

COUNTY COURT OF NEW YORK
COUNTY OF ERIE

THE PEOPLE OF THE STATE OF NEW YORK

-against-

NOTICE OF MOTION

Indictment No.: [REDACTED]

PLEASE TAKE NOTICE, that upon the annexed affirmation of [REDACTED] ESQ, the attorney of record for the accused [REDACTED] the annexed exhibits, and upon all the proceedings had heretofore, a motion will be made in the County Court, County of Erie, at the Courthouse at 25 Delaware Ave., New York, on the [REDACTED] day of [REDACTED] at 9:30AM or as soon thereafter as counsel may be heard for an Order:

1. Declaring [REDACTED] an incapacitated person, or in the alternative, granting a hearing pursuant to CPL § 730.30(2) to make a final determination of competency based on conflicting reports, annexed hereto.

Dated: September [REDACTED]
Buffalo, New York

Respectfully submitted,

[REDACTED]

Hon. [REDACTED]
Part 23 - Fourth Floor
25 Delaware Avenue
Buffalo, New York 14202

Erie County District Attorney
ADA Christine Garvey, Esq.
25 Delaware Avenue
Buffalo, NY 14202

COUNTY COURT OF NEW YORK
COUNTY OF ERIE

THE PEOPLE OF THE STATE OF NEW YORK

-against-

████████████████████

ATTORNEY AFFIRMATION
Indictment No.: ██████████

████████████████████, being duly sworn, deposes and says:

1. I am the attorney for the Defendant herein and am fully familiar with the facts and circumstances surrounding this action.
2. This affidavit is being made in support of a motion for a hearing to determine the issue of Defendant's capacity to stand trial.
3. On ██████████, the Defendant was arraigned on a felony complaint, charging the Defendant with One count of NY PL § 150.10(1), Arson in the Third Degree and two counts of NY PL § 265.02(2), Criminal Possession of a Weapon in the Third Degree.
4. On July 18, 2022, I was assigned by the City Court as counsel for Defendant.
5. On July 21, 2002, pursuant to an application made by your deponent, that Court ordered an examination to determine whether or not Defendant is an incapacitated person who as a result of mental disease or defect lacks capacity to understand the proceedings or assist in the defense.
6. Pursuant to the order the Director of The Erie County Forensic Mental Health Service appointed Dr. Stephanie Ficarro, Psy. D and Dr. Corey Liednefrost, Phd. to examine the Defendant to determine the Defendant's capacity to stand trial.
7. Upon completion of their examinations Dr. [Dr. Stephanie Ficarro, Psy. D and Dr. Corey Liednefrost, Phd submitted their respective examination reports to the Director of the Erie County Froensic Mental Health Services who submitted them to this Court on August 8, 2022. Copies of the examination reports are annexed hereto as Exhibits A and B.
8. That the examination reports show Dr. Stephanie Ficarro, Psy. D and Dr. Corey Liednefrost, Phd are each of the opinion that the defendant is not an incapacitated person.
9. Given my experiences with Defendant, along with the licensed social worker from the Assigned Counsel Program, I sought a third expert opinion fro Dr. Steven Erickson, JD, Phd, LLM, ABBP. His CV is attached hereto as Exhibit C. Dr. Erickson also has additional experience, having previously performed an evaluation of Defendant's twin brother who is similarly situated as far as medical history and diagnoses.

10. Dr. Erickson conducted an evaluation on September 26, 2022. He made a finding that [REDACTED] is an incapacitated person. The report is annexed herein as Exhibit D.

11. That in view of the foregoing, CPL § 730.30 mandates that the court grant the relief requested herein.

12. That no previous application has been made for the relief requested herein.

WHEREFORE your deponent respectfully prays for an order, pursuant to CPL § 730.30, directing that a hearing be held to determine the issue of capacity, and for such other and further relief as the court deems proper.

September 27, 2022

[REDACTED]

EXHIBIT A



County of Erie

MARK POLONCARZ
COUNTY EXECUTIVE

DEPARTMENT OF MENTAL HEALTH
MARK O'BRIEN, LCSW-R
COMMISSIONER

FORENSIC MENTAL HEALTH SERVICE
CHRISTINA SCOTT, LCSW
DIRECTOR OF FORENSIC MENTAL HEALTH

August 3, 2022

The Honorable [REDACTED]
Buffalo City Court
County of Erie

RE: [REDACTED]
DOB: [REDACTED]
DOCKET NO.: [REDACTED]
ADJOURN DATE: [REDACTED]

Dear Judge [REDACTED]

At the request of the court, I completed a forensic evaluation of Mr. [REDACTED] at the Erie County Holding Center (ECHC) in Buffalo, New York, on 08/03/2022. Mr. [REDACTED] was evaluated according to section 730 of the Criminal Procedure Law to determine whether he has the capacity to understand the proceedings against him or to assist in his defense. Other sources used for this report included the accusatory instrument and his medical records from the ECHC. Also present during the evaluation was Dr. Corey Leidenfrost, an independent evaluator. Mr. [REDACTED] was notified of, and indicated he understood, the purpose and the non-confidential nature of this evaluation.

