

STATE OF MICHIGAN
IN THE SUPREME COURT

THE PEOPLE OF THE
STATE OF MICHIGAN,

Plaintiff-Appellee,

-v-

JUAN MARTINEZ III,

Defendant-Appellant.

Supreme Court No. 160060

Court of Appeals No. 341147

Lower Court No. 2017-015329-FH

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PLAINTIFF-APPELLEE'S ANSWER TO APPLICATION
FOR LEAVE TO APPEAL

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COUNTERSTATEMENT OF JURISDICTION

Plaintiff does not dispute the statement of jurisdiction in defendant's appellate brief.

COUNTERSTATEMENT OF QUESTIONS PRESENTED

- I. Whether the trial court abused its discretion by refusing to admit evidence of prior hearsay statements of the victim.

Plaintiff-Appellee answers: “No.”
Defendant-Appellant answers: “Yes.”
The trial court answered: “No.”

- II. Whether the trial court abused its discretion by refusing to declare a mistrial where any error was cured by two cautionary instructions.

Plaintiff-Appellee answers: “No.”
Defendant-Appellant answers: “Yes.”
The trial court answered: “No.”

COUNTERSTATEMENT OF FACTS

In the fall of 2017, 17-year-old Jacqueline Gadde lived with her mother, Rachel Bailey, and her three siblings – Lana (age 15), Olivia (age 10), and Jonathan (age 9) – at a residence located on Thirteenth Street in Niles, Michigan (TT Vol I, pp 140-142). Rachel’s boyfriend of two years, defendant Juan Martinez, also lived at the residence.

One day after school in early December, Jacqueline and defendant decided to watch a movie in defendant’s bedroom (TT¹ Vol I, pp 153-154). Jacqueline and defendant were alone in the house; Jacqueline’s mother, Rachel, was at work, and her siblings were still at school (TT Vol I, pp 151-153, 198-199). Jacqueline changed her clothes, got a snack, and walked into the bedroom where she sat on a chair in front of the television (TT Vol I, pp 155-156, 158). Defendant was laying on the bed; shortly after Jacqueline entered, he asked her to lay down with him (TT Vol I, pp 157, 160). Although she thought it was “weird,” Jacqueline joined defendant on the bed, eventually laying down on her side facing away from defendant (TT Vol I, pp 163-164). At some point, defendant “reached his arm around [Jacqueline] and put it on [her] stomach” (TT Vol I, p 165). Defendant then moved his hand to Jacqueline’s chest and grabbed her breast (TT Vol I, p 169). When she tried to move his hand away, defendant slid his fingers into Jacqueline’s pants and touched her vagina. One finger made its way inside (TT Vol I, p 170). After a minute or so, defendant removed his hand; Jacqueline got up from the bed, left the room, and retreated to her bedroom, where she stayed until her mother got home. As her mother showered, defendant approached Jacqueline in the hallway and told her not to tell her mother what had happened (TT Vol I, pp 171-172).

¹ “TT” refers to the trial transcript, “PE” to the preliminary examination transcript, and “MT” to the transcript of the June 14, 2017 motion hearing.

Jacqueline didn't tell her mother – or anyone else – about the assault for several weeks; then, on January 16th, while messaging her ex-boyfriend, William Shirley, Jacqueline wrote that defendant had “touched her inappropriately” (TT Vol I, pp 173-174; Vol II, pp 134-138). Although encouraged by Mr. Shirley to report the incident, Jacqueline remained silent (TT Vol II, p 146).

Several weeks later, on January 29, 2017, defendant was arrested on an unrelated domestic violence charge, and was forced to move out of the residence (TT Vol I, pp 221-222). Once the charges were resolved, Jacqueline's mother, Rachel, told her daughters that she was thinking of letting defendant back into the house (TT Vol I, pp 178-179). On February 17, while discussing this possibility with Lana, Jacqueline confided that defendant's return would make her feel uncomfortable. This information was relayed by Lana to Rachel, who in turn confronted Jacqueline (TT Vol I, pp 177-179, 255-256, 292). Jacqueline eventually told her mother what defendant had done, and the police were called (TT Vol I, p 294).

Defendant was subsequently charged with criminal sexual conduct, third degree, MCL 750.520d(1)(b), and criminal sexual conduct, fourth degree, MCL 750.520e(1)(b). Following a three-day jury trial, defendant was convicted as charged (TT Vol III, p 87). He was thereafter sentenced on September 25, 2017, to 30 to 180 months in prison on the CSC 3rd conviction, and 35 days' imprisonment on the CSC 4th charge.

