

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	NO. CR – 1348 - 2005
	:	
vs.	:	CRIMINAL DIVISION
	:	
TIMOTHY W. SCARBOROUGH,	:	
Defendant	:	Motion for Supplemental Discovery

OPINION AND ORDER

Before the Court is Defendant's Motion for Supplemental Discovery, filed April 7 2006. Argument on the motion was heard May 5, 2006. Counsel were thereafter provided the opportunity to submit briefs on the matter and Defendant filed a brief on May 11, 2006. The Commonwealth did not file a brief.

Defendant has been charged with aggravated indecent assault, statutory sexual assault, involuntary deviate sexual intercourse, corruption of minors and indecent assault. In the instant motion he indicates that the Commonwealth has provided certain psychological/psychiatric records of the alleged victim, and seeks follow-up records. At argument, the Commonwealth raised the psychologist/psychiatrist privilege of 42 Pa.C.S. Section 5944 and the confidentiality provision of the Mental Health Procedures Act, 50 Pa.C.S. Section 7111. It appears, however, inasmuch as both protections can be waived by the person subject to treatment, and that the provision in discovery of the initial documents by the Commonwealth is assumably based on such waiver, that neither statute serves to foreclose the further discovery sought by Defendant in the instant matter.

In Mitchell v. Sturm, 842 F. Supp. 158 (E.D. Pa. 1994), the Court held that Plaintiff's production to Defendant of a report from one psychologist which concerned the subject of a shooting (the focus of the civil action) constituted a waiver of the psychologist-client privilege over the subject of the shooting, and that another report issued by another professional concerning that same subject was thus discoverable. Further, in Rost v. State Board of Psychology, 659 A.2d 626 (Pa. Commw. 1995), the Court noted that where a plaintiff in a civil suit places her mental condition at issue, the psychologist-client privilege is waived as to that

condition. It thus appears that appellate authority looks to the subject matter in determining questions of waiver, rather than focusing on individual documents or care-givers.

Accordingly, to the extent that the records requested by Defendant in paragraph 2 of his motion exist, the Commonwealth will be directed to provide such to defense counsel. Should the Commonwealth feel that the records contain material which is not relevant, and therefore not discoverable on that basis, a motion for a protective order may be filed, and an in-camera review will be conducted.

ORDER

AND NOW, this 3rd day of August 2006, for the foregoing reasons, within thirty (30) days of the date of this Order, the Commonwealth is directed to provide¹ to defense counsel the records enumerated in paragraph 2 of Defendant's Motion for Supplemental Discovery, subject to the caveat noted above.

BY THE COURT,

Dudley N. Anderson, Judge

cc: DA
Ronald C. Travis, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson

¹ In the event the Commonwealth has yet to obtain such records from the respective record-holders, the assistant district attorney handling this matter is directed to obtain such in order to provide them to defense counsel.