

IN THE CIRCUIT COURT FOR THE EIGHTEENTH JUDICIAL CIRCUIT,  
IN AND FOR SEMINOLE COUNTY, FLORIDA

CASE NO. 12-CF-1083-A

STATE OF FLORIDA,

Plaintiff(s),

vs.

GEORGE ZIMMERMAN,

Defendant(s).

FILED IN OPEN COURT THIS  
Oct. 19 20 12  
MARYANNE MORSE  
Clerk of Circuit Court  
Seminole County, Florida  
By: \_\_\_\_\_  
Deputy Clerk

**ORDER DISCLOSING REDACTED MEDICAL RECORDS**

The Defendant is charged with second-degree murder. During the pretrial proceedings in the case, it is apparent that the Defendant will argue that he acted in self-defense. After the shooting, the Defendant was treated at a local medical facility. The State sought a *subpoena duces tecum* of the Defendant's complete medical records and gave proper notice to the Defendant of that request. The State sought the records to determine the extent of his injuries, to discover whether any of his claimed injuries existed prior to the incident, and to review records relating to any follow-up care for those injuries. The Defendant opposed the release of those records pursuant to Fla. Stat. §395.3025. In the alternative, the Defendant requested that the Court conduct an *in camera* review of the records to prevent the disclosure of irrelevant records. The Court held a hearing on the matter on October 19, 2012, and after considering the arguments of counsel and the relevant case law, the Court agreed to conduct an *in camera* review of those records.

The State's right to obtain a patient's medical records when investigating criminal activity must be balanced against the patient's right to privacy in those records.

A patient's medical records enjoy a confidential status by virtue of the right to privacy contained in the Florida Constitution, and any attempt on the part of the government to obtain such records must first meet

constitutional muster. The right to privacy is not absolute and will yield to compelling governmental interests. Therefore, in reviewing a claim of unconstitutional governmental intrusion, the compelling state interest standard is the appropriate standard of review. Clearly, the control and prosecution of criminal activity is a compelling state interest, and this Court has held that a subpoena issued during an ongoing criminal investigation satisfies a compelling state interest when there is a clear connection between illegal activity and the person whose privacy has allegedly been invaded.

*State v. Johnson*, 814 So. 2d 390, 393 (Fla. 2002). Fla. Stat. §395.3025 was enacted by the Legislature in an attempt to balance those competing interests. *Id.*

The Fifth District Court of Appeal set forth the balancing test that must be conducted by the Court when determining whether to disclose a patient's medical records in a criminal case. In *Hunter v. State*, 639 So. 2d 72 (Fla. 5th DCA 1994), that Court held,

The state attorney may use an investigative subpoena to compel disclosure of a patient's medical records, but the patient must first be given notice before the subpoena is issued. If the patient objects, the state has the obligation and the burden to show the relevancy of the records requested before the subpoena for the patient's medical records is allowed to issue. We do not rule that a finding of relevancy is equivalent to a finding of probable cause. We do not suggest, nor is there a need for, a new rule to determine relevancy. Relevancy and relevant evidence have been determined by Florida courts to be "evidence tending to prove or disprove a material fact." Charles W. Ehrhardt, Florida Evidence § 90.401 (1992).

*Id.* at 74 (internal citations omitted). The issue for this Court to determine is whether the medical records are relevant, meaning that the records would tend to prove or disprove a material fact.

Several of the records are relevant and should be disclosed. Any injuries received that night would clearly be relevant to a self-defense claim, as would any similar injuries present before that night or continuing symptoms after that night. Observations of the Defendant's physical appearance surrounding the date of the shooting may also be relevant. However, other medical reports relating to the treatment of unrelated maladies should not be disclosed. This Court has reviewed the complete medical file and redacted those irrelevant and confidential materials. The remaining

materials should be disclosed to the State under seal, as they remain confidential and should not be further disclosed.

**ORDERED AND ADJUDGED:**

1. The attached redacted medical records shall be provided under seal to counsel for the State and for the Defendant. A sealed copy of these records shall be filed with the Clerk of the Court.
2. An unredacted copy of the records shall also be filed under seal with the Clerk of the Court.
3. These records shall remain confidential and shall not be further disclosed without leave of court.

**DONE AND ORDERED** in chambers at Sanford, Seminole County, Florida this 26 day of October, 2012.


  
DEBRA S. NELSON, Circuit Judge

Copies furnished this 26 day of October, 2012 to:

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JUDICIAL ASSISTANT