

James R. Plaisted, Ph.D.

CLINICAL PSYCHOLOGY
CLINICAL NEUROPSYCHOLOGY

3030 SOUTH ALAMEDA, SUITE 1
CORPUS CHRISTI, TEXAS 78404

TELEPHONE (512) 888-8862
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June 15, 1983

PSYCHOLOGICAL EVALUATION

NAME: Carlos De Luna
D.O.B.: 3-15-62
AGE: 21 years
SEX: Male
D.O.E.: 6-15-83
ETHNICITY: Hispanic
MARITAL STATUS: Single
EXAMINER: Dr. James Plaisted

REFERRAL SOURCE: District Court
28th Judicial District
Nueces County, Texas

PLACE OF EVALUATION: Examiner's Office Suite

REASON FOR THE REFERRAL:

Dr. Kutnick performed a court-ordered psychiatric examination of Mr. De Luna on May 19, 1983, and had some questions of whether the patient was genuinely suffering from a mental illness. Dr. Kutnick requested that the court order detailed psychological examination in order to get confirmatory evidence.

PROCEDURES USED:

Wechsler Adult Intelligence Scale - Revised (WAIS-R)
Peabody Picture Vocabulary Test - Revised (PPVT-R)
Human Figure Drawing (DAP)
Bender Visual Motor Gestalt Test
Rorschach Inkblot Technique (Exner System)
Minnesota Multiphasic Personality Inventory (MMPI)
Wide Range Achievement Test (WRAT)
Review of the Patient's Judicial File
Behavioral Observations and Clinical Interview

Mr. DeLuna received a psychological examination in a small, quiet, well-lit testing area within the examiner's office suite. Adequate rapport was established prior to all standardized testing and the battery of instruments was administered incorporating several breaks. Over three hours of intensive, one-on-one examination time was spent between the patient and myself. It is believed that the results of the psychological tests and observations are valid in that they provide a reliable and accurate estimate of the patient's functioning at the time of the examination. Mr. De Luna exhibited no lapses of consciousness, tics, nor seizures during the assessment session.

It was established that Mr. De Luna's dominant language is English and all of the standardized psychological instruments were administered in the English language.

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CLINICAL INTERVIEW:

Early Segment

When I met with the patient in the waiting room he responded to me right away. He was able to follow directions to get to my office correctly. He began by acting like he could not remember very much of anything at all. He said that he could not even remember events from his childhood or from his teenage years. He was not able to recall anything about any jobs he had ever had, nor anything about the events surrounding the crimes for which he has been accused. In fact, Mr. De Luna stated that he couldn't remember anything up to a few moments before the assessment had begun.

When asked what crime Mr. De Luna was being held for, he responded "I think that I am accused of murder." He refused to give any details. When I probed for details about his life, he continually answered that he did not know, he could not recall, he could not remember. It seemed as though he was trying to claim total amnesia. After a long line of attempts at gaining information, I finally asked, "Well, how are you feeling?" and the prisoner responded, almost reflexively, "I don't know, I can't remember." To that I responded, "I mean right now?" to which Mr. De Luna replied, "I know." It appeared to me that he wanted me to believe that he could not remember anything at all prior to today.

Late Segment

After I had done my early inquiry and it was obvious that the patient was trying to portray total amnesia, I opted to administer the standardized psychological tests. The tests took over 2 hours to administer, after which I continued with my clinical interview. In this later segment, after rapport had been established and Mr. De Luna had become comfortable with answering questions and responding to standardized psychological test items, his memory seemed somewhat different.

