

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2019

RESHAUD BROWN,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO
THE COURT OF APPEALS OF WASHINGTON

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QUESTION PRESENTED

Whether imposition of a mandatory sentence of life without parole under a habitual offender statute violates the Eighth Amendment prohibition against cruel and unusual punishment, where petitioner committed prior "strike" offenses when he was a youthful adult (21-22 years old) but the sentencing court did not take youth into account in imposing the sentence?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Reshaud Brown respectfully requests that this Court issue a writ of certiorari to review the judgment of the Washington Court of Appeals affirming his sentence.

OPINIONS BELOW

The Washington Court of Appeals' opinion, reported at 5 Wn. App. 2d 1037, is attached as appendix A. The Washington Supreme Court's order denying Brown's petition for review, reported at 433 P.3d 813 (2019), is attached as appendix B.

JURISDICTION

The Washington Court of Appeals issued its decision on October 15, 2018. The Washington Supreme Court entered its order denying Brown's petition for review on February 6, 2019. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Eighth Amendment to the United States Constitution provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

RCW 9.94A.570 provides "a persistent offender shall be sentenced to a term of total confinement for life without the possibility of release."

STATEMENT OF THE CASE

A jury found Brown guilty of multiple crimes committed against his girlfriend, the most serious of which was second degree assault. *State v. Brown*, 5 Wn. App. 2d 1037, 2018 WL 4959959, at *1-3. Brown committed the assault in this case at 27 years of age, but he committed his prior "strike" offenses at ages 21 and 22. *Id.* at *5.

Defense counsel requested that the court impose a sentence of less than life by considering Brown's qualities of youth as a mitigating factor. App. C, Sentencing Memo at 5-8. Although Brown was not a juvenile based on chronological age, his functioning age and mental abilities were not those of an adult. *Id.* at 8. He was diagnosed with an intellectual disability and functioned in the mildly retarded range (the lowest two percent of the population). App. C, Dr. Asher's Report (9/6/13) at 11, 13-14. Testing showed his "understanding of social situations and ability to estimate consequences from prior

conditions" was "extremely poor and immature." *Id.* at 13. His planning and impulse control is "equivalent to that of an early elementary school child." *Id.* Mental status testing put Brown in the range indicative of dementia. App. C, Dr. Asher's Report (8/30/16) at 6, Dr. Asher's Report (12/20/16) at 6. His cognition and reasoning abilities were significantly impaired. App. C, Dr. Asher's Report (8/30/16) at 6-7.

The court sentenced Brown to life under the Persistent Offender Accountability Act (POAA), believing it had no choice. *Brown*, 5 Wn. App. 2d 1037, 2018 WL 4959959, at *2. A "persistent offender" — one who has three "most serious offense" convictions — "shall" be sentenced to life imprisonment without the possibility of release. RCW 9.94A.030(38)(a)(i); RCW 9.94A.570.

On appeal, Brown contended his mandatory life sentence violated the Eighth Amendment of the U.S. Constitution. The Court of Appeals found no error and affirmed. *Brown*, 5 Wn. App. 2d 1037, 2018 WL 4959959, at *1.

REASONS FOR GRANTING THE WRIT

A MANDATORY SENTENCE OF LIFE WITHOUT PAROLE ON THE BASIS OF A PRIOR OFFENSE COMMITTED AS A 21-YEAR-OLD VIOLATES THE EIGHTH AMENDMENT.

The science on brain development has advanced. The law has followed. It is now established that chronological age is not determinative of mental development. The qualities of youth that mandate constitutional protection in the sentencing context persist into young adulthood.

Brown committed his first “strike” offense when he was only 21 years old. That is an age when a young person’s brain is still developing. He is still psychologically immature, prone to impulsivity and risk-taking, and susceptible to peer pressure. Brown’s current intellectual disability ensures that the hallmark qualities of youth endure. Despite the mitigating circumstance, Washington’s Persistent Offender Accountability Act required the trial court to sentence Brown to life without parole, without allowing the court to exercise any discretion by considering Brown’s youthful qualities. Brown’s mandatory

sentence violates the Eighth Amendment prohibition against cruel and unusual sentences.

