IN THE CRIMINAL COURT FOR DAVIDSON COUNTY, TENNESSEE
DIVISION III

PAUL DENNIS REID, JR.	)	
	)	
	)	
	)	**No. 97-C-1834**
vs.	)	**(Captain D's)**
	)	**(Capital Case)**
	)	**(Post-Conviction)**
	)	
STATE OF TENNESSEE	)	

ORDER

I. INTRODUCTION

This matter is before the Court regarding the issue of petitioner's competency to proceed in his post-conviction proceedings in the instant matter.[1] Petitioner's competency in this context was first raised by the Post-Conviction Defender's Office ("PCDO") (who had been appointed to represent petitioner following the filing of the pro se petition for post-conviction relief) as eventually memorialized in the unsigned and unverified amended petition filed on petitioner's behalf by the PCDO.

When the Court determined that no procedure had been established to address competency at this level and under these circumstances, this Court proposed a procedure

[1] Petitioner's competency is also at issue in the McDonald's case. Even though the same competency standard (Nix) is applicable to both cases, the Court must address each case separately due to the different procedural posture. As noted herein, petitioner timely filed a pro se petition for post-conviction relief in the instant matter (Captain D's).

for making such a determination by Order dated January 10, 2005. Following a Rule 9 appeal, the Tennessee Supreme Court adopted the Court's procedure (as modified) in Reid v. State, 197 S.W.3d 694 (Tenn. June 26, 2006).

In the interim, petitioner filed handwritten requests to withdraw his petition. Pursuant to Tennessee Supreme Court Rule 28, Section 11(A), the Court conducted a lengthy competency hearing to determine petitioner's competency to withdraw his petition based on the Rees v. Peyton competency standard. As indicated in the December 2007 order, the Court concluded, without specifically finding that petitioner was incompetent, that a combination of factors including the evidence presented, the waxing and waning nature of petitioner's condition and fundamental fairness concerns, warranted a finding that petitioner not be permitted to withdraw his petition.

Upon resolution of the Rule 28 proceedings, the Court immediately returned the focus of these proceedings back to the issue of petitioner's competency to proceed. Following a series of related proceedings, the Court conducted a competency hearing on May 12 and 13, 2008.[2] Both parties were given an opportunity to file post-hearing briefs. Following the Nix competency hearing and submission of briefs, the Court took the matter under advisement pending preparation of the hearing transcripts.

Having now reviewed the transcripts, the briefs filed by the parties, along with relevant legal authority, the Court finds the petitioner through his next friend has failed to meet his burden of establishing by clear and convincing evidence his incompetency under

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[2] In the interest of judicial economy, the Court attempted to coordinate its competency hearing in the Captain D's and McDonald's cases with the related hearing in the Baskin-Robbins matter in Clarksville, Montgomery County, Tennessee. The Clarksville hearing was in fact conducted on May 14 and 15, 2008.

the State v. Nix standard. As a result, the petitioner may proceed on his original pro se post-conviction petition in the Captain D's case; however, because he has failed to demonstrate his incompetency under Nix, the unsigned unverified petition filed on his behalf cannot be accepted by the Court.

II. BACKGROUND

Due to the nature of these competency proceedings, the Court summarized much of the relevant case history and background in the introduction portion of this Order. However, it is useful to review the lengthy history of this case (and related cases).

In the instant case, petitioner was convicted of the first degree murders of two employees of a Captain D's restaurant in Donelson, Nashville, Tennessee. The same jury also sentenced petitioner to death on each of the murders. Following a separate sentencing hearing, petitioner received a twenty-five year sentence to be served consecutively to the two death sentences. The convictions and sentences were affirmed in State v. Reid, 91 S.W.3d 247 (Tenn. 2002).

Subsequently, petitioner was convicted on two counts of first degree murder of two employees of a Baskin-Robbins store in Clarksville for which the jury imposed two death sentences. Those convictions and sentences were affirmed in State v. Reid, 164 S.W.3d 286 (Tenn. 2005). Next, petitioner was convicted of the murders of three employees of a McDonald's restaurant in Nashville, Tennessee for which he received three death sentences. The convictions and sentences were affirmed in State v. Reid, 213 S.W.3d 792 (Tenn. 2006).

In the Captain D's case, the Tennessee Department of Correction initiated its deathwatch procedure leading up to the scheduled execution on April 29, 2003. Initially, petitioner refused to file a post-conviction petition and wrote a lengthy letter regarding, among other things, his desire not to proceed with post-conviction relief. However, in the eleventh hour on April 28, 2003, petitioner signed a prepared pro se post-conviction petition halting the execution after the Sixth Circuit Court of Appeals granted a stay.

Once the petition was filed, the Court appointed the Post Conviction Defender's Office ("PCDO") to represent petitioner as required by statute. As the proceedings moved toward a hearing, petitioner filed a handwritten request to withdraw his post-conviction petition. The Court entered an Order discouraging petitioner's pro se request to withdraw. On May 13, 2004, the petitioner filed a written document requesting to proceed on his post-conviction petition.

Prior to the deadline for filing the amended petition, the PCDO informed the Court that in its belief, the petitioner was incompetent, and therefore, could not sign an amended post-conviction petition. Following a hearing, the Court developed a procedure to determine competency to proceed in a post-conviction proceeding. This procedure was affirmed, as modified, in Paul Dennis Reid, Jr. vs. State, 197 S.W.3d 694 (Tenn. 2006).

On October 6, 2006, the Court conducted a status conference to discuss future proceedings in light of the Reid opinion. The Court also addressed petitioner's two pro se filings in which he moved withdraw his "post-conviction appeal" in this case. By Order dated October 23, 2006, the Court determined the petitioner's request to withdraw should be addressed prior to any post-conviction proceedings. Accordingly, the Court instructed the parties to prepare for a Tennessee Supreme Court Rule 28, Section 11 inquiry into

petitioner's desire and competency to withdraw his post-conviction petition. The Court conducted a Rule 28 hearing to determine petitioner's competency under the Rees v. Peyton standard adopted by the Tennessee Supreme Court in Rule 28. On December 20, 2007, the Court entered an order the concluded petitioner should not be permitted to withdraw his pro se petition under the circumstances presented in that case.[3]

During the pendency of the Captain D's case and related proceedings, the one-year statutory limitations period for filing for post-conviction relief began on the McDonald's case. The limitations period began following the Supreme Court's issuance of its opinion in McDonald's on December 26, 2006. Petitioner never filed a pro se petition in the McDonald's case. Instead, petitioner's sister, Linda Martiniano, filed a next friend petition on December 26, 2007 on petitioner's behalf alleging petitioner's incompetence to file for post-conviction relief. Attached to the petition were a number of documents in support of Ms. Martiniano's requisite threshold showing of incompetence. The Court determined that a threshold showing had been made by order issued on February 20, 2008.

Finding both the McDonald's and Captain D's cases in similar but not identical procedural postures, the Court conducted joint status conferences to determine how best to proceed in both cases. Because petitioner's competency under the Nix standard was at issue in both cases, the Court instructed the parties to prepare for a combined Nix hearing.

At issue in the Captain's D's case is the petitioner's present competency to proceed on his previously-filed pro se post-conviction petition. On the other hand, the issue in the

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[3] The Court's December 2007 order relating to the Rule 28 proceedings is incorporated by reference as if fully set out herein.

McDonald's case is petitioner's competency during the one-year statutory limitations period for filing for post-conviction relief. The Court informed the parties that one competency hearing would be conducted for both the Captain D's and McDonald's cases but that two separate orders would be entered to reflect the findings on each case. On May 12 and 13, 2008, the Court conducted a Nix competency hearing.

III. NIX COMPETENCY PROCEEDINGS

Initially, the Court notes that its Order relating to the Rule 28 proceedings which addressed petitioner's competency under the Rees v. Peyton standard has been incorporated by reference into this Order. Both Dr. Woods and Dr. Bernet testified at both the Rule 28 hearing and the instant Nix hearing conducted on May 12 and 13, 2008. Because both experts relied extensively upon the evaluations conducted in preparation for the 2007 Rule 28 proceedings and essentially supplemented those findings in 2008, the Court finds it useful to include the summaries of both Dr. Bernet and Dr. Woods.

At the May 12 and 13, 2008 Nix hearing, the Court heard testimony from Dr. Woods, Dr. Bernet and Dr. Martell. Summaries of their respective testimony are included.

A. Dr. George Woods

As noted Dr. George Woods testified at the September 4 and 5, 2007 Rule 28 proceedings as one of two court-appointed experts. His Rule 28 hearing testimony and related report are summarized herein. Dr. Woods testified on behalf of the petitioner at the May 12, 2008 proceedings. This testimony and related report are also summarized below.

September 4 & 5, 2007 Rule 28 Proceedings

On September 4, 2007, the Court continued with the Rule 28 competency hearing. Dr. George Woods,[4] a forensic psychiatrist from California, testified that he was appointed by the Court to evaluate the petitioner's competency in light of the Rule 28 (or Rees v. Peyton) standard.

Dr. Woods recited the materials he relied upon and informed the Court of his diagnosis. Dr. Woods examined the petitioner for Rule 28 purposes on March 29, 2007 and again on April 26, 2007. According to Dr. Woods, petitioner suffers from psychosis secondary to a general medical condition (i.e., left temporal lobe damage) and cognitive disorder not otherwise specified. As a result, Dr. Woods opines that petitioner is not "fit" or competent under the Rees/Rule 28 standard.

