

**IN THE CIRCUIT COURT FOR THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR GLADES COUNTY, FLORIDA**

**STATE OF FLORIDA,
Plaintiff,**

vs.

CASE NO: 83-CF-12

**CARY MICHAEL LAMBRIX,
Defendant.**

ORDER DENYING DEFENDANT'S MOTION FOR STAY

THIS CAUSE comes before the Court on Defendant's "Application For A Stay Of Execution And Order Allowing Transport For PET Scan," filed by counsel on December 15, 2015. Having reviewed the motion, the State's response to the motion, the record, and the applicable law, the Court finds as follows:

1. Defendant moves for a stay of execution so that a PET scan and other "necessary medical and psychological evaluations" can be performed. The motion attaches a report by Dr. Ouaou of an evaluation conducted on December 11, 2015, where the expert makes the recommendations for such testing.

2. In order to grant a stay of execution during death warrant proceedings, Defendant must show that there are substantial grounds upon which relief may be granted. Howell v. State, 109 So.3d 763, 778 (Fla. 2013).

3. Defendant cannot meet that burden. The report of Dr. Ouaou indicates that after testing, Defendant's full scale IQ was 109, in the average to high average range. He found impairments in memory and executive functioning, but the report does not make a finding of any

gross neurological impairments. He recommended a PET scan and referral to a trauma specialist to evaluate Defendant for PTSD. That Defendant has now offered expert opinions different from those of the experts appointed before trial does not mean relief is warranted. Cherry v. State, 781 So. 2d 1040 (Fla. 2000). The record indicates that during the 1991 federal proceedings, Dr. Whitman testified that he had a neurologist, Dr. Steinmetz, evaluate Defendant for clinical abnormality or organic brain damage, and there was no evidence of gross neurological impairment (federal transcript, Vol. 3 pp. 17-23).

4. The initial diagnosis that there was no mental health mitigation is not rendered incompetent merely because defendant has now secured the testimony of an expert who gives a more favorable diagnosis. Asay v. State, 769 So. 2d 974 (Fla. 2000). Defense counsel is entitled to rely on the evaluations conducted by qualified mental health experts, even if, in retrospect, those evaluations may not have been as complete as others may desire. Stewart v. State, 37 So.3d 243, 251-252 (Fla. 2010), *citing* State v. Sireci, 502 So. 2d 1221, 1223 (Fla.1987). “[T]rial counsel's reliance on his retained experts is not proven unreasonable simply because another expert . . . questions the thoroughness of the prior evaluations.” Stewart, 37 So.3d at 253-254. Further, a subsequent finding of a mental deficiency does not necessarily warrant a new sentencing hearing, unless the psychiatric examinations were so grossly insufficient that they ignored clear indications of either mental retardation or organic brain damage. Sireci, 502 So. 2d. at 1224.

5. The new report does not make a finding of “clear indications” that Defendant has organic brain damage. The report merely gives the opinion that Defendant has never received what Dr. Ouauou believes was an “adequate assessment” of Defendant’s psychiatric and

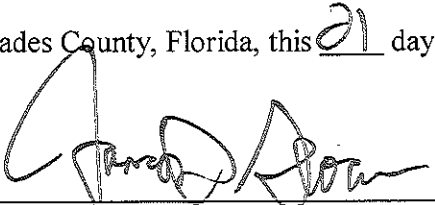
neurological status. The Court finds that Defendant's average to above average IQ score is inconsistent with Defendant's theory that he has organic brain damage. Defendant has failed to meet his burden of showing that there are substantial grounds upon which relief may be granted.

6. Further, this claim is procedurally barred. Davis v. State, 742 So. 2d 233, 234; 236-237 (Fla. 1999) (claim of need for a PET scan procedurally barred as an abuse of process when filed after death warrant was signed, because it could and should have been raised in a previous postconviction motion).

Accordingly, it is

ORDERED AND ADJUDGED that Defendant's motion for stay and motion for transport for a PET scan is DENIED.

DONE AND ORDERED in Chambers at LaBelle, Glades County, Florida, this 21 day of Dec, 2015.



