STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED December 20, 1996
v	No. 187058
NORMAN SAMUEL MCCULLOUGH, Defendant-Appellant.	Delta County LC No. 94-005605-FH

Before: Hood, P.J., and Neff and M. A. Chrzanowski,* JJ.

PER CURIAM.

Defendant was convicted by a jury of one count of third-degree criminal sexual conduct, MCL 750.750.520d(1)(c); MSA 28.788(4)(1)(c) (sexual penetration of a person where the defendant knows or has reason to know that the victim is mentally incapable), and was sentenced to 1 1/2 to 15 years imprisonment. He appeals as of right and we affirm.

Defendant's conviction stems from his fellating of a mentally disabled sixteen-year old boy. The victim and his younger brother were befriended by defendant and other adult males, who showed the boys pornographic movies and magazines and sexually abused them over the course of almost two years. Both boys underwent extensive counseling as a result of their ordeal.

On appeal defendant challenges the trial court's denial of his motion for an in camera inspection of the child victim's confidential counseling records. We will not reverse such ruling absent an abuse of discretion. *People v Stanaway*, 446 Mich 643, 680; 521 NW2d 557 (1994). In order to find that an abuse of discretion has occurred, the result must be so violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or an exercise of passion or bias. *People v Goecke*, 215 Mich App 623, 633; 547 NW2d 338 (1996). We find no abuse of discretion here.

Before a trial court grants a criminal defendant's request for an in camera review of privileged psychological or counseling records, the defendant must demonstrate a good faith belief, based on some demonstrable fact, that there is a reasonable probability that the records are likely to contain material

* Circuit judge, sitting on the Court of Appeals by assignment.

information necessary to the defense. *Stanaway, supra*, at 677. Defendant argues that he met this burden because the victim's initial statements to the investigating officer differed from his testimony at defendant's preliminary examination. We have reviewed carefully the preliminary examination transcript, and conclude that the mere existence of such inconsistencies does not demonstrate a "reasonable probability" that additional inconsistencies will be found in the victim's counseling records.

Furthermore, even if it were reasonably probable that additional inconsistencies existed in the counseling records, defendant has not established that they would be "material information necessary to the defense." *Id.* at 677. To be "material," the evidence must be more than merely favorable or relevant to the defense. *Id.* at 701 n 2 (Boyle, J, concurring). Here, defense counsel himself characterized the differences between the victim's initial statements to the investigating officer and his testimony at the preliminary examination as "slight," and acknowledged that these differences could have been the result of fading memory or of different questions being asked of the victim. Defendant has not suggested what the content of any additional inconsistencies may be or how they would favorably affect his case. *Id.* at 681.

It is not uncommon for victims of criminal sexual conduct, and particularly children, to have difficulty recalling specific details of their ordeal. We find nothing to suggest that the victim's accusations were the result of suggestions by his counselors or others. To require an in camera inspection under the circumstances presented here would effectively abrogate the privileged nature of such records in virtually every case.

We conclude that defendant's generalized assertions were insufficient to compel an in camera review of the victim's confidential counseling records. The trial court's denial of defendant's motion was not an abuse of discretion.

Affirmed.

/s/ Harold Hood
/s/ Janet T. Neff
/s/ Mary A. Chrzanowski