People v Doe

2024 NY Slip Op 24301 (2024) | Cited 0 times | New York Supreme Court | November 25, 2024

This case raises the issue of what materials should be available to the prosecutor by grand jury subpoena after a grand jury presentation has concluded. On August 27, 2024, the People subpoenaed a health care provider for the medical records of the defendant. When the subpoena was issued, the People were in the process of presenting the case against the defendant in the grand jury and anticipated a justification defense. The defendant had been arraigned on charges of attempted murder and robbery in the first degree. The defense had served cross grand jury notice at arraignment. From August 19-21, 2024, the case was presented in the Grand Jury. The defendant testified and claimed self-defense. On August 21, 2024, the Grand Jury voted an indictment charging the defendant with assault in the second degree and criminal possession of a weapon in the fourth degree.

On August 30, 2024, a representative from the health care provider sent a response to the judge who had signed the so-ordered subpoena. The letter stated that certified records responsive to the subpoena were enclosed for the court's review but noted that "the [p]atient's medical record is confidential and protected by the physician-patient privilege set forth in NY Civil Practice Law and Rules (CPLR) § 4504(a)." The letter went on to say: "[i]n the absence of a patient authorization or applicability of one of the statutory exceptions to the privilege, the record remains confidential." The letter concluded by requesting that the court review the record "in-camera" prior to sharing it with the District Attorney's Office.

This court received the letter and enclosures after the presentation to the grand jury had been concluded and the defendant was indicted on charges of assault in the second degree and criminal possession of a weapon in the fourth degree. The court contacted the People and inquired as to whether they had sought and whether the defendant had given consent to the release of his medical records. The People did not directly address the issue of the defendant's consent, but instead argued that the nature of the grand jury subpoena meant the records were "returnable directly to the People" and that "the defendant placed his medical condition at issue [*2]by asserting a justification defense." The court will now address the question of what of the defendant's medical information the People are entitled to pursuant to a so-ordered subpoena in the absence of the defendant's consent.

Applicable Law

As joint legal advisor to the Grand Jury along with the court, see CPL § 190.50(6), the People are authorized to determine their legitimate need for a subpoena of the defendant's medical records

without a HIPAA release, such as when the information would be relevant to a justification defense in the grand jury. In this case, a court so-ordered the People's subpoena for medical records, signaling the court's concurrence in the People's judgment. While a defendant may argue that fairness dictates that s/he be advised of the subpoena, see People v. Lomma, 35 Misc 3d 395 (Sup Ct NY Co 2012), there is no legal requirement that this information be shared.

After the Grand Jury has voted an indictment, however, the prosecutor's role as legal advisor ceases and the subpoena becomes subject to CPL § 610.25, which provides,

Subpoenas are generally part of the processes of the courts, not the parties. People v. Natal, 75 NY2d 379 (1990). The court must oversee the subpoena process even when it has been properly initiated by the District Attorney according to its role as the legal advisor to a Grand Jury. When the Grand Jury's work is concluded because it has voted an indictment which has been filed in the supreme court, the good cause that existed at the time of the subpoena has abated. While the defendant here may choose to raise a justification defense at trial, discovery is not yet completed and a trial date has not been scheduled.

In a criminal proceeding, a prosecution subpoena must have a purpose beyond mere discovery or to ascertain the existence of evidence. See People v. Crean, 115 Misc 3d 526 (Sup Ct West Co 1982). See also People v. Magliore, 178 Misc 2d 489 (Crim Ct Kings Co 1998) (showing that subpoenaed documents carry potential for establishing relevant evidence insufficient). As the appellate court noted in 381 Search Warrants Directed to Facebook, 132 AD3d 11 (1st Dept 2015), aff'd, 29 NY3d 231 (2017), courts have imposed fairly narrow limits on the use of subpoenas for criminal discovery purposes. Although CPL 610.25 was amended in 1979 to allow the defendant (or the prosecution) to subpoena documentary and other physical evidence prior to trial (see L 1979, ch 413, § 3), the Court of Appeals has consistently held that a subpoena may not be used for the purposes of general discovery. Rather, the purpose of a subpoena is "to compel the production of specific documents that are relevant and material to facts at issue in a pending judicial proceeding'" (Matter of Terry D., 81 NY2d 1042 (1993), quoting Matter of Constantine v Leto, 157 AD2d 376 (3d Dept 1990]), affd 77 NY2d 975 (1991]); see also People v Gissendanner, 48 NY2d (1979)).

