

SUPREME COURT OF LOUISIANA

NO. 2015-KK-1905

STATE OF LOUISIANA

VERSUS

JACOB WITZ

**ON SUPERVISORY WRITS TO THE 19TH JUDICIAL DISTRICT COURT,
PARISH OF EAST BATON ROUGE**

Crichton, J., additionally concurs and assigns reasons:

I agree with the denial of this application. I write separately to point out that, in my view, the defendant may ultimately be entitled to certain documents he seeks. Under *Chambers v. Mississippi*, 410 U.S. 284 (1973), and abundant subsequent jurisprudence, a defendant is entitled to make out his own defense. *Id.* at 302 (“Few rights are more fundamental than that of an accused to present witnesses in his own defense.”). Here, the defendant intends to argue consent as a defense, which may include impeachment of the alleged victim.

The defendant knows that the alleged victim has claimed to take Dexedrine, a drug which may be used recreationally as a euphoriant and aphrodisiac, as well as other unknown medication. Based upon this knowledge, and the unique facts this case presents, I believe the defendant may be entitled to certain records related to this prescription (and perhaps others) in order to fully investigate his defense of consent. As a result, I find it troubling that the prosecution has already refused to work with the defense to obtain certain documents that may be relevant, though I note that I do not condone a wholesale release of the alleged victim’s medical records to the defense. *See* La. R.S. 46:1841. In my view, an *in camera* inspection of the requested records related to the prescriptions would be the correct course of action.

Despite the fact that the defendant may ultimately be entitled to use certain of the requested documents to support his defense, in my view, the defendant's application is premature, insofar as he does not appear to have sought the documents through the proper procedural mechanisms provided for in the Louisiana Code of Criminal Procedure. Additionally, the records that the defendant seeks are not in the state's custody or control, and consequently, the relief he seeks is unclear. Therefore, in my view, the trial court did not abuse its discretion in denying the defendant's request at this time.