

Order

Michigan Supreme Court
Lansing, Michigan

March 31, 2010

Marilyn Kelly,
Chief Justice

140264

Michael F. Cavanagh
Elizabeth A. Weaver
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman
Diane M. Hathaway,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellant,

v

SC: 140264
COA: 287420
Kent CC: 07-006211-FC

JOSEPH RYAN CARLSON,
Defendant-Appellee.

On order of the Court, the application for leave to appeal the November 5, 2009 judgment of the Court of Appeals is considered and, pursuant to MCR 7.302(H)(1), in lieu of granting leave to appeal, we REVERSE only that part of the judgment of the Court of Appeals that vacates the defendant's convictions of and sentences for first-degree criminal sexual conduct based on oral penetration of the victim and REMAND this case to the Court of Appeals. The challenged evidence that was found to be arguably admissible by the Court of Appeals supported a finding of cunnilingus, which, by definition, is penetration. See MCL 750.520a(r). On remand, the court is to consider whether that evidence was admissible under the circumstances of this case. See *People v Meeboer*, 439 Mich 310 (1992). The court shall also determine whether a remand for a new trial is appropriate pursuant to *Lockhart v Nelson*, 488 US 33; 109 S Ct 285; 102 L Ed 2d 265 (1988). In all other respects, leave to appeal is DENIED, because we are not persuaded that the remaining question presented should be reviewed by this Court.

We do not retain jurisdiction.



s0324

I, Corbin R. Davis, 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.

March 31, 2010

Corbin R. Davis

Clerk