

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.

SUPERIOR COURT

STATE OF NEW HAMPSHIRE

v.

JEFFREY H.

DOCKET NO. 07-S-557

**DEFENDANT'S MOTION FOR
AUTHORIZATION TO CONDUCT DISCOVERY DEPOSITION**

NOW COMES Defendant in the above-captioned matter, through his Attorneys, BRENNAN, CARON, LENEHAN & IACOPINO, and respectfully requests this Court grant leave for Defendant to undertake the discovery depositions of Adriana P., the complaining witness in the above captioned matter.

IN SUPPORT OF HIS MOTION, the 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.

I. Applicable Law

1. The Defendant recognizes he has no unqualified due process right to compel depositions in a criminal matter, and that rights set forth in criminal matters are statutory in nature. State v. Heath, 129 N.H. 102 (1986); N.H. RSA 517:13.

2. The Court has discretion to permit discovery depositions. N.H. RSA 517:13. Depositions may be taken in criminal matters upon showing by preponderance of the evidence that the deposition is necessary to (i) preserve testimony of a witness who may be reluctant to cooperate or unlikely to be available at trial, or (ii) to ensure a fair trial, to avoid surprise or for good cause shown. N.H. RSA 517:13, II(a)-(b).

3. Defendant understands the burden of establishing the necessity for deposition testimony is on him as the party making such request. State v. Rhodes, 139 N.H. 432 (1995). What constitutes a “necessity” to the taking of the discovery deposition must be determined on a case-by-case basis, driven by complexity of issues and the prospect of other avenues available for discovery of the same information, or other special circumstances demonstrate to the Court. State v. Sargent, 148 N.H. 571 (2002); State v. Rhodes, 139 N.H. 432 (1995).

II. Deposition Requested

1. Adriana P. is the complaining witness in the above referenced matter. Adriana P. is a critical witness to be deposed and will certainly testify at Trial in this matter, as she and Defendant are the only witnesses with personal knowledge of the events that led to the allegations of sexual assault.

2. The deposition of Adriana P. in advance of trial is necessary to ensure fair trial, avoid surprise and to further develop limited discovery provided by the State in this matter and which relate to conduct, acts, omissions, publications and statements of Adriana P. made under

circumstances directly related to allegations against the Defendant.

3. Discovery produced by the state includes a transcript of an interview conducted by the Hollis Police Department on the date the allegations were made by the complainant. During the course of said interview with the Hollis Police Department, Adriana P. stated that she does not know how to say no because she was raped before when she was five years old. Interview Transcript, 9/19/06, p 19.

4. Adriana P. also indicated in the interview that she was intoxicated during the alleged sexual assault. Interview Transcript, p. 23. Additionally, Adriana P. stated that she suffers from bipolar disorder and depression which requires her to take medication that can make her depressed and irrational when mixed with alcohol. Interview Transcript, pp.3-4.

5. As the transcript provided is from an initial statement to the police, prior to the police having any information on the allegations, the Hollis Police Department failed to question the complainant with respect to the underlying details and explanations surrounding the aforementioned statements as well as many other topics.

6. Inquiry surrounding the circumstances of such statements must be made by deposition.

7. 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 requests the following:

- A. That the Defense be permitted the opportunity to depose Adriana P.; and,
- B. For such other and further relief as may be just and equitable.

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

Date: November 7, 2007

By: _____
Michael J. Iacopino, Esq.
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Manchester, NH 03104
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CERTIFICATE OF SERVICE

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

Michael J. Iacopino, Esq.