CURRENT CHARGES:

According to the accusatory instrument, Mr. [REDACTED] (C Felony) and Criminal Possession of a Weapon in the 3rd Degree (D Felony). On or about 07/17/2022, [REDACTED] allegedly threw a Molotov cocktail at the complainant's front window, causing the front of the house to catch on fire.

BACKGROUND INFORMATION:

Mr. [REDACTED] Black male born and raised in Buffalo, New York. He reported that he was most recently living alone in an apartment in the City of Buffalo. Prior to this, he reported living with his mother whom he remains close with. He has one sister and two brothers, including an identical twin brother. He has never been married and has no children. [REDACTED] reported that he graduated high school in [REDACTED]. He stated that he graduated from [REDACTED] an alternative education program. He reported that he required special education services in school and had an Individualized Education Program (IEP) due to a learning disability and

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behavioral issues. Mr. [REDACTED] transferred to [REDACTED] after being "kicked out" of [REDACTED] due to threatening people. He reported that he financially supports himself through receipt of SSI benefits that he qualifies for due to having a serious mental illness. Mr. [REDACTED] reported that "Sue" from Person Centered Services is his current representative payee.

Regarding his mental health history, Mr. [REDACTED] reported being diagnosed with "bipolar, schizophrenia" at a young age. He stated that he began participating in mental health counseling around the age of 6 or 7. He endorsed a history of "a lot" of psychiatric hospitalizations at the Erie County Medical Center (ECMC). He reported that his most recent hospitalization occurred approximately three years ago. Per review of available records, he had five admissions at ECMC for psychosis between [REDACTED] described a history of being treated with psychiatric medications including Abilify and Invega (antipsychotic medications). He also reported being previously prescribed medication as a child for a diagnosis of Attention-Deficit/Hyperactivity Disorder; however, he could not recall the name of the medication. Mr. [REDACTED] stated that he is currently linked with Best Self Behavioral Health (BSBH) for outpatient mental health treatment, including medication management. He stated that he receives a monthly injection of Invega Sustenna and that he has been compliant with his prescribed medication in the community. Mr. [REDACTED] also reported a prior history of participating in Mental Health Court with Judge Russell and that his case had been closed out. In the jail setting, [REDACTED] is diagnosed with Schizophrenia (by history), Antisocial Personality Disorder, and Mild Intellectual Disability. He is currently prescribed Invega Sustenna and is due for his next injection on 08/11/2022. Mr. [REDACTED] reported medical history is remarkable for a history of treatment for high blood pressure. He stated that he previously was prescribed medication to address this. He also reported history of burning his arm and requiring a skin graft in 2021. He stated that he had fallen asleep on a heater, which resulted in the burn injury. He denied any history of head injuries or concussions.

Mr. [REDACTED] reported a history of substance use. He stated that he began smoking marijuana at the age of 18 and was most recently smoking "a dime" on a daily basis. He reported that he began using cocaine in 2021 and this has since escalated to daily crack cocaine use over the last couple of months. He described experiencing problems related to his drug use and attempting to quit using without success. Mr. [REDACTED] denied any history of participating in substance abuse treatment, but expressed interest in going to an inpatient rehabilitation facility if released.

MENTAL STATUS EXAMINATION:

Mr. [REDACTED] appeared his chronological age. His hygiene and grooming were appropriate. He had observable burn scarring on his left forearm and a tattoo on his right forearm. His speech was normal in rate and rhythm, but low in volume. His eye contact was appropriate. He appeared to have below average intellectual abilities, as evidenced by a limited vocabulary and his answering questions in a concrete manner. He was oriented to person (e.g., he correctly stated his full name, age, and date of birth), place (e.g., he correctly identified the current location as "the Erie County Holding Center"), and generally to time (e.g., he correctly reported the month and year, but was unsure of the date). He was cooperative throughout the interview and maintained behavioral control. His long-term memory appeared intact as he was able to recall information related to his legal case and events that occurred during his current incarceration. His short-term memory also appeared to be intact, as he was able to retain and recall information presented to him by the evaluator during the interview (e.g., the maximum possible sentence he could face if convicted). His observed mood was euthymic with constricted affect. Mr. [REDACTED] did not report or present with any objective signs of psychosis (e.g., attending to internal stimuli) or major mood disturbance (i.e., depression, mania, lability) at the time of the evaluation. He did not endorse any active suicidal or aggressive ideation, intent, or plan. He presented as future-oriented in working with his attorney to resolve his legal case. His thought process was organized and his thought content was logical