Under RCW 9.94A.570, a persistent offender shall be sentenced to life in prison without the possibility of release. A persistent offender is one who has been convicted of a most serious offense, known as a “strike” offense, and has two prior felony convictions that are also most serious offenses. RCW 9.94A.030(38)(a); State v. Estes, 188 Wn.2d 450, 459, 395 P.3d 1045 (2017). Brown's current conviction for second degree assault qualifies as a strike offense. RCW 9.94A.030(33(b)). The POAA's mandatory sentencing scheme does not allow for individualized sentencing that accounts for a young adult's developmental immaturity.

The Eighth Amendment prohibition against cruel and unusual punishment draws meaning “from the evolving standards of decency that mark the progress of a maturing society.” *Atkins v. Virginia*, 536 U.S. 304, 311-12, 122 S. Ct. 2242, 153 L. Ed. 2d 335 (2002) (quotation marks and citation omitted). The central question is whether, in light of evolving standards of decency, the punishment is disproportional to

either the crime or the class of offender. *Graham v. Florida*, 560 U.S. 48, 59, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010).

The Eighth Amendment “categorically” bars certain sentencing practices for a particular class of offenders “based on mismatches between the culpability of [the] class of offenders and the severity of [the] penalty.” *Miller v. Alabama*, 567 U.S. 460, 470, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012). In deciding whether a given punishment is disproportional for a class of offenders, the Court asks whether a national consensus exists against the sentencing practice, looking at “objective indicia.” *Graham*, 560 U.S. at 62. Second, the Court exercises independent judgment, assessing the culpability of the particular class of offenders in light of their shared, general characteristics, and weighing that culpability against the severity of the punishment. *Id.* at 67. This analysis takes account of the penological justifications for the sentencing practice. *Id.* at 71.

The United States Supreme Court has held the Eighth Amendment categorically bars the most serious sentences for juvenile offenders. *Roper v. Simmons*, 543 U.S. 551, 568-73, 125

S. Ct. 1183, 161 L. Ed. 2d 1 (2005) (barring execution of all juveniles under age 18); *Graham*, 560 U.S. at 74-75 (barring life without parole for all juveniles who did not commit homicide); *Miller*, 567 U.S. at 479-80 (barring mandatory life without parole for juveniles). The Court relied on developments in empirical scientific research to conclude the most serious punishments are not justified for juveniles because, due to their psychological immaturity, they are less culpable and less likely to be deterred by the threat of criminal sanction than adults. *Miller*, 567 U.S. at 471-72; *Graham*, 560 U.S. at 72; *Roper*, 543 U.S. at 571. Further, youth crime is not exclusively the offender's fault, as it represents a failure of family, school, and society. *Thompson v. Oklahoma*, 487 U.S. 815, 834, 108 S. Ct. 2687, 101 L. Ed. 2d 702 (1988).

Just as the Eighth Amendment bars a mandatory sentence of life without parole for a juvenile offender, *Miller*, 567 U.S. at 479, this Court should hold it also bars a mandatory sentence of life without parole based on prior "strike" offenses committed as a 21-year-old.

- a. **A 21-year-old is like a juvenile for purposes of the Eighth Amendment.**

Roper, *Graham* and *Miller* relied on developments in psychology and neuroscience showing “fundamental differences between juvenile and adult minds’ — for example, in ‘parts of the brain involved in behavior control.’” *Miller*, 567 U.S. at 471-72 (quoting *Graham*, 560 U.S. at 68). These differences both lessened a juvenile’s moral culpability, *Roper*, 543 U.S. at 571, and enhanced the prospect of reformation, *Miller*, 567 U.S. at 472. With these differences, the penological justifications for imposing the harshest sentences were diminished for juveniles. *Miller*, 567 U.S. at 472.

Brown’s previous strike offenses were committed while he was an adult by chronological age, the first at age 21 and the second at age 22. But the qualities that distinguish juveniles as a class and make them less deserving of the most serious punishments, “do not disappear when an individual turns 18.” *Roper*, 543 U.S. at 574. Chronological age is not a talisman here. This Court recognizes “youth is more than a chronological fact.” *Miller*, 567 U.S. at 476 (quoting *Eddings v. Oklahoma*, 455 U.S. 104, 115, 102 S. Ct. 869, 71 L. Ed. 2d 1 (1982)). If an adult has

the mind of a juvenile, then there is no sound basis on which to bar that adult from seeking to rely on the same characteristics that would justify mitigation for the juvenile.

