

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
FOR PINELLAS COUNTY, FLORIDA
CRIMINAL DIVISION**

STATE OF FLORIDA,

CASE NO.: 23-03157-CF

v.

SECTION: K

THOMAS ISAIAH MOSLEY,

Person ID: 3322179, Defendant.

**ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT'S
OBJECTION TO ISSUANCE OF INVESTIGATIVE SUBPOENA**

ORDER PERMITTING, IN PART, DISCLOSURE OF MEDICAL RECORDS

This matter came before the Court for hearing¹ on April 18, 2023, on Defendant's Objection to Issuance of Investigative Subpoena No. 23-03157-CF-K filed April 11, 2023, pursuant to sections 395.3025 and 456.057, Florida Statutes. Having considered Defendant's Objection, the evidence and argument presented at the hearing, the record, and applicable law, the Court finds as follows:

THE OBJECTION

According to Defendant's Objection, he was arrested for two murders on March 31, 2023, while undergoing surgery at St. Anthony's Hospital. By letter dated April 4, 2023, the State Attorney noticed him of its intent to subpoena his medical records from St. Anthony's within fifteen days of the letter if no action was taken. In response, Defendant timely filed the instant objection arguing that his medical records are protected under state and federal constitutional rights to privacy. He contends that the government must demonstrate a compelling state interest before intruding into a fundamental privacy right. Further, he contends that the State has the burden of showing the subpoena is narrowly tailored to serve a legitimate purpose and that a clear connection exists between the alleged illegal activity and the requested records.

THE HEARING

At the hearing, the State showed the defense and the Court a copy of the proposed subpoena reflecting that the State is seeking the abstract version of medical records of the diagnosis and treatment of Thomas Isaiah Mosely commencing on or about March 29, 2023,

¹ The hearing was held in accordance with Hunter v. State, 639 So. 2d 72 (1994).

when he was admitted to the hospital. Specifically, the proposed subpoena sought blood and toxicology analyses, the names of all treating physicians and nurses, as well as the observations and notes of all treating physicians and nurses.

In support of the subpoena, the State introduced, over objection, a police bodycam video (State's Exhibit 1) of a statement by Lakita Jenson who is the mother of victim Pashun Jeffery. The video was recorded on March 30, 2023, the day Ms. Jeffery's body was discovered, and depicts Ms. Jenson stating that she and other family members were at the apartment sitting on the couch eating ice cream and smoking pot just hours before the murder. The State posited that Ms. Jenson's statements are relevant to and support its request for the blood and toxicology analyses because Ms. Jenson personally observed Defendant close in time to the crime.

The State also introduced, without objection, the Complaint/Arrest Affidavit for each of the murders (State's Exhibits 2 and 3). According to the State, the arrest affidavits support its request for the notes and observations of the physicians and nurses, including the statements they obtained in diagnosing and treating Defendant, because the arrest affidavits reflect the timeline of the events surrounding the murders. Specifically, they show that within hours of when he was last seen at the victims' apartment, Defendant arrived at the hospital with deep lacerations to both his hands and arms, which are consistent with injuries sustained due to knife slippage during a stabbing; that these deep lacerations were severe enough to require surgery; and that victim Ms. Jeffery was found deceased in her apartment with over 100 stab wounds.

Defendant argued that the State has a heavy burden to show a specific, closely tailored nexus between the records sought and the elements of the crime it must prove but no formal charges had yet been filed.² He contended that the request for *all* medical records was overly broad and that he would suffer irreparable harm if the subpoena is granted. Specifically, Defendant claims that there is no connection between the toxicology analysis and the elements of a murder charge and, because the arrest affidavits already reflect he had stab wounds to his hands and arms, the request for those medical records is cumulative. In the event the Court were to allow the subpoena to issue, Defendant asked for an *in camera* review of the hospital records before turning them over to the State.

² The Court notes that on April 27, 2023, the State filed an indictment charging Defendant with two counts of first-degree murder as well as its notice of intent to seek the death penalty.

LEGAL CONSIDERATIONS

“Before a subpoena can be issued to compel disclosure of a patient’s medical records, the patient must be given notice” and, if the patient objects, “the State has the burden to establish the relevancy of the medical records [that] it seeks to obtain. State v. Rivers, 787 So. 2d 952, 953 (Fla. 2d DCA 2001) (citing Hunter, 639 So. 2d at 74). “The right to privacy may be overcome by the showing of a compelling state interest ... which exists where there is a reasonable founded suspicion that the materials contain information relevant to an ongoing criminal investigation.” Id. The State satisfies its burden by showing that the materials sought are directly related to the offense with which the defendant is charged. Id. at 953-54. The State must “show a ‘nexus’ between the medical records the State seeks and some material issue in the case by (1) identifying some theory that reasonably makes the records relevant and (2) producing some evidence that makes it reasonable to expect that the records will produce evidence that supports the theory.” Gomillion v. State, 267 So. 3d 502, 507 (Fla. 2d DCA 2019) (citing Faber v. State, 157 So. 3d 429, 431 (Fla. 2d DCA 2015); McAlevy v. State, 947 So. 2d 525, 529 (Fla. 4th DCA 2006); Cerroni v. State, 823 So. 2d 150, 152 (Fla. 5th DCA 2002)).

