

THE STATE OF TEXAS	X	IN THE DISTRICT COURT
VS.	X	28TH JUDICIAL DISTRICT
CARLOS DE LUNA	X	NUECES COUNTY, TEXAS

ORDER FOR EXAMINATION

On this day the motion of the defendant, Carlos De Luna, for an examination pursuant to Article 46.02, Section 3, and Article 46.03, Section 3, of the Code of Criminal Procedure was presented to the Court, and it is the opinion of this Court that such motion should be granted.

It is also the opinion of this Court that the herinafter named person is a disinterested expert, experienced and qualified in mental health or mental retardation to examine this Defendant with regard to said Defendant's competency to stand trial and with regard to the insanity defense, and to testify at any trial or hearing on these issues.

It is, therefore, ORDERED, that Joel Kutnick, M.D., whose address is ~~5250 Weber Road~~ <sup>3030 So. Alameck Suite #1</sup>, Corpus Christi, Texas be and he is hereby appointed to examine the Defendant on the 19<sup>th</sup> day of May, 1983, at 2:00 o'clock P..m., to determine the presence or not of mental disease or defect or other facts which relate to the Defendant's competency to stand trial and to the condition of his sanity at the time of the alleged offense pending against the Defendant.

It is further ORDERED that said expert, prior to making said examination, shall familiarize himself with the meaning of incompetency to stand trial and with the elements of the defense of insanity.

Said expert is advised that a person is incompetent to stand trial if he does not have:

1. Sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding, or;
2. A rational as well as a factual understanding of the proceedings against him.

Said expert is further advised that it is an affirmative defense to prosecution that, at the time of the conduct charged, the actor, as a result of mental disease or defect, either did not know that his conduct was wrong or was incapable of conforming his conduct to the requirements of the law he allegedly violated. The expert is further advised that the term "mental disease or defect" does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

Said expert is further advised pursuant to Art. 46.02, Sec. 3 (c), and Art. 46.03, Sec. 3(c), Code of Criminal Procedure, that the facts and circumstances of the offense with which the Defendant is charged are:

Capital Murder. A copy of the indictment is attached to this Order for information purposes.

It is further ORDERED that the said expert appointed herein shall submit to the Court within 30 days of this Order written reports of the examination, as follows:

1. As to the matter of incompetency, the report shall include a description of the procedures used in the examination, the examiner's observations and findings pertaining to the Defendant's competency to stand trial, and recommended treatment. If the examiner concludes that the Defendant is incompetent to stand trial, the report shall include the examiner's observations and findings about whether there is a substantial probability that the Defendant will attain the competence to stand trial in the foreseeable future.

The examiner shall also submit a separate report setting forth his observations and findings concerning:

- (a) Whether the Defendant is mentally ill and requires observation and/or treatment or hospitalization in a mental hospital for his own welfare and protection or the protection of others; or
- (b) Whether the Defendant is a mentally retarded person as defined in the Mentally Retarded Persons Act of 1977, Article 5547-300, Vernon's Texas Civil Statutes, and requires commitment to a mental retardation facility.

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If the examiner is a physician and concludes that the Defendant is mentally ill, he shall complete and submit to the court a Certificate of Medical Examination for Mental Illness. If the examiner concludes that the Defendant is a mentally retarded person and the examination has been conducted at a facility of the Texas Department of Mental Health and Mental Retardation or at a diagnostic center approved by the Texas Department of Mental Health and Mental Retardation, the examiner shall submit to the court an affidavit setting forth the conclusions reached as a result of the diagnostic examination.

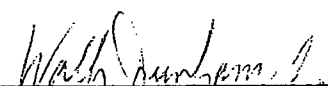
2. As to the matter of insanity, the report shall include a description of the procedures used in the examination and the examiner's observations and findings pertaining to the insanity defense. The examiner shall also submit a separate report setting forth his observations and findings concerning:

- (a) whether the Defendant is presently mentally ill and requires observations and/or treatment or hospitalization in a mental hospital for his own welfare and protection or the protection of others; or
- (b) whether the Defendant is a mentally retarded person as defined in the Mentally Retarded Persons Act of 1977, Article 5547-300, Vernon's Texas Civil Statutes.

It is further ORDERED that the expert appointed herein be compensated by Nueces County in a reasonable amount upon completion of his examination and reports, and that all costs of such examination be paid by said County.

The expert appointed herein, the defense counsel and the prosecuting attorney shall each be provided with a copy of this Order, and a copy of the reports submitted to the Court pursuant to this Order shall be provided by the District Clerk to defense counsel and the prosecuting attorney.

SIGNED this the 16<sup>th</sup> day of May, 1983.

  
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JUDGE PRESIDING

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