

EXHIBIT #1

TRIAL TRANSCRIPT VOL. 3

PAGE 71, 72, 73

MS. BRINKMAN: Oh, I'm sorry, Your Honor, may I ask one final question? I apologize.

THE COURT: Mr. Parker seems to be contemplating so I think you probably can.

MS. BRINKMAN: I missed the key one here.

BY MS. BRINKMAN:

Q He wanted you to talk about whether you could tell if it was consensual or non-consensual penetration as it relates to these injuries, the internal injury to the vaginal canal, and the vaginal injuries. Based on your education, training and experience, both with the Y and with women outside not claiming sexual assault, just genital exams that you've witnessed, do you have an opinion based on reasonable medical certainty as to these injuries being more consistent with consensual or non-consensual penetration?

A They're more consistent with non-consensual penetration.

Q Thank you.

MS. BRINKMAN: Nothing further.

THE COURT: Mr. Parker.

RE CROSS-EXAMINATION

BY MR. PARKER:

Q But you can't tell medically why though. You've already, correct--you've already answered by question to that, correct?

A I can't tell why--

1 Q Medically you can't tell if it was a first sexual act or a
2 second sexual act that caused the injury if there were two
3 sexual acts.

4 A In all the women that I've seen over the years in the
5 emergency department and at the Y, the injuries are more
6 consistent with non-consensual sex--

7 Q Stop right here then. Most everybody you've seen is non-
8 consensual sex, that's why they're there, they were--claimed
9 to have been raped and they're taken to see you, correct?

10 A At the Y, correct.

11 Q At the Y. Now, have you ever had anybody that had
12 consensual sex and then immediately had forced sex afterward
13 come to you? Yes or no?

14 A I'm sure I have, yes.

15 Q You're sure?

16 A I mean, over the years I'm sure they've--I've had patients
17 have consensual sex and then non-consensual sex that I've
18 seen, yes.

19 Q By the same person.

20 A I'm not sure about that.

21 MR. PARKER: I would ask the opinion be struck,
22 Your Honor. I don't think she can medically say that with
23 her experience.

24 THE COURT: Well, I think she can, based on her
25 training and experience, with the understanding that it is

1 just an opinion. The jury has heard the basis for the
2 opinion and is in the best position to weigh and balance
3 whether it makes sense and is consistent with the totality
4 of the evidence.

5 Anything further, Ms. Brinkman?

6 MS. BRINKMAN: No, Your Honor.

7 THE COURT: Thank you, ma'am. You may step down.

8 (At 10:27 a.m., witness is excused)

9 THE COURT: We're about 10:30, so let's take our
10 mid-morning break before we start another witness. Ladies
11 and Gentlemen, we'll reconvene in about 10 minutes.

12 (At 10:27 a.m., jury exits courtroom)

13 (At 10:48 a.m., court is reconvened with all
14 parties and jury present)

15 CLERK: Circuit Court is back in session. You may
16 be seated.

17 THE COURT: Welcome back, everybody. We are
18 reconvened in the matter of People against Bowman, and Ms.
19 Brinkman, you may call your next witness.

20 MS. BRINKMAN: Thank you, Your Honor. At this
21 time I'd call Amber Podbregar to the stand.

22 THE COURT: Very well. Good morning, ma'am.

23 MS. Podbregar: Good morning.

24 THE COURT: Would you raise your right hand,
25 please? I see you've got an armload of stuff there, there

TABLE OF CONTENTS - VOLUME III

Preliminary Discussions	3
-------------------------	---

WITNESSES: (People)

TERESA KINNEY

Direct Examination by Ms. Brinkman	22
Voir Dire Examination by Mr. Parker	23
Continued Direct Examination by Ms. Brinkman	26
Cross-Examination by Mr. Parker	47
Redirect Examination by Ms. Brinkman	67
Recross-Examination by Mr. Parker	71

AMBER JOY PODBREGAR

Direct Examination by Ms. Brinkman	74
Cross-Examination by Mr. Parker	98
Redirect Examination by Ms. Brinkman	120
Recross-Examination by Mr. Parker	127
Redirect Examination by Ms. Brinkman	130
Recross-Examination by Mr. Parker	130

ROBYN WOLTERS

Direct Examination by Ms. Brinkman	132
Cross-Examination by Mr. Parker	136

WITNESSES: (Defense)

