

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RAYMOND ANTHONY JACHERA,

Defendant-Appellant.

UNPUBLISHED
October 22, 1999

No. 208359
Oakland Circuit Court
LC Nos. 97-152241 FC;
97-152242 FC

Before: O'Connell, P.J., and Talbot and Zahra, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of two counts of first-degree criminal sexual conduct, MCL 750.520b(1)(b); MSA 28.788(2)(1)(b),¹ and sentenced to concurrent terms of fifteen to thirty years' imprisonment. Defendant now appeals as of right. We affirm.

Complainant was born June 22, 1980. When she was less than three years old, her mother, Ti Jachera, married defendant. Complainant was Ti Jachera's only child from a previous marriage. Sometime during mid to late 1996, complainant ran away from home. She resided in several foster care and youth homes prior to alleging to police that defendant had sexual intercourse with her on more than twenty occasions between the time that she was eleven and sixteen years old. Defendant was charged in connection with two incidents that allegedly occurred in or about June 1991 and in or about July 1995. Defendant denied ever sexually assaulting complainant.

Defendant first argues that the trial court erred in denying his pretrial motion for discovery of records kept by counselors, social workers and other individuals who spoke with complainant regarding her allegations of abuse and erred in denying his pretrial motion for appointment of a private investigator to investigate the existence of such records. We disagree. A trial court's ruling on a discovery issue is reviewed for an abuse of discretion. *People v Fink*, 456 Mich 449, 458; 574 NW2d 28 (1998); *People v Stanaway*, 446 Mich 643, 680; 521 NW2d 557 (1994). An abuse of discretion will be found 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 made. *People v Reigle*, 223 Mich App 34, 37; 566 NW2d 21 (1997); *People v Ullah*, 216 Mich App 669, 673; 550 NW2d 568 (1996).

Defendant claims that records kept by individuals whom complainant told about the alleged instances of sexual abuse were necessary to allow him to fully challenge complainant's credibility at trial. MCR 6.201(C) provides for discovery of privileged information under certain circumstances. That rule provides:

(C) Prohibited Discovery.

(1) Notwithstanding any other provision of this rule, there is no right to discover information or evidence that is protected from disclosure by constitution, statute, or privilege, including information or evidence protected by a defendant's right against self-incrimination, except as provided in subrule (2).

(2) If a defendant demonstrates a good faith belief, grounded in articulable fact, that there is a reasonable probability that records protected by privilege are likely to contain material information necessary to the defense, the trial court shall conduct an in-camera inspection of the records.

(b) If the court is satisfied, following an in-camera inspection, that the records reveal evidence necessary to the defense, the court shall direct that such evidence as is necessary to the defense be made available to defense counsel. If the privilege is absolute and the privilege holder refuses to waive the privilege to permit disclosure, the trial court shall suppress or strike the privilege holder's testimony. [MCR 6.201(C); see *Stanaway*, *supra* at 677-679.]

In the present case, neither defendant nor the prosecution knew whether the records that defendant sought existed. During the hearing on defendant's pretrial motions, the prosecution stated that it did not possess any of the records that defendant sought and did not know if any such records existed. Defendant speculated that such records must have existed because complainant was believed to have told several social workers and counselors about the incidents. Defendant speculated further that complainant's statements to those individuals would likely be useful to challenge her credibility. Children's Protective Services employee, Carolyn Janisse, testified at trial that she believed that complainant told as many as ten individuals about the incidents of sexual abuse. However, defendant did not set forth any evidence prior to trial that indicated any records were, in fact, kept or that such records were likely to contain inconsistent statements by complainant. Consequently, defendant failed to demonstrate a good-faith belief that there was a reasonable probability that privileged records contained material information necessary to his defense. MCR 6.201(C)(2).

We also find that appointment of a private investigator to search for such records was not necessary to ensure defendant a fair trial. A criminal defendant does not have a general constitutional

right to discovery. MCR 6.201(C)(1); *Stanaway*, *supra* at 664. Therefore, the trial court did not abuse its discretion in denying defendant's motion for appointment of a private investigator.

Defendant also argues that he was denied a fair trial because of several instances of prosecutorial misconduct. We disagree. Only two of the claimed instances were properly preserved for our review. We consider properly preserved claims of prosecutorial misconduct in context and decide whether the alleged instances of improper conduct denied the defendant a fair and impartial trial. *People v Reid*, 233 Mich App 457, 466; 529 NW2d 767 (1999); *People v Paquette*, 214 Mich App 336, 342; 543 NW2d 342 (1995). Defendant claims that the prosecutor improperly attacked defendant on the basis of his economic status by asking Ti Jachera why she did not have a telephone in the family apartment. Defendant objected to this line of questioning and the trial court sustained defendant's counsel's objection. No other reference was made to the economic status of either Ti Jachera or defendant. Consequently, that questioning did not deprive defendant of a fair and impartial trial. The prosecutor's inquiry into whether Ti Jachera had a telephone at the time of trial was, at most, directly reflective of Ti Jachera's economic situation and did not unduly focus on defendant's economic situation or portray defendant in a bad light.

Defendant also claims that the prosecutor improperly questioned Ti Jachera regarding whether defendant called her derogatory names. The trial court sustained defendant's counsel's objection, finding the questioning irrelevant. Contrary to defendant's argument on appeal, the prosecutor did not later refer to that testimony in her closing argument. Rather, the prosecutor referenced during her closing defendant's testimony regarding derogatory names that he allegedly called his wife. This testimony was properly elicited during trial for impeachment purposes. The prosecutor's questions to Ti Jachera on the subject did not deprive defendant of a fair and impartial trial.

The several unpreserved alleged instances of prosecutorial misconduct could have been cured by cautionary instructions below and failure to review the issues would not result in manifest injustice. Thus, we decline to review those unpreserved issues. *Stanaway*, *supra*, at 687; *Reid*, *supra* at 466.

Affirmed.

/s/ Peter D. O'Connell
/s/ Michael J. Talbot
/s/ Brian K. Zahra

¹ Sexual penetration of a person at least thirteen but less than sixteen years of age by a member of the victim's household.