

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant/Cross-Appellee,

v

MICHAEL J. ANKENBRANDT,

Defendant-Appellee/Cross-Appellant.

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UNPUBLISHED

January 29, 1999

No. 210899

Oakland Circuit Court

LC No. 97-152684 FH

Before: Sawyer, P.J., and Bandstra and R. B. Burns\*, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of third-degree child abuse, MCL 750.136b(4); MSA 28.331(2)(4). Thereafter, he pleaded guilty to being an habitual offender, fourth offense, MCL 179.12(1)(a); MSA 28.1084(1)(a), and was sentenced to sixteen months to fifteen years' imprisonment. The prosecutor appeals by leave granted the trial court's orders granting defendant's motion for a new trial and denying the prosecutor's motion for reconsideration. Defendant filed a cross appeal in which he appeals his conviction as of right. We reverse the court's order and reinstate defendant's conviction. With respect to defendant's cross appeal, we affirm.

On appeal, the prosecutor argues that the trial court abused its discretion in granting a new trial on the basis that it erred in admitting statements made to emergency room medical personnel by the three-year-old victim which identified defendant as his assailant. The trial court ruled that the statements were not necessary for treatment and therefore, did not fall within MRE 803(4).

A trial court may grant a defendant a new trial, "on any ground that would support appellate reversal of the conviction or because it believes that the verdict has resulted in manifest injustice." MCR 6.431(B); *People v Leonard*, 224 Mich App 569, 578; 569 NW2d 663 (1997).

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

In determining whether the trial court abused its discretion, we must examine the reasons given by the trial court for granting a new trial. *Id.*, citing *People v Bart (On Remand)*, 220 Mich App 1, 11; 558 NW2d 449 (1996). An abuse of discretion will be found if the reasons given are inadequate or not legally recognized. *Id.*, citing *Bart, supra* at 11.

The prosecutor argues that the trial court abused its discretion by deciding that it had improperly admitted the victim's statement to the emergency room physician, that, "[defendant] spanked me" and a nurse's report containing the victim's statement that "[defendant] hits me hard [and] pushes me down to (sic) much." The trial court reasoned that the statements were not reasonably necessary for treatment. The prosecutor contends that the trial court's conclusion is inconsistent with *People v Meeboer (After Remand)*, 439 Mich 310; 484 NW2d 621 (1992).

MRE 803(4) allows the admission of statement's made for purposes of medical treatment or diagnosis regardless of the availability of the declarant. A hearsay statement is admissible under this exception if the statement (1) was made for the purpose of medical diagnosis or treatment, (2) in connection with treatment, (3) describes medical history, or past or present symptoms, pain or sensations or the inception or general character of the cause or external source of it, and (4) was reasonably necessary for diagnosis or treatment. MRE 803(4); *Meeboer, supra* at 322.

Generally, statements pertaining to fault do not ordinarily qualify as necessary for treatment under MRE 803(4). *In re Freiburger*, 153 Mich App 251, 258; 395 NW2d 300 (1986); *People v Wilkins*, 134 Mich App 39, 45; 349 NW2d 815 (1984), citing *United States v Iron Shell*, 33 F2d 77, 84 (CA 8, 1980). However, in *Meeboer*, our Supreme Court held that statements made to treating medical health care providers by victims of child sexual abuse which identify their assailants are admissible under MRE 803(4) if: (1) the evidence of trustworthiness is sufficient to establish that the child had the selfish motivation to speak truthfully to treating physicians in order to receive proper medical care and, (2) the statement was reasonably necessary for diagnosis or treatment. *Id.* at 322, 324, 328, 333-334.

In *Meeboer*, the Court held that the rationale supporting MRE 803(4) does not require the exclusion of all statements made to treating medical health care providers by the victims of sexual abuse which identify their assailants. *Id.* at 315. In so holding, the Court reasoned that, [i]dentification can be as important to the health of the child as treatment of the physical injuries that are apparent to the physician." *Id.* at 328. The Court stated, in pertinent part:

Disclosure of the assailant's identity also refers to the injury itself; it is part of the pain experienced by the victim. The identity of the assailant should be considered part of the physician's choice for diagnosis and treatment, allowing the physician to structure the examination and questions to the exact type of trauma the child recently received.

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In addition to the medical aspect . . . the psychological trauma experienced by a child who is sexually abused must be recognized as an area that requires diagnosis and

treatment. A physician must know the identity of the assailant in order to prescribe the manner of treatment, especially where the abuser is a member of the child's household. As found in *Wilkins, supra*, sexual abuse cases involve medical, physical, developmental, and psychological components, all of which require diagnosis and treatment. [*Id.* at 329.]

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A physician should also be aware of whether a child will be returning to an abusive home. This information is not needed merely for "social disposition" of the child, but rather to indicate whether the child will have the opportunity to heal once released from the hospital. [*Id.* at 329-330.]

In applying this rationale to the facts of the companion case, *People v Conn*, the Court found that the child victim's statement identifying her assailant was reasonably necessary for diagnosis and treatment. The Court reasoned:

The doctor testified that he inquired into the identity of the assailant as an aid for diagnosis and treatment. He inquired into the identity of the assailant so he could scan for sexually transmitted diseases. Furthermore, since the doctor learned that the assailant was a member of the victim's household, he in fact began her future treatment by alerting the authorities. [*Id.* at 334-335.]

