APPENDIX A

2020 IL App (5th) 170194-U

NO. 5-17-0194

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. MILTON LATTIMORE, Defendant-Appellant.	)))))))))	Appeal from the Circuit Court of St. Clair County. No. 09-CF-1306 Honorable Randall W. Kelley, Judge, presiding.

JUSTICE BOIE delivered the judgment of the court.
Justices Cates and Barberis concurred in the judgment.

ORDER

¶ 1 Held: The defendant failed to establish the existence of a bona fide doubt of his fitness when he pled guilty but mentally ill to first degree murder. The defendant's 55-year prison sentence for first degree murder was not an abuse of discretion. The lower court's sentencing hearing complied with the constitutional safeguards required by the eighth amendment to the U.S. Constitution and the proportionate penalties clause of the Illinois Constitution.

¶ 2 This appeal raises issues stemming from a plea of guilty but mentally ill to one count of first degree murder entered by the defendant, Milton Lattimore. Prior to his plea, the circuit court found the defendant to be unfit to stand trial. One year later, the circuit court found that he was restored to fitness provided that "special provisions" were utilized at his trial to ensure that he remained fit during the trial. The defendant did not go to trial. Instead, he pled guilty. He then filed a motion to withdraw his plea, which the circuit court denied. On appeal, the defendant argues that

he should be allowed to withdraw his guilty plea because the circuit court erred in finding that he had been restored to fitness and, alternatively, because the circuit court failed to follow the "special provisions" at his plea hearing. The defendant also argues that his sentence of 55 years of imprisonment was an abuse of discretion and was unconstitutional under the eighth amendment to the U.S. Constitution and the proportionate penalties clause of the Illinois Constitution. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 One of the central issues in this case is whether the record before us establishes a bona fide doubt of the defendant's fitness for trial when he pled guilty but mentally ill. The due process clause of the fourteenth amendment prohibits the prosecution of a defendant who is unfit for trial. U.S. Const., amend. XIV; Medina v. California, 505 U.S. 437 (1992). In this context, "[f]itness speaks only to a person's ability to function within the context of trial; it does not refer to sanity or competence in other areas." People v. Coleman, 168 Ill. 2d 509, 524 (1995). It is measured by the defendant's ability to understand the nature and purpose of the proceedings against him and to assist in his defense (725 ILCS 5/104-10 (West 2016)), and it is "a fact-specific inquiry" (People v. Williams, 364 Ill. App. 3d 1017, 1026 (2006)). There are "a number of factors" that the courts should consider on the issue of fitness. People v. Stahl, 2014 IL 115804, ¶ 39. Those factors include, but are not limited to, the defendant's knowledge and understanding of the charge, the proceedings, and the consequences of a plea, judgment, or sentence; his knowledge and understanding of the functions of the participants in the trial process; his ability to observe, recollect, and relate occurrences, especially those concerning the incidents alleged; his ability to communicate with counsel; his behavior and demeanor during court proceedings; orientation as to time and place; recognition of persons and things; medical opinions on his competence; and any

representations by defense counsel on the defendant's competence. 725 ILCS 5/104-16(b) (West 2016); People v. Brown, 236 Ill. 2d 175, 186-87 (2010).

¶ 5 Important to our analysis is the supreme court's directive that we not evaluate a defendant's fitness based on any single factor; instead, our evaluation must be based on "the totality of the circumstances." (Emphasis added.) Stahl, 2014 IL 115804, ¶ 39. The totality of the circumstances in this case includes psychiatric evaluations, preplea pleadings and hearings, and the plea hearing itself. In addition, the totality of the circumstances also includes postplea pleadings and proceedings and representations of defense counsel. The entire record before us constitutes the totality of the circumstances from which we must evaluate the defendant's claim of a bona fide doubt of his fitness when he pled, not any single hearing or circumstance. Accordingly, we have set out the lower court proceedings before, during, and after the plea with considerable detail.

¶ 6 The State initially charged the defendant with three counts of first degree murder (720 ILCS 5/9-1(a)(1) (West 2008)) for the shooting deaths of Jaimaca McDaniel, Tenikia Harvey, and Raykel Gathing. The charges stem from events that took place on November 7, 2009, at approximately 9:25 p.m., at the Crown Food Mart in East St. Louis. The defendant parked at the gas pumps at the food mart and talked to McDaniel, who was the mother of his two-year-old son, Little Milt. Witnesses at the food mart saw McDaniel walk away from the defendant and get into the back seat of a grey Dodge Caliber that was also parked at the gas pumps. The witnesses then saw the defendant approach the Dodge Caliber and fire multiple gunshots into the vehicle.

¶ 7 The driver of the Dodge Caliber, Tenikia Harvey, died from two gunshot wounds. The front passenger of the vehicle, Raykel Gathing, died from four gunshot wounds. McDaniel, who was in the back seat with Little Milt, died from four gunshot wounds. Little Milt did not sustain any physical injuries during the shooting. In addition to Little Milt, two other children were in the

vehicle: a 14-month-old infant who was seated in the front between Harvey and Gathing and Harvey's 8-year-old son who was seated in the hatchback area of the vehicle. None of these children sustained any physical injuries during the shooting.

¶ 8 On January 12, 2010, the defendant's attorney appeared in court and informed the court that he had a bona fide doubt about the defendant's fitness to stand trial. The circuit court ordered a psychiatrist, Dr. Daniel J. Cuneo, to evaluate the defendant's fitness for trial. On March 29, 2010, Dr. Cuneo submitted a report concluding that the defendant was unfit to stand trial because he had a mental illness that, at the time of the report, substantially impaired his ability to understand the nature and purpose of the proceedings against him and his ability to assist in his own defense.

¶ 9 According to the report, the defendant told Dr. Cuneo that, in the past, he had heard voices telling him to kill himself and to start fires. Dr. Cuneo believed that the " 'voices' may very well have been [the defendant's] thoughts" and not true auditory hallucinations. Dr. Cuneo learned that the defendant had been in special education classes when in school and had "limited formal education." He believed that the defendant was functioning in the "Mild Mentally Retarded Range of Intelligence" and had "grossly impaired" short-term and long-term memory. The defendant had an extremely low frustration tolerance level and could lash out at others in anger when placed under the slightest stress. The defendant also admitted to a lengthy history of alcohol and drug abuse which included marijuana, crack cocaine, and Ecstasy.

¶ 10 Dr. Cuneo concluded that the defendant's thinking was very concrete, that he had a very limited vocabulary, and that he was functioning "only at the cognitive level of a nine to ten-year-old." Dr. Cuneo's diagnosis of the defendant included a psychotic disorder, alcohol dependency, polysubstance dependency, mild mental retardation, and borderline personality traits. Dr. Cuneo explained that, at the time of his report, the defendant was unfit to stand trial as follows:

"[The defendant] could not grasp the adversarial roles in the court even after repeated attempts by me to explain this to him. He kept saying that the state's attorney, judge, and public defender were all there to help him. He could not understand how a person would be found guilty or not guilty. Due to his inability to stay on task, emotional ability, and extremely concrete thinking, he would have much difficulty communicating with his attorney in any meaningful way, much less assist in his own defense."

¶ 11 Dr. Cuneo also concluded, however, that "if [the defendant] were provided with a course of inpatient psychiatric treatment and stabilized on psychotropic medication, there [was] a substantial probability that he would be able to attain fitness within the course of one year."

¶ 12 After Dr. Cuneo completed his evaluation, on the State's motion, the circuit court appointed Dr. John Rabun to evaluate the defendant's fitness for trial. Dr. Rabun submitted his report on April 1, 2010. Dr. Rabun's findings were similar to Dr. Cuneo's in that Dr. Rabun believed that the defendant suffered from mild mental retardation, alcohol dependence in a controlled environment, and cocaine dependence in a controlled environment. Dr. Rabun also noted the defendant's history of learning problems, impaired intelligence, and "deficits in his adaptive level of functioning." Dr. Rabun reported that he had to use simple terms or explain concepts to the defendant in order to "maintain the flow of the conversation."

¶ 13 The jail staff informed Dr. Rabun that the defendant had been prescribed Risperdal, which is an antipsychotic medication, and Remeron, which is an antidepressant. Dr. Rabun did not believe the defendant overplayed or dramatized his intellectual limitations. He concluded that the defendant's "limited intellectual abilities substantially impair[ed] his capability to work, use language, pursue education, and engage in all other usual activities of daily living" and believed that the defendant functioned below 98% of the general population. Dr. Rabun also opined that the

defendant's mental defect impaired his capacity to understand the nature and purpose of the proceedings against him and to assist in his own defense. Specifically, Dr. Rabun reported:

> "[The defendant] had difficulty responding in a knowledgeable and rational manner when I questioned him about the roles of key courtroom personnel. He understood his plea options, but could not describe the process of plea bargaining. He knew the charges against him but was unsure of the range of penalties he could receive if convicted. He knew that he was represented by an attorney, but could not state how he could help his attorney defend him. He also did not know the important legal rights he would forfeit if he chose to plead guilty.
>
> [The defendant] did not understand the term, cross examination. He was unsure what he could do if a witness fabricated information about him during a trial or hearing. Further, [the defendant's] language impairments would substantially interfere with his ability to track the testimony of witnesses and aid his attorney in cross examining those witnesses."

¶ 14 Accordingly, Dr. Rabun concluded that the defendant lacked "the capacity to understand the nature and purpose of the proceedings against him and to assist in his own defense" but that it was "probable that [the defendant] will regain his capacity to stand trial within one year."

¶ 15 On April 8, 2010, the parties appeared in court for a hearing on the defendant's fitness for trial. Prior to the hearing, the State filed a notice of its intent to seek a sentence of natural life imprisonment for the three murders. The parties stipulated that, if called as witnesses, Dr. Cuneo and Dr. Rabun would testify consistent with their reports. The circuit court explained to the defendant that he had a right to a bench trial or a jury trial on the issue of his fitness, and the defendant acknowledged that he understood that right and that he did not want a jury trial. The

circuit court found that the defendant was unfit to stand trial but that there was a substantial probability that he would be able to attain fitness within the course of one year. The court ordered the defendant remanded to the Illinois Department of Human Services (Department) for inpatient treatment to obtain fitness.

¶ 16 One year later, on April 7, 2011, the Department issued a progress report that concluded that the defendant had been restored to fitness in that he was able to understand the nature of the charges against him and cooperate in his defense. The report included a psychiatric evaluation that was completed on March 28, 2011. The evaluation stated that, during the defendant's treatment with the Department, there were periods in which he refused medication, had suicidal thoughts, was unwilling to cooperate, and was confused and ambivalent about returning to court. However, during the period of February 8, 2011, through March 28, 2011, the defendant participated in treatment and had "not exhibited any signs of psychosis, depression[,] or anxiety." During this period, the defendant "thought he was fit and wanted to return to court to be fit for trial and 'get it over with.' "

¶ 17 The Department's evaluation report further stated that the defendant had a "clear understanding of his charges except some disagreement about the nature of the charges and explained his version of how the incident (murder) occurred." The psychiatrist conducting the evaluation reported that the defendant was "compliant with medication and not suicidal." At that time, the defendant's medications were "Risperidone 4 mg for psychosis and Mirtazapine 3 mg for depressed mood."

¶ 18 The psychiatrist concluded as follows:

> "[The defendant] has mentioned on several occasions about his decision and intention to return to court. In spite of his mild mental retardation diagnosis, he has

sufficient understanding and knowledge about the rational and factual understanding of the charges and possible outcome of a trial. He is very communicative and is fully capable of cooperating with his public defender. He can provide adequate information about his charges and possible strategies about his charges and assist his public defender in his own defense. He is fit to stand trial and can return to court. He is compliant with medication which might have helped his basic functions including orientation, memory[,] and recall. It is imperative that he be treated with medication while he is waiting for trial."

¶ 19 On May 24, 2011, the circuit court entered an order directing Dr. Cuneo to evaluate the defendant to determine whether he agreed with the Department's finding that the defendant had been restored to fitness for trial. In addition, the circuit court directed Dr. Cuneo to determine whether the defendant qualified for trial with "special provisions."

¶ 20 Prior to Dr. Cuneo's reevaluation, the Department completed a 90-day fitness evaluation of the defendant on June 14, 2011. The Department reported that, during the period of March 28, 2011, through June 14, 2011, the defendant was placed in restraints on one occasion for two hours because he "physically assaulted a peer," but that this behavior had "not affected any areas of his mental status and function," and that he remained "compliant with medication and [was] fit to stand trial."

¶ 21 Dr. Cuneo prepared his reevaluation report on July 6, 2011. Dr. Cuneo noted in his report that he explained to the defendant that a copy of the evaluation findings would be sent to defense counsel, the state's attorney, and the court. According to Dr. Cuneo, the defendant agreed to continue with the interview in light of this disclosure and was able to explain in his own words that he had agreed to the interview in light of the doctor's limited confidentiality. Dr. Cuneo found the defendant to be oriented in all three spheres: person, time, and place, which was an

improvement from his March 2010 evaluation. The defendant denied experiencing any hallucinations since taking his psychotropic medications on a regular basis.

¶ 22 Dr. Cuneo reported that the defendant had been medication compliant for roughly four months and had stabilized. Dr. Cuneo opined that the defendant's mental illness "at the present time [did] not substantially impair[ ] his ability to understand the nature and purpose of the proceedings against him or his ability to assist in his own defense." According to Dr. Cuneo, the defendant knew that he was charged with three counts of murder and that he must stand trial for those charges. The defendant had a basic understanding of the different court personnel and their roles in court. Dr. Cuneo further reported as follows:

> "[The defendant] knows that he can have a jury present to decide based upon the evidence his innocence or guilt. He knows that if he is convicted, he could be sentenced to prison for a very lengthy period of time. [The defendant] has a very basic understanding of the concepts of plea bargaining. Finally, even though his memory is impaired, he has a sufficient memory to relate these things in his own personal manner. Therefore, it is my opinion that [the defendant] is presently fit to stand trial with special provisions."

¶ 23 Dr. Cuneo recommended three special provisions to ensure that the defendant could comprehend what was happening during his trial. First, Dr. Cuneo "strongly recommend[ed]" that the defendant continue his psychotropic medication. Second, Dr. Cuneo recommended that the vocabulary "be kept simple at the level of a nine to ten-year-old." Third, Dr. Cuneo recommended "periodic checks" to ensure that the defendant understood what was happening during the trial. Dr. Cuneo recommended that, during these checks, the defendant "not be asked yes or no questions." Instead, "he should be asked to explain back in his own words what was happening." Dr. Cuneo

stated that "[t]his demonstrated competence would ensure that he [the defendant] truly grasps what [was] happening in the court at that time."

¶ 24 On August 3, 2011, the parties appeared in court for a hearing to determine the defendant's fitness for trial. At the hearing, the circuit court asked the defendant the following questions:

"THE COURT: *** [I]n your words, can you tell me why you're here today?

THE DEFENDANT: Because I was—I was fit to stand trial. They found me fit.

THE COURT: What is your understanding of what happens at a trial?

THE DEFENDANT: That's how they prove me guilty or not guilty.

THE COURT: [The defense attorney] here, what's his job?

THE DEFENDANT: To help me.

THE COURT: And Mr. Piper here, what's his job? The gentleman over here. Do you know what his job is?

THE DEFENDANT: He didn't tell me who he was, sir.

THE COURT: Okay.

THE DEFENDANT: I know she's the court reporter.

THE COURT: This is the court reporter here?

THE DEFENDANT: Yes, sir.

THE COURT: And I'm the Judge, do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: What about the prosecutor?

THE DEFENDANT: The prosecutor, they're against me."

¶ 25 The parties stipulated that, if called as witnesses, Dr. Cuneo and the Department's psychiatrist would testify consistent with their reports. After questioning the defendant, the circuit court found as follows:

> "At this time, based upon the report received in court as stipulated to by the parties, the Court would find that the Defendant is fit to stand trial upon the following conditions:
>
> So long as he continues with his psychotropic medications, so long as communications are kept at a nine to ten year old level, and the Court would order that periodic checks be made each month to verify that the Defendant continues fit to stand trial—to be fit to stand trial."

¶ 26 On August 3, 2011, the circuit court entered a written order finding that the defendant was "fit to stand trial with special provisions as recommended by Dr. Cuneo." (Emphasis added.) The court also entered a written order remanding the defendant to the custody of the St. Clair County jail and ordering the medical personnel of the jail to ensure that the defendant maintained "the medication regiment [sic] which has been formulated by the professionals at Chester Mental Health."

¶ 27 After the circuit court found that the defendant was fit for trial and ordered him transferred to the St. Clair County jail, the defendant appeared in court for several pretrial hearings during which his attorney asked for continuances for various reasons. The same judge who presided over the restoration hearing presided over these pretrial hearings and was able to observe the defendant and ask him if he understood that his attorney was asking that his trial be continued and that the continuances would not count toward his speedy trial demand. On each occasion, the defendant responded to the circuit court's inquiries with, "Yes, sir."

¶ 28 The defendant's first appearance in court after being found fit for trial occurred on September 19, 2011, during which the State asked for a handwriting sample from the defendant. The State presented the court with an agreed order setting a pretrial hearing date and tolling the defendant's speedy trial time until the entry of a scheduling order. The defense attorney told the court that he had reviewed the order with his client and that he agreed with the order. The judge asked the defendant whether he understood that the time until the next pretrial hearing would not count toward the running of his speedy trial demand. The defendant responded, "Yes sir." The court asked, "And you are in agreement with this?" The defendant responded, "Yes sir."

¶ 29 The defendant appeared in court for the next scheduled hearing on November 7, 2011. At this hearing, the defendant's attorney presented the circuit court with a proposed scheduling order that provided a deadline for motions and a date for a hearing on pending motions. The defense attorney told the court that the parties agreed to a May 7, 2012, trial date and that the order "would toll my client's speedy trial time." The defense attorney also told the court that he had discussed the scheduling order with the defendant. The judge asked the defendant whether he understood that the time that transpired up to the May 7, 2012, trial date would not count toward his speedy trial demand. The defendant responded, "Yes, sir." The judge asked, "Are you in agreement with this continuance?" The defendant responded, "Yes, sir."

¶ 30 The defendant appeared in court again on April 17, 2012, for a hearing on pending motions. The defense attorney requested more time to prepare for trial and requested a new scheduling order with a trial date of August 20, 2012. Before granting the continuance, the judge asked the defendant whether he understood that the time that transpired up to the new trial date would not count toward the running of the speedy trial clock. The defendant responded, "Yes, sir." The court asked, "And you in agreement with this?" The defendant responded, "Yes sir."

¶ 31 The defendant appeared in court on August 15, 2012, for a pretrial hearing in which the defense attorney requested another continuance of the trial date. At the hearing, the defense attorney told the court that he had neglected to ask Dr. Cuneo to evaluate the defendant to determine whether he lacked "the requisite capacity of knowingly and voluntarily waiving Miranda" in November 2009 when the defendant made statements during a videotaped police interrogation. The defense attorney requested a continuance for this evaluation. The defense attorney told the court that he had discussed this with the defendant and that the defendant was "in agreement with it."

¶ 32 The judge then addressed the defendant as follows: "[Y]our attorney is wishing to continue your case which is set for trial this coming Monday. Do you object to that?" The defendant responded, "I want to push it back." The judge asked the defendant, "You're okay with continuing the case?" He replied, "Yes, sir." The judge asked the defendant whether he understood that the time it took to get the case "back in court" would not count toward any speedy trial demand he may have made. The defendant responded, "Yes, sir." The circuit court entered a written order directing Dr. Cuneo to evaluate the defendant "to determine whether he had the requisite mental capacity to knowingly and voluntarily waive Miranda at the time he spoke to the police."

