

2008 WL 8765028 (M.D.Fla.) (Expert Report and Affidavit)
United States District Court, M.D. Florida.

USA,

v.

REYES, et al.

No. 05CR00522.

January 31, 2008.

Forensic Psychiatric Evaluation Criminal Competency and Sentencing Assessment of Michael S. Maher, M.D.

Name of Expert: Michael S Maher, M.D.

Area of Expertise: Psychiatry & Psychology >> Psychiatry

Representing: Unknown

Jurisdiction: M.D.Fla.

REASON FOR EVALUATION

This young man has been convicted at trial of various charges associated with a federal drug enforcement operation. The drug operation was conducted in November 2005 when the subject John Docampo was 18 years 2 months of age. Mr. Docampo's current defense attorney William Kent has requested an evaluation with regard to issues which may be relevant with regard to sentencing.

SUMMARY OF EVALUATION

At the time of the arrest, John Docampo was an adolescent age eighteen years, two months. Consideration of his developmental process supports the conclusion that he was somewhat less mature than his chronological age. Regardless of the extent of his developmental immaturity, he was functioning at the level of an older adolescent. As such, he was significantly more influenced by peer group and authority figures, both in wholly accepting and wholly rejecting authority figure's values and in not utilizing his own independent judgment to make decisions regarding his actions. He was particularly more likely to be influenced, entangled and ensnared into risky and morally questionable activities without understanding or considering the full impact of his involvement and without the specific capacity to understand how the initial or early steps in his involvement might develop and inevitably *rather than possibly* lead to later actions and involvement.

HISTORY OBTAINED FROM JOHN DOCAMPO

John acknowledges that he is indeed guilty of some of the charges for which sentencing is pending. He had a difficult time describing the exact nature of all of the charges and the specific elements of each charge. He believes that his participation was tentative and not fully committed that he was "along for the ride" and his participation has been mischaracterized as directing and promoting the action. He reports and acknowledges that he knew about what "they wanted to do". Throughout the event including his arrest, he continued to believe that this was something that others were going to do.

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With regard to his involvement in obtaining the gun, he acknowledges that he had some awareness that the individuals he was dealing with were interested in obtaining a gun, possibly selling a gun to another individual. He further acknowledges that he was not particularly concerned about whether this was a legal or illegal sale. He reports that he did not explicitly know that it was an illegal sale but also acknowledges that that was not a major concern to him. He denies that he was aware that the specific intent of providing this gun was in order to promote this robbery. He reports he had no experience with guns and had never shot a gun himself. He reports that he never touched or held either gun. He acknowledges that there was testimony at trial which was contradictory to his description of his involvement with the gun. He reports that he did not expect to obtain money, drugs, guns or other specific rewards for any of the activity involved in this scenario. He acknowledged nonetheless that this was interesting and exciting to him and he believed that some of his cohorts might “get something out of it”.

This young man grew up in Tampa Florida and attended high school in Tampa. He reports that his grades at Leto High School were generally poor. He comes from a Spanish speaking family and had trouble in early grades with English. His family speaks Spanish in the home. He reports that he has been in good health throughout his life without a history of serious illnesses. He experienced possibly one significant head injury at age fourteen. He recalls that after this he was evaluated and told not to go to sleep immediately. This is consistent with a medical warning which might be given in the instance of an individual who suffered a mild concussion. He reports that his mother's health is extremely poor and that his father worries about that a great deal.

He has no history suggesting any psychotic disorders or any disorder which would render him out of touch with reality. He denies significant drug or alcohol use; however does acknowledge an arrest for marijuana and a period of probation associated with a drug program when he was seventeen years old. He also acknowledges occasional alcohol consumption prior to his arrest in this case.

Following his arrest in this case, he was released to what appears to be a house arrest condition during which he lived at home and worked. He reports that he wanted to help pay bills and although he was restricted in the types of jobs he could obtain, he did his best to contribute to this. He reports some unhappiness and anxiety associated with his high school experience and what he believed was a failure to perform according to his parent's wishes, particularly during his late high school years. There is no history of diagnosis or treatment for depression or other mood disorders.

