

**OVER THE
COUNTER**

Attachment A

to

**APPLICATION FOR PERMISSION TO APPEAL PURSUANT TO
TENNESSEE RULES OF APPELLATE PROCEDURE, RULE 11**

West v. State, Order
No. E2010-02258-CCA-R28-PD
(Tenn.Ct.Crim.App.)

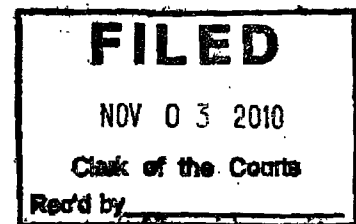
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IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

STEPHEN MICHAEL WEST v. STATE OF TENNESSEE

Circuit Court for Union County
No. 629

No. E2010-02258-CCA-R28-PD



ORDER

The capital Petitioner, Stephen Michael West, has filed an application for permission to appeal from the order of the Criminal Court for Union County denying and dismissing his motion and supplemental motion to re-open his prior post-conviction proceeding challenging his convictions and death sentences for the first degree premeditated murders of Wanda Romines and her daughter, Sheila Romines. See Tenn. Code Ann. § 40-30-117(c); see also Tenn. S. Ct. R. 28, § 10(B). By order entered on July 15, 2010, the Supreme Court of Tennessee directed prison officials to execute the Petitioner's death sentences at 10:00 p.m. on November 9, 2010, "or as soon as possible thereafter within the following twenty-four hours." State of Tennessee v. Stephen Michael West, No. M1987-00130-SC-DPE-DD, order at 1 (Tenn. July 15, 2010). Upon due consideration of the application, together with applicable law, we conclude that there is no need for the State of Tennessee to file a response to the application because the Petitioner has not demonstrated that an appeal from the challenged order is warranted.

In 1987, a jury found the Petitioner guilty of two counts of first degree premeditated murder, two counts of aggravated kidnapping, one count of aggravated rape, and one count of grand larceny. The Petitioner's crimes occurred on March 17, 1986. At the conclusion of a separate sentencing hearing, the jury imposed death sentences for both murders. The Petitioner received lengthy terms of imprisonment for his non-capital offenses. On direct appeal, the Supreme Court of Tennessee affirmed all convictions and sentences, including

the death sentences. See State v. West, 767 S.W.2d 387 (Tenn. 1989), cert. denied, 497 U.S. 1010 (1990). The Petitioner's petition for post-conviction relief was denied following a hearing. The denial of relief was affirmed on appeal. See Stephen Michael West v. State of Tennessee, No. 03C01-9708-CR-00321 (Tenn. Crim. App., Knoxville, June 12, 1998), reh'g denied (Tenn. Crim. App., Knoxville, July 22, 1998), aff'd, 19 S.W.3d 753 (Tenn. 2000), reh'g denied (Tenn. June 7, 2000). To date, the Petitioner's efforts to obtain relief in the federal courts have proven unsuccessful. See West v. Bell, 550 F.3d 542 (6th Cir. 2008), reh'g denied (6th Cir. May 20, 2009), cert. denied, 130 S. Ct. 1687 (2010), reh'g denied, 130 S. Ct. 2142 (2010).

On October 8, 2010, the Petitioner filed a motion to re-open his state court post-conviction proceeding on grounds that "[a] state or federal appellate court has issued a final ruling establishing a constitutional right that was not recognized as existing at the time of trial but now is required to be recognized and applied in [his] case." The Petitioner asserted that the decisions from the United States Supreme Court in Porter v. McCollum, 130 S. Ct. 447 (2009), and Sears v. Upton, 130 S. Ct. 3259 (2010), changed the standard under which claims of ineffective assistance of counsel are to be judged. The Petitioner also asserted that article I, sections 8 and 16 of the Tennessee Constitution and the Eighth and Fourteenth Amendments to the United States Constitution prohibit imposition of the death penalty upon those like the Petitioner who are severely mentally ill. The Petitioner asserts that the decision from the Supreme Court of Tennessee in Van Tran v. State, 66 S.W.3d 790 (Tenn. 2001), dictates that he seek to establish his categorical exemption from the death penalty, based upon his severe mental illness, through a motion to re-open his post-conviction proceeding.

On October 22, 2010, the Petitioner filed a supplemental motion to re-open asserting that the decision in Frazier v. State, 303 S.W.3d 674 (Tenn. 2010), also justifies the re-opening of his post-conviction proceeding. The Petitioner asserted that Frazier stands for the proposition that a trial court's failure to inquire into a defense attorney's conflict of interest, of which the court is aware or should have been aware, and failure to determine whether the defendant knowingly and voluntarily waives the right to conflict-free counsel, amounts to a structural error warranting automatic reversal of any conviction obtained while the defendant was represented by conflicted counsel.

In its response in opposition to the motion and supplemental motion, the State argued that neither Porter nor Sears changed or revised the standard under which claims of ineffective assistance of counsel are to be considered. The State also argued that the decision in Van Tran does not stand for the proposition that a motion to re-open is the proper vehicle for the Petitioner to seek to *establish* his constitutional exemption from the death penalty due to his severe mental illness. Finally, the State argued that the decision in Frazier does not create or establish any new constitutional rights but simply makes clear that a defendant is

entitled to conflict-free counsel in a post-conviction proceeding pursuant to the *statutory* right to counsel in such proceedings.

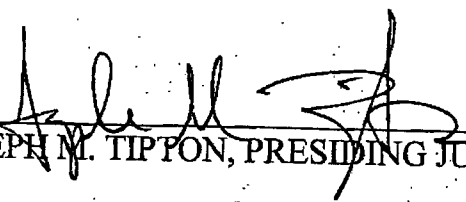
After hearing argument from counsel on October 26, 2010, the post-conviction court denied the motion and supplemental motion to re-open on grounds that the Petitioner had failed to assert any basis for re-opening his post-conviction proceeding. On October 27, 2010, the post-conviction court entered a written order denying and dismissing the motion and supplemental motion. The Petitioner timely filed his application for permission to appeal from the October 27, 2010 order on November 1, 2010.

The Post-Conviction Procedure Act of 1995 provides that a motion to re-open a prior post-conviction proceeding may raise a claim “based upon a final ruling of an appellate court establishing a constitutional right that was not recognized as existing at the time of trial, if retrospective application of that right is required.” Tenn. Code Ann. § 40-30-117(a)(1). “The motion must be filed within one (1) year of the ruling of the highest state appellate court or the United States supreme court establishing a constitutional right that was not recognized as existing at the time of trial[.]” *Id.* “[A] new rule of constitutional criminal law is announced if the result is not dictated by precedent existing at the time the petitioner’s conviction became final and application of the rule was susceptible to debate among reasonable minds.” Tenn. Code Ann. § 40-30-122.

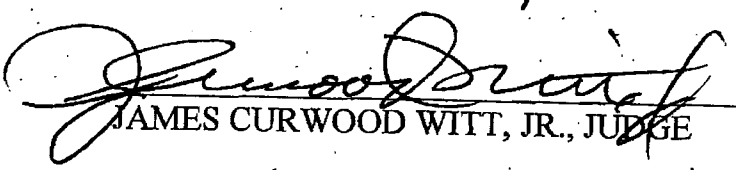
As argued by the State below and determined by the post-conviction court, none of the appellate court decisions cited by the Petitioner justify a re-opening of his post-conviction proceeding. First, the decisions in Sears and Porter applied the standard established in Strickland v. Washington, 466 U.S. 668, 687 (1984), for evaluating claims of ineffective assistance of counsel. They did not revise or change the Strickland standard. See Sears, 130 S. Ct. at 3264-67 (applying standard set forth in Strickland); Porter, 130 S. Ct. at 452-56 (same); see also Pinholster v. Ayers, 590 F.3d 651, 665 (9th Cir. 2009) (noting that the decision in Porter “help[ed] illuminate which applications of Strickland are unreasonable”). Second, the decision in Van Tran established the unconstitutionality of executing the mentally retarded and remanded to the post-conviction court with directions that the petitioner in that case be given the benefit of the newly established constitutional right. See Van Tran, 66 S.W.3d at 811-12. The decision in Van Tran does not stand for the proposition that a petitioner can seek to establish a new constitutional right through a motion to re-open. Finally, the decision in Frazier addressed a petitioner’s *statutory* right to conflict-free counsel in a post-conviction proceeding and, thus, cannot be a decision establishing a *constitutional* right not recognized at the time of the Petitioner’s trial. See Frazier, 303 S.W.3d at 680.

Accordingly, the application for permission to appeal from the order of the Criminal Court for Union County denying and dismissing the Petitioner’s motion and supplemental

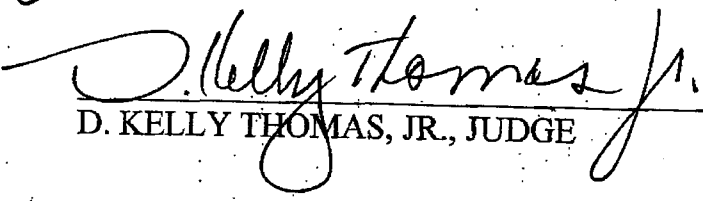
motion to re-open is DENIED. Because the Petitioner is indigent, costs on appeal are taxed to the State, for which execution may issue.



JOSEPH M. TIPPON, PRESIDING JUDGE



JAMES CURWOOD WITT, JR., JUDGE



D. KELLY THOMAS, JR., JUDGE

Attachment B

to

**APPLICATION FOR PERMISSION TO APPEAL PURSUANT TO
TENNESSEE RULES OF APPELLATE PROCEDURE, RULE 11**

**Letter from Stephen West
to Judge Asbury,
Dated March 9, 1987**

Judge Lee Asbury
Jacksboro, TN 37757

March 9, 1987

Judge Asbury,

I am writing this letter in order to bring certain circumstances to your attention, and to request information on the proper route(s) to take in proceeding with this matter.

In March of 1986, my family retained a defense attorney on my behalf, in accepting the case at hand the attorney-Richard McConnell-did so without any consent on my part. In fact, I fully intended to be represented by an attorney of the state; but Mr. McConnell, in the first meeting that I had with him concerning this case, advised me that a contract had already been signed by my family and that whether I chose to accept him as my counsel or not, they were obligated to pay the contracted amount. I would remind His Honor that this is apparently in violation of DR 5-107 (A)(1).

Further bringing to His Honor's attention is the fact that throughout his representation of me, Mr. McConnell has repeatedly informed me that any and all decisions pertaining to my case would be made by my family members, since legally he was working for them and not for me. This again would seem to be in violation of DR 5-107 (B).

On January 31, 1987, Mr. McConnell held a meeting here at Union Co. Jail-house with myself, and several of my family members attending. In this meeting, Mr. McConnell stated that if my family could not in some way find a means of additionally paying him \$5,000 that he would be forced to withdraw from my case, and in his own words, "...if I withdraw then Steve will definately go to the electric chair..." He further stated that he would co-sign with any member of my family at the bank that they carried their business with in order to help obtain the \$5,000 that he wanted. I would bring to His Honor's attention that Mr. McConnell signed a receipt dated 8-6-86, stating that, 'Received from Mr. and Mrs. West the sum of five thousand dollars and 00/100 (\$5,000) as final payment in Steve West's homicide case. Total fee for handling case through trial and post trial motions exclusive of Appeal-10,000...paid 3-20-86 5,000...paid 8-6-86 5,000...total paid \$10,000. ACCOUNT PAID IN FULL; and is signed by Mr. McConnell. I would further submit to His Honor that in view of the aforementioned events in this paragraph, Mr. McConnell seems to be in violation of DR 2-106 (C) and EC 2-19 clearly points out that such practice is not only unethical, but also shows Mr. McConnell to be in violation of the Disciplinary Rules mandated by the Code of Professional Responsibility.

Since Mr. McConnell is asserting that his presentation and representation fees of me in this case are strictly on a contingent basis; I would bring to His Honor's attention that no mention of 'contingent' fees was referred to in the original contract, and that a contingent fee in a criminal case is in violation of: EC 2-20 (last sentence), and DR 2-106 (C).

