

STATE OF MICHIGAN

IN THE 17TH JUDICIAL CIRCUIT COURT FOR THE COUNTY OF KENT

THE PEOPLE OF THE
STATE OF MICHIGAN,

vs.

File No.: 93-63014-FCA
93-63014-FCBDANIEL ARTHUR TURNER and
STEPHEN DENNIS TURNERDefendants.
_____ /

REC'D & FILED

OCT 31 1994

Kent County Clerk

FINAL DAY OF JURY TRIAL

BEFORE THE HONORABLE ROBERT A. BENSON, CIRCUIT JUDGE

Grand Rapids, Michigan - Monday, December 13, 1993

APPEARANCES:

FOR THE PEOPLE:

KEVIN M. BRAMBLE (P38380)
Assistant Prosecuting Attorney
416 Hall of Justice
Grand Rapids, MI 49503FOR THE DEFENDANT
DANIEL TURNER:ROBERT F. MIRQUE (P47391)
920 McKay Tower
Grand Rapids, MI 49503FOR THE DEFENDANT
STEPHEN TURNER:TONYA L. KRAUSE (P42056)
920 McKay Tower
Grand Rapids, MI 49503LESLIE BROWN, CSR KENT COUNTY CIRCUIT COURT
(616) 336-3786

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STATE APPELLATE
DEFENDER OFFICE

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1 Grand Rapids, Michigan

2 Thursday, December 13, 1993

3 (Court in session out of the presence of the jury)

4 THE COURT: We had a request from the jury
5 for, it says, 911 tape/ with time overlay. I don't have Mr.
6 Daniels in here, but I don't think I need him at this point.
7 I'm going to have to try to agree with the attorneys as to
8 what we're going to give the jury. I take it the whole tape
9 was inadmissible, Mr. Bramble?

10 MR. BRAMBLE: Yes, your Honor.

11 MR. MIRQUE: It is my understanding that
12 the only evidence that was introduced was the tape about the
13 overlay. We stipulated as to the time, so my position is only
14 give the jury that which has been admitted, plus the
15 stipulation.

16 MR. BRAMBLE: The tape was introduced into
17 evidence. The tape was played twice; once with player I have
18 before me that doesn't tape the time over, once with a smaller
19 tape player that takes the time off it so all you hear is the
20 spoken words by the people calling the 911. So, I'll leave it
21 to the Court as to what you want to do with it.

22 THE COURT: Well, the whole tape was
23 introduced and the tape has the time overlay on it.

24 MR. BRAMBLE: Right. It's just a matter
25 of which player you play it on.

1 THE COURT: Mr. Mirque?

2 MR. MIRQUE: Well, I'm not quite sure
3 which was introduced.

4 THE COURT: Excuse me. It's only one
5 tape.

6 MR. MIRQUE: That's right. But, which
7 version of being introduced --

8 THE COURT: Well, you've got a tape, it
9 just depends what tape recorder, and I understand it was
10 played with the time overlay at one point?

11 MR. BRAMBLE: It was. Right before lunch
12 time one particular day, Wednesday or Thursday of last week.
13 Wednesday of last week. We brought up this one to make it
14 easier to hear the people who we calling on the tape. It was
15 once before lunch and on this one without the time over, then
16 after lunch with the other.

17 THE COURT: The problem is the
18 stipulation. I don't the jury is bound by stipulation.

19 I assume the Judge read the Standard Jury
20 Instructions to them, SJI -- CJI 2nd 4.7 says as follows:

21 "When the lawyers agree on a statement of facts, these
22 are called stipulated facts. You may regard such
23 stipulated facts as true, but you are not required to do
24 so."

25 The commentary says:

1 "The jury is the sole judges of all the facts presented
2 at trial and may choose to believe or disbelieve any or
3 all evidence."

4 I've got a feeling that if I'm going to get the jury
5 in and they want the tape overlay, I'm going to give it to
6 them. They're not required to accept the stipulation that was
7 made. If they want to listen to the tape overlay and the tape
8 overlay was admitted, it's just a question of which machine
9 you put it on, I don't see why they can't have it. Let me get
10 the Daniel's jury in. Well, I need her client. We have to
11 put something on the record with her client.

