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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION ONE

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STATE OF ARIZONA, *Appellee*,

*v.*

JERMARCUS DONTREL FIELDS, *Appellant*.

No. 1 CA-CR 16-0483  
FILED 8-31-2017

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Appeal from the Superior Court in Maricopa County  
No. CR2014-115516-001  
The Honorable Virginia L. Richter, Judge *Pro Tempore*

**AFFIRMED**

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COUNSEL

Arizona Attorney General's Office, Phoenix  
By Gracynthia Claw  
*Counsel for Appellee*

Maricopa County Public Defender's Office, Phoenix  
By Jeffrey L. Force  
*Counsel for Appellant*

STATE v. FIELDS  
Decision of the Court

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**MEMORANDUM DECISION**

Judge Kent E. Cattani delivered the decision of the Court, in which Presiding Judge Diane M. Johnsen and Judge Peter B. Swann joined.

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**CATTANI**, Judge:

¶1 Jermarcus Fields appeals his convictions and sentences for four counts of sexual conduct with a minor and three counts of sexual abuse. For reasons that follow, we affirm.

**FACTS AND PROCEDURAL BACKGROUND**

¶2 Fields was the victim's stepfather. He began to abuse the victim sexually when she was 11 or 12 years old, when the family was living in Louisiana. After the family moved back to Arizona, when the victim was 12 or 13 years old, Fields was playing with her and put his penis in her mouth until she gagged and vomited.

¶3 The abuse continued after Fields and the victim's mother ended their relationship. When the victim, still 12 or 13 years old, was visiting Fields at his then-girlfriend's house, Fields lay behind her on his bed, holding her waist, buttocks, and breasts, and penetrated her anus with his penis multiple times. On another occasion at the same house, when the victim was 13 years old, Fields kissed her and touched her legs, buttocks, and breasts, and again penetrated her anus with his penis.

¶4 The last incident occurred when the victim was still 13 years old, at the house where Fields lived with a subsequent girlfriend. Fields began kissing the victim and touching her breasts in the kitchen, then took her to a bedroom, where he penetrated her vagina with his penis. He stopped when he saw his girlfriend and the victim's sister returning to the apartment. The victim left the apartment crying and told a friend that Fields had molested her. Soon thereafter she told her sister that "dad molested me." And later that day she told her grandfather "what had happened with [Fields]."

¶5 Fields was arrested and charged with four counts of sexual conduct with a minor and three counts of sexual abuse. A jury found him guilty as charged, and the court sentenced him to a total of 80 years' imprisonment, flat time, to be followed by three concurrent terms of

STATE v. FIELDS  
Decision of the Court

lifetime probation. Fields timely appealed, and we have jurisdiction under Arizona Revised Statutes (“A.R.S.”) § 13-4033.<sup>1</sup>

DISCUSSION

¶6 Fields argues the superior court erred by denying his request for production of the victim’s counseling records. He asserts that, at a minimum, the court should have conducted an in camera review of the requested documents.

¶7 Before trial, Fields learned that the Department of Child Safety had referred the victim for “behavioral health assessment . . . and counseling to address sexual abuse,” and he moved under Arizona Rule of Criminal Procedure 15.1(g) to compel production of any counseling records to assist in his defense. He argued that, because the counseling was specifically for sexual abuse, the records would presumably include statements by the victim about the offenses. He also asserted that the victim had made inconsistent statements about the offenses, so it would be “reasonably possible” that the counseling records might contain additional inconsistent statements, as well as that the records “may” include the victim’s feelings about Fields, which could be used to show motive or bias underlying her accusations. The superior court denied the motion, finding that Fields had not made a sufficiently specific showing to justify access to the victim’s records.

¶8 We generally review discovery rulings for an abuse of discretion, but review de novo Fields’s underlying constitutional claim that the information withheld was critical to his defense. *See State v. Connor*, 215 Ariz. 553, 557, ¶ 6 (App. 2007).

