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### THE PSYCHOLOGICAL RECORDS OF THE CRIME VICTIM

*by Jay C. Howell*

In a recent Florida case, the defendant was charged with attempted murder for beating the victim, his girlfriend, nearly to death with a tire iron, and with ramming the police vehicle of the officers who attempted to apprehend him the following day.

During the course of the criminal prosecution, the attorneys for the defendant took the deposition of the victim and asked her about prior incidents of domestic violence. She testified that in connection with a prior incident of domestic violence, she told her treating psychiatrist that she had been beaten by two unknown males. She testified that she did this because she did not want to disclose that the defendant, her boyfriend, had beaten her.

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The defendant then asked the trial court for a subpoena to the victim's psychiatrist, requiring disclosure of all the victim's psychiatric records. In making their motion, the defense attorneys argued that the information in the psychiatric files either demonstrated the defendant's innocence or went to the credibility of the victim's testimony. The trial judge ruled that the psychiatrist's files regarding the victim should be disclosed to the judge privately, or what the law calls "in camera." The judge would then make the determination whether to release any of the records to the defense. The state appealed the judge's decision to the District Court of Appeal, because the State Attorney felt that the victim's records should not even be disclosed to the Judge. The appellate court, after satisfying itself that the state did have standing, or the right to bring the case to an appeal court, declared that the Florida Evidence Code did **not** contain any provisions which would allow the defendant to invade the victim's communications because those communications are protected by the psychotherapist-patient privilege. Under our Evidence Code, the patient has the privilege to refuse to disclose, and prevent any person from disclosing, confidential communications made for the purpose of diagnosis or treatment of a mental or emotional condition.

The defendant tried to convince the appeal court that the psychotherapist-patient confidentiality may be invaded under the federal constitutional rights of the accused. The appellate court rejected the claims of the defendant and concluded that nothing in the Evidence Code nor the constitutional rights of the accused allowed the invasion of the victim's privileged communications with her psychotherapist. The court concluded that the defendant had no legal right to access her medical records.

The trial court's order was overruled and the case was certified to the Florida Supreme Court, because a previous decision of another Florida appellate court conflicted with the court's decision in this case. In that case, another appeals court ruled that the accused **may** be able to gain access to the victim's

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psychological records if he could show that there was a very good reason why he needed them. This means that the Florida Supreme Court will resolve the conflict and we hope they will follow the analysis that decided this case.

The case is *State of Florida vs. Famiglietti*, decided by the Third District Court of Appeal on May 8, 2002. That case can be found in legal publications at 817 So.2d 901.