

STATE OF MAINE
CUMBERLAND, ss.

2015 AUG 15 AM 9:43

UNIFIED CRIMINAL DOCKET
No. CR-15-1373

STATE OF MAINE

v.

ORDER

JON CIANCHETTE,

Defendant

Defendant has moved under Rule 17(d)¹ for the production from Spring Harbor and from David Hodgkins, LCSW of certain records that may be privileged. The proposed subpoenas attached to defendant's motion states that there are attachments listing the specific records that are sought but the attachments have not been included with the proposed subpoenas filed with the court.

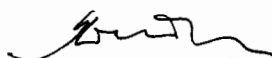
The proposed subpoenas also call for production at the offices of defendants' attorney instead of at the court for in camera inspection. Since there is no dispute that some or all of the records sought may be privileged, any records that are sought must be submitted for in camera inspection by the court before any disclosure to counsel. Moreover, the Law Court has held that subpoenas for counseling records that are sought solely because of the possibility that those records may contain impeachment material may be quashed without in camera review. *State v. Watson*, 1999 ME 41 ¶ 7, 726 A.2d 214. *See State v. Dube*, 2014 ME 43 ¶ 8, 87 A.3d 1219 (party seeking subpoena must show that subpoena is not a fishing expedition); *State v. Marroquin-Aldana*, 2014 ME 47 ¶ 34, 89 A.3d 519 (purpose of subpoena is not to expand the discovery rights of the parties).

¹ Where only records are sought rather than testimony, M.R.Crim.P. 18(f) may be applicable rather than Rule 17(d), but there is no material difference in the procedure involved.

Accordingly, the motion is denied without prejudice to resubmission with proposed subpoenas that (1) include the relevant attachments and (2) call for production at the court for possible in camera inspection. The court understands that there are other hearings scheduled for August 4 in this case. Another hearing date will have to be set for the motion in limine to allow a new proposed court order to be submitted and for proper subpoenas to be issued and for argument as to whether in camera review is called for or whether the subpoenas should be quashed under *Watson*.²

As the court understands it, the party requesting a subpoena must also provide notice to the person whose records are at issue. Unless that person expressly waives privilege, waiver will not be presumed but that person has a right to be heard if he or she wishes.

Dated: July 31, 2015



Thomas D. Warren
Justice, Superior Court

² If in camera review is ordered, the court will request the positions of the parties with respect to the determination of what material is privileged and what is non-privileged and whether and under what circumstances privileged material can be disclosed. M.R.Evid. 503 does not appear to contain any exception applicable to this situation.

STATE OF MAINE
vs
JON KENT CIANCHETTE
8 ORLANDO ST
SOUTH PORTLAND ME 04106

CRIMINAL DOCKET
CUMBERLAND, ss.
Docket No CUMCD-CR-2015-01373

DOCKET RECORD

DOB: 03/13/1958

Attorney: THOMAS HALLETT
HALLETT WHIPPLE PA
75 MARKET ST SUITE 502
PO BOX 7508
PORTLAND ME 04112-7508
RETAINED 06/08/2015

State's Attorney: MEGAN ELAM

Filing Document: CRIMINAL COMPLAINT
Filing Date: 03/11/2015

Major Case Type: FELONY (CLASS A,B,C)

Charge(s)

1	AGGRAVATED PROMOTION OF PROSTITUTION	09/01/2013	SOUTH PORTLAND	
Seq 782	17-A 852(1)(A)			Class B
ESTABROOK	/			CUM
2	AGGRAVATED SEX TRAFFICKING	10/09/2013	SOUTH PORTLAND	
Seq 12764	17-A 852(1)(A)			Class B
ESTABROOK	/			CUM
3	GROSS SEXUAL ASSAULT	09/01/2013	SOUTH PORTLAND	
Seq 638	17-A 253(2)(B)			Class B
ESTABROOK	/			CUM
4	PROMOTION OF PROSTITUTION	09/01/2013	SOUTH PORTLAND	
Seq 783	17-A 853(1)			Class D
ESTABROOK	/			CUM
5	SEX TRAFFICKING	10/09/2013	SOUTH PORTLAND	
Seq 12767	17-A 853(1)(A)			Class D
ESTABROOK	/			CUM
6	SEX TRAFFICKING	10/09/2013	SOUTH PORTLAND	
Seq 12767	17-A 853(1)(A)			Class D
ESTABROOK	/			CUM
7	SEX TRAFFICKING	10/09/2013	SOUTH PORTLAND	
Seq 12767	17-A 853(1)(A)			Class D
ESTABROOK	/			CUM
8	SEX TRAFFICKING	10/09/2013	SOUTH PORTLAND	
Seq 12767	17-A 853(1)(A)			Class D
ESTABROOK	/			CUM
9	SEX TRAFFICKING	10/09/2013	SOUTH PORTLAND	
Seq 12767	17-A 853(1)(A)			Class D
ESTABROOK	/			CUM
10	SEX TRAFFICKING	10/09/2013	SOUTH PORTLAND	
Seq 12767	17-A 853(1)(A)			Class D
ESTABROOK	/			CUM

Docket Events:

03/11/2015 FILING DOCUMENT - CRIMINAL COMPLAINT FILED ON 03/11/2015

03/11/2015 BAIL BOND - \$10,000.00 CASH BAIL BOND SET BY COURT ON 03/11/2015

PAUL E EGGERT, JUDGE

\$10,000 CASH BAIL & MPTS CONTRACT. NO CONTACT DIRECT OR INDIRECT WITH ANY VICTIMS/WITNESSES IN THIS CASE AND SHALL NOT ENTER OR GO UPON THE PREMISES OF ANY RESIDENCE OR PLACE OF EMPLOYMENT OF SAME. NO USE/POSSESSION OF ALCOHOL/MARIJUANA/ILLEGAL DRUGS OR DANGEROUS WEAPONS INCLUDING BUT NOT LIMITED TO FIREARMS AND SUBMIT TO RANDOM SEARCHES AND TESTING FOR SAME. NOTIFY THE COURT OF ANY CHANGE OF ADDRESS OR EMPLOYMENT. SHALL NOT HAVE ANY UNRELATED PERSONS RESIDING WITH HIM

03/11/2015 OTHER FILING - OTHER DOCUMENT FILED ON 03/11/2015

DA: MEGAN ELAM

STATE'S REQUEST FOR BAIL ON WARRANT

03/11/2015 MOTION - MOTION TO IMPOUND FILED BY STATE ON 03/11/2015

DA: MEGAN ELAM

MOTION TO IMPOUND COMPLAINT AND AFFIDAVIT IN SUPPORT OF ARREST WARRANT AND INTIAL DETERMINATION OF PROBABLE CAUSE.

03/11/2015 MOTION - MOTION TO IMPOUND GRANTED ON 03/11/2015

PAUL E EGGERT , JUDGE

IN PART - AFFIDAVIT IN SUPPORT OF ARREST WARRANT

03/11/2015 ORDER - COURT ORDER ENTERED ON 03/11/2015

PAUL E EGGERT , JUDGE

IT IS ORDERED THAT THE AFFIDAVIT IN SUPPORT OF ARREST WARRANT IN THIS MATTER BE IMPOUNDED, TO REMAIN UNDER SEAL UNTIL FURTHER ORDER OF THIS COURT OR ANOTHER COURT HAVING JURIDICITION IN THIS MATTER.

03/11/2015 WARRANT - \$10,000.00 ON AFFIDAVIT ORDERED ON 03/11/2015

PAUL E EGGERT , JUDGE

\$10,000 CASH BAIL & MPTS CONTRACT. NO CONTACT DIRECT OR INDIRECT WITH ANY VICTIMS/WITNESSES IN THIS CASE AND SHALL NOT ENTER OR GO UPON THE PREMISES OF ANY RESIDENCE OR PLACE OF EMPLOYMENT OF SAME. NO USE/POSSESSION OF ALCOHOL/MARIJUANA/ILLEGAL DRUGS OR DANGEROUS WEAPONS INCLUDING BUT NOT LIMITED TO FIREARMS AND SUBMIT TO RANDOM SEARCHES AND TESTING FOR SAME. NOTIFY THE COURT OF ANY CHANGE OF ADDRESS OR EMPLOYMENT. SHALL NOT HAVE ANY UNRELATED PERSONS RESIDING WITH HIM

03/11/2015 WARRANT - \$10,000.00 ON AFFIDAVIT ISSUED ON 03/11/2015

\$10,000 CASH BAIL & MPTS CONTRACT. NO CONTACT DIRECT OR INDIRECT WITH ANY VICTIMS/WITNESSES IN THIS CASE AND SHALL NOT ENTER OR GO UPON THE PREMISES OF ANY RESIDENCE OR PLACE OF EMPLOYMENT OF SAME. NO USE/POSSESSION OF ALCOHOL/MARIJUANA/ILLEGAL DRUGS OR DANGEROUS WEAPONS INCLUDING BUT NOT LIMITED TO FIREARMS AND SUBMIT TO RANDOM SEARCHES AND TESTING FOR SAME. NOTIFY THE COURT OF ANY CHANGE OF ADDRESS OR EMPLOYMENT. SHALL NOT HAVE ANY UNRELATED PERSONS RESIDING WITH HIM

03/11/2015 WARRANT - ON AFFIDAVIT EXECUTED BY AGENCY ON 03/11/2015 at 05:38 p.m.

03/16/2015 Party(s): JON KENT CIANCHETTE
ATTORNEY - RETAINED ENTERED ON 03/13/2015

Attorney: CLIFFORD STRIKE

03/16/2015 Charge(s): 1,2,3,4,5
HEARING - INITIAL APPEARANCE HELD ON 03/13/2015

MARY KELLY , JUDGE

Attorney: CLIFFORD STRIKE

DA: HANNAH MAY

Defendant Not Present in Court

03/16/2015 Charge(s): 1,2,3,4,5
PLEA - NO ANSWER ENTERED BY DEFENDANT ON 03/13/2015

03/16/2015 BAIL BOND - CASH BAIL BOND SET BY COURT ON 03/13/2015

MARY KELLY , JUDGE

\$7,500. W/ MPS CONTRACT AND CONDS.

03/16/2015 HEARING - DISPOSITIONAL CONFERENCE SCHEDULED FOR 05/26/2015 at 08:30 a.m. in Room No. 7

03/16/2015 TRIAL - JURY TRIAL SCHEDULED FOR 06/22/2015 at 08:30 a.m. in Room No. 11

NOTICE TO PARTIES/COUNSEL

03/16/2015 MOTION - MOTION TO IMPOUND VACATED ON 03/13/2015

MARY KELLY , JUDGE

03/18/2015 HEARING - BAIL HEARING SCHEDULED FOR 03/24/2015 at 01:00 p.m. in Room No. 1

NOTICE TO PARTIES/COUNSEL

03/18/2015 HEARING - BAIL HEARING NOTICE SENT ON 03/18/2015

03/20/2015 MOTION - MOTION TO AMEND BAIL FILED BY DEFENDANT ON 03/18/2015

Attorney: CLIFFORD STRIKE

03/25/2015 HEARING - BAIL HEARING HELD ON 03/24/2015

JEFF MOSKOWITZ , JUDGE

Attorney: CLIFFORD STRIKE

DA: MEGAN ELAM

Defendant Present in Court

TAPE 6720

MOTION GRANTED

NEW BAIL SET

03/25/2015 MOTION - MOTION TO AMEND BAIL GRANTED ON 03/24/2015

JEFF MOSKOWITZ , JUDGE

COPY TO PARTIES/COUNSEL

NEW CONDITIONS OF RELEASE ISSUED

03/25/2015 BAIL BOND - \$20,000.00 CASH BAIL BOND SET BY COURT ON 03/24/2015

JEFF MOSKOWITZ , JUDGE

Attorney: CLIFFORD STRIKE

DA: MICHAEL MADIGAN

\$20,000 CONCURRENT WITH 14-6224

WITH CONDITIONS

04/10/2015 Charge(s): 1,2,3,4,5,6,7,8,9,10

SUPPLEMENTAL FILING - SUPERSEDING INDICTMENT FILED ON 04/10/2015

JIM PAUL TURCOTTE , ASSISTANT CLERK

04/10/2015 Charge(s): 1,2,3,4,5,6,7,8,9,10

HEARING - ARRAIGNMENT SCHEDULED FOR 04/22/2015 at 01:00 p.m. in Room No. 1

04/10/2015 Charge(s): 1,2,3,4,5,6,7,8,9,10

HEARING - ARRAIGNMENT NOTICE SENT ON 04/10/2015

JIM PAUL TURCOTTE , ASSISTANT CLERK

04/23/2015 Charge(s): 1,2,3,4,5,6,7,8,9,10

HEARING - ARRAIGNMENT HELD ON 04/22/2015

ROLAND A COLE , JUSTICE

DA: JULIA SHERIDAN

Defendant Present in Court

DEFENDANT INFORMED OF CHARGES. 21 DAYS TO FILE MOTIONS

FTR #1

04/23/2015 Charge(s): 1,2,3,4,5,6,7,8,9,10

PLEA - NOT GUILTY ENTERED BY DEFENDANT ON 04/22/2015

04/23/2015 BAIL BOND - CASH BAIL BOND CONTINUED AS SET ON 04/22/2015

ROLAND A COLE , JUSTICE

05/11/2015 HEARING - DISPOSITIONAL CONFERENCE NOTICE SENT ON 05/11/2015

05/26/2015 HEARING - DISPOSITIONAL CONFERENCE HELD ON 05/26/2015

WILLIAM BRODRICK , JUSTICE

Attorney: CLIFFORD STRIKE

DA: ANGELA CANNON

CONF HELD, OFFER MADE. CASE UNRESOLVED. NEW DISPO DATE GIVEN: 6-10-15

05/26/2015 Charge(s): 1,2,3,4,5,6,7,8,9,10

HEARING - DISPOSITIONAL CONFERENCE SCHEDULED FOR 06/10/2015 at 08:30 a.m. in Room No. 7

05/27/2015 Charge(s): 1,2,3,4,5,6,7,8,9,10

HEARING - DISPOSITIONAL CONFERENCE NOTICE SENT ON 05/27/2015

06/09/2015 Party(s): JON KENT CIANCHETTE

ATTORNEY - RETAINED ENTERED ON 06/08/2015

Attorney: THOMAS HALLETT

06/09/2015 MOTION - MOTION TO CONTINUE FILED BY STATE ON 06/09/2015

TO CONTINUE DC 6-10-15.

06/10/2015 MOTION - MOTION TO CONTINUE GRANTED ON 06/10/2015

ROLAND A COLE , JUSTICE
COPY TO PARTIES/COUNSEL

06/10/2015 Charge(s): 1,2,3,4,5,6,7,8,9,10

HEARING - DISPOSITIONAL CONFERENCE CONTINUED ON 06/10/2015

ROLAND A COLE , JUSTICE
NEW DC.

06/10/2015 HEARING - DISPOSITIONAL CONFERENCE SCHEDULED FOR 06/24/2015 at 08:30 a.m. in Room No. 7

06/10/2015 TRIAL - JURY TRIAL CONTINUED ON 06/10/2015

06/11/2015 HEARING - DISPOSITIONAL CONFERENCE NOTICE SENT ON 06/11/2015

06/12/2015 MOTION - MOTION FOR WITHDRAWAL OF CNSL FILED BY COUNSEL ON 06/12/2015

Attorney: CLIFFORD STRIKE

06/12/2015 MOTION - MOTION FOR WITHDRAWAL OF CNSL GRANTED ON 06/12/2015

ROLAND A COLE , JUSTICE
COPY TO PARTIES/COUNSEL

06/12/2015 Party(s): JON KENT CIANCHETTE

ATTORNEY - WITHDRAWN ORDERED ON 06/12/2015

Attorney: CLIFFORD STRIKE

06/24/2015 HEARING - DISPOSITIONAL CONFERENCE HELD ON 06/24/2015

ROLAND A COLE , JUSTICE

Attorney: THOMAS HALLETT

DA: MEGAN ELAM

HELD- OFFER MADE - SET FOR ANOTHER DISPO 7-22-15

06/24/2015 TRIAL - JURY TRIAL SCHEDULED FOR 09/14/2015 at 08:30 a.m. in Room No. 11

NOTICE TO PARTIES/COUNSEL

06/24/2015 Charge(s): 1,2,3,4,5,6,7,8,9,10

HEARING - DISPOSITIONAL CONFERENCE SCHEDULED FOR 07/22/2015 at 08:30 a.m. in Room No. 7

07/10/2015 BAIL BOND - CONCURRENT BAIL BOND FILED ON 07/09/2015

BAIL IS CONCURRENT TO CUMCDCR201406224 HAVING BAIL ID YII956 AS PRIMARY.

07/22/2015 Charge(s): 1,2,3,4,5,6,7,8,9,10

HEARING - DISPOSITIONAL CONFERENCE HELD ON 07/22/2015

JOYCE A WHEELER , JUSTICE

Attorney: THOMAS HALLETT

DA: MEGAN ELAM

TWO MOTION DATES WILL BE NEEDED. JURY SELECTION GIVEN NEW DATE. MOTIONS TO BE FILED.

07/22/2015 TRIAL - JURY TRIAL CONTINUED ON 07/22/2015

JOYCE A WHEELER , JUSTICE

07/22/2015 TRIAL - JURY TRIAL SCHEDULED FOR 11/16/2015 at 08:30 a.m. in Room No. 11

NOTICE TO PARTIES/COUNSEL

07/29/2015 Charge(s): 1,2,3,4,5,6,7,8,9,10

MOTION - MOTION TO SEVER CHARGE FILED BY DEFENDANT ON 07/27/2015

COUNTS

07/29/2015 Charge(s): 1,2,3,4,5,6,7,8,9,10

HEARING - MOTION TO SEVER CHARGE SCHEDULED FOR 10/06/2015 at 01:00 p.m. in Room No. 1

NOTICE TO PARTIES/COUNSEL

07/29/2015 Charge(s): 1,2,3,4,5,6,7,8,9,10

HEARING - MOTION TO SEVER CHARGE NOTICE SENT ON 07/29/2015

07/29/2015 MOTION - MOTION FOR DISCOVERY FILED BY DEFENDANT ON 07/27/2015

07/29/2015 HEARING - MOTION FOR DISCOVERY SCHEDULED FOR 08/04/2015 at 01:00 p.m. in Room No. 1

NOTICE TO PARTIES/COUNSEL

07/29/2015 HEARING - MOTION FOR DISCOVERY NOTICE SENT ON 07/29/2015

07/29/2015 MOTION - MOTION TO SUPPRESS EVIDENCE FILED BY DEFENDANT ON 07/27/2015

AND MOTION TO DISMISS.

07/29/2015 HEARING - MOTION TO SUPPRESS EVIDENCE SCHEDULED FOR 08/04/2015 at 01:00 p.m. in Room No. 1

NOTICE TO PARTIES/COUNSEL

07/29/2015 HEARING - MOTION TO SUPPRESS EVIDENCE NOTICE SENT ON 07/29/2015

07/29/2015 MOTION - MOTION FOR DISCOVERY FILED BY DEFENDANT ON 07/27/2015

EXPERT'S WITNESS

07/29/2015 HEARING - MOTION FOR DISCOVERY SCHEDULED FOR 08/04/2015 at 01:00 p.m. in Room No. 1

NOTICE TO PARTIES/COUNSEL

07/29/2015 HEARING - MOTION FOR DISCOVERY NOTICE SENT ON 07/29/2015

07/29/2015 ORDER - COURT ORDER ENTERED ON 07/29/2015

THOMAS D WARREN , JUSTICE

DEFENDANT'S MOTION IN LIMINE FOR PRIVILEGED OR PROTECTED DOCUMENTARY EVIDENCE TO BE PRODUCED FOR INCAMERA INSPECTION BY THE COURT IS GRANTED WITH THE AMENDMENT THAT THE SUBPOENA RECORDS SHALL NOT BE PRODUCED AT THE OFFICES OF DEFENDANT'S ATTORNEY BUT SHALL BE PRODUCED FOR INCAMERA INSPECTION.

08/03/2015 MOTION - MOTION IN LIMINE, RULE 17 FILED BY DEFENDANT ON 08/03/2015

08/03/2015 ORDER - COURT ORDER FILED ON 08/03/2015

THOMAS D WARREN , JUSTICE
ORDER ON MOTION IN LIMINE UNDER RULE 17D.

08/03/2015 MOTION - MOTION IN LIMINE, RULE 17 DENIED ON 08/03/2015

THOMAS D WARREN , JUSTICE
DENIED WITHOUT PREJUDICE TO RESUBMISSION WITH PROPOSED SUBPOEANAS THAT INCLUDE THE RELEVANT ATTACHMENTS AND CALL FOR PRODUCTION AT THE COURT FOR POSSIBLE INCAMERA INSPECTION. THE COURT UNDERSTANDS THAT THERE ARE OTHER HEARINGS SCHEDULED FOR 8-4 IN THIS CASE. ANOTHER HEARING DATE WILL HAVE TO BE SET FOR THE MOTION IN LIMINE TO ALLOW A NEW PROPOSED COURT ORDER TO BE SUBMITTED AND FOR PROPER SUBPOENAS TO BE ISSUED & FOR ARGUMENT AS TO WHETHER INCAMERA REVIEW IS CALLED FOR OR QUASHED. SEE ORDER

A TRUE COPY

ATTEST: _____
Clerk