

STATE OF MICHIGAN  
IN THE EATON COUNTY CIRCUIT COURT

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PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff,

vs

Case No.: 19-20329-FH  
Hon. John D. Maurer

LOU-ANNA K. SIMON,  
Defendant.

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Opinion and Order on Defendant's Motion to Quash Bindover

At a session of court, held in the City of Charlotte,  
County of Eaton, State of Michigan,  
on the 13th day of MAY, 2020.

Present: HONORABLE JOHN D. MAURER, Circuit Judge.

Defendant Lou-Anna K. Simon, former President of Michigan State University, was charged by the Attorney General in a four-count Complaint with knowingly and willfully making a false or misleading statement to a peace officer regarding a material fact in a criminal investigation having been advised of that criminal investigation. MCL 750.479c. Preliminary examination was held over seven days before the Honorable Julie H. Reincke of the 56-A District Court, who bound Defendant over as charged. This matter is before this Court on the Defendant's Motion to Quash the bindover. This Court has reviewed the transcripts and the Opinion of the District Court; considered the Defendant's Motion, the Plaintiff's response, and the Defendant's reply; and heard oral argument on May 8, 2020. For the reasons that follow, this Court grants the Defendant's Motion to Quash as to all counts.

**I. BACKGROUND**

In 2014, Amanda Thomashow made a complaint against Larry Nassar, a doctor at Michigan State University's College of Medicine who also separately treated USA olympic gymnasts. Ms. Thomashow alleged that he had sexually assaulted her during a medical exam. Michigan State

University (MSU) conducted a Title IX investigation. In the final report, which was reviewed and approved by MSU's general counsel, the investigator reached the conclusion that the complaint was unfounded. The Title IX investigator also forwarded the report to the police for further investigation into a potential crime. Ultimately, charging recommendations were made to the Ingham County Prosecutor, but no charges were filed against Larry Nassar in 2014.

In 2016, news broke that Dr. Nassar had sexually assaulted other former patients. Soon, many more victims came forward. Dr. Nassar was convicted and sentenced in January 2018 in the Ingham County Circuit Court, and in February 2018 in the Eaton County Circuit Court for multiple charges of criminal sexual conduct. The Attorney General and Michigan State Police continued to investigate. On May 1, 2018 during that investigation, two detectives interviewed Defendant Dr. Lou-Anna Simon, President of MSU from 2005-2018.

On the basis of statements made in that interview, Dr. Simon is charged in this case as noted above. Count I alleges that during an investigation of criminal sexual conduct the Defendant made a misleading statement with respect to whether she knew Dr. Nassar's name at the time of the 2014 investigation; Count II alleges that during that same investigation she made a misleading statement with respect to whether in 2014 she knew the nature or substance of the Title IX investigation. Count III alleges that during an investigation of misconduct of a public official, she made a misleading statement with respect to whether she knew Dr. Nassar's name at the time of the 2014 investigation; and Count IV alleges that during that same investigation she made a misleading statement with respect to whether in 2014 she knew the nature or substance of the Title IX investigation.

## **II. STANDARD OF REVIEW**

This Court "should not disturb the determination of the [district court] unless a clear abuse of discretion is demonstrated." People v. Doss, 406 Mich. 90, 101, 276 N.W.2d 9 (1979) (quoting People v. Dellabonda, 265 Mich. 486, 491, 251 N.W. 594, 596 (1933)). "Primarily the question of probable cause is for the consideration of and determination by the examining [court]. This court may not agree with the findings... but it has no right to substitute its judgment for [hers]... [.]" Id.

"The object of a preliminary examination is not to prove guilt or innocence beyond a reasonable doubt, nor should a [district court] discharge a defendant when evidence conflicts or raises reasonable doubt of his guilt; such questions should be left for the jury upon the trial." Id. at

103 (quoting People v. Medley, 339 Mich. 486, 64 N.W.2d 708 (1954)). The district court is statutorily required to bind over felony defendants to the circuit court when it determines “at the conclusion of the preliminary examination that a felony has been committed and there is probable cause for charging the defendant therewith[.]” People v. Yost, 468 Mich. 122, 125, 659 N.W.2d 604 (2003)(quoting MCL 766.13). “Probable cause requires a quantum of evidence ‘sufficient to cause a person of ordinary prudence and caution to conscientiously entertain a reasonable belief’ of the accused's guilt.” Id. at 126 (quoting People v. Justice (After Remand), 454 Mich. 334, 334, 562 N.W.2d 652 (1997)). See also, People v. Fairey, 325 Mich. App. 645, 649, 928 N.W.2d 705 (2018)(“Probable cause is established if the evidence would persuade a careful and reasonable person to believe in the defendant’s guilt. People v. Yost, 468 Mich. 122, 126, 659 N.W.2d 604 (2003). Evidence supporting that the defendant perpetrated the crime may be circumstantial, but must nevertheless demonstrate reasonable grounds to suspect the defendant’s personal guilt. People v. Tower, 215 Mich. App. 318, 320, 544 N.W.2d 752 (1996).”).

### **III. THE ELEMENTS OF THE OFFENSES**

All four charges are alleged violations of MCL 750.479c(1) which provides that:

“Except as provided in this section, a person who is informed by a peace officer that he or she is conducting a criminal investigation shall not do any of the following:

- (a) By any trick, scheme, or device, knowingly and willfully conceal from the peace officer any material fact relating to the criminal investigation.
- (b) Knowingly and willfully make any statement to the peace officer that the person knows is false or misleading regarding a material fact in that criminal investigation.
- (c) Knowingly and willfully issue or otherwise provide any writing or document to the peace officer that the person knows is false or misleading regarding a material fact in that criminal investigation.”

Defendant is alleged to have violated subsection (b). This Court must therefore consider whether the District Court had probable cause to find that Dr. Simon was (a) informed by a peace officer that he was conducting a criminal investigation and that (b) she knowingly and (c) willfully - made a statement that she knew was false or misleading, (d) regarding a material fact in that criminal investigation. In other words specifically, was Dr. Simon informed by the interviewing detectives that they were conducting a criminal investigation, did she knowingly and willfully make a false or

misleading statement, and was that false or misleading statement regarding a material fact in that investigation?<sup>1</sup>

**IV. PROBABLE CAUSE TO BELIEVE THAT DEFENDANT WAS INFORMED BY ONE OF THE DETECTIVES THAT HE WAS CONDUCTING A CRIMINAL INVESTIGATION**

One of the elements of the crime in question in this case is that the defendant was “informed by a peace officer that he or she is conducting a criminal investigation[.]” MCL 750.479c(1). The district court found that there was probable cause to believe Detective Cavanaugh advised Dr. Simon prior to the interview on May 1, 2018 that he and Detective Arndt were conducting a criminal investigation.<sup>2</sup> The defense argues that the detectives were not credible in their testimony and that the evidence does not support such a finding.

Although the interview was recorded, there is no evidence on the recording that either detective advised Dr. Simon they were conducting a criminal investigation.<sup>3</sup> There is also no evidence in the detectives’ written report that either of them advised Dr. Simon that they were conducting a criminal investigation.<sup>4</sup> The detectives’ memories as to other aspects of the interview, including questions the Attorney General wanted them to ask, were not particularly clear.<sup>5</sup> It is unclear why an investigator with decades of experience -- or two such detectives working together -- would fail to ask allegedly important follow up questions such as who told Dr. Simon about the

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<sup>1</sup> In People v. Edwards, unpublished opinion of October 30, 2018 (Court of Appeals No. 337354, 2018 WL 5629738), the Court of Appeals listed the following as elements that must be proven: (1) a police officer informed the defendant that the officer was conducting a criminal investigation, (2) the defendant knowingly and willfully made a statement to the officer, (3) the defendant knew the statement was false or misleading, and (4) the statement related to a material fact in the crime the officer told the defendant he or she was investigating. Element #2 was not raised as an issue in this case and is not addressed in this Opinion. The defense here argues that the peace officer is required to advise the defendant of the specific crime being investigated, relying on Edwards. This Court disagrees that this requirement is contained in the statute or in any binding legal authority. This statement in Edwards is dicta and non-precedential. A potential defendant can know what is material to an investigation without knowing the specific crime or crimes the officer is investigating. If the officer tells the person being interviewed that he is conducting a criminal investigation into the mysterious death of a Mrs. Smith, the person being interviewed does not need to know the specific crimes the officer is investigating in order to know that it is material to that investigation that he saw someone shoot Mrs. Smith the day she disappeared. This Court is not persuaded by this defense argument.

