IN THE LONOKE COUNTY CIRCUIT COURT OF ARKANSAS

HEATH STOCKS PETITIONER

VS CASE NO. CR-97-9

STATE OF ARKANSAS RESPONDENT

MOTION/PETITION FOR THE ISSUANCE OF THE WRIT OF ERROR CORAM NOBIS TO REINVEST JURISDICTION IN THE TRIAL COURT TO CONSIDER THE WRIT OF ERROR CORAM NOBIS .

Comes now, Heath Stocks, pro se and in forma pauperis, moving this honorable court to grant his motion for the issuance of the writ of error coram nobis and for his motion does so state;

JURISDICTION

The writ of coram nobis challenging a guilty plea is to first be filed in the trial court before proceeding to the Arkansas Supreme Court. *Scott v State, 2017 Ark 199, June 1, 2017.*

PROCEDURAL HISTORY

1. On January 18, 1997, Heath C. Stocks (hereinafter "Stocks") was charged with three (3) counts of capital felony murder in Lonoke County, Arkansas. On January 21, 1997 defense counsel Edgar Thompson (hereinafter "Thompson") filed a motion with the trial court to prohibit anyone from interviewing or questioning Stocks without his attorney (s) being present. *[Petitioner's Ex. No. 44; Defense Motion to Prevent Any State Agent from Interviewing Stocks: page 470]* Stocks was ordered by the trial court to undergo a mental health evaluation at the

Arkansas State Hospital. *[Petitioner's Ex. No. 5; Order for Evaluation; page 89-90]*Pursuant to a guilty plea agreement on June 6, 1997, *[Petitioner's Exhibit 2; Guilty Plea Agreement;page 7]* Petitioner plead guilty to three (3) counts of Capital Felony Murder and he was sentenced to three life without parole sentences to be served consecutively. *[Petitioner's Exhibit 1; Judgment and Commitment Order;page 68-69].* Stocks's guilty plea was not knowingly, intelligently and voluntarily made because the trial court failed to comply with Arkansas Rules of Criminal Procedure Rule 24.3, 24.5 and 24.6.

In May of 2017 Stocks received documents that were in the possession of the Prosecuting Attorney Larry Cook (hereinafter "Cook") not previously disclosed to him prior to trial, and had these documents been disclosed to Stocks, he would not have plead guilty.

Defense counsel for Stocks, Mac Carder and Edgar Thompson filed several motions under Arkansas Rules of Criminal Procedure Rule 17.1 and 19.4 directing the prosecutor to disclose evidence to the defense. Prosecutor Cook withheld exculpatory material and mitigating evidence that would have negated the guilt of Stocks; this exculpatory material and mitigating evidence may have led to the involvement of two other individuals in the three capital felony murders; hid criminal charges of rape, child abuse, sexual molestation and the training of boy scouts to be assassins, at the hands of Charles A. Walls III, (hereinafter "Jack Walls") as the troop leader of a boy scouts troop of which Stocks was a member. [1]

Prosecutor Cook committed multiple *Brady* violations by not disclosing to the defense exculpatory material and mitigating evidence that would have lessened the culpability of Stocks in the murders, and provided mitigating evidence for Stocks at a trial. This failure to disclose by the prosecution led Stocks to enter a guilty plea that was not knowingly, intelligently and voluntarily made.

[1] Petitioner's Ex.No. 41; page 401-402; Letter from Attorney General Verifying the child sexual abuse of Stocks.

Defense counsel Carder and Thompson both submitted discovery motions under Arkansas Rules of Criminal Procedure 17.1 and 19.2 *[See Petitioner Exhibit No. 3 Motion for Discovery and Motion to Comply with Discovery; page 72-83]* requesting that the prosecutor turn over all the material evidence that was in the prosecution possession. Prosecutorial misconduct by a prosecutor falls within one of the four categories of coram nobis relief. The Supreme Court in *Brady v Maryland, 373 U. S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963),* held that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material to guilt or punishment, irrespective of the good faith or bad faith of the prosecution." *373 U. S. at 83.* Evidence is material "if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *Strickler v Greene, 527 U.S. 263, 119 S. Ct. 1936, 144 L. Ed. 2d 286 (1999).* This type of blatant and impervious prosecutorial misconduct is violative of state and federal law. *Isom v State, 2015 Ark. 255, 462 S. W. 3d 662 (2015 and Kyles v Whitley, 514 U. S. 419, 437, 115 S. Ct. 1555, 131 L. Ed. 2d 490 (1995).* Stocks did not receive a fair trial as guaranteed by the Fifth, Sixth and Fourteenth Amendments of the United States Constitution. *Brady v Maryland, supra; U. S. v Giglio, 405 U. S. 150 (1972); United States v Bagley, 473 U. s. 667, 105 S. Ct. 3375, 87 L. Ed. 2d 481 (1985).*

The trial court judge was impartial and bias toward Stocks and failed to conduct a competency hearing and a guilty plea hearing.

Stocks has recently obtained exculpatory material evidence that was not available to him before he plead guilty and signed the plea agreement. *[Petitioner's Ex. No.56;Affidavit of Samantha Jones: page 505-506]*

STANDARD OF REVIEW:

The proper standard of review for granting permission to reinvest jurisdiction in the circuit court to pursue a writ of error coram nobis is whether it appears that the proposed attack on the judgment is meritorious. *Howard v. State, 2012 Ark. 177, at 4–5, 403 S.W.3d 38, 43.* In making such a determination, we look to the reasonableness of the allegations of the petition and to the existence of the probability of the truth thereof. *Id., 403 S.W.3d at 43.*

A writ of error coram nobis is available to address certain fundamental errors extrinsic to the record, such as material evidence withheld by the prosecutor. *Id. at 4, 403 S.W.3d at 42–43.* To establish a violation of *Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963)* by the State's withholding of evidence, "[t]he evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; the evidence must have been suppressed by the State, either willfully or inadvertently; prejudice must have ensued."*Id. at 8, 403 S.W.3d at 44.*The writ is allowed only under compelling circumstances to achieve justice and to address errors of the most fundamental nature. We have held that a writ of error coram nobis is available to address only certain errors that are found in one of four categories: (1) insanity at the time of trial, (2) a coerced guilty plea, (3) material evidence withheld by the prosecutor, or (4) a third-party confession to the crime during the time between conviction and appeal. Although there is no specific time limit for seeking a writ of error coram nobis, due diligence is required in making an application for relief. In the absence of a valid excuse for delay, the petition will be denied. Due diligence requires that (1) the defendant be unaware of the fact at the time of trial; (2) the defendant could not have, in the exercise of due diligence, presented the fact at trial; and (3) the defendant, after discovering the fact, did not delay in bringing the petition. See id.

Stocks's petition for writ of error coram nobis for the trial court to be reinvested consists of several claims, each of which asserts that the prosecutor withheld material evidence under *Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963).* When examining allegations involving the withholding of material evidence in the context of a petition to reinvest jurisdiction to seek a writ of error coram nobis, this court has done so under *Brady*, which requires the State to disclose all favorable evidence material to the guilt or punishment of an individual. See *Newman, 2009 Ark. 539, 354 S.W.3d 61*; see also *Howard, 2012 Ark. 177, 403 S. W.3d 38; Cloird v. State, 349 Ark. 33, 76 S.W.3d 813 (2002) (per curiam).* For a true *Brady* violation, "[t]he evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued." *Strickler v. Greene, 527 U.S. 263, 281–82, 119 S.Ct. 1936, 144 L.Ed.2d 286 (1999).* Evidence is material "if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *Cook v. State, 361 Ark. 91, 105, 204 S.W.3d 532, 540 (2005) (quoting Strickler, 527 U.S. at 280, 119 S.Ct. 1936.* The "reasonable probability" standard is applied "collectively, not item by item," such that the "cumulative effect" of the suppressed evidence, and not necessarily each piece separately, must be material. *Kyles v. Whitley, 514 U.S. 419, 436–37, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995).* The rule set out in Brady also "encompasses evidence 'known only to police investigators and not to the prosecutor.' " *Strickler, 527 U.S. at 280–81, 119 S.Ct. 1936 (quoting Kyles, 514 U.S. at 438, 115 S.Ct. 1555).* "In order to comply with Brady, therefore, 'the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in this case, including

the police.' " *Strickler, 527 U.S. at 281, 119 S.Ct. 1936 (quoting Kyles, 514 U.S. at 437, 115 S.Ct. 1555).*

Prosecutorial misconduct by a prosecutor falls within one of the four categories of coram nobis relief. The Supreme Court in *Brady v Maryland, 373 U. S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963),* held that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material to guilt or punishment, irrespective of the good faith or bad faith of the prosecution." *373 U. S. at 83.* Evidence is material "if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *Strickler v Greene, 527 U.S. 263, 119 S. Ct. 1936, 144 L. Ed. 2d 286 (1999).*

Under the standard of the review for *Brady* violations decided in *Weary v Cain, 136 S. Ct. 1002, March 7, 2016*, Stocks does not need to show that there was a reasonable probability that he more likely than not would have plead guilty had the Prosecutor Cook disclosed this exculpatory material evidence. He is only required to show that the failure to disclose the exculpatory material evidence was sufficient to undermine confidence in the guilty verdict. *Smith v Caine, 565 U. S. 73, ____,_ _____, 132 S. Ct. 627, 629-631, 181 L. Ed. 2d 571 (2012) (internal quotation marks and brackets omitted).*

Stocks will now set forth in numbered paragraphs the multiple instances of prosecutorial misconduct in violations of *Brady v Maryland, supra* and its progeny.

GROUND ONE

THE STATE COMMITTED PROSECUTORIAL MISCONDUCT WHEN PROSECUTOR LARRY COOK FAILED TO DISCLOSE TO THE DEFENSE THAT THE OFFICE OF THE PROSECUTOR WAS COMPROMISED BECAUSE THE PROSECUTOR WORKED WITH JUDGE CHARLES WALLS II. CHARLES WALLS III PARTICIPATED IN THE MURDERS. LARRY COOK LATER RECUSED FROM THE

TRIAL OF CHARLES WALLS III AND BETTY DICKEY WAS APPOINTED AS SPECIAL PROSECUTOR. STOCKS FIFTH, SIXTH AND FOURTEENTH AMENDMENT RIGHTS OF THE UNITED STATES CONSTITUTION WERE VIOLATED AND LED TO STOCKS MAKING A GUILTY PLEA THAT WAS NOT KNOWINGLY, INTELLIGENTLY AND VOLUNTARILY MADE.

Prosecutor Cook committed prosecutorial misconduct by failing to disclose to the defense this relationship with former Judge Charles Walls II; a violation under *Brady v. Maryland, 373 U. S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963)* and a violation of *Arkansas Model Rules of Professional Conduct Rules 8.4 (a), (c), (d), (e) and (f),* which states in part: Rules of Prof. Conduct, Rule 8.4:

RULE 8.4. MISCONDUCT

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the rules of professional conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a government agency or official; or to achieve results by means that violate the Rules of Professional Conduct or other law; or

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

This disclosure by the prosecution was relevant because Stocks had indicated that Jack Walls had been involved in the murders of the Stocks family and Judge Charles Walls II, (hereinafter "Judge Walls") was the father of Jack Walls. *[Ex. No. 25; Reverend Robert Marble's Testimony; page 341]*

If defense counsel would have been disclosed this information about the personal and professional relationship between the prosecutor and former Judge Walls, counsel for Stocks could have filed a motion to have Prosecutor Cook recuse from the case. Instead, Cook acted as

inside agent for the Walls and hid exculpatory material evidence from the defense that would have revealed the rape of and training of scouts to commit murder on behalf of Jack Walls, as well as the sexual abuse of Stocks and other boy scouts by Jack Walls. Jack Walls had been raping Stocks since he was in grade school and training both Wade Knox (hereinafter "Knox")[2] and Heath Stocks to be an assassin *[Petitioner's Ex. No. 23; Wade Knox Testimony; page 299-313];[Petitioner's Ex. No. 42; Keith Anthony Interview; page 404-405;408-409]*and instructing Stocks and Knox to kill a man named Cledis Hogan (hereinafter"Cledis"), who had brought child sexual abuse charges against Jack Walls for molesting his son Doug Hogan, (hereinafter "Hogan").. *[Petitioner's Ex No. 7;Lawsuit filed against Jack Walls by Cletis Hogan; page 102-109]*and *[Petitioner's Ex. No. 26; Morgan Welch Letter; page 345-346]*

Judge Walls political and social influence over Cook was obvious because Cook was a former colleague of Judge Walls. Cook had a history of refusing to file child sexual abuse and rape charges against Jack Walls and this went on for years as verified by evidence submitted to this Court. *[Petitioner's Ex No.32; Letter from Chief Peckat; page 368-369]* Stocks was prejudiced by this prosecutorial misconduct and these actions by the prosecutor prevented Stocks from receiving due process of law, as provided by the Fifth, Sixth and Fourteenth Amendments of the United States Constitution and, had Stocks known of this undisclosed evidence, he would not have plead guilty.

Cook later revealed this prosecutorial misconduct by recusing from the trial of Jack Walls, when Walls was charged with the rape of Stocks and other boy scouts. *[Petitioner's Ex No. 35, Affidavit of Arrest of Jack Walls; page 374-384];[Petitioner's Ex No.45, Letter of Recusal from Prosecutor Larry Cook; page 471-472]* Cook's recusal was forced by Charles Peckat, the new Chief of Police for Lonoke, Arkansas. *[See Ex. No. 33, Letter from Chief Peckat*

[2] See Petitioner's Exhibit No. 19; Bio on Wade Knox and comments from his wife; page 289-291.

to Judge Hanshaw; page 370] After Cook was removed he was replaced by Special Prosecutor Betty Dickey (hereinafter "Dickey") from Jefferson County, Arkansas and she had to prosecute the case of Jack Walls for raping Stocks and other boy scouts, of which Cook was reluctant to file charges. *[Petitioner's Ex No. 22, Letter from Betty Dickey;page 298]*Prosecutor Betty Dickey additionally charged Jack Walls with two (2) counts of solicitation for murder. *[Petitioner's Ex. No. 71; Charging Instrument; page 554-557].* These two charges were later nolle prossed due to a plea deal between the State and Jack Walls.

