

FILED
OCT 28 1983
FREEMAN R. BOSLEY, JR.
CLERK, CIRCUIT COURT

STATE OF MISSOURI)
) SS.
CITY OF ST. LOUIS)

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS

STATE OF MISSOURI

STATE OF MISSOURI,)
)
 Plaintiff,)
)
 vs.)
)
RODNEY LEE LINCOLN,)
)
 Defendant.)

Cause No.
Division No. 23
Honorable Jack Koehr

November 4, 1983
Honorable Jack Koehr

MOTION FOR NEW TRIAL

COMES NOW this Defendant, Rodney Lincoln, by and through his counsel, Robert A. Hampe, and most respectfully moves this Honorable Court to enter its Order granting him a new trial in this cause, for the following grounds and reasons:

1. The judgment and verdict of the jury is against the weight of the evidence.
2. The judgment and verdict of the jury is against the greater weight of the evidence.
3. The judgment and verdict of the jury is against the concrete and substantial evidence.
4. The Learned Trial Court erred in overruling objections by the Defendant to testimony and exhibits offered by the State in admitting into evidence over objection by the Defendant said testimony and evidence.
5. The Learned Trial Court erred in not ordering stricken testimony as requested by the Defendant.
6. The Learned Trial Court erred in overruling Defendant's Motion for Direct Verdict and Motion for Judgment of Acquittal at the close of the State's case, on each count in which Defendant is named.
7. The Learned Trial Court erred in overruling Defendant's Motion for Directed Verdict and Motion for Judgment of Acquittal at the close of the entire case, on each count in which Defendant is named.

8. The Learned Trial Court erred in overruling Defendant's Motion for Continuance at the start of the proceedings in this matter, on the grounds that the Defendant had not received transcripts of testimony from the prior trial of this cause, said transcripts having been paid for, and being material to the cross examination of the State's witnesses and the defense of the Defendant.

9. That the Learned Trial Court erred in allowing veniremen to be "death-qualified" under the principles as set forth in the Witherspoon decision; that this Defendant objected and accepted and continued to object and accept to the disqualification of veniremen under the principles as set forth in Witherspoon, to the detriment of Defendant.

10. That the Learned Trial Court erred in excusing for cause veniremen, among those numbered as follows:

#138 (Jackson)
#527 (Rueve)
#153 (Jones)
#248 (Speck)
#90 (Garst)
#570 (Willenbrock)
#11 (Avery)
#203 (Richardson)
#510 (Porterfield)
#6 (Atkinson)
#427 (Clemmons)
#364 (Ray)
#73 (Duenwald)
#135 (Hudson)
#346 (Kelly)
#121 (Hines)
#437 (Donnelly)

All for the grounds and reasons that insufficient foundation had been laid for showing that these veniremen could not capably and fairly determine the issues in this cause, prejudice on all and each of their parts not having been developed by the attorney for the State with sufficient clarity.

11. That the Learned Trial Court erred in overruling Defendant's challenge for cause on veniremen #20 (Bradway) and #217 (Scaglione), on the grounds that it was clearly established by the responses of these two veniremen that they could not fairly judge the issues in this cause and could not consider the full range of sentences.

12. That the Learned Trial Court erred in failing and refusing to sustain Defendant's objection to the voir dire question propounded by the attorney for the State as to whether or not the jury could convict on the testimony of one eye witness; such question is clearly an attempt to commit the panel to a course of action and to a quantum of proof, was not phrased in terms of the burden of proof, reasonable doubt, presumption of innocence, and sought to commit the panel before one word of evidence had been heard.

13. That the Learned Trial Court erred in failing and refusing to sustain timely objection by Defendant to remarks made by the attorney for the State in the State's opening statement regarding the non-verbal, assertive, and non-assertive conduct on the part of the youngest victim, [REDACTED]

14. That the Learned Trial Court erred in failing and refusing to sustain objections made by counsel for Defendant regarding the non-verbal assertive and non-verbal non-assertive conduct of the youngest child (victim) [REDACTED]

15. That the Learned Trial Court erred in failing and refusing to sustain Defendant's offer of proof and tender of the 1980 diary of the victim, [REDACTED]

16. That the Learned Trial Court erred in failing and refusing to sustain objections made by counsel for Defendant to State's Exhibits 1 through 9 on the grounds that said exhibits, all being photographs, contained far more potential for prejudice than probative value, that the injuries to the children were expounded upon by a multitude of witnesses, verbally, and the cumulative effect of same created insurmountable prejudice.

17. That the Learned Trial Court erred in failing and refusing to sustain objections by counsel for Defendant to State's Exhibits 41, 44 and 46 on the grounds that these exhibits contain far more potential for prejudice, being very gory, they contain probative value, and the cumulative effect of same was to prejudice the fact finder.