HISTORY OBTAINED FROM AUDIO RECORDING OF AGENTS

While there is no detailed opportunity to understand all of the interactions between the confidential informant, federal agent and others involved in this case, the audio recording related to the final arrest was available and reviewed. It is clear from this recording that the federal authorities prior to revealing themselves presented themselves as powerful, aggressive and authoritative. They also presented the enticement of an opportunity to engage in an exciting and extremely profitable robbery of drug dealers. Further, they also clearly acted in the role of guide and director of the action in this particular recording.

HISTORY OBTAINED FROM MR. DOCAMPO

Mr. Docampo and his wife were interviewed together on one occasion. Mr. Docampo, the father, was interviewed privately on one occasion. Both parents essentially confirm the history obtained from other sources. The style of parenting clearly apparent based on this interview is an essentially rigid style in which the parent makes rules and the children follow them. While this style of parenting has its advantages, it becomes problematic particularly during late adolescence when a child must move away from the parents rules, guidance and expectations and establish a clear and consistent pattern of rules, guidance and expectation based on their own internal capacities.

HISTORY OBTAINED FROM PRE-SENTENCE INVESTIGATION

Pre-sentence investigation prepared by Cynthia Elenz for the Honorable Judge Elizabeth Kovachevich.

Three counts of conviction are described: Count one Conspiracy to Possess with Intent to Distribute 5kg or more of Cocaine, count two Possession of a Firearm in furtherance Drug Trafficking Crime and count three Conspiracy to Possess a Firearm in furtherance Drug Trafficking Crime.

Docampo was arrested 11/3/05 and released on bail 11/9/05. He was remanded to custody 5/9/07.

Co-Defendants Isail Reyes pled guilty to associated counts and was sentenced to 168 months imprisonment followed by 5 years of supervised release. Co-Defendant Alex Gutierrez pled guilty to associated counts and was sentenced to 60 months imprisonment followed by 5 years of supervised release.

Pre-sentence report offense conduct information: Beginning in September 2005, a confidential informant advised ATF agents that Isail Reyes was involved in illegal trafficking of firearms or narcotics. On September 21, 2005 an AFT agent operating undercover met with the confidential informant and Reyes. Reyes, accompanied by two other individuals, facilitated the sale of a Ruger 9mm pistol to the undercover agent. On September 27, 2005, further discussions between Reyes and the undercover agent were directed toward "a future armed robbery of multi-kilograms of cocaine." Continuing conversations occurred on October 17th, during which Reyes reported that he was experienced with this type of work, specifically indicating "I am not a rookie at this" and further that *he would recruit associates who would also be experienced* in this type of activity. Continuing discussions occurring on November 1st included Alex Gutierrez and a juvenile. The undercover agent "reiterated to Alex Gutierrez and Luengas that their would be 15 - 20 kg of cocaine in the stash house." The undercover agent further explained that one of the occupants of the stash house would be armed with a firearm. Continuing discussions concerning Luengas obtaining an AK47 later that evening are reported. Gutierrez and Luengas stated that they already had pistols available for the robbery and that they intended to obtain additional firearms for the robbery. "The UC arranged for all parties to meet again at Reyes residence on November 3, 2006.

This is the first described contact between John Docampo and the undercover agent. It is reported that Docampo exited the vehicle he was in, began to converse with the UC and informed the UC *that he had previously executed a robbery and had two 9mm pistols*. It is further reported, "the UC instructed Docampo, Carmona, Reyes, and Gutierrez to follow him into a warehouse area where he would show them where to take the stolen kilograms of cocaine following the robbery."