Consider *Atkins v. Virginia*, 536 U.S. 304, 306-07, 122 S. Ct. 2242, 153 L. Ed. 2d 335 (2002), where the Court held imposition of the death penalty on mentally retarded defendants is unconstitutional. In reaching that holding, the Court identified the same features that diminished the defendant's culpability as in the juvenile cases. *Id.* at 318 (“Because of their impairments, . . . [mentally retarded persons], by definition . . . have diminished capacities to understand and process information, to communicate, to abstract from mistakes and learn from experience, to engage in logical reasoning, to control impulses, and to understand the reactions of others.”). In *Atkins*, the defendant was an adult by chronological age, but he had the “mental age” of between 9 and 12 years old. *Id.* at 310.

“[T]he Court, in essence, has equated diminished mental capabilities of juveniles and mentally retarded persons as the central justification for its categorical restrictions on types of

sentences for classes of individuals: both juveniles and mentally retarded individuals are 'categorically less culpable than the average criminal.'" *United States v. Marshall*, 736 F.3d 492, 503 (6th Cir. 2013) (Lawson, J., concurring) (quoting *Roper*, 543 U.S. at 567 (quoting *Atkins*, 536 U.S. at 316), *cert. denied*, 573 U.S. 922, 134 S. Ct. 2832, 189 L. Ed. 2d 795 (2014)). *Roper's* reliance on *Atkins* shows that "mental age," not chronological age, should drive the Eighth Amendment analysis.

Although "a line must be drawn" for a categorical rule, *Roper*, 543 U.S. at 574, that line must be rational, based on empirical fact, and subject to change as scientific understandings develop and change. *See Moore v. Texas*, __ U.S. __, 137 S. Ct. 1039, 1053, 197 L. Ed. 2d 416 (2017) (holding that in determining whether an offender has an intellectual disability for purposes of the Eighth Amendment, states must defer to the "medical community's current standards" that reflect "improved understanding over time"). Scientific research now shows that young adults in their late teens and early 20s are more similar to younger adolescents than to older adults in ways significant to the Court's constitutional analysis.

“Over the past decade, developmental psychologists and neuroscientists have found that biological and psychological development continues into the early twenties.” Elizabeth S. Scott et al., *Young Adulthood as a Transitional Legal Category: Science, Social Change, and Justice Policy*, 85 Fordham L. Rev. 641, 642 (2016). Although “basic intellectual abilities reach adult levels around age 16,” the “process of psychological maturation” is not complete until “well into the young adult years.” Laurence Steinberg, *A Social Neuroscience Perspective on Adolescent Risk-Taking*, 28(1) Dev. Review, 78-106 (2008).

As a result of this delay in brain development, persons in their early 20s are still prone to impulsivity and risky behavior, including “criminal offending.” Scott, *Young Adulthood*, *supra*, at 647. They are more vulnerable to negative outside influences, such as peer pressure, than their older counterparts. Margo Gardner et al., *Peer Influence on Risk Taking, Risk Preference, and Risky Decision Making in Adolescence and Adulthood: An Experimental Study*, 41 Dev. Psychology 625, 632-34 (2005). And while the process of “[i]dentity formation . . . begins in adolescence,” it “takes place mainly in emerging adulthood.”

Jeffrey Arnett, *Emerging Adulthood: A Theory of Development from the Late Teens through the Twenties*, 55 Am. Psychologist 469, 470 (2000).

Thus, a 21-year-old shares many of the same developmental characteristics, such as impulsivity, vulnerability to outside pressures, and lack of maturity, that the Court found significant in teenagers in *Roper*, *Graham*, and *Miller*. A 21-year-old is less culpable and less likely to be deterred by the threat of criminal sanction than a mature adult.

- b. A mandatory sentence of life without parole is disproportionate for a person who committed his first strike offense at age 21.

A mandatory sentence of life without parole is the most severe possible sentence short of death. *Miller* analogized life without parole for juveniles to capital punishment, as “[i]mprisoning an offender until he dies alters the remainder of his life by a forfeiture that is irrevocable.” *Miller*, 567 U.S. at 474-75 (quotation marks and citation omitted). Due to the harshness of the sentence, the sentencer must “consider the mitigating qualities of youth,” including “immaturity, impetuosity, and failure to appreciate risks and consequences.”