On February 17, 1987 Mr. McConnell telephoned me here at Union County Jail and informed me that since my family had failed to produce the additional \$5,000 that he had requested on 1-31-87; that ethically he could not bring himself to withdraw from the case, but that he would no longer work on or prepare for the case until presenting himself for defense at the time of trial. He further stated that if I could convince my father-in-law to pay the requested \$5,000 to him that he would be more than happy to become an active participant in the preparation of my defense. I told Mr. McConnell that I preferred him not to contact my in-laws in request of this money, but Mr. McConnell stated that he had already spoken to my wife, and that she had agreed to allow him to talk to my in-laws, and that my in-laws had asserted to him that they could not produce that kind of money. I would bring to His Honor's attention that this seems to be in violation of (or an attempt at violating) DR 5-107 (A)(1).

On March 8, 1987 Mr. McConnell contacted me here at Union County Jail via the telephone, and told me that he had to have \$500 before the trial date to afford him the opportunity to rent a motel room, and that without the \$500 he would not be able to be present for trial, and that it would be my fault for not providing him with the funds to make himself available.

I would remind His Honor that I have been found indigent by the court, and have no way to further make funds available to Mr. McConnell.

The practice and the manner to which Mr. McConnell has handled my case is in my opinion been less than desirable and ethical. He has constantly harassed my family, my in-laws, my wife and myself for more funds, despite the contract that has been legally fulfilled on our part.

Mr. McConnell's conduct in handling this case, and his actions toward me as his client seem to show him in violation of: Preamble-last line, second paragraph; Preamble-third line, third paragraph; EC 1-5 lines one and two; EC 2-23 first line; EC 2-31 first line; DR 2-106 (C); DR 1-102 (A)(1)(4)(6); EC 2-16 last line; EC 2-18; EC 2-20 last line; EC 1-1 last line; EC 5-21; DR 5-107 (A)(1); DR 5-107 (B); EC 6-2 last line; DR 6-101 (A)(2)(3); EC 7-1 line one; EC 7-19 last line; DR 7-101 (A)(2); DR 7-102 (A)(5)(8); DR 7-107 (B)(1)(6);

I am asking His Honor to advise me on how to further proceed in seeing that EC 1-2; EC 2-32 last line; DR 2-110 (A)(3); are followed, and further request that Mr. McConnell be allowed to withdraw from handling my defense on this case as I feel that as counsel he has proved less than adequate, and due to the circumstances named above, I feel that I can no longer work with Mr. McConnell in an adequate lawyer/client relationship.

In closing, I would further bring to the attention of His Honor, 'Code of Judicial Conduct, Canon 3 MEDIA GUIDELINES (B) Administrative Responsibilities (3); "A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware."

Respectfully written to His Honor, Judge Lee Asbury, on this, the 9th day of March, 1987.

Stephen M. West
Stephen M. West
Union County Jail
Maynardville, TN 37807

Attachment C

to

**APPLICATION FOR PERMISSION TO APPEAL PURSUANT TO
TENNESSEE RULES OF APPELLATE PROCEDURE, RULE 11**

**Thomas McAlexander, Esq
Affidavit**

AFFIDAVIT OF THOMAS K. MCALEXANDER, ESQ.

STATE OF TENNESSEE)
)
COUNTY OF SHELBY)

Comes now Thomas K. McAlexander, after being duly sworn according to law, and says as follows:

1. I am a duly licensed attorney in the State of Tennessee, Board of Professional Responsibility No. 11912.
2. I was appointed to represent Stephen Michael West in September or October 1986. I, along with lead counsel Richard McConnell, who was hired by Mr. West's family, defended Mr. West in his first-degree murder trial.
3. With respect to our representation of Mr. West, I was primarily responsible for pretrial motions, the suppression hearing, and roughly half of the guilt-phase witnesses. Mr. McConnell was in charge of the other half of the guilt-phase witnesses and the penalty phase. Although we divided responsibilities in this manner, Mr. McConnell was lead counsel as I was only in my first year of law practice. Nevertheless, Mr. McConnell was not present during the suppression hearing and I conducted it myself. I also prosecuted the motion for new trial and Mr. West's direct appeal alone.
4. One thing I never understood was the pre-trial introduction of the satan-worship theory by Mr. McConnell. After being hired by the West family, but before meeting with Mr. West for the first time, Mr. McConnell held a press conference and announced that the crimes were part of a satan-worship ritual. The newspapers then reported Mr. McConnell's comments. Mr. McConnell employed investigator Ken Holt to substantiate this theory. I did not understand how this theory benefitted Mr. West's defense. I also told Mr. McConnell that if this theory was used at trial I would ask the court for permission to withdraw from the case.
5. I have met with Mr. West's habeas counsel and reviewed records which I have been told are attachments to the amended petition for writ of habeas corpus filed in the federal district court.
6. After a careful review of these records, and in conjunction with my

recollection, it is clear to me that I did not have, nor was I aware of, the information contained in the designated Attachments C, F-L, N-O, W-Y, AA-BB, GG-HH. Debbie West did tell me that Stephen had been "knocked crosseyed" and might have resulting brain damage. I inquired about this with Mr. McConnell and Wanda and Vestor West without success. I was unable to consult with an expert about this issue because the trial court denied my motion for funding. With respect to Dr. Bursten's notes which are Attachment P, Mr. McConnell consulted with Dr. Bursten before I was appointed to the case and I did not ever see Dr. Bursten's notes.

7. In my opinion, this information would have provided us with evidence to rebut the prosecution's premeditation theory, supported the defense theory of duress and would have provided a substantial case for life instead of the death penalty. At the time, I was associated with attorney Doug Trant and Mr. Trant had made me aware of the importance of developing a life history and mitigating circumstances. I certainly would have used this information to support Mr. West's defense at trial if I had known about it.
8. Even though Mr. McConnell was responsible for the sentencing phase of the trial, I attempted to talk to him about investigating Mr. West's family history. When I inquired about Mr. West's family it was like running into a brick wall with Mr. McConnell and Wanda and Vestor West. I never met with Wanda and Vestor alone; Mr. McConnell was always present. The three refused to offer any information about the West family history.
9. With respect to Attachment Q, Mr. West's letter to Judge Asbury, I was aware that Mr. McConnell was unhappy with the amount of money he received from the West family. With respect to Attachment S, Ken Holt's affidavit, and Attachment T, transcript of telephone call, this information is consistent with what I know about Mr. McConnell's money issue.
10. I recall meeting with Mr. McConnell about a month after I was appointed to the case. Mr. McConnell told me that he had to stop working on Mr. West's case because he was not getting paid enough money. Other than simply talk about the case I do not know of any work product by Mr. McConnell after I was appointed. Mr. McConnell told the West family that he had stopped working on the case and that I had been appointed to take over the work load. Mr. McConnell also told the family, however, that I was a new lawyer

and did not know what I was doing. Mr. McConnell asked the family to get a bank loan to cover his fees so he could continue to work the case. Mr. McConnell offered to cosign the loan if necessary to make it happen. Wanda and Vestor West refused to do this.

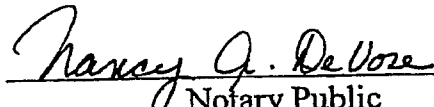
FURTHER AFFIANT SAYETH NOT.



THOMAS K. MCALEXANDER

STATE OF TENNESSEE)
COUNTY OF SHELBY)

Sworn to and subscribed before me this 21st day of May, 2002.



Notary Public

My Commission Expires: Sept. 18, 2002

Attachment D

to

**APPLICATION FOR PERMISSION TO APPEAL PURSUANT TO
TENNESSEE RULES OF APPELLATE PROCEDURE, RULE 11**

Claudia Coleman, Ph.D. Report

Claudia R. Coleman, Ph.D.
220 West Millbrook Road Suite A
Raleigh, North Carolina 27609
(919) 846 6442

Forensic Psychology • Neuropsychology • Psychological Assessment

PSYCHOLOGICAL EVALUATION

Name: WEST, Stephen
Date of Birth: 09-16-62
Age: 39
Date of Evaluation: 11-07-01
Referral Source: Dana C. Hansen, Assistant Federal Community Defender

Identifying Information and Reason for Referral: Mr. Stephen West is a thirty-nine-year-old divorced white male who was found guilty in 1987 in Union County, Tennessee of two counts of First Degree Murder; two counts of Aggravated Kidnapping; and one count of Aggravated Rape relative to the deaths of Wanda and Sheila Romines on March 17, 1986. Mr. West's post-conviction counsel, Dana C. Hansen, Assistant Federal Community Defender, requested that an evaluation be conducted to assess any psychological factors that might have influenced Mr. West's thinking and behavior at the time of the offenses, and thereby might have had some bearing on possible defenses and/or mitigation issues at the time of his trial in 1987.

Date of Contact and Procedures Administered: A clinical interview was conducted with Mr. West on November 7, 2001 at the Riverbend Maximum Security Institution in Nashville, Tennessee. Psychological assessment conducted at that time consisted of the administration of the Millon Clinical Multiaxial Inventory, Third Edition (MCMI-III) and the Beck Depression Inventory-Second Edition (BDI-II). In addition to the MCMI-III and BDI-II test results, the results from extensive neuropsychological and psychological testing performed in 1995 by Eric S. Engum, Ph.D., J.D. was available through Dr. Engum's report of 09-22-96 and also through his testimony at a post-conviction hearing on September 24, 1996. All of the findings were considered in the current evaluation.

Extensive collateral records were made available for review. These records included the following:

- Supreme Court case opinion of 02-06-89;
- Three statements of Ronnie Martin (co-defendant);
- TBI memo regarding Mr. Martin's statements dated 05-28-87;
- Arrest warrant for Ronnie Martin;
- Interview of John F. Allen;
- Five statements of Stephen West;
- Transcription of Steve Hunley tape;
- Clinical notes of Dr. Ben Bursten (1986);
- Competency Evaluation notes from February, 1989 (unsigned);
- Neuropsychological Evaluation Report of Eric S. Engum, 09-22-96;

Affidavit of Dr. Engum dated 01-31-96;
Affidavits of Daniel Matthews, Joseph Ingle, Elisabeth Domnovin, William Harris, Jerry Welborn, Karin Elsea, and Darlene Foote (February, 2001);
Letter from Glenn Fuller dated 02-28-01;
Affidavit of Vestor West (father), dated 12-31-98;
Affidavit of Debra Harless (sister), dated 12-31-98;
Medical Records from Riverbend dated 02-01-01 to 05-30-01;
Trial testimony, Vol. 3, pp. 2-17;
Letter from Stephen West to Judge Asbury;
Trial testimony, Vol. 10, pp. 31-142;
Trial testimony, Vol. 11, pp. 6-35
Trial testimony, Vol. 11, pp. 76-129;
Trial testimony, Vol. 13, pp. 93-137;
Post-conviction testimony of Dr. Engum, pp. 56-168 (1996);
Post-conviction testimony of sister, Debra West, pp.158-192 (1996);
Post-conviction testimony of aunt, Ruby West, pp. 380-391 (1996);
Post-conviction testimony of Dr. Bursten, pp. 421-483 (1996);
School records;
Military discharge record;
Affidavit of Dr. Keith Caruso dated 02-23-01;
Medical records of birth from Community Hospital;
Post-conviction testimony of sister, Patricia DePew, pp.369-380 (1996);
Trial testimony of Patty Rutherford, pp. 45-61.
Affidavit of Karen West Bryant dated 12-18-01;
Mental Health Records of Ronnie Martin from the Regional Mental Health Center of Oak Ridge for services in 1983

Additional information was obtained by telephone interviews with Mr. West's ex-wife and his older sisters.

Background Information: Mr. West was born in Anderson, Indiana. His father is still living, but his mother died several months after his conviction. He has two older sisters and one older brother. Mr. West reported essentially no memory of his childhood. The collateral records indicated that Mr. West was severely abused by his parents. There has been family testimony that he was born after his mother was psychiatrically hospitalized due to a suicide attempt by gas inhalation. Further, the records reflected that Mr. West received recurrent beatings by his mother with belts, shoes, and her hands, frequently leaving bruises and marks. The mother was noted to grab Mr. West by his feet and sling him into a wall, at one point apparently injuring his eyes such that he later needed several surgeries. An aunt reported that she once took Mr. West to the hospital after his mother threw him against the wall. The aunt also reported that Mr. West's mother would make him stay in a very cold room on a urine-soaked mattress. One of Mr. West's sisters stated that he became so fearful of his mother that he would tense if she simply walked near him, and that he would flinch, become immobilized, and start crying if she raised her arm toward him in any manner. His sister also described the mother as pinching the children until they bled, simply "for fun".