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but concrete. Mr. [REDACTED] demonstrated intact insight and judgment related to his legal case. His insight and judgement related to his mental health, substance use, and need for treatment was fair.

DIAGNOSTIC IMPRESSION:

- Schizophrenia, By History
- Probable Intellectual Developmental Disorder
- Cocaine Use Disorder, In a Controlled Environment
- Cannabis Use Disorder, In a Controlled Environment

COMPETENCY ASSESSMENT:

Mr. [REDACTED] demonstrated a rational and factual understanding of his charges, along with the court process and relevant court personnel. He conveyed understanding that one of his pending charges is [REDACTED] and that he is being accused of starting a fire. He was provided education related to his second pending charge. Mr. [REDACTED] demonstrated awareness that his charges are classified as "felonies" and that a felony charge is more serious than a misdemeanor charge in terms of sentencing. He was unsure of the maximum possible sentence he could receive if convicted of a class C or D Felony and was provided education by the evaluator. He demonstrated understanding and ability to retain this information as he correctly reported that he could serve up to "fifteen years" in prison if convicted of his most serious charge later during the evaluation. Additionally, Mr. [REDACTED] demonstrated appreciation of the seriousness of his current legal charges. Mr. [REDACTED] conveyed understanding that he is being represented by an attorney and recognized her name when it was provided to him. He indicated that his attorney was on his side and that the role of the defense attorney is "to represent me." He reported having spoken to his attorney previously and expressed willingness to work with his attorney to resolve his legal case. Regarding how he could best assist his attorney, he stated, "Tell her stuff I do know." He indicated understanding that the prosecutor is "against" him. Mr. [REDACTED] demonstrated understanding that the judge is "neutral" and that in general judges are in charge of the courtroom and "decide the sentence." He was able to identify the judge in his case by name ([REDACTED]). Mr. [REDACTED] required education from the evaluator in regard to the concept of a plea bargain, to which he conveyed understanding. He indicated that charges are reduced or dismissed in exchange for a guilty plea, which can include mandated treatment. He also conveyed understanding that it is to the defendant to decide whether or not to accept a plea bargain. He was familiar with the trial process and stated that a defendant could "go to jail" if they lost at trial. He was able to identify potential sources of evidence for and against his case. He was able to rationally discuss his legal options, including the consideration of a potential plea bargain. Regarding the best possible outcome in his case, Mr. [REDACTED] stated it would involve "a plea deal and going to rehab." In terms of the worst possible outcome, he stated, "15 years" in prison. He also demonstrated understanding of acceptable courtroom behavior and that he could receive another charge for behaving inappropriately in court. Additionally, Mr. [REDACTED] indicated understanding of who to talk to if he does not understand something that happens in court or related to his legal case (e.g., he indicated that he would ask his attorney if he had any questions).

COMPETENCY OPINION:

In accordance with Criminal Procedure Law §730 the purpose of this report is to advise the Court that it is my opinion with a reasonable degree of professional and psychological certainty, that Mr. [REDACTED] does have (a) sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and does have (b) a rational understanding of the proceedings against him. It is in my opinion that Mr. [REDACTED] at the present time not an incapacitated person as defined under CPL §730 and is, at this time, competent to proceed with the adjudication process.

Please note that "incapacitated person" is a legal term and not a psychological diagnosis. The decision as to whether Mr. [REDACTED] is an incapacitated person rests solely with the Court. The opinions included in this report

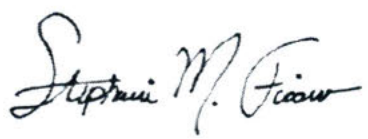
were based on information available to this evaluator at the time of the report and especially his presentation at the time of the interview. If significant new information becomes available (including information that contradicts the information relied upon), the opinions in this report may warrant reconsideration.