¶ 33 Dr. Cuneo submitted a report of this new evaluation on September 11, 2012. Dr. Cuneo noted that at the beginning of the interview, he again advised the defendant that the assessment would be shared with defense counsel, the state's attorney, and the judge. Dr. Cuneo asked the defendant whether he understood this limited confidentiality and whether he wished to continue with the interview. According to Dr. Cuneo, the defendant "blurted, 'Yes, sir!' Yes, sir!' " In addition, Dr. Cuneo asked the defendant "to explain back in his own words what he had just agreed," and Dr. Cuneo reported that "[the defendant] was able to do so." Dr. Cuneo noted that

the defendant was "oriented in all three spheres—person, time, and place." Dr. Cuneo reported that this was a "striking improvement from [the defendant's] confusion over time in March 2010 when he could not tell me the day of the week or year."

¶ 34 Dr. Cuneo wrote in his report that the defendant indicated that he had heard "voices" a couple days before the interview. In addition, Dr. Cuneo reported that the defendant stated as follows, "They stopped giving me my Remeron and I got a call in to the doctor. I don't want to go into the Quiet Room and be naked." Nonetheless, Dr. Cuneo reported, "No specific delusional material could be detected in his thinking. His thinking itself was neither loose nor tangential, but rather it was extremely concrete. This would be consistent with his very limited intellectual abilities."

¶ 35 Dr. Cuneo opined that the defendant's mental illness "substantially impaired his ability to knowingly, intelligently[,] and willingly waive his [Miranda rights] on November 8, 2009." He noted that the defendant had "severe reading difficulties and [could] only read at the third grade level." Dr. Cuneo also noted that the defendant misspelled his last name when he printed it on his written statement following the police interrogation. Dr. Cuneo viewed the videotape of the defendant's interrogation and wrote in his report as follows:

> "It should be noted on his videotaped interview the officer only had [the defendant] read the first statement to them and explain it back to him. The officer never asked him to explain back any of the other [Miranda rights] and [the defendant] only shook his head yes and 'Uh huh' that he understood them."

¶ 36 Dr. Cuneo stated that the defendant did not have the ability to understand all of the Miranda rights when the officer read them to him. He believed that the defendant's limited intellectual abilities made him "much more suggestible and easily led." According to Dr. Cuneo, the defendant

was "much more likely to seek to please another individual" especially "if the individual asking the questions were in a position of authority, such as a police officer."

¶ 37 On October 8, 2012, the circuit court entered a written order directing Dr. Rabun to evaluate the defendant to determine whether the defendant lacked the capacity to knowingly and intelligently waive his Miranda rights. The record does not include any report of Dr. Rabun's evaluation pursuant to this order.

¶ 38 The record includes docket entries reflecting three agreed continuances during the period of October 3, 2012, through April 2013, and a docket entry indicating that the case was scheduled for an April 22, 2013, jury trial. However, on April 16, 2013, the circuit court entered an agreed order for Dr. Cuneo to evaluate the defendant's potential of being found not guilty by reason of insanity. On May 21, 2013, Dr. Cuneo prepared his report pursuant to the circuit court's April 16, 2013, order.

¶ 39 Dr. Cuneo's report stated that, at the beginning of this new evaluation, he again explained to the defendant that the report would be shared with defense counsel, the state's attorney, and the judge. The defendant "shook his head yes" when Dr. Cuneo asked the defendant whether he understood this and whether he wished to continue with the interview. In addition, Dr. Cuneo reported that the defendant was able to "explain back in his own words what he had just agreed to do." During this interview, the defendant was "oriented in all three spheres—person, time, and place."

¶ 40 With respect to medications, Dr. Cuneo noted in the report that the defendant "most recently had been on the psychotropic medications, Navane and Cogentin" while in the St. Clair County jail. He noted that the defendant "had been refusing his medications and they were discontinued on January 24, 2013." However, Dr. Cuneo noted that at the time of his interview,

the defendant was "asking to be placed back on his psychotropic medication," and Dr. Cuneo "strongly recommend[ed] that he go back on his psychotropic medication or he [would] decompensate into psychosis, much as he [had] in the past."

¶ 41 During this interview, the defendant was able to recollect and relate occurrences related to the alleged shooting. Specifically, Dr. Cuneo reported that when he asked the defendant what happened at the time of the alleged offenses, he replied as follows:

> "They say I killed my baby momma. Two others. I wasn't at the scene. [The defense attorney] said they charged me with three (murders), but I didn't do it. All they have is the kid. He eight then. They threw out my statement. I was in St. Louis. My family over there. I'm in St. Louis."

¶ 42 Dr. Cuneo opined that the defendant "was suffering from a substantial disorder of thought, mood, and behavior *** at the time of the alleged offenses which severely impaired his judgment and effected his behavior, but not to the extent that he was unable to appreciate the criminality of his conduct or to conform his behavior to the requirements of the law." Dr. Cuneo noted that the defendant denied that he was experiencing any type of command hallucinations at the time of the offenses and that, even though he was intellectually limited, he knew that shooting someone was wrong and could cause death. He concluded that the defendant "could have controlled his behavior if he so desired," noting that the defendant repeatedly insisted that he did not shoot anyone and was in St. Louis at the time. The doctor concluded that the defendant was legally sane at the time of the alleged offenses but that he would qualify for a plea of guilty but mentally ill.[1]

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[1]A person who was not insane at the time he committed a criminal offense, but was suffering from a mental illness, is criminally responsible for his conduct and may be found guilty but mentally ill. 720 ILCS 5/6-2(c) (West 2016).

¶ 43 On May 29, 2013, the parties appeared in court for a pretrial hearing. On that day, the circuit court made a docket entry scheduling a June 7, 2013, hearing for "Plea of Guilty before Hon. John Baricevic." This was followed by an agreed written order entered on May 30, 2013, scheduling the June 7, 2013 hearing "for plea."

¶ 44 The defendant appeared in court on June 7, 2013. Instead of a plea, the defense attorney asked the court to set the matter for trial. The defense attorney told the court that all the preliminary issues that they had been dealing with were completed and that they had agreed to an October 7, 2013, trial date. The circuit court then addressed the defendant as follows:

> "THE COURT: *** [W]hat the attorneys have told me here is that they don't have enough time to get to your case and you got to sit in the County Jail till October. Do you understand that?
>
> THE DEFENDANT: Yes, Your Honor.
>
> THE COURT: Any objections?
>
> THE DEFENDANT: Is there—it would push it back?
>
> THE COURT: So, you concur in your attorney's motion to continue the case?
>
> THE DEFENDANT: Yes, sir."

¶ 45 The record does not reflect any further court appearances by the defendant until October 2, 2013, when the parties appeared in court to announce that they had reached "a negotiated plea agreement." Pursuant to the terms of the plea, the State agreed to dismiss the three pending charges of first degree murder, which had the potential penalty of natural life in prison, and recharge only one count of first degree murder with a deadly weapon, which would carry a sentencing range of 20 to 60 years in the Illinois Department of Corrections. The defendant agreed to waive the preliminary hearing on the new charge and plead guilty but mentally ill. Under the terms of the

plea agreement, the State could argue for the maximum sentence of 60 years of imprisonment, the defendant could argue for a prison sentence no less than 30 years, the State would be allowed to include the murder of all three victims in the factual basis for the plea and at sentencing and, all three victims' families would be allowed to present victim impact statements. After hearing the terms of the plea agreement, the circuit court questioned the defendant as follows:

"THE COURT: *** [H]ow old are you?

THE DEFENDANT: Twenty-five, sir.

THE COURT: Do you read and write?

THE DEFENDANT: Yes. Yes, sir.

THE COURT: Are you currently taking any drug or medication?

THE DEFENDANT: Yes, sir.

THE COURT: Does it affect your ability to understand what we're doing?

THE DEFENDANT: No, sir.

THE COURT: If you have any questions about this process, you stop me and either ask me or [the defense attorney], and we'll make sure you know what's going on. Okay?

THE DEFENDANT: Yes, sir.

THE COURT: Do you think you need any more time to talk to [the defense attorney].

THE DEFENDANT: Yeah, he said he going to talk to me after we get finished. He said he going to talk to me after we get finished.

THE COURT: Okay, let me change the question. Do you believe you've had enough time to talk about the—

THE DEFENDANT: Yes, sir.

THE COURT: —facts of the case—

THE DEFENDANT: Yes, sir.

THE COURT: —to prepare for the plea to today?

THE DEFENDANT: Yes, sir."

¶ 46 The court informed the defendant of the three counts of murder and asked the defendant if he understood what he was charged with. He responded, "Yes, sir." The court described the sentencing range of the original offenses and the sentencing range for the offense to which he was agreeing to plead guilty. The court asked the defendant whether he had "any questions about what the punishments available are," and the defendant responded, "No, sir."

¶ 47 The court explained the constitutional rights the defendant was giving up by pleading guilty, including the right to have a trial by a judge or jury, the right to confront the State's witnesses, his presumption of innocence, and the obligation of the State to prove him guilty beyond a reasonable doubt. The court told the defendant that by pleading guilty he was giving up all of those rights and that there would be no trial. The court asked the defendant whether he understood that, and he responded, "Yes, sir."

¶ 48 The court asked the defendant whether he had any questions about his rights, and the defendant stated, "No, sir." The court asked the defendant, "Do you wish to proceed with the plea and waive your trial?" The defendant responded, "Yes, sir." The circuit court accepted the defendant's plea of guilty but mentally ill as follows: "I'll accept that plea, find that you've been advised of the charges against you, the potential sentences and your constitutional rights, that you understand the consequences of your plea, which is voluntary, and a factual basis exists."

¶ 49 Two days after the defendant pled guilty, on October 4, 2013, a probation officer interviewed the defendant at the St. Clair County jail for the purpose of preparing a presentencing

report. The presentencing report stated that during this interview, the defendant was able to tell the probation officer the date and location of his birth, his address immediately prior to his incarceration, that he had lived at that address for a year and a half, and that had resided in the "metro-east area his entire life." The defendant told the probation officer the names and ages of his children, parents, and sister. He told the probation officer where he had attended high school and that he did not graduate. He described his lack of employment and that he was receiving disability in the amount of $650 per month. The defendant told the probation officer that he did not have any debts, did not have any savings or checking accounts, had never owned an automobile or real property, and never had a driver's license.

¶ 50 During the interview, the defendant described his medical history to the probation officer, including a gunshot wound, metal rods in his arm, and his diagnosed mental health issues. According to the probation officer's report, "[t]he defendant also stated that he currently sees the psychiatrist at the St. Clair County Jail and is taking medication for his mental health issues." In preparing the presentencing report, the probation officer also obtained information "from the St. Clair County Jail Infirmary [that] reveal[ed] [that] the defendant [was] currently taking medication for psychotic disorder."

¶ 51 On October 15, 2013, the defendant filed a pro se "Motion for Appointment of Counsel." The motion and an affidavit attached to the motion bear the defendant's notarized signature dated October 5, 2013. The defendant, therefore, prepared the pro se motion three days after he pled.

¶ 52 In the motion, the defendant alleged that there had been a breakdown in communication between himself and his defense counsel, that his attorney "informed" him during a telephone conversation that he would die in prison if he did not accept the plea agreement, and that defense

counsel also informed two of his "family members of the same." He further alleged in the pro se pleading as follows:

> "Im [sic] not good at comprehending well I have a mental problem. I didn't understand my counsel meant [sic] a lot of the time. I informed him countless times I wanted to go to trial and he continually told me no, and I needed to plea out. We were always in conflict about me going to trial. While he informed my mother we were in agreement with pleading out I wanted a trial."

¶ 53 The defendant asked the court to appoint him new counsel. The motion contained no allegations that the defendant was not properly medicated at the time of the plea hearing, that he did not understand the nature of the proceedings, or that he was unable to assist in his defense.

¶ 54 The parties appeared in court on November 25, 2013, for sentencing. At the outset, the circuit court asked the defendant if he wanted to argue his motion requesting new counsel, and the defendant said, "Yes, sir." The following colloquy took place:

> "THE DEFENDANT: My mother have me a new attorney. So, I want to get rid of [the defense attorney] because my mother have me a new attorney. And I don't want to take the plea.
>
> THE COURT: Well, you already took a plea.
>
> THE DEFENDANT: I want to withdraw the plea.
>
> THE COURT: I'm sorry?
>
> THE DEFENDANT: The guilty plea, I want to withdraw it.
>
> THE COURT: Well, you're certainly free to hire an attorney any time you want, —
>
> THE DEFENDANT: Yes, sir.
>
> THE COURT: —but today is a sentencing day. Do you have another attorney?"

¶ 55 The defendant's mother, Rose Best, was present for the hearing. She approached the bench and told the court that she had hired another attorney two or three weeks prior to the hearing, but the attorney told her that "he wanted to see what was going on first, and then he'll take over." Best stated that she told the attorney that the defendant had "plead because somebody told him that I said to plead."

¶ 56 The court asked the defendant about his claim of a breakdown in communication with his counsel. The defendant stated: "Well, half of the time, I really don't comprehend what he's saying and stuff like that. So, about—I told him I didn't want to take the plea, I wanted to go to trial, but he told me my mother told me to take the plea. So, I took the plea." The circuit court told the defendant that when he pled, it had asked him whether he needed more time to speak with his attorney and that the defendant had stated that he understood what was going on and that "everything was fine." The defendant responded to the court, "Yeah, I didn't really know what was going on. I didn't take my medicine, so I didn't really—sometimes I comprehend and sometimes I don't." The court stated, "There is no evidence that you didn't know what was going on. *** Your language wasn't confused. Your behavior was appropriate." The defendant stated, "I think I would been better off going to trial because I really didn't know—I didn't want to plead guilty to something I didn't do. So I wanted to go to trial."

¶ 57 The defense attorney told the court that he felt that he had the ability to continue to represent the defendant. The circuit court denied the defendant's motion for new counsel. The court stated that it found nothing in the defendant's comments "to suggest any incompetency of counsel, only [the defendant] having second thoughts about his plea." The court, therefore, stated that it was leaving defense counsel on the defendant's case; however, it continued the sentencing hearing for two weeks, in part, to give the defendant's mother an opportunity to hire a new attorney.

When asked whether he had any questions, the defendant stated that he "wanted to take the plea back" and did not want "to plead guilty to it." The circuit court told the defendant that he could file a motion to withdraw his plea after sentencing. No new counsel ever entered an appearance on the defendant's behalf.

¶ 58 On December 11, 2013, the parties appeared in court for sentencing. During the sentencing hearing, the defense attorney argued that the defendant's mental illness was a mitigating factor which justified a sentence of 30 years of imprisonment. The court asked the defendant if he had anything to say. The defendant replied, "No, sir," and the defense attorney clarified that this was on the advice of counsel.

¶ 59 The circuit court stated that it had reviewed the presentencing report, mitigating and aggravating factors, and arguments of counsel. The court agreed with the State's factors in aggravation and the defense's factors in mitigation. The court concluded that the defendant's mental illness was not an excuse for the defendant's actions. The court stated that the mental illness did not "mean that [the defendant] didn't know what [he] was doing when he pulled the trigger" or that the defendant did not "know that when those bullets left [his] gun, that they could likely hurt somebody." Nonetheless, the court stated that in mitigation, it gave the defendant "some credit for the fact that [he was] mentally ill" and that he had "accepted responsibility and pled guilty." The court also found that there was no reason to believe that there was any likelihood that the defendant would be rehabilitated. The court sentenced the defendant to 55 years of imprisonment.

¶ 60 On December 31, 2013, the defense attorney filed a motion to withdraw the defendant's guilty plea which realleged the claims that the defendant had set out in his pro se motion for new counsel. The motion alleged that the defendant was forced into pleading guilty by the defense attorney, that he pled guilty only because the defense attorney falsely told him that his mother

wanted him to plead guilty, that he often did not understand the defense attorney, that he did not comprehend the plea proceeding, that he had not taken his medicine, and that he repeatedly expressed his desire to go to trial, which the defense attorney ignored.

¶ 61 On January 6, 2014, the defendant filed a pro se motion to withdraw his guilty plea in which he alleged that the defense attorney pressured him into pleading guilty and that he made the plea under extreme duress and coercion. The defendant did not allege in his pro se motion that he had not been taking his medication at the time of his plea, that he did not understand the nature of the proceedings or the functions of the participants of the trial process, or that he was unable to assist in his defense.

¶ 62 On March 18, 2014, the circuit court conducted a hearing on the defendant's motions to withdraw his guilty plea. New counsel (postplea counsel) represented the defendant at the hearing. The same judge that presided over the plea hearing and the sentencing hearing presided over the hearing on the motion to withdraw the guilty plea. At the hearing, the defendant made no claim that he was not properly medicated at the time of the plea nor did he present any evidence to establish that he was incapable of understanding the nature and purpose of the proceedings against him or that he lacked the ability to assist in his own defense. Instead, the defendant read a prepared statement to the court that, in substance, established that he understood the nature of the proceedings when he pled guilty and could assist with his defense. Specifically, he claimed that he wanted to go to trial and continually insisted on going to trial. He stated that he accepted the plea only because he was coerced and because his defense attorney falsely told him he would receive a 30-year prison sentence with day-for-day credit.

¶ 63 The defendant told the court that the defense attorney "made threats of violence to me over and over to the point I was extremely terrified by the way he spoke to me stating you're going to

die in prison, over and over, take time to think about this." The defendant repeated his claim that he told the defense attorney that he wanted to go to trial, but, according to the defendant, the defense attorney falsely told him his mother wanted him to take the plea. The defendant stated, "But the whole reason I pleaded guilty to this devastating, unforgettable crime that I am accused of doing is because my attorney *** promised me I'd receive thirty years at fifty percent, not fifty-five years at hundred percent." The defendant continued:

> "And, yes, I did see the negotiation plea agreement paper, but I didn't read it. At the time, my attorney *** just let me see the part stating at sentencing, the People will be allowed to argue for the maximum sentence of sixty years IDOC. Your Honor, right at that moment, I told him no, I want a trial, he gets up, leaves, comes back, tells me they're at thirty years at fifty percent. So I agreed, but I still didn't feel comfortable taking the plea, cause—cause, Your Honor, you're the Chief Judge, my Judge, and I know I could receive a fair trial from you.
>
> Your Honor, I prayed daily [sic] and night that you grant my motion to withdraw my guilty plea that I has [sic] no knowledge that I was pleading out to a thirty-to-sixty, meaning I can get no more than sixty and no less than thirty years."

¶ 64 When he finished reading his statement, his postplea counsel asked him, "So, all the reasons that you did plead guilty, I mean those are the reasons you just explained to the Court, is that right?" The defendant answered, "Yes, sir."

¶ 65 On cross-examination, the defendant agreed that when he pled guilty he told the court that he was taking medications, that he told the court that he understood everything that was going on, and that he told the court that he understood that he could go to trial. He also agreed that "[a]t no time *** did [he] tell the Judge that [his attorney] had been making threats of violence to [him]."

On redirect examination, the defendant did not contradict his admitted testimony at the plea hearing about taking medications and understanding the nature and purpose of the proceedings. Instead, the defendant explained that he did not ask the court any questions when the court gave him the opportunity because "[m]y attorney told me to be quiet, he would take care of it." The defendant did not present any further evidence.

¶ 66 The State called the defense attorney to testify about his conversations with the defendant leading up to the plea. The defense attorney testified that while he represented the defendant, he "repeatedly" explained the terms of the negotiations to him. He testified that based on his experience, it appeared that the defendant understood the terms of the plea as well as the possible sentence of natural life in prison if he went to trial. When asked about what measures he took to ensure the defendant's understanding and comprehension, the defense attorney testified:

> "I had always made sure that when we had any kind of a conversation I did not ask leading questions or anything calculated, to simply result in a yes or no answer.
>
> I took care to reduce my vocabulary as much as possible. And I always asked [the defendant] to repeat back to me in his own words what it is that we had just discussed to satisfy myself as to his comprehension of that."

