2018 IL App (2d) 160411-U
No. 2-16-0411
Order filed June 28, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of De Kalb County.
Plaintiff-Appellee,	)	
v.	)	No. 14-CF-740
IVAL E. MILES,	)	Honorable Robbin J. Stuckert,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Presiding Justice Hudson and Justice Hutchinson concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Defendant forfeited his claim that the trial court erred in refusing to turn over impounded records, as he did not obtain a definitive ruling on his motion for same, and in any event, because the records were not submitted to us, we could not say that the court erred; (2) the trial court did not err in excluding certain impeachment evidence, as it was speculative and, in any event, cumulative of admitted evidence.

¶ 2 Following a jury trial, defendant, Ival E. Miles, was convicted of 12 counts of predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a)(1) (West 2004))[1] and sentenced to 12

[1] In what appears to be a scrivener's error the charging documents cite 720 ILCS 5/12-

consecutive 6-year prison terms. He appeals, contending that he was unable to present an effective defense because the trial court refused to (1) release to him portions of the victim's school records that the court reviewed *in camera* and (2) allow him to call a regional counsel with the Department of Children and Family Services (DCFS) who would have testified that DCFS investigated a previous complaint about defendant's conduct with the victim and dismissed the complaint as unfounded. We affirm.

¶ 3 Defendant was charged with assaulting J.A.M. between 2005 and 2007. Prior to trial, the defense sought J.A.M.'s school records for the relevant period. Defense counsel argued, *inter alia*, that, because J.A.M. was in special education classes, she might have been medicated, which in turn might have affected her ability to perceive and narrate events. The court acknowledged the prosecutor's concern that "because someone is in special ed, therefore medicated, therefore can't perceive, is a long jump to take" but granted the motion, noting that it would review the records *in camera*.

¶ 4 At a later hearing, the court said that it had received and reviewed J.A.M.'s high school records. The court said that it could "understand some argument as to her mental status as far as her specialized education programs." Defense counsel clarified that he sought all of J.A.M.'s school records, not just those from high school. The court noted that defendant was J.A.M.'s legal guardian and could thus obtain the records directly from the school. The court stated that it would keep the high school records impounded, but if counsel had difficulty obtaining records from the school it would revisit the issue.

¶ 5 Shortly before trial, the State moved *in limine* to allow a witness to testify that, while in high school, J.A.M. told her that she had been the victim of repeated sexual assaults. Defense

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14(a)(1).

counsel argued that there might be something in the school records already in the court's possession to show what people around J.A.M. knew and when they knew it. Counsel asked the court to consider turning over the records in its possession. Counsel informed the court for the first time that the school had not responded to his request for records, given that J.A.M. was emancipated.

¶ 6 The court reserved ruling on the State's motion, stating that if the defense asked why J.A.M. had not told others contemporaneously about the sexual assaults, the State would be allowed to present evidence that she did speak to a friend about it. The court then addressed other motions that the State brought. The court never specifically addressed the defense's motion concerning the school records and defense counsel never pressed the court for a definitive ruling.

¶ 7 The State also moved *in limine* to bar defendant from introducing evidence about a March 2005 DCFS investigation. The State alleged that defendant, in his answer to discovery, listed Karen Wilkerson, regional counsel for DCFS, as a potential witness. Defendant had subpoenaed records from DCFS, and Wilkerson responded with a letter stating that she had "reviewed the DCFS investigation database for a case involving Ival Miles, SCR # 609337B and 609337C." She could not find any investigation with those numbers. It was her understanding "that these records were unfounded and thus have been expunged from the system." The court deferred ruling on the State's motion.

¶ 8 At trial, the then-20-year-old victim testified that, prior to her marriage, she was known as J.A.M. She and her brother, Jordan, moved in with defendant and his wife, Patricia, in January 2005. Defendant and Patricia were her paternal grandparents.

