



2008

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Recommended Citation

Desai, Neal (2008) "Recent Developments: State v. Coates: Statements Made to a Medical Care Provider Are Not Admissible under the Statements Made for Medical Diagnosis or Treatment Hearsay Exception When the Declarant Was Unaware of the Purpose of the Statement," *University of Baltimore Law Forum*: Vol. 39 : No. 1 , Article 18.

Available at: <http://scholarworks.law.ubalt.edu/lf/vol39/iss1/18>

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RECENT DEVELOPMENT

STATE V. COATES: STATEMENTS MADE TO A MEDICAL CARE PROVIDER ARE NOT ADMISSIBLE UNDER THE STATEMENTS MADE FOR MEDICAL DIAGNOSIS OR TREATMENT HEARSAY EXCEPTION WHEN THE DECLARANT WAS UNAWARE OF THE PURPOSE OF THE STATEMENT.

By: Neal Desai

The Court of Appeals of Maryland held that statements made to a nurse practitioner during examination were not admissible under the hearsay exception for statements made for medical diagnosis or treatment because the declarant did not know the statements were being made for medical diagnosis or treatment. *State v. Coates*, 405 Md. 131, 950 A.2d 114 (2008). More specifically, the court stated that there is a lack of reliability in such statements, and therefore, the hearsay exception is inapplicable. *Coates*, 405 Md. at 147, 950 A.2d at 124.

In September 2002, Kimberly Jenkins (“Jenkins”) was involved in a romantic relationship with Frederick Roscoe Coates (“Coates”). When away from home, Jenkins often left Coates alone to take care of her daughter, Jazmyne T. (“Jazmyne”). Approximately one year later, it was discovered that Coates had sexually abused Jazmyne. Jazmyne was examined and interviewed by Heidi Bresee (“Bresee”), a nurse practitioner, to obtain a patient history and to conduct an external vaginal examination. During the interview, Jazmyne told Bresee, among other things, that Coates “put his private inside her private.” After the interview and examination, Jazmyne asked Bresee, “Are you going to go out and find him now?”

On October 7, 2004, the Grand Jury for Montgomery County indicted Coates on counts of second-degree rape and other related offenses. Coates filed a motion in limine, asking the circuit court to exclude Bresee’s testimony. The court denied the motion, and Bresee testified at trial. On May 25, 2005, the jury for the Circuit Court of Montgomery County found Coates guilty. Coates appealed to the Court of Special Appeals of Maryland, which reversed, ruling that Bresee’s testimony was improperly admitted and prejudicial. The

State filed a petition for writ of certiorari to the Court of Appeals of Maryland, and the court granted the petition.

The hearsay exceptions derive from the common law theory that certain out-of-court statements have a minimal risk of inaccuracy and untrustworthiness. *Coates*, 405 Md. at 141, 950 A.2d at 121 (citing 5 JOHN HENRY WIGMORE, EVIDENCE IN TRIALS AT COMMON LAW § 1420 at 251 (Chadbourn rev. ed. 1974)). The Court of Appeals of Maryland addressed the admissibility of Bresee's testimony under the hearsay exception in Maryland Rule 5-803(b)(4). *Coates*, 405 Md. at 141, 950 A.2d at 120. Under the Maryland rule, statements made for medical treatment or diagnosis are admissible if the declarant describes medical history, symptoms, pain, or the general character of the cause as reasonably pertinent to treatment or diagnosis in contemplation of treatment. *Coates*, 405 Md. at 141, 950 A.2d at 121 (citing Md. Rule 5-803(b)(4)). This exception does not apply to cases where a non-treating physician is merely preparing to testify on the patient's behalf. *Coates*, 405 Md. at 142, 950 A.2d at 121 (citing *Candella v. Subsequent Injury Fund*, 277 Md. 120, 124, 353 A.2d 910, 914-15 (2003); *Yellow Cab Co. v. Hicks*, 224 Md. 563, 571, 168 A.2d 501, 505 (1961)).

The court agreed with the intermediate appellate court, in that Bresee, in addition to having a cognizable medical reason for interviewing Jazmyne, also had a forensic purpose. *Coates*, 405 Md. at 143, 950 A.2d at 123. The court stated that the existence of dual medical and forensic purposes for an examination does not automatically disqualify an otherwise admissible statement under Maryland Rule 5-803(b)(4). *Id.* at 143, 950 A.2d at 122 (citing *Webster v. State*, 151 Md. App. 527, 546, 827 A.2d 910, 921 (2003)). However, the court conclusively noted that the overarching purpose Bresee had was investigatory in nature rather than related to medical concerns. *Coates*, 405 Md. at 143, 950 A.2d at 122.

Next, the court looked to whether the declarant believed there was a medical purpose for the examination. *Id.* at 144, 950 A.2d at 122. The court stated that the facts do not support a finding that Jazmyne would have understood that she was being seen for medical treatment or diagnosis because the interview with Bresee took place fourteen months after the last sexual-abuse incident and three weeks after her disclosure of the incident to her mother. *Id.* Further, the court determined that most eight-year-olds cannot distinguish "emergent circumstances or medical necessity in the absence of any medical complaints or symptoms." *Id.* at 144, 950 A.2d at 122. Finally, the

court found that Jazmyne's inquiry about whether Bresee would find Coates implied that Jazmyne did not understand that there was a medical or dual purpose for the examination. *Id.*

The court distinguished this case from other significant Maryland cases. *Id.* at 144, 950 A.2d at 123. In one such case, the victim had the requisite motive for providing sincere and reliable information because the victim's statement was "pathologically germane" to treatment by a hospital nurse in an emergency setting. *Id.* (citing *Webster*, 151 Md. App. at 546, 827 A.2d at 920). The court found the case at bar distinguishable because there was no emergency situation that would render Jazmyne's statements reasonably pertinent to diagnosis or treatment. *Coates*, 405 Md. at 145, 950 A.2d at 123. The court rejected the State's argument that Coates' identity was "pathologically germane" to diagnosis or treatment because statements to a medical practitioner about the identity of the person who caused the injury are unlikely to be considered by the declarant as related to diagnosis or treatment. *Id.* at 146, 950 A.2d at 123.

The court then compared the case at hand to another case where the intermediate appellate court reasoned that at the age of two, a declarant does not understand the purpose of a doctor's questions and therefore, does not have the self-interested motive to tell the truth that underlies the hearsay exception. *Id.* (citing *Cassidy v. State*, 74 Md. App. 1, 27, 536 A.2d 666, 678-79 (1988)). Similarly, here the court stated that it is unlikely that Jazmyne, a seven-year-old at the time of her statements to Bresee, would have known that Coates' identity was medically relevant in determining her exposure to a sexually transmitted infection. *Coates*, 405 Md. at 147, 950 A.2d at 124. The court concluded that the record indicates Jazmyne's motive was to find Coates because he had not been apprehended. *Id.*

By issuing a writ of certiorari, the Court of Appeals of Maryland recognized the importance of this decision regarding the hearsay exception embodied in Maryland Rule 5-803(b)(4). *Coates* clarifies Maryland law in establishing that where the declarant is unaware that the success of the diagnosis and treatment depends on the accuracy of his or her disclosure, the reliability of his or her information is no longer presumed. As a result, under Maryland Rule 5-803(b)(4), lawyers in Maryland will now have a greater burden of showing that the declarant made his or her statement with the knowledge that the success of treatment was dependent on the declarant's accurate disclosure.