

OPINION NO. 179 ANSWERED BY LETTER.
(Nessenfeld)

July 6, 1962



Honorable Stephen E. Strom
Prosecuting Attorney
Cape Girardeau County
Cape Girardeau, Missouri

Dear Mr. Strom:

This is in answer to your letter requesting our opinion on the following:

"A number of months ago a prisoner in the Cape Girardeau County Jail awaiting a preliminary hearing on a first degree murder charge went beserk and the Magistrate Judge ordered her transferred to State Hospital No. 4 for examination. We have now received a report from the hospital that she is presently a person of unsound mind and the hospital authorities have recommended that she be committed.

"I request your opinion concerning whether the procedure outlined in Section 545.750, relating to the procedure to be followed where a person becomes insane before his trial, can be followed in this case by the Magistrate Court. No information or indictment has yet been filed.

"If the above statutory procedure is not applicable at this time, I would assume that the Probate Court would have jurisdiction in the matter, jurisdiction not having been taken over by the criminal court. I request your opinion concerning this procedure also."

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In the circumstances described in your letter, it is the opinion of this office that you may follow either of two alternative courses of procedure, namely: (1) To proceed with a preliminary hearing, and if the defendant is ordered held for the circuit court, to file an information (or indictment), after which the circuit court could hold a sanity hearing under its common-law powers, and if the defendant is found insane, postpone the trial until the accused recovers; or (2) to withdraw the complaint if you believe the accused is now in fact of unsound mind, and subsequently file a new complaint when the accused recovers. If the latter alternative is adopted, the probate court would have jurisdiction to act, but not until the complaint has been withdrawn and the proceeding in the magistrate court has been terminated.

State ex rel. Lamar v. Impey, 365 Mo. 437, 283 SW2d 480, ruled that when a person was arrested and held without bail on a charge of murder, awaiting a preliminary hearing, the probate court was without jurisdiction to hold a hearing under Section 202.807, RSMo 1959, which provides for involuntary confinement of persons who are likely to endanger themselves or others. We hold, in accord with that case, that the magistrate court has "jurisdiction of the person (of the accused) to the exclusion of the probate court" during the pendency of the criminal case.

Section 545.750, RSMo 1959, referred to in your letter, expressly provides for and is limited to, a hearing by the circuit or criminal court wherein the person stands charged only where such person, theretofore indicted, "shall after his indictment and before his trial on such charge becomes insane." At the time this statute was enacted, informations were not provided for. In our opinion, the statute should be construed to include informations as well as indictments. However, the statute has no application to your case because the accused became insane before any information had been filed.

The case of In re McWilliams, 254 Mo. 512, ruled that Section 545.750 applied only where the accused became insane after indictment, and that there was no statute providing a procedure for determining the sanity of a defendant who becomes insane after the commission of the offense and before

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his indictment. The court held, however, that "in the absence of an express statute the rule at common law should prevail", the common-law rule authorizing the trial court to impanel a jury in his discretion to try as a preliminary matter the question of the present insanity of the accused.

In the Impey case, the magistrate proceeded to hold a preliminary hearing, and ordered the accused held for the circuit court. Thereafter, an information was filed. We are of the opinion that such is a proper course for you to follow. The circuit court does not have jurisdiction over the defendant until the information is filed therein, and has no authority under the statute to hold a sanity hearing except in the circumstances there described. There is no authority in the statutes for the magistrate to hold a sanity hearing. After the information has been filed in the circuit court a sanity hearing can be held therein, in the discretion of the circuit court, but not under the provisions of Section 545.750 as above pointed out, but rather under the common-law powers of the circuit court.

Summarizing: The magistrate court has no authority to hold a sanity hearing, but may hold a preliminary hearing on the complaint, and if the defendant is held for the circuit court and an information is filed, the circuit court, in the exercise of its common-law powers, may impanel a jury to determine the present sanity of the accused. During the entire pendency of the case, both in the magistrate court and in the circuit court, the probate court has no authority to exercise jurisdiction over the person of the accused. If you desire a probate court hearing, you must first withdraw your complaint and terminate the proceedings in the magistrate court.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

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