

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED

Plaintiff-Appellee,

v

No. 195321

Ingham Circuit Court

MICHAEL PATRICK IVERS,

LC No. 94-068070-FC

Defendant-Appellant.

Before: Michael J. Kelly, P.J., and Reilly and Jansen, JJ.

JANSEN, J. (dissenting).

I respectfully dissent. Although I agree that the proffered testimony did not fall within the parameters of the rape-shield statute, MCL 750.520j; MSA 28.788(10), I find that the proffered testimony was not relevant. Therefore, I would find that the trial court did not abuse its discretion in prohibiting testimony concerning statements made by the complainant to one of her friends on the night of the alleged rape.

As noted by the majority, the witness would have testified that the complainant told her that the complainant had discussed birth control with her mother, that she was “ready to have sex,” and that the complainant wanted the witness to help her “find a guy.” MRE 401 defines relevant evidence as “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Evidence which is not relevant is not admissible. MRE 402. The issue in this case was whether the complainant actually consented to having sexual intercourse with the defendant. Defendant claimed that the complainant consented to having sex with him, while the complainant claimed that she did not consent and was raped.

I find these statements to be irrelevant in this case because they do not relate to whether the complainant consented to having sexual intercourse with this defendant during the night in question. Further, as noted by the prosecutor, the statements were not even related to any time, place, or person. How, then, can the statements be probative or material of the issue of the complainant’s consent or lack thereof? See *People v Mills*, 450 Mich 61-67-68; 537 NW2d 909 (1995) (in order to determine

whether evidence is relevant, the court must first determine the materiality of the evidence and the probative force of the evidence). Such generalized and indefinite statements do not prove the complainant's state of mind with respect to consent, especially regarding the night of the alleged rape with this defendant. Therefore, the statements are not material because they were not related to any fact of consequence to the case, and they are not probative because the statements do not make a fact *of consequence* more or less probable than it would be without the evidence. See *id.*

Accordingly, there is no abuse of discretion on the part of the trial court because the trial court properly ruled that the proffered testimony was irrelevant.

With respect to the remaining issues raised by defendant, I would find no error and would affirm defendant's conviction and sentence.

/s/ Kathleen Jansen