James D. Sloan
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above Order has been furnished to: **William M. Hennis, III**, Capital Collateral Regional Counsel, Southern Region, 1 East Broward Blvd., Suite 444, Fort Lauderdale, FL 33301; **Cynthia A. Ross**, Assistant State Attorney, P.O. Box 399, Fort Myers, FL 33901-0399; **Capital Appeals Intake Box**, capapp@myfloridalegal.com; **Scott Browne**, Assistant Attorney General, Department of Legal Affairs, 3507 E. Frontage Road, 2nd Floor, Suite 200, Tampa, FL 33607; and **Administrative Office of the Courts (XIX)**, 1700 Monroe Street, Fort Myers, FL 33901; this _____ day of _____, 2015.

SANDRA BROWN
Clerk of Court

By: _____
Deputy Clerk

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CARY MICHAEL LAMBRIX,)
PETITIONER,)
VS.)
RICHARD L. DUGGER,)
RESPONDENT.)

FILED BY
92 JUN 30 P 1:38
U.S. DISTRICT COURT
S.D. OF FLORIDA
CASE NUMBER
88-12107-CIV-ZLOCH

VOLUME 3

TRANSCRIPT OF PROCEEDINGS HAD BEFORE THE
HONORABLE WILLIAM J. ZLOCH, U. S. DISTRICT JUDGE,
IN FORT LAUDERDALE, BROWARD COUNTY, FLORIDA, ON
WEDNESDAY, AUGUST 14, 1991, IN THE ABOVE-STYLED
ACTION.

91-125177ADA 88-121079912107CivZloch
Lambrix, Cary Michael
vs Dugger, Richard L.
USDC - Southern District
Robert J. Krauss

APPEARANCES OF COUNSEL:

FOR THE PETITIONER: ROBERT C. JOSEFSBERG,
JOEL V. LUMBER
MATTHEW LAWRY, AND
STEVEN GOLDSTEIN, ESQS.
FOR THE RESPONDENT: RANDALL MC GRUTHER
ROBERT J. KRAUSS
FARIBA KOMEILY, AND
ANIJA J. GAY, ESQS.

CARL SCHANZLEH
OFFICIAL COURT REPORTER
U. S. COURTHOUSE
299 E. BROWARD BLVD., 202B
FORT LAUDERDALE, FLORIDA 33301

VOLUME 3

1 RESPONSE TO THE DRINKING.

2 THE COURT: BUT IN RESPONSE TO YOUR QUESTIONS WITH
3 RESPECT TO THE INCIDENT IN QUESTION AND, SAY, THE DAY LEADING
4 UP TO THE INCIDENT, HE GAVE YOU SPECIFIC ANSWERS TO YOUR
5 QUESTIONS?

6 THE WITNESS: HE GAVE ME SPECIFIC ANSWERS TO MY
7 QUESTIONS.

8 THE COURT: WITH CLARITY?

9 THE WITNESS: THE -- I GUESS THE ISSUE OF CLARITY IS
10 ONE THAT MAY BE IN SOME QUESTION, ONLY BECAUSE AS HE WAS
11 GIVING ME A NARRATIVE ACCOUNT, PIECING SOME OF THE TIMES AND
12 SITUATIONS AND PEOPLE TOGETHER TOOK A FAIR AMOUNT OF TEDIOUS
13 WORK WITH HIM, AND AT TIMES THE ACCOUNT SEEMED SOMEWHAT
14 DISJOINTED IN THE CORRELATION AND IN THE SEQUENCING AS WE WENT
15 THROUGH IT.

16 THE COURT: THANK YOU.

17 COUNSEL?

18 BY MR. MC GRUTHER:

19 Q. DR. WHITMAN, DO YOU KNOW A DR. EDWARD S. STEINMETZ?

20 A. I DO.

21 Q. AND WHO IS DR. STEINMETZ?

22 A. DR. STEINMETZ IS A NEUROLOGIST, PHYSICIAN IN FORT MYERS.

23 Q. OKAY. DID YOU CONSULT WITH HIM ON THIS CASE?

24 A. I DID.

25 Q. IN WHAT WAY?

VOLUME 3

1 A. I REQUESTED HIM TO NEUROLOGICALLY EVALUATE MR. LAMBRIX,
2 ALSO PERFORM AN ELECTROENCEPHALOGRAM OF THE BRAIN, DO THE
3 HISTORY OF HEAD TRAUMA TO MR. LAMBRIX' LIFE TO MAKE SURE THERE
4 WAS NO EVIDENCE OF EITHER ANY CLINICAL ABNORMALITY ON
5 EXAMINATION OR THE SCREENING RESULTS OF THE
6 ELECTROENCEPHALOGRAM.

