

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED

Plaintiff-Appellee,

v

No. 180764

LC No. 94-000996-FC

JOANN ELLEN MORLEY,

Defendant-Appellant.

Before: Holbrook, Jr., P.J., and Taylor and W.J. Nykamp,* JJ

TAYLOR, J. (concurring in part and dissenting in part).

I concur with the majority's finding that defendant is entitled to reversal of her convictions and a new trial because the trial court improperly restricted her cross-examination of the complainant regarding the contents of certain psychological reports and records. At retrial, if the complainant asserts or refuses to waive her privilege regarding these documents, *People v Stanaway*, 446 Mich 643, 684; 521 NW2d 557 (1994), requires that the court suppress the complainant's testimony.

I also concur that the trial court did not abuse its discretion in disallowing expert testimony regarding past behavior of the complainant.

I dissent from the majority's implicit holding that defendant is not entitled on retrial to cross-examine the complainant regarding the specific nature of the allegations defendant made to the authorities that resulted in the complainant being placed in the Children's Home of Detroit. The complainant in this case was defendant's daughter. The complainant was removed from the family home and placed in the Children's Home, much to the complainant's displeasure, after defendant reported to the authorities that she found the complainant and one of complainant's younger brother's having sexual intercourse. At trial, defendant was able to establish that she had made unspecified allegations regarding the complainant that resulted in complainant's placement in the Children's Home. However, the exact nature of these allegations were not allowed into evidence even though they gave the complainant a much stronger ulterior motive for making a false charge of a sexual nature against her mother than some unspecified allegations. *People v Hackett*, 421 Mich 338, 348; 365 NW2d 120

* Circuit judge, sitting on the Court of Appeals by assignment.

(1984) (evidence of a complainant's sexual conduct may be probative of an ulterior motive for making a false charge and must be admitted into evidence, notwithstanding the rape-shield statute, in order to preserve a defendant's constitutional right of confrontation).

The exact nature of the allegations fleshes out defendant's claim that the complainant had an ulterior motive to fabricate the charges. The rough similarity of the complainant's charges to those that defendant earlier made give viability to defendant's claim that her daughter fabricated the charges for revenge. I would hold that defendant should be allowed to apprise the jury regarding the exact circumstances which led to the complainant being placed in the Children's Home at her retrial.

/s/ Clifford W. Taylor