FILED
2018 Feb-23 PM 05:39
U.S. DISTRICT COURT
N.D. OF ALABAMA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA

DOYLE LEE HAMM, Plaintiff, v. JEFFERSON S. DUNN, Commissioner, Alabama Department of Corrections, et al., Defendants.	)))))))))	Civil Action No. 2:17-cv-02083-KOB

DOYLE HAMM'S REPORT AND MOTION FOR AN ORDER (OPPOSED)

Plaintiff Doyle Lee Hamm files this report and request for clarification and an order from the Court following good faith discussions with counsel for defendants regarding the medical examination by Dr. Mark Heath of Doyle Hamm scheduled for Sunday, February 25, 2018, at 9:00AM CST at Holman Correctional Facility.

The parties have agreed to the timing of the examination, the equipment that Dr. Heath will be allowed to bring in, the location of the examination in a private conference room, and the persons attending the examination—points 1, 2, 3 and 4 of the attached letter, *see* Appendix A.

The parties have not, however, reached agreement on whether Dr. Mark Heath can examine the execution chamber or have access to the detailed notes taken by the prison staff during the lengthy attempt at venous access for purposes of execution last night. The need for Dr. Heath to inspect the execution chamber and review the contemporaneous notes taken by prison

staff during the execution arise from the unique circumstances of what happened during the attempted execution.

By way of background, Thursday evening, February 22, 2018, beginning at around 9:00PM CST, following the United States Supreme Court denial of his application for a stay at approximately 8:40PM CST, the state of Alabama attempted to execute Doyle Hamm via intravenous lethal injection at Holman Prison. Doyle Hamm was taken into the execution chamber and strapped onto the lethal injection gurney. Two members of the IV execution team entered the death chamber and immediately began to work on Doyle Hamm below his knees on both the left and right sides. The two members of the IV execution team worked at the same time, each taking one side of Doyle Hamm's body, in an attempt to find a vein anywhere in his lower extremities for peripheral venous access. The IV execution team inserted needles multiple times on his left and right legs and ankles, each time forcing the needles into his lower extremities. At one point, the IV execution team turned Doyle Hamm over onto his stomach on the gurney, slapping the back of his legs to try to generate a vein. After multiple, repeated attempts, the IV execution personnel stated aloud that they could not get anything. With peripheral access unavailable, other IV execution personnel next attempted central venous access. Multiple times, they tried to insert a catheter into Doyle Hamm's right groin, causing severe bleeding and pain. The execution was ultimately called off at approximately 11:27PM, or at least that was when counsel was notified; however, even after the execution was called off, the IV execution personnel suggested continuing with central venous access in the groin or trying elsewhere on his lower extremities.

This Court has ordered the Alabama Department of Corrections to permit Dr. Mark Heath to immediately conduct a full medical evaluation of Doyle Hamm. *See* Order Granting in Part

and Denying in Part Plaintiff's Emergency Motion for a Hearing, Feb. 23, 2018, at 2. In a telephone conference on Friday, February 23, 2018, the Court requested that, rather than file a motion, the parties should agree to the conditions for the examination, which they did this afternoon, with the exception of two points: a visual inspection of the execution chamber and a review of the contemporaneous notes of the attempted venous access.

Given the importance of conducting this medical exam properly and obtaining all information possible regarding the attempted execution while Dr. Heath is present and available, undersigned counsel now respectfully requests this Court to resolve the disagreement between counsel and order that defendants provide the following:

1. Inspection of Execution Chamber

Undersigned counsel seeks permission for Dr. Heath to inspect the execution chamber and all medical equipment used in the execution chamber, including the ultrasound equipment. This would include being able to open drawers in order to see what catheters were used. It is important for Dr. Heath to be able to see the environment in which the execution was performed and the medical equipment that was available and used. It is also important for Dr. Heath to see how Doyle Hamm would have been positioned on the gurney and what parts of his body would have been available.

2. Notes of Officials Present at Execution

Doyle Hamm also seeks permission for Dr. Heath to review the contemporaneous notes of the staff who were present at Doyle Hamm's execution. Copious notes were taken of every move of every person in the execution chamber, and they would allow Dr. Heath to examine Doyle Hamm properly. A preliminary report, supplemented by notes given to him later, is insufficient because Dr. Heath requires the notes to inform his examination. He needs to know

what exactly the staff members did during the execution preparations so that he can properly examine Doyle Hamm.

PRAYER FOR RELIEF

WHEREFORE, Doyle Hamm requests that the Court grant Dr. Heath access to the execution chamber and to the contemporaneous notes taken during the execution in order to properly guide his examination of Doyle Hamm.