Defendant appealed his convictions to the Court of Appeals, claiming numerous errors. In an unpublished opinion dated June 18, 2019, the Court affirmed defendant's convictions. *People v Martinez*, unpublished opinion per curiam of the Court of Appeals, issued June 18, 2019 (Docket No. 341147).

Additional facts will be included below where pertinent.

ARGUMENT

- I. The trial court did not abuse its discretion by refusing to admit prior hearsay statements of the victim.

Standards of Review. A trial court's decision to admit evidence is reviewed for an abuse of discretion. *People v Meisner*, 294 Mich App 438, 444-445; 812 NW2d 37 (2011). An abuse of discretion occurs when the trial court chooses an outcome that falls outside the range of principled outcomes. *People v Jones*, 497 Mich 155, 161; 860 NW2d 112 (2014).

An unpreserved, nonconstitutional error is reviewed for plain error affecting defendant's substantial rights. To avoid forfeiture under the plain error rule, the following three requirements must be met: 1) the error must have occurred; 2) the error was plain (i.e., clear or obvious); and 3) the plain error affected substantial rights (i.e., the error affected the outcome of the lower court proceedings). *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). Reversal is warranted only if the plain error seriously affects the fairness, integrity, or public reputation of the judicial proceedings, or results in the conviction of an actually innocent defendant. *Id.*

Although short on specifics, the record is clear that the victim's biological parents separated at some point during her childhood. When the victim was 14, her mother, Rachel, broached the subject of getting back together with the victim's father. Both the victim and her sister, Lana, were against the idea, and indicated they would "tell a story" that their father had "touched" them to prevent any reconciliation (PE, pp 28-29). Despite her daughters' objections, Rachel allowed the victim's father back into the house (PE, pp 31-32). Neither Lana nor the victim made good on their threats to accuse their father of any abusive behavior (PE, pp 31-32; MT, pp 27-30).

After telling the police that she had been assaulted by defendant, the victim admitted that she had threatened to make accusations against her father three years earlier. The People thereafter filed a Motion in Limine, asking the trial court to prohibit any mention of the victim's earlier threat. At the conclusion of a hearing held June 14, 2017, the trial court granted the People's motion, ruling that the victim's statement was inadmissible hearsay (MT, pp 58-60).

On appeal, defendant argued that the trial court erred by refusing to admit evidence of the victim's earlier threat to accuse her father of abuse. In its opinion, the Court of Appeals did not address whether the statement in question was indeed hearsay; rather, the Court assumed that it was not, and proceeded to address the question of whether the trial court's refusal to admit the statement prejudiced defendant's case. The Court ultimately ruled that the "presumed error" did not result in a miscarriage of justice, and affirmed defendant's convictions. *Martinez*, unpub op at 2, 5. In dissent, Judge Riordan addressed the issue of hearsay head on, opining that the statement was not hearsay as it had not been offered for the truth of the matter asserted. However, Judge Riordan disagreed with the majority's conclusion that the error was harmless, believing instead that "it was more probable than not that the jury's verdict was affected by its inability to properly consider [the victim's] credibility." *Martinez* (Riordan, J., dissenting), unpub op at 2.

Contrary to Judge Riordan's analysis, the trial court did not abuse its discretion when ruling that the victim's statement was inadmissible hearsay. Hearsay is defined as "a statement . . . offered in evidence to prove the truth of the matter asserted." MRE 801(c). The word "statement," in turn, is defined as "an oral or written assertion." MRE 801(a)(1). Here, the victim made the following statement to her mother: if you and dad get back together, I'll say that dad touched me (PE, p 28). The unmistakable assertion at the heart of this statement -- that the victim was willing to accuse her father of abuse if he and the victim's mother reunited -- was offered by defendant to prove the victim's willingness to level accusations if she disapproved of

her mother's suitors.² Stated another way, the relevance of this assertion relies entirely on its truth: if the assertion is false (i.e., if the victim *wasn't* willing to accuse her father of abuse), then no inference can be drawn that she would have likewise been willing to accuse defendant. Only if the statement is true (i.e., that the victim *was* willing to accuse her father of abuse) can a rational inference be made that she would have done the same to defendant.³ The statement, therefore, was offered by defendant to prove the truth of the matter contained in the statement, and was accordingly hearsay. See *People v DeRushia*, 109 Mich App 419, 424; 311 NW2d 374 (1981), and *People v Melvin*, 70 Mich App 138, 145; 245 NW2d 178 (1976).⁴