12 The record should reflect that Judge Kolenda is
13 gone. He is out of town.

14 We have Stephen Turner is here. There was
15 something that Ms. Krause wanted to put on the record. Go
16 ahead, Ms. Krause.

17 MS. KRAUSE: Thank you, your Honor.

18 The record should reflect that on Friday,
19 last, at approximately three o'clock, Stephen Turner's jury
20 began deliberations.

21 Sometime near the end of the day, it came
22 to my attention, and I believe to the assistant prosecutor's
23 as well, that a piece of evidence that was introduced in
24 Daniel Turner's case only, and not in Stephen Turner's case,
25 was taken from Daniel Turner's jury room into Stephen Turner's

1 jury room.

2 I do not have the exact number of that
3 exhibit with me, however, I could describe it for the record.
4 It is a photograph of my client, Stephen Turner and the co-
5 defendant, Daniel Turner, dressed in women's clothing. Prior
6 to the evidence being taken into Daniel Turner's jury room, I
7 specifically had Judge Kolenda mark that as D. Turner only.

8 This evidence was specifically not to be
9 introduced at Stephen Turner's trial. I think the prosecutor
10 would agree with me that throughout the course of the trial,
11 we kept out of evidence the fact that my client was a cross-
12 dresser, and with the exception of one photograph from the
13 apartment of my client that showed some lingerie in a drawer,
14 there was no evidence introduced in my client's case of cross-
15 dressing attributable to Stephen Turner.

16 Because of this, because this photograph,
17 which was excluded from my client's case, and is highly
18 prejudicial to him and involves material that was kept out of
19 our trial, deliberately, I believe that the jury-deliberation
20 process has been tainted, I believe that it is prejudicial
21 that arises to the level of 403 prejudiced to my client.
22 That, based on that, I ask for a mistrial.

23 THE COURT: Mr. Bramble?

24 MR. BRAMBLE: Your Honor, I would oppose.

25 Judge Kolenda mentioned this to me and his

1 belief was that the photograph which contained both the
2 conviction of this defendant as well as the co-defendant, that
3 one could not discern from that photograph that, in fact, the
4 person dressed in women's clothing was this particular
5 defendant.

6 I suspect that the photograph was in there
7 momentarily and that it was brought out of the jury room. So
8 I would oppose the motion.

9 THE COURT: Anything else, Ms. Krause?

10 MS. KRAUSE: Well, the fact of the matter
11 is, that may be Judge Kolenda's opinion, but we don't know
12 what effect it had on the jury.

13 That jury may be able to look at that
14 photograph and say, yes, that is Stephen Turner with his
15 brother, Daniel Turner. And the problem we find ourselves
16 with right now is we can't go in there and ask them which one
17 of you saw it, what effect did this have on you, because then,
18 for sure, the whole jury is going to be tainted.

19 And I think just the fact that the
20 evidence that was specifically not introduced against my
21 client got into that jury room is taint enough, and there
22 should be a mistrial granted.

23 THE COURT: Okay. I'll -- let me -- I
24 talked to Judge Kolenda. He mentioned it this morning. I'll
25 tell you what he told me. I assume when he gets back into

1 town he can put it on the record.

2 Judge Kolenda indicated to me that the
3 picture was returned by the jury foreman. There is no
4 indication that anybody on the jury, other than the foreman,
5 even saw it.

6 Judge Kolenda told me that it was a small
7 picture, that when I say small, I assume you've got some
8 8 x 10 or something like that. This was a small picture, I
9 assume a 3-1/2 x 4 or a standard, what we call a snapshot.

10 Judge Kolenda said that there was no way
11 to identify the people in the photograph or that it was highly
12 unlikely anybody would identify them. There is no evidence
13 that the whole jury saw it. And he was of the opinion that if
14 any err, it was harmless err.

15 I would assume if you want some kind of
16 an instruction, I will get the jury in and get them
17 instruction when they come in, but that's going to be a choice
18 you'll have to make with your client. I don't see any grounds
19 for a mistrial here. It was inadvertent. No evidence that
20 the jury saw it, and given back by the foreman.