Mr. West's father was described as an alcoholic who also was physically and verbally abusive toward him. The father frequently called Mr. West a "bastard", specifically because he (the father) thought Mr. West was not his own child. Family members report that it was an open secret among many that Mr. West was actually the child of the father's brother. Mr. West's sisters described him as a timid, shy, and fearful child because of the parental abuse. They reported that he did not act out; he was a passive child not an aggressive one. He apparently sustained multiple ankle and foot fractures, along with the eye problems, as a result of the abuse.

Despite the severe abuse, Mr. West did attend school and was not in special classes. He began drinking alcohol while he was still in junior high school because it made him "feel better". He dropped out of school in the eleventh grade, and, to escape the violent home situation, joined the United States Army. Mr. West obtained his GED while in the Army. He served approximately three years in the military, and received a discharge under honorable conditions in 1982.

Mr. West noted that his drinking increased significantly while he was in the service. Often he would begin drinking early in the morning and drink a case of beer by noon. He also drank hard liquor and began smoking marijuana daily. After discharge from the military, his alcohol and marijuana use decreased for a period of time, but he slowly began drinking more and was again drinking around a case of beer a day when he met his wife, Karen, in 1983. The couple met in Cleveland, Ohio where Mr. West was working in construction.

In discussing his use of alcohol, Mr. West admitted that he had blackouts at times from alcohol, but denied that he became aggressive or abusive when drinking. This information was confirmed by his ex-wife. She denied that he was ever threatening or abusive to her, even when drinking. Mr. West's ex-wife described Mr. West as a friendly individual who was very well-liked by others. Both Mr. West and his ex-wife discussed his chronic use of marijuana. He reported that smoking marijuana, just as using alcohol, "calmed his nerves" and decreased the tension he "always" felt.

Mr. West and his wife moved to Tennessee only a few months prior to Mr. West's arrest on the instant offenses. His wife was several months pregnant at the time of his arrest. Mr. West and his wife were eventually divorced in 1992.

Medical history is positive for the eye surgeries and multiple bone fractures in childhood as noted previously. Mr. West also reported hearing loss in his left ear that has been present as long as he can remember. There is a family history of mental illness. An older sister has been diagnosed with Bipolar Disorder and continues to remain on medication for this illness. The sister stated that her adult daughter also has Bipolar Disorder and that at least two of Mr. West's maternal aunts have suffered from this illness. The sister further reported that the mother had symptoms consistent with Bipolar Disorder, but that the family did not know if she was actually diagnosed with the illness when she was psychiatrically treated. The mother was described as having psychotic symptoms. She experienced auditory hallucinations and believed there was a little man in her head that spoke to her. The mother also was very paranoid at times, thinking that others were talking about her and plotting against her. As mentioned previously, the mother made at least one suicide attempt by gas inhalation when she was pregnant with Mr. West. The family is aware that the mother was treated with ECT after Mr. West was born.

Mr. West had no history of psychiatric/psychological treatment prior to his incarceration. He was evaluated after his arrest by Dr. Ben Bursten on July 26, 1986. Dr. Bursten's notes from this interview were available as was a transcript of his testimony from the 1996 post-conviction hearing. There were indications in the notes of various factors that are typically associated with a stress response. For example, Mr. West reported suddenly seeing the co-defendant holding a knife to Wanda Romines' throat and afterward making threats. Mr. West described feeling dazed, crying and shaking, and feeling unable to do anything to resist. He also reported feeling as though the events were not happening. Mr. West testified to these factors at trial. Nevertheless, the testimony of Dr. Bursten at the post-conviction hearing in 1996 indicated that he found no evidence of mental state issues as a result of his interviewing Mr. West in 1986 that could have had bearing on defense or sentencing issues. Dr. Bursten noted in his records and his testimony that Mr. West denied having been abused during his childhood. The only testing performed by Dr. Bursten in 1986 was administration of the Shipley Scale, a brief screening measure for verbal intelligence. No personality or other psychological testing was given. Dr. Bursten did conduct an interview with Mr. West's parents.

The collateral records contained notes from an interview conducted in 1989 reflecting psychological problems, but there was no signature accompanying the notes. Nevertheless, there was indication in that record that Mr. West was abused during childhood and that he had no substantial memory for events in childhood. The interview notes also indicated that Mr. West had on-going problems with dizziness and blurred vision as well as chronic problems with anxiety and racing thoughts.

In 1995, Dr. Eric Engum performed a comprehensive neuropsychological evaluation including standard personality and psychological assessment. Although he did not find evidence of neuropsychological deficit associated with either pre-natal maternal exposure to gas or to head injury related to the pattern of abuse Mr. West experienced in childhood, Dr. Engum did find that Mr. West had long-standing personality features that have characterized his psychological functioning during adulthood. Dr. Engum described these features in both his report and during his post-conviction testimony in 1996. Specifically, Dr. Engum reported that the test results showed schizoid, avoidant, self-defeating and dependent personality traits. Dr. Engum noted that individuals with such personality features tend to be overly compliant in order to avoid rejection and abandonment, thereby being, "...exceedingly passive, submissive, dependent...". Dr. Engum's opinion was that, based upon Mr. West's statements to law enforcement and to Dr. Bursten after his arrest, Mr. West was in "extreme emotional distress" at the time of the offenses" and that "...he was emotionally overwhelmed by the events initiated by and sustained by the co-defendant, Ronnie Martin". Dr. Engum also found Mr. West to be suffering from depression at the time of the evaluation in late 1995. Dr. Engum's diagnoses were Depressive Disorder, NOS, and Mixed Personality Disorder with Schizoid, Avoidant, Self-defeating, and Dependent Characteristics. Dr. Engum further noted that the test findings, coupled with Mr. West's amnesia for childhood, were consistent with significant abuse during childhood. In testimony, Dr. Engum stated that he viewed Mr. West as functioning at an emotional level consistent with early adolescence.

More recently, medical records from the Tennessee Department of Correction showed that Mr. West was diagnosed with Major Depression on April 5, 2001 and was started on the antidepressant medication, Paxil. At the time of the current evaluation in November of 2001, Mr. West reported that he was then taking the antidepressant, Effexor, and a low dose of Haldol at bedtime.

There were some mental health records obtained regarding Mr. West's co-defendant, Ronnie Martin. This information was considered in an effort to assess how Mr. Martin's personality and behavioral factors might have interacted with and thereby affected Mr. West's behavior at the time of the offenses.

Mr. Martin's records were from two contacts at the Regional Mental Health Center in Oak Ridge in 1983. At that time, he was fourteen and was seen for assessment regarding possible treatment in the center's in-patient program. Mr. Martin had been arrested for stealing \$7000 worth of equipment from TVA and had also threatened to harm himself with a knife in the school cafeteria. The records indicated that Mr. Martin reported being "bored and unhappy" and noted much conflict with his mother. The record also reflected that he believed he had committed the theft of property "for the excitement", and he reported that he liked to be "scared". A history of occasional outbursts of temper and mild destructiveness was noted. Mr. Martin was described as expressing "considerable anger toward others who are in occasional conflict with him, teachers, neighbors, relatives, peers." The progress notes further reflected that Mr. Martin "...does seem to be an angry young man who fantasizes violence toward those who frustrate his desires". The notes showed that he was viewed as "skillfully manipulative" and that his mother was tired of his "playing games" with other people. The mother was noted to not take Mr. Martin's provocative behavior seriously. She apparently was concerned that he did not have insight into the difficulties that could stem from breaking the law and from "...fabricating stories about possibly hurting himself or others". The examiner noted that Mr. Martin's veiled threats of harming himself or others appeared "...to be related to boredom and a desire for excitement and challenge". The examiner also stated that Mr. Martin's anger could be due to feelings of abandonment by his father. Mr. Martin was diagnosed as having a Conduct Disorder, Undersocialized, and non-aggressive at that time. The possibility of out-patient and/or in-patient treatment was discussed with Mr. Martin and his mother after the evaluation, but treatment was declined.

Behavioral Observations: Mr. West presented as a medium-statured man who appeared his stated age. He was somewhat reserved initially and appeared mildly anxious. Over the course of the interview, he became less tense and was very cooperative with the procedures. He was alert and fully oriented. There was no evidence of a formal thought disorder and Mr. West denied psychotic symptoms. He expressed no clearly delusional thinking, but did describe having "racing thoughts" for as long as he could remember. He denied other symptoms associated with mania or hypomania, other than on-going sleep disturbance. Affect was tearful at times and mood was viewed as mildly depressed and moderately anxious. Mr. West denied suicidal thinking. He reported that his mood had improved over the months preceding the evaluation and it was his belief that the improvement was a direct result from the antidepressant medication he was taking. Nevertheless, he reported continued difficulties with chronic worry and with disturbed sleep and appetite. As noted previously by others, Mr. West denied memory for his childhood. He did report significant parental abuse during early adolescence and stated that he joined the military to escape the home environment. Mr. West also noted that, after his arrest, he finally became somewhat closer to his mother and father.

In discussing the events surrounding the offenses, Mr. West reported some fragmentation of memory. He admitted that, over the course of time, it was increasingly more difficult to recall some of the events of that morning and reported that when he actively tries to recall them he becomes very anxious. He does, however, have a clear, recurring and intrusive memory of sitting on the sofa with Sheila Romines, hearing

her gasp, and looking up to see Ronnie Martin with a knife to Wanda Romines' throat. He also remembers at one point sitting on the floor crying. He still feels as though he is remembering most of the events as though they did not really happen and he was not actually there. Mr. West described that for months after his arrest, he had recurrent intrusive thoughts of the events, particularly of first seeing Ronnie Martin with the knife. He also experienced nightmares and would frequently wake up in a near-panic from the dreams of the events. He reported that he had the "shakes" for months, along with increased heart rate and sweating, and that he experienced frequent uncontrollable crying spells. When asked if these symptoms were simply associated with his legal circumstance, Mr. West stated that they were related to what happened at the time of the offenses because he could not get those images from his mind. Over many months, these symptoms diminished considerably, but he continues to have them on occasion. His sister and ex-wife confirmed that Mr. West was extremely nervous, tense, and "shaking" during the months after his arrest.

When asked about his passivity and non-intervention at the time of the offenses, Mr. West described having been very frightened of Ronnie Martin since Martin had the knives and the gun. He stated that, after he first saw Martin with the knife, he felt as though things were unreal, as though they were not happening although he knew they actually were. He described feeling unable to resist and as having no control of the situation.

Test Findings: As described above, previous psychological testing by Dr. Engum in 1996 revealed that Mr. West has long-standing personality traits characterized by schizoid, avoidant, self-defeating and dependent features. The current psychological testing indicated highly similar personality factors. The findings showed that Mr. West is an individual who did not develop cohesive, mature emotional coping mechanisms during his formative years. His self-image is that he is weak and ineffectual and he has marked feelings of social inadequacy. He typically relates to others in a dependent manner, seeking acceptance and approval through passivity. He is prone to become confused and to regress emotionally during episodes of stress by psychological withdrawal. He is susceptible to disabling anxiety with depersonalization at such times and may experience confusion to such a degree that there is some breakdown in reality-testing.

The current test results further showed that Mr. West suffers from a prominent anxiety disorder characterized by social anxiety, chronic apprehension, restlessness, sleep disturbance, fatigue and poor concentration. Additionally, the findings reflected that he was previously confronted by a traumatic event that precipitated intense fear and horror and that he continues to have some persistent residual symptoms associated with this event. Specifically, he has recurrent and distressing recollections of the event, he seeks to avoid cues associated with event, he has nightmares and sleep difficulties, and he is prone to having a subjective sense of numbing of his emotions. A chronic pattern of dysthymic mood was also indicated by the testing.