Id. at 476-78. Mandatory sentencing “ignores that [the offender] might have been charged and convicted of a lesser offense if not for incompetencies associated with youth—for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys.” *Id.* at 477-78. These same considerations apply to a sentencing scheme that mandates life without parole on the basis of a prior offense committed as a 21-year-old. Such a sentence is disproportional for this class of offenders because it does not allow the court to consider the mitigating qualities of youth that diminish culpability for the prior offense.

The penological purposes of the POAA are not served by applying it to offenders who committed their first strike at the age of 21. The purposes of the statute are retribution, deterrence, and incapacitation. *State v. Rivers*, 129 Wn.2d 697, 713, 921 P.2d 495 (1996). Retribution encompasses all three of an offender’s “strikes,” as the statute punishes “[t]he repetition of criminal conduct.” *Id.* at 714-15 (citation omitted). But “[t]he heart of the retribution rationale relates to an offender’s

blameworthiness.” *Miller*, 567 U.S. at 472. A 21-year-old is less blameworthy than a fully formed adult. Moreover, “[r]etribution is not proportional if the law’s most severe penalty is imposed on one whose culpability or blameworthiness is diminished, to a substantial degree, by reason of youth and immaturity.” *Roper*, 543 U.S. at 571.

Likewise, deterrence has little justification when applied to a youthful offender. The same characteristics that render youth less culpable than older adults, “their immaturity, recklessness, and impetuosity,” “make them less likely to consider potential punishment.” *Miller*, 567 U.S. at 472. And finally, incapacitation cannot fairly justify a mandatory sentence of life without parole because such a sentence “disregards the possibility of rehabilitation even when the circumstances most suggest it.” *Id.* at 477-78.

Apparently in recognition that a person should not be punished later in life for prior youthful criminal activity, states overwhelmingly prohibit the use of juvenile offenses to drastically enhance later sentences under recidivist schemes. See Beth Caldwell, *Twenty-Five to Life for Adolescent Mistakes*:

Juvenile Strikes as Cruel and Unusual Punishment, 46 U.S.F. L.Rev. 581, 618-22 & nn.240, 241, 244 (2012); *State v. Bruegger*, 773 N.W.2d 862, 885 (Iowa 2009) (applying *Roper* to hold prior offense committed as juvenile could not be used to impose mandatory 25-year sentence for adult crime, as Bruegger was “entitled to an opportunity to show that the consequences of his adolescent act become grossly disproportional to his sentence for the adult crime”).

Some courts have specifically held an offender’s mandatory minimum sentence for an adult crime was disproportional when aggravated through crimes committed as a young adult. *United States v. Howard*, 773 F.3d 519, 529-32 (4th Cir. 2014) (citing *Roper* and holding life sentence substantively unreasonable when based on crimes committed at age 18 or younger); *Matthews v. Cain*, 337 F. Supp. 3d 687, 706 (E.D. La. 2018) (citing *Graham* and striking down sentence of life without parole based on crimes committed at age 17 and 18).

In light of recent scientific advances and the Supreme Court’s holdings in *Miller* and related cases, courts around the country increasingly recognize that young adults cannot be

treated the same as fully mature adults when imposing severe criminal sanctions. *See, e.g., State v. O'Dell*, 183 Wn.2d 680, 358 P.3d 359 (Wash. 2017) (permitting 18-year-old offender to seek exceptional sentence downward on basis of youth); *Cruz v. United States*, No. 11-CV787 (JCH), 2018 WL 1541898 (D. Conn. March 29, 2018) (holding that, in light of recent scientific developments, “*Miller* applies to 18-year-olds,” and vacating sentence of life without parole for 18-year-old offender); *United States v. Walters*, 253 F. Supp. 3d 1033, 1036 (E.D. Wis. 2017) (imposing sentence below federal guidelines for 19-year-old based on youth); *In re Poole*, 24 Cal. App. 5th 965, 981-82 (Cal. Ct. App. 2018) (relying on *Miller* in part to vacate parole board’s decision to deny parole for 19-year-old in light of inadequate consideration of youth); *State v. Norris*, No. A-3008-15T4, 2017 WL 2062145, at *5 (N.J. Super. Ct. App. Div. May 15, 2017) (relying on *Miller* to strike down 75-year sentence for 21-year-old).

Given that Brown was only 21 years old at the time he committed his first strike offense, his mandatory sentence of life

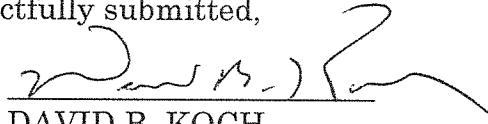
without the possibility of parole is disproportionate in violation of the Eighth Amendment.