Of the many exceptions to the hearsay rule, only one -- MRE 803(3) -- would seem to apply. This rule, routinely referred to by courts as the "state of mind" exception, allows for the admission of statements that reflect a "declarant's then existing state of mind, emotion, sensation, or physical condition," including intent, plan, motive, design, or mental feeling. MRE 803(3). Case law is clear that such statements are admissible only if the declarant's then-existing state of mind is at issue: "The general rule in Michigan is that statements indicative of the declarant's state of mind are admissible when that state is in issue in the case." *People v White*,

² This very reason was given by defendant's trial attorney at both the preliminary examination and the subsequent motion hearing. See PE, p 29 ("She would make up a story about criminal sexual conduct to keep someone – her mom from getting back together with somebody"); and MT, p 47 ("[I]t does indicate that this witness is willing to fabricate a story").

³ "In determining whether an out-of-court statement is hearsay, there is an essentially foolproof, practical test by which one can persuade the trial judge that evidence is, in fact, hearsay. First, ask the question whether or not the only relevant purpose for the offering of the out-of-court statement is its truth. If the answer to that question is 'yes,' then the out-of-court statement is hearsay." Commentary, Prof. Anthony Bocchino, FRE 801.

⁴ Judge Riordan concludes that because the victim's statement was offered to "directly attack [her] credibility," the statement was not hearsay. *Martinez* (Riordan, J., dissenting), unpub op at 2. However, his analysis fails to recognize that the statement is relevant to the victim's credibility *only* if it was true (i.e., only if she was willing to accuse her father of abuse). Therefore, as the statement was offered for its truth, the trial court correctly identified it as hearsay.

401 Mich 482, 502-503; 257 NW2d 912 (1987). The People readily acknowledge that a victim's credibility is routinely "in issue"; here, however, the victim's statement was not relevant to her credibility, and therefore not relevant to an issue in the case. Defendant's appellate counsel and the Court of Appeals both assumed that the victim's statement referred to sexual abuse, and that, accordingly, any accusations levelled against her father would be false. That, however, is not necessarily the case. As noted by the trial court, "all the references . . . [are] of a touching; and I'm not sure if that meant a physically abusive touching or a sexual touching. There wasn't much clarification on that particular issue . . ." (MT, p 60). The testimony of both the victim and her mother suggests that the touching referred to by the victim actually involved physical abuse. For instance, after being asked by defense counsel whether she would "tell a story about [her] dad saying that he touched her," the victim responded: "Yes, sir. I was also fourteen and my dad was abusive" (PE, pp 28-29). Nowhere does the victim affirmatively claim that the touching she was referring to involved anything other than physical abuse.

The testimony of the victim's mother also referenced the nature of the touching:

[*Prosecutor*]: And had [the victim] made – What kinds of comments had she made to you about your ex-husband?

[*Ms. Hart*]: At one point, when I was discussing with my children getting back with their father, her and my other daughter stated that – they said that their dad had touched them.

[*Prosecutor*]: Is that all they said, just touched them?

[*Ms. Hart*]: Yes.

[*Prosecutor*]: Did they give any further explanation?

[*Ms. Hart*]: No.

[*Prosecutor*]: Okay. And did you take that to mean sexual touching?

[*Ms. Hart*]: I didn't know if they meant sexual or just physical because he had, in the past, put his hands on them kind of hard. [MT, pp 27-28.]

This testimony places the victim's statement in an entirely different light: while the victim may have been willing to report her father for past abuse, her accusations would have been based on actual facts, not made-up lies. Stated another way, on this record, the victim's allegations surrounding her father were anything but false. Her willingness to tell the truth about her father's abusive behavior, then, does not reflect adversely on her credibility, and her statement, accordingly, would not be relevant to any issue in the case. MRE 803(3) would therefore not apply.