GROUND TWO

THE STATE COMMITTED A BRADY VIOLATION BY PROVIDING CHARLES WALLS III A COPY OF THE MURDER CASE FILE THROUGH STEVEN FINCH OF THE LONOKE POLICE DEPARTMENT OF WHICH CHARLES WALLS III USED THE FILE TO COERCE THE STOCKS FAMILY INTO HAVING HEATH STOCKS PLEAD GUILTY. ALSO, THE STATE COMMITTED A BRADY VIOLATION BY COERCING STOCKS TO PLEAD GUILTY OR RECEIVE THE DEATH PENALTY AND THIS LED STOCKS TO ENTER A GUILTY PLEA THAT WAS NOT KNOWINGLY, INTELLIGENTLY AND VOLUNTARILY MADE.

Prosecutor Cook failed to disclose to the defense that the alternative suspect to the Stocks family murder, Jack Walls was allowed to coerce the Stocks family to influence Stocks to plead guilty. *Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963)* Steve Finch of the Lonoke Police Department was present at a retreat with Jack Walls and provided Jack Walls with a copy of the murder file of the Stocks family murders. *[Petitioner's Ex No.57; Email from Linda Buffalo; page 511]*Jack Walls subsequently used this file to coerce the Stocks family to have Stocks plead guilty to cover up Jack Walls involvement in the murders. The prosecution is responsible for the actions of officer Steve Finch and knew, or should have known, that this officer took an active murder case file to a retreat and provided the alternative suspect Jack Walls

with information of the murder investigation. *Kyles v Whitley, 514 U. S. 419, 437, 115 S. Ct. 1555, 131 L. Ed. 2d 490 (1995).*

Defense counsel had filed a motion to control prejudicial publicity on January 24, 1997. When officer Steve Finch provided a copy of the murder case file at the retreat, this action violated the motion the trial court granted on January 24, 1997, *[Petitioner's Ex.No. 38;Judge's Order;page 39];* which strictly prohibited Officer Steve Finch from releasing information in any form. *[Petitioner's Ex. No. 36; Defense Motion to Control Prejudicial Publicity; page 385-388];* which states in part;

> "WHEREFORE, for the reasons set out herein, Defendant respectfully requests that this Court enter an Order which;
> 2. prohibits all attorneys, parties, witnesses, law enforcement personnel and court personnel who are connected to the prosecution of this case, from extra-judicially releasing information in any form, to any agent or employee of any news media, concerning any aspect of this proceeding;
> 3. directing that all records and transcripts in this case be sealed until a jury is impaneled and sequestered or after trial;

Officer Steve Finch was one of the two law enforcement investigators directly involved with the interrogation and arrest of Stocks. *[Petitioner's Ex. No. 55; Interview of Stocks at Arkansas State Police Headquarters 1-18-97 at 7:08pm; page 495-504]*

If defense counsel for Stocks would have known about this retreat and officer Steve Finch providing Jack Walls with the murder case file, the defense would have known how Jack Walls was able to coerce and manipulate the surviving Stocks family to have their grandson/nephew Stocks plead guilty. Secondly, the defense counsel could have notified the trial court that Officer Finch had violated the order to control prejudicial publicity and the trial court could have taken appropriate action against the State. *[Petitioner's Ex. No. 38; Order Control of Publicity; page 391]* This is a *Brady* violation and prejudiced Stocks. *Brady v. Maryland, 373*

U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963); Strickler v Greene, 527 U.S. 263, 119 S. Ct. 1936, 144 L. Ed. 2d 286 (1999).

Defense counsel was unaware that the murder case file had been provided to Jack Walls. The defense was entitled to this information because it would have supported the findings of defense counsel Edgar Thompson that, at a community meeting at a church about the Stocks family murders. A friend of Stocks informed those present, that Jack Walls had trained Stocks to be an assassin.*[Petitioner's Ex No. 20, Church Meeting Minutes;page 292-296]* and *[Petitioner's Ex. No. 42; Keith Anthony Interview;page 404-405;408-409]* Failure to disclose this exculpatory material evidence was prejudicial to the defense and unknown at the time Stocks plead guilty. This material evidence was pertinent to the guilt of Stocks to the murders and further provided mitigating evidence to the actions of Stocks. In addition, it would have shed light on Jack Walls as an alternative suspect to the murders. *Isom v State, 2015 Ark. 225, 462 S.W. 3d 662 (2015)*

Stocks would not have plead guilty had this information been disclosed to the defense and Stocks's guilty plea was not knowingly, intelligently and voluntarily made.

GROUND THREE

THE STATE COMMITTED A BRADY VIOLATION BY ILLEGALLY QUESTIONING AND INTERVIEWING STOCKS WITHOUT HIS COUNSEL BEING PRESENT AFTER DEFENSE COUNSEL HAD PREVIOUSLY FILED A MOTION THAT NO PERSON WERE TO QUESTION OR INTERVIEW STOCKS WITHOUT HIS COUNSEL BEING PRESENT. THE STATE ALLOWED A REVEREND ROBERT MARBLE TO VIOLATE THE NOTICE AND COME TO THE STATE HOSPITAL AND THE LONOKE COUNTY JAIL AND QUESTION STOCKS ABOUT THE MURDERS. ADDITIONALLY, THE STATE WITHHELD EVIDENCE THAT REVEREND MARBLE HAD BEEN INFORMED BY STOCKS'S MOTHER THAT SHE HAD DISCOVERED STOCKS BEING SEXUALLY ABUSED BY JACK WALLS AND THAT STOCKS HAD INFORMED REVEREND ROBERT MARBLE THAT CHARLES WALLS III HAD ORDERED STOCKS TO COMMIT THE MURDERS. REVEREND MARBLE WAS A MANDATORY REPORTER OF CHILD ABUSE UNDER A. C. A. 12-18-402. STOCKS WOULD NOT HAVE PLEAD GUILTY HAD THIS EXCULPATORY MATERIAL AND MITIGATING EVIDENCE BEEN KNOWN TO THE DEFENSE; A VIOLATION OF STOCKS FIFTH, SIXTH AND FOURTEENTH AMENDMENT RIGHTS OF THE UNITED STATES CONSTITUTION.

Defense counsel Thompson filed a motion on January 21, 1997 to prohibit anyone from speaking with Stocks without his counsel being present. *[Petitioner's Ex No.44 ,Motion to prevent anyone from interviewing Stocks with counsel present; page 470]* The State committed a *Brady* violation by ignoring this Motion and sending in Reverend Robert Marble to gather information from Stocks about the murders. *Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963) ; Kyles v Whitley, 514 U. S. 419, 437, 115 S. Ct. 1555, 131 L. Ed. 2d 490 (1995)* (Prosecution is responsible for information and actions of other state agents).

The State committed a *Brady* violation by failing to disclose information that a Reverend Robert Marble (hereinafter "Marble") went to the Arkansas State Hospital and Lonoke County Jail to interview Stocks about the murders without Stocks's counsel being present. *[Petitioner's Ex No.25;Reverend Robert Marble Testimony; page 337-344 at 342]Brady v. Maryland, 373 U. S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963)* The State knew Marble had information about the child sexual abuse and rape of Heath Stocks by Jack Walls. Marble had come to see if Stocks had revealed the sexual abuse by Jack Walls and rather or not Stocks had implicated Jack Walls in the murders. If the State would not have committed the *Brady* violation and allowed defense counsel to be present when Stocks was being interviewed by Marble, the defense would have found out first hand at this meeting that Jack Walls had been implicated in the murder as being the one that ordered Stocks to murder the Stocks family.

The defense was not aware that Marble had went to see Stocks at the State Hospital and jail. Prosecutor Cook did not submit to the defense what Marble had tried to get Stocks to say about the murders, especially when the State knew, or should have known, that Marble was in possession of exculpatory material and mitigating evidence that prior to the murders that Stocks mother, Barbara Stocks had informed Marble that she had walked in and found her son being

sexually abused by Jack Walls in her home. *[Petitioner's Ex No. 25;Reverend Robert Marble's Testimony;page 340]* Marble later testified at the victim impact hearing for the sentencing of Jack Walls, who plead guilty to raping and sexually abusing Stocks and other boy scouts. In that testimony, Marble admitted that he had went to the State Hospital and the Lonoke County Jail to speak with Stocks, and that Stocks had told him that the reason he murdered his family was that Jack Walls had told him to do so. *[Petitioner's Ex No. 25;Reverend Robert Marble's Testimony; page 340]* This occurred several months prior to June 6, 1997, when Stocks signed a plea agreement to three (3) counts of capital felony murder. Had the State disclosed this evidence, the defense could have proven a nexus between Jack Walls and the murders and that the conspiracy to murder the Stocks family was at Walls's manipulation to hide the years of child sexual abuse of Stocks by Jack Walls.

Marble was a mandatory reporter of child abuse under *Arkansas Code Annotated 12-18-402 (b) 29 (a) (b)*. Barbara Stocks made the confession to Marble about the child sexual abuse of Stocks by Jack Walls prior to her death. Even if, Marble was bound by confidentiality, it was lifted after the death of Barbara Stocks on January 17, 1997 and Marble as a mandatory reporter, had a duty to inform the necessary authorities of the statements that Barbara Stocks made to him concerning the child sexual abuse. The United States Supreme Court recently reviewed a case parallel to this one in *Williams v Pennsylvania, 579 U. S. ___, ___, 136 S. Ct. 1899, 1905, 195 L. Ed. 2d 132 (2016)* whereas, evidence of a pedophile was concealed by a Reverend and how that concealment led to a *Brady* violation and the appropriate relief that is to be administered. *[Pet. Ex. No.47; Amicus Curiae Brief of ACLU and ACLU of Pennsylvania, page 475-483]*

A prosecutor is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at

all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. *Berger v United States, 295 U. S. 78, 88 (1935).*

In *Williams v Pennsylvania, 136 S. Ct. 1899 (2016),* the ACLU submitted an amicus curiae brief that dealt with a member of clergy withholding evidence or in possession of evidence of child sexual abuse and imparting this knowledge to the prosecution of which the prosecution subsequently failed to disclosed to the defense. As in *Williams,* Prosecutor Cook engaged in "gamesmanship," and "knowingly suppressed evidence concerning Jack Walls's sexual abuse and rape of Heath Stocks and other boys scouts; he played fast and loose with the truth, took unfair measures to win, and had no problem disregarding his ethical obligations.

Reverend Marble's motive for covering up for Jack Walls was that Marble's church was a sponsor of the boys scout troop and had allowed Jack Walls to be the scoutmaster during all these years of sexual abuse of the boy scouts. The rape, sexual abuse, and training scouts to kill people, was all done during the tenure of Marble at the church. In order to alleviate the church of any civil liability for the monstrous and deviant actions of Jack Walls, Marble concealed the information that Barbara Stocks had told him about the sexual abuse of Stocks and that Stocks had told him that Jack Walls had ordered Stocks to murder the Stocks family. Marble who was the head of Concord United Methodist Church, and the Methodist Churches had a history of suppressing illegal actions by Jack Walls *[Petitioner's Ex No. 25;Reverend Robert Marble's Testimony;page 337-344]* and Bill Ryker on scouting trips, because the church was a sponsor of the boys scouts troop.

Even after Marble knew what Stocks had told him about the murders, Marble still invited Jack Walls to attend a church meeting concerning the Stocks family murders. During the meeting one of Stocks friends mentioned that Stocks had told him that Jack Walls had trained Stocks to

be an assassin. *[Petitioner's Ex. No. 42; Keith Anthony Interview; page 404-405;408-409]; [Petitioner's Exhibit No. 20; Church Meeting Minutes;page 292-296]* This is evidence of Marble's implication in covering up the sexual abuse of the boy scouts and involvement in the Stocks family murders by Jack Walls.

The evidence of the rape, sexual abuse, manipulation to murder the Stocks family, and mind control of Stocks by Jack Walls would have undoubtedly changed the outcome of the proceedings. *[Petitioner Ex. No.22 ; Letter from Betty Dickey; page 298] [Petitioner Ex. No.32 & 33 ; Letter from Chief Peckat; page 368-370]; [Petitioner Ex. No. 21, Letter from Joye Cook Victim Coordiator; page 297];[Petitioner Ex. No. 34, Letter from Judge Hanshaw; page 371-373]* Stocks would not have plead guilty had this information been disclosed rendering his guilty plea was not knowingly, intelligently and voluntarily made.