TREATMENT RECOMMENDATION:

Mr. [REDACTED] is currently prescribed psychotropic medication and it is recommended that he continue to comply with this medication regimen, as failure to do so could result in psychiatric decompensation. Mr. [REDACTED] also expressed openness to treatment and conveyed that he hopes to be released to an inpatient rehabilitation program. Given his recent regular substance use, inpatient treatment would likely be beneficial in facilitating his sobriety. He reported that he is currently linked with BSBH for outpatient mental health treatment, including medication management, and it is recommended that he continues this treatment if released to the community. Additionally, Mr. [REDACTED] may benefit from treatment that addresses issues related to both his serious mental illness and his substance abuse issues. Lastly, Mr. [REDACTED] reported that he was previously linked with Mental Health Court. The supervision and structure that such a treatment court can provide may be currently beneficial in ensuring his treatment compliance and helping to divert him from future legal involvement.

Please do not hesitate to contact me at any time if you have questions regarding this report.

Respectfully submitted,



Stephanie M. Ficarro, Psy.D.
NYS Licensed Psychologist
Forensic Psychologist
Erie County Forensic Mental Health Service

EXHIBIT B



County of Erie

MARK POLONCARZ
COUNTY EXECUTIVE

DEPARTMENT OF MENTAL HEALTH
MARK O'BRIEN, LCSW-R
COMMISSIONER

FORENSIC MENTAL HEALTH SERVICE
CHRISTINA SCOTT, LCSW
DIRECTOR OF FORENSIC MENTAL HEALTH

August 3, 2022

The Honorable [REDACTED]
Buffalo City Court
County of Erie

RE: [REDACTED]
DOB: [REDACTED]
DOCKET NO.: [REDACTED]
ADJOURNED DATE: [REDACTED]

Dear Judge [REDACTED],

At the request of the court I completed a forensic examination on Mr. [REDACTED] at the Erie County Holding Center, Buffalo, New York on 8/3/2022. Mr. [REDACTED] was evaluated according to section 730 of the Criminal Procedure Law to determine whether he has the capacity to understand the proceedings against him or to assist in his defense, as well as his need for treatment. Other sources used for this report included the accusatory instrument and his admission screening the Erie County Holding Center. Also present during the evaluation were Dr. Stephanie Ficarro, an independent forensic examiner, and Chloe Evans, a psychology trainee. Mr. [REDACTED] was notified of, and indicated he understood, the non-confidential nature of this evaluation.

CURRENT CHARGES:

According to the accusatory instrument, Mr. [REDACTED] is charged with [REDACTED] (C Felony) and Criminal Possession of a Weapon in the 3rd Degree (D Felony) as a result of allegedly throwing a Molotov cocktail at the front window of a residence on or about 7/17/2022.

BACKGROUND INFORMATION:

Mr. [REDACTED] was born and raised in Buffalo, NY. He had been living alone in an apartment at the time of his arrest. He has never been married and has no children.

Mr. [REDACTED] reported that he earned his high school diploma from [REDACTED] indicated that he had an Individualized Education Plan, but was unsure about the nature of his specific learning difficulties. He denied any employment history, explaining that he has received SSI/SSDI for mental health problems since adolescence.

Mr. [REDACTED] acknowledged a significant mental health history. He reported that he had been diagnosed with Bipolar Disorder, Schizophrenia, and ADHD in childhood. Mr. [REDACTED] estimated that he has been hospitalized for psychiatric reasons at ECMC over 15 times, most recently in 2019. He also reported that he has been in and out of outpatient mental health services since age six. He was linked with Best Self outpatient services at the time of his arrest. He also has a case manager from People, Inc. who is the representative payee for his SSI. For approximately two months before his arrest, Mr. [REDACTED] recalled that he had been receiving monthly injections of Invega Sustenna, a long acting antipsychotic medication, from someone at Best Self. He described the medication as helpful, stating that it "keep[s] [him] calm and collected." He is maintained on this medication at ECHC. He appeared unsure whether he was linked with an Assertive Community Treatment team. Mr. [REDACTED] reported that he has taken additional psychotropic medication in the past, including Abilify, an antipsychotic medication.

In terms of substance use, Mr. [REDACTED] acknowledged that he had been using crack cocaine daily for two months prior to his arrest. He also reported that he has been smoking marijuana since age eighteen and that he had used cocaine in the past. Mr. [REDACTED] reported that he very rarely drinks alcohol (about once a year) and denied any resultant psychosocial dysfunction. He denied ever having gone to a drug rehabilitation program. He previously attended Mental Health Court, but believed that his case was closed.