Impressions: Given the overall findings from review of the collateral material, information obtained from family members, and results of psychological evaluation, it is clear that Mr. West suffered from intense psychological trauma and anxiety as a child directly due to the severe physical and emotional abuse of his parents. He was described as hypersensitive to stimuli associated with abuse, such as his mother simply walking close to him or even innocuously throwing her hand out, and as having intense

psychological stress reactions to such cues. He was also observed to be a passive, essentially immobilized, recipient of the harsh abuse. Given that memory of these events has been blocked and Mr. West cannot now personally recall his childhood does indicate the severity of the distress he suffered during that period. Due to his amnesia for that period of time, it is difficult to assess the full range and exact nature of all the symptoms he experienced at an early age, but the pattern of responses that is known strongly supports the development of Posttraumatic Stress Disorder.

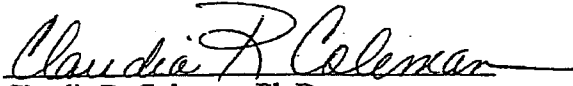
It is also clear that Mr. West's passive, dependent, and avoidant personality traits as an adult stem from his traumatic childhood experiences. While unable to exert any change over his unpredictable and threatening environment, he obviously remained passive and compliant in attempts to avoid acute conflict and fear-provoking situations. This strategy became quite entrenched as Mr. West's coping response to stress, later forming a basis of his personality integration. When he became a teenager, he found another way to temper and avoid his pervasive fears and anxieties when he began drinking and using marijuana. His continued use of these substances over time appears to have been an attempt to self-medicate his chronic anxiety. The history supports diagnoses of Alcohol and Cannabis Dependence.

Mr. West has reported that, at the time of the offenses, he experienced intense fear for his life and for the lives of others due to Mr. Martin's actions. Mr. West described feelings of derealization, depersonalization, and numbing associated with the events of that morning. He described being psychologically immobilized and unable to resist or obtain assistance. He subsequently experienced persistent recollections of the events in the form of flashbacks, recurrent intrusive thoughts, and nightmares, along with chronic generalized anxiety and difficulty with memory. While his symptoms diminished over the course of some months, many of the symptoms still persist. The available history indicated that Mr. West experienced an overwhelming Acute Stress Disorder at the time of the offenses and subsequently had Posttraumatic Stress Disorder from the experience. He continues to have residual symptoms of this disorder.

The current evaluation also showed evidence of chronically depressed mood. The records reflect that Mr. West has been depressed over the last several years and that he was diagnosed with Major Depression, Moderate, last year. He has since been treated with antidepressant medication and his mood has improved. He remains on medication.

Conclusions: There are several factors that appear to have influenced Mr. West's psychological response and therefore his behavior at the time of the offenses. His background of extreme trauma and anxiety during childhood set the stage for Mr. West's having an acute stress response and becoming emotionally overwhelmed by the situation, experiencing intense dissociative symptoms of depersonalization and derealization. Mr. Ronnie Martin's psychological history indicates that, although younger than Mr. West, he was an angry individual who had a hostile, aggressive and manipulative personality features. It is my opinion that this more dominating and pathological personality style, in contrast to Mr. West's submissive and fearful personality traits, did serve to reinforce Mr. West's long-standing pattern of becoming passive and compliant when confronted with intense stress. It is my opinion that he had very limited psychological resources for proactive resistance due to the psychological trauma and anxiety reaction he was experiencing at that time. His lack of sleep and his intoxication at the time further depleted his ability to more effectively cope with the traumatic situation.

Based upon the evaluation findings, it is my opinion that Mr. West was suffering from a mental disorder at the time of the offenses and that this mental disorder might have had relevance as a defense and/or mitigation issue at trial. The acute anxiety disorder, along with sleep deprivation and intoxication, appear to have significantly compromised Mr. West's judgment, reasoning, decision-making and problem-solving abilities at the time of the offenses. It is also my opinion that a complete forensic evaluation prior to trial, consisting of repeated observation and clinical interviews over time, psychological testing, in-depth assessment of psychosocial history, and review of all investigative records, would have been able to determine the presence and possible legal relevance of Mr. West's significant problems with anxiety.


Claudia R. Coleman, Ph.D.

Attachment E

to

**APPLICATION FOR PERMISSION TO APPEAL PURSUANT TO
TENNESSEE RULES OF APPELLATE PROCEDURE, RULE 11**

Richard G. Dudley, Jr., M.D. Report

RICHARD G. DUDLEY, JR., M.D.

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212-926-0122

FEDERAL DEFENSE
OF EASTERN T

21 February 2002
PSYCHIATRIC EVALUATION

IN RE: STEPHEN M. WEST

Presenting Problem:

Stephen M. West (SW) is a 39 year old (DOB 16 September 1962) white male, who is currently under sentence of death in Tennessee for the 17 March 1986 murders of Wanda and Sheila Romines.

It is the understanding of this psychiatrist that in 1987, in connection with this matter, SW was found guilty of two counts of first degree murder, two counts of aggravated kidnapping, and one count of aggravated rape, and then sentenced to death for the murders and also given sentences of 40 years for each of the other three counts. SW had no prior record of any involvement with the law. SW's codefendant in this matter was Ronnie Martin, and although Ronnie Martin was only 17 years old at the time of the murders, he had a prior record of involvement with the law.

In connection with SW's petition for post-conviction relief, his attorney referred him to this psychiatrist for an evaluation, focused on whether or not he was suffering from any psychiatric disorder or difficulties at the time of the crime that might have constituted either a defense to his involvement in this matter and/or mitigation against the penalty of death. The following is the report of that evaluation.

Sources of Information:

- Supreme Court opinion on SW's appeal, dated 6 February 1989
- SW's 18 March 1986 sworn statement, and a later 18 March 1986 addendum to that statement
- SW's first oral statement transcribed on 17 April 1986, and then his second oral statement also transcribed on 17 April 1986
- Bruton statement of SW, transcribed on 11 April 1986
- Ronnie Martin's arrest warrant
- Ronnie Martin's statements, dictated on 2 April, 16 April, and 17 April 1986
- Interview of John F. Allen, transcribed on 11 April 1986
- Transcription of Steve Hunley tape
- Dr. Bursten's notes, CCRC notes regarding competency evaluation
- Trial testimony, Volume 3 pp 2-17, Volume 10 pp 31-142, Volume 11 pp 6-35 and pp 76-129, and Volume 13 pp 93-137
- SW's letter to Judge Asbury
- Dr. Engum's evaluation of SW and affidavit
- Post-conviction testimony pp 56-192, pp 380-391, and pp 421-483
- Affidavits of Daniel Matthews, Joseph Ingle, Elisabeth Donnovin, William Harris III, Jerry Welborn, Karin Elsea, Glenn Fuller, Darlene Foote, Vestor West, Debra Harless, Patty Rutherford, and Kathy West Bryant
- Dr. Caruso's affidavit
- Riverbend records from 1 February 2001 to 30 May 2001
- SW's Anderson County school records
- SW's military records
- Report of the psychological evaluation of SW performed by Claudia Coleman, Ph.D.
- Psychiatric examination of SW performed by this psychiatrist on 11 January 2002

Summary of Information:

When SW met with this psychiatrist, he reported that he only has 'regular memories' starting from about the time he was about 17 years old and about to enter the army. Prior to that point, his memory is extremely spotty. Upon further exploration, SW explained that he only remembers a few scenes from prior to that point in his life; these are just isolated scenes, and he doesn't remember when they occurred, what happened prior to those scenes, or what happened after those scenes; and he really doesn't remember anything else about his childhood or early adolescent years.

Upon further exploration, SW reported, for example, that he remembers a couple scenes wherein his parents are beating him. He remembers being a young child and being kept in a room; when the door opened he hid under the bed; and he hid there hoping that it would be little feet coming into the room, which would mean that he wasn't going to be beaten. He also has a memory of being at the beach with his mother and some man other than his father.

SW reported that recently, 2 guys who said that they had attended junior high school with him heard about his case, contacted him, and started trying to remind him of their time together in junior high school. On his own he couldn't remember anything about junior high school, including any classes, teachers, or other students. However, when they kept trying to remind him of things, he thought that maybe he could remember some of those things, but he doesn't really know if his memory was stimulated by what they told him or if it was simply that he bought into the things that they told them.

SW reported that in contrast, although the information contained in affidavits from his family members about his childhood years is also new to him (and not a part of his independent memory), he still can't remember any of the events that family members described in those affidavits. SW noted that for all of these years, he just thought that it was strange that others could remember their childhood, instead of thinking that his inability to do so was a major problem. He explained, for example, that when he met his wife, she told him about her childhood; but when she tried to question him about his childhood, he couldn't remember very much; and then after she questioned him a couple more times and he still couldn't remember very much, she just stopped asking him about his childhood. Therefore, he really didn't make anything of the fact that he just couldn't remember things about his childhood.

SW reported that he remembers leaving school while in junior high school, but he doesn't really remember why he left school or if there really even was a particular reason why he left school. He thinks that he was doing OK in school; but he remembers feeling that nothing mattered and feeling like he didn't have any direction; and in retrospect (i.e., now that he has learned more about his childhood and early adolescent years), he suspects that he probably just wanted to get away from home. SW noted that he does remember that he was drinking a lot of beer and other alcohol - by the time that he was 17 he was drinking a pint of alcohol and a couple 6-pacs of beer each day. He was also constantly smoking marijuana all day - by the time that he was 17 he was smoking about 20 joints each day. In addition, he was using a little acid whenever he could get it, which was about twice a month.

Upon further exploration, SW reported that he doesn't really remember when he started drinking. However, he remembers being about 16 or 17 years old and drinking until he would blackout; he remembers that it got to the point where he was drinking that heavily most nights; and he remembers repeatedly waking up at home and not knowing how he got home. He noted that he really can't remember any days when he didn't drink, and he noted that essentially, if he was awake he was drinking.

SW reported that he used to get a good high from the marijuana; he really enjoyed marijuana; and he denied ever having any bad experiences with the drug. SW reported that he also had good trips with acid; he doesn't remember any bad experiences with acid either; and although the acid made everything more intense, he doesn't remember ever having any hallucinations or anything like that while on acid.

Upon further exploration, SW reported that although he often drank alcohol and smoked marijuana by himself, he lived in a small town where drinking and smoking marijuana was quite popular, even during the school day. Eventually he also started drinking and smoking with some friends, but he really can't remember anything about those friends. What he does remember however is that he used to roll marijuana joints the size of cigars, and that that (as opposed to anything else about him) made him quite popular with some of the other kids.

SW then noted that in retrospect, he guesses that he was a pretty depressed teenager who spent most of his teenage years in an alcohol/drug-induced stupor. He doesn't remember having any home life; his parents just argued with each other all the time; and he just came and went from the house, feeling that his parents didn't care what he did or didn't do. Although he remembers that his brother was still in the house, he and his brother really didn't have much of a relationship either.

Upon further exploration about his family, SW reported that his father was an alcoholic, but he noted that he never really knew that until after he was locked up in connection with this matter. After he was locked up, he also learned that his mother had mental problems.

SW reported that he had a brother and 3 sisters, but one of his sisters died at an early age and so he never met her. His surviving sisters are now about 43 and 45 years old, and his brother is a year older than he is. SW reported that he doesn't remember his sisters ever being in the home with him or even being around him; actually, he doesn't remember his sisters at all; but he does remember his brother being around. He noted that he remembers meeting his sisters at his trial and then later talking to them during the post-conviction process; when he met them, they were like strangers to him, and he couldn't remember anything that they told him about his childhood years; and if he hadn't been told that they were his sisters, he wouldn't have known that they were his sisters.

SW reported that he entered the Army in about 1980, and spent 3 years in the Army. After basic training, he trained as a combat engineer, and then he served in that capacity in West Germany. After serving those 3 years in the Army, he was given an honorable discharge.

SW reported that he continued to drink alcohol in the Army, but he graduated from marijuana to hash. The Army was conducive to both alcohol and hash use/abuse; they couldn't drink while on duty, but they smoked hash while on duty; and then as soon as they were off duty, they went right to the bars to drink. He noted that although while he was in the Army he wasn't drinking all day anymore, he thinks he actually drank more than he did before he entered the Army; he still always drank until he blacked out; and his Army buddies used to carry him home.

