



### **Introduction**

Before this Court is Defendant's motion to compel the State to respond to his request for the alleged victim's medical records. The State opposes the motion.

### **Background**

Defendant James Wells has been charged by indictment with Rape First Degree, Terroristic Threatening, and Assault Third Degree. In a separate indictment, he was charged with Attempted Murder in the First Degree,<sup>1</sup> two counts of Rape Fourth Degree, and Terroristic Threatening. The attempted murder charge alleges that Wells intentionally attempted to cause the death of his son, James Gregory Wells III. On March 5, 2004, Defendant requested that the State provide him with the

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<sup>1</sup> 11 Del. C. § 636(a) states:

A person is guilty of murder in the first degree when:

(1) The person intentionally causes the death of another person; . . .

11 Del. C. § 531 states:

A person is guilty of an attempt to commit a crime if the person:

(1) Intentionally engages in conduct which would constitute the crime if the attendant circumstances were as the person believes them to be; or

(2) Intentionally does or omits to do anything which, under the circumstances as the person believes them to be, is a substantial step in a course of conduct planned to culminate in the commission of the crime by the person.

Attempt to commit a crime is an offense of the same grade and degree as the most serious offense which the accused is found guilty of attempting.

following information regarding his son's medical condition:

1. Pediatric records from the alleged victim's primary care physician from the date of his release from A.I. duPont Hospital to this date.
2. Records of clinical visits for neurological consultations and/or treatments from the date of his release from A.I. duPont Hospital to this date.
3. Developmental clinic records and/or all other examinations from the date of his release from A.I. duPont hospital to this date.
4. All records that have been generated as a result of the "Infants and Toddlers Early Intervention Act" pursuant to 16 Del. C. § § 210 - 218, since it appears that the alleged victim may fall within the definition of "eligible children," 16 Del. C. § 212(3).

Defendant contends that this information is necessary for his defense and because he may be able to utilize the services of an expert witness. Defendant asserts that his son's substantial recovery, as is allegedly documented in the requested medical records, "goes to the very heart of the Attempted Murder 1 charge."<sup>2</sup> Defendant has already received records of the child's hospital admission, diagnosis, and treatment. Defendant now requests additional information regarding the ongoing care and treatment of the child, in an attempt to show that the injuries were not as severe as

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<sup>2</sup> Defendant's Letter to the Court, May 7, 2004.

originally diagnosed. Thus, Defendant asserts that such records are *Brady* material. The State argues that whether the alleged victim has recovered or not is irrelevant to an attempted murder charge. Further, the State asserts that the records are not in its custody as the child was treated at a private medical facility.

### **Discussion**

Superior Court Criminal Rule 16 governs discovery and disclosure of evidence by the State. Previously this Court concluded, “Rule 16 does not provide for the discovery of privileged medical records of witnesses, especially those records which are unrelated to the alleged criminal activity of the defendant.”<sup>3</sup> In *Brady v. Maryland*,<sup>4</sup> the Supreme Court held that the failure of the prosecution to disclose exculpatory evidence violates the defendant’s due process rights. With respect to *Brady* material, the Delaware Supreme Court has stated, “The State must release evidence to the defendant if (1) ‘the evidence is requested by the accused but production is withheld by the State,’ (2) ‘the information is favorable to the accused’s case,’ and (3) the evidence is material to guilt or punishment.”<sup>5</sup>

Defendant contends that the requested medical records are relevant to the attempted murder charge to show that the injuries to the alleged victim were less

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<sup>3</sup> *State v. Block*, 2000 Del. Super. LEXIS 67, \*5 (citing *State v. Williams*, 1997 Del. Super. LEXIS 337, \*2).

<sup>4</sup> 373 U.S. 83 (1963).

<sup>5</sup> *Cabrera v. State*, 840 A.2d 1256, 1269 (Del. 2004) (citing *Dawson v. State*, 673 A.2d 1186, 1193 (Del. 1996)).

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severe than originally believed. However, the State argues that because lack of injury is not a defense to attempted first degree murder, the additional medical records are irrelevant and immaterial.

In order to establish that Defendant is guilty of attempted first degree murder, the State must prove that Defendant intended to kill his son and undertook a substantial step toward the commission of the crime. Attempted first degree murder does not require the alleged victim to have suffered any particular injuries.<sup>6</sup> The severity of the injury allegedly suffered by the victim is not an element of the crime. Thus, whether the alleged victim's condition has improved is irrelevant to the crime charged or any defenses which could be raised.

Further, the Defendant has the burden of advancing ““some factual predicate which makes it reasonably likely that the file will bear such fruit and that the quest for its contents is not merely a desperate grasping at a straw.””<sup>7</sup> *Snowden* involved a request for an *in camera* review of police personnel records. The Court found the factual predicate to be that the officer's employment had been terminated and the prosecutor had not established to the trial judge that the records had been reviewed for *Brady* material. Here, the Defendant has not presented any reason to believe that the medical records contain information relevant to this case. This appears to be little

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<sup>6</sup> See *Bright v. State*, 740 A.2d 927 (Del. 1999) and *McCluskey v. State*, 702 A.2d 927 (Del. 1997).

<sup>7</sup> *Snowden v. State*, 672 A.2d 1017, 1024 (Del. 1996) (citing *State v. Kaszubinski*, 425 A.2d 711, 714 (N.J. Super. 1980) (quoting *People v. Gissendanner*, 399 N.E.2d 924, 928 (N.Y. 1979))).

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more than a fishing expedition on the part of the Defendant.

Therefore, it appears to the Court that the medical records sought here are not material to the Defendant's guilt or punishment or favorable to the Defendant's case. Thus, the records are not discoverable and are not *Brady* material.

### **Conclusion**

The Court concludes that the medical records Defendant is attempting to obtain are not relevant to the crime with which he was charged and are not relevant to any defenses he may raise. Accordingly Defendant's motion to compel the production of the additional medical records for James Wells III is *denied*.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.  
J.

WLW/dmh

oc: Prothonotary

xc: Order Distribution  
File