TECHNICAL RECORD

NO. 24527

DEFENDANT: BILLY RAY IRICK, ALIAS
(Defendant Indigent)

APPEALED FROM

KNOX COUNTY CRIMINAL COURT

AT KNOXVILLE, TENNESSEE

HON. RICHARD BAUMGARTNER JUDGE – DIVISION I

JOY R. MCCROSKEY CLERK

IN THE CASE OF

STATE OF TENNESSEE

VS.

BILLY RAY IRICK, ALIAS

Petition to Determine Competency to be Executed heard and Order filed finding the ~~defendant to be competent~~

CHARGE: MURDER & AGGRAVATED RAPE

TO THE

SUPREME COURT

NASHVILLE, TENNESSEE

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FILED 27 DAY OF August 2010

CRIMINAL COURT JOY R. MCCROSKEY CLERK

NO. 24527 SHEILA MELTABARGER DEP CLERK

APPELLANT RIVERBEND MAXIMUM SECURITY INSTITUTION

STATE OF TENNESSEE NO. 24527

VS

BILLY RAY IRICK, ALIAS MURDER & AGGRAVATED RAPE

T O T H E

S U P R E M E C O U R T

K N O X V I L L E, T E N N E S S E E

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FILED THIS 27 DAY OF August, 2010.

CONVICTED: 1ST Degree Murder & Aggravated Rape

DEFENDANT: Riverbend Maximum Security Institution
7475 Cockrill Bend Boulevard
Nasvhille, TN 37243-0471

STATE OF TENNESSEE NO. 24527

VS

BILLY RAY IRICK, ALIAS MURDER & AGGRAVATED RAPE

I N D E X

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

STATE OF TENNESSEE V. BILLY RAY IRICK

Criminal Court for Knox County
No. 24527

No. M1987-00131-SC-DPE-DD - Filed: July 19, 2010

ORDER

On May 10, 2010, the State filed a motion to set an execution date for Billy Ray Irick. The State alleges that Mr. Irick has completed the standard three-tier appeals process and that an execution date should therefore be set in accordance with Tenn. S. Ct. R. 12.4(A).

On May 27, 2010, Mr. Irick filed a response opposing the State's motion. The response includes a request that this Court issue a certificate of commutation on Mr. Irick's behalf under Tenn. Code Ann. § 40-27-106 (2006). As grounds for issuance of a certificate, Mr. Irick asserts that information received since his trial and affidavits recently obtained from mental health professionals constitute new scientific evidence demonstrating his actual innocence of the crime. He also contends that flawed state and federal proceedings have denied him a full and fair hearing as to the issue of his sanity. Finally, he alleges that his "longstanding and severe mental illness" should exclude him from execution under evolving standards of decency.

After careful review of the motion, the response, and the documentation submitted with the response, the Court concludes that under the principles announced in Workman v. State, 22 S.W.3d 807 (Tenn. 2000), Mr. Irick has presented no extenuating circumstances warranting issuance of a certificate of commutation. It is therefore ordered that the request for a certificate of commutation is denied.

Mr. Irick's response also includes a claim of incompetency to be executed, in which he raises the issue of his present competency to be executed and requests a competency hearing under Van Tran v. State, 6 S.W.3d 257 (Tenn. 1999). Upon consideration of the claim and the supporting exhibits, it appears to the Court that Mr. Irick has raised the issue of his present competency to be executed in accord with the procedures adopted by this Court in Van Tran v. State. It is hereby ordered that the issue is remanded to the Criminal Court of Knox County, where Mr. Irick was originally tried and sentenced, for an expeditious

determination of his present competency, including the initial determination of whether he has met the required threshold showing. These proceedings shall be conducted in accord with the procedures and time limits set forth in Van Tran v. State, 6 S.W.2d at 267-73, which provides no more than fifty-five (55) calendar days for the conclusion of the trial court proceedings and the filing of an appeal in this Court.

Upon due consideration, it is, therefore, ordered that the Warden of the Riverbend Maximum Security Institution, or his designee, shall execute the sentence of death as provided by law at 10:00 p.m. on the 7th day of December, 2010, or as soon as possible thereafter within the following twenty-four hours, unless otherwise ordered by the Court or other appropriate authority.

Counsel for Mr. Irick shall provide a copy of any order staying execution of this order to the Office of the Clerk of the Appellate Court in Nashville. The Clerk shall expeditiously furnish a copy of any order of stay to the Warden of the Riverbend Maximum Security Institution.

PER CURIAM

Michael W. Catalano, Clerk, hereby certify that this is a true and exact copy of the original filed in the cause.
This 19 day of July, 2010
CLERK OF COURT
By: D.C.

CRIMINAL COURT OF KNOX COUNTY, TENNESSEE

STATE OF TENNESSEE	*	No. 24527
vs.	*	Tennessee Supreme Court No. M1987-00131-SC-DPE-DD
BILLY RAY IRICK	*	DEATH PENALTY

PETITION TO DETERMINE COMPETENCY TO BE EXECUTED UNDER FORD V. WAINWRIGHT, 477 U.S. 399 (1986); PANETTI V. QUARTERMAN, 551 U.S. 930 (2007); VAN TRAN V. STATE, 6 S.W.3D 257 (TENN. 1999); THE TENNESSEE CONSTITUTION; AND THE COMMON LAW

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CRIMINAL COURT OF KNOX COUNTY, TENNESSEE

STATE OF TENNESSEE	*	No. 24527
vs.	*	Tennessee Supreme Court No. M1987-00131-SC-DPE-DD
BILLY RAY IRICK	*	
	*	DEATH PENALTY

CLAIM OF INCOMPETENCY TO BE EXECUTED UNDER FORD V. WAINWRIGHT, 477 U.S. 399 (1986); VAN TRAN V. STATE, 6 S.W.3D 257 (TENN. 1999); PANETTI V. QUARTERMAN, 551 U.S. 930, 127 S.CT. 2842, 168 L.ED.2D 662 (2007); LEXIS 8667 (2007); THE TENNESSEE CONSTITUTION; AND THE COMMON LAW

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CRIMINAL COURT OF KNOX COUNTY, TENNESSEE

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PETITION TO DETERMINE COMPETENCY TO BE EXECUTED UNDER FORD V. WAINWRIGHT, 477 U.S. 399 (1986); PANETTI V. QUARTERMAN, 551 U.S. 930 (2007); VAN TRAN V. STATE, 6 S.W.3D 257 (TENN. 1999); THE TENNESSEE CONSTITUTION; AND THE COMMON LAW

In response to the setting of an execution date of December 7, 2010, petitioner, Billy Ray Irick, by and through the undersigned attorneys, states that he is presently incompetent to be executed and invokes all relevant procedures and rights to ensure the determination of his competency in proximity to his scheduled execution, including but not limited to those rights afforded him under the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution. Therefore, petitioner seeks (1) the appointment of experts as identified herein to perform a thorough competency examination; (2) funds to perform brain imaging tests as set out in petitioner's separate motion; (3) sufficient time to allow for the testing and analysis of his present mental condition; and (4) an evidentiary hearing allowing him to present evidence of his present incompetency to be executed. Furthermore, petitioner asserts that his longstanding and severe mental illnesses should, under evolving standards of decency, exclude him from execution.

SUMMARY OF ARGUMENT AND CONSTITUTIONAL OBJECTIONS TO CURRENT PROCEEDINGS

"The beginning of doubt about competence in a case like petitioner's is not a misanthropic personality or an amoral character. It is a psychotic disorder." The United States Supreme Court, Panetti v. Quarterman, 551 U.S. 930, 960 (2007).

In December 2009 and January 2010, some five months prior to the state filing its motion to set execution date, Dr. Peter Brown, a psychiatrist and currently the Medical Director at Unum Provident of Chattanooga, Tennessee, personally examined the petitioner at Riverbend Maximum Security Institution. Based on tests results administered by Dr. Malcolm Spica, who assisted in the examinations of the petitioner, Dr. Brown diagnosed petitioner as *presently* suffering from cognitive and psychotic disorders, Axis I, and further diagnosed petitioner with paranoid and schizoid personality disorders, Axis II.[1] In addition to the above diagnoses, Dr. Brown found the following:

> If personality or emotional and social development is compared to intellectual impairment, then [Irick] can reasonably be considered to be "socially and emotionally retarded" with a functional level corresponding generally to those of a seven to nine year old.

Dr. Brown further reports that the petitioner lacks any memory of the offense and denies that he committed the crime, finding no evidence of malingering or exaggeration on the part of the petitioner. With petitioner's underlying psychosis, cognitive impairment and personality disorders, coupled with his belief in his own innocence, petitioner is currently incapable of rationally understanding the meaning and/or purpose for his execution and, therefore, under Panetti, is not competent to be executed.

Furthermore, petitioner submits that the state of Tennessee's procedures for determining competency as set out in Van Tran v. State, 6 S.W.3d 257 (Tenn. 1999) and the state's supreme court's order of July 19, 2010 in this case violate the Eighth Amendment to the United States Constitution as interpreted by the United States Supreme Court in Ford v. Wainwright, 477 U.S. 399 (1986) and Panetti in that the time limits for determining competency are arbitrary and unfair in that they fail

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[1]Dr. Brown's report is provided beginning at IRICK 907, Vol. II of the exhibits.

to provide adequate time for petitioner to obtain competent experts, administer relevant tests and perform a thorough analysis, conduct an evidentiary hearing, and provide sufficient time for a court to consider the evidence and render a thoughtful decision. For these reasons, petitioner states that the current proceedings are unconstitutional and that as a result of this unconstitutional procedure, he is being deprived of his rights to life and due process.

Furthermore, petitioner submits that his execution would violate due process/equal protection as articulated in Furman v. Georgia, 408 U.S. 238 (1972), when, in a different jurisdiction, different criteria for competency are used and he would not be executed.

STATEMENT OF RELEVANT FACTS AND COURT PROCEEDINGS

I.
Knox County Criminal Court Proceedings

The indictment and appointment of counsel.

On June 18, 1985, a criminal indictment was issued against the petitioner in regard to the death and rape of seven year old Paula Dyer. The four count indictment charged: (1) felony murder; (2) first degree murder; (3) rape of a minor less than thirteen (13) years old (vaginal); and (4) rape of a minor less than thirteen (13) years old (anal). (IRICK 160-61). The trial court appointed Kenneth Miller and James Varner of the Knoxville, Tennessee bar to represent the petitioner. (IRICK 162)

As explained below, trial counsel filed a notice of insanity which was later withdrawn. The only mental health evidence introduced at trial was presented during sentencing. The *general* facts presented during the guilt/innocence phase of the trial were largely uncontested, except where indicated, and the more relevant of which are set out below.

Facts presented in the guilt/innocence phase of the trial.

At the time of Paula Dyer's death, her mother, Kathy Jeffers, had known the petitioner for approximately two (2) years. (Trial Transcript, p. 544, IRICK 204). She had been introduced to the petitioner when the family was living in Clinton, Tennessee through her then husband, Kenny Jeffers, who had known the petitioner for a much longer period of time. Petitioner actually lived with the Jeffers as an "adopted" member of the family during the next two years, and since petitioner rarely kept a job, he regularly babysat the family's five children when the Jeffers were at work or otherwise out of the home. (Trial Transcript, pp. 545-546, 564, IRICK 205-206, 218). At trial, Mrs. Jeffers stated that her relationship with the petitioner was "like brother and sister" and that he had cared for the children and had never been a "cause for concern" with them. (Trial Transcript, pp. 544, 564-565, (IRICK 204, 218-19).

Mrs. Jeffers also testified that while living in Clinton, Tennessee, their home had been destroyed by fire and that the petitioner had been responsible for rescuing two of her children. Subsequently, the Jeffers and petitioner, as a family, relocated to Knoxville, Tennessee. (Trial Transcript, p. 544, IRICK 204). However, upon relocating to Knoxville, Mr. and Mrs. Jeffers separated with Mrs. Jeffers and the children moving into a two bedroom house on Exeter Street around the first of March 1985[2] while Kenny and the petitioner moved in with Kenny's parents on Virginia Avenue in Knoxville. (Trial Transcript, p. 546-547, IRICK 206-07). Even after the separation, petitioner continued to babysit and play with the Jeffers children much as he had done before, though not as often. (Trial Transcript, p. 567, IRICK 221).

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[2]During the trial, Kathy Jeffers agreed that she had been at the Exeter residence for "approximately a month and a half" prior to the offense, which occurred on April 15, 1985. (Trial Transcript, pp. 565-566, IRICK 219-20).

On the day of Paula Dyer's death, April 15, 1985, Mrs. Jeffers returned to the Exeter Street home at approximately 3:30 or 4:00 p.m. where she saw the petitioner, along with her husband, Kenny, and another friend. (Trial Transcript, pp. 549-550, IRICK 208-09). At approximately 5:00 or 5:30 in the afternoon, Mrs. Jeffers laid down for a nap and did not wake until 8:00 or 8:30 in the evening. During that period of time, the Jeffers children, including Paula, were cared for by the petitioner and Kenny. (Trial Transcript, p. 552, IRICK 211).

After putting the children to bed around 9:00 p.m., Mrs. Jeffers saw the petitioner on her back porch. At first she thought the petitioner was talking to someone, but then realized that "he was talking to himself" and that she could not understand what he was saying. It sounded like "mumbles" to her. (Trial Transcript, pp. 554, 568, IRICK 212,222). After showering, she again saw Irick in the kitchen where they spoke. She learned that earlier in the day the petitioner had been literally chased out of the Virginia Avenue home with a broom by Kenny Jeffers' mother, Linda Jeffers. (Trial Transcript, pp. 568-569, IRICK 222-23). Petitioner told Kathy Jeffers that he was upset with Kenny's mother over the incident and that he would be leaving for Virginia the next day. He further stated his preference to leave that night, but that Kenny wanted him to babysit the children. (Trial Transcript, p. 555-556, IRICK 213-14).

During the conversation described above, Kathy Jeffers testified that petitioner left the kitchen, went to the porch and brought back a quart of beer in a paper bag, from which he was drinking. (Trial Transcript, p. 555, IRICK 213). When asked on direct during the trial whether petitioner was

intoxicated "at that point," she testified, "[n]o, I noticed more his being mad than anything else," and further agreed that petitioner spoke "coherently." (Trial Transcript, p. 558, IRICK 216).[3]

Since the Jeffers family did not have a telephone, Mrs. Jeffers testified she left home around 10:00 that evening in order to use a pay phone to call Kenny. She explained to the jury that she wanted Kenny to watch the children since petitioner had stated he didn't want to be there and had been drinking. (Trial Transcript, p. 557, IRICK 215). When she returned from making the phone call, Mrs. Jeffers told the petitioner that she was going to have Kenny come back and watch the children.

When she left for work, the children were still in bed, and the petitioner was on the back porch. (Trial Transcript, pp. 557-558, IRICK 215-16). She arrived at work around 10:30 and would, about an hour later, receive a telephone call from her husband saying that the petitioner could not wake Paula. Paula would be taken to the hospital and pronounced dead from asphyxiation.

Conclusion of guilt/innocence phase of the trial:

During the guilt phase of the trial, counsel attempted to create a reasonable doubt as to the identity of the perpetrator. The defense called no witnesses, and the petitioner did not testify. No mental health evidence was presented during this phase of the trial. On November 1, 1986, a Knox County jury found the petitioner guilty of felony murder and the two counts of aggravated rape while acquitting of first degree murder. (Trial Transcript, pp. 982-83, IRICK 226-27).

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[3]Mrs. Jeffers' testimony would become the subject of controversy and a continuing Brady claim when post-conviction counsel learned that she had told Knoxville police, in part, that petitioner was "drunk and talking crazy." See p. 22 below.

Trial Counsel's investigation of Mental Health Issues:

Prior to trial, defense counsel filed an insanity defense notice with the court. From subsequent post-conviction hearings discussed in more detail below, it was learned that defense attorneys had obtained copies of petitioner's mental health records from the Knoxville Mental Health Center, where he had been treated as an outpatient, Eastern State Mental Hospital where he had been treated and hospitalized as a child, records from the Church of God Children's Home in Sevierville, Tennessee where he had lived from ages eight to thirteen, and limited Army records. (P.C. Transcript, p. 98, IRICK 456). Trial counsel consulted with a psychiatrist at Ridgeview Psychiatric Hospital in Oak Ridge, Tennessee (name unknown), Dr. Jack E. Scariano (a neuropsychiatrist with West Knoxville Neurological Associates), Dr. Emily Oglesby, and Dr. Diana McCoy, a psychologist.[4]

Interestingly, when Dr. McCoy contacted petitioner's mother, his mother said she did not care if her son was helped or not. (P.C. Transcript, p. 110, IRICK 462). Trial counsel had been told by her that, if convicted, her son should be put to death. (P.C. Transcript, p. 27, IRICK 453).

Dr. Emily Oglesby, a neuropsychologist, told trial counsel that her testing was invalid because the petitioner would not cooperate, presumably by refusing to answer questions. (P.C. Transcript, p. 129, IRICK 473). Trial counsel were also provided the opinions of Dr. Clifton Tennison and Dr. Neal W. Dye, who were appointed by the court to conduct competency screenings and who found petitioner to be competent at the time of the offense and to stand trial. After considering the mental health evidence, defense counsel withdrew the insanity defense. (IRICK 180).

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[4]In a post-conviction hearing held on December 14, 1995, Mr. Miller testified that he was unable to recall the name of the expert from Ridgeview and perhaps one other expert he consulted. (PC Transcript, p. 177, IRICK 474).

Mental health evidence presented during sentencing:

During the trial, the only evidence offered by the defense concerning petitioner's mental state was provided during sentencing. All defense evidence was provided by or through Nina Braswell-Lunn, a clinical social worker at the Knoxville Mental Health Center. Ms. Lunn had worked with and treated petitioner when he was between the ages of six and eight. However, when petitioner was placed at the Church of God home in Sevierville, Tennessee, at the age of eight, Ms. Lunn lost all contact with him; therefore, her testimony and the exhibits that were introduced were restricted to the time period between May 1965 and August of 1967. What is provided below is a summary of information that she provided in testimony and/or through treatment reports.

In March of 1965, at age six (6), Billy, while still in the first grade, was referred to the Knoxville Mental Health Center[5] (hereinafter "the Center") by the school's principal. The principal specifically requested an independent mental evaluation to answer the question of whether Billy's extreme behavioral problems and un-manageability in school were the result of emotional problems or whether Billy suffered from some form of "organic brain damage." Ms. Lunn performed the initial assessment and stated, in part:

> At the present time [age six] he is overly aggressive, is difficult to manage, is very difficult to discipline particularly. He apparently mistreats animals; this is something that is particularly evident with his cat. He is hyperactive all during the night, he talks in the nighttime and rummages about the house. He prowls and meddles a great deal at home and at school. He has for a couple of years been telling people outside the home that his mother mistreats him, that she ties him up with a rope and beats him and he also has told neighbors and other people of his parents being naked in bed and this kind of thing. Both parents show considerable concern over the fact that it seems to them that Billy Ray does not really relate to them, that he is in pretty much of a

[5]The name of the facility was subsequently changed to the currently existing Helen Ross-McNabb Mental Health Center.

world of his own. They state that when they correct him or try to talk with him he only gives them a blank meaningless stare.

Later in the initial assessment, Ms. Braswell stated:

> At about the age of three (3) Billy Ray began talking and apparently according to the parents when he began he became fluent rather quickly but he was late in beginning to talk. At around the time of the birth of the younger brother, Jeffrey, Billy was talking enough that he began telling stories of his mother's mistreating him, of tying him up and beating him. Mrs. Irick apparently takes all this very seriously, in effect internalizes the verbal attacks from the boy. I would raise the question of how much of this behavior on Billy Ray's part is actually stimulated by the mother through unconscious mechanisms. It seems very apparent that Ms. Irick is an emotionally unstable person. According to Dr. Harvell, the mother has not been cooperative as far as the boy's behavior in school is concerned but Mrs. Irick on the other hand states that she has had phone calls up to three and four times a week about the boy, has attempted to cope with him there and yet she brings out that she feels rather guilty for inflicting Billy in a sense upon the teachers.

(Trial Exhibit 53, IRICK 249-50).

She further noted that petitioner's problems were apparently already "long standing" (Trial Transcript, p. 1007, IRICK 231) and testified at trial that, in her opinion, Billy's behavior/condition was consistent with abused children. (Trial Transcript, p. 1008, IRICK 232). Approximately a month later, Dr. Ken Carpenter, the psychiatrist-director of the center, met with Billy and made the following observation, "His reality observations are deficient and the patient has only slight awareness of this. The possibility of brain damage in this case is fairly great." His diagnostic impression was "adjustment reaction of childhood versus organic brain damage versus childhood schizophrenia" and recommended further psychological testing. (Trial Exhibit 55, IRICK 253). Billy continued to be seen and treated at the Center on an out-patient basis.

In May of 1965, while Billy Ray was still just six years old, Dr. John A. Edwards, a clinical psychologist, and the Center's psychiatrist/director, interviewed Billy and concluded that he was most

likely "suffering from a severe neurotic anxiety reaction with a possibility of mild organic brain damage." He noted that Billy felt "intense hostility" directed at his family members and had little emotional control. In a remarkably prescient observation, Dr. Edwards noted:

> Billy Ray tends to *fear his own impulses* as well as being threatened from those in his environment; in fact, he seems to be overwhelmed and at the mercy of other people. Has an exceptional fantasy life with some possible atypical thinking.

(Emphasis supplied). (Trial Exh. 57, IRICK 256).

In the fall of 1966, staff at the Center recognized that Billy's home life was unsuitable for a child with such severe mental problems. Ms. Lunn testified that the staff had been very specific about the need for the parents to be involved in Billy's treatment. However, she stated that his mother had "psychiatric problems of her own and was just not able to function in the role of a parent for Billy." She further testified that his father was not supportive of the effort and "we were not able really to keep them [Billy's mother and father] involved in treatment at the Center." (Trial Transcript, p. 997, IRICK 228). Therefore, Ms. Lunn began seeking Billy's hospitalization at Eastern State Mental Hospital in Knoxville.[6] In a letter to the Church of God Home dated November 14, 1966, Ms. Lunn would write in regard to Billy's earlier placement at Eastern State:

> Billy's mother has become increasingly more disturbed to the point that recently she had to be placed on heavy medication and the possibility of hospitalization for her is still being considered. It was at this time that we decided to hospitalize Billy at Eastern State in an effort, in part, to remove him from the home situation in which his mother's disturbance so strongly affects Billy.

(Trial Exhibit 61, IRICK 261).

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[6]The name of the facility was subsequently changed to the currently existing Lakeshore Mental Health Institute.

Billy was admitted to Eastern State and spent the next ten months (October 24, 1966 - August 30, 1967) as an inpatient, though at that point in time, Eastern State had only limited experience with treating children, at least as inpatients. (IRICK 19). As a consequence, Ms. Lunn continued to treat Billy at Eastern State even after his admission.[7] (IRICK 23).

In January of 1967, after having been treated with Thorazine and other forms of treatment for over two months, Billy's diagnosis[8] was changed to "situational reaction of childhood" by an Eastern State psychologist, and Billy was subsequently transferred from the Intensive Treatment Unit to the children's cottages in the "therapeutic village" where he continued to receive treatment. (IRICK 34). In the spring of 1967, Eastern State sought to place Billy in a residential school, still recognizing that placement in the family home was not an option. In a March 7, 1967 letter, Ms. Lunn, who had continued to treat Billy, explained the decision to place Billy in a residential school, in part, this way, "[a]fter his initial rather positive adjustment at Eastern State Hospital, Billy has recently begun to act out, showing much of the behavior that was shown in the home and the school situation prior to hospitalization." (Trial Exhibit 63, IRICK 264).

In rebuttal to Ms. Lunn's testimony, the state called Dr. Clifton R. Tennison, a psychiatrist then employed at the Helen Ross-McNabb Center (McNabb Center), and who, in January of 1985, had, pursuant to court order, performed a forensics screening for petitioner's competency and mental condition at the time of the offense and at trial. (Trial Transcript, p. 1065, IRICK 233). Dr.

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[7]While at Eastern State, medical records reflect that Billy received various treatments, including group and individual therapy, as well as regular doses of Thorazine, an anti-psychotic medication which was begun within the first 24 hours of his admission. However, it does not appear that the use of Thorazine was specifically discussed during the trial.

[8]In December 1966, Eastern State, under the direction if its chief clinical psychologist, Dr. Stanley Webster diagnosed Billy as having "psychoneurotic anxiety reaction, moderate, with possible brain damage" though his report was not introduced into evidence. (IRICK 29).

Tennison's opinion was based on a review of some of the childhood records described above and a one hour examination session at the city jail during which the petitioner was "very hostile." (Trial Transcript, pp. 1072-1073, IRICK 239-40). He testified that the scope of his responsibilities in performing such an examination was to determine whether there was a basis to find the patient incompetent or whether further testing was needed. Therefore, he said he was looking for evidence of "psychotic disorders, effective disorders, or severe anxiety disorders." (Trial Transcript, p. 1070, IRICK 237).

Based on his examination, Dr. Tennison did not find "any evidence" of mental illness or defect that would have prevented petitioner from appreciating the wrongfulness of his conduct. (Trial Transcript, pp. 1067-1068, IRICK 234-35). While testifying that there was no evidence that petitioner experienced psychotic phenomena; however, petitioner, according to Dr. Tennison, did "endorse vague auditory illusions or mis-perceptions described as hearing sounds or noises which bothered him and sometimes startled him..." but added, "[t]hat doesn't qualify as what we call a discreet hallucination..." (Trial Transcript, p. 1085, IRICK 242).

