STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

vs

149798 +

TIMOTHY WARD JACKSON,
Defendant-Appellant.

Supreme Court No. 149798

Lower Court No. 10-13476
Court of Appeals No. 310177

PLAINTIFF-APPELLEE'S ANSWER OPPOSING DEFENDANT-APPELLANT'S APPLICATION FOR LEAVE TO APPEAL

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PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

vs **Supreme Court No.**

TIMOTHY WARD JACKSON,
Defendant-Appellant.

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PLAINTIFF-APPELLEE'S ANSWER OPPOSING DEFENDANT-APPELLANT'S APPLICATION FOR LEAVE TO APPEAL

The People of the State of Michigan, through Kym L. Worthy, Prosecuting Attorney, County of Wayne, Timothy A. Baughman, Chief of Research, Training, and Appeals, and David A. McCreedy, Lead Appellate Attorney, ask this Court to deny defendant's application for leave to appeal.

1. Defendant's application relies on the same arguments he made in the Court of Appeals.
2. The People's brief on appeal in the Court of Appeals adequately address these issues, and is incorporated in this answer. See Attachment A.
3. The Court of Appeals did not clearly err in rejecting defendant's arguments and affirming his convictions. MCR 7.302(B)(5).
4. Defendant's application does not demonstrate any of the other grounds for granting leave to appeal. MCR 7.302(B)(1)-(3).

5. In sum, defendant's application raises no issues worthy of this Court's review, and it should be denied.

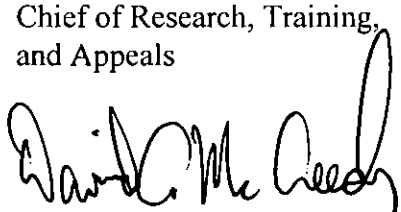
RELIEF

THEREFORE, the People request this Honorable Court to deny defendant-appellant's application for leave to appeal.

Respectfully submitted,

KYM WORTHY
Prosecuting Attorney
County of Wayne

TIMOTHY A. BAUGHMAN
Chief of Research, Training,
and Appeals



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Dated: September 5, 2014

STATE OF MICHIGAN
IN THE SUPREME COURT

THE PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

vs

Supreme Court
No.

TIMOTHY WARD JACKSON,
Defendant-Appellant.

Third Circuit Court No. 10-13476
Court of Appeals No. 310177

ATTACHMENT - A

STATE OF MICHIGAN
IN THE COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

vs **Court of Appeals No. 310177**

TIMOTHY WARD-JACKSON,
Defendant-Appellant.

Lower Court No. 10-13476

PLAINTIFF-APPELLEE'S BRIEF ON APPEAL
ORAL ARGUMENT NOT REQUESTED

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TABLE OF CONTENTS

Index of Authorities . . . . . -iii-

Counterstatement of Jurisdiction . . . . . -1-

Counterstatement of Questions Presented . . . . . -2-

Counterstatement of Facts . . . . . -4-

Argument . . . . . -9-

I. To prove a violation of the fair-cross-section requirement of the Sixth Amendment, a defendant must establish that a distinctive group was underrepresented in his venire or jury pool, and that the underrepresentation was the result of systematic exclusion of the group from the jury selection process. Defendant has done nothing to establish any systematic exclusion. Defendant has not demonstrated a violation of the fair cross-section requirement of the Sixth Amendment. . . . . -9-

Standard of Review . . . . . -9-

Discussion . . . . . -10-

II. Even if they implicate the defendant, the circumstances surrounding a child's disclosure of sexual abuse are admissible. Shania did not disclose that defendant had been sexually abusing her until confronted by her Aunt Jackie, who directly questioned her niece about defendant after hearing that a friend had left their church after some kind of affair with defendant. Judge Callahan did not abuse his discretion in admitting the circumstances of Shania's disclosure. . . . . -15-

Standard of Review . . . . . -15-

Discussion . . . . . -15-

III. If believed, the testimony of a sexual-assault victim is legally sufficient—without any corroboration—to convict a defendant of criminal sexual conduct. Here, the victim not only testified to all the elements of six counts of CSC 1, she was corroborated by indisputable physical evidence. Sufficient evidence existed to support defendant's convictions for CSC 1. . . . . -20-