In this later clinical interview segment, the patient was able to tell me that he had been in school in the local area, but he does not believe that he finished school. He also said that he believed he had been a prisoner at some time before. He told me that he has a parole officer, but would not provide me with a name. He stated that he was single, and that his family lives in the local community. He strongly objected to spending time with Mr. Kiki Rodriguez at the jail, stating "I don't like him," indicating that Mr. De Luna had some memory of individuals employed at the jail and had formulated an opinion. At one point during the testing, Mr. De Luna asked if he would "have to see the other doctor again," indicating that he recalled his previous visit to our office complex on May 19th, and wondered if

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he would be required to attend another interview with Dr. Kutnick. Mr. De Luna also made statements which indicate he recalled working at some kind of semi-skilled occupation, but he was not willing to give details. Just before leaving for the morning, the patient requested that his favorite radio station be tuned in on my office stereo. At this time, he provided me with the name of the station and the station's frequency. Within a few moments, the patient was singing along with the broadcast to "I Honestly Love You" by Olivia Newton-John. This indicates that at least part of his long-term memory is intact. It certainly struck this examiner that Mr. De Luna was attempting to deceive, and that his memory loss was selective.

Mr. De Luna used words which he claimed not to have knowledge of during the IQ testing, and he showed a knowledge of these words. For example, when he was asked "What is your sentence?" near the end of the examination session, Mr. De Luna replied, "I don't have one." And when I asked "Do you see lots of arguments there in the jail house?", the patient responded "Yes ... you learn to live with it." I also asked him at one point to look at the ceiling and he reflexively looked up. The words "sentence," "argument," and "ceiling" were among those that the patient claimed not to have knowledge of. Again, it appeared that the patient was attempting to deceive.

FINDINGS AND IMPRESSIONS:

Intellectual Factors

Mr. De Luna's present level of intellectual functioning as measured by the WAIS-R is within the Borderline range (WAIS-R VIQ-72, PIQ-72, FSIQ-72). It is my opinion that the results of this testing are a gross underestimate of this patient's intellectual abilities. I believe that his intelligence is much higher than indicated by the quotients, and that one can assume that these measures are absolute minimums that Mr. De Luna is capable of. Making the assumption that the intelligence quotients derived from Mr. De Luna's responses are accurate, he still has plenty of native intelligence to understand the proceedings of the court, the discrimination between right and wrong, and the ability to assist in his defense. His thinking and cognitive abilities are perfectly adequate for these tasks. Even people with a much lower intelligence quotient than 72 could perform these tasks.

There was considerable evidence of faking on the WAIS-R. The evidence arose independently on three of the individual subtests, Picture Arrangement, Arithmetic, and Digit Span. These subtests were administered out of order after the patient had been prepared with the false expectation that the items ranged in difficulty from easy to complex. I administered these items out of order and Mr. De Luna, assuming that the first few items he received were the simple ones,

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correctly negotiated a number of the more difficult items and then later, when he thought he was receiving the more difficult items, managed to miss simple ones. This was true in all three of the above-stated subtests. The patient was attempting to portray himself as functioning poorly cognitively.

On the PPVT-R, again the false expectation of easy-to-difficult item progression was established. I began the exam by administering to him several of the easier items and then skipped to difficult items and began to work backwards (that is, I began with difficult items and with each item administered, it became easier). The patient managed to answer correctly to a number of the more difficult items on the instrument and then missed items down to some which are commonly known by 4-year-old children, and a number of which he later showed knowledge of (e.g., ceiling, flaming, argument).

On the Wide Range Achievement Test the patient responded in a manner which is about what one would expect of a person with Borderline intelligence. As on the IQ test, I believe that the patient was trying to deliberately show himself in a bad light. Even so, his responses demonstrate that he possess cognitive skills which are well-enough developed for him to understand academic material adequate to carry on a simple independent existence. This test shows that Mr. De Luna's cognitive abilities and understanding are at least adequate enough to understand day-to-day living.

Neuropsychological Screening Factors

On the Bender Visual Motor Gestalt Test, a neuropsychological screening device, the patient's renditions of the geometric figures are fairly poorly drawn. He drew them rapidly and flippantly, and the general quality of his responses are not indicative of an organic syndrome.

Likewise, the patient drew a human figure quickly and then handed it back to me without a head. When I asked about this, he said that he had "forgot" and that he would be happy to put a head on the figure. This is not a valid effort on the patient's part.

