

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

State of South Carolina,

2021-CP-23-04376

Appellant

v.

Ex Rel.: UTT# H480200

Kathryn Martin Key,

Respondent.

ORDER **RECEIVED**

Mar 28 2022

SC Court of Appeals

This case came before the court on appeal from the East Greenville Summary Court. Arguments were held on December 2, 2021, at which Powers Price, attorney for Respondent, and Elizabeth Gary, attorney for Appellant, were present.

The State served and filed in the East Greenville Summary Court a motion for the release of Respondent's medical records pursuant to the Health Insurance Portability and Accountability Act (HIPAA). Pub. L. No. 104-191, §264, 110 Stat. 1936. Respondent, through counsel, timely objected to the State's motion. The Honorable Mark C. Edmonds entered an order denying the State's motion for medical records.

On appeal to this Court, the State contends that the magistrate erred by denying the State's motion for records under the law enforcement exception to HIPAA. Respondent contends the State failed to make a necessary showing of relevance to obtain Respondent's private medical information and argues HIPAA does not apply in South Carolina's summary courts. Respondent also filed a motion to dismiss the State's appeal, arguing the denial of the State's motion for medical records is not immediately appealable.

Based upon the forgoing, the arguments of counsel, and the record before me, I find the magistrate's denial of the State's motion for medical records is immediately appealable. Ordinarily, an appeal may only be pursued after a party has obtained a final judgement. *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005). In South Carolina, the State's right to appeal is a judicially created right. A "pre-trial order granting the suppression of evidence which significantly impairs the prosecution of a criminal case is directly appealable under S.C. Code

Ann. §14-3-330(2)(a).” *State v. Belviso*, 360 S.C. 112, 600 S.E.2d 68 (Ct. App. 2004). *See also State v McKnight*, 287 S.C. 167, 168, 337 S.E.2d 208, 209 (1985). I find the magistrate’s denial of the State’s motion for medical records significantly impaired the prosecution of the criminal case, rendering the order immediately appealable. It is the order of this Court that the only medical records relevant to the issue of exigent circumstances in this case are those that encompass the time frame of the defendant’s admission to the hospital and treatment on the day of the accident from which the criminal charges that are the subject of this litigation were filed.

Additionally, I find the magistrate erred in denying the State’s motion for medical records under the law enforcement exception to HIPAA. The law enforcement exception, which applies to a prosecuting authority, is a well-established exception which allows a medical provider to disclose a patient’s health information pursuant to a court order, subpoena, or summons issued by a judicial officer. 45 CFR §§164.512(f)(1)(ii)(A); *see also* 45 CFR §§164.512 (f)(1)(ii)(C) (authorizing administrative and investigative requests). HIPAA is a federal statute which provides for the preemption of state laws unless such laws are “more stringent” than HIPAA. 45 CFR §§ 160.202 (2002). A state law is “more stringent” than HIPAA if it “provides greater privacy protection for the individual . . .” *Id.*; Pub. L. No. 104-191, §264(C)(2); 110 STAT. 2033-34; *South Carolina Medical Association v Thompson*, 327 F.3d 346, 354 (4th Cir. 2003). South Carolina’s privacy statute is not more stringent than HIPAA. Physician Patient Records Act, S.C. Code Ann. §44-115-10, *et. seq.* HIPAA controls the disclosure and dissemination of medical records by the Summary Court in South Carolina.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the undated order, signed by the Honorable Mark C. Edmonds of the East Greenville Summary court denying the State’s motion for release of medical records in this case, be and hereby is reversed.

IT IS SO ORDERED.

December _____, 2021

G.D. Morgan, Jr.
Circuit Judge, 13th Judicial Circuit



Greenville Common Pleas

Case Caption: South Carolina State Of VS Kathryn Martin Key , defendant, et al
Case Number: 2021CP2304376
Type: Order/Other

So Ordered

G.D. Morgan Jr.

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ELECTRONICALLY FILED : 2022 Mar 24 3:02 PM : GREENVILLE : COMMON PLEAS : CASE#2021CP2304376