21 Apparently, I don't know the exact time,
22 but apparently, when the pictures were taken in, the clerk got
23 it back very shortly and the foreman said, this is not one of
24 our exhibits and gave it back. So there is no indication that
25 anybody else in the jury, other than the foreman, even saw it.

1 And, as I say, Judge Kolenda also said
2 it's highly unlikely that anybody in there would be able to
3 identify the people as being this defendant or anybody else.
4 Since they had not seen it before, there was no reason for
5 them to believe they would know who the people are in the
6 pictures. There was no indication on the picture to tie this
7 into your client as opposed to Daniel Turner's case.

8 If you want some kind of instruction, I'll
9 consider giving it, but that's a decision you'll have to make.
10 But I'm going to deny the motion for mistrial at this point
11 with the right, Ms. Krause, to ask for instruction if you want
12 it. Okay.

13 Oh, by the way, I got a note now from the
14 jury for Lakeysha Cage's testimony. I don't know what the
15 Judge has been doing. Apparently, I've got the testimony
16 here. I don't know if the Judge has been giving it to them,
17 or what he has been doing, Mr. Bramble.

18 MR. BRAMBLE: I have no objection to that.
19 I have no objection. That's fine. I think it's already --

20 MR. MIRQUE: I think they've already seen
21 it, so -- That's okay. Who ordered it first?

22 MR. BRAMBLE: I don't know. I have no
23 idea.

24 MR. MIRQUE: That's fine with me.

25 THE COURT: Has the Judge been giving it

1 to them?

2 MR. BRAMBLE: Yes.

3 THE COURT: In the jury room?

4 MR. MIRQUE: Right.

5 THE COURT: Okay. I'll give them that
6 then.

7 (Short break had and Daniel Turner's Jury resume seats)

8 THE COURT: Good morning, ladies and
9 gentlemen. My name is Judge Robert Benson. Judge Kolenda is
10 out of town today, so I'm kind of helping him out here.

11 We had a request from the jury for the 911
12 tape with the time overlay. Is that what the request was?

13 THE FOREPERSON: Yes.

14 THE COURT: The delay was we had some
15 confusion among the attorneys because, apparently, there was
16 also a stipulation as to the time when the call came in. Did
17 you want more --

18 THE FOREPERSON: We're looking for --

19 THE COURT: Pardon?

20 THE FOREPERSON: We were looking for the
21 times that the calls came in.

22 THE COURT: Was there more than one call
23 that came in or just one?

24 MR. BRAMBLE: Four calls came in.
25 Right, counsel?

1 THE COURT: Did you stipulate on all of
2 the times or just one?

3 MR. BRAMBLE: One of them was 5:41, I
4 believe.

5 MR. MIRQUE: We stipulated to one time
6 that the calls were. I don't think there was --

7 MR. BRAMBLE: I think there was six calls.

8 THE COURT: Well, I guess the only thing
9 is, is I don't know how clearly -- you know, I can give you
10 the tape with the recorder that will play the time overlay,
11 too, if that's what you to try to do.

12 THE FOREPERSON: If you could have the
13 attorneys agree on a time, this bunch time, we'd be satisfied
14 with that.

15 MR. BRAMBLE: We believe 5:41 would be --

16 THE COURT: A.m. or p.m.?

17 MR. BRAMBLE: P.m.

18 MS. KRAUSE: P.m.

19 MR. BRAMBLE: I believe that was --

20 THE COURT: That's the first call?

21 MR. BRAMBLE: No. That is the call that
22 was made by the co-defendant, Steven Turner. We stipulated it
23 was made at 5:41; is that correct?

24 MS. KRAUSE: 17:41.

25 MR. BRAMBLE: 17:41, 5:41.

1 THE COURT: 5:41 p.m.

2 MR. BRAMBLE: That's correct. There were
3 others made before that. I think we stipulated that as well.

4 THE FOREPERSON: We wanted the first one,
5 though. The first call.

6 THE COURT: Well then, I would suggest we
7 give you the tape. Is the tape audible?

8 MR. MIRQUE: Yes.

9 MR. BRAMBLE: You'll have to play it on
10 this player in order to get the time. This one takes the time
11 out.

12 THE COURT: Okay. Give them the big
13 recorder and the tape. Why don't you show them, Mr. Bramble,
14 right there, how to run it, how to run that recorder. Tell
15 the foreman. Then they won't have to do it in the jury room.
16 Just show him what he has to press.