Personality Factors

The patient was administered the Rorschach Inkblot Technique according to the norms tables and formulas scientifically validated by Exner. Although the patient attempted a number of times to make his percepts appear to be "crazy sounding" (e.g., "A bug head, it's scary, I don't want to look at it."), the actual percepts were almost all quite normal. When scored against published norms tables, Mr. De Luna's responses were well within the normal range. In fact,

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it shows that this patient is not suffering from any particularly debilitating anxiety or a serious depression. The Rorschach is particularly difficult to fake when using the Exner System, and it is extremely difficult to "fake normal." The results indicate that Mr. De Luna's personality is free of significant neurotic and/or psychotic processes.

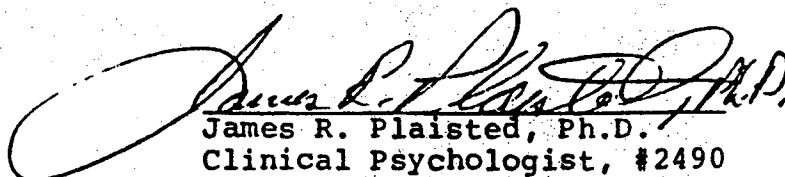
On the MMPI, Mr. De Luna approached the instrument in a way which was patently designed to deceive. This is a classic "fake bad" profile which is often associated with individuals who are in trouble and wanting to appear to be mentally ill when they are not. This kind of profile suggests that the patient made a deliberate attempt to deceive, and endorsed a strategy of over-responding to the items, endorsing many statements which a bonified mentally-ill individual would not accept. It would not surprise me to find that this patient is suffering from a character disorder. From the present testing, it is not possible to make an accurate determination about this.

DIAGNOSTIC IMPRESSION:

AXIS I: V65.20 Malingering.
Borderline or Higher Intellectual Functioning.
AXIS II: V71.09 No Diagnosis.

CONCLUSIONS:

It appears fairly obvious to this examiner that Mr. De Luna was making a major effort to deceive me into thinking that he was suffering from a psychotic process. In fact, there is no evidence in the psychometric data to support that he is suffering from anything other than perhaps a personality disorder. The patient is fully competent to stand trial, and his level of intelligence, even if it is Borderline, is high enough for him to understand the proceedings of a court room, to tell the difference between right and wrong, and to aid in his defense. The patient's claim of amnesia, which turns out to be selective in that he can recall things that he wants to recall when he wants to recall them, fits no known medical patterns of amnesiac syndromes. It is my opinion that the patient is probably faking his memory loss.


James R. Plaisted, Ph.D.
Clinical Psychologist, #2490

JRP:dp

cc: file

Joel Kutnick, M.D., P.A.

*Diplomate American Board of
Psychiatry and Neurology*

3030 S. Alameda, Suite 1
Corpus Christi, Texas 78404

512-888-8862

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.

IN THE UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

CARLOS DELUNA,
Petitioner,

vs.

CIVIL ACTION NO. _____

JAMSE A. LYNAUGH, Director,
TEXAS DEPARTMENT OF CORRECTIONS,
Respondent

APPLICATION FOR WRIT OF HABEAS CORPUS

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Carlos DeLuna, Petitioner in the above-styled and numbered cause, by and through his attorney, R. K. Weaver, and files this his Application for Writ of Habeas Corpus, and in support thereof, would respectfully show this Honorable Court as follows:

I. CUSTODY

Petitioner is confined on Death Row in the Ellis I Unit of the Texas Department of Corrections in Huntsville, Texas, pursuant to a judgment of conviction and sentence of death in Cause No. 83-CR-194-A pursuant to a jury verdict returned July 15, 1983, for the offense of capital murder, and the jury finding the special issues to be true, the Court sentenced Petitioner to death.

APPENDIX B

James R. Plaisted, Ph.D.

CLINICAL PSYCHOLOGY
CLINICAL NEUROPSYCHOLOGY

3030 SOUTH ALAMEDA SUITE 1
CORPUS CHRISTI, TEXAS 78404

TELEPHONE (512) 888-8862
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June 15, 1983

PSYCHOLOGICAL EVALUATION

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SEX: Male EXAMINER: Dr. James Plaisted

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PLACE OF EVALUATION: Examiner's Office Suite

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