¶ 67 The defense attorney stated that the defendant was able to articulate, in his own words, an accurate understanding of the sentencing range as a result of his plea as well as other conditions, including having to serve 100% of the sentence and possible treatment while in custody. He denied making any promises or threats, coercing the defendant in any way, or indicating that the sentence would be served at 50%. He testified that the first time the defendant indicated that he did not want to plead guilty was after the plea hearing and before the sentencing hearing.

¶ 68 The defense attorney stated that he did have a conversation with the defendant's mother during which he discussed the negotiated plea "at length" the day before the plea hearing, including its pros and cons. According to the defense attorney, the defendant's mother agreed that the plea was in the defendant's best interests and indicated that she would recommend it. The attorney testified about his conversations with the defendant after speaking with the defendant's mother as follows: "And we discussed all of the pros and cons of that, in particular, given what his mother's stance was and what she and I had discussed, as I relayed to [the defendant]. We ultimately decided yes, he did want to take that, yes, he thought that that was in his best interests. We went and we did the plea."

¶ 69 At the conclusion of the hearing, the circuit court denied the defendant's request to withdraw his plea. The court stated that it had reviewed the transcripts of the prior proceedings and concluded that there was nothing in the transcripts that supported the defendant's argument. The court told the defendant that it had advised him of the possible sentences and that the court was certain that the defense attorney did as well, adding "[y]ou knew what you were going to get." The court concluded, "There is no question in my mind that your plea was knowing and voluntary." The circuit court entered a written order denying the motion to withdraw the plea as follows:

> "The defendant produces no credible evidence to support allegations that his plea was coerced. He alleges that his lawyer lied about good time credits and conversations with defendant's mother. These are denied by his attorney ***[,] and [his attorney's] testimony is supported by the transcript. The record and testimony support a knowing and voluntary plea."

¶ 70 The defendant appealed the circuit court's order denying his motion to withdraw his guilty plea, but the defendant's postplea counsel failed to file a correct certificate of compliance required

by Illinois Supreme Court Rule 604(d) (eff. July 1, 2006). Specifically, the attorney's Rule 604(d) certificate did not state that the attorney consulted with the defendant with respect to any contentions of error the defendant might have with respect to sentencing. In a summary order entered on September 17, 2015, we vacated the circuit court's order denying the motion to withdraw the guilty plea and remanded the proceedings "for strict compliance with Rule 604(d)" and the filing of a new postplea motion if counsel concluded that a new motion was necessary.

¶ 71 On remand, the defendant's postplea counsel filed a motion to reconsider the sentence arguing that the 55-year prison sentence imposed was unduly harsh and not consistent with "alternatives available to the court to assist the defendant in his rehabilitation." The motion also alleged that the circuit court failed to give due consideration to mitigating factors.

¶ 72 On May 16, 2016, the circuit court conducted a hearing on the defendant's pending motions during which his postplea attorney filed the proper certificate required by Rule 604(d). The same judge who presided over the plea hearing presided over this hearing. With respect to the motion to withdraw the guilty plea, the postplea attorney asked the court to review the transcripts of the previous hearing and reconsider its prior ruling. Postplea counsel also argued the merits of the motion to reconsider the sentence, stating, in part, that "a lesser sentence would achieve the goals of rehabilitation and protect the community."

¶ 73 The defendant also addressed the court, during which he repeated his previous arguments for withdrawing the plea, including that he wanted to take his case to trial and that he thought he was only going to get a 30-year sentence. The defendant further told the court as follows:

> "Due to the fact because [the defense attorney] didn't never want to take me to trial because I was unfit. By me coming back from Chester Mental Health, I was unfit and I wasn't on the right medication. But now that I'm—I'm functioning better, I think I got a

better chance now because [the defense attorney] didn't want to take it because he kept telling them I wasn't ready because I was unfit, you know. But now that I've been taking my medicine, I'm properly functioning now, I think I should deserve a trial and with a trial lawyer, with my—with [postplea counsel]. I think he will take me to trial. [The defense counsel] never want to take me to trial."

¶ 74 On May 17, 2016, the circuit court entered an order denying the defendant's motion to withdraw his guilty plea. The court wrote in its order, "My observations of [the defendant] at his plea and his responses indicate the plea was intelligently made and was both knowing and voluntary." On March 21, 2017, the circuit court conducted another hearing on the defendant's motion to reconsider the sentence. After considering arguments from counsel, the court denied the motion.

¶ 75 The defendant now appeals the circuit court's denial of his request to withdraw his guilty plea and its denial of his motion to reconsider his sentence.

¶ 76 II. ANALYSIS

¶ 77 A. Motion to Withdraw the Guilty Plea

¶ 78 The first argument that the defendant raises is that the circuit court erred in denying his motion to withdraw his guilty plea because, according to the defendant, at the time of his plea, there existed a bona fide doubt of his fitness to stand for trial.

¶ 79 In Illinois, a defendant does not have an absolute right to withdraw his plea. People v. Hughes, 2012 IL 112817, ¶ 32. Instead, "[w]ithdrawal is appropriate where the plea was entered through a misapprehension of the facts or of the law or where there is doubt as to the guilt of the accused and justice would be better served through a trial." Id. The defendant has the burden of demonstrating sufficient grounds to allow withdrawal of the plea. People v. Kokoraleis, 193 Ill.

App. 3d 684, 691-92 (1990); see also People v. Rutledge, 212 Ill. App. 3d 31, 33 (1991). ("The defendant always bears the burden of proof in presenting [a motion to withdraw a guilty plea].")

¶ 80 1. Standard of Review

¶ 81 Generally, whether to grant or deny a motion to withdraw a guilty plea rests in the circuit court's sound discretion. People v. Hughes, 2012 IL 112817, ¶ 32. In the present case, however, the defendant raises grounds for withdrawing his plea that were not asserted in the circuit court. For example, the defendant argues that there was a bona fide doubt concerning his fitness when he pled guilty because, according to the defendant, the circuit court erred in finding that he had been restored to fitness. The defendant did not make this claim in the proceedings below. In addition, the defendant argues that there was a bona fide doubt concerning his fitness when he pled guilty because, at the plea hearing, the circuit court did not follow the "special provisions" that were required for his fitness. Again, the defendant did not argue this issue in the circuit court. The defendant asks us to review these claims under the plain error rule and conclude that there was a bona fide doubt of his fitness when he pled.

¶ 82 The plain error rule allows a reviewing court to review a forfeited error affecting substantial rights under one of two alternative prongs: (1) the evidence is so closely balanced that the conviction may have resulted from the error and not the evidence, or (2) the error is so serious that the defendant was denied a substantial right and a review of the forfeited error preserves the integrity of the judicial process. People v. Herron, 215 Ill. 2d 167, 178-79 (2005). Under both prongs the defendant has the burden of persuasion. People v. Reese, 2017 IL 120011, ¶ 69. If the defendant fails to carry his burden, the procedural default must be honored. People v. Naylor, 229 Ill. 2d 584, 593 (2008).

¶ 83 The first analytical step under either prong is to determine whether there was a clear or obvious error at trial. People v. Sebby, 2017 IL 119445, ¶ 49. If the defendant establishes a clear or obvious error, the next step depends on which prong the defendant has invoked. Id. ¶ 50. Here, the defendant asks us to review his arguments under the second prong of the plain error rule. "When the defendant claims second-prong plain error, a reviewing court must decide whether the defendant has shown that the error was so serious it affected the fairness of the trial and challenged the integrity of the judicial process." Id. If the defendant carries this burden, prejudice is presumed because of the importance of the right involved. Id.

¶ 84 In the present case, the foundation of the defendant's plain error claim is his fitness for trial when he pled. It is well established that the conviction of a person who is unfit to stand trial violates due process (Pate v. Robinson, 383 U.S. 375, 378 (1966)), and our supreme court has held that fitness for trial is a fundamental right (People v. Gipson, 2015 IL App (1st) 122451, ¶ 28). Accordingly, we will consider the defendant's arguments under second prong plain error standards.

¶ 85 As we stated at the outset of this decision, the supreme court requires us to consider "the totality of the circumstances" in evaluating fitness for trial. Stahl, 2014 IL 115804, ¶ 39. Also, in People v. Jamison, 197 Ill. 2d 135, 153 (2001), in the context of a review of the denial of a motion to withdraw a guilty plea, the supreme court held that a "circuit court's ruling on the issue of fitness will not be reversed unless it is against the manifest weight of the evidence." Likewise, in Stahl, the supreme court reviewed a circuit court's finding of unfitness after a fitness restoration hearing under the manifest weight of the evidence standard. Stahl, 2014 IL 115804, ¶ 25.

¶ 86 In the present case, at various stages of the lower court proceedings, the circuit court made findings relevant to the defendant's fitness. Under the standard of review set out in Jamison and

Stahl, in reviewing the totality of the circumstances, we must accept those findings as true unless they are against the manifest weight of the evidence.

¶ 87 2. Bona Fide Doubt of the Defendant's Fitness to Stand Trial

¶ 88 The circuit court initially found that the defendant was unfit to stand trial and remanded him to the Department for treatment. One year later, after a course of treatment and after a restoration hearing, the circuit court found that the defendant had been restored to fitness provided that special provisions were followed at his trial. On appeal, the defendant's first plain error argument is that the court erred when it found that he had been restored to fitness. Because of this error, the defendant argues, there is a bona fide doubt of his fitness when he subsequently pled guilty. We disagree.

¶ 89 (a) Circuit Court's Finding That the Defendant Was Restored to Fitness

¶ 90 When a defendant is adjudicated to be unfit to stand trial, as was the case here, there is a presumption that the defendant's unfitness remains until he has been adjudicated to be fit at a valid subsequent hearing. People v. Gillon, 2016 IL App (4th) 140801, ¶ 20. At a restoration hearing, the State has the burden of proving, by a preponderance of the evidence, that the defendant is fit for trial. People v. Phillips, 110 Ill. App. 3d 1092, 1099 (1982).

¶ 91 Here, at the restoration hearing, the circuit court considered: Dr. Cuneo's report on the defendant's fitness; the Department's report that the defendant had obtained fitness; a stipulation by the parties that, if called as a witness, Dr. Cuneo and the Department's psychiatrist would testify consistent with their reports; the defendant's testimony; and observations of the defendant's demeanor while he testified. Importantly, the parties stipulated that the experts would testify consistent with the contents of their reports; they did not stipulate to the ultimate issue of the defendant's fitness. See People v. Taylor, 409 Ill. App. 3d 881, 896 (2011) ("the defendant's fitness

may not be determined solely on the parties' stipulation to the expert's conclusions that defendant is fit to stand trial" (emphasis in original)).

¶ 92 In his report, Dr. Cuneo stated that the defendant had been medication compliant for four months and had stabilized. Dr. Cuneo described, with specificity, the defendant's ability to understand the nature and purpose of the proceedings against him as well as the different court personnel and their roles in court. Likewise, the circuit court questioned the defendant concerning his understanding of the proceedings and the court personnel involved in the process. The court witnessed the defendant's responses and demeanor firsthand, which could include observations of the defendant's body language, tone of voice, facial expressions, and other nonverbal indicators that are not reflected in the record before us. Dr. Cuneo recommended three special provisions to be used during the defendant's trial, and the circuit court incorporated those special provisions in its order finding that the defendant had been restored to fitness. The circuit court's finding was not against the manifest weight of the evidence.

¶ 93 The defendant argues that the restoration hearing was inadequate because the circuit court did not ask him enough questions and did not ask "follow up questions to gauge whether [he] genuinely understood the proceedings or was simply parroting learned terminology." The defendant also maintains that it was significant that he could not tell the circuit court who "Mr. Piper" was, and the court did not ask him any questions with respect to his understanding of plea bargaining. We disagree with the defendant's criticisms of the restoration hearing.

¶ 94 The circuit court asked the defendant to describe the purpose of the restoration hearing and the trial in his own words, and the defendant did so accurately. As we stated, the court also asked the defendant to explain the roles of the various court personnel in his own words. He was able to do so. Although the defendant could not specifically identify "Mr. Piper" as the prosecutor, the

defendant nonetheless knew that the prosecutor was "against" him. In fact, when asked about Mr. Piper, the defendant gave the appropriate response that Mr. Piper "didn't tell me who he was, sir." Nothing in the record suggests that the defendant, if fit, should be so familiar with Mr. Piper that he would be able to identify him by his name or know why he was in the courtroom. The defendant's inability to identify Mr. Piper is not compelling, particularly when the defendant knew the role of the prosecutor in the trial process.

¶ 95 The defendant told the court in his own words the purpose of the restoration hearing, the purpose of a trial, and the functions of the participants in the trial process. The circuit court's questioning was not inadequate. Although the circuit court did not ask the defendant specifically about his understanding of the plea-bargaining process, this fact does not undermine the circuit court's fitness finding. This is also particularly true when Dr. Cuneo reported that the defendant had a "very basic understanding of the concepts of plea bargaining."

¶ 96 The information in Dr. Cuneo's report provided the circuit court with a detailed explanation concerning the defendant's ability to observe, recollect, relay occurrences, and understand the trial process. The record of the restoration hearing supports a finding that the defendant had the ability to consult with counsel and had a rational understanding of the proceedings against him. Accordingly, because the finding was not against the manifest weight of the evidence, no error resulted from the circuit court's finding that the defendant was restored to fitness. See People v. Lewis, 103 Ill. 2d 111, 116 (1984) (court relied not only on stipulations that the experts would testify defendant was fit, but also on its observations of the defendant and a review of the psychological report); People v. Payne, 2018 IL App (3d) 160105, ¶ 16 (court reviewed fitness report, considered stipulation that doctor would testify consistently with it, and noted its finding was based on its observations of the defendant).

¶ 97 (b) Special Provisions

¶ 98 Next, the defendant argues that there is a bona fide doubt of his fitness when he pled guilty because, at the plea hearing, the circuit court committed plain error by failing to follow any of the "special provisions" recommended by Dr. Cuneo. The defendant argues, therefore, that we should reverse the circuit court's denial of his motion to withdraw his guilty plea under the plain error rule. After reviewing the totality of the circumstances contained within the record before us, we cannot find a bona fide doubt of the defendant's fitness when he pled guilty. Accordingly, the defendant has failed to establish that plain error occurred at the plea hearing.

¶ 99 As noted above, when the circuit court found that the defendant was restored to fitness, it found that the defendant was fit to stand trial "with special provisions as recommended by Dr. Cuneo." "Section 104-22 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/104-22 (West 2000)) recognizes that defendants with certain disabilities, who may otherwise be unfit to stand trial, may become fit if special provisions are made or assistance provided." People v. Jackson, 205 Ill. 2d 247, 284 (2001). "The case may proceed to trial only if the court determines that such provisions or assistance compensate for a defendant's disabilities so as to render the defendant fit ***." 725 ILCS 5/104-22(c) (West 2016).

¶ 100 The special provisions recommended by Dr. Cuneo were: that the defendant continue his psychotropic medication, that the vocabulary "be kept simple at the level of a nine to ten-year-old," and that the court use "periodic checks" during the trial to ensure that the defendant understood what was happening. During the "periodic checks," the defendant should "not be asked yes or no questions." Instead, "he should be asked to explain back in his own words what was happening." Dr. Cuneo stated that "[t]his demonstrated competence would ensure that he truly grasps what [was] happening in the court at that time."

¶ 101 Initially, we must note that, although the "special provisions" recommended by Dr. Cuneo are an important part of our inquiry, the special provisions in and of themselves do not establish a protected constitutional right. See, e.g., People v. Mitchell, 189 Ill. 2d 312, 326-27 (2000) (Statutory procedure concerning fitness for trial set out in section 104-21(a) of the Code (Ill. Rev. Stat. 1989, ch. 38, ¶ 104-21(a)) was a "procedure to be invoked purely by legislative design," and the defendant's right to that procedure was "wholly statutory," not constitutional. Therefore, a denial of a section 104-21(a) hearing was in and of itself not a constitutional violation.).

¶ 102 Because "the totality of the circumstances" controls a fitness determination, we cannot rely on any single factor in our analysis. Stahl, 2014 IL 115804, ¶ 39. As a result, we must consider not only the special provisions, but also all other relevant circumstances related to the defendant's fitness when he pled, including evidence of his knowledge and understanding of the charge, the proceedings, and the consequences of a plea; evidence of his knowledge and understanding of the functions of the participants in the trial process; evidence of his ability to observe, recollect, and relate occurrences; evidence of his ability to communicate with counsel; the circuit court's observations of his behavior and demeanor; medical evaluations reflecting his competence made near the time he pled; and any representations by defense counsel on the defendant's competence when he pled.

¶ 103 (i) Psychotropic Medications

¶ 104 Dr. Cuneo's first recommended special provision was that the defendant "continue with his psychotropic medication." We agree with the defendant that the circuit court could have made a better record at the plea hearing concerning the defendant's use of his psychotropic medications leading up to his plea. Nonetheless, when we consider the totality of the following circumstances,

we find no bona fide doubt of the defendant's fitness when he pled guilty but mentally ill and, therefore, no error stemming from the plea hearing.

¶ 105 First, on May 21, 2013, approximately four months before the defendant pled guilty, Dr. Cuneo evaluated the defendant to determine whether he was eligible for an insanity defense. According to Dr. Cuneo's report, the defendant had been refusing his medications, and the medications "were discontinued on January 24, 2013." However, the doctor noted in his report that the defendant was asking to be placed back on his psychotropic medications. Importantly, Dr. Cuneo did not report any concern about the defendant's fitness and did not indicate that the defendant had started to decompensate. Instead, the defendant was oriented in person, time, and place, and demonstrated his ability to observe, recollect, and relate occurrences, particularly those related to the offense. The defendant demonstrated his understanding of the nature of the proceedings against him and his ability to assist with his defense.

¶ 106 Specifically, the defendant explained that he understood that he was charged with three murders but insisted that he did not commit the murders. The defendant even suggested an alibi as follows: "I was in St. Louis. My family over there. I'm in St. Louis." The defendant also noted what he perceived to be a weakness in the State's eyewitness evidence against him, stating, "All they have is the kid. He eight then." The defendant also demonstrated his understanding of the trial process by stating, "They threw out my statement," which presumably was the statement he gave after waiving his Miranda rights. In addition, we note that the defendant was able to understand representations made by Dr. Cuneo with respect to Dr. Cuneo's limited confidentiality. The defendant was able to describe this concept in his own words after agreeing to the interview. The substance of Dr. Cuneo's report establishes that the defendant was fit for trial four months before

the plea, and this is a circumstance that we are obligated to consider in evaluating the totality of the circumstances.

¶ 107 Second, at the plea hearing, the circuit court asked the defendant whether he was currently taking any drugs or medication, and the defendant stated, "Yes, sir." The court asked the defendant whether the medication affected his ability to understand what he was doing, and the defendant responded, "No, sir." Isolated from the rest of the circumstances in the record, the defendant's testimony at the plea hearing with respect to his use of medications is not compelling as it relates to Dr. Cuneo's recommended special provisions. However, this testimony is only part of the totality of the circumstances consideration.

¶ 108 Third, two days after the defendant pled guilty, a probation officer interviewed the defendant at the St. Clair County jail for the purpose of preparing the presentencing report. During that interview, the defendant told the probation officer that he was seeing "the psychiatrist at the St. Clair County Jail and [was] taking medication for his mental health issues." (Emphasis added.) Also, the probation officer reported that he obtained information "from the St. Clair County Jail Infirmary [that] reveal[ed] [that] the defendant [was] currently taking medication for psychotic disorder." (Emphasis added.) When this information in the presentencing report is considered, the defendant's testimony at the plea hearing regarding his use of medications becomes more compelling as it relates to Dr. Cuneo's recommended special provisions.