Standard of Review . . . . . -20-

Discussion . . . . . -21-

Relief . . . . . -25-

INDEX OF AUTHORITIES

FEDERAL CASES

Duren v Missouri,
439 U.S. 357 ..... 12, 13

Ford v Seabold,
841 F.2d 677 (CA 6, 1988) 13

Taylor v Louisiana,
419 U.S. 522 11

STATE CASES

California v Ayala,
1 P.3d 3 (2000) 13

People v Bahoda,
448 Mich. 261 (1995) 16

People v Brantley,
296 Mich. App. 546 (2012) 22

People v Carines,
460 Mich. 750 (1999) 10

People v Dukes,
189 Mich. App. 262 (1991) 21, 23

People v Dunigan,
299 Mich. App. 579 (2013) 23

People v Hubbard,
217 Mich. App. 459 (1996) 10, 12

People v Lemmon,
456 Mich. 625 (1998) 21, 23, 24

People v Martin,
271 Mich. App. 280 (2006) 22

People v Meshell,
265 Mich. App. 616 (2005) 22, 23

People v Noble,
238 Mich. App. 647 (1999) 21

People v Robinson,
unpublished per curiam opinion of the Court of Appeals, Docket No. 285416 (dated October 20, 2009) 13

People v Smith,
463 Mich. 199 (2000) 10

People v Smith,
unpublished per curiam opinion of the Court of Appeals, Docket No. 286409 (dated Nov. 24, 2009) 9

People v Ullah,
216 Mich. App. 669 (1996) 16

People v VanderVliet,
444 Mich. 52 (1994) 18

People v Wallace,
unpublished per curiam opinion of the Court of Appeals, Docket No. 237115 (dated March 20, 2003) 10, 13

People v Watson,
245 Mich. App. 572 (2001) 11, 16

People v Wolfe,
440 Mich. 508 (1992) 23

COUNTERSTATEMENT OF JURISDICTION

The People concur with defendant's statement of appellate jurisdiction.

COUNTERSTATEMENT OF QUESTIONS PRESENTED

I.

To prove a violation of the fair-cross-section requirement of the Sixth Amendment, a defendant must establish that a distinctive group was underrepresented in his venire or jury pool, and that the underrepresentation was the result of systematic exclusion of the group from the jury selection process. Defendant has done nothing to establish any systematic exclusion. Has defendant demonstrated a violation of the fair cross-section requirement of the Sixth Amendment?

The trial court did not answer this question.

The People answer, "No."

Defendant answers, "Yes."

II.

Even if they implicate the defendant, the circumstances surrounding a child's disclosure of sexual abuse are admissible. Shania did not disclose that defendant had been sexually abusing her until confronted by her Aunt Jackie, who directly questioned her niece about defendant after hearing that a friend had left their church after some kind of affair with defendant. Did Judge Callahan abuse his discretion in admitting the circumstances of Shania's disclosure?

The trial court answered, "No."

The People answer, "No."

Defendant answers, "Yes."

III.

If believed, the testimony of a sexual-assault victim is legally sufficient—without any corroboration—to convict a defendant of criminal sexual conduct. Here, the victim not only testified to all the elements of six counts of CSC 1, she was corroborated by indisputable physical evidence. Did sufficient evidence exist to support defendant's convictions for CSC 1?

The trial court did not answer this question.

The People answer, "Yes."

Defendant answers, "No."

COUNTERSTATEMENT OF FACTS

The People do not concur in defendant's argumentative and biased statement of facts, which violates MCR 7.212(C)(6) and should be stricken from his brief. MCR 7.216(C)(1)(b).

Defendant's convictions for six counts of first-degree criminal sexual conduct arise out of the testimony of Shania Swift and several pieces of corroborative physical evidence introduced at trial. According to Ms. Swift, defendant had been pastor to her and her family since they joined Outreach Cathedral of Faith when she was three years old.[1] The Swift family became very involved in the church, taking on various leadership roles. One of Shania's roles was that of "pastor's nurse," which basically meant serving the pastor and his wife.[2] In June 2009, she and her family went on a church trip to Alabama with defendant. Once there, defendant asked Shania's mother if Shania, then twelve years old, could watch a movie with him in his room.[3] During the movie, defendant said his back hurt and asked for a backrub, which Shania provided. Defendant then told her to take off her clothes and get in bed. Despite feeling uncomfortable, Shania complied. Defendant then disrobed, got in bed with

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[1]3.21.12 at 237.

[2]Id. at 283.