CONCLUSION

For the reasons stated, Brown requests that this Court grant his Petition for a Writ of Certiorari.

DATED this 2nd day of May, 2019.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David B. Koch", is written over a horizontal line.

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APPENDIX A

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON,)	
)	No. 76891-3-I
Respondent,)	
)	DIVISION ONE
v.)	
)	UNPUBLISHED OPINION
RESHAUD TODD BROWN,)	
)	
Appellant.)	FILED: October 15, 2018
)	

CHUN, J. — The State charged Reshaud Brown with multiple crimes, including assault in the second degree. During trial, Brown requested a jury instruction on assault in the third degree. The trial court denied the request but issued a jury instruction on assault in the fourth degree in addition to second degree assault by strangulation. A jury convicted Brown of assault in the second degree. He appeals the trial court's refusal to issue a jury instruction on assault in the third degree. He also contends his mandatory life sentence under the Persistent Offender Accountability Act (POAA) violates the Eighth Amendment of the United States Constitution and article I, section 14 of the Washington Constitution as cruel and unusual punishment because of his mental and emotional deficits. Finding no error, we affirm.

I.

BACKGROUND

On September 21, 2015, the Kent Police Department (KPD) responded to a call about sounds of a domestic struggle in one of the rooms of a Howard Johnson motel. Throughout the night before, a couple in the neighboring unit heard loud noises, crying, and a female voice saying "No, no." The couple reported the noises to the hotel clerk who called the police.

When they arrived, KPD officers heard a male voice followed by a frantic female voice saying, "He's killing me. Help me." KPD had obtained a key but kicked the door open because the woman continued to scream for help. Upon entering the hotel room, KPD found Brown standing just inside the door with his girlfriend, Natalie Guntow, seated in a chair to the right.

KPD officers found Guntow "extremely frantic." KPD detained Brown and took a statement from Guntow. KPD observed marks on Guntow's neck and minor scrapes on her arm, legs, and face. Guntow told KPD Brown had strangled her with the cord of a Roto Hammer,¹ which they found between the bed and bathroom of the motel room. Guntow also reported Brown had told her the tool was a nail gun and threatened to shoot her with it.

An EMT at the scene evaluated Guntow and noted red marks on her neck and leg. Guntow told the EMT she had been hit and choked. After transfer to the emergency room, the evaluating physician noted, "[t]he patient states that

¹ A Roto Hammer is a tool for drilling concrete.

she was in a hotel with her boyfriend and he choked her with his hands, and also wrapped a cord around her neck and was strangling her."

KPD arrested Brown and took him into custody. The State charged Brown with assault in the second degree by strangulation and felony harassment, both with domestic violence allegations.²

At trial, Guntow told a very different version of the events: She testified she left the hotel to visit her ex-pimp, Mikey, at his apartment to obtain methamphetamines. Guntow and Mikey smoked together and Mikey became upset and began beating her. He wrapped a cord around her neck. Guntow thought she blacked out for a few seconds. She eventually left Mikey's apartment and returned to the Howard Johnson motel. When Guntow arrived back at the motel, she told Brown about the incident with Mikey. Brown became angry and told Guntow he would leave her for someone else. Guntow and Brown argued. Guntow became upset and began throwing things, including Brown's shoes.

Throughout this testimony, the State confronted Guntow with her prior statements to police that Brown choked her at least four times that night and threatened to shoot her with a nail gun, chop her up, or stab her. Guntow admitted she told the police Brown assaulted her, but denied any memory of Brown choking her. She also denied Brown threatened her. She testified Brown never "put hands" on her. According to Guntow, she told the police Brown

² The State amended the information several times to include a charge of tampering with a witness, and multiple charges of domestic violence felony violation of a court order. None of these additional charges are at issue on appeal.

choked her because she was upset and did not want Brown to leave her.

Gumtow denied any wrongdoing by Brown.

Toward the end of trial, Brown requested an instruction for third degree assault. Brown raised the issue as a request for a lesser included offense instruction. The trial court refused to give the instruction for third degree assault as a lesser included offense because second and third degree assault required different elements. Instead the trial court issued a jury instruction on fourth degree assault as a lesser degree offense:

The defendant is charged in Count 1 with assault in the second degree. If, after full and careful deliberation on this charge, you are not satisfied beyond a reasonable doubt that the defendant is guilty, then you will consider whether the defendant is guilty of the lesser crime of assault in the fourth degree.