¶9 Although Arizona’s Victims’ Bill of Rights allows a crime victim to “refuse an interview, deposition, or other discovery request by the defendant,” Ariz. Const. art. 2, § 2.1(A); *see also* Ariz. R. Crim. P. 39(b), “this right is not absolute.” *State v. Sarullo*, 219 Ariz. 431, 437, ¶ 20 (App. 2008). When the victim’s right to refuse a discovery request directly conflicts with the defendant’s constitutional right to due process, “due process is the superior right.” *State ex rel. Romley v. Superior Court (Roper)*, 172 Ariz. 232, 236 (App. 1992); *see also id.* at 240 (reasoning that the Victims’ Bill of Rights’ restrictions on a defendant’s access to information “essential to preparation for effective, reasonable cross-examination or impeachment of the victim

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<sup>1</sup> Absent material revisions after the relevant date, we cite a statute’s current version.

STATE v. FIELDS  
Decision of the Court

... must be proportionate to the interest of protecting the victim as balanced against the defendant's due process right to a fundamentally fair trial").

¶10 Even a limited infringement on the victim's rights (such as that necessary to facilitate *in camera* review) is only justified, however, after the defendant shows a "reasonable possibility" of being "entitled [to the information at issue] as a matter of due process." *Connor*, 215 Ariz. at 558, ¶ 10. This requires that the defendant present a "sufficiently specific basis" that the records sought might contain information "necessary" to present the defense or to cross-examine witnesses. *Id.* at ¶ 11. Thus, while the court generally has discretion to order a third party to produce information based on the defendant's substantial need and inability to obtain a substantial equivalent without undue hardship, *see* Ariz. R. Crim. P. 15.1(g), the defendant must show more when production of the information would infringe the victim's statutory and constitutional privileges: "[B]efore the Court could order an *in camera* production of the materials for its review, the defendant would have to demonstrate that his 'substantial need' for the information would, at least potentially, amount to one of constitutional dimension." *Connor*, 215 Ariz. at 561, ¶ 22; *see also Roper*, 172 Ariz. at 240 (allowing access to otherwise-protected information "essential" to effective cross-examination).

¶11 Here, the superior court did not err by concluding that Fields had failed to provide a sufficiently concrete basis to justify production of the victim's counseling records for an *in camera* review. First, Fields offered only speculation that the records would contain any potentially exculpatory information. While his request targeted only records relating to counseling for sexual abuse—and thus was more narrowly focused than the "unlimited" request for all the victim's medical records at issue in *Connor*, 215 Ariz. at 561, ¶ 24—Fields offered nothing more than speculation that such records would involve detailed recitation of the facts of the offense, rather than, for instance, the victim's development of coping strategies.

¶12 Moreover, Fields's argument that the records were necessary to his defense as impeachment material does not withstand scrutiny. He contends that the victim had made inconsistent statements, rendering it "reasonably possible" that her statements in counseling might include additional inconsistencies with which to impeach her testimony at trial. But the prior statements he cites are hearsay accounts—filtered through other witnesses' recollections of the victim's statements—that provide little reason to suspect that more recent statements by the victim would contain inconsistencies, and the existing inconsistencies generally evidence only

STATE v. FIELDS  
Decision of the Court

minor discrepancies or incomplete disclosures. Additionally, the fact that Fields already had access to multiple arguably inconsistent statements undermines his assertion of substantial need for *more* statements to ensure effective cross-examination. *See id.* at 561, ¶ 22; *Roper*, 172 Ariz. at 240. And although Fields further posits that the records “may” reveal the victim’s motive or bias against him, this argument is based only on speculation.

¶13 Accordingly, Fields failed to present a “sufficiently specific basis” to conclude that the victim’s counseling records would reveal information “necessary” to his defense, *see Connor*, 215 Ariz. at 558, ¶ 11, and the superior court did not err by denying his motion to compel production of those records.<sup>2</sup>

CONCLUSION

¶14 We affirm Fields’s convictions and sentences.



AMY M. WOOD • Clerk of the Court  
FILED: AA

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<sup>2</sup> We note that counseling records like those at issue here are also protected by a statutory privilege for communications between a behavioral health professional and a client. *See* A.R.S. § 32-3283. In *Roper*, the victim had waived his statutory physician–patient privilege over the medical records at issue, and this court addressed the interplay of the Victims’ Bill of Rights and a defendant’s due process rights in that context. *See Roper*, 172 Ariz. at 234–35, 239. We need not—and do not—address the existence or import of the victim’s behavioral health professional–client privilege in this case, because we conclude that Fields failed to make an adequate showing to overcome the protection provided by the Victims’ Bill of Rights.