<sup>2</sup> District Court order, page 3.

<sup>3</sup> PE Vol. V, page 150-151.

<sup>4</sup> PE Vol. V, page 150-151.

<sup>5</sup> At PE Vol. V, page 200, lines 12-18, Detective Arndt testified that he was not told by the attorney general to ask specific questions that might have shed light on what Dr. Simon knew. However, at PE Vol. V, pages 201- 203, he testified that he did receive an email from the attorney general's office that states, "Here is an updated list of Simon questions with additional proposed questions from Christina, Chris and me." When asked, "[Y]ou told us you don't recall verbatim exactly what was said to her in this regard; is that correct?" Detective Arndt answered, "It's been a year ago, so." PE Vol. V, page 145-147. When asked, "...not only did you not ask her in response to her answer who the staff person was that informed her that a sports medicine doctor was under review in 2014, you did not ask her when she became aware of that in 2014; correct?" Detective Cavanaugh noted that he "would have to refer to my, refresh my memory with the report." PE Vol. VI, page 111.

sports medicine doctor under investigation or clarifying questions such as what did she mean by the “substance” of the investigation.<sup>6</sup> The detectives’ failure to ask obvious questions that they had in writing and discussed with legal counsel, questions they knew they were expected to ask, calls into serious question whether or not they actually did tell Dr. Simon that they were conducting a criminal investigation. If they failed to ask written questions and obvious follow up questions, it stands to reason that they would also forget to make advisements that were **not** in writing, especially in light of the fact that the advisement was not in the recording or in their written report. Detective Arndt initially struggled in his testimony to admit he’d made a mistake in not asking Dr. Simon questions that might have promoted her to share the information they were supposed to gather. The district court could have determined that the detectives had a motive to lie to cover up yet another mistake -- that they failed to give notice of the criminal investigation even after the attorney general’s office reminded them it was important to do so.

Even so, the detectives testified that they did in fact advise Dr. Simon that they were conducting a criminal investigation. When making a decision at a preliminary examination whether a crime has been committed, the court “has not only the right, but the duty, to pass judgment on the credibility of the witnesses.” People v. Yost, 468 Mich. 122, 127-128, 659 N.W.2d 604 (2003)(citing People v. Paille, 383 Mich. 621, 627, 178 N.W.2d 465 (1970)). The credibility of the witnesses, including the detectives, is much more difficult for this Court to ascertain than for the district court. The district court judge was able to see their body language and hear the tone of their voices. Based on the detectives’ testimony in the preliminary examination transcripts and the lack of recorded and physical evidence as to any notification, it is quite possible that this Court would have reached a different decision. However, simply because this Court would have reached a different decision does not mean the district court abused its discretion with regard to this element

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<sup>6</sup> Detective Cavanaugh acknowledged they did not ask questions that were deemed important:

Q: And would you agree with me, Lieutenant, that when she told you that she had been advised of this by a staff person, neither you nor your partner, Detective Arndt, ever followed up and asked her, 'Who was the staff person that told you this?'

...

A: That would, I agree with that. That is a correct statement.

...

Q: So if you wanted to know if it was Paulette Gransberry Russell, or whoever it was that told her about the sports medicine doctor being under review, all you had to do was ask her who the staff person was that informed her of this, but you elected not to do so, correct?

A: Correct.

of the crimes alleged. People v. Doss, 406 Mich. 90, 101, 276 N.W.2d 9 (1979). This finding is not reversed.

V. **PROBABLE CAUSE TO BELIEVE THAT THE DEFENDANT KNOWINGLY AND WILLFULLY MADE A FALSE OR MISLEADING STATEMENT TO THE DETECTIVE.**

Detective Arndt asked at the May 1, 2018 interview:

“So I mean specifically to Nassar, were you aware of any prior investigation, you know, before the story broke in the news, were you aware of any prior investigation with Larry Nassar or, you know, misconduct for that matter, anything?”<sup>7</sup>

Dr. Simon responded:

“I was aware that in 2014 there was a sports medicine doc who was subject to a review. But I was not aware of any of the substance of that review, the nature of the complaint, that was all learned in ‘16 after it became clear in the newspaper regarding the --[.]”<sup>8</sup>

And then when Detective Cavanaugh asked,

“Well, how did you become aware of it in 2014? Is that something that’s part of a briefing or --”<sup>9</sup>

Dr. Simon responded:

“I was told by one of my staff members that there was a sports medicine -- physician who was going through OIE, none of the substance. And I don’t involve myself in the OIE investigations.”<sup>10</sup>

Although they were instructed prior to the interview to gather specific information from Dr. Simon, and they had previously, before the interview, learned of Dr. Simon making a similar statement, neither of the detectives asked Dr. Simon the name of the staff member or specifically what that staff member told her or if she knew the exact date when she learned that information or if she was told in an in-person meeting, in an email, or by phone.<sup>11</sup> Neither detective asked her what she

<sup>7</sup> Transcript of the May 1, 2018 interview of Dr. Simon, page 23.

<sup>8</sup> Transcript of the May 1, 2018 interview of Dr. Simon, page 23. These two sentences form the basis of all charges against Dr. Simon. Dr. Simon was not able to finish her sentence because Detective Arndt interrupted her to say, “I think that’s going to boil right into our next question.”

<sup>9</sup> Transcript of the May 1, 2018 interview of Dr. Simon, page 24.

<sup>10</sup> Transcript of the May 1, 2018 interview of Dr. Simon, page 24.

<sup>11</sup> See, for example, PE Vol. VI, page 111:

Q: ... when she disclosed to you that she had been told by a staff person that a sports medicine doctor was under review, you didn’t ask her whether she was informed of that by this staff person in writing or verbally; correct?

A: Correct.

Q: And you never asked her if she asked this person who the sports medicine doctor was that was under review, or why she didn’t ask who the sports medicine doctor was that was under review. You didn’t ask her those questions either; correct?

A: Correct.

meant by “the nature of the complaint” or the “substance” of the OIE investigation. Neither detective asked her if she might be able to produce more information if given an opportunity to review her records. Dr. Simon never made any indication that she did not remember who that staff member was or that she would have declined to answer any additional questions. Instead, the detectives moved the conversation along asking questions about standard procedures related to OIE investigations.

On this basis, the People allege that Dr. Simon made “a statement or statements to the officers that... she knew was false or misleading regarding the following material fact or facts relating to the investigation, her knowledge of who was the subject of the 2014 MSU Title IX investigation into the Amanda Thomashow complaint against Larry Nassar”<sup>12</sup> and “that she was not aware of the nature and substance of the 2014 MSU Title IX investigation into the Amanda Thomashow complaint against Larry Nassar[.]”<sup>13</sup>

**A. A Knowingly False or Misleading Statement**

The essence of the People’s evidence regarding what Dr. Simon knew in 2014 about Dr. Nassar’s assault on Ms. Thomashow is this:

1. Ms. Thomashow communicated the details of Dr. Nassar’s assault on her to Kristine Moore in May of 2014.<sup>14</sup>
2. Ms. Moore contacted Ms. Russell by both phone<sup>15</sup> and email<sup>16</sup> in May, almost immediately after she heard the details from Ms. Thomashow. Ms. Moore didn’t tell Ms. Russell about

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<sup>12</sup> Felony information filed November 12, 2019, counts I and III. In its brief in response to the motion, the prosecution states, “Simon’s first two charges are based on the first portion of Simon’s statement to detectives that she was aware of an allegation against a ‘sports medicine doctor,’ as opposed to ‘Larry Nassar.’” and “The second two charges are based on the second portion of Simon’s statement that she was not aware of the nature of the allegation or the substance of the review.” Brief in Response, page 11. However, reading the felony information, it is quite clear that charges I and III (not I and II) correspond to knowledge of Larry Nassar’s name and charges II and IV (not III and IV) focus on the nature and substance of the investigation.