None

EXHIBITS: (People)

	<u>MARKED</u>	<u>ADMITTED</u>
PX#1 - Body Diagram	32	34
PX#2 - Body Diagram	32	34
PX#3 - Body Diagram	32	34
PX#4 - Body Diagram	32	34
PX#5 - Photograph - Bruise on eye	42	43
PX#6 - Photograph - Linear bruise Right lateral neck	42	43
PX#7 - Photograph - Near hairline on neck-right upper chest	42	43
PX#8 - Photograph - Multiple red bruises	42	43
PX#9 - Photograph - Close-up of #8	42	43
PX#10- Booking photo of Amber Podbregar	42	43

EXHIBITS: (Defense)

	<u>MARKED</u>	<u>ADMITTED</u>
DX-A - Sealed paperwork	20	20
DX-B - Photo disk from Nurse Examiner	95	96

EXHIBIT # 2

REPORTS FROM:

1. SUSAN CLARE
 2. TERESA KINNEY
 3. PETE KEMME
-

Michigan Department of Corrections
Offender Callout Management System
Reporting Station Log Report
Callout Log for Reporting Station : E2 - E Officer Desk

Callout date: 07/17/2022

Start/Arrive/Init.	End/Depart/Init.	Number	Name	Unit/Lock	Callout Purpose	Room
Itinerary Notes						
0700/	1500/	374401	Davis, Eric Anthony	E1-116Top	Paid Work	E Officer Desk
OTHER HOURS AND DUTIES AS ASSIGNED BY STAFF. NEED STAFF AUTHORIZATION TO BE OUT DURING COUNT.						
1500/	2300/	725520	Burkhardt, Travis Aaron	E1-122Top	Paid Work	E Officer Desk
OTHER HOURS AND DUTIES AS ASSIGNED BY STAFF. NEED STAFF AUTHORIZATION TO BE OUT DURING COUNT.						

EXHIBIT - A

Report Date/Time 07/14/2011 / 15 38 hrs	Date/Time - Between /	and/or On 07/13/2011 / 02 30 hrs	Inc Number 11-065657
--	--------------------------	-------------------------------------	-------------------------

Narrative

Rpt Date / Time: 7/14/2011 / 15:38

Reporting Officer:
Clare, Susan #007

I was dispatched to KCCF for a CSC report. Information was provided that Amber Podbregar alleged she had been sexually assaulted prior to having been arrested for domestic assault (11-64989), but hadn't notified anyone until now.

At KCCF, I spoke to Podbregar who said that she did not report it until now because of how intoxicated she was. She said that she had been sober for over a year until this day. Once sobered up and in KCCF, she notified the Sgt by note.

I asked her what happened and she said she was quite intoxicated and looking for "Jay." She said she didn't know his last name and was just looking to hang out. I asked if she was looking to purchase drugs and she said no. She said while walking near Langley, she came across a BM who called himself Jinx. When she asked about Jay, Jinx told her that Jay wasn't around but she could party with him. She agreed and accompanied him to an apartment across from Pointe o Woods (east side of Oak Park), possibly on Blossom, but she thought it might be before that. She said there were two chairs on the second floor balcony.

Inside the apartment, she met "Laurie." He indicated it was Laurie's apartment and Podbregar said she accidentally called her Lauren and Laurie corrected her, spelling out LAURIE for her. She said Laurie had blond hair and no teeth. She claimed to be 47 yrs old and showed her a picture of her 3 kids.

Podbregar said the party was good until Jinx went to the store for more Bacardi. When he came back, Podbregar said he forced her to take about 3 hits of a marijuana joint. When I asked how he forced her to, she said he grabbed the back of her head and held it to her. She said that's when the party started to decline. She said while the party was good, both Jinx and Laurie put their numbers into her phone.

Shortly after that, while all 3 were seated on the couch in the living room, Jinx (who was sitting in the middle) pulled his pants down and exposed his penis and had Laurie perform oral sex on him. He pulled her off before completing the act and told Podbregar to finish it. She said no, pulled back and he said he was about to get a little freaky. He again grabbed her by the back of the head and pulled her toward his penis. He then pushed up and forced his penis into her mouth. He had no condom on during this, nor did he ejaculate.