¶ 109 Also, similar to Dr. Cuneo's May 2013 evaluation, the probation officer's interview of the defendant two days after he pled guilty confirmed the defendant's ability to observe, recollect, and relate occurrences; his ability to communicate with individuals involved in the trial process (the probation officer); his orientation as to time and place; and his recognition of persons and things. Specifically, the defendant was able to state the date and location of the defendant's birth, his

address immediately prior to his incarceration, that he had lived at that address for a year and a half, and that he had resided in the metro-east area his entire life. The defendant described the names and ages of the defendant's children, parents, and sister. The defendant knew where he had attended high school and that he did not graduate. The defendant described his lack of employment and that he was receiving disability in the amount of $650 per month. The defendant noted that he did not have any debts, did not have any savings or checking accounts, had never owned an automobile or real property, and never had a driver's license. The defendant was able to describe his medical history, including a gunshot wound, metal rods in his arm, and his diagnosed mental health issues. The substance of this interview, conducted two days after the plea, is part of the totality of the circumstances that we must consider with respect to the defendant's fitness.

¶ 110 Fourth, we also find it compelling that three days after he pled, the defendant prepared a pro se motion for new counsel, the substance of which confirmed his understanding of the proceedings against him and his ability to assist his counsel, i.e., the foundation of fitness for trial. In the pro se motion, the defendant alleged a breakdown of communication between himself and his attorney, cited counsel's obligation to "abide by a clients [sic] decision concerning the objectives of representation," and stressed that he wanted "to go to trial."

¶ 111 Although the defendant alleged that he did not understand his counsel "a lot of the time," he nonetheless demonstrated his understanding of the proceedings against him by alleging, "I informed [defense counsel] countless times I wanted to go to trial and he continually told me no, I needed to plea out." The defendant did not allege that he was unable to assist with his defense, but, instead, alleged that he and his counsel "were always in conflict about *** going to trial." The allegations of this pro se motion are in stark contrast to Dr. Cuneo's report of his interview of the defendant in March 2010, when the doctor found the defendant to be unfit for trial.

¶ 112 The substance of the pro se motion for new counsel, prepared three days after the plea, demonstrated the defendant's grasp of the legal process and the role of his attorney in the process. The allegations, by necessity, concede that he understood the nature and purpose of a trial because the defendant insisted that he wanted to go to trial. We also find it significant that the defendant did not allege in the motion that he was off his psychotropic medications when he pled, that he did not understand the nature and purpose of the proceedings against him, or that he was incapable of assisting defense counsel at trial.

¶ 113 Fifth, when the defendant first appeared in court for the sentencing hearing following the plea, the court allowed the defendant to argue his pro se motion for new counsel himself. The defendant argued the motion, which demonstrated his understanding of the nature and purpose of the proceedings against him and his ability observe, recollect, and relate occurrences. The defendant told the court that he thought he would be better off going to trial and that before the plea, he told defense counsel that he wanted to go to trial. When the court reminded the defendant that at the plea hearing it asked him whether he needed more time to consult with his attorney, the defendant responded, "I didn't take my medicine, so I didn't really—sometimes I comprehend and sometimes I don't." As noted above, however, two days after the plea, the defendant told the probation officer that he was taking his medicine, and the probation officer confirmed that the defendant was taking his medicine with the jail staff. In addition, although the defendant claimed not to have taken his medication, his argument established that, at the plea hearing, he was oriented to time and place, was able to observe, recollect, and relate occurrences, and understood the nature of the proceedings against him. If not, he would not have been able to tell the court that he had adamantly wanted to go to trial prior to his plea. The defendant's in-court arguments in support of his pro se motion for new counsel undermine his claim on appeal.

¶ 114 Sixth, when the defendant filed his pro se motion to withdraw his guilty plea after sentencing, he again did not claim that he was off his medications when he pled. Instead, the defendant alleged that, as grounds for withdrawing his plea, his attorney pressured him into pleading guilty when he wanted to go to trial. Like the allegations in the pro se motion for new counsel, this allegation necessarily includes the premise that the defendant understood the nature and purpose of a trial, understood that he had the option of going to trial, and believed he could assist defense counsel and had a great chance at defeating the charges against him at trial. Importantly, according to the defendant, he understood all of this at the time of the plea but pled guilty due to coercion and false information from his attorney with respect to the sentence he would receive if he pled. Therefore, the substance of the defendant's allegations in his pro se pleading contradicts his claim on appeal of a bona fide doubt of fitness when he pled.

¶ 115 Seventh, at the March 18, 2014, hearing on the motion to withdraw his plea, the defendant testified by reading a prepared statement that set out the factual basis for his request to withdraw the plea. The defendant's factual basis for withdrawing his plea did not include a claim that he was off of his medications and that, as a result, he could not understand the nature and purpose of the plea hearing or the plea-bargaining process or that he was unable to assist with his defense had the case gone to trial. Instead, during his testimony, the defendant said he saw "the negotiation plea agreement paper, but [that he] didn't read it." He told the court that his attorney only let him see "the part stating at sentencing, the People will be allowed to argue for the maximum sentence of sixty years IDOC," at which time he told the defense attorney that he wanted to go to trial. Then, the defendant claimed, the defense attorney "gets up, leaves, comes back, tells me they're at thirty years at fifty percent. So I agreed."

¶ 116 This testimony contradicts any claim that the defendant did not understand the plea-bargaining process when he pled. The substance of his testimony is that he understood the process and made demands on how to proceed during the process.

¶ 117 The supreme court has stated, "[i]f the defendant does understand the nature and object of the charges against him and can, in co-operation with his counsel, conduct his defense in a rational and reasonable manner, then he is mentally competent to stand trial although upon other subjects his mind may be unsound." Withers v. People, 23 Ill. 2d 131, 135 (1961). When we consider the totality of the circumstances set out above, the defendant has failed to establish a bona fide doubt as to his fitness based upon his argument that the circuit court failed to inquire of the defendant whether he was on his medications prior to the plea. The totality of the circumstances establishes that the defendant understood the nature and object of the charges against him and could, in co-operation with his counsel, conduct his defense in a rational and reasonable manner. Accordingly, the record establishes that he was mentally competent to stand trial.

¶ 118 (ii) Simplified Language and Periodic Checks During the Trial

¶ 119 In addition to medications, Dr. Cuneo's "special provisions" also included the use of simplified vocabulary and "periodic checks" during the trial. The purpose of these "periodic checks" was to ask the defendant questions to ensure that he understood "what [was] happening in the court at that time." Dr. Cuneo recommended that during the periodic checks, the defendant not be asked yes or no questions and that he "be asked to explain back in his own words what was happening" to ensure his understanding.

¶ 120 At the plea hearing, the circuit court asked the defendant "yes" or "no" questions with respect to his understanding of the potential sentences if he chose to go to trial or, alternatively, if he chose to plead guilty. The circuit court also asked "yes" or "no" questions concerning the

defendant's understanding of the rights he was giving up as a result of his plea. The circuit court did not ask the defendant to explain back anything in his own words. The defendant argues that this procedure created a bona fide doubt as to his fitness because it was contrary to Dr. Cuneo's recommended special provisions. Based on the totality of the circumstances, we disagree.

¶ 121 First, we note that because the defendant did not go to trial, Dr. Cuneo's suggestion of "periodic checks" during a trial could not be implemented. The defendant pled guilty and there was no trial.

¶ 122 Second, if we adopt a judicially modified version of Dr. Cuneo's special provisions for purposes of a plea hearing, rather than a trial, the totality of the circumstances before us still does not support a finding of a bona fide doubt of the defendant's fitness when he pled. In addition to the facts that we have outlined in detail above, we note that Dr. Cuneo's recommendations did not specify who was required to ask the defendant to explain the proceedings in his own words during the trial, or in this case, the plea-bargaining process. Although the court asked the defendant "yes" or "no" questions and did not ask the defendant to explain anything in his own words, the record establishes that the defense attorney did ask questions of the defendant to ensure that the defendant understood the process. The record also establishes that defense counsel implemented Dr. Cuneo's special provisions during the plea-bargaining process, ensuring the defendant's understanding of the process and the consequences of his plea.

¶ 123 Specifically, the defense attorney testified at the hearing on the motion to withdraw the plea that he "repeatedly" explained the terms of the plea negotiations to the defendant. He testified that based on his experience, it appeared that the defendant understood the terms of the plea as well as the possibility of natural life in prison if he went to trial on all three murders. Importantly,

with respect to application of Dr. Cuneo's special provisions during the plea-bargaining process, the defense attorney testified:

> "I had always made sure that when we had any kind of a conversation I did not ask leading questions or anything calculated, to simply result in a yes or no answer.
>
> I took care to reduce my vocabulary as much as possible. And I always asked [the defendant] to repeat back to me in his own words what it is that we had just discussed to satisfy myself as to his comprehension of that."

¶ 124 The defense attorney stated that the defendant was able to articulate, in his own words, an accurate understanding of the sentencing range as a result of his plea, as well as other conditions, including having to serve 100% of the sentence and possible treatment while in custody. This testimony establishes that Dr. Cuneo's special provisions, which he recommended for a trial, not for a plea, were nonetheless followed during the plea-bargaining process.

¶ 125 At the hearing on the motion to withdraw the guilty plea, the circuit court found the defense attorney's testimony to be credible. For hearings on motions to withdraw guilty pleas, as with most criminal proceedings, the determination of witness credibility rests with the trier of fact. People v. Mercado, 356 Ill. App. 3d 487, 497 (2005) (the trial court "bears the burden of assessing the credibility of witnesses who testify at a hearing on a motion to withdraw a guilty plea"). Nothing in the record allows us to second-guess the circuit court's finding with respect to the defense attorney's credibility. Accordingly, for purposes of evaluating the totality of the circumstances, we must accept as true the defense attorney's testimony that during plea bargaining, he did not ask the defendant "yes" or "no" questions, that he reduced his vocabulary as much as possible, and that he always asked the defendant to repeat back in his own words what they had discussed to ensure that the defendant understood the plea-bargaining process and the terms of the plea bargain.

We must accept as true that "the defendant was able to articulate, in his own words, an accurate understanding of the sentencing range as a result of his plea as well as other conditions, including having to serve one hundred percent of the sentence and possible treatment while in custody." Under these facts, the defendant has not carried his burden of persuasion under the plain error rule because the record shows no bona fide doubt as to his fitness when he pled guilty.

¶ 126 Third, as part of the totality of the circumstances before us, we note that the same judge who presided over the plea hearing presided over the hearing on the motion to withdraw the plea. The judge noted that his "observations of [the defendant] at his plea and his responses indicate[d] the plea was intelligently made and was both knowing and voluntary." As we stated above, the circuit court's observations include the defendant's demeanor, tone of voice, facial expressions, and other nonverbal indicators that are not available for us to review from the record. Although not controlling, the circuit court's observations of the defendant's demeanor are part of the totality of the circumstances relevant to a defendant's fitness that we must consider. The trial court is in the best position to observe the defendant and evaluate his conduct. People v. Tolefree, 2011 IL App (1st) 100689, ¶ 53.

¶ 127 In support of his argument, the defendant cites People v. Shanklin, 351 Ill. App. 3d 303, 306 (2004), where the court found a bona fide doubt of a defendant's fitness to plead because the record indicated that the "defendant may not have been able to fully comprehend what was being verbally communicated to him either by counsel or the trial court as to the consequences of a guilty plea." The Shanklin court noted that, "[w]hen confronted by a defendant who may be mentally [impaired], the trial court and both prosecution and defense may not simply rely on affirmative answers to rote questions to conclude the defendant understands the proceedings and the consequences of his plea." Id. at 307.

¶ 128 For the reasons we have explained above, Shanklin is distinguishable and not persuasive. In the present case, defense counsel did "not simply rely on affirmative answers to rote questions" during the plea-bargaining process. In addition, the totality of the circumstances in the record before us establishes that the defendant understood the legal process and could assist his counsel when he pled. In Shanklin, the defendant's attorney did not investigate the defendant's mental disability or bring it to the attention of the circuit court. Id. at 308. Here, it was the defense attorney who brought the defendant's fitness to the attention of the circuit court in the first instance, raising a bona fide doubt of the defendant's fitness at the very beginning of the proceedings below. In Shanklin, the court found that the defendant may not have fully comprehended what was being verbally communicated to him. Id. at 306. In contrast, in the present case, the circuit court found defense counsel credible when he testified that the defendant "was able to articulate, in his own words, an accurate understanding of the sentencing range as a result of his plea as well as other conditions, including having to serve one hundred percent of the sentence and possible treatment while in custody."

¶ 129 We believe People v. Tapscott, 386 Ill. App. 3d 1064 (2008), is closer to the facts of this case than Shanklin. In Tapscott, the court noted similarities with Shanklin in that the defendant in Tapscott had a deficient range of intelligence, a weakness in vocabulary, depression and anxiety disorders, attention deficit hyperactivity disorder, and was emotionally younger than his age, with difficulty in expressing himself. Id. at 1077. The court, however, found no bona fide doubt of the defendant's fitness when he pled guilty where the attorney who represented the defendant when he pled testified that the defendant was slow and that he sometimes had to explain things to him more than once, but that he saw no indication that defendant did not understand the proceedings. Id. In addition, the Tapscott court noted that after sentencing, the defendant wrote the trial court

that he wanted to withdraw his plea and filed a pro se motion to withdraw his plea alleging that his defense attorney provided him with ineffective assistance of counsel. Id. At the hearing on the motion to withdraw the plea, the defendant testified that he wanted his attorney to file a motion for a substitution of judge because the judge was prejudiced against him and that the defense attorney failed to investigate the case to his satisfaction because he failed to interview certain witnesses. Id. The Tapscott court found that the defendant's testimony at the hearing on the motion to withdraw his plea "demonstrated his grasp of the legal process." Id. The court also concluded that the record "clearly illustrate[d] that defendant understood the nature of the proceedings." Id. at 1078.

¶ 130 In the present case, like the Tapscott court, we find that the defendant's postplea pro se pleadings and his testimony at the hearing on his motion for new counsel and at the hearing on his motion to withdraw his plea "demonstrated his grasp of the legal process" at the time of his plea. Id. at 1077. The totality of the circumstances in the record before us "clearly illustrates that defendant understood the nature of the proceedings." Id. at 1078.

¶ 131 (iii) Monthly Checks

¶ 132 Lastly, the defendant argues that a bona fide doubt of his fitness existed when he pled guilty but mentally ill because the circuit court did not conduct "monthly checks" after finding him restored to fitness. We note that this "special provision" was not recommended by Dr. Cuneo but was set out by the circuit court during its oral pronouncement from the bench at the restoration hearing. Its written order did not include this requirement, and the circuit court never specified any specific procedures for conducting these monthly checks.

¶ 133 Although the defendant claims that the monthly checks were never done, nothing in the record establishes this fact. Instead, the record establishes that the defendant was in the continual care of a psychiatrist while in custody in the St. Clair County jail. In addition, after being found

fit, the defendant made numerous appearances in court during which the judge who found that the defendant was restored to fitness was able to observe the defendant's demeanor and question him about his agreement to various continuances. Because the judge was aware of the issues surrounding the defendant's fitness, we are confident that the judge scrutinized the defendant's demeanor on every occasion the defendant appeared in court. The record indicates that the defendant was appropriate and responsive to all of the court's questions throughout the proceedings.

¶ 134 In addition, Dr. Cuneo evaluated the defendant twice after the defendant was found fit, once to determine the defendant's capacity to waive his Miranda rights and once, four months before the defendant pled guilty, to determine whether the defendant was entitled to an insanity defense. As previously explained, Dr. Cuneo's documented conversation with and evaluation of the defendant four months prior to the plea support a finding that the defendant remained fit after being restored to fitness.

¶ 135 Finally, as stated previously, we note that it was the defense attorney who brought the defendant's fitness to the attention of the circuit court in the first instance. Nothing in the record suggests that counsel did not continually monitor the defendant for any doubts of his fitness after he was found restored to fitness. Defense counsel did not raise any issue of defendant's fitness after the restoration hearing. "We assume *** that this silence meant that defense counsel had little, if any, concern about defendant's fitness." People v. Meyers, 367 Ill. App. 3d 402, 413 (2006). See also People v. Rangel, 104 Ill. App. 3d 695, 699 (1982) (court presumed that the defendant's trial attorneys would have informed the trial court if they had doubts about the defendant's fitness). Based on the totality of all the other circumstances in the record, we cannot presume that no one conducted periodic checks concerning the defendant's fitness.

¶ 136 B. Ineffective Assistance of Counsel

¶ 137 The defendant's final argument with respect to his motion to withdraw his guilty plea is that both defense counsel and postplea counsel were constitutionally ineffective in failing to raise an independent bona fide doubt about his fitness at the plea hearing and in failing to require the special provisions to be followed at the plea hearing. The defendant further argues that postplea counsel was ineffective in failing to present evidence to support a bona fide doubt of the defendant's fitness at the postplea hearings.

¶ 138 We evaluate a defendant's claim of ineffective assistance of counsel under the two-prong test set forth in Strickland v. Washington, 466 U.S. 668 (1984), and adopted by the supreme court in People v. Albanese, 104 Ill. 2d 504 (1984). People v. Moore, 356 Ill. App. 3d 117, 121 (2005). "Under this test, a defendant must demonstrate that counsel's performance fell below an objective standard of reasonableness, and a reasonable probability exists that, but for counsel's unprofessional errors, the result of the proceeding would have been different." People v. Henderson, 2013 IL 114040, ¶ 11. "This means the defendant must show that counsel's errors were so serious, and his performance so deficient, that he did not function as the 'counsel' guaranteed by the sixth amendment." People v. Perry, 224 Ill. 2d 312, 342 (2007).

¶ 139 Here, the defendant has failed to establish ineffective assistance of counsel because the record does not establish a bona fide doubt of his fitness for trial. As the defendant correctly states in his brief, in the context of counsel's failure to request a fitness hearing, a defendant must show facts raising a bona fide doubt of his ability to understand the nature and purpose of the proceedings against him or assist in his defense when he pled and that there is a reasonable probability that a fitness hearing would have resulted in a finding that he was unfit. People v. Harris, 206 Ill. 2d 293, 304 (2002); Mitchell, 189 Ill. 2d at 334. As we have explained, under the

record before us, the defendant has not established facts raising a bona fide doubt of his fitness when he pled. Accordingly, the defendant's claim of ineffective assistance of counsel has no merit.

¶ 140 In conclusion, no error occurred at the plea hearing that affected the ultimate fairness of the defendant's plea or the integrity of the judicial process. The defendant has not established that the ends of justice require the withdrawal of his guilty plea. Accordingly, we affirm the circuit court's denial of the defendant's request to withdraw his guilty plea.

¶ 141 C. The Defendant's Sentence

¶ 142 The defendant's final argument on appeal concerns his sentence. His argument is, in essence, twofold: (1) that the court abused its discretion in sentencing him in light of the relevant mitigating and aggravating factors and (2) that his sentence is unconstitutional under the eighth amendment to the United States Constitution and the proportionate penalties clause of the Illinois Constitution. We disagree.

¶ 143 1. Abuse of Discretion

¶ 144 The Illinois Constitution requires sentencing courts to determine sentences according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship. Ill. Const. 1970, art. I, § 11. To comport with constitutional sentencing requirements, the legislature enacted procedures setting out aggravating and mitigating factors that a trial court is to consider when making a sentencing decision. 730 ILCS 5/5-5-3.1, 5-5-3.2 (West 2016). The defendant argues that his 55-year prison sentence is excessive considering his youth, difficult upbringing, mental health issues, and rehabilitation potential.

¶ 145 A circuit court's determination of the appropriate sentence involves considerable judicial discretion and is a determination that we cannot reverse unless we find that it was an abuse of discretion. People v. Stacey, 193 Ill. 2d 203, 209-10 (2000). The supreme court requires we give

the circuit court "great deference" because it is "generally in a better position than the reviewing court to determine the appropriate sentence." Id. at 209. The circuit court "has the opportunity to weigh such factors as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age." Id. Accordingly, the supreme court has directed us not to substitute our judgment for that of the circuit court merely because we could have weighed these factors differently. Id.