When asked specifically by the Court about the elements of the Rees/Rule 28 competency standard, Dr. Woods indicated that petitioner does not have the capacity to appreciate his position. He said petitioner's capacity is impaired in that sometimes petitioner says he understands and at other times does not understand. Dr. Woods stated that this confusion is a function of petitioner's delusion and that the capacity to appreciate his position is impaired. Petitioner's understanding is based on the precept of scientific technology, i.e., whether scientific technology will allow him to be executed or not.

Dr. Woods testified that petitioner's inability to understand his position or to make decisions is further exemplified in his lack of understanding as to why he is housed at Brushy Mountain. Dr. Woods said petitioner believes he is at Brushy Mountain because

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[4] The curriculum vitae of Dr. George Woods was made an exhibit in this hearing and will not be recited in this Order.

of his counsel's inactions, which Dr. Woods added is clearly not true. Further, Dr. Woods notes petitioner's alleged relationship with a female; however, Dr. Woods expressed his belief that this is fictitious. Dr. Woods said petitioner even believes the surveillance tapes and scientific technology affect petitioner's choices at the commissary.

Next, Dr. Woods gave a PowerPoint™ presentation to highlight what he believes is the basis of petitioner's present condition. Dr. Woods noted petitioner's right skull injury and left temporal lobe damage. Dr. Woods stepped down from the stand and approached Petitioner to physically point out what he perceived to be a left indentation on petitioner's head.

Dr. Woods rejected the proposition that the petitioner is malingering. He said petitioner's psychosis is less encapsulated then in the past resulting in petitioner's inability to keep it "under wraps." Petitioner's delusions control (e.g., scientific technology controls spelling, reading, etc.) and impair his abilities. Dr. Woods said petitioner believes scientific technology can put him under pain and make him uncomfortable in private parts of his body.

Dr. Woods spent a significant amount of time discrediting the testimony and findings of Dr. Bernet. Dr. Woods said his own diagnosis of petitioner was mainstream and was supported by the DSM-IV. To the contrary, he opined that Dr. Bernet's conclusion that petitioner was a pathological liar was unsupported in the psychiatric community. In support of his stance, Dr. Woods cited to the absence of references in the DSM-IV relating to pathological lying.

Report of Dr. Woods

In addition to Dr. Woods' testimony, he submitted a written report dated May 29, 2007. Citing the Rees/Rule 28 standard, Dr. Woods first addressed whether petitioner suffered from a mental disease or defect. He concludes that petitioner suffers from a neurological defect, i.e., left anterior temporal lobe atrophy. Dr. Woods opined that the deterioration of the temporal lobe began early in petitioner's life and worsened following a minibike accident at age 13. Citing the report of Dr. Kessler, a neuro-radiologist at Vanderbilt University, who performed Magnetic Resonance Imaging (MRI) and Positron Emission Tomography (PET) scans in 1998, Dr. Woods noted Dr. Kessler's findings of such left temporal lobe atrophy.

Dr. Woods indicated that even Dr. Bernet acknowledged the impairment of the frontal and temporal lobe. However, he disagreed with Dr. Bernet's assessment that the impairment was likely a partial version of Gastaut-Geschwind syndrome. Dr. Woods maintained petitioner's deficits have been well-documented by more objective measures than those considerations/symptoms associated with Gastaut-Geschwind syndrome.

Dr. Woods disagreed with an earlier diagnosis of schizophrenia concluding that petitioner's impairment lends weight to petitioner instead suffering from a neurologically-derived organic psychosis. He concedes that many diseases, including temporal lobe syndromes, can manifest with psychotic delusions similar to schizophrenia.

In Dr. Woods' opinion, petitioner is not faking mental illness. He indicates that, consistent with untreated psychosis, the psychometric testing has identified the erosion of petitioner's psychological defenses. He illuminates this erosion by citing to past testing and conclusions of Dr. Pamela Auble and Dr. Dan Martell. Both had examined petitioner in the

past during the trial phases of petitioner's cases. Dr. Woods' report indicates that Dr. Auble found at the time that petitioner provided a defensive profile on the MMPI as well as on the Personality Assessment Inventory (PAI). Citing to Dr. Martell, Dr. Woods recites Dr. Martell's finding in 1993 of Delusional Disorder, as well as malingering. However, in 2006, Dr. Martell (in preparation for federal court proceedings in another matter), determined that the delusional disorder had exacerbated. Dr. Martell said in 2006 that petitioner could no longer contain his delusions, including grandiose (petitioner's false belief that he is a person of great importance and known by thousands) and persecutory delusions (petitioner's false belief that a secret government agency has been monitoring him since November 1985).

Citing Dr. Martell's 2006 findings, Dr. Woods quotes Dr. Martell's report in which Dr. Martell said petitioner suffered from essentially the same delusions as he had witnessed back in 1999; however, the delusions were no longer in "substantial remission." Dr. Martell said the delusional system had gotten significantly worse event to the point of encompassing past and present counsel.

Dr. Woods noted Dr. Bernet's concern that petitioner's psychosis did not present until 1978. Dr. Bernet reported that petitioner's psychotic symptoms were "almost completely related to his involvement with the criminal justice system." Dr. Bernet found no evidence of psychotic symptoms until petitioner was arrested in 1978 at age 20. Dr. Woods disagreed maintaining that petitioner's increasingly disabling behavior is the characteristic pattern of psychotic deterioration.

Next, Dr. Woods discussed the February 2007 psychological evaluation performed by Dr. James Walker, who performed testing in conjunction with Dr. Bernet. Dr. Walker

reached the conclusion that the results were well within normal range. However, Dr. Woods challenged these findings stating that it was unwise to make a determination based on a few answers on an instrument. Dr. Woods added that Dr. Walker's findings that petitioner had a high "F" scale (which looks at unusual responses) and on the Subtle-Obvious scale were not explained other than the mention of malingering. Dr. Woods added that an elevated "F" scale could mean "a cry for help" reflecting just how severe the symptoms are. Dr. Woods found no evidence of malingering on these instruments.

Dr. Woods challenged Dr. Bernet's finding or explanation of pathological lying. He argues that petitioner's lying speaks to the memory inaccuracies found in temporal lobe dysfunction. Dr. Woods insists pathological lying is not a diagnosis and is not widely accepted. Instead, Dr. Woods described such an explanation as highly controversial and poorly substantiated.

Dr. Woods further discussed Dr. Bernet's finding that petitioner was lying when petitioner said he had actually seen several of the mental health professionals previously when in fact he had not. Dr. Bernet attributed this inaccuracy to petitioner's lying rather than to a failure of memory resulting from temporal lobe damage. Dr. Woods said confabulation, defined as " a reasonably coherent but false account of some recent event or experience," is a symptom of temporal lobe dysfunction.

As to this element of the Rees standard, Dr. Woods concluded as follows:

> It is my professional opinion, which I hold to a reasonable degree of medical certainty, that Mr. Reid has a mental defect, left temporal lobe dysfunction, with resultant paranoid ideation and delusions, circumstantiality of both speech and writing, hypergraphia with repetitive themes, and defects of several memory circuits, primarily declarative, with disruptions of

> contextual and sequential components of memory. Each of these neurologically-derived deficits also, at the time of my last examination, impeded Mr. Reid's capacity to appreciate his position and make a rational choice with respect to continuing or abandoning further litigation.

Dr. Woods discussed petitioner's mental defects and the effect on his capacity to appreciate his position and make a rational choice with respect to his options. He opines that none of the mental defects are more relevant than petitioner's delusional thinking. Dr. Woods insists petitioner's delusions of scientific technology (which now include present counsel) preclude petitioner from being able to work with his attorneys. The delusions of control impair his capacity to appreciate and rationally choose. Again citing Dr. Martell's findings (in the federal court proceeding), Dr. Woods agrees with Dr. Martell that petitioner's delusions are no longer "encapsulated." He said this inability to essentially rein in the delusions is consistent with untreated psychotic illness.

Dr. Woods said the delusions cause petitioner to believe that all the judges have video and audio tapes of his life since 1985 and that his "real" lawyers are "Washington lawyers" who are working for his release. Petitioner's capacity, Dr. Woods adds, is "filtered by an irrational lens" through which he views the participants as actors. Dr. Woods said petitioner is paranoid.

Dr. Woods describes his examinations of petitioner conducted at Riverbend. Early in the interviews Dr. Woods began to question petitioner about the delusions. According to Dr. Woods, petitioner told him that if scientific technology were not a part of his life, petitioner believed he could continue his appeals.

In summary, Dr. Woods concludes petitioner is delusional due to a frontal lobe injury,

which substantially affects his capacity to appreciate his legal position and make a rational choice with respect to continuing or abandoning further litigation. He adds that petitioner believes scientific technology controls every aspect of his life. Dr. Woods insists petitioner's decision to withdraw his appeals is an impairment of judgment based on the "torture, hopelessness, and paranoid ideation of a psychotic delusion." The pervasive quality and content of the delusion substantially affect petitioner's ability to rationally understand his legal position and make rational choices.

May 12, 2008 Nix Hearing Testimony

At the beginning of the May 12, 2008 proceedings, the Court reminded the experts of the present posture of both the Captain D's and McDonald's cases. The Court further reminded the parties about the burden of proof and the applicable competency standard. The exhibits from the 2007 Rule 28 proceedings were made a part of the present record and incorporated into the present proceedings.