[3]Id. at 241.

her, and attempted to have vaginal intercourse with her.[4] Although she cried because it hurt and tried to fight him off, defendant did not stop. When it was over, defendant instructed Shania to tell her mother she had been helping him with a presentation he had to give at church the next day.[5]

The next week, after returning from Alabama, defendant picked up Shania from her home, claiming that he needed her to help with the offering envelopes, and took her to his office in the basement of the church. There, while Shania was on the couch, defendant sat down in his "rollie chair," took out his penis, and told her to "kiss it," meaning to suck it.[6] Then he had her take off her clothes and get on the floor, where again he penetrated her vagina with his penis until he ejaculated.[7] After putting his penis in her mouth one more time, defendant handed Shania a towel so she could clean up in the bathroom next to his office.[8]

From that point on, the sexual contact continued nearly every other day at the church until after she turned thirteen, at which point they began also having sexual

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[4]Id. at 242-44.

[5]Id. at 247-49.

[6]Id. at 256-57.

[7]Id. at 258-60.

[8]Id. at 261.

intercourse at defendant's home.[9] Initially at the church, defendant had unlocked the building and turned the lights on when they arrived. Eventually, however, he began having sex with Shania when others were present elsewhere in the church.[10] Shania, as the pastor's nurse, would bring him his Throat Coat before preaching, and he would pull out his penis for her to suck.[11] Usually he would also ask for a "quick one," and the two would have sexual intercourse. Whenever he ejaculated, defendant would grab a cloth towel from the bathroom to wipe off his hand.[12]

During this period of more than a year, Shania never told anyone what defendant had been doing to her. In August 2010, her aunt Jacklyn talked to her between church services, asking if anyone had touched her or made her feel uncomfortable in a certain way. Only then did Shania disclose that the pastor had been touching her.[13] According to Shania, there were a number of reasons she didn't tell earlier: defendant told her that God saw and that it was better for her to have sex with him than many other guys who wouldn't do it as well as him; she thought she

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[9]Id. at 265, 269.

[10]Id. at 279.

[11]Id. at 284.

[12]Id. at 286.

[13]Id. at 305.

might get in trouble if her mom found out; she worried that it would cause a rift at church if the truth got out; and she believed that people wouldn't be on her side.[14]

After disclosing to her aunt, Shania went with her mother to the police, where Shania described, in recounting the sexual abuse, a black mark that defendant has on his upper thigh under his scrotum—a mark that cannot be seen looking at defendant's unclothed body from the front or the back, or even while seated.[15] Shania also described the towels defendant used to wipe the ejaculate from his hand. In investigating her allegations, police sketched the mark that Shania described, and then located and photographed it on defendant's body. The police lab also detected defendant's sperm on the towels from his office bathroom.

Defendant claimed that none of Shania's allegations were true—her aunt had put her up to it because defendant had refused to perform her wedding ceremony.[16] His explanation why Shania could describe the discoloration under his scrotum was that she once walked in on him between church services while he was sitting spread-

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[14]Id. at 307-08.

[15]3.23.12 at 204-09.

[16]Id. at 190.

eagled and naked on his office couch. He had no idea how she would know that he ejaculated on his bathroom towels.[17]

Defendant's jury convicted him, as charged, of four counts of penetration when Shania was 12 and defendant more than 17, and two counts of penetration when Shania was 13 and defendant used his authoritative position to coerce her into submitting.

[17]Id. at 252.

ARGUMENT

I.

To prove a violation of the fair-cross-section requirement of the Sixth Amendment, a defendant must establish that a distinctive group was underrepresented in his venire or jury pool, and that the underrepresentation was the result of systematic exclusion of the group from the jury selection process. Defendant has done nothing to establish any systematic exclusion. Defendant has not demonstrated a violation of the fair cross-section requirement of the Sixth Amendment.

Standard of Review:

This Court reviews preserved fair-cross-section claims de novo.[18] But here defendant lodged no objection to the composition of the jury pool or his particular petit jury, and as such review is for plain error.[19] Plain error means that the error was clear, that it affected the outcome at trial, and that it seriously affected the fairness, integrity, or public reputation of judicial proceedings.[20]

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[18] *People v Hubbard,* 217 Mich App 459, 472 (1996); see *People v Smith,* 463 Mich 199 (2000).

