

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
MENTAL HEALTH 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 the complete mental health records of the complaining witness, including, but not limited to, psychiatric, psychological and counseling records.

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 pursuant to R.S.A. 626:6, notice that he may rely on the defense 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 of sexual assault.

5. During the course of the interview, the complainant 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. Additionally, the complainant indicated that she was intoxicated during the alleged sexual assault. Interview Transcript. 9/19/06, p. 23.

6. Additionally, the complainant stated that she went to see her therapist, Sarah Hart, on August 28, 2006, and gave Dr. Hart her recitation of the events of the prior weekend. Interview Transcript, p. 54.

7. 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).

8. 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' course of treatment, nature of medications and therapy prescribed for her bipolar disorder is highly relevant to the case at bar.

9. The Complainant's illness and its effect on her faculties, rationality and ability to distinguish fact from fantasy, specially after the consumption of alcohol, are especially relevant in this case, as only the Complainant and the Defendant have actual knowledge of the events that led to the allegation of sexual assault. Thus, the Defendant seeks discovery regarding the extent

and nature of the complainant's mental illness in order to determine if that illness has influenced the allegations made.

10. Additionally, the complainant indicated in her interview that she discussed the events which gave rise to the allegations made against defendant with her therapist the day after they allegedly took place. 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 complete mental health records of the complaining witness, Adrianna P., including, but not limited to, the psychiatric, psychological and counseling records, be reviewed by the Court on an in-camera basis; and,
- 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: _____
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 has been forwarded, even date herewith, postage prepaid, to Assistant County Attorney Kent Smith.

Michael J. Iacopino, Esq.