STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED December 30, 2003
v	No. 227117 Allegan Circuit Court
MICHAEL DENNIS BATEY, Defendant-Appellant.	LC No. 99-011109-FC ON REMAND

Before: Whitbeck, C.J., and Bandstra and Talbot, JJ.

MEMORANDUM.

Defendant Michael Batey's appeal of his first-degree criminal sexual conduct[1] conviction for engaging in sex with his nephew, MA, is before us on remand. Batey initially appealed his conviction on several grounds, one of which was the trial court's refusal to grant him access to the privileged psychological records of MA and his brother JA, both of whom testified against Batey at trial. This Court rejected the argument on the ground that Batey did not demonstrate a reasonable probability that the privileged records were material to his defense. The Supreme Court remanded the case for reconsideration of this issue with instructions either to indicate that the panel had reviewed the records, or to "reconsider the appeal after having reviewed the sealed records at issue."

Having reviewed the sealed records, we again conclude that the trial court did not abuse its discretion in denying Batey's discovery motion.[2] Batey sought support in the sealed records for the proposition that both MA and JA were unreliable witnesses because of MA's psychological issues, JA's drug use, and the influence of the siblings' mother and stepfather, both of whom had been concerned about Batey's relationship with MA before the allegations surfaced. Our review of the records revealed nothing to support the theory that MA fabricated the charges against Batey, either at his family's behest or otherwise.

[1] MCL 750.520b(1)(b)(ii).

[2] See *People v Lemcool (After Remand)*, 445 Mich 491, 497; 518 NW2d 437 (1994); *People v Valeck*, 223 Mich App 48, 51; 566 NW2d 26 (1997).

With respect to Batey's arguments about MA's and JA's credibility, the jury heard testimony at trial that MA was experiencing auditory hallucinations and that JA had both a substance abuse problem and a reputation for lying. Accordingly, Batey was able to attack both siblings' credibility on these grounds without access to the records, which, in any event, contain little that is not merely cumulative of the boys' own testimony in this regard. Although the records did indicate that MA's mother and step-father visited him at the Pine Rest facility before he made the allegations against Batey, we reject Batey's *post hoc, ergo propter hoc* argument that because the family's visit occurred before the allegations, it therefore must have caused the allegations. This assertion is purely speculative, and is unsupported by the records. We also note that the records confirm JA's testimony that he did not visit MA at Pine Rest before MA made the allegations.

Batey also sought support in the sealed records to counter the prosecutor's implication that Batey's abuse caused MA's mental breakdown. However, there was no direct evidence in the records regarding the source of MA's breakdown, and what indirect evidence existed to rebut this implication—namely, that MA had also been sexually abused by both JA and his biological father—had already been presented to the jury at trial. Likewise, MA's mother testified at trial that her previously close relationship with Batey had changed in the weeks before his arrest because of his negative influence and interference with the way she was raising MA. Batey's assertion that he needed access to the sealed records to present this theory is without merit.

Privileged evidence should be provided to defense counsel only if the trial court finds that the evidence is "essential to the defense."[3] Our review of the records revealed no exculpatory evidence that was not cumulative of evidence presented to support the defense theories at trial. Therefore, we affirm our previous holding that the trial court did not abuse its discretion in denying Batey's motion for discovery of the sealed records.

Affirmed.

/s/ William C. Whitbeck
/s/ Richard A. Bandstra
/s/ Michael J. Talbot

[3] *People v Fink*, 456 Mich 449, 455; 574 NW2d 28 (1998).