

STATE OF WISCONSIN : CIRCUIT COURT : KENOSHA COUNTY

STATE OF WISCONSIN,
Plaintiff

-vs-

, Case No.
Defendant

NOTICE OF MOTION AND MOTION
FOR SHIFFRA/GREEN DISCOVERY HEARING

NOW COMES the defendant, , by his attorney, Aileen G. Henry, moving the court for a Shiffra/Green Discovery Hearing and for a court order requiring the complaining witness' psychiatric/psychological doctors to provide all counseling records and psychological/psychiatric evaluations which have been conducted on her for an in-camera inspection.

In addition, the defendant moves the court for a Shiffra/Green Discovery Hearing for a court order requiring the Kenosha Human Services Department, the Kenosha Police Department, the Rock County Human Services Dept., and the Clinton Police Dept., to produce all records pertaining to any and all investigations conducted relating to the complaining witness for an in-camera review.

Finally, the defendant moves the court to include for in-camera inspection, all public school records from Clinton High School relating to the complaining witness from the period of 2006 & 2007.

Authority

A defendant has the right to an in-camera review by the court of otherwise confidential medical records, and to the disclosure of exculpatory records to the defense, as a matter of due process. Pennsylvania v. Ritchie, 480 U.S. 39, 107 S. Ct. 989, 94 L. Ed.2d. 40 (1987). The defendant's burden is to make a preliminary showing that the sought after evidence is relevant and may be helpful to the defense or is necessary to a fair determination of guilt or innocence. State v. Shifra, 175 Wis. 2d 600, 608, 499 N.W. 2d 719, 723 (Ct. App. 1993). The court has the right to conditionally order the execution of authorization for release of the records to the court and ultimately to the defendant.

The defendant moves for a hearing in order to make a preliminary showing that the records may contain evidence material to his defense, thus entitling the defendant to an in-camera review by the trial court of those records. Shifra at 175 Wis. 2d 605, State v. S. H., 159 Wis. 2d 730, 737-738, 465 N.W. 2d 238, 241 (Ct. App. 1990). In the event that the alleged victim refuses to identify the doctors or to execute the needed authorizations, the proper remedy is suppression of the alleged victim's testimony. Shifra, 175 Wis. 2d 600, 499 N. W. 2d 719 (1993).

In State v. Green, 2002 Wis. 68, 253 Wis. 2d 356, the court held that in order to obtain access to the records through an in-camera inspection requires a threshold showing that:

1. A specific factual basis demonstrating a reasonable likelihood that the records contain relevant information necessary to a determination of guilt or innocence.
2. The information is necessary to a determination of guilt or innocence if it tends to create a reasonable doubt that might not otherwise exist.
3. The evidence must not be merely cumulative.

Analysis

Based upon the investigation conducted by private investigator____there is significant information that the complaining witness has a history of mental health issues, police contacts and human service contacts.

Private investigator _____ obtained some KDHS records from the complaining witness' mother. These records are from 2002 through 2008.

As recent as August of 2008, the KDHS records reflect that the KDHS worker was concerned that the complaining witness was involved in drugs and gangs. The worker stated that there was concern for the child because she is "covering up" for people and that she may be involved in something illegal and/or gang related.

In July of 2008, KDHS was involved because of the child being out all night.

In June of 2008, KDHS was involved because the complaining witness was threatening to run away if she is not allowed to have her friends ("crack heads") over. Also, the complaining witness was going to court because of truancy problems.

In May of 2008, KDHS was involved again, child kicked out of _____. Child continues to hangout with "very bad kids".

In November of 2005, KDHS was involved because child not in school for over 1 ½ months. Has Family First worker, _____. In addition, goes to PSG, _____ is social worker.

October 2005, KDHS was involved, child not going to school. Child being disrespectful to teachers, principal. Involved in home therapy. Hanging out with gang members. Child jumped, blood on shirt, and proud of it. Child not coming home at night. Hanging out with people aged between 18 and early 20s.

Child also alleged dad sexually abused her. Child's dad arrested. Kenosha District Attorney's Office declines prosecution. Also, mention of looking into the Bridges Program for the child. In home therapist and Families First contacted.

In September 2005, KDHS was involved because child went to school with bloody nose. Hanging out with 17 and 18 year-olds. Family involved with in-home services, PSG, Families First, DCFS worker is _____.

July of 2005, KDHS was involved because _____ Middle School called regarding child being suicidal.

February of 2005, KDHS was involved because _____ Middle School called because of child's "self-abuse". Child said she was cutting self again. Prior to this, taking pills to harm herself. Child also attempted suicide by cutting her wrist. Mom encouraged to get child psychiatrist. Family working with many service providers. There is talk of signing her into the hospital.

January of 2004, KDHS was involved because _____ Middle School called because child was feeling suicidal. Wanted to hang herself, thinks she is pregnant. Child is in Foster Care. Child is dating a 19 year-old who might be the father. Mention of child being hospitalized over summer because she is suicidal.

June of 2004, KDHS was involved because child was caught having sex. Dr. Concannon of St. Catherine's Hospital called regarding child who claimed to have been sexually abused. Child receiving treatment for genital warts, which she contracted at age 12 through consensual sex.

October of 2003, KDHS was involved because child claimed her dad was feeling on her butt. Child writes note in school explaining assault. There is a picture of her crying. She

claimed to have been asleep when dad came in with alcohol on his breath and felt her butt. Det. _____ explained that in recent past child had made false allegations towards mom's then boyfriend after they upset her. Child recanted and said she made it up because she was upset. Worker notes her concerns because child three weeks earlier falsely accused mom's boyfriend because she was mad at him.

On July 23, 2003, social worker spoke with child who admitted she made the whole story up regarding her mom's boyfriend. Child said her mom is gonna quit frequently and she thought that if she said something like that her mom would possibly be around a little bit more. Child went on to admit that her mom's boyfriend never sexually assaulted her. Child working with Family First Program and professional services.

On July 21, 2003, KDHS was involved with child because child has suicidal and homicidal intentions whenever mom is with dad and towards dad. Father said only reason child does not want dad around is because of his rules, and he is strict. Mom said she cannot handle the child. All child wants to do is hang around boys and talks of having a baby. Child tells workers does not want to stay with dad because she hates him.

On May 30, 2003, child tells _____, in home worker at PSG she would hurt herself, and there would be blood everywhere. Looking at putting child in Respite for 3-4 weeks. Mention of child seeing Dr. _____.

On May 16, 2003, KDHS was involved because counselor at child's elementary school calls and said child is suicidal. Child told counselor wants to be away from dad and that she tried to hurt herself with a knife. Child is upset because her mom is not listening to her and she doesn't want to live with dad. Counselor said child is threatening to harm herself if her mom and brothers don't move out. Mention of child having in-home therapist.

On March 25, 2002, KDHS was involved. Mention of Columbus School not wanting her around. Mention of sexual harassment on school grounds. Child spoke of being at party, mention of oral sex going on.

Based upon the limited information contained within the KDHS reports provided to investigator _____, there is substantial evidence that the complaining witness' psychiatric issues affect both her ability to accurately perceive events and her ability to relate the truth. This is relevant evidence because they affect the complaining witness' credibility.

The defense, therefore, moves the court for a Shiffra/Green hearing based upon the KDHS reported information.

Dated: December 21, 2009.

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