When she wouldn't complete the act, he pulled her off the couch, bruising her arms, and pushed her into the bedroom. He tried to push her onto the bed, but she kept trying to get back off of it. He was still trying to get her to perform oral sex and she was still avoiding it. He pulled her clothes off, pulling her shorts and panties down and finally punched her in the left eye and knocked her down on the bed. He crawled on top of her and used his knees to pin her arms down while grabbing her around the throat and choking her. He then asked her "who would even miss you?"

She told him she was going to scream and he told her he would knock her out if she did. He then tried several times to reach climax with his penis in her vagina, but he couldn't and that seemed to make him even more mad. She said he never reached climax and didn't have a condom on at this point either. She was able to pull her panties up at one point and he got mad and pulled them down again and asked why she had blood in her panties. She told him it was because of him. He tried intercourse one last time, but still couldn't climax. He got mad and left the room. She got dressed except for her flip-flops (black with silver buckles) and tried to leave. Jinx told her to "get the fuck out." She left without the shoes and wandered back home, but ended up in the wrong driveway. She eventually made it home and later got arrested for the domestic assault.

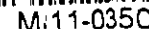
She said she didn't report it because she was so intoxicated she couldn't. She then ended up in suicide watch at KCCF and couldn't "get a note" to tell anyone about it. When they transferred her to the regular floor, she notified the deputy who notified our department. Upon entering the main floor, Podbregar was allowed to, and did, shower.

I contacted Lt Matt Ostapowicz who transferred me to Sgt McGee. Sgt McGee advised regardless of the showering and time delay to respond to the nurse examiners for the kit anyway. On the way out of the jail, I collected her clothing and took it with us to the NE program. I turned it over as evidence there to be kept with the CSC kit. While discussing the collection of the clothing, Podbregar advised the blood was clearly from the assault as she had a hysterectomy several years ago and therefore doesn't menstruate.

Once the exam was complete, I transported Podbregar back to KCCF where she was lodged on her original charge only. There, we retrieved the cell phone numbers she said had been put in her phone for Jinx (482-9887) and Laurie (514-4066).

After lodging her, I had dispatch try and cross the numbers for addresses, but they were unsuccessful. I carried the address of the assault as the nearest intersection she described as she didn't know the actual address/location. Due to being lodged, she was advised to respond to the detective unit upon release, if a detective hadn't contacted her first.

00002 (A)(C)



Michigan Medical Forensic Examination Record

PATIENT INFORMATION

MRCase Number *11-21*
 Telephone Number *416-284-9984*
 Contact Name *(cell)*
 Ethnicity Race *White*
 Time of Examination *1550*

A. Information for Patient. (Health provider review with patient.)

- ☒ Patient has been told that she or he **cannot** be required to participate in the Clinical trial as a condition of receiving treatment and evidence collection. MD-13-0526d
- ☒ Information about **SAFE Response** and examination payment options has been explained to the patient.
- ☒ The patient has received a copy of the booklet **Important Health Information for You**.

MEDICAL HISTORY

B. General medical history

Allergies: Topamax, PCN, peanuts
 Current medications including contraception: Abilify, Serenol, Lorazepam, Caspar, Alprazolam, Doxycycline
 Premenstrual syndrome: Flavoxyl
 General medical history: Dual personality, Bipolar, Schizophrenia, Migraine, SS-14
 Disability: No Yes comments: due to mental health
 Recent treatments including last OB/GYN exam, date: Hyst. total March 2011 BV last week.
 Sexual history including date of last intercourse: 2 weeks ago
 Last menstrual period: 11/11 Birth history: GT + Normal delivery: No Date most recent: 13 years of
 Last consensual coitus date (time if less than 96 hours): 2 weeks ago Condom use: NO HIV: NA
 Patient alcohol and/or drug use: I was intoxicated in 7 pit states
 Sex: Female Age: 21 Height: 5'4" Weight: 110 lbs Hair: Brown Eyes: Blue Skin: Fair
 Social history of tobacco, alcohol, and drug use: I smoked marijuana to my mother

C. History of chief complaint/assault

Date of Assault 7/13/11 Time of assault = 6200
Brief history of assault include 1588 of memory, for lapse of time, business and
Went with Jim to Lori's house to drink and change
plotting because my brother was in a room pool. I went
Lori and I went on about the 10th of the month
gave him a good sex. Then he came over to me and
~~that~~ his penis in my mouth - I backed away - then
he took me to the bedroom - I tried to stand up
to him and tried to leave I was getting help from
out of here - he told me to shut the fuck up
or he was going to knock me out - I landed on
the bed he picked me up by my throat and
told me "who's coming in this yard" and he
tried to make me have sex with me and sex
I (what say my brother until today because I
didn't think I do it) because I was interested.
Then I told the police officer today. W

