

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STANLEY GENE DENHOF,

Defendant-Appellant.

UNPUBLISHED

December 14, 2010

No. 287720

Kent Circuit Court

LC No. 08-003097-FC

Before: HOEKSTRA, P.J., and FITZGERALD and STEPHENS, JJ.

STEPHENS, J. (*CONCURRING*).

I concur in the majority's well written opinion. I write separately only to address the questions of the admission of the officer's statements on the DVD. As the majority recognizes, a witness may not comment on the credibility of another witness because issues of credibility are reserved for the finder of fact. The prosecution asserts that the officer's statements were not intended to bolster the credibility of the victim, but were merely introduced to provide context for defendant's statements and to demonstrate the effect that the statements had on defendant. However, defendant's statements did not cry out for contextualization much less require admission of the officer's statements regarding the veracity of the complainant and the strength of the physical evidence. The probative value of the officer's comments was minimal. Furthermore, to the extent that there was a proper purpose for the admission of the officer's statements, I believe that testimony from a police officer has a great danger of being given undue weight. It is natural for a juror who has had little or no exposure to criminal sexual conduct matters to defer to the officer's superior experience in analyzing evidence. Great care should be taken to avoid the potential harm that the officer's opinion can become the thirteenth juror. Therefore, unlike the majority, I find that the admission of his statements was erroneous under MRE 403. The cautionary instruction, however, is presumed to have been heeded and the strength of the other evidence in this case renders this error not outcome determinative. *People v Callon*, 256 Mich App 312, 329-330; 662 NW2d 501 (2003). Consequently, relief is not warranted.

/s/ Cynthia Diane Stephens