While declining to give a specific diagnosis since the competency evaluation was of a more limited scope, nevertheless, Dr. Tennison had a "strong diagnostic impression" that petitioner suffered from an anti-social personality disorder. (Trial Transcript, p. 1069, IRICK 236). He testified that a personality disorder was not considered a "mental illness but can serve... as the context in which other mental illness might take place." (Trial Transcript, pp. 1070, 1083, IRICK 237, 241). In addition, Dr. Tennison had other impressions which included "anti-social schizoid, narcissistic, histrionic and impaired judgment." In explaining his impression that petitioner's judgment was impaired, Dr. Tennison stated, in part:

What I meant - well, I'm looking back. I'm sure that what I was talking about was the fact that I'm there, primarily, to see whether or not there is evidence to support an insanity defense. And the defendant has every opportunity to give me some evidence along those lines and did not. In fact, he was very hostile, very mocking, very sarcastic, very pejorative. And in one sense of the term, when someone is there to try to help you out a little bit, to mock them, and mimic them, and put them off is not extremely good social judgment. The rest of the judgment issues came from the history...

(Trial Transcript, p. 1086, IRICK 243).

In trying to explain the characteristics of an antisocial personality, the following dialogue took place on direct examination:

Q: Is there a characteristic of the antisocial personality that, sort of, summarizes it so that we, who aren't trained as you are, can understand what we are talking about - what you are talking about?

A: There are several characteristics, and there are many specific factors in a person's history. I can't recall all the factors in the person's history that have to be met in the criteria without having the diagnostic and statistical manual in front of me. The characteristics, though, are primarily based on an unwillingness or an inability to take into account the rights of other people - sort of the basic characteristic of antisocial personality. It is just that - uh - the rights or feelings of other are, generally, disregarded in a person who exhibits the other signs and symptoms of an antisocial personality disorder.

Q: And as a result of that, they ordinarily don't conform their conduct to accepted standards?

A: As a result of that, there would be a long history of illegal activities, perhaps, or less than socially-acceptable activities. Many people with antisocial personality are in jail - or in prisons right now...[9]

(Trial Transcript, pp. 1071-1072, IRICK 238-39).

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[9]According to the state pre-sentence report, petitioner's record consisted of only three public drunkenness convictions and one disorderly conduct - all misdemeanors. (IRICK 271).

When questioned further by the trial judge about Dr. Tennison's findings, the following dialogue took place.

> Q: Doctor, you said you found evidence of an antisocial personality disorder and that this developed over a long period of time, usually; is that correct?
>
> A: Personality disorders, by definition, are there because of some developmental abnormality in a person. People can only think, and feel, and behave in certain ways. There are only so many things the brain can do. In the course of developing into who you are as an adult, something is missing either in your environment or in your own genetic and biological makeup, then this can - not always - but it can result in what we call a personality disorder. So, yes, it is a long term deeply ingrained fixed way of responding to the environment. It represents in the adult what we call developmental disorders in children.
>
> Q: You said that this personality disorder - this antisocial personality disorder is an unwillingness or an inability to take into consideration the rights of others. And it would seem to me that there is or could be a big difference between unwillingness or inability. Were you able to make a determination with this defendant on whether his disorder is an unwillingness or an inability, or did you not meet with him enough?
>
> A: That's the problem with the personality disorders right there is that we are not able, in any scientific way - using any measures that can hold up to decide whether or not these kinds of personality traits are due to an inability or an unwillingness. There is no way to know. There are very strong theories for both sides, but it makes no difference with regard to treatment...no one knows as far as I'm concerned.

(Trial Transcript, pp. 1087-88, IRICK 244-45).

Conclusion of sentencing phase of the trial:

On November 3, 1986, the jury sentenced petitioner to death by electrocution based on his felony murder conviction. In imposing the death penalty, the jury found the presence of the following four aggravating circumstances:

> (1) the victim was less than twelve (12) years of age and the defendant was eighteen (18) years of age, or older;

(2) the murder was especially heinous, atrocious or cruel in that it involved torture or depravity of mind;

(3) the murder was committed for the purpose of avoiding, interfering with or preventing a lawful arrest or prosecution of the defendant; and

(4) the murder was committed while the defendant was engaged in committing the felony of rape.

(IRICK 183-84).

The following mitigating circumstances were recognized by the court and provided to the jury:

(1) defendant has never been convicted of any felony, and before this case, had never been arrested for any felony;

(2) defendant has never arrested or convicted of any misdemeanor involving moral turpitude;

(3) defendant has a history of a mental impairment that required the defendant to be placed in an institution at a young age;

(4) defendant was under the influence of alcohol or marijuana at the time of the offense; and

(5) defendant has shown remorse.

(IRICK 181-82).

Mental health evidence not presented during sentencing:

In addition to the Center records introduced at trial, trial counsel had also obtained a limited number of records from the Church of God Home ("the Children's Home") where Billy resided from age eight through age thirteen along with records from Eastern State which dealt with his hospitalization, treatment and, among other circumstances, a series of incidents in June of 1972 that led to his removal from the Children's Home and return to Eastern State for hospitalization. These two sets of records were not introduced during petitioner's trial, but a summary of the information

is provided below, along with a limited number of records from the McNabb Center which were not presented or described during trial.

In addition to Nina Lunn's letter of November 14, 1966 to Eastern State (described above, p. 10), Dr. Carpenter, also of the McNabb Center, wrote the staff at Eastern State on October 24, 1966 urging admission for Billy. The letter states, in part:

> Please admit this patient at your earliest convenience. He has been under treatment at the Mental Health Center for the past six (6) months and we feel that because of his mother's condition and Billie's [*sic*] *psychosis* that a period of hospitalization would be helpful. Nina Lunn, Billie's [*sic*] therapist here, will attempt to continue with him at least on a weekly basis... (Emphasis supplied).

(IRICK 16).

The letter also goes on to state that Billy's medication included Mellaril (25 mg q.i.d.) and Stelazine (2 mg b.i.d.) which are both anti-psychotic and anti-anxiety medications. In yet another letter dated October 25, 1966, Ms. Lunn had told Eastern State officials :

> At times, he is definitely out of contact; there are comments of a hallucinatory quality. However, these have not been dealt with too seriously in view of this boy's age and tendency toward fantasy...Billy for the most part functions at his mother's will and functions on his mother's emotionality. His ego strengths are quite limited and he is impulse driven...when threatened, he becomes quite negative which is seen as his fear, but deep resentment and hostility are not seen as a part of this child's makeup as much so as they are part of the mother's. Mrs. Irick has recently become more intensely disturbed...we are recommending hospitalization at this time due to the apparent need for more extensive care for this child. The mother's condition very likely could become worse and if so, it is possible that she too will need hospitalization. The mother's use of this child in expressing her own deep personal and emotional conflicts is seen as a very real factor in any changes that the boy might be able to make.

(IRICK 17).

When Billy was taken to Eastern State for voluntary admission, he was accompanied by his father and his aunt, who was the mother of another patient being treated at Eastern State. Medical records

reflected that the father was unable to supply any admission information and referred the staff to "my wife who knows more about him." (IRICK 23).

It should be noted that Eastern State began treating Billy with Thorazine, a strong anti-psychotic medication, on his first full day at the hospital, which was October 25, 1966. His next dosage of Thorazine appears to be 50 mg on October 28. Beginning the next day, October 29, the records reflect that he was put on a *daily* regimen of 12.5 mg of Thorazine. (See Nurses' Notes beginning at IRICK 98).

On December 1, 1966, Dr. Stanley Webster, Chief Clinical Psychologist of Eastern State, reported, after concluding the first set of comprehensive examinations of Billy, that his psychomotor functioning had considerably "regressed." He found that there were indications of "emotional lability, low frustration tolerance and explosiveness." (IRICK 28-29). After being asked to draw human figures, Billy, according to the report, "stated his intention to draw a naked figure [in the case of the female figure], but then changed his mind and added a dress." The report goes on to state that:

> Other than the clothes, the only difference between the two figures was that the male possessed teeth and the female didn't. This suggests that the patient's father may not be the passive individual that the records indicate.

(IRICK 29).

Dr. Webster's diagnosis was "psychoneurotic anxiety reaction, moderate, with possible brain damage." Id. On December 8, 1966, Billy's dosage was doubled to 25 mg per day. After having his Thorazine dosage doubled to 25 mg per day (IRICK 100), Billy was re-examined on January 12, 1967. At that time, a different physician changed Billy's diagnosis to "situational reaction of childhood." (IRICK 34; see also IRICK 40). Nevertheless, on April 16, 1967, his dosage was once again doubled to 50 mg per day until his discharge. (IRICK 101-104). Therefore, while ultimately disputing Billy

was psychotic, Eastern State placed Billy on daily doses of an anti-psychotic and twice doubled his dosage, while sometimes exceeding 50 mg per day when the boy became "agitated." (See letter of Susan Tollerson below).

On August 30, 1967, at the age of eight, Billy was "conditionally discharged" from Eastern State to the children's home which meant that he could return to Eastern State without further admission procedures. In a letter from Susan Tollerson, a psychiatric social worker with Eastern State to Paul Duncan of the children's home, she stated, in part:

> Billy Ray's medication at discharge was Thorazine 50 mg. q.i.d. This prescription may be refilled three times by sending the pink duplicate copy to the Cashier: Eastern State Psychiatric Hospital. A prescription must be obtained following that, but his medication can still be obtained through the hospital if you prefer since this will be at no cost. Often, with the doctor's permission, Billy Ray's medication has been slightly increased when he becomes agitated and we have found this procedure most helpful...

(IRICK 42).

During these years, between the ages of eight and thirteen, Billy was rarely, if ever, visited by his parents. However, in June of 1972, the Children's Home arranged a rare visit to his parents' home for Billy, who was now thirteen years of age. However, the visit and its aftermath went very badly. During the visit, Billy used an axe to destroy the family television set, clubbed flowers in the flower bed, and, in a very disturbing incident, used a razor to cut up the pajamas that his younger sister was wearing *as* she slept. The razor was later found in his sister's bed. (IRICK 496).

On July 25, 1972 and back at the Children's Home, Billy broke a window in one of the dormitories and gained access to a girl's bedroom. As the young girl slept, Billy was found hovering over her and was promptly removed after she began screaming. Later, a "butcher knife" was found

in the girl's bed. Billy was still just thirteen years old. On that same day, Billy was expelled from the Children's Home and returned to Eastern State as an inpatient. Id.

Back at Eastern State, Billy was placed once again on 50 mg of Thorazine. Medical records from this date of his re-admission on July 25, 1972 state, "It is now thought that boy may be really dangerous had been taken off psychotropic drugs at the Children's Home." (IRICK 90). In another report dated August 1, 1972, the staff member recounted the two incidents which occurred in July of 1972 and discussed above, and then stated, "Patient denied remembering doing this." The report went on to state:

> He [Billy] had told mother he wanted to come home and live and mother had said that she would have to talk it over with the Home. When patient returned to the Home, he seemed in a daze and said that his family did not want him and he hated the SOB's. ...Since vacation patient has played with matches and they found knives and bullets with him. He has requested not to go home during vacation any more. He has been moody, withdrawn, and daydreamed a lot....The Home has tried to involve the parents in writing to patient and in coming in for interviews, without success. They display passive resentment toward patient, procrastinating signing vacation forms for him to go home, etc. No one visits patient and no one pays for him.

(IRICK 61).

Billy remained as an inpatient until March 2, 1973 when, at the age of fourteen (14), he was discharged to his parents' home with a diagnosis of "adjustment reaction to adolescence" with a "guarded" prognosis. (IRICK 79-80). There is no indication of any follow-up treatment or even a subsequent examination of Billy until he was examined for competency to stand trial for the underlying offense. Billy joined the Army in November 1975 at the age of seventeen (17) but was discharged within a short period of time for unstated reasons. After his discharge from the Army, Billy's life seemed to be one of roaming, though there are few, if any, records to provide any detail.

II.
Appellate Proceedings

Following petitioner's conviction and death sentence, his attorneys filed an appeal with the Tennessee Supreme Court. However, none of the issues raised before the Tennessee Supreme Court concerned mental health issues or intoxication. In State v. Irick, 762 S.W.2d 121 (Tenn. 1988), the Tennessee Supreme Court affirmed petitioner's conviction and sentence. *Certiorari* was denied by the United States Supreme Court in Irick v. Tennessee, 525 U.S. 895, 1195 S.Ct. 219, 142 L.Ed.2d 180 (1998). (State and Federal pleadings of petitioner are provided, beginning at IRICK 279 and IRICK 352).

III.
State Post-Conviction Trial Proceedings

Post-conviction petition and claims:

On May 3, 1989, a *pro se* state post-conviction petition was filed in the Criminal Court for Knox County, Tennessee (No. 36992) and petitioner was appointed Douglas Trant as counsel. Among the claims submitted in post-conviction proceedings were the following:

1. "Petitioner, Billy Ray Irick, has been denied his constitutional right under the Sixth and Fourteenth Amendments to the United States Constitution to reasonably effective assistance of counsel at both the trial and sentencing phase of his trial, and on appeal, in that counsel representing petitioner was not within the 'range of competence demanded of attorneys in criminal cases' and trial and appellate counsel's performance was deficient and said performance prejudiced the defense. Counsel's assistance to petitioner was so defective as to require reversal of the conviction or, in the alternative, reversal of the sentence imposed at the separate sentencing hearing." (Petition for Post-conviction Relief, ¶ 6, May 3, 1989).

2. "Trial counsel failed to conduct an adequate or effective pre-trial investigation of the case." (Petition for Post-conviction Relief, ¶ 9(d), May 3, 1989).

3. "Trial counsel failed to conduct proper, adequate or effective strategy and tactics with regard to the case." (Petition for Post-conviction Relief, ¶ 9(e), May 3, 1989).

4. "Trial counsel did not investigate and interview all necessary and essential witnesses." (Petition for Post-conviction Relief, ¶ 9(g), May 3, 1989).

5. "Counsel failed to investigate for witnesses and/or prepare and present them during the penalty phase of trial to demonstrate all aspects of defendant's character and background that would support a sentence less than death." (Amendment to Petition for Post-conviction Relief, ¶ 9(q), September 8, 1989).

6. "Counsel failed to prepare adequately for either the guilt/innocence phase or the penalty phase of trail and to develop and present to the jury a coherent theory of defense at either phase." (Amendment to Petition for Post-conviction Relief, ¶ 9(r), September 8, 1989).

7. "Counsel for the defendant failed to have a neurological examination done of the defendant even though there is evidence of a severe head injury to the defendant during his childhood." (Amendment to Petition for Post-conviction Relief, ¶ 9(u), September 8, 1989).

8. "Counsel for the defendant at trial did not properly investigate the case for trial. ABA standards relating to the defense function, 4.1." (Amendment to Petition for Post-conviction Relief, ¶ 9(ff), September 8, 1989).

9. Among other Brady claims, petitioner alleged that the prosecution failed to produce evidence that "Billy Irick was well on his way to being intoxicated according to Kathy Jeffers when

she left for work that evening." (Amendment to Petition for Post-conviction Relief, ¶ 3, January 19, 1993). (For all Post-Conviction Petitions, see IRICK 383, *et seq*).

Mental health evidence including evidence of intoxication submitted to the post-conviction trial court:

During their investigation, P.C. counsel obtained the file of the state district attorney. Within that file was a transcribed statement of Kathy Jeffers, mother of the victim. The statement taken on April 16, 1985, one day after the death of her daughter, was the result of an interview conducted by Detective Wiser and Detective Ashburn of the Knoxville Police Department. During the interview, the following exchange took place concerning her observations of petitioner's sobriety and state of mind when she left the house for work that night:

DW: The room where that you left Paula at...And so, you went to work at Hageman's, and then the next time you saw your husband, where was that at?

KJ: He came in, I was getting ready to go to the phone. The girl I worked with, Donna, was there with me. I was going to call and see if he was at the other truck stop and tell him to go home, that Bill was drunk and talking crazy...

DW: Bill called you?

KJ: No. I went down early for a reason, to find Kenny and ask him to go home and stay with the kids. But he [Kenny] walked in the door of Hageman's..

JA: Bill was drunk when you left home?

KJ: I had to find somebody to stay with the kids.

DW: Yeah, but Bill was intoxicated when you left?

KJ: He wasn't drunk drunk, but he was well on his way.

(IRICK 774).

Despite a proper request by petitioner's trial counsel, P.C. counsel discovered that the statement had never been provided to trial counsel and alleged a Brady violation that was both material and prejudicial.[10]

P.C. counsel also obtained the services of Dr. Pamela Auble, a neuropsychologist, to support a claim that trial counsel had been ineffective in failing to present evidence of petitioner's mental health in mitigation. However, during the hearing, the state trial judge ruled that her testimony was irrelevant and would not be considered because it was based on interviews and testing that occurred *subsequent* to the offense. Her testimony was presented only as a proffer. (P.C. Transcript, pp. 98-103, IRICK 456- 461).

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[10] The Assistant District Attorney would ask Kathy Jeffers during the trial on no less than five separate occasions about what she had observed regarding petitioner's alcohol intake that evening. (Trial Transcript, pp. 551, 554, 555 and 558-559, IRICK 210m 212, 213, 216-17). While Ms. Jeffers would testify that she saw petitioner drinking beer from a quart bottle wrapped in a brown paper bag, she did not testify in form or substance that petitioner was drunk or "well on his way [to being drunk]." A representative sample of her testimony can be found on pages 558 and 559 of the transcript. A portion of her direct testimony follows:

Q: Now, you said he had been drinking and was talking to himself and seemed angry. Could you tell whether he was intoxicated at that point?

A: No, I noticed more his being mad than anything else.

Q: Was he able to talk with you coherently when he did have a conversation with you?
A: Yes, sir.

Q: Was he able to walk around the house, the kitchen, and to the back porch without stumbling over furniture or falling or anything like that?

A: Yes, sir.

Adding insult to injury, during the penalty phase of the trial, Assistant District Attorney Drake argued to the jury that they should not consider intoxication as a mitigating factor and stated: "I anticipate that the defense is going to suggest that he was acting under the influence of alcohol or marijuana. Where's the proof of it? What does 'under the influence' mean? *No one* has ever said he was intoxicated..." (Trial Transcript, pp. 1096-1097, IRICK 246-47). (Emphasis supplied.)

During the proffer, Dr. Auble testified that she had reviewed various medical and mental health records, including records from the Knoxville Mental Health Center/Helen Ross McNabb Center (discussed above), Eastern State/Lakeshore Hospital (discussed above), United States Army (discussed above), his "GED," West Knoxville Neurological Associates, and prison records. (P.C. Transcript, pp. 96-98, IRICK 454-56). From her review of the records, she stated she could not find evidence that a "neurological work up" had been completed at the time of the trial, though one had been started by Dr. Emily Oglesby, who indicated that her testing was invalid because on non-cooperation. (P.C. Transcript, pp. 107-108, IRICK 462-463).

Dr. Auble testified that she evaluated petitioner in January and February of 1990 at the Riverbend facility. While there, she administered 15 tests and spent approximately 21 hours with him. (P.C. Transcript, p. 96, IRICK 454). After describing the various tests that she administered, she opined that petitioner suffered from "a serious mixed personality disorder" with strong paranoia features, possible schizoid features and brain damage could not be ruled out. (P.C. Transcript, pp. 112-113, IRICK 466-467). During cross examination, Dr. Auble discussed, in part, the information provided from the Children's Home and Eastern State regarding the incidents discussed above pertaining to petitioner's sister and the girl in the Children's Home dormitory in the summer of 1972.

The state's rebuttal included calling Ken Miller, one of petitioner's two trial attorneys. Mr. Miller testified that after consulting with Dr. McCoy prior to trial, it was determined that they would not pursue an insanity defense. He further described his concern that petitioner would be viewed as

a sociopath and that in his opinion, his client's responses to questions had at times changed on what he thought would be in his best interest. (P.C. Transcript, p. 178, IRICK 475).[11]

Post-conviction resolution:

On April 1, 1996, the court denied post-conviction relief to the petitioner on all issues. (IRICK 508).

IV.
Post-Conviction Appellate Proceedings and Their Resolution

On appeal to the Court of Appeals, post-conviction counsel submitted the following issues:

1. Whether the petitioner received ineffective assistance of counsel at his trial for first degree murder, felony murder, and aggravated rape, requiring the setting aside of his conviction and sentence of death.

2. Whether the state's violation of its duty under Brady v. Maryland requires a new, fair trial.

3. Whether petitioner's sentence of death by electrocution must be set aside when all of the four aggravating circumstances found by the jury to justify the imposition of the death penalty are clearly invalid.

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[11]Cf., however, Mr. Miller's statement with Dr. Tennison, the state's witness, who performed the forensic competency screening. As quoted above, on page 13, he stated, in part, "...[a]nd the defendant has every opportunity to give me some evidence along those lines [evidence to support an insanity defense] and did not. In fact, he was very hostile, very mocking, very sarcastic, very pejorative. And in one sense of the term, when someone is there to try to help you out a little bit, to mock them, and mimic them, and put them off is not extremely good social judgment..." (Trial Transcript, p. 1086, IRICK 243).

The Court of Appeals denied post-conviction relief in Irick v. State, 973 S.W.2d 643 (Tenn. Crim. App. Jan. 14, 1998).[12] Subsequently, a petition for review was filed with the Tennessee Supreme Court. The issues stated in that petition follow:

1. Whether defendant was ineffectively assisted at trial because defense counsel failed to investigate available exculpatory evidence.

2. Whether the state's failure to fulfill its Brady obligations requires a new trial.

3. Whether defendant was ineffectively assisted at his sentencing hearing.

4. Whether defendant must receive a new sentencing hearing because the jury improperly considered five aggravating circumstances. (See P.C. appellate brief beginning at IRICK 513).

In his brief to the Tennessee Supreme Court, post-conviction counsel argued that the testimony provided by petitioner's trial counsel "did absolutely nothing to establish the brutal treatment defendant received at the hands of his parents, his mental illness, and possible brain damage." (Supreme Court Application, p. 18, IRICK 571). Subsequently, the Tennessee Supreme Court denied review and later that year, the United States Supreme Court denied *certiorari* in Irick v. Tennessee, 525 U.S. 895, 1195 S.Ct. 219, 142 L.Ed. 180 (1998).

V.
Facts Discovered During Federal *habeas corpus* Proceedings:

Subsequent to the appointment of *habeas* counsel, counsel sought funds to hire investigators and mental health experts. (IRICK 683). While the district court granted funds for investigators, it denied defense counsel funds for the initial appointment of mental health experts on two separate occasions. (IRICK beginning at 690 and 732).

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[12]However, the Court of Appeals did find that the fourth aggravating factor, the felony murder aggravator, failed to adequately narrow eligibility for the death penalty. Nevertheless, the court found the error to be harmless. Id. at 659.

During counsel's investigation, a *habeas* investigator traveled to Knoxville, Tennessee to interview potential witnesses and among those individuals interviewed was Inez M. Prigmore. Ms. Prigmore had become acquainted with Billy Ray Irick and his family when Billy was approximately fourteen or fifteen years old and living on Bakertown Road in Knoxville, Tennessee. During that period of time Ms. Prigmore lived, on a part time basis, two doors from the Irick home. In her affidavit, she testifies that she personally observed Billy Ray's father, Clifford Irick, to be an excessive drinker and a brutal man and that she could frequently hear Clifford Irick swearing at his wife and children from his residence approximately 1000 feet away. (IRICK 865). She could also hear the sounds of the children being struck within the home and observed Billy, his mother and one or more sisters at various times with bruises on their bodies. On one occasion, she witnessed Clifford Irick hit one of his daughters, who was pregnant at the time, knocking her to the ground. Id.

Finally, she relates that she personally observed Billy Ray's father hit him in the back of the head with a piece of lumber, knocking Billy Ray to the ground. At the time of the incident, Billy Ray was approximately fifteen years of age. When Billy Ray was approximately seventeen years of age, she personally heard Clifford Irick tell Billy to leave the house and to never return.[13] (Id.)

Investigators also found that no one had interviewed Ramsey and Linda Jeffers nor their daughter, Cathy Jeffers (the victim's mother's name is Kathy Jeffers), all of whom had lived with the petitioner in the weeks just preceding Paula Dyer's death. [14] (See IRICK 859, 862, 864). While

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[13]Cf. Dr. Webster, after analyzing the young Billy's drawings, observed that "the patient's father may not be the passive individual that the records indicate." (IRICK 29).

[14]The *habeas* investigator, Bill Dipillo, first interviewed Linda and Ramsey Jeffers at their home on July 1, 1999. Subsequently, on July 14, 1999, Mr. Dipillo and *habeas* counsel, Howell Clements, interviewed Linda, Ramsey and Cathy Jeffers. Finally, on November 3, 1999, Linda, Ramsey and Cathy Jeffers signed the affidavits which have been made exhibits to this pleading.

interviewing these unsympathetic witnesses, the investigator learned that Billy, just days or weeks before the offense, was caught stalking through Kenny's parents' home late one night after everyone was in bed with a bared machete. Kenny's father, Ramsey, who was also the step-grandfather of the victim, stopped Billy and asked him what he was doing. Billy stated unabashedly that he was going down the hall "to kill" Ramsey Jeffers' son, Kenny, with the machete. Ramsey Jeffers knew of no explanation or possible motivation for Billy's bizarre behavior. Mr. Jeffers convinced Billy to put down the machete and return to his room, but apparently no legal action was taken. (See IRICK 859).