Because Dr. Woods was qualified as an expert in the Rule 28 proceedings, the parties agreed to dispense with voir dire on qualifications. The curriculum vitae of Dr. Woods was made an exhibit to his testimony.

Dr. Woods testified that he had seen petitioner approximately seven times. He listed visits on August 18, 2005, December 11, 2005, October 6, 2005, June 20, 2006, November 30, 2006, March 29, 2007, April 26, 2007 and December 11, 2007. Dr. Woods said he had observed petitioner in other environments including the courtroom and during interviews with other experts. He also evaluated petitioner in December 2007 under both the Rees and Nix competency standards. As a result, Dr. Woods issued an affidavit dated December

11, 2007 in which he expressed his opinions about petitioner's mental status.

Dr. Woods said he reviewed a number of documents in the past and had reviewed certain materials in preparation for the Nix hearing, including the State v. Nix opinion, his affidavit, his May 27, 2007 report, a December 2007 declaration of Dr. Ruben Gur, a 2007 declaration of Ms. Martiniano, and December 2007 declarations of Kelly Gleason and Connie Westfall. He said he also reviewed Dr. Martell's April 2008 report and accompanying DVD along with Dr. Martell's 2003 and 2006 reports. Dr. Woods reviewed the MMPI and PMI performed by Dr. Martell in April 2008 and Dr. Bernet's current and 2007 report (along with DVDs). He also reviewed a petition for relief from conviction dated April 2003, an amended petition submitted August 22, 2006 (Captain D's case), an order filed December 20, 2007 by Judge Blackburn and an order appointing witnesses dated December 2006. Finally, he said he reviewed MMPI materials and the Merriam-Webster online dictionary.

Dr. Woods testified that in his opinion petitioner was delusional in December 2007. He explained that petitioner had a number of delusions which he described as fixed false beliefs that were unshakable. Dr. Woods described petitioner's core delusion as the monitoring (both audio and video) since 1985 by a government agency called scientific technology. He said petitioner believes this technology has captured his every movement and has the ability to control certain aspects of his bodily functions. For example, the technology can impair petitioner's reading and his ability to write. Dr. Woods said it can also control the legal processes such as the trials, which he said petitioner believes were scripted. According to Dr. Woods, petitioner believes his attorneys are not actually attorneys. Dr. Woods explained that petitioner's belief is that he is serving an 8 to 10 year

sentence negotiated by Washington or New York lawyers.

Dr. Woods said that because petitioner has not been treated he has developed other delusions including a delusion about a woman friend named Susan a/k/a April. Petitioner believes they are going to be married and has named her as the beneficiary in his will. When asked about treatment, Dr. Woods noted petitioner had been prescribed Elavil, an antidepressant. He explained that according to psychiatric literature, Elavil can be harmful in terms of exacerbating psychosis in someone who is already psychotic. Even though he acknowledges a person who is psychotic and depressed can be treated, Dr. Woods maintained that giving them antidepressants is not clinically the first step.

When asked about the course of petitioner's illness since 2005, Dr. Woods opined that petitioner's psychotic state has deteriorated. He explained again that petitioner has developed additional delusions. However, as to the long standing delusions, he notes that the delusions were once encapsulated or had boundaries. Dr. Woods said the delusions are no longer encapsulated and are affecting other aspects of petitioner's life.

Dr. Woods testified that psychosis is a break from reality and is the inability to maintain contact in specific ways. He said petitioner's delusions focus primarily on the monitoring and secondarily on the impact it has upon his legal state. While Dr. Woods concedes that petitioner can accurately report some past events, he believes petitioner many times only parrots the process. As an example Dr. Woods described petitioner's belief that the trials were only mock trials scripted by scientific technology. According to Dr. Woods, Judge Blackburn confirmed that he did not really have a death sentence but instead was serving a 10 to 12 years sentence at 80 percent. He said that petitioner does not believe his present attorneys are in fact attorneys.

Dr. Woods said that in reviewing the April 2008 interview between petitioner and Dr. Bernet he found it important the petitioner erroneously thought both Dr. Woods and Dr. Bernet had found him incompetent. He also noted petitioner's reference to repeated behaviors and believing things had happened previously when in fact they had not. Dr. Woods said petitioner also inaccurately believed he had execution dates set for 2005, 2006 and 2007. However, Dr. Woods did not know for which cases petitioner believed the dates had been set. Even if petitioner accurately reports certain events in his case, Dr. Woods believes these correct recitations are again examples of petitioner parroting the information.

As to the procedural posture of petitioner's case, Dr. Woods believes there are some aspects of the case petitioner is able to comprehend. He specifically references petitioner's understanding that he is in the post-conviction process. However, Dr. Woods believes petitioner's ability to actually understand aspects of his legal status are inaccurate. As an example, Dr. Woods cites to petitioner's disbelief that he will be executed due to the 10 to 12 year sentence. He notes that petitioner thinks he is going to be released, will marry Susan, and will receive large sums of money. Accordingly, Dr. Woods concludes petitioner may understand some basic legal processes but has an inability to recognize that they apply to him.

Dr. Woods said that petitioner's belief that his attorneys are not actually attorneys impairs his ability to discuss anything meaningful with counsel. He noted that petitioner said he had not done significant reading on his case but referred to a large number of materials generated by petitioner which Dr. Woods said are full of his delusional thinking. Dr. Woods testified that the pro se petition itself is an important example of petitioner's

delusions. He concluded, based on Dr. Bernet's April 2008 interview, that petitioner did not have an understanding that the outcome of the instant competency hearing could have a bearing on petitioner going forward on the pro se petition which Dr. Woods described as clear evidence of petitioner's delusional thinking.

When asked whether he had an opinion as to whether petitioner still held to some of the beliefs expressed in the pro se petition, Dr. Woods said that there is no question that the same quality of delusion and psychotic thinking was present in the interviews conducted by Dr. Martell and Dr. Bernet. Dr. Woods cited to various portions of Dr. Martell's report wherein Dr. Martell, among other things, maintains his diagnosis that petitioner suffers from delusional disorder.

Next, Dr. Woods gave his opinion as to how petitioner's beliefs affect petitioner's understanding of his legal rights and liabilities. Dr. Woods said he was unclear after reading Nix what the case meant by the term "understanding" so he looked at the term as defined in the Merriam-Webster dictionary. As defined in the dictionary, the term has a number of meanings. Based on what he called the common definition, Dr. Woods reached several conclusions. First, he noted there are basic things petitioner understands. More specifically, petitioner understands he is going through a process called post-conviction and has been convicted. However, Dr. Woods said he questions petitioner's grasp of his position and is concerned about the depth of petitioner's understanding.

Dr. Woods said to a reasonable degree of medical or psychiatric certainty, petitioner is unable to understand his legal rights and liabilities. Within this answer, Dr. Woods highlighted what he believes petitioner does not understand. As examples he references petitioner's misunderstanding at the end of the Rule 28 hearing that both Dr. Bernet and

Dr. Woods found him incompetent; petitioner's failure to understand that his sister had been "appointed" in another venue; petitioner's comment to Dr. Bernet that he had not seen his sister in 20 years; and petitioner's mixed reaction when asked about whether he would want a new trial. In another example, Dr. Woods cited to petitioner's will which, according to petitioner, was mailed to the federal court and listed Susan as the beneficiary. From this Dr. Woods again noted that such actions relate to petitioner's legal rights and responsibilities. When asked by the Court, Dr. Woods did not know if the will had, in fact, been mailed to Judge Campbell. He further admitted to the Court that he had not seen the will. Dr. Woods based his opinion on petitioner's statements that he had left everything to Susan and had mailed the will to the court. Finally, in response to the Court's questions, Dr. Woods said it was significant that petitioner adamantly insisted that his sister had not been appointed in any case.

Dr. Woods was asked to give his opinion as to how petitioner's delusions affect his understanding of his legal rights and liabilities. Dr. Woods testified that the delusions are petitioner's core understanding of his legal rights and liabilities. Dr. Woods again cited to Dr. Martell's report wherein Dr. Martell expressed concern that the delusions may impair petitioner's judgment and behavior with regard to decisions. Dr. Woods believes the delusions impairs petitioner's judgment because, while petitioner can understand concepts or processes, petitioner's right to counsel is impaired in that he believes counsel are actors. Dr. Woods again referred back to the pro se petition as an example of petitioner's lack of understanding due to the delusions. In Dr. Woods' opinion, petitioner does not have a meaningful understanding of his rights and liabilities.

As to whether petitioner can manage his personal affairs, Dr. Woods again looked

to the dictionary for the definition of the word "manage." He concluded that petitioner's personal affairs include more than hygiene or daily activities and actually encompass his legal affairs. As noted earlier by Dr. Woods, petitioner does very little to manage his legal affairs. However, referring to petitioner's explanation that he can choose to eat and exercise daily and manage his commissary account, Dr. Woods said even these functions are impaired by scientific technology. Dr. Woods said the technology affects petitioner's bodily functions, his ability to eat, his ability to sleep and even his reading. Dr. Woods concludes that one of the greatest "personal affairs" is petitioner's "legal affairs." Thus, he concludes to a reasonable degree of psychiatric certainty that petitioner cannot effectively manage those affairs.