GROUND FOUR

THE STATE COMMITTED A BRADY VIOLATION BY NOT FILING CHILD SEXUAL ABUSE AND RAPE CHARGES AGAINST JACK WALLS UNTIL STOCKS PLED GUILTY IN JUNE 1997. PROSECUTOR COOK WAS FORCED TO FILE CHARGES AGAINST JACK WALLS WHEN THE NEW POLICE CHIEF TOOK OFFICE AND DEMANDED THAT THE CHARGES BE FILED AGAINST JACK WALLS, AND HAD COOK FILED THE CHARGES MITIGATING AND EXCULPATORY MATERIAL EVIDENCE CONCERNING JACK WALLS INVOLVEMENT IN THE MURDERS WOULD HAVE SURFACED. THIS FAILURE LED TO STOCKS MAKING A GUILTY PLEA THAT WAS NOT KNOWINGLY, INTELLIGENTLY AND VOLUNTARILY MADE A VIOLATION OF STOCKS FIFTH, SIXTH AND FOURTEENTH AMENDMENT RIGHTS OF THE UNITED STATES CONSTITUTION

Prosecutor Cook was in possession of information concerning the sexual abuse of the boy scouts by Jack Walls and failed to bring the rape charges against Jack Walls until after Stocks had plead guilty in June 6, 1997. *[Petitioner's Ex No. 33;Chief Peckat's Letter;page 370]; [Petitioner's Ex No.34;Judge Hanshaw's Letter;page 371-373];[Petitioner's Ex No.35; Affidavit of Arrest of Jack Walls;page 374-384];[Petitioner's Ex No.32; Chief Peckat's Letter to Judge*

Hanshaw;page 368-369]; [Petitioner's Ex. No. 46;page 473-474; Ex. No. 71; page 554-557] The failure of the prosecutor to file the charges is a *Brady* violation and led to the withholding of exculpatory material evidence that was favorable to the defense for mitigation purposes and proof that there were alternative suspect (s) in the murders. *Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963); Isom v State, 2015 Ark. 225, 462 S.W. 3d 662 (2015).*

The Lonoke City Police Department filed a police report that Knox had informed the Lonoke Police that Jack Walls was trying to get him to kill Cletis Hogan. *[Petitioner's Ex. No. 28; Lonoke Police Report; page 349-350] and [Petitioner's Ex. No. 23; Wade Knox Testimony; page 304].* Prosecutor Larry Cook still would not bring charges against Jack Walls. Even the Arkansas State Police Investigators assigned to Lonoke County, Arkansas were covering up for Jack Walls. *[Petitioner's Ex. No. 39;Investigator's Warford's Findings; page 392]; and [Petitioner's Exhibit No. 40; Interview of Warford by Raper; page 418;430]*

Lonoke Chief of Police Charles Peckat wrote a letter *[Petitioner's Ex. No. 32; Letter from Chief Peckat to Judge Hanshaw; page 368-369]* informing Judge Hanshaw of Prosecutor Cook's refusal to file charges against Jack Walls states in part;

"The Lonoke Police Department has not received support, guidance, suggestions, or communication from Larry Cook of the Prosecutor's Office..... Larry Cook came to my office and stated that he was only going to pursue three of the charges against Mr. Walls. He did not give any explanation of why he did not seek warrants for two counts of solicitation of Capital Murder. he stated that he was not going to seek Rape charges on behalf of one Rape victim because he had a gut feeling that he should not because this victim would steal the spotlight....Judge Hanshaw, I respect the position of prosecuting attorney and have worked with attorneys for 21 years without many problems. I receive phone calls daily from citizens, families, and victims as to why these other charges have not been filed. They have asked that Larry Cook and his office cease from having any further involvement in this case. It is with the deepest regret that I must agree and respectfully ask that Larry Cook and members of his office be removed from this case and a special prosecutor be appointed."

Chief Charles Peckat's letter to the judge, clearly shows that not only the Lonoke Police Department, but the citizens, families and victims were having problems with Prosecutor Cook

delaying for months of bringing the charges against Jack Walls, especially charges in relation to Stocks a rape victim of Jack Walls, that Cook stated to Chief Peckat that "...he was not going to seek rape charges on behalf of one rape victim because he had a gut feeling that he should not because this victim would steal the spotlight." Due to Cook's questionable behavior of refusing to file charges in relation to Jack Walls monstrous acts of rape and child molestation of boy scouts over many years, Cook later recused from prosecuting Jack Walls. *[Petitioner's Ex. No. 33; Letter from Chief Peckat ;page 370];[Petitioner's Ex. No. 45; Prosecutor Cook's Letter of Recusal; page 471-472]*

The Department of Human Services has formally acknowledged the rape and child sexual abuse of Stocks by Jack Walls. *[Petitioner's Ex No. 18 , DHS Letter to Stocks; page 279-288]* Since, April 30, 1999, the Office of the Attorney General of Arkansas, due to the child rape and sexual abuse of Stocks by Jack Walls have continously updated Stocks on the criminal status of Jack Walls. *[Petitioner's Ex No.41 , Attorney General's Letter to Heath Stocks; page 401-402]*

This disclosure would have also led to revealing that Jack Walls had trained Knox and Stocks as assassins *[Petitioner's Ex. No. 23; Wade Knox Testimony; page 299-306]* and ordered both Stocks and Knox to kill their families after their families discovered that Jack Walls had been raping them since they were in grade school. Knox ended up committing suicide in 2003 rather than murder his family, even though his mother, Karen Knox stated that Jack Walls had ordered her son Wade Knox to kill them, his family. *[Petitioner's Ex No.24; Karen Knox Interview; page 323;328]* The State is responsible for exculpatory and mitigating material evidence that is in the hands of other State actors. In this case the Prosecutor Cook was well aware of the Department of Human Services files *[Petitioner Ex. No. 43; DHS files on Doug Hogan ;page 412-470]* and Arkansas State Police investigations*[Petitioner Ex. No. 8,9; page*

110-116] about the sexual abuse of the boys scouts and that Heath Stocks was a member of Jack Walls troop. *[Petitioner's Ex. No.35; Affidavit of Arrest of Charles Walls III; page 374-384] Strickler v Greene, 527 U.S. 263, 119 S. Ct. 1936, 144 L. Ed. 2d 286 (1999).*

If the defense would have known prior to trial that Cook had enough information to bring charges against Jack Walls for the rape, sexual abuse of the boy scouts and ordering Stocks to murder his own family, which would have revealed Walls's role in the murders, Stocks would not have signed the guilty plea agreement. Secondly, had the defense known through exculpatory material evidence that there existed documentation from attorney Morgan Welch that Jack Walls was soliciting the murder of the Hogan family because Cletis brought felony charges and filed a lawsuit against Jack Walls. *[Petitioner's Ex No. 26;Letter from Attorney Morgan Welch; page 345-346] and [Petitioner's Ex. No. 7; Lawsuit Filed by the Hogans and Apology Letter from Charles Walls III; page 102-109]* This would have led to the defense discovering that Jack Walls had mind control through emotional bonding over his nephew Wade Knox and Stocks and ordered them to kill the Hogan family, of which the State charged Jack Walls with Solicitation to Murder. *[Petitioner's Ex. No. 71; Walls Felony Information; page 554-557]* This would have been exculpatory material and mitigating evidence showing the mind control Jack Walls had over Stocks, and the boy scouts as well as cognitive dissonance used in coercing the boys to assassinate other people, as well as their families, on behalf of Jack Walls. Stocks would not have plead guilty to the charges and would have chosen to go to trial.

GROUND FIVE

THE STATE COMMITTED A BRADY VIOLATION BY WITHHOLDING EVIDENCE OF THE JACK WALLS MIND CONTROL OVER STOCKS AND OTHER BOY SCOUTS AND HAD THE DEFENSE KNOWN THAT JACK WALLS HAD ORDERED STOCKS TO MURDER THE HOGANS AND SUBSEQUENTLY MANIPULATED AND PLANNED THE STOCKS FAMILY MEMBERS THE DEFENSE WOULD HAVE NOT ADVISE STOCKS TO SIGN THE GUILTY PLEA AGREEMENT AND CHOSEN TO GO TO TRIAL AND USE THE AFFIRMATIVE DEFENSE OF DURESS. A VIOLATION OF

STOCKS'S FIFTH AND FOURTEENTH AMENDMENT RIGHTS OF THE UNITED STATES CONSTITUTION.

Prosecutor Cook failed to disclose to the defense exculpatory material evidence and this failure deprived and prejudiced the defense from raising an insanity defense of duress for Stocks because evidence was suppressed by the State that Jack Walls was raping Stocks *[Petitioner's Ex. No. 18; Department of Human Services Verification of the Rape and Sexual Abuse of Stocks by Charles Walls III; page 279-288];* and other boy scouts and training them to be assassins and had ordered Stocks and Knox to murder their families and the family of Cledis Hogan. *[Petitioner's Ex No. 26;Letter from Attorney Morgan Welch Addressed to Prosecutor Larry Cook; page 345-346]. Brady v. Maryland, supra; Kyles v Whitley, 514 U. S. 419, 437, 115 S. Ct. 1555, 131 L. Ed. 2d 490 (1995); United States v. Bagley, 473 U.S. 667, 105 S.Ct. 3375, 87 L.Ed. 2d 481 (1985).* The Lonoke City Police Department filed a police report that Knox had informed the Lonoke Police that Jack Walls was trying to get him to kill Cletis . *[Petitioner's Exhibit No. 28; Lonoke Police Department Report; page 349-350]* Prosecutor Cook still would not bring charges against Jack Walls. This information that was recently discovered shows that Jack Walls had brainwashed Knox and Stocks. *[Petitioner's Ex. No. 23; Wade Knox Testimony;page 299-313]and [Petitioner Ex. No.24, Karen Knox Interview; page 331] which states in part:*

Interviewer: So we were talking about the ammunition, and he was teaching them, using expensive guns.

Knox : But (?) that was their reward. You know, that's how he enticed those boys. And then, (BACKGROUND NOISE)I know one'a the boys said, "You know, after-after he let me shoot these real expensive guns, and taught me all this stuff, you know, and took me all these places, and, ya know, and doted over me," He said, "He made me feel like I owed it to him. This is what I had to do. And that I owed it to him." So the guilt-Ya know(inaudible; Interviewer; Manipulation) Mind manipulation, and control, and the mind games.

The psychological profile of Stocks's childhood reveals that he was mentally impaired and could easily be manipulated by Jack Walls. *[Petitioner Ex. No.6; Stocks Psychiatric Report;*

page 99-101] If the defense would have known about the influence that Jack Walls had over Stocks and his nephew Knox prior to the guilty plea agreement, the defense could have used the defense of insanity at the time of the murders as an affirmative defense of duress, and at the time of the guilty plea, Stocks was mentally impaired due to numerous things (i.e., sexual and physical abuse) and mind control Jack Walls had over him. *Newman v State, 2009 Ark. 539, 354 S. W. 3d 61, 69* . In Arkansas the defense of duress is allowable in criminal prosecutions. The failure to disclose duress by the State in essence prohibited the defense from using the affirmative defense of duress and the resulting guilty plea was a violation of due process because Stocks would not have pleaded guilty had the State disclosed the evidence, rendering Stocks's guilty plea as not being knowingly, intelligently and voluntarily made.

At all times, Stocks was under duress of serious bodily harm to himself and coercion by Jack Walls and this may have absolved Stocks of criminal liability for the murders. Stocks was under threat to his own life by Jack Walls and, since he was brainwashed and sexually abused by Jack Walls, revealed through intimidating acts by Jack Walls (use of explosives and firearms) that he knew Jack Walls would kill him. *[Petitioner Ex. No. 10; Stocks Interview by Peckat;page 117-134]* Stocks feared for his life for many years because of the sexual abuse and the intimidation Jack Walls used to keep him and other boy scouts silent about the sexual abuse. *[Petitioner Ex. No. 11;* [redacted] *Interview; page 135-155] and [Petitioner's Ex. No. 23; Wade Knox Testimony; page 299-313];[Petitioner Ex. No. 12;* [redacted] *Interview; page 156-167];[Petitioner Ex. No. 14;* [redacted] *Interview; page 197-231];[Petitioner Ex. No. 15;* [redacted] *Interview; page 232-248];[Petitioner Ex. No. 13;* [redacted] *Interview; page 168-196];[Petitioner Ex. No. 16;* [redacted] *Interview; page 249-272];[Petitioner Ex. No. 17;*

[redacted] *Interview; page 273-278];[Petitioner Ex. No. 29; Doug Hogan Interview; page 351-353]; [Petitioner's Ex. No. 27;* [redacted] *Interview; page 347-348]*

Stocks could not have avoided the threat to his life because Jack Walls knew his whereabouts, his family's location, etc. Stocks did not willingly place himself in the position of being sexually abused and brainwashed. Thus, Stocks should not be punished to the maximum extent of the law for his actions.

Jack Walls was a Vietnam veteran, who was a firearms expert and worked at the Remington factory where firearms were produced. Walls used his military experience and knowledge of explosions, firearms, and ways to kill to intimidate Stocks and other boy scouts from revealing sexual abuse at the hands of Jack Walls who was raping Stocks and other boy scouts throughout their childhood. This psychological torture and brainwashing contributed tremendously to Stocks's participation in the murder of his family, under Jack Walls instructions to cover up the knowledge of the sexual abuse found out by Stocks's mother. *[Petitioner's Ex. No.25; Reverend Robert Marble's Testimony; page 340]* This psychological mind control of Stocks by Jack Walls continued for many years. Had the State made proper disclosure of this information the defense could have made proper use of it.

An example of the mind control that Walls had over Stocks and Knox can be examined from the testimony of Knox at the victim impact hearing of Jack Walls.

Wade Knox testified to the following: *[Petitioner's Ex. No.23; Wade Knox Testimony at Victim Impact Hearing; page 304-305]*

Q When he asked you about killing Cledis or Doug Hogan, which one were you suppose to kill?

A Cledis.

Q And who was going to help you.

A Heath

Q And what were you supposed to do to Cledis?

A I was supposed to get a stun gun that he was going to get for me and stun him in the neck and put him in his car and pour gas all over him and burn him.

Q Why didn't you do it?

A Because it was wrong.

The letter from attorney Morgan Welch *[Petitioner's Ex. No.26; Morgan Welch Letter to Prosecutor about Solicitation of Murder of the Hogans; page 345-346]* corroborates that Jack Walls had ordered Stocks and Knox to murder the Hogans because of the lawsuit and sexual abuse charges brought against Walls by the Hogans. *[Petitioner's Ex. No. 7; Lawsuit filed against Walls; page 102-109]; [Petitioner's Ex. No. 71; Walls Felony Information; page 554-557].*

Upon proper disclosure Stocks would not have plead guilty and his guilty plea was not knowing, voluntary and intelligently made in violation of his Fifth and Fourteenth Amendments rights of the United States Constitution.

GROUND SIX

THE LONOKE POLICE CHIEF AND SPECIAL PROSECUTOR BETTY DICKEY AGREED THAT PROSECUTOR LARRY COOK HAD WITHHELD INFORMATION FROM THE DEFENSE THAT WOULD HAVE CHANGED THE OUTCOME OF THE JUDICIAL PROCEEDINGS. THIS EXCULPATORY AND MITIGATING MATERIAL EVIDENCE WAS WITHHELD BY THE PROSECUTION IN VIOLATION OF STOCKS FIFTH, SIXTH AND FOURTEENTH AMENDMENT RIGHTS OF THE UNITED STATES CONSTITUTION AND LED TO STOCKS MAKING A GUILTY PLEA THAT WAS NOT KNOWINGLY, INTELLIGENTLY AND VOLUNTARILY MADE.

