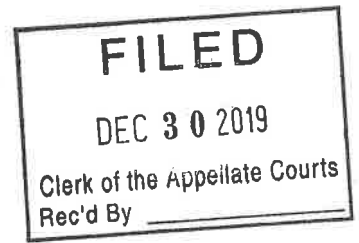


IN THE TENNESSEE SUPREME COURT  
AT NASHVILLE



STATE OF TENNESSEE,	)	
	)	
Movant,	)	No. W1997-00097-SC-DDT-DD
	)	
v.	)	SHELBY COUNTY CRIMINAL
	)	94-02797, 94-02798, 94-02799,
TONY VON CARRUTHERS,	)	95-11128, 95-11129.
	)	
Defendant.	)	

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**SYLLABUS OF  
RESPONSE IN OPPOSITION TO MOTION TO SET  
EXECUTION DATE**

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Comes now counsel for Tony Von Carruthers and submits this syllabus of his contemporaneously filed Response, pursuant to Tennessee Supreme Court Rule 12.4(C), and as his Response exceeds 50-pages in length.

This syllabus contains a brief summary of each section and subsection of the Response. Should this Honorable Court find a shorter syllabus more helpful, the Table of Contents to the Response contains the text of all the headings, and may prove useful.

This syllabus is structured around the Section (Roman Numeral), and Sub-Section (Capital Letter) headings used in the Response.

## I. Introduction.

The Introduction introduces the major arguments that will be developed in the Response, including:

1. Should Mr. Carruthers be executed, he will be the first person in a century to be put to death after being denied counsel at trial.
2. He would be a unique defendant to face execution who was indicted under a theory of guilt that the government later disavowed, based on a witness that the prosecution subsequently called a liar.
3. He would be executed, despite the prosecution's willingness to settle his case for life, and willingness to settle his co-defendant's case for 27 years on a best-interest plea.
4. There was a lack of direct or forensic evidence at trial, and the prosecution relied on convicted criminals for much of their case.
5. Some of most damaging arguments for guilt and the death sentence were presented by Mr. Carruthers whose forced self-representation is directly responsible for the death verdict.
6. The crime for which Mr. Carruthers was sentenced to death, "burying three people alive," never happened. Overwhelming scientific evidence, acknowledged by the Medical Examiner, establishes that the three victims were dead before being placed in a grave.
7. Mr. Carruthers is seriously mentally ill, with no ability to rationally understand his legal situation, or even his own illness. He was not competent to stand trial, not competent to represent himself, not

competent to waive meritorious claims, and he lacks all rational understanding of why the State of Tennessee intends to kill him.

8. Mr. Carruthers' understanding of the request to set an execution date is that it is a continuation of a long-term "fraud upon the court" and "extrinsic fraud" perpetrated by a cabal of defense lawyers, prosecutors, judges, Masons and deviants. He believes that the conspirators are seeking an execution date as a means to avoid their own indictments and to preserve their law licenses. His understanding of the execution is not rational.

**I.A. The framework of this opposition.**

This section explains the structure of the Response.

**I.B. Relief requested.**

Counsel for Mr. Carruthers requests that this Honorable Court (1) issue the Certificate of Commutation, (2) exercise its supervisory authority to remand for further proceedings in the trial court, and (3) decline to set an execution date.

**I.C. Note on exhibits, and**

**I.D. A note on citations.**

These sections discuss the formatting of the Response.

## **II. "Fraud Upon the Court"**

This section is broken into six-separate sections, which contain the substantive arguments regarding the errors and injustices that infected Mr. Carruthers' trial proceedings, with the exception of arguments related directly to his serious mental illness, which are found in Section III.

### **II.A. The facts, and lack thereof, at trial; the unmatched bloody DNA; the role of Alfredo Bernard Shaw and his contrary story of guilt; the suspects the jury never heard about.**

There was a lack of direct and/or forensic evidence connecting Mr. Carruthers to the murders. The prosecution relied on criminal informants. Blood was found on a cloth that was buried with the victims, and this blood contains the DNA of someone other than the victims or the defendants. To this day, no one knows who left their blood in the victims' grave.