EXHIBIT-B

Report Date/Time 07/17/2012 / 14 40 hrs	Date/Time - Between /	and/or On 07/13/2011 / 02 30 hrs	Inc Number 11-065657
--	--------------------------	-------------------------------------	-------------------------

Narrative

Rpt Date / Time: 7/17/2012 / 14:40 Follow-Up Report

Reporting Officer:
Kemme, Peter #36

DETECTIVE KEMME

FOLLOW-UP

7/25/11-

I was assigned this case on 7/15/11 and confirmed that AMBER was released from jail on 7/16/11. On 7/25/11 I still had not heard from her and called the contact number, speaking to her father. He advised that she has been and will be in Pine Rest. He agreed to get a message to her with my contact information.

7/28/11-

I had contact with the management at Poin O' Woods apartments and obtained LAUREN'S information. There were still no leads for sure on the suspect, "JINX."

VICTIM INTERVIEW - AMBER:

AMBER called me from Pine Rest and we spoke on the phone. She said that she went there voluntarily and is not sure how long she will be in there. She wanted to press charges against JINX. She said that she was looking for a friend named JAY, but never found him. She did agree to go to LAUREN'S apartment with JINX (later determined to be JAMAL BOWMAN). She said that they were drinking alcohol casually and then out of nowhere, JAMAL "whipped" his penis out and wanted oral sex performed on him. This was out in front of LAUREN. AMBER said that LAUREN performed oral sex on JAMAL in front of AMBER. JAMAL then wanted AMBER to perform oral sex, but she did not want to do that in front of LAUREN, so they went into the bedroom.

AMBER said that she began to perform oral sex on JAMAL, but then began to resist and said, "no." Then JAMAL threw her onto the bed and said that he would "knock my ass out." AMBER tried to back away, and finally said "do it then" to his threats of hitting her, so he did. After JAMAL hit her, he forced her to have sex. At one point he choked her and said "who's going to miss you?" AMBER said that she screamed "help" and "let me out." She could ID and was upset that LAUREN did not help out as she would have clearly heard her yelling.

8/8/11-

WITNESS INTERVIEW - LAUREN:

I finally was able to track down LAUREN and she agreed to come in for an interview. I spoke with her in Family Services. LAUREN talked about how she met AMBER that night when JAMAL brought her over. LAUREN had JAMAL'S date of birth and then positively confirmed his ID from a KCCF photo as being JINX. She said that JAMAL was just helping AMBER and that AMBER seemed upset and paranoid. LAUREN has known JAMAL for about 2 years and he has always been respectful to her. LAUREN said that she has a boyfriend and JAMAL has never done anything inappropriate. She denied having any sexual contact with JAMAL that night or ever.

LAUREN said that she was drinking pop (she is on probation) and did not know what JAMAL and/or AMBER were taking or drinking, although AMBER was clearly drunk. She said that at one point, AMBER and JAMAL went into the second bedroom for about 20-30 minutes. LAUREN did not listen at the door or anything like that, but would have easily heard AMBER if she did shout for help. When AMBER first arrived at LAUREN'S apartment, her clothes were wet and so LAUREN gave her some of hers. LAUREN said that she did not see AMBER leave that bedroom, but then she heard the door close. AMBER had changed back into her clothes and left LAUREN'S clothes on the floor. JAMAL was still there.

JAMAL had said that AMBER started tripping on him and became jealous of JAMAL and LAUREN, thinking they were together. He said that he told AMBER to leave. LAUREN believes that JAMAL and AMBER had some type of sexual contact in that bedroom, but did not know for sure. She also does not believe JAMAL forced AMBER to do anything. She gave me a contact number for him.

8/9/11-

I had called JAMAL'S contact number and the listed number on 8/8/11. I had left a message with an unknown male on 8/8/11, who said that JAMAL would most likely not cooperate. I then checked my messages on 8/9/11 and JAMAL left a message. He said he would not come down for an interrogation and that I would have to take whatever evidence I had and go with that. He left his address and said that we know how to find him if we need to, but he is not talking to the police.