Prosecutor Cook withheld exculpatory and mitigating material evidence from the defense. *[Petitioner Exhibits No. 6,7,8,9,11-17,21,22,25,26,29,30,32,33,34,39,40,45,57; See Exhibit Index*

page 63-65] that would have prevented Stocks from pleading guilty to the charges. *Howard v State, 2012 Ark. 177, at 4-5, 403 S. W. 3d 38, 43.;Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L.Ed.2d 215 (1963); Buckley v State, 2010 Ark. 154, WL 1255763 (Ark.) and Cloird v State, 349 Ark. at 38, 76 S. W. 3d at 816.*

Lonoke Chief of Police Peckat and Special Prosecutor Dickey verify that prosecutor Cook was withholding evidence and covering up the years of child sexual abuse by Jack Walls of the boy scouts. *[Petitioner Ex. No. 10; Stocks Interview by Peckat;page 117-134]* Stocks feared for his life for many years because of the sexual abuse and the intimidation Jack Walls used to keep him and other boy scouts silent about the sexual abuse. *[Petitioner Ex. No. 11;* [redacted] *Interview; page 135-155] and [Petitioner's Ex. No. 23;* [redacted] *Testimony; page 299-313]; [Petitioner Ex. No. 12;* [redacted] *Interview; page 156-167];[Petitioner Ex. No. 14;* [redacted] *Interview; page 197-231];[Petitioner Ex. No. 15;* [redacted] *Interview; page 232-248]; [Petitioner Ex. No. 13;* [redacted] *Interview; page 168-196];[Petitioner Ex. No. 16;* [redacted] *Interview; page 249-272];[Petitioner Ex. No. 17;* [redacted] *Interview; page 273-278];[Petitioner Ex. No. 29; Doug Hogan Interview; page 351-353]; [Petitioner's Ex. No. 27;* [redacted] *Interview; page 347-348][Petitioner Ex. No. 33 ;Letter from Chief Peckat; page 370]; [Petitioner Ex. No.32;Letter from Chief Peckat; page 368-369]; [Petitioner Ex. No. 22; Letter from Betty Dickey; page 298]* Prosecutor Cook was acting under the influence of former Judge Walls to cover up the actions of Jack Walls, his pedophile son. Even though Cook later recused from prosecuting Jack Walls for the rape of Stocks and other boy scouts, this does not diminish his clandestine role in covering up the involvement of Jack Walls in the Stocks family murders by withholding information.

If all of this undisclosed mitigating and exculpatory evidence had been disclosed Stocks would not have pled guilty and his guilty plea was not knowing, intelligently and voluntarily made. Thus, depriving Stocks of due process of law as guaranteed by the Fifth and Fourteenth Amendments of the United States Constitution.

GROUND SEVEN

HEATH STOCKS SUFFERED FROM A MENTAL DISEASE OR DEFECT AT THE TIME OF HIS PLEA OF GUILTY. HE RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL BECAUSE HIS COUNSEL WAS (1)DENIED MONEY FROM THE TRIAL COURT TO HAVE AN INDEPENDENT EXPERT CONDUCT A MENTAL EVALUATION OF STOCKS; (2) STOCKS ILL ADVISED BY HIS DEFENSE COUNSEL TO NOT COOPERATE WITH THE MENTAL EVALUATION CONDUCTED BY THE STATE HOSPITAL MAKING THAT EVALUTION UNRELIABLE AND NOT DETERMINATIVE OF STOCKS MENTAL STATE PRIOR TO, DURING AND AFTER THE MURDERS. THE STATE HOSPITAL MENTAL EVALUATION PERSONNEL DOCTOR ANDERSON AND DOCTOR KITTRELL FAILED TO RELY UPON STOCKS PREVIOUS MENTAL EVALUATION BY DOCTOR KENNETH COUNTS THAT WAS THE ONLY RELIABLE MENTAL EVALUATION CONDUCTED ON STOCKS AT THE TIME OF HIS GUILTY PLEA AGREEMENT. STOCKS GUILTY PLEA WAS NOT KNOWINGLY, VOLUNTARILY AND INTELLIGENTLY MADE IN VIOLATION OF HIS FIFTH, SIXTH AND FOURTEENTH AMENDMENT RIGHTS OF THE UNITED STATES CONSTITUTION.

Heath Stocks was sexually abused and raped by Jack Walls for over ten years. Stocks and other scouts under Walls mind control allowed Walls to rape and sexually molest and train them to be assassins and carry out violent crimes on behalf of Jack Walls. *[Petitioner Ex. No. 10; Stocks Interview by Peckat;page 117-134] [Petitioner Ex. No. 11;* [redacted] *Interview; page 135-155] and [Petitioner's Ex. No. 23; Wade Knox Testimony; page 299-313];[Petitioner Ex. No. 12;* [redacted] *Interview; page 156-167];[Petitioner Ex. No. 14;* [redacted] *; page 197-231];[Petitioner Ex. No. 15;* [redacted] *Interview; page 232-248];[Petitioner Ex. No. 13;* [redacted] *Interview; page 168-196];[Petitioner Ex. No. 16;* [redacted] *Interview; page 249-272];[Petitioner Ex. No. 17;* [redacted] *Interview; page 273-278];[Petitioner Ex.*

No. 29; Doug Hogan Interview; page 351-353]; [Petitioner's Ex. No. 27; [redacted] *Interview; page 347-348]*

Stocks suffered greatly from the sexual abuse perpetrated upon him by Jack Walls and his dance teacher. *[Ex. No. 6; Dr. Counts report; page 96-101]* This led to many mental defects that caused Stocks to behave abnormally. His parents eventually sought a mental evaluation from medical experts because they did not know what was causing Stocks mental breakdown. Stocks parents were not the only parents having trouble with their children who were in Jack Walls boy scouts troops. These parents had to take their young boys to see therapists and doctors as well.

Barbara Stocks, the mother of Heath Stocks personally discovered Stocks being sexually abused by Jack Walls. Due to the traumatic shock, Barbara Stocks confided in Reverend Marble the sexual abuse of Stocks. *[Pet. Ex. No.25; Marble's Testimony;page 337-344]* Reverend Marble's church was a sponsor of the boy scout troop where Jack Walls was given the job scout master over the boy scout troop. **Somehow, Walls found out that Barbara Stocks had caught him sexually abusing her son, Heath Stocks. Walls then used his psychological mind control over Stocks and instructed him to murder the Stocks family to cover up the secret; years of sexual abuse. On January 17, 1997, under the mind control and manipulation of Walls, Stocks participated in the murder of his father, mother and sister to comply with Jack Walls instructions. Upon Stocks arrest for the murders, his mental condition was seriously in question and the trial court ordered a mental health evaluation to be conducted by the Arkansas State Hospital.** *[Petitioner's Ex. No. 5 , Court Order for Mental Evaluation; page 89-90]*

Cook, the prosecutor at the time of the trial court's order for a mental evaluation had not complied with the defense motion for discovery. Defense counsel Thompson and Carder advised

Stocks not to cooperate with the mental evaluation because the defense counsel lacked information from the prosecutor to properly advise Stocks about the mental evaluation. *[Ex. No. 50; Carder Notes: page 487-489]* Therefore, Stocks did not cooperate during the mental health evaluation at the direction of his defense counsel. Furthermore, Stocks was confused because Carder was telling Stocks to cooperate, then not cooperate and Thompson was telling Stocks not to cooperate with the mental evaluation. *[Petitioner Ex. No. 51, 52 & 53; Carder Notes; page 490-493]*

Since, defense counsel Thompson was not qualified to handle a death penalty case, the Arkansas Public Defender's Commission had appointed Carder to be lead counsel in Stocks's defense. There existed a conflict of interest between defense counsel Carder and Thompson on how to represent Stocks and how to handle Stocks mental evaluation. Carder advised Stocks to go ahead and talk to the doctors and then Thompson told Stocks not to cooperate with the mental evaluation. *[Ex. No. 51; Carder Notes;page 490-491]*. Stocks complied with Thompson's instructions. This is ineffective assistance of counsel in violation of Stocks's Sixth Amendment right of the United States Constitution. Stocks was prejudiced because had he been properly advised by his defense counsel to cooperate, the evaluating doctors would have properly diagnosed Stocks and the revelation of his child sexual abuse would have opened the door to the involvement of Walls in the murder of the Stocks family.

On 1-20-97, defense counsel Mac Carder wrote in his notes "Can't advise client either way w/out proper discovery. This is a critical stage in the process and should be done correctly." *[Ex. No.50; Carder notes; page 487-489]*

Defense counsel Mac Carder received a call from Edgar Thompson's assistant Sara Talbot on 2-3-97 informing him that she was going to call Billy Burris at the State Hospital and request

that Stocks evaluation be expedited. Carder advised against the mental evaluation being expedited. *[Ex. No.49; Notes/Memo from Carder;page 485-486]* Stocks told not to talk to anyone by Thompson. *[Petitioner Ex. No.51; Carder Notes; page 490-491]*

Sara Talbot either believed, or relayed Judge Hanshaw's thoughts to Carder, that Stocks was faking. Thompson informed Carder, that the Stocks kid was faking, and that he (Thompson), and the judge thought that the kid was a cold blooded murderer. *[Petitioner's Ex. No. 49; page 485-486].*

On 2-11-97 defense counsel Carder and investigator Lance Womack went to the Arkansas State Hospital to meet with Dr. Kittrell and advise Dr. Kittrell that Stocks was not discussing the events of the crime due to the defense not having the complete case file. *[Ex. No. 52 ; Carder Notes-Memo;page 492]*

When a convicted defendant alleges that Sixth Amendment right to counsel was violated due to the conduct of his attorney, a defendant must demonstrate both that his attorney's performance was deficient, and that the deficient performance prejudiced the defendant. *Strickland v Washington, 466 U. S. 668, 687-688, 104 S. Ct. 2052 (1984).*

Defense counsel admitted that they could not provide effective assistance to Stocks without discovery and defense counsel Carder filed a motion with the trial court on February 12, 1997 to suspend the psychiatric examination. *[Petitioner's Ex. No. 4; Motion to Suspend Psychiatric Examination; page 84-88]*

Under these circumstances, any findings of Stocks's mental evaluation by Dr. Anderson or Dr. Kittrell, at the Arkansas State Hospital is unreliable. Especially, since the Arkansas State Hospital refused to allow Stocks to contact his attorneys to let them know he was at the Arkansas State Hospital. The only reliable mental evaluation of Stocks that is determinative of Stocks's

mental capacity is the report of Dr. Kenneth Counts. *[Ex. No.6; Dr. Counts Medical Report; page 96-101]*

Dr. Counts findings were that Stocks was "psychologically vulnerable, defense deteriorated, lacked adequate resources to function beyond a marginally adaptive level." Also, Dr. Counts diagnosed Stocks as "suffering from schizophrenia (paranoid type) paranoid disorder and personality disorders" and that Stocks "suffered from a psychotic disorder with autistic thinking, delusional, hallucinations and feelings of unreality and or thought disorder." *[Ex. No.6 ; Dr. Counts Medical Report; page 99-101]*

The purposes of Stocks's mental evaluation was to explain Stocks's explosive behavioral problems he exhibited. Dr. Counts's report reveals the mental deterioration and psychological breakdown of Stocks, due to the childhood sexual abuse by Walls that allowed Walls to exert mental and emotional control over Stocks, and manipulating Stocks to participate in the murder of his mother, father, and sister to cover up the sexual abuse of Stocks by Walls. Even though Dr. Counts's report reveals that Stocks was sexually abused by his dance teacher, Dr. Anderson and Dr. Kittrell did not take into consideration this abuse in evaluating him and making it part of their final report. *[Petitioner's Ex. No.6; Dr. Kittrell's Report; page 92-95]*

Knox and Stocks were two of the numerous sexually abused boy scouts that Walls was able to break down psychologically. *[Petitioner's Ex. No. 19; Wade Knox Bio; page 289-291]* Knox's mental condition deteriorated to the point that he eventually committed suicide in 2003 rather than killing his family as instructed by Walls. *[Petitioner's Ex. No. 23; Wade Knox Testimony; page 299-313]* and *[Petitioner's Ex. No.24; Karen Knox Statement, CourtTV; page 323]* Stocks's grandmother Annie Mae Harris testified that Jack Walls was training Stocks to be

an assassin. *[Petitioner's Ex. No. 31; Annie Mae Harris Testimony at Victim Impact Hearing; page 363-364] states;*

Annie Mae Harris: ...."Jack Walls, III, told Heath he was training him to be a hit man.

STANDARD OF REVIEW

The trial court did not provide money for an independent expert to perform a mental evaluation of Stocks and to aid in his defense. There were no independent psychiatrist or psychologist at any hearing to refute the findings of the Arkansas State Hospital determining that Stocks was competent to stand trial. Stocks mental state at the time of the crime was paramount. Due to the ineffective assistance of counsel and the trial court not providing funds for an independent expert to evaluate Stocks. He was denied due process of law.

The United States Supreme Court in *Ake v. Oklahoma,* U.S. 68, 83, 105 S.Ct. 1087, 84 L. Ed.2d 53, clearly established that when an indigent "defendant demonstrates ... that his sanity at the time of the offense is to be a significant fact at trial, the State must" provide the defendant with "access to a competent psychiatrist who will conduct an appropriate examination and assist in evaluation, preparation, and presentation of the defense." *Ake* clearly established that when certain threshold criteria are met, the State must provide a defendant with access to a mental health expert who is sufficiently available to the defense and independent from the prosecution to effectively "conduct an appropriate examination and assist in evaluation, preparation, and presentation of the defense." U.S., at 83, 105 S.Ct. 1087.

Three preliminary issues require resolution. First, the conditions that trigger *Ake 's* application are present. Stocks is and was an "indigent defendant," U.S., at 70, 105 S.Ct. 1087 and his "mental condition" was both "relevant to ... the punishment he might suffer," *id., at 80,*

105 S.Ct. 1087 and " sanity at the time of the offense is seriously in question," *id.,at 70, 105 S. Ct. 1087.*

This Court does not have to decide whether *Ake* requires the State to provide an indigent defendant with a qualified mental health expert retained specifically for the defense team, because the State did not meet even *Ake 's* most basic requirements in this case. *Ake* requires more than just an examination; it requires that the State provide the defense with "access to a competent psychiatrist who will conduct an appropriate [1] examination and assist in [2] evaluation, [3] preparation, and [4] presentation of the defense." *U.S., at 83, 105 S.Ct. 1087.* Even assuming that the State met the examination requirement, it did not meet any of the other three. No expert helped the defense evaluate the Arkansas State Hospital's report or Stocks extensive medical records and translate these data into a legal strategy. No expert helped the defense prepare and present arguments that might have explained that Stocks purported malingering was not necessarily inconsistent with mental illness. Stocks's mental condition was the result of long term child sexual abuse and mind control. No expert helped the defense prepare direct or cross-examination of any witnesses, or testified at the judicial sentencing hearing.