Further, although the State must present evidence and argument to establish the requisite “nexus,” it is not required to “present live witness testimony or non-hearsay evidence” to meet its burden. McAlevy, 947 So. 2d at 529 (citing Hunter, 639 So. 2d at 72). And the fact that the medical records sought by the State may be cumulative to other incriminating evidence in its possession does not preclude execution and issuance of the investigative subpoena. Rivers, 787 So. 2d at 953-54.

ANALYSIS

As to the toxicology analysis, the Court finds that the State has not met its burden of demonstrating a reasonable founded suspicion that the toxicology analysis contains any information relevant to the ongoing criminal investigation in this case. The State’s evidence does not support a reasonable basis to expect that Defendant was under the influence of marijuana at the time of the murders. Specifically, in the bodycam video, Ms. Jenson stated only that she and other family members were smoking marijuana. She did not state or otherwise indicate that Defendant was also smoking marijuana. Moreover, intoxication is not an element of either of the murders and the State presented no evidence or argument to establish the relevancy of Defendant’s potential intoxication to this case. Without such evidence, the State has failed to

establish the nexus required to compel disclosure of the toxicology analysis. Accordingly, Defendant's objection as to disclosure of the toxicology analysis is granted. The granting of this objection is without prejudice to any right the State may have to seek disclosure of the toxicology analysis in the future by presenting testimony or other evidence demonstrating their relevance and the requisite nexus.

As to the remainder of the medical records sought, the Court finds the State has met its burden of demonstrating a reasonable founded suspicion that they contain information relevant to the ongoing criminal investigation. The two Complaint/Arrest Affidavits show that on March 29, 2023, Ms. Jeffery's family visited her at her apartment between the hours of 4:30 and 5:15 p.m. to celebrate Defendant's birthday and when they left the apartment, the only people still there were Ms. Jeffery, Defendant, and their two-year old son. Approximately four hours later, at around 9:00 p.m., Defendant arrived at his mother's home with severe lacerations to both of his hands and arms consistent with injuries caused by slippage during a knife attack. His family then transported him to St. Anthony's Hospital where he was admitted for treatment.

The arrest affidavits further show that on March 30, 2023, the victim's family went to her apartment to check on her and saw blood on the sidewalk leaving the apartment. The family called management who opened the apartment and found Ms. Jeffery deceased with over 100 knife wounds. A bottle of cleaning solution was found under a bed at the crime scene with a bloody fingerprint that was identified as belonging to Defendant. Also, a bloody shoe print with a "Gucci" emblem was located on the bathroom floor where the victim was found and this shoe print was consistent with the Gucci slides Defendant was reportedly wearing when he arrived at his mother's home on March 29, 2023. Phone records indicate that Ms. Jeffery's phone left the area of her apartment around 8:42 p.m. on March 29, 2023, and traveled to the vicinity of the home of Defendant's mother before he arrived around 9:00 p.m. Following his arrest, the Court found probable cause to detain Defendant.

The Court concludes that the medical records of Defendant's diagnosis and treatment on or about March 29, 2023, for injuries consistent with knife slippage during a stabbing attack are directly related to the State's investigation of the circumstances surrounding the death of Pashun Jeffery by multiple stab wounds. The fact that the medical records may include observations of Defendant's injuries that are in some way similar to the lacerations on Defendant's hands and

arms observed and reported by his family does not prevent execution and issuance of the investigative subpoena.

Likewise, the Court concludes that release of medical records of blood analysis is appropriate. Given Defendant's wounds, the blood observed at the scene, and the blood observed on the sidewalk, records of blood analysis can reasonably be expected to contain evidence showing that Defendant's blood matched some of the blood left at the scene of Ms. Jeffery's murder. Finally, the Court finds that an *in camera* inspection of Defendant's medical records and blood analysis is not necessary before disclosing the records to the State.

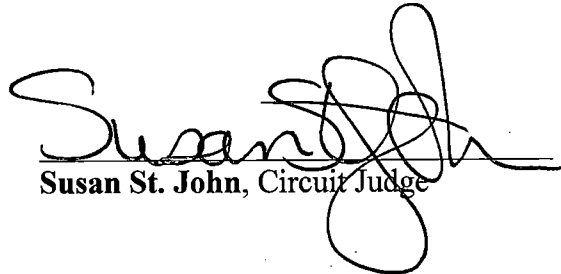
CONCLUSION

For the reasons set forth above, the Court concludes that Defendant's Objection should be granted in part and denied in part.

Accordingly, it is hereby **ORDERED** and **ADJUDGED** as follows:

- 1) Defendant's Objection to Issuance of Investigative Subpoena No. 23-03157-CF-K is **GRANTED in part and DENIED in part as set forth above.**
- 2) Disclosure of medical records in response to the investigative subpoena is **PERMITTED in part as set forth above.**

4th **DONE AND ORDERED** in Chambers in Clearwater, Pinellas County, Florida, this day of May, 2023. A true and correct copy of the foregoing has been provided to the persons listed below.


Susan St. John, Circuit Judge

cc: Office of the State Attorney
Office of the Public Defender