In terms of medical problems, Mr. [REDACTED] reported that he has high blood pressure that had been treated with medication in the past. Mr. [REDACTED] expressed the desire to resume blood pressure medication. In addition, Mr. [REDACTED] reported that he had burned his left arm severely about a year ago when he fell asleep on a heater. The injury required hospitalization and a surgical skin graft.

MENTAL STATUS EXAMINATION:

Mr. [REDACTED] is a [REDACTED] man who appeared older than his chronological age. He appeared well-groomed and was oriented to person, place and time. Speech and eye contact were normal, although his eyes were partly closed during the assessment as if he had just woken up. He was calm and cooperative throughout the interview, and his affect was neutral and relaxed. He was able to respond to direct questions in a logical and appropriate manner, although his responses were unelaborated, brief, and concrete. He also occasionally had difficulty recalling details about his mental health history. Mr. [REDACTED] thought process was organized, coherent, and logical. He did not report, nor did I observe evidence of hallucinations or delusions. The absence of active psychotic symptoms suggests that he is responding well to his anti-psychotic medication.

DIAGNOSIS/IMPRESSION:

- Schizophrenia, By History
- Intellectual Disability, Mild by history
- Stimulant Use Disorder in a Controlled Environment
- Probable Cannabis Use Disorder

COMPETENCY ASSESSMENT:

Mr. [REDACTED] presented with a rational and factual understanding of his charges, their severity, relevant court personnel, and the court process. He accurately identified his most serious charge as first degree murder and his other charge as criminal possession of a weapon. He identified both of these charges as felonies and understood that felonies are more severe than misdemeanors. With education, he understood that his most serious charge carries up to 15 years in prison and that his possession charge carries up to 7 years in prison. He demonstrated an appreciation for the severity of his charges. He expressed and demonstrated an understanding of the allegations against him.

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Mr. [REDACTED] affirmed that he had been assigned and had met with an attorney; he accurately described her role ("to represent me") and his own role in assisting her in his own defense ("to tell her the stuff I know"). Based on his ability to maintain a rational discussion of his legal troubles during the interview, it demonstrated his current capacity to work with an attorney with a reasonable degree of rational understanding. Mr. [REDACTED] demonstrated an understanding of the role of the prosecutor ("to make the charges stick") and the judge ("to sentence") and correctly identified his return to court date. Mr. [REDACTED] was responsive to education about a plea deal, and understood that he cannot be forced to plead guilty. Finally, Mr. [REDACTED] readily identified the best-case scenario for his legal case as a plea deal and his worst-case scenario as 15 years in prison. He understood that his case could proceed to a trial and could identify the role of a jury. He appreciated the role of witnesses and evidence during a trial. He could identify how to conduct himself in the courtroom ("collected").

COMPETENCY OPINION:


In accordance with Criminal Procedure Law §730 the purpose of this report is to advise the Court that it is my opinion with a reasonable degree of professional and psychological certainty, that Mr. [REDACTED] does have (a) sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and does have (b) a rational as well as factual understanding of the proceedings against him. It is in my opinion that Mr. [REDACTED] is at the present time not an incapacitated person as defined under CPL §730 and is, at this time, competent to proceed with the adjudication process.

TREATMENT RECOMMENDATION:

If released, Mr. [REDACTED] may benefit from remaining compliant with his current antipsychotic medication in the community, including receiving a monthly long acting Invega Sustenna shot (an antipsychotic medication). This medication appears to have worked well to stabilize his psychiatric condition based on how well he presented during the evaluation. In addition, Mr. [REDACTED] may benefit from substance abuse treatment to address his substance use, including crack cocaine. Ongoing substance abuse may significantly exacerbate his psychiatric symptoms and limit the efficacy of antipsychotic medication. If released and if he is not already linked, he may benefit from participating with an Assertive Community Treatment Team (ACT).

Please do not hesitate to contact me at any time if you have questions regarding this report.

Respectfully Submitted,


 Corey Reidtrost, Ph.D.
 NYS Licensed Psychologist
 Forensic Psychologist
 Erie County Forensic Mental Health Service

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EXHIBIT C

STEVEN K. ERICKSON

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steven.erickson@alumni.harvard.edu
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CURRENT POSITION

Licensed Psychologist
Board Certified Forensic Psychologist
Diplomate, American Board of Professional Psychology

EDUCATION

Harvard Law School
LL.M. 2006
Major Paper Advisor: Prof. William J. Stuntz

SUNY Buffalo
Ph.D. in Counseling Psychology 2003
Dissertation: *Outpatient commitment in New York: Examining violence, compliance and demographic characteristics of the seriously mentally ill under Kendra's law.*