The United States Supreme Court then wrote that "when the State has made the defendant's mental condition relevant to his criminal culpability and to the punishment he might suffer, the assistance of a psychiatrist may well be crucial to the defendant's ability to marshal his defense." *Id.,at 80, 105 S.Ct. 1087.* A psychiatrist may, among other things, "gather facts," "analyze the information gathered and from it draw plausible conclusions," and "know the probative questions to ask of the opposing party's psychiatrists and how to interpret their answers." These and related considerations "lea[d] inexorably to the conclusion that, without the

assistance of a psychiatrist to conduct a professional examination on issues relevant to the defense, to help determine whether the insanity defense is viable, to present testimony, and to assist in preparing the cross-examination of a State's psychiatric witnesses, the risk of an inaccurate resolution of sanity issues is extremely high. With such assistance, the defendant is fairly able to present at least enough information to the jury, in a meaningful manner, as to permit it to make a sensible determination." *Id.,at 82, 105 S.Ct. 1087* (emphasis added).

The Court concluded: "We therefore hold that when a defendant demonstrates to the trial judge that his sanity at the time of the offense is to be a significant factor at trial, the State must, at a minimum, assure the defendant access to a competent psychiatrist who will conduct an appropriate examination and assist in evaluation, preparation, and presentation of the defense.... Our concern is that the indigent defendant have access to a competent psychiatrist for the[se] purpose[s]." I*d.,at 83, 105 S.Ct. 1087* (emphasis added).

Ake thus clearly establishes that when its threshold criteria are met, a State must provide a mental health professional capable of performing a certain role: "conduct[ing] an appropriate examination and assist [ing] in evaluation, preparation, and presentation of the defense." Unless a defendant is "assure[d]" the assistance of someone who can effectively perform these functions, he has not received the "minimum" to which *Ake* entitles him.

The relevant court order did not ask Dr. Kittrell, Dr. Anderson or anyone else to provide the defense with help in evaluating, preparing, and presenting its case. It only required "the Arkansas State Hospital" to "complete neurological and neuropsychological testing on the Defendant ... and send all test materials, results and evaluations to the Court." *[Petitioner's Ex. No.5; Court Order for Evaluation; page 89-90]*. The mental evaluation of Stocks was rushed by the State Hospital in compliance with the request of Judge Hanshaw, and given that time frame,

it was not possible for Dr. Kittrell, Dr. Anderson, or any other expert to satisfy the latter three portions of *Ake 's* requirements even had he been instructed to do so.

Stocks mental capacity at the time of the murders and guilty plea are in question due to the insufficient evaluation procedures at the State Hospital used to evaluate Stocks, and the denial of an independent psychiatrist to refute the findings of Dr. Kittrell to help the preparation of the defense.

Dr. Diner, who spoke with Stocks at the jail, formed a similar evaluation as Dr. Counts concerning Stocks mental condition. However, Dr. Anderson and Dr. Kittrell did not take Dr. Diner's evaluation and subsequent opinion into consideration, or make it a part of their report. *[Petitioner's Ex. No. 73; Dr.Diner's Notes; page 564]*

Dr. Kittrell states in his report page 2; " Mr. Stocks declined on the advice of his attorneys to talk with the evaluator about his behavior at the time of the alleged crime," which renders the validity of any forensic evaluation tainted because Stocks was advised by his attorneys not to cooperate. Thus, any findings by Dr. Kittrell that Stocks was competent, is invalid by Dr. Kittrell's own admission that Stocks's attorneys advised him not to cooperate. Therefore, Dr. Kittrell's March 11, 1997 report *[Petitioner's Ex. No. 6; Forensic Evaluation Report;page 91-101]* was not an appropriate examination and does not accurately evaluate Stocks mental condition at the time of the crime or when Stocks signed the guilty plea agreement. Stocks's Fifth and Fourteenth Amendment rights were violated and his resulting guilty plea agreement was not knowing, voluntarily and intelligently made.

GROUND EIGHT

STOCKS'S COMPETENCY DETERMINATION AND GUILTY PLEA PROCEEDINGS WERE DEFECTIVE AND SUBJECT TO A DENIAL OF DUE PROCESS BECAUSE OF THE JUDICIAL IMPARTIALITY AND BIAS OF JUDGE HANSHAW WHO, PRIOR TO ANY COMPETENCY DETERMINATION AND GUILTY PLEA PROCEEDINGS, HAD SHOWN BIAS AND IMPARTIALITY IN VIOLATION OF THE ARKANSAS

CODE OF JUDICIAL CONDUCT AND THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION, THEREBY DENYING STOCKS DUE PROCESS OF LAW. THE TRIAL COURT FURTHER EXCEEDED ITS SUBJECT MATTER JURISDICTION BY FAILING TO HOLD A COMPETENCY HEARING AND A GUILTY PLEA HEARING, A DENIAL OF DUE PROCESS OF LAW. U. S. C. A. AMEND 14.

Prior to any competency determination and guilty plea acceptance by the trial court Judge Lance Hanshaw. Judge Hanshaw exhibited bias and impartiality toward Stocks by calling Stocks "a cold-blooded killer." In addition, Hanshaw failed to conduct a competency hearing and failed to conduct a guilty plea hearing prior to sentencing Stocks to three consecutive terms of life without parole in prison for three (3) counts of capital felony murder.

STANDARD OF REVIEW:

Due process guarantees "an absence of actual bias" on the part of a judge. *In re Murchison, 349 U. S. 133, 136, 75 S. Ct. 623, 99 L. Ed. 942 (1955).*"Bias is easy to attribute to others and difficult to discern in oneself. To establish an enforceable and workable framework, the Court's precedents apply an objective standard that, in the usual case, avoids having to determine whether actual bias is present. The Court asks not whether a judge harbors an actual, subjective bias, but instead whether, as an objective matter," " the average judge in his position is 'likely' to be neutral, or whether there is an unconstitutional 'potential for bias.'"*Caperton, 556 U. S. at 881, 129 S. Ct. 2252.* No attorney is more integral to the accusatory process than a prosecutor who participates in a major adversary decision.

Judicial bias is reviewable and recognizable in a writ of error coram nobis proceeding. *Chatmon v State, 2016 Ark. 236, 492 S. W. 3d 867 June2, 2016.* In *Chatmon*, the Arkansas Supreme Court considered the judicial bias claims and subsequently reviewed the judicial bias claims in *McArthur v State, 2017 Ark. 120, April 6, 2017.*

The United States Supreme Court decided on March 6, 2017 in *Rippo v Baker, 137 S. Ct. 805* ruled that, under the Due Process Clause, the 14th Amendment demands recusal even when a judge has no actual bias. *Aetna Life Ins. Co. v Lavoie, 475 U.S. 813, 825, 106 S.Ct. 1580, 89 L. Ed. 2d 823 (1986).* Recusal is required when, objectively speaking, the probability of actual bias on the part of the judge or decision maker is too high to be constitutionally tolerable. *Withrow v Larkin, 421 U. S. 35, 47, 95 S. Ct. 1456, 43 L. Ed. 2d 712 (1975); Williams v Pennsylvania, 579 U. S. ___, ___, 136 S. Ct. 1899, 1905, 195 L. Ed. 2d 132 (2016)* (The Court asks not whether a judge harbors an actual, subjective bias, but instead whether, as an objective matter, the average judge in his position is likely to be neutral, or whether there is an unconstitutional potential for bias).

The ruling in *Chatmon v State, supra,* by the Court was prior to the recent ruling in *Rippo v Baker, supra* by the U. S. Supreme Court, which is the controlling case law and clearly established federal law for actual bias to demonstrate error in post-conviction proceedings. Therefore, the standard announced in *Chatmon v State, supra* runs afoul of the ruling in *Rippo v Baker, supra.* To constitute a due process violation, the judicial bias must be sufficient significance to result in the denial of Stocks's rights to a fair trial. *Greer v Miller, 485 U. S. 756, 765 (1987).* Judge Hanshaw violated the judicial canons *Rules 1.1, 1.2, 1.3, 2.2, 2.3, 2.4, 2.7 and 2.11 of the Arkansas Code of Judicial Conduct.* Recusal was mandatory under the *Arkansas Code of Judicial Conduct Rule 2.11 (a)(1)(2)*; which states in part;

Code of Jud.Conduct, Rule 2.11

RULE 2.11. DISQUALIFICATION

(A) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding.

(2) The judge knows that the judge, the judge's spouse or domestic partner, or a person within the third degree of relationship to either of them, or the spouse or domestic partner of such a person is:

(a) a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;

(b) acting as a lawyer in the proceeding;

(c) a person who has more than a de minimis interest that could be substantially affected by the proceeding; or

(d) likely to be a material witness in the proceeding.

(3) The judge knows that he or she, individually or as a fiduciary, or the judge's spouse, domestic partner, parent, or child, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or in a party to the proceeding.

(4) [Reserved]

(5) The judge, while a judge or a judicial candidate, has made a public statement, other than in a court proceeding, judicial decision, or opinion, that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy.

(6) The judge:

(a) served as a lawyer in the matter in controversy, or was associated with a lawyer who participated substantially as a lawyer in the matter during such association;

(b) served in governmental employment, and in such capacity participated personally and substantially as a lawyer or public official concerning the proceeding, or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy;

(c) was a material witness concerning the matter; or

(d) previously presided as a judge over the matter in another court.

(B) A judge shall keep informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse or domestic partner and minor children residing in the judge's household.

(C) A judge subject to disqualification under this Rule, other than for bias or prejudice under paragraph (A)(1), may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, outside the presence of the judge and court personnel, whether to waive disqualification. If, following the disclosure, the parties and lawyers agree, without participation by the judge or court personnel, that the judge should not be disqualified, the judge may participate in the proceeding. The agreement shall be incorporated into the record of the proceeding.

Recusal was mandatory under Arkansas Code of Judicial Conduct Rule 1.1 Compliance with the Law and Rule 1.2 which states;

"**1.1** A judge shall comply with the law, including the Arkansas Code of Judicial Conduct."

"**1.2** PROMOTING CONFIDENCE IN THE JUDICIARY

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

Arkansas Rules of Judicial Conduct Rule 2.2 Impartiality and Fairness states, "A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially."

Arkansas Code of Judicial Conduct Rule 2.4 states;

EXTERNAL INFLUENCES ON JUDICIAL CONDUCT

(A) A judge shall not be swayed by public clamor or fear of criticism.

(B) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment.

(C) A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge.

An unconstitutional failure to recuse constitutes structural error that is "not amendable" to harmless-error review, regardless of whether the judge's decision was dispositive. *Puckett v United States, 556 U. S. 129, 141, 129 S. Ct. 1423, 173 L. Ed. 2d 266.*

The State had submitted to the Arkansas State Hospital a complete file from the prosecutor's office, and failed to disclose to defense counsel for Stocks this same information. Defense counsel filed a Motion to Suspend the Psychiatric Examination due to the defense not receiving the same case file information as the Arkansas State Hospital. *[Petitioner's Ex. No. 4; Motion to Suspend Psychiatric Examination; page 84-88]* . Judge Hanshaw denied this motion and allowed the psychiatric examination even though defense counsel opposed the forensic

examination of Stocks. This impartiality and bias from Judge Hanshaw, led to the defense counsels Thompson and Carder advising Stocks not to comply with the psychiatric examination; which resulted in Dr. Kittrell's deficient forensic evaluation report to the trial court, that Stocks was competent to stand trial, or that Stocks did not suffer from a mental disease or defect at the time of the commission of the crime. *[Petitioner's Ex. No. 6; Forensic Evaluation by Arkansas State Hospital; page 91-101]* Judge Hanshaw's impartiality and bias effected the outcome, and not only led to the denial of a competency hearing, but also led to a denial of a guilty plea hearing to determine whether or not Stocks guilty plea was knowingly, voluntarily and intelligently made.

GUILTY PLEA:

Stocks guilty plea was not knowingly, voluntarily and intelligently made pursuant to *Atkins v State, 1985, 287 ark. 445, 701 S. W. 2d 109* in violation of *Ark. R. Cr. P. 24.4* and *24.6* and *McDaniel v State, 1986 288 Ark. 629, 708 S. W. 2d 613* because the trial court did not convey required information to defendant by addressing Stocks personally, did not establish factual basis for guilty plea and did not inquire of Stocks whether he was in fact guilty and this does not substantially comply with requirements of *Rule 24.4* dealing with advice to be given by court to defendant pleading guilty or nolo contendere and did not comply with *Rule 24.6* dealing with determining accuracy of plea.

Arkansas Rules of Criminal Procedure Rule 24.4 states;

The court shall not accept a plea of guilty or nolo contendere from a defendant without first addressing the defendant personally, informing him of and determining that he understands:

(a) the nature of the charges;
(b) the mandatory minimum sentence, if any, on the charge;
(c) the maximum possible sentence on the charge, including that possible from consecutive sentences;

(d) that if the offense charges is one for which a different or additional punishment is authorized because the defendant has previously been convicted of an offense or offenses one (1) or more times, the previous conviction or convictions may be established after the entry of his plea in the present action, thereby subjecting him to such different or additional punishment; and
(e) that if he pleads guilty or nolo contendere he waives his right to a trial by jury and the right to be confronted with the witnesses against him, except in capital cases where the death penalty is sought.

Rule 24.6 Determining Accuracy of Plea states;

The court shall not enter a judgment upon a plea of guilty or nolo contendere without making such inquiry as will establish that there is a factual basis for the plea.

There is no record of Stocks pleading guilty before the court. *Dorsey v State, 2012, 393 S. W. 3d 578, 2012 Ark. App. 183* . The trial court failed to comply with *Ark. R. Cr. P. 24.7* and cause a verbatim of the guilty plea proceedings to be made and preserved. In absence of the required record the State has the burden of proving that the guilty plea was voluntarily and intelligently entered. *Reed v State, 1982, 276 Ark. 318, 635 S. W. 2d 472.*

Arkansas Rules of Criminal Procedure 24.7 Record of Proceedings states;

The court shall cause a verbatim of record of the proceedings at which a defendant enters a plea of guilty or nolo contendere to be made and preserved.