<sup>13</sup> Felony information filed November 12, 2019, counts II and IV.

<sup>14</sup> PE Vol. I, page 44. Ms. Thomashow testified that she spoke with Ms. Moore by phone in mid-May and met with her in person on May 29, 2014. PE Vol. I, page 46 and 49. Ms. Thomashow testified that Ms. Moore seemed shocked by what she heard “because when I started to explain where Larry put his hands, and I got through the description of the assault, she had to clarify details. She said things along the lines of, ‘I’m sorry, what happened? Excuse me? You’re going to have to repeat that’. And those are sounds of somebody who is shocked.” PE Vol. I, page 53-54. No other witness testified that Ms. Moore or anyone else at the university was “shocked” by the allegations, including Ms. Moore. Even so, the district court found that “Moore was ‘shocked’.” District Court Opinion and Order, page 4. The district court went so far as to say that “The allegations, the ‘nature of the complaint’ are extraordinary, are ‘shocking’ as Moore stated.” District Court Opinion and Order, page 5. However, Ms. Moore never made any such statement.

<sup>15</sup> PE Vol. II, page 60. There may have been two phone calls or perhaps only one phone call.

<sup>16</sup> PE Vol. II, page 60-61.

all investigations, but she thought it was important to tell her about this one right away. Ms. Russell received a summary of the allegations via email on May 16, 2014 at 2:32 pm.<sup>17</sup>

3. Ms. Russell contacted Dr. Simon about the allegations via email<sup>18</sup> and at a meeting on May 19, 2014.<sup>19</sup>

a. The email, sent on May 16, 2014 at 7:58 am, had the subject “incident” and the entire text of the email was: “We have an incident involving a sports medicine doc.”

<sup>20</sup> This email came after Ms. Moore’s call to Ms. Russell, but before Ms. Moore sent a summary of the allegations to Ms. Russell.

b. For the purposes of the May 19, 2014 meeting, which may have been in person or by phone (Ms. Russell does not recall),<sup>21</sup> Ms. Russell provided Dr. Simon with an agenda that included item number six, “COM incident.”<sup>22</sup> Dr. Simon had her own agenda with her during the meeting that contained fourteen items.<sup>23</sup> She wrote on her copy “COM / both issues / Court Case” and put a check mark next to that item.<sup>24</sup> Ms. Russell had a folder that she may or may not have had with her during the meeting that had “sports med, Dr. Nassar SA” and “Estelle MCG age discrim” written on the outside.<sup>25</sup> There is no evidence that this “COM incident” or Dr.

<sup>17</sup> PE Vol. II, page 63.

<sup>18</sup> PE Vol. III, page 111.

<sup>19</sup> PE Vol. III, page 126.

<sup>20</sup> PE Vol. III, page 111.

<sup>21</sup> PE Vol. III, page 175. “Because again, it says May 19th by phone.”

<sup>22</sup> PE Vol. III, page 131. “COM” meant “College of Osteopathic Medicine,” which was Dr. Nassar’s department. When asked if “COM incident” referred to the Nassar complaint, Ms. Russell testified, “I’ve answered that I can’t say with certainty that that’s what it’s about; but it may have been.” PE Vol. III, page 149. Ms. Russell previously testified that she didn’t know of any other COM incidents to which it might be referring. PE Vol. III, page 135.

<sup>23</sup> PE Vol. V, page 18-19. At the next two meetings scheduled between Dr. Simon and Ms. Russell in June and July, it appears, based on Dr. Simon’s system of writing an “X” next to items that are discussed, the topics “sexual assault cases,” “Title IX implementation,” were not discussed. PE Vol. V, page 19-21. “OCR” likely was discussed at the July meeting only, and Dr. Simon wrote “e-learning will be up and running” next to that topic. PE Vol. V, page 21. In all of Dr. Simon’s meeting agendas examined, the name Larry Nassar never appears either typed or handwritten. Topics such as “sexual assault” and “Title IX” appear on an agenda for a meeting between Ms. Russell and Dr. Simon that occurred before Ms. Russell learned of the allegations against Dr. Nassar. PE Vol. V, page 26-27.

<sup>24</sup> People’s exhibit 14; PE Vol. IV, page 186-187. This item was checked, meaning that it was to continue on to the next meeting. See also PE Vol. V, page 13. Although several names were written in Dr. Simon’s handwriting on her copy of the agenda, none of those names was Larry or Nassar. PE Vol. V, page 14-16.

<sup>25</sup> PE Vol. III, page 149; Exhibit 12. “SA” meant “sexual assault.” Ms. Russell’s memory of the events of 5/14-19/2014 are not at all clear. For instance, she testified, “[T]here’s an agenda that’s dated 5/19, and on my calendar that you’ve shown me there was a meeting on 5/19 and a meeting that was scheduled on 5/14. I indicated I don’t recall if the meeting on 5/14 occurred, but we have a folder that has background materials that I believe were related to why we would have a meeting on the 14th; regarding, as it says on the outside, sexual assault survey. So if that meeting got combined with the 5/19, then I had an agenda that was in this folder that you had that I turned over in 2019, that had the agenda with no handwriting on it.” PE Vol. III, page 148. Likewise, when asked about the May 14th meeting, Ms. Russell noted, “Based on the exhibits that I’ve been given, it was not a one on one meeting.” And then asked about the May 19th meeting, Ms. Russell said, “That appears to have been the, from the other exhibit that I was given, that



Nassar were ever discussed with Dr. Simon or with Dr. Simon's knowledge at any other meeting or in any other context.<sup>26</sup>

Because Ms. Moore notified them of Amanda Thomashow's allegations,<sup>27</sup> the police did their own investigation in 2014. Recommendations were made to the Ingham County Prosecutor that charges be brought against Dr. Nassar on the basis of his assault on Ms. Thomashow.<sup>28</sup> Michigan State University's (MSU's) Title IX investigation under the direction of Ms. Moore resulted in a "no finding."<sup>29</sup> Prior to Ms. Moore completing her report, MSU's general counsel's office reviewed and approved it.<sup>30</sup>

Ms. Thomashow testified that she did not communicate with Dr. Simon about Dr. Nassar's assault on her.<sup>31</sup>

Q: Prior to 2016, did you ever discuss Larry Nassar or your complaint that Larry Nassar had sexually assaulted you, with Lou-Anna Simon?

A: No.

Q: Prior to 2016, did you ever exchange any written communication with Lou-Anna Simon regarding Larry Nassar or your complaint that you had been sexually assaulted by Larry Nassar?

A: No.

There was no evidence or testimony to suggest that Ms. Thomashow had any knowledge of anyone else communicating this information to Dr. Simon.

Ms. Moore testified that neither Ms. Russell nor Dr. Simon participated in any of the interviews as part of the investigation.<sup>32</sup> In fact, Ms. Moore testified that Dr. Simon "had no

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would appear to have been one of my monthly meetings with President Simon." PE Vol. III, page 173-174. At the time of her testimony, she did not have much independent memory of the events to which she testified. In fact, she did not appear to remember why she wrote "Dr. Nassar" on the folder, but instead was "...assuming it was there so that I would raise it in conversation... I'm assuming with Dr. Simon." PE Vol. III, page 149.

<sup>26</sup> On the basis of the email which does not state Dr. Nassar's name or any details of the allegations, the calendar showing a meeting scheduled for May 19, 2014 which does not state Dr. Nassar's name or any details of the allegations, Ms. Russell and Dr. Simon's separately created May 19, 2014 meeting agendas which do not state Dr. Nassar's name or any details of the allegations, Dr. Simon's handwritten notes from the May 19, 2014 meeting agenda which do not state Dr. Nassar's name or any details of the allegations, and a file folder which Ms. Russell may have had with her during the May 19, 2014 meeting that had written on it Dr. Nassar's name and "SA," Detective Cavanaugh concluded at the May 19, 2014 meeting between Dr. Simon and Ms. Russell "there was an exchange of detailed information regarding Larry Nassar and the accusation against him." PE Vol. VI, page 98.

<sup>27</sup> PE Vol. II, page 111.