February 23, 2018

Respectfully submitted,



BERNARD E. HARCOURT
Bar Number: ASB-4316-A31B
Columbia Law School
435 West 116th Street
New York, NY 10027
Telephone: (212) 854-1997
Fax: (212) 854-7946

Counsel for Doyle Lee Hamm

CERTIFICATE OF SERVICE

I hereby certify that on February 23, 2018, I served a copy of the attached pleading by electronic mail to opposing counsel, Assistant Attorneys General Thomas Govan and Beth Jackson Hughes at tgovan@ago.state.al.us and bhughes@ago.state.al.us, as well as to the Docket Clerk of the Capital Litigation Division of the Office of the Alabama Attorney General, Courtney Cramer at ccramer@ago.state.al.us.



BERNARD E. HARCOURT
Counsel of Record

Appendix A

COLUMBIA UNIVERSITY
IN THE CITY OF NEW YORK

Bernard E. Harcourt
Isidor and Seville Sulzbacher Professor of Law and Professor of Political Science
Executive Director of the Eric H. Holder Initiative for Civil and Political Rights

212.854.1997
beh2139@columbia.edu

February 23, 2018

Thomas Govan
Capital Litigation Division
Office of the Attorney General
State of Alabama
501 Washington Avenue
Montgomery, AL 36130
By e-mail

Re. Hamm v. Dunn, No. 2:17-CV-02083-KOB

Dear Thomas,

I am following up on the conference call with Chief Judge Bowdre regarding the emergency medical visit by Dr. Mark Heath of Doyle Hamm. To ensure that Dr. Heath is able to perform a complete and proper medical evaluation unimpeded, I would respectfully request the following:

(1) *Timing*

Dr. Heath is on emergency call for heart and liver transplants until 8:00am Saturday morning, February 24, 2018, but will try to find someone to replace him at 5:00am. He will make all efforts to arrive at Holman Prison as early as 1:00pm on Saturday, but with flight delays and other exigent circumstances, he may arrive later. In the event that Dr. Heath is not able to arrive on Saturday in time for a medical examination, he is willing to perform the exam on Sunday, February 25, 2018, as the Court ordered in the telephone conference on Friday, February 23, 2018.

(2) *Equipment Requested*

As you will recall, Dr. Mark Heath last evaluated Doyle Hamm at Donaldson Correctional Facility on September 23, 2017. At that visit, ADOC prevented Dr. Heath from bringing the proper and necessary medical equipment into the prison to conduct his evaluation and had to resort to using my tie as a tourniquet.

To ensure that Dr. Heath is capable of performing a proper medical examination on February 23, in compliance with this Court's order, I would like to provide a list of what Dr. Heath has identified as necessary for the performance of the exam:

1. Camera
2. Video
3. Bright light
4. Ultrasound equipment (if the equipment from the execution is available, that would be preferred and avoid bringing his own)
5. Medical tourniquet
6. Gloves
7. Alcohol swabs
8. Blood pressure measuring device
9. Pulsoximeter
10. Vein finder
11. Any other reasonable and necessary medical equipment that Dr. Heath may require and that may have been left off this list inadvertently.

(3) *Medical Examination Room*

Dr. Heath must be permitted to conduct his exam in a properly equipped medical evaluation room and that a healthcare provider be present and available to remove dressings and replace them during the exam.

(4) *Persons Attending Medical Visit*

I will be present during the medical examination, as well as, possibly, my law associates Nicola Cohen, Phoebe Wolfe, and Isadora Ruyter-Harcourt.

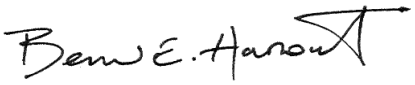
(5) *Inspection of Execution Chamber*

I further will need permission for Dr. Heath to inspect the execution chamber, and all medical equipment used in Doyle Hamm's execution on February 22, 2018. This includes being able to open the drawers in the room and provided any keys to drawers that are locked.

(6) *Preservation of Evidence*

I further request, pursuant to Dr. Heath's recommendation, that ADOC be ordered to preserve all medical containers, medical waste, and any relevant evidence that has not been destroyed already, and that Dr. Heath be allowed to inspect it. Also, that the execution team retain all imaging taken during the ultrasounds during the executions, as well as all notes taken by anyone during the week of the execution, including all notes taken during the execution, and that Dr. Heath be allowed to inspect them.

Sincerely yours,



Bernard E. Harcourt