[19] See *People v Carines*, 460 Mich 750, 772 (1999). See also *People v Smith,* unpublished per curiam opinion of the Court of Appeals, Docket No. 286409 (dated Nov. 24, 2009) (applying plain-error standard to unpreserved fair-cross-section claim).

[20] *Id.*

Discussion:

Defendant's claim fails for at least three reasons. First, he does not even attempt to meet the plain-error standard of review, and as such he has abandoned the issue on appeal by "merely announc[ing] his position and leav[ing] it to this Court to discover and rationalize the basis for his claims." *People v Watson,* 245 Mich App 572, 586 (2001). Second, his claim is based entirely on the fact that only one black juror sat on his petit jury, but the relevant inquiry is whether African-Americans are systematically excluded from Wayne County *jury pools*. Again, by not addressing the actual legal issue, defendant has abandoned the claim. See *id.* Third, on the merits, this court has already concluded after an exhaustive analysis in *People v Wallace*, unpublished per curiam opinion of the Court of Appeals, Docket No. 237115 (dated March 20, 2003), that black jurors are *not* excluded on a systematic basis in Wayne County. For any and all of these reasons, defendant's claim must be rejected.

The Sixth Amendment of the United States Constitution guarantees a criminal defendant a trial by an impartial jury. In that context, the United States Supreme Court has declared that "the American concept of the jury trial contemplates a jury drawn from a fair cross section of the community."[21] Over twenty-five years ago, the

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[21] *Taylor v Louisiana,* 419 US 522, 527; 95 S Ct 692; 42 L Ed 2d 690 (1975).

Supreme Court extended the fair-cross-section requirement to the States via the Fourteenth Amendment.[22] In doing so, however, the Court emphasized that defendants "are not entitled to a jury of any particular composition."[23] Rather, "the jury wheels, pools of names, panels, or venires from which juries are drawn must not systematically exclude distinctive groups in the community and thereby fail to be reasonably representative thereof."[24] In other words, the Sixth Amendment simply guarantees an "*opportunity* for a representative jury."[25]

In *Duren v Missouri*,[26] the Supreme Court clarified the defendant's burden with regard to a fair-cross-section claim:

> In order to establish a prima facie violation of the fair-cross-section requirement, the defendant must show (1) that the group alleged to be excluded is a "distinctive" group in the community; (2) that the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and (3) that this underrepresentation is due to systematic exclusion of the group in the jury-selection process.

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[22] *Id.* at 526-531.

[23] *Id.* at 538.

[24] *Id.*

[25] *Hubbard, supra* at 472 (emphasis added).

[26] *Duren v Missouri,* 439 US 357, 364; 99 S Ct 664; 58 L Ed 2d 579 (1979).

Regarding the third prong of *Duren*, Michigan's Supreme Court in *People v Smith*[27] recognized that a *systematic* exclusion is one that is "'inherent in the particular jury-selection process utilized.'" Underrepresentation alone thus does not show a systematic exclusion. Indeed, *Smith*[28] observed that "*Duren* did not hold that the third prong was established solely on the basis of statistical proof; there was also proof of the cause of the underrepresentation." A defendant must show that the underrepresentation is the result of some improper feature of the selection process,[29] or, at the very least, point to something in the process "which makes it obvious that the underrepresentation was due to the system itself."[30]

Defendant here has failed to satisfy the second and third prongs of the *Duren* analysis. More specifically, there are no facts *in this record* demonstrating that African-Americans are underrepresented across Wayne County jury venires generally, as opposed to his jury in particular. Although defendant makes a conclusory statement that "underrepresentation of African Americans on Wayne County juries is

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[27] *Smith,* 463 Mich at 205, quoting *Duren, supra* at 366.

[28] *Id.* at 206, n 3.

[29] *California v Ayala,* 23 Cal 4th 225, 256; 1 P3d 3 (2000).

[30] *Ford v Seabold,* 841 F2d 677, 685 (CA 6, 1988).

a recurring problem,"[31] he has introduced no statistical finding or anything else of record to support the claim.[32] For this reason alone, defendant cannot prevail.

