

THE STATE OF MICHIGAN
IN THE SUPREME COURT

THE PEOPLE OF THE
STATE OF MICHIGAN,

Plaintiff-Appellee,

Vs

BRANDON JAMES HARBISON,

Defendant-Appellant,

SUPREME COURT NO. 157404

COURT OF APPEALS NO. 326105

CIRCUIT COURT NO. 13-18686-FC

JONATHAN K. BLAIR (P71908)
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**PLAINTIFF-APPELLEE'S ANSWER TO DEFENDANT-APPELLANT'S
APPLICATION FOR LEAVE TO APPEAL**

NOW COME, Plaintiff-Appellee, the People of the State of Michigan, by and through Myrene K. Koch, Prosecuting Attorney for the County of Allegan, and Jonathan K. Blair, Assistant Prosecuting Attorney, answers Defendant-Appellant's Application as follows:

1. On November 21, 2014, the Defendant was convicted of two counts of Criminal Sexual Conduct 1st, one count of attempted Criminal Sexual Conduct 1st, two counts of Criminal Sexual Conduct 2nd, and one count of Accosting a Child for Immoral Purposes. The victim was the Defendant's niece.

2. On January 26, 2015, the Defendant was sentenced to: 320 months – 480 months in the Michigan Department of Corrections.

3. The Defendant filed a claim of appeal with the Court of Appeals on February 19, 2015. Transcripts were filed on June 25, 2015. Defendant filed a "Motion for New Trial" with the Circuit Court on August 21, 2015. The Court denied all issues in this motion except for resentencing

regarding a deviation from the guidelines. The Court resentenced the Defendant on January 21, 2016, to the same sentence previously imposed.

4. Defendant filed a Motion to Remand with the Court of Appeals on March 18, 2016. After the Court of Appeals granted the People an extension to file an answer, the Court of Appeals granted the motion on April 25, 2016, before the due date for the People's answer had elapsed. The Court of Appeals ordered that "[t]he trial court shall conduct an evidentiary hearing and again rule on defendant's appellant's motion for a new trial after supplement the record with its finding of fact. Proceedings on remand are limited to issues raised in the motion to remand." Order of the Court of Appeals, 326105

5. On June 2, 2016, the trial court held a *Ginther* hearing with testimony presented on the Defendant's motion for a new trial. The Defendant's motion for new trial/remand raised the same issues heard by the trial court on September 10, 2015.

6. On or about July 28, 2016, the trial court ruled that the Defendant was entitled to a new trial because "trial counsel's failure to reasonably investigate and present to the jury contradictions between statement of [REDACTED] Harbison and the victim, resulting in prejudice to the Appellant-Defendant."

7. The People cross-appealed along with Defendant's still pending appeal as a right. On or about January 26, 2017, the Court of Appeals issued an opinion finding that "The trial court's order granting defendant a new trial is reversed and defendant's convictions are affirmed." *People v Harbison*, Unpublished opinion per curiam of the Court of Appeals Issued January 26, 2017 (Docket No. 326105).

8. This Court then considered the case under docket number 155501. This Court vacated the Court of Appeals judgment "concerning the testimony of Dr. N. Debra Sims" and remanded the

case for the Court of Appeals to consider under *People v Peterson*, 450 Mich 349 (1995). *People v Harbison*, 501 Mich 897 (2017 (Harbison II)).

9. The Court of Appeals, on January 23, 2018, issued another opinion, again affirming the conviction. *People v Harbison (On Remand)*, unpublished opinion of the Court of Appeals issued January 23, 2018 (Doc No. 326105) (*Harbison III*). The Defendant now seeks leave with this Court.

10. The Court of Appeal considered Defendant's issues at length and issued a well-reasoned opinion. Defendant-Appellant's Application for Leave to Appeal does not provide sufficient reason for this Court to review the issues presented.

9. The Plaintiff-Appellee agrees with the logic of the Court of Appeals in that:

Dr. Simms never directly opined on the ultimate question in this case – *ie.*, whether the victim was abused by defendant – she merely stated a medical diagnosis based on established diagnostic criteria, all of *which were explained to the jury*. (Emphasis in original.) Moreover, she never stated that she personally, or as an expert, found the victim's account of the abuse to be credible. Rather, she indicated that the victim had provided a history that was "clear, consistent, detailed or *descriptive*[".] (Emphasis in original.) Viewed in context, the testimony did not clearly run afoul of *Peterson's* admonishment that an expert may not vouch for the veracity of the victim or testify that the sexual abuse occurred or that the defendant is guilty.

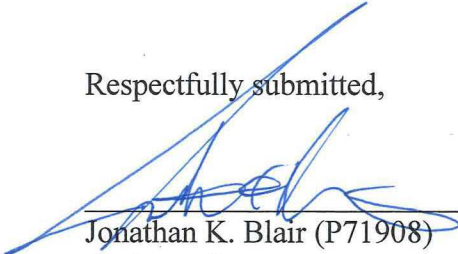
People v Harbison (On Remand), unpublished opinion of the Court of Appeals issued January 23, 2018 (Doc No. 326105) (*Harbison III*) at *8.

RELIEF REQUESTED

Plaintiff-Appellee respectfully requests that this Honorable Court deny Defendant's Application for Leave to Appeal.

Dated: April 13, 2018

Respectfully submitted,


Jonathan K. Blair (P71908)
Assistant Prosecutor