17 If you want to plug it in and make sure
18 that it is working, Mr. Bramble, there's a spot right down
19 there in front of the jury box.

20 MR. BRAMBLE: Does it work, do you know,
21 Judge?

22 THE COURT: It does work, yes.

23 (Tape played)

24 THE COURT: All right. You know how to
25 run it well enough, Foreman? Why don't you take it into the

1 jury room with you.

2 Did you get your coffee and sugar? They
3 sent you down -- apparently they didn't have any made up. Did
4 you go down and get coffee?

5 THE FOREPERSON: Yes, we did.

6 THE COURT: Okay, fine. Thank you. Do
7 you have any more questions right now?

8 THE FOREPERSON: No.

9 THE COURT: Okay, fine. Thank you.

10 (Jurors retire to jury room)

11 THE COURT: Do you have any objections,
12 Mr. Bramble?

13 MR. BRAMBLE: No, your Honor.

14 THE COURT: Mr. Mirque?

15 MR. MIRQUE: No, your Honor.

16 THE COURT: Okay, fine. Thanks.

17 You can take Mr. Turner back.

18 (Break had, after which court resumes without jury)

19 THE COURT: All the jury is here, and I'll
20 bring them in in a minute. Let me read into the record to
21 make sure I'm reading it correctly. Will you be seated, sir.

22 THE DEFENDANT: (Complies).

23 THE COURT: Okay, Ms. Krause has given me
24 a handwritten instruction. I'll read it, and if I'm reading
25 it correctly, let me know, Ms. Krause.

1 The instruction says:

2 "An item was mistakenly sent into your jury room on
3 Friday. That item is not evidence in the case you are
4 deliberating, therefore, you are not to consider the item when
5 deliberating and must disregard the item."

6 Have I read it correctly?

7 MS. KRAUSE: Yes.

8 MR. BRAMBLE: Your Honor, I guess what I
9 would like to do is go get the exhibit and show the back of it
10 and say it was a small picture, and you can't consider this --

11 THE COURT: She doesn't want to identify
12 it in any way. I think this is good enough.

13 MR. BRAMBLE: I think I should get it
14 so --

15 THE COURT: You probably should get it so
16 that we have a number so we know what we're talking about.

17 MR. BRAMBLE: Your Honor, for the record,
18 that would be Exhibit 32. I guess I just want to make it
19 clear that it but one exhibit they are not to consider and
20 they may consider all of the other exhibits, obviously.

21 Judge Kolenda, in his handwriting, put "D.
22 Turner" on the back, but to signify that is was an exhibit to
23 be admitted for Mr. Daniel Turner's jury only.

24 THE COURT: Okay. Well, it's Exhibit 32.
25 It won't show up in this record anyway, except now.

1 MS. KRAUSE: Right.

2 THE COURT: Okay. I'll get the jury in
3 and I'll read this for them.

4 You want to bring in, what Steve Turner?

5 MS. KRAUSE: Yes.

6 THE COURT: Steve Turner's jury.

7 (Jury present for Stephen Turner's jury)

8 THE COURT: Okay, you may be seated,
9 ladies and gentlemen.

10 Again, for the record, my name is Judge
11 Robert Benson. As you know, I think Judge Kolenda told you,
12 he was going to be gone today because of some prior plans, and
13 I am taking his place.

14 I've got an instruction that I am going to
15 give to you, a special instruction. An item was mistakenly
16 sent into your jury room on Friday. That item is not evidence
17 in the case upon which you are deliberating, therefore, you
18 are not to consider that item in any way when deliberating,
19 and must disregard that item completely.

20 Okay. Thank you very much. You may go
21 back to your jury room and continue deliberating.

22 (Jurors retire to deliberate)

23 THE COURT: Okay. Any objections, Mr.
24 Bramble?

25 MR. BRAMBLE: No, your Honor.

1 THE COURT: Ms. Krause?

2 MS. KRAUSE: No, your Honor.

3 THE COURT: Then you also, as I say, you
4 have on the record your motion for mistrial, so you are all
5 set on that.

6 MS. KRAUSE: Thank you, your Honor.

7 THE COURT: Thank you very much.

8 MR. BRAMBLE: Your Honor, I'm going to
9 show this to Ms. Mueller so we can understand what we are
10 talking about here.

