

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BENJAMIN OCTAVIO ARREGUIN,

Defendant-Appellant.

UNPUBLISHED

February 3, 2011

No. 294065

Washtenaw Circuit Court

LC No. 08-002113-FH

Before: MURPHY, C.J., and METER and GLEICHER, JJ.

GLEICHER, J. (*concurring*).

I concur in the majority's decision to affirm defendant's conviction, but write separately to express my disagreement with two aspects of the majority's analysis.

Defendant asserts that the prosecutor committed misconduct by proffering testimony intended to impermissibly bolster the victim's credibility. According to defendant, the prosecutor elicited improper bolstering evidence from the victim's mother and Detective Craig Raisanen. Regarding the mother's testimony, the majority concludes that "we cannot find that the prosecutor acted in bad faith," given that the prosecutor admonished the mother "that he did not 'want to know the details of what [the victim] told you.'" *Ante* at 2. However, immediately before this admonition, the transcript reveals the following colloquy:

Q. Okay. At that point did [the victim] tell you about something?

A. Yes.

Q. *What did she tell you?*

A. She told me that [defendant] touched her. [Emphasis added.]

A prosecutor may not knowingly offer or attempt to elicit inadmissible evidence. *People v Dyer*, 425 Mich 572, 576; 390 NW2d 645 (1986). "As a general rule, neither party in a criminal trial is permitted to bolster a witness' testimony by seeking the admission of a prior consistent statement made by that witness." *People v Lewis*, 160 Mich App 20, 29; 408 NW2d 94 (1987). In my view, the prosecutor's question reflects a deliberate effort to elicit both inadmissible hearsay and improper bolstering evidence. Nevertheless, defendant raised no objection to this question, and this single question and answer neither affected the outcome of the trial, nor seriously affected

the fairness, integrity, or public reputation of the judicial proceeding. *People v Barber*, 255 Mich App 288, 296; 659 NW2d 674 (2003).

Defendant also challenges as prosecutorial misconduct the prosecutor's solicitation of bolstering evidence through Raisanen's testimony concerning the forensic interview protocol. Raisanen explained at trial that a trained social worker interviewed the child victim at the Washtenaw County Child Advocacy Center. Defense counsel objected to further details about this interview, arguing that it amounted to bolstering of the victim's testimony. The prosecutor responded, "Judge, I have no intention of eliciting testimony about what [the victim] said in that interview. We are talking about the process." Unfortunately, the prosecutor's subsequent questions belie that assertion. The prosecutor asked Raisanen, "What's the goal of this interview?" Raisanen replied, "The goal is to get to the truth." The prosecutor then established through Raisanen that "[e]verything was done properly in this case," and that Raisanen submitted the case to the prosecutor's office "a day or so" after he viewed the forensic interview.

The prosecutor's questions concerning the "goal" of the interview and the date Raisanen submitted the case for prosecution intended to convey that the interviewer "g[o]t to the truth," and that Raisanen believed the complainant. A prosecutor cannot vouch for the credibility of a witness by suggesting that he has some special knowledge concerning the witness's truthfulness. *People v Bahoda*, 448 Mich 261, 276; 531 NW2d 659 (1995). In my view, the prosecutor violated this rule by pursuing an otherwise irrelevant line of questioning. Although a closer question than that presented by the mother's answer, I nevertheless agree with the majority that the admission of this evidence did not deprive defendant of a fair and impartial trial. *People v Thomas*, 260 Mich App 450, 453; 678 NW2d 631 (2004).

/s/ Elizabeth L. Gleicher