<sup>28</sup> PE Vol. I, page 69. Charges were not brought, but the testimony and evidence does not explain why Ingham County Prosecutors did not press charges except that Ms. Thomashow indicated that the decision was based on the Title IX report. Ms. Thomashow, in her testimony, concluded that the Michigan State Police investigation and the Ingham County Prosecutor's 2014 decision not to prosecute Dr. Nassar was based entirely on the report Ms. Moore produced in 2014.

<sup>29</sup> PE Vol. II, page 83.

<sup>30</sup> PE Vol. II, page 90 and 109.

<sup>31</sup> PE Vol. I, page 69-70.

<sup>32</sup> PE Vol. II, page 108-9.

involvement whatsoever” in the investigation of Ms. Thomashow’s complaint against Nassar.<sup>33</sup> This appears to have been typical practice, that Dr. Simon had no involvement in any sexual assault or harassment investigations. Ms. Moore testified that she did not send a copy or a draft of her report to Dr. Simon.<sup>34</sup> She did not show to or discuss with Dr. Simon her notes from the investigation.<sup>35</sup> She did not send to Dr. Simon the email that she sent to Ms. Russell about the investigation.<sup>36</sup> She did not have any conversations with Dr. Simon about university policy on sexual harassment in 2014.<sup>37</sup> There is no testimony or evidence to suggest that Ms. Moore communicated with Dr. Simon in 2014 regarding any allegations or investigation involving Dr. Nassar, or had any knowledge of anyone else communicating this information to Dr. Simon.

During a phone call, Ms. Russell asked Ms. Moore to send her the details of the allegations so that she could contact the unit administrator and the MSU police department.<sup>38</sup> On May 16, 2014 at 7:58 am, Ms. Russell sent an email to Dr. Simon stating, “we have an incident involving a sports medicine doc” because the university was in the middle of an OCR investigation.<sup>39</sup> Ms. Russell also contacted Dean Strampel regarding the allegations.<sup>40</sup> Ms. Russell testified that she had no memory of telling Dr. Simon the substance of the investigation or anything else about Dr. Nassar during the May 19th meeting.

- The Court: Let’s -- you know, maybe I -- do you, do you remember bringing up the issue of Dr. Nassar at that May 19th meeting?
- Ms. Russell: I don’t remember bringing up the matter involving Larry Nassar at that meeting.
- The Court: Do you think you would have?
- Ms. Russell: It’s possible; but again, I cannot recall stating to President Simon the matter involving Larry Nassar at that meeting. I don’t have any notes that would cause me to trigger a memory<sup>41</sup> of that. It was two thousand and, you know, fourteen. I can’t remember.

In fact, this was Ms. Russell’s consistent statement in all of the interviews she underwent.

Q: You couldn’t remember anytime you were interviewed, specifically talking to President Simon about Dr. Nassar; is that correct?

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<sup>33</sup> PE Vol. II, page 110.

<sup>34</sup> PE Vol. II, page 109-10. She could not remember if her supervisor, Ms. Russell, received a copy. PE Vol. II, page 110.

<sup>35</sup> PE Vol. II, page 114.

<sup>36</sup> PE Vol. II, page 115.

<sup>37</sup> PE Vol. II, page 119.

<sup>38</sup> PE Vol. III, page 119.

<sup>39</sup> PE Vol. III, page 122.

<sup>40</sup> PE Vol. III, page 124.

<sup>41</sup> PE Vol. III, page 216.

A: Yes.<sup>42</sup>

....

Q: And you told them repeatedly, repeatedly that you had no recollection at all of ever specifically discussing Larry Nassar with President Simon during your meeting on May 19; is that correct?

A: Yes.<sup>43</sup>

Ms. Russell testified that it was unusual for Dr. Simon to know specifics about any Title IX investigation.<sup>44</sup> There is no evidence that Ms. Russell provided Dr. Simon with a copy of the report or had any knowledge of Dr. Simon receiving a copy of the report. In fact, even Ms. Russell, the supervisor for the office responsible for producing the report, did not receive the final OCR report on the Dr. Nassar investigation in 2014.<sup>45</sup> There were no emails between Ms. Russell and Dr. Simon that included Dr. Nassar's name.<sup>46</sup> Ms. Russell, as the Title IX coordinator and Ms. Moore's supervisor, had no knowledge of Dr. Simon being involved in the investigation of Dr. Nassar in 2014.<sup>47</sup> Ms. Russell, the only person the People claim directly communicated with Dr. Simon about the allegations against Dr. Nassar in 2014,<sup>48</sup> does not remember providing Dr. Simon with any details of the complaint.<sup>49</sup>

Q: You don't have any recollection providing Ms. Simon with the details of Ms. Thomashow's complaint that was set forth in the email Kristine Moore sent to you on Friday, May 16th; is that correct?

A: That's correct.<sup>50</sup>

Ms. Russell testified that it was very possible, even likely, that she did not specifically discuss Dr. Nassar during the May 19, 2014 meeting -- the meeting the People assert provides proof that Dr.

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<sup>42</sup> PE Vol. IV, page 14.

<sup>43</sup> PE Vol. IV, page 56.

<sup>44</sup> PE Vol. IV, page 8.

<sup>45</sup> PE Vol. IV, page 9.

<sup>46</sup> PE Vol. IV, page 18-22. In fact, there were no emails in discovery between Dr. Simon and anyone else that included Dr. Nassar's name or the substance of the allegations against him in 2014.

<sup>47</sup> PE Vol. IV, page 36. "...I have no recollection, nor do I believe I asked Dr. Simon to be involved in that case."

<sup>48</sup> When asked, "[W]ho are you claiming, based on the evidence, told Dr. Simon in 2014 about a complaint specifically against Larry Nassar by name?" Detective Arndt answered, "I believe Paulette... Granberry Russell had a conversation with Dr. Simon." Asked, "Anybody else?" he said, "No." PE Vol. V, page 189.

<sup>49</sup> Not only was that her testimony at the Preliminary Examination, that was also her statement during interviews with the police. PE Vol. V, pages 180-181. Ms. Russell said in her June 2018 interview, "I, you know, the assumption is that I had some detailed conversation with the president about Larry Nassar. The best I can recall, *if there was a conversation*, it would have happened at this time." PE Vol. VI, pages 82-83

<sup>50</sup> PE Vol. IV, page 36-37.

Simon knew about Dr. Nassar and the allegations against him in 2014.<sup>51</sup> Likewise, Ms. Russell had no knowledge of anyone else discussing the allegations with Dr. Simon in 2014.<sup>52</sup>

No one else testified that they had discussed Dr. Nassar or the substance of the allegations against him with Dr. Simon in 2014. No documents were provided to suggest as much. Instead, the People presented witnesses who testified that Dr. Simon was knowledgeable about what happened at MSU and that she had a good memory. When Detective Arndt was asked, “[H]as anybody, including Paulette Granberry Russell, ever said that you’re aware of, ‘I specifically recall discussing Larry Nassar with Lou-Anna Simon in 2014?’” he answered, “No.”<sup>53</sup>

The People asked the district court, and by extension ask this Court, to find that, on the basis of the testimony and documentary evidence provided, there is probable cause to believe that Dr. Simon:

- A. Knew in 2014 that Dr. Nassar specifically (not just a sports medicine doctor) was being investigated, and
- B. Knew in 2014 the “nature” of that investigation (although what constituted the “nature” that she was to have known -- the fact that it was a sexual assault, the name of the accuser, a summary of the allegations, the details of the allegations, who was interviewed as part of the investigation -- is not clear).<sup>54</sup>

However, the testimony and documentary evidence show instead that no one remembers communicating with Dr. Simon about Dr. Nassar in 2014. Not one person was able to testify that in 2014 they communicated with Dr. Simon or remembered having knowledge of someone else communicating with Dr. Simon about Dr. Nassar or the nature of the complaint against him. The police and attorney general interviewed hundreds of people and searched through thousands of pages of documents.<sup>55</sup> One can speculate that Ms. Russell might have said his name and might have told Dr. Simon everything she knew about Dr. Nassar at their May 19, 2014 meeting. And perhaps

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<sup>51</sup> PE Vol. IV, page 51.