Stocks claims of judicial bias are not trial errors and he does not have to show actual bias in demonstrating fundamental error. It would be error to refuse to procedurally consider claims of Stocks coram nobis petition. To constitute a due process violation, the prosecutorial misconduct and judicial bias must be sufficient significance to result in the denial of Stocks's rights to a fair trial. *Greer v Miller, 485 U. S. 756, 765 (1987).*

The trial court not only exhibited impartiality and bias, but further exceeded its subject matter jurisdiction by accepting a guilty plea from Stocks without first complying with Rules 24.

4, 24.6 and 24.7 of the Arkansas Rules of Criminal Procedure. Any other judge would have complied with the above rules of criminal procedure.

There was no competency hearing conducted by Judge Hanshaw due to the judge's impartiality and bias. Under Arkansas Code Annotated 5-2-390 the trial court is obligated to conduct a competency hearing to determine if Stocks was fit to proceed to trial or withdraw his plea and plea guilty. *Westbrook v State, 265 Ark. 736, 580 S. W. 2d 702 (1979), Gruzen v State, 267 Ark. 380, 591 S. W. 2d 342 (1979)*; and *Robertson v State, 298 Ark. 131, 765 S. W. 2d 936 (1989).* The trial court only received a two page letter from Dr. Kittrell of the State Hospital; this violates due process of law. *Griffin v Lockhart, 935 F. 2d 926 (8th Cir. 1991).*

Judge Hanshaw's bias and impartiality caused the trial court to exceed its subject matter jurisdiction and not hold a competency hearing. A question of Stocks competency to stand trial or enter a guilty plea is essentially a jurisdictional matter and essential to the trial court's authority to require Stocks to proceed to trial or plead guilty and is separate and apart from any adjudication of criminal responsibility. Arkansas Constitution Article 7§ 23, U. S. C. A. Amend. 14; *Rogers v State, 1978, 264 Ark. 258, 570 S. W. 2d 268* and *Greene v State, 1998 S. W. 2d 192, 335 Ark. 1.*

This court should conduct an evidentiary hearing and subsequently grant the writ of error coram nobis and allow Stocks to withdraw his guilty plea.

GROUND NINE

STOCKS'S COERCED CONFESSION OF GUILTY WAS DONE IN VIOLATION OF THE FIFTH AND FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION. THE ARKANSAS STATE POLICE AND LONOKE COUNTY SHERIFFS OFFICE VIOLATED STOCKS'S RIGHTS TO DUE PROCESS OF LAW WHEN THEY HELD STOCKS IN CUSTODY UNTIL STOCKS CONFESSED THAT HE ALONE HAD COMMITTED THE MURDERS. STOCKS CONFESSION WAS OBTAINED IN VIOLATION OF HIS FIFTH, SIXTH AND FOURTEENTH AMENDMENT RIGHTS OF THE UNITED STATES CONSTITUTION.

On January 17, 1997, there was a triple homicide in Lonoke County, Arkansas; wherein, Stocks's father, mother and sister were murdered. At approximately 7:00am on January 18, 1997, Stocks was taken into custody in Arkadelphia, AR by Mark Hollingsworth of the Arkansas State Police, and Steve Finch of the Lonoke County Sheriffs Office. Stocks was not given his Miranda rights, and after he was informed that his family had been murdered, he was questioned in Arkadelphia, AR by Finch and Hollingsworth. While being questioned in Arkadelphia, AR, Stocks made no confession of any involvement in the murders. The interrogation lasted for hours. *[Petitioner's Ex. No.67;Whispering Oaks Interviews:page 540-546]* Finch and Hollingsworth, then transported Stocks in a police car from the jurisdiction of Arkadelphia, AR to Lonoke County, AR.

On January 18, 1997 at 1:10pm Stocks was questioned at the Lonoke County Sheriffs Office by Finch and Hollingsworth as to his whereabouts on the night of January 17, 1997. The interrogation was conducted by State Police Investigator Mark Hollingsworth. *[Petitioner's Ex. No. 64;Stocks Interviewed by Hollingsworth; page 553-536].* Stocks did not make any confession of guilt at this time. However, Stocks was not released from custody. At approximately 3:00pm this interrogation was terminated. Stocks was then taken against his will out of the jurisdiction of Lonoke County, AR to Little Rock, AR to the Arkansas State Police Headquarters (hereinafter"ASP") for a polygraph examination. *[Petitioner's Ex. No. 58;Pre-Test Polygraph by Alex Finger; page 513-518]* and *[Petitioner's Ex. No. 66;Pre-Test Polygraph by Alex Finger; page 538-539]*

After Stocks arrived at the ASP headquarters, he was threatened and intimidated by Finch and Hollingsworth to confess to the murders. Investigators Finch and Hollingsworth told Stocks he had to take the polygraph test before they released him from custody and if he did not take the

polygraph test that he would remain in their custody. Stocks then signed a consent to the polygraph test and said polygraph test was given by an Investigator Alex U. Finger.

During the test Stocks was asked the following questions along with other preliminary questions. *[Petitioner's Exhibit No. 66;Pre-Test Polygraph by Alex Finger; page 538-539]*

Q Did you shoot either one of your family members?
A No.
Q Did you cause the death of your family?
A No.
Q Were you there at the exact time of the shooting?
A No.
Q Did you suspect someone in particular causing the death of your family?
A No.
Q Do you know for sure who shot your family?
A No.

Once the polygraph examination terminated at approximately 5:00pm on January 18, 1997. Investigators Finch and Hollingsworth began to interrogate Stocks again by threatening him with receiving the lethal injection, that if they let him go vigilante justice may happen, that he was not telling the truth on the polygraph test and if he confessed that they would make sure that no citizen in Lonoke County would get to him to kill him and that they would make sure that he didn't receive the death penalty. As a result of the threats, intimidation and coercion by Hollingsworth and Finch, Stocks confessed to his involvement in the murders. At no time during 5:00pm until approx. 7:00pm on January 18, 1997, did Finch or Hollingsworth require Stocks to sign a waiver of his rights form, to not have an attorney present during questioning. *[Petitioner's Ex. No. 65;Stocks Interview by Hollingsworth and Finch; page 537]*

Proof that the interrogation of threats, coercion and intimidation took place after the polygraph examination between 5:00pm and 7:00pm on January 18, 1997, is that prior to Hollingsworth and Finch turning on any tape recorder at 7:08pm on January 18, 1997, investigator Sgt. Dale Swesey called investigator James Ward and told him to go to Arkadelphia,

AR, and search for jewelry in a dumpster at 7:00pm on 1-18-97. *[Petitioner's Ex. No. 69; Investigator Ward's Notes; page 549-550]* How could Sgt. Swesey and Investigator Ward possible have known to search for jewelry in a dumpster at 7:00pm, prior to the time of Stocks interrogation by Finch and Hollingsworth, at 7:08pm, on January 18, 1997? According to the interview conducted by Investigator Hollingsworth and Finch, at the Arkansas State Police Station, Stocks did not mention anything about jewelry in a dumpster until well into the taped interview, that started at 7:08pm.*[See Ex. No 69;Invest. James Ward's Notes; page 549-550]* and *[Petitioner Ex. No.65; Interview of Stocks by Hollingsworth on 1-18-97 at 7:08pm; page 501]*

At 7:08pm on 1-18-97, investigators Finch and Hollingsworth did not advise Stocks that he had a right to have a lawyer present and told Stocks that the only way that they could protect Stocks from the people in Lonoke, AR wanting to kill him was that he waive his rights and sign the form and tell them what he had already told them during the hours (5:00pm-7:00pm) of the interrogation about the murders. Investigator Hollingsworth then turned on the tape recorder. *[Ex. No.65 Stocks 1-18-97 Statement at 7:08pm to Inv. Hollingsworth; page 537]*

A. Voluntariness in confessions.

1. The constitutional requirement of voluntariness.

False confessions are anathema to the judicial process. They are not beneficial to the prosecutor whose goal is to find, punish, and incapacitate the actual criminal. They are not beneficial to grieving relatives and friends who want to bring justice to the perpetrator of a crime, and, of course, they are of no benefit to a wrongfully accused defendant. For these reasons it is obvious why coercive tactics that lead to a false confession would be an affront to our judicial system. But the use of involuntary confessions violates the Constitution even when they are

confessions of truth (where, in fact, it is possible to know such a thing). "The aim of the requirement of due process is not to exclude presumptively false evidence, but to prevent fundamental unfairness in the use of evidence, whether true or false." *Colorado v. Connelly, 479 U.S. 157, 167, 107 S.Ct. 515, 93 L.Ed.2d 473 (1986) (citing Lisenba v. California, 314 U.S. 219, 236, 62 S.Ct. 280, 86 L.Ed. 166 (1941)).*

The Supreme Court has long held that "certain interrogation techniques, either in isolation or as applied to the unique characteristics of a particular suspect, are so offensive to a civilized system of justice that they must be condemned under the Due Process Clause of the Fourteenth Amendment." *Miller v. Fenton, 474 U.S. 104, 109, 106 S.Ct. 445, 88 L.Ed.2d 405 (1985) (citing Brown v. Mississippi, 297 U.S. 278, 56 S.Ct. 461, 80 L.Ed. 682 (1936)).* Coerced confessions also violate the Fifth Amendment's right against self-incrimination. *Withrow v. Williams, 507 U.S. 680, 688, 113 S.Ct. 1745, 123 L.Ed.2d 407 (1993).* As the Supreme Court noted, "[A] criminal law system which comes to depend on the confession will, in the long run, be less reliable and more subject to abuses than a system relying on independent investigation." *Berghuis v. Thompkins, 560 U.S. 370, 403–04, 130 S.Ct. 2250, 176 L.Ed.2d 1098 (2010) (internal citations omitted).*

"[T]he ultimate issue of 'voluntariness' is a legal question requiring independent federal determination." *Arizona v. Fulminante, 499 U.S. 279, 287, 111 S.Ct. 1246, 113 L.Ed.2d 302 (1991); Miller v. Fenton, 474 U.S. at 110, 106 S.Ct. 445.* This court should review Stocks's coerced confession of guilt and determine if Stock's confession was not voluntary "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States," *Bobby v. Dixon, 565 U.S. 23, 27, 132 S.Ct. 26, 181 L.*

Ed.2d 328, (2011)), or whether it was based on an unreasonable determination of the facts in light of the evidence presented in the present state court proceeding.

B. COERCION

2. The risks of coercion on voluntariness.

Historically, courts have looked at traditional modes of coercion in evaluating whether the defendant voluntarily confessed—that is, whether the suspect was tortured, beaten, or deprived of sleep, food or water. The Supreme Court and the community of experts on confessions have long recognized, however, that psychological coercion can be as powerful a tool as physical coercion. *Arizona v Fulminante, 499 U.S. at 287, 111 S.Ct. 1246.*

The primary cause of police-induced false confessions is the use of psychologically coercive police interrogation methods. These include methods that were once identified with the old "third degree," such as deprivation (of food, sleep, water, or access to bathroom facilities, for example), incommunicado interrogation, and extreme induced exhaustion and fatigue. Since the 1940s, however, these techniques have become rare in domestic police interrogations. Instead, when today's police interrogators employ psychologically coercive techniques, they usually consist of implicit or explicit promises of leniency and implicit or explicit threats of harsher treatment in combination with other interrogation techniques such as accusation, repetition, attacks on denials, and false evidence ploys.

Jon B. Gould & Richard A. Leo, One Hundred Years Later: Wrongful Convictions After A Century of Research, 100 J. Crim. L. & Criminology 825, 846 (2010).

We know, however, that innocent people do in fact confess and do so with shocking regularity. The National Registry of Exonerations has collected data on 1,994 exonerations in the United States since 1989 (as of February 26, 2017), and that data includes 227 cases of innocent people who falsely confessed. This research indicates that false confessions (defined as cases in

which indisputably innocent individuals confessed to crimes they did not commit) occur in anywhere from 15-24% of wrongful convictions cases. Samuel Gross & Michael Shaffer, Exoneration in the United States, 1989-2012: Report by the National Registry of Exonerations, 60.6.

A survey of false confession cases from 1989–2012 found that 42% of exonerated defendants who were younger than 18 at the time of the crime confesse, as did 75% of exonerees who were mentally ill or mentally retarded, compared to 8% of adults with no known mental disabilities. Samuel Gross & Michael Shaffer, Exoneration in the United States, 1989-2012: Report by the National Registry of Exonerations, 58.7 Overall, one sixth of the exonerees were juveniles, mentally disabled, or both, but they accounted for 59% of false confessions. Id. In another study of those exonerated by DNA, juveniles accounted for one third of all false confessions. Brandon L. Garrett, The Substance of False Confessions, 62 Stan. L. Rev. 1051, 1094 (2010).

Indeed, age and intellectual disability are the two most commonly cited characteristics of suspects who confess falsely. Samuel R. Gross, Kristen Jacoby, Daniel J. Matheson, and Nicholas Montgomery, Exonerations in the United States 1989 through 2003, 95 J. Crim. L. & Criminology 523, 545 (2005). Stocks suffered under the weight of both youth and intellectual deficit and thus the State court was required, by a long history of Supreme Court precedent, to assess the voluntariness of his confession with great care. The interrogation techniques of investigators Hollingsworth and Finch could have affected Stocks because of his mental defect, which led Stocks to be coerced to admit guilt.