Alfredo Bernard Shaw met Mr. Carruthers, in jail, in 1988, when they got into an "altercation." According to Mr. Shaw's Grand Jury testimony, he next spoke to Mr. Carruthers five years later, and Mr. Carruthers tried to enlist him in a murder-for-hire plot. Then, following the three murders, while Shaw was in jail, and despite being an incompatible, he claimed that he met Mr. Carruthers in the jail law library, where Mr. Carruthers chose to make his only confession in the history of this case to Shaw.

Mr. Shaw recanted this story on the nightly news, and claimed he was paid to lie to the Grand Jury. In the same news program the prosecutor announced that he would not put Shaw on the witness stand because he is a man “who lies.”

Not surprisingly, the prosecution abandoned Shaw’s story at trial. The various felons called as witnesses at trial did not talk about a murder-for-hire. Instead, a new motivation for the crime was presented; the convicted felons claimed that the murders had been committed by Mr. Carruthers and his co-defendant James Montgomery in an attempt to take over the drug trade in their neighborhood. The majority of the prosecutions’ felon witnesses received benefits from the prosecution in return for their testimony.

The trial court prevented Mr. Carruthers from presenting proof about alternative suspects. One set of alternative suspects were Columbian drug dealers to whom victim Marcellus Anderson and his partner in kilogram scale cocaine trafficking, Andre Johnson, owed a sizeable drug debt. These drug dealers had been driving around Memphis looking for Anderson and Johnson. Another suspect was Andre Johnson, himself, who had ordered another associate from the drug trade (Michael Holmes) to kidnap a fourth member (Charles Smith, who was a state’s witness, and admitted to being a drug trafficker along with Anderson and Johnson). Johnson, subsequently, admitted under oath that he would accept \$100,000 to have a man killed.

Mr. Carruthers chose to put Alfredo Shaw on the witness stand, despite being told that he would recant his recantation and claim that he had recanted out of fear of Mr. Carruthers. Mr. Carruthers' decision to call Shaw was a bad one, and Shaw provided devastating testimony against Mr. Carruthers both on direct, and then on cross-exam by the prosecution.

**II.B. For years the State of Tennessee has fought to conceal the truth: Alfredo Shaw was a paid informant before, during, and after the time he allegedly obtained Tony Carruthers' "confession," the fight to conceal this truth rises to the level of a "Fraud Upon the Court" as formal pleadings introduced before the Honorable Walter Kurtz falsely disavowed Mr. Shaw's role as an informant.**

The prosecution went to great lengths to avoid revealing that Mr. Alfredo Shaw had been a paid confidential informant for the Shelby County Sheriff for two years prior to, allegedly, obtaining the confession of Tony Carruthers.

The prosecution successfully won a legally spurious objection to Mr. Carruthers' attempt to ask Shaw if he was an informant. Subsequently, in post-conviction proceedings they repeatedly denied that Shaw had been a paid informant, and claimed that he had not been an informant for "anyone" at "any time."

At the same time the prosecutors made this claim, they were concurrently defending the conviction of Earley Story in the Court of

Criminal Appeals. Mr. Story had been convicted based on the undercover drug purchases made by Shaw.

Records obtained in 2017 reveal that Mr. Shaw had been an informant for the Shelby County Sheriff for at least two years prior to the date he—allegedly—met with Mr. Carruthers in the Shelby County Sheriff's jail law library. Those records revealed hundreds of dollars of payments to Shaw, and an ongoing relationship between Shaw and the Sheriff's Department.