<sup>52</sup> PE Vol. IV, page 88. When asked, “And to your knowledge, do you know if President Simon talked to anybody else but you, or received any communication about this complaint, other than what you sent her?” Ms. Russell responded, “I have the complaint, the email that was sent to her from me; I have no knowledge of anyone else having discussion with her, whether in general or his name.”

<sup>53</sup> PE Vol. V, page 188.

<sup>54</sup> It is clear from the detectives’ questions at the interview in 2018 and from the detectives’ testimony that they already knew that the “sports medicine doctor” was Dr. Nassar and that the OIE investigation was one involving a sexual assault, and it is also clear that Dr. Simon knew that and was not hiding it at her interview.

<sup>55</sup> PE Vol. VI, page 57.

she should have. However, Ms. Russell testified that it is very possible, even likely, that she did *not* discuss Dr. Nassar with Dr. Simon.<sup>56</sup>

The People ask this Court to speculate - with no evidentiary support - that at that one meeting out of the thousands of meetings Dr. Simon attended each year, on that one topic, "COM," out of several topics addressed at that one meeting in 2014, Ms. Russell told Dr. Simon Dr. Nassar's name and the "nature" of the allegations against him. Even if this Court gave some credence to that argument, there is simply no evidence that Dr. Simon *remembered* knowing in 2014 either his name or the substance of the investigation when she was interviewed in 2018. The fact that her statements before or after the interview are consistent with the statements she made in the interview do not serve as evidence that she was lying. Instead, the consistency of those statements suggests that she had no independent memory of any conversation regarding Dr. Nassar and relied on what documentary evidence she could find of her previous knowledge - the email from Ms. Russell referring to a sports medicine doctor - when trying to reconstruct events more than a year after the fact when everything came to light in 2016. A "person of ordinary prudence and caution" would not "conscientiously entertain a reasonable belief" that Dr. Simon knew in 2014 Dr. Nassar's name and certainly not that she knew any more about the investigation than what she told the detectives or was willing to tell but wasn't asked. People v. Yost, 468 Mich. 122, 126, 659 N.W.2d 604 (2003). at 126 (quoting People v. Justice (After Remand), 454 Mich. 334, 334, 562 N.W.2d 652 (1997)). In addition, an equally prudent, cautious person would not conscientiously entertain a reasonable belief that, even if she did know in 2014, Dr. Simon remembered knowing in 2018 at the time of her interview.

**B. A Willfully False or Misleading Statement**

The burden is on the People to prove not only that Dr. Simon knew in 2014 Dr. Nassar's name and the "nature" or "substance" of the complaint against him, that she remembered in 2018 during her interview what she knew in 2014, that her knowledge of those two facts was material in that investigation, that she knew her knowledge in 2014 was material in that investigation, but also that her failure to communicate that knowledge to the detectives during the 2018 interview was willful with intent to deceive and not by any mistake.

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<sup>56</sup> PE Vol. VI, page 51.

As noted repeatedly above, the detectives did not ask for any additional information even though they knew from Dr. Simon's own statement that she both knew there was a complaint against a sports medicine doctor and that a staff member provided her with this information. As noted above, Detective Arndt acknowledged that the Attorney General's office asked the detectives to gather additional information about who provided this information to Dr. Simon, when, and in what form (email, phone call, etc.). Detective Cavanaugh acknowledged this mistake:

- Q: So my question for you, Lieutenant, is if this information was so critical to how you proceeded with your investigation, and if this information was important to you, why wouldn't you ask her, Lieutenant, if you really wanted to know, who told her? 'Who told you, Dr. Simon, that a sports medicine doctor was under review in 2014? Did they tell you in writing? Verbally? Did you ask any follow up questions?' Why wouldn't you ask these types of questions if it was important for you to know this stuff?
- A: There were lots of questions that we had. Unfortunately, the follow up question which was never asked as to who this person, who this staff person was, was unfortunately missed by myself and Detective Sergeant Arndt.
- Q: Okay. So you would agree with me that that was a miss, or a mistake by you and Arndt; correct?
- A: Sure.<sup>57</sup>

Just as the detectives made a mistake, there is no reason to conclude beyond pure speculation that Dr. Simon's omission - if it was an omission - was willful.

The detectives had the benefit of a team of both experienced detectives and attorneys, all of whom knew precisely what information they were looking for, and a resultant written list of questions to ask that they were free to take with them and may have taken with them into the interview. The detectives knew they wanted the information and made the mistake of not asking for it.

The facts of this case are strikingly different as compared to the facts of People v. Williams, 318 Mich.App. 232, 899 N.W.2d 53 (2016). In that case, the defendant was contacted by police "[s]hortly after Williams reported his girlfriend's death." Williams, at 235. The officer in Williams interviewed the defendant with regards to this one event - his girlfriend's death - "throughout the course of 8 to 10 hours[.]" Id. at 235. In Williams, two officers "went over the time line 'several times,'" but the defendant never noted going to the victim's apartment complex

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<sup>57</sup> PE Vol. VI, pages 112-113.

that night. Id. In addition, the defendant specifically identified “just” two people with him during the night. Id. Another witness told the police that they saw the car that Williams was in at the victim’s apartment complex the night of the murder. Id. When confronted with that information, the defendant admitted that a third person had been with him and that he had been at the apartment complex that night. Id. at 235-236.

With so little time between the events and the interview, with the officer rehashing his timeline several times over the course of 8 to 10 hours, an independent witness, and the defendant’s later admission that he did in fact remember being at the apartment complex with a third person, a careful and reasonable person would have probable cause to believe the Williams defendant willfully mislead the officer regarding his whereabouts the night of the murder and with regard to who was with him that night. In contrast, Dr. Simon’s interview was four years after the May 19, 2014 meeting. The 2014 meeting was one in thousands of meetings, and the topic allegedly discussed at that meeting was one of several. Dr. Simon only had one interview during which the officers asked a wide range of questions, “generally investigating Michigan State University[,]” covering topics as broad as the inner workings of the university, Dr. Nassar, Twistars, and Dean Strampel.<sup>58</sup> She was only asked for the information once, answered the questions she was asked, and was not asked for additional information or asked to clarify what she meant. The portion of the conversation between Dr. Simon and the detectives that forms the basis of these four charges took less than five minutes.<sup>59</sup> Dr. Simon has not admitted to knowing more than she said she knew in her interview and there is not even one witness, out of hundreds interviewed, who can say they remember that Dr. Simon was told anything more than what she said she knew in her interview. There is no evidence that she made any prior or subsequent inconsistent statements.<sup>60</sup> Under these circumstances, a careful and reasonable person would not have probable cause to believe Dr. Simon willfully mislead the officers.

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<sup>58</sup> May 1, 2018 interview of Dr. Simon, page 81. PE Vol. V, page 77.

<sup>59</sup> May 1, 2018 interview of Dr. Simon, pages 23-25. Detective’s first question on the subject, “So I mean specifically to Nassar, were you aware of any prior investigation, you know, before the story broke in the news, were you aware of any prior investigation with Larry Nassar or, you know, misconduct for that matter, anything?” just before the 28:09 minute marker. Just before Detective Cavanaugh noted, “Let’s jump ahead to the 2016 uncorking...” the minute marker was at 31:35.

<sup>60</sup> The prosecutor does claim the fact that she made prior and subsequent *consistent* statements somehow proves she was lying.

### C. Conclusion

The district court abused its discretion in finding probable cause to believe Dr. Simon knowingly and willfully made false or misleading statements.<sup>61</sup> Therefore, its decision on this issue is reversed.

