

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

JEFFREY HAVARD

PETITIONER

V.

CIVIL ACTION NO.: 5:08cv275-KS

CHRISTOPHER EPPS, et al

RESPONDENTS

**PETITIONER’S REPLY TO RESPONSE TO MOTION
FOR LEAVE TO CONDUCT DISCOVERY**

Petitioner, by and through his undersigned counsel, submits his Reply to Respondents’ Response to Petitioner’s Motion for Leave to Conduct Discovery (Docket # 35). For the reasons set forth herein and in the original Motion (Docket # 34), Petitioner should be granted leave to conduct the specific, discrete discovery requested in the Motion. In reply to the specific arguments raised in the Response filed by Respondents, Petitioner would show as follows:

1. Respondents acknowledge at the outset of their Response that Petitioner is seeking only three discrete elements of discovery (Resp. at ¶ I). Though Respondents later go on to call Petitioner’s motion a “fishing expedition,” that is clearly not the case. Petitioner has narrowly tailored his request for discovery, and Respondents do not seriously dispute the need for the discovery or Petitioner’s entitlement to the discovery. Accordingly, the Motion should be granted.

2. With respect to the first element of discovery sought (information related to a videotaped statement of Rebecca Britt), Respondents state that they “will attempt to facilitate the delivery of same to petitioner if the video is found to exist.” (Resp. at ¶ II). Respondents also state that Petitioner “should be allowed to inquire further” on this issue. (Resp. at ¶ V). Therefore, Respondents have confessed the Motion as to this request, and discovery on this

element should be granted. Specifically, Petitioner requests that he be allowed to (a) send written discovery to Respondents seeking information concerning and production of that video, (b) send a subpoena to the Adams County Sheriff's Department and Adams County District Attorney seeking similar information, and (c) depose the two law enforcement officers (Deputy Jackson and Major Manley) who were involved with procuring the statement.

3. Even if it is later alleged that the videotaped statement "does not exist," Petitioner would still seek leave to conduct this discovery. The Sheriff's Department's investigative file makes two separate references to a videotaped statement of Rebecca Britt. At the very least, then, Petitioner should be granted leave to depose Deputy Jackson and Major Manley about the contents of the investigative file, all interviews conducted with Rebecca Britt, Department procedure concerning the taking and retention of videotaped statements, and the discrepancy between the two references in the file to the videotaped statement of Britt and the allegation (if it is made by the State) that no such statement exists.

4. With respect to the second element of discovery sought (x-rays from the night of Chloe Britt's death), Respondents do not contest the validity of Petitioner's request for the x-rays or the relevance of those x-rays to this case. Respondents simply state that Petitioner need only make an informal written request to Natchez Community Hospital for the x-rays. (Resp. at ¶ III). Respondents further state that Petitioner should "be allowed to contact the Natchez Community Hospital for access to any relevant x-rays that may be in its possession. (Resp. at ¶ V). Petitioner will seek the x-rays through informal means, but asks for an order permitting discovery in the event that the informal effort is not successful. Petitioner has satisfied the test for seeking discovery on this topic, Respondents have not contested the request on its merits, and this Court is empowered to ensure that Petitioner has this crucial x-ray evidence is made

available under the applicable discovery rules. A promise of cooperation from a non-party is not sufficient when those rules make specific provision for conducting discovery in the manner requested by Petitioner. Accordingly, Petitioner's request to serve requests for production on Respondents and to have a subpoena issued to Natchez Community Hospital should be granted.

5. With respect to the third element of discovery sought (depositions of Dr. James Lauridson and Dr. Steven Hayne), Respondents argue that, at the time the Response was filed, Petitioner had not filed a motion seeking an evidentiary hearing. (Resp. at ¶ IV). However, that motion has now been filed (*see* Docket # 36 & 37), so Respondents' complaint is moot.

6. Respondents also argue that the depositions of Drs. Lauridson and Hayne are "unnecessary as the record is complete as to the basis for the sexual assault" (the underlying felony on which Petitioner's capital murder conviction and death sentence were improperly based). (Resp. at ¶ IV). However, as demonstrated in the merits briefing, the record is not complete. Dr. Lauridson's opinions **completely contradict** the State's theory that Chloe Britt had been sexually assaulted, but his opinions were not given full and fair consideration by the Mississippi Supreme Court. To be clear, Dr. Lauridson opines that the conclusion that Chloe Britt was sexually assaulted is "wrong." (*See* Petition Exhibit "B"). Dr. Hayne's recent Declaration (*see* Petition Exhibit "A") likewise casts serious doubt on the conviction and sentence. In a case where Petitioner's life hangs in the balance due to a conviction based upon an allegation of sexual battery—an allegation that has been called into serious question by experts such as Dr. Lauridson and Dr. Hayne—the evidence used by the State in support of that allegation needs to be more fully developed through either (a) an evidentiary hearing or (b) deposition testimony. While Petitioner prefers an evidentiary hearing, he alternatively requests leave to depose Dr. Lauridson and Dr. Hayne.

7. Furthermore, Respondents have criticized Dr. Lauridson's reports as being unsworn (which is not true) and have characterized the Hayne Declaration as being "purportedly" by Dr. Hayne and also unsworn (which is also not true). Such opposition is further grounds for having either an evidentiary hearing or taking deposition testimony from Drs. Lauridson and Hayne, so that these manufactured issues can be laid to rest.

8. Contrary to Respondents' characterization of the alternative effort to depose Drs. Lauridson and Hayne as a "fishing expedition," Petitioner has demonstrated in great detail what is at issue (the purported factual and scientific bases for the State's allegation of sexual battery) as well as what can be garnered through receiving this testimony (namely, facts which, if proven, would entitle Petitioner to relief). Petitioner has thus demonstrated that he is entitled to this discovery, and Respondents have not seriously contested the request. Accordingly, Petitioner requests leave to depose Dr. Lauridson and Dr. Hayne in the event that the Court determines that an evidentiary hearing will not be held, or if the Court prefers that the depositions be taken in order to determine if an evidentiary hearing is needed.

9. For the reasons set forth in the original Motion for Leave to Conduct Discovery (Docket #34) and herein, Petitioner respectfully requests that this Court grant him leave to conduct the discovery requested.

This the 27th day of April, 2010.

Respectfully submitted,

JEFFREY HAVARD

s/ Mark D. Jicka
MARK D. JICKA

OF COUNSEL:

Mark D. Jicka (MSB No. 8969) **[LEAD COUNSEL]**
WATKINS & EAGER PLLC
400 East Capitol Street
The Emporium Building (39201)
P. O. Box 650
Jackson, MS 39205
Phone: (601) 965-1900
Fax: (601) 965-1901
Email: mjicka@watkinseager.com

Graham P. Carner (MSB No. 101523)
THE GILLIAM FIRM, PLLC
P.O. Box 1303
Clinton, MS 39060
Phone: (601) 488-4044
Fax: (601) 488-4043
Email: gcarner@gilliamfirm.com

CERTIFICATE OF SERVICE

I hereby certify that on April 27, 2010, I electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

Jim Hood
agcivillit@ago.state.ms.us

Patrick J. McNamara, Jr.
pmcna@ago.state.ms.us

Marvin L. White, Jr.
swhit@ago.state.ms.us

s/ Mark D. Jicka

MARK D. JICKA