11 THE COURT: Your going to show it to whom?

12 MR. BRAMBLE: Nadine Mueller.

13 THE COURT: Oh, okay. That's fine.

14 (Break had after which court resumes
15 with Stephen Turner's jurors present)

16 THE COURT: I have a request for
17 transcript. I've got a real serious problem there. The court
18 reporter who took this was my court reporter, who is home
19 today because her daughter is terribly ill, and it's her
20 software. We cannot run these transcripts. We have one other
21 reporter who is capable of doing it, I think, because she has
22 the same software, she's off today. So, I don't have anybody
23 who can run these transcripts.

24 I -- transcripts usually are not
25 available, and we're not going to be able to get them to you

1 today. I'm even going to have a -- I probably won't even be
2 able to read them back today, if you want them read back.

3 So what I'm going to ask you to do is go
4 ahead and rely on your memory as much as you can rely on your
5 notes. I think some of you took notes.

6 If you can't get it, I only have two
7 possibilities: one is maybe later today, if her daughter gets
8 better, I can get her in later this afternoon. More likely it
9 would be tomorrow before we could even read it back. I can
10 probably see if I can get some of the other reporters who
11 might be able to read her notes.

12 You know, court reporters, even though
13 they use stenotype machines, their style is individual. It's
14 a lot like handwriting and not everybody can read it. And so
15 I cannot promise you Officer Mesman's testimony, even to have
16 it read back to you today. I would probably say the best I
17 can do for that would be tomorrow. There would be a
18 possibility that after lunch we can talk to Mrs. Russo and see
19 how her daughter is, she might be able to come in, but I would
20 probably not count on it.

21 So rely on your memory right now as best
22 you can. If you run into real problems, let me know, because
23 as I say, I've got two choices: one is to wait until
24 tomorrow, the other is to see if some other reporter, such as
25 Leslie or Barbara or one of the other reporters might be able

1 to read Becky's notes. She might be able to read the
2 transcript back to you.

3 The other one is a question that says,
4 "If there are two or three acts that can be construed
5 as aiding and abetting, do jurors have to agree on the act?
6 Perhaps worded another way, can jurors agree on guilt or
7 disagree on a specific act that constitutes guilt?"

8 Have I read that right?

9 The answer is, Yes, if I understand the
10 answer correctly. For example, you might have a case in which
11 there was a bank robbery and there may be testimony that the
12 defendant was the driver of the getaway car. There might be
13 other testimony in the case which would indicate that he was
14 not at the scene at all, but he was the one who planned the
15 robbery and did all of the planning for the robbery.

16 The jurors might disagree as to whether or
17 not he planned the robbery or whether or not he was the
18 getaway driver. As long as all of the jurors agree that he
19 aided and abetted the robbery and that he had the proper
20 intent, as Judge Kolenda instructed on you, then they can
21 determine the guilty verdict -- they could determine the
22 verdict of guilty of the bank robbery, even though they didn't
23 agree on the specific act with which they think he's guilty
24 of.

25 In putting it all together, whether he

1 planned the robbery or whether he was the getaway driver is
2 not material as long as all of the jurors agree that he did,
3 in effect, aid and abet.

4 And secondly, that he had the requisite
5 intent in his mind when he did that. Do you understand?

6 THE FOREPERSON: Yes.

7 THE COURT: If you have serious trouble
8 with Officer Mesman's testimony, send another note out. But
9 again, in all fairness, it probably would be much later today
10 or probably tomorrow before I can get that for you.

11 Okay, thank you very much.

12 (Jurors retire to deliberate)

13 THE COURT: Number one, Mr. Bramble, do
14 you have objections to either of the comments?

15 MR. BRAMBLE: No, your Honor.

16 THE COURT: Ms. Krause, any objections?

17 MS. KRAUSE: No, your Honor.

18 THE COURT: Okay, fine. Thank you.

19 (Break had after which Court resumes with

20 Mr. Daniel Turner's jury present)

21 THE COURT: Okay, you may be seated ladies
22 and gentlemen. Let me explain what we are going to do. I
23 understand you have a verdict and in just a minute I will
24 start the process of taking the verdict.

