

SUPREME COURT OF NEW HAMPSHIRE

State v. Barka

150 N.H. 436 (2004) · Decided January 6, 2004

SUMMARY

The New Hampshire Supreme Court held that the State may overcome the physician-patient privilege to obtain medical records in a felony aggravated driving while intoxicated prosecution only upon a showing of compelling justification and the unavailability of reasonably available alternative evidence. The court rejected the argument that the physician-reporting statute independently authorized subpoenas for privileged medical records and established standards requiring admissibility, trial sufficiency, and substantial good-faith investigative efforts. The court vacated and remanded the trial court’s rulings in the Carta, Payne, and Barka matters, requiring notice to the defendant and in camera review before disclosure.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Chief Justice Broderick; Justice Dalianis; Justice Duggan; Justice Nadeau
JURISDICTION	New Hampshire
DECIDED	January 6, 2004
DISPOSITION	vacated
PROCEDURAL POSTURE	Interlocutory consolidated appeals from Superior Court orders allowing the State access to defendants’ privileged medical records to establish the serious-bodily-injury element of felony aggravated driving while intoxicated.
STANDARD OF REVIEW	The Supreme Court reviewed the legal standards governing abrogation of the physician-patient privilege and vacated because the trial court failed to make required findings concerning admissibility, sufficiency, and the State’s investigative efforts. The adequacy of investigative efforts is initially a question of fact for the trial court.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	St. Joseph’s Hospital, Scott Carta, Gregory E. Barka, Curtis Payne v. State of New Hampshire

TOPICS

criminal procedure

privilege

medical records privacy

statutory interpretation

evidence

PRACTICE AREAS

criminal procedure

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health law

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QUESTIONS PRESENTED

1. Whether RSA 631:6, the physician-reporting statute, authorizes the State to subpoena privileged medical records when it believes medical providers failed to report injuries caused by criminal acts.
2. What showing the State must make to obtain privileged medical records when the records are sought to establish the serious-bodily-injury element of a felony.
3. Whether the trial court properly determined that disclosure of each defendant's medical records was essential despite potentially available alternative evidence.
4. Whether a subpoena for privileged medical records must be served on the individual whose records are sought.
5. Whether the trial court must conduct an in camera review and limit disclosure when privileged medical records are ordered produced.

HOLDINGS

1. RSA 631:6 requires medical providers to report information concerning injuries they believe were caused by criminal acts, but it does not give the State unilateral authority to subpoena privileged medical records based on an alleged failure to comply with the reporting duty.
2. To establish essential need for privileged medical records, the requesting party must prove both that the information is unavailable from another source and that a compelling justification exists for disclosure.
3. The availability of alternative evidence must be evaluated by considering whether the evidence is admissible at trial, sufficient to overcome a motion for directed verdict, and sought through substantial, good-faith investigative efforts by the State.
4. The trial court's essentiality rulings were vacated because it failed to determine whether competent alternative evidence was admissible and sufficient at trial and whether the State had made substantial, good-faith efforts to investigate alternative sources.
5. Any subpoena issued to a hospital or medical provider to obtain privileged medical records must also be served on the individual whose records are sought.
6. When a party objects to production and the State establishes a legal right to override the physician-patient privilege, the trial court must conduct an in camera review and ensure that irrelevant, nonresponsive, and unnecessary medical information is not disclosed.

KEY QUOTATIONS

“To establish essential need, the party seeking the privileged records must prove both that the targeted information is unavailable from another source and that there is a compelling justification for its disclosure.”
(at 442)

“In determining whether a reasonable alternative source of information is available to the State for it to pursue criminal prosecution of the defendants without access to their medical records, we consider: (1) whether the alternative evidence is admissible at trial; (2) whether the alternative evidence is sufficient to overcome a motion for directed verdict; and (3) whether the State has made adequate efforts to investigate alternative sources.” (at 442-443)

“Invasion of the privilege can never be justified just because a defendant’s medical records might be the best evidence of “serious bodily injury” or provide the least burdensome means to pursue a felony prosecution.”
(at 443)

“Therefore, any subpoena issued to a hospital or medical provider to obtain privileged medical records must also be served upon the individual whose records are sought.” (at 447)

“Finally, we acknowledge our continuing obligation to carefully safeguard the statutory protection afforded the confidential relationship between physicians and patients.” (at 448)

FACTUAL BACKGROUND

Each defendant was injured in a motor vehicle or off-highway accident while allegedly operating under the influence of alcohol. Police and emergency personnel observed varying signs of injury, including lacerations, unconsciousness, immobilization, numbness, and reported fractures, but the State sought medical records to determine whether the injuries met the statutory definition of serious bodily injury. In the Carta and Payne matters, a grand jury subpoenaed the hospital records; in the Barka matter, the State obtained an indictment without the records and later subpoenaed them for trial. The defendants asserted the physician-patient privilege, and the State argued that disclosure was essential to investigate or prove felony aggravated driving while intoxicated.

PROCEDURAL HISTORY

The State sought subpoenas for the defendants’ hospital records. The defendants and hospital moved to quash, asserting the physician-patient privilege. The Superior Court ruled that disclosure was essential because police lacked sufficient opportunity to assess the injuries and no competent alternative source of dispositive information was available. The court stayed the proceedings for interlocutory appeals, which the Supreme Court accepted and consolidated.

DISPOSITION

vacated

REMAND INSTRUCTIONS

The trial court must reconsider each essentiality ruling, determine whether competent alternative evidence is admissible and sufficient to withstand a motion for directed verdict, assess whether the State made substantial, good-faith efforts to investigate alternative sources, and make explicit findings and rulings on each dispositive prong. Any subpoena for privileged medical records must be served on the individual whose records are sought, and any authorized production must undergo in camera review and be limited to information necessary to prove serious bodily injury.

CASES CITED

- Nelson v. Lewis, 130 N.H. 106, 109-110 (1987)
- State v. Elwell, 132 N.H. 599, 603, 605-606 (1989)
- State v. Kupchun, 117 N.H. 412, 415-416 (1977)
- State v. LaRoche, 122 N.H. 231, 233 (1982)
- In re Kathleen M., 126 N.H. 379, 382, 385-386 (1985)
- In re Brenda H., 119 N.H. 382, 384-386 (1979)
- In re Tracy M., 137 N.H. 119 (1993)
- McGranahan v. Dakar, 119 N.H. 758, 764 (1979)
- State v. Favreau, 134 N.H. 336, 339 (1991)
- State v. Brown, 132 N.H. 321, 328 (1989)
- State v. St. Arnault, 114 N.H. 216, 218 (1974)
- Moody v. Cunningham, 127 N.H. 550, 554 (1986)
- State v. Gagne, 136 N.H. 101, 105-106 (1992)
- State v. Williams, 142 N.H. 662, 665 (1998)
- Brewster Academy v. Town of Wolfeboro, 142 N.H. 382, 383 (1997)