C. The totality of the circumstances requirement for assessing voluntariness.

There is no magic formula or even an enumerated list for assessing the voluntariness of a confession. Such an assessment depends, instead, upon the totality of the circumstances. *Withrow, 507 U.S. at 693, 113 S.Ct. 1745; Schneckloth v. Bustamonte, 412 U.S. 218, 226, 93 S. Ct. 2041, 36 L.Ed.2d 854 (1973).* An incriminating statement is voluntary "if, in the totality of circumstances, it is the product of a rational intellect and free will and not the result of physical abuse, psychological intimidation, or deceptive interrogation tactics that have overcome the defendant's free will." *Carrion v. Butler, 835 F.3d 764, 775 (7th Cir. 2016).* Police conduct may be unduly coercive because of the inherent nature of the conduct itself or because "in the particular circumstances of the case, the confession is unlikely to have been the product of a free and rational will." *Miller v. Fenton, 474 U.S. at 110, 106 S.Ct. 445.*

"The admissibility of a confession turns as much on whether the techniques for extracting the statements, as applied to this suspect, are compatible with a system that presumes innocence and assures that a conviction will not be secured by inquisitorial means as on whether the defendant's will was in fact overborne." *Id. at 116, 106 S.Ct. 445* (emphasis in original). In short, a court must look at the interplay between the characteristics of the defendant and the nature of the interrogation. A simple recitation of each, as the state appellate court did here, is not sufficient.

Factors that courts consider as part of the totality of the circumstances include the length of the interrogation, its location, its continuity, the defendant's maturity, education, physical condition, mental health, and whether the police advised the defendant of his right to remain silent and have counsel present. *Withrow, 507 U.S. at 693–94, 113 S.Ct. 1745.*

D. Courts must pay close attention to voluntariness when manipulative interrogation techniques are used, particularly on the young and intellectually challenged.

Psychologically manipulative interrogation techniques, likewise, are not per se coercive, but among the circumstances that a court must evaluate in total to determine whether a particular defendant's free will has been overcome. To be clear, many manipulative interrogation techniques, in and of themselves, are not unconstitutional. "Trickery, deceit, even impersonation do not render a confession inadmissible." *United States v. Villalpando, 588 F.3d 1124, 1128 (7th Cir. 2009) *958 (citing U.S. v. Kontny, 238 F.3d 815, 817 (7th Cir. 2001))*. The law permits the police to "pressure and cajole, conceal material facts, and actively mislead—all up to limits." *United States v. Rutledge, 900 F.2d 1127, 1131 (7th Cir. 1990)*. That limit is exceeded, however, when the government gives the suspect information that destroys his ability to make a rational choice "for example by promising him that if he confesses he will be set free." *Aleman v. Vill. of Hanover Park, 662 F.3d 897, 906 (7th Cir. 2011)*. And, as we describe further below, those limits depend on the characteristics of the defendant. False promises that a suspect will be treated leniently by the courts, we have noted, have "the unique potential to make a decision to speak irrational and the resulting confession unreliable ... because of the way it realigns a suspect's incentives during interrogation." *Villalpando, 588 F.3d at 1128; United States v. Montgomery, 555 F.3d 623, 629 (7th Cir. 2009)* ("a false promise of leniency may be sufficient to overcome a person's ability to make a rational decision about the courses open to him."). See also *United States v. Nichols, 847 F.3d 851, 857 (7th Cir. 2017)* ("a government agent's false promise of leniency may render a statement involuntary."); *Montgomery, 555 F.3d at 629* ("[g]iven the right circumstances, a false promise of leniency may be sufficient to overcome a person's ability to make a rational decision about the courses open to him."); *Hadley v. Williams, 368 F.3d 747, 749*

(7th Cir. 2004) (police may not extract a confession in exchange for a false promise to set the defendant free).

In other words, the totality of the circumstances test dictates that coercive interrogation on the one hand, and suspect suggestibility, on the other, are on inverse sliding scales—the more vulnerable or suggestible a suspect, the less coercion it will take to overcome his/her free will. This is not a statement of a new test, but rather the logical conclusion of the totality of the circumstances review itself.

To determine whether a promise is coercive as a legal matter, a court cannot consider the promise alone, but rather the promise in conjunction with the characteristics of the suspect. Again, the Supreme Court's seminal case advises, "[t]hat which would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens." *Haley, 332 U.S. at 599, 68 S. Ct. 302.* And the Supreme Court precedent requires lower courts to consider interrogation techniques as applied to the particular defendant at hand. *Miller v. Fenton, 474 U.S. at 116, 106 S.Ct. 445.*

Specifically, in such a case, the police should, as the Supreme Court requires, ensure that such a suspect "has the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights." *Fare, 442 U.S. at 725, 99 S. Ct. 2560;* see also *Murdock, 846 F.3d at 209; Hardaway, 302 F.3d at 762.* A court reviewing a challenge to a confession must assess the totality of the circumstances to assure itself that the defendant voluntarily confessed. This the trial court did not do because the trial court did not conduct a guilty plea hearing to determine the voluntariness of Stocks coerced confession of guilt, prior to accepting the guilty plea agreement.

This court should not ignore these false assurances and promises, steering, coaxing, and and address the totality of the circumstances, and apply that rule to these facts. . The requirement to view the totality of the circumstances, however, applies to adults and minors alike. See, e.g., *Missouri v. Seibert, 542 U.S. 600, 608, 124 S.Ct. 2601, 159 L.Ed.2d 643 (2004).*

Considering that Stocks was interrogated three (3) times prior to making a confession of guilt: a) In Arkadelphia, AR by Investigators Finch and Hollingsworth; b) In Lonoke County, AR by by Investigators Finch and Hollingsworth; c) In Little Rock, AR by Investigator Alex. U. Finger of the Arkansas State Police, it is very probably that the threats, intimidation and coercion, and false promises made to Stocks by Investigators Finch, Finger and Hollingsworth on 1-18-97 between 5:00 pm and 7:00 pm, led to the confession of guilt by Stocks.

This coerced plea of guilt was done in violation of Stocks's Fifth and Fourteenth Amendment rights of the United States Constitution and had Stocks's constitutional rights not been violated, he would not have signed the guilty plea agreement.

GROUND TEN

STOCKS GUILTY PLEA AND WAIVER OF RIGHTS TO PRESENT MITIGATING EVIDENCE WERE NOT MADE KNOWINGLY, INTELLIGENTLY AND VOLUNTARILY BECAUSE THE STATE WITHHELD MITIGATING AND EXCULPATORY MATERIAL EVIDENCE IN VIOLATION OF STOCKS FIFTH, SIXTH AND FOURTEENTH AMENDMENT RIGHTS OF THE UNITED STATES CONSTITUTION.

STANDARD OF REVIEW:

To be valid, a guilty plea must represent "a voluntary and intelligent choice among the alternative courses of action open to the defendant, " *North Carolina v Alford, 400 U. S. 25, 31, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970),* and the defendant must "possess [ ] an understanding of

the law in relation to the facts." *McCarthy v United States, 394 U. S. 459, 466, 89 S. Ct. 1166, 22 L. Ed. 2d 418 (1969).*

As argued in grounds one through nine Stocks's youth, troubled background, and substantial mental impairments clouded his decision-making throughout the state court proceedings. Since, the trial court failed to make a record of any competency hearing determination or any guilty plea proceedings there is no way to ascertain or establish by any trial court records that Stocks possessed the required "understanding of the law in relation to the facts." *McCarthy, 394 U. S. at 466, 89 S. Ct. 1166.* The trial court did not discuss possible defenses such as diminished capacity; the court failed to inform Stocks of lesser included offenses such as second degree murder and manslaughter; and the court did not explain the full range of potential sentences that Stocks could receive.

Arkansas sentencing laws provide that in the sentencing phase of the trial, evidence, relevant to sentencing may include victim-impact evidence and statements. See *Ark. Code Ann. § 16-97-103 (4) (Supp. 1997).* The sentencing state further provides that relevant character evidence of aggravating and mitigating circumstances may be allowed. See *Ark. Code Ann. § 16-97-103 (5) & (6).* The presentation of this mitigating and exculpatory material evidence suppressed by Prosecutor Cook would not have been unduly prejudicial to Stocks and would have lessened the culpability of Stocks. *Noel v State, 331 Ark. 79, 960 S. W. 2d 439 (1998).*

Stocks defense counsel Edgar Thompson had previously filed a motion for disclosure on January 21, 1997. *[Petitioner's Ex. No. 3; Defense Supplemental Motion for Discovery; page 72-83]* which states in part;

11. All evidence in the prosecution's possession or available to the prosecution which if favorable to the defendant on the issue of punishment, including but not limited to evidence disclosing:

(a) the defendant has no significant history of prior criminal activity;
(b) the offense was committed while the defendant was under the influence of extreme emotion or mental disturbance;
(c) the victim was a participant in the defendant's conduct;
(d) the victim was an accomplice and participation was relatively minor;
(e) the defendant act under extreme duress or under substantial domination of another person;
(f) the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired; and
(g) partial or total negation of any evidence offered by the State in support of any alleged aggravating circumstance.

20. Any other evidence of any aspect of the defendant's character and record or the circumstances of the crime that may call for a sentence less than death.

21. Any other evidence that is probative of a negative answer to one or more of the aggravating circumstances in the sentencing phase. See Ark. Code Ann. 5-4-604.

22. Any other evidence of the circumstances of the crime or the character and record of another party to the crime that would tend to show that the other party was more culpable, more dominant or more dangerous than the defendant.

Stocks's defense counsel were unaware of the mitigating and exculpatory evidence that the State had withheld that the defense could have chosen to forego the guilty plea agreement or present as mitigating evidence in any sentencing proceeding. *Brady v. Maryland, supra.* The mitigating and exculpatory material evidence that the State withheld are as follows:

A. Investigation of the child sexual abuse of Doug Hogan and the boys scouts troop that Heath Stocks was a member and a victim of child sexual abuse. These documents are:

- Notice of child maltreatment to prosecutor Larry Cook. (Ex. No. 8; pg. 110)
- Lawsuit filed against Charles "Jack" Walls by the Hogans. (Ex. No. 7; pg.102)
- ASP Investigator Rainbolt's letter to Larry Cook closing investigation. (Ex. No. 9;pg.112)
- Attorney Morgan Welch Letter to Prosecutor Larry Cook about Charles Jack Walls soliciting to murder the Hogans; of which Heath Stocks and Wade Knox were the two scouts that were ordered by Charles Jack Walls to kill the Hogans. (Ex. No. 26; pg345)
- DHS letter from Warford to Investigator Rainbolt ASP. (Ex. No. 39; pg.392)
- Interview of Warford by Raper. (Ex. No. 40;pg.393)

- DHS file of the Hogan child sexual abuse by Charles Jack Walls III. (Ex. No. 43;pg. 412)

The above listed information that was in the State's possession would have shown that Stocks was a member of the same boy scouts troop of Hogan and that Stocks was sexually abused by the same scout master Charles Jack Walls III. *Brady v Maryland, supra; United States v Bagley, supra; and Kyles v Whitle, supra. [Petitioner's Ex. No. 8;Notice of Child Maltreatment to Prosecutor Larry Cook; page110-111]* This is crucial mitigating evidence showing the nexus between the psychological mind control, child sexual abuse and manipulation by Charles Jack Walls III to have Stocks murder the Hogans and the Stocks family. The State had a legal responsibility to disclose this evidence to the defense.

B. Reverend Robert Marble's knowledge that Charles Walls III had sexually abused Stocks, had psychological mind control over Stocks and ordered Stocks to murder the Stocks family and the State allowing Marble to interrogate Stocks without his counsel being present.

The State failed to disclose that Reverend Robert Marble had knowledge that Charles Walls III had been sexually abusing Stocks since he was a child. Marble knew that Stocks mother, Barbara Stocks had informed him of the child sexual abuse and Marble did not report the child sexual abuse. Upon Stocks arrest defense counsel filed a motion on January 21, 1997 that no one was to question, interview or talk to Stocks without his counsel being present. Defense counsel was unaware that the State had circumvented the notice by defense counsel that Stocks was not to be interviewed without counsel present and sent Reverend Robert Marble in to question Stocks about the murders. Reverend Marble was allowed by the State to interview Stocks at the Arkansas State Hospital and the Lonoke County Jail without Stocks's counsel being present. *[Petitioner's Ex. No. 25; Reverend Robert Marble's Testimony; page 337-344]* Defense

knew nothing about these two interviews of Stocks by Reverend Marble and had defense known the content of the interview, which revealed that Charles Walls III had ordered Stocks to murder the Stocks family members. The defense would not have allowed Stocks to sign the guilty plea agreement and upon any subsequent finding of guilty the defense could have used this undisclosed information for mitigation purposes at any sentencing proceedings. This is a violation of Stocks Fourteenth Amendment rights to Due Process and Equal Protection of the Laws of the United States Constitution.

C. Lonoke Chief of Police letter to the judge about Prosecutor Larry Cook refusing to file rape charges against Charles Walls III of the boy scouts including, which included Stocks.

The State willfully suppressed the knowledge of the child sexual abuse of the boy scouts by Charles Walls III of which Heath Stocks was a victim and had the State filed the child sexual abuse charges against Charles Walls III the defense counsel would not have advised Stocks to sign the guilty plea agreement and waive his rights to have the mitigating evidence presented to show his culpability in the crimes and possibly lessen any subsequent punishment imposed because Charles Walls III[3] was involved in the murders. *Brady v Maryland, supra. [Petitioner's Ex. No.34; Letter from Judge Lance Hanshaw; page 371-373].* Judge Hanshaw blamed Charles Walls III for the murder of the Stocks family, and further proof of Jack Walls's psychological control of Heath Stocks, Judge Hanshaw states to Walls, "Heath Stocks was your finest creation."

Lonoke City Police Chief Peckat's letter accurately shows that the prosecutor Larry Cook was in possession of irrefutable evidence that Charles Walls III was raping and molesting the boy scouts of which Stocks was victim and the prosecutor Larry Cook deliberately delayed filing charges of rape against Charles Walls III until after Stocks had signed the guilty plea agreement

[3] See Petitioner's Ex. No. 35; page 374; Affidavit of Arrest of Charles Walls III,for rape of Heath Stocks.

to three life without sentences. *[Petitioner's Ex. No.33 ; Chief Peckat's Letter; page 370]* which states in part;

> *"I am not advocating that Heath Stocks be released from prison, but I do feel that there is evidence and testimony available at this time, that was not available or considered before Heath Stocks pled guilty on June 6, 1997. In January 1999 Jack Walls III pled guilty to four (4) counts of rape and other sexual offenses. One of those charges and plea of guilty involved Heath Stocks as his victim. The opening of this case, may not do anything for Heath Stocks, but it may reveal the truth of what led up to these murders and why."*

Any information in the possession of the police that is not disclosed to the defense is attributable to the prosecution and had this information been known to the defense it would have changed the outcome of the judicial proceedings and Stocks would not have signed the guilty plea agreement. By Chief Charles Peckat's own words the judicial proceedings would have gone differently. *Brady v Maryland, supra; and Kyles v Whitley, supra.*

D. Prosecutor Larry Cook instructed Annie Mae Harris not to talk about Charles Jack Walls's sexual abuse of her grandson Heath Stocks and about the training of Heath Stocks to be an assassin because of the court's gag order. The prosecutor willfully suppressed this exculpatory material and mitigating evidence.

