

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
June 20, 2013

V

No. 309427
Wayne Circuit Court
LC No. 11-011299-FC

D'ANTE DWAN GORDON,
Defendant-Appellant.

Before: WHITBECK, P.J., and METER and DONOFRIO, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of kidnapping, MCL 750.349, unarmed robbery, MCL 750.530, and two counts of first-degree criminal sexual conduct, MCL 750.520b. Because the trial court did not abuse its discretion by limiting the scope of defense counsel's cross-examination of the complainant's mother, we affirm.

Defendant's convictions arise out of the sexual assault of 14-year-old "SB," a friend of defendant's sister. SB testified that defendant grabbed her and took her into an abandoned house where he forced her to perform fellatio on him and engaged in penile/anal penetration with her. After the assault, defendant asked her to give him her cell phone, and she complied because she was scared.

Defendant argues that the trial court abused its discretion by limiting defense counsel's cross-examination of SB's mother regarding SB's treatment with a psychiatrist for attention deficit hyperactivity disorder (ADHD). SB's mother testified that SB's failure to take medication prescribed for ADHD explained SB's uncooperative and inappropriate behavior during her first police interview with Officer Joanne Wight. Defendant contends that defense counsel should have been permitted to ask SB's mother the name of SB's psychiatrist so that counsel could have called the psychiatrist to provide expert testimony regarding how SB's withdrawal from the medication affected her. Defendant asserts that, at a minimum, the trial court could have conducted an in camera review of SB's psychiatric records to determine whether they contained information that would have benefited defendant's defense. We review for an abuse of discretion a trial court's determination regarding the proper scope of cross-examination. *People v Morton*, 213 Mich App 331, 334; 539 NW2d 771 (1995). "An abuse of discretion occurs when the court chooses an outcome that falls outside the range of reasonable and principled outcomes." *People v Unger*, 278 Mich App 210, 217; 749 NW2d 272 (2008).

A witness may be cross-examined regarding any matter relevant to a case. MRE 611(c). Privileged communications, however, cannot be disclosed in a legal proceeding unless the patient waived the privilege. MCL 330.1750(1). A “privileged communication” includes “a communication made to a psychiatrist or psychologist in connection with the examination, diagnosis, or treatment of a patient[.]” MCL 330.1700(h). In this case, SB’s mother testified that SB regularly treated with a psychiatrist. The trial court did not abuse its discretion by precluding defense counsel from asking SB’s mother the name of the psychiatrist. The psychiatrist’s name was not relevant given that SB did not waive her psychiatrist-patient privilege. Without such a waiver, the psychiatrist could not have permissibly testified and disclosed the substance of his or her communications with SB.

Defendant has also failed to show that an in camera review of SB’s psychiatric records was warranted. “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.” MCR 6.201(C)(2); see also *People v Stanaway*, 446 Mich 643, 677; 521 NW2d 557 (1994). Here, defendant made no such showing. Rather, he asserts that the records *could* have contained information “which would not only assist the defense, but the trier of fact in assessing [SB’s] behavior both on and off her medication.”

Further, we note that defense counsel was able to thoroughly cross-examine both SB and her mother regarding the effect on SB’s behavior when she missed a dose of her ADHD medication. Defendant contends that the psychiatrist’s testimony could have shown that SB was mistaken when she claimed that defendant forced her into an abandoned house and engaged in sexual relations with her because she had not taken her medication at that time. The record shows, however, that SB did not take her medication on the morning of her first police interview with Officer Wight. No evidence indicates that she did not take her medication on the morning that the incident occurred. Moreover, no evidence was presented that missing a dose of her ADHD medication affected SB’s ability to perceive reality or tell the truth. Accordingly, the trial court did not abuse its discretion by limiting the scope of defense counsel’s cross-examination of SB’s mother regarding SB’s psychiatric treatment.

Affirmed.

/s/ William C. Whitbeck
/s/ Patrick M. Meter
/s/ Pat M. Donofrio