STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES BAUGH,

Defendant-Appellant.

UNPUBLISHED
January 27, 1998

No. 197047
Macomb Circuit Court
LC No. 94-001664 FC

Before: MacKenzie, P.J., and Holbrook, Jr., and Saad, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of one count of first-degree criminal sexual conduct, MCL 750.520b(1)(a); MSA 28.788(2)(1)(a), and one count of second-degree criminal sexual conduct, MCL 750.520c(1)(a); MSA 28.788(3)(1)(a). He was sentenced to concurrent prison terms of eight to twenty years for the first-degree CSC conviction and 2 ½ to 15 years for the second-degree CSC conviction. Defendant appeals as of right. We affirm.

Defendant first argues that the trial court committed error requiring reversal by failing to suppress his confession because it was not given voluntarily. We disagree. When reviewing a trial court's determination of the voluntariness of a statement, this Court examines the entire record and makes an independent determination. *People v Haywood*, 209 Mich App 217, 225-226; 530 NW2d 497 (1995). The trial court's findings will not be reversed unless they are clearly erroneous. *Id.*

At the evidentiary hearing, defendant testified that the police induced his confession with promises of leniency, while the interrogating officer testified that he made no promises to defendant to induce his statement. Given this conflicting testimony, credibility was in issue, and we defer to the trial court's finding that defendant's statement was not induced by promises of leniency. *People v Williams*, 163 Mich App 744, 749-750; 415 NW2d 301 (1987).

Defendant also claims that his statement was involuntary because of the coercive atmosphere created by the interrogating officers who took advantage of his physical exhaustion. However, the officers testified that defendant was not abused nor threatened with abuse, and he did not appear tired

nor in need of food or water at the time of the statement. Again, the trial court believed the officers' testimony over defendant's and we defer to that finding. *Williams, supra.*

Defendant further asserts that he did not voluntarily waive his Fifth Amendment rights. When determining the validity of a *Miranda* waiver [*Miranda v Arizona,* 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966)], this Court applies an objective standard by inspecting the circumstances involved, including the education, experience, and conduct of the accused and the credibility of the police officers' testimony. *People v Garwood*, 205 Mich App 553, 557; 517 NW2d 843 (1994).

Here, defendant claims that the use of a form by police did not adequately explain his rights, and that the officers did not read or advise him of his rights in their entirety. However, presentation to a defendant of a written form which adequately lists his rights is sufficient. *People v Nantelle,* 130 Mich App 51, 52; 342 NW2d 627 (1983). The interviewing officer testified that he read defendant all of his rights, and defendant initialed each right on the form, indicating that he understood them. The officer also stated that defendant was given an opportunity to read the rights form, and defendant signed it. Therefore, we conclude that defendant's rights were adequately explained to him, and they were given in their entirety.

Defendant's educational background was such that he could understand the rights as explained to him. Additionally, although defendant contends that he did not fully appreciate the serious criminal implications inherent in giving the statement, it is only necessary that a defendant is aware of his available options; one need not understand the ramifications and consequences of waiving or exercising the rights that the police have properly explained. *People v Cheatham,* 453 Mich 1, 28; 551 NW2d 355 (1996). Because defendant's options were adequately explained, the trial court properly denied defendant's motion to suppress his confession.

Next, defendant argues that the trial court abused its discretion by not conducting an in camera review of the complaining witness' medical records and not ordering a psychiatric examination of the complaining witness. According to defendant, these omissions resulted in the denial of his constitutional right of confrontation because he could not properly cross-examine the witness on matters affecting his credibility. We disagree.

A trial court's decision whether to order an in camera review is reviewed for an abuse of discretion. *People v Laws,* 218 Mich App 447, 455; 554 NW2d 586 (1996). An abuse of discretion occurs only if an unprejudiced person, considering the facts on which the trial court acted, would say that there was no justification or excuse for the ruling. *Id.* Although MCR 6.201 makes certain discovery mandatory, a trial court may grant additional discovery which this Court reviews for an abuse of discretion. *People v Valeck*, 223 Mich App 48, 50-51; 566 NW2d 26 (1997).

Here, the record shows that the court responded to defendant's pretrial motion for an in camera review by ordering the victim's psychological records forwarded to the court. Subsequently, at trial, the court stated that it had reviewed the victim's counseling records, and after excising any information pertaining to this matter, it made the records available to the parties. Thus, the court did conduct the in camera review of victim's records. With regard to the material which the trial court excised from the

victim's records, this is within the trial court's discretion. *People v Stanaway*, 446 Mich 643, 677, 684; 521 NW2d 557 (1994). The record reveals nothing showing that the court abused its discretion.

Defendant also asserted that if the trial court found that the victim's psychological records revealed that he made statements exculpating defendant, then a psychological examination of the victim was warranted. A psychological examination of a complaining witness in a criminal sexual conduct case may be ordered where there is a compelling reason to do so. *People v Graham*, 173 Mich App 473, 478; 434 NW2d 165 (1988). However, the court apparently found nothing pertinent in the victim's records, and the unsubstantiated allegation that it is possible that the victim made statements that would exonerate defendant is an inadequate demonstration of the need for discovery which defendant sought. *People v Freeman (After Remand)*, 406 Mich 514, 516; 280 NW2d 446 (1979). Hence, defendant did not show a compelling reason for a psychological examination of the victim, and the trial court did not abuse its discretion in not ordering such a procedure. Defendant's right of confrontation was not infringed.

Finally, defendant next argues that multiple convictions arising out of the single incident in this case were violative of double jeopardy. Again, we disagree. There is no double jeopardy protection if one crime is complete before the other takes place. *People v Lugo*, 214 Mich App 699, 708; 542 NW2d 921 (1995). Here, the record shows that on at least one occasion defendant's penis touched the victim's anus when he attempted to penetrate him, which supports a conviction of second-degree criminal sexual conduct involving sexual contact, and on another occasion, defendant penetrated victim's anus with his fingers, which supports a conviction of first-degree criminal sexual conduct involving penetration. Accordingly, one crime was completed before the other occurred. Defendant's constitutional right against double jeopardy was not violated.

Affirmed.

/s/ Barbara B. MacKenzie
/s/ Donald E. Holbrook, Jr.
/s/ Henry William Saad