### VI. PROBABLE CAUSE TO BELIEVE AS TO COUNTS I AND III THAT DEFENDANT'S PURPORTED KNOWLEDGE OF DR. NASSAR'S NAME IN 2014 WAS A MATERIAL FACT IN THE INVESTIGATION AT ISSUE HERE

The Legislature could have omitted the phrase requiring a "material fact" in MCL 750.479c, as it did for criminal liability for perjury. See People v. Lively, 470 Mich. 248, 253-254, 680 N.W.2d 878 (2004). It did not, so any false or misleading statement made by Dr. Simon must be material for criminal liability to attach. "A material fact is '[a] fact that is significant or essential to the issue or matter at hand.'" People v. Katt, 468 Mich. 272, 292, 662 N.W.2d 12 (2003)(quoting Black's Law Dictionary (7th ed.)). "Statements that *omit* material information may qualify as false or mislead[ing] an investigating officer." People v Williams, 318 Mich. App. 232, 238, 899 N.W.2d 53 (2016)(emphasis added).<sup>62</sup>

According to Detective Cavanaugh, the officers in this case were investigating accessory after the fact, obstruction of justice, aiding and abetting, misconduct by a public official, and "things

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<sup>61</sup> In its opinion and order, the district court wrote that after Ms. Moore learned of the allegations from Ms. Thomashow on May 15, 2014: "Moore was 'shocked.'" This must have come from Ms. Thomashow's testimony, see supra note 16. Ms. Moore did not testify that she was shocked, although the district court apparently believed she did. See District Court Opinion and Order, page 5 ("The allegations, the 'nature of the complaint' are extraordinary, are 'shocking' as Moore stated."). The district court went on: "Shortly thereafter, at about 9:00 p.m., she called her supervisor, Paulette Gransberry Russell to inform her. Before 8:00 a.m. the next day, Russell had emailed the defendant a terse message about the incident. The next business day, evidence suggests that this was a topic of conversation in a meeting between Simon and Russell." District Court Opinion and Order, page 4. What the district court leaves out is that the meeting was a regularly scheduled meeting between Ms. Russell and Dr. Simon, not one scheduled specifically to address the allegations against Dr. Nassar. Several topics were on the agenda, not just "COM." Perhaps most importantly, Ms. Russell testified that it was very likely Dr. Simon and Ms. Russell did *not* discuss Dr. Nassar at that meeting. Dr. Simon was not typically apprised of sexual assault cases. The district court went on: "It is not credible to believe that Simon would have heard even the outline of Thomashow's story and forgotten it." What the district court missed was that there was no evidence presented that clarified what exactly Ms. Russell told Dr. Simon about Dr. Nassar, if anything. There is absolutely no evidence -- not on a folder, not in an email, nor from any testimony -- from which the court can infer rather than merely speculate that Ms. Russell provided Dr. Simon with an outline of the allegations. Finally, the district court rested her finding on this point on arguably inadmissible character evidence that Dr. Simon was "very responsible and dedicated about her work at MSU." She paid attention to detail." and therefore "[f]orgetting about the Thomashow allegations against Larry Nassar does not match that description."

<sup>62</sup> "[A] willful, knowing omission of pertinent information about a crime may lead the police down a fruitless path, permit the destruction of evidence while the police look in another direction, enable the escape of the actual culprit, or precipitate the arrest of an innocent person. The plain meaning of a 'misleading statement' surely encompasses statements that leave out key details." *Id.* at 240.



like that.”<sup>63</sup> In order for the district court to bind over Counts I and III, the People were required to provide evidence sufficient to create probable cause to believe it was a material fact that Dr. Simon knew in 2014 the name of the sports medicine doctor who was under investigation. For clarity, the question and answer at issue here are as follows:

“So I mean specifically to Nassar, were you aware of any prior investigation, you know, before the story broke in the news, were you aware of any prior investigation with Larry Nassar or, you know, misconduct for that matter, anything?”<sup>64</sup>

Dr. Simon responded in part as it relates to Counts I and III: “I was aware that in 2014 there was a sports medicine doc who was subject to a review.”<sup>65</sup> Although Dr. Simon does not specifically state that she did not know Dr. Nassar’s name, the form of her response can fairly be interpreted to indicate that she did not know his name or at least did not remember knowing his name in connection with the investigation. If she did remember knowing that Dr. Nassar was the referred-to sports medicine doc, one would expect her to say instead, for example, “I was aware that in 2014 *he* was subject to a review.”<sup>66</sup>

According to Detective Cavanaugh’s testimony, if Dr. Simon told detectives she knew about an investigation regarding Larry Nassar in 2014 (rather than that she knew about an investigation regarding a sports medicine doctor, who the detectives clearly knew was Larry Nassar):

A: It would have, it would have given us some idea of where to take our investigation. It would have given us an idea of, of -- well, I guess, who we needed to target, additional people to talk to. We, we would have conducted search warrants on email accounts, cell phones, you know, records. Potentially, yes, it very much would have changed our, our investigative angle.<sup>67</sup>

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<sup>63</sup> PE Vol. VI, page 52-53. There is no evidence Dr. Simon was told the officers were investigating these crimes.

<sup>64</sup> Transcript of the May 1, 2018 interview of Dr. Simon, page 23.

<sup>65</sup> Transcript of the May 1, 2018 interview of Dr. Simon, page 23. This statement of Dr. Simon is the basis of counts I and III. Dr. Simon was not able to finish her sentence because Detective Arndt interrupted her to say, “I think that’s going to boil right into our next question.”

<sup>66</sup> On the other hand, if it was important to know whether or not Dr. Simon knew Dr. Nassar’s name, experienced and well-trained detectives could be expected to ask a clarifying question such as, “Am I correct in understanding that you only knew that there was a sports medicine doctor, and that you did not know that doctor under review was named Larry Nassar?”

<sup>67</sup> PE Vol. VI, page 56-57. Almost every other question the prosecution asked Detective Cavanaugh was a leading question. When Detective Arndt was asked:

“Q: Based on what the defendant told you, how did your investigation proceed?”

He responded:

“A: You know, we continued with the investigation with interviews, we did a search warrant at MSU to produce documents, we interviewed Ms. Russell and others at the time, so. We were early on in, into the investigation when we interviewed Ms. Simon, I’m sorry, Dr. Simon.”

PE Vol. V, page 93.

Detective Arndt's response to a similar question was:

A: We would have been able to pinpoint the time line to one, for her interview, but for others; more specifically, pinpoint that time line and the search warrants that we did were broad, and there were -- I don't even know how many -- hundreds of thousands of documents we would have, we went through or the attorney general went through. We could have pinpointed time lines, agendas, calendars. That information would have been, would have been useful to us as investigators so we didn't have to go through hundreds of thousands of documents, we could have obtained a calendar appointment for a specific day or conducted a search warrant for a specific day or person regarding a specific time line.<sup>68</sup>

However, there's absolutely no explanation for how, if Dr. Simon had said, "I was aware that in 2014 *he* was subject to a review" instead of, "I was aware that in 2014 there was a sports medicine doc who was subject to a review," that would have led to "time lines, agendas, or calendars." There is no testimony explaining how this slight change in her statement would lead them to target or talk to different people. And, likewise, whether or not Dr. Simon knew Dr. Nassar's name in 2014, the detectives were free to ask follow up questions that might have led them to time lines, agendas, calendars, and people's names. For instance, knowing that she knew there was a sports medicine doctor under investigation, they could reasonably be expected to ask who told her, when, specifically, she became aware of that review, and how she learned of it (in a meeting, in email, etc.). Being told to ask those questions before they went to the interview and having those questions in writing did not prompt the detectives to ask for more information. There is no reasonable inference that can be made to suggest that changing the words "there was a sports medicine doctor" to "he" would have prompted them to ask the necessary questions to get the information they now claim they could not get because Dr. Simon misled them.

In addition, whether or not Dr. Simon knew Dr. Nassar's name does not make a crime of aiding and abetting more or less likely on her part or on the part of anyone else. If Dr. Simon (or anyone else) covered up one or more of Dr. Nassar's criminal acts and knowingly allowed him to continue committing crimes without interfering, but she didn't know his name, she would still be criminally liable. Likewise, if she did know his name but she (or anyone else) did not cover up one or more of Dr. Nassar's criminal acts, she would not be criminally liable. Dr. Simon's knowledge of Dr. Nassar's name in 2014 is not a fact that is significant or essential to the issues the detectives were investigating, and therefore was not a material fact.

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<sup>68</sup> PE Vol. V, page 105.

The district court abused its discretion in finding otherwise.<sup>69</sup> Therefore, its decision on this issue is reversed.