7 Q. WOULD THE NEUROLOGICAL EXAMINATION ALSO REVEAL ANY
8 ORGANIC CASE BRAIN DAMAGE?

9 A. CORRECT.

10 Q. OKAY. AND WAS SUCH A REPORT PERFORMED?

11 A. THERE WAS.

12 Q. OR WAS SUCH A REPORT PREPARED BASED ON THE EXAMINATION
13 PERFORMED?

14 A. YES. THE RESULTS STATED THAT FROM EXAMINATION THERE WERE
15 NO EVIDENCE OF GROSS NEUROLOGICAL IMPAIRMENT. THE
16 ELECTROENCEPHALOGRAM WAS NORMAL. THERE WAS NO EVIDENCE OF
17 WHAT WE WOULD CALL AN EPISODIC DISCONTROL SYNDROME.

18 DR. STEINMETZ DID RECOMMEND THAT A BRAIN SCAN BE
19 DONE, AND TO MY BEST KNOWLEDGE SINCE I DID NOT HAVE A
20 FOLLOW-UP REPORT OR ANY EVIDENCE OF BRAIN SCAN BEING PERFORMED
21 I DO NOT KNOW OR BELIEVE THAT THAT WAS IN FACT DONE.

22 Q. YOU REFERRED TO EPISODIC DISCONTROL.

23 WILL YOU DESCRIBE THAT FOR US?

24 A. THAT'S AN ILLNESS WHERE SOMEONE GOES OUT OF CONTROL
25 EPISODICALLY, LOSES CONTROL OF THEIR ABILITY TO MAINTAIN

VOLUME 3

1 DEMEANOR, AND WILL BECOME EXPLOSIVE. MANY TIMES THAT'S
2 RELATED TO A WHAT WE CALL A COMPLEX PARTIAL SEIZURE, OR SOME
3 SEIZURE ACTIVITY OF THE BRAIN THAT IS SUDDENLY CAUSING THAT
4 LOSS OF CONTROL.

5 Q. IS THAT TRIGGERED BY ALCOHOL?

6 A. NO.

7 Q. OKAY.

8 MR. MC GRUTHER: MAY I APPROACH THE WITNESS, YOUR
9 HONOR?

10 THE COURT: YOU MAY.

11 BY MR. MC GRUTHER:

12 Q. I SHOW YOU NOW WHAT HAS BEEN MARKED DEFENDANT'S --
13 STATE'S EXHIBIT NUMBER 6 FOR IDENTIFICATION PURPOSES, WHICH I
14 HAVE SHOWN TO COUNSEL, AND ASK YOU TO LOOK AT THAT, PLEASE?

15 THE COURT: THIS IS STATE'S NUMBER 6?

16 MR. MC GRUTHER: NUMBER 6, YOUR HONOR.

17 THE COURT: DID YOU SHOW THOSE TO MR. JOSEFSBERG?

18 MR. JOSEFSBERG: I HAVE NO OBJECTION TO IT, YOUR
19 HONOR.

20 THE COURT: YOU WISH TO OFFER IT?

21 MR. MC GRUTHER: YES, I DO, YOUR HONOR.

22 AT THIS POINT DUE TO THE STIPULATION OF COUNSEL, I
23 WOULD OFFER THAT INTO EVIDENCE.

24 THE COURT: ALL RIGHT. STATE'S NUMBER 6 IS IN
25 EVIDENCE, WHICH IS?

VOLUME 3

1 BY MR. MC GRUTHER:

2 Q. WHAT IS THIS, DR. WHITMAN?

3 A. A REPORT OF DR. STEINMETZ, AND ALSO A COPY OF THE
4 ELECTROENCEPHALOGRAM REPORT.

5 Q. AND YOU RELIED UPON THIS IN PART OF YOUR CLINICAL
6 EVALUATION OF MR. LAMBRIX?

7 A. ACTUALLY THAT REPORT WAS TO RULE OUT ANYTHING ORGANIC. I
8 HAD MADE MY DIAGNOSIS PRIOR TO THAT REPORT BEING RECEIVED IN
9 MY OFFICE.