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. . . Treatment and removal from an abusive environment is medically beneficial to the victim of a sexual abuse crime and resulted from the victim's identification of the assailant to her doctor. The questions and answers regarding the identity of her assailant can therefore be regarded as reasonably necessary to this victim's medical diagnosis and treatment. [*Id.* at 335.]

Applying this rationale to the present facts, we conclude that the victim's statements were reasonably necessary for diagnosis and treatment. The treating emergency room physician testified that it is essential to ask the victim about the cause of the injury to determine the amount of force and mechanism used in order to provide the proper treatment. Questioning the victim about the identity of the assailant was therefore reasonably necessary to allow the physician and nurse to structure the examination to the exact type of trauma the victim received and to prescribe the proper treatment. *Id.* In addition, questioning the victim as to the identity of the perpetrator was necessary for the physician to fulfill his statutory duty to report suspected child abuse and to determine whether the victim would be returning to an abusive home. *Id.* at 329-330. Our Supreme Court's reasoning in *Meeboer* would lack consequence if statements to treating physicians were automatically inadmissible when the child victim identified the perpetrator when describing his injuries. Accordingly, we conclude that the trial court abused its discretion in granting a new trial because the statements made by the child victim were reasonably necessary for diagnosis and treatment.

In his cross appeal, defendant argues that the trial court abused its discretion in admitting the victim's statements through medical records because the statements were not sufficiently trustworthy under the factors articulated in *Meeboer* and therefore violated his constitutional right to confrontation.<sup>1</sup> Defendant contends that the statements could have been coached by his natural father and points to the fact that the victim told his natural father a different story before he spoke to medical personnel. We review a trial court's decision whether to admit or exclude evidence for an abuse of discretion. *People v Hoffman*, 225 Mich App 103, 104; 570 NW2d 146 (1997); *People v Hack*, 219 Mich App 299, 308; 556 NW2d 187 (1996).

In *Meeboer*, the Supreme Court specified that the inquiry into the trustworthiness of the declarant's statement should be based on the "totality of the circumstances" surrounding the declaration. The balancing is to evaluate whether a child's statement to medical personnel bears sufficient indicia of trustworthiness to be admitted pursuant to MRE 803(4). *Meeboer, supra* at 324. The ten factors relating to the trustworthiness guarantees surrounding the actual making of the statement include:

(1) the age and maturity of the declarant, (2) the manner in which the statements are elicited (leading questions may undermine the trustworthiness of the statement), (3) the manner in which the statements are phrased (childlike terminology may be evidence of genuineness), (4) use of terminology unexpected of a child of similar age (5) who initiated the examination (prosecutorial initiation may indicate that the examination was not intended for purposes of medical diagnosis and treatment), (6) the timing of the examination in relation to the assault (the child is still suffering pain and distress), (7) the timing of the examination in relation to the trial (involving the purpose of the examination), (8) the type of examination (statements made in the course of treatment for psychological disorders may not be as reliable), (9) the relation of the declarant to the person identified (evidence that the child did not mistake the identity), and (10) the existence of or lack of motive to fabricate. [*Id.* at 324-325 (footnotes omitted).]

See also *People v McElhaney*, 215 Mich App 269, 280-281; 545 NW2d 18 (1996).

After a thorough review, we conclude that, on balance, the trial court did not abuse its discretion in finding that the victim's statements bear sufficient indicia of trustworthiness to be admitted under MRE 803(4). The three-year-old victim was examined the day after the alleged abuse. The fact that the victim's natural father took the victim to the emergency room for an examination immediately after discovering the bruises indicates that the statement was intended for diagnosis and treatment, not as a mechanism for having the victim give coached testimony to implicate defendant. Furthermore, when asked by the emergency room physician how he was injured, the victim replied that his stepfather "spanked me." Due to the victim's young age, it is unlikely that he lied when he told medical personnel what happened. While we recognize that the fact that the victim was only three years old makes it harder to establish that he understood the need to be truthful to his physician, *Meeboer, supra* at 336, defendant has not shown that the young child had a motive to lie. Under these circumstances, we conclude that the victim's statements were sufficiently trustworthy to be admitted under the exception. Accordingly, the trial court did not abuse its discretion in finding the statements trustworthy.

Reversed and remanded for reinstatement of defendant's conviction. Affirmed as to defendant's cross appeal.

/s/ David H. Sawyer

/s/ Richard A. Bandstra

/s/ Robert B. Burns

<sup>1</sup> Although defendant appears to claim that the victim's statements were improperly admitted under MRE 803(6), the business records exception to the hearsay rule, defendant's argument focuses on whether the statements were sufficiently trustworthy under *Meeboer*. Defendant further contends that, because the statements were not trustworthy under *Meeboer* and because neither the victim nor the nurse testified at trial, his constitutional right to confront the witnesses against him was violated. US Const, Am VI; Const 1963, art 1 § 20. Therefore, this Court has confined its analysis to whether the statements were trustworthy under *Meeboer*. Because our Supreme Court held in *Meeboer* that statements which are trustworthy under the factors enunciated in that case, do not violate a defendant's right to confrontation, the determination whether the statements were trustworthy resolves the confrontation issue. *Meeboer, supra* at 323-324.