Upon arriving at the warehouse, the UC had identified as the place to take the stolen cocaine, the ATF Special Response Team converged and arrested the conspirators. Apparently Reyes had attempted to escape. However, no other individuals made such efforts. Luengas was charged as a juvenile in Hillsborough County; however, some months later was killed in a gang related shooting. *Christian Carmona and Davin Powell also traveling with Docampo were juveniles and were charged as adults in Hillsborough County.*

"Based on testimony at trial a week before the meeting with the UC on 11/3/05, Docampo went to Eduardo Lorenzo's home and took possession of a 9mm Khar pistol. This firearm *was provided to Reyes by Docampo the day of the meeting.*"

Custody Status section reports that Docampo was released following a detention hearing on 11/9/06. He was then remanded to custody following the guilty verdict. The courtroom incident in which John was hugging his mother and "either pulled away by jerking his elbow back or attempted to strike the Marshall with his elbow is described." Adjustment for Obstruction section reports the incident in which Docampo allegedly attempted to threaten, intimidate or otherwise unlawfully influence a witness.

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The adjustment for obstruction of justice is noted. (Note: It is my thought that this fits clearly into the adolescent mind set of the Defendant at the time.)

Under the heading of Defendant's Criminal History, there is a possession of cannabis 7/30/05 at age 17; adjudication withheld. This history is relatively unremarkable. There is an indication of smoking marijuana starting at age 16, drinking alcohol starting at age 17, an ongoing relationship with an apparently appropriate girlfriend. During his pre-trial release, apparently there were drug tests done which were negative. History of employment is noted for two months; termination of employment because "he did not enjoy his job." There is a history of significant employment reported. There is also an indication of being fired for "poor performance." Social Security Administration records confirm in a general sense the history of employment. History under Sentencing Options section indicates a mandatory required imprisonment under count one as ten years with a maximum term of life. The guideline range is 188 to 235 months.

MENTAL STATUS EXAMINATION

On each occasion interviewed, this young man was alert and oriented to time, place and person. There was evidence of hallucinations, delusions or other distortions interfering with his basic and fundamental grasp of reality. The cognitive functions appeared to be intact and consistent with a normal IQ. No formal IQ test was performed. The affect on each occasion was extremely respectful, serious and mildly depressed. He appeared and expressed feelings of hopelessness with regard to his present situation and confusion with regard to the events that led him to this circumstance. He expressed with considerable frustration the feeling that "I know I shouldn't have done a lot of the stuff I did; I know it was wrong but I wasn't going to do all these things they said I was going to do." He utilized significant psychological defenses throughout the interview including intellectualization, rationalization and denial. He utilized intellectualization in order to shield himself from the feelings of distress and disappointment in himself and prepare himself for the prospect of a long prison sentence. His use of this psychological defense was thus in most respects reasonably healthy and mature. He utilized the psychological defense of rationalization in order to shield himself from the emotions which were more clearly and closely connected to his fear that he could not handle himself in this situation and his shame that he had brought this upon himself. He also utilized this rationalization with regard to shielding himself from a more clear awareness that his father had aggressively influenced him to make decisions which led to going to trial and quite possibly worsening his legal situation. He utilized the entirely unconscious psychological defense of denial primarily in order to shield himself from the tremendous distress of his childlike need to be with his parents and in a safe and familiar situation. His use of this more primitive psychological defense is consistent with his description of hugging his mother in the courtroom and pushing away a bailiff or other court authority in a manner which was apparently hostile.

CONCLUSIONS

The subjects of this federal drug sting operation were juvenile and young adults including John Docampo age eighteen years, two months. John acknowledges his participation and responsibility with regard to some of the actions he took in this circumstance. He insisted on going to trial on these charges while being strongly influenced by his father. He also believed he was not guilty of some of the offenses charged and did not feel that he was responsible or knowledgeable for the actions of others who were involved in these activities.

At the time of these events, John was in many respects a typical older adolescent with the one significant exception that he was not psychologically and emotionally at a developmental level consistent with chronological years. While there is no agreed upon method or basis to calculate a year equivalent of an individual's psychological and emotional maturity, it is clear that individuals can be properly and professionally placed at a maturity level commensurate with their chronological years, ahead of their chronological years or behind their chronological years. John's developmental maturity was significantly below his chronological years. This specifically affected his judgment, capacity to anticipate significant consequences of future behavior,

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understanding of his own abilities and limitations in dealing with complex social interactions. It also diminished his capacity to make his own independent decisions regarding moral and personal values while engaged with his peer group and the influence of persons of authority.