Focusing on petitioner's health or bodily functions, Dr. Woods said technology impacts petitioner's mental and physical health. He cites to Dr. Bernet's interview in which petitioner was asked to describe his mental state on a particular scale. Petitioner told Dr. Bernet that he typically stayed in the middle but when asked if he had ever been elated, petitioner referred to his love for his fiancé. Dr. Woods said this line of questioning by Dr. Bernet evidenced the effect on petitioner's mental health and illustrates that petitioner's only cited example of being elated refers to a delusional thought. Dr. Woods testified that a delusional individual cannot put these delusions aside.

On cross-examination, Dr. Woods agreed that he had likely been involved in sixty-five death penalty cases on behalf of the defense. He said he had never been asked by the prosecution to assist in a case. Dr. Woods said he had found a number of defendants competent in death penalty cases but could not recall any of the names.

Dr. Woods agreed that he had been asked to determine retrospective competency

by looking back years and years and finding a person incompetent. He recalled working on certain death penalty cases including the highly publicized case of Tookie Williams. Again, he could not recall his findings from those cases. Dr. Woods acknowledged that he had worked on petitioner's case in both state and federal courts and had been involved in other Tennessee death penalty cases. However, he could not recall his findings in most of those cases.

Dr. Woods said he was aware of the book "The Warrior's Edge" published in 1990 about scientific technology. He was also aware that petitioner had read the book and had discussed it. Dr. Woods recalled that the book spoke of the Soviet attempt to use this type of technology as mind control. While Dr. Woods agreed that delusions typically have some basis, he did not state affirmatively that petitioner's delusions were based on the book.

Dr. Woods testified that he did not diagnose petitioner with delusional disorder as did Dr. Martell but acknowledged he agreed with Dr. Martell that petitioner has delusions. Dr. Woods said he concluded the delusions are secondary to his brain dysfunction. He noted that delusions and psychosis are a final common pathway and can lead to delusional thinking. In arriving at whether petitioner's delusions are real, Dr. Woods said he reviewed Dr. Martell's psychological testing and the neuropsychological findings that petitioner has an atrophied left frontal lobe. He noted that people with a problem in their left frontal lobe can have delusions. Dr. Woods said based on the testing and brain scans, petitioner had a potential foundation for an organic delusional disorder.

Dr. Woods agreed that such a result does not flow directly from these tests or scans, but that the diagnosis is made in part based on an examination of others who have had similar brain injury and have reported delusions. However, Dr. Woods agreed that some

who suffer that type of brain injury may not have delusions. Therefore, if petitioner fell within the latter group, he could still be lying about the delusions.

Dr. Woods said he was aware petitioner has indicated on prior occasions that he had made up the delusions. He knew of the letter petitioner had written to a female friend in Oklahoma in which petitioner said he was making up the story about technology. Dr. Woods explained his perceived difference in the clinical and forensic settings. He explained that the clinical expert takes the patient at face value. On the other hand, the forensic expert looks for more scientific knowledge. Dr. Woods testified that Dr. Walker's testing and Dr. Martell's testing do a good job of scientifically documenting that petitioner's delusion is very real. Dr. Woods then described the nature and results of the some of the testing.

When asked about the pro se post-conviction petition referenced during Dr. Woods' direct testimony, Dr. Woods reiterated his belief that the document is very relevant in determining petitioner's mental state. Dr. Woods agreed that not all of the contents were delusional but noted that the very foundation of the petition is delusional. When the State cited various portions of the petition to illustrate petitioner's understanding of concepts, Dr. Woods responded with other portions that support his position that the judgment is filtered through the delusions.

Dr. Woods said he did not record his interviews with the petitioner but made notes during the interviews. He said he did not record his interviews because the American Psychological Association has expressed concerns about video or audio recording them because it could alter the clinical relationship. He added that because he thinks the clinical relationship is most important, he adheres to the policy of the APA. Dr. Woods did not

believe the failure to record affected the forensic findings because the forensic decisions are based upon accurate clinical information. However, Dr. Woods agreed that viewing the interviews conducted by Dr. Martell and Dr. Bernet, which had been recorded, assisted him in corroborating his position.

When questioned about what he described as a "fictitious girlfriend," Dr. Woods admitted that he had made no effort to find if such a person existed. He also agreed that he had not reviewed petitioner's mail and had not monitored petitioner's telephone calls. Dr. Woods said he recognized that death row inmates can some times become popular in society and that people communicate with them through letters. He also knew that some death row inmates had gotten married in prison. Even though Dr. Woods expressed great doubt that petitioner's fiancé was a real person, he could not completely discount the possibility that she existed.

Dr. Woods agreed that he had not interviewed or otherwise spoken with anyone who had regular contact with petitioner. He conceded that such information could be useful in determining whether petitioner can manage his personal affairs. Again, Dr. Woods acknowledged that petitioner can exercise, can brush his teeth, and engage in an exercise routine. However, he said he did not view those activities as "managing personal affairs." These, Dr. Woods added, along with petitioner's ability to buy candy, are filtered through his delusions. For example, he said even if petitioner manages his commissary account petitioner only does so if scientific technology allows people to send him money. Dr. Woods said petitioner has difficulty reading because scientific technology impairs his vision or changes the words around.

Dr. Woods conceded that petitioner was able to discuss the presidential primary

campaign, including the concept of super delegates. He also recalled petitioner's ability to discuss Coach Summitt and Willie Horton. Dr. Woods was aware that petitioner attended community college prior to his arrest and was employed from time to time. He also knew that petitioner had received large sum in settlement of an automobile accident; rented his own apartment; owned his own car; dated; and belonged to a health spa and worked out. Dr. Woods noted these abilities but cited the passage of time since petitioner was able to do these things. He said often people function for a significant period of time but if they do not receive treatment they will become impaired over time due to the worsening of the delusions that were once encapsulated.

Dr. Woods again stated that petitioner's legal problems are a great part of petitioner's personal affairs. He conceded that petitioner can brush his teeth or make his bed but cannot manage the bulk of his personal affairs, which he has concluded is petitioner's legal affairs. As to petitioner's ability to understand his legal rights and liabilities, Dr. Woods agrees that petitioner understands some of them. For example, while he believes petitioner can recite the nature of an appeal (and that if he loses he will be executed), Dr. Woods said petitioner does not believe he is going to be executed. Further, he said that even if petitioner can express some understanding of the basic legal concepts, including an ability to recite the Nix standard, he has no real understanding. Dr. Woods agreed that petitioner knew about the Baze lethal injection case at that time pending in the United States Supreme Court and that petitioner understood the underlying issues relating to the three drugs commonly used for lethal injection. However, he reaches the same conclusion that petitioner's delusions have an impact on both petitioner's judgment and behavior because even as to a basic understanding petitioner nonetheless gets facts

wrong.

On redirect examination, Dr. Woods testified that the delusions inform and define petitioner's understanding of his legal rights and liabilities because he believes he is monitored 24 hours per day and that his attorneys are imposters. Dr. Woods concludes that even the things petitioner understands (i.e., petitions, etc.) are founded upon scientific technology. These delusions, he adds, form all of petitioner's "legal thinking." Citing to the colloquy between Dr. Bernet and petitioner relating to the pros and cons of a new trial, Dr. Woods said the petitioner sees the truth as the delusions and the delusions as the accurate reflection of life.

The Court questioned Dr. Woods about various portions of his testimony. First, the Court addressed petitioner's comments about the advantages or disadvantages of a new trial. Dr. Woods agreed that petitioner was concerned about witnesses telling the truth about the amount of money taken during the robbery. He further agreed that petitioner's point or real concern was General Thurman's characterization of the amount of money and the insinuation that petitioner purchased a car with the stolen money. Petitioner insisted that if he only took $2,500 then he could not have used $5,200 to buy a new car.

Dr. Woods also agreed with the Court that petitioner was concerned about the footprints or shoe prints in that trial counsel Engle had not had the photo of the prints enlarged as he had requested. Dr. Woods acknowledged that these were petitioner's concerns as expressed to Dr. Martell (and/or Dr. Bernet) and are factually based. However, he explained that with mental illness there is an assumption of all or nothing or that a person is either completely delusional or not delusional at all. Dr. Woods found the responses about the shoe prints and monetary sums interesting but discounted such

assertions when held against the backdrop of the scientific technology delusion, which informs petitioner his attorneys are scripted. Dr. Woods also attempted to minimize petitioner's responses that he once believed the trials were mock but now is being told they were real and that he is facing the death penalty. He again indicated that these responses reflect the inability to apply the all or nothing approach. Dr. Woods again cited the example that these comments are being made along with statements that everyone is scripted.

Dr. Woods was asked about the Nix competency standard and reiterated his position that, in the context of Nix for a person on death row, legal affairs are equivalent to personal affairs. Dr. Woods agreed that petitioner made decisions about whether to take his medication, what to do with his commissary money, and whether to get up early for breakfast. However, Dr. Woods believes the scientific technology delusions controls all of those decisions. Even though petitioner said his counsel Gleason gives him monthly money for the commissary account, Dr. Woods said petitioner believes the money is given only if scientific technology allows her to give the money. He agreed that the portion of the interview referenced by the Court did not support such a position. Even though he could not point to it in the interviews or reports, Dr. Woods said petitioner had made such statements to him and others.

During recross-examination, the State asked Dr. Woods about petitioner's remarks in the interview that the jury convicted him, that he accepts their verdict and that he chooses not to appeal further. Dr. Woods recalled these responses along with petitioner's comment that he does not want people to get up in a new trial and say bad things about him. He said he not think petitioner was narcissistic based on these comments. Dr. Woods said petitioner is so grossly psychotic in the Axis I diagnosis that it is difficult to look at Axis

II issues.

