

Order

Michigan Supreme Court
Lansing, Michigan

January 11, 2013

Robert P. Young, Jr.,
Chief Justice

145743

Michael F. Cavanagh
Stephen J. Markman
Diane M. Hathaway
Mary Beth Kelly
Brian K. Zahra
Bridget M. McCormack,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 145743
COA: 304459
Oakland CC: 2010-234100-FH

BRANDON JERROLD JOHNSON,
Defendant-Appellant.

On order of the Court, the application for leave to appeal the June 28, 2012 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

MARKMAN, J. (*concurring*).

Although I concur in the order, I write separately to state my agreement with the Court of Appeals partial dissent that the victim's statement here did not constitute hearsay and, in any event, was admissible under the hearsay exception for statements "made for purposes of medical treatment or medical diagnosis." MRE 803(4). A statement is only hearsay if it is offered to prove the truth of the matter asserted. MRE 801(c). Here, the testimony was not offered to prove that defendant "carries a gun," but was instead offered to describe the process of the examination of the victim and the gathering of the information contained in necessary medical forms. Further, even if the testimony did constitute hearsay, it was reasonably necessary for medical diagnosis or treatment of the victim. The Court of Appeals held in *People v Mahone*, 294 Mich App 208, 214-215 (2011), that particularly in sexual assault cases, in which injuries might be "latent" or "psychological" in nature, a victim's complete history and recitation of the totality of the circumstances of the assault are properly considered statements made for purposes of medical treatment or diagnosis.

HATHAWAY, J., not participating.



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I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

January 11, 2013

Corbin R. Davis

Clerk