

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED

Plaintiff-Appellee,

v

No. 163190

Genesee Circuit Court

JOHN ANTHONY LEIS,

LC No. 92046347 FH

Defendant-Appellant.

Before: Gribbs, P.J., and Marilyn Kelly and White, JJ.

MARILYN KELLY, J. (dissenting).

I respectfully dissent.

The prosecution improperly questioned Barbara Cody concerning prior consistent statements about the alleged sexual abuse that one of the complainants had made to her. *People v Rosales*, 160 Mich App 304, 308; 408 NW2d 140 (1987). A witness's prior consistent statement is admissible only to rehabilitate the witness following impeachment by a prior inconsistent statement or to rebut a charge of recent fabrication. MRE 801(d)(1); *People v Stricklin*, 162 Mich App 623, 627; 413 NW2d 457 (1987). Here, the prosecutor improperly used Cody's testimony to bolster the complainant's assertion that defendant had sexually abused her. Cody's testimony was inadmissible hearsay, as it was offered to prove the truth of the matter asserted. MCR 801(c); *People v Harris*, 201 Mich App 147, 150-151; 505 NW2d 889 (1993).

I cannot agree with the majority that a curative instruction could have removed the prejudice. Moreover, I believe that our failure to review the issue does result in manifest injustice. As in most criminal sexual assault cases, the jury's assessment of credibility in this case was crucial. Had the hearsay testimony not been admitted, I cannot say beyond a reasonable doubt that not one juror would have voted to acquit defendant. *People v Scobey*, 153 Mich App 82, 85-86; 395 NW2d 247 (1986). I would reverse.

/s/ Marilyn Kelly