But even if African-Americans are underrepresented, it is not because of any systematic exclusion: defendant has not alleged any, and any such claim would be untrue. That is, if there is an underrepresentation of certain minorities, it is for reasons other than that the system is unfair in how it selects citizens for jury service. To the contrary, this court has already found, in a case where the defendant presented actual facts on the issue, that Wayne County's system is not biased, even if it did unintentionally result in underrepresentation. This is because, as the record in *People v Wallace* showed, potential jurors from Detroit were disqualified at a higher rate than those from Wayne County generally. Detroit residents were more likely to be exempted or disqualified because of (1) age; (2) citizenship; (3) medical conditions; (4) an inability to speak and understand English; (5) service on a petit or grand jury within the previous twelve months; (6) the fact that they moved out of the county; or (7) being under a sentence for a felony. *Id.*, citing M.C.L. 600.1307a. Thus, the

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[31]Defendant-Appellant's Brief on Appeal at 18.

[32]He cites a seven-year-old report from the National Center for State Courts as support, which is neither part of the record on appeal (see MCR 7.210(A)(1)) nor dispositive. See *People v Robinson*, unpublished per curiam opinion of the Court of Appeals, Docket No. 285416 (dated October 20, 2009) (analyzing the NCSC report defendant cites).

system was (and is) not set up to exclude Detroit residents generally or African-Americans in particular. Rather, valid race-neutral factors may have the effect of reducing the percentage of Detroiters, and thus African-Americans, on Wayne County jury venires. But while this may present a political problem worthy of a political solution, it does not render Wayne County's jury-selection process unconstitutional—in general or in defendant's case specifically. *Id.* Defendant's claim in this regard is foreclosed. He is not entitled to relief.

II.

Even if they implicate the defendant, the circumstances surrounding a child's disclosure of sexual abuse are admissible. Shania did not disclose that defendant had been sexually abusing her until confronted by her Aunt Jackie, who directly questioned her niece about defendant after hearing that a friend had left their church after some kind of affair with defendant. Judge Callahan did not abuse his discretion in admitting the circumstances of Shania's disclosure.

Standard of Review:

A trial court's decision to admit evidence is reviewed for an abuse of discretion.[33] An abuse of discretion exists when an unprejudiced person, considering the facts on which the trial court acted, would conclude there was no justification or excuse for the ruling.[34] A decision on a close evidentiary question ordinarily cannot be an abuse of discretion.[35]

Discussion:

Although the circumstances surrounding Shania's disclosure of defendant's sexual abuse may have hinted at another potential bad act by defendant, the

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[33]*People v Watson,* 245 Mich App 572, 575 (2001).

[34]*People v Ullah,* 216 Mich App 669, 673 (1996).

[35]*People v Bahoda,* 448 Mich 261, 289 (1995).

prosecution did not actually offer any 404(b) evidence and so Judge Callahan could not have abused his discretion in admitting such evidence. In any event, the testimony in question was not barred by any rule of evidence, and even if it should have been excluded any error was harmless.

As indicated, according to Shania defendant's sex abuse went on for more than a year without her telling anyone about it. Shania's disclosure occurred only because her Aunt Jackie directly questioned her whether she had been inappropriately touched by defendant. The aunt—Jacklyn Price—testified that the reason she confronted Shania was that a friend of Price's had left the church, and Price got a communication two or three years later from the friend (Latoya Newsome) about why she left, and the message affected Price "very, very badly."[36] The message from Newsome concerned defendant, and it made Price want to talk to Shania to see if she had been touched in any sexual way.[37] No evidence about Newsome's age was introduced, other than that she was married and living in China.[38] Price also referenced "occasions that had happened back in the years with him messing around with a female."[39]

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[36]3.21.12 at 159.

[37]Id. at 157.

[38]Id. at 158.

[39]Id. at 305.

To begin with, the prosecution did not introduce any direct 404(b) evidence, but even if the hints of a sexual affair with Newsome constituted uncharged misconduct, the requirements of MRE 404(b) were met. Rule 404(b) requires "reasonable notice" if the prosecution seeks to introduce uncharged "crimes, wrongs, or acts" of the defendant. Notice aside, bad-acts evidence must be admitted as long as it is offered for some relevant purpose other than to prove the defendant's propensity to commit crime[40] and its probative value is not substantially outweighed by the danger of unfair prejudice.[41] Thus, other than the notice and non-propensity requirements, 404(b) testimony is reviewed under the same MRE 403 standard as every other piece of evidence.

