

State v. Ramsey, CR-10-8527 (Unified Criminal Docket – Cumberland)

Defendant Dylan Ramsey is charged with gross sexual assault and unlawful sexual contact.

Before the court are motions in limine pursuant to M.R.Crim.P. 17(d) seeking (1) production of medical, mental health, and prescription records from the physician of the alleged victim and (2) medical, psychiatric counseling, and school records from the alleged victim's high school.

The mother of the alleged victim objects to any invasion of her daughter's privacy, including in camera review by the court, and the State – to the extent it has standing – also objects. The custodians of the medical and school records have also asserted that the records in question cannot be disclosed without a court order.

At a hearing on April 5, 2011 the court directed that the medical and school records in question be provided to the clerk and sealed to await further consideration.

In State v. Watson, 1999 ME 41 ¶¶ 6-7, 726 A.2d 214, 216, the Law Court ruled that a trial court had correctly quashed a subpoena from the defendant seeking treatment records and testimony from a licensed clinical social worker who had been treating the alleged victim. Defense counsel had speculated that the records and testimony might provide a basis to impeach the victim or otherwise contain exculpatory information, but the Law Court concluded that the defense had not made a preliminary showing that the subpoena was anything more than a fishing expedition. Accordingly, it ruled that the trial court had not abused its discretion in quashing the subpoena and declining to conduct an in camera review of the documents.

In the Watson case, the records that were being sought were subject to a limited statutory privilege that allowed disclosure in the event that a court deemed such disclosure necessary to the proper administration of justice. 1999 ME 41 ¶ 3 n.3, 726 A.2d at 215 n.3. In the case at bar, the medical records are subject to confidentiality provisions under state and federal law that allow disclosure in this situation only pursuant to a court order. 22 M.R.S. § 1711-C(6)(F-1); 42 U.S.C. ¶¶ 1320d et seq. ("HIPAA"), 45 C.F.R. § 164.512(e)(1)(i). The educational records are also subject to state and federal confidentiality statutes that would allow disclosure pursuant to court order. See 20 M.R.S. § 7202(2); 20-A M.R.S. § 6001; 20 U.S.C. § 1232g(b)(2)(B).

In this case the defense's basis for seeking Dr. Goodrich's records is that a Spurwink evaluation states that the alleged victim had been prescribed medication including Abilify and Wellbutrin and had a history of depression. The defense has not made any showing that those reported facts are relevant to the events in this case or to the alleged victim's credibility. Although the defense speculates that information in Dr. Goodrich's files "may" indicate that the alleged victim has "perceptual problems or paranoia," this falls into the category of a fishing expedition barred by Watson.


The defense's basis for seeking the alleged victim's school records is that she was entering Special Education classes due to difficulty memorizing and that the school records "may" show other causes for her accusations, including "perceptual or personal

problems." The court has no basis to infer that difficulty in memorizing schoolwork is relevant to whether a witness can remember the details of an alleged sexual assault. Moreover, speculation as to personal or perceptual problems once again appears to be a fishing expedition that the court should not allow the defense to undertake. In particular, the court cannot discern any relationship between a special education student's IEP and her credibility.

Accordingly, the defense's motions in limine are denied without prejudice to renewal if the defense makes a sufficient showing that there is some basis for its request beyond what has been suggested to date. The court has not reviewed the records in question in camera and orders that the records remain sealed in the event that the defense makes a further submission.

There are other pending motions in this case, including a motion for a Clifford order, and the clerk shall schedule a hearing so that those issues can be handled expeditiously given a May 9 trial exposure date.

Dated: April 11, 2011



Thomas D. Warren
Justice, Superior Court

STATE OF MAINE

vs

DYLAN RAMSEY
105 GILMAN STREET #1
PORTLAND ME 04102

Docket No CUMCD-CR-2010-08527

DOCKET RECORD

DOB: 06/04/1991

Attorney: RUBIN SEGAL
LAW OFFICE OF RUBIN G.SEGAL
97 INDIA STREET, FLOOR 2
PORTLAND ME 04101
APPOINTED 12/20/2010

State's Attorney: MEGIN ELAM

Filing Document: INDICTMENT

Major Case Type: FELONY (CLASS A,B,C)

Filing Date: 12/09/2010

Charge(s)

1	GROSS SEXUAL ASSAULT		06/01/2010 PORTLAND
Seq 4262	17-A 253(1)(A)	Class A	
BAILEY	/ POR		
2	UNLAWFUL SEXUAL CONTACT		06/01/2010 PORTLAND
Seq 8410	17-A 255-A(1)(O)	Class C	
BAILEY	/ POR		

Docket Events:

12/14/2010 FILING DOCUMENT - INDICTMENT FILED ON 12/09/2010

12/14/2010 Charge(s): 1,2

HEARING - ARRAIGNMENT SCHEDULED FOR 01/06/2011 @ 8:30 in Room No. 1

NOTICE TO PARTIES/COUNSEL

12/14/2010 Charge(s): 1,2

HEARING - ARRAIGNMENT NOTICE SENT ON 12/14/2010

JAMES TURCOTTE , ASSISTANT CLERK

12/22/2010 Charge(s): 1,2

MOTION - MOTION FOR APPOINTMENT OF CNSL GRANTED ON 12/20/2010

ROLAND A COLE , JUSTICE

COPY TO PARTIES/COUNSEL

12/22/2010 Party(s): DYLAN RAMSEY

ATTORNEY - APPOINTED ORDERED ON 12/20/2010

Attorney: RUBIN SEGAL

01/06/2011 BAIL BOND - \$1,000.00 CASH BAIL BOND SET BY COURT ON 01/06/2011

ROLAND A COLE , JUSTICE

OR 10,000 SS, OR A MPTSC IN THE ALTERNATIVE

01/06/2011 BAIL BOND - CASH BAIL BOND COMMITMENT ISSUED ON 01/06/2011

ROLAND A COLE , JUSTICE

01/06/2011 Charge(s): 1,2

HEARING - ARRAIGNMENT HELD ON 01/06/2011

ROLAND A COLE , JUSTICE

Attorney: RUBIN SEGAL

DA: TRACY LEADBETTER

Defendant Present in Court

DEFENDANT INFORMED OF CHARGES. 21 DAYS TO FILE MOTIONS

TAPE 2497

01/06/2011 Charge(s): 1,2

PLEA - NOT GUILTY ENTERED BY DEFENDANT ON 01/06/2011
ROLAND A COLE , JUSTICE

01/06/2011 HEARING - DISPOSITIONAL CONFERENCE SCHEDULED FOR 04/06/2011 @ 10:30 in Room No. 7

01/06/2011 Charge(s): 1,2

TRIAL - JURY TRIAL SCHEDULED FOR 05/09/2011 @ 8:30 in Room No. 11

NOTICE TO PARTIES/COUNSEL

01/11/2011 OTHER FILING - PRETRIAL SERVICES CONTRACT FILED ON 01/11/2011

01/13/2011 OTHER FILING - PRETRIAL SERVICES CONTRACT APPROVED ON 01/12/2011
ROLAND A COLE , JUSTICE

01/18/2011 BAIL BOND - PR BAIL BOND FILED ON 01/13/2011

Date Bailed: 01/13/2011

682

03/08/2011 MOTION - MOTION FOR FURTHER DISCOVERY FILED BY DEFENDANT ON 03/04/2011

03/08/2011 MOTION - MOTION IN LIMINE, RULE 17 FILED BY DEFENDANT ON 03/04/2011

03/08/2011 MOTION - MOTION IN LIMINE, RULE 17 FILED BY DEFENDANT ON 03/04/2011

03/10/2011 HEARING - MOTION IN LIMINE, RULE 17 SCHEDULED FOR 04/05/2011 @ 1:00 in Room No. 8

03/10/2011 HEARING - MOTION IN LIMINE, RULE 17 NOTICE SENT ON 03/10/2011

03/21/2011 HEARING - DISPOSITIONAL CONFERENCE NOTICE SENT ON 04/06/2011

03/25/2011 LETTER - FROM PARTY FILED ON 03/22/2011

Attorney: JAMES BAILINSON

IN RESPONSE TO SUBPOENA/ MOTION IN LIMINE. COUNSEL OBJECTS TO MOTION. COUNSEL WILL BE
PRESENT AT THE HEARING 4-5-11 @ 1:00 P.M.

04/05/2011 MOTION - MOTION TO AMEND BAIL FILED BY DEFENDANT ON 04/05/2011

04/05/2011 MOTION - MOTION TO PRODUCE DHS RECORD FILED BY DEFENDANT ON 04/05/2011

04/12/2011 HEARING - CONFERENCE SCHEDULED FOR 04/14/2011 @ 1:00

THOMAS D WARREN , JUSTICE

NOTICE TO PARTIES/COUNSEL

04/12/2011 HEARING - CONFERENCE NOTICE SENT ON 04/12/2011

04/12/2011 MOTION - MOTION IN LIMINE, RULE 17 DENIED ON 04/11/2011

THOMAS D WARREN , JUSTICE

SEE ORDER

ACCORDINGLY THE
DEFENSE'S MOTION IN LIMINE ARE DENIED WITHOUT PREJUDICE TO RENEWAL IF THE DEFENSE MAKES A
SUFFICIENT SHOWING THAT THERE IS SOME BASIS FOR IT'S REQUEST BEYOND WHAT IS SUGGESTED TO
DTAE. THE COURT HAS NOT REVIEWED THE RECORDS IN QUESTION IN CAMERA AND ORDERS THAT THE
RECORDS REMAIN SEALED IN THE EVENT THAT THE DEFENSE MAKES A FURTHER SUBMISSION

04/12/2011 ORDER - COURT ORDER FILED ON 04/11/2011
THOMAS D WARREN , JUSTICE

04/12/2011 HEARING - MOTION IN LIMINE, RULE 17 HELD ON 04/05/2011
THOMAS D WARREN , JUSTICE

Attorney: RUBIN SEGAL

DA: MEGIN ELAM

MOTION IN LIMINE HELD. RECORDS RECEIVED UNDER SEAL AND IMPOUNDED. AFTER HEARING MOTION IS
UNDER ADVISEMENT

04/12/2011 OTHER FILING - OTHER DOCUMENT FILED ON 04/05/2011

RECORDS RECEIVED FROM MMC & SCHOOL UNDER SEAL AND IMPOUNDED

04/12/2011 HEARING - DISPOSITIONAL CONFERENCE HELD ON 04/06/2011

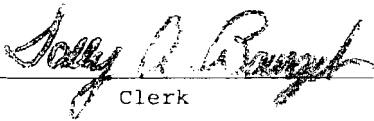
KEEP ON TRIAL LIST

04/12/2011 MOTION - MOTION IN LIMINE, RULE 17 DENIED ON 04/11/2011
THOMAS D WARREN , JUSTICE

SEE ORDER

A TRUE COPY

ATTEST:


Clerk