**VII. PROBABLE CAUSE TO BELIEVE AS TO COUNTS II AND IV THAT DEFENDANT'S PURPORTED KNOWLEDGE IN 2014 OF THE NATURE AND SUBSTANCE OF AN INVESTIGATION OF DR. NASSAR WAS A MATERIAL FACT IN THE INVESTIGATION AT ISSUE HERE**

For the district court to bind over Counts II and IV, the People were required to provide evidence sufficient to create probable cause to believe it was a material fact that Dr. Simon knew the “nature and substance” of the investigation into the allegations against Dr. Nassar. For clarity, Dr. Simon’s answer at issue here is this:

“I was not aware of the substance of that review, the nature of the complaint, that was all learned in ‘16 after it became clear in the newspaper regarding the --”<sup>70</sup>

The detective interrupted Dr. Simon, saying, “I think that’s going to boil right into our next question.” Detective Cavanaugh asked:

“Well, how did you become aware of it in 2014? Is that something that’s part of a briefing or --”

Dr. Simon responded:

“I was told by one of the staff members that there was a sports medicine -- physician who was going through OIE, none of the substance. And I don’t involve myself in OIE investigations.”<sup>71</sup>

“OIE” refers to the Office of Institutional Equity. MSU’s OIE investigates complaints of discrimination, harassment, sexual misconduct, relationship violence, and stalking. Detective Arndt acknowledged that “when Dr. Simon said the physician who was under review was going through OIE [he] assumed that it likely involved something of a sexual nature is what she was saying[.]”<sup>72</sup>

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<sup>69</sup>In its opinion and order, the district court wrote with regard to materiality: “Dr. Simon’s lack of acknowledgement of any specific knowledge of Nassar’s system of treating young athletes along with her credibility as the long-term president of Michigan State University appears to have resulted in an investigation that was like looking for a needle in a haystack instead of having focus on a limited number of persons and communications.” District Court Opinion and Order, page 5. There is simply no evidence, no basis even for speculation, that Dr. Simon had “any specific knowledge of Nassar’s system of treating young athletes[.]” At most the prosecution attempted to provide sufficient evidence to create probable cause to believe that Dr. Simon knew Dr. Nassar’s name and the substance of one person’s allegations against him. The district court’s opinion in this regard is clearly erroneous. Even if the proper standard was to view the evidence in the light most favorable to the prosecution, this section of the district court’s opinion with regard to materiality would be an abuse of discretion.

<sup>70</sup> Transcript of the May 1, 2018 interview of Dr. Simon, page 23. This statement of Dr. Simon is the basis of counts I and III.

<sup>71</sup> Transcript of the May 1, 2018 interview of Dr. Simon, page 24.

<sup>72</sup> PE Vol. V, pages 208.

By the “substance of that review” and “nature of the complaint,” Dr. Simon could have meant she was not provided any of the specifics of the allegations even though she knew it involved a complaint of a sexual nature. Or maybe she meant that she didn’t know anything except the victim’s name. The evidence does not show exactly what she meant.<sup>73</sup> And this statement, as noted above, does not contradict what this Court understands the People have attempted to prove Dr. Simon knew -- that there was a doctor in the College of Medicine (“COM”) who was accused of sexual assault (“SA”) -- based on the folder Ms. Russell might have had with her during their May 19, 2014 meeting and based on the agendas used during that meeting.

It is difficult to know if what Dr. Simon omitted from her statement (if anything) was relevant to the investigation when we don’t know what was supposed to have been omitted. Even Detective Arndt, the People’s complaining witness, acknowledged he didn’t know what Dr. Simon meant by the “substance” of the review or the “nature” of the complaint.<sup>74</sup> We don’t know that, because the detectives didn’t ask any clarifying questions.<sup>75</sup> If they had asked what exactly she did know - did she know the victim was a patient, did she know it was allegations arising out of an exam, and so on - this Court would be better able to ascertain exactly what Dr. Simon was claiming

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<sup>73</sup> The district court wrote in its opinion, “It is not credible that Simon would have heard even the outline of Thomashow’s story and forgotten it.” District Court Opinion and Order, page 4. However, no one testified that Dr. Simon ever heard an outline of Thomashow’s story. Although Ms. Russell didn’t remember ever telling Dr. Simon anything about the allegations against Dr. Nassar, even if she did and forgot or she did and lied, the testimony doesn’t provide any clarity as to what she told Dr. Simon. If she mentioned Dr. Nassar’s name, she may have told Dr. Simon that a patient made allegations of a sexual nature against Dr. Nassar, a much more forgettable statement than one including the details of the allegations. There simply were not facts sufficient to make any finding with respect to what Dr. Simon knew in 2014 about Dr. Nassar. In addition, the district court found that “Dr. Simon’s lack of acknowledgement of any specific knowledge of Nassar’s system of treating young athletes along with her credibility as the long-term president of Michigan State University appears to have resulted in an investigation that was like looking for a needle in a haystack instead of having focus on a limited number of persons and communications.” District Court Opinion and Order, page 5. However, there is simply no evidence, nor does the prosecution allege or argue, that Dr. Simon knew anything about “Nassar’s system of treating young athletes” prior to 2016.

<sup>74</sup> PE Vol. V, page 206-207.

<sup>75</sup> Detective Arndt suggested that they asked no follow up questions because “we didn’t have those documents that we believed where she was lying.” PE Vol. V, page 200. This is contrary to logic. Dr. Simon told them that a staff person told her about the sports medicine doctor and the complaint. The court cannot speculate why the detectives would need to believe Dr. Simon was lying in order to ask who the staff person was, when the staff person told Dr. Simon about the complaint, how much the staff person told her, or if the staff person told her in a meeting, on the phone, or via email. If the detectives honestly needed that information for their investigation, they would have asked. Detective Cavanaugh confirmed that, if the omitted information was that the allegations were with regards to a sexual assault, “I don’t know why that question would help or change any of the investigation.” In fact, Dr. Simon had previously stated to the media that she was informed a sports medicine doctor was under investigation, the detectives and attorney general knew about that statement, and on that basis directed the detectives to ask follow up questions. When identifying those follow up questions, the detectives and attorney general attorneys also did not have the email, agenda, or calendar items -- still they were able to conceive of reasonable follow up questions such as “Who told you that? When? Did you ask for additional information? Why didn’t you inquire about the name of the sports medicine doctor who was the subject of the Title IX investigation?” PE Vol. V, page 203.

to know or not know and then determine if that knowledge or lack thereof was material to the investigation.

Dr. Simon's attorney tried to obtain from Detective Arndt a clear explanation for how this information was material. He asked:

Q: And if Dr. Simon had said during her interview on May 1, 2018, 'I knew that this complaint against this sports medicine doctor was for sexual assault', if she had told you that during her interview in 2018, how would that have exposed her to criminal liability?

Detective Arndt answered:

A: My belief is that had she told us, basically she lied during the -- well, I believe that she lied during our interview. I think she did know about Larry Nassar.<sup>76</sup>

Even if she told the detectives that she did know it was a doctor in the College of Medicine who was facing allegations of sexual assault, it is not at all clear how that would have furthered their investigation. The detectives already knew the nature of the allegations. Given that the detectives forgot or opted not to ask questions the Attorney General had already told them were important to ask, there is no reason to believe this additional information would have furthered their investigation at all. Dr. Simon's knowledge in 2014 that Dr. Nassar had been accused of a sexual assault is not a fact that is significant or essential to the issues the detectives were investigating, and therefore was not a material fact.<sup>77</sup> The district court abused its discretion in finding otherwise.<sup>78</sup> Therefore, its decision on this issue is reversed.

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<sup>76</sup> PE Vol V., page 237. Detective Arndt's answer clearly is not responsive to the question. Dr. Simon's attorney, Mr. Silver, attempted unsuccessfully to get assistance from the court to get a direct answer to the question.