**II.C. Mr. Carruthers, against his will, and as punishment for his unusual behavior, was forced to represent himself; the last known case where a man was denied counsel and sentenced to death occurred in 1923; executions for men who were punished by being denied counsel are simply unheard of.**

Mr. Carruthers was punished for intemperately complaining about a series of attorneys who, in fact, did virtually nothing to prepare for his trial. The various lawyers had only 6 of over 125 possible witnesses interviewed, and failed to secure necessary expert assistance.

However, Mr. Carruthers' complaints about his lawyers were sometimes offensive and inflammatory. As punishment the trial court stripped Mr. Carruthers of his right to counsel and required him to represent himself. The Honorable Bill Massey was willing to forgive Mr. Carruthers and to represent him at trial, but the trial court refused to permit this.

Should Mr. Carruthers be executed, he will be the first prisoner in nearly a century to be killed after being denied an attorney at trial.

**II.D. The State was willing to convey an offer of life in prison, which Mr. Carruthers could have already served had he accepted it; his co-defendant, James Montgomery is already free having accepted a best-interest plea for 27 years.**

The title adequately summarizes this section.

**II.E. The Aggravating Factor of Hideous, Atrocious and Cruel was false; the victims were not buried alive; the prosecutions' essential argument for death was factually false; the continued repetition of this horrifying myth reveals how incredibly prejudicially misleading it was; in Mr. Carruthers' words, it was a fraud upon the court.**

Dr. O.C. Smith testified during sentencing that the three victims had been buried alive. The prosecution relied on this testimony in their closing argument at sentencing, arguing that it established that the murders were "heinous, atrocious, and cruel" and deserved the death penalty. Multiple appellate courts found the "fact" the victims were "buried alive" to be an important legal justification for upholding Mr. Carruthers' death sentence.

Dr. Smith's testimony was scientifically invalid and false. Two experts have directly repudiated Dr. Smith's testimony, and Dr. Smith, himself, submitted an affidavit disavowing his testimony.



**II.F Tony Carruthers, in part due to his lack of legal knowledge or understanding, and in part for reasons that will be addressed, below, did more to get himself convicted and sentenced to death than did the prosecution.**

Mr. Carruthers ineptly and ineffectively represented himself, after being denied counsel by the trial court. His odd and, at times, detrimental behavior prompted the jury to pass notes to the court, and his irrational decisions led to his conviction and death sentence.

**III. MR. CARRUTHERS IS SEVERELY MENTALLY ILL, HE WAS LEGALLY INCOMPETENT TO STAND TRIAL, TO REPRESENT HIMSELF, OR TO WAIVE MERITORIOUS ISSUES; HE IS INCOMPETENT TO BE EXECUTED.**

This section introduces six-subsections that all deal with Mr. Carruthers' severe mental illness, and the impact of this mental illness on his competency at the various stages of the proceedings.

**III.A. The overwhelming evidence that Tony Carruthers is severely mentally ill: the conclusions of the experts who personally evaluated him.**

Four separate neuropsychologists and psychiatrists evaluated Mr. Carruthers and concluded that Mr. Carruthers has a severe mental illness, which can be labelled bi-polar disorder, or schizoaffective disorder bi-polar type. He also suffers a co-morbid condition of severe brain damage. The impacts of his mental illness and brain damage are severe and disabling. Through no fault of his own, Mr. Carruthers lacks

the capacity for rational thought regarding his criminal case. His thinking is distorted by delusions and paranoia.

Three experts provided real world examples of Mr. Carruthers' observable delusional, irrational and paranoid behavior, while the fourth, Dr. Ruben Gur, provided concrete empirical evidence of severe brain injury as observed on MRI and PET scans.

Two experts, Dr. Kenner and Dr. Agharkar both concluded that due to Mr. Carruthers' lack of capacity for rational thought, and due to the distorting impact of his delusions and paranoia, he was not competent at any stage of the proceedings.

