

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY

Steven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

PHILLIP PARSONS,

APPELLANT

APPELLATE CASE NO. 2011-184126

SUPPLEMENTAL RECORD ON APPEAL

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SC Court of Appeals

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STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

IN THE COURT OF GENERAL SESSIONS FOR THE
FIFTEENTH JUDICIAL CIRCUIT
Indictments No(s): 2009-GS-22-1158
2010-GS-22-1317

STATE OF SOUTH CAROLINA)
)
Vs.)
)
PHILLIP WAYNE PARSONS,)
)
Defendant.)

Motion to Require Disclosure of Alleged Victim's
Counseling Records

FILED
GEORGETOWN COUNTY, S.C.
2010 NOV -5 AM 10:03
ALEXIA V. WHITE
CLERK OF COURT

TO: NANCY COTE, Assistant Solicitor for the 15th Judicial Circuit

Pursuant to Rule 5 of the South Carolina Rules of Criminal Procedure, *Brady v. Maryland*, 373 U.S. 83 (1963), *Kyles v. Whitley*, 115 S. Ct. 1555 (1995), the 5th, 6th and 14th Amendments to the United States Constitution, and Article 1, Sections 3 and 14 of the South Carolina Constitution, the Defendant moves for an Order requiring disclosure of the counseling records, and any other mental health records, of the alleged victim.

The alleged victim in this case has been a client of Dr. Fogel at Waccamaw Mental Health. Defendant is informed and believes that the State has consulted with Dr. Fogel, has obtained opinions from him regarding the alleged victim and the allegations in this case, and intends to call Dr. Fogel as an expert witness at trial. Yet the State, although having access to any information it wants from this counselor, did not obtain or disclose these records. While S.C. Code Section 19-11-95 establishes a privilege, this section also provides an exception to the privilege. Section 19-11-95(D)(1) provides, in part:

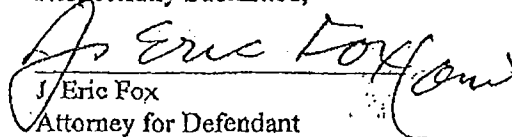
A provider shall reveal confidences when required by statutory law
Or by court order for good cause shown to the extent that the
Patient's care and treatment or the nature and extent of his mental
Illness or emotional condition are reasonably at issue in a proceeding.

These records are needed for several reasons. First, the defendant should have access to the same information that the State has access to in investigation and preparing the case for trial. Second, the Defendant should have access to the information in order to learn of any inconsistent statements made by the alleged victim to the counselor. Third, the Defendant should have access to the notes of the counselor in order to determine if the counselor used appropriate techniques. Fourth, the Defendant should have access to the information in order to determine if the child has been abused by another individual and that such abuse may be the source of the child's symptoms. Fifth, the Defendant should have access to the information in order to determine if there is another cause for the child's symptoms and whether the counselor has investigated that possibility. Sixth, the Defendant needs the records in order to determine whether or not to request a competency evaluation of the alleged victim pursuant to *In Re Michael H.*, 360 S.C. 540, 602 S.E.2d 729 (2004).

The Defendant contends that the requested information is material to his defense and should be produced prior to trial in order that counsel for the Defendant can adequately and effectively prepare a defense.

IT IS SO MOVED:

Respectfully Submitted,


J. Eric Fox
Attorney for Defendant

November 5, 2010

Georgetown, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

IN THE COURT OF GENERAL SESSIONS
INDICTMENT No(s): 2009-GS-22-1158
2010-GS-22-1317

STATE OF SOUTH CAROLINA)
)
Vs.)
)
PHILLIP WAYNE PARSONS,)
)
Defendant.)

ORDER TO COMPEL DISCLOSURE OF
COUNSELING RECORDS

FILED
GEORGETOWN COUNTY, S.C.
2011 JAN 20 PM 2:19
ALMA Y. WHITE
CLERK OF COURT

This matter comes before the Court upon the Motion of Defendant for an Order requiring disclosure of counseling records of the alleged victim, Minor . After hearing from counsel for Defendant and the State, the Court finds as follows:

The Defendant is charged with Criminal Sexual Conduct with a Minor, 1st Degree and Lewd Act Upon a Minor. The alleged victim is Minor . Minor has been under the care of George Fogel, a counselor at Waccamaw Mental Health in Georgetown. Fogel is expected to testify at trial regarding his treatment of Minor . The counselor has records and/or notes in his possession regarding this treatment. The Court finds the requested information is relevant and material to Defendant's trial preparations.

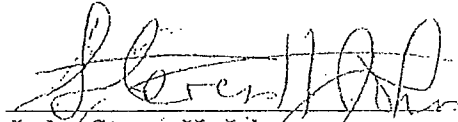
Therefore, for good cause shown, and pursuant to S.C. Code of Laws Section 19-11-95(D)(1), IT IS ORDERED that any and all records, notes and/or information regarding the treatment of Minor

l at Waccamaw Mental Health shall be made available to counsel for Defendant. Such material is to remain in the custody of counsel for Defendant and no one other than defense counsel shall have access to or review the material. Specifically, defense counsel must not disclose this material to Defendant without prior approval of the Court. Further, Defense counsel shall not make copies.

SCANNED

Waccamaw Mental Health and George Fogel shall make all requested material available to the Solicitor who shall then make it available to defense counsel.

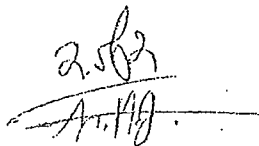
IT IS SO ORDERED.



Judge Steven H. John
Chief Administrative Judge
15th Judicial Circuit

January 20, 2011


Georgetown, SC



CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Supplemental Record on Appeal contains material proposed to be included by the Court under Rule 212(a), SCACR and not any other material and that this Record on Appeal complies to the best of my ability with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

August 6th, 2012


Benjamin John Tripp
Appellate Defender

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