
STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

COA No. 273407

v

LC No. 06-002597-FC

JOEL DUFRESNE,
Defendant-Appellant.

James R. Linderman (P23088)
Emmet County Prosecutor
200 Division Street
Petoskey, MI 49770
(231) 348-1725
Attorney for Plaintiff-Appellee

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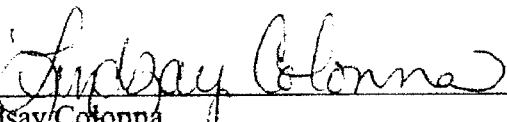
PROOF OF SERVICE

Lindsay Colonna deposes and says that on June 19, 2007, she served the following documentation:

MOTION FOR RECONSIDERATION

and this Proof of Service upon ALL COUNSEL OF RECORD placing said documents in an envelope properly addressed to said counsel and depositing same in the U.S. Mail with postage fully prepaid.

I declare that the statements above are true to the best of my information, knowledge, and belief.



Lindsay Colonna

Dated: June 19, 2007

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MOTION FOR RECONSIDERATION

On May 30, 2007, this Court denied Mr. Dufresne's motion to remand because it "was not supported by an affidavit or an offer of proof that set forth the facts to be established at a hearing." Mr. Dufresne will first reiterate his claims to be decided if this Court remands the issue to the trial court. Second, Mr. Dufresne will provide this Court with an offer of proof.

Issues on Remand

Mr. Dufresne was convicted by jury trial in the Emmet County Circuit Court, the Honorable Charles Johnson presiding, of nine counts of first and third- degree criminal sexual conduct, fourth habitual offender, and acquitted of three counts of first-degree criminal sexual conduct. The trial court sentenced him to a controlling sentence of fifty to seventy-five years' imprisonment.

The charges against Mr. Dufresne arose from allegations of the Complainant, Angela W█████. Mr. Dufresne and Ms. W█████ had been living together and had an infant son together, Hale. Ms. W█████ testified that their relationship was good to start, but then became abusive, physically and sexually. Ms. W█████ testified to instances of terrible physical beatings and horrible sexual abuse. Mr. Dufresne countered that Ms. W█████ had mental problems and had, in fact, physically attacked him on multiple occasions before he finally lost control and beat her. He denied that some of the sexual abuse ever happened, and countered that other instances were, in fact, consensual. The prosecution introduced corroborating testimony regarding the tense relationship between the two and observation of marks on Ms. W█████'s body. There was also medical testimony that a detailed examination of Ms. W█████ disclosed a centimeter long laceration in her anus. This testimony was actually consistent with both versions of the event because Mr. Dufresne admitted that he had hit Ms. W█████ and then he had had anal intercourse with her that could have caused the injury, but that the intercourse was consensual. The bulk of the dispute as it is in many CSC cases, was a credibility contest between the parties.

Mr. Dufresne's attorney was ineffective for the following reasons:

1. Mr. Dufresne is a former member of the "creativity movement," a white supremacist group. This fact is irrelevant to the criminal case against Mr. Dufresne's membership in this organization could prove no fact relating to the alleged crimes nor could it lead to any such fact. Because it lacked any probative value, it was more prejudicial than probative. Given the common perception of white supremacists as hateful and violent, the introduction of this evidence tended to encourage the jury to convict Mr. Dufresne based on his character, not the substance of the allegations.

The most egregious reference to Mr. Dufresne's membership in the organization came from Trooper White-Erickson. She testified, for no apparent reason, that she was familiar with Mr. Dufresne because she had investigated him as part of an FBI investigation into the entire movement following the murder of a judge's family in Chicago. There was no reason that the jury needed to know whether or not the trooper had previous contact with Mr. Dufresne. There was certainly no reason for them to know that he had been investigated as part of a movement that was involved with the murder of a judge's family. There was nothing about the murder and the CSC crimes in this case that would justify admission as a prior act under MRE 404(b), and there was no testimony that Mr. Dufresne was involved in any way in the murder.

Setting up this testimony was the testimony of Ms. W██████ herself in which she detailed Mr. Dufresne's involvement in the movement. Again, none of this testimony was necessary for the jury to determine the veracity of the allegations in this case. Its only effect was to prejudice the jury and to encourage a verdict based on Mr. Dufresne's character.

This evidence was improperly admitted and constitutes error under multiple theories. First, it was an evidentiary error to admit under MRE 401, 402, and 403 as irrelevant evidence that was more prejudicial than probative. Second, it was prosecutorial misconduct for the prosecutor to ask questions regarding these facts because of the prejudicial nature of the evidence. Third, it was ineffective assistance of counsel for Mr. Dufresne's trial attorney to object to the evidence.

2. During his testimony, Trooper Armstrong testified that the police tried to do the best job they could in investigation and try to investigate it as fully as possible and document things, and talk to people to substantiate the facts in the case if they can. T I 181. He said that were looking for evidence that can go either way, and in different cases in the past accusations were made and after looking into them, you would come to find out that it probably didn't happen. T I 181. He continued on re-direct by testifying that when listening to the taped calls in the jail if he, hypothetically, heard the Defendant say that so and so had proof of his innocence, he would check it out. T I 192.

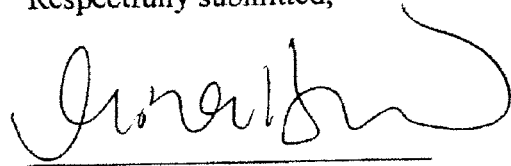
Mr. Dufresne's attorney was ineffective for failing to object to this vouching of Trooper Armstrong for the veracity of the allegations and the credibility of Complainant.

Offer of Proof

At a hearing on this matter, Mr. Dufresne will attempt to prove that Mr. Dufresne's attorney had no legitimate purpose under the law for failing to object to the evidence described above. Mr. Dufresne would call the trial attorney, Bryan Klawuhn, as a witness to testify regarding his understanding of the law surrounding these issues and whether he believed the evidence to be objectionable in the first instance. Also, Mr. Dufresne would introduce testimony from Mr. Klawuhn regarding any reasons that he might have had in failing to object to the evidence if he found it objectionable. To date, undersigned counsel, Michael Skinner, left a voicemail, sent an e-mail, and left a message with Mr. Klawuhn's secretary but he has not received a response from him. Mr. Klawuhn's secretary informed Mr. Skinner that Mr. Klawuhn was aware of Mr. Skinner's messages,

but he still has not contacted Mr. Skinner as of the date of the filing of this motion.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael Skinner", written over a horizontal line.

Michael Skinner (P62564)
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(248) 693-4100
Attorney for Defendant-Appellant

Dated: June 19, 2007