

FILE

State v. White

Office of the Public Defender

Felony Trial Division

TO: Applicant
FROM: Carlos Espinoza, Assistant Public Defender
DATE: July 24, 2001
RE: *State v. James White*

Our client, James White, has been arrested for the knife-murder of his brother, Stephen White, and his indictment is pending before the Grand Jury. Last year we represented this client on a charge of aggravated assault, also involving a knife and Stephen. During the course of that representation, we referred him to Grace Peterson, one of the social workers on our staff. She interviewed him, wrote a report for me, and ultimately was instrumental in getting him released from jail and admitted to a hospital for psychiatric treatment. Even though I did not reveal the report or its contents to the court, I was able to persuade the court to release him to the hospital for treatment.

The aggravated assault case is still unresolved because both the prosecutor and the judge agreed to several three-month continuances while the client was in treatment. I had hoped to convince White's brother to help me reach an agreement with the prosecutor to drop those charges. Now, of course, everything is changed, and the prosecutor will, no doubt, try to use whatever he can from the assault case to help prove the murder case.

There was never a trial in the assault case and the only witness to the alleged assault (other than James) is now dead. The prosecutor wants to present, as evidence in the murder case, statements made by James concerning the alleged assault. Accordingly, as part of its case before the Grand Jury, the State has subpoenaed the records of conversations that Peterson had with our client and the report she prepared for me in the assault case. Ms. Peterson has left our office and moved to Italy.

We will file a Motion to Quash the Subpoena with the judge presiding over the Grand Jury. I have drafted the Motion so that it refers only obliquely to what is contained in Peterson's report. I need you to draft a persuasive brief in support of the Motion to Quash to be submitted to the judge *in camera*, along with the social worker's report, to persuade her that the contents of that report are privileged and may not be seen or used by the prosecutor in this case. As you know, in an *in camera* submission, the judge reviews the claimed privileged material outside the presence of the lawyer for the party seeking disclosure of the material. Neither the brief nor the report attached to the brief will be served on opposing counsel. You should bring the specific confidential information in the report to the judge's attention so that the judge will focus on the specific points you have directed her to. Prepare the brief in accordance with the guidelines set forth in the attached office memorandum.

Office of the Public Defender
Felony Trial Division

MEMORANDUM

September 8, 1995

TO: Attorneys
FROM: Maurice Abelard
RE: Persuasive Briefs

All persuasive briefs, including Briefs in Support of Motions (also called Memoranda of Points and Authorities), shall conform to the following guidelines.

All briefs shall include a Statement of Facts. The aim of the Statement of Facts is to persuade the tribunal that the facts support our client's position. The facts must be stated accurately; however, emphasis should be placed on the material facts that best support our client's position. The Statement of Facts need not be exhaustive but it must contain key facts sufficient to inform the court of the essence of the dispute and the relief sought.

Our office follows the practice of breaking the argument into its major components and writing carefully crafted subject headings that illustrate the arguments they cover. Avoid writing briefs that contain only a single broad argument heading. The argument heading must succinctly summarize the reasons the tribunal should take the position you are advocating. A heading should be a specific application of a rule of law to the facts of the case and not a bare legal or factual conclusion or a statement of an abstract principle. For example, improper: The Police Did Not Have Probable Cause to Arrest Defendant. Proper: The Fact That Defendant Was Walking Alone in a High-Crime Area at Night Without Photo Identification Was Insufficient to Establish Probable Cause for His Arrest.

The body of each argument should identify and analyze applicable legal authority and persuasively argue how the facts and law support our client's position. It is important to use the facts in the argument. Authority supportive of our client's position should be emphasized, but contrary authority also should generally be cited, addressed in the argument, and explained or distinguished. Do not reserve arguments for reply or supplemental briefs.

The lawyer need not prepare a table of contents, a table of cases, a summary of argument, or the index. These will be prepared, where required, after the draft is approved.

IN THE SUPERIOR COURT FOR MONTGOMERY COUNTY
STATE OF FRANKLIN

SUBPOENA DUCES TECUM

State of Franklin

Criminal Case Number 01-7703

vs.

James White, Defendant

TO:

Custodian of Records
Rehabilitation Services Division
Office of the Public Defender
22 Twin Peaks Blvd.
Galewood, Franklin 33988

YOU ARE COMMANDED TO APPEAR before the Grand Jury duly empaneled in the above captioned case at the Montgomery County Courthouse, Room 346, on July 27, 2001, at 10:00 a.m. YOU ARE COMMANDED TO PRODUCE all reports, notes and any documents regarding the defendant, James White, prepared during the period from September 27, 2000, to date by Grace Peterson, MSW.

Subpoena requested by the Montgomery County State's Attorney's Office.

DATE ISSUED: July 23, 2001


Katherine Klare, Clerk

NOTICE: You are liable to Body Attachment and Fine for Failure to Obey This Subpoena.

IN THE SUPERIOR COURT FOR MONTGOMERY COUNTY

STATE OF FRANKLIN

State of Franklin
7703

Criminal Case Number 01-

vs.

MOTION TO QUASH SUBPOENA

James White, Defendant

Defendant James White moves this Court to quash the subpoena duces tecum issued by the Montgomery County State's Attorney's Office to Custodian of Records, Rehabilitation Services Division, for notes and records of conversations and interviews pertaining to him and prepared by Grace Peterson, MSW. In support of this motion Defendant states:

1. at the time of Defendant's conversations with her, Grace Peterson
 - a. was a social worker duly licensed to practice in the State of Franklin;
 - b. was employed by the Office of the Public Defender in its Rehabilitation Services Division; and
 - c. was assisting his attorney, Carlos Espinoza, in preparing to defend him in a pending criminal case.
2. all communications between Defendant and Grace Peterson were believed by Defendant to be privileged and confidential.
3. all communications between Defendant and Grace Peterson were privileged under both §§ 835 and 952 of the Franklin Evidence Code and, therefore, cannot be divulged.
4. Defendant has at no time waived any privilege applicable to the communications.