### **III.B. The overwhelming evidence that Tony Carruthers is severely mentally ill: twenty-five plus years of delusional and paranoid behavior.**

Mr. Carruthers lawyers, over the years, have witnessed the delusional, paranoid and irrational behavior described by the experts. Mr. Carruthers' delusional and paranoid behavior has been consistent and persistent over the decades. Despite evidence to the contrary, Mr. Carruthers has consistently maintained a factually inconsistent belief system that (1) his lawyers are about to get him released (with no need for a new trial), so that he needs to make plans in the next month for his victory celebration and to buy a new car (always a Jaguar), and (2) his lawyers are in conspiracy against him, and wish to do him harm. Also persistent over the years has been his belief that his own personally conceived legal arguments will work, and all his attorneys need to do is

say the words that Mr. Carruthers wants and he will be released. Any refusal to say those words is evidence of the attorneys' membership in the conspiracy.

As exhibits to this section, counsel provided examples of some of Mr. Carruthers' writings, not shared for their substance, but as examples of the mystical symbols, magic language and unique numerology that he has employed for 25+ years. Also in this section is one complaint to the Board of Professional Responsibility (shared with the attorney's explicit permission by signed release), which illustrates Mr. Carruthers' illogical, contradictory and nonsequential thinking, and his paranoid and delusional beliefs.

### **III.C. Undersigned counsel's best description of Mr. Carruthers' present mental state.**

This section contains his present attorney's best description of ten of Mr. Carruthers' most unique and frequently expressed beliefs. These beliefs are inconsistent with observed reality, and are indicative of significant thought disorders, paranoia and delusion.

Mr. Carruthers continues to believe in a vast conspiracy against him that could be easily thwarted if his attorneys would just say the right words to the Department of Justice or the Board of Professional Responsibility. With these magic words being said, Mr. Carruthers will be released from prison, and awarded millions in damages. His attorneys' refusal to do so is because they are part of the conspiracy (or,

in a few cases, because they are just cowards who are afraid of the Shelby County District Attorney).

This section describes additional unusual beliefs that are likely contrary to any reality known by the Justices of the Tennessee Supreme Court.

**III.D. The four relevant (and distinct) legal standards for competency: competency to stand trial, to self-represent at trial, to waive post-conviction claims, and to be executed.**

This section discusses the legal standards relevant to the four issues of (1) competency to stand trial, (2) competency to self-represent, (3) competency to waive issues, and (4) competency to be executed.

The facts set-forth in Section III.A-C, demonstrate that Mr. Carruthers is not and was not competent at any stage of the proceedings.

Counsel respectfully requests that Mr. Carruthers' case be remanded for a competency to be executed hearing, and that the trial court be authorized to, additionally, determine whether Mr. Carruthers had been competent to stand trial or represent himself.

**III.E. No court has ever determined whether Mr. Carruthers was competent to stand trial, defend himself, or waive meritorious legal issues; until now, his competency to be executed was not ripe for adjudication.**

The competency claims and mental health issues that are raised in this Response have never been addressed on their merits by any court at any time.

**III.F. A certificate of commutation should be issued, because Mr. Carruthers' unaddressed severe mental illness and clear legal incompetency are exactly the type of extenuating circumstances envisioned by Tenn.Code.Ann. § 40-27-106.**

This Court should issue a Certificate of Commutation, in light of Mr. Carruthers' severe mental illness and incompetency at every stage of the proceedings. Mr. Carruthers is entitled to the same relief received by his co-defendant James Montgomery—as both of them were denied a fair trial due to Mr. Carruthers' untreated serious mental illness.

#### **IV. TONY CARRUTHERS SHOULD BE CATEGORICALLY EXEMPT FROM EXECUTION DUE TO SERIOUS MENTAL ILLNESS.**

This section, which has three-subsection, explains why, categorically, the severely mentally ill should be exempt from execution.

##### **IV.A. Defining terms: what is a “serious mental illness”?**

This section explores the scientific definitions for “serious mental illness.” These definitions include schizoaffective disorder, and bipolar disorder.

