

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION**

JEFFREY HAVARD,

Petitioner

versus

CIVIL ACTION NO. 5:08-cv-275-KS

CHRISTOPHER B. EPPS, ET AL,

Respondents

**RESPONSE TO PETITIONER'S
MOTION FOR LEAVE TO CONDUCT DISCOVERY**

COME NOW the respondents, by and through counsel, and file this response to petitioner's motion for leave to conduct discovery and would show unto the Court the following:

I.

Petitioner requests leave of this Court to conduct discovery in this case for the purpose of obtaining information related to an interview of the victim's mother, Rebecca Britt, said to have been conducted on February 22, 2002, in Adams County, Mississippi. Petitioner also seeks information regarding x-rays of the victim, Chloe Britt, possibly taken near the time of her death at the Natchez Community Hospital. Petitioner additionally includes a request that, in the alternative to a call for an evidentiary hearing-that petitioner acknowledges he has never filed for-he be allowed to depose two witnesses.

II.

Regarding the request for information involving the possibility of a videotaped

statement of Rebecca Britt, the respondent will attempt to facilitate the delivery of same to petitioner if the video is found to actually exist.

III.

Regarding petitioner's request for information associated with any x-rays taken of Chloe Britt at the Natchez Community Hospital, respondent counsel contacted the records section of the hospital and was informed the records related to the victim are archived. The records clerk further advised that it is unknown whether the actual x-rays are contained in the archived file. Petitioner need only file a written request with the hospital to obtain the x-rays, should they exist¹.

IV.

As to petitioner's final request, the taking of depositions in the alternative, is premature, as admitted by petitioner he has not even requested an evidentiary hearing at this point that would justify an alternative pleading.

Alternatively, respondents argue that the taking of depositions is unnecessary as the record is complete as to the basis for the sexual assault of Chloe Britt that was before the trial court. As discussed and argued throughout the trial, direct appeal, post-conviction relief and now on habeas, the testimony of the treating medical personnel was fully discussed at every phase of this case and is now before this Court in the habeas pleadings and answers.

¹Respondent counsel informed petitioner's PCR counsel at the time of the filing of petitioner's Exhibit G (doc. no. 34-8) that the State did not possess any x-rays and that counsel should contact the hospital at that time in 2007.

As presented, the petitioner merely request the Court allow him to embark on an unfettered fishing expedition which is not permissible. *Murphy v. Johnson*, 205 F.3d 809, 814 (5th Cir.2000).

V.

WHEREFORE, PREMISES CONSIDERED, respondents would submit that petitioner's motion for leave to conduct discovery should be denied as far as the request for depositions, that respondent be allowed to inquire further of the possibility of the videotape which would be delivered to petitioner if found to exist and that petitioner be allowed to contact the Natchez Community Hospital for access to any relevant x-rays that may be in its possession.

Respectfully submitted,

JIM HOOD
ATTORNEY GENERAL
STATE OF MISSISSIPPI

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BY: S/ **PAT McNAMARA**

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CERTIFICATE OF SERVICE

This is to certify that I, Pat McNamara., Special Assistant Attorney General for the State of Mississippi, have electronically transmitted the foregoing RESPONSE TO PETITIONER'S MOTION FOR LEAVE TO CONDUCT DISCOVERY with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

Mark D. Jicka, Esquire
P.O. Box 650
Jackson, MS 39205

Graham P. Carner, Esquire
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Clinton, MS 39060

This, the 9th day of April, 2010.

s/ **PAT McNAMARA.**