In that same period of time - just days or weeks before Paula Dyer's death - Billy chased a school aged girl with the same machete down a Knoxville public street in broad daylight with the explanation that he "didn't like her looks." (See, e.g., IRICK 859). Mr. and Mrs. Ramsey Jeffers, along with their daughter, Cathy Jeffers, who was also living at the home, stated in affidavits that Billy was frequently "talking with the devil," "hearing voices," and "taking instructions from the devil." (IRICK 858-862). In her affidavit, Cathy Jeffers stated that the petitioner told her, "[t]he only person that tells me what to do is the voice." (IRICK 864). She also recalled an evening when petitioner was frantic that the police would enter the home and kill them with chainsaws. (Id.). This highly revelatory evidence had never been discovered by previous counsel nor had it ever been discussed, alluded to or even admitted by petitioner to the knowledge of *habeas* counsel.[15]

Expert review of later arising evidence:

Upon discovery of this later arising evidence, *habeas* counsel, Howell Clements, using his own funds (a total of $1,750.00), provided the Prigmore and three Jeffers affidavits to two

[15]Petitioner has, to date, denied and/or claimed no memory of the events discussed in the three Jeffers affidavits.

Chattanooga psychologists, Dr. Kenneth S. Nickerson and Dr. William F. Blackerby[16] for their review, along with some of the other records described above. Petitioner was of course in the custody of the Riverbend Maximum Security Institution in Nashville. Given that the funds were out of Mr. Clements' own pocket and were limited, there were insufficient funds available at that time to have either of the two physicians travel to Nashville to personally examine petitioner.

After reviewing the three Jeffers' affidavits and substantial portions of petitioner's mental health history, Dr. Blackerby opined in an affidavit dated September 14, 1999 that petitioner "suffered at the very least from a dissociative disorder, and probably was schizophrenic or intermittently psychotic." (IRICK 868-69). Dr. Nickerson concurred with Dr. Blackerby's conclusions in an affidavit signed November 17, 1999. (IRICK 875-76). They disputed the validity of the earlier evaluations and further opined that the petitioner should be reevaluated based on the newly discovered factual evidence as well as the advances of the mental health sciences relevant to patients such as the petitioner.

Armed with the affidavits of Dr. Blackerby and Dr. Nickerson, as well as the affidavits of Inez Prigmore and the three Jeffers family members, *habeas* counsel again requested for the second time that the federal district court provide funds to hire a mental health expert who could personally examine petitioner and administer the necessary tests to form an expert opinion on petitioner's sanity at the time of the offense and to stand trial. (IRICK 740). Again, the district court rejected their requests. (IRICK 744). Nevertheless, *habeas* counsel submitted all of the affidavits and other documents which were officially made part of the record pursuant to two district court orders

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[16] Mr. Clements paid Dr. Blackerby $1,000 and Dr. Nickerson $750.00.

expanding the record. (See IRICK beginning at 745, *et seq*; IRICK 847 (Order); IRICK 850 (Motion); and IRICK 857 (Order)).

Subsequent to the dismissal of the *habeas* petition and while the case was on appeal before the Sixth Circuit and United States Supreme Court, counsel contacted Dr. Clifton Tennison mentioned above as the psychologist who had performed the initial mental health screening before petitioner's trial. After reviewing the three Jeffers' affidavits, he stated in his affidavit that he could no longer have confidence in his earlier evaluation because he had not been provided all material evidence.[17] He states, in part:

> The information contained within the attached affidavits [the three Jeffers affidavits] raises a serious and troubling issue of whether Mr. Irick was psychotic on the date of the offense and at any previous and subsequent time. That is, this historical information would have been essential to a determination of a role of a severe mental illness - a mental disease or defect - in his ability to have appreciated the nature and wrongfulness of his behavior, and therefore, to the formation of an opinion with regard to support for the insanity defense. ...
>
> The fact that this information was not provided to me prior to my evaluation of Mr. Irick is very troubling to me as a medical professional and as a citizen with regard to issues of ethics, humanitarian concern, and clinical accuracy. I am concerned that in the light of this new evidence, my previous evaluation and the resulting opinion were incomplete and therefore not accurate...
>
> I further note that behavioral health science greatly advanced since 1985 and especially within the last five to ten years. While the basis screening and assessment procedures for forensic evaluations have remained consistent in principal, diagnostic criteria and categories have changed, scientific data and testing instruments have been improved and expanded, and the clinical handling of evidence and standards for opinions and testimony have changed. Because of such changes and advances, and especially in the light of this new information, it is my professional opinion to a reasonable degree of medical certainty that without further testing and evaluation, no

[17] *Habeas* counsel first contacted Dr. Tennison in August of 2009. However, Dr. Tennison did not complete his review of the materials and form an opinion until a few weeks prior to the completion of his affidavit.

> confidence should be placed in Mr. Irick's 1985 evaluations of competency to stand trial and mental condition at the time of the alleged offense.

(IRICK 896-99).

Initial Classification Psychological Summary from Riverbend Maximum Security Institute.

Since petitioner's conviction and sentence to death in 1986, the state is believed to have withheld evidence of petitioner's insanity. Since the dismissal of his *habeas* petition by the Sixth Circuit Court of Appeals, *habeas* counsel have been taking steps to prepare for the next round of state or federal proceedings. One of those steps was to investigate whether petitioner is currently competent to be executed. In performing that investigation, counsel sought an update of all medical records from Riverbend Maximum Security Institute where petitioner has been incarcerated since his sentence of death. *Habeas* counsel had already received Riverbend records from previous counsel which included, at least, all Riverbend records prior to October 6, 1988, when James Varner, one of Irick's two original trial attorneys, requested medical records from Riverbend. (See Affidavits of Mr. Varner and Mr. Miller with Attachments, IRICK 877-884). These exhibits reflect that on or about October 10, 1988, Riverbend supplied Mr. Varner with allegedly all the medical records in their possession. Id.

After requesting all records from Riverbend on October 29, 2009, *habeas* counsel subsequently received medical records from Riverbend, under a cover letter dated December 16, 2009. Among those records was a document entitled Initial Classification Psychological Summary performed by staff of the Riverbend facility and dated December 12, 1986 - a little more than a month after being sentenced to death. That summary stated, in part:

> The Peabody Picture Vocabulary Test indicates that the subject is functioning within the "borderline" range of intellectual abilities. Inmate Irick scored at the less than

> third grade level in the reading segment and at the beginning of the fifth grade level in the arithmetic segment of the Revised WRAT. This inmate's Carlson Psychological Survey Profile did not fit any of the type categories and has not yet been identified. He did, however, score at very high level in the thought disturbance and self-depreciation scales. The thought disturbance scale reflects "disorganization of thinking, confusion, perceptual distortions and hallucinations, and feeling of unreality. These traits may manifest themselves in unusual affect, including anxiety. High scorers on this scale are indicating unusual problems in dealing with reality because they cannot organize themselves or the work around them. They are emotionally upset, and may be moody, hypochondriacal, and miserable." The self-depreciation scale reflects "the degree to which the person degrades himself and his actions. The high scorer generally does not value himself and refuses credit for any accomplishment. This may be a characteristic personality trait for him or it may be a mood state, reflecting despondency, depression, and possible suicidal tendencies."

(IRICK 278).

After receiving the summary, *habeas* counsel reviewed the records provided to them by previous counsel and, after diligent search, could not find where this document had previously been provided. Subsequently, *habeas* counsel provided the summary to James Varner, Kenneth Miller and Douglas Trant (post-conviction counsel), none of whom remembered ever seeing the document, and with all stating within their attached affidavits that they were confident they would have remembered its substance since the contents support a finding that petitioner was incompetent at all relevant times. (IRICK 877, 878, 881-82, 885-86). The summary was also provided to the Attorney General's office, and while the AG's office has not conceded that the document was withheld, neither has it taken a contrary position.

VI.
Medical Findings and Diagnoses by Dr. Peter Brown

Beginning in late 2009, *habeas* counsel approached Dr. Peter Brown for further assistance in evaluating the petitioner. Again, using his own funds, Attorney Howell Clements arranged for

the petitioner to be examined by Dr. Peter Brown and Dr. Malcolm Spica.[18] (This was the first time since January of 1990 that petitioner had been seen and examined by a mental health expert.)

In November and December of 2009, during the pendency of petitioner's federal *habeas* case, Dr. Malcom Spica administered numerous psychiatric tests to the petitioner. Subsequently, on December 7, 2009 and January 21, 2010, the petitioner was personally interviewed by Dr. Peter Brown. Based on his review of historical documents, the testing performed by Dr. Spica, and his own interviews, Dr. Brown prepared the report which begins at page IRICK 907.

Dr. Brown's report describes the petitioner as suffering from a severe mental disturbance with both genetic and environmental origins. Historical records indicate that the birth of the petitioner was troubled and that petitioner may have suffered from "cerebral anoxia" and early medical records report a concern with resulting "organic brain damage." (See Report of Dr. Brown, p. 25, IRICK 931). More recent information obtained by federal *habeas* counsel also demonstrates that petitioner's home was violent and unstable based on the eyewitness account of Inez Prigmore, a former neighbor. (Id. at pp. 5-6, IRICK 911-12).

Furthermore, there was a significant history of "chronic and severe psychiatric disorder" in petitioner's family, including his mother, who had a long history of psychiatric disturbances and treatment, as well as a cousin. (Petitioner also reported to Dr. Brown that his mother is a "practicing witch" who regularly uses spells and witchcraft directed against others. (Id. at p. 6, IRICK 912)). Since his arrest for the offense, petitioner's mother has been, at best, apathetic towards her son and his attorneys, when not openly hostile. He further reported that the petitioner was, at the time of the

[18]With no funds having been approved from the federal court, Dr. Spica was paid $5,400.00 out of Howell Clements' personal funds. Dr. Brown has, to date, not been paid anything.

offense, consuming marijuana and alcohol and that chronic use of these substances can worsen emotional and cognitive problems. "In particular, the combination may have combined to heighten paranoid thinking patterns." (Id. at p. 13, IRICK 919).

In personal interviews, petitioner described overarching government led conspiracies against him. He further expressed that he is "constantly endangered in prison" and worried that without sufficient diligence one could get stabbed in the back. Petitioner also believes that other individuals who might have helped him in the past had been bribed or intimidated. (Id. at p. 15, IRICK 921).

Petitioner denies guilt though he cannot provide an account of what happened. Petitioner states, "I can't say yea or nay about who did it...it is just not in me to do this. If I thought I had done this I would kill myself." (Id. at p. 16, IRICK 922). Dr. Brown found no evidence "whatsoever" of malingering or symptom exaggeration. (Id. at p.12, IRICK 918). Dr. Brown has provided the following diagnoses of petitioner's present mental state:

DIAGNOSES:

AXIS I:

a. Cognitive disorder NOS

b. Psychotic Disorder NOS, by history, rule out Schizophrenia, Paranoid Type

AXIS II:

Paranoid Personality Disorder

Schizoid Personality Disorder

AXIS III:

No diagnosis

AXIS IV:

Stressors (severely/prolonged): Post-Conviction 1st Degree Murder, Incarceration

AXIS V:

GAF = 48/48 (severe symptoms or impairments)

(Id. at p. 20, IRICK 926)

Dr. Brown found evidence of gross impairment of the executive function, in other words, the capacity to plan, premeditate, weigh out consequences and carry out plans. He states that the evidence of impairment in executive functioning was particularly evident with more complex tasks. (Id. at p. 12, IRICK 918). There were profound deficits in petitioner's verbal fluency and executive function. (Id. at p. 13, IRICK 919). Dr. Brown further explained:

> The deficits in verbal fluency and executive function are likely to interact in a vicious cycle during times of stress. His anxiety will mount as he is unable to formulate a plan or to organize his thinking in words. Coupled with his difficulties in restraining his behavior this will likely lead to worsening anxiety, bizarre thinking and impulsive behavior.
>
> His deficits are further complicated by marked paranoia and, possibly, intermittently florid psychotic symptoms. He is unable to maintain himself as is typical for many paranoid individuals through by avoiding all but the most perfunctory social contacts.
>
> This pattern appears to have been present since early childhood with documentation of a gross failure of formal social development both at home and at school, prolonged psychiatric hospitalizations, repeated school failure, premature discharge from the military, a prolonged period of time when he was a vagrant and his tenuous adaptation to present life through extreme isolation.

Id.

The deficits described above led Dr. Brown to conclude that the past and present test results are "in fact over estimates" of his cognitive abilities, explaining that petitioner's abilities in real life situations will be significantly worse than his performance on paper and pencil tests because "deficits

in integrating knowledge into actual thinking and behavior will be disproportionately compromised and complicated and emotionally stressful real-life situations." Id. Even so, he concludes that test results were approximately consistent with the emotional and social levels of a 7 - 9 year old child. Dr. Brown found that petitioner's severe impairments would have existed continuously from childhood and been present "both at the time of the offense and at the time of his trial and are present now." (Id. at p. 1, IRICK 907).

Dr. Brown also expressed the following opinion regarding petitioner's condition as reflected in circumstances at the time of the offense:

> The combination of impaired ability to control behavior, command hallucinations and related paranoid delusions constitutes one of the most severe psychiatric emergencies. In this case there is evidence that he reported on multiple occasions in the weeks prior to his arrest that his behavior was being controlled by the devil, that police were coming to kill him and that he had to take action to save himself. This coincided with a dramatic impairment in hygiene and self care. He was observed planning to attack or chasing other individuals with a knife. Chasing a total stranger down the street while screaming and brandishing a machete is not only consistent with other reported symptoms but clearly demonstrates a severe, acute incapacity to control behavior.

(Id. at p. 23, IRICK 929).

WHY PRIOR EVALUATIONS WERE WRONG:

Dr. Brown notes that the situation concerning petitioner is not one where the examiners "failed to connect the dots" but rather was a situation where several critical pieces of the puzzle were missing. (Id. at p. 19, IRICK 925). In characterizing the information provided by the three Jeffers family members, Dr. Brown states:

> In the final stages, several adults who lived with him [the Jeffers] reported evidence of the most severe and dangerous, psychotic symptoms: command hallucinations of violence accompanied by persecutory delusions.[19]

(Id. at p. 13, IRICK 919).

He predicts that had the previous examiners been provided the information found in the Jeffers and Inez Prigmore affidavits, they would have dramatically altered their conclusions and recommendations. In his opinion, they would have certainly recommended, "at a minimum," psychiatric hospitalization for close assessment and evaluation. (Id. at p. 20, IRICK 926). He further states:

> It is important to remember that rather than claiming a psychiatric illness, Mr. Irick consistently denied psychiatric disturbance. In the absence of the information from the Jeffers family, they [the previous examiners] were left with a hostile and unsympathetic individual who denied any significant psychiatric symptoms and evidently claimed to be unable to remember the events in question.

Id.

Finally, Dr. Brown notes that there have been advances in neuropsychological testing allowing for dramatically improved evaluation of executive functional capacities of individuals such as petitioner. (Id.)

CONCLUSIONS:

Concluding to a reasonable degree of medical certainty, Dr. Brown states, *in part*:

> Neuropsychological testing and developmental history indicate that the claimant has severe deficits in his capacity to premeditate, appreciate, make judgments or conform his behavior. It is more likely than not that these deficits have been present since childhood and have continued unchanged throughout his adult life. Test results are approximately consistent with those of a seven to nine year child. His severe

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[19]Dr. Brown further states, "Auditory hallucinations can take a variety of forms. The most potentially dangerous are 'command' sounds or voices that the patient believes cannot be resisted." (Id. at p. 22, IRICK 928).

impairments would have existed continuously from childhood and have been present both at the time of the offense and at the time of his trial and are present now.

(Id. at p. 1, IRICK 907).

DISCUSSION

I. Petitioner is presently incompetent to be executed.

An incompetent prisoner cannot be sentenced to death. Ford v. Wainwright, 477 U.S. 399 (1986); Panetti, 551 U.S. at 930; and Van Tran v. State, 6 S.W.3d 257 (Tenn. 1999). Once a prisoner seeking a stay of execution has made "a substantial threshold showing of insanity," the protection afforded by procedural due process includes a "fair hearing" in accord with fundamental fairness. Ford, 477 U.S. at 426. (Opinion concurring in part and concurring in judgment). Petitioner has met that threshold showing of insanity by his filings with this court. The basis for petitioner's incompetency/insanity is that in any competency evaluation it will be shown that petitioner lacks a rational understanding of the reasons for his execution. See Panetti, 551 U.S. at 959, where the court stated:

> We likewise find no support elsewhere in Ford, including in its discussions of the common law and the state standards, for the proposition that a prisoner is automatically foreclosed from demonstrating incompetency once a court has found he can identify the stated reason for his execution. A prisoner's awareness of the state's rationale for an execution is not the same as a rational understanding of it. Ford does not foreclose inquiry into the latter.

Petitioner has met the threshold showing by virtue of at least four categories of evidence. First, it is worth repeating the United States Supreme Court's admonition in Panetti:

> The beginning of doubt about competence in a case like petitioner's is not a misanthropic personality or an amoral character. It is a psychotic disorder.

As in Panetti, Dr. Brown has diagnosed the petitioner currently as psychotic and suffering from a severe cognitive disorder, Axis I, while also suffering from paranoid and schizoid personality disorders. (Report of Dr. Brown, p. 20, IRICK 926). Second, there is no dispute that petitioner has a long history of continuous and uninterrupted psychiatric problems[20], including childhood diagnoses of psychosis, beginning when petitioner was only eight years old (See above at pp. 15 and16), along with bizarre behavior such as drinking from toilets.[21] In fact, and as stated above, petitioner was routinely treated with Thorazine, an anti-psychotic medication, during his childhood. In the summer of 1972, when Billy was only thirteen years old and engaged in two bizarre incidents with his sister and girl in the Church of God dormitory, Eastern State staff concluded that Billy might be "really dangerous" and made the connection between his actions and the fact that he had been "taken off psychotropic drugs at children's home." (See above at p. 19).

Third, petitioner has a history of at least episodic hallucinations and delusions severely distorting his perceptions of reality. When Billy was eight years old, Ms. Nina Lunn, a clinical social worker at the Knoxville Mental Health Center, stated in a letter dated October 26, 1966 to Eastern State officials, in part, "[a]t times, he is definitely out of contact; there are comments of an hallucinatory quality." (See above at p. 16). At the time petitioner was evaluated for competency to stand trial, Dr. Tennison, while concluding that petitioner was competent, nevertheless, found that petitioner did "endorse vague auditory illusions or mis-perceptions described as hearing sounds or

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[20]Although present competency is at issue, petitioner's past medical records are relevant to that question, particularly to the extent that they demonstrate a chronic mental condition. Thompson v. Bell, 580 F.3d 423, 436 (6th Cir. 2009).

[21]See Exhibit 3, which is a copy of a Knoxville Police Department record, constituting handwritten notes taken from a conversation with petitioner's mother, Nancy Irick.

noises which bothered him and sometimes startled him..." (See above at pp. 11 and 12). Most vivid, however, are the recollections of the victim's family who lived with the petitioner for several weeks just prior to the offense in question where Billy was "talking with the devil," "hearing voices," and "taking instructions from the devil." Cathy Jeffers stated that the petitioner told her, "The only person that tells me what to do is the voice." (See above at p. 28). Subsequently, Riverbend staff, after administering to the petitioner a Peabody Picture Vocabulary Test in December 1986 reported, in part:

> He did, however, score at very high level in the thought disturbance and self-depreciation scales. The thought disturbance scale reflects "disorganization of thinking, confusion, perceptual distortions and hallucinations, and feeling of unreality.

Fourth, petitioner currently has no recollection of committing the offense or his association with it. With this lack of recollection/amnesia as to the event and with his lifelong history of psychosis and severe cognitive disorder, petitioner is incapable of rationally understanding the meaning and/or purpose for his execution and, therefore, is incompetent to be executed.

Petitioner states that his claim of incompetency is made in good faith, grounded in recent psychological testing and examinations as described above. However, petitioner has, to date, relied upon the personal funds of *habeas* counsel Howell Clements, and has yet to receive funding for psychiatric experts in regard to any issue, including his present competency. While the availability of counsel's personal funds limited the scope of Drs. Brown and Spica's examination and did not include a complete or, *per se*, competency evaluation; nevertheless, Dr. Brown's report, along with the other evidence of severe mental illness, presented to this court exceeds any threshold showing that petitioner is presently incompetent to be executed and supports his request for the appointment of experts.

Pursuant to this court's instructions in Van Tran, *supra*, petitioner states that the following physicians are willing and able to examine him for competency to be executed:

Dr. Peter Brown (*curriculum vitae* attached as Exhibit 1)
UNUM Provident
1 Fountain Square
Chattanooga, Tennessee 37402
423/294-8016 (phone)
423/785-2803 (fax)

Clinical services rate: $250.00/hr
Travel rate: $125.00

Dr. Malcolm Spica (*curriculum vitae* attached as Exhibit 2)
220 F. Sanders West Blvd.
Medical Office Bldg. 2
Suite 300
Knoxville, TN 37919
865/531-9088 (phone)
865/531-9089 (fax)

Clinical services rate: $270.00/hr
Travel rate: $135.00

Counsel has also attempted to contact Dr. Bessel van der Kolk to confirm whether or not he is available and willing to evaluate the petitioner. The petitioner would respectfully request that he be given additional time to make such a confirmation and supplement this position.

Dr. Bessel van der Kolk
The Trauma Center at JRI
1269 Beacon St.
Brookline, MA 02446
617/232-1303 (phone)

II. Petitioner's severe mental illness should preclude his execution.

A related basis for relief raised by petitioner is the uncontroverted evidence of his longstanding severe mental illness. Even the state's own mental health expert at trial, Dr. Clifton

Tennison, now doubts that petitioner was competent at the time of the offense or at his trial. Furthermore, Dr. Brown has found that his mental illness has existed since at least the first extant medical records, beginning at age six until the present. At least one psychological evaluation from Riverbend also confirms a high level of thought disturbance reflecting "disorganization of thinking, confusion, perceptual distortions, and hallucinations, and feeling of unreality." (See pp. 31-32 above.)

In 2001, the United States Supreme Court held that the Eighth Amendment's ban on excessive and cruel and unusual punishment prohibited execution of individuals who suffer from mental retardation. Atkins v. Virginia, 536 U.S. 304 (2002). The court found:

> A claim that punishment is excessive is judged not by the standards that prevailed in 1685 when Lord Jeffreys presided over the "Bloody Assizes" or when the Bill of Rights was adopted, but rather by those that currently prevail. As Chief Justice Warren explained in his opinion in Trop v. Dulles [citation omitted]: "The basic concept underlying the Eighth Amendment is nothing less than the dignity of man...the Amendment must draw its meaning from the evolving standards of decency that marked the progress of a maturing society." [citation omitted] Id. at 311 -312.

The court concluded that mentally retarded persons frequently know the difference between right and wrong, but because of their impairments, they have diminished capacities "to understand and process information, to communicate, to abstract from mistakes and learn from experience, to engage in logical reasoning, to control impulses and to understand the reaction of others." Id. at 318. Based on these findings, the court concluded that mentally retarded persons are not exempt from criminal sanctions; however, their mental states do diminish their personal culpability. Id. Three years after Atkins, the Supreme Court banned execution of juveniles in Roper v. Simmons, 543 U.S. 551 (2005). Reasoning much as it had in Atkins, the court held that executing juveniles violated the ban against cruel and unusual punishment.

Subsequent to Atkins and Roper, a number of courts and commentators have found that the same rationale should apply with equal force to those individuals who suffer from a severe mental illness. *See*, e.g., State v. Ketterer, 855 N.E.2d 48 (2006); (Lundberg Stratton, J., concurring "Deterrence is of little value as a rationale for executing offenders with severe mental illness when they have diminished impulse control and planning abilities."); People v. Danks, 82 P.3d 1249 (2004); Bryan v. Mullin, 335 F.3d 1207 (10th Cir. 2003); State v. Nelson, 803 A.2d 1 (2002); Corcoran v. State, 774 N.E.2d 495, 502-503 (2002).

In this vein, petitioner argues that there is no substantive difference between the execution of the mentally retarded or juveniles and the execution of people with mental illness such as himself who suffers from delusions, command hallucinations, and disoriented thought processes. Dr. Brown has found petitioner's functional capacity to be that of a seven to nine year old child and has further found that petitioner has diminished capacities to understand and process information, to communicate, to abstract from mistakes and learn from mistakes, to engage in logical reasoning, to control impulses, and to understand the reaction of others, not unlike those defendants found to be "mentally retarded" and protected under Atkins and the Eighth Amendment. Petitioner submits that his psychological state, moral culpability and legal position are consistent with and supported by Atkins and Roper and constitutionally prohibit his execution.

RELIEF REQUESTED

Based on the foregoing, petitioner prays(1) that this court consider his pleadings and exhibits and find that he has met the threshold showing for incompetency to be executed; (2) that experts be appointed at the expense of the state; (3) that petitioner be provided funds to perform brain imaging tests at Vanderbilt Medical Center; (4) that the appointed experts be given at least sixty (60) days

in which to conduct tests, analyze the results and prepare a report for consideration by this court as to petitioner's competency; (5) that subsequent to receiving a report from the appointed experts, the court set a hearing date to take evidence and argument from counsel as to the competency issue; and (6) for any further general relief to which petitioner may be entitled.