**IV.B. Mr. Carruthers' psychotic disorder is a serious mental illness which renders his conviction and death sentence unconstitutionally unreliable.**

This section examines the United States Supreme Court's rationales for excluding the intellectually disabled and juveniles from execution. The six-part analysis set-forth in *Roper v. Simmons* determines whether a categorical exemption from execution is appropriate. While, this analysis is category-specific, and not case-specific, Mr. Carruthers' case and illness fit clearly and obviously within this six-part analysis.

**IV.C. Execution of a seriously mentally ill person violates contemporary standards of decency.**

Our nation has had a change of heart regarding the execution of the seriously mentally ill. By any and all measures, the majority of citizens, jurisdictions, and governments have determined that the seriously mentally ill should not be subject to execution.

**V. THE DEATH PENALTY IS UNCONSTITUTIONAL DUE TO INHERENT AND SYSTEMIC RACISM.**

This section, which has seven sub-sections, explores our nation's and our state's unfortunate and challenging history of racism, and, in particular racism in the justice system, and why this history counsels against continuing to impose the death penalty on any person.

## VI. TENNESSEE IS OUT OF STEP WITH THE EVOLVING STANDARDS OF DECENCY THAT HAVE LED MOST OF THE COUNTRY TO STOP EXECUTING ITS CITIZENS AND WHICH RENDER TENNESSEE'S DEATH PENALTY UNCONSTITUTIONAL.

This section, which has three sub-sections, discusses our nation's evolving attitude towards execution as an (un)ethical, (im)moral, (in)effective and (un)just punishment. Tennessee is a radical outlier that is increasing executions (if not death sentences, which Tennessee juries are rarely imposing), while the vast majority of our nation is ending the death penalty entirely.

## VII. CONCLUSION

This section reads as follows:

Undersigned counsel cares deeply about Tony Von Carruthers. He does not deserve to die. He did not choose to have a serious mental illness. He never wanted, as a consequence of his mental illness, to be forced to defend himself at a trial for his life.

But, against his will, and contrary to justice, he was forced to defend himself. And, he failed. He failed, primarily, because he was not competent to defend himself. Due to mental illness he acted in a manner, and made choices in a way, that assured conviction and the death penalty.

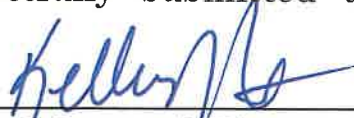
He also failed because the jury was lied to. Alfredo Shaw lied, thrice, about a confession that never happened. The jury was lied to by

a medical examiner who told them a horrific myth about three victims being buried alive—and that myth became the prosecutions’ essential argument for death. And based on that since repudiated myth and that central, but false, argument, the jury imposed death.

This Honorable Court can stop this train of injustice.

Respectfully, it would be appropriate under our constitutions and our laws for this Honorable Court to (1) refuse to set a date for Mr. Carruthers’ execution, (2) issue a Certificate of Commutation based on the unique and powerful extenuating circumstances that have been set-forth in this Response, and (3) remand this case to the trial court for full and fair hearings where Mr. Carruthers’ competency to be executed, competency to stand trial, competency to defend himself, and claim of exemption from execution due to Serious Mental Illness may be heard.

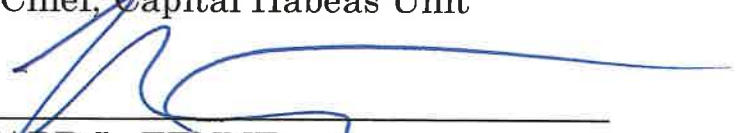
This syllabus is respectfully submitted this the 30th day of December, 2019.



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CERTIFICATE OF SERVICE

I, Kelley J. Henry, certify that a true and correct copy of the foregoing Syllabus was served via email and United States Mail to opposing counsel, Amy Tarkington, Associate Solicitor General, P.O. Box 20207, Nashville, Tennessee, 37202.

BY:

  
\_\_\_\_\_  
Kelley J. Henry