

**IN THE CIRCUIT COURT OF LONOKE COUNTY, ARKANSAS
TWENTY-THIRD JUDICIAL DISTRICT
SECOND DIVISION**

STATE OF ARKANSAS

PLAINTIFF

vs.

CR 97-9

HEATH STOCKS

DEFENDANT

**RESPONSE TO DEFENDANT'S MOTION FOR THE LONOKE COUNTY
PROSECUTOR'S OFFICE TO RECUSE**

Comes now the State, by and through Deputy Prosecuting Attorney Ben Hooper, and states the following as a response to the Defendant's Motion for the Lonoke County Prosecutor's Office to Recuse:

The Defendant has filed a motion seeking the recusal of the Lonoke County Prosecutor's Office. In broad strokes, the Defendant's arguments for his request are twofold: first, that deputy prosecuting attorney Ben Hooper has a conflict with Larry Cook due to a personal and prior work relationship; and second, that the prosecutor's office failed to prosecute Charles Walls III for an alleged role in the murders that the Defendant committed. Not only do neither of the Defendant's arguments remotely merit recusal in this case as a matter of law, but he is also completely wrong as to the facts underlying his arguments. As such, the State objects to the Defendant's motion and asks that it be denied.

The Defendant's First Argument

The Defendant's first argument for recusal is that deputy prosecutor Ben Hooper has a conflict with Larry Cook. This argument has two sub-parts: first, that they have a "close personal relationship" as evidenced by the Defendant's attached exhibit; and second, that Hooper "worked with Larry Cook" and therefore may be "a material witness as to the conduct of former Prosecutor Cook, while Cook was Lonoke County Prosecutor. Both contentions are wholly without merit, and the State will address each in turn below.

The first sub-part of this argument is that Hooper and Cook have a "close personal relationship" as evidenced by the attached exhibit. This exhibit is the Defendant's entire basis for claiming that a "close personal relationship" exists between Hooper and Cook - he offers nothing else in regards to a personal relationship in his motion. The exhibit is a series of screen captures from a 2005 online obituary for Brady Rudd Hooper. One of the comments under the obituary was from "Larry & Kim Cook" and dated April 4, 2005.

This is the comment – again which the Defendant alleges as the sole basis of this “close personal relationship” – in its entirety: “Our heartfelt sympathies for your loss. There are no words which will ease your pain, but please know that you are in our prayers. I know God was pleased with Brady’s witness to others. God used him to reach other students, and they will bear witness to God’s touching them through their friend named Brady Hooper. God Bless you all.” That’s it. That’s the whole thing. That is what the Defendant absurdly claims constitutes a “close personal relationship”.

Putting the quoted statement in context makes the claim yet more absurd. Brady Rudd Hooper is Ben Hooper’s younger brother. Brady died suddenly just a few months short of his high school graduation. His death affected many in his school and in his community. In the aftermath of Brady’s loss, many people gave their condolences to his family, including Larry and Kim Cook as quoted above. Let it be very clear what the Defendant is arguing here. The Defendant – duly convicted of murdering his own family - is claiming that a kind word of condolence spoken (via an online posting) to a grieving family constitutes a “close personal relationship” with the deceased’s surviving brother. This is absurd – both legally and according to ordinary common sense.

Not only is the Defendant’s factual underpinning for his claim absurd, but even if it were not he offers no legal support for his argument. Even if the exhibit evidenced a “close personal relationship” between the current deputy prosecutor handling the case and the former elected prosecutor who handled the case twenty years ago (as it clearly does not), the Defendant cites not a single case, statute, or rule that would require recusal in light of this specific alleged “close personal relationship”. The Defendant’s argument stated most plainly - that a kind word of condolence in the face of a family tragedy creates a “close personal relationship” that requires recusal - is both ridiculous and completely unsupported by the law.

The second sub-part of the Defendant’s first argument is that Hooper and Cook had a work relationship - that Hooper “worked with Larry Cook” and that he might be “called as a material witness as to the conduct of former Prosecutor Larry Cook, while Cook was Lonoke County Prosecutor”. The Defendant appears to be claiming in this argument that Hooper “worked with Larry Cook” when Cook was elected prosecutor and therefore witnessed Cook’s actions and alleged “misconduct” first-hand when Cook served as elected prosecutor. That contention is completely and utterly false. The Defendant, by putting forth this argument, is either dishonest or is mistaken to an astonishing degree.