SW reported that reportedly (according to his Army buddies), he was always a more 'goofy/stupid' drunk. He really never got that crazy when he was drinking; over the years, he only got into a few fights; and he was really a 'mild tempered' drunk. He remembers a few guys from the Army (he remembers their faces more than their names), and he remembers having some friends in the Army and getting along pretty well there. SW noted that aside from the alcohol-related blackouts, his memory is much better for the period of his life starting after he left home and entered the Army.

SW noted that when he was in the Army, he felt he had something to do (his job)/felt that something was expected of him; he could do his job and that felt good to him; and it also felt good to have a focus. He even got his GED while he was training to become a combat engineer; he really didn't have to prepare for the GED that much, and for the most part he just took the test and passed it (which is why he presumes that he must have done OK when he was in school); and he was actually encouraged by getting his GED. SW noted that he thinks that he had a good time in the Army, and he believes that he was less depressed during that period in his life as compared with his childhood and early adolescent years.

SW reported however that when he was discharged from the Army, he had no idea what he was going to do. He returned home to Lake City; he found that nothing had changed there; and so after a couple days there, he decided that that wasn't the life for him. Then, he went to Ohio where he got some 'odds and ends jobs'; eventually, he met and became involved with his wife, Karen; and then his wife got pregnant. When his wife got pregnant, he brought her back to Lake City. The murders occurred about 6 months after he returned to Lake City.

Upon further exploration, SW reported that when he first got home from the Army, he saw the same old family problems; his parents were still arguing; and his parents still treated him like he wasn't there. He concluded that both of his parents were nuts, and that he just needed to find something to do and get on with his life. Therefore, he went to Ohio because he thought that with the mills there and all, he might be able to find a job.

SW reported that once he got to Ohio he worked here-and-there, and otherwise drifted, partied, and continued to get high on alcohol and marijuana. Then in 1984, he met and became involved with Karen, at which point he cut back on his drinking. SW explained that Karen didn't drink; she grounded him for a while/gave him a foothold; and he really

enjoyed being with her. She was different than the other girls he had met; he and Karen were friends first, and they didn't start having sex until much later, and from the start, he knew that there was something different about her.

When asked if he had had any serious relationships prior to meeting and becoming involved with Karen, SW reported that he was involved with a German woman while he was in the Army and stationed in Germany; she was a couple years younger than he was; and he met her in a train station one night. He was involved with her during most of the time that he was stationed in Germany, and she wanted to get married; he loved her, but it was too hard to work out the details involved in marrying her and bringing her back to the United States; and then after he returned to the United States, they just quickly drifted apart. Upon further exploration, SW noted that the German woman was his first and only other serious relationship, and his first sexual experience was with her.

Upon further exploration about Karen, SW reported that Karen is 3 years younger than him. She is sweet; she cares about everyone and everything; and she is just one of those positive people that one meets along the way. She was still living with her parents when they met; then about 6 months later, they got a place together; and then about 6 months after that, they got married. He was working at a paper company and he had learned to run all of the machines; she was working at a candy factory; and so between them they made enough money to support themselves.

SW reported that once he started living with Karen, they primarily hung out at home or with a few friends. He cut back even further on his drinking; he wasn't really getting drunk and having blackouts anymore; and so Karen thought that he was OK. He did however continue to smoke marijuana pretty heavily, but Karen didn't really seem to mind that as long as he didn't become a nut while high on the marijuana. SW explained that he and Karen were in love; he treated her well, and nothing else but her really mattered to him; and he noted that he was extremely happy with Karen, and noted that it was the best time of his life.

SW reported that he and Karen didn't exactly plan to have a child; but they both wanted children and they were not using any birth control; and although they were not making a lot of money, they could afford to have a child. He reported that therefore, they were really happy when they discovered that Karen was pregnant. SW then noted that actually, he hadn't thought about having a child until he met Karen; he hadn't even seriously thought about getting married until he met Karen; but he noted that all of that just clicked in for him when they met.

SW reported that once he and Karen discovered that she was pregnant, they decided to return to Lake City so that they could raise their child in a small town environment. He explained that that was what Karen wanted; plus she wanted to meet his parents; and so he decided 'why not'. Upon further exploration, he explained that although he wasn't interested in being around his parents, he just concluded that he would be with Karen now; she would be his family now; and his parents and their behavior really wouldn't matter. When he agreed to move back to Lack City, he really didn't focus on work; he

had been working steadily in Ohio; and he just felt that therefore, he could find another job back in Lack City.

SW reported that when he and Karen moved to Lake City, they both got a job at the McDonald's. He met his codefendant, Ronnie Martin, at work about 2 weeks before the incident, which was just after Ronnie Martin started working at the McDonald's too. SW then explained that when he and Karen were still working in Ohio, they had put a little money aside; so they were able to pay for the move and rent a house once they got to Lake City; and then they got the jobs. He and Karen also started making some friends; he noted that everyone liked Karen; and he noted that Karen even managed to have some positive interactions with his mother, and that was despite the fact that he limited their contacts with his parents.

SW reported that Karen's pregnancy went well. He reported that he cut his drinking and his use of marijuana to a minimum, because he wanted to do the right thing. Upon further exploration, SW explained that he made the decision that he would stop drinking and stop smoking marijuana before the baby was born; he didn't want any of that going on around the baby; and the idea of having a baby/becoming a father gave him even more of a sense of purpose and direction, so much so that he wanted to and felt that he could stop drinking and smoking marijuana. Therefore, he started cutting down his use of both substances, and it got to the point where he was hardly using either substance at all.

SW reported that he really didn't know Ronnie Martin, and noted that he had only met him a couple times. Then one night, Ronnie Martin asked him to go out for a few beers; by then, he hadn't done that for quite a while and he had almost completely stopped drinking and smoking marijuana; and so he thought 'why not', he told Ronnie Martin OK, and he told Karen that he was just going out for a few beers.

SW reported however that it ended up that he and Ronnie Martin just kept riding around drinking beers and smoking marijuana; he noted that Ronnie Martin had a lot of marijuana and just kept buying more and more beer; and he doesn't even know how much they drank and smoked that night. Since he really hadn't been drinking in a while, he quickly became drunk from the alcohol. He noted that he was also probably high on the marijuana, but he doesn't really have much of a sense/memory about that. Upon further exploration, SW noted that he had really thought that he could just have a couple beers and then go home, but he guesses that he just got caught up in it. The riding, drinking and smoking went on for most of the night/early morning (they had gotten off work at midnight); after a while, he really wasn't paying attention to the time; and he noted that when one is drunk like that, one really doesn't pay attention to the time. Upon further exploration, SW reported that he hadn't done anything like that since he had met Karen; he hadn't even been out without Karen since they met; and so neither he nor she had any reason to suspect that he would do anything else other than just have a few beers and come home.

SW reported that then at some point, Ronnie Martin stopped at one of his friend's house, but he/SW didn't know the guy. He later learned that Ronnie Martin got a knife from that friend's house, but he didn't realize that at the time.

SW reported that then Ronnie Martin ran out of money, and then said that he wanted to go to his aunt's and borrow some money. When they got to the house (which ended up being the Romines House), a lady and a girl opened the door; the girl said 'it's Ronnie', and so he thought that they really were all family; and then he and Ronnie Martin went into the house.

SW reported that he sat on the couch with the girl, who appeared to him to be about 15 years old, while Ronnie Martin went to talk to the lady. Then suddenly, the girl looked over his shoulder and gasped; he turned around and saw Ronnie Martin holding a knife at the lady's throat; and that is the last thing he clearly remembers. SW noted that to this day he sees that scene over and over again, and it is just as clear to him today as it was that morning.

SW noted that now it is hard to separate any other independent memories that he might have about the incident from all the things that he has been told about the incident. The things that he is certain about are seeing the above noted scene, and feeling helpless. He reported that he also remembers being in the driveway of his home, feeling tired, and going right to sleep. He knows that he went to work that next evening, but he doesn't actually remember going to or being at work that evening. He also knows that he was arrested the morning after that; reportedly, he was questioned several times; but he only remembers one attempt to question him that was stopped by an attorney.

SW noted that he really doesn't think that he was involved in the murders. He explained that there was no blood on him; he believes that Karen would have noticed something like blood on him; and he noted that besides, murdering someone is not at all something he would do. SW reported that he remembers being in jail and waiting for his trial, and remembers everyone (the police and his attorney) feeding him information about what must have happened at the Romines house.

Upon further exploration about Ronnie Martin, SW noted that before the incident, it seemed to him like Ronnie Martin was just an every day guy. He/SW had thought that he and Ronnie Martin were about the same age; he had a car and wasn't going to school or anything; and it wasn't until after the incident that he learned that he was only 17 years old.

SW reported that he doesn't remember much about the guilt phase of his trial, and he doesn't remember the penalty phase at all. Upon further exploration, he noted that some years after he got on death row, one of the psychiatrists here pointed out to him that he loses things when emotionally stressed, and he noted that he knows that he has seen some things while in jail (for example, a murder) that he doesn't actually remember. He noted that he had never really realized how that happens to him until that discussion with that psychiatrist, and he noted that he had just always thought that he had a bad memory.

Upon further exploration, SW reported that he only sleeps a couple hours each night; he was sleeping a little better for a while when the psychiatrist was giving him Trazadone at night; but once the Trazadone was discontinued, he went right back to sleeping only a couple hours each night.

When asked about his obvious physical agitation (observed by this psychiatrist during the examination), SW reported that he stays 'wired up' all the time; he is constantly moving/fidgety; but although he feels fearful, there is no real focus for his fears. Upon further exploration, he noted that he was always like that (i.e., fearful and fidgety); the marijuana slowed him down and gave him a more 'mellow' feeling; and he noted that that was why he liked smoking marijuana so much. He started really feeling fidgety again when he tried to stop drinking and smoking marijuana (during Karen's pregnancy); but he was determined to stop drinking and smoking marijuana; but then some nights he had to walk for miles/burn some of that energy off before he could get to sleep at all. At the time, he just told himself that he was over excited and a little hyper. SW reported that although he is still constantly moving, if he focuses on it, he can control it, but as soon as he stops focusing on it, it starts up again.

SW reported that at night he spends hours trying to fall asleep, because his mind keeps going and will not turn off. He noted that it is not just that he is thinking about his case or his current situation - he is mostly thinking about his own life or anything and everything else that is going on in the world. SW noted that he has always had a problem getting to sleep; he thinks his best period in this regard was when he was with Karen; but before he got involved with Karen he would black out from being drunk, and he never really just fell asleep.

Upon further exploration about his relationships with his friends, SW noted that although he had some friends, there was no one who he ever felt close to until he met the woman in Germany. The only person he ever really felt especially close to was Karen. Upon further exploration, SW noted that it wasn't that he didn't want to have close friends, it is just that he never felt really that comfortable with and close to anyone until he met Karen.

When asked about his physical health, SW reported that he knows that his ankles were broken several times when he was a child; but he doesn't have any memory of any of that; and he doesn't have any current problems resulting from any of that. He also knows that he had some surgeries on his eye when he was a child, but he doesn't have any memory of those surgeries either. However, he has had to wear glasses; his vision has even further deteriorated as he has gotten older; but he was never able to see very much without his glasses. When asked about his weight, SW reported that he has been about 175 pounds (he stands about 6'2") for all of his adult life; at various times he has tried to put on weight, but nothing he tried ever worked; and he noted that he is the only thin one in his family.

Returning to his memories about the morning of the murders, SW again reported that he only remembers Ronnie Martin holding the knife at the lady's throat and feeling helpless. He explained that he felt that if he jumped up Ronnie Martin would cut the lady, and if he didn't do anything Ronnie Martin would still cut the lady. He still thinks about that memory even when he is trying to keep his mind on something else, and when he thinks about it, he still feels helpless. Upon further exploration, SW denied currently having any nightmares containing that memory, and noted that he can't honestly recall if he ever had any such nightmares during the months after the murders.

When asked about any history of psychiatric treatment, SW reported that the only mental health treatment that he has received has been here on death row. For the last several months, he has been taking Effexor (an antidepressant medication) 150mg each day (in a time-released form) and Haldol (an antipsychotic medication) 5 mg each night. He explained that he was really despondent before being started on the medication, and he noted that before being started on the medication, he was so depressed that he would not have been able to tolerate his session with this psychiatrist (i.e., would not have been able to talk about all of the things he had talked about with this psychiatrist without breaking down).