SPEARS, MOORE, REBMAN & WILLIAMS

By: _____

C. Eugene Shiles, Jr., BPR #011678
P. O. Box 1749
Chattanooga, TN 37401-1749
(423) 756-7000

_____

Howell G. Clements, BPR# 001674
1010 Market Street, Suite 404
Chattanooga, TN 37402
(423) 757-5003

Attorneys for Petitioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of this pleading has been served on counsel for all parties at interest in this cause addressed as follows:

Randall Eugene Nichols
District Attorney General
400 Main St. Suite 168
P.O. Box 1468
Knoxville, TN 37901-1468

Via Fax: 615/532-7791
James E. Gaylord
Assistant Attorney General
P.O. Box 20207
Nashville, TN 37202

This 21 day of July, 2010.

SPEARS, MOORE, REBMAN & WILLIAMS

By: _____

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CURRICULUM VITAE

PERSONAL

Name:	Peter I. Brown, M.D., F.R.C.P. (C)
Address:	UnumProvident 1 Fountain Square Chattanooga, TN 37402 Telephone: (423) 755-1263 FAX: (423) 755-1117 e-mail: peterbrown@UnumProvident.com
Date of Birth:	February 10, 1951
Place of Birth:	Cornwall, Ontario, Canada
Citizenship:	Canadian
Immigration Status:	Resident Alien, 1996 ("Alien of extraordinary ability": #AO45276508)
Medical Licenses:	Province of Ontario and State of Tennessee

ACADEMIC RECORD

1975	Degree: Doctor of Medicine, University of Western Ontario
1975 - 1979	University of Toronto, Faculty of Medicine Postgraduate Program in Psychiatry
1979	Passed Royal College Examinations in Psychiatry; Fellow of the Royal College Physicians and Surgeons of Canada

PREVIOUS POSITIONS

1979 - 1980	Lecturer in Psychiatry, McMaster University
1980 - 1986	Assistant Professor, Psychiatry, McMaster University Received tenure in 1985
1981 - 1986	Brain and Behaviour Programme, McMaster University
1979 - 1986	Staff Psychiatrist, Chedoke-McMaster Hospital Visiting Staff, St. Joseph's Hospital
1983 - 1986	Consultant Psychiatrist, Ontario Cancer Clinic, Hamilton Civic Hospitals
1986 - 1994	Head of Consultation-Liaison Service, Head of Research, and Staff Psychiatrist, Department of Psychiatry, Mount Sinai Hospital
1986- 1993	Assistant Professor, University of Toronto
1993 - 1994	promoted Associate Professor, University of Toronto
1994 - 1996	Private Practice, Toronto
1996 - 1998	Moccasin Bend Mental Health Institute, Chattanooga, TN, Acute Care, Forensic Service, Certified Forensic Evaluator for the State of TN, Continuing Education Coordinator

EXHIBIT 1

1997 – 2000	Private Practice - Psychiatric Group of Chattanooga, Chattanooga, TN. December, 1997 – June,2000 Consultant Psychiatrist, Memorial Hospital and April,1999-June,2000 Erlanger Medical Center Chattanooga, TN
1999 - 2000	Private Practice – Psychology Center, Chattanooga, TN Consultant, UnumProvident, Chattanooga, TN
7/2000-2/ 2002	Medical Director, UnumProvident, Chattanooga, TN
2/2002-present	Lead Medical Director, UnumProvident, Chattanooga, TN

PROFESSIONAL ORGANIZATIONS

1. American Academy of Psychiatry and Law, Member, Peer Review and Psychopharmacology Committees 1998-2003; Councilor for Tennessee, Southern Membership Group, 1998-2000
2. American Psychiatric Association
3. College of Physicians and Surgeons of Ontario
4. Royal College of Physicians and Surgeons of Canada
5. Ontario Medical Association
6. Canadian Medical Association
7. Association for the Advancement of Philosophy and Psychiatry
8. Past President, Ontario Society of Clinical Hypnosis, 1992-1993

REVIEWER

The Journal of the Canadian Medical Association
The Journal of the Canadian Psychiatric Association
The Canadian Psychiatric Research Foundation
Clarke Foundation, Clarke Institute of Psychiatry
Ontario Mental Health Foundation
Psychological Perspectives
OSCH Newsletter
Pacifica Graduate Institute
New England Journal of Medicine
Journal of Clinical Psychiatry
Journal American Academy Psychiatry and Law
American Journal of Forensic Psychiatry

ACADEMIC AWARDS AND PRIZES

Research Day Prize - awarded at the Annual Research Day, University of Toronto, Department of Psychiatry, September, 1978 for a paper entitled: "Neuroendocrine and Pharmacologic Predictors of Antidepressant Response."

Runner-up - Annual Essay Contest Canadian Doctor, 1980: "On Being of Two Minds: The Structure of Scientific Evolution."

Tenth International Congress Commemorative Prize awarded by the Stanley Kushnir Memorial Foundation and the Ontario Society of Clinical Hypnosis for a paper entitled: "Oral Poetry" - December, 1989.

ACADEMIC PRESENTATIONS

1. The Interrater Reliability of the Nurses' Observation Scale, Presented at the Annual Research Day, Department of Psychiatry, University of Toronto, Clarke Institute of Psychiatry, Toronto, Ontario, September, 1977, P. Brown, P. Brawley, W. Lancee and R. Allon.

2. Neuroendocrine and Pharmacologic Predictors of Antidepressant Response, Presented at the Annual Research Day, University of Toronto, Department of Psychiatry, Clarke Institute of Psychiatry, Toronto General hospital, Toronto, Ontario, September, 1978, P. Brown and P. Brawley.

3. Methylphenidate Mood Response and the Dexamethasone Suppression Test, Presented at the Annual Meeting of the American Psychiatric Association, Chicago, May, 1979, Abstract No. 161, P. Brown and P. Brawley.

4. Neuroendocrine Response to Apomorphine in Unmedicated Schizophrenic Patients, Third Annual Meeting of the Canadian College of Neuropsychopharmacology, Edmonton, May, 1980, D. MacCrimmon, J. Cleghorn, G. Brown, M.H. Blackall and P. Brown.

5. GH Dose Response to Apomorphine in Schizophrenic and Control Subjects, Psychoneuroendocrinology Symposium, Hamilton, May 1981, Poster Session, J. Cleghorn, G. Brown, P. Brown, and R. Kaplan.

6. Relapse in Schizophrenia: Growth Hormone Responses (abstract), Presented at the American Psychiatric Association, 135th Annual Meeting, New Research Abstracts NR4, 1982, J.M. Cleghorn, G.M. Brown, P.J. Brown, R.D. Kaplan, S.W. Dermer, D.J. MacCrimmon and J. Mitton.

7. Growth Hormone Responses to Apomorphine in Schizophrenia: Dose Response Curves (abstract), Society for Biological Psychiatry Annual Meeting, Toronto, 1982, J.M. Cleghorn, G.M. Brown, P.J. Brown, R.D. Kaplan and J. Mitton.

8. Clinical Assessment of Depression, In Symposium: Affective Disorders: Current Research Methodologies, Presented at the Canadian Psychiatric Association Annual Meeting, Montreal, Quebec, 1982, P. Brown, Chairman, with R. Prudo, M. Steiner and G.M. Brown.

9. Growth Hormone Responses to Apomorphine in Schizophrenia, Presented at the Ontario Psychiatric Association Annual Meeting, Toronto, 1982, J.M. Cleghorn, G.M. Brown, P. Brown, R.D. Kaplan and J. Mitton.

10. The McGuffin in Psychotherapy: A Discussion of Presented Papers, The Hincks Memorial Lectures, McMaster University, Hamilton, Ontario, May 1983, P. Brown.

11. Circadian Rhythms in Chronic Insomnia, Poster Session, Annual Meeting of the Society for Sleep Research, Toronto, Ontario, May 1984. J. McFarlane, G. Brown, J. Cleghorn, S. Garnett, G. Brown, R. Kaplan, P. Brown and J. Mitton.

12. Positron Emission Tomography: Schizophrenia and Order Effect, Abstract No. 60, Annual Meeting, Canadian Psychiatric Association, October, 1984, Banff, Alberta, J. Cleghorn, S. Garnett, G. Brown, R. Kaplan, P. Brown and J. Mitton.

13. Longitudinal Patterns of Schizophrenia Patients, World Congress of Biological Psychiatry, September, 1985, Philadelphia PA., Abstract No. 231.5, J.M. Cleghorn, P.J. Brown, G.M. Brown, R. Kaplan, H. Szechtman and J. Mitton.

14. Oral Poetry: The Work of Milton Erikson from the Neurobiologic Perspective, Presented at the Annual Joint Meeting of the International Society of Hypnosis and Family Therapy and the Italian Society of Clinical Hypnosis, Abstract 129, October 17, 1995, Rome, Italy, P. Brown.

15. Neuropsychological Characteristics Associated with Absent Hypofrontality and Regional Shifts of Glucose Metabolism in Acute, Untreated Schizophrenics, R. Kaplan, J.M. Cleghorn, S. Garnett, G.M. Brown, H. Szechtman, P.J. Brown, and J. Mitton, Annual Meeting, International Neuropsychological Society, Denver, 1986.

16. Psychosocial Issues for Oncology Patients, Panel Discussion, Annual Meting of Canadian Society of Oncology Nurses, Hamilton, Ontario, October 1987.

17. Ethical Considerations in HIV Infection, Panel Discussion, AIDS and Psychiatry, An Interdisciplinary Conference, Mount Sinai Hospital Toronto, Ont. March 1988.

18. The Everyday Trance, P. Brown, Poster Presentation 2949, Viii World Congress of Psychiatry, Athens, Greece, October 5-12, 1989

19. Behavioural Management of Anticipatory Nausea and Vomiting, P. Brown, Poster Presentation, Controversies in the Etiology, Detection and Treatment of Early Breast Cancer, Meeting of the Breast Cancer Site Group, Oncology Coordinating Council, University of Toronto, April 5-6, 1990.

20. Research Frontiers in the Evolution of Psychotherapy, E. Rossi and P. Brown, Symposium, The Evolution of Psychotherapy, Anaheim, CA, December 11-16, 1990.

21. A Review of Ultradian Rhythms of Cerebral Function and Hypnosis, P. Brown, Annual Scientific Meeting, American Society of Clinical Hypnosis, St. Louis, MO, April 14-18, 1991.

22. Weight Control in Early Breast Cancer: Pilot Testing of Psychological Questionnaires, P. Goodwin, L. DelGuidice, K. Pritchard, P. Brown, Controversies in the Etiology, Detection and Treatment of Early Breast Cancer: 1992, Toronto, Ontario, April 2-3, 1992.

23. Towards a New Research Paradigm: Applications of the Ultradian Model, P. Brown, American Society of Clinical Hypnosis, Las Vegas, NV, April 509, 1992.

24. Symposium: Weight Control in Early Stage Breast Cancer, Chairman: Peter Brown, M.D. with P. Goodwin and M. Elliott. World Congress of Cognitive Therapy, Toronto, June 17-21, 1992.

25. A Multi-Centre Randomized Trial of Group Psychosocial Support in Metastatic Breast Cancer: Pilot Results, P. Brown, P. Goodwin, K. Pritchard, International Congress of Psychosocial Oncology, Beaune, France, October 12-14, 1992.

26. Initial Weight and Weight Gain in Early Stage Breast Cancer: Relationship to Psychological Factors and Eating Behaviour, P. Goodwin, L. DelGuidice, K. Pritchard, M. Elliott, P. Brown, International Contress of Psychosocial Oncology, Beaune, France, October 12-14, 1992.

27. Psychobiological Research and the Ultradian Model, P. Brown, The Fifth International Congress on Eriksonian Approaches to Hypnosis and Psychotherapy, Phoenix, AZ, December 1-6, 1992.

28. The BEST Randomized Trial of Group Psychosocial Support in Metastatic Breast Cancer: Pilot Results, P. Brown, K.I. Pritchard, J. Koopmans, H.M. Chochinov, M. Navarro, G. Linn, S. Steggles, A Bellissimo, P.J. Goodwin, The International Association for Breast Cancer Research, Banff, Alberta, April 25-28, 1993.

29. Development of a Weight Management Program in Early Stage Breast Cancer, P. Brown, K.I. Pritchard, P.J. Goodwin, The International Association for Breast Cancer Research , Banff, Alberta, April 25-28, 1993.

30. Meta-analysis of the Prognostic Effect of Initial Body Size in Primary Breast Cancer, P. J. Goodwin, C. Quigley, S. Goel, P. Brown. The International Association for Breast Cancer Research, Banff, Alberta, April 25028, 1993.

31. Body Size is a Significant Predictor of Outcome in Axillary Node Negative Breast Cancer in an Ontario Clinical Oncology Group (OCOG) Study, P.J. Goodwin, P. Skingley, R.M. Clark, R. Wilkinson, M. Lipa, M.N. Levine, P. Brown. The International Association for Breast Cancer Research, Banff, Alberta, April 25-28, 1993.

32. Peer Review of Expert Psychiatric Testimony: Developing Ethical and Scientific Standards, P. Brown, 16th Annual Symposium, American College of Forensic Psychiatry, San Francisco, CA, April 23-26, 1998

33. Ethical & Scientific Standards for Psychiatric Expert Testimony in Sexual Harassment Cases, P. Brown, 17th Annual Symposium, American College of Forensic Psychiatry, Santa Fe, NM, April 22-25, 1999.

34. Mock Trial, participant expert witness, 17th Annual Symposium, American College of Forensic Psychiatry, Santa Fe, NM, April 22-25, 1999

35. Scientific and Ethical Standards for Independent Psychiatric Examinations, P. Brown, Panel presentation: "IME's and Disability Insurance" Private , Annual Meeting, American Academy of Psychiatry and Law, Baltimore, MD, Oct13-17,1999

36. Violence Risk Assessment of the Psychotic Patient, P. Brown, 18th Annual Symposium, American College of Forensic Psychiatry, Newport Beach, CA, March 30-April 2,2000

37. Evaluating Current Impairment and Risk of Relapse in the Chemically Dependent Anaesthesiologist, P. Brown, Workshop: "IME's and Private Disability Insurance", Annual Meeting, AAPL, Vancouver, B.C.,Oct 19-22, 2000

38. Evaluating Study Design for Antiandrogen Treatment P. Brown, Workshop: "Antiandrogen Treatment of Sexual Offenders, presentation of the Psychopharmacology Committee, Annual Meeting, AAPL, Vancouver, B.C., Oct 19-22, 2000
39. Evaluating Guideline Utility for Treatment Decisions for Patients with Long-term Violence Risk, P. Brown, Workshop: The Psychopharmacology of Violence, presentation of the Psychopharmacology Committee, Annual Meeting, AAPL, Boston, MA, Oct.25-28, 2001
40. The Fungible Center: Cognitive Science and the Potential and Limits of Moderation, Association for the Advancement of Philosophy & Psychiatry, 20th Annual Meeting, Washington, DC, May 3 & 4, 2008
41. The Experience of Freedom: Cognitive Science Models, International Network of Philosophy and Psychiatry, 11th International Meeting for Philosophy and Mental Health, Dallas, Texas, October 6-8, 2008
42. I am So the Boss of You: Narrative, Attention and the Development of Self-Regulation Association for the Advancement of Philosophy & Psychiatry, 21th Annual Meeting, San Francisco,CA, May 16&17,2009

INVITED LECTURES

1. The Neurobiology of Emotion, American Institute for Medication Education, Emotional Development in Adult Life, Honolulu, HA, December, 1983.

2. Current Concepts in Depression: Sleep Deprivation, Teleconference Ontario, Continuing Medical Education, Hamilton, Ontario, October, 1983.

3. The Neurobiology of Anxiety and Attachment, Guest Speaker Series, Neuroscience Postgraduate Students Programme, McMaster University, Hamilton, Ontario, November, 1983.

4. Anxiolytic Drugs, Woodstock Medical Society, Woodstock General Hospital, February, 1984, Woodstock, Ontario.

5. Conceptual Changes in the Neurosciences, Department of Psychiatry, University of Texas Medical Branch, Galveston, Texas, June, 1984.

6. The Biology of Hypnosis, Department of Psychiatry, University of Western Ontario, London, Ontario, November, 1985.

7. The Use of Hypnosis in Treating Medical Disorders, North York General Hospital, Toronto, Ontario, January 25, 1991.

8. Psychosocial Issues in the Treatment of Breast Cancer, A Symposium on Breast Diseases, OCTRF, Ottawa, Ontario, October 28-29, 1993.

9. Using Metaphor in Psychotherapy and Hypnotherapy, a Workshop at The Annual Meeting of the Society of Clinical and Experimental Hypnosis, San Antonio, TX, October, 1995.

10. Antipsychotic Medication, Chattanooga Psychological Association, Chattanooga, TN, September, 1997.

11. Coronary Artery Disease and Depression, Combined Meeting of Chattanooga Psychological and Chattanooga Psychiatric Associations, Chattanooga, TN, January, 1998.

12. Legal Liability Issues in Psychopharmacology, Decatur Mental Health Center, Decatur, AL, March, 1998.

13. Depression as a Risk Factor in Coronary Artery Disease, Grand Rounds, Chattanooga Unit University of Tennessee Memphis School of Medicine, Chattanooga, TN, September 17, 1998.

14. Violence in the Workplace and EAP, 7th Annual THRC Conference, Chattanooga, TN, September 15-17, 1999.

15. Integrated Treatment of Smoking Cessation, Meeting, Chattanooga Psychological Association, Chattanooga, TN, October 28, 1999.

16. Ethical Issues in Utilization Review, Disability Assessment and Case Management, P. Brown and J Connor JD, Seminar "Ethics and Risk Management", The Mental Health Association, Chattanooga TN, Oct. 4, 2001

17. Potential Legal Consequences of Psychiatric Disability Evaluations, Panel Discussion, Southern California Chapter of the AAPL, Pasadena, CA, Jan. 19, 2002

18. Psychiatric Disability Evaluations, The New York Academy of Medicine and the Tri-State Chapter of the AAPL, in: 'New Applications Of Forensic Psychiatry: The Workplace', New York Academy of Medicine, New York, NY, Jan. 26, 2002

PEER REVIEWED PUBLICATIONS

1. A simple method of monitoring behaviour change in the ward. Research Communications in Psychology, Psychiatry and Behaviour, 1978. P. Brawley, W. Lancee, R. Allon and P. Brown.

2. The neuroendocrinology of schizophrenia. International Journal of Mental Health 9: 108-138, 1981. P.J. Brown, J.M. Cleghorn, G.M. Brown and M.H. Blackall.

3. On Being of Two Minds: The structure of Scientific Evolution. McGill Journal of Education, pp. 13-18, Winter, Vol. 17, 1982, P. Brown.

4. Methylphenidate mood response and dexamethasone suppression in primary depression. American Journal of Psychiatry, 140: 990-993, August, 1983, P. Brown and P. Brawley.

5. Growth hormone responses to appomorphine HCI in schizophrenic patients on drug holidays and at relapse. British Journal of Psychiatry, 142: 482-488, 1983. J.M. Cleghorn, G.M. Brown, R.D. Kaplan, P. Brown, S.W. Dermer, D.J. MacCrimmon and J. Mitton.

6. Longitudinal instability of hormone responses in schizophrenia. Progress in Neuropsychopharmacology and Biological Psychiatry, Vol. 7, pp. 545-5491983. J.M. Cleghorn, G.M. Brown, P. Brown, R.D. Kaplan and J. Mitton.

7. Growth Hormone Responses to graded doses of apomorphine HCI in schizophrenia. Biological Psychiatry 18, 8:875-885, 1983. J.M. Cleghorn, G.M. Brown, P. Brown, R. Kaplan and J. Mitton.

8. Clinical and biological correlates of sleep deprivation in depression. Canadian Psychiatric Association Journal 19,3: 347-352, 1984. R.T. Joffe and P. Brown.

9. Neuroendocrine predictors of the antidepressant effect of sleep deprivation. Biological Psychiatry, 1984. R. Joffe, P. Brown, A. Bienenstock and J. Mitton.

10. Longitudinal growth hormone studies in schizophrenia. Psychiatry Research 24: 123-136, 1988. G.M. Brown, J.M. Cleghorn, R.D. Kaplan, H. Szechtman, P. Brown, B. Szechtman and J. Mitton.

11. Seasonal variations in prolactin levels in schizophrenia. Psychiatry Research 25: 157-162, 1988. P. Brown, J.M. Cleghorn, G.M. Brown, R.D. Kaplan, J. Mitton, H. Szechtman and B. Szechtman.

12. Review: Drug induced akathisia in medical and surgical patients. International Journal of Psychiatry in Medicine 18, 1: 1-15, 1988. P. Brown.

13. Utradian rhythms of cerebral function and hypnosis. Contemporary Hypnosis, Vol. 8, No. 1: 17-24, 1991. P. Brown.

14. Oral Poetry: Towards an integrative framework for Erikson's clinical approaches. Eriksonian Monographs, No. 8: 66-94, 1991. P. Brown.

BOOKS AND CHAPTERS

1. Hormonal markers in schizophrenia and depression. In: P. Hrdina and L. Singhal (Eds), Neuroendocrine Regulation and Altered Behaviour, pp. 339-362. Elsevier Biomedical Press, North Holland, 1981. G.M. Brown, J.M. Cleghorn, P. Ettigi and P. Brown.

2. A critical appraisal of neuroendocrine approaches to psychiatric disorder. In: E. Mueller and R.M. MacLeod (Eds), Neuroendocrine Perspectives, Elsevier North Holland, 1983. G.M. Brown, P.E. Garfinkel, E. Gorf, P. Grof, J.M. Cleghorn and P. Brown.

3. Growth hormone response in schizophrenia. In: Integrative Neurohumoral Mechanisms, Edited by E. Endroczi. Akadenial Kiado, Budapest, 1983. G.M. Brown, J.M. Cleghorn, H.B. Keward, P. Brown and R. Eastwood.

4. Adjunct Therapies, P. Brown , Chap 8, pp141-159, in Seeman, M.V., and Greben, S.E. (Eds.), Office Treatment of Schizophrenia, Washington, D.C.: American Psychiatric Press, 1990.

5. The Hypnotic Brain: Hypnotherapy and Social Communication. New Haven, CT: Yale University Press, 1991. P. Brown ISBN: 0-300-05001-1.

6. Metaphor and Hypnosis, P. Brown, Chapter 14,pp 291-308, in: Handbook of Clinical Hypnosis, Edited by S. Lynn, J. Rhue and I. Kirsh. American Psychological Association Press, 1993.

7. Towards a Psychobiological Model for Dissociation and Post-Traumatic Stress Disorder. Chapter 5 in: Dissociation: Clinical and Theoretical Perspectives. Edited by S. Lynn and J. Rhue. Guilford Press, 1994. Pp. 94-122.

8. DSM IV-TR, P. Brown, Chapter 4, in: Mental and Emotional Injuries in Employment Litigation, ed: J. McDonald, Jr. and F. Kulick, BNA Books, 2002

NON-PEER REVIEWED PUBLICATIONS

1. On Being of Two Minds: The Structure of Scientific Evolution. Canadian Doctor 47 (1): 31-40, January, 1981. P. Brown.

BOOK REVIEWS

1. Behaviour Modification: Principles and Clinical Applications. W.S. Agras. For The Journal of the Canadian Psychiatric Association, June, 1981.

2. Emotions in Health and Illness. Edited by L. Temoshok, Journal of the Canadian Psychiatric Association, June, 1986.

3. Biological Rhythms and Behaviour. Edited by J. Medlewicz. Journal of the Canadian Psychiatric Association, March, 1987.

4. Exploring the World of Lucid Dreaming. Edited by S. Laberge. Psychological Perspectives, pp. 179-181, Spring/Summer, 1991.

5. Hypnosis. Edited by N. Spanos. OSCH News, December, 1991.

6. Handbook of Psycho-Oncology. Edited by J. Holland, Journal of the Canadian Psychiatric Association, May, 1992.

7. The Psychological Treatment of Patients with Cancer. By S. Greer and S. Moorey. Journal of the Canadian Psychiatric Association, March, 1992.

8. Theories of Hypnosis: Current Models and Perspectives. Edited by S. Lynn and S. Rhue. OSCH News, , 1992.

9. Changing Expectations: A Key to Effective Psychotherapy. Edited by I. Kirsch. OSCH News, June, 1992.

10. Ultradian Rhythms and Life Processes. Edited by D. Lloyd and E. Rossi, Psychological Perspectives, FallWinter, 1993.

11. Critical Issues in the Treatment of Schizophrenia. Edited by N. Brumello, G. Racagni, S. Langer and J. Mendliwicz, Journal of Clinical Psychiatry, 58:3, March 1997.

12. The New Pharmacotherapy of Schizophrenia. Edited by S. Breier, Journal of Clinical Psychiatry, 58:5, May, 1997.

13.Principles and Practice of Military Forensic Psychiatry. Journal of Clinical Psychiatry, 58:11, pg. 500, November, 1997.