¶ 9 J.A.M. said that, while the family was living in a house in Compton, defendant asked her to go to the garage with him. Once inside, he told her to " '[s]uck it,' " meaning his penis. When defendant was finished, he pulled his penis out and went to a corner of the garage. She recalled another occasion when defendant had her suck his penis in the bathroom. That morning, her uncle Gordon tried to get into the bathroom, but found the door locked.

¶ 10 J.A.M. testified that the assaults continued after they moved into a house in Hinckley. Incidents occurred about four times per week during each month charged in the indictment. Defendant told her not to tell anyone about the sexual contact and that if she did she would be removed from the home and lose contact with her family including her brother.

¶ 11 When J.A.M. was 11 or 12 years old, Patricia Miles asked her if defendant was touching her inappropriately. J.A.M. said that he was not, because she "didn't want to lose [her] family and [her] brother." She said that she did not tell anyone else about the assaults.

¶ 12 Sheila Dabbs testified that defendant was her father. When she was 14 to 15 years old, defendant had sexual intercourse with her repeatedly. Defendant told her that if he told anyone she would be removed from the home and would not see her siblings again.

¶ 13 Gordon Parks, Patricia Miles's brother, testified that he lived at defendant's house in Compton for a time. One morning in 2005, around 6 a.m., he tried to use the bathroom but defendant and J.A.M. were locked inside. Defendant said that he was brushing J.A.M.'s hair and that Parks would have to use the downstairs bathroom. Later, he saw defendant and J.A.M. leaving the bathroom. After that incident, Parks filed a report with DCFS.

¶ 14 At that point, defense counsel sought clarification about whether he would be able to call Wilkerson. The court found that Wilkerson would have no knowledge "of anything" and thus would not be able to testify. Counsel made an offer of proof that she would testify that she found

no records of the prior investigation and that the protocol was that unfounded investigation records are routinely destroyed. After the sidebar, Parks testified that an investigator came to the house to talk to him and the children.

¶ 15 The jury found defendant guilty on all counts. The court denied defendant's posttrial motion, in which he argued that the court erred by not releasing any portion of J.A.M.'s school records and not allowing him to call Wilkerson. The court sentenced him to 12 consecutive 6-year terms of imprisonment. Defendant timely appeals.

¶ 16 Defendant first contends that the trial court erred by refusing to turn over any portion of J.A.M.'s school records after reviewing them *in camera*. The State responds that defendant forfeited the issue by failing to obtain a definitive ruling on his motion and that no plain error occurred.

¶ 17 The government must turn over evidence in its possession that is both favorable to the accused and material to guilt or punishment. *People v. Escareno*, 2013 IL App (3d) 110152, ¶ 16 (citing *Pennsylvania v. Ritchie*, 480 U.S. 39 (1987)). Where records are otherwise privileged from disclosure, the privilege must give way to a defendant's right to present an effective defense, but only to the extent that a court finds the privileged information relevant. *People v. Printy*, 232 Ill. App. 3d 735, 744 (1992). In *People v. Bean*, 137 Ill. 2d 65, 99 (1990), the court approved *Ritchie*'s *in camera* review procedure, which allows a court to review the requested records privately and release to the defense only such portions as may be relevant for impeachment or other purposes.

¶ 18 Here, of course, the trial court did review the records *in camera*, and it suggested that they might have some relevance to the defense. However, defense counsel responded that he

was seeking additional records, and the court invited him to try to obtain them from the school and to revisit the issue if he could not do so.

¶ 19 Defense counsel did raise the issue again, in response to a State motion *in limine*, pointing out that the school had not responded to his request for records. Counsel asked the court to turn over the high school records, but he never obtained a definitive ruling on whether the court would do so. As the State points out, a movant has the obligation to obtain a definitive ruling on his motion to avoid forfeiture on appeal. *Hernandez v. Pritikin*, 2012 IL 113054, ¶ 41.

¶ 20 Defendant contends in his reply brief that the State forfeited its forfeiture argument by failing to raise it in its response to defendant's motion for a new trial. Regardless of whether the State forfeited the issue, however, defendant's failure to obtain a definitive ruling makes review of the issue impossible.