¶ 146 In the present case, the circuit court did not abuse its discretion in sentencing the defendant to 55 years in prison. The sentencing range for a conviction of one count of first degree murder with a deadly weapon was 20 to 60 years of imprisonment. 730 ILCS 5/5-4.5-20(a)(1) (West 2016). Pursuant to the plea agreement, the defendant could argue for no less than 30 years. The sentence that the circuit court imposed was five years below the maximum sentence the defendant could receive. Pursuant to the plea agreement, the State's factual basis for the plea included the shooting deaths of three people, and the court considered victim impact statements from the families of all three victims. If the defendant had been convicted of the shooting deaths of all three victims, the court would have been required to sentence the defendant to natural life in prison. Id. § 5-8-1(a)(1)(c)(ii). At the sentencing hearing, the circuit court listened to and considered mitigating factors articulated by the defense attorney and aggravating factors set out by the prosecutor.

¶ 147 In mitigation, the defense attorney asked the court to focus on the defendant's mental illness. The defense attorney emphasized the psychological reports in the record and that the defendant pled guilty but mentally ill. Defense counsel also asked the sentencing court to consider the defendant's potential for rehabilitation with mental health treatment and that the defendant

"thinks as a kid." Defense counsel asked for a 30-year sentence, the minimum sentence he could request under the plea agreement.

¶ 148 In aggravation, the State described how the defendant gunned down three young mothers while they sat in a car with their children. The State noted the defendant's criminal history, which included two prior felony convictions. The defendant had received probation for previous offenses but was subsequently sentenced to 20 months in prison when the court revoked his probation. The defendant had been discharged from prison only nine months before murdering the victims in this case. The State emphasized the need to protect the community, acknowledged that the court must consider the defendant's rehabilitation potential, but emphasized that the defendant's rehabilitation potential was minimal to nonexistent and did not outweigh the seriousness of the offense. The State also asked the court to consider the effect of the crime on the victims' families as reflected in the victim impact statements. The State asked the court to sentence the defendant to 60 years of imprisonment, the maximum sentence under the plea agreement.

¶ 149 In handing down the 55-year sentence, the sentencing court noted that it had reviewed the presentencing investigation report and the psychological reports and had considered the aggravating and mitigating factors set out by the attorneys. The court agreed with the State's aggravating factors and the defense's mitigating factors and stated that it would consider the murder of all three victims in imposing the sentence. The court gave the defendant credit for having a mental illness and for accepting responsibility and pleading guilty. However, the court also commented on the senselessness of the murders and concluded that the defendant's mental illness did not excuse his actions because he knew what he was doing when he shot the victims. The psychological reports that the circuit court considered included Dr. Cuneo's May 21, 2013, report. Although the defendant was intellectually limited, Dr. Cuneo concluded that the defendant knew

"that shooting someone [was] wrong and could cause death," and he could have "controlled his behavior if he so desired." The circuit court found that there was little likelihood that the defendant would be rehabilitated.

¶ 150 On appeal, the defendant's appellate counsel has highlighted the mitigating factors that could favor a lighter sentence had the sentencing court weighed those factors differently. The defendant argues that the sentencing court failed to consider or acknowledge factors such as his age, childhood, and social environment. However, these facts were before the sentencing court, and the defense attorney argued the applicable statutory mitigating factors as justification for a 30-year sentence. A sentencing court "need not expressly indicate its consideration of mitigating factors and, absent evidence to the contrary, is presumed to have considered mitigating factors brought before it." People v. Wright, 272 Ill. App. 3d 1033, 1046 (1995).

¶ 151 Based on the record before us, we decline to reverse or revise the defendant's sentence by reweighing any aggravating or mitigating factors. It is within the trial court's discretion to determine what significance is given to each aggravating and mitigating factor. People v. Saldivar, 113 Ill. 2d 256, 270-71 (1986). In addition, we cannot "take the trial court's findings lightly and cherry-pick from the record to support a reduction of sentence." People v. Vijerina, 381 Ill. App. 3d 1024, 1040 (2008).

¶ 152 Here, the record is more than sufficient to support the circuit court's sentence. The defendant gunned down three young mothers in front of their children while they sat defenseless inside a parked car. The brutal and tragic nature of this senseless crime cannot be overstated under any interpretation of the record. None of the cases cited by the defendant in support of his argument are factually similar. Under the facts of this case, a 55-year sentence of imprisonment for first

degree murder was not an abuse of discretion; therefore, we are obligated to affirm the sentence under the abuse of discretion standard.

¶ 153 2. Constitutionality

¶ 154 The defendant's final argument is that his sentence is unconstitutional. He asks us to apply Miller v. Alabama, 567 U.S. 460 (2012), and its progeny to the facts of this case and hold that his 55-year sentence is a de facto life sentence and that, due to his age and limited intellectual capabilities, the de facto life sentence is unconstitutional under the eighth amendment to the U.S. Constitution and under the proportionate penalties clause of the Illinois Constitution.[2] Miller, and the cases that have applied Miller, have focused on the constitutional requirements of the procedure for imposing a life sentence in certain circumstances, not the constitutionality of a life sentence itself. In the present case, the procedure the circuit court followed in imposing its sentence complied with constitutional requirements. Accordingly, we reject the defendant's as-applied[3] constitutional challenge to his sentence.

¶ 155 In Miller, the United States Supreme Court held that a sentencing scheme that mandates life in prison without the possibility of parole for juvenile offenders violates the eighth amendment to the United States Constitution. Id. at 478-79. Specifically, the Court's concern was with proportionate punishment. Id. at 470. The Court's reasoning was based on a conclusion that children were different than adults for purposes of sentencing; they were less deserving of punishment because of their diminished culpability and greater prospects of reform. Id. at 471. The

[2]The Illinois Supreme Court has held that the eighth amendment to the U.S. Constitution and the proportionate penalties clause in the Illinois Constitution are "co-extensive" (People v. Patterson, 2014 IL 115102, ¶ 106), and it has applied eighth amendment precedent to decide proportionate penalties cases (People v. Coty, 2018 IL App (1st) 162383, ¶ 58).

[3]The defendant has raised an as-applied constitutional challenge. An "as-applied challenge requires a showing that the statute is unconstitutional as it applies to the specific facts and circumstances of the challenging party." People v. Harris, 2018 IL 121932, ¶ 38. "By definition, an as-applied constitutional challenge is dependent on the particular circumstances and facts of the individual defendant or petitioner." People v. Thompson, 2015 IL 118151, ¶ 37.

Court held that the eighth amendment required a sentencing court to examine all circumstances, including facts related to a youth's diminished culpability, before concluding that a life without any possibility of parole was the appropriate penalty for a juvenile offender. Id. at 479. The Court stated, "the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders." Id.

¶ 156 The statute in Miller mandated a life sentence for the juvenile offender; therefore, the Court held that the procedure for implementing the life sentence was unconstitutional because it did not allow the sentencing court to consider the characteristics specific to juveniles as mitigating factors. Importantly, we note that the Miller Court did not hold that a life sentence for a juvenile could never be appropriate. Id. at 480 ("Although we do not foreclose a sentencer's ability to [impose a life sentence for juvenile offenders] in homicide cases, we require it to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison."). See also People v. Holman, 2017 IL 120655, ¶ 51 ("[n]othing in this [c]ourt's jurisprudence or Miller held that a natural life sentence may never be appropriate" (emphasis in original and internal quotation marks omitted)).

¶ 157 In Holman, the Illinois Supreme Court expanded on the Miller decision, holding that a discretionary life sentence for a juvenile offender is also unconstitutional under the eighth amendment unless the sentencing court, prior to sentencing, considers the characteristics specific to juveniles that were articulated by the Supreme Court in Miller. Holman, 2017 IL 120655, ¶ 46. Again, the issue in that case was whether the procedure for arriving at the sentence was constitutional, not the sentence itself.

¶ 158 In People v. Coty, 2018 IL App (1st) 162383, appeal allowed, No. 123972 (Ill. Jan. 31, 2019), the appellate court extended "the Miller line of cases" to adults with intellectual disabilities

who receive discretionary de facto life sentences. Id. ¶¶ 75-76. Again, the court's focus in that case was on the procedure that resulted in the de facto life sentence, not the sentence itself. Id. ¶ 56 ("We hold that this procedure resulted in constitutional error." (Emphasis added.)). The Coty court held that the sentencing hearing in that case was constitutionally deficient because the record was insufficient for the sentencing court "to assess the unique factors that can impact the culpability of the intellectually disabled." Id.

¶ 159 As stated, in the present case, the defendant asks us to expand the Miller line of cases to de facto life sentences of adults with intellectual disabilities. Whether the 55-year sentence in the present case involves a de facto life sentence is disputed by the parties. In addition, the expansion of the Miller line of cases to adults with intellectual disabilities has not been conclusively established in Illinois, as that issue is currently before the supreme court in Coty. Nonetheless, in the present case, we need not decide these disputed legal issues because, even if we assume that the defendant's sentence is a de facto life sentence, and that Miller reasoning applies in this case, the procedure that the circuit court utilized in reaching its sentence complied with the constitutional requirements set out in Miller. Accordingly, we are obligated to affirm the defendant's sentence on constitutional grounds, even if we apply the reasoning of the Miller line of cases.

¶ 160 In reaching this conclusion, Holman guides our analysis. In Holman, after concluding that the Miller court's analysis applied to the discretionary life sentence for the juvenile defendant in that case, the supreme court then proceeded to a second step in its analysis, which was an evaluation of the procedure utilized by the lower court. The court stated: "A court revisiting a discretionary sentence of life without parole must look at the cold record to determine if the trial court considered [the characteristics specific to juveniles] at the defendant's original sentencing hearing. We must decide whether the trial court did so here." Holman, 2017 IL 120655, ¶ 47. After

conducting this analysis, the Holman court held that the defendant's sentencing hearing in that case complied with the requirements of Miller because, at sentencing, the lower court did consider mitigating circumstances of the defendant's youth. Id. ¶ 50. This portion of the Holman court's analysis is relevant in the present case because, even if we apply Miller and its progeny in this case, we must still look at the "cold record" of the sentencing hearing and determine whether the circuit court considered the characteristics specific to adults with intellectual disabilities. Id. ¶ 47.

¶ 161 In Holman, when conducting this second step of its analysis, the supreme court noted that the sentencing court in Holman "explicitly stated" that it considered the trial evidence, the presentencing investigation report (PSI), and evidence and arguments from the sentencing hearing. Id. ¶ 48. The sentencing court knew that the defendant was 17 at the time of the offense, and both parties highlighted his age in their arguments at sentencing. Id. The court also noted that "[t]he PSI and the psychological reports provided some insight into [the defendant's] mentality" and included "information about the defendant's family." Id. "The PSI alerted the [sentencing court] to the defendant's susceptibility to peer pressure, as well as his low intelligence and possible brain damage from a head injury." Id. Although the defendant claimed that the sentencing court did not consider any mitigating circumstances of his youth, the Holman court noted that "the defendant had every opportunity to present evidence to show that his criminal conduct was the product of immaturity and not incorrigibility" but he chose "to offer nothing." Id. ¶ 49. The court concluded that the sentencing court considered some evidence related to the Miller factors, but had significant factors to consider in aggravation. The court stated that the sentencing court knew the relevant facts, concluded that the defendant's conduct placed him beyond rehabilitation, and sentenced him to life without parole. Id. ¶ 50. The Holman court, therefore, held that the defendant's sentence "passes constitutional muster under Miller." Id.

¶ 162 Likewise, in the present case, similar to the sentencing court in Holman and as we have extensively set out above, the circuit court explicitly stated that in sentencing the defendant, it considered the presentencing report, evidence and arguments of counsel, and the numerous psychological reports contained within the record. This record was sufficient for the circuit court to make a proper assessment of the defendant's culpability in light of his age and intellectual disability, and the court did so. The record included detailed psychological evaluations that the circuit court expressly stated it reviewed and considered in imposing its sentence. The defense attorney argued the mitigating factors, including the defendant's mental illness and rehabilitation potential, and the circuit court stated it considered those arguments in imposing the sentence. Dr. Cuneo reported that the defendant was mentally ill but that he was able to appreciate the criminality of his conduct and to conform to the requirements of the law. Nonetheless, the court gave the defendant "some credit for the fact that [he was] mentally ill."

¶ 163 In contrast, in Coty cited by the defendant, the sentencing court lacked a record sufficient to assess the unique factors that can impact the culpability of the intellectually disabled. Coty, 2018 IL App (1st) 162383, ¶ 56. Specifically, in Coty, the court noted that at sentencing, the record "was void of any information about the state of the attributes of the defendant's intellectual disability" at the time of sentencing. Id. ¶ 86. The PSI ordered for the sentencing hearing "contained no reference whatsoever to the defendant's intellectual disability." Id. Because the sentencing court was without "an iota" of evidence concerning the defendant's intellectual disabilities, the Coty court concluded that the sentencing hearing lacked "the procedural safeguards" required by Miller and its progeny and remanded for a new sentencing hearing.

¶ 164 Unlike the facts in Miller and in Coty, here, the sentencing court considered the facts in mitigation and exercised its discretion in imposing the sentence. In addition, as we stated above,

the circuit court did not abuse its discretion in evaluating those factors. The defendant's sentencing hearing included the procedural safeguards that were lacking in Miller and in Coty. Accordingly, the defendant's sentence is not unconstitutional under the eighth amendment to the U.S. Constitution or the proportionate penalties clause of the Illinois Constitution.

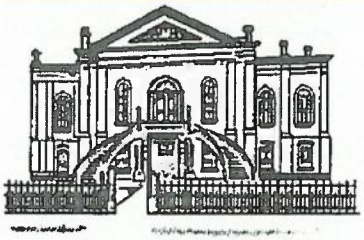
¶ 165 III. CONCLUSION

¶ 166 For the foregoing reasons, we affirm the defendant's conviction and sentence.

¶ 167 Affirmed.

APPENDIX B

JOHN J. FLOOD
CLERK
(618) 242-3120



APPELLATE COURT, FIFTH DISTRICT
14TH & MAIN ST., P.O. BOX 867
MT. VERNON, IL 62864-0018

February 11, 2020

Office of the State Appellate Defender, Fifth District
909 Water Tower Circle
Mt. Vernon, IL 62864

RE: People v. Lattimore, Milton
General No.: 5-17-0194
County/Agency: St. Clair County
Trial Court/Agency No: 09CF1306

Pursuant to the attached order, the court today denied the petition for rehearing filed in the above entitled cause. The mandate of this Court will issue 35 days from today unless a petition for leave to appeal is filed in the Illinois Supreme Court.

Clerk of the Appellate Court

c: St. Clair County Circuit Court
State's Attorney's Appellate Prosecutor, Fifth District

FILED
February 11, 2020
APPELLATE
COURT CLERK

5-17-0194

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. MILTON LATTIMORE, Defendant-Appellant.	St. Clair County Trial Court/Agency No.: 09CF1306

ORDER

This cause has been considered on defendant-appellant's petition for rehearing and the court being advised in the premises:

IT IS THEREFORE ORDERED that the petition for rehearing be, and the same hereby is, denied.

APPENDIX C

SUPREME COURT OF ILLINOIS
SUPREME COURT BUILDING
200 East Capitol Avenue
SPRINGFIELD, ILLINOIS 62701-1721
(217) 782-2035

FIRST DISTRICT OFFICE
160 North LaSalle Street, 20th Floor
Chicago, IL 60601-3103
(312) 793-1332
TDD: (312) 793-6185

November 24, 2021

In re: People State of Illinois, respondent, v. Milton Lattimore, petitioner.
Leave to appeal, Appellate Court, Fifth District.
125864

The Supreme Court today DENIED the Petition for Leave to Appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on 12/29/2021.

Very truly yours,

Carolyn Taft Grosboll

Clerk of the Supreme Court

APPENDIX D

5/

Daniel J. Cuneo, Ph. D.
Clinical Psychologist
2217 West Main Street
Belleville, Illinois 62226
618-277-5498 phone/ 618-235-4316 fax

March 18, 2010

The Honorable Milton Wharton
Twentieth Judicial Circuit
St. Clair County Building
10 Public Square
Belleville, Illinois 62220

Re: Milton Lattimore, Sr.
09-CF-1306

Dear Judge Wharton:

Pursuant to court order on March 15, 2010 I evaluated Mr. Milton Lattimore, Sr., at St. Clair County Jail for the purpose of establishing an opinion as to his fitness to stand trial. Milton Lattimore, Sr., is a 21-year-old (July 7, 1988), African American, single male who is charged with three counts of First Degree Murder.

In addition to my interview with Mr. Lattimore, I administered to him the Wechsler Adult Intelligence Scale - III for the purpose of assessing his intellectual abilities. I spoke with Ms. Rose Best, Mr. Lattimore's mother, to gather additional information about her son's functioning. I reviewed his clinical files at St. Clair County Jail. Finally, I spoke with the nursing staff as to Mr. Lattimore's behavior since he has been incarcerated.

At the beginning of my interview with Mr. Lattimore, I informed him of the limited confidentiality of my assessment as I would be sending a copy of my findings to Mr. Thomas Q. Keefe, III, his defense attorney; to Mr. Robert Haida, the State's Attorney; and to you, the presiding judge. When asked if he understood the aforementioned information and if he wished to continue, Mr. Lattimore shook his head yes. I then asked him to explain back in his own words what he had just agreed to do and he was unable to do so. I then broke down the issue of confidentiality into simpler terms and he was eventually was able to grasp that I would be sending a copy of my findings to other people.

Mental Status Exam revealed Mr. Lattimore to be oriented to person and place, but not to time. In other words, he knew who he was and that he was at St. Clair County Jail, but he did not know the day of the week or year. When pushed on what day of the week it was, he could only shrug, "It seventh week."

When asked if he ever experienced any type of hallucinations, he replied, "I been hearing voices telling me to kill myself. Heard them when I little, but they worser." When pushed, he spoke of how these voices in the past have told him to light fires and kill himself. He added, "I don't hear them when I on my medicine." He did say that these voices appeared to come from inside of his head and not outside of his head. True auditory hallucinations are usually described as coming from outside of one's head. These "voices" may very well have been his thoughts. Ms. Rose Best, Mr. Lattimore's mother, related how her son had set fires in the house. In addition she stated that her son had attempted to kill himself.

No specific delusional material could be elicited in his thinking. His thinking itself was neither loose nor tangential, but rather it was extremely concrete. This would be consistent with his very limited intellectual abilities.

Intellectually, Mr. Lattimore is functioning in the Mild Mentally Retarded Range of Intelligence as indicated by his performance on the Wechsler Adult Intelligence Scale - III (Verbal IQ 60, Performance IQ 57, Full Scale IQ 54). There was little "scatter" or variability in his performance on the individual WAIS-III subtests. He scored at or below the 2 %ile on all of them. He scored his lowest on the Arithmetic Subtest, a measure of concentration and utilization of basic math skills. For example, he could not correctly do such simple problems as "10 - 6" or "30 divide by 6." His range of general information was extremely limited as evidenced by his performance on the Information Subtest. For example, he did not know how many months were in a year. Nor did he know in what direct the sun rose. Intellectually, he is functioning in the bottom 1 % of the nation. His overall cognitive abilities would be roughly the equivalent of a nine to ten year old.

His limited intellectual abilities would be consistent with his past placement in special education classes and limited formal education. When asked how far he had gone in school, Mr. Lattimore muttered, "Don't remember." When pressed, all he could say was Lincoln. He could not remember how long he had attended there. Nor could he remember his age when he dropped out. Ms. Rose Best, Mr. Lattimore's mother, stated that her son had been in special education programming since "kindergarten - first grade." She could not tell me when her son had dropped out.

His memory, both short and long term, was grossly impaired. For example, he could only repeat back accurately four numbers forward and not even two numbers backwards. Mr. Lattimore could at best only give a simple history.