I brought the CSC kit to the MSP lab for processing.

8/9/11-

APA Bramble reviewed this case and did not authorize charges at that time, pending the MSP lab processing. The case will be reviewed again after that.

EXHIBIT #3

PRELIMINARY EXAMINATION REPORT

PAGE 19, 20

**Michigan Department of Corrections
Housing Unit Log / Callout Report
Callout Log for Unit : E2
Sorted By: Offender Number**

Callout date : 07/17/2022

Start/Depart/Init.	End/Return/Init.	Lock	Number	Name	To	Room
Itinerary Notes						
1900/	2000/	263Bot	946878	Kallin, Arthur Peter, Jr.	Health Service Officer	Medication Window
MANDATORY CALLOUT ** UNITS WILL BE CALLED FOR THIS MEDLINE BY HEALTHCARE - DO NOT ARRIVE BEFORE YOUR UNIT IS CALLED **						
Masks are mandatory & state blues are required to be worn and tucked in for this appointment.						
1330/	1500/	228Top	959340	Colquitt, Jacob Michael	Programs Officer	Classroom 1
State blues required, shirt tucked in at all times while in the Control Center Annex.						

STATE OF MICHIGAN
IN THE DISTRICT COURT, 61ST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF MICHIGAN,

vs.

District No.: 12-FY-1139

JAMAIL BOWMAN,

Circuit No.: 12-06429-FC

Defendant.

PRELIMINARY EXAMINATION

BEFORE THE HONORABLE DAVID J. BUTER, DISTRICT JUDGE

Grand Rapids, Michigan - Thursday, July 12, 2012

APPEARANCES:

For the People:

MS. HELEN V. BRINKMAN (P40233)
Assistant Prosecuting Attorney
82 Ionia, N.W., Suite 450
Grand Rapids, Michigan 49503
(616) 632-6697

For the Defendant:

MR. THOMAS C. PARKER (P24953)
Kent County Office of the Defender
920 McKay Tower
146 Monroe Center
Grand Rapids, Michigan 49503
(616) 774-8181

REC'D & FILED

JUL 30 2012

CIRCUIT COURT ADMINISTRATION

RECORDED BY:

LuAnn Fritzen, CER 4016
Certified Electronic Recorder
(616) 632-5660

1 Q Right. The Nurse Examiner. Do you remember that?

2 A Where? At the YWCA?

3 Q Correct.

4 A Yeah. I remember going there.

5 Q And did you give them a statement?

6 A I did.

7 Q All right. Would looking at that statement help refresh your memory?

8 A (No verbal response).

9 MS. BRINKMAN: Your Honor, may I approach?

10 THE COURT: Sure. And just for the record, I

11 think she indicated affirmatively that it may refresh her

12 memory; although, I didn't hear anything.

13 MS. BRINKMAN: Thank you, your Honor.

14 THE WITNESS: I said, yes. I'm sorry.

15 THE COURT: Thank you.

16 MS. BRINKMAN: All right. Your Honor, she's

17 indicated that the handwriting on this --

18 THE WITNESS: It's difficult to read.

19 BY MS. BRINKMAN:

20 Q Would looking at your typed report to the officer, refresh

21 your recollection?

22 A I can do that, yeah.

23 Q Okay. Page 2 of the typewritten report, one, two, three,

24 four, fifth paragraph up. You can start there. See if that

25

Page -18-

1 paragraph --

2 A Where "She told him..."?

3 Q Yeah. Don't read it out loud. But just read that and see

4 if that refreshes your memory. Does that refresh your

5 memory?

6 A (No verbal response).

7 Q I need to hear "Yes" or "No."

8 A Yes.

9 Q Okay. And so now, having read this, do you honestly

10 remember it, or is it just because you read it in the police

11 report?

12 A I remember bits and pieces --

13 Q Okay. What do you remember about --

14 A -- but I don't recall -- I honestly don't remember all of

15 the attempts.

16 Q Sure. But was there any other sex act that occurred other

17 than oral sex between you and the defendant when it wasn't

18 consensual?

19 A Yes.

20 Q What was that?

21 A I'm envisioning -- I don't understand.

22 Q Okay. You said that he forced you to have his penis in your

23 mouth when it wasn't consensual.