18. That the Learned Trial Court erred in failing and refusing to sustain objections by counsel for Defendant to State's Exhibits 85, 76, 77, 78, 86, 87 and 83 on the grounds that these exhibits contain far more potential for prejudice, being very gory, they contain probate value, and the cumulative effect of same was to prejudice the fact finder.

19. That the Learned Trial Court erred in failing and refusing to sustain Defendant's Motion to Suppress Identification.

20. That the Learned Trial Court erred in failing and refusing to admit into evidence photographs of parks, identified by the victim as the park across the street from the home of the Defendant.

21. That the Learned Trial Court erred in failing and refusing to admit into evidence Defendant's Exhibit Y, an aerial photograph of Pontiac Central Park area, since photo was a 1981 photo, the time which the victim [REDACTED] claimed to have been taken to a park by Defendant.

22. That the Learned Trial Court erred in giving instructions which are CR 15.02, 15.14, 15.18, 19.02, 19.02, 2.70, 33.01, for the following grounds and reasons:

- A. Improperly state the law;
- B. Confuse and mislead the jury;
- C. Invade the province of the fact finder;
- D. Deny Defendant procedural due process;
- E. Deny Defendant substantive due process;
- F. Place the burden of proof upon Defendant;
- G. Deny Defendant his rights under the 4th, 5th, 6th and 8th Amendments to the Constitutions of the United States and of the Constitution of the State of Missouri.

23. That the Learned Trial Court erred in failing and refusing to permit acknowledged eyewitness identification expert Elizabeth Loftus, psychologist and professor of psychology, to testify regarding factors which affect the acquisition, retention and retrieval stages of the human memory, denying thereby this

Defendant's right to present to the fact finder witnesses in his own behalf.

24. That the Learned Trial Court erred in permitting [REDACTED] year old witness [REDACTED] to testify in this cause, in adopting the ruling of the court in a prior mistrial as to competency, and in finding this child to be a competent, credible witness.

25. That the Learned Trial Court erred in overruling Defendant's Motion and Renewed Motion for Bill of Particulars.

26. That the Learned Trial Court erred in overruling Defendant's Motion and Renewed Motion for Individual Voir Dire.

27. That the Learned Trial Court erred in failing and refusing to sustain Defendant's objection to the "Death-Qualified" jury panel, qualified over objection of the Defendant on the basis of the Witherspoon decision.

28. That the Learned Trial Court erred in overruling Defendant's Motion and Renewed Motion for a new jury on the sentencing issue.

29. That the Learned Trial Court erred in overruling Defendant's Motion and Renewed Motion in Limine on the death qualification of the jury panel on the basis of the Witherspoon decision.

30. That the Learned Trial Court erred in overruling Defendant's Motion and Renewed Motion for Production of Hair Samples.

31. That the Learned Trial Court erred in overruling Defendant's Motion and Renewed Motion to Dismiss.

32. That the Learned Trial Court erred in overruling Defendant's Request for Disclosure of Aggravating Circumstances, and Defendant's Amended Request for Disclosure of Aggravating Circumstances.

33. That the Learned Trial Court erred in overruling Defendant's Motion and Renewed Motion for Production of the witness [REDACTED] for psychiatric examination.

34. That the Learned Trial Court erred in overruling Defendant's Motion for Determination of Mental Competency on witness [REDACTED]

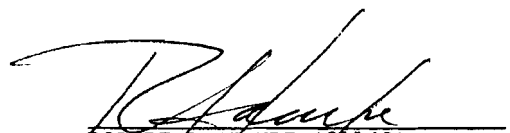
35. That the Learned Trial Court erred in overruling Defendant's Motion to Suppress Identification and Defendant's Renewed Motion to Suppress Identification.

36. That the Learned Trial Court erred in failing and refusing to sustain Defendant's Motion to Produce a letter from the victim [REDACTED] to her sister, concerning her children, in the event that something should happen to her [REDACTED].


37. That the Learned Trial Court erred in failing and refusing to permit Defendant to inform the jury as to the number and names of men appearing in [REDACTED] 1980 diary.

38. That the Learned Trial Court erred in allowing witness Harold Messler, Criminalist, to testify regarding the examination and testing of pubic hair samples taken from individuals not connected with this crime, and without sufficient scientific accuracy and/or certainty or quality control and to testify to his conclusions resulting therefrom, and to his opinion regarding frequency of appearance in the general population.

Respectfully submitted this 27th day of October, 1983.


ROBERT A. HAMPE (21149)
Attorney for Defendant
411 North 10th St., Suite 402
St. Louis, Missouri 63101
621-3540

I hereby certify that a true and accurate copy of the foregoing was mailed this 27th day of October, 1983, to Joseph Bauer, Esquire, Attorney at Law, 412 Missouri Avenue, East St. Louis, Illinois 62201; Circuit Attorney's Office, City of St. Louis, Municipal Courts Building, 14th & Market Streets, St. Louis, Missouri 63101; and Rodney Lincoln, City Jail, 111 South 14th Street, St. Louis, Missouri 63101.


Robert A. Hampe