Ben Hooper has never worked with or for Larry Cook when Cook was in the Prosecutor’s Office. Larry Cook was the elected prosecutor for Lonoke County from 1993 to 1998. Hooper didn’t even start at the Lonoke Prosecutor’s Office until 2005 (Lona McCastlain was the elected prosecutor at the time. Larry Cook soon thereafter became a public defender and has been a public defender for the remainder of the time Hooper has been at the Lonoke prosecutor’s office). Hooper didn’t move to Arkansas until late 2002 and didn’t even meet Cook until sometime thereafter. The Defendant’s misstatement of the facts is even more pronounced when looked at more closely. In 1993 – when Cook started as elected prosecutor – Hooper wasn’t even in the same *hemisphere* as Cook, much less the same office. In 1998, when Cook left the Lonoke Prosecutor’s Office, Hooper was a senior in high school – in an entirely different state. The

Defendant's implication that Hooper "worked with" Cook while Cook was in the prosecutor's office is utterly and completely false. The further idea that Hooper witnessed or could testify to Cook's conduct while in the prosecutor's office is even more ridiculous. Hooper and Cook didn't even live in the same state during Cook's years in the prosecutor's office (for two of those years they didn't even live in the same *hemisphere*), much less serve in the same office. This particular argument of the Defendant stands out as ridiculous even compared to the other questionable arguments he has made during his recent filings. It is completely devoid of merit and pushes the boundaries of having been made in good faith.

It is also worth nothing that the Defendant has once again failed to cite any relevant case law, statutes, or rules in support of his argument.

The Defendant's Second Argument

The Defendant's second argument is that the State should be removed for failure to comply with its duty to prosecute cases. The Defendant cites two statutes which stand for the very unremarkable and obvious proposition that it is the duty of the prosecutor's office to appear in court and prosecute cases. The Defendant claims that the Lonoke County Prosecutor's Office failed to file charges against Charles Walls III for his alleged role (alleged by the Defendant) in the murders which the Defendant committed, and because of that failure must recuse from this case pursuant to those statutes. This argument comes from a tortured misreading and misapplication of the referenced statutes. It is both without merit and without support under Arkansas case law and should therefore be dismissed.

The Defendant's misapplication of ACA 16-21-103 and 16-21-112 is obvious from a plain reading of the statutes. The statutes do not remotely require the State to file charges in regards to every single criminal allegation made no matter how outlandish or thinly supported. To hold otherwise would lead to absurd outcomes. Indeed, the State is charged and bound to do quite the opposite – to only pursue charges where there is good faith to do so. The Arkansas Supreme Court also firmly disagrees with the Defendant's contention regarding these statutes. In *Smith v. Simes*, 2013 Ark. 477 (2013), the Court ruled that the State seeking an order of nolle prosequi on a murder charge did not trigger the needs for a special prosecutor under the exact statutes cited by the Defendant. The Court noted: "The plain language of the statute provides that the prosecutor must neglect or fail to attend court and prosecute as required by law in order to trigger the necessity to appoint a special prosecutor". *Id.* It is clear that the case at hand is not the situation which the statute is referencing.

It is again worth noting that the Defendant has failed to offer any case law to support his novel reading of the two statutes at issue.

Conclusion

The Defendant's Motion for the Lonoke County Prosecutor's Office to Recuse wildly misstates the facts at issue and completely misunderstands and misapplies the referenced statutes. The Defendant failed to cite any case law to support his contentions and the two statutes he referenced are clearly not relevant to the facts at hand.

The Defendant's Motion for the Lonoke County Prosecutor's Office to Recuse is unsupported in either law or fact and should therefore be denied.

Respectfully Submitted,




Ben Hooper
Deputy Prosecuting Attorney
301 North Center Street, St 301
Lonoke, Ar

CERTIFICATE OF SERVICE

I, Ben Hooper, Deputy Prosecuting Attorney, do hereby certify that a copy of the foregoing Response was mailed via first class mail to the Defendant at the following address on this 15th day of December, 2017.

Heath Stocks
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Ben Hooper
Deputy Prosecuting Attorney