WHEREFORE, Defendant requests that this Court grant this motion to quash. This motion is supported by an accompanying brief and records filed concurrently under seal for *in camera* review.

Respectfully Submitted,
Office of the Public Defender

By Carlos Espinoza
Carlos Espinoza
Counsel for the Defendant

July 24, 2001

Office of the Public Defender

Felony Trial Division

MEMORANDUM

TO: File of James White
FROM: Carlos Espinoza, Assistant Public Defender
DATE: September 27, 2000
RE: Notes from Interview with James White at Montgomery Jail

Client charged with aggravated assault of his older brother, Stephen, and arraigned this morning. I was appointed as his Public Defender and met with him several hours later. Client has been in jail since arrest last night. Bail set at \$25,000.

Client says charge arose from a fight he had with his brother in the house they share. Says he doesn't remember the incident. The police told him that Stephen was cut with a knife and had to be rushed to the hospital for "more than 100 stitches." The noise from the fight was loud enough to alarm some neighbor (he doesn't know which neighbor), who then called the police. It is not the first time the police have come to the house because of fighting between the brothers nor is it the first time client has been arrested. Client says he doesn't remember any of the fights.

Client says he loves his brother and doesn't know why he would fight with him. Says brother is his best friend.

Client is 39-year-old Army veteran who receives disability compensation from the Veteran's Administration (VA) for "a nervous condition." Says he never recovered mentally from his combat experience in the Gulf War and that the VA rates him as 25% disabled. He says he doesn't get enough to live on but that he can't work. Brother Stephen is trustee for a small inheritance left by their parents to support client. Sometimes there is conflict between the brothers over Stephen's decisions about "my money." Client's share of the household expenses in Stephen's house comes from the inheritance. Client says it is unfair that his parents left Stephen in charge of his life but that he also appreciates the many things "my brother does for me." Client admits to heavy drinking when he is depressed. Says he often blacks out. Sometimes he has "episodes" and only learns about them later from others.

Asked client about Stephen's statement to police that says client started argument over Stephen's refusal to provide money for booze, and that as the argument got louder client began throwing things at him and then lunged at him with the knife. Client says he doesn't remember, but that he wouldn't do something like that to his brother. Explained lawyer-client confidentiality to client. Client revealed he owns large knife he brought home from Gulf War. He keeps the knife hidden under the floor boards in his bedroom, but he insists he never used knife to harm his brother.

Client agrees to meet with Grace Peterson, our social worker, who will help us prepare for a bail reduction motion to get him released on own recognizance. Complicated because brother won't let him return home. Might be willing to accept psychological treatment if it will help him get out of jail.

Called Peterson and she will see him tomorrow morning.

Office of the Public Defender

Rehabilitation Services Division

22 Twin Peaks Blvd.
Galewood, Franklin 33988

TO: Carlos Espinoza
FROM: Grace Peterson, MSW
DATE: September 29, 2000
RE: Report on James White

Client was interviewed for two hours on September 28, 2000, and for one hour on September 29, 2000, after being referred by Assistant Public Defender Carlos Espinoza for evaluation for purposes of preparing a bail reduction motion and possibly for disposition.

Mr. White, 39 years old, has a history of psychiatric disorder. The precise prior diagnosis was not ascertainable, and the client either did not know it or would not reveal it. All of his prior treatment was done at the local VA hospital. Client's history includes military service in a combat situation, so a possible diagnosis is Post Traumatic Stress Disorder, but the interview situation and the amount of time available did not permit a full assessment. Client says he left psychotherapy several years ago "because those VA shrinks are a bunch of quacks and they don't make me feel any happier." He stopped taking medication because "I don't feel like myself when I am taking those head pills." Client was advised of my recommendation that he needed to get back into treatment since he had now apparently injured his brother.

Mr. White's response to being confronted with the allegations against him evolved over the course of the three hours we spent together. He was in deep denial at first, claiming to have no memory of any fight with his brother. As I continued to ask him about his relationship with his brother, he said he was sure he didn't do what his brother said he did.

Later, when I told him that his brother would no longer permit him to live in the same house with him, he became enraged. He yelled, "He is lucky I didn't kill him. He makes me so mad! Why does he get to control my life and my money? I wanted to teach him a lesson, to convince him to let me live as I want to, to make my own decisions." I then asked him what made him lose his temper. His answer, full of profanities and shouting, was to claim that his brother was responsible for everything that was

wrong, to deny that his temper was an issue, and to say, "I hope these things I've done to him have taught him his lesson!"

I asked him whether he had ever done anything else to teach his brother a lesson. He said that he had once tried to poison his brother by putting rat poison in some mashed potatoes. He said that his effort failed because Stephen spit out the potatoes after one taste and assumed that the food was spoiled. It is not clear whether this story was truthful and could possibly have been said for the shock value. It is clear that he has fixated on his brother as a perceived persecutor. Without further tests I am unable to express a reliable opinion on whether there is paranoia present, but I would not be surprised to learn that the client is in the early stages of schizophrenia.

My recommendation at this stage is that we try to get him out of jail as soon as possible and into an inpatient facility at the Veterans Administration Hospital. It is clear that he cannot be returned to the living situation that led him to wound his brother, at least until he is properly diagnosed and commits himself to staying on the medication that could control his rage. He said he is willing to voluntarily commit himself to such a facility if it would mean he could get out of jail. I will go to work immediately to secure him a bed in the Anger Management Treatment Program at that facility.