Updated 01/27/09

D. Malcolm Spica, Ph.D.

Curriculum Vitae

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Tennessee Health Service Provider License #2558
Michigan Clinical Psychologist License #6301008473

Education

1986	Bachelor of Science Degree with Distinction	Major: Psychology University of Michigan Ann Arbor, Michigan
1991	Master of Arts Thesis Title: "Detecting Late-Life Forgetfulness Using the Brief SDAT Battery."	Clinical Psychology Michigan State University East Lansing, Michigan
1994	Doctor of Philosophy Dissertation Title: "Use of Executive Control in Accessing Episodic and Semantic Memory in Patients with Alzheimer's Dementia."	Clinical Psychology Michigan State University East Lansing, Michigan

Current Positions

Jan. 2007 - 2009 — Vice President - East Tennessee - Tennessee Psychological Association, Represent East Tennessee as a voting board member of the Tennessee Psychological Association to advance psychology on the national and state level, as well as to enhance the effectiveness of members as scientists and practitioners in the practice of psychology.

Jan. 2005 - Present — Medical Consultant - Neuropsychology – UnumProvident Insurance Corporation, Chattanooga TN. Conduct reviews of medical records to determine neurobehavioral status of claimants in complex cases of long-term disability. Evaluate forensic evidence adduced in medico-legal cases for disability determinations/settlements.

June 2004 - Present — Chief Neuropsychologist – Behavioral Medicine Institute, P.C., Knoxville Tennessee Examine outpatients with a variety of neurological and psychiatric conditions, and produce diagnostic reports of their neuropsychological functioning. Provide psychotherapy treatment to adults and adolescents utilizing a variety of approaches, including goal-directed time limited interventions.

Nov. 1998 - Chief Psychologist - Montcalm Center for Behavioral Health, Stanton Michigan

EXHIBIT 2

Present	Supervise Masters Level psychologists in the treatment of individuals and families with psychological disorders and generalized problems of living. Provide psychological and neuropsychological examinations to patients with difficult diagnostic presentations.
Jan. 2004 - Present	Consulting Neuropsychologist – Catholic Diocese of Lansing, Michigan Conduct screening examinations of seminary candidates to determine character and fitness to serve. Make recommendation about formation and possible follow-up treatment.
Nov. 2001 - Present	Consulting Neuropsychologist – Michigan Rehabilitation Services, Lansing Michigan Conduct examinations of participates in a variety of rehabilitation programs funded by the state of Michigan. Determine the participants' current and potential levels of functioning.
Dec. 1997 - Present	Consulting Neuropsychologist – Sacred Heart Mercy Health Care Center, Alma Michigan Conduct examinations of clergy, seminarians, and nuns referred to the Scared Heart Health Care for treatment or evaluation. Psychodiagnostic procedures assess a broad range of conditions including paraphilias, personality disorders, and cognitive dysfunction.
April 1995 - Present	Lecturer Human Medicine: Disorders of Development & Behavior - College Of Human Medicine, Michigan State University, East Lansing Michigan. Provide lectures to second year medical students on topics including learning disorders and attentional disorders. Also provided original manuscript for course content and authored examination items for course (Human Medicine 512 Disorders of Development & Behavior Domain)
Sept. 2001- Present	Director/Owner - Clinical Neuropsychologist – Spica Psychology, PLLC, Knoxville, Tennessee Examine outpatients with a variety of neurological and psychiatric conditions, and produce diagnostic reports of their neuropsychological functioning. Provide psychotherapy treatment to adults and adolescents utilizing a variety of approaches, including goal-directed time limited interventions.
Sept. 1993- 2001	Director - Clinical Neuropsychologist - Neurobehavioral Associates, P.C., Okemos, Michigan Examine outpatients with a variety of neurological and psychiatric conditions, and produce diagnostic reports of their neuropsychological functioning. Provide psychotherapy treatment to adults and adolescents utilizing a variety of approaches, including goal-directed time limited interventions. Organize a comprehensive data set gathered from patients with cortical dementia.
Nov. 2000 - 2001	Pediatric Neuropsychology Supervisor – Department of Psychology, College of Social Science, Michigan State University, East Lansing Michigan. Supervise graduate students in the clinical psychology program during their clinical assessments of children with a wide variety of neurocognitive disorders.
Spring 2000	Adjunct Assistant Professor – Department of Psychology, College of Social Science, Michigan State University, East Lansing Michigan. Instructor for Behavior Disorders Course. The course covers diagnostic and treatment issues for the broad range of neurobehavioral syndromes; course designed for doctoral students in their first year of training.
Fall 1998- 2004	Preceptor - Problem Based Learning Program – College Of Human Medicine, Michigan State University, East Lansing Michigan. Facilitate the Problem Based Learning process for second year medical students as they attempt to diagnose and treat hypothetical clinical cases presented to them in step-wise fashion. Their training requires reviewing principles of scientific method, logical/diagnostic reasoning, and resource utilization as well as group dynamics.
April 1995- 2004	Adjunct Assistant Professor - Department of Psychiatry, Michigan State University, East Lansing Michigan.

Teach the weekly Neuropsychiatry Seminar Series to medical residents in their third year of psychiatry residency. The seminar covers diagnostic and treatment issues for the broad range of neurobehavioral syndromes psychiatrists encounter in clinical work.

CLINICAL EXPERIENCE:

Sept. 1992- Aug. 1993 — Neuropsychology Intern - Long Island Jewish Medical Center-Hillside Hospital, Glen Oaks, New York.
Conducted neuropsychological assessments of inpatients and outpatients with a variety of neurological and psychiatric conditions and produced diagnostic reports of their functioning. Treated persons through individual psychotherapy using a variety of insight-oriented approaches (psychodynamic and cognitive-behavioral). Training also included participation in the Comprehensive Epilepsy Evaluation Clinic, supervised assessments in the Pediatric Neuropsychology Service, and weekly individual sessions of cognitive rehabilitation for patients with schizophrenia. The site complies with all APA requirement guidelines including Division 40 guidelines for clinical neuropsychology pre-doctoral internship.

June 1991- Sept 1992 — Assessment Liaison - Michigan State University Learning Disabilities Program; Office of Programs for Handicapper Services/MSU Psychological Clinic, East Lansing Michigan.
Trained graduate students in the administration and reporting of a broad selection of neuropsychological measures. Coordinated, supervised, and conducted neuropsychological/ psychoeducational assessments of MSU students referred for learning disabilities. Organized a comprehensive data set gathered from college-aged learning disabled individuals and matched normal controls.

Sept. 1991- Sept. 1992 — Neuropsychology Consultant-Trainee - Neurobehavioral Clinic and Research Center (Michigan State University/Department of Psychiatry), East Lansing Michigan.
Conducted neuropsychological assessments of outpatients with a variety of neurological and psychiatric conditions and produced diagnostic reports of their functioning. Organized a comprehensive data set gathered from patients with cortical dementia.

June 1989- Sept 1992 — Inpatient and Outpatient Assessment Coordinator - Michigan State University Psychological Clinic, East Lansing Michigan.
Trained graduate students in the administration and reporting of a broad and flexible battery of neuropsychological and personality measures. Coordinated, supervised, and conducted neuropsychological/ personality assessments of patients referred from Lansing General Hospital, Ingham County Medical Center, as well as from private physicians in the community.

March 1989- June 1991; — Teaching Assistant - Neuropsychology Assessment Laboratory 852B (3 credit graduate level course), Clinical Psychology Program - Michigan State University Graduate School, East Lansing Michigan.

Sept. 1989- July. 1991 — Psychotherapy Trainee (Practicum Student) - Michigan State University Psychological Clinic, East Lansing Michigan.
Conducted insight-oriented individual psychotherapy with outpatient community members seeking services from the MSU Clinic.

June 1989- Sept. 1991 — Neuropsychology Consultant-Trainee - Ingham Medical Center/ Michigan State University Psychology Graduate Program, Lansing, Michigan.
Conducted neuropsychological examinations of inpatients from general medical units and produced diagnostic reports of their functioning.

June 1990-
Sept. 1990 Student Trainee · Neuropsychology Program (Department of Psychiatry), University of Michigan Medical Center, Ann Arbor, Michigan.
Conducted neuropsychological assessments of outpatients with a variety of neurological and psychiatric conditions and produced diagnostic reports of their functioning. Organized a comprehensive data set gathered from patients with Alzheimer's dementia and isolated memory impairment.

June 1989-
Sept. 1989 Neuropsychology Consultant-Trainee · Tamarack Head Injury Rehabilitation Center
East Lansing Michigan.
Conducted neuropsychological assessments of outpatients and rehabilitation center residents with a variety of conditions resulting from traumatic brain injury and produced diagnostic reports/treatment plans. Organized data set gathered from patients with mild head injuries.

June 1988-
Sept. 1988 Student Trainee · Battle Creek Veterans Administration Medical Center,
Neuropsychology/Department of Psychology, Battle Creek, Michigan.
Conducted neuropsychological assessments of inpatients and outpatients with a variety of neurological and psychiatric conditions and produced diagnostic reports of their functioning.

Dec. 1986-
June 1988 Neuropsychology Testing Technician · Neuropsychology Program
(Department of Psychiatry), University of Michigan Medical Center,
Ann Arbor, Michigan.
Administered neuropsychological assessment batteries to outpatients and inpatients with a wide range of neurological and psychiatric conditions.

Jan. 1986-
April 1988 Neurology Volunteer · Neurology Inpatient Unit [Spinal Cord
Rehabilitation Program] Department of Neurology, University of Michigan Medical
Center, Ann Arbor, Michigan.
Assisted in the general care for acute spinal- and brain-injured patients.

Jan. 1985-
April 1985 Mental Health Volunteer · Psychiatry Adult Inpatient Unit [Depression
Clinical Studies Program] Department of Psychiatry, University of Michigan
Medical Center, Ann Arbor, Michigan.
Facilitated treatment plans through engaging patients in social tasks, activities and outings.
Conducted one-to-one observations for suicidal individuals.

Jan. 1983-
April 1983 Mental Health Volunteer · Project Outreach · Child Development Center,
University of Michigan, Dearborn, Michigan.
Supervised activities and lesson plans for healthy children ages 3 through 6 from the community.
Administered Stanford-Binet Intelligence Scale tests.

Feb. 1981-
May 1981 Mental Health Worker · Ardmore Acres Psychiatric Hospital, Farmington, Michigan
Implemented the direct care of psychiatric patients as prescribed by staff psychiatrists, including maintenance of medication schedules, supervision of activities and visitation, charting of vital signs, and continuous formal reporting of patient behavior.

RESEARCH EXPERIENCE

Sept. 1990-
Sept. 1994 Spica, D.M. (1994). Use of executive control in accessing episodic and semantic memory in patients with Alzheimer's dementia. Unpublished dissertation, Michigan State University, East Lansing.

Sept. 1988-
June 1991 Spica, D.M. (1991). Detecting late-life forgetfulness using a brief SDAT battery.
Unpublished master's thesis, Michigan State University, East Lansing.

Sept. 1988- Research Consultant · Michigan State University · Department of Psychology/Clinical

Sept. 1994 Aging Research Project, East Lansing Michigan.
Train students in testing procedures and analyze data for ongoing study investigating the relationships of mood, memory, and physical health in normal aged persons.
Norman Abeles, Ph.D. - Principal Investigator

June 1989-Sept. 1989 Research Consultant - Ann Arbor Veterans Administration Medical Center, Neuropsychology/Department of Psychology. Ann Arbor, Michigan.
Recruited and ran subjects for an ongoing study of eye-tracking and attention.
Henry Buchtel, Ph.D.- Principal Investigator

May 1986-Dec. 1988 Research Consultant - Neuropsychology Program (Department of Psychiatry)/ Department of Neurology, University of Michigan Medical Center, Ann Arbor, Michigan.
Constructed computer file and processed data for ongoing study investigating the relationship of neurologic symptoms and neuropsychometric performance in patients with Alzheimer's Disease.

GRANTS

1991 Coping with aging: Quality of life among nursing home residents. With N. Abeles, P.S. Fastenau, & L.A. Domitrovic. Not funded. Submitted to Sigma Kappa Foundation, Inc., Indianapolis, IN.

1990 Wechsler adult intelligence score patterns in learning disabled college students. Not funded. Submitted to the Michigan Health Care Education and Research Foundation, Detroit, MI.

1989 Detecting age-associated memory impairment using the brief SDAT battery. Awarded by the Michigan Health Care Education and Research Foundation, Detroit, MI.

1988 Summer Traineeship (first ever without graduate education). Awarded by the Veterans Administration, Washington, D. C.

1986 Altered metabolism in olivopontocerebellar atrophy studied with positron-emission tomography. With S. Berent. Awarded by the University of Michigan Medical School Summer Research Foundation, Ann Arbor, Michigan.

RESEARCH PRESENTATIONS

Stawicki, J.A., Spica, D.M., Lount, R. (2001) The Importance of Thorough Examinations for Evaluation of Attention Deficit-Hyperactivity Disorder. Poster presented at the meeting of the American Psychological Association, San Francisco.

Spica, D.M., Klotz, M, & Abeles, N. (Submitted). Use of executive control in accessing episodic and semantic memory in patients with Alzheimer's dementia. Poster submitted for the 1996 meeting of the International Neuropsychological Society, Chicago.

Spica, D.M., Klotz, M, & Abeles, N. (1995). Differential episodic and semantic memory defects in patients with Alzheimer's disease. Poster presented at the 1995 meeting of the National Academy of Neuropsychological, San Francisco.

Abeles, N., & Spica, D.M. (1994). Mini inventory of right brain injury. Test Critiques. New York: Oxford University Press.

Spica, D.M., Abeles, N, & Giordani, B. (1991, August). Detecting age-associated memory impairment using the brief SDAT battery. Poster presented at the meeting of the American Psychological Association, San Francisco.

Berent, S., & Spica, D.M. (1986, August). Altered metabolism in olivopontocerebellar atrophy studied with positron-emission tomography. Poster presented at The University of Michigan Summer Research Forum, Ann Arbor, MI.

OTHER PRESENTATIONS

Caruso, K.A., Spica, D.M., (2007, October). Disability Evaluations: Dissimulation & Somatization. 38th Annual Meeting of the American Academy of Psychiatry and the Law, Miami, FL.

Spica, D.M., (2005, November). Fighting procrastination in everyday life. 2005 Convention of the Tennessee Psychological Association, Nashville, TN.

Spica, D.M., (2005, October). Procrastination? Tools for memory testing & screening. Wellness: A Healthy State of Being. 2005 EAPA Tennessee State Conference, Gatlinburg, TN.

Spica, D.M., (2005, July). Introduction to neuropsychological assessment? Cariten Employee Assistance Program Professional Address Series. Knoxville, TN.

Spica, D.M., (2002, November). Fighting procrastination in students with attention and learning disorders. Professional Information Series. Learning Disabilities Association, Lansing, MI.

Spica, D.M., (1996, April). Behavioral manifestations of learning disabilities. E. Weinbolt (Chair), Community Information Series. Meeting of Learning Disability Friends and Families, Lansing, MI.

Spica, D.M., (1996, January). Treatment of attentional syndromes in adults. L. Gorbis (Chair), Professional Presentations. Meeting of Children and Adults with Attention Deficit Disorders [CH.A.D.D.] Lansing Area Chapter, Lansing, MI.

Spica, D.M., (1995, November). Clinical assessment of neurobehavioral disorders. J. Picone (Chair), Continuing Medical Education. Meeting of the inpatient clinical service, Sparrow Hospital, Lansing, MI.

Spica, D.M., (1991, November). Brain lesion localization: The role of neuropsychological assessment. V. Hulce (Chair), Nervous system lesions: Localization and characterization: A workshop for primary care physicians and health care providers. Workshop conducted at the Seventh Annual Neurodiagnostics Conference, East Lansing, MI.

Spica, D.M., (1990, October). Advances in research of memory for the aged individual. N. Abeles (Chair), Coping with aging: Mood and memory concerns. Symposium conducted at the meeting of the Ingham Medical Center/Community Relations and Development Association, Lansing, MI.

Spica, D.M., (1989, November). Special issues in cognitive rehabilitation. W. Beecroft (Chair), Psychiatry service grand rounds presentations. Meeting of the Department of Psychiatry, Ingham Medical Center, Lansing, MI.

Spica, D.M., (1989, August). Clinical characteristics of multi-infarct dementia. W. Beecroft (Chair), Psychiatry service grand rounds presentations Meeting of the Department of Psychiatry, Ingham Medical Center, MI.

PROFESSIONAL MEMBERSHIPS

Vice President - East Tennessee - Tennessee Psychological Association 2007
Member, American Psychological Association
Member, International Neuropsychology Society
Member, National Academy of Neuropsychology

Member, Society for Personality Assessment

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NANCY IRICK

Sevierville Home → Kicked out, because in girls room

drank out of commode

After her 15th B/D
medical care

he left & she didn't tell
when he came back, she wouldn't stay @ home
That's when daughter told Mrs. Irick

Diana McCoy.

This occurred after Billy in hospital for back operation
Living w/ Brown's in west Knox County

Staff infection

1979 App.

2 boys / 2 girls

~~Billy or~~

After Bill had hair cut

went ~~into~~ service
wouldn't follow orders

Abandoned house

Ruby oldest	DOB 1956
Billy	DOB 1958
Jeff	DOB 1961
Susan	DOB 1964

15
79

79
58
21

Fired from Sans Souci for having it around w/ people selling drugs.

Slashed tires

said he couldn't remember

don't volunteer anything

Billy dealt w/ anger

arrested in Fla. as juvenile attempting to steal car.

EXHIBIT 3

CRIMINAL COURT OF KNOX COUNTY, TENNESSEE

STATE OF TENNESSEE	*	No. 24527
vs.	*	Tennessee Supreme Court No. M1987-00131-SC-DPE-DD
BILLY RAY IRICK	*	DEATH PENALTY

PETITIONER'S MOTION FOR BRAIN IMAGING TESTS TO BE PERFORMED ON PETITIONER

In conjunction with his petition to determine competency to be executed, petitioner, by and through counsel, moves this Court to enter an order authorizing funds to obtain brain imaging tests at Vanderbilt University. Neuroimaging of petitioner's brain and analysis of the resulting data is necessary to determine the possible existence and extent of brain damage and the behavioral/psychological consequences of that damage. The possibility of brain damage arises from medical reports of anoxia at petitioner's birth, childhood diagnoses which included schizophrenia and organic brain damage, and/or neurological deficits as reported by Dr. Brown. (See Dr. Brown's Report, IRICK 907, *et seq*, including pp. 909, 910 and 931, filed with his petition).

The funding sought is for Computed Tomography (CT) imaging, also known as "CAT scanning" (Computed Axial Tomography); a Positron Emission Tomography (PET) scan; a Magnetic Resonance Imaging (MRI) scan; a Single Photon Emission Computed Tomography (SPECT) scan; and a Functional Magnetic Resonance Imaging (FMRI) scan of petitioner's brain. The testing is necessary in order to determine whether petitioner is presently competent to be executed. The approximate hospital fee schedule for the requested procedures is as follows:[1]

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[1]Counsel are in the process of requesting the fee schedule for associated physician fees, and move to supplement the record later with this information.

CT HEAD W/O CONTRAST	2,344.00
MRI BRAIN W/O CONTRAST	2,247.00
FUNCTIONAL MRI	2,247.00
PET BRAIN METABOLIC FDG SCAN	3,755.00
SPECT SCAN	2,366.00
TOTAL	14,099.00

A CAT scan uses x-rays, a type of ionized radiation, to acquire its images, making it a good tool for examining bone and calcifications. Therefore, a CAT scan would be used to detect bone trauma, as well as tumors. An MRI uses non ionized radio frequency signals to acquire its images and is best suited for non calcified tissue. It is used to visualize the brain and any pathology which may be present, including signs of stroke, aneurism, brain tumors, pituitary abnormalities, etc. An MRI can detect physiological damage associated with deficits discovered from neurological testing and/or other observations. However, an MRI does not measure the function of the brain or how it is performing.

A functional MRI helps a physician diagnose how a brain is working by having the patient perform a particular task and then analyzing the data produced by the fMRI, including the expansion of blood vessels, chemical changes and the delivery of extra oxygen. A SPECT scan is a type of nuclear imaging test which produces 3-D images showing how organs, such as a patient's brain, are working. A SPECT scan can show blood flows and what areas of the brain are more or less active. A SPECT scan is ordered to help diagnose brain disorders such as Alzheimer's, stroke, seizure and other similar problems. A PET scan looks at the metabolic functioning of the brain to determine areas where the brain is malfunctioning either due to lack of metabolism (cells that have died) or due to

excessive metabolism (cells that are about to die). Areas of malfunction may be correlated to the deficiencies that Dr. Brown found from his neuropsychological testing to prove the existence of brain damage.

Multiple tests, including neuropsychological tests and the imaging tests, are necessary since the function of the brain may be impaired despite lack of results on any one or two of the tests. However, in this case, we already know from Dr. Brown's report that there may be brain damage that will show up on one or more of these tests.

Petitioner's motion is made pursuant to the Sixth, Eighth and Fourteenth Amendments to the United States Constitution; Article I, §§8, 9, 16, and 17 and Article XI, §8 of the Tennessee Constitution; Tennessee Code Annotated § 40-14-207(b); Tennessee Supreme Court Rule 13, §5; Owens v. State, 908 S.W.2d 923 (Tenn. 1995); and his right to a full and fair hearing under due process of law.[2] Additional factual bases for this motion have been provided in petitioner's competency petition filed with this motion.

SPEARS, MOORE, REBMAN & WILLIAMS

By: _____
C. Eugene Shiles, Jr., BPR #011678
P. O. Box 1749
Chattanooga, TN 37401-1749
(423) 756-7000

_____
Howell G. Clements, BPR# 001574
1010 Market Street, Suite 404
Chattanooga, TN 37402
(423) 757-5003

Attorneys for Petitioner

[2]See Panetti v. Quarterman, 551 U.S., 930, 948, 950 (2007).

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of this pleading has been served on counsel for all parties at interest in this cause addressed as follows:

Randall Eugene Nichols
District Attorney General
400 Main St. Suite 168
P.O. Box 1468
Knoxville, TN 37901-1468

Via Fax: 615/532-7791
James E. Gaylord
Assistant Attorney General
P.O. Box 20207
Nashville, TN 37202

This 21 day of July, 2010.

SPEARS, MOORE, REBMAN & WILLIAMS

By: _____

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IN THE CRIMINAL COURT FOR KNOX COUNTY, TENNESSEE
DIVISION I

STATE OF TENNESSEE

V. **CASE NO. 24527**

BILLY RAY IRICK, ALIAS

STATE'S RESPONSE TO PETITION TO DETERMINE PRESENT INCOMPETENCY TO BE EXECUTED

Comes the State of Tennessee, by and through the District Attorney General for the Sixth Judicial District, in response to the Petition to Determine Present Competency to be Executed, filed by Mr. Billy Ray Irick, in this case. The State asserts that the Defendant has failed to meet the required threshold to support his claim of present competency to be executed as established by the Tennessee Supreme Court in Van Tran v. State, 6, S.W.3d 257 (Tenn. 1996). Accordingly, his petition should be denied without further hearing.

A. Introduction.

Mr. Billy Ray Irick is currently incarcerated at the Riverbend Maximum Security Institution in Nashville, Tennessee. Mr. Irick is on death row for the 1985 rape and murder of Paula Dyer. In 1985, Mr. Irick confessed to the anal rape, vaginal rape and murder of this seven-year-old girl. On November 3, 1986, a jury sentenced Mr. Irick to death for the murder of Miss Dyer.

The Tennessee Supreme Court recently set an execution date for Mr. Irick of December 7, 2010. The Defendant has filed a claim that he is presently incompetent to be executed and this

claim was referred to this Court under the provisions of Van Tran v. State, 6 S.W.3d 257 (Tenn. 1999).

This matter is now before this Court to determine whether the petitioner has made a sufficient showing of present incompetency, so as to qualify for a hearing on this issue.

B. The Standard at this Stage of the Proceedings.

In Van Tran v. State, 6 S.W.3d 257 (Tenn. 1999), the Tennessee Supreme Court created a two-part "cognitive" test to determine the present incompetency of a death row inmate facing execution. This two-part test is a cognitive test that requires a court to consider the following questions:

> 1. Does the prisoner presently lack the mental capacity to understand the fact of his impending execution? and,
>
> 2. Does the prisoner presently lack the mental capacity to understand the reason for his impending execution?

See id. at 266.

C. The Procedure For Determining Competency To Be Executed

In addition to establishing the standard by which present incompetency to be executed claims are to be evaluated, the Van Tran Court also adopted the following procedure for evaluating such claims:

> 1. The issue of competency to be executed is generally not considered ripe for determination until execution is imminent.
>
> 2. The issue of competency to be executed should be raised by the prisoner after the State has moved the Tennessee Supreme Court to set an execution date. The prisoner should raise the issue of competency in his response to the motion to set an execution date.
>
> 3. If the Tennessee Supreme Court enters an Order setting an execution date, the Court will also remand the issue of competency

to the trial court where the prisoner was originally tried and sentenced.

4. Within three days of entry of the Order of remand, the prisoner shall file a petition in the trial court. The petition shall clearly set forth the facts alleged to support the claim that execution should be stayed due to present mental incompetence. The petition shall have attached to it affidavits, records, or other evidence supporting the factual allegations of mental incompetence.

5. The State shall file a response within three days of the filing by the prisoner.

6. Within four days of the filing of the response, the trial court shall decide if a hearing is warranted. This decision depends upon whether the prisoner has made the required threshold showing that his competency to be executed is genuinely in issue. The burden placed on the prisoner sets a high or substantial threshold showing before he is entitled to a hearing.