Dr. Woods said petitioner commented that he did not want a new trial because the witnesses would lie against him. He added that petitioner also said if they told the truth it might be worth a new trial but if they lied it would not. Dr. Woods acknowledged that petitioner then said even if they told the truth it would not be worth having a new trial.

Dr. Woods recalled the references to out-of-state lawyers and the negotiation of the 10 to 12 year sentence. He admitted he knew petitioner had been approached by out-of-state lawyers but not for the negotiation of the sentence. Dr. Woods then narrowed this area of concern to the delusional negotiation process.

On further redirect examination, Dr. Woods testified that petitioner does not believe his trials were real. With respect to the management of the commissary account, Dr. Woods said he had reviewed a number of records from people who spent a significant amount of time with petitioner, including his legal team. Dr. Woods agreed that these records from counsel provided the basis of his testimony that scientific technology affected petitioner's medical and physical status including his heart. He noted that this same information provided the basis of his opinion about petitioner's interactions with TDOC personnel. Dr. Woods concluded that petitioner has little contact with the prison personnel because technology will not allow him to do so.

During further recross-examination, Dr. Woods could not recall the precise documents he reviewed in making such determinations. When pressed further, he said some of the information must have come from his interview with petitioner. He then conceded that the conclusions he noted during the further redirect were not found in any of the TDOC materials he had reviewed. Dr. Woods similarly could not recall the source

of information that the petitioner did not interact with prison personnel. He first indicated that he likely found it in the same unspecified records from TDOC but then said he would not recall exactly what record he had reviewed. Dr. Woods again turned to his position that an all or nothing approach could not be applied here.

Finally, the Court noted the confusion as to the time periods of competency at issue. The Court expressed concern that some of the testimony related to the 2001 and 2002 time period but brought the focus back to petitioner's competency during December 2006 to December 2007 and his present competency. Based on those time frames, Dr. Woods concluded petitioner was not competent under either based on the Nix standard.

B. Dr. William Bernet

Dr. William Bernet testified on July 31, 2007 during the Rule 28 proceedings as one of two court-appointed experts. In addition to his hearing testimony, Dr. Bernet also prepared a written report based in part on two interviews with petitioner he conducted in February 2007. His hearing Rule 28 hearing testimony, his 2007 report (including interviews) are summarized below. Dr. Bernet testified on behalf of the State at the May 12, 2008 Nix hearing. The April 2008 interview with petitioner, subsequent updated report and May 12, 2008 hearing testimony are also summarized below.

July 31, 2007 Proceedings

Dr. William Bernet,[5] a forensic psychiatrist with Vanderbilt University Medical Center

[5] The curriculum vitae of Dr. William Bernet was made an exhibit in this hearing and will not be recited in this Order.

in Nashville, Tennessee, testified that he evaluated the petitioner in accordance with the Court's order appointing him. Dr. Bernet outlined the materials he relied upon in his evaluation and stated that he had interviewed the petitioner on February 13 and February 27, 2007, at Riverbend Maximum Security Prison in Nashville [hereinafter "Riverbend"]. These interviews totaled approximately four hours.

Dr. Bernet recalled having evaluated the petitioner in preparation for the Clarksville, Montgomery County case involving the killings of two employees of Baskin Robbins. Dr. Bernet said this history gave him the ability to see how petitioner had changed over the years, if at all, indicating the "long term view" was important. Dr. Bernet explained that he was called by the prosecution in the Clarksville case to conduct an evaluation and diagnose petitioner's mental condition. Dr. Bernet said at that time (1999) petitioner had a history of delusions with a one-time diagnosis of delusional disorder, which fluctuated as to the severity. He said other diagnoses from other mental health professionals at the time included, but were not limited to, bi-polar disorder, manic depressive, and antisocial personality disorder. In fact, he testified that twelve mental health professionals had found petitioner actively psychotic while sixteen had concluded he was not psychotic at all.

Dr. Bernet testified that he conducted an examination of petitioner in September 1999 to determine his competency to stand trial. During the evaluation, he said petitioner told him about the delusions and confided that he had made up all the delusions. According to Dr. Bernet, petitioner told him he had made up illnesses in the past while in Texas in an attempt to avoid prosecution for charged offenses there. During the February 2007 interviews, petitioner told Dr. Bernet that the delusions are now real. Petitioner detailed to Dr. Bernet his purported delusion that government surveillance was ongoing.

Dr. Bernet indicated petitioner had a history of making things up or fabricating. He noted that petitioner had no cognizable mental problems when he was not in trouble criminally. However, the delusions resurfaced when new charges surfaced. Dr. Bernet said petitioner told these stories to protect himself from criminal charges, including homicide charges in the instant case. He added that there are moments when a person gets so wrapped up in their delusion that they tend to believe it.

Dr. Bernet admitted that he initially thought petitioner suffered from delusional disorder back in 1999. However, he retreated from this earlier position and concluded petitioner never suffered from such a disorder. The additional information now available attributed to Dr. Bernet's change in position.

When asked about the Rule 28 competency issue, Dr. Bernet said he had reviewed the standard of competency set out in Rule 28, Section 11 (as quoted in the Court's order from Rule 28 and also known as the Rees v. Peyton standard). He said he specifically asked petitioner questions to assess petitioner's competency under that standard.

Dr. Bernet said petitioner had a long list of reasons why he wanted to withdraw his petition, describing the reasons as coherent. As an example, petitioner told Dr. Bernet he did not like Brushy Mountain Correctional Complex [hereinafter "Brushy Mountain"] where he is presently housed. Petitioner explained to Dr. Bernet the classification system at Riverbend and the opportunity to advance to a new level with more privileges. However, he told Dr. Bernet that at Brushy Mountain he was placed in twenty-four hour lock down with only one hour out of his cell. Dr. Bernet said petitioner indicated he "might" change his mind about withdrawing his petition if the living conditions could be improved. Petitioner also told Dr. Bernet that he is willing to accept what three juries found.

Dr. Bernet explained that petitioner did not have significant impaired memory. He does, however, pretend to have "deja vu" experience or the belief he has experienced the same thing in the past. Dr. Bernet said petitioner likely picked it up from his twenty-six or more mental health interviews, evaluations or testing.

As to his diagnosis, Dr. Bernet again stated that petitioner is not suffering from delusional disorder. However, he testified that petitioner suffers from some type of mental disease or defect, i.e., depression (for which he has been taking antidepressants) and language disorder (likely resulting from the temporal lobe injury). Notwithstanding these findings, Dr. Bernet concluded that petitioner suffered from pseudologia fantastica, or pathological lying.

Dr. Bernet conceded that pathological lying is not a "diagnosis" under the DSM-IV but indicated it is an accepted term in the profession. He added that the term appears in the DSM-IV, including in the listed criteria for psychopathy. Dr. Bernet said he had only seen approximately ten cases in his career. He contrasted pathological lying with malingering indicating these are not the same. Dr. Bernet explained that malingering is very specific while pathological lying may be used as a defense mechanism and might be used for one reason one day and another reason the next day.

Report of Dr. Bernet

In addition to his testimony, Dr. Bernet submitted a written report as required by Rule 28, Section 11. The overall evaluation included a brief psychological evaluation report prepared by Dr. James S. Walker of Vanderbilt University Medical Center. Dr. Walker performed certain psychological testing as described. The report addressed procedures

for the evaluation, interview information, and the test results.

Dr. Bernet discussed briefly the materials he reviewed in preparation for this examination of petitioner. As noted, the attorney ad litem prepared a master list of documents so that both experts would have access to the same materials.

Dr. Bernet interviewed petitioner on February 13 and February 27, 2007 at Riverbend Maximum Security Institution in Nashville, Tennessee. Each interview lasted approximately two hours and both were video and audio recorded. However, the audio portion of the latter part of the second interview did not record.

Initially, Dr. Bernet summarized his previous evaluations of petitioner conducted in 1999 in preparation for petitioner's trial in Clarksville, Tennessee for homicides that had occurred at Baskin-Robbins. In preparation for the trial (penalty phase), Dr. Bernet reviewed a large number of documents and records as cited in the report. In 1999, Dr. Bernet concluded that petitioner suffered from a condition of delusional disorder, persecutory type. At that time, Dr. Bernet found that petitioner's delusions were confined to petitioner's notion that he was under government surveillance and had been for years. Dr. Bernet said the intensity of petitioner's belief in the delusions waxed and waned over the years. Dr. Bernet also noted in the 1999 report that petitioner was probably born with cerebral dysfunction which was possibly aggravated by head injuries suffered in a minibike accident.

According to Dr. Bernet's 1999 report, petitioner was thought by some to suffer from schizophrenia probably due to his bizarre behavior and report of auditory and visual hallucinations and bizarre beliefs. However, petitioner reported that he had actively fabricated some of his previous symptoms, especially the symptoms which served as the

basis for the schizophrenia diagnosis. Even though Dr. Bernet believed at the time (1999) that petitioner suffered from delusional disorder, Dr. Bernet did not believe petitioner was schizophrenic.

In September 1999, Dr. Bernet conducted a second evaluation of petitioner. The focus of this evaluation was petitioner's competence to stand trial in the Baskin-Robbins case. Dr. Bernet said at that time he reviewed the reports of Dr. Pamela Auble and Xavier F. Amador, Ph.D. Following the evaluation, Dr. Bernet opined that petitioner was competent to stand trial. He added that petitioner suffered from antisocial personality disorder and demonstrated a pattern of malingering.