10 Q. OKAY. DID YOU MAKE DEFENSE COUNSEL AWARE OF THIS REPORT?

11 A. I KNOW I REQUESTED IT FROM DEFENSE COUNSEL. I AM NOT
12 SURE WHETHER WE HAD A CONVERSATION TO --

13 Q. YOU REQUESTED THIS REPORT FROM THEM?

14 A. I REQUESTED THAT THAT BE DONE, CORRECT.

15 Q. OKAY. YOU DID DIAGNOSE -- BACK TO YOUR REPORT AGAIN,
16 SIR, MR. LAMBRIX AS HAVING CERTAIN ANTISOCIAL PERSONALITY
17 TRAITS, IS THAT CORRECT?

18 A. CORRECT.

19 Q. WHAT DO YOU MEAN BY THAT?

20 A. FROM HIS --

21 MR. JOSEFSBERG: YOUR HONOR, I DON'T KNOW EXACTLY
22 WHERE TO DRAW THE LINE.

23 WE HAVEN'T LISTED DR. WHITMAN AS AN EXPERT. THEY
24 HAVEN'T LISTED HIM. HE IS HERE TO SAY WHAT HE DID.

25 I MAY BE OBJECTING PREMATURELY, BUT I WANTED TO PUT

VOLUME 3

1 THE COURT ON NOTICE THAT I AM NOT PERMITTED TO USE HIM AS AN
2 EXPERT, THEY ARE NOT, AND I DON'T WANT TO GO INTO THIS IN ANY
3 GREATER DETAIL THAN IS NECESSARY.

4 I PUT HIM ON FOR VERY LIMITED PURPOSES, AND I AM
5 GOING TO OBJECT WHEN WE START GOING THROUGH OUR -- WHAT WILL
6 BE OUR FIFTH OR SIX MENTAL HEALTH EXPERT TESTIMONY.

7 MR. MC GRUTHER: YOUR HONOR, IF I MAY RESPOND?

8 THE COURT: YES.

9 MR. MC GRUTHER: I BELIEVE I AM ENTITLED TO
10 CROSS-EXAMINE THIS WITNESS. HE HAS -- HIS REPORT WAS
11 SUBMITTED AS AN EXHIBIT BY PETITIONER'S COUNSEL. I AM
12 ENTITLED TO CROSS-EXAMINE HIM ON THE CONTENTS OF THAT REPORT.

13 ONE OF THE THINGS THAT HE LISTED IN THE REPORT IS
14 THAT CARY MICHAEL LAMBRIX SHOWED CERTAIN ANTISOCIAL
15 PERSONALITY TRAITS. I AM MERELY INQUIRING OF THE DOCTOR AS TO
16 WHAT HE MEANS BY THAT.

17 MR. JOSEFSBERG: AND, YOUR HONOR, IF IT IS LIMITED
18 TO THAT AREA, I AM NOT GOING TO OBJECT AGAIN.

19 THE COURT: ALL RIGHT.

20 BY MR. MC GRUTHER:

21 Q. DR. WHITMAN, ANTISOCIAL PERSONALITY TRAITS, WHAT DID YOU
22 MEAN BY THAT?

23 A. WHAT I MEANT BY THAT IS FROM MR. LAMBRIX' HISTORY AS HE
24 REVEALED IT TO ME WITH DIFFICULTIES IN JOB SITUATIONS, IN
25 RELATIONSHIP SITUATIONS, DIFFICULTIES IN THE ARMED FORCES,

VOLUME 3

1 DIFFICULTIES WITH THE LEGAL SYSTEM, HE SHOWED TRAITS OF HAVING
2 THE PROBLEM WITH BEING ABLE TO SHOW REMORSE, OR INDICATE ANY
3 REMORSE FOR HIS BEHAVIORS, A CERTAIN DEGREE OF NARCISSISM, AND
4 IN A CONTEXT OF THAT WITHOUT HAVING ANY FURTHER IN-DEPTH
5 HISTORICAL BACKGROUND, I COULD NOT DIAGNOSIS A DISORDER BUT I
6 CERTAINLY HAD TO INDICATE THAT THE TRAITS WERE THERE FROM HIS
7 INFORMATION TO ME ON THE DAY OF EXAMINATION.