See, id. at 267.

C. Mr. Irick Has Failed To Meet The Threshold Requirement

Mr. Irick has filed a lengthy petition and numerous supporting documents on the issue of whether he is presently incompetent to be executed. Despite the volumes of paper, Mr. Irick has completely failed to meet the threshold burden set for him in Van Tran. 6 S.W.3d at 269 ("We adopt a rule that places the burden on the prisoner to make a threshold showing that he or she is presently incompetent.") In order to meet the burden, the Defendant should submit affidavits, depositions, medical reports or other credible evidence sufficient to demonstrate that there exists a genuine question regarding petitioner's present competency to be executed. Id.

The Van Tran Court emphasized that the proof required to meet the threshold showing "must relate to present incompetency" and include "recent mental evaluations or observations of the prisoner". Id. at 269 (emphasis added). However, the vast majority of the mental health material submitted with the Defendant's petition is very old and stale and not relevant to the

question of present incompetency to be executed. Instead, the focus is on the Defendant's mental state at the time of the offense and/or his competency for trial in 1986. The Tennessee Supreme Court specifically warned prisoners that they cannot meet their initial threshold if the only evidence they submit is "stale in the sense that it relates to the prisoner's distant past competency or incompetency." Id. at 269. See also, Thompson v. State, 134 S.W.3d 168, 177 (Tenn. 2004) ("The threshold is not satisfied by evidence of the prisoner's distant past incompetency.").

Almost all of the mental health records, submitted in support of the current petition, are between 10 to 45 years old. The only exception to this is the recent work done by Dr. Peter I. Brown, M.D. Dr. Brown met with Mr. Irick in December 2009 and January 2010. It is important to note that Dr. Brown was never asked to give his opinion on the two-part cognitive test set forth in Van Tran for determining competency to be executed. Instead he was only asked to evaluate Mr. Irick "...to identify clinical factors related to issues of aggravation or mitigation concerning his offense." (Rpt. Of Dr. Brown, p. 1).

No mental health expert has been presented by the prisoner that has given an opinion concerning his present competency to be executed. The lengthy petition and documentation in this case only contain the unsupported, conclusory assertions of counsel that Mr. Irick is presently incompetent to be executed. The Van Tran Court has stated that this will ordinarily be insufficient for the prisoner to meet his required threshold showing. 6 S.W.3d at 269 ("[U]nsupported conclusory assertions of a family member of the prisoner or an attorney representing the prisoner will ordinarily be insufficient to satisfy the required threshold showing.").

Mr. Irick makes no attempt to meet the first prong of the two-part cognitive test established in Van Tran – that the prisoner be aware of the punishment he or she is about to suffer. Mr. Irick apparently does know that the government is seeking to execute him. For example, according to Dr. Brown, within the last few months Mr. Irick has told Dr. Brown "that the government has systematically portrayed him as 'sub-human', in part to legitimize his execution." (Rpt of Dr. Brown, p. 15)(emphasis added).

Counsel for Mr. Irick make an attempt to meet the second prong of the cognitive test - that the prisoner understand why he or she is being executed - by claiming that Mr. Irick has no current recollection of the murder and rape of Miss Dyer. This assertion, even if true, does not meet the test set forth in Van Tran. Mr. Irick does not need to have a current recollection of the events of April 15, 1985, to be competent to be executed. He simply needs to be aware of the facts of why the State is seeking to execute him. In reviewing the various mental health records it is clear that Mr. Irick understands that he has been convicted of the rape and murder of Miss Paula Dyer and that is why the State is seeking to execute him.

For example, the examination of Dr. Brown undercuts the factual claim that Mr. Irick does not remember the events of April 15, 1985. Mr. Irick initially confessed to the rape and murder of Miss Dyer. Shortly after his confession, Mr. Irick begins to claim that he cannot remember the events of that night because he was too intoxicated. Dr. Brown questions Mr. Irick about the murder and Mr. Irick denies being guilty of the rape and murder. However, Mr. Irick merely denies the charges and cannot provide any account of what did happen. Dr. Brown makes the following observation:

> He does frequently say "I can't remember" about a variety of events. However, this appears to be a mechanism to avoid thinking about painful situations and to forestall further questions or discussion rather than true amnesia.

Rpt of Dr. Brown, p. 16 (emphasis added).

Moreover, even if one believes his claims of amnesia, the Defendant's assertions of factual innocence clearly demonstrate he is aware of the crime for which the State is seeking to execute him. Dr. Brown indicates that during a discussion concerning his conviction, the Defendant asserted, "It is just not in me to do this. If I thought I had done this I would kill myself." Rpt of Dr. Brown, p. 16. Whether or not he believes he did it, the Defendant clearly understands that the crime occurred and that the State blames him for it. A belief in one's own guilt is not required for execution, only an understanding of the reason for the execution. Van Tran, 6, S.W.3d at 266.

The insufficiency of this petition becomes very apparent when this petition is compared and contrasted with the petition filed in the case of Thompson v. State, 134 S.W.3d 168 (Tenn. 2004). The petition in Thompson contained affidavits from three mental health experts where each expert opined that Mr. Thompson was not competent to be executed.

The trial court in Thompson examined the petition, and the supporting documents, and held that the prisoner had failed to meet the initial burden that was necessary to proceed to an evidentiary hearing. The Tennessee Supreme Court conducted a de novo review. Despite the fact that the defendant had submitted three affidavits from mental health experts stating he was not competent to be executed, the Tennessee Supreme Court affirmed the summary denial of the petition without a hearing or further proceedings. Id. The Thompson Court explained, "Simply put, a prisoner need only be aware of 'the fact of his or her impending execution and the reason for it' to satisfy the competency required for execution of the death penalty." Id. at 184.

D. Conclusion.

The petition filed by Mr. Irick fails to properly raise any real issue as to whether Mr. Irick is aware of the fact of his impending execution and the reason for it. Mr. Irick has completely failed to meet his threshold burden in this petition. The State would respectfully ask that this Court deny the petition without further proceedings.

E. Expert Available to Examine Mr. Irick.

While the State does not believe that any further examination of Mr. Irick is proper under the Van Tran decision, the State does provide the information listed below in compliance with the procedure mandated by the Tennessee Supreme Court:

Dr. Clifton R. Tennison, Jr., M.D.
Helen Ross McNabb Center
201 West Springdale Avenue
Knoxville, Tennessee 37917
(865) 637-9711
(CV in materials filed by Mr. Irick)

RESPECTFULLY SUBMITTED,

RANDALL E. NICHOLS
DISTRICT ATTORNEY GENERAL

BY: 

LELAND L. PRICE, BPR# 018853
Assistant District Attorney General
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this pleading has been forward to the following:

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Howell G. Clements, Esq.,
1010 Market Street
Suite 404
Chattanooga, Tennessee 37402

this the 26 day of July, 2010.

BY: 

LELAND L. PRICE
ASSISTANT DISTRICT ATTORNEY

CRIMINAL COURT OF KNOX COUNTY, TENNESSEE

STATE OF TENNESSEE	*	No. 24527
vs.	*	Tennessee Supreme Court No. 180
BILLY RAY IRICK	*	DEATH PENALTY

PETITIONER'S REPLY IN SUPPORT OF HIS PETITION TO DETERMINE PRESENT INCOMPETENCY TO BE EXECUTED

In its response to the petition to determine present incompetency to be executed, the state appears to be making three objections to the court holding a competency hearing. The first is that the majority of the records provided by the petitioner are "old and stale" and are not relevant to present competence. (E.g., see pp. 3-4 of Response). The second major objection appears to be that in contrast to Bell v Thompson, petitioner has not submitted reports of three mental experts who opine that the petitioner is not competent to be executed. The third general objection is that the evidence provided by the petitioner is insufficient to meet a threshold showing of present incompetency to be executed. Petitioner will address each of these objections below.

The use of historical medical records.

The state complains that the majority of historical records are old and stale and goes so far as to argue that the historical records are "not relevant to the question of present incompetency to be executed." Respectfully, it is submitted that the state's statement of prevailing law is inaccurate. The United States Sixth Circuit Court of Appeals found that a petitioner's past medical records are indeed relevant to present competency, particularly to the extent that they demonstrate a chronic mental condition. *See* Thompson v. Bell, 580 F.3d 423, 436 (6th Cir. 2009).

As demonstrated by the medical records and the opinion of Dr. Peter Brown who examined the petitioner in December 2009 and January 2010, Mr. Irick indeed suffers from a chronic mental

condition including but not limited to (1) cognitive disorder; (2) psychotic disorder; (3) paranoid personality disorder; and (4) schizoid personality disorder. Dr. Brown's report, along with the long history of mental illness documented within the records, demonstrates that petitioner suffers from a psychotic disorder which includes "command hallucinations," paranoid thinking and amnesia and/or an otherwise disconnect from the offense, leaving petitioner unable to *rationally understand* the basis for his sentence of death. Therefore, petitioner submits that his medical records, along with the diagnoses and findings stated within Dr. Brown's report, meet any applicable threshold and qualify him for a competency evaluation and hearing prior to any execution.

Petitioner's mental health evaluation and report.

The state criticizes the bases of petitioner's submission, in part, on the grounds that Dr. Brown was not asked to give a Van Tran competency evaluation but focused instead on petitioner's insanity at the time of the offense. First, it should be remembered that this petitioner, unlike in the Thompson case,[1] has not been provided funds with which to hire mental health experts for his evaluation. Instead, Dr. Brown and Dr. Spica were paid wholly out of the personal funds of Howell Clements, one of the undersigned counsel.[2] While counsel for petitioner do not know all the details of the Thompson case, they are quite confident that Mr. Thompson's counsel did not have to pay for their experts out of their own pockets. Because of this restriction on this petitioner and his counsel, counsel was only able to afford the limited services which they could pay for out of their own pockets. It is

---

[1]134 S.W.3d 168 (Tenn).

[2]As indicated in earlier pleadings, Mr. Clements paid Dr. Spica $5,400.00 while Dr. Brown has deferred payment.

unfair, and not a valid comparison, to compare the Thompson case where the defendant had mental health experts paid through the public defender's office, and this defendant, who has been provided no funds whatsoever to hire his experts and has to rely o the personal funds of his attorneys.

Furthermore, when counsel engaged Dr. Brown and Dr. Spica in November 2009, an execution date had not been set and therefore was not imminent. In fact, the United States Supreme Court would not deny his application for *certiorari* until February 22, 2010 and his motion for rehearing until April 19, 2010. Therefore, petitioner had not completed the standard 3-tier process and the issue of his competency to be executed was not ripe. Van Tran v. State, 6 .W.3d 257, 267 (Tenn. 1999). Since counsel could not know whether the United States Supreme Court might grant his application for *certiorari* and/or other relief and therefore could not know when his execution might be set, spending personal funds for a competency evaluation which might not be close in time to his execution date seemed foolish and a waste of money. In fact, more than six months have elapsed since Dr. Brown's last interview with the petitioner - too long to serve as a reliable measure of his "present" competency. For these reasons, petitioner's counsel believed that their personal resources would best be used to demonstrate petitioner's insanity at the time of the offense[3] because of the possibility of demonstrating through "new scientific evidence" that petitioner was, in fact, innocent of the offense by reason of insanity. Towards that end, petitioner has filed a pending motion with the Knox County Criminal Court to reopen his post-conviction proceedings.

---

[3]Dr. Brown's report has been made an exhibit to petitioner's motion to reopen his post-conviction proceedings. Without such a report, it is clear that the petitioner would have no reasonable chance of getting his state post-conviction pleadings reopened.

Given the wealth of mental health information demonstrating petitioner's psychosis and probable incompetence to be executed as well, as the United States Supreme Court's decisions in Panetti v. Quarterman, 551 U.S. 930 (2007); and Ford v. Wainwright, 477 U.S. 399 (1986), counsel believed, and still believe, that the state will meet its constitutional obligations by providing funds for mental health experts prior to executing a prisoner who has been continuously incarcerated since April 1985. It is respectfully submitted that should the state deny petitioner funds to appoint experts to determine competency, it would be a constitutional violation of his rights under the Sixth, Eighth and Fourteenth Amendments to the United States Constitution, as well as Article I, §§8, 9, 16 and 17 and Article XI, §8 of the Tennessee Constitution.

A threshold showing of incompetency.

Finally, the state claims that the petitioner has failed to make a threshold showing of incompetency. Specifically, the state argues that the second prong of the cognitive test: "he simply needs to be aware of the facts of why the state is seeking to execute him." (Response, p. 5). It is again respectfully submitted that the state has not identified the correct constitutional standard under Panetti v. Quarterman, 551 U.S. 930 (2007). In that case, the United States Supreme Court held a petitioner who lacks a rational understanding of the reasons for his execution should be found to be incompetent under Ford. It stated:

> We likewise find no support elsewhere in Ford, including in his discussions of the common law and the state standards, for the proposition that a prisoner is automatically foreclosed from demonstrating incompetency once a court has found he can identify the stated reason for his execution. A prisoner's awareness of the state's rationale for an execution is not the same as a rational understanding of it. Ford does not foreclose inquiry into the latter.

Panetti, 551 U.S. at 959.

The Panetti court went on to find that the beginning of doubt regarding competence is a psychotic disorder. Petitioner has created that doubt by the report of Dr. Brown which finds that he suffers from a psychotic disorder as well as a cognitive disorder. There is also evidence that, as a result of his severe mental disorders, he has no recollection/amnesia of the offense and, therefore, his connection or nexus to the offense does not exist in his understanding.[4]

Therefore, while petitioner has, at least in the past, shown knowledge of his death sentence, he does not have a rational understanding of the reasons for his execution because, in part, his psychotic disorders prevent him from understanding his connection with the death of Paula Dyer, thereby rendering him incompetent to be executed.

Conclusion.

Petitioner would respectfully urge this court (1) to find that he has met a threshold showing for incompetency to be executed; (2) appoint and provide funding for at least two experts at the expense of the state; (3) order funds be provided to perform necessary brain imaging tests as sought in a separate motion; (4) provide sufficient time for experts to conduct tests, analyze results and prepare a report for consideration by this court; (5) set a hearing date to take evidence and argument from counsel as to competency; and (6) for any further general relief to which petitioner may be entitled.

SPEARS, MOORE, REBMAN & WILLIAMS

By: _____

C. Eugene Shiles, Jr., BPR #011678
P. O. Box 1749
Chattanooga, TN 37401-1749
(423) 756-7000

[4]It is expected that a more precise description of petitioner's incompetence can be provided to the court in a report after mental health experts have been appointed and given an opportunity to evaluate the petitioner and submit a report.

Howell G. Clements, BPR# 001574
1010 Market Street, Suite 404
Chattanooga, TN 37402
(423) 757-5003

Attorneys for Petitioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of this pleading has been served on counsel for all parties at interest in this cause addressed as follows:

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Via Fax: 615/532-7791
James E. Gaylord
Assistant Attorney General
P.O. Box 20207
Nashville, TN 37202

This 29th day of July, 2010.

SPEARS, MOORE, REBMAN & WILLIAMS

By: M. Dillon

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IN THE CRIMINAL COURT FOR KNOX COUNTY, DIVISION I

KNOXVILLE, TENNESSEE

STATE OF TENNESSEE	)	No. 24527
	)	
v.	)	Supreme Court No.
	)	M1987-00131-SC-DPE-DD
BILLY RAY IRICK	)	DEATH PENALTY

ORDER GRANTING HEARING ON ISSUE OF COMPETENCY TO BE EXECUTED

This matter is presently before the Court on the "Petition To Determine Competency To Be Executed Under Ford v. Wainwright, 477 U.S. 399 (1986); Panetti v. Quarterman, 551 U.S. 930 (2007); Van Tran v. State, 6 S.W.3d 257 (Tenn. 1999); The Tennessee Constitution; And The Common Law", the State's response in opposition to the Petition, and the Petitioner's Motion For Brain Imaging Tests.

The Eighth Amendment to the United States Constitution precludes the execution of a prisoner who is incompetent. Ford v. Wainwright, 477 U.S. 399 (1986).

The issue of competency to be executed generally is not ripe for determination until execution is imminent. Van Tran, at 267.

> In Tennessee, execution is imminent only when a prisoner sentenced to death has unsuccessfully pursued all state and federal remedies for testing the validity and correctness of the prisoner's conviction and sentence and [the Tennessee Supreme Court] has set an execution date upon motion of the State Attorney General.

Id. As the parties have done here, the issue of competency to be executed in Tennessee is required to be raised for the first time when filing a response to the State's motion to set an execution date. The issue then is ripe for review only upon the granting of the State's motion and the setting of an execution date at which time the Tennessee Supreme Court remands the issue of competency to be executed to the trial court where the prisoner was originally tried and sentenced.

The order setting the execution date in this matter was entered by the Tennessee Supreme Court on July 19, 2010, and in that order the Tennessee Supreme Court remanded the issue of competency to be executed to this court. Upon remand the petitioner, within the required 3 days, filed the instant petition on July 22, 2010. The District Attorney General then filed his response to the petition within the required 3 days as well on Monday, July 26, 2010.

Pursuant to Van Tran, within four days of the filing of the State's response, this court must decide if a hearing is warranted based upon a determination of whether the petitioner has made a threshold showing that his competency is genuinely at issue. In addition, in Van Tran the court stated that

> Issues may, and no doubt will, arise in competency proceedings which have not been addressed in this opinion. Such issues can and will be resolved on a case-by-case basis.

Id. at 274.

Petitioner is presumed competent to be executed and bears the burden of overcoming this presumption by a preponderance of the evidence Ford, 477 U.S. at 426, 106 S.Ct. at 2610 (Powell, J. concurring). Petitioner may demonstrate that there is a genuine issue as to his present competency through the submission of affidavits, depositions, medical reports or other

credible evidence. Id. However, the proof submitted must relate to present competency. Thus, at least some of the evidence must be the result of recent mental evaluations or observations of the petitioner. Id. Ordinarily unsupported assertions by family members, the petitioner or his attorney(s) will be insufficient to satisfy the required threshold showing. Id. Likewise, assertions that a petitioner may become incompetent in the future will not be sufficient to meet the threshold showing. See Coe v. State, 17 S.W.3d 193, 221 n.5 (Tenn. 2000).

Tennessee has adopted a cognitive test for determining competency to be executed. Van Tran v. State, 6 S.W.3d 257 (Tenn. 1999). In Van Tran, the court held that a prisoner is not competent to be executed if the prisoner lacks the mental capacity to understand the fact of the impending execution and the reason for it. Id.

Subsequent to our state court rulings in Van Tran, however, the United States Supreme Court expounded on its holding in Ford. See Panetti v. Quarterman, 551 U.S. 930 (2007). The Panetti decision appears to be broader than the current standard applied in Tennessee. While the Panetti Court's decision does not appear to affect the procedure established by Tennessee courts to determine competency to be executed, it does appear to broaden the definition of "incompetence" with regard to competency to be executed and it appears to expand the evidence which this trial court should consider in determining this issue. See Thompson v. Bell, 580 F.3d 423 (6th Cir. 2009)(Holding that the Tennessee Supreme Court unreasonably applied Ford when it (1) determined that Thompson's "severe delusions" were "irrelevant" to a Ford competency analysis and (2) determined that Thompson's documented history of mental illness was equally "irrelevant" to the question of present competency). No longer is it sufficient for trial courts such as this one to merely examine whether a prisoner has identified

the link between his crime and the punishment to be inflicted. Rather, in applying the Ford standard, adopted by the Tennessee Supreme Court in Van Tran, this court must now consider whether petitioner suffers from such a severe mental disorder that puts the awareness of the link between crime and punishment "in a context so far removed from reality that the punishment can serve no proper purpose." Id. 168 L.Ed. 2d at 687. The Court in Panetti held that

> The potential for a prisoner's recognition of the severity of the offense and the objective vindication are called in question ... if the prisoner's mental state is so distorted by a mental illness that his awareness of the crime and punishment has little or no relation to the understanding of these concepts shared by the community as a whole....
>
> ... A prisoner's awareness of the State's rationale for an execution is not the same as a rational understanding of it.

Id. at 686.

With these broad standards in mind, this Court must consider whether the Petitioner should receive a hearing on the issue of his competency to be executed. The State has submitted that the Petitioner has not met the threshold showing of a genuine issue regarding his competency to be executed required for a hearing on the issue.

Here, the petition contains affidavits, medical reports, mental health records and other credible evidence which documents Mr. Irick's life-long history of mental issues. In the most recent report from Dr. Peter Brown, the Petitioner's sanity, throughout his life, is questioned. Dr. Brown described the Petitioner as having the capacity of a child of approximately 7 to 9 years of age and states that his mental impairments have existed continually from childhood to the present time.

The Petition, as provided, admittedly does not contain lengthy present mental health information[1] but, after careful consideration of the documentation of his mental health history throughout his life along with the information from Dr. Brown's report, this Court finds that the Petition raises a genuine issue concerning the Petitioner's competency throughout his life, including now.

Accordingly, and pursuant to the procedures set forth in Van Tran, Dr. Clifford Tennison and Dr. Peter Brown are hereby appointed to evaluation the Petitioner to determine his competency to be executed. Drs. Tennison and Brown shall file their written evaluations with this Court within ten (10) days of this order appointing them.

The last matter still pending is the Petitioner's Motion for Brain Imaging Tests. This Motion is hereby GRANTED with the provision that all tests must be completed and incorporated into the ordered evaluations which are due 10 days from entry of this order.

ENTERED this the 30 day of July, 2010.

Richard Baumgartner
Criminal Court Judge, Div. I

[1]This lack of present information is explained in part through the Petitioner's motion with the Tennessee Supreme Court seeking additional time to supplement the petition with recent prison mental health records and other materials. Another reason cited for this lack of additional recent information is the Petitioner's indigency and the fact that he has not been provided with funds for any type of a recent mental health evaluation. The recent limited work done by Drs. Spica and Brown have been done at the personal expense of counsel and counsel has indicated that funds are needed in order for more information to be provided to the Court.

CRIMINAL COURT OF KNOX COUNTY, TENNESSEE

STATE OF TENNESSEE	*	No. 24527
	*	
vs.	*	DIVISION I
	*	
BILLY RAY IRICK	*	DEATH PENALTY

NOTICE OF FILING DR. WILLIAM KENNER'S CURRICULUM VITAE

Comes the petitioner, and gives notice of filing Dr. William Kenner's Curriculum Vitae attached hereto as **Exhibit 1** in support of his Motion to Amend and/or Supplement Petition to Determine Competency to be Executed by Substituting Expert. Petitioner respectfully requests that Dr. Kenner's Curriculum Vitae be considered by this Court in ruling on said motion.

SPEARS, MOORE, REBMAN & WILLIAMS, P.C.

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Attorneys for Petitioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of this pleading has been served on counsel for all parties at interest in this cause addressed as follows:

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P.O. Box 20207
Nashville, TN 37202

This 2nd day of August, 2010.

SPEARS, MOORE, REBMAN & WILLIAMS

By: Cindy Jarnemann

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CURRICULUM VITAE

WILLIAM DAVIS KENNER, M.D.

