

LAWRENCE SLY

NO. 21-K-648

VERSUS

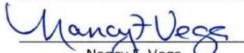
FIFTH CIRCUIT

STATE OF LOUISIANA

COURT OF APPEAL

STATE OF LOUISIANA

FIFTH CIRCUIT COURT OF APPEAL  
A TRUE COPY OF DOCUMENTS AS  
SAME APPEARS IN OUR RECORDS

  
Nancy F. Vega  
Chief Deputy, Clerk of Court

November 09, 2021

Nancy F. Vega  
Chief Deputy Clerk

**IN RE LAWRENCE SLY**

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**APPLYING FOR** SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT, PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE NANCY A. MILLER, DIVISION "I", NUMBER 19-6813

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Panel composed of Judges Marc E. Johnson,  
Robert A. Chaisson, and Stephen J. Windhorst

### **WRIT DENIED**

Relator, Lawrence Sly, seeks review of the 24th Judicial District Court's August 17, 2021 ruling denying his Second Supplemental Motion for Discovery of Medical Records. On June 18, 2020, the Grand Jury returned a bill of indictment charging Relator with second degree murder in violation of La. R.S. 14:30.1. The following day, Relator entered a plea of not guilty. Relator claims he killed the victim, his former neighbor, in self-defense and the medical records requested are needed to help prove the victim's aggressive behavior on November 11, 2019, the date of the offense.

This Court previously determined that the district court did not err in its May 3, 2021 ruling on Relator's Motion in Limine and found that the district court correctly determined that the evidence Relator presented at that hearing "met the threshold requirement for the admissibility of 'dangerous character' evidence on the part of the victim at trial" pursuant to La. C.E. art. 404(A). *See State v. Sly*, 21-K-297 (La. App. 5 Cir. 6/17/21) (unpublished writ disposition).

Relator then filed a second motion to request supplemental discovery of medical records on July 21, 2021, specifically requesting the name(s) of the hospital and pharmacy treating the victim, so defense counsel could issue a subpoena duces tecum to the appropriate healthcare providers for the victim's medical records. On August 16, 2021, the district court heard arguments on Relator's Second Supplemental Motion for Discovery of Medical Records and advised that it would issue a written judgment the following day. In its subsequent written order, the district court found Relator's "current theory for the relevance of the supplemental discovery is too speculative to be reliable," and "without

evidence that [the victim] had previously engaged in aggressive behavior while ‘off’ of his prescribed medication, the relevance of the requested discovery is too speculative to warrant a breach of the victim’s right to medical privacy.”

In *State v. Marcelin*, 10-2036 (La. 10/15/10), 46 So.3d 191, the Louisiana Supreme Court set forth the criteria regarding the issuance of a pre-trial subpoena duces tecum, finding that the moving party had to clear the following three hurdles: (1) relevancy; (2) admissibility; and 3) specificity.

“In enacting [La. ]R.S. 13:3715.1<sup>1</sup>, and in particular Section B(5) thereof, the legislature has entrusted the courts with the duty of determining, in the context of a contradictory hearing, on a case by case basis, according to the unique facts presented, whether disclosure of a non-party's otherwise privileged medical information is ‘proper’ in a particular case in the absence of consent or a waiver.”

*Moss v. State*, 05-1963 (La. 4/4/06); 925 So.2d 1185, 1199–200; *See also* La. C.E. art. 510.

We find that the trial court did not abuse its discretion by denying Relator’s request for information about the victim’s medical history and prescriptions. Relator’s request is overly broad and granting the same would not strike the proper balance between the defendant’s right to a vigorous defense and the privacy interests of the victim and his family. Relator is still able to introduce evidence of the victim’s aggressive behavior at trial as part of his defense. Accordingly, the writ application is denied.

Gretna, Louisiana, this 9th day of November, 2021.

**MEJ**  
**RAC**  
**SJW**

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<sup>1</sup> La. R.S. § 13:3715.1(B):

B. The exclusive method by which medical, hospital, or other records relating to a person's medical treatment, history, or condition may be obtained or disclosed by a health care provider, shall be pursuant to and in accordance with the provisions of R.S. 40:1299.96 or Code of Evidence Article 510, or a lawful subpoena or court order obtained in the following manner:

[. . .]

(2) Any attorney requesting medical records of a patient, who is not a party to the litigation in which the records are being sought may obtain the records by written authorization of the patient whose records are being sought or if no such authorization is given, by court order, as provided in Paragraph (5) hereof.

(3) Any attorney requesting medical records of a patient who is deceased may obtain the records by subpoena, as provided in Paragraph (1) hereof, by written authorization of the person authorized under Louisiana Civil Code Article 2315.1 or the executor or administrator of the deceased's estate, or by court order, as provided in Paragraph (5) hereof.

[. . .]

(5) A court shall issue an order for the production and disclosure of a patient's records, regardless of whether the patient is a party to the litigation, only: after a contradictory hearing with the patient, or, if represented, with his counsel of record, or, if deceased, with those persons identified in Paragraph (3) hereof, and after a finding by the court that the release of the requested information is *proper*; or with consent of the patient. (Emphasis added.)

SUSAN M. CHEHARDY  
CHIEF JUDGE

FREDERICKA H. WICKER  
JUDE G. GRAVOIS  
MARC E. JOHNSON  
ROBERT A. CHAISSON  
STEPHEN J. WINDHORST  
HANS J. LILJEBERG  
JOHN J. MOLAISSON, JR.

JUDGES



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CURTIS B. PURSELL  
CLERK OF COURT  
NANCY F. VEGA  
CHIEF DEPUTY CLERK

SUSAN S. BUCHHOLZ  
FIRST DEPUTY CLERK

MELISSA C. LEDET  
DIRECTOR OF CENTRAL STAFF

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**NOTICE OF DISPOSITION CERTIFICATE OF DELIVERY**

I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN TRANSMITTED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 4-6** THIS DAY **11/09/2021** TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

**CURTIS B. PURSELL**  
CLERK OF COURT

**21-K-648**

**E-NOTIFIED**

24th Judicial District Court (Clerk)  
Honorable Nancy A. Miller (DISTRICT JUDGE)  
Kathrine E. Ellis (Relator)  
Thomas J. Butler (Respondent)  
Roger W. Jordan, Jr. (Relator)

**MAILED**

James A. Williams (Relator)  
Attorney at Law  
706 Derbigny Street  
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