John's participation both in terms of the intensity and longevity of his participation as well as the full knowledge of his participation and the consequences of his participation were significantly impaired as compared with an 18 year old of average maturity.

John had particular difficulties in distinguishing and identifying the line between the abstract idea and fantasy of being involved in an exciting action oriented scenario involving drugs and the reality of participating in a process and initiating actions which would then require future actions and decisions under the influence of considerable social and psychological forces and momentum. For example, in the apparent planning stages of these activities, he believed and imagined that he wasn't really making decisions to follow through with and engage in various activities but was rather simply talking about and *imagining what it would be like* to engage in such activities. With regard to the specific issue of following through with these abstract "plans" he was strongly influenced by individuals either working as agents for the federal law enforcement authorities or at their direction and authority. These individuals manifested and displayed an aggressive and authoritative style in the course of their interactions with Mr. Docampo and others involved. This aggressive and authoritative style is particularly appealing and attractive to older adolescents who are anxious to prove and experience their maturity, adulthood and manhood to others who appear to possess the full power and authority of adulthood as well as their peers who are participants and observers in this process. Mr. Docampo's actions related to obtaining a firearm which was involved in this operation, is a clear example of this older adolescent but not fully adult pattern of behavior. Additional particular interactions described below are an illustration of the influences which altered his decisions, actions, and understanding of the circumstances and brought forth into action these otherwise abstract ideas.

A consideration of this young man's history, consultation with his parents and review of various legal documents including the pre-sentence investigation and other information strongly indicates that his propensity to engage in these activities was extremely strongly influenced by the actions of the police authorities and in this examiner's opinion, more likely than not would not have occurred absence such influences.

John has, since his arrest, trial and conviction, experienced the very painful effects of external social and psychological forces which have resulted in a maturing of his understanding of himself and his circumstances. In light of this maturation process, his recidivism risk is considered low.

A significant part of this maturation process has been related to the handling and processing of this case. Just as John's involvement in these illegal activities was a manifestation of his adolescent developmental process in that he was rejecting the values, authority and influence of his parents and his upbringing, his response following arrest was also very clearly a manifestation of his developmental process in that he relied in a dependent manner on his parents and particularly his father's authoritative guidance and influence in making his decision to go to trial rather than reach a plea agreement. In this manner, John's involvement in activities which were first contrary to his family's values and then over-dependent on the authority of his family's values are evident. This swing from rejection to over-dependence on the family authority and values is a nearly universal characteristic of adolescence and in particular, late adolescence where the opportunity to engage in such actions and behavior is available but the capacity to independently and with adult maturity, understand and consider ones actions is not yet developed. This characterizes John's actions in a manner which is typical of older adolescents.

In addition to those factors explicitly described above with regard to this defendant, there are factors which are of grave significance in understanding how any older adolescent in the range of seventeen to nineteen years, regardless of developmental maturity, is likely to understand and interact with individuals in the scenario presented in this case. Medical and scientific

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research clearly demonstrates that there is no clear “bright line” which marks the end of adolescence and the beginning of adulthood. Various scientific articles were reviewed in preparation for this report; a small selection of which are included in the appendix and demonstrate that the development of basic neurological and brain systems that are related to risk taking, decision making, judgment and abstract reasoning do not reach their full adult capacity until sometime after age twenty. During this period of late adolescence, particularly from approximately age seventeen to twenty-one, all adolescents whether normal or somewhat delayed in their development are significantly more easily influenced by peer and authority influences and have less capacity for independent self-sufficient judgment, decision-making and action. This young man who was age eighteen years, two months at the time of these events, was certainly not in possession of full adult capacities and therefore did not have the full capacity to judge and understand the relevance, meaning and level of his participation in the plans and activities which preceded his arrest.