Reviewing his notes from the September 1999 interview, Dr. Bernet recalled that he asked petitioner about the delusions of government surveillance. Petitioner explained that he had been arrested in 1982 and by 1984 two juries had found him incompetent. In April 1984, petitioner pled guilty but felt the conviction was invalid. Once released from prison, petitioner wanted to draw attention to himself. The "roots of the story" originated at some time in 1986 when he was in prison. He later said he may have come up with the idea from a movie in which Russia was about the launch missiles at the United States. Petitioner did not believe his letters to then Texas Governor Ann Richards had anything to do with letters his father had been writing to President Clinton and others.

Petitioner told Dr. Bernet in 1999 that he continued to talk about the government surveillance because he could not separate fantasy and reality having told it so many times. Petitioner insisted he knew for a fact at that time that he had never been under government surveillance. He added that he went into malingering whenever he was apprehended.

Coming back to the present examination, Dr. Bernet summarized the materials he

had reviewed in conducting petitioner's examination. In addition, he summarized the reports of Xavier F. Amador, Ph.D., Pamela Auble, Ph.D., Keith A. Caruso, M.D., Rokeya Farooque, M.D., Samuel N. Craddock, Ph.D., Rebecca Smith (Farooque, Craddock and Smith of the Middle Tennessee Mental Health Institute), Richard T. Hoos, M.D., Robert M. Kessler, M.S., James N. Kyne, Ph.D., Daniel A. Martell, Ph.D., Cynthia Turner-Graham, M.D., and George Woods, M.D.

Dr. Bernet said petitioner was alert and oriented when he conducted the mental status examination in February 2007 at Riverbend. However, he noted that petitioner claimed he had met with Dr. Woods, Dr. Walker and Ms. Dezube on certain recent occasions even though they had not seen him. Bernet said he took these statements to be examples of lying rather than a failure of petitioner's memory. Petitioner related to Dr. Bernet the same unusual history relating to government surveillance and gave Dr. Bernet his reasons for wanting to withdraw his post-conviction appeals.

February 13, 2007 Interview

Specifically during the February 13, 2007 interview, Dr. Bernet said petitioner understood the purpose of the evaluation, i.e., to assess his competency to waive his right to post-conviction appeals of murder convictions in the Captain D's case. He also knew the evaluation resulted when he notified the court that he wanted to discontinue the appeals. Petitioner explained that his direct appeals had run their course and that he was still found guilty and sentenced to death. Once the case entered the post-conviction phase, he was ready to withdraw his appeals. Petitioner understood the purpose of the present evaluation was to determine whether he was competent to "make such a rash decision."

Petitioner explained that he had previously met with Dr. Bernet and Walker in the room at Riverbend but Dr. Bernet said these assertions were not correct. Dr. Bernet asked petitioner to bring him up to date since the 1999 trial. Petitioner discussed his initial housing at Riverbend on Death Row and his later transfer to Brushy Mountain, which transfer, according to petitioner, was with no proper reasoning behind it. He explained that he was a death row inmate on paper but could not take advantage of the death row inmate program at Brushy Mountain as he could at Riverbend. Petitioner explained the incentive program in great detail. He said without the benefits of the program, he could not earn his way to "A" level to have more exercise time. At Brushy Mountain, he is permitted one hour out of his cell per day. Petitioner said this was the basis of his desire to drop his appeals because he was being treated unfairly.

Dr. Bernet asked petitioner to summarize the current legal status of his murder convictions. Petitioner told Dr. Bernet he had completed the direct appeals process and now wants to drop his appeals in post-conviction. He explained that the McDonalds case (a separate homicide case in Davidson County) had also completed the direct appeals process and that an execution date was set in that case. Petitioner said an execution date was set in the Baskin-Robbins case and he was eventually moved to death watch. Because he thought that execution was going to take place, he had no reason to push the Captain D's case. When the Baskin-Robbins execution was stayed, petitioner moved back to his pursuit to withdraw his post-conviction appeals in the Captain D's case. He added that the Baskin-Robbins case was now at the federal level.

When asked why other people were concerned about his waiver of appeals, petitioner related a history of involvement with psychiatric facilities. He passed part of the

blame to an attorney who had represented him in Texas in 1978. His then-attorney instructed him how to malinger mental illness. Petitioner gave specific examples of how the attorney told him to respond to questions so that he could convince mental health professionals he was not mentally stable. Those charges were dismissed. He again tried to malinger mental illness when arrested again in 1982. He repeatedly used his malingering to escape prosecution.

Petitioner gave an example when he was transferred to a mental health unit and put on lithium. He explained that he would go to the pill window to receive his lithium but would save it in little match boxes. When his monthly blood test was to be performed, he would take the lithium all at one time so as to skew the results.

When asked about his motivation for pretending to have mental illness, petitioner explained that after his 1984 conviction he wanted to file for habeas corpus relief in which he would allege that he was coerced into pleading guilty. Once released from prison in 1990, he saw a psychiatrist, Dr. Patel. Petitioner said he did not pretend to have mental illness with Dr. Patel because he was then a free citizen and did not need to malinger.

Petitioner explained when he began writing letters to Governor Ann Richards and others in Texas. He said it started in 1985 when he was sent to the Ellis II unit. He said because of his physical appearance (well groomed, nice hair) he did not look like the other psychiatric patients. One of the inmates asked him why he was there recognizing that he did not look like the others. Petitioner said he facetiously responded that he was there doing undercover work for the FBI. The inmate reported this to a corrections officer. Petitioner said since that time his every physical movement and word has been recorded.

Petitioner made repeated references to scientific technology indicating this

surveillance had been the motivation behind his letters to Governor Richards. He opined that the more the investigators learned about petitioner's life the more intriguing he became as a surveillance subject. He said when he walked into a supermarket in Fort Worth (population 500,000), everyone in the store would know him. He denied that the letters written by his father were tied to his letter writing.

When reminded about past evaluations conducted by Dr. Auble, Dr. Amador, Dr. Martell, Dr. Caruso and Dr. Woods, petitioner indicated he had also been evaluated Dr. Bernet and Dr. Walker. He also recalled being evaluated by doctors at MTMHI. Petitioner said he did not pretend to have a mental illness during any of these evaluations. He said he has not malingered mental illness since 1985 because he was honest now.

Dr. Bernet asked petitioner about the time (in 1999) petitioner had told him he made up the idea about the surveillance. Petitioner acknowledged that he had previously stated it was a "figment of [his] mind." He said Mr. Engle [trial counsel] would use it against him in an attempt to get a life sentence. Petitioner said "we all know now I did not make it up." He explained that tapes were released to the public and that reporter Jennifer Krause at Channel 5 almost lost her job over it.

Petitioner could not state with certainty whether the government surveillance statements triggered the present mental examination ordered by Judge Blackburn. He said Judge Blackburn was aware of the tapes as two major companies were selling the tapes. Petitioner said the interview was being recorded by this surveillance. When asked if there was any other reason to question his competence, petitioner noted that it was lucrative for Dr. Woods to find him incompetent and to conduct more interviews. He suggested Dr. Woods did not advocate the death penalty.

When asked why his counsel feel he is not competent, petitioner explains that they do not want him to be executed. He added that Dr. Martell questioned petitioner's competency because Dr. Martell has a sexual interest in petitioner. According to petitioner, Dr. Martell likes the same sex but also did not want to see petitioner die. Issues regarding homosexuality have surfaced at other times throughout petitioner's life and prison service.

Petitioner could not give a definitive response when asked if he would continue with his appeals if the tapes (of government surveillance) could be found. Petitioner said his present attorney and one of his trial attorneys had indicated to him the tapes could not be released because the investigation was ongoing. He added that attorney Gleason had talked to the scientific technology people, alleging that Washington, D.C. lawyers had been hired to negotiate to give petitioner 10 to 12 years at 80% so that he could be released on June 1, 2007. Petitioner became emotional briefly when talking about wanting 22 years of his life back. He later added that he would be afraid to believe that he could get out once the tapes are surrendered. Rather than continue to be tormented, petitioner said he would prefer to get it over and have the execution.

Reflecting on past incidents relating to his delusions, petitioner recalled an incident at Ellis when the inmates stabbed another inmate six or seven times. Petitioner said he saw large amounts of blood and saw the inmate toss the knife. However, the inmates returned later laughing and indicating the entire scene had been staged. Petitioner said he was told the stabbing was a mock demonstration for scientific technology to determine whether petitioner was a coward. He said when he was told about the McDonald's killings and the Captain D's killings he was unsure whether they were really killed or not.

Petitioner said he was told he would be freed on June 1 [2007] and that he would

come into a windfall of money. Additionally, the scientific technology would stop.

February 27, 2007 Interview

Dr. Bernet conducted a second interview on February 27, 2007 at Riverbend. As noted in the report, this session was also recorded (video and audio) but the audio is lost during the latter part of this interview.

At the beginning of this second interview, Dr. Bernet asked, and was given permission by petitioner, to speak with Dr. Martell, Dr. Woods, and the other psychiatrists and psychologists who evaluated him. When asked what he remembered from the February 13, 2007 interview, petitioner recalled the meeting accurately. However, petitioner erroneously stated that he had been tested by Dr. Walker on a prior occasion and had met with Dr. Bernet and assistant, Ms. Dezube (Dr. Bernet's assistant, who was present to videotape the session).