8 Q. NOW, DR. WHITMAN, I AM NOT A MEDICAL DOCTOR OBVIOUSLY.

9 SOMEONE WHO EXHIBITS ANTISOCIAL PERSONALITY TRAITS
10 IN LAYMAN'S TERMS WOULD BE LABELED A MEAN PERSON?

11 A. NO. THE PERSON WHO IS ANTISOCIAL IN THE CONTEXT OF HIS
12 DAILY ACTIVITIES CREATES A CERTAIN AMOUNT OF CHAOS IN HIS LIFE
13 AND THE LIFE OF THOSE AROUND HIM BY DIFFERENT TYPES OF
14 BEHAVIORS, AND THOSE BEHAVIORS CONSIST OF PROBLEMS, AS I
15 MENTIONED, WITH CONSISTENT WORK SITUATIONS, CONSISTENT SOCIAL
16 TYPES OF THINGS LIKE WORK, FAMILY, INTERACTION THAT ALLOWS HIM
17 TO HAVE A DEGREE OF NORMALCY AS OPPOSED TO ABNORMALCY.

18 THE DIFFICULTIES THAT MR. LAMBRIX INDICATED TO ME
19 THROUGHOUT HIS LIFE WITH DIFFICULTIES AT SCHOOL, AND ALL THE
20 WAY UP THROUGH HIS CURRENT SITUATION WHERE HE WAS OUT OF HIS
21 JAIL SITUATION AND ON SOME ESCAPE CONTENT AT THAT TIME, ALL
22 MOVES TOWARDS THAT TYPE OF A PERSONALITY DISORDER.

23 Q. OKAY.

24 A. AND THE DIFFICULTY WITH HAVING REMORSE IN RELATION TO
25 THOSE KINDS OF PROBLEMS AND LEARNING FROM THE CONSEQUENCES OF

VOLUME 3.

1 THE BEHAVIOR, AND THEN BEING ABLE TO PUT THAT INTO AN
2 EFFECTUAL WAY TO MAKE CHANGES.

3 WHEN ONE DOES NOT DO THAT THEY SUFFER FROM
4 ANTIPERSONALITY TYPE TRAITS OR DISORDER. AGAIN, AS I
5 MENTIONED, IF THE DISORDER IS DIAGNOSED WITH MORE IN-DEPTH
6 INFORMATION I WOULD NOT DIAGNOSE A DISORDER, WHICH IS A SEVERE
7 STATEMENT UNLESS I HAD FURTHER CLARIFICATION.

8 Q. OKAY. REFERRING BACK AGAIN, AND I'M SORRY FOR JUMPING
9 AROUND, REFERRING BACK TO DR. STEINMETZ' REPORT THAT YOU
10 REVIEWED, AND SUCH, DO YOU RECALL IN THERE WHETHER OR NOT DR.
11 STEINMETZ ASKED CARY MICHAEL LAMBRIX ABOUT CIRCUMSTANCES
12 SURROUNDING THE MURDER?

13 MR. JOSEFSBERG: YOUR HONOR, I AM GOING TO OBJECT TO
14 WHAT NOW IS DOUBLE HEARSAY TO A REPORT WHICH I AGREED TO GO
15 INTO EVIDENCE, WHICH IS IN EVIDENCE.

16 MR. MC GRUTHER: THAT'S TRUE, YOUR HONOR.

17 MR. JOSEFSBERG: WHETHER THE DOCTOR RECALLS ANOTHER
18 DOCTOR'S HISTORY IS IRRELEVANT FOR CROSS, AND HE DIDN'T
19 RECEIVE IT WHEN HE MADE HIS IMPRESSIONS. HE HAD RULED OUT THE
20 ORGANIC BRAIN PROBLEMS. THAT IS ALL IT DOES.

21 MR. MC GRUTHER: IF I MAY BE HEARD, YOUR HONOR?

22 THE REPORT IS IN EVIDENCE, IT WAS STIPULATED TO BY
23 COUNSEL. I AM ALLOWED TO QUESTION HIM ABOUT MATTERS IN
24 EVIDENCE.

25 THE COURT: SPECIFICALLY THE REPORT YOU ARE