

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,  
  
Plaintiff-Appellee,

UNPUBLISHED  
July 24, 2012

v

MICHAEL DAVID MARVIN,  
  
Defendant-Appellant.

No. 302002  
Grand Traverse Circuit Court  
LC No. 10-011051-FC

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Before: BECKERING, P.J., and FITZGERALD and STEPHENS, JJ.

STEPHENS, J. (*concurring*).

I concur with the majority that the jury verdict should be affirmed. I write separately only to address the issue of the failure to appoint a DNA expert. While I find that the failure to provide a DNA expert was error, I am not left with a firm conviction that that error warrants reversal.

Both parties cited *People v Tanner*, 469 Mich 437; 671 NW2d 728 (2003), as providing the analytical framework under which a request for a DNA expert must be evaluated. Defense counsel, by his own admission, was inexperienced with DNA evidence. In *Tanner*, the trial court denied the appointment of a DNA expert to assist in trial preparation. The prosecutor made it clear in that case that the DNA evidence was exculpatory and could not, therefore, implicate defendant. Our Supreme Court reasonably found that there must be some logical and legal nexus between the request for the expert and the facts of the case and that the defendant was able to safely proceed to trial without the assistance of the requested expert. In this case, when counsel requested the expert it was clear that DNA evidence was going to be offered and that the outcome of DNA testing pended. Further, the prosecution made no assertion that the evidence was exculpatory. In hindsight we know that the DNA evidence was not exculpatory in this case, nor was it highly damning. However, as of the time of the request, the trial court had sufficient information in the record upon which to make a finding of a strong nexus between the facts of the case and need for the expert. Specifically, the court knew that DNA evidence was going to be proffered by the prosecution, that defendant was not familiar with DNA protocols and that DNA evidence carries significant weight with jurors. The court was aware that defendant's theory placed the identity of the perpetrator into issue. There were no eyewitnesses. Therefore, since the logical nexus was clear, it was outside the range of principled outcomes to deny defendant a DNA expert. The court abused its discretion in not affording the defense a DNA expert at some level to educate him as the trial date rapidly approached. Despite that error,

defendant is not entitled to relief, as he has failed to show that the deprivation of a DNA expert impacted the outcome of the proceedings.

*/s/ Cynthia Diane Stephens*