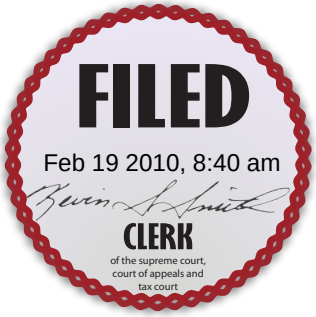

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IN THE
COURT OF APPEALS OF INDIANA

JAMES D. FORD,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 12A04-0905-CR-270
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE CLINTON CIRCUIT COURT
The Honorable Linley E. Pearson, Judge
Cause No. 12C01-0703-FB-58

February 19, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

James D. Ford appeals his convictions for criminal confinement, as a Class B felony; intimidation, as a Class C felony; and domestic battery, as a Class D felony, following a jury trial. Ford raises two issues for our review, which we restate as the following dispositive issue: whether the trial court abused its discretion when it denied Ford's request for production of the victim's mental health records.

We affirm.

FACTS AND PROCEDURAL HISTORY

In 2007, Ford lived with J.C. and her two minor daughters, C.D. and K.C., in Rossville. On March 16, 2007, J.C. arrived home from work to find Ford with a "knife in his pocket . . . [and] a butcher knife on a kitchen counter." Transcript at 47. Ford had recently purchased a six-pack of beer and asked J.C. to get him another six-pack from the nearby liquor store, which she did.

Later that evening, J.C. noticed Ford walking back-and-forth by the children's bedroom door. J.C. asked him what he was doing, and he said he thought he had heard someone knocking on the front door. J.C. and Ford then went to get ready for bed. In their bedroom, Ford told J.C. "to go get [C.D.]" Id. at 57. J.C. later recalled Ford saying the following:

> he [said he] wanted to have sex with her. He told me that he was Satan. And that my daughter was pure and that he wanted to plant a seed. . . . My heart dropped. I felt like I was having a heart attack. I sat on the side of the bed and I said why are you doing this to me. You're supposed to be helping us, not hurting us. . . . He said ["]I've explained this to you once, I'm not gonna explain it to you again. You f-ing b.["] But I still kept saying I don't understand. . . . I asked him if I could get some air. And he told me to ["]get naked you f-ing b, you've ran from me once, you won't run from me again.["] So I took my clothes off.

Id. at 57-58. J.C. also recalled that Ford had a hammer in his hand during that exchange.

After removing her clothes, J.C. went to C.D.'s bedroom. J.C. told C.D., "he's got a hammer, you have to call [9-1-1]." Id. at 60. J.C. then went into a bathroom, and Ford followed her. J.C. kept saying that she did not understand what he was doing, and Ford became angry. Ford "snatched [J.C.] by [her] hair . . . [and] said ['I told you, I'm not telling you again you f-ing b.']" Id. Ford then threatened J.C. with the hammer, saying "you ran from me once you f-ing b, you won't run from me again. This hammer [is] going [to the] back of your head." Id. J.C. asked to put her clothes back on and get some air, and Ford responded by saying, "It's all gonna be over soon. We're all going to a better place." Id. at 61. Ford kept repeating similar statements until police arrived and arrested him.

On May 19, the State charged Ford with criminal confinement, as a Class B felony; intimidation, as a Class C felony; and domestic battery, as a Class D felony. On August 20, 2007, Ford filed a motion to produce J.C.'s mental health and/or medical records. That motion stated only that Ford "respectfully moves the Court to order the State and/or [J.C] or both to produce to the defendant complete copies of [J.C.'s] mental health and medical records." Appellant's App. at 28. The State responded on October 2, and the court held a hearing on the motion on January 14, 2008.[1]

On January 13, 2009, the court held a pretrial hearing on the State's motion in limine. The following exchange took place at that hearing:

[1] Ford has not included a copy of the transcript for the January 14, 2008, hearing in the appellate record.

MR. TROEMEL [for Ford]: We . . . had argued about whether or not we could get the complaining witness' mental health records. We had a hearing on that.

THE COURT: Uh-huh.

MR. TROEMEL: And then we went back and did another part of a deposition. And my understanding is[, and] John Meyers [for the State] can correct me on that[,] but . . . the complaining witness did then sign a release and so the State has her records.

THE COURT: Uh-huh.

MR. TROEMEL: If the State . . . actually has her records then I think we're entitled to see them. Or at least let the Court look at them and determine whether or not there's anything impeachable on that. Because she testified in her deposition that she's never really been treated for mental illness except that the doctor gave her some Lexapro to try for depression and anxiety. So if [the State has] them I think . . .

THE COURT: What are you going to try[] to impeach her on?

MR. TROEMEL: On her credibility.

THE COURT: On credibility on what's she been in for [sic], is that it?

MR. TROEMEL: Right. But . . . the situation is different now. Because subsequently we've learned that the State actually has them in their possession.

MR. MEYERS: Uh[,] I don't have those.

MR. TROEMEL: And then we sent a letter . . . to counsel . . . . So if they have them we're entitled to see them . . . or at least have the Court look at them.