His affect was flat and he often had a wide eyed stare. He blurted, "Sad every day." Ms. Rose Best stated that her son had been diagnosed with Attention Deficit Hyperactivity Disorder in the past and placed on medication for this. Mr. Lattimore does have an extremely low frustration

tolerance level and will quickly decompensate into anger when placed under the slightest stress. When he turns this anger inward, he becomes depressed and suicidal. Mr. Lattimore spoke of how he had attempted suicide "a lot of times. Been thinking about it." He blurted, "Knife when I was little. I tired to stick it in my chest. I like five or something. Mommy caught me, whipped me." Ms. Best confirmed that her son had attempted to kill himself several times in 1994. She stated, "He'd have pictures in his bed of his daddy and slept with a butcher knife." While at the jail, Mr. Lattimore attempted to hang himself and was placed in the Quiet Room.

When he turns his anger outward, he lashes out at others around him. This would be consistent with his placement in behavioral classes. It would be consistent with his numerous fights. Mr. Lattimore lamented, "Fights on streets. Older people try to hurt me. I got shot in the arm by older dude. I 17. Wanted me to sell drugs."

He did admit to both alcohol and drug abuse. When asked how much he drank, he replied, "A lot." He stated that he first began drinking when he was "little" and it "messed up my ulcers. Had to go to the hospital for that." He admitted to drinking on a daily basis and would usually consume at least a pint of gin a day. He admitted to memory lapses, but he denied ever having the d.t.s or drinking in the morning. Mr. Lattimore has never been able to get a driver's license, but he did say that he received a DUI.

In addition he admitted to a lengthy history of drug abuse. He stated that he first began smoking marijuana at "eight or nine" and would smoke "five blunts a day." He also admitted to using cocaine "when the weed don't work." He continued that he first began using cocaine at 17 and he didn't use "much." He later spoke of how he smoked two to three rocks of crack cocaine a day. In addition he stated that he began using Ecstasy when he was 17 and would take "about three pills a day."

When asked about his past mental health treatment, Mr. Lattimore answered, "Dr. Kasky. In East St. Louis on State Street. My mom took me there. I hyper since I little." He could not remember when he had sought treatment. Nor could he remember the medication that he had taken.

Ms. Best stated that her son had seen Dr. Katzman through Comprehensive Mental Health Center and that he had tried three different types of medications. She lamented that the medications only made him worse. She went on, "Last year I took him back to 38th street for an evaluation. Something wrong with him. He always needed so much guidance, always angry."

While at the jail, Mr. Lattimore is currently taking the following psychotropic medications - Risperdal 4 mg and Remeron 45 mg.

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Mr. Lattimore does receive SSI for his extremely limited intellectual ability. Ms. Best stated that her son has been on disability since he was six years old. His mother is his payee.

The diagnosis for Mr. Lattimore based upon my evaluation would be the following:

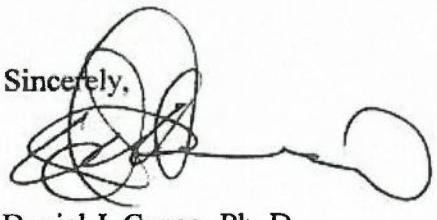
Axis I:	Psychotic Disorder, NOS
	Alcohol Dependence in a Controlled Environment
	Polysubstance Dependence in a Controlled Environment
Axis II:	Mild Mental Retardation
	Borderline Personality Traits
Axis III:	Deferred

It would be my opinion that Mr. Lattimore's mental illness (Psychotic Disorder, NOS, Alcohol Dependence in a Controlled Environment, Polysubstance Dependence in a Controlled Environment, Mild Mental Retardation, and Borderline Personality Traits) at the present time substantially impairs his ability to understand the nature and purpose of the proceedings against him and his ability to assist in his own defense. Mr. Lattimore's thinking is very concrete and his vocabulary very limited. He is functioning only at the cognitive level of a nine to ten-year-old. He could not grasp the adversarial roles in the court even after repeated attempts by me to explain this to him. He kept saying that the state's attorney, judge, and public defender were all there to help him. He could not understand how a person would be found guilty or not guilty. Due to his inability to stay on task, emotional ability, and extremely concrete thinking, he would have much difficulty communicating with his attorney in any meaningful way, much less assist in his own defense. Therefore, it is my opinion that Mr. Milton Lattimore, Sr., is presently unfit to stand trial.

It is also my opinion that if Mr. Lattimore were provided with a course of inpatient psychiatric treatment and stabilized on psychotropic medication, there is a substantial probability that he would be able to attain fitness within the course of one year.

If you have any questions or if I can be of any further assistance, please do not hesitate to ask.

Sincerely,



Daniel J. Cuneo, Ph. D.

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APPENDIX E

John S. Rabun, M.D.
1034 Brentwood Blvd., Suite 660
St. Louis, Missouri 63117

Telephone: (314) 727-8099 Facsimile (314) 727-6796

Diplomate, ABPN
with board certification in General Psychiatry
with board certification in Forensic Psychiatry
Diplomate, NBME
Licensed in Missouri and Illinois

April 1, 2010

James Piper
St. Clair County State's Attorney's Office
10 Public Square, 2nd Floor
Belleville, Illinois 62220

RE: Illinois vs. Milton Lattimore
Case No.: 09-CF-1306

Dear Mr. Piper:

Pursuant to the court's order, I evaluated Milton Lattimore in order to form an opinion about whether he suffers from a mental disease or defect that impairs his capacity to understand the nature and purpose of the proceedings against him and to assist in his own defense. Mr. Lattimore is a 21 years old, single, never married, right handed African-American male who is charged with Murder, First Degree, three counts. Mr. Lattimore is presently detained in the St. Clair County Jail pending resolution of the alleged offenses.

Prior to the formal interview, I explained to Mr. Lattimore the reason for the evaluation. I told him that I was hired by the State's attorney to provide my opinion about his capacity to stand trial. I informed Mr. Lattimore that I would not question him about his role in the alleged offenses. I warned Mr. Lattimore that his statements to me were on the record. I cautioned him that I had to generate a report that would be provided to the State's attorney, who would then disclose my findings to the defense attorney and the presiding judge. I also advised Mr. Lattimore that although I am a physician, I was not acting as his physician for the purposes of the evaluation. I inquired if Mr. Lattimore had any questions or needed to speak with his attorney. He, however, stared blankly at me, appearing not to understand what I said to him. Subsequently, I repeated my admonitions. I again asked Mr. Lattimore if he understood my purpose. He responded that he understood that I was writing a report to the court about him because of his charges. He did not express any reservations.

Sources of Information

1) My interview with Mr. Lattimore at the St. Clair County Jail on 03/29/10. My interview lasted 1.5 hours.
2) My interview with St. Clair County Jail staff about Mr. Lattimore.
3) A report generated by Daniel Cuneo, Ph.D. dated 03/18/10.
4) The police report of the charged offenses.
5) DVDs of the taped interrogations of Mr. Lattimore.
6) *The Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision*, published by the American Psychiatric Association in 2000.

Opinions

Diagnostic Opinion: It is my opinion with reasonable medical certainty that Mr. Lattimore suffers from Mild Mental Retardation, Alcohol Dependence In a Controlled Environment, and Cocaine Dependence, In a Controlled Environment. In forming my diagnostic opinion, I questioned Mr. Lattimore about his personal history, performed a mental status examination, and administered the Kent Intelligence Test. I also noted that Dr. Cuneo arrived at a similar opinion in his report dated 03/18/10. In fact, Dr. Cuneo used the Wechsler Adult Intelligence Scale – III and found that Mr. Lattimore had a Verbal IQ of "60," a Performance IQ of "57," and a Full Scale IQ of "54." Mr. Lattimore's Full Scale IQ places him in the mildly mentally retarded range of intellectual capacity.

Further, I noted that Mr. Lattimore had a history of problems with learning, suggesting that he is intellectually impaired. In fact, Mr. Lattimore required special education as a child and adolescent, arguing that his intellectual deficits began at a young age, clearly before the age of 18. In addition, Mr. Lattimore did not complete high school, stating that he quit in the 11th grade. He also showed deficits in his adaptive level of functioning, a finding that indicates his intellectual impairments started at a young age. For example, he told me that he never possessed a driver's license, which is consistent with the police report, does not hold a personal bank account, has never shopped on his own, only with his mother, receives Social Security Disability for "being slow," and needs his mother to manage his finances, meaning she is his payee for his disability payments. Moreover, Mr. Lattimore has never been employed. He informed me that he spends most of the day at his mother's home where he still lives, playing video games. He indicated that he has few social contacts outside of his family members. While discussing his personal history, Mr. Lattimore displayed problems with the use of language, compared to other individual's in his age range. I noted that I often had to use simple terms or explain concepts to Mr. Lattimore in order to maintain the flow of the conversation.

During my mental status examination, I administered the Kent Intelligence Test to Mr. Lattimore. Mr. Lattimore scored "11" on the Kent Intelligence Test, placing his intellectual capacity in the "Defective" range, a finding consistent with Mild Mental Retardation. I also questioned Mr. Lattimore about recent injuries or behaviors that might cause neurological trauma which in turn could lead to intellectual deficits. Mr.

Lattimore did not report any history of serious head injuries as an adult. He did not show any deficits in his neurological functioning during my evaluation. He did not describe suffering from any physical disorders that might cause or contribute to his intellectual deficits. Therefore, given his history of special education, lack of employment, poor social skills, and limited use of language, it is likely that Mr. Lattimore's intellectual impairments started long before the age of 18.

I questioned Mr. Lattimore about other psychiatric symptoms. He noted that as a child he was treated for Attention-Deficit/Hyperactivity Disorder with the medication, "Ritalin." He described suffering from many of the behaviors consistent with Attention-Deficit/Hyperactivity Disorder, but said that these symptoms improved as an adolescent. He said that he was not treated with "Ritalin" as an adult.

I probed for symptoms associated with a mood or psychotic disorder. Mr. Lattimore responded that he has heard "voices," but added that he believes these are his own thoughts. I provided Mr. Lattimore with numerous examples of delusional thinking, but he did not endorse any such thoughts. Further, he did not relate any features of major depression or mania. The jail staff informed me that Mr. Lattimore is prescribed, "Risperdal," an antipsychotic medication, and "Remeron," an antidepressant. His medical record at the jail noted that he was diagnosed with "major depression" and "psychosis." The jail staff added that he is viewed as "slow" by officers that work with him or who had contact with him in prior legal cases.

I also diagnosed Mr. Lattimore with Alcohol Dependence because outside of a controlled environment he reported a pattern of use consistent with dependence. For instance, he indicated that he drinks alcohol every day, up to a pint a day, and has experienced withdrawal symptoms when he does not have access to this substance. He endorsed tolerance to alcohol and acknowledged that he has given up important family events in order to use this substance. Further, Mr. Lattimore related a similar pattern of behavior while discussing his use of cocaine, suggesting that he suffers from Cocaine Dependence as well.

As in all forensic psychiatric evaluations, I considered but rejected the possibility of malingering. Mr. Lattimore did not attempt to overplay or dramatize his intellectual limitations. He also did not endorse examples of bizarre experiences or thoughts, even when given ample opportunity to do so. He did not approximate answers, a common finding in those that adopt an unsophisticated approach to malingering. I therefore found no evidence to suggest that Mr. Lattimore was malingering.

Accordingly, I opine with reasonable medical certainty that Mr. Lattimore is afflicted by Mild Mental Retardation. It is also my opinion with reasonable medical certainty that Mr. Lattimore's intellectual deficits began before the age of 18.

Mental Disease or Defect Opinion: It is my opinion with reasonable medical certainty that Mr. Lattimore is afflicted by a mental defect. Mr. Lattimore suffers from Mild Mental Retardation, a condition that began prior to the age of 18 and will continue throughout

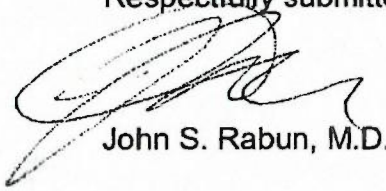
his life. Mr. Lattimore's limited intellectual abilities substantially impair his capacity to work, use language, pursue an education, and engage in all other usual activities of daily living. In fact, he functions intellectually below 98% of the general population. Accordingly, I opine with reasonable medical certainty that Mr. Lattimore is afflicted by a mental defect.

Capacity to Understand the Nature and Purpose of the Proceedings Against Him and to Assist in His Own Defense: It is my opinion with reasonable medical certainty that Mr. Lattimore's mental defect impairs his capacity to understand the nature and purpose of the proceedings against him and to assist in his own defense. Mr. Lattimore had difficulty responding in a knowledgeable and rational manner when I questioned him about the roles of key courtroom personnel. He understood his plea options, but could not describe the process of plea bargaining. He knew the charges against him, but was unsure of the range of penalties he could receive if convicted. He knew that he was represented by an attorney, but could not state how he could help his attorney defend him. He also did not know the important legal rights he would forfeit if he chose to plead guilty.

Mr. Lattimore did not understand the term, cross examination. He was unsure what he could do if a witness fabricated information about him during a trial or hearing. Further, Mr. Lattimore's language impairments would substantially interfere with his ability to track the testimony of witnesses and aid his attorney in cross examining those witnesses.

Accordingly, I opine with reasonable medical certainty that Mr. Lattimore lacks the capacity to understand the nature and purpose of the proceedings against him and to assist in his own defense. It is also my opinion with reasonable medical certainty that it is probable that Mr. Lattimore will regain his capacity to stand trial within one year.

Respectfully submitted,



John S. Rabun, M.D.

APPENDIX F

125864

5/

Daniel J. Cuneo, Ph. D.
Clinical Psychologist
2217 West Main Street
Belleville, Illinois 62226
618-277-5498 phone/ 618-235-4316 fax

July 6, 2011

The Honorable Milton Wharton
Twentieth Judicial Circuit
St. Clair County Building
10 Public Square
Belleville, Illinois 62220

Re: Milton Lattimore, Sr.
09-CF-1306

Dear Judge Wharton:

Pursuant to court order on July 6, 2011 I evaluated Mr. Milton Lattimore, Sr., at Chester Mental Health Center for the purpose of establishing an opinion as to his fitness to stand trial. Milton Lattimore, Sr., is a 22-year-old (July 7, 1988), African American, single male who is charged with three counts of First Degree Murder.

At the request of the court on March 15, 2010 I had previously evaluated Mr. Lattimore as to his fitness to stand trial and submitted a copy of my report on March 18, 2010. It had been my opinion then that Mr. Lattimore could best be diagnosed as 1) Psychotic Disorder, NOS, 2) Alcohol Dependence in a Controlled Environment, 3) Polysubstance Dependence in a Controlled Environment, 4) Mild Mental Retardation, and 5) Borderline Personality Traits. It was also my opinion then that Mr. Lattimore's mental illness substantially impaired his ability to understand the nature and purpose of the proceedings against him and his ability to assist in his own defense. The court adjudicated Mr. Lattimore as unfit to stand trial on April 8, 2010 and remanded him to the Department of Human Services for treatment. On June 10, 2010 Mr. Lattimore was admitted to Chester Mental Health Center where he continues to be hospitalized.

In addition to my current interview with Mr. Lattimore, I reviewed my March 18, 2010 fitness to stand trial report on Mr. Lattimore. I reviewed his clinical files at Chester Mental Health Center. Finally, I spoke with Ms. Emily Bollman, LCSW, Mr. Lattimore's therapist at Chester Mental Health Center.

At the beginning of my interview with Mr. Lattimore, I informed him of the limited confidentiality of my assessment as I would be sending a copy of my findings to Mr. Thomas Q. Keefe, III, his defense attorney; to Mr. Brendan Kelley, the State's Attorney; and to you, the presiding judge. When asked if he understood the aforementioned information and if he wished to

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continue, Mr. Lattimore nodded yes. I then asked him to explain back in his own words what he had just agreed to do and he was able to do so.

Mental Status Exam revealed Mr. Lattimore to be oriented in all three spheres - person, time, and place. In other words, he knew who he was, that he was at Chester Mental Health Center, and that he could correctly identify the day of the week, month, and year. This is a striking improvement from his confusion over time in March 2010 when he could not tell me the day of the week or year.

He denied presently experiencing any type of hallucinations, but he did admit to experiencing the auditory hallucinations in the past. He spoke of how he used to hear "monster voices" telling him to do things. He continued that he last heard these voices "two - three months ago" when he began taking his psychotropic medications on a regular basis.

Mr. Lattimore had admitted to hearing voices in my March 2010 assessment. At that time when he had been asked if he ever experienced any type of hallucinations, he had answered, "I been hearing voices telling me to kill myself. Heard them when I little, but they worser." When pushed, he had spoken of how these voices in the past have told him to light fires and kill himself. He added, "I don't hear them when I on my medicine." He did say then that these voices appeared to come from inside of his head and not outside of his head. True auditory hallucinations are usually described as coming from outside of one's head. These "voices" may very well have been his thoughts. Ms. Rose Best, Mr. Lattimore's mother, had related how her son had set fires in the house. In addition she had stated that her son had attempted to kill himself.

No specific delusional material could be elicited in his thinking. His thinking itself was neither loose nor tangential, but rather it was extremely concrete. This would be consistent with his very limited intellectual abilities.

Intellectually, Mr. Lattimore is functioning in the Mild Mentally Retarded Range of Intelligence as indicated by his March 2010 performance on the Wechsler Adult Intelligence Scale - III (Verbal IQ 60, Performance IQ 57, Full Scale IQ 54). There had been little "scatter" or variability in his performance on the individual WAIS-III subtests. He had scored at or below the 2 %ile on all of them. He had scored his lowest on the Arithmetic Subtest, a measure of concentration and utilization of basic math skills. For example, he could not correctly do such simple problems as "10 - 6" or "30 divide by 6." His range of general information had been extremely limited as evidenced by his performance on the Information Subtest. For example, he did not know how many months were in a year. Nor did he know in what direct the sun rose. Intellectually, Mr. Lattimore is functioning in the bottom 1 % of the nation. His overall cognitive abilities would be roughly the equivalent of a nine to ten year old.

C-385

His limited intellectual abilities would be consistent with his past placement in special education classes and limited formal education. When asked how far he had gone in school in my March 2010 interview with him, Mr. Lattimore had muttered, "Don't remember." When pressed, all he could say was Lincoln. He could not remember how long he had attended there. Nor could he remember his age when he dropped out. Ms. Rose Best, Mr. Lattimore's mother, stated that her son had been in special education programming since "kindergarten - first grade." She could not tell me when her son had dropped out.

His memory, both short and long term, was impaired. For example, he could only repeat back accurately four numbers forward and two numbers backwards. Mr. Lattimore could at best only give a simple history.

His affect was flat. At times Mr. Lattimore would flash an inappropriate smile and he often had a wide eyed stare. He had presented with the same wide eyed stare in my March 2010 interview with him. Ms. Rose Best had stated that her son had been diagnosed with Attention Deficit Hyperactivity Disorder in the past and placed on medication for this.

Mr. Lattimore does have an extremely low frustration tolerance level and will quickly decompensate into anger when placed under the slightest stress. When he turns this anger inward, he becomes depressed and suicidal. Mr. Lattimore has repeatedly attempted suicide in the past by cutting on himself and attempting to hang himself. Ms. Best confirmed that her son had attempted to kill himself several times in 1994. She stated, "He'd have pictures in his bed of his daddy and slept with a butcher knife." Mr. Lattimore had attempted to hang himself during his previous incarceration at St. Clair County Jail. Shortly after he had been admitted to Chester Mental Health, he had attempted to hang himself.

When he turns his anger outward, Mr. Lattimore lashes out at others around him. This would be consistent with his placement in behavioral classes. It would be consistent with his numerous fights. It would be consistent with his physical altercation with another patient at Chester Mental Health a month ago.