SUNY Buffalo
J.D. 2000
Buffalo Public Interest Law Summer Fellow
Editor, Buffalo Public Interest Law Journal

Canisius College
B.A. in English 1995
DiGamma Honors Society

FELLOWSHIPS

University of Pennsylvania
Olin-Searle Fellow in Law 2008-2009
Law School

Yale University
Postdoctoral Fellow in Clinical Psychology 2006-2008
Department of Psychiatry, School of Medicine

University of Rochester
Chief Fellow in Clinical Psychology 2003-2005
Department of Psychiatry, School of Medicine

University of Massachusetts
Forensic Intern in Clinical Psychology 2002-2003
Department of Psychiatry, School of Medicine

FACULTY APPOINTMENTS

University of Missouri
Visiting Associate Professor of Law 2009-2010

University of Rochester
Senior Clinical Instructor in Psychiatry 2005-2010

RELATED EXPERIENCE

Association for the Treatment of Sex Abusers Adult Clinical Practice Committee Member	2021-Present
Pennsylvania State Board of Psychology Member	2017-Present
American Board of Professional Psychology Diplomate in Forensic Psychology	2011-Present
American Academy of Forensic Psychology Fellow	2011-Present
American Board of Forensic Psychology Immediate Past President President President-Elect National Chair of Examinations Recording Secretary	2018 2017 2016 2013-2016 2012
Council of Specialties in Professional Psychology Member, Forensic Specialty Council	2017-2018
Yale University Research Member, Psychiatry and Law Program Department of Psychiatry, School of Medicine	2006-2008
Department of Veteran Affairs MIRCC Fellow Northeast Program Evaluation Center	2006-2008
New York State Office of Mental Health Associate Forensic Psychologist Rochester Regional Forensic Unit	2003-2005
Erie County Forensic Mental Health Services Psychology Intern Criminal and Family Court Unit	2001-2002
Erie County Medical Center Psychology Intern Comprehensive Psychiatric Emergency Program	2000-2001

LEGAL EXPERIENCE

Law Guardian Program Law Guardian New York State, Fourth Appellate Division	2001-2006
Aid to Indigent Prisoners Society Program Assigned Counsel Family Court and Criminal Matters	2001-2004

Buffalo Police Benevolent Association, Inc. Confidential Law Clerk Office of the President	1999
Erie County Sheriff's Office Legal Intern Internal Affairs and Training Bureau	1998

PUBLICATIONS

BOOKS:

CRIME, PUNISHMENT, AND MENTAL ILLNESS: LAW AND THE BEHAVIORAL SCIENCES IN CONFLICT, Rutgers Press: New Brunswick, NJ (with Patricia E. Erickson)

LAW REVIEW:

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Blaming the Brain, 11 MINN. J. L. SCI. & TECH. 27 (2010).

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Failing the Burden of Proof: the Science and Ethics of Projective Tests in Family Court Evaluations, 45 FAMILY CT. REV. 185 (2007) (with Scott O. Lilienfeld & Michael J. Vitacco).

Legal Fallacies of Antipsychotic Drugs, 35 J. AM. ACAD. PSYCHIATRY & L. 235 (2007) (with J. Richard Ciccone, J. Steven Lamberti, et al).

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Legal Contours of Expert Testimony, HANDBOOK OF PSYCHOLOGY (Vol 11, 2d Ed). Hoboken, NJ: Wiley (2012) (with Charles Patrick Ewing).

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STEVEN K. ERICKSON, J.D., Ph.D., LL.M., A.B.P.P.

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AWARDS & HONORS

University of Rochester Medical Center
CARES Schizophrenia Research Award

American Psychological Association
Todd E. Husted Memorial Dissertation Award

Canisius College
DiGamma Honors Society

EDITORIAL DUTIES

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Psychiatric Services
Psychology Public Policy and Law
Schizophrenia Research
The Social Science Journal

PROFESSIONAL LICENSURE

New York State
Attorney at Law

New York State
Licensed Psychologist

Commonwealth of Pennsylvania
Licensed Psychologist

* * *

EXHIBIT D

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PSYCHOLOGICAL EVALUATION

DATE OF REPORT: [REDACTED]

IDENTIFYING INFORMATION

Name: [REDACTED]

DOB: [REDACTED]

Age: [REDACTED]

REFERRAL INFORMATION

Attorney [REDACTED] referred Mr. [REDACTED] for a psychological assessment regarding his capacity to stand trial under N.Y. Criminal Procedure Law § 730.10.