When asked about the Structured Interview of Reported Symptoms (SIRS) administered by Dr. Walker, petitioner agreed that he had malingered mental illness in the past but denied that he was presently malingering. He then gave specific examples of when he had malingered mental illness. Dr. Bernet inquired as to why petitioner did not endorse items on the SIRS relating to people reading his mind or people talking about him behind his back. Petitioner said people reading his mind was not a problem for him because attorney Gleason had confirmed it had happened. He similarly added that it was no problem for him that people talked about him behind his back because everything had been recorded since 1985, and he was now living a law-abiding and Christian lifestyle.

Dr. Bernet asked petitioner whether he had ever made any attempts to locate the

camera or other monitoring device. Petitioner responded that attorney Gleason told him they did not need a camera because they can monitor him on a computer monitor. When asked the same question again, petitioner said he looked around the walls, the light fixtures and outside his room. Petitioner also talked about other places he had lived and indicated he had not searched for the technology in those locations either. He opined that the technology could have been similar to that shown in *The Six Million Dollar Man* television show.

When Dr. Bernet told petitioner he thought petitioner had a pattern of pretending or making up things, petitioner agreed again that he lied in the past but stopped the lying altogether when he was released from prison in 1990. Dr. Bernet gave petitioner a specific example of altering a driver's license and/or birth certificate. Petitioner said when he got his license, the clerk erroneously put 1967 instead of 1957. This error would have cost an additional ten dollars to correct so he left it as it was. When he applied for college at Volunteer State College he was asked to provide forms of identification. Because the date did not match from his driver's license to his birth certificate, he changed the dates to match.

Dr. Bernet reminded petitioner that he had told Dr. Bernet in September 1999 that there was no scientific technology watching him and that he had made it up. Petitioner agreed that he also told Dr. Craddock in 2000 the same. Petitioner became defensive when questioned about the timing of his father's letter writing to President Clinton and others. Petitioner said Dr. Bernet's credentials should be questioned for doubting petitioner's statements. Dr. Bernet went on to say he thought petitioner had a habit or compulsion to make wrong statements. Petitioner said "we don't see eye to eye. I am not

intentionally misleading anyone."

Dr. Bernet told petitioner he wanted to discuss the advantages and disadvantages of waiving his appeals. Petitioner responded about the plea agreement with the Washington, D.C. attorneys and his resulting June 1, 2007 release. Petitioner discussed his fiancee April and their plans to wed in June 2007. He said April as well as his "four lovely sisters" would favor the appeals and attorney Gleason would be relieved. Petitioner added that if he is not released on June 1, 2007 it would not change his mind.

Dr. Bernet asked petitioner to assume there has been no surveillance by scientific technology. Based on that assumption, Dr. Bernet asked petitioner about possible reasons for not continuing his appeals. Petitioner responded as follows:

> It's not fun being incarcerated. Every day is against you. You could be pursuing life. The negatives outweigh the positives. You're confined to a restricted area, your room. You don't have a choice about the food menu. You don't have a choice about when to eat. You don't have any capacity for liberty. You're in a controlled environment. You are confined. You have no choice about the other individuals in your environment. Other inmates are violent. They curse. They spit on each other, which is the nastiest thing I can think of. The negativity is paramount to anything you can think of.

When further asked if there were reasons for waiving his appeals, petitioner responded as follows:

> I was falsely convicted of seven homicides and three robberies. I can't imagine spending the rest of my life incarcerated for something I didn't do. A person who is innocent is more likely to give up the appeals process, because it is impossible for them to recover their lives. A guilty person will talk and tell everyone how innocent they are.

Following these responses, petitioner again made a reference to the scientific technology

and accused Connie Westfall and attorney Gleason of the PCDO of being actresses hired to look like attorneys. Nonetheless, petitioner said he would remain focused putting "one foot in front of the other." Dr. Bernet suggested to petitioner that he could not do so if he is dead and described his stance as a "quitting attitude." Petitioner said he had execution dates in 2003, 2005, and 2006 and had no desire to defend himself.

Petitioner believed the state could execute an inmate who is not competent, if that person could answer a few fundamental questions including "who is the president," etc. Petitioner explained that three chemicals are used in executions.

Following the interviews, Dr. Bernet summarized his diagnosis and conclusions. Recognizing that the petitioner has had long and complicated psychiatric, legal, medical and social histories (having had psychiatric symptoms and diagnoses including serious psychotic disorders – paranoid schizophrenia, delusional disorder and bipolar disorder, antisocial personality disorder and malingering), Dr. Bernet indicates at present the most important consideration is "whether Mr. Reid actually has a serious mental disorder manifested by paranoid delusions or is pretending to have a serious mental disorder." Stating it another way, Dr. Bernet summarizes the crucial inquiry as follows: "EITHER Mr. Reid is a non-psychotic but prevaricating individual who sometimes pretends to be delusional OR he is a severely psychotic, delusional man who sometimes pretends to be totally free of delusions." He opines that if petitioner is truly delusional and out of touch with reality, he is unlikely to be mentally competent. If petitioner is lying, he is mentally competent.

Dr. Bernet recognizes in his report that several factors in petitioner's history and current presentation are consistent with delusional disorder (including government

surveillance claims and attempts by the government to turn him into a homosexual). However, he also finds notes "significant aspects" of petitioner's behavior inconsistent with true delusional disorder. He maintains that delusional individuals who believe they are victims of covert surveillance try to locate the cameras, microphones or other such equipment. Dr. Bernet notes no serious attempt on petitioner's behalf to try to do so. Further, Dr. Bernet said paranoid delusional individuals usually keep their thoughts to themselves, noting petitioner's open announcement of the surveillance including letters to Governor Ann Richards. In day-to-day relationships, petitioner does not act like a delusional individual in that he is outgoing, friendly and loves to talk about himself.

Dr. Bernet explains that bizarre delusions are usually accompanied by other serious psychiatric symptoms including disorganized speech and behavior and "negative symptoms," none of which are exhibited by petitioner. In this analysis, Dr. Bernet also includes petitioner's malingered mental illness while in Texas facing criminal prosecution. Finally, he notes petitioner's statements to various mental health professionals that he made up the delusions.

Dr. Bernet indicates the course of petitioner's "illness" is the most important factor in indicating petitioner has never had an actual psychotic illness. In support of his position, Dr. Bernet reviewed petitioner's history and notes the psychotic symptoms parallel petitioner's involvement in the criminal justice system. He maintains the history shows no psychotic symptoms until petitioner was arrested in 1978 at age 20 and eventually found not guilty by reason of insanity. Once he returned to society, petitioner had no notable psychotic symptoms at all. However, when petitioner was rearrested in 1982 for armed robberies, he had a recurrence of dramatic psychiatric symptoms. He again later used the

mental illness claim in an attempt to overturn prior guilty pleas.

Dr. Bernet also considered a second explanation for the government surveillance statements. According to Dr. Bernet, the statements are "simply a manifestation of antisocial personality disorder and psychopathy" and appear to be an example of a syndrome known as pathological lying. Under this consideration, Dr. Bernet indicates it is important to seriously consider the range of possibilities including actual delusions (delusional disorder caused by temporal lobe injury) and fake delusions (personality disorder and pathological lying). Dr. Bernet insists petitioner fulfilled the criteria (DSM-IV-TR) for antisocial personality disorder.

Dr. Bernet acknowledges that pathological lying (sometimes called pseudologia fantastica) is not a diagnosis but maintains it is a well known symptom or pattern of behavior. He cited to a book authored by Dr. William Healy as well as an important paper by Dr. Charles Dike[6] which he says lend credence to the phenomenon known as pathological lying. Dr. Bernet said pathological lying and malingering are not the same, as pathological lying is a broader concept than malingering. He added that you simply cannot argue petitioner is not malingering in an attempt to negate the pathological lying.

Next, Dr. Bernet highlighted various features of petitioner's psychiatric and legal histories and current condition he believes are consistent with pathological lying. This analysis includes petitioner's admission that he malingered mental illness when facing prosecution in Texas and his current need for the government surveillance statements as

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[6] The citations to these resources, as well as other publications relied upon by Dr. Bernet, are included in a document styled "Bibliography Regarding Pathological Lying, Also Called Pseudologia Phantastica and Psudologia Fantastica" prepared by Dr. Bernet, which was admitted as part of collective exhibit 21. This collective exhibit includes the text of the article by Dr. Dike as well as excerpts from other publications..

a psychological defense mechanism. As a defense mechanism, petitioner's belief that he has been under government surveillance for years protects him from the harsh reality that he killed seven men and women. Dr. Bernet states it would probably not be helpful to expect or force petitioner to give up the beliefs and simply permit him to retain this defense mechanism.

Dr. Bernet acknowledges the temporal lobe injury as has been documented in MRI and PET scans. However, he states there is no clear connection between the temporal lobe abnormalities and the pathological lying.

Near the end of his report, Dr. Bernet specifically addresses petitioner's competency under the Rule 28 standard. Dr. Bernet opines that petitioner's most significant mental disorder is antisocial personality disorder with the added feature of pathological lying. These individuals can become so engrossed in their lies that they begin to adopt them as their reality. Dr. Bernet said these individuals live in a fantasy that approaches the intensity of a delusion. However, Dr. Bernet believes petitioner understands his position.

