

Court of Appeals, State of Michigan

ORDER

People of MI v Kenneth Stanley Miller

Docket No. 322340

LC No. 13-004837-FC

David H. Sawyer
Presiding Judge

William B. Murphy, C.J.

Joel P. Hoekstra
Judges

Pursuant to MCR 7.205(D)(2), in lieu of granting the application for leave to appeal, the Court REVERSES the circuit court's ruling that assistant prosecutor Kathleen Rezmierski is disqualified from prosecuting defendant's case and VACATES the part of the circuit court's June 4, 2014, order that allowed the district court's ruling disqualifying Rezmierski to stand. The rest of the circuit court's order remains in effect. The mere fact that a third person is not present when, during witness preparation, an alleged child sexual abuse victim discloses criminal acts not previously disclosed does not require disqualification. Nor does "the mere possibility that the trial prosecutor's testimony may be required." *New Jersey v Alfano*, 305 NJ Super 178, 187; 701 A 2d 1296 (App Div 1997). In order to disqualify Rezmierski, defendant had the burden of establishing that she is "likely to be a necessary witness." MRCp 3.7a; *People v Tesen*, 276 Mich App 134, 144; 739 NW2d 689 (2007). Defendant has not carried that burden. As in *Alfano*, "[i]t was premature to conclude that [her] testimony would ever be needed at trial."



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

AUG 08 2014

Date


Chief Clerk