Office Address:
113 30th Avenue, North
Nashville, TN 37203

Telephone:
Office: (615) 292-8555
Telefax: (615) 292-4716

email: williamkenner@comcast.net

Date of Birth: October 3, 1943

Place of Birth: Kingsport, Tennessee

EDUCATION

September 1978 to December 1983
St. Louis Psychoanalytic Institute
St. Louis, Missouri
Training in Psychoanalysis

July 1975 to June 1976
Vanderbilt University Hospital
Nashville, Tennessee
Fellowship in Child Psychiatry

July 1970 to June 1973
Institute of Psychiatry and Human Behavior
University of Maryland Hospital
Baltimore, Maryland
Residency in Adult Psychiatry and Fellowship in Child Psychiatry

July 1969 to June 1970
Baptist Memorial Hospital
Memphis, Tennessee
Rotating Medical Internship

March 1969 to April 1969
Mayo Clinic
Rochester, Minnesota
Clinical Clerkship in Psychiatry

March 1966 to June 1969
University of Tennessee Medical School
Memphis, Tennessee
Doctor of Medicine 1969

September 1963 to June 1965
University of Tennessee
Knoxville, Tennessee

September 1961 to May 1963
Tulane University
New Orleans, Louisiana

PROFESSIONAL EXPERIENCE

January 1984-to the Present	Instructor, St. Louis Psychoanalytic Institute
July 1977-to the Present	Private Practice of Adult and Child Psychiatry, and Psychoanalysis Associate Clinical Professor of Psychiatry, Vanderbilt Medical School
July 1976- June 1977	Vanderbilt University Medical School Department of Psychiatry, Attending Inpatient Psychiatrist
July 1973- June 1975	Director of Vanderbilt Admission Unit at Central State Hospital (Middle Tennessee Mental Health Institute)
July 1973- June 1975	Assistant Professor of Psychiatry

COURSES TAUGHT AND SUPERVISION

"Trauma and Dissociation," "Child Development," and group supervision for the Advanced Psychodynamic Psychotherapy Program

Weekly Case Conference for Fellows in Child Psychiatry

Demonstration of Psychodynamic short Term Psychotherapy for PGY 3 Residents in Psychiatry Vanderbilt Medical School Department of Psychiatry

"Introduction to Psychodynamic Psychotherapy"-Post-graduate Year 2 course, Vanderbilt Medical School of Psychiatry

Individual, Weekly Supervision of 1 or 2 Post-graduate Year 3 Residents in Adult Psychiatry, Vanderbilt Medical School of Psychiatry

"Psychoanalytic Psychotherapy"-Fourth Year Course, St. Louis Psychoanalytic Institute

"Continuing Case Conference" for psychiatry residents Vanderbilt University Hospital, Department of Psychiatry

"The Child as a Witness"-The Supreme Court of Tennessee, Judicial Conference

"Current Issues in Classical Psychoanalytic Theory" Vanderbilt University Hospital, Department of Psychiatry

"Insanity Defense and Competency to Stand Trial" Vanderbilt University Law School

"Short Term Psychotherapy" Vanderbilt Psychiatry Medical School

PAPERS GIVEN

"Competency to Wave Post Conviction Appeals" at the American Academy of Law and Psychiatry, 2005

"Competency to be Executed, at the American Academy of Law and Psychiatry," 2004

"The Reid Technique of Interrogation," at the American Psychoanalytic Association 2007

"The Good, Bad, and Ugly of Forensic Psychiatry" for the Forensic Interest Group's Annual Meeting

Competency to Make a Will

Murder During Sleep

Normal Adolescent Development

Psychological Trauma in a Case of Torture

Normal and Perverse Adolescent Sexual Development

Neurotic Conflicts in Marriage

Death of a Parent, Divorce, and Other Traumas of Adolescence

Discharge Planning on an Adolescent Psychiatric Inpatient Unit

Teenage Suicide

Self Esteem as a Critical Issue for Children with Learning Disabilities

LECTURES AND TELEVISION APPEARANCES

Early Object Loss, and Hysterical Contagion in a Nursery School Outbreak of Mass Pyschogenic Illness by Proxy-Vanderbilt Child Psychiatry Grand Rounds

Question-Child Sex Abuse, the Witch Hunt of the 80's? Town Hall Forum, Cecil C. Humphreys School of Law, Memphis State University

The Expert Witness in Court-Nashville Bar Association, Inns of Court

Adolescent Depression-Tennessee Academy of Family Practice

Panel Member on "For the Family" series, Fox Television

CONSULTANTSHIPS

The Federal Public Defender for the Middle District of Tennessee

U.S. Attorney for the Middle District of Tennessee

The Attorney General for the State of Tennessee

Board of Professional Responsibilities of the Supreme Court of Tennessee

District Attorney for Davidson County, Tennessee

Helen Ross McNabb Community Mental Health Center Forensic Team

Dede Wallace Community Mental Health Center Forensic Team

Division of Health Related Boards of the State of Tennessee

Boys Town Home of Maryland

State of Maryland Department of Mental Hygiene

COMMITTEE APPOINTMENTS

Current	Centennial Medical Center Ethics Committee, Chairman from 1994
Past	Centennial Medical Center Quality Assurance Committee for the Adolescent Unit Ad hoc Committee to Write Guidelines for Impaired Physicians Impaired Physicians Committee
	Tennessee Department of Mental health and Retardation Commission to Establish Guidelines for Violent Patients
	Tennessee Department of Mental Health and Retardation Commission to Establish Voluntary Admission Procedures

Tennessee Department of Mental Health and Retardation
Forensic Transfer Committee

Tennessee Supreme Court Commission on Foster Care and
Permancy Placement

STATE MEDICAL LICENSURE

Tennessee

HOSPITAL STAFF MEMBERSHIP

The Psychiatric Hosital at Vanderbilt
Centennial Medical Center

PROFESSIONAL ASSOCIATIONS AFFILIATIONS

Life Member, American Psychiatric Association
Member, Nashville Academy of Medicine
American Psychoanalytic Association
International Psychoanalytic Association

STUDY GROUPS

American Psychoanalytic Association-Psychoanalytic
Treatment of Patients with Learning Disabilities

American Psychoanalytic Association-The Analysis of
Adults Who Have Been Sexually Abused as Children

American Psychoanalytic Association-The
Vulnerable Child

American Psychoanalytic Association-Dissociative Disorders

PUBLICATIONS

Letter to the Editor in the *Journal of the American Academy of Child and Adolescent Psychiatry*, vol. 28, issue 5, pages 800-802, September, 1989.

"Competency on Death Row" in *The International Journal of Law and Psychiatry*. 1986

LISTINGS

Best Lawyers in America: Directory of Experts, 1990, published by Woodward-White and edited by Stephen Naifeh and Gregory W. Smith

Who's Who in the South and Southeast

Who's Who in Medicine and Healthcare

CRIMINAL COURT OF KNOX COUNTY, TENNESSEE

STATE OF TENNESSEE	*	No. 24527
	*	
vs.	*	DIVISION I
	*	
BILLY RAY IRICK	*	DEATH PENALTY

MOTION TO AMEND AND/OR SUPPLEMENT PETITION TO DETERMINE COMPETENCY TO BE EXECUTED BY SUBSTITUTING EXPERT

Comes the petitioner and respectfully moves this court, pursuant to Rule 47 of the Tennessee Rules of Criminal Procedure, to amend/supplement his petition to determine competency by substituting Dr. William Kenner for Dr. Peter Brown as the designated mental health expert to perform the competency evaluation as ordered by this Court in its order of July 30, 2010. As grounds therefore, petitioner states that given the relatively short time period (pursuant to Van Trav v. State, 6 SW3d (Tenn. 1999)) to complete such an examination and provide the court with a written report, Dr. Kenner, who resides and works in Nashville, is better situated to timely accomplish the evaluation of petitioner who is incarcerated in the Riverbend Maximum Security prison in Nashville. Dr. Kenner is also better situated to arrange the brain imaging tests at Vanderbilt Hospital as approved by the court. By substituting Dr. Kenner for Dr. Brown, it is expected that the costs of the examination will be less because of the reduced travel times. In addition with Dr. Kenner being located so close to Riverbend, he will have more flexibility should there be unexpected scheduling problems.

Dr. Kenner has performed competency evaluations and has been qualified to present expert testimony/reports before Tennessee courts on this issue. Therefore petitioner respectfully requests that Dr. Kenner be substituted for Dr. Brown to perform the competency examination and report to the court. Below is Dr. Kenner's address and phone number.

Dr. William Kenner
113 30th Ave. North
Nashville, Tennessee 37203
615/383-7221

SPEARS, MOORE, REBMAN & WILLIAMS

By: _____

C. Eugene Shiles, Jr., BPR #011678
P. O. Box 1749
Chattanooga, TN 37401-1749
(423) 756-7000

_____

Howell G. Clements, BPR# 001574
1010 Market Street, Suite 404
Chattanooga, TN 37402
(423) 757-5003

Attorneys for Petitioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of this pleading has been served on counsel for all parties at interest in this cause addressed as follows:

Randall Eugene Nichols
District Attorney General
400 Main St. Suite 168
P.O. Box 1468
Knoxville, TN 37901-1468

Via Fax: 615/532-7791
James E. Gaylord
Assistant Attorney General
P.O. Box 20207
Nashville, TN 37202

This 2nd day of August, 2010.

SPEARS, MOORE, REBMAN & WILLIAMS

By: _____

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CRIMINAL COURT OF KNOX COUNTY, TENNESSEE

STATE OF TENNESSEE	*	No. 24527
	*	
vs.	*	DIVISION I
	*	
BILLY RAY IRICK	*	DEATH PENALTY

MOTION TO STRIKE MOTION TO AMEND AND/OR SUPPLEMENT PETITION TO DETERMINE COMPETENCY TO BE EXECUTED BY SUBSTITUTING EXPERT

Comes the petitioner and respectfully moves this court to strike his previously filed motion to amend and/or supplement petition to determine competency to be executed by substituting expert as unnecessary at this time.

SPEARS, MOORE, REBMAN & WILLIAMS

By: _____
C. Eugene Shiles, Jr., BPR #011678
P. O. Box 1749
Chattanooga, TN 37401-1749
(423) 756-7000

_____
Howell G. Clements, BPR# 001574
1010 Market Street, Suite 404
Chattanooga, TN 37402
(423) 757-5003

Attorneys for Petitioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of this pleading has been served on counsel for all parties at interest in this cause addressed as follows:

Randall Eugene Nichols
District Attorney General
400 Main St. Suite 168
P.O. Box 1468
Knoxville, TN 37901-1468

Via Fax: 615/532-7791
James E. Gaylord
Assistant Attorney General
P.O. Box 20207
Nashville, TN 37202

This 4th day of Aug., 2010.

SPEARS, MOORE, REBMAN & WILLIAMS

By: _____

CRIMINAL COURT OF KNOX COUNTY, TENNESSEE

STATE OF TENNESSEE	*	No. 24527
vs.	*	DEATH PENALTY
BILLY RAY IRICK	*	

MOTION TO TRANSPORT PETITIONER FOR BRAIN IMAGING TESTS

Comes the petitioner, Billy Ray Irick, and through his attorneys, moves this court for an order directing Warden Ricky J. Bell of the Riverbend Maximum Security Institution to transport the petitioner to Vanderbilt Hospital on August 9, 2010 in order that petitioner may undergo an MRI brain scan without contrast at 1:00 p.m. and a PET brain metabolic FDG scan at 1:45 p.m. This motion is made pursuant to this court's order of July 30, 2010 granting petitioner's motion for authorization of said brain imaging tests.

SPEARS, MOORE, REBMAN & WILLIAMS

By: _____
C. Eugene Shiles, Jr., BPR #011678
P. O. Box 1749
Chattanooga, TN 37401-1749
(423) 756-7000

_____
Howell G. Clements, BPR# 001974
1010 Market Street, Suite 404
Chattanooga, TN 37402
(423) 757-5003

Attorneys for Petitioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of this pleading has been served on counsel for all parties at interest in this cause addressed as follows:

Via Fax: 86/5215-4253
Randall Eugene Nichols
District Attorney General
400 Main St. Suite 168
P.O. Box 1468
Knoxville, TN 37901-1468

Via Fax: 615/532-7791
James E. Gaylord
Assistant Attorney General
P.O. Box 20207
Nashville, TN 37202

This 5th day of Aug., 2010.

SPEARS, MOORE, REBMAN & WILLIAMS

By: M. Dillon

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IN THE CRIMINAL COURT FOR KNOX COUNTY, DIVISION I

KNOXVILLE, TENNESSEE

STATE OF TENNESSEE	)	
	)	
v.	)	No. 24527
	)	
BILLY RAY IRICK	)	

ORDER SUBSTITUTING EXPERT

This matter is before the Court on the State's request to substitute Dr. Bruce Seidner, 1111 Northshore Dr. Suite S-490, Knoxville, TN, 37919, for Dr. Clifton Tennison, who was appointed by this Court's order of July 30, 2010, to perform an evaluation of the Petitioner on the issue of his competency to be executed.

The State's request is hereby GRANTED.

Due to the substitution, Dr. Seidner's evaluation will be due to the Court on Friday August 13, 2010.

The competency hearing in this matter will be held on August 16 and/or August 17, 2010, at 9:00 a.m.

It is so ORDERED.

ENTERED this the 6th day of August, 2010.

Richard Baumgartner
Criminal Court Judge, Div. I

CERTIFICATE OF SERVICE

I, Lon R. McGaha, Clerk, hereby certify that I have mailed a true and exact copy of same to the Petitioner, Attorneys Howell G. Clements and C. Eugene Shiles, Dr. Bruce Seidner, and ADA Leland Price this the 10 day of August, 2010.

IN THE CRIMINAL COURT FOR KNOX COUNTY, TENNESSEE
DIVISION I

STATE OF TENNESSEE

V. **CASE NO. 24527**

BILLY RAY IRICK, ALIAS

STATE'S REQUEST TO SUBSTITUTE EXPERT

Comes the State of Tennessee, by and through the District Attorney General for the Sixth Judicial District, and hereby moves this Court to enter an Order substituting one of the experts that has been designated to evaluate the present competency of Mr. Irick to be executed. In support of this request, the State would allege as follows:

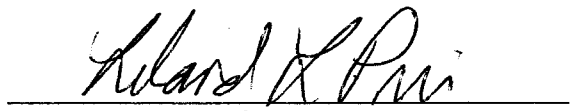
1. On July 30, 2010, this Court entered an Order appointing two experts to evaluate Mr. Irick. One of those experts was Dr. Clifton R. Tennison, M.D. Dr. Tennison was recommended for appointment by the State.

2. It has now come to the attention of the State that Dr. Tennison will be unavailable to perform this evaluation.

3. The State has learned that Dr. Bruce Seidner is available to perform the evaluation. Dr. Seidner's address is 1111 Northshore Drive, Suite S-490, Knoxville, Tennessee 37919. His phone number is (865) 584-0171. His clinical services rate is: $250.00 /hour and his travel rate is: $125.00/hour. (CV attached).

In light of the foregoing, the State respectfully asks that an Order be entered replacing Dr. Tennison with Dr. Seidner.

RESPECTFULLY SUBMITTED,



LELAND L. PRICE.
ASSISTANT DISTRICT ATTORNEY

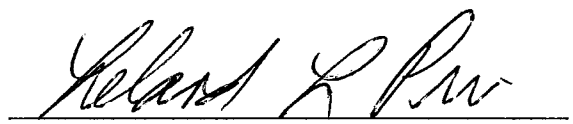
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this pleading has been forward to the following:

C. Eugene Shiles, Jr. Esq.
Post Office Box 1749
Chattanooga, Tennessee 37401-1749
ces@smrw.com

Howell G. Clements, Esq.,
1010 Market Street
Suite 404
Chattanooga, Tennessee 37402

on this the 6th day of August 2010.



LELAND L. PRICE
ASSISTANT DISTRICT ATTORNEY

Bruce G. Seidner, Ph.D.

Clinical &Forensic Psychology
Family Mediation

865.584.0171
865. 584.0174 fax
Email brucegseidner@mac.com

The Northshore Group
1111 Northshore Drive Suite S-490
Knoxville, TN 37919-4054

Vita

Education:

Williamsville South High School Williamsville, NY		Graduated: June, 1972
Canisus College Buffalo, NY		Biology Major Sept., 1972 - June, 1974
Antioch College Yellow Springs, OH		BA in Psychology Sept., 1974 - June, 1977
Menninger School of Psychiatry Topeka, KS		Antioch/Menninger Intern Dec., 1977 - April, 1979
University of Tennessee Knoxville, TN		Clinical Psychology – APA approved Sept., 1979 - March, 1987

University Departmental Awards:

1979 - 1981 Graduate Assistantship in Clinical Psychology

Licensure:

1983 - 1987 Psychological Examiner's License - Clinical, State Licensing Board for the Healing Arts (Tennessee)

1987 to Present Licensed Clinical Psychologist - Clinical, State Licensing Board for the Healing Arts (Tennessee)
Tennessee License Number: P001196

1998 to 2003 Supreme Court of Tennessee Alternative Dispute Resolution Commission
Rule 31 Mediator in the field of Family Mediation
Certificate Number: 0534

Malpractice Insurance:

Kirke-Van Orsdel, Incorporated
1776 West Lakes Parkway
West Des Moines, IA 50398

Clinical Experience:

Camarillo State Hospital
Camarillo, CA.
January, 1975 - April, 1975
Title: Antioch Intern
Supervisor: S. Hart, Ph.D.

Dayton Free Clinic & Counseling Center
Dayton, Ohio
January, 1975 - December, 1976
Title: Staff Member
Supervisor: Bruce G. Steele, MA

The Menninger Foundation
Topeka, KS.

a. January, 1977 - June, 1977
Title: Antioch Intern
Supervisors:
Cecil B. Chamberline, M.D.
Rudy Serrano, MA
Stephen Lerner, Ph.D.

b. July, 1977 - April, 1979
Title: Child-Care Worker
Supervisors:
Cecil B. Chamberline, M.D.
Rudy Serrano, MA

University of Tennessee Psychological Clinic
Knoxville, TN
June, 1980 - September, 1980
Title: Clinical Psychology Trainee
Supervisors: Clinical Faculty

Daniel Arthur Rehabilitation Center
Oak Ridge, Tennessee
September, 1980 - June, 1981
Title: Clinical Psychology Trainee
Supervisor: R. Jeff Slavin, Ph.D.

Overlook Mental Health Center
Blount County Clinic
Maryville, TN

a. September, 1981 - June, 1982

Title: Clinical Psychology Trainee
Supervisors:
Robert E. Levey, Ph.D.
John B. Judd, Ph.D.

b. June, 1982 - April, 1983

Title: Clinical Associate
Supervisor:
Robert E. Levey, Ph.D.

Overlook Mental Health Center
The Maryville Family Guidance Clinic
Maryville, Tennessee
April, 1983 - May, 1984
Title: Psychological Examiner
Supervisor: Robert E. Levey, Ph.D.

Roane County School System
Kingston, TN

September, 1983 - May, 1984
Title: Psychological Examiner
Supervisor: David W. Stewart, Ph.D.
Nassau County Medical Center
East Meadow, New York
June 1984 - June 1985
Title: Clinical Psychological Intern
Supervisor: Aaron Balasney, Ph.D.

Cherokee Mental Health Center
Morristown, Tennessee
August, 1985 - February, 1987
Title: Psychological Examiner
Supervisor: Peter Watrous, Ph.D.

Peninsula Hospital
Louisville, TN
December, 1986 to October, 1989
Title: Clinical Psychologist
Supervisor: William B. Berez, Ph.D.

Child and Adult Clinical Associates
Knoxville, TN
October, 1989 to April, 1993
Title: Clinical Psychologist

The Northshore Group
Knoxville, TN
April, 1993 to Present
Title: Clinical Psychologist

Academic Experience:

University of Tennessee
Knoxville, TN
January, 1995 to Present
Title: Clinical Assistant Professor
University Studies and Graduate Program in Clinical Psychology

Professional Affiliations:

American Psychological Association – Member
American Psychology-Law Society – Member
American Psychological Association - Division of Psychoanalysis-Member
Tennessee Psychological Association – Member
Knoxville Area Psychological Association – Member
Society for Personality Assessment – Member
Appalachian Psychoanalytic Society - Past President
Association of Family and Conciliation Courts – Life Member
Tennessee Valley Mediation Association - Past President
Tennessee Supreme Court, Lawyer's Assistance Program Ram Team-Clinician Member

Curriculum Vitae Accurate as of 1/5/09

CRIMINAL COURT OF KNOX COUNTY, TENNESSEE

STATE OF TENNESSEE	*	No. 24527
	*	
VS.	*	DIVISION I
	*	
BILLY RAY IRICK	*	DEATH PENALTY

NOTICE OF FILING OF REPORT

Comes the defendant and gives notice of filing of a draft report prepared by Dr. D. Malcolm Spica, who administered certain tests and prepared the attached draft report. While Dr. Spica will not be testifying in the competency hearing, his report was reviewed by Dr. Peter Brown in conjunction with preparing his report, which has previously been filed with this court and the state.

SPEARS, MOORE, REBMAN & WILLIAMS

By: _____
C. Eugene Shiles, Jr., BPR #011678
P. O. Box 1749
Chattanooga, TN 37401-1749
(423) 756-7000

_____
Howell G. Clements, BPR# 001574
1010 Market Street, Suite 404
Chattanooga, TN 37402
(423) 757-5003

Attorneys for Petitioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of this pleading has been served on counsel for all parties at interest in this cause addressed as follows:

Randall Eugene Nichols
District Attorney General
400 Main St. Suite 168
P.O. Box 1468
Knoxville, TN 37901-1468

Via Fax: 615/532-7791
James E. Gaylord
Assistant Attorney General
P.O. Box 20207
Nashville, TN 37202

This 12th day of Aug ; 2010.

SPEARS, MOORE, REBMAN & WILLIAMS

By: M. Dillon

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D. MALCOLM SPICA, PH. D.
Licensed Clinical Psychologist
Neuropsychologist

NEUROPSYCHOLOGICAL CONSULTATION

-REPORT DRAFT-

Examinee:	**Billy IRICK**
Laboratory Number:	295218
Age:	51
Date of Birth:	8/26/1958
Handedness:	Right
Education:	8c
Date of Examination:	11/12/09; 11/14/09; 12/04/09
Examiner:	D. Malcolm Spica, Ph.D.

REFERRAL QUESTION:

Mr. Billy Ray Irick is a 51-year-old, right-handed male referred for neuropsychological examination by attorney Howell Clements to assess Mr. Irick's neurobehavioral status. This assessment is intended to serve as a contributing component to the broader evaluation of Mr. Irick's psychological, developmental, and adaptive functioning being conducted by forensic psychiatrist Peter Brown, M.D. Mr. Irick was arrested in connection with events that occurred 4/16/85 in Knoxville, Tennessee.

Mr. Irick is completing the evaluation at the request of attorney Clements. No doctor/examinee relationship was established, nor were there any expectations or guarantees of future contact or relationship. The limits of confidentiality were explained to Mr. Irick. He stated that he understood some tasks are designed to determine if he is providing his best effort, and that what ever is stated during the evaluation may later be subject to inquiry. These factors of assessment were explained to Mr. Irick, and he stated that he understood the factors and consented to complete the testing. All testing and interviewing was conducted with the examinee at the Riverbend Maximum Security Institution in Nashville, Tennessee.

HISTORICAL INFORMATION:

Mr. Irick's history has been summarized by other examiners, and will not be repeated here. On the three days of the examination, Mr. Irick reported that he was in good health. He stated that his medical history was significant for a surgery in 8/77 to remove bone spurs from his spine. He stated that he was institutionalized in her approximately age 6, but cannot recall for what condition. He stated that he had a period of heavy drinking from age 18 to 26, and was arrested twice for public intoxication. He has been incarcerated since 1985. He reported no other serious illnesses, losses of consciousness, head injuries, or toxin exposures. He described his sleep as sporadic, as "I wake up after a couple hours." He described his appetite as "hungry all a time," and his mood as variable: "I'm usually alright, but when I get pissed off I get angry and hateful. But that's normal for anybody in here." He stated that he takes no medications.

The examinee believes he is the product of a normal pregnancy and birth. However, Mr. Irick was told by his mother that he had been adopted, but he is unsure if this was accurate. He knows of no difficulties in

220 Fort Sanders West Boulevard, MOB 2 Suite 300, Knoxville, Tennessee 37922
Tel. 865.531.9088 Fax: 865.531.9089

his attainment of developmental milestones (e.g., learning to walk and speak). Mr. Irick reported that his family history is significant for myocardial infarction and cancer in his father, and diabetes and heart disease in his maternal grandmother. His maternal aunt suffered leukemia.

Mr. Irick reported being expelled from school for fighting during the ninth grade. He stated, "they said I threw him out the window, but it wasn't my fault." He reported being a poorly performing student throughout his education. He obtained his graduate equivalency diploma in 1988 while incarcerated. He stated that he was retained in no grades and received no special education assistance.

Mr. Irick last worked as a dishwasher in preparatory cook in 1985; he held that job for approximately 9 months. Previously he worked as a dishwasher for 1 month, did landscaping for approximately 1 year, and worked on a shrimp boat for approximately 1.5 years. He stated that he typically walked away from jobs when angered by the employer. He has never been married and has no children.

BEHAVIORAL OBSERVATIONS:

Mr. Irick presented as an adequately groomed man in his Riverbend Maximum Security Institution uniform, appearing his age. Hygiene appeared adequate. Mood appeared generally euthymic with a mildly restricted range of appropriate affect. Spontaneous speech was normal and receptive language abilities appeared intact. The examinee's eye contact was good throughout, and he appeared to engage easily with me. Mr. Irick's interpersonal behavior is best described as polite and cooperative with eager to please manner. He did not decline to answer any questions and he worked without complaint during the testing sessions. He appeared to give his best effort on all tasks.

EXAMINATION FINDINGS:

During the course of the examination, the following tests and procedures were administered:

21-Item Word Memory Test
Beck Anxiety Inventory
Beck Depression Inventory-II
Benton Facial Recognition Test
California Verbal Learning Test-II
Delis Kaplan Executive Functions System:
  Trail making test
  Verbal Fluency Test
  Design Fluency Test
  Color-Word Interference Test
  Twenty Questions Test
  Tower Test
Digit Span
Finger Tapping Test
Grooved Pegboard Test
Hopkins Verbal Learning Test - Revised
Judgment of Line Orientation Test
Rey-Osterrieth Complex Figure Test
Symptom Checklist-90-Revised
Test of Memory Malingering
Wechsler Adult Intelligence Scale - IV
Wechsler Test of Adult Reading
Wide Range Achievement Test-3
Wisconsin Card Sorting Test

Validity/Motivation: Mr. Irick did not appear to withhold effort during his evaluation. He was administered both verbal and visual dedicated measures of effort/motivation. His performance of 15/21 on the verbal quantified symptom validity instrument (21-Item Word Test) ranked well within normal limits. Likewise, Mr. Irick provided a strong performance on the visual Test of Memory Malingering:

Trial 1 = 48/50
Trial 2 = 50/50
Retention Trial = 50/50

The validity scales with the standardized self-report inventory, the Personality Assessment Inventory (PAI), revealed high levels of symptoms and some degree of inconsistent defensiveness. The PAI test publisher's computer analysis reported that the multiple scale elevations used to compute the Cashel Discriminate Function (CDF) suggested that he was reluctant to admit to common problems, although the Defensiveness Index (DEF) was not significantly elevated. Also:

"The Rogers Discriminate Function (RDF), an empirically -derived malingering index based on multiple PAI scale elevation s, is elevated... The Malingering Index (MAL) is not significantly elevated. The current PAI profile does not possess many of the characteristics commonly observed in profiles produced by research participants instructed to simulate psychiatric disturbance. In short, there was inconsistency in the evidence that pointed to the possibility of negative distortion and symptom exaggeration. This is not entirely unexpected because the NIM, MAL, and RDF scales appear to Different aspects of the negative distortio n construct... In short, there is inconsistency with respect to the PAI evidence indicating defensive responding. This is not unusual because the PIM, DEF, and CDF tap different aspects of defensiveness, or may reflect other factors such as comprehension difficulties. Additional information should be collected to determine the source of this inconsistency."