24 A When -- and initially when it was consensual, he didn't want

25 to have just regular sex.

Page -19-

1 Q Right, but I'm focusing on the nonconsensual --

2 A I don't remember. Okay.

3 Q Did anything happen sexually between you and the defendant

4 that was not consensual other than the oral sex?

5 A Yes.

6 Q What was that?

7 A And that was just regular sex. And I do remember, because

8 the -- the blood in my underwear.

9 Q Okay. Where did the blood in your underwear come from?

10 A The sex.

11 Q Was that during the consensual sex?

12 A No.

13 Q Are you sure?

14 A No.

15 Q You're not sure?

16 A I don't wanna do this anymore.

17 Q Do you know how the blood got -- where the blood came from?

18 A From me.

19 Q I know, and I apologize, but I have to know exactly what

20 body part. It makes a difference in the law. Where did the

21 blood --

22 A From my vagina.

23 Q Your vagina?

24 A (No verbal response).

25 Q You have to answer out loud.

Page -20-

1 A Yes.

2 Q And what body part or object caused the injury to your

3 vagina?

4 A His penis. I don't wanna do this anymore.

5 Q You need a break? We can't really stop here without the

6 charges being dropped. Do you need a break?

7 A No.

8 Q All right. How does it all end?

9 A They helped me fasten my bra. He told me to get out.

10 MR. PARKER: I didn't catch that.

11 THE WITNESS: He told me to get out.

12 BY MS. BRINKMAN:

13 Q All right. And do you know where you went after you left?

14 Do you recall?

15 A No. I couldn't find my apartment building.

16 Q Do you know why?

17 A Because I was intoxicated, and I had been hit in the head,

18 and I was disoriented. I didn't know where I was when I

19 walked out of the building.

20 Q Eventually, do you find your residence?

21 A Yeah.

22 Q And what happens there?

23 A I got in. I pushed the buttons, and somebody buzzed me in,

24 and I went and found an -- our door.

25 MR. PARKER: I can't understand that.

Page -21-

APPENDIX - A

MICHIGAN CIRCUIT COURT

2021 ORDER

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

THE PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,

v

Case No. 12-06429-FC
Hon. Paul J. Denenfeld

JAMAL A. BOWMAN,
Defendant.

Kent County Prosecutor's Office
82 Ionia Avenue NW
Suite 450
Grand Rapids, MI 49503

Jamal A. Bowman #246714
Kinross Correctional Facility
4533 W. Industrial Park Dr.
Kincheloe, MI 49788

ORDER DENYING DEFENDANT'S SUCCESSIVE MOTION FOR RELIEF FROM
JUDGMENT AND DEFENDANT'S MOTION TO EXPAND THE RECORD

Defendant Jamal A. Bowman ("Defendant"), acting *in pro per*, has filed a *fourth* Motion for Relief from Judgment under MCR 6.500 *et seq.*, and a Motion to Expand the Record in support. Following a six-day jury trial, Defendant was convicted of one count of first-degree criminal sexual conduct and sentenced to 30 to 90 years of imprisonment. Defendant appealed to the Michigan Court of Appeals, which affirmed his conviction. Defendant also appealed the denial of his first Motion for Relief from Judgment, which was ultimately denied by the Michigan Supreme Court after it concluded that Defendant had failed to meet his burden under MCR 6.508(D). Defendant's most recent Motion for Relief from Judgment prior to the current Motion, raising very similar arguments to those raised here, was denied by this Court on May 28, 2020.

Pursuant to MCR 6.502(G)(2), "one and only one motion for relief from judgment may be filed with regard to a conviction" unless either a retroactive change in law has occurred or the defendant has made "a claim of new evidence that was not discovered before the first motion." This subsection further provides that the court may waive these requirements if it concludes that there is a significant possibility that the defendant is innocent of the crime.

Defendant first argues that he has satisfied the “new evidence” requirement. For a new trial to be granted on the basis of newly discovered evidence, a defendant must show that: (1) “the evidence itself, not merely its materiality, was newly discovered”; (2) “the newly discovered evidence was not cumulative”; (3) “the party could not, using reasonable diligence, have discovered and produced the evidence at trial”; and (4) the new evidence makes a different result probable on retrial. *People v Cress*, 468 Mich 678, 692; 664 NW2d 174, 182 (2003), citing *People v. Johnson*, 451 Mich. 115, 118 n. 6, 545 N.W.2d 637 (1996); MCR 6.508(D).

