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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

PABLO MICHAEL MARQUEZ,

Defendant and Appellant.

H040651

(Santa Clara County

Super. Ct. No. C1240991)

Defendant Pablo Michael Marquez appeals from a judgment entered after his conviction of sex offenses against his young stepdaughter. The only issue on appeal is whether the trial court properly denied disclosure of the victim's school records following its in camera review. We find no error and therefore affirm the judgment.

Background

Defendant was charged by information with six counts of oral copulation or sexual penetration with a child 10 years old or younger, in violation of Penal Code section 288.7, subdivision (b). The victim was his stepdaughter, S., who was between seven and nine years old when the offenses took place. The jury found defendant guilty on all six counts. The trial court sentenced defendant to consecutive prison terms of 15 years to life on counts one through three and concurrent terms of 15 years to life on the remaining three counts. He filed a timely notice of appeal from the judgment.

Discussion

Before trial defense counsel served a subpoena duces tecum on the San Jose Unified School District (the District), requesting all records pertaining to S., including “counseling records, performance records, testing results, requests for parent/teacher conferences, discipline records, attendance and truancy reports/records, individualized education program recommendations/evaluations, suspensions, grades and academic performances [*sic*], records of instances of untruthfulness or dishonesty, and contacts with any social workers, medical personnel employed by the school district and/or mandatory reporters.” The District complied with the subpoena. Counsel then moved for an order requiring release of those records “to determine whether the complaining witness previously reported any alleged incidents of sexual misconduct to [her elementary school]; to discover whether during the period at issue she displayed any unusual, strange, or acting-out behavior that would indicate whether she was undergoing stress or difficulty at home or at school; and to determine the complaining witness’s credibility and truthfulness as to this allegation.”

At a hearing in limine counsel renewed the motion, asking the court first to conduct an in camera review of the subpoenaed records and then to order them released to the defense “if there is anything discoverable.” The court conducted the requested review and then ruled as follows: “There are records that in response to the subpoena are medical [*sic*] related, none of which appear to have any connection whatever with respect to the issues presented in this case. And I therefore find that there is nothing contained in these records that could even lead to any possibly relevant or material evidence.” The court therefore ordered that the records remain sealed.

On appeal, defendant requests an independent review of the subpoenaed records to determine whether the court properly denied defendant’s request for their disclosure. He does not question the restrictions on access to student records set forth in Education Code section 49076, nor the procedure for determining whether disclosure is appropriate; he

nonetheless points out that due process requires that material exculpatory evidence be disclosed to the defense in a criminal trial. (See *Pennsylvania v. Ritchie* (1987) 480 U.S. 39, 57-60 (*Ritchie*) [victim's juvenile court file properly reviewed to determine whether it contained material evidence requiring disclosure to criminal defense]; *People v. Webb* (1993) 6 Cal.4th 494, 518.) As explained by the United States Supreme Court in *Ritchie*, "Although courts have used different terminologies to define 'materiality,' a majority of [the United States Supreme] Court has agreed, '[e]vidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. A "reasonable probability" is a probability sufficient to undermine confidence in the outcome.' " (*Ritchie, supra*, at p. 57, quoting *United States v. Bagley* (1985) 473 U.S. 667, 682; see *People v. Martinez* (2009) 47 Cal.4th 399, 453 [applying *Ritchie* to uphold trial court's finding that undisclosed portions of victim's juvenile court file were not material to the defense].) "When the state seeks to protect such privileged items from disclosure, the court must examine them in camera to determine whether they are 'material' to guilt or innocence." (*People v. Webb, supra*, at p. 518.)

The People do not oppose defendant's request for an independent review of the subpoenaed school records. We have carefully reviewed those sealed records and conclude that they contain no evidence material to defendant's guilt or punishment. The trial court did not err in denying disclosure to the defense.

Disposition

The judgment is affirmed.

ELIA, J.

WE CONCUR:

RUSHING, P. J.

PREMO, J.