

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RANDALL ASBURY VANLANDINGHAM,

Defendant-Appellant.

UNPUBLISHED
December 2, 2003

No. 241311
Shiawassee Circuit Court
LC No. 01-007218-FC

Before: Sawyer, P.J., and Griffin and Smolenski, JJ.

PER CURIAM.

Defendant, a captain in the Salvation Army, was convicted by a jury of one count of first-degree criminal sexual conduct, MCL 750.520b, and two counts of second-degree criminal sexual conduct, MCL 750.520c, in connection with his alleged sexual molestation of children under the age of thirteen who spent the night at his house. He was sentenced to concurrent prison terms of fifteen to forty years for the first-degree CSC convictions, and ten to fifteen years for each second-degree CSC conviction. He appeals as of right. We affirm.

Defendant argues that the trial court erred in denying his motion to suppress the statements of the child complainants. We review a trial court's decision to admit evidence for an abuse of discretion. *People v Jones*, 240 Mich App 704, 706; 613 NW2d 411 (2000). "Questions of law relevant to a motion to suppress evidence are reviewed de novo." *People v Hawkins*, 468 Mich 488, 496; 668 NW2d 602 (2003).

Relying on *New Jersey v Michaels*, 136 NJ 299; 642 A2d 1372 (NJ, 1994), defendant argues that the trial court erred by refusing to permit expert testimony at the pretrial suppression hearing, which defendant mischaracterizes as a "taint" hearing. We disagree.

As the trial court recognized, *Michaels* is not binding precedent in Michigan. In any event, under *Michaels*, a so-called "taint" hearing is required only after the defendant satisfies his initial burden of showing "'some evidence' that the victim's statements were the product of suggestive or coercive interview techniques." *Michaels, supra* at 320. If the defendant makes such a showing, the burden shifts to the prosecution "to prove the reliability of the proffered statements and testimony by clear and convincing evidence." *Id.* at 321. During a taint hearing, the prosecution is entitled to call expert witnesses and the defense may also offer expert testimony to contradict the state's witnesses. *Id.*

Here, we need not decide whether a “taint” hearing should be recognized in Michigan, because defendant failed to make a preliminary showing that the victims’ statements were the product of coercive or improperly suggestive interview techniques. On the contrary, following an evidentiary hearing, the trial court found that the interviews of the child complainants had been professionally conducted by trained professionals, and that the children’s statements were the result of “free narrative.” As the trial court observed, the children were allowed to explain their statements without suggestion, the interviewers were trained in “children’s issues” and in interviewing young children, and notes were taken to document the interviews. Furthermore, contrary to what defendant argues, the record does not disclose that defendant was pressured to hurry or limit his examination of the witnesses. Therefore, the trial court did not err by failing to hold a taint hearing and by denying defendant’s motion to quash the children’s statements. The credibility of the child witnesses was a matter for the trier of fact to resolve at trial. *People v McFall*, 224 Mich App 403, 412; 569 NW2d 828 (1997).

Defendant next argues that the trial court violated his right of confrontation when it prevented him from cross-examining the mother of one of the child victims about the possibility of her filing a civil suit against defendant. Even if the trial court erred in precluding inquiry into the matter, given its relevance to the witness’ possible bias or interest, see *People v Grisham*, 125 Mich App 280, 284-285; 335 NW2d 680 (1983), we are satisfied that it was harmless beyond a reasonable doubt considering that it did not bear directly on the credibility of the child victims, and that its significance was minimal in the face of the number of child victims and other witnesses who testified. *People v Belanger*, 454 Mich 571, 576; 563 NW2d 665 (1997).

Defendant also argues that the trial court erred by prohibiting him from cross-examining a physician about statements allegedly made by one of the child complainants. The complainant testified at defendant’s preliminary examination that she saw blood in her underwear after defendant digitally penetrated her. As a result of her testimony, the child was taken to Dr. Guertin for medial examination.

At trial, the child testified that she believed she told Dr. Guertin about the blood in her underwear. The child also testified that defendant was always kind to her and that she did not remember him ever threatening her. Dr. Guertin testified at trial that he took an oral history from the child, and that she demonstrated with dolls that “the girl doll was laying on its belly and an adult male doll laying next to it and then the adult male doll, using its hands coming from behind, starting where the child’s buttocks are and then moving under the child to be able to touch the child’s vaginal area. So between the legs from the back to the front while the child was laying on its belly.” Dr. Guertin testified that his physical examination of the child, which revealed that her hymen had been injured, was consistent with the complainant’s demonstration.

Defense counsel sought to question Dr. Guertin about what the child told him during the oral history, but, because the medical examination was conducted for purposes of litigation rather than treatment, the trial court ruled that Dr. Guertin could only testify about what the child demonstrated, not about what she said. Defense counsel asked Dr. Guertin whether the child demonstrated or indicated a blood discharge, and Dr. Guertin replied that she did not, “she only indicated that it hurt.” The court reiterated its ruling that Dr. Guertin could only testify about what the child demonstrated, but did not strike Dr. Guertin’s answer or tell the jury to disregard it.

Defendant argues on appeal that he was entitled under MRE 613(b) to cross-examine Dr. Guertin about the child's alleged inconsistent statements regarding her bleeding and regarding any threats defendant may have made to her. MRE 613(b) provides that "extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate the witness thereon, or the interests of justice otherwise require." Here, defense counsel did not ask the child about any prior statements in any detail and, as noted previously, the child did not testify with assurance that she told Dr. Guertin that she bled, saying only that she believed she had told him. The child was excused without any defense request that she be subject to recall. As the trial court indicated at trial, Dr. Guertin testified in front of the jury that the child did not tell him that she had bled. The court further noted that inquiry into the child's statements to the physician would have opened the door to testimony about "a number of incidents perpetrated on her by the defendant." On this record, we are not convinced that the trial court erred by not permitting extrinsic evidence of the child's alleged inconsistent statements to Dr. Guertin. *People v Parker*, 230 Mich App 677, 682-684; 584 NW2d 753 (1998).

Finally, defendant argues that the trial court abused its discretion by denying his request to admit the forensic interview protocols as exhibits at trial. We disagree. Regardless whether the protocols qualify as a business record under MRE 803(8), the record discloses that the trial court excluded them under MRE 403, reasoning that the "evidence" in this case concerned the testimony regarding the interviews and the methods used during the interviews, "not the protocol itself," and that admission of the protocols would "sidetrack" and unduly confuse the jury. We find no abuse of discretion. *Jones, supra*.

Affirmed.

/s/ David H. Sawyer
/s/ Richard Allen Griffin
/s/ Michael R. Smolenski