

STATE OF MICHIGAN  
IN THE SUPREME COURT

THE PEOPLE OF THE  
STATE OF MICHIGAN,

Plaintiff-Appellee,

-v-

Juan Martinez III,

Defendant-Appellant.  
\_\_\_\_\_ /

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Supreme Court No. 160060

Court of Appeals No. 341147

Lower Court No. 2017-015329-FH

**PLAINTIFF'S SUPPLEMENTAL BRIEF IN RESPONSE TO DEFENDANT'S  
APPLICATION FOR LEAVE TO APPEAL**

**ORAL ARGUMENT REQUESTED**

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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 prior hearsay statements of the victim.

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

- II. Whether the trial court’s decision to exclude prior statements of the victim, if error, undermined the reliability of the jury’s verdict.

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 (0034a-0035a). 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 (0040a-0041a). Jacqueline and defendant were alone in the house; Jacqueline’s mother, Rachel, was at work, and her siblings were still at school (0038a-0040a). Jacqueline changed her clothes, got a snack, and walked into the bedroom where she sat on a chair in front of the television (0042a-0043a, 0044a). Defendant was laying on the bed; shortly after Jacqueline entered, he asked her to lay down with him (0043a, 0045a). Although she thought it was “weird,” Jacqueline joined defendant on the bed, eventually laying down on her side facing away from defendant (0048a-0049a). At some point, defendant “reached his arm around [Jacqueline] and put it on [her] stomach” (0050a). Defendant then moved his hand to Jacqueline’s chest and grabbed her breast (0054a). 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 (0055a). 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 (0056a-0057a).

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” (0058a-0059a; 17b-21b). Although encouraged by Mr. Shirley to report the incident, Jacqueline remained silent (22b).

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 (11b-12b). Once the charges were resolved, Jacqueline’s mother, Rachel, told her daughters that she was thinking of letting defendant back into the house (9b-10b). 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 (8b-10b, 13b; 0091a-0092a). Jacqueline eventually told her mother what defendant had done, and the police were called (16b).

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. 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). Defendant thereafter filed an Application for Leave to Appeal to this Court. In an order dated February 4, 2020, the People were directed to answer defendant’s application. In a second order, dated July 2, 2020, the People were directed to file a supplemental brief addressing the issues stated above.

The People stipulate to the use of the appendix filed by defendant, but find it necessary to file an appendix containing additional pages from both the motion and trial transcripts.

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.

**Standard of Review.** A trial court’s decision to admit evidence is reviewed for an abuse of discretion. *People v Meissner*, 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).

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 (0017a-0018a). Despite her daughters’ objections, Rachel allowed the victim’s father back into the house (0019a-0020a). Neither Lana nor the victim made good on their threats to accuse their father of any abusive behavior (0019a-0020a; 1b-4b).

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 (5b-7b).

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). Although left undefined by the rules, the word "assertion" is routinely understood to mean "a declaration of fact, capable of being true or false." 3 Michigan Court Rules Practice, Evidence (4th ed), Section 801.2. See *People v Jones*, 228 Mich App 191, 204-205; 579 NW2d 82 (1998).<sup>1</sup>

Here, the victim made the following statement to her mother: if you and dad get back together, I'll say that dad touched me (0017a). That this statement is an "assertion" seems clear – the victim is declaring a fact (i.e., that she intends to accuse her father of abuse if he reunites with her mother) that is capable of being either true (i.e., she actually intends to accuse her father) or false (i.e., she doesn't intend to accuse her father). Proving (or disproving) this intent is no different than establishing a defendant's intent to sell cocaine (if the buyer first provides the

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<sup>1</sup> Per McCormick, the word "assertion" simply means "to say something is so, e.g., that an event happened or that a condition existed." 2 McCormick on Evidence (8th ed), Section 246.

agreed-upon cash) or a defendant's intent to kill his wife if their fights continue. See *People v Melvin*, 70 Mich App 138, 145; 245 NW2d 178 (1976).

It seems equally clear that the statement was intended by the victim to be an assertion, as it was made for the distinct purpose of dissuading her parents from reconciling. See *People v Davis*, 139 Mich App 811, 812-813; 363 NW2d 35 (1984).

Finally, the unmistakable assertion at the heart of the victim's statement -- that the victim was willing to accuse her father of abuse -- was offered by defendant to prove the victim's willingness to level accusations if she disapproved of her mother's suitors.<sup>2</sup> 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.<sup>3</sup> The statement, therefore, was offered by defendant to prove the truth of the matter contained in the statement, and was accordingly hearsay. See *Melvin*, 70 Mich App at 145 (defendant's earlier statement that he intended to kill his wife if their fights continued was hearsay), and *People v DeRushia*, 109 Mich App 419, 424; 311 NW2d 374 (1981) (defendant's

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<sup>2</sup> This very reason was given by defendant's trial attorney at both the preliminary examination and the subsequent motion hearing. See 0018a ("She would make up a story about criminal sexual conduct to keep someone -- her mom from getting back together with somebody"); and 0030a ("[I]t does indicate that this witness is willing to fabricate a story").