BRIEF SYNOPSIS OF ATTACHED ARTICLE RELEVANCE TO CASE ANALYSIS

Development of Emotional Facial Recognition In Late Childhood and Adolescence

This article is a high quality peer review scientific publication which examines the capacity for “emotional facial recognition” through childhood, adolescence and early adulthood. This is particularly relevant to this case because of John Docampo's age (eighteen years, two months) at the time of this offense. It is also relevant in a concrete sense because facial recognition cues and emotional facial recognition cues in particular are an important part of accurate and knowledgeable social communication. They also serve as an indicator of underlying brain development. The article points out that this may be particularly related to the development of the amygdala, an area of the brain associated with assessing risk and danger. The article concludes among other things that their results may be indicative of “late maturation of prefrontal-limbic cognitive and affective processes”. These processes are otherwise clearly know to be associated with judgment and decision making, particularly with regard to weighing risks and benefits of behavior and considering “value laden” or moral decisions.

BRIEF SYNOPSIS OF ATTACHED ARTICLE RELEVANCE TO CASE ANALYSIS

Earlier Development of the Accumbens Relative to Orbitofrontal Cortex Might Underlie Risk-Taking Behavior in Adolescents

This article is a high quality publication in a peer review journal. The article specifically addresses issues related to the developmental characteristics of different brain areas, specifically “the accumbens relative to orbitofrontal cortex” and its relevance to risk-taking behavior in adolescents. The methodology of this study examined reaction times to various reward scenarios. They report, “Our finding support our hypothesis that adolescents differ from children and adults in NAcc and OFC recruitment, regions previously implicated in reward processing.”

Finally the authors conclude, “These different developmental trajectories may contribute to suboptimal choices in adolescents being driven more by appetitive systems than control systems.” This article then generally and specifically supports the conclusion that older adolescents are more likely to be enticed or engaged in participating in activities that appear to have particular rewards without having the attendant capacity to utilize their not yet fully developed brain dependant “control systems” to modulate and inhibit their behavior.

BRIEF SYNOPSIS OF ATTACHED ARTICLE RELEVANCE TO CASE ANALYSIS

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**Synaptophysin and Postsynaptic Density Protein 95 in the Human
Prefrontal Cortex from Mid-Gestation into Early Adulthood**

This article is also a high quality peer review publication. The article essentially examines the synaptic connection, that is the connection between nerves in the human frontal cortex. The essential conclusion drawn from this article is that this fundamental element of brain development does not reach full maturity until age twenty or somewhat later.

THIS EVALUATION IS BASED ON THE FOLLOWING INFORMATION

1. Clinical Psychiatric Interview conducted at the Hernando County Jail on November 7, 2007 and November 12, 2007.
2. Mental Status Examination conducted on November 7,2007 and November 12,2007.
3. Interview with Mr. and Mrs. Docampo (parents) on October 1, 2007.
4. Interview with Mr. Docampo (father) on November 14, 2007.
5. Audio of John Docampo's statement at the scene.
6. Video/audio of arrest sequence.
7. Audio of Ryes statement.
8. Transcript of trial 5/ 7/07 10:00 a.m.
9. Transcript of trail 5/7/07 1:10 p.m.
10. Excerpt of testimony of Richard Zayas from trial.
11. Transcript of trial 5/8/07 10:00 a.m.
12. Transcript of trial 5/9/07 10:00 a.m.
13. Pre-sentencing investigative report of Cynthia Elenz.
14. Development of Emotional Facial Recognition in Late Childhood and Adolescence. (Attached in Appendix)
15. Earlier Development of the Accumbens Relative to Orbitofrontal Cortex Might Underlie Risk-Taking Behavior in Adolescents. (Attached in Appendix)
16. Synaptophysin and Postsynaptic Density Protein 95 in the Human Prefrontal Cortex from Mid-Gestation into Early Adulthood. (Attached in Appendix)

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