The “new evidence” Defendant now offers is a report from Anita Sadaty, MD, who Defendant refers to as an expert in women’s health, and more specifically, obstetrics and gynecology. Defendant claims that this report is “relevant scientific literature” standing for the proposition that the presence or absence of a genital injury should not be used to render an opinion regarding consent or non-consent to sexual intercourse. Defendant fails, however, to establish that this evidence satisfies any of the above requirements. Rather, Defendant’s own admission, that this evidence was “apart (sic) of the medical community before and during defendant’s trial” tends to prove that Defendant cannot establish that he “could not, using reasonable diligence, have discovered and produced the evidence at trial.” Therefore, the Court finds that Defendant’s “new evidence” does not entitle him to the relief requested.

Additionally, the Court finds that Defendant has not established that there is a significant possibility that Defendant is innocent of the crime under MCR 6.508(D)(3). To satisfy the “actual innocence” standard, a defendant “must show that it is more likely than not that no reasonable juror would have found [the defendant] guilty beyond a reasonable doubt.” *People v Swain*, 288 Mich App 609, 638; 794 NW2d 92, 108 (2010), quoting *Schlup v. Delo*, 513 US 298, 327; 115 S Ct 851; 130 L.Ed.2d 808 (1995). This is a demanding standard that only permits review in “extraordinary cases.” *Id.* Here, Defendant only goes as far as to argue that his new claims and evidence “raise a reasonable doubt” as to the validity of evidence admitted at trial. This is insufficient to establish actual innocence, meaning Defendant has not established entitlement to file a successive Motion for Relief from Judgment based on a significant possibility that he is innocent.

Finally, the Court finds that Defendant has failed to satisfy the requirements of MCR 6.508(D). MCR 6.508(D)(2) prohibits this Court from granting relief if Defendant “alleges

grounds for relief which were decided against the defendant in a prior appeal or proceeding under this subchapter.” The current Motion filed by Defendant contains the same arguments, or at least very similar arguments, to those that this Court, the Michigan Court of Appeals, and the Michigan Supreme Court have previously rejected.

Accordingly, Defendant’s Successive Motion for Relief from Judgment and Motion to Expand the Record are DENIED.

IT IS SO ORDERED.

Dated: April 5, 2021

PAUL J. DENENFELD

Hon. Paul J. Denenfeld, Circuit Judge

17th CIRCUIT COURT



TRUE COPY

APPENDIX - B

MICHIGAN COURT OF APPEALS

2021 ORDER

Court of Appeals, State of Michigan

ORDER

People of MI v Jamal Bowman

Docket No. 358112

LC No. 12-006429-FC

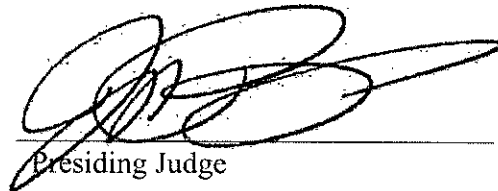
Jane M. Beckering
Presiding Judge

David H. Sawyer

Mark T. Boonstra
Judges

The motion to waive fees is GRANTED for this case only.

The delayed application for leave to appeal is DENIED because defendant has failed to establish that the trial court erred in denying the successive motion for relief from judgment. MCR 6.502(G).



Presiding Judge

A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

September 22, 2021
Date



Chief Clerk

APPENDIX - C

MICHIGAN SUPREME COURT

2022 ORDER

Order

Michigan Supreme Court
Lansing, Michigan

May 3, 2022

Bridget M. McCormack,
Chief Justice

163637

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh
Elizabeth M. Welch,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 163637
COA: 358112
Kent CC: 12-006429-FC

JAMAL BOWMAN,
Defendant-Appellant.

On order of the Court, the application for leave to appeal the September 22, 2021 order of the Court of Appeals is considered, and it is DENIED, because the defendant has failed to meet the burden of establishing entitlement to relief under MCR 6.508(D).



m0425

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

May 3, 2022

Clerk

APPENDIX-D

MICHIGAN COURT OF APPEALS

2015 ORDER

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMAL BOWMAN,

Defendant-Appellant.

