

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LEONARD ONEIL TURNER, a/k/a
EUGENE TURNER, a/k/a LARRY HANSEND,

Defendant-Appellant.

UNPUBLISHED
March 26, 1999

No. 203767
Recorder's Court
LC No. 96-001973

Before: Neff, P.J., and Kelly and Hood, JJ.

KELLY, J. (concurring).

I concur in the result because of the ruling in *People v Graves*, 458 Mich 476; 581 NW2d 229 (1998). However, I believe an analysis would be required addressing at least the highly probable preference discussed in *Graves, supra* at 482-483. In my view, this record does not support the People's contention that the time lapse between the overheard threat, alluded to by witness Joanne Jackson, and the killing was sufficient to satisfy the premeditation element necessary to make out a prima facie case by imputing to defendant the opportunity to take a second look before committing the killing. In my view the first degree murder charge should not have been presented to the jury. I do believe, however, that it is highly probable that the erroneous submission of the charge to the jury did not effect its verdict.

I, therefore, concur in the result.

/s/ Michael J. Kelly