

HILLSBOROUGH, SS.

THE STATE OF NEW HAMPSHIRE

SUPERIOR COURT

STATE OF NEW HAMPSHIRE

v.

JEFFREY H.

DOCKET NO. 07-S-557

MOTION FOR
IN-CAMERA REVIEW AND DISCOVERY OF
MEDICAL RECORDS

NOW COMES, Defendant in the above captioned matter, through his counsel, and respectfully requests that this Honorable Court grant his request for an in-camera review and discovery with respect to Dr. Suzanne Schoel's medical records regarding the complaining witness, Adriana P.

IN SUPPORT OF THIS MOTION, Defendant states the following:

1. The Defendant is charged with aggravated felonious sexual assault against Adriana P. The Defendant has filed a Notice of Consent.
2. The indictment alleges that the charge of sexual assault arose from the Defendant's conduct on or between August 26, 2006 and August 27, 2006 in Hollis, New Hampshire.
3. The allegations were first made by the complainant on September 19, 2006 to Detective Richard R. Mello of the Hollis Police Department who conducted a recorded interview of the complainant that same day.

4. Based upon reports received in discovery, the complainant is the sole witness with first hand knowledge available to the State as to the allegations.

5. During the course of said interview with the Hollis Police Department, Adriana P. stated that during the early morning of August 27, 2006, while having consensual sex with the Defendant, she noticed that she was bleeding and that her vaginal area was red and swollen. Interview Transcript, p. 19. The complainant later indicates that around 5:00 AM on August 27, 2006, she went into the bathroom with a compact and noticed that her vaginal area was “extremely inflamed and red like”. Interview Transcript, p. 26.

6. Later in the interview, the complainant revealed that she saw Dr. Suzanne Schoel, the Tuesday after the alleged sexual assault, who allegedly told the complainant that “she was swollen and irritated but it didn’t look like anything really bad.” Interview Transcript, p.54. Additionally, the complainant indicated in her interview that she discussed the events which gave rise to the allegations made against defendant with Dr. Schoel prior to her examination. Interview Transcript, p. 54.

7. The Defendant seeks discovery of Dr. Schoel’s medical records regarding the complainant’s office visit subsequent to the events which constitute the allegations of sexual assault as referenced above.

8. In the light of the above referenced facts, it is reasonably probable that the above requested discovery materials will contain information that is material and relevant to the defense in this case. *See State v. Gagne*, 136 N.H. 101 (1992).

9. As the Defendant asserts that he had consensual sexual intercourse with Adriana P., his defense will, thus, rely upon undermining the credibility of the complaint. Information

regarding the complaining witness' gynecological examination and medical treatment subsequent to the events that constitute the allegation of sexual assault is highly relevant to the case at bar. The medical information is especially relevant in this case, as only the Complainant and the Defendant have actual knowledge of the events that constitute the allegation of sexual assault. Thus, the Defendant seeks discovery regarding the complainant's medical condition subsequent to events which constitute the allegation of sexual assault.

10. Additionally, the complainant indicated in her interview that she discussed the events which gave rise to the allegations made against defendant with Dr. Schoel prior to her examination. Interview Transcript, p. 54. As such, the Defendant has a legitimate desire to review those statements regarding allegations in order to determine if they are consistent with other statements she has made to the police and other individuals.

11. Based upon the foregoing facts, it is reasonably probable that the discovery sought herein will contain information that is material to and relevant to the defense of this matter.

12. The Defendant respectfully submits that the due process clause of the Fourteenth Amendment to the Constitution of the United States of America requires that the Court grant the relief sought herein Pennsylvania v. Ritchie, 480 U.S. 39(1987).

13. The Defendant submits that Part I Article 15 of the Constitution of the State of New Hampshire requires this Court to grant the relief requested herein. State v. McLellan. 146 NH 108 (2001); State v. Gagne, 136 NH 101 (1992).

14. A memorandum of law accompanies the filing of this motion and the arguments set forth therein are hereby incorporated as if fully set forth herein.

15. Undersigned counsel has attempted to contact the prosecutor to determine the State's position on this motion but the prosecutor has been unavailable to accept counsel's call.

WHEREFORE, the Defendant respectfully moves this Court grant the following relief:

A. GRANT this motion and order that the complainant's medical records from Dr.Schoel be reviewed by the Court on an in-camera basis;

B. GRANT this motion and, after in-camera review, order the production of the aforementioned discovery materials to the defense for use in the defense of this case; and

C. GRANT such other relief as is just.

Respectfully submitted,
Jeffrey H., Defendant
By his Attorneys,
BRENNAN CARON LENEHAN & IACOPINO

Date: November 7, 2007

By: _____
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Motion has been forwarded, even date herewith, postage prepaid, to Assistant County Attorney Kent Smith.

Michael J. Iacopino, Esq.