Stocks's grandmother Annie Mae Harris testified at the victim impact hearing of Charles Jack Walls III that she was instructed not to talk[4] about the sexual abuse and murderous training of Heath Stocks. *[Petitioner's Ex. No. 31; Annie Mae Harris Testimony; page 359-367]*, states;

Q And after she was dead, why didn't you tell the authorities?
A. Nobody ever asked me anything.
Q Were you reluctant to tell the authorities because of a misunderstanding you had about a gag order?
A Well, he said not to talk about it.
Q You thought you couldn't talk about it because of the gag order?
A Yes..
REDIRECT EXAMINATION:

[4] See Petitioner's Ex. No. 37; Order Control of Publicity; page 389-390 .

Q Mrs. Harris, I'm not referring to a gag order in connection with the rape trial of Jack Walls. I'm referring to a gag order in connection with the murder trial of Heath Stocks. Was there not a gag order in effect?
A Yes.
Q And did you think that you were restricted or unable to tell what you knew about this at that time because of that gag order?
A Yes. I thought there would probably be a hearing, and I would tell it at that time.
Q And there never was.
A No.

Compelling factual evidence that the prosecution willfully suppressed this exculpatory and mitigating evidence and this led to Stocks's waiver of presenting this exculpatory and material evidence was due to suppression of this evidence by the State. *Brady v Maryland, supra.* If Mrs. Harris knowledge of the sexual abuse and training of Stocks by Charles Walls III would have been made known. Stocks would not have waived his rights and pled guilty. Annie Mae Harris was waiting on a hearing to tell what she knew about the sexual abuse, and training of Heath Stocks to be a hit man.

The defense was unaware that the prosecutor Larry Cook was in possession of information related to the rape of Heath Stocks and other child boy scouts by Charles Walls III. Upon proper disclosure by the State the rape of Stocks as a child was mitigating and exculpatory material evidence as to the commission of the crime and any culpability in relation to punishment. Prosecutor Larry Cook did not file the charges until Chief Peckat repeatedly pressured the prosecutor through the circuit court judge to bring forth the charges.

In the files of the Lonoke Police Department a letter from Chief Peckat that reveals that the State*[Petitioner's Ex. No. 32 & 33; Chief Peckat's Letter ; page 368-370]* had information in their possession concerning child sexual abuse leading up to the murders of the Stocks family that was not divulged to the defense prior to Stocks signing the guilty plea agreement.

The United States Supreme Court in *Williams v Pennsylvania, 136 S. Ct. 1899 (2016),* the Court reversed because the prosecution had suppressed evidence of child sexual abuse and that the prosecutor was in possession of exculpatory and mitigating evidence of perpetrator having sexual contact with young boys. Prosecutor Larry Cook committed these same *Brady* violations because he was well aware of Charles Walls III inappropriate sexual contact with the boy scouts of which Heath Stocks was a member of Charles Walls III boy scouts troop.

Larry Cook later revealed his reluctance to file charges against Charles Walls III by recusing from the prosecution of Charles Walls III because of Cook's relationship to Charles Walls III father, Judge Charles Walls II. *[Petitioner's Ex. No. 45; Letter of Recusal from Larry Cook; page 471-472]*

In *United States v Bagley, 473 U. S. 667, 105 S. Ct. 3375, 87 L. Ed. 2d 481 (1985)*, the *Bagley* court held that regardless of request, favorable evidence is material, and constitutional error results from its suppression by the government. Four aspects of materiality under *Bagley* bear emphasis. Although constitutional duty is triggered by the potential impact of favorable but undisclosed, a showing of materiality does not require demonstration by a preponderance that disclosure of the suppressed evidence would have ultimately in the Stocks acquittal.

Evidenced qualifies as material when there is "any reasonable likelihood" it could have "affected the judgment." *Giglio, supra at 154, 92 S. Ct. 763 (quoting Napue v Illinois, 360 U. S. 264, 271, 79 S. Ct. 1173, 3 L. Ed. 2d 1217 (1959).*

Stocks did not understand his legal alternatives and there is no record of any guilty plea or competency hearing. The Arkansas State Hospital report from Dr. Kittrell without a competency determination hearing was insufficient and the trial court erred by accepting the guilty plea agreement of Stocks merely because Dr. Kittrell's report had found him competent to stand trial.

Stocks has submitted the affidavit of Samantha Jones, who completed the investigative research and uncovered the undisclosed exculpatory material and mitigating evidence that the State did not disclose to Stocks prior to him signing the guilty plea agreement.

Stocks immediately filed this present writ of error coram nobis after receiving this information and after a careful review of the petition for error coram nobis and the attached exhibits. This court can clearly conclude that this undisclosed information was not available to Stocks at the time of him signing the guilty plea agreement, which is verified by Chief Peckat[5] and Prosecutor Betty Dickey,[6] and that Stocks remains a victim of child sexual abuse. [7]

CONCLUSION

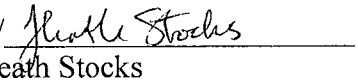
WHEREFORE, petitioner prays that this court grant his petition to reinvest the trial court with jurisdiction to consider his writ of error coram nobis and that this court conduct an evidentiary hearing to reach the merits of this petition.

Respectfully submitted,

Heath Stocks 

VERIFICATION OF SIGNATURE

I, Heath Stocks do swear and attest that I am filing this Motion to Reinvest the Trial Court with Jurisdiction to consider the Issuance of the Writ of Error Coram Nobis and the facts asserted herein are to the best of my knowledge and is not done in bad faith.

/s/ 
Heath Stocks

[5] Exhibit No. 33; page 370; Chief Peckat's Letter about prosecutor withholding information.

[6]Exhibit No. 22; page 298;Letter from Prosecutor Betty Dickey.

[7]Exhibit No. 41; page 401-402; Letter from Attorney General keeping Stocks informed of his rights as a victim.

State of Arkansas
County of Jefferson

SUBSCRIBED AND SWORN TO BEFORE me a Notary Public on this 13th day of September 2017.

JOHN SPEARS
NOTARY PUBLIC-STATE OF ARKANSAS
JEFFERSON COUNTY
My Commission Expires 03-09-2021
Commission # 12382196

Notary Public

My Commission Expires:

CERTIFICATE OF SERVICE

I, Heath Stocks hereby certify that I have serviced an exact copy of the foregoing to the Prosecuting Attorney Chuck Graham, Courthouse, 301 N. Center St., Ste. 301, Lonoke AR 72086-2892 on this ___ day of _____ 2017 by U. S. Mail postage prepaid.

Heath Stocks

IN THE LONOKE COUNTY CIRCUIT COURT OF ARKANSAS

HEATH STOCKS **PETITIONER**

VS **CASE NO.**

STATE OF ARKANSAS **RESPONDENT**

MEMORANDUM OF AUTHORITIES

Comes now, Heath Stocks, the petitioner and for his memorandum of authorities in support of his motion for the issuance of the writ of error coram nobis, does so state;

AUTHORITIES RELIED UPON FOR RELIEF

Aetna Life Ins. Co. v Lavoie, 475 U.S. 813, 825, 106 S.Ct. 1580, 89 L. Ed. 2d 823 (1986)

Aleman v. Vill. of Hanover Park, 662 F.3d 897, 906 (7th Cir. 2011)

Ake v Oklahoma, U. S. 68, 83, 105 S. Ct. 1087, 84 L. Ed. 2d 53

Arizona v Fulminate, 499 U. S. 279, 287, 111 S. Ct. 1246 (1991)

Atkins v State, 1985, 287 ark. 445, 701 S. W. 2d 109

Berger v United States, 295 U. S. 78, 88 (1935)

Berghuis v Thompikins, 560 U. S. 370, 403-04, 130 S. Ct. 2250, 176 L. Ed. 2d 1098 (2010)

Bobby v Dixon, 565 U. S. 23, 27, 132 S. Ct. 26 (2011)

Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963)

Brown v Mississippi, 297 U. S. 278, 56 S. Ct. 461, (1936)

Buckley v State, 2010 Ark. 154, WL 1255763 (Ark.)

Carrion v Butler, 835 F. ed 764, 775 (7th Cir. 2016)

Caperton, 556 U. S. at 881, 129 S. Ct. 2252.

Chatmon v State, 2016 Ark. 236, 492 S. W. 3d 867 June2, 2016.

Cloird v State, 349 Ark. at 38, 76 S. W. 3d at 816 (per curiam)

Cook v State, 361, Ark. 91, 105, 204 S. W. 3d 532, 540 (2005)

Dorsey v State, 2012, 393 S. W. 3d 578, 2012 Ark. App. 183

Echols v State, 354 Ark. 414, 125 S. W. 3d 153 (2003)

Godinez v Moran, 509 U. S. at 400, 113 S. Ct. 2680 (1993)

Flanigan v State, 2010 Ark. 140, 2010 WL 987049

Greene v State, 1998 S. W. 2d 192, 335 Ark. 1.

Griffin v Lockhart, 935 F. 2d 926 (8th Cir. 1991)

Gruzen v State, 267 Ark. 380, 591 S. W. 2d 342 (1979)

Greene v State, 1998 S. W. 2d 192, 335 Ark. 1

Greer v Miller, 485 U. S. 756, 765 (1987)

Hadley v. Williams, 368 F.3d 747, 749 (7th Cir. 2004)

Howard v State, 2012 Ark. 177, at 4-5, 403 S. W. 3d 38, 43.

Illinois v Fisher, 540 U. S. 544, 547 (2004)

In re Murchison, 349 U. S. 133, 136, 75 S. Ct. 623, 99 L. Ed. 942 (1955)

Isom v State, 2015 Ark. 225, 462 S.W. 3d 662 (2015)

Kyles v Whitley, 514 U. S. 419, 437, 115 S. Ct. 1555, 131 L. Ed. 2d 490 (1995)

McArthur v State, 2017 Ark. 120, April 6, 2017

McCarthy 394 U. S. 459, 466, 89 S. Ct. 1166 (1969)

McDaniel v State, 1986 288 Ark. 629, 708 S. W. 2d 613

Miller v Fenton, 474 U. S. 104 (1985)

Missouri v Seibert, 542 U. S. 600,608, 124 S. Ct. 2601, (2004)

Newman v State, 2009 Ark. 539, 354 S. W. 3d 61, 69

Noel v State, 331 Ark. 79, 960 S. W. 2d 439 (1998)

North Carolina v Alford, 400 U. S. 25, 31, 91 S. Ct. 160 (1970)

Puckett v United States, 556 U. S. 129, 141, 129 S. Ct. 1423, 173 L. Ed. 2d 266.

Reed v State, 1982, 276 Ark. 318, 635 S. W. 2d 472

Rippo v Baker, 137 S. Ct. 805

Robertson v State, 298 Ark. 131, 765 S. W. 2d 936 (1989)

Rogers v State, 1978, 264 Ark. 258, 570 S. W. 2d 268

Sanders v State, 374 Ark. 70, 285 S. W. 3d 630 (2008)

Schneckloth v Bustamonte, 412 U. S. 218, 226, 93. S. Ct. 2041 (1973)

Scott v State, 2017 Ark 199, June 1, 2017

Smith v Caine, 565 U. S. 73, ____,_ _____, 132 S. Ct. 627, 629-631, 181 L. Ed. 2d 571 (2012)

Strickland v Washington, 466 U. S. 668, 687-688, 104 S. Ct. 2052 (1984).

Strickler v Greene, 527 U.S. 263, 119 S. Ct. 1936, 144 L. Ed. 2d 286 (1999)

United States v. Bagley, 473 U.S. 667, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985)

United States v. Montgomery, 555 F.3d 623, 629 (7th Cir. 2009)

United States v. Villalpando, 588 F.3d 1124, 1128 (7th Cir. 2009)

U. S. v Giglio, 405 U. S. 150 (1972)

Weary v Cain, 136 S. Ct. 1002, March 7, 2016

Westbrook v State, 265 Ark. 736, 580 S. W. 2d 702 (1979)

Williams v Pennsylvania, 579 U. S. ___, ___, 136 S. Ct. 1899, 1905, 195 L. Ed. 2d 132 (2016)

Withrow v Larkin, 421 U. S. 35, 47, 95 S. Ct. 1456, 43 L. Ed. 2d 712 (1975)

STATUTE AND RULES:

Arkansas Rules of Criminal Procedure Rule 17.1

Arkansas Rules of Criminal Procedure Rule 24.4, 24.6, 24.7

Arkansas Code Annotated 12-18-402

Arkansas Code Annotated 12-18-803 (b)

Arkansas Code Annotated 16-97-103 (4); 16-97-103 (5) & (6)

Arkansas Code of Judicial Conduct 1.1, 1.2, 1.3, 2.2, 2.3, 2.4, 2.7 and 2.11

Fourteenth Amendment of the United States Constitution

Respectfully submitted,

Heath Stocks

Heath Stocks

State of Arkansas
County of Jefferson

SUBSCRIBED AND SWORN TO BEFORE me a Notary Public on this 13th day of September 2017.

My Commission Expires:

JOHN SPEARS
NOTARY PUBLIC-STATE OF ARKANSAS
JEFFERSON COUNTY
My Commission Expires 03-09-2021
Commission # 12382198

s/ John Spears
Notary Public

CERTIFICATE OF SERVICE

I, Heath Stocks hereby certify that I have serviced an exact copy of the foregoing to the Prosecuting Attorney Chuck Graham, Courthouse, 301 N. Center St., Ste. 301, Lonoke AR 72086-2892 on this ___ day of _____ 2017 by U. S. Mail postage prepaid.

Heath Stocks

Heath Stocks

INDEX TO EXHIBIT LIST