Here, defendant knew of the evidence in question at least as early as the preliminary examination, the evidence was not introduced to show defendant's propensity, and the probative value of the testimony was not substantially outweighed by the danger of unfair prejudice. First, Shania testified at the exam that she had heard things about defendant that made her upset. And more specifically, in her witness statement (which was provided to the defense), Shania detailed the conversation with her Aunt Jackie, including the Facebook communication with

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[40] *People v VanderVliet,* 444 Mich 52, 55 (1994).

[41] See *id.*; MRE 403.

Newsome.[42] In other words, defendant had notice of the general nature of the evidence and the specific allegations regarding Newsome.

Second, the testimony was offered to explain why Shania disclosed at that particular point in time, and not to prove defendant had a bad character. At trial [43] (and in his brief on appeal[44]), defendant challenged the truth of Shania's testimony by pointing to her silence, essentially claiming that if this really happened Shania would not have kept it to herself. In this light, it was important for the prosecution to show how and why Shania ended up revealing that which she had kept secret for so long: she was confronted by her aunt and specifically asked about a possible sexual relationship with defendant. In other words, the oblique reference to possible other sexual conduct by defendant was not introduced to show any propensity on his part, whatsoever. It merely showed why Price would specifically question Shania about her relationship with defendant.

Third, the testimony was not unfairly prejudicial. At most, it hinted that defendant had engaged in some kind of extra-marital activity in years past with Ms. Newsome. But the circumstances did not support the inference that Ms. Newsome

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[42]3.22.12 at 15.

[43]3.26.12 at 35, 36, 37.

[44]See Appellant's Brief on Appeal at 4, 10, 11.

had been underage, since she was a friend of Shania's adult aunt and the conduct in question seemingly had occurred within the past several years, and since Newsome was currently married and living abroad. It cannot be that indirect evidence of a possible years-old affair with another adult is so unfairly prejudicial that the trial court abused its discretion by finding it did not substantially outweigh the probative value. As Judge Callahan said, "I don't believe the testimony [was] prejudicial in any way, shape, or form. If anything, it's been convoluted, to say the least."[45]

Finally, even if the testimony should not have come in, any error is harmless. Shania's claims were corroborated by indisputable physical evidence. Despite defendant's straw-grasping explanation (he was sitting naked on his office couch when Shania burst in unannounced), the photographs of defendant introduced at trial proved that there was no innocent way she could have seen under his scrotum. And even defendant himself had "no idea" how Shania could know that he ejaculated on his bathroom towel. Her knowledge of that fact cannot be coincidental. Given the equivocal and trivial nature of the challenged evidence—versus Shania's compelling and corroborated testimony—defendant cannot merit relief even if Price's testimony should have been more circumscribed.

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[45]3.21.12 at 180.

III.

If believed, the testimony of a sexual-assault victim is legally sufficient—without any corroboration—to convict a defendant of criminal sexual conduct. Here, the victim not only testified to all the elements of six counts of CSC 1, she was corroborated by indisputable physical evidence. Sufficient evidence existed to support defendant's convictions for CSC 1.

Standard of Review:

Although defendant frames this issue as a challenge to the sufficiency of the evidence, it is really a claim that the great weight of the evidence preponderates heavily against the verdict. No doubt the reason he calls an apple an orange is because he did not preserve his great-weight claim by timely moving for a new trial below.[46] Thus, review is foreclosed absent manifest injustice.[47] But even if this court does review his claim, defendant must show that the inculpatory evidence either contradicts indisputable physical facts, or is so patently incredible or so inherently implausible that it could not be believed by a reasonable juror.[48]

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[46]MCR 2.611(A)(1)(e); *People v Dukes,* 189 Mich App 262, 264 (1991).

[47]*People v Noble,* 238 Mich App 647, 658 (1999).

[48]*People v Lemmon,* 456 Mich 625, 647 (1998).

Discussion:

Defendant's sufficiency claim is patently meritless: Shania Swift testified that, when she was twelve and thirteen years old, defendant sexually penetrated her on countless occasions between June 2009 and August 2010, while defendant was in a position of authority over her and older than age 17. Swift's testimony unquestionably fulfilled all the elements of the six counts of first-degree criminal sexual conduct defendant was convicted of, and defendant does not allege otherwise. And the law is clear that the complainant's testimony can, by itself, be sufficient to support a conviction of criminal sexual conduct. MCL 750.520h; *People v Brantley,* 296 Mich App 546, 551 (2012).