<sup>3</sup> "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.

earlier statement that she “would have killed” the victim was offered for the truth of the matter asserted, and was therefore hearsay).<sup>4</sup>

Of the many exceptions to the hearsay rule, only one -- MRE 803(3) -- would arguably 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*, 401 Mich 482, 502-503; 257 NW2d 912 (1987).

Here, the victim’s state of mind with regard to her biological father when she was 14 years old was not in issue in defendant’s case, as it “did not relate to any element of the crime charged or any asserted defense” involving defendant’s 2017 conviction. *Id.* at 504. There is simply no connection between the victim’s intent to accuse her father in 2014 and her allegations against defendant three years later.

Nor was the victim’s state of mind in 2014 relevant to her credibility at defendant’s trial. Defendant’s appellate counsel and the Court of Appeals both assumed that the victim’s threat 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

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<sup>4</sup> Judge Riordan concluded 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.

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 . . ." (7b). The testimony of both the victim and her mother suggests that the touching referred to by the victim may have 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" (0017a-0018a).<sup>5</sup>

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

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

*Rachel 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.

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

*Rachel Hart:* Yes.

*Assistant Prosecutor:* Did they give any further explanation?

*Rachel Hart:* No.

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

*Rachel 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 (0023a-0024a).

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<sup>5</sup> When addressing the court, defense counsel reframed his question: "She would make up a story about criminal sexual conduct to keep someone – her mom from getting back together with somebody" (0018a). Later, on re-direct, the prosecutor asked the victim: "And did you ever actually make a statement that your father sexually assaulted you to anyone?" (0020a). Despite these references, the victim never affirmatively testified that the allegations she had threatened to level against her father involved sexual rather than physical abuse.

If, in fact, the victim's intention had been to level charges of physical abuse against her father, her accusations would have been based on actual occurrences, not fabrications. Her willingness to tell the truth about her father's abusive behavior, then, would 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, or otherwise fits within a hearsay exception, it is likely that the trial court would have nonetheless excluded it under MRE 403, as its probative value would have been slight. Several appellate cases have addressed this issue under similar circumstances. In *DeRushia*, for instance, the defendant was charged with fatally shooting her husband. At trial, the prosecutor attempted to admit a statement made by the defendant to her sister-in-law that at some unspecified time in the past she had pointed a gun at her sleeping husband and "would have killed him" because of the way he disciplined her children. The Court held that this statement was "virtually irrelevant" to the defendant's current charge because it had been provoked by circumstances "entirely different" from those which led to the killing. *DeRushia*, 109 Mich App at 427. Similarly, in *People v Goddard*, 429 Mich 505, 508; 418 NW2d 881 (1988), the defendant told a confederate, Michael Koski, that he would fire his pistol "once into the air and then fire at the people" if he were ever approached during the course of a breaking and entering. Approximately six months later, the defendant was charged with murder in an unrelated incident. At defendant's trial, the prosecution successfully argued that the defendant's statement to Koski was relevant on the issue of his intent in the subsequent murder. On appeal, the *Goddard* Court found that the defendant's "hypothetical" statement was of minimal probative value as "[t]he circumstances surrounding [its] making" were dissimilar to those leading up to the murder. *Id.* at 519-520.

Similarly, the victim's hypothetical statement here concerning her father was provoked by circumstances entirely different from those that led her to accuse defendant of sexual abuse in 2017. 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 (0018a). Further, the statement was specific to the victim's biological father – not defendant (5b). Additionally, as noted by the trial court, the uncertainty surrounding the type of touching involved – physical versus sexual -- “ma[de] [the statement] even less relevant” (7b). Moreover, the victim's 2014 statement was motivated by her desire to keep her father out of the family home. In contrast, the victim accused defendant of sexual abuse weeks *before* her mother broached the subject of defendant's return. Finally, the victim never made good on her threat, even after her father returned to the residence (7b). 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.

In contrast, the prejudicial effect of the statement would have been high. Evidence that the victim had threatened to accuse her father 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, and the uncertainty surrounding the type of touching involved would have required the jury to engage in speculation. 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 argues that the victim's statement was admissible pursuant to MRE 608(b).<sup>6</sup> 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 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.

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<sup>6</sup> 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 either MRE 608(b) or 404(b) applied. Defendant has therefore failed to preserve these issues. *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").

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.<sup>7</sup> 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).<sup>8</sup> 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 of allowing such cross-examination would have been substantially outweighed by the danger of unfair prejudice. MRE 403.

Defendant additionally argues that the victim's statement was admissible as a prior act pursuant to MRE 404(b). See *People v VanderVliet*, 444 Mich 52; 508 NW2d 114 (1993). Whether offered by defendant as relevant to the victim's intent, or as evidence of a common scheme or plan, both theories suffer from the same infirmities. First, as noted above, the record

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<sup>7</sup> Had the victim instead leveled false accusations against her father, her credibility would have likely been open to attack. See, e.g., *People v Hackett*, 421 Mich 338, 348; 365 NW2d 120 (1984) ("[T]he defendant should be permitted to show that the complainant has made false accusations of rape in the past").