Upon further exploration, SW explained that he has really deteriorated since being on death row; over the years he became increasingly depressed; and in about March 2001, he was so depressed that he was ready to drop his appeals and he just wanted to die. Then, within about 12 hours of his execution, his friends pulled him back/talked him out of it. SW reported that then he was started on Paxil (an antidepressant), which was the first time he was ever treated by a psychiatrist, but the Paxil didn't help him. Then he was switched to another antidepressant medication, but that medication didn't help him either. Then he was switched to the Effexor and the Haldol; he was also given the Trazadone then, but that was stopped after 2 weeks; and although he told the psychiatrist that he couldn't sleep after the Trazadone was stopped, the psychiatrist wouldn't put him back on the Trazadone.

A mental status examination of SW revealed that he was a 39 year old (DOB 16 September 1962) white male, who was tall and thin, and who appeared to be about his stated age. He grossly appeared to be physically healthy. As noted above, although he was on medication, there was still considerable physical agitation/almost constant movement. His speech was clear, coherent, and goal-directed. He appeared to be open and cooperative with the examination process.

- He was oriented to person, place, and time
- He denied having any independent memory of his childhood or early adolescent years except for a few scenes (screen memories), and reported that there had also been incidences in his adult life that he was unable to remember

- He appeared to be moderately depressed, despite the fact that he was taking antidepressant medication, but noted that he was not as depressed as he had been back in 2001 or at other even earlier periods in his life
- His affect was appropriate to his depressed mood, there was also the above noted agitation, and there was little-to-no range of affect evidenced in response to the various topics discussed
- There was no gross evidence of a thought process disorder or an organic brain syndrome
- His intellectual capacity grossly appeared to be within the average range
- His insight was fair
- His judgement was fair

In the interest of time, the various records and documents reviewed by this psychiatrist will not be summarized here. Most of these records and documents are available to reviewers of this report and/or already summarized in Dr. Coleman's report, and the particularly relevant information contained in these records and documents will be noted in the 'summary & discussion' below.

Summary & Discussion:

Although SW has little-to-no independent memory of his childhood or early adolescent years, information contained in the documents reviewed by this psychiatrist indicate that he was a victim of extremely severe child abuse and neglect. More specifically, he was repeatedly brutally beaten by his parents, especially his mother, and he was repeatedly seriously injured during the course of those beatings. He was also regularly confined to a dirty room with hardly any contact with other family members. In addition, he was deprived of the love, attention, and guidance usually offered by reasonably adequate parents.

The few 'scenes' (or screen memories) that SW remembers from his childhood years indicate that he responded to the abuse and neglect that he experienced with extreme fear/horror and a sense that he was helpless/totally unable to protect himself.

Based on the information currently available to this psychiatrist, it is the opinion of this psychiatrist that as a result of the extremely severe abuse and neglect that SW was exposed to during his childhood and early adolescent years, he developed a Posttraumatic Stress Disorder (PTSD). SW's inability to remember his childhood and early adolescent years is part of the persistent avoidance and numbing of general responsiveness that is characteristic of PTSD, as was his intense desire to escape from his home/parents and his inability to emotionally connect with friends (i.e., a restricted range of affect). SW's persistent sleep difficulties, fearfulness, and fidgetiness are examples of the persistent symptoms of increased arousal associated with his PTSD. Given SW's inability to remember his childhood and early adolescent years, it is difficult to explore for indications that he persistently reexperienced the traumas (the other group of symptoms characteristic of PTSD). However, SW reports that he is unable to remember other violent events that occurred later in his life; this would suggest that he responds to reminders of his original traumas with intense psychological distress; and such a response would be an indication that he persistently reexperiences the original traumas.

Based on the information currently available to this psychiatrist, it appears that at least by the time that SW was an adolescent, he had learned to use alcohol and marijuana as 'self-medication' for the symptoms of his PTSD. As he reported to this psychiatrist, the substances helped him to feel 'more mellow', feel less fearful, and be less fidgety. However, it is the opinion of this psychiatrist that as a result of such heavy use of alcohol and marijuana (and, given his family history, probably also a genetic predisposition for the development of alcoholism), SW developed substance abuse difficulties. More specifically, he developed Alcohol Dependence, as characterized by, for example, the use of increasing amounts of alcohol over time, the development of tolerance to alcohol, and the continued use/abuse of alcohol despite blackouts and other negative effects on his ability to function. He also developed Cannabis (marijuana) Dependence, as characterized by, for example, the use of increasing amounts of marijuana over time, the development of tolerance to marijuana, and the continued use/abuse of marijuana despite negative effects on his ability to function.

SW reported that when he met and became involved with Karen, he began to cut back on his use/abuse of alcohol. He reported that then when he discovered that Karen was pregnant, he made the decision to stop using/abusing alcohol and marijuana, and by the time of the murders, he had virtually stopped using/abusing alcohol and marijuana. However then, he spent the hours before the murders constantly drinking and smoking marijuana; he remembers quickly becoming drunk from the alcohol; and he noted that he suspects that he had more than enough marijuana to also become high on the marijuana. As SW noted when he met with this psychiatrist, given that he had virtually stopped using both substances before that night, the heavy alcohol and marijuana use had a far greater impact on him than it had had in the past.

Based on the information currently available to this psychiatrist, it is the opinion of this psychiatrist that as a result of his PTSD, when SW saw Ronnie Martin holding a knife to Mrs. Romines' neck, he responded with horror and a sense of helplessness, and that scene exacerbated the symptoms of his PTSD and/or precipitated a new PTSD. It is also the

opinion of this psychiatrist that that night's/early morning's heavy use of alcohol and marijuana only increased SW's vulnerability to respond to a violent/threatening situation with horror, helplessness, and an exacerbation of the symptoms of his PTSD and/or a new PTSD.

Therefore, it is the opinion of this psychiatrist that on 17 March 1986, at the time of the murders for which SW is currently under sentence of death, SW was suffering from a mental disorder. It is also the opinion of this psychiatrist that SW's mental disorder was of the type that would have been relevant to his defense during the guilt phase of his trial and also relevant as mitigation during the penalty phase of his trial.

Richard G. Dudley, Jr.

Richard G. Dudley, Jr., M.D.
Psychiatrist
Diplomate, American Board of Psychiatry & Neurology

RGD:dw

Attachment F

to

**APPLICATION FOR PERMISSION TO APPEAL PURSUANT TO
TENNESSEE RULES OF APPELLATE PROCEDURE, RULE 11**

Pablo Stewart, M.D. Report

AFFIDAVIT OF PABLO STEWART, M.D.

I, Pablo Stewart, M.D., declare as follows:

1. I am a physician licensed to practice in California, with a specialty in clinical and forensic psychiatry. I have extensive clinical, research, and academic experience in the diagnosis, treatment, and prevention of substance abuse and related disorders, including the management of patients with dual diagnoses and the use of psychotropic medication and diagnostic, treatment, and community care programs for persons with Posttraumatic Stress Disorder. I have written and published numerous articles in peer review journals on topics that include dual diagnoses, psychopharmacology and the treatment of psychotic disorders and substance abuse. I have designed and taught courses on protocols for identifying and treating psychiatric patients with substance abuse histories and have supervised psychiatric residents in teaching hospitals. I have worked closely with local and state governmental bodies in designing and presenting educational programs about psychiatry, substance abuse, and preventative medicine.
2. I received my Bachelor of Science from the United States Naval Academy, Annapolis, Maryland, in 1973, with a major in chemistry. I received my Doctor of Medicine Degree from the University of California, San Francisco, School of Medicine in 1982.
3. I have served as Medical Director of the Comprehensive Homeless Center, Department of Veterans Affairs Medical Center in San Francisco where I had overall responsibility for the medical and psychiatric services at the Homeless Center; Chief of the Intensive Psychiatric Community Care Program, Department of Veterans Affairs Medical Center in San Francisco, a community based case management program that is social work managed; Chief of the Substance Abuse Inpatient Unit, Department of Veterans Affairs Medical Center in San Francisco, where I

had overall clinical and administrative responsibilities for the unit; and Psychiatrist, Substance Abuse Inpatient Unit, where I provided consultation to the Medical/Surgical Units regarding patients with substance abuse issues. I am currently the Chief of Psychiatric Services at Haight Ashbury Free Clinic, a position I have held since 1991. I served as a Physician Specialist to the Westside Crisis Center, San Francisco from 1984 to 1987 and the Mission Mental Health Crisis Center from 1983 to 1984.

4. In addition to my clinical and teaching responsibilities, I have experience in forensic psychiatry. From 1988 to 1989, I was Director, Forensic Psychiatric Services for the City and County of San Francisco where I had administrative and clinical responsibilities for psychiatric services provided to the inmate population of San Francisco. My duties included direct clinical and administrative responsibility for the Jail Psychiatric Services and the Forensic Unit at San Francisco General Hospital. From 1986 to 1990, I was Senior Attending Psychiatrist, Forensic Unit, University of California, San Francisco General Hospital, where I was responsible for a 12-bed maximum-security psychiatric ward. One of my duties was advising the San Francisco City Attorney on issues pertaining to forensic psychiatry.

5. I am also serving as medical and psychiatric consultant to the monitors of the agreement between the United States and Georgia to improve the quality of juvenile justice facilities, critical mental health, medical and educational services, and treatment programs. The monitor is the Institute of Crime, Justice and Corrections at George Washington University. I have qualified and testified as a Psychiatric Expert witness in federal court cases regarding the implementation of constitutionally mandated psychiatric care to California's inmate population at different maximum security and psychiatric care facilities. I serve as a Technical Assistance

Consultant to the Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration, Department of Health and Human Services; and Psychiatric Consultant to the San Francisco Drug Court.

6. In 1985, I received the Mead-Johnson American Psychiatric Association Fellowship for demonstrated commitment to public sector psychiatry and was selected as the Outstanding Psychiatric Resident by the graduating class of the University of California, San Francisco, School of Medicine. In 1985 - 1986, I was the Chief Resident, Department of Psychiatry, University of California San Francisco General Hospital and had direct clinical supervision of seven psychiatric residents and three to six medical students.

7. I have served as an Examiner for the American Board of Psychiatry and Neurology and am a Diplomate of the same Board. I am active in several professional associations and have served as the President, Secretary-Treasurer and Councilor-at-large of the Alumni-Faculty Association, University of California, San Francisco, School of Medicine; Vice President of the Northern California Area, Alumni-Faculty Association, University of California, San Francisco; and Associate Clinical Member of the American Group Psychotherapy Association.

8. I have held academic appointments as Associate Clinical Professor, Assistant Clinical Professor, and Clinical Instructor in the Department of Psychiatry, University of California, San Francisco, School of Medicine, since 1989. I received the Henry J. Kaiser Award for Excellence in Teaching in 1987 and was selected by the graduating class of the University of California, San Francisco, School of Medicine as one of the top ten faculty members for the academic year 1994 - 1995, 1990 - 1992, and 1988 - 1989. I designed, planned and taught "Drug Alcohol Abuse" and "Alcoholism," one unit courses covering major aspects of drug and alcohol abuse;

supervised fourth year medical students in the care of dual diagnostic patients at the Psychiatric Continuity Clinic, Haight Ashbury Free Clinic; facilitated a weekly psychiatric intern seminar on "Psychiatric Aspects of Medicine;" and lectured on addictionology and substance abuse to the School of Pharmacy, UCSF.

Referral Questions

9. At the request of counsel for Stephen West¹, I conducted a psychiatric assessment of Mr. West to determine what factors contributed to his actions surrounding the offenses for which he has been sentenced to death, the presence and effect of any mental disease from which he may suffer, and the role of alcohol and substance abuse in his and his family's life.

Materials Reviewed

10. In order to answer the questions asked of me, I conducted a clinical interview of Mr. West and reviewed extensive material relating to the legal proceedings against him and his social and medical history, including birth records, academic records, military records, affidavits and testimony of family members, prison medical and psychiatric records, Stephen's statements to law enforcement and testimony, his codefendant's statements to law enforcement, and excerpts of legal proceedings. I also reviewed the exhaustive reports of Richard Dudley, M.D., and Claudia R. Coleman, Ph.D., and consulted with them by telephone conference. These are the kinds of materials routinely relied upon by members of my profession in providing expert opinions.

