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June 14, 1983

PSYCHIATRIC EVALUATION

The Honorable Walter Dunham, Jr.
28th Judicial District
Nueces County Court House
Corpus Christi, Texas 78401

SUBJECT: THE STATE OF TEXAS VS. CARLOS DE LUNA
CAUSE NUMBER: 83-CR-194-A

Dear Judge Dunham:

This defendant was seen for psychiatric evaluation as requested by the court on May 19, 1983. My examination consisted of interviewing the defendant, reviewing a number of records, and having a brief conversation with his probation officer, Mr. Garcia.

One record was the order for examination which defines competency and insanity. It also states he is indicted for Capital Murder.

There are also numerous police offense reports and witness statements. Essentially, the defendant apparently robbed a Shamrock Gas Station at knife point and then stabbed the female clerk in the store. Apparently one witness talked to him just before the incident when he asked for a ride. He was confronted by another witness. He told this witness, "Don't mess with me, I got a gun." He was seen by other witnesses to have run away from the gas station and to be hiding under a car. He was approached by police officers where he was apprehended. As he was being apprehended he told them not to shoot him, that he was giving up.

It was noted by the police officer that he knew the Miranda warning. He was given this warning and then started to recite the lines by heart himself. He appeared to be somewhat anxious and agitated. Apparently alcohol was smelled on his breath. He was interested to know if the woman had died. It was of interest to note that he knew the victim was a female, even though he stated he knew nothing about the situation.

One police officer noted that he knew this defendant because he arrested him for disorderly conduct at the Club Casino. Apparently the defendant recognized the police officer from before. He told the police officer that he would beat this one like he did the first one. The police officer felt he was more intent on seeking revenge for being captured than for facing a charge of robbery. The police

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officer went on to state that in the past he saw him as being intimidating, disrespectful and an unstable person. However, he feared those that he had respect for. He seemed to pick on others that he could intimidate.

The defendant related he did not know why he was here. He does not know what a psychiatrist does. He was given a warning whereby he was told that this conversation was not confidential and that it may be used against him. He was asked if he understood this, and he replied, "In a way." I asked him to elaborate on this but he did not say anything else.

He went on to relate that he has been in the County Jail for two to three months. He knows he is charged with murder. His attorney is Mr. Pena. He recalls talking just once to his attorney. He states he has trouble communicating with his lawyer. He states he just doesn't understand what the lawyer tells him. He was not able to give me any examples as to why he did not understand. He just stated that he could not remember.

He denies going to any pretrial hearings or knowing how a psychiatric evaluation came about. He was asked if he could get out of jail by bail or bond. He began to answer this question and his lips started to form the word "yes," but then he stopped and stated he just doesn't pay attention to this kind of thing.

He went on to state that no one has explained his legal situation, at least he doesn't remember anything about it. He was asked specifically if he was given the Miranda warning or a warning about his rights. He states he doesn't know what that is.

He does not remember ever seeing a psychiatrist before. In fact, this is the first time he heard this word and doesn't know what it really means. He was asked if he had mental problems and he replied that people said he did something, but he can't remember doing anything. I asked him what they said he did and he stated that he cannot remember. This is interesting to note in that in our earlier conversation he apparently did know he was charged with murder.

He went on to state he has memory problems. He doesn't seem to remember much of anything anymore. He states before he was in jail he was living with his mother. He cannot remember the address. He was asked what his father did, and he stated he couldn't remember exactly what work his father was into. He doesn't remember the name of the company that the father worked for. He doesn't remember if he has ever been married. He also does not seem to remember where he grew up or if he graduated from high school. He finally was able to

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state that perhaps he got as far as the 7th or 8th Grade, but he just can't seem to remember very well. He was asked how long he's had memory problems and he replied, "I don't remember." I informed him that I read a report that he is accused of stabbing a lady. He replied, "I don't know." He went on to state he just doesn't remember. He doesn't remember being arrested. The next thing he knows is he is in jail but doesn't know why. He then stated he was told that he murdered someone. Again, this is of interest to note since he keeps changing his mind. At one time he doesn't remember what the charges are and another time he does.

I tried to ask him about why he was hiding under a car when the police found him. He again replied he didn't remember.

He is not certain if he has been in trouble with the law before. He vaguely recalls that perhaps he spent up to 18 months in prison and then was let out and given probation.

He was challenged at this point in that I told him I thought he could remember more than he was willing to admit. I then asked him about his health. He stated he didn't know what his state of health was. He did shake his head no to the question if he heard voices. He was asked if his lawyer was trying to help him and again he stated he didn't know. He was asked what he did in jail all day and his reply again was "I don't know."

He was specifically asked what the judge's function was. He did not know what he did. When asked about the jury, he stated he didn't know what that was. He had not heard the word. He was asked what his lawyer was trying to do. He shook his head and states that he doesn't know exactly what a lawyer does. He was asked if his lawyer was trying to protect his rights. He replied he thought so, but wasn't certain. In fact, now he doesn't even remember his lawyer's name, but he did remember the name in the first part of the interview. He was asked about the District Attorney and he stated he doesn't recall hearing this word.

It was at this point that I decided to terminate the interview in that it seemed I would not get any useful information from the defendant. I asked him if he had any other questions of me. He then stated, "When will they hold my trial?" I told him that I did not know. Again it is of interest to note that he apparently knows what is going on in the court of law but just won't tell me.

I tried to get some more information from the District Attorney, Mr. Schiwetz. Specifically, I was interested in the background information in terms of how far this defendant got in school, and whether there was a question of his being retarded. Mr. Schiwetz did not have this information, but stated he would try to supply it to me if he

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got it. So far I have not heard back from Mr. Schiwetz, and feel that this information is just not obtainable.

I did talk with the defendant's probation officer, Mr. Gilbert Garcia. He stated that he felt this client came across as normal and did not seem to have any memory problems. He also felt his conversation was such that he was not retarded. Apparently he worked as an electrician or plumber. He recalls talking with this client for at least 5 or 6 times, and he seemed to be able to remember a number of things.

MENTAL STATUS:

The defendant was dressed in the white uniform of the County Prison. He had handcuffs and leg irons. His affect was one of anxiety with a little bit of sadness. He was not very cooperative. He kept stating that he couldn't remember. I felt that as the interview progressed, his memory seemed to get worse and worse. It was obvious that he remembered more than he was willing to admit. I thought that several times he remembered things in the initial part of the interview but did not later on. It also was apparent that he knew much more about his legal situation than he was willing to admit. He seemed to understand the questions when he chose to answer them. His vocabulary was fairly good. He had good sentence structure when he chose to answer. However, most of the time he stated he didn't know or just couldn't remember. The defendant does not seem to be having any hallucinations, delusions, suicidal or paranoid ideation. He appears to be oriented to person, place and time. He claims marked memory problems. His attention and concentration span appear to be adequate.

IMPRESSIONS:

AXIS I: Malingering
AXIS II: No Known Personality Disorder
AXIS III: No Known Physical Disorder

I definitely feel this defendant is malingering and that he knows much more than he is willing to admit. I feel that he could probably cooperate with his attorney and understand his legal situation. I feel that he could hold a rational conversation if he so chose.

I did want to get psychological testing to confirm my opinion. I think the testing would definitely show malingering. However, I was not able to arrange for this additional data.