SOURCES OF INFORMATION

1. Video interview with [REDACTED]
2. Buffalo Police Department records, various dates;
3. Examination report by Corey Lindenfrost, Ph.D., dated 8/03/22;
4. Examination report by Stephanie Ficarro, Psy.D., dated 8/03/22;
5. Neuropsychological evaluation by Michael Maria, Ph.D., dated 3/5/11;
6. Neuropsychological evaluation by Louise Ferretti, Ph.D., dated 3/5/13;
7. Western New York Children's Psychiatric Center records, various dates;
8. Prescription Drug Summary by Aetna Health, dated 3/8/22;
9. Erie County Medical Center psychiatric records, various dates;
10. School records, various dates.

INFORMED CONSENT

Although the referral for this evaluation concerned Mr. [REDACTED]'s mental capacity, he was nonetheless provided with informed consent consistent with § 6.03.03 of the American Psychological Association's Specialty Guidelines for Forensic Psychology. He was informed of the nature and purpose of this evaluation and the lack of confidentiality regarding all aspects of the evaluation and the subsequent report. He was informed that he was not required to speak with the evaluator, that he had the right to refuse any questions asked of him, and that his decision to participate in the examination would not guarantee him any particular outcome regarding the exam.

BACKGROUND INFORMATION

Law enforcement records indicate that Mr. [REDACTED] was arrested on three occasions in the summer of 2022 and charged with Criminal Mischief in the Third Degree, Burglary in the Second Degree, Criminal Conspiracy in the Fourth Degree, Criminal Possession of Stolen Property in the Fifth Degree and Arson in the Third Degree. Attorney [REDACTED] is legal counsel for Mr. [REDACTED] and requested this evaluation due to her concerns regarding whether Mr. [REDACTED] is an incapacitated person pursuant to New York CPL § 730.10.

The records reviewed in this case indicate that [REDACTED] has a significant mental health history dating back to his early childhood. These records reveal that Mr. [REDACTED] and his [REDACTED] were exposed to significant amounts of alcohol and illicit drugs in utero. From an early age, Mr. [REDACTED] demonstrated numerous cognitive deficiencies and behavioral issues consistent with fetal alcohol syndrome. This suspected diagnosis was confirmed by a neuropsychologist who performed a comprehensive examination of Mr. [REDACTED] (see, report by Louise Ferretti, Ph.D., dated 5/1/13), who also examined Mr. [REDACTED] and was familiar with the family. An earlier neuropsychological evaluation by Dr. Maria in 2011 also came to similar conclusions.

Fetal alcohol syndrome is a neurodevelopmental disorder caused by prenatal exposure to alcohol. Individuals afflicted with fetal alcohol syndrome exhibit substantial neurocognitive deficits as well as significant global intellectual impairments. These include deficiencies in learning, memory, self-regulation, and goal-directed behavior. In addition, individuals with this disorder frequently have focus and concentration deficits, impulsivity, and mood and behavioral disorders. Since the necessary cognitive and social abilities are typically missing, social contact can be challenging and people with this disorder are easily susceptible to manipulation by others. Fetal alcohol syndrome patients are thought to have a significant risk of suicide, with a peak risk in early adulthood that coincides with social aspirations for independence.

The central nervous system damage caused by fetal alcohol syndrome is irreversible; hence the prognosis is typically poor. Numerous behavioral treatments are often utilized and psychotropic drugs may provide mild relief of some symptoms, particularly aggression. The underlying cognitive deficiencies, however, are permanent. For people with fetal alcohol syndrome, the inability to gather, process, and integrate information is a significant and enduring problem, and intellectual impairment is widespread. People with this illness frequently demonstrate a cursory grasp of newly taught content without a deep understanding of its significance or the capacity to apply it in their daily life.

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Consistent with the above diagnosis, records reviewed for this evaluation reveal that Mr. [REDACTED] had significant academic limitations during his formative years. He was assessed as intellectually disabled, with a full-scale IQ of 58, placing him in the mild to moderate range of this disability. People with intellectual disabilities in this range typically suffer from serious memory, attention, and focus problems. They frequently misinterpret social cues, negatively affecting their judgment when interacting with others. Effective communication is difficult for most people with this disability and can occasionally result in aggressive behavior. Furthermore, even though affected individuals might exhibit a basic comprehension of certain concepts, their capacity to put those notions into practice in real-world situations is constrained. The underlying deficiencies are present throughout life since this handicap is essentially irreversible.