Under the next Rees consideration, Dr. Bernet believes petitioner possesses the present capacity to make a rational choice with respect to continuing or abandoning further litigation. He cites various bullet points in support of his conclusion including petitioner's statements to other mental health professionals that he made up the idea of government surveillance; petitioner's insight into his lying; petitioner's motivation to fabricate the delusions; petitioner's ability to talk about the pros and cons of withdrawing his petition (noting all of the reasons were logical, coherent and were not based on the government surveillance statements); and petitioner's acceptance that three juries have found him guilty and sentenced him to death. Dr. Bernet also found petitioner was making his decision to

withdraw the petition in a knowing, intelligent and voluntary manner citing the basis for each finding.

In conclusion, Dr. Bernet added that petitioner might want to continue his appeals if he had a more comfortable life in prison. Citing to petitioner's statements regarding the disadvantages of being at Brushy Mountain versus being housed on death row at Riverbend in Nashville, Dr. Bernet believes petitioner might want to continue the appeals if moved back to Riverbend where he can enter the incentive-based program.

May 12, 2008 *Nix* Hearing

Dr. Bernet testified at the May 12, 2008 hearing that he is a psychiatrist and professor in the Department of Psychiatry at Vanderbilt University School of Medicine. Dr. Bernet said he is board certified in the field of forensic psychiatry. As with Dr. Woods, the curriculum vitae of Dr. Bernet (who also testified at the 2007 Rule 28 proceedings) was tendered to the Court to dispense with the need for further voir dire.

Dr. Bernet said he conducted an interview of petitioner on April 11, 2008 which was captured both on audio and video. He noted that he taped the interview because it is important to have an accurate account of what was said by both the evaluator and the evaluee. Dr. Bernet said he also took notes of the interview.

When asked about his professional relationship with petitioner, Dr. Bernet said he had interviewed petitioner on six different occasions for a total of 13.7 hours – twice in January 1999, once in September 1999, twice in February 2007 and once in April 2008. Dr. Bernet said he had also been provided a large amount of information about petitioner and his medical, psychiatric and legal history going back to his childhood. He estimated

he reviewed approximately thirty different reports from different testing and forensic experts. Dr. Bernet said he summarized each of his interviews in his April 23, 2008 report.

Dr. Bernet said his most recent request was to evaluate petitioner's competency under the Nix standard. For these purposes, Dr. Bernet conducted the personal interview with petitioner on April 11, 2008 and reviewed collateral information from various prison personnel. With respect to the prison personnel, Dr. Bernet said he was interested in seeing if petitioner manifested any significant psychiatric issues or symptoms. Summarizing the telephone conversation with Officer Michael Slaughter, Dr. Bernet said Officer Slaughter told him petitioner was quiet, cooperative and friendly. Officer Slaughter also told him that he had not heard anything about scientific technology in a long time. Similarly, Ms. Wolfenbarker, a nurse at the clinic at Riverbend noted no significant problems but noted the Elavail prescription and the diagnosis of Dr. Glenn. The records also indicated petitioner was seen by Dr. Laura d'Angelo, who reached a diagnosis similar to Dr. Glenn.

When asked whether he noticed a change in petitioner's condition since the last time he had seen him, Dr. Bernet said when he saw petitioner again in 2007 he had not changed significantly from the last time he had seen him. Dr. Bernet said that on his April 2008 meeting he thought petitioner's overall condition was about the same as it had been previously.

Dr. Bernet was shown a document which contained writing by the petitioner. He explained that he had asked petitioner to write down certain basic information. Dr. Bernet noted no errors or anything of significance regarding petitioner's responses. He noticed petitioner put the wrong date on the paper but Dr. Bernet did not find it problematic. Other

than general information about himself and the time and date, petitioner indicated the purpose of the meeting with Dr. Bernet was to discuss petitioner's mental status. Dr. Bernet said petitioner did not need assistance in writing his responses but did ask for spelling assistance.

Dr. Bernet was asked at the outset whether in his opinion petitioner was able to manage his personal affairs or understand his legal rights and liabilities. Dr. Bernet said he concluded petitioner was competent as to both prongs. In explaining how he arrived at those conclusions, Dr. Bernet began by describing his interview with petitioner.

According to Dr. Bernet, petitioner brought him up to date since the 2007 interview, which petitioner remembered in detail. Dr. Bernet also noticed that petitioner remembered the unusual name of the assistant who had accompanied him during the last interview but noted petitioner had seen a piece of paper with her name on it.

Dr. Bernet testified that petitioner recalled a number of details about the past hearings. Petitioner recalled that Dr. Glenn was present during the 2007 hearings and that attorney Brad McLean questioned Dr. Bernet for about two hours. Dr. Bernet said that petitioner was in error on occasion but attributed the slight confusion to the large number of hearings that had taken place. He said petitioner did a good job of explaining the post-conviction process and had a good understanding of what happens if you win or lose during the post-conviction process. Petitioner indicated he could get a new trial if he won but would get an execution date if he lost at a post-conviction hearing. However, petitioner also noted the various additional state and federal appeals to follow.

Dr. Bernet said he and petitioner explored the advantages and disadvantages of a new trial. Dr. Bernet said he hoped they could discuss these issues without getting

immersed in petitioner's thoughts about government surveillance. During this conversation, government surveillance topics came up but Dr. Bernet said they came up for a specific reason. He opined that the topics arose when petitioner thinks about the crimes that he committed. Dr. Bernet said petitioner uses these thoughts to defend against the bad thoughts he has about having committed the crimes. Even though the topics surfaced during their conversation, Dr. Bernet thought petitioner did a good job of talking about the advantages and disadvantages of having a new trial.

Dr. Bernet found petitioner to be set in his opinion and armed with many reasons why he does not want a new trial. He said none of the reasons had anything to do with government surveillance. Dr. Bernet said government surveillance would be a reason to have a new trial if he really believed in it because a new trial would give petitioner the opportunity to expose it.

In explaining why he did not want a new trial, petitioner told Dr. Bernet that he had been tried by three juries who found him guilty. He did not want to put himself or his family through that kind of ordeal again. He said the juries had convicted him and sentenced him to death. Petitioner said he did not want to be subject to the humiliation a second time. He also added that some of the things said were real or true while others were false and fabricated. Dr. Bernet said in other words petitioner finds it very unpleasant to have these accusations made by all of those witnesses.

Dr. Bernet agreed that petitioner is a person who values very much what people think of him. He describes petitioner as having narcissistic personality traits. Not only is it important to him what other people think about him, petitioner also has a very high opinion of himself. When Dr. Bernet asked petitioner what types of unpleasant things he

wanted to avoid in a new trial, petitioner referenced the testimony of his sister accusing petitioner of molesting her as a child.

In addition, petitioner gave Dr. Bernet examples of false testimony against him citing to testimony about his haircut and the sum of coins he kept in glass bottles in relation to the money taken from Captain D's restaurant. Petitioner also mentioned the testimony about his tennis shoes and maintained that counsel could have done a better job of investigating the shoes issue. When Dr. Bernet asked petitioner whether there were other reasons to have a new trial or not to have a new trial, petitioner said based on his observation it is totally unnecessary and not worth the time of day. Petitioner also made reference to only five people who thought he was guilty. Dr. Bernet admitted that these responses did not make sense; however, when he asked petitioner to explain petitioner was unable to do so. Instead, petitioner said to leave it at that. Dr. Bernet said this response was common in individuals who are fabricating because when you press them further for an explanation they want to move on.

Dr. Bernet asked petitioner about the advantages of having a new trial. Petitioner said he did not see any advantages; however, when Dr. Bernet mentioned the prospect of being found not guilty, petitioner said those are unchartered waters and that he would not go there. Petitioner conceded there was always a possibility a jury could find him not guilty but he went on to say that he had a trial and accepted the outcome.

Dr. Bernet testified that petitioner next expressed his position in a very eloquent way. Petitioner told Dr. Bernet he would like to make the decision himself. He explained that people badger him to change his opinion and that he tries to be decent and respectful to them. However, he said he was entitled to his vote and that he would not be

disenfranchised or manipulated. Petitioner told Dr. Bernet he had the democratic right to cast his vote as he sees fit. He noted that he had a trial and while he does not appreciate the outcome he will live with the result. Dr. Bernet found this statement and reasoning to be very competent, noting the interesting use of the metaphor about voting and expressing his current opinion. He said petitioner was talking about his wish to be autonomous even though other people tried to talk him out of it. Dr. Bernet thought it significant that none of this explanation had anything to do with government surveillance.

Dr. Bernet found petitioner able to talk about his rights and liabilities without going in depth into his stories of surveillance. He said it was for these reasons he recorded the entire interview so that others could decide for themselves.

Next, Dr. Bernet was asked about petitioner's reference to his fiancee Susan. Dr. Bernet said he believes petitioner makes up things that are helpful and make him feel better. Noting a history of lying dating back to petitioner's youth, Dr. Bernet said petitioner has a history of lying and making up psychiatric symptoms. He said petitioner even told him that he had made up the government surveillance stories. Dr. Bernet said petitioner uses these stories or fantasies as a way to get through difficult times.

Dr. Bernet said the stories surface when petitioner has a need for them including when he was facing legal trouble in Texas. When asked about a time period when petitioner apparently was not in legal trouble but persisted in the stories, Dr. Bernet indicated he examined the time period in question when petitioner was writing letters to the governor of Texas about surveillance. He said such conduct was out of character for petitioner who had consistently only used the stories when in trouble. Dr. Bernet explained that when he examined it closer and discussed it with petitioner, petitioner provided a