Instead, defendant maintains that Swift's testimony was not believable because it contained inconsistencies, implausibilities, and even impossibilities. But even if true, that is not enough to prove a sufficiency claim: to prevail a defendant must take the evidence in the light most favorable to the prosecution, draw all reasonable inferences that support the verdict, and resolve credibility issues in favor of the People.[49] Correspondingly, neither the defendant or this Court may interfere with the jury's role as the sole judge of the facts when reviewing the evidence.[50] Here, even

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[49]*People v Martin*, 271 Mich App 280, 340 (2006).

[50]*People v Meshell*, 265 Mich App 616, 619 (2005).

if Shania's testimony did contain inconsistencies and implausibilities regarding some instances of defendant's sexual abuse, she testified that defendant sexually penetrated her almost every other day for a year, and the jury was entitled to credit this claim. Again, this court cannot interfere with the jury's evaluation of credibility. *People v Wolfe*, 440 Mich 508, 514-15 (1992); *People v Dunigan,* 299 Mich App 579, 582 (2013); *People v Meshell*, 265 Mich App 616, 619 (2005). In other words, because the standard of review related to defendant's sufficiency claim requires this court to credit the testimony of the People's witnesses, the only way that defendant could prevail is if there were a total lack of evidence on a particular element: defendant backhandedly concedes that this is not the case.

What he is really arguing is that Shania's testimony was *legally* (not factually) unbelievable; but that is a great-weight-of-the-evidence claim which he did not preserve by moving for a new trial below, and he has thereby forfeited it. See MCR 2.611(A)(1)(e); *People v Dukes,* 189 Mich App 262, 264 (1991). Even were the issue preserved, defendant would have to show more than that Swift's testimony had holes and discrepancies in it because, as indicated above, to prevail on a great-weight claim the testimony must either contradict indisputable physical facts or be so patently incredible or so inherently implausible that it could not be believed by a reasonable juror. *People v Lemmon*, 456 Mich 625, 647 (1998).

Lemmon itself is instructive. There, the trial court found that the two principal sexual-assault witnesses lacked credibility because they had poor memory of details, gave an illogical description of the circumstances surrounding the crime, had a poor reputation for truthfulness, and claimed that they had been sexually abused only when it became in their self-interest to do so. *Id.* at 632. Additionally, their demeanor at trial was suspect and there was absolutely no corroboration of their claims—no medical records, counseling records, or corroborating testimony. *Id.* Nevertheless, our Supreme Court found that the trial court had usurped the jury's function by granting a new trial based on the great weight of the evidence. *Id.* at 647.

Shania Swift had none of the problems exhibited by the *Lemmon* complainants. Defendant argues that Shania's recount of the sexual assaults was inconsistent, that the alleged assault in Ohio could not have happened because defendant's young son would have been present in the hotel room, that the assaults in defendant's office were implausible because the office was not totally private, and that she was impeached on several other matters. But none of these meet the *Lemmon* standard—none contradict indisputable physical facts, and none is so patently incredible or implausible that it could not be believed by a reasonable juror. Memories are not always completely accurate, especially regarding details of events. And perhaps defendant's witnesses were wrong about defendant's younger son being in the room; or perhaps the boy was

sleeping at the time of the assault. Perhaps defendant is a risk taker who courted disaster by having sex with a twelve-year-old while others could interrupt them at any moment. Or perhaps—yes it is possible—defendant's witnesses lied. Any number of reasonable explanations exist to answer defendant's objections in his brief.

But more than that, Shania's claims were solidly corroborated in several ways. First, she had little, if any, reason to lie. It stretches credulity to believe that Shania would falsely accuse the leader of her family's church, taking on the scorn of the parishioners and the wrath of her former friends, all because defendant wouldn't officiate at her aunt's wedding. Second, when she reported defendant's abuses she described to the police the mark on defendant's upper thigh under his scrotum. The police made a sketch from Shania's description, and found that very mark on defendant, in a location that could only be viewed by a doctor or during intimate sexual contact. Further, Swift described how defendant would ejaculate in his hand and wipe using the cloth towels in his office bathroom. The police lab found defendant's semen on those towels. According to defendant, these are mere coincidences. Suffice it to say that his jury was entitled to find that they were more than that, and thereby did not act irrationally in believing Shania over him. Defendant's convictions should be affirmed.

RELIEF

THEREFORE, the People request this Honorable Court to affirm defendant's convictions.

Respectfully submitted,

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