Further, both CPLR § 4504 and HIPAA protect the privacy of patients from unwarranted intrusions. CPLR § 4504 states: "[u]nless the patient waives the privilege, a person authorized to [*3]practice medicine . . . shall not be allowed to disclose any information which he acquired in attending a patient in a professional capacity, and which was necessary to enable him to act in that capacity." Although the CPLR governs civil practice, criminal courts have routinely cited it in decisions affirming the rights of patients who are also criminal defendants. See e.g., People v. Rivera, 25 NY3d 256 (2015) ("The issue on this appeal is whether the trial court's ruling ran afoul of the physician-patient privilege . . . [w]e hold that it did"); see also People ex. rel. Davis, 51 Misc 3d 849, 857 (Bronx County S. Ct. 2016) ("[R]egardless of whether a psychiatrist is required or permitted by law

to report instances of abuse or threatened future harm to authorities . . . it does not follow that such disclosure necessarily constitutes an abrogation of the evidentiary privilege a criminal defendant enjoys under CPLR 4504 (a)").

There are well-recognized exceptions to the physician-patient privilege. See People v. Rivera, 25 NY3d 256 (2015); Matter of Grand Jury Investigation of Onondaga County, 59 NY2d 130 (1983). As this court discussed in People v Marrero, 71 Misc 3d 1078 (SupCt NY Co 2021), these include "[d]isclosures for judicial and administrative proceedings." 45 C.F.R. § 164.512. Specifically, information can be disclosed "[i]n response to a subpoena, discovery request, or other lawful process, that is not accompanied by an order of a court or administrative tribunal, if "(A) the provider receives assurances of reasonable efforts to notify the individual whose information is sought, or (B) the provider receives assurances that the party seeking the information has made reasonable efforts 'to secure a qualified protective order' shielding notice of the request." Section 164.512 (e)(ii); People v Marrero, 71 Misc 3d at 1081 (New York County S. Ct. 2021). The People did neither "A" nor "B" here.

The People argue that "[i]t is incumbent upon the subpoenaed party to raise a challenge to the issuer's possession." Brunswick Hosp. Center, Inc. v. Hynes, 52 NY2d 333, 338-39 (1981). The People point out that the health care provider did not move to quash the subpoena. Although the health care provider was the subpoenaed party in this matter, it had no institutional interest in the materials, and no basis to challenge the subpoena from a court with jurisdiction to issue the subpoena. However, without moving to quash the subpoena, the provider did question it by reminding the court in its letter "that the Patient's medical record is confidential and protected by physician-patient privilege." Ex. 1. The court shares the concerns of the provider. As stated in Marrero, there are "troubling aspects to the [subpoena] process" and a court should question the necessity for overriding the defendant's HIPAA protections.

In the instant matter, the subpoenaed party communicated with the court days after being served the subpoena. The court then corresponded with the People and confirmed that the People did not provide the health provider with either of the assurances suggested by 45 C.F.R. § 164.512. Although the People served the subpoena on the provider prior to their presentation of the case against the defendant to the grand jury, the response came after the presentation had concluded and the grand jury returned an indictment. Therefore, while the defendant's medical records may have initially been necessary in order for the People to prepare for their grand jury presentation, the same cannot be said at present. In their correspondence with the court, the People cited Hirchfeld v. City of New York, 253 AD2d 53, 58 (1st Dept 1999), in support of the proposition that, "there is no requirement that the People open a Grand Jury proceeding prior to the return date of a Grand Jury subpoena, or that the subpoena's validity depends on the existence of a particular Grand Jury at any specific time." While this was indeed the holding of Hirchfield, the People fail to acknowledge that Hirchfield involved a very different scenario, where the subpoenaed hospital's finances were under investigation. As a result, there were no [*4]issues relating to privacy of individual patient medial records. Hirschfeld was also a pre-HIPAA case.

As this court wrote in Marrero, "[a]ll parties to litigation must be mindful of the purposes and policies behind HIPAA and the physician-patient privilege, and the limited uses for which medical records may been obtained." 71 Misc 3d 1078, 1085 (Sup Ct, NY Co 2021). Unless the People seek a defendant's medical records in order to 1) investigate a matter that the defendant has put at issue by asserting a particular defense; AND 2) a grand jury proceeding or trial is imminent, the court should exercise great caution. In the present matter, the Grand Jury proceeding is concluded and a trial date has not yet been set. Therefore, the court finds it premature to release the subpoenaed material. Once a trial date is set, the People may renew their application, and the court will notify the defendant's attorney and allow an opportunity for the parties to be heard.

The People's application is denied at this time. This is the decision and order of the court.