25 As you know, there are two juries

1 deliberating on this case, so this verdict is going to be
2 sealed and the results will not be announced until after the
3 other jury has returned. So in a minute what I'm going to do
4 is I will ask the foreperson whether or not the jury has a
5 verdict, and if so, I'm going to ask him to rise.

6 What I will do then, I'm going to look at
7 the verdict, just to make sure that there is no, what we call
8 internal inconsistencies, in it. I will then give it back to
9 the foreman, and then I'm going to ask each of the jurors, in
10 turn, if that juror will actually look at the verdict, and
11 then I will ask each juror, in turn, whether that was and is
12 his or her verdict, and they will then confirm yes or no that
13 it is.

14
15 Once I have all twelve of the jurors
16 affirming that it is their verdict, Mr. Foreman, I'm going to
17 have you seal it in this envelope and sign your name across
18 the back, and I will hold that verdict until such time as the
19 other jury has returned. Do you understand?

20 THE FOREPERSON: All right.

21 THE COURT: So Mr. Foreman, let me ask
22 you, have you all twelve of you agreed upon a verdict?

23 THE FOREPERSON: We have.

24 THE COURT: Okay, you want to give it to
25 me, please?

1 If you would, Madam clerk, show it to each
2 of the jurors to look at, starting with juror seat number one
3 up under the clock and let me ask each of you -- you are juror
4 seat number one back there.

5 Okay. Juror in seat number one, was and
6 is that your verdict?

7 JUROR SEAT NO. ONE: Yes, it is

8 THE COURT: Okay, you want to pass it
9 down, please?

10 Juror in seat number three, was that and
11 is that your verdict?

12 JUROR SEAT NO. THREE: Yes.

13 THE COURT: Juror in seat number four, was
14 that and is that your verdict?

15 JUROR SEAT NO. FOUR: Yes.

16 THE COURT: Juror in seat number five, was
17 that and is that your verdict?

18 JUROR SEAT NO. FIVE: Yes.

19 THE COURT: Juror in seat number six, was
20 that and is that your verdict?

21 JUROR SEAT NO. SIX: Yes.

22 THE COURT: Juror in seat number seven,
23 was that and is that your verdict?

24 JUROR SEAT NO. SEVEN: Yes, it is.

25 THE COURT: Okay, you want to pass it up

1 to the front, please.

2 Juror, you would be number 14, was that
3 and is that your verdict?

4 JUROR SEAT NO. FOURTEEN: It is.

5 THE COURT: Juror in seat number 12, was
6 that and is that your verdict?

7 JUROR SEAT NO. TWELVE: Yes.

8 THE COURT: Juror in seat number 11, was
9 that and is that your verdict?

10 JUROR SEAT NO. ELEVEN It is.

11 THE COURT: Juror in seat number 10, was
12 that and is that your verdict?

13 JUROR SEAT NO. TEN: Yes, it is.

14 THE COURT: Juror in seat number nine, was
15 that and is that your verdict?

16 JUROR SEAT NO. NINE: Yes, it is.

17 THE COURT: And juror number eight, was
18 that and is that your verdict?

19 JUROR SEAT NO. EIGHT: Yes, it is.

20 THE COURT: Okay. Madam Clerk, why don't
21 you have -- Mr. Foreman, would you fold that and put it in the
22 envelop and seal it and then sign your name right across the
23 back of the flap, if you would, please.

24 All right. Just sign your name right
25 across the flap there, that's it, fine, thank you. Why don't

1 you date it today's date and put the time, which is 3:25 p.m.

2 Okay. You want to give it to me and I'll
3 hold onto it.

4 Okay, thank you, ladies and gentlemen.
5 Two instructions. Don't talk to anyone about the case. Don't
6 talk to the police, or the prosecutor, or anybody; and don't
7 make any public announcements, or don't tell anybody what your
8 verdict is or was until the other jury has arrived at a
9 verdict, okay?