If this Court concludes that the victim's statement was not hearsay, it is likely that the trial court would have nonetheless excluded it under MRE 403, as its probative value would have been slight. See *People v Goddard*, 429 Mich 505, 519; 418 NW2d 881 (1988) (hypothetical statement of intent, made 6 months before crime, was irrelevant under facts and therefore of minimal probative value). As noted by the trial court, the victim was only 14 years old at the time of her initial statement – an age when, by her own description, she was too young to appreciate the seriousness of her charges (PE, p 29). Further, the statement referenced the victim's biological father – not defendant (MT, p 58). Additionally, the victim never made good on her threat, even after her father moved back into the family home (MT, p 60). Finally, the trial court specifically found that the uncertainty surrounding the type of touching involved – physical versus sexual -- “makes [the statement] even less relevant” (MT, p 60). Given these dissimilarities, the victim's state of mind when threatening to reveal her father's abuse would have little if any bearing on the issue of whether the victim was telling the truth three years later with regard to defendant. *DeRushia*, 109 Mich App at 427 (as defendant's prior state of mind

was “provoked by entirely different circumstances,” it was “virtually irrelevant” on issue of defendant’s subsequent intent).

In contrast, the prejudicial effect of the statement would have been high. The uncertainty surrounding the type of touching referred to by the victim would have tended to confuse or mislead the jurors by focusing their attention on the conduct of the victim’s father rather than the conduct of defendant. Further, its admission would have invited the jury to gauge the victim’s credibility by referencing a statement she had made years earlier, when, as a young teenager, she had been thrown into an emotionally-charged situation involving her biological father. In light of these circumstances, there was a real danger that the victim’s statement would have been given pre-emptive or undue weight by the jury. A trial court’s decision will not be reversed when it reached the right result, albeit for a wrong reason. *People v Ramsdell*, 230 Mich App 386, 406; 585 NW2d 1 (1998).

Defendant also claims that the victim’s statement was admissible pursuant to MRE 608(b).⁵ Subsection (b) permits cross-examination of a witness concerning specific instances of his or her conduct if those instances are: (1) probative of truthfulness or untruthfulness; and (2) bear on the witness’ character for truthfulness or untruthfulness. MRE 608(b). See *People v Crabtree*, 87 Mich App 722, 726; 276 NW2d 478 (1979). Here, defendant’s claim fails on the first prong as the victim’s statement was not probative of her untruthfulness. As noted above, the

⁵ Defendant has offered no analysis as to how MRE 608 applies. Accordingly, this argument has been abandoned. *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998)(“It is not sufficient for a party ‘simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments’”). Additionally, at the trial court level, defendant argued that the victim’s statement was admissible as non-hearsay. He did not additionally claim that MRE 608(b) applied. Defendant has therefore failed to preserve this issue. *People v Stimage*, 202 Mich App 28, 30; 507 NW2d 778 (1993)(“An objection based on one ground at trial is insufficient to preserve an appellate attack based on a different ground”).

victim's threat to expose her father's touches likely referred to physical, not sexual abuse. As there is substantial evidence that the victim's father did in fact physically abuse her, any threat to reveal such abuse would be based on truthful information. In *People v Brownridge*, 459 Mich 456, 464; 591 NW2d 26 (1999), this Court upheld the decision of the trial court to preclude evidence of a witness' allegedly false affidavit, noting that because the affidavit was not false, it "was not probative of [the witness'] veracity." Similarly, the victim's statement threatening to disclose her father's abuse contained no falsehoods, and accordingly was not probative of the victim's credibility.

Further, even if this Court believes that the victim's accusations concerning her father were false, it is uncontested that the victim never followed through with her threat. A mere threat to lie, never realized, and an actual fabrication are two very different things, and should be treated differently for purposes of MRE 608(b).⁶ Here, there is no record evidence as to why the victim never made good on her threat to report her father. Without this information, defendant is unable to show that the victim's failure to disclose would have had any negative bearing on her character for truthfulness. For instance, had the victim remained silent because "she could not bring herself to fully engage in a fabrication involving criminal sexual conduct," such a change of heart "may have actually enhanced her credibility," not impaired it. *Martinez*, unpub op at 5. Likewise, the victim may have never intended to report her father, hoping instead that the threat, in and of itself, would work to keep him out of the house. Accordingly, any inquiry on cross-examination concerning her statement would not be probative of her character for truthfulness or untruthfulness. MRE 608(b). In any event, for the reasons outlined earlier, the probative value

⁶ Although not deciding the issue, the Court of Appeals recognized this distinction when questioning whether a threat, in and of itself, is probative of truthfulness or untruthfulness under MRE 608(b). *Martinez*, unpub op at 5 n 2.

of allowing such cross-examination would have been substantially outweighed by the danger of unfair prejudice. MRE 403.