Social and Medical History

¹ In the interest of clarity, Mr. West and his family members will be referred to by their first names.

11. Mr. West was born September 16, 1962, while his mother was a patient in a psychiatric hospital in Anderson, Indiana. Stephen was the youngest of five children born to Wanda West, a mentally ill woman who was ill equipped to parent any of her children. The child's grandmother reared her first child, Debra, born when Wanda was only a teenager. Wanda's second child died in infancy, apparently from complications of hemolytic disease, which developed when Wanda's Rh-negative blood was incompatible with the infant's Rh-positive blood. Wanda and her husband, Vestor West, reared her last three children (Patty, Teddy, and Stephen) as a family, although Vestor denied paternity of Stephen. Stephen's biological father, according to family reports, was Vestor's brother, Vaughn. By all accounts Vestor shared Wanda's limited abilities to parent. An alcoholic who could not read or write, Vestor worked in menial jobs. Wanda worked occasionally as a house cleaner in a hotel. The family was impoverished and lived in public housing.

12. Stephen's family has a significant history of major mental illness that significantly interfered with the family's functioning and derailed Stephen's developmental trajectory. His mother, Wanda demonstrated psychotic symptoms that included auditory hallucinations, delusions, and paranoia. She believed that others plotted against her and talked about her and that a little man in her head spoke to her. When she was pregnant with Stephen, she attempted suicide by gas inhalation. Her symptoms were severe enough that she required psychiatric hospitalization and treatment with medication and electroconvulsive therapy (ECT). Stephen's older sister, his niece, and two of his maternal aunts have Bipolar Disorder, a major psychiatric disease recognized to have a strong genetic component. His biological daughter is taking medication for Attention Deficit Hyperactivity Disorder (ADHD).

13. Stephen survived prolonged, life threatening maltreatment at the hands of his mother and her husband. The abuse began in early childhood and continued until Stephen left home to join the military in an attempt to find safety from the relentless abuse he survived. His mother and stepfather physically assaulted Stephen without provocation or fear of reprisals. They beat, kicked, punched, and threw him, causing injuries that left him deformed and disabled. His mother beat him with belts, shoes and her hands, often pinching him until he bled. She grabbed him by his feet and slung him into a wall. During one episode of being slung into a wall Stephen was knocked "cross eyed. Stephen had multiple surgeries to correct his vision. At another point, she broke Stephen's ankles. The physical assaults caused bruising, bleeding, and scarring. Stephen's alcoholic stepfather, described as having a temper and being unpredictable as well as retarded, regularly beat Stephen and his siblings. Stephen's stepfather hit him with a belt, the buckle of the belt, a cord, sticks, a broom handle and his fists on all part of his body.

14. Extreme acts of cruelty accompanied the constant battering Stephen survived. The acts of cruelty formed an effective strategy of coercive control by both parents that included public humiliation, degradation, threats to maim, control over basic bodily functions, captivity, and isolation. In an act of humiliation and degradation, Wanda forced Stephen to sit outside on the porch clad only in his underwear while the neighborhood children ridiculed him. Wanda exiled Stephen as a child to an unheated, cold room where he had to sleep on a urine soaked mattress. She withheld food from him as a form of punishment. Wanda singled Stephen out for the harshest punishment while favoring her other son, Teddy, whom she did not physically abuse. Wanda offered words of encouragement for Stephen's siblings, but withheld support for

Stephen. His stepfather cursed Stephen, calling him a bastard because Stephen's biological father was the stepfather's brother.

15. Stephen developed a characteristic set of responses to surviving chronic and severe abuse. He became so fearful of his mother that he tensed when she came near him. An aunt described him as "shivering up" when she approached him. If his mother raised her arm toward him in any manner, he became immobilized and cried. Stephen became a fearful, timid, shy child who did not act out. He was passive and not aggressive, accepting the blows without fighting back. Stephen was undernourished as a child. His sister Patricia Depew, described a picture of neglect and abuse:

I always picture Steve with long, blond, curly hair, never combed, a diaper dragging down to his knees, always needing changed, bruises, very, very, very thin. You could always see his ribs; all of his bones always. . . . [M]ost of the time he was crying.

His academic records show that, like other abused children, his responses to chronic danger at the hands of his caretakers interfered with his academic performance. He began drinking alcohol and smoking marijuana in junior high school in an effort to quell the overwhelming emotions he experienced. Although he was promoted from one grade to the next, his academic marks fell far below his potential. He withdrew from school in the eleventh grade and joined the army, where he served three years before being discharged under honorable conditions in 1982.

16. Stephen developed clear symptoms of psychiatric disease as he matured that prevented him from functioning in the community in the manner he desired. After discharge from the military, Stephen moved to Cleveland, Ohio, where he spent several years growing up, and

worked on maintenance crews and in construction. It was in Ohio where he met and married his wife Karen, with whom he has three daughters: Krystal Marie, Stephanie Michelle and Tiffany Kay. He deeply wanted his marriage to be successful and wanted to meet his responsibilities as a father. In an effort to be a responsible husband and father, he reduced his drinking greatly, but he continued to experience symptoms of anxiety and depression that interfered with his ability to maintain employment. He and Karen returned to Tennessee and he took a job at McDonald's in Lake City, Tennessee, where he met his codefendant.

17. Prior psychiatric evaluations and psychological assessments provide a uniform picture of the distressing symptoms that affected Stephen over the course of his life. He experienced social anxiety, chronic apprehension, restlessness, sleep disturbance, fatigue, and poor concentration. He showed signs of obvious physical agitation and felt "wired up" all the time. He moved and fidgeted constantly. He walked for miles to "burn some of that energy off" so he could sleep. He described forgetfulness, racing thoughts, blackouts, dizziness, blurred vision, and insomnia. He demonstrated sudden autonomic changes commonly seen in survivors of life threatening trauma, including increased pulse rate, tremors and shaking, and sweating. He reported losing his vision, having spots in his vision, and episodes of syncope as often as three or four times a week. He self medicated by using marijuana and drinking alcohol. His symptoms and the course of his illness are consistent with Posttraumatic Stress Disorder as a result of childhood abuse and exposure to the murder for which he has been convicted, Polysubstance Abuse/Dependence (alcohol and marijuana), Attention Deficit Hyperactivity Disorder, and Mood Disorder with Psychotic Features (resolved).

Clinical Interview

18. I interviewed Stephen West on August 26, 2002, at the Riverbend Maximum Security Institute, where he is a death-sentenced prisoner. Stephen is a Caucasian male who appears his stated age. He was somewhat tense and mildly anxious but was cooperative throughout the interview. He is euthymic. He was alert and oriented. He described past episodes of severe depression with psychotic features of hearing whispers.

19. At the time of the interview with me, Stephen was medicated with Effexor 75 mg BID, an antidepressant; Haldol, an antipsychotic; and trazodone, an antidepressant. Psychiatric staff at the prison started Stephen on these medications for chronic depression characterized by anhedonia, mood lability, and sadness. Paxil and Elavil were not effective for Stephen's condition. Paxil made him very drowsy and he slept too much. Paxil had similar effects on Stephen's intense anxiety as marijuana and drinking, but was even stronger. Paxil addressed Stephen's symptoms of anxiety but his depression was not responsive. Elavil did not have any positive effects but caused him difficulty urinating. Stephen reported that the medications are effective and that he feels the "best I've felt in my life. I feel like a human." It is unclear what the exact effects of his medication regimen are because Haldol was begun at the time same time he started Effexor. Of note, the Effexor dealt with symptoms of depression but Stephen remained anxious (i.e., foot twitching, racing thoughts, tapping his feet). It was due to these symptoms that Trazodone 100 mg was started. After the trazodone was started, all of these symptoms subsided. Haldol was begun while he was still depressed and the Paxil and Elavil were not addressing these symptoms. Stephen admitted to hearing whispers while he was severely depressed. The Haldol did address this symptom. Of note, he had ADHD-like symptoms for a while after starting Effexor and Haldol.

20. Since being medicated, Stephen was able to recognize that he has suffered a life-long depressive syndrome. His "style" of depression was the "withdrawn" variety. This is consistent with prior mental health evaluations and lay witness reports describing him as passive and complacent. Due to his depression being treated effectively, he was able to be friendly and enjoy activities with others. He was relieved to be getting along with people. He felt that the custody staff would report how well he has been doing since he began receiving proper medication. He described himself at the time of the interview as being happy.

21. Stephen had significant memory impairments, most likely associated with the acute trauma he experienced during his formative years. His recall memory began when he was 17 or 18 years of age and corresponded to his joining the U.S. Army where he was stationed in the U.S. and in West Germany as a combat engineer. He has a few non-specific memories before the age of 13. He has no direct memories of the well-documented abuse inflicted upon him and appears to be sincere in this denial. He does not have much of a memory for events since age 17. He described his memory as being "fragmented." For example, he could not recall the previous mental health expert who evaluated him. The relative immediacy of the offense made it easier for him to access traumatic memories of the offense at the time he was questioned by law enforcement and testified. This coupled with his being under the extremely stressful situation of police interrogation increased his vulnerability to reexperiencing the actual trauma and relating its details. This unfortunate situation was also recreated in the courtroom where he appeared detached and cold in telling the details of the crime, when in fact, he was displaying classic symptoms of posttraumatic stress disorder.

22. Stephen is unclear about the exact onset of his drinking, but believes it began when he was young and in junior high school. He consumed up to a case of beer and a pint of liquor or more daily. By the time he was 17, he drank daily until he passed out each night. When he awakened, he was unable to remember how he got home. He described his teen years as ones spent in an alcohol-drug induced stupor. He continued drinking until a few weeks before the offense, secondary to his wife's pregnancy. In an effort to prepare for parenting and to keep his marriage intact, Steve had greatly reduced his drinking. As he reduced his drinking, he confirmed the fact of increased ADHD-like symptoms as his drinking decreased.

23. Stephen began using marijuana at the same time he began drinking in junior high school. Marijuana "calmed him down." He smoked up to 20 marijuana cigarettes a day. He smoked hashish while in the military. By the time of his arrest, his drinking and use of marijuana had substantially decreased to a few beers now and then and an occasional marijuana cigarette.

Mental Status at the Time of the Offense

24. Stephen reported that on the day of the offense he and his codefendant left work and purchased two six packs of beer and stopped at his house for three more beers. Stephen and the codefendant drove around drinking until early morning hours. By the time they arrived at the house where the offenses occurred, Stephen was drowsy and drunk. According to Stephen, his codefendant did not make known his plans to harm the two women in the house until after they entered the house. Instead, the codefendant told Stephen he wanted to go into the house to borrow money from one of the occupants who was a friend of his. After they entered the house, the codefendant revealed he was armed with a gun and knives, sexually assaulted both women, and forced Stephen to participate in sexual acts with one of the women. Stephen was passive

throughout the offenses and followed orders to move from one room to the next or to have one of the victims perform sexual acts on him. Stephen, however, refused to participate in stabbing either victim, both of whom were stabbed to death by the codefendant. The codefendant threatened to have Stephen's family killed if Stephen went to the police. At the time of the offenses, Stephen believed he was helpless to take any action against his codefendant and was overwhelmed and frozen by the sheer terror at his codefendant's actions. He did not plan or intend for his codefendant to harm anyone and he was repulsed and horrified by the codefendant's actions.

Conclusions

25. A constellation of psychiatric symptoms and disorders affected Stephen West's behavior at the time of the offenses. The kind of prolonged abuse that Stephen survived constitutes extreme duress and breaks the bonds that children need to develop into healthy adults. It caused Stephen to relinquish his autonomy, moral principles and relationships with others for the sake of his survival. He developed an insidious progressive form of posttraumatic stress disorder that controlled and constricted his entire life. Stephen, like other chronically traumatized people, became hypervigilant and lived in a state of constant arousal, acutely tuned to following the coercive demands of others in positions of perceived power. His severe memory loss is avoidance of memories of abuse and inability to tolerate re-experiencing acts of abuse that he survived. He displays classic physiological responses to abuse such as increased heart and pulse rate, trembling, sweating, and dizziness. This disorder is long-standing and chronic.