Police Inc Number

11-005657

UNPUBLISHED

January 22, 2015

No. 317535

Kent Circuit Court

LC No. 12-006429-FC

Case No. 218-CV-106

Before: RIORDAN, P.J., and MARKEY and WILDER, JJ.

PER CURIAM.

Defendant appeals as of right his conviction for first-degree criminal sexual conduct, MCL 750.520b (penile-vaginal penetration). He was sentenced to 30 to 90 years of imprisonment. We affirm.

I. BINDOVER

A. STANDARD OF REVIEW

Defendant first contends that the district court erred in binding him over for trial.¹ “[A] decision to bind over a defendant is reviewed for abuse of discretion.” *People v Corr*, 287 Mich App 499, 502; 788 NW2d 860 (2010). “An abuse of discretion occurs when the court chooses an outcome that falls outside the range of reasonable and principled outcomes.” *People v Unger*, 278 Mich App 210, 217; 749 NW2d 272 (2008).

B. ANALYSIS

¹ On January 30, 2013, defendant, *in propria persona*, filed a delayed application for leave to appeal and sought dismissal of the case based on insufficient evidence to bind him over for trial. This Court denied defendant’s application for leave to appeal. *People v Bowman*, unpublished order of the Court of Appeals, entered March 7, 2013 (Docket No. 314537). The Michigan Supreme Court likewise denied defendant’s application for leave to appeal. *People v Bowman*, 494 Mich 851; 830 NW2d 136 (2013).

Because defendant was acquitted of first-degree criminal sexual conduct involving oral-penile penetration, that issue is moot. See *People v Billings*, 283 Mich App 538, 548; 770 NW2d 893 (2009) (quotations omitted) (“An issue is moot if an event has occurred that renders it impossible for the court, if it should decide in favor of the party, to grant relief.”). Furthermore, presentation of sufficient evidence at trial to convict defendant of first-degree criminal sexual conduct (vaginal-penile penetration) rendered any error in the bindover harmless. *People v Bennett*, 290 Mich App 465, 481; 802 NW2d 627 (2010) (“the presentation of sufficient evidence to convict at trial renders any erroneous bindover decision harmless.”).

The prosecution was required to prove that defendant engaged in sexual penetration with the victim using force or coercion to accomplish the penetration and caused personal injury to the victim. MCL 750.520b(1)(f). The victim testified that after consensual sex with defendant, she wanted to leave the bedroom. Defendant prevented her from doing so. She screamed for help and defendant threatened to hit her. Defendant then hit her in the left eye. He pinned her on the bed and placed his knees on her shoulders while attempting to insert his penis into her mouth. Defendant also slammed something against the back of her neck and picked her up by the neck. He choked her and asked, “Who’s gonna miss you?” Defendant then penetrated her vagina with his penis.

A sexual assault nurse testified about numerous injuries that the victim suffered, including swelling and bruising of her left eyelid, bruising on her left upper chest, thigh, arms, and several bruises on her neck. As for the victim’s genital area, she had injuries to the fossa navicularis area, the posterior forchette, and her vaginal wall. According to the nurse, the injuries were more consistent with nonconsensual sexual intercourse and were consistent with the victim’s account of the sexual assault.

Because the prosecutor presented sufficient evidence at trial to convict defendant of first-degree criminal sexual conduct, any error the district court may have made in the bindover was harmless. *Bennett*, 290 Mich App at 481.

II. OTHER ACTS EVIDENCE

A. STANDARD OF REVIEW

Defendant next contends that the trial court erred when admitting evidence of his prior sexual assault. “The admissibility of other acts evidence is within the trial court’s discretion and will be reversed on appeal only when there has been a clear abuse of discretion.” *People v Waclawski*, 286 Mich App 634, 669-670; 780 NW2d 321 (2009). “An abuse of discretion occurs when the court chooses an outcome that falls outside the range of reasonable and principled outcomes.” *People v Unger*, 278 Mich App 210, 217; 749 NW2d 272 (2008). “When the decision involves a preliminary question of law however, such as whether a rule of evidence precludes admission, we review the question de novo.” *People v Maydlin*, 487 Mich 609, 614; 790 NW2d 607 (2010). Reversal is not required “unless after an examination of the entire cause, it shall affirmatively appear that it is more probable than not that the error was outcome determinative.” *People v Knapp*, 244 Mich App 361, 378; 624 NW2d 227 (2001) (quotation marks and citation omitted).