MR. MEYERS: [T]here's no entitlement to it. In fact . . . he should not be able to see them. Uh so one and number two, I do not have them. [Troemel] did send me a release some time back . . . [b]ut she has since said that she's not gonna sign a release for him. [T]here's no factual basis whatsoever to think that there's anything about this fact pattern that's accountable by history. But he has deposed her on it. And . . . there's nothing about that deposition [to] suggest that there's anything that would be useful. Th[is] is simply a fishing expedition. And it's nothing else.

> THE COURT: Yeah. I think we've already handled [this]. And I'll remain with where we were before on that. . . .
>
> MR. TROEMEL: So you're denying our request for you to even look at them?
>
> THE COURT: [H]e said he didn't have them if you remember. . . .
>
> MR. TROEMEL: Well but she has them.
>
> THE COURT: Yeah. And she didn't want . . . it in or [to] bring it up. And I don't know what it would have to do with too much of anything. So at this point in time[,] yes, I've denied it.

Transcript at 5-8. The court then held a jury trial on January 14, and the jury found Ford guilty as charged. The court entered its judgment of convictions and sentence accordingly. This appeal ensued.

DISCUSSION AND DECISION

Ford challenges the trial court's denial of his motion to compel production of J.C.'s mental health records. When a defendant requests discovery in a criminal case, the following test must be applied to determine whether the information is discoverable:

> (1) there must be a sufficient designation of the items sought to be discovered (particularity); (2) the items requested must be material to the defense (relevance); and (3) if the particularity and materiality requirements are met, the trial court must grant the request unless there is a showing of "paramount interest" in non-disclosure. . . .
>
> . . . An item has been designated with reasonable particularity if the request enables the subpoenaed party to identify what is sought and enables the trial court to determine whether there has been sufficient compliance with the request. . . . Although described as a "particularity" requirement, in reality this test also smuggled in the commonsensical elements of a showing that the information is not readily available elsewhere (the "degree of discovery of other items of information" . . .) and that the party seeking it is not engaged in a fishing expedition with no focused idea of the size, species, or edibility of the fish.

> The requirement of materiality has similarly absorbed related but different concepts. An item is "material" if it appears that it might benefit the preparation of the defendant's case. The relevance of some information or items may be self-evident. . . . In other situations, materiality may not be known or easily demonstrated until the information or item is actually examined. Where the only method for determining materiality is production, a specific showing of materiality is not required.
>
> Nonetheless, "[w]here the materiality of the information is not self-evident the [defendant] must indicate its potential materiality to the best of his ability . . . ." [P]otential materiality may properly be viewed as shorthand for the requirement that the requested item "appears reasonably calculated to lead to the discovery of admissible evidence." This "potential materiality" when the specific nature of the requested item is not known embraces also an evaluation of not only theoretical relevance, but also the availability of the information from other sources, the difficulty of compliance, and some plausible showing as to what information the respondent has and why there is a need to demand it from the respondent.
>
> The third rubric under which we have evaluated discovery demands in criminal cases is whether the party resisting has a "paramount interest" that trumps the presumption of discovery of any relevant matter. The term suggests that some fundamental and important stake is required to resist discovery. However, the depth of the interest in resisting may be no more than inconvenience if the need for it from a given source is minimal—for example, because it is readily available elsewhere without need to drag third parties into court. Whether a sufficient interest has been shown to prevent discovery "will depend upon the type of interest put forth" and "the category of information sought."

In re WTHR-TV, 693 N.E.2d 1, 6-8 (Ind. 1998) (citations omitted; some alterations original).

Trial court rulings on the elements of this test are reviewed for an abuse of discretion. Id. at 6. It is also within the trial court's discretion to conduct an in camera review to determine the validity of any objection to the production of material. Id. at 8. An abuse of discretion occurs when a trial court reaches a conclusion that is against logic and the natural inferences that can be drawn from the facts and circumstances before the trial court. Fifth Third Bank v. PNC Bank, 885 N.E.2d 52, 54 (Ind. Ct. App. 2008)

(quoting Hartford Fin. Servs. Group, Inc. v. Lake County Park & Recreation Bd., 717 N.E.2d 1232, 1234 (Ind. Ct. App. 1999)).

Here, Ford sought production of J.C.'s mental health records for impeachment purposes. But Ford's sparse arguments—both to the trial court and on appeal—do not address the test outlined by our supreme court in In re WTHR-TV. Ford does not discuss whether his request satisfied the particularity requirement. He does not address the relevance of the information he requested, other than a general reference to principles of constitutional law. And he does not discuss whether there was a "paramount interest" in the non-disclosure of J.C.'s mental health records. Accordingly, Ford has waived his arguments on appeal. See Ind. Appellate Rule 46(A)(8)(a).

Additionally, as noted by the State, Ford has not demonstrated that his requests for J.C.'s mental health records were made in compliance with Indiana Code Chapter 16-39-3, which regulates the release of mental health records without a person's written consent. See Thompson v. State, 765 N.E.2d 1273, 1275-76 (Ind. 2002) (holding that the trial court did not abuse its discretion in denying the defendant's request to compel production of a witness' mental health records when the defendant's request failed to comply with Indiana Code Chapter 16-39-3); Williams v. State, 819 N.E.2d 381, 385-86 (Ind. Ct. App. 2004) (same), trans. denied. Thus, waiver notwithstanding, neither can we say on the merits that the trial court's denial of Ford's request was an abuse of the court's discretion.

Affirmed.

FRIEDLANDER, J., and BRADFORD, J., concur.