¶ 21 In any event, we could not review whether the court reversibly erred by failing to release the records, because those documents are not part of the record on appeal. An appellant has the burden to present a sufficiently complete record of the trial court proceedings to support a claim of error and, in the absence of such a record, we presume that the trial court's order conformed with the law and had a sufficient factual basis. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). This is true despite the fact that the records remain secured. In *Bean*, the court held that due process did not require that appellate counsel have access to the requested records in formulating his arguments. *Bean*, 137 Ill. 2d at 102-03. According to the court, the proceeding was not unfair where the court had independently reviewed the records in reaching its decision. *Id.* at 103. Similarly, in *Printy*, which defendant also cites, this court reviewed the records independently and agreed with the trial court that they contained no additional impeaching information. *Printy*, 232 Ill. App. 3d at 744-45.

¶ 22 *People v. Escareno*, 2013 IL App (3d) 110152, on which defendant relies, is distinguishable because the trial court there refused to review the requested records *in camera*. The appellate court thus ordered a limited remand to allow the court to review the records.

¶ 23 Defendant next contends that the court erred by refusing to allow Wilkerson to testify that a previous DCFS investigation of defendant was ruled unfounded. He contends that the evidence was relevant to show that J.A.M. had made a prior false accusation against him.

¶ 24 Evidence of a witness's bias is always relevant. *People v. Gonzalez*, 104 Ill. 2d 332, 337 (1984). Thus, if a complainant's credibility is at issue, a defendant is allowed to present evidence of the complainant's potential interest, bias, and motive to lie. *People v. Cookson*, 215 Ill. 2d 194, 215 (2005). However, that a party may explore a witness's bias is not a license to engage in speculative attacks on that witness; the facts must be within the witness's knowledge and cannot be so remote as to be mere conjecture. *People v. Rivera*, 145 Ill. App. 3d 609, 622 (1986); see also *People v. Phillips*, 186 Ill. App. 3d 668, 679 (1989) (impeachment evidence properly disallowed where it was either collateral or based on mere rumor and speculation).

¶ 25 Here, as the trial court pointed out, the proposed testimony lacked any specifics to connect it to this case. It is not clear that the investigation involved J.A.M. at all. It is not clear who made the complaint, what steps, if any, DCFS took to investigate it, or why the decision was made to declare the allegations unfounded. Even Wilkerson's proposed testimony that the allegations must have been declared unfounded was based only on agency protocol, not any knowledge of the particular facts of the case. Thus, it is only by pure speculation that the investigation can be connected to J.A.M.'s allegations of sexual assaults by defendant.

¶ 26 Defendant's argument seems to assume that the investigation resulted from Parks's call to DCFS in 2005, that DCFS interviewed J.A.M. as part of the investigation, and that she denied

being assaulted, which resulted in the allegations being declared unfounded. However, none of this information was included in defendant's offer of proof. Even if we made all of these inferences, however, we agree with the State that the proposed evidence would have been merely cumulative of properly admitted evidence. J.A.M. testified that she had not previously told anyone about the assaults and, in fact, denied to Patricia Miles that defendant had assaulted her, due to defendant's threats that she would be separated from her brother and the rest of her family. Moreover, Parks testified that he called DCFS, which sent an investigator to interview him and J.A.M.

¶ 27 In the cases defendant cites, the offer of proof was much more specific. In *People v. Grano*, 286 Ill. App. 3d 278 (1996), for example, the defendant proposed to call three witnesses who would testify that the complainant told them that she had sex with three other adult men. The defendant also proposed to call the three men, who would testify that they never had sex with the complainant. *Id.* at 287-88. Thus, there was direct evidence that the complainant had falsely accused other men.

¶ 28 The judgment of the circuit court of De Kalb County is affirmed. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2016); see also *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978).

¶ 29 Affirmed.