26. The long term consequence of surviving terror at the hands of his father and mother resulted in numerous alterations in Stephen's behavior and functioning that are recognized in psychiatry as the sequellae to trauma, but he also has been plagued with other major mental disorders, including Major Depressive Disorder with Psychotic Features, Attention Deficit Hyperactivity Disorder, and Polysubstance Abuse/Dependence. He has experienced persistent depression and chronic anxiety, auditory hallucinations, sleeplessness, hopelessness, and agitation. As a child and young adult, he ingested copious amounts of alcohol to suppress the terror and anxiety associated with the abuse. Prolonged ingestion of alcoholism, especially during critical developmental periods, can result in deleterious changes to brain structure and function, as well as other body organs. Brain changes associated with alcoholism include lower white-matter volume, enlarged ventricles and sulci, and lower brain weight. It can also cause abnormalities in brain function including lowered brain metabolism, impaired memory and other cognitive deficits.

27. It is my professional opinion, which I hold to a reasonable degree of medical certainty, that Stephen West was under unusual and substantial duress when he participated in the events that led to the deaths of Wanda and Sheila Romines. His capacity to conform his conduct to the requirements of the law at the time of his offense and to appreciate the wrongfulness of his conduct was substantially impaired. The extreme duress he experienced is the direct result of the psychiatric disease from which he suffers. Stephen had a present, imminent and pending fear of death or serious bodily harm at the hands of his co defendant and a reasonable belief that he could not escape his codefendant's control. The codefendant was described as a bizarre, belligerent, and dominant person, while Stephen was uniformly described as passive and

submissive. Stephen's history of subjection to totalitarian control, combined with the codefendant's threats to kill Stephen's family, deprived him of the sense of autonomy that allows independent action and the ability to choose a course of action. The events of the crime shattered Stephen's already fragile mental state to the point that he responded to the violent and threatening situation with complete submission and dissociation resulting in loss of contact with reality. At the time of the killings, Stephen responded to his codefendant's commands without plan, thought, or recognition of the consequences of his actions. He harbored no intent to kill or malice for the victims, and his actions were taken without premeditation or understanding, knowledge about the difference between right and wrong, or awareness of the risks to others of his behavior.

28. I have been asked to offer my opinion about Stephen's intoxication at the time of the offense. Stephen was intoxicated at the time of the offense, secondary to the chronic symptoms of posttraumatic stress disorder, depression, and ADHD he experienced. Because Stephen had greatly decreased his alcoholic intake for months prior to the evening of the offense, he was especially susceptible to the effects of alcohol and its exacerbating effects on Stephen's underlying mental impairments. Alcohol causes impaired judgment, reasoning, and insight. In sufficient quantities, such as the amount Stephen consumed over a relatively short period of time, it causes mental confusion and altered states of consciousness. It is my professional opinion, which I hold to a reasonable degree of medical certainty, that Stephen's intoxication at the time of the offense exacerbated Stephen's underlying mental impairments and further eroded his ability to understand and conform his conduct to that required by the law.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct. Executed on December 13, 2002.

Pablo Stewart, MD

PABLO STEWART, M.D.

Attachment G

to

**APPLICATION FOR PERMISSION TO APPEAL PURSUANT TO
TENNESSEE RULES OF APPELLATE PROCEDURE, RULE 11**

William D. Kenner, M.D. Affidavit

STATE OF TENNESSEE)
)
COUNTY OF DAVIDSON)

Before me, the undersigned authority, personally appeared WILLIAM D.

KENNER, M.D., who upon oath deposes and says:

1. My name is William D. Kenner, M.D. I am a physician licensed to practice in the State of Tennessee with specialty training in psychiatry, child psychiatry, and psychoanalysis. I maintain an office and private practice in Nashville, Tennessee, specializing in Child and Adult Psychiatry/Psychoanalysis. I have been qualified as an expert in psychiatry in State and Federal courts in Tennessee and many other states. My Curriculum Vitae has been previously provided to this Court and is attached to this Affidavit.
2. At the request of Attorney Stephen Ferrell, I have reviewed medical records compiled by medical personnel working on behalf of the Tennessee Department of Corrections. These records pertain to the treatment of Stephen Michael West, an inmate at Riverbend Correctional Institution in Nashville, Tennessee and are as recent as April, 2010. Although not the focus of this Affidavit, I have also reviewed mental health reports prepared by mental health experts and presented at various stages of post-trial litigation.
3. Doctors, working on behalf of the prison, have examined Mr. West and diagnosed him as suffering from a variety of mental illnesses. In March, 2001, prison staff expressed concerns about the state of Mr. West's mental health. Molly O' Toole, M.D. initially diagnosed him with major depressive disorder with psychotic features, and over the next five years his modifiers have ranged from moderate to severe. On September 12, 2001, Mr. West was experiencing auditory hallucinations, and Nurse Gilchrist wrote that Mr. West thinks "people are whispering about me ... mumbling and whispering in his 'head only when I'm around others.'" His affective diagnosis of major depressive disorder with psychotic features remained from 2001 to 2006.
4. In 2006, Ana Maria Sarasti, M.D. changed his diagnosis to "chronic paranoid schizophrenia." Dr. Sarasti described that Mr. West presented with "anxiety, depression and auditory hallucinations," and several months later, Dr. Renee L. Glenn, described that her patient "feels sad 'all the time'" in addition to "feeling paranoid."
5. In 2008, after a careful chart review, Susan O'Connor, M.D. changed Mr. West's diagnosis once again to schizoaffective disorder. In reviewing West's progress notes and evaluations, Dr. O'Connor saw that her patient has had both symptoms of schizophrenia, delusions and hallucinations, and those of a bipolar type I disorder, mania and depression.

6. Major depressive disorder with psychotic features, as diagnosed by Dr. O' Toole, is characterized by a disturbance of mood and loss of interest or pleasure in everyday activities. Symptoms may also include weight loss or gain, sleep disturbance, fatigue, inability to concentrate, feelings of worthlessness, thoughts or attempts of suicide. This disorder is not directly caused by a general medical condition or the use of substances, including prescription medications. The severity of these symptoms can range from mild to severe, with Mr. West experiencing moderate to severe symptoms.
7. Chronic paranoid schizophrenia, as diagnosed by Dr. Sarasti, is diagnosed in individuals who first qualify for the schizophrenic label and then have symptoms that put them into the paranoid subgroup. Schizophrenia is a group of psychotic disorders characterized by disturbances in thought, perception, affect, behavior, and communication that last longer than 6 months. Symptoms include delusions, hallucinations, disorganized or incoherent speech, severely disorganized or catatonic behavior. The paranoid type indicates Mr. West was preoccupied with threatening auditory hallucinations; as documented by the prison medical staff.
8. Current findings in schizophrenia research suggest that some prenatal or obstetrical insult damages the brain that then develops normally until the neuronal pruning process of adolescence occurs.¹ When that happens, particularly to genetically vulnerable individuals, normal brain development goes off its rails in adolescence such that by the end of adolescence, schizophrenic brains have decreased volume compared to healthy brains. As Paul J. Harrison wrote in *New Oxford Textbook of Psychiatry* (2003) about the structural changes in the brains of schizophrenic patients:

Despite the many uncertainties, there are now established facts about the neurobiology of schizophrenia. There is ventricular enlargement and decreased brain volume. Although the cellular correlates remain poorly understood, they involve the size, density, and organization of neurons and their synaptic connection. In vivo studies show differences in cerebral metabolism and other parameters of cerebral function, with a pattern indicative of aberrant connectivity between brain areas. (p 610)
9. To shed light on how the brain disorder is experienced by someone suffering with this severe mental illness, we can turn to a noted legal scholar, who has struggled with schizophrenia since her late adolescence. Professor Elyn R. Saks (University of Southern California Gould School of Law, San Diego) in her autobiography

¹ Bloom, FE. Advancing a neurodevelopmental basis for schizophrenia. *Archives of General Psychiatry*. 1993;50(3):224-227.

The Center Cannot Hold, My Journey Through Madness (2007) described how her paranoia began, as her thoughts became frightening and disjointed:

Once, there 'd been a time in my life when thoughts were something to be welcomed, and pored over, like pages in a favorite book. Just to idly think about things—the weather, the future, the subject of a paper I needed to write for a class, the friend I was going to meet for a cup of coffee—these things felt so simple, so taken-for-granted. But now thoughts crashed into my mind like a fusillade of rocks someone (or something) was hurtling at me—fierce, angry, jagged around the edges, and uncontrollable. I could not bear them, I did not know how to defend myself against them, and I could not bear to be near anyone when I was experiencing them. “You are a piece of shit. You don’t deserve to be around people. You are nothing. Other people will see this. They will hate you. They will hate you and try to hurt you. They can hurt you. They are powerful. You are weak. You are nothing.” (p. 83)

10. To understand Mr. West’s latest diagnosis, schizoaffective disorder, it helps to picture someone with the disordered brain and symptoms of schizophrenia, hallucinations and delusions, at the same time he is riding the rollercoaster of bipolar disorder. Dr. O’Connor took a careful history from Mr. West that traced his auditory hallucinations at least to his adolescence. If those symptoms did start at that time, then that timing would fit with the usual onset of his illness, and his severe mental illness would have started years before his capital offense. In my opinion as a practicing psychiatrist, schizoaffective disorder is a severe mental illness.
11. In his years between adolescence and his incarceration, Stephen West’s schizophrenic process had been hidden behind his self-medication with alcohol and marijuana. The confusion in his diagnosis and delay in recognition of his schizoaffective illness is also typical for both schizoaffective and bipolar disorders. Even in the free world, a decade often passes before an individual’s manic symptoms will be recognized. If Dr. O’Connor had not done a careful chart review, Mr. West might still not be on mood stabilizing drugs.
12. In an attempt to control his severe mental illness, doctors working on behalf of the prison, have prescribed Mr. West a number of psychotropic medications. Beginning in 2001 and continuing to the present, Mr. West has been prescribed a number of different antidepressant and antipsychotic medications at normally prescribed levels that are used to treat severe mental illnesses. Those agents have included Haldol and Thorazine, both old line, or first generation, antipsychotic drugs, which have been described as “chemical straightjackets,” not drugs to take

for the fun of it.² As of April 5, 2010, he was taking 900 mg of Thorazine daily. This is a very high dose of Thorazine. The impact and side effects of those two drugs are so unpleasant that less sick individuals and those faking mental illness will refuse to take them. Stephen West's antidepressant medications have included Paxil, Pamelor, Effexor, Trazodone (a sedating antidepressant used as much to induce sleep as to improve mood), and Wellbutrin. After Dr. O'Connor diagnosed him with the combined illness of schizoaffective disorder, she stopped his first generation antipsychotic and started him on a second generation or atypical antipsychotic, Risperidol that has significant mood stabilizing effects as well. Although the exact medication has varied, since 2001, Mr. West has been continually taking some form of medication to treat his severe mental illness, including antipsychotics.

13. Under the prevailing standard of care and the black box warnings in the *Physician's Desk Reference* or *PDR*, no psychiatrist should prescribe these antipsychotic medications unless the treating physician sincerely believes that the patient is indeed suffering from a severe mental illness.
14. The records show no indications that prison doctors believe that Mr. West is, in any way, malingering or "faking" the severity of his mental illness. If a doctor were to suspect malingering, the doctor typically indicates that in the patient's medical records. Mr. West has seen many mental health professionals in the prison, and if he were thought to be faking, then observations to that effect would appear in his medical records.

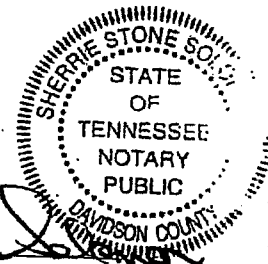
FURTHER AFFIANT SAYETH NOT.

William D. Kenner, M.D.
 William D. Kenner, M.D.

STATE OF TENNESSEE)
)
 COUNTY OF DAVIDSON)

Sworn to and subscribed before me this 17 day of May, 2010.

Sherrie Stone Solari



² Lahti AC, Weiler MA, Medoff DR, Tamminga CA, Holcomb HH. Functional effects of single dose first- and second-generation antipsychotic administration in subjects with schizophrenia. *Psychiatry Research: Neuroimaging*. 2005;139(1):19-30.

MY COMMISSION EXPIRES:
September 25, 2010

Notary Public

My Commission Expires: _____