

IN THE CIRCUIT COURT OF LONOKE COUNTY, ARKANSAS

STATE OF ARKANSAS

PLAINTIFF

VS.

NO. CR 97-9

HEATH STOCKS

DEFENDANT

~~MOTION TO SUSPEND ANY AND ALL OBSERVATION AND PSYCHIATRIC
EVALUATION OF DEFENDANT BY THE ARKANSAS STATE HOSPITAL~~

Comes now the defendant, Heath Stocks, by and through his attorneys, and moves this Court pursuant to the Fourth, Fifth, Eighth, and Fourteenth Amendments to the United States Constitution, equivalent provisions of the Constitution of the State of Arkansas, and all other applicable federal and state law to enter an Order suspending all further testing and any observation of the defendant by any and all personnel of the Arkansas State Hospital until after the prosecuting attorney has fulfilled his discovery obligations to defense counsel.

In support of this motion, he states as follows:

1. Defendant is charged with three counts of violating Ark. Code Ann. § 5-10-101, capital murder. The Defendant, through his attorney, has requested an evaluation pursuant to Ark. Code Ann. §5-2-305, withholding entering a plea to the charges until after an evaluation is completed. A Motion for Disclosure to Defendant was filed by defense counsel on January 21, 1997. The prosecutor has stated to defense counsel that he will wait until after he reviews the case file and the state hospital report to announce whether or not he will seek the penalty of death in this matter.

2. On January 21, 1997, an Order for Psychiatric Evaluation was filed in the Circuit Court of Lonoke County, Arkansas, pursuant to Ark. Code Ann. § 5-2-305, in which this Court

3. On Monday, February 10, 1997, defense counsel was informed by Marla Gergely, of the Arkansas State Hospital that Stocks had been at the state hospital since Friday, February 7, 1997. Defendant was not allowed to telephone his attorney because he was placed on "suicide precautions". On Wednesday, February 12, 1997, counsel for defendant learned from Billy Burris, Assistant Director of Division of Mental Health Services, that the state hospital had received a copy of the state's case file by prosecuting attorney, Larry Cook, on February 5, 1997. Mr. Cook transmitted via facsimile to the Arkansas State Hospital 39 pages of his case file on February 4, 1997. (See attachment herein as exhibit 2) As of February 10, 1997, counsel for defendant had yet to be provided with any discovery of this case from the prosecuting attorney. When counsel called the prosecutor and inquired why the state hospital was provided a copy of the state's file before the defense counsel, counsel was informed by Mr. Cook that the state hospital was provided a "partial file" and that he was in the process of compiling and numbering a file to be provided to defense counsel.

4. On February 11, 1997, what was purported to be the partial case file was finally made available to counsel, and was personally retrieved from the prosecutor's office in Lonoke by counsel's investigator in order to avoid any further delays in this matter. The prosecuting attorney informed defense counsel that this was not a complete file because he was expecting further material and information from the state investigative agencies. Counsel received only 27 numbered pages, 12 pages less than that sent to the state hospital. Excluded from counsel's discovered material, yet included in the state hospital file, is a statement purportedly made by defendant. Rule 17.1 of the Arkansas Rules of Criminal Procedure provide that the prosecuting attorney "shall disclose to defense counsel, upon timely request.... any written or recorded statements and the substance of any oral statements made by the defendant....any reports or

statements of experts, made in connection with the particular case....any books, papers, documents, photographs or tangible objects...." Timely request was made by the defendant when he filed a motion for disclosure on January 21, 1997. Nothing was disclosed to or made available to counsel until after counsel learned that a third party was provided the information. Rule 17.2 of the Arkansas Rules of Criminal Procedure deals generally with the time for and manner of making discovery. Prosecutorial responsibility is defined chiefly in terms of the existence and availability of information. Under the rule, the prosecutor must perform the obligations detailed by Rules 17.1(a)-(c) "as soon as practicable." The official Commentary to rule 17.1 states that:

In so far as the rule requires pretrial disclosure, it represents an extension of the mandate of Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194 (1963), although that decision clearly requires that disclosure be timed so as to allow intelligent appraisal of the import of the matter disclosed. By obliging the prosecution to divulge information as part of a systematic process of pretrial discovery, the rule advances "the procedural objectives of permitting adequate preparation for, and minimizing interruptions of, a trial and providing for informed pleas"

Arkansas Rules of Criminal Procedure, Rule 17.1 (commentary to Article V)

5. The psychiatric examination of a defendant in a capital murder case is a "critical stage" of the aggregate proceedings against the defendant when the death penalty is being sought. Estelle v. Smith, 451 U.S. 454 (1981). In absence of a waiver of the death penalty by the prosecution, defense counsel must assume that Defendant faces the possibility of being sentenced to death if convicted. In addition to preparation of a defense to the guilt-innocence phase of a trial, including whether the appropriate charge is a lesser included offense of that actually sought, counsel must also prepare for a penalty phase. Mitigating circumstances are not limited and may be found in a variety of Defendant's psychological history and make-up. Counsel is not trained in psychology or psychiatry. A full mental evaluation, with diagnosis on each Axis, is essential

to giving Defendant a full and fair opportunity to present a defense.

6. The Sixth Amendment and Article 2, Section 10 of the Arkansas Constitution require that a defendant be given effective assistance of counsel. Counsel can not render effective assistance of counsel without having been provided all discoverable materials in the prosecution's possession or imputed to him. Not only has the prosecutor provided the state hospital with information that defense counsel is entitled to before defense counsel was provided with it, he still has not provided counsel with all the materials that the state hospital was given.

7. The 14th Amendment and Article 2, Section 8 of the Arkansas Constitution, guarantee due process of law. Failure to provide defense counsel with proper discovery is a due process violation.

8. Because this is a capital case, the Eighth Amendment and Article 2, Section 9 of the Arkansas Constitution are also applicable. Because the prosecutor and this Court have communicated to personnel at the state hospital that defendant should be evaluated in such a rushed manner, counsel has been forced to limit defendant's cooperation with state hospital personnel conducting the mental evaluation, simply because counsel has not received full discovery. Counsel would be ineffective if he allowed defendant to fully discuss the case with state hospital personnel before counsel has even read the file or had ample time to discuss the evidence and possible ramifications of any potential statements that may be made in the course of the evaluation. Because of this situation, the state hospital can not fully evaluate the defendant. Furthermore, the state hospital has not been provided a completed file either and can not adequately evaluate defendant without one.

WHEREFORE, Defendant, Heath Stocks, respectfully moves that this Court enter an Order which suspends any and all observation and psychiatric evaluation of defendant by the

Arkansas State Hospital and stays all further proceedings of Defendant herein until the Prosecuting Attorney provides defense counsel with full and complete discovery, and defense counsel has been given ample time to discuss with defendant the evidence likely to be presented against him.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Mac Carder, Jr., hereby certify that a true and correct copy of the foregoing motion has been delivered to Larry Cook, Prosecuting Attorney, at his office at the Lonoke County Courthouse in Lonoke, Arkansas, on this 12 day of February, 1997.



Mac Carder, Jr.