<sup>8</sup> 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.

evidence is far from clear concerning what type of abuse – physical or sexual – the victim threatened to disclose. If physical, then the victim’s threat to accuse her father was based on actual abuse. This “threat” would hardly support defendant’s claim that the victim intended to falsely accuse defendant, or that she otherwise acted in accordance with a plan or scheme to falsely accuse her mother’s suitors.

Additionally, defendant’s claim that the victim followed a common scheme when accusing him of abuse (see Defendant’s Brief, p 21) is not borne out by the record. Although both incidents involved allegations of abuse by one of her mother’s paramours, at no time did the victim threaten defendant in order to prevent him from moving back into the family home. In fact, the victim didn’t learn of her mother’s plan to reunite with defendant until two weeks *after* she told her boyfriend that defendant had abused her. Therefore, unlike the threat involving her father, the victim’s accusations here were motivated by something *other* than a desire to keep defendant out of her mother’s residence. Further, at no time did the victim actually follow through on her threats to accuse her father of abuse. Rather than evidence a preexisting design or plan, these dissimilarities suggest that the victim’s accusations against defendant were “spontaneous acts,” independent of and unrelated to the situation involving her father. *People v Sabin*, 463 Mich 43, 66; 614 NW2d 888 (2000), quoting *People v Ewoldt*, 7 Cal 4th 380, 403; 867 P2d 757 (1994).<sup>9</sup> In the absence of a common scheme or plan, the relevance of the victim’s statement concerning her father rests solely on an intermediate inference drawn from her subjective character, i.e., that she acted in conformity with her character when accusing defendant of abuse. Such a use is prohibited by the rule. *VanderVliet*, 444 Mich at 63.

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<sup>9</sup> “To establish the existence of a common design or plan, the common features must indicate the existence of a plan rather than a series of similar spontaneous acts . . . .” *Id.*

Further, as previously argued, the probative value of the victim's statement concerning her father would be substantially outweighed by the danger of unfair prejudice. MRE 403. See *VanderVliet*, 444 Mich at 74.

Finally, admissibility under MRE 404(b) is still contingent on presenting evidence that is otherwise admissible. *VanderVliet*, 444 Mich at 74 (“Other acts evidence is not admissible simply because it does not violate Rule 404(b)”). Here, as argued above, the victim's statement concerning her father constitutes hearsay, and does not fit within any recognized exception.

The trial court correctly ruled that the victim's 2014 statement concerning her father was inadmissible hearsay. Defendant has failed to show that this hearsay fits within any recognized exception, and further, has failed to show that the statement is otherwise admissible pursuant to either MRE 608(b) or 404(b). Defendant's claim should therefore be denied.

- II. The trial court's decision to disallow a prior statement of the victim, if error, did not undermine the reliability of the jury's verdict.

**Standards of Review.** A preserved, nonconstitutional error is grounds for reversal only where it affirmatively appears that, more probably than not, it was outcome determinative. *People v Krueger*, 466 Mich 50, 54; 643 NW2d 223 (2002). An error is "outcome determinative" if it undermined the reliability of the verdict. In making this determination, a court should focus on the nature of the error in light of the weight and strength of the untainted evidence. *People v Burns*, 494 Mich 104, 110; 832 NW2d 738 (2013).

Even if this Court concludes that the victim's statement concerning her father was excluded in error, its omission was not so prejudicial as to undermine the reliability of the jury's verdict. *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 evidentiary value. For instance, at the time of her statement in 2014, the victim was a 14-year-old middle-schooler who had been physically abused by her father. It was therefore not surprising that she would react to news of her father's return by threatening to expose his previous abuse. By December of 2017, however, these circumstances had changed: the victim was a 17-year-old junior in high school, and defendant, whom she had no "major issues" with, was "just [her] mom's boyfriend" (0037a, 0046a). In light of these differences, defendant's argument that the victim was reacting to defendant's presence in the family home the same way she had toward her father – by levelling false accusations of abuse – loses much of its probative force. See *DeRushia*, 109 Mich App at 427.

Moreover, had evidence of the victim's statement concerning her father been admitted, the prosecution would have elicited testimony that the victim never made good on her threat, even after her father had returned home. As noted by the Court of Appeals, such evidence may have

actually enhanced the victim's credibility: "It showed that [the victim] could not bring herself to fully engage in a fabrication involving criminal sexual conduct." *Martinez*, slip op at 5.

Finally, the victim told her boyfriend about defendant's abusive conduct at least two weeks *before* her mother broached the subject of defendant's return. This evidence undercuts defendant's claim that the victim had a habit of lying to keep her mother's suitors out of the family home, which in turn serves to lessen any impeachment value the victim's 2014 statement may have had.

Accordingly, defendant has failed to establish that the outcome of his trial would have likely been different had the victim's 2014 statement been admitted. Defendant's Application for Leave should therefore be denied.

**REQUEST FOR RELIEF**

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

DATED: August 31, 2020

Respectfully submitted,

/s/ Mark Sanford

Mark Sanford (P35150)  
Assistant Prosecuting Attorney