When a crime has been proved against a person, and there exists a reasonable doubt as to which of two or more degrees that person is guilty, he or she shall be convicted only of the lowest degree crime.

The jury convicted Brown of second degree assault, harassment, tampering with a witness, and seven counts of violation of a court order. The jury also found the existence of a domestic relationship between Brown and Gumtow at the time of commission of all crimes.

Due to prior offenses of first degree burglary and first degree robbery, Brown's second degree assault conviction constituted his third "most serious offense" under the POAA. Brown requested the trial court exercise discretion at sentencing and not impose the life sentence required by the POAA. The trial

court did not believe it had discretion to deviate from the POAA in this case and sentenced Brown to life without the possibility of early relief.

Brown appeals.

II.

ANALYSIS

A. Inferior Degree Offense Instruction

Brown claims the jury should have received an inferior degree offense instruction for assault in the third degree. The State argues the trial court properly refused the instruction because the evidence did not show Brown negligently assaulted Guntow. We agree the evidence failed to establish only third degree assault and conclude the trial court properly denied the third degree assault instruction.

"Generally, a criminal defendant may only be convicted of crimes charged in the State's information." State v. Corey, 181 Wn. App. 272, 275, 325 P.3d 250 (2014). But, a jury may find a defendant guilty of a crime that is an inferior degree to the crime charged. RCW 10.61.003; State v. Fernandez-Medina, 141 Wn.2d 448, 453, 6 P.3d 1150 (2000). A trial court may instruct the jury on an inferior degree offense only when:

(1) the statutes for both the charged offense and the proposed inferior degree offense 'proscribe but one offense'; (2) the information charges an offense that is divided into degrees, and the proposed offense is an inferior degree of the charged offense; and (3) there is evidence that the defendant committed only the inferior offense.

Fernandez-Medina, 141 Wn. 2d at 454 (quoting State v. Peterson, 133 Wn.2d 885, 891, 948 P.2d 381 (1997)).

Based on Brown's request, the trial court considered whether to give a third degree assault jury instruction as a lesser included offense rather than an inferior degree offense. The legal standard for entitlement to a lesser included offense differs from that of an inferior degree offense. Fernandez-Medina, 141 Wn.2d at 454. But in this case, any confusion means little because the parties do not dispute the legal component of the test for entitlement to an inferior degree offense instruction. See Fernandez-Medina, 141 Wn.2d at 454-55. On appeal, the parties only dispute the factual element of the test.

Whether to instruct a jury on an inferior degree offense requires the application of law to facts and is reviewed de novo. Corey, 181 Wn. App. at 276. We view the supporting evidence in the light most favorable to the party who requested the instruction. Fernandez-Medina, 141 Wn.2d at 455-56. The supporting evidence must affirmatively establish the defendant's theory of the case. Fernandez-Medina, 141 Wn.2d at 456.

A defendant must make a "more particularized" factual showing for an inferior degree offense instruction than for other jury instructions. Fernandez-Medina, 141 Wn.2d at 455. The evidence must raise an inference that *only* the inferior degree offense was committed. Fernandez-Medina, 141 Wn.2d at 455. "[W]hen substantial evidence in the record supports a rational inference that the defendant committed only the lesser included or inferior degree offense to the exclusion of the greater offense, the factual component of the test for entitlement to an inferior degree offense instruction is satisfied." Fernandez-Medina, 141 Wn.2d at 461. The inference does not arise merely because the jury does not

believe the State's evidence. State v. McClam, 69 Wn. App. 885, 888, 850 P.2d 1377 (1993) (citing State v. Speece, 115 Wn.2d 360, 362, 798 P.2d 294 (1990)). "[S]ome evidence must be presented which affirmatively establishes the defendant's theory." State v. Fowler, 114 Wn.2d 59, 67-68, 785 P.2d 808 (1990), overruled on other grounds by State v. Blair, 117 Wn.2d 479, 816 P.2d 718 (1991).

The State argued Brown committed assault in the second degree by strangulation. A defendant is guilty of this category of assault in the second degree if, "under circumstances not amounting to assault in the first degree," he or she "assaults another by strangulation or suