

DOCKET NO: CR11-0128328-S : SUPERIOR COURT
: :
STATE OF CONNECTICUT : JUDICIAL DISTRICT OF STAMFORD
: :
VS. : AT NORWALK
: :
DUANE T. DOUDEL : APRIL 5, 2012

**MOTION FOR COURT APPROVAL
TO PROVIDE P.B. § 40-13A DISCLOSURE TO DEFENDANT**

The Defendant Duane T. Doutel (“Doutel”), by and through his undersigned attorney and pursuant to Connecticut Practice Book (P.B.), § 40-10, hereby moves for court approval to disclose copies of materials to Doutel, already disclosed to his attorney pursuant to P.B. § 40-13A, for use by Doutel to provide notice and information to the public of public concern.¹

I. BACKGROUND

(1) Officer Jared Zwickler of the Norwalk Police Department prepared a case/incident report in support of Doutel’s February 16, 2011, arrest for Threatening.²

¹ P.B. § 40-10, “Discovery in General – Custody of Materials,” provides: “(a) Any materials furnished to counsel pursuant to this chapter, including statements, reports and affidavits disclosed pursuant to Section 40-13A, shall be used only for the purposes of conducting such counsel's side of the case or for the performance of his or her official duties, and shall be subject to such other terms and conditions as the judicial authority may provide. Without the prior approval of the prosecuting authority or the court, defense counsel and his or her agents shall not provide copies of materials disclosed pursuant to Section 40-13A to any person except to persons employed by defense counsel in connection with the investigation or defense of the case. (b) The prosecuting authority is not required to disclose to an unrepresented defendant the names and addresses required by Section 40-13 unless the court orders disclosure upon a finding of need which cannot reasonably be met by other means. Before other materials are disclosed or provided to an unrepresented defendant pursuant to this chapter, the prosecuting authority may request and the court may order that the materials remain in the defendant's exclusive custody to be used only for the purpose of conducting the case, subject to such terms, conditions and restrictions that the court, in its discretion, may impose. The court shall also inform the unrepresented defendant that violation of an order issued under this subsection is punishable as a contempt of court.”

² The Threatening charge, a Class A misdemeanor which carries a maximum one year period of incarceration, was later reduced by the state to Harassment, a Class C misdemeanor which carries a maximum three month period of incarceration.

**ORAL ARGUMENT REQUESTED
TESTIMONY NOT REQUIRED**

(2) Officer Zwicker indicates in his report that he spoke to the following individuals in the course of his investigation: (a) Dr. Igal Staw, a physician at Internal and Respiratory Associates in Norwalk (“medical office”); (b) Janine Roy (“Roy”), medical office receptionist/ office manager³; and (c) Sandy Staw, medical office coordinator.

(3) According to Officer Zwickler’s report: “Roy stated that she had been advised by other staff that Doutel carries a gun with him to each visit. Roy stated Doutel often brandishes the firearm and sets it on the counter, and discuss [sic] it with Dr. Staw.”

(4) Officer Zwicker did not obtain a written statement from Janine Roy; however, at an August 22, 2011, hearing, Janine Roy testified under Oath that she had never seen Doutel bring a firearm to the medical office or anywhere else, that Sandy Staw had never talked to Roy about Doutel bringing a firearm to the medical office, and that it was Dr. Staw who had told Roy about an occasion when he observed a firearm beneath a hat after the hat was moved.⁴

³ In his report, Officer Zwickler refers to Janine Roy as an office manager. In her August 22, 2011, testimony the medical office coordinator and Dr. Staw’s wife, Sandy Staw, refers to Janine Roy as a receptionist. See n. 4, below.

⁴ In her testimony on August 22, 2011, at a hearing held on Doutel’s Motion to Vacate Temporary Order. Janine Roy testified as follows:

Q: Have you -- during the time that you've known Mr. Doutel as a patient there at the office, have you seen him bring a firearm onto the premises?
A: I have not seen it myself, no.
Q: Okay. So you've never seen Mr. Doutel with a firearm?
A: No.
Q: And do you know whether he ever brought a firearm onto the premises?
A: Yes. Oh, I've been told that he had it a few times.
Q: Okay. And without telling me what the person said or didn't say to you, who told you that information?
A: I -- I don't know.
Q: Okay. Would it have been Dr. -

(5) In a written statement given by Dr. Staw to Officer Zwickler on February 16, 2011, Dr. Staw states: "In the last few visits, Mr. Doutel came into the office with a revolver. In the last visit he placed his hat on the counter in the exam room, with the gun under his hat. I asked him about the hat (just making conversation), and he told me his gun was underneath. I saw the gun after moving the hat a few inches."

(6) At an August 22, 2011, hearing, Dr. Staw testified that he observed a firearm on February 7, 2011, under a hat on a counter in room number two of his medical office, that Doutel never picked the firearm up while in the presence of Dr. Staw, and that Dr. Staw never told Doutel that he could not bring a firearm into the medical office.⁵

A: It may have been -- it was Dr. Staw. I know at least the one time when the hat was moved, that it was Dr. Staw.

Q: Okay. Did Sandy Staw ever talk to you about Mr. Doutel bringing a firearm onto the premises?

A: No.

Q: Is there a policy at the medical office with regard to bringing firearms onto the premises?

A: Well, no.

08/22/2011 Hr'g Tr. at 46:6 – 27.

⁵ In his testimony on August 22, 2011, at a hearing held on Doutel's Motion to Vacate Temporary Order. Dr. Staw testified as follows:

Q: And what do you remember in detail, if you can tell me everything you remember about seeing that firearm with Mr. Doutel on February 7, 2011?

A: The firearm was under a hat on a counter in room number two in my office.

Q: Okay. And how did you come to see the firearm under a hat in room number two of your office?

A: I don't remember who removed or partially removed the hat, but somehow the hat was removed and I saw it.

08/22/2011 Hr'g Tr. at 7:19-27.

Q: Okay. And when you went into room number two of your office and saw the firearm because the hat on top of it was partially moved, what did you do?

A: I said it's a firearm.

Q: Did you talk to Mr. Doutel about the firearm that you saw in room number two?

A: Yes. He told me that it's a firearm. Its licensed. He's allowed to carry and that's what it is.

Q: Okay. And did Mr. Doutel pick the firearm up in front of you that day?

A: Not in front -- I don't remember him picking it up in front of me, no.

Q: Okay. Did he threaten you with the firearm that day?

A: No.

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(7) In a written statement given by Sandy Staw to Officer Zwickler on February 16, 2011, Sandy Staw states: "Mr. Doutel is known to carry a gun into the office during his visits & place [sic] it on a table under his hat. He typically alerts the physician that he has a firearm & has a permit to carry it."⁶

(8) At an August 22, 2011, hearing, Sandy Staw testified that she never spoke to Janine Roy about Doutel bringing a firearm to the medical office, that she only knew that Doutel brought the firearm into the medical office because Dr. Staw told her, and that she was not aware that Doutel had brought the firearm to the medical office on February 7, 2011.

Q: And did your office have any policy that prohibited individuals from bringing firearms into your office?

A: No. We don't expect it.

08/22/2011 Hr'g Tr. at 8:1-14, 21-23.

Q: And when you knew that he had the firearm, at least two times prior to February 7, 2011, did you -- did you discuss making a policy at that time that firearms not be brought in your office?

A: No.

Q: Did you ever tell Mr. Doutel do not bring a firearm to this office again?

A: No.

Q: Did you, prior to February 7th or on February 7th call 12 the police when you saw Mr. Doutel with a firearm in your office?

A: No.

08/22/2011 Hr'g Tr. at 9:3-14.

⁶ In her testimony on August 22, 2011, at a hearing held on Doutel's Motion to Vacate Temporary Order. Sandy Staw testified as follows:

Q: Has anyone ever spoke to you about Mr. Doutel bringing a firearm into the medical practice?

A: I know that he has brought it in, yes.

Q: And how do you know that?

A: My husband told me.

Q: Okay. And when -- when did your husband first tell you that Mr. Doutel brought a firearm into the practice?

A: I don't remember.

Q: Do you recall Mr. Doutel bringing a firearm into the medical office on February 7th , 2011?

A: I don't, no.

Q: And is there a person that works in the medical office named Jeanine Roy?

A: Correct. And what is her capacity in the office?

A: She's a receptionist.

Q: Did Ms. Roy ever come to you and talk to you about Mr. Doutel bringing a firearm into the practice?

A: No.

(9) In taking Dr. Staw's statement and presenting it to the court for prosecution, Officer Zwickler failed to include in his report Dr. Staw's felony conviction for a crime of moral turpitude against the United States Government, i.e. fraud and dishonesty.⁷

II. ARGUMENT

A. Statement #1 Falsely Attributed to Janine Roy By Officer Zwickler

Officer's Zwickler represents in his report that he was told by Janine Roy that "she had been advised by other office staff that Doutel carries a gun with him to each visit." Janine Roy and Sandy Staw each testified on August 22, 2011, that they never discussed Doutel bringing a firearm into the medical office. Janine Roy testified on August 22, 2011, that Dr. Staw informed her of one occasion when Doutel brought a firearm into the medical practice when it was observed under a hat and that perhaps there were a couple times that Doutel brought a firearm to the medical practice.

B. Statement #2 Falsely Attributed to Janine Roy By Officer Zwickler

Officer Zwickler represents in his report that he was told by Janine Roy that Doutel "often brandishes the firearm and sets it on the counter, and discuss [sic] it with Dr. Staw." Janine Roy testified at the August 22, 2011, hearing that she never saw Doutel with a firearm. If Janine Roy never saw Doutel with a firearm then she never saw him brandishing a firearm.

08/22/2011 Hr'g Tr. at 29:19-27.

⁷ See attached United States Attorney's Office District of Connecticut Press Release dated May 23, 2008, "WESTPORT DOCTOR CONVICTED OF HEALTH CARE FRAUD PAYS MORE THAN \$421,000 IN RESTITUTION, CIVIL DAMAGES." Although the Press Release states that Dr. Staw engaged in a scheme to defraud the United States Government by falsely representing physical therapy sessions, nutritional counseling sessions, and massage therapy sessions rendered by non-physician providers as physician office visits there is no

Dr. Staw testified at the August 22, 2011, hearing that he knew of one and perhaps two other occasions when Doutel brought a firearm to the medical office but Dr. Staw never testified or made a statement that the firearm had been brandished.

III. CONCLUSION

A police officer's veracity, or lack, is a matter of public concern and safety. Doutel has been charged in this case with a crime and borne that stigma for more than a year while awaiting trial. Notice of Doutel's arrest was posted without his consent at the State of Connecticut's Judicial Branch web site for the entire world to view following his initial appearance in court.

Testimony was elicited from Dr. Staw, Sandy Staw, and Janine Roy during an August 22, 2011, hearing showing that Officer Zwickler fabricated his police report by falsely attributing two statements to Janine Roy. Similar to the public scrutiny that Doutel has been placed under because of the public nature of his arrest and prosecution, information about the arresting officer's conduct should be available to the public as notice of the conduct engaged in by state and local officials in the name of the people they serve.

indication that his wife Sandy Staw, the office coordinator, or Janine Roy, the officer manager, were ever charged with participating in the fraudulent scheme.

DEFENDANT
DUANE T. DOUDEL



BY:

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ORDER

The foregoing motion having been duly heard, it is hereby, **GRANTED/DENIED**.

BY THE COURT

Judge/Clerk of the Superior Court

CERTIFICATION OF SERVICE

Pursuant to Practice Book § 10-14, I hereby certify that a copy of the above was transmitted by facsimile / hand-delivered on April 5, 2012, to all counsel as listed below:

Tiffany Lockshier, A.S.A.
Office of the State's Attorney
17 Belden Ave
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Rachel M. Baird
Commissioner of the Superior Court



United States Attorney's Office District of Connecticut Press Release

May 23, 2008

WESTPORT DOCTOR CONVICTED OF HEALTH CARE FRAUD PAYS MORE THAN \$421,000 IN RESTITUTION, CIVIL DAMAGES

Nora R. Dannehy, Acting United States Attorney for the District of Connecticut, announced that Dr. IGAL STAW, 70, of Stony Brook Road, Westport, was sentenced today by Senior United States District Judge Peter C. Dorsey in New Haven to two years of probation for engaging in health care fraud. STAW pleaded guilty to the offense on December 11, 2007.

According to documents filed with the Court and statements made in court, STAW owned and operated two medical practices, *Respiratory Associates* and *Health Extenders*, located on East Avenue in Norwalk, Connecticut. From June 1, 2004 through June 1, 2006, STAW submitted claims to insurance companies for physical therapy sessions, nutritional counseling sessions, and massage therapy sessions, which were rendered by non-physician providers at his medical practices. In order to obtain reimbursement of these services, STAW falsely represented that these services were physician office visits. STAW has admitted that the scheme caused a loss of \$171,225.81 to insurance companies, and he has paid full restitution of that amount.

STAW and *Respiratory Associates* also have entered into civil settlement agreement with the Government in which *Respiratory Associates* has paid an additional \$250,000 to resolve allegations that STAW and *Respiratory Associates* violated the False Claims Act. The civil allegations involved claims submitted to Medicare between 2000 and 2006 for physician office visits that were rendered by non-physician providers. The civil allegations also involved claims for physical therapy services provided by exercise physiologists and massage therapists (not by licensed physical therapists), as well as claims for services provided by an individual who had previously been excluded from Medicare and Medicaid.

The False Claims Act provides for treble damages and penalties of \$5,500 to \$11,000 per false claim submitted to the Government.

This investigation was conducted by agents from the Office of the Inspector General of the U.S. Department of Health and Human Services, and the FBI Health Care Fraud Task Force. The case was prosecuted by Assistant United States Attorneys David J. Sheldon and Richard M. Molot, along with Auditor Kevin Saunders.

Acting U.S. Attorney Dannehy encouraged individuals who suspect health care fraud to report it by calling 1-800-HHS-TIPS, or the Health Care Fraud Task Force at (203) 785-9270.