Even if the victim's statement was excluded in error, the Court of Appeals correctly ruled that its exclusion was not so prejudicial that it would have changed the outcome of the case.

People v Lukity, 460 Mich 484, 495; 596 NW2d 607 (1999). This is so because the circumstances surrounding the victim's statement served to diminish its impeachment value. As noted by the Court, had the victim's statement been admitted, the prosecutor would have presented the following evidence: first, that the statement was made when the victim was 14 years old, or three years after its making; second, that the statement involved the victim's father, not defendant; third, that the victim never actually reported her father for abuse even though he eventually moved back into the home; fourth, as argued above, that the victim's threat to report her father was based on actual events – both the victim and her mother testified that the victim's father had physically abused her in the past; and fifth, that the victim had told her ex-boyfriend about the sexual abuse weeks before she learned that defendant may be moving back in with her mother. This disclosure undercuts defendant's claim that the victim lied to prevent his return to the family home, which in turn lessens any evidentiary value defendant might have hoped to gain by admitting the victim's original statement.

Rather than evidence the victim's willingness to level false accusations, these facts show that the victim was reluctant to report her father to the authorities even after suffering at his hands. This reluctance may have actually enhanced her credibility; when seen in light of her past unwillingness to report physical abuse, the victim's decision to nonetheless report defendant is a strong indication that something even more egregious had taken place between them.

Accordingly, the Court of Appeals correctly ruled that any error in excluding evidence of the victim's statement would not have undermined the reliability of the verdict.

- II. The trial court did not abuse its discretion by refusing to declare a mistrial where any error was cured by two cautionary instructions.

Standard of Review. A trial court’s decision to deny a motion for mistrial is reviewed for an abuse of discretion. *People v Dennis*, 464 Mich 567, 572; 628 NW2d 502 (2001). An abuse of discretion occurs when the trial court chooses an outcome that falls outside the range of principled outcomes. *Jones*, 497 Mich at 161.

Defendant next argues that the trial court erred by denying his motion for a mistrial with regard to the expert testimony of Barbara Welke. In rejecting this argument, the Court of Appeals held that Ms. Welke’s testimony, while improper, did not “prejudice[] defendant’s rights [or] impair[] his ability to receive a fair trial.” *Martinez*, unpub op at 11.

As part of her case in chief, the prosecutor qualified Barbara Welke as an expert in the areas of forensic interviewing, child sexual abuse, and the process of disclosure (TT Vol II, pp 64-65). On cross examination, Ms. Welke agreed with defense counsel’s suggestion that there was “no sure fire way to objectively determine whether a child’s been abused or not” (TT Vol II, p 99). Ms. Welke also admitted that some children “make up stories” of abuse (TT Vol II, p 98). Ms. Welke went on to note that it wasn’t her job “to determine whether a child has been abused” (TT Vol II, p 100). Rather, as Ms. Welke indicated on re-direct examination, her job was to “determine whether a child has or hasn’t made a statement that would either support or not support an allegation of abuse” (TT Vol II, pp 109-110). The following exchange then occurred:

[Prosecutor]: You talked with Jacqueline for 40 minutes. You observed her behavior. And we’ve talked about this process in this interviewing discussions, discussion as being a truth seeking process. So are there things that you did in that interview to try to make sure that [the victim] knew she could tell you the truth?

[Ms. Welke]: Well, for one thing we talked about the importance of telling the truth and I asked her if she would commit to

making sure that what we talked about in here today was only the truth and she agreed to do so. *And there was nothing that she said or did that made me believe that that wasn't happening.*

[Prosecutor]: – And do you –

[Defense Counsel]: – Objection. May we approach? [TT Vol II, p 111 (emphasis supplied).]

Following a conference at the bench, the trial court sustained counsel's objection that Ms. Welke had improperly vouched for Jacqueline's credibility, and instructed the jury to disregard Ms. Welke's last statement (TT Vol II, p 112). The court subsequently denied defense counsel's request for a mistrial (TT Vol II, pp 117-118, 278-279).

