

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JASON ALLEN BOISMIER,

Defendant-Appellee.

UNPUBLISHED

December 28, 2010

No. 291642

Wayne Circuit Court

LC No. 2008-012562-01

Before: SHAPIRO, P.J., and SAAD and SERVITTO, JJ.

Servitto, J. (*concurring*).

Although I concur in the result reached by the majority, I write separately to address my conclusion that the prosecutor's specific question to defendant as to whether he told his neighbor, David Gasidlo, that he had consensual sex with the complainant was improper. The prosecution initially moved to endorse David Gasidlo as a late witness when, according to the prosecutor, Gasidlo's daughter informed the prosecutor that defendant had told Gasidlo he had consensual sex with the complainant. After Gasidlo denied that defendant made such a statement to him, the prosecution withdrew its motion to include Gasidlo as a witness. In doing so, the prosecution implicitly acknowledged that Gasidlo's testimony would be that defendant made no admission to him. And, the defense being that defendant had no sexual contact with the complainant whatsoever, the prosecution was well aware that defendant's response to the question of whether he made any admission to Gasidlo would be "no." The prosecution thus had no reasonable or good faith basis to ask defendant if he had told Gasidlo he had consensual sex with the complainant, and appears to have asked the question simply to inject an improper suggestion that she had evidence of such an admission into the proceedings when she clearly did not. Had the prosecution any doubt as to Gasidlo's testimony, it could very well have called Gasidlo as a witness or carefully questioned Gasidlo's testifying daughter (who denies making such a statement to the prosecutor) on the issue.

That being said, I agree that the question did not deny defendant a fair and impartial trial. No one dwelled on the single question and, as indicated by the majority, both the trial court and defense counsel addressed the issue, thus eliminating any potential prejudice to defendant. I therefore agree that defendant was not entitled to a new trial.

/s/ Deborah A. Servitto