10 If you want to, leave your message or
11 leave you name with Ms. Mueller, We will call you if the jury
12 comes back in with a verdict and so forth. But, again, you
13 are discharged from this case. Don't forget to sign out.
14 Thank you very much for your patience. I know this was a
15 long, hard case. I think you're all done, right?

16 THE FOREPERSON: Yes.

17 THE COURT: Again, we appreciate your time
18 and effort that you, as citizens, serve in coming down for the
19 juries. I'm sure Judge Kolenda may have mentioned that the
20 jurors end up trying the tough cases. The easy cases, whether
21 it's a civil case or a criminal case, settle out, and the one
22 the juries end up with are the tough cases. So we know you
23 worked and we know you earned your money. We do appreciate
24 it.

25 Don't talk about the case to anyone. Have

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1 a good holiday. If you have any questions about your jury
2 service, I can stop into the jury room in a few minutes. I
3 can't talk about this case, only because I don't know enough
4 about it and I wouldn't talk to you anyway, but I'll be glad
5 to answer any questions you may have about your jury service.
6 I'll stop in and see you for a minute. You are free to go.

7 (Jurors discharged in Mr. Daniel Turner's case)

8 THE COURT: Any objection to the
9 procedure, Mr. Bramble?

10 MR. BRAMBLE: No, your Honor.

11 THE COURT: Mr. Mirque?

12 MR. MIRQUE: No, your Honor.

13 THE COURT: Okay, what will happen, Mr.
14 Daniel Turner, as soon as the other jury has come back in with
15 it's verdict, which will be announced in open court, either
16 myself or Judge Kolenda, whoever is here, will get you back
17 in. I will open this in your presence at that time and we
18 will read the verdict into the record.

19 THE DEFENDANT: Okay.

20 MR. MIRQUE: Thank you.

21

22

(Break had after which

23

Mr. Stephen Turner's jury present)

24

THE COURT: Okay, Madam Clerk?

25

THE CLERK: Ladies and Gentlemen of the

1 Jury, have you agreed upon a verdict? If so, let your
2 foreperson rise.

3 Mr. Foreperson, what is your verdict as
4 to count one -- excuse me, as to count two?

5 THE FOREPERSON: We find the defendant
6 guilty of aiding and abetting in the commission of criminal
7 sexual conduct in the first degree.

8 THE CLERK: Mr. Foreperson, what is your
9 verdict as to count four?

10 THE FOREPERSON: We find the defendant
11 guilty of criminal sexual conduct in the second degree.

12 THE CLERK: Ladies and gentlemen of the
13 jury, listen to your verdict as recorded. You say, upon your
14 oaths, that you find the defendant, Stephen Dennis Turner,
15 guilty of the crime of aiding and abetting the commission of
16 criminal sexual conduct in the first degree as to count two.

17 And as to count four, guilty of criminal
18 sexual conduct in the second degree.

19 In the manner and form as the People have
20 in their Information in this cause charged, so say you,
21 Mr. Foreperson?

22 THE FOREPERSON: Yes.

23 THE CLERK: So say you all, ladies and
24 gentlemen of the jury?

25 THE JURY: Yes.

1 THE COURT: Do you want the jury polled?

2 MS. KRAUSE: Yes, your Honor. Thank you.

3 THE COURT: Okay, we'll poll the jury,
4 ladies and gentlemen. We'll do it by seat number. You, sir,
5 are in seat number one, you're juror number 13 -- 12. The
6 clerk will say to each of you, she'll say, Was this and is
7 this your verdict? And each of you will then answer, out
8 loud, after she calls your seat number.

9 Do you want to poll the jury, please?

10 THE CLERK: Juror number one, was this and
11 is this your verdict?

12 JUROR SEAT NO. ONE: Yes, it is.

13 THE CLERK: Juror number two, was this and
14 is this your verdict?

15 JUROR SEAT NO. TWO: Yes.

16 THE CLERK: Juror number three, was this
17 and is this your verdict?

18 JUROR SEAT NO. THREE: Yes.

19 THE CLERK: Juror number four, was this
20 and is this your verdict?

21 JUROR SEAT NO. FOUR: Yes.

22 THE CLERK: Juror number five, was this
23 and is this your verdict?

24 JUROR SEAT NO. FIVE: Yes.

25 THE CLERK: Juror number six, was this and

1 is this your verdict?