Other records reviewed for this evaluation indicate that Mr. [REDACTED] has a history of hallucinations and inpatient psychiatric treatment on multiple occasions, including at least three visits to the Comprehensive Psychiatric Emergency Program at the Erie County Medical Center when he was sixteen years old. Hospital records note active auditory hallucinations, destructive behavior and delusions, including Mr. [REDACTED] belief that "nano" bugs had infiltrated the ventilation system, resulting in him dismantling the home's furnace. Although Mr. [REDACTED] tested positive for cannabis on his admission to the hospital concurrent with these troubling behaviors, there were no indications he had used other illicit drugs. His treating physicians diagnosed him with a psychotic disorder and mild intellectual disability and prescribed antipsychotic medications. This treatment protocol continued into adulthood with injections of a long-acting antipsychotic medicine called Invega. Mr. [REDACTED] reported to me that he had used marijuana extensively since adolescence but only recently began using cocaine this past summer. He also reported past suicidal ideation, although he denied any current thoughts or plans.

PRESENT MENTAL STATE

Mr. [REDACTED] presented as an average build male who appeared his stated age. He was dressed in appropriate inmate clothing and was not handcuffed during the interview. He was adequately groomed. He had no abnormal movements, tics or gestures. He appeared confused at times but was cooperative and polite during the interview. Overall, his presentation was of an individual with limited intellectual ability. His speech was limited in content, and many of his answers consisted of a few words, requiring frequent follow-up questions. This did not appear to be defiant behavior but indicative of his poor cognitive abilities. His thought processes were free of active psychosis, although he was guarded at times. His attention and concentration were poor, and he frequently asked for questions to be repeated. His mood was depressed, and his affect flat. His immediate and recent memory was impaired; for example, he could not recall several numbers after minimal delay. He was also unable to perform rudimentary mathematics, such as answering

correctly simple subtraction problems. His remote memory was also impaired as he had difficulty providing personal historical details.

Mr. [REDACTED] had a very limited understanding of the legal system. Although he could explain the role of the prosecutor and defense counsel, he had minimal, if any, understanding of the role of a judge, jury, trial or plea bargain. More importantly, it was clear that Mr. [REDACTED] had a limited comprehension of the legal system as it would apply to him in his current legal situation. He did not seem to grasp, for instance, why a plea deal would be proposed or what benefits and drawbacks it may have for him, even after I explained the concept. He was cooperative during my interview with him, but his responses were sparse, and he frequently omitted words or phrases associated with everyday conversation. This insight shows that his capacity to communicate appropriately with his lawyer is compromised.

FINDINGS

Under NY CPL § 730.10, an incapacitated person is defined as:

[A] defendant who as a result of mental disease or defect lacks capacity to understand the proceedings against him or to assist in his own defense.

It is my professional opinion that Mr. [REDACTED] is an incapacitated person under the statutory criteria of New York CPL § 730.10. He meets the diagnostic criteria for intellectual disability, neurobehavioral disorder associated with prenatal alcohol exposure (e.g., fetal alcohol syndrome), and unspecified psychotic disorder. Due to these disorders, his cognitive abilities are significantly limited. He appears to lack the ability to communicate properly with his counsel and has a poor comprehension of key elements of the legal system. Although he has a simple understanding of some aspects of the legal system, his capacity to apply this information to his current legal situation is quite limited by his scarce comprehension of these ideas. In particular, it does not appear that Mr. [REDACTED] comprehends the nature of a plea bargain, including the associated rights he would waive if he accepted a plea. Nor does he appreciate how a guilty plea is an admission of guilt that could impact his liberty or result in restrictions if he is placed within the community.

In addition, Mr. [REDACTED] appears unable to adequately process information presented to him in a manner in which he can understand the consequences of actions taken by his attorney or assist in his defense. His attention and concentration are poor, and his memory recall appears impaired, consistent with his historical diagnosis of intellectual disability and fetal alcohol syndrome. Additionally, Mr. [REDACTED] ability to conceptualize his case and communicate with his attorney appears substantially impaired. Overall, Mr. [REDACTED] requires competency restoration to ensure that he can sufficiently understand the criminal

proceedings against him and assist in his defense, although given the nature of his cognitive impairments, it remains uncertain whether such efforts would be successful.

All of the above opinions are stated within a reasonable degree of professional certainty. I am one of approximately 350 psychologists in North America who are board-certified in forensic psychology by the American Board of Forensic Psychology, a specialty board of the American Board of Professional Psychology (ABPP). This credential is intended to signify the highest levels of expertise and practice in forensic psychology.

Respectfully submitted,



Digitally signed by
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