Taken together, the symptom validity and effort assessment findings suggest the examinee made no attempt to simulate difficulties on the tests of cognitive functioning, but was mildly inconsistent in his approach to self-report measures pertaining to psychiatric status.

Intellectual Functioning: General level of intellectual functioning was assessed with the Wechsler Adult Intelligence Scale-IV (WAIS-IV). Mr. Irick' performances ranged from the Low-Average to Average levels:

Verbal Comprehension Index	= 98	45th percentile
Perceptual Reasoning Index	= 107	68th percentile
Working Memory Index	= 92	30th percentile
Processing Speed Index	= 86	18th percentile
Full Scale IQ	= 96	39th percentile

Mr. Irick demonstrated a relative strength on tasks requiring visual pattern recognition/reasoning. Conversely, he had his greatest difficulty on tasks requiring mental speed or attention to detail.

Subtest	Percentile	Subtest	Percentile
Information	63rd	Picture Completion	25th
Digit Span	37th	Figure Weights	63rd
Vocabulary	25th	Block Design	25th
Arithmetic	25th	Coding	9th
Comprehension	25th	Matrix Reasoning	84th
Similarities	50th	Symbol Search	37th
Letter-Number Sequencing	50th	Visual Puzzles	84th
		Cancellation	16th

These scores are comparable to statistical premorbid estimates, which also placed Mr. Irick in the lower half of the Average range: for example, his score on the Wechsler Test of Adult Reading provided a

Predicted Full Scale IQ = 95 (37th percentile). Considering these findings, Mr. Irick' current intellectual scores likely reflect his long-standing abilities.

Academic skills were assessed with the Wide Range Achievement Test-3. Mr. Irick's word reading skills ranked in the Average range (27th percentile; high school equivalent). Written arithmetic was Borderline-Impaired: 7th percentile, sixth grade equivalent. Spelling was also Borderline-Impaired: 5th percentile, fifth grade equivalent.

Attentional Control: Mr. Irick appeared fully alert throughout the examination on the days of testing. As noted above, simple attentional spans ranked in the Average range for stimuli presented aurally (Digit Span, 37th percentile). Overall mental speed appeared Low Average: Processing Speed Index = 86, 18th percentile. Mr. Irick demonstrated Average ability (commensurate with his intellectual level) for holding information in his mind briefly: Working Memory Index = 92, 30th percentile.

Executive Functioning: More complex attentional controls were assessed with subtests of the Delis-Kaplan Executive Function System. Mr. Irick provided adequate performances on a task of simultaneous visual tracking (Trail Making Test Composite Score, 25th percentile), and a task of simple reasoning through process of elimination (Twenty Questions Test, 25th percentile).

However, Mr. Irick demonstrated severe impairment in his ability to organize information or utilize method or strategy to deal with material. For example, he was highly disorganized in his approach to generating novel designs under time pressure (Design Fluency Test, 5th percentile) or generating words beginning with specified letters (Letter Fluency Test, 2nd percentile).

Mr. Irick performed in the average range (63rd percentile) during the Tower Test. However, additional signs of executive control dysfunction were seen on more complex tasks requiring hypothesis testing and general mental organization: e.g., Wisconsin Card Sorting Test - Trials, 2nd percentile. During this task, Mr. Irick was highly distractibility, as he tended to lose track of his own approach to solving the problem: Failure to Maintain Set, 8th percentile. Use of such strategy is known to rely on the frontal lobes of the cerebral cortex.

Language Functioning: The examinee exhibited variable abilities in the area of language, as verbal fluency abilities ranked as Impaired (Letter Fluency, 2nd), but he performed adequately on a task of word knowledge (Vocabulary, 25th percentile). His semantic access abilities for generating words within a semantic category (e.g., exemplars of animals) ranked in the Impaired range: Category Fluency, 2nd percentile.

In general, Mr. Irick demonstrated adequate verbal skills, but when placed under time pressure he was unable to think quickly or express himself in an organized way.

Sensory-Motor Functioning: Mr. Irick reported being right-handed. Simple repetitive motor speed was within normal limits, bilaterally: Finger Tapping-right hand, >99th percentile; left hand, >99th percentile. Mr. Irick was less efficient on a task requiring fine motor dexterity for placing pegs into a board: Grooved Pegboard Test-right hand, 38th percentile; left hand, 24th percentile.

Visuoanalytic Functioning: The examinee demonstrated a relative strength in his abilities to work with visual spatial material. On a task of complex visuoanalysis, he performed in the Average range: Rey Complex Figure Test - Copy, 37th percentile. His ability to perceive simple angular relationships between two lines was strong: Judgment of Line Orientation Test, >86th percentile.

Mr. Irick's ability to solve nonverbal problems appeared variable, depending on the necessity to utilize executive functions: e.g., Visual Puzzles, 84th percentile vs. Wisconsin Card Sorting Test - Trials, 2nd percentile. Mr. Irick's performance on the Visual Puzzles test was one of his highest in the protocol, whereas

the executive control requirements of the Wisconsin Card Sorting Test proved to be challenging for him; the more the examinee was required to recall information and learn from experience, the poorer his performance.

Memory and Learning Functioning: Mr. Irick's memory skills ranked in the Low Average range for recall of either verbal or visual stimuli. For example, he performed in the Low Average range for his recall of a complicated visual design: Rey Complex Figure Test-Delayed Recall, 20th percentile. Similarly, his recall of a word list across three repeated trials was poor: Hopkins Verbal Learning Test - revised Total 1-3, 9th percentile. The examinee provided a better performance during a yes/no recognition trial (68th percentile).

These findings suggest Mr. Irick has difficulty learning new information and retaining it over time. These problems were especially prominent when he relied on information presented aurally. The memory patterns are again suggestive of mental disorganization.

Psychological/Mood Status: Mr. Irick was administered three standardized tests of mood and personality assessment: Beck Depression Inventory-II; Beck Anxiety Inventory; Personality Assessment Inventory.

Mr. Irick endorsed a number of symptoms of depression on the quantified Beck Depression Inventory-II (raw score = 18/63; Mild). He reported very few anxiety features on the Beck Anxiety Inventory (raw score = 4/63; Moderate). The items Mr. Irick endorsed on these measures generally pertained to feeling he is being punished, anhedonia, irritability, and nervousness.

On the quantified Symptom Checklist-90-Revised, Mr. Irick ranked within normal limits across domains measured. However, his highest scores were obtained the following scales:

Paranoid Ideation	83rd percentile
Hostility	89th percentile
Psychotic Symptoms	83rd percentile

The PAI yielded extreme elevations on scales pertaining to paranoia, schizophrenia-spectrum disorders, and depression. Mr. Irick's highest elevations on the PAI were on the following scales:

Paranoia	>99th percentile
Schizophrenia	>99th percentile
Depression	>99th percentile
Non-support	>99th percentile

Persons in correctional settings producing profiles similar to Mr. Irick's typically exhibit very high suspiciousness, disorganized thinking, and alienation. Significant depression was also evident. The examinee reported suicidal features on the PAI; upon further interview, he denied current suicidal ideation, plan, or intent.

According to the PAI publisher's computerized analysis, the examinee produced a profile of low dominance and warmth. He is likely to avoid social interactions and may have problem being assertive and standing up for himself. Consequently, he may be a target of predatory individuals who perceive his submissive tendencies as a sign of weakness. Others may view him as cold and socially inept. His low level of warmth is complicated by a high degree of suspiciousness, sensitivity, and social disinterest. Furthermore, he also reported a high level of interpersonal problems, suggesting that his interpersonal tendencies have not allowed him to effectively negotiate relationships.

He is likely to have notable psychotic symptoms, including thought disturbance, disorganization, and perceptual experiences (such as hallucinations and/or delusions) typically associated with schizophrenia-spectrum disorders. Based on the PAI responses, I recommend diagnostic considerations of paranoid personality disorder, depression, and psychotic disorder.

The PAI also provided information regarding conditions that may be reasonably ruled out. For example, the findings (including supplementary and subscales) were inconsistent with diagnosis of Antisocial Personality Disorder, as each of the following scales ranked within normal limits:

Antisocial scale
Antisocial Behaviors
Egocentricity
Stimulus-Seeking

Considering the specific scope of this neuropsychological examination, I defer to Dr. Brown to make a more precise classification of Mr. Irick's personality traits and psychological/psychiatric status through his ongoing psychiatric evaluation. I will provide provisional diagnoses for Mr. Irick's features of paranoia and psychosis.

SUMMARY & CONCLUSIONS:

This 51-year-old man participated in a neuropsychological examination to evaluate his neurobehavioral status. This assessment is intended to serve as a contributing component to the broader evaluation of Mr. Irick's psychological, developmental, and adaptive functioning being conducted by psychiatrist Peter Brown, M.D. Formal validity/motivation measures indicated that Mr. Irick provided his full effort on the neurocognitive procedures. The neuropsychological test results revealed the following deficits:

1. Executive Functioning
2. Verbal fluency
3. (Mental processing speed - mild)

These deficits are in the context of an individual with intact visual spatial skills: e.g., Perceptual Reasoning Index, 68th percentile. Taken together, the above features suggest cerebral dysfunction, and specifically implicate frontal territories as being maximally involved in the examinee's cerebral dysfunction. While the etiology of the examinee's deficits is not clear from his history, it is likely that they are long-standing in nature, as Mr. Irick reported a history of poor performance in school and no clear head injuries or other cerebral insults. Psychological testing indicated prominent features of paranoia, depression, and disorganized thinking.

During the current examination, Mr. Irick demonstrated intact visuoanalytic abilities. In fact, he performed in the normal range on select tasks of spatial analysis, nonverbal problem solving, and figural memory. While these skills indicate normal cerebral functioning for posterior/right hemisphere territories, it is likely rare that they benefit Mr. Irick's in his daily functioning. From the current data, the examinee's cognitive deficits in rapid verbal skills and executive functioning likely combine during times of stress to cause the examinee to feel overwhelmed by information from multiple sources and revert to known --but highly ineffective-- behavioral responses to solve problems at hand.

DIAGNOSTIC IMPRESSION:

1. Cognitive Disorder - Not Otherwise Specified: executive functioning, verbal fluency (294.9)
2. Psychotic Disorder - Not Otherwise Specified (298.9)
3. Depressive Disorder - Not Otherwise Specified (311)
4. Paranoid Personality Disorder (301.0)

The above diagnoses are provided as provisional. As noted above, these findings are to be used as part of an evaluation conducted by psychiatrist Dr. Peter Brown who will revise the specific diagnoses if additional information comes to light in his evaluation.

It was a pleasure working with this examinee. If I can be of any further assistance to Mr. Irick, please do not hesitate to contact me.

D. Malcolm Spica, Ph.D.
Licensed Clinical Psychologist

[Transcribed by speech recognition software]

IN THE CRIMINAL COURT FOR KNOX COUNTY, TENNESSEE

DIVISION I

STATE OF TENNESSEE	)	
	)	
VS.	)	**NO. 24527**
	)	
BILLY RAY IRICK	)	**DEATH PENALTY**

ORDER TO PRODUCE RECORDS

To: Warden Ricky Bell
Riverbend Maximum Security Institution
7475 Cockrill Bend Boulevard
Nashville, TN 37243-0471

The Court hereby orders that the Warden, Ricky Bell, produce the medical and phone records of prisoner, Billy Ray Irick #113945, for review by Dr. Bruce Seidner, for purposes of evaluating competency to be executed.

It is so **ORDERED.**

The Clerk shall provide a copy of this order to the warden of said facility, the counsel for defendant and the district attorney general.

ENTER this 14th day of August, 2010.

JUDGE RICHARD R. BAUMGARTNER
SIXTH JUDICIAL DISTRICT
CRIMINAL COURT, DIVISION I

IN THE CRIMINAL COURT FOR KNOX COUNTY, TENNESSEE

DIVISION I

STATE OF TENNESSEE	)	
	)	
VS.	)	**NO. 24527**
	)	
BILLY RAY IRICK	)	**DEATH PENALTY**

ORDER FOR CONTACT VISIT

It appearing to the court that the defendant is currently incarcerated in the Knox County Detention Facility awaiting disposition in the above-styled case. It is necessary for a contact visit with Dr. Bruce Seidner, to perform various tests and interviews to determine competency to be executed. Dr. Bruce Seidner will bring audio and electronic equipment for such tests, as well as voluminous paperwork and requests a private room with a table and two chairs. The Court's assistant has consulted with the jail authorities regarding this visit and will forward a copy of this order to Chief Hayes of the Knox County Sheriff's Office.

Therefore, the defendant shall be allowed a contact visit with the following individual, Dr. Bruce Seidner, on Saturday and Sunday, August 14 and 15, 2010 at 9:00 a.m.

It is so **ORDERED.**

The Clerk shall provide a copy of this order to the Sheriff of the Knox County Jail, the counsel for defendant and the district attorney general.

ENTER this 13th day of August, 2010.

JUDGE RICHARD R. BAUMGARTNER
SIXTH JUDICIAL DISTRICT
CRIMINAL COURT, DIVISION I

IN THE CRIMINAL COURT FOR KNOX COUNTY, TENNESSEE

DIVISION I

STATE OF TENNESSEE	)	
	)	
VS.	)	NO. 24527
	)	
BILLY RAY IRICK	)	DEATH PENALTY

ORDER OF APPOINTMENT

It appearing, that the defendant is an indigent person and thereby qualifies for appointed legal counsel.

It is, therefore, ordered that on the issue of competency to be executed C. Eugene Shiles, Jr., and Howell G. Clements are hereby appointed as counsel for the defendant as provided by law nunc pro tunc July 19, 2010.

It is so **ORDERED.**

The Clerk shall provide a copy of this order to counsel for defendant and the Administrative Office of the Courts.

ENTER this 17th day of August, 2010.

JUDGE RICHARD R. BAUMGARTNER
SIXTH JUDICIAL DISTRICT
CRIMINAL COURT, DIVISION I

IN THE CRIMINAL COURT FOR KNOX COUNTY, DIVISION I

KNOXVILLE, TENNESSEE

STATE OF TENNESSEE	)	No. 24527
	)	
v.	)	Supreme Court No.
	)	M1987-00131-SC-DPE-DD
BILLY RAY IRICK	)	DEATH PENALTY

ORDER ON ISSUE OF COMPETENCY TO BE EXECUTED

This matter came before the Court for hearing on the issue of the Petitioner Billy Ray Irick's Competency To Be Executed pursuant to the procedures set forth in Van Tran v. State, 6 S.W.3d 257 (Tenn. 1999).

The Eighth Amendment to the United States Constitution precludes the execution of a prisoner who is incompetent. Ford v. Wainwright, 477 U.S. 399 (1986). Petitioner is presumed competent to be executed and bears the burden of overcoming this presumption by a preponderance of the evidence Ford, 477 U.S. at 426 (Powell, J. concurring). However, the proof submitted must relate to present competency. Thus, at least some of the evidence must be the result of recent mental evaluations or observations of the petitioner. Id.

Tennessee has adopted a cognitive test for determining competency to be executed. Van Tran v. State, 6 S.W.3d 257 (Tenn. 1999). In Van Tran, the court held that a prisoner is not competent to be executed if the prisoner lacks the mental capacity to understand the fact of the impending execution and the reason for it. Id. Subsequent to our state court rulings in Van Tran, the United States Supreme Court expounded on its holding in Ford. See Panetti v.

Quarterman, 551 U.S. 930 (2007). While the Panetti Court's decision does not appear to affect the procedure established by Tennessee courts to determine competency to be executed, it does appear to broaden the definition of "incompetence" with regard to competency to be executed and it appears to expand the evidence which this trial court should consider in determining this issue. See Thompson v. Bell, 580 F.3d 423 (6th Cir. 2009)(Holding that the Tennessee Supreme Court unreasonably applied Ford when it (1) determined that Thompson's "severe delusions" were "irrelevant" to a Ford competency analysis and (2) determined that Thompson's documented history of mental illness was equally "irrelevant" to the question of present competency). No longer is it sufficient for trial courts such as this one to merely examine whether a prisoner has identified the link between his crime and the punishment to be inflicted. Rather, in applying the Ford standard, adopted by the Tennessee Supreme Court in Van Tran, this court must now consider whether petitioner suffers from such a severe mental disorder that puts the awareness of the link between crime and punishment "in a context so far removed from reality that the punishment can serve no proper purpose." Id. 168 L.Ed. 2d at 687. The Court in Panetti held that

> The potential for a prisoner's recognition of the severity of the offense and the objective vindication are called in question ... if the prisoner's mental state is so distorted by a mental illness that his awareness of the crime and punishment has little or no relation to the understanding of these concepts shared by the community as a whole....
>
> ... A prisoner's awareness of the State's rationale for an execution is not the same as a rational understanding of it.

Id. at 686.

Here, the petitioner presented the testimony of Psychiatrist Dr. Peter Brown and Licensed Clinical Social Worker Nina Lunn, along with various exhibits related to the Petitioner and his life-long history of mental issues. In his testimony and report, Dr. Peter Brown questioned the Petitioner's sanity throughout his life. Dr. Brown described the Petitioner as having the capacity of a child of approximately 7 to 9 years of age and stated that his mental impairments have existed continually from childhood to the present time.

On cross, Dr. Brown admitted that he had not had contact with the Petitioner since early 2010 when he had originally performed an evaluation on him and that when he performed the evaluation that he had not been looking at the question of competency to be executed. He admitted that because he had not been looking at that question in particular that he had not followed the testing procedure or questions suggested by literature for the issue of competency to be executed. He stated that it was his opinion that the evaluation he had performed provided him with sufficient information to formulate an opinion that the Petitioner was not competent to be executed.[1]

Nina Lunn testified to events from the Petitioner's childhood and stated that she had not seen him since 1967.

Dr. Bruce Seidner, a psychologist, testified for the State that he was asked to evaluate the Petitioner solely on the issue of competency to be executed. His report indicates that there is "extensive documentation and objective evaluations that Mr. Irick has long suffered major psychiatric illness and substance dependence." He testified that the Petitioner's prison records

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[1]This court also granted funds for Brain Imaging Tests to be done on the Petitioner but counsel represented that these tests were not completed or provided to Dr. Brown.

do not indicate that he has had any significant contact with either medical or mental health services which he has been housed with the Department of Corrections for the last 2 decades. He testified that he had no opinion concerning Dr. Brown's evaluation or opinion.

He indicated that he had met with the Petitioner in a private room at the Knox County Detention Facility on the Saturday and Sunday before this hearing for a total of about 12 ½ hours and had done a general interview of him as well as some testing. He testified that the WAIS-IV test indicated that the Petitioner has a full scale I.Q. of 97 and that he was of average intelligence. Dr. Seidner indicated that the Petitioner had been very cooperative with the testing and that the results of the I.Q. test was consistent with the prior testing done by Dr. Brown. As a result, he stated in his report that "there is no obvious or systematic intellectual deficit which would question or, more importantly, impair his functional capacity relative to his adjudicative competence or competence to be executed."

Dr. Seidner also administered the MMPI-2 (Minnisota Multiphasic Personality Test- 2) to the Petitioner but indicated that the results of the tests were not useful in his assessment.

Dr. Seidner testified that he and the Petitioner discussed extensively his role in this litigation and the issues which were directly related to his competency to be executed. He described the Petitioner as cooperative and as having demonstrated a detailed understanding of his current legal status and situation. He described how the Petitioner in his own words described Dr. Seidner's role in these proceedings. He also indicated to Dr. Seidner that while he viewed this proceeding as a formality because of the lack of results from all of his legal efforts to be exonerated, he was "going to fight this to the end" which he described as what he believed would be his execution on December 7, 2010. He also testified that the Petitioner

understands that if he is executed that this will end his life.

Dr. Seidner testified that the Petitioner was able to understand the difference between this evaluation and evaluations done in the past such as those to determine his competency to stand trial. He stated that the Petitioner had been able to name the victim, identified her relationship to family, explained his relationship with her, and maintained his innocence of the crime. The Petitioner understood the crime for which he was convicted and the sentence he had received and which he continues to fight through the legal system. He described how the Petitioner had knowledge of the course of his litigation, the issues of what the Petitioner viewed as inconsistent outcomes and penalties, and the legal options that the Petitioner has had over the years and that he has now run out of options.

Dr. Seidner testified that the Petitioner indicted that he did not oppose the death penalty and that he in fact believed that "a life for a life" is justified. He stated rather that the Petitioner was critical of how the death penalty is applied. He described the Petitioner as having an entirely rationale appreciation and understanding of the death penalty.

In the final paragraph of his report, Dr. Seidner summarizes that

> At this point in time Mr. Irick continues to resist his execution and expresses confidence that his lawyers are doing everything they can to protect and defend him. But, he describes being realistic and is contemplating his choice of death by lethal injection or electrocution. He appears knowledgeable of the objective facts related to both methods and has full knowledge that this will likely be his last major life decision. He feels it is wrong but he fully appreciates, understands, and accepts that he will likely be put to death on the 7th of December 2010.

As previously stated, the Petitioner is presumed competent and bears the burden of overcoming this presumption by a preponderance of the evidence. After carefully considering all the evidence presented and the applicable standards, this Court finds that the Petitioner has failed to overcome the presumption of competency. In fact, this Court finds that the evidence presented more than sufficiently establishes that the Petitioner has the mental capacity to understand the fact of his impending execution and the reason for it. In addition, this Court finds that the record establishes that the Petitioner has a "rationale understanding" of these facts and issues as discussed in Panetti and Thompson.

Accordingly, this Court finds that Petitioner Billy Ray Irick is competent to be executed.

ENTERED this the 20th day of August, 2010.

Richard Baumgartner
Criminal Court Judge, Div. I

CRIMINAL COURT OF KNOX COUNTY, TENNESSEE

STATE OF TENNESSEE	*	No. 24527
	*	
vs.	*	DIVISION I
	*	
BILLY RAY IRICK	*	DEATH PENALTY

NOTICE OF APPEAL OF COMPETENCY DETERMINATION AND MOTION TO TRANSMIT RECORD TO TENNESSEE SUPREME COURT

Comes the defendant, Billy Ray Irick, and gives notice of his appeal of the trial court's determination that he is competent to be executed entered on August 20, 2010 to the Tennessee Supreme Court. Furthermore, and pursuant to the Tennessee Supreme Court's instructions/rules as set out in Van Tran v. State, 6 SW3d 257 (Tenn. 1999), he moves for an order, if necessary, to transmit the trial court record to the supreme court at the office the appellate court clerk in Nashville, Tennessee, as also directed in Van Tran..

SPEARS, MOORE, REBMAN & WILLIAMS

By: _____

C. Eugene Shiles, Jr., BPR #011678
P. O. Box 1749
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Howell G. Clements, BPR# 001574
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Chattanooga, TN 37402
(423) 757-5003

Attorneys for Petitioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of this pleading has been served on counsel for all parties at interest in this cause addressed as follows:

Via Fax: 865/215-4253
Leland Price
Assistant District Attorney
400 Main St. Suite 168
P.O. Box 1468
Knoxville, TN 37901-1468

Via Fax: 615/532-7791
James E. Gaylord
Assistant Attorney General
P.O. Box 20207
Nashville, TN 37202

This 13rd day of Aug., 2010.

SPEARS, MOORE, REBMAN & WILLIAMS

By: M. Dillon

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CERTIFICATE OF APPELLATE RECORD

I, Joy R. McCroskey, Clerk of the Criminal Court of Knox County, Tennessee, do hereby certify that the following items herewith transmitted to the Supreme Court are originals or true and correct copies of all or the designated papers on file in my office in the captioned case.

1. Technical record attached to this certificate and consisting of 135 pages consisting of 1 volume.

2. 3 Volumes of Transcript filed in my office on August 27, 2010, and authenticated by the Trial Judge or automatically authenticated under T.R.A.P. Rule 24(f).

3. Exhibits filed in my office on August 17, 2010, and authenticated by the Trial Judge or as provided in T.R.A.P. Rule 24(f) and described as follows:

Ex. 1, consisting of CV - Dr. Brown.

Ex. 2, consisting of Report from Dr. Spica.

Ex. 3, consisting of Psychiatric Evaluation.

Ex. 4, consisting of Article.

Ex. 5, consisting of Statement - Kathy Ann Jeffers.

Ex. 6, consisting of CV - Dr. Seidner.

Ex. 7, consisting of Report from Dr. Seidner.

This 27 day of August, 2010.

Jay R McCaskey
Clerk, Criminal Court
of Knox County, Tennessee

STATE OF TENNESSEE

VS

BILLY RAY IRICK, ALIAS

NO. 24527

MURDER & AGGRAVATED RAPE

JOY R. MCCROSKEY, CLERK

TRANSCRIPT COSTS

135 pages at $1.50 per page	$202.50
Certificate and Seal	$ 4.00
TOTAL	$206.50