<sup>77</sup> Mr. Teter, attorney for the People, argued: "So assuming Mr. Silver's scenario, and that is that Ms. Simon knew it was Nassar in 2014, knew that it was a sexual assault allegation, which we believe she did, and then took no action; so we have potential misconduct in office, we have potential accessory after the fact to a felony, not determined by I3, but determined by a prosecutor's office and whether or not her actions helped him not, you know, avoid detection and therefore prosecution. Or the potential for leaving him in place to access literally another hundred victims is possible aiding and abetting." This argument is not logical. The allegations were investigated. More than one doctor said that what Ms. Thomashow said happened was medically reasonable and not evidence of a sexual assault. The university's legal counsel reviewed the report and approved it. The OIE report was given to the police who forwarded the complaint to prosecutors with a charging recommendation. Prosecutors had far more information than what the People claim Dr. Simon had and took no action. The People are not claiming that Dr. Simon ever had or read the OIE report. There is no evidence prosecutors made any attempt to advise the university to take any action, either. Even if Dr. Simon knew Dr. Nassar's name and the same summary of the allegations that Ms. Russell received in the email from Ms. Moore, there's no reason to believe that knowledge would make her or anyone else criminally liable under any theory advanced by Mr. Teter.

<sup>78</sup> See supra note 68.

**VIII. KNOWLEDGE BY THE DEFENDANT OF THE MATERIALITY OF A STATEMENT A NECESSARY COMPONENT FOR CRIMINAL LIABILITY**

The People rightly point out that the specific crime may not in fact be known at the time the officer contacts a defendant and therefore the officer is not required to notify the interviewee of the specific crime being investigated in order for MCL 750.479c to apply. However, the Legislature chose not to criminalize all false or misleading statements made to peace officers under MCL 750.479c. Setting aside constitutional complications,<sup>79</sup> the Legislature could have chosen to leave off the words, “in that investigation,” thereby requiring people to tell the truth in all matters any time they are speaking to a peace officer whom they know is investigating any crime, even if they don’t know what crime is being investigated. This court will not unnecessarily make nugatory this intentionally placed statutory language.

Detective Arndt’s understanding was that Dr. Simon was interviewed:

[I]n relation to the misconduct and, involving Larry Nassar and the CSC, the aiding and abetting of the CSC. Larry Nassar had already been charged, convicted at that time and we were there to figure out if anyone at the university, including Ms. Simon or, or those, you know, other staff, were aware of those incidents or potentially covered them up.<sup>80</sup>

They also had “spin-off” investigations underway, including with regard to Dean Strampel, “sports med, MSU sports med; Twistars at the time; and John Geddert.”<sup>81</sup> Detective Cavanaugh’s understanding of the investigation was:

Basically, a criminal sexual conduct charge where there was either accessory after the fact, obstruction of justice, you know, who knew what and when, any type of aiding and abetting. Things like that.<sup>82</sup>

Nothing in the detectives’ testimony indicates that Dr. Simon was told or knew these purposes of the investigation or how her May 1, 2018 interview related to that investigation except that the detectives were “investigating criminal investigation for MSU.”

The detectives asked a lot of questions about the workings of the university - who reported to whom, who was responsible for what, and so on. Those questions were likely to give the

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<sup>79</sup> As the defense notes, such a broadly worded or interpreted statute would inevitably face constitutional challenges.

<sup>80</sup> PE Vol. V, pages 79-80. However, Dr. Simon was not told the detectives were investigating a CSC or a cover up.

<sup>81</sup> PE Vol. V, page 80.

<sup>82</sup> PE Vol. VI, page 52. Detective Cavanaugh also noted, “We were trying to determine if, whether it was employees, doctors, administration; if, if someone had knowledge and/or covered up acts that Larry Nassar had committed, and, and the -- I guess to your question, the aiding and abetting question is, is it, if they, if they, being the administration or bosses, doctors left Larry Nassar in place to continue to do what he did, we would have considered that potential aiding and abetting.”

impression that Dr. Simon was being interviewed for a basic understanding of how the university functioned. In fact, the detectives specifically told her:

We have found that your guys' world at MSU, and Brian's heard this, every time we talk to someone we learn something absolutely new. We've obviously talked to human resources, we've talked to the provost. The world of college -- the college dynamic, if you will, is -- it's very hard for someone like us as outsiders to come in and comprehend -- positions and roles and responsibilities. ... So as, I guess, to continue off and I didn't mean to interrupt you, but as president can you tell us about some of your roles and responsibilities at the university?<sup>83</sup>

If Dr. Simon knew the detectives were investigating any crime narrower than "anything criminal that might happen at MSU," she knew at the time of the interview it was somehow related to Dr. Nassar and Dean Strampel. The detectives told her:

So today besides some of your roles and responsibilities there are two subject areas we would like to talk about today and I don't think it will come as any surprise. We would like to talk a little bit -- not a little bit, we'd like to talk about Larry Nassar and some of the history involved with Mr. Nassar. We would also like to talk about Dean Strampel. ... Kind of somehow -- or how the two of those gentleman relate and things like that. So that's kind of generally what we would like to talk about today.<sup>84</sup>

When asked about Dr. Nassar, Dr. Simon responded, "I was aware that in 2014 there was a sports med doc who was the subject to a review; but I was not aware of any of the substance of that review, the nature of the complaint; that was all learned in 2016 after it became clear in the newspaper regarding the --" and "I was told by one of the staff members that there was a sports medicine physician who was going through OIE. None of the substance, I don't involve myself in the OIE investigations."<sup>85</sup> The detectives then went on to ask about standard practice. They did not ask her what she meant by "the substance" of the investigation. We don't know what she meant because the detectives directed the questioning and conversation elsewhere and never brought it back up, despite a specific request from the attorney general's office to ask. The detectives focused on the general practices and processes - who received reports in Title IX investigations, whether or not the findings were confidential - the same sorts of questions they used to begin the interview. And then they asked questions about Dean Strampel.

From the preliminary examination transcripts there is no evidence that Dr. Simon knew the information the People allege was missing from her statements was material to the detectives'

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<sup>83</sup> Transcript of the May 1, 2018 interview of Dr. Simon, page 6.

<sup>84</sup> Transcript of the May 1, 2018 interview of Dr. Simon, page 5-6.

<sup>85</sup> Transcript of the May 1, 2018 interview of Dr. Simon, pages 23-25.


investigation. The fact that they didn't ask who told her, how she was told (verbally, in an email, when she received a copy of the report, etc.), the specifics of what she was told (the name of the victim, a summary of the allegations, who was interviewed as part of the investigation, etc.), or when she was told would certainly imply to a reasonable person that the information was not material. Any reasonable person in her position would assume, based on what they told her, they were interested in how the university worked in general and in how Dr. Nassar and Dean Strampel related "and things like that," because that's what they told her they wanted to know. From Dr. Simon's perspective, or from the perspective of any reasonable person in her position, whether or not she knew Dr. Nassar's name and a summary of the allegations against him in 2014 didn't have anything to do with "how the two of those gentleman relate" or how things worked at the university. Even if she knew they were looking for information on aiding and abetting, she could safely assume they didn't want any additional information about her knowledge of the allegations because they were directing the interview, and they didn't ask any more about it - not for specifics or clarification or anything else.<sup>86</sup>

The prosecution did not provide evidence sufficient to give a reasonable person probable cause to believe that Dr. Simon knew during her 2018 interview that her purported knowledge in 2014 of Dr. Nassar's name and the "nature" and "substance" of the complaint against him in 2014 was material to the investigation that was ongoing in 2018. The district court's decision to the contrary is reversed.

#### **IX. CONCLUSION**

**IT IS HEREBY ORDERED**, for the reasons set forth in this Opinion and Order, that the motion to quash the bindover from the district court as to all counts is **GRANTED**. This case is **DISMISSED** in its entirety.

This Order resolves the last pending claim in this matter and closes the case.

  
John D. Maurer (P41845)  
Circuit Court Judge

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<sup>86</sup> This is different than the defendant in Williams who was asked repeatedly where he had been that night. People v Williams, 318 Mich. App. 232, 899 N.W.2d 53 (2016). He clearly knew the officer was investigating his girlfriend's murder and clearly knew the officer wanted to know where he had been all night, but failed to tell the officer that he had been at his girlfriend's apartment complex.



**PROOF OF MAILING**

Angela L. Curtiss swears on the 13th day of May, 2020 that she served a copy of the foregoing Opinion and Order on Defendant's Motion to Quash Bindover upon Scott Teter and Lee T. Silver via email and first class mail, postage fully prepaid.

*Angie Curtiss*

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Angela L. Curtiss

People v Lou-Anna K. Simon  
File No. 19-20329-FH.