A mistrial is appropriate only upon a finding of manifest necessity. See, e.g., *People v Blackburn*, 94 Mich App 711, 714; 290 NW2d 61 (1980). While “not a precisely defined concept,” manifest necessity generally refers to “the existence of sufficiently compelling circumstances that would otherwise deprive a defendant of a fair trial or make its completion impossible.” *People v Echavarria*, 233 Mich App 356, 363; 592 NW2d 737 (1999). See *People v Ortiz-Kehoe*, 237 Mich App 508, 513-514; 603 NW2d 802 (1999)(court should grant a mistrial “only for an irregularity that is prejudicial to the rights of the defendant and impairs his ability to get a fair trial”). A mistrial should not be granted unless the error is “so egregious that the prejudice can be removed in no other way.” *People v Gonzalez*, 193 Mich App 263, 266; 483 NW2d 458 (1992). See *People v Dickinson*, 321 Mich App 1, 17; 909 NW2d 24 (2017). See also MCR 6.417. Here, the trial court did not abuse its discretion when denying defendant's motion for a mistrial.

Initially, when read in context, it is clear that Ms. Welke's statement was unresponsive to the prosecutor's question, which did *not* call for Ms. Welke's opinion as to whether the victim

was telling the truth. See *People v Dennis*, 464 Mich 567, 575; 628 NW2d 502 (2001) (prosecutor’s question was not “aimed at eliciting” improper testimony). The Court of Appeals agreed with this assessment, concluding that Ms. Welke’s statement “constituted an unresponsive, volunteered answer to a proper question.” *Martinez*, unpub op at 10. As noted by the Court, “unresponsive answers from witnesses generally do not justify a mistrial.” *Id.*, citing *People v Haywood*, 209 Mich App 217, 228; 530 NW2d 497 (1995), and *People v Jackson*, 313 Mich App 409, 427; 884 NW2d 297 (2015).

Further, the prosecutor did not highlight Ms. Welke’s response, either by asking additional questions or mentioning it in either of her closings. *Id.*, p 576. Additionally, as noted above, the trial court immediately instructed the jury to disregard Ms. Welke’s remark (TT Vol II, p 112). Finally, the court instructed the jury at the close of proofs that they could not consider Ms. Welke’s remark “as an opinion by Barbara Welke that [the victim] is telling the truth” (TT Vol II, p 79). Jurors are “presumed to follow their instructions, and it is presumed that instructions cure most errors.” *People v Mahone*, 294 Mich App 208, 212; 816 NW2d 436 (2011). See *Dennis*, 464 Mich at 581.

Defendant also argues that Ms. Welke’s remark was in keeping with a coordinated “tactic” to inject inadmissible evidence into sexual assault cases.⁷ This claim is baseless. First, defendant’s allegation that the assistant prosecutor “specifically asked Welke a question that could/would solicit Welke’s improper answer” is belied by the record (Defendant’s Brief, p 13). As argued above, Ms. Welke’s testimony, when viewed in context, was unresponsive to the prosecutor’s question. Second, the mistake identified in *Hreha* was not the “same tactic”

⁷ This “tactic” apparently had its genesis in *People v Hreha*, unpublished opinion of the Court of Appeals issued April 21, 2016 (Docket No. 324389), 2016 WL 1612751, a sexual assault case involving both Ms. Welke and the same assistant prosecutor who tried the present case.

complained of here. In *Hreha*, Ms. Welke testified that the victims' behaviors were consistent with those of other sexually abused children. The *Hreha* Court held that this testimony was improper because the credibility of the victims had not yet been attacked. See *People v Peterson*, 450 Mich 349, 373-374; 537 NW2d 857 (1995). Here, in contrast, Ms. Welke testified that nothing Jacqueline said or did during the interview led her to believe that Jacqueline wasn't being honest. Accordingly, although both cases involved issues of witness credibility, they were not so similar as to evidence the systematic pattern of willful misconduct alleged here by defendant. Third, it is unremarkable in a county the size of Berrien that the assistant prosecutor and Ms. Welke would work together on more than one sexual assault case during the course of a several-year period. It is similarly unremarkable that issues involving the post-incident behaviors of abused children would surface in two unrelated sexual assault trials. To assign a sinister motive to Ms. Welke's remarks on the basis of nothing more than the loose conjecture forwarded here by defendant is both reckless and irresponsible, and his allegations here should be disregarded by this Court.

REQUEST FOR RELIEF

For these reasons, defendant's convictions should be affirmed.

DATED: February 27, 2020

Respectfully submitted,

/s/ Mark Sanford

Mark Sanford (P35150)
Assistant Prosecuting Attorney