2 JUROR SEAT NO. SIX: Yes.

3 THE CLERK: Juror number seven, was this
4 and is this your verdict?

5 JUROR SEAT NO. SEVEN: Yes.

6 THE CLERK: Juror number eight, was this
7 and is this your verdict?

8 JUROR SEAT NO. EIGHT: Yes.

9 THE CLERK: Juror number nine, was this
10 and is this your verdict?

11 JUROR SEAT NO. NINE: Yes.

12 THE CLERK: Juror number 10, was this and
13 is this your verdict?

14 JUROR SEAT NO. TEN: Yes.

15 THE CLERK: Juror number 11, was this and
16 is this your verdict?

17 JUROR SEAT NO. ELEVEN: Yes.

18 THE CLERK: Juror number 12, was this and
19 is this your verdict?

20 JUROR SEAT NO. TWELVE: Yes.

21 THE COURT: Okay, thank you, ladies and
22 gentlemen. Mr. Foreman, you want to give the jury verdict
23 form to the clerk, if you would, please. You are excused,
24 ladies and gentlemen.

25 If you took notes, leave them in the jury room. The

1 court rule requires that they be destroyed. So, just leave
2 them in the jury room and we will tear them up. You are
3 excused from jury duty. Thank you very much.

4 If you have any questions about jury duty,
5 I'll be in in a few minutes to talk to you if you have any
6 questions or anything I can clear up for you.

7 Again, we appreciate the effort on this
8 case and all of the cases you served on. Have a happy holiday
9 and good luck and good bye. Thank you.

10 Madam Clerk, you want to show this to the
11 attorneys to make sure that the form agrees with what the jury
12 read?

13 Ms. Krause, does the form agree with what
14 the jury read?

15 MS. KRAUSE: Yes, your Honor.

16 THE COURT: Mr. Bramble?

17 MR. BRAMBLE: Yes, your Honor.

18 THE COURT: Okay, fine. Then Stephen's
19 case, we'll ask that there be a 274, remand him to jail
20 without bond pending sentence. You want to take him out and
21 we'll give you a sentence date at a later time, Ms. Krause.
22 I don't know --

23 THE CLERK: It's set for January 19th.

24 THE COURT: January 19th will be
25 sentencing.

1 (Stephen Turner remanded to jail)

2 THE COURT: Now we'll bring down.

3 Okay. The record should reflect that we are back on the
4 record now in Case Number 93-63014-FCA, the People versus
5 Daniel Turner.

6 The Court will open the verdict which was
7 sealed earlier. I have the form -- or the envelope, which was
8 signed by Don McGahan at 3:25 p.m. on December 13, 1993. It's
9 now approximately 4:46 by the court clock. We will open the
10 verdict, which is sealed.

11 Okay. The verdict form says, as to count
12 one, guilty of kidnapping. As to count two, guilty of
13 criminal sexual conduct in the first degree. As to count
14 three, guilty of criminal sexual conduct in the first degree.

15 It's dated December 13, 1993, signed by
16 Don McGahan, foreperson. And the record should reflect that
17 before it was put in the envelope, each of the jurors had
18 acknowledged, in open court, that that was and, is their
19 verdict.

20 Madam Clerk, do you want to show this to
21 the prosecutor and the defense lawyer and make sure that the
22 Court has read it correctly?

23 Has the Court read it correctly, Mr.
24 Mirque?

25 MR. MIRQUE: It appears it has, your

1 Honor.

2 MR. BRAMBLE: Yes, your Honor.

3 THE COURT: Okay. We'll order a
4 presentence investigation in the case of Daniel, also.

5 Daniel will be remanded to the Kent County
6 Jail without bond pending sentence. And sentence is January
7 19th at, what, 1:30?

8 THE CLERK: Yes.

9 THE COURT: 1:30 p.m. Court is adjourned.

10 Mr. Bramble, you want to stick around and
11 gather all of the exhibits so that we can hold them in case
12 there are appeals?

13 MR. BRAMBLE: Yes, your Honor.

14 (Mr. Daniel Turner remanded to jail
15 and court in recess at 4:48 p.m.)

16 --oo00oo--

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