He did admit to both alcohol and drug abuse. When asked how much he drank, Mr. Lattimore had replied, "A lot." He stated that he first began drinking when he was "little" and it "messed up my ulcers. Had to go to the hospital for that." He admitted to drinking on a daily basis and would usually consume at least a pint of gin a day. He admitted to memory lapses, but he denied ever having the d.t.s or drinking in the morning. Mr. Lattimore has never been able to get a driver's license, but he did say that he received a DUI.

In addition he admitted to a lengthy history of drug abuse. He stated that he first began smoking marijuana at "eight or nine" and would smoke "five blunts a day." He also admitted to using cocaine "when the weed don't work." He continued that he first began using cocaine at 17 and he didn't use "much." He later spoke of how he smoked two to three rocks of crack cocaine a day. In addition he stated that he began using Ecstasy when he was 17 and would take "about three pills a day."

He does have a lengthy history of psychiatric treatment beginning when he was a child. Ms. Best stated that her son had seen Dr. Katzman through Comprehensive Mental Health Center and that he had tried three different types of medications. She lamented that the medications only made him worse. She had stated in March 2010, "Last year I took him back to 38th street for an evaluation. Something wrong with him. He always needed so much guidance, always angry."

Mr. Lattimore was admitted to Chester Mental Health Center on June 10, 2010. He has been medication compliant for roughly four months and has stabilized. While at Chester Mental Health Center, Mr. Lattimore is taking the following psychotropic medications - Risperdal 4 mg and Mirtazepine 3 mg.

Prior to Mr. Lattimore incarceration at St. Clair County Jail in 2010, he had received SSI for his extremely limited intellectual ability. Ms. Best stated that her son has been on disability since he was six years old. His mother is his payee.

The diagnosis for Mr. Lattimore based upon my evaluation would be the following:

Axis I:	Psychotic Disorder, NOS
	Alcohol Dependence in a Controlled Environment
	Polysubstance Dependence in a Controlled Environment
Axis II:	Mild Mental Retardation
	Borderline Personality Traits
Axis III:	Deferred

It would be my opinion that Mr. Lattimore's mental illness (Psychotic Disorder, NOS, Alcohol Dependence in a Controlled Environment, Polysubstance Dependence in a Controlled Environment, Mild Mental Retardation, and Borderline Personality Traits) at the present time does not substantially impairs his ability to understand the nature and purpose of the proceedings against him or his ability to assist in his own defense. Mr. Lattimore's thinking is very concrete and his vocabulary very limited. He is functioning only at the cognitive level of a nine to ten-year-old.

At the same time he is oriented to person, place, and time. He does know that he is charged with three counts of Murder and that he has to stand trial on these charges. He has a basic understanding of the different court personnel and their roles in court. For example, he knows that there will be a state's attorney whose role is to convict him. He knows that he has a public defender whose name is Tom Keefe and who is on his side in court. He knows that there will be a judge on the bench who can make the decision as to his innocence or guilt. While his thinking is concrete and his vocabulary limited, he can still tell his attorney to the best of his ability the circumstances surrounding him at the time and place where the law violation is alleged to have occurred. Mr. Lattimore was able to give me an accounting. He knows that he can have a jury present to decide based upon the evidence his innocence or guilt. He knows that if he is convicted, he could be sentenced to prison for a very lengthy period of time. Mr. Lattimore has a very basic understanding of the concepts of plea bargaining. Finally, even though his memory is impaired, he still has sufficient memory to relate these things in his own personal manner. Therefore, it is my opinion that Milton Lattimore, Sr. is presently fit to stand trial with special provisions.

I would recommend the following special provisions to insure that Mr. Lattimore can follow what was happening during his trial. First, I would strongly recommend that he continue on his psychotropic medication. Second, I would recommend that the vocabulary be kept simple at the level of a nine to ten-year-old. Third, I would recommend that there be periodic checks to insure that Mr. Lattimore understands what is happening during the trial. During these checks I would recommend that he not be asked yes or no questions. Rather he should be asked to explain back in his own words what was happening. This demonstrated competence would insure that he truly grasps what is happening in the court at that time.

If you have any questions or if I can be of any further assistance, please do not hesitate to ask.

Sincerely,

Daniel J. Cuneo, Ph. D.

cc: Mr. Keefe
Mr. Kelley

C. 388

APPENDIX G

IN THE CIRCUIT COURT FOR THE TWENTIETH JUDICIAL CIRCUIT

ST. CLAIR COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)
)
Plaintiff,)
vs.) Case No. 09-CF-1306
)
MILTON LATTIMORE,)
)
Defendant.)

BEFORE THE HONORABLE MILTON S. WHARTON, CIRCUIT JUDGE

REPORT OF PROCEEDINGS

August 3, 2011

APPEARANCES:

Mr. James Piper, Assistant State's Attorney, on behalf of the People; and

Mr. Thomas Q. Keefe, Assistant Public Defender, on behalf of the Defendant.

KATHLEEN WATSON BRUNSMANN, CRR, RPR, CSR
Official Court Reporter
(License Number 084-001317)

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BE IT REMEMBERED AND CERTIFIED that heretofore, on to-wit: August 3, 2011, being one of the regular judicial days of this Court, the matter as hereinbefore set forth came on for hearing before the HONORABLE MILTON S. WHARTON, CIRCUIT JUDGE in and for the Twentieth Judicial Circuit of the State of Illinois, Belleville, St. Clair County, Illinois, and the following was had of record, to-wit:

(The following proceedings were had in open court.)

THE COURT: For the record, this is case number 09-CF-1306, People of the State of Illinois versus Milton Lattimore, Sr. This matter has been reset after an evaluation by Dr. Daniel Cuneo concerning the fitness of the Defendant to stand trial or plead guilty. Are the parties in receipt of the report from Dr. Cuneo?

MR. PIPER: Yes, your Honor.

MR. KEEFE: We are, sir.

THE COURT: Would the parties waive the presence of Dr. Cuneo?

MR. PIPER: Yes, your Honor.

MR. KEEFE: We do, sir.

THE COURT: Will the parties stipulate as to the qualification of Dr. Cuneo to render an opinion in

this case?

MR. PIPER: We would, Judge, as well as Dr. -- I'll spell the last name, that is V-A-L-L-A-B-H-A-N-E-N-I, who is a medical doctor, a psychiatrist at the Alton facility as well.

MR. KEEFE: As do we, Judge.

THE COURT: Mr. Lattimore, in your own words, can you tell me why you're here today?

THE DEFENDANT: Because I was -- I was fit to stand trial. They found me fit.

THE COURT: What is your understanding of what happens at a trial?

THE DEFENDANT: That's how they prove me guilty or not guilty.

THE COURT: Mr. Keefe here, what's his job?

THE DEFENDANT: To help me.

THE COURT: And Mr. Piper here, what is his job? The gentleman over here. Do you know what his job is?

THE DEFENDANT: He didn't tell me who he was, sir.

THE COURT: Okay.

THE DEFENDANT: I know she's the court reporter.

THE COURT: This is the court reporter here?

THE DEFENDANT: Yes, sir.

THE COURT: And I'm the Judge, do you understand that?

THE DEFENDANT: Yes, sir.

MR. KEEFE: What about the prosecutor?

THE DEFENDANT: The prosecutor, they're against me.

THE COURT: At this time, based upon the report received in court as stipulated to by the parties, the Court would find that the Defendant is fit to stand trial upon the following conditions:

So long as he continues with his psychotropic medications, so long as communications are kept at a nine to ten year old level, and the Court would order that periodic checks be made each month to verify that the Defendant continues fit to stand trial -- to be fit to stand trial.

MR. PIPER: Judge, may I address the Court as to one point just to supplement the record?

THE COURT: Yes.

MR. PIPER: Judge, the parties are stipulating that Dr. Vallabhaneni from the Alton facility, would testify consistently with his report, dated July

25th of 2011, as well as his report dated June 14th of 2011, in which that doctor opines that the Defendant is fit in both those reports.

Thank you, Judge.

THE COURT: Okay. Has this matter been set for trial yet?

MR. PIPER: Judge, it has not been. We anticipate that there will be a variety of motions filed. I know that the -- we anticipate the next thing happening is the People will be filing a motion for supplemental discovery requesting some handwriting exemplars. We were going to respectfully request a 30-days date tolling the Defendant's speedy trial time.

THE COURT: Can we set a status date then?

MR. PIPER: Judge, actually I would ask for a hearing date on the People's motion I'll file before that time and that will guarantee that he's brought over as well. Then I can get a date from Madelyn, Judge, if that's convenient for the Court.

THE CLERK: September 19th, that would be a Monday afternoon.

MR. PIPER: That would be great, thank you. Judge, I'll prepare an order to that effect. Thank you.

MR. KEEFE: Thank you, your Honor.

THE COURT: Thank you.

MR. PIPER: Judge, if I might, I don't know if the Court indicated, he is now remanded back to the St. Clair County sheriff.

THE COURT: Yes, he's remanded back to the sheriff of St. Clair County, with notice to the sheriff of his condition.

MR. PIPER: Yes, your Honor.

(Court adjourned.)

STATE OF ILLINOIS.

TWENTIETH JUDICIAL CIRCUIT

COUNTY OF ST. CLAIR

I, KATHLEEN WATSON BRUNSMANN, one of the Official Court Reporters, do hereby certify that the foregoing is a true and correct copy of said transcript.

DATED: April 25, 2014

KATHLEEN WATSON BRUNSMANN, CRR, RPR, CSR

(License Number 084-001317)

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APPENDIX H

125864

Daniel J. Cuneo, Ph. D.
Clinical Psychologist
2217 West Main Street
Belleville, Illinois 62226
618-277-5498 phone/ 618-235-4316 fax

September 11, 2012

Thomas Q. Keefe, III
Attorney at Law
6 Executive Woods Court
Belleville, Illinois 62226-2016

Re: Milton Lattimore, Jr.
09-CF-1306

Dear Mr. Keefe:

Pursuant to court order on September 11, 2012 I evaluated Mr. Milton Lattimore, Jr., at St. Clair County Jail for the purpose of establishing an opinion as to his ability to knowingly, intelligently, and willingly waive his Miranda Rights on November 8, 2009. Milton Lattimore, Jr., is a 24-year-old (July 7, 1988), African American, single male who is charged with three counts of First Degree Murder.

I have evaluated Mr. Lattimore twice before as to his fitness to stand trial. On March 15, 2010 I had previously evaluated Mr. Lattimore as to his fitness to stand trial and submitted a copy of my report on March 18, 2010. It had been my opinion then that Mr. Lattimore could best be diagnosed as 1) Psychotic Disorder, NOS, 2) Alcohol Dependence in a Controlled Environment, 3) Polysubstance Dependence in a Controlled Environment, 4) Mild Mental Retardation, and 5) Borderline Personality Traits. It was also my opinion then that Mr. Lattimore's mental illness substantially impaired his ability to understand the nature and purpose of the proceedings against him and his ability to assist in his own defense. The court adjudicated Mr. Lattimore as unfit to stand trial on April 8, 2010 and remanded him to the Department of Human Services for treatment. On June 10, 2010 Mr. Lattimore was admitted to Chester Mental Health Center where he continues to be hospitalized.

I next evaluated Mr. Lattimore on July 6, 2011 as to his fitness to stand trial at Chester Mental Health Center. It had been my opinion then that Mr. Lattimore could best be diagnosed as 1) Psychotic Disorder, NOS, 2) Alcohol Dependence in a Controlled Environment, 3) Polysubstance Dependence in a Controlled Environment, 4) Mild Mental Retardation, and 5) Borderline Personality Traits. It was also my opinion at that time that Mr. Lattimore's mental illness did not substantially affect his ability to understand the nature and purpose of the proceedings against him as long as there were special provisions at the trial.

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I had recommended the following special provisions to insure that Mr. Lattimore could follow what was happening during his trial. First, I had strongly recommended that he continue on his psychotropic medication. Second, I had recommended that the vocabulary be kept simple at the level of a nine to ten-year-old. Third, I had recommended that there be periodic checks to insure that Mr. Lattimore understands what is happening during the trial. During these checks I had recommended that he not be asked yes or no questions. Rather he should be asked to explain back in his own words what was happening. This demonstrated competence would insure that he truly grasps what is happening in the court at that time.

The court adjudicated Mr. Lattimore fit to stand trial and remanded him back to St. Clair County Jail. He has been incarcerated at St. Clair County Jail since August 3, 2011.

In addition to my current interview with Mr. Lattimore, I reviewed my March 18, 2010 fitness to stand trial report on Mr. Lattimore. I reviewed my July 6, 2011 fitness to stand trial report on Mr. Lattimore. I administered to him the Reading Subtest of the Wide Range Achievement Test - 3. I reviewed his videotaped statements. I reviewed the Miranda Rights Form that he signed on November 8, 2009. I reviewed his clinical files at St. Clair County Jail. Finally, I spoke with the nursing staff at St. Clair County Jail as to their interactions with Mr. Lattimore.

At the beginning of my interview with Mr. Lattimore, I informed him of the limited confidentiality of my assessment as I would be sending a copy of my findings to you and you in turn may be sharing these findings with the state's attorney and the presiding judge. When asked if he understood the aforementioned information and if he wished to continue, Mr. Lattimore immediately blurted, "Yes, sir! Yes, sir!" I then asked him to explain back in his own words what he had just agreed to do and he was able to do so.

Mental Status Exam revealed Mr. Lattimore to be oriented in all three spheres - person, time, and place. In other words, he knew who he was, that he was at St. Clair County Jail, and that he could correctly identify the day of the week, month, and year. This is a striking improvement from his confusion over time in March 2010 when he could not tell me the day of the week or year.

He did admit to experiencing auditory hallucinations and spoke of how he had last heard these "voices" a couple of days ago. He continued, "They stopped giving me my Remeron and I got a call in to the doctor. I don't want to go into the Quiet Room and be naked." When I had seen Mr. Lattimore in July 2011, but he had admitted to experiencing the auditory hallucinations in the past. He spoke of how he used to hear "monster voices" telling him to do things. He had

stated in July 2011 that he last heard these voices "two - three months ago" and that they had stopped when he began taking his psychotropic medications on a regular basis.

Mr. Lattimore had also admitted to hearing voices in my March 2010 assessment. At that time when he had been asked if he ever experienced any type of hallucinations, he had answered, "I been hearing voices telling me to kill myself. Heard them when I little, but they worser." When pushed, he had spoken of how these voices in the past have told him to light fires and kill himself. He added, "I don't hear them when I on my medicine." He did say then that these voices appeared to come from inside of his head and not outside of his head. True auditory hallucinations are usually described as coming from outside of one's head. These "voices" may very well have been his thoughts. Ms. Rose Best, Mr. Lattimore's mother, had related how her son had set fires in the house. In addition she had stated that her son had attempted to kill himself.

No specific delusional material could be elicited in his thinking. His thinking itself was neither loose nor tangential, but rather it was extremely concrete. This would be consistent with his very limited intellectual abilities.

Intellectually, Mr. Lattimore is functioning in the Mild Mentally Retarded Range of Intelligence as indicated by his March 2010 performance on the Wechsler Adult Intelligence Scale - III (Verbal IQ 60, Performance IQ 57, Full Scale IQ 54). There had been little "scatter" or variability in his performance on the individual WAIS-III subtests. He had scored at or below the 2 %ile on all of them. He had scored his lowest on the Arithmetic Subtest, a measure of concentration and utilization of basic math skills. For example, he could not correctly do such simple problems as "10 - 6" or "30 divide by 6." His range of general information had been extremely limited as evidenced by his performance on the Information Subtest. For example, he did not know how many months were in a year. Nor did he know in what direct the sun rose. Intellectually, Mr. Lattimore is functioning in the bottom 1 % of the nation. His overall cognitive abilities would be roughly the equivalent of a nine to ten year old.

His limited intellectual abilities would be consistent with his past placement in special education classes and limited formal education. Mr. Lattimore stated that he had dropped out of school in the ninth grade and had always been in special education classes. Ms. Rose Best, Mr. Lattimore's mother, had stated that her son had been in special education programming since "kindergarten - first grade." She could not tell me when her son had dropped out.

Mr. Lattimore's scholastic abilities would be consistent with his placement in special education services and limited intellectual abilities. On the Reading Subtest of the Wide Range

Achievement Test - 3, he only scored at the third grade level. For example, he could not read such words as "stretch" or "bulk."

His memory, both short and long term, was impaired. For example, he could only repeat back accurately four numbers forward and two numbers backwards. Mr. Lattimore could at best only give a simple history.

Through much of my assessment Mr. Lattimore would flash an inappropriate smile and he often had a wide eyed stare. He had presented with the same wide eyed stare in both my March 2010 and July 2011 interviews with him. Ms. Rose Best had stated that her son had been diagnosed with Attention Deficit Hyperactivity Disorder in the past and placed on medication for this.

Mr. Lattimore does have an extremely low frustration tolerance level and will quickly decompensate into anger when placed under the slightest stress. When he turns this anger inward, he becomes depressed and suicidal. Mr. Lattimore has repeatedly attempted suicide in the past by cutting on himself and attempting to hang himself. Ms. Best confirmed that her son had attempted to kill himself several times in 1994. She stated, "He'd have pictures in his bed of his daddy and slept with a butcher knife." Mr. Lattimore had attempted to hang himself during his previous incarceration at St. Clair County Jail. Shortly after he had been admitted to Chester Mental Health, he had attempted to hang himself.

When he turns his anger outward, Mr. Lattimore lashes out at others around him. This would be consistent with his placement in behavioral classes. It would be consistent with his numerous fights. It would be consistent with his physical altercation with another patient at Chester Mental Health in June 2011.

He did admit to both alcohol and drug abuse. When asked how much he drank, Mr. Lattimore had replied, "A lot." He stated that he first began drinking when he was "little" and it "messed up my ulcers. Had to go to the hospital for that." He admitted to drinking on a daily basis and would usually consume at least a pint of gin a day. He admitted to memory lapses, but he denied ever having the d.t.s or drinking in the morning. Mr. Lattimore has never been able to get a driver's license, but he did say that he received a DUI.

In addition he admitted to a lengthy history of drug abuse. He stated that he first began smoking marijuana at "eight or nine" and would smoke "five blunts a day." He also admitted to using cocaine "when the weed don't work." He continued that he first began using cocaine at 17 and he didn't use "much." He later spoke of how he smoked two to three rocks of crack cocaine a

day. In addition he stated that he began using Ecstasy when he was 17 and would take "about three pills a day."

He does have a lengthy history of psychiatric treatment beginning when he was a child. Ms. Best stated that her son had seen Dr. Katzman through Comprehensive Mental Health Center and that he had tried three different types of medications. She lamented that the medications only made him worse. She had stated in March 2010, "Last year I took him back to 38th street for an evaluation. Something wrong with him. He always needed so much guidance, always angry."

Mr. Lattimore was admitted to Chester Mental Health Center on June 10, 2010 and stabilized on psychotropic medication. He was remanded back to the court, adjudicated as fit to stand trial, and has been at St. Clair County Jail since August 3, 2011.

Prior to Mr. Lattimore incarceration at St. Clair County Jail in 2010, he had received SSI for his extremely limited intellectual ability. Ms. Best stated that her son has been on disability since he was six years old. His mother is his payee.

The diagnosis for Mr. Milton Lattimore, Jr. based upon my evaluation would be the following:

Axis I:	Psychotic Disorder, NOS
	Alcohol Dependence in a Controlled Environment
	Polysubstance Dependence in a Controlled Environment
Axis II:	Mild Mental Retardation
	Borderline Personality Traits
Axis III:	Headaches

It would be my opinion that Mr. Lattimore's mental illness (Psychotic Disorder, NOS, Alcohol Dependence in a Controlled Environment, Polysubstance Dependence in a Controlled Environment, Mild Mental Retardation, and Borderline Personality Traits) substantially impaired his ability to knowingly, intelligently and willingly waive his Miranda Right on November 8, 2009.

I base my opinion on the following. First, Mr. Lattimore is severely intellectually limited and functions at best only at the cognitive level of a nine to ten-year-old year. He has severe reading difficulties and can only read at the third grade level. When Mr. Lattimore was asked by the officer to sign his statement, he printed his name and then misspelled his last name as he did not put the "e" on the end of "Lattimore." He could not read all of the Miranda Rights back to

me that he had signed and initialed. For example, he could not read such simple words as "questions," or "answering." It should be noted that on his videotaped interview the officer only had Mr. Lattimore read the first statement to them and explain it back to him. The officer never asked him to explain back any of the other Miranda Rights and Mr. Lattimore only shook his head yes or said "Uh huh" that he understood them.

Second, Mr. Lattimore does not have the ability to understand all of these Miranda Rights when I read them to him. I read to Mr. Lattimore the five Miranda Rights and asked him to explain each one back to me. For example, when Mr. Lattimore was asked to explain "You have the right to remain silent. You do not have to talk to us," he did answer, "Like I don't have to talk to them."

When asked what "If you do talk to us, everything that you say can be used against you in court" meant, Mr. Lattimore shrugged, "I don't know. When I go to court, I ask Tom (Keefe). Sometimes I say something and mess up." He could not understand that his statement might later be used to incriminate him.

Mr. Lattimore explained, "You have the right to talk to a lawyer before you talk to us. The lawyer can be with you before we ask you questions. The lawyer can be with you during the whole time we ask you questions" as "Like when Tom be with me?" When I asked M. Lattimore if he could have Tom (Keefe) with him when he had been questioned, he shrugged, "Tom not there." When asked if he could have another attorney there with him, he shrugged, "They never told me."

When asked what "If you do not have money for a lawyer, one can be given to you for free" meant, he could say, "Public Defender." When asked what "You can stop answering questions any time you want" meant, he asked, "Like when you stop me from answering questions? Like you stop me?" When asked if he had to answer the police's questions, he shrugged, "Had to talk to police. They told me to. I was scared. They kept asking the same questions."

Finally, Mr. Lattimore has the intellectual abilities of a nine to ten-year-old. He is easily led. This could be seen repeatedly on the videotaped statement of November 8, 2009. His limited intellectual abilities would make him much more suggestible and easily led. He would be much more likely to seek to please another individual. This would especially be true if the individual asking the questions were in a position of authority, such as a police officer. Therefore, it would be my opinion that Mr. Lattimore's mental illness (Mild Mental Retardation and Psychotic

Disorder, NOS) substantially impaired his ability to knowingly, intelligently and willingly waive his Miranda Right on November 8, 2009.

If you have any questions or if I can be of any further assistance, please do not hesitate to ask.

Sincerely,

Daniel J. Cuneo, Ph. D.

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APPENDIX I

125864

Daniel J. Cuneo, Ph. D.
Clinical Psychologist
2217 West Main Street
Belleville, Illinois 62226
618-277-5498 phone/ 618-235-4316 fax

May 21, 2013

Thomas Q. Keefe, III
Attorney at Law
6 Executive Woods Court
Belleville, Illinois 62226-2016

Re: Milton Lattimore, Jr.
09-CF-1306

Dear Mr. Keefe:

Pursuant to court order on September 11, 2012 I evaluated Mr. Milton Lattimore, Jr., at St. Clair County Jail for the purpose of establishing an opinion as to his sanity at the time of the alleged offenses. Milton Lattimore, Jr., is a 24-year-old (July 7, 1988), African American, single male who is charged with three counts of First Degree Murder.

I have evaluated Mr. Lattimore twice before as to his fitness to stand trial and once as to his ability to waive his Miranda Rights. On March 15, 2010 I first evaluated Mr. Lattimore as to his fitness to stand trial and submitted a copy of my report on March 18, 2010. It had been my opinion then that Mr. Lattimore could best be diagnosed as 1) Psychotic Disorder, NOS, 2) Alcohol Dependence in a Controlled Environment, 3) Polysubstance Dependence in a Controlled Environment, 4) Mild Mental Retardation, and 5) Borderline Personality Traits. It was also my opinion then that Mr. Lattimore's mental illness substantially impaired his ability to understand the nature and purpose of the proceedings against him and his ability to assist in his own defense. The court adjudicated Mr. Lattimore as unfit to stand trial on April 8, 2010 and remanded him to the Department of Human Services for treatment. On June 10, 2010 Mr. Lattimore was admitted to Chester Mental Health Center where he continues to be hospitalized.

I next evaluated Mr. Lattimore on July 6, 2011 as to his fitness to stand trial at Chester Mental Health Center. It had been my opinion then that Mr. Lattimore could best be diagnosed as 1) Psychotic Disorder, NOS, 2) Alcohol Dependence in a Controlled Environment, 3) Polysubstance Dependence in a Controlled Environment, 4) Mild Mental Retardation, and 5) Borderline Personality Traits. It was also my opinion at that time that Mr. Lattimore's mental illness did not substantially affect his ability to understand the nature and purpose of the proceedings against him as long as there were special provisions at the trial.

I had recommended the following special provisions to insure that Mr. Lattimore could follow what was happening during his trial. First, I had strongly recommended that he continue

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on his psychotropic medication. Second, I had recommended that the vocabulary be kept simple at the level of a nine to ten-year-old. Third, I had recommended that there be periodic checks to insure that Mr. Lattimore understands what is happening during the trial. During these checks I had recommended that he not be asked yes or no questions. Rather he should be asked to explain back in his own words what was happening. This demonstrated competence would insure that he truly grasps what is happening in the court at that time.

The court adjudicated Mr. Lattimore fit to stand trial and remanded him back to St. Clair County Jail. He has been incarcerated at St. Clair County Jail since August 3, 2011.

I next evaluated Mr. Lattimore on September 11, 2012 as to his ability to knowingly, intelligently, and willingly waive his Miranda Rights. It had been my opinion then that Mr. Lattimore's mental illness (Psychotic Disorder, NOS, Alcohol Dependence in a Controlled Environment, Polysubstance Dependence in a Controlled Environment, Mild Mental Retardation, and Borderline Personality Traits) substantially impaired his ability to waive his Miranda Rights on November 8, 2009.

In addition to my current interview with Mr. Lattimore, I reviewed my March 18, 2010 fitness to stand trial report on Mr. Lattimore. I reviewed my July 6, 2011 fitness to stand trial report on Mr. Lattimore. I reviewed my September 11, 2012 Miranda Rights evaluation on Mr. Lattimore. I reviewed his videotaped statements. I reviewed his clinical files at St. Clair County Jail. Finally, I spoke with the nursing staff at St. Clair County Jail as to their interactions with Mr. Lattimore.

At the beginning of my interview with Mr. Lattimore, I informed him of the limited confidentiality of my assessment as I would be sending a copy of my findings to you and you in turn may be sharing these findings with the state's attorney and the presiding judge. When asked if he understood the aforementioned information and if he wished to continue, Mr. Lattimore immediately shook his head yes. I then asked him to explain back in his own words what he had just agreed to do and he was able to do so.

Mental Status Exam revealed Mr. Lattimore to be oriented in all three spheres - person, time, and place. In other words, he knew who he was, that he was at St. Clair County Jail, and that he could correctly identify the day of the week, month, and year.

He did admit to experiencing auditory hallucinations and spoke of how he had last heard these "voices" a couple of days ago. When I had seen Mr. Lattimore in July 2011, but he had admitted to experiencing the auditory hallucinations in the past. He spoke of how he used to hear "monster voices" telling him to do things. He had stated in July 2011 that he last heard these

voices "two - three months ago" and that they had stopped when he began taking his psychotropic medications on a regular basis.

Mr. Lattimore had also admitted to hearing voices in my March 2010 assessment. At that time when he had been asked if he ever experienced any type of hallucinations, he had answered, "I been hearing voices telling me to kill myself. Heard them when I little, but they worser." When pushed, he had spoken of how these voices in the past have told him to light fires and kill himself. He added, "I don't hear them when I on my medicine." He did say then that these voices appeared to come from inside of his head and not outside of his head. True auditory hallucinations are usually described as coming from outside of one's head. These "voices" may very well have been his thoughts. Ms. Rose Best, Mr. Lattimore's mother, had related how her son had set fires in the house. In addition she had stated that her son had attempted to kill himself.

No specific delusional material could be elicited in his thinking. His thinking itself was neither loose nor tangential, but rather it was extremely concrete. This would be consistent with his very limited intellectual abilities.

Intellectually, Mr. Lattimore is functioning in the Mild Mentally Retarded Range of Intelligence as indicated by his March 2010 performance on the Wechsler Adult Intelligence Scale - III (Verbal IQ 60, Performance IQ 57, Full Scale IQ 54). There had been little "scatter" or variability in his performance on the individual WAIS-III subtests. He had scored at or below the 2 %ile on all of them. He had scored his lowest on the Arithmetic Subtest, a measure of concentration and utilization of basic math skills. For example, he could not correctly do such simple problems as "10 - 6" or "30 divide by 6." His range of general information had been extremely limited as evidenced by his performance on the Information Subtest. For example, he did not know how many months were in a year. Nor did he know in what direct the sun rose. Intellectually, Mr. Lattimore is functioning in the bottom 1 % of the nation. His overall cognitive abilities would be roughly the equivalent of a nine to ten year old.

His limited intellectual abilities would be consistent with his past placement in special education classes and limited formal education. Mr. Lattimore stated that he had dropped out of school in the ninth grade and had always been in special education classes. Ms. Rose Best, Mr. Lattimore's mother, had stated that her son had been in special education programming since "kindergarten - first grade." She could not tell me when her son had dropped out.

Mr. Lattimore's scholastic abilities would be consistent with his placement in special education services and limited intellectual abilities. On the Reading Subtest of the Wide Range

Achievement Test - 3, he only scored at the third grade level. For example, he could not read such words as "stretch" or "bulk."

His memory, both short and long term, was impaired. For example, he could only repeat back accurately four numbers forward and two numbers backwards. Mr. Lattimore could at best only give a simple history.

Through much of my assessment Mr. Lattimore would flash an inappropriate smile and he often had a wide-eyed stare. He had presented with the same wide-eyed stare in both my March 2010 interview, my July 2011 interview, and my September 11, 2012 interview with him. His speech was rapid and out often come out in bursts. Ms. Rose Best had stated that her son had been diagnosed with Attention Deficit Hyperactivity Disorder in the past and placed on medication for this.

Mr. Lattimore does have an extremely low frustration tolerance level and will quickly decompensate into anger when placed under the slightest stress. When he turns this anger inward, he becomes depressed and suicidal. Mr. Lattimore has repeatedly attempted suicide in the past by cutting on himself and attempting to hang himself. Ms. Best confirmed that her son had attempted to kill himself several times in 1994. She stated, "He'd have pictures in his bed of his daddy and slept with a butcher knife." Mr. Lattimore had attempted to hang himself during his previous incarceration at St. Clair County Jail. Shortly after he had been admitted to Chester Mental Health, he had attempted to hang himself.

When he turns his anger outward, Mr. Lattimore lashes out at others around him. This would be consistent with his placement in behavioral classes. It would be consistent with his numerous fights. It would be consistent with his physical altercation with another patient at Chester Mental Health in June 2011. It would be consistent with his numerous fights at St. Clair County Jail. He added that he had been in the Quiet Room and is now in a disciplinary block.

He did admit to both alcohol and drug abuse. When asked how much he drank, Mr. Lattimore had replied, "A lot." He stated that he first began drinking when he was "little" and it "messed up my ulcers. Had to go to the hospital for that." He admitted to drinking on a daily basis and would usually consume at least a pint of gin a day. He admitted to memory lapses, but he denied ever having the d.t.s or drinking in the morning. Mr. Lattimore has never been able to get a driver's license, but he did say that he received a DUI.

In addition he admitted to a lengthy history of drug abuse. He stated that he first began smoking marijuana at "eight or nine" and would smoke "five blunts a day." He also admitted to using cocaine "when the weed don't work." He continued that he first began using cocaine at 17

and he didn't use "much." He later spoke of how he smoked two to three rocks of crack cocaine a day. In addition he stated that he began using Ecstasy when he was 17 and would take "about three pills a day."

He does have a lengthy history of psychiatric treatment beginning when he was a child. Ms. Best stated that her son had seen Dr. Katzman through Comprehensive Mental Health Center and that he had tried three different types of medications. She lamented that the medications only made him worse. She had stated in March 2010, "Last year I took him back to 38th Street for an evaluation. Something wrong with him. He always needed so much guidance, always angry."

Mr. Lattimore was admitted to Chester Mental Health Center on June 10, 2010 and stabilized on psychotropic medication. He was remanded back to the court, adjudicated as fit to stand trial, and has been at St. Clair County Jail since August 3, 2011.

Prior to Mr. Lattimore incarceration at St. Clair County Jail in 2010, he had received SSI for his extremely limited intellectual ability. Ms. Best stated that her son has been on disability since he was six years old. His mother is his payee.

Mr. Lattimore has been on numerous psychotropic medications in the past. He most recently had been on the psychotropic medications, Navane and Cogentin, at St. Clair County Jail. He had been refusing his medications and they were discontinued on January 24, 2013. Mr. Lattimore is now asking to be placed back on his psychotropic medication. I would strongly recommend that he go back on his psychotropic medication or he will decompensate into psychosis, much as he has in the past.

The diagnosis for Mr. Milton Lattimore, Jr. based upon my evaluation would be the following:

Axis I:	Psychotic Disorder, NOS
	Alcohol Dependence in a Controlled Environment
	Polysubstance Dependence in a Controlled Environment
Axis II:	Mild Mental Retardation
	Borderline Personality Traits
Axis III:	Headaches

When Mr. Lattimore was asked what had happened at the time of the alleged offenses, he replied, "They say I killed my baby momma. Two others. I wasn't at the scene. Tom (Keefe) said they charged me with three (murders), but I didn't do it. All they have is the kid. He eight

then. They threw out my statement. I was in St. Louis. My family over there. I'm in St. Louis."

It would be my opinion that Mr. Lattimore was suffering from a substantial disorder of thought, mood, and behavior (Psychotic Disorder, NOS, Alcohol Dependence in a Controlled Environment, Polysubstance Dependence in a Controlled Environment, Mild Mental Retardation, and Borderline Personality Traits) at the time of the alleged offenses which severely impaired his judgment and effected his behavior, but not to the extent that he was unable to appreciate the criminality of his conduct or to conform his behavior to the requirements of the law. Mr. Lattimore is severely intellectually limited. His overall cognitive abilities are at the level of a nine to ten year old. He has an extremely low frustration tolerance level and will quickly decompensate into anger. He has a history of alcohol and drug dependence which further impairs his already poor frustration tolerance level and increases his potential for acting out. He has had periods where he has experienced auditory hallucinations in the past.

At the same time Mr. Lattimore denied that he was experiencing any type of command hallucinations at the time of the alleged offenses. Even though he is intellectually limited, he does know that shooting someone is wrong and could cause death. He could have controlled his behavior if he so desired. Mr. Lattimore repeatedly insisted he did not shoot anyone and was in St. Louis at the time. Therefore, it would be my opinion that Mr. Milton Lattimore, Jr., was legally sane at the time of the alleged offenses. It would also be my opinion that he was legally sane at the time of the alleged offenses. It would also be my opinion that Mr. Milton Lattimore would qualify for a Guilty But Mentally Ill plea.

If you have any questions or if I can be of any further assistance, please do not hesitate to ask.

Sincerely,

Daniel J. Cuneo, Ph. D.

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APPENDIX J

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT

ST. CLAIR COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)
)
VS) CAUSE NO: 09-CF-1306
)
MILTON LATTIMORE,)
)
Defendant.)

REPORT OF PROCEEDINGS

Before the HONORABLE JOHN BARICEVIC, Chief Circuit Judge

PLEA OF GUILTY

(October 02, 2013)

APPEARANCES:

MS. DEBORAH PHILLIPS, Assistant State's Attorney,
On Behalf of the People of the State of Illinois;
and

MR. THOMAS Q. KEEFE, III, Assistant Public Defender,
On Behalf of Defendant.

LINDA S. DENNIS, C.S.R.
Official Court Reporter
C.S.R. License No. 084-002848

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BE IT REMEMBERED AND CERTIFIED that heretofore, on to-wit: October 02, 2013, being one of the regular judicial days of this Court, the matter as hereinbefore set forth came on for hearing before the HONORABLE JOHN BARICEVIC, Chief Circuit Judge in and for the Twentieth Judicial Circuit, St. Clair County, Illinois, and the following was had of record, to-wit:

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(Upon the Court convening, with the defendant, Mr. Milton Lattimore, present in open court and with his counsel, Mr. Thomas Q. Keefe, III, Assistant Public Defender, and the People of the State of Illinois being represented this date by Ms. Deborah Phillips, Assistant State's Attorney, the following was had of record.)

THE COURT: People of the State of Illinois vs. Milton Lattimore, 09-CF-1306.

Ms. Phillips?

MS. PHILLIPS: Your Honor, the parties have a negotiated plea agreement, subject to the Court's approval, which will involve the defendant pleading guilty but mentally ill to a new Criminal Information filed today's date charging the defendant with one count of first degree murder.

The potential sentencing range for the new charge is twenty to sixty years in the Illinois Department of Corrections at one hundred percent Truth-in-Sentencing, followed by three years of mandatory supervised release.

It's the People's understanding that the defendant would waive preliminary hearing and formal reading on the new charge.

MR. KEEFE: That's correct, Your Honor.

THE COURT: And the negotiations?

MS. PHILLIPS: In exchange for the plea of guilty but mentally ill to the new Information, at the time of sentencing, the People can argue for the maximum sentence of sixty years in the Illinois Department of Corrections, and the defendant can argue for no less than thirty years in the Illinois Department of Corrections at one hundred percent Truth-in-Sentencing.

Additionally, as part of these negotiations, the People will allow to be able to include in its factual basis and to argue at time of sentencing the facts and circumstances surrounding the defendant's murder of all three victims, Jaimaca McDaniel, Tenikia Harvey, Raykel Gathing. Additionally, all three victims' families will be allowed to present victim impact statements at the sentencing hearing.

Then at the time of sentencing, Your Honor, the

People would move to dismiss the three-count Criminal Indictment filed on December 4th of 2009 charging the defendant with three counts of first degree murder.

The potential penalty as charged in the original Indictment was natural life pursuant to 730 ILCS 5/5-8-1, subparagraph (c)(2).

And there would also be three years of mandatory supervised release.

THE COURT: But if he had -- if a jury had come back and found him guilty of one of those but not all three, it would have been the twenty to sixty?

MS. PHILLIPS: It would -- it would have been as charged in the Indictment a mandatory twenty-five-year enhancement. So, a minimum of forty-five years to natural life.

THE COURT: Forty-five to --

MS. PHILLIPS: Natural life.

THE COURT: But only if he was convicted of killing multiples?

MS. PHILLIPS: No, it was -- it would be natural life, Your Honor, if he was -- if he was found guilty of killing more than one individual.

If it were only one individual that they returned a guilty verdict on, it would have been a mandatory minimum of

forty-five to natural life, considering the firearm enhancement.

THE COURT: Do you agree?

MR. KEEFE: I do, sir.

THE COURT: Mr. Lattimore, how old are you?

THE DEFENDANT: Twenty-five, sir.

THE COURT: Do you read and write?

THE DEFENDANT: Yes. Yes, sir.

THE COURT: Are you currently taking any drug or medication?

THE DEFENDANT: Yes, sir.

THE COURT: Does it affect your ability to understand what we're doing?

THE DEFENDANT: No, sir.

THE COURT: If you have any questions about this process, you stop me and either ask me or Mr. Keefe, and we'll make sure you know what's going on. Okay?

THE DEFENDANT: Yes, sir.

THE COURT: Do you think you need any more time to talk to Mr. Keefe?

THE DEFENDANT: Yeah, he said he going to talk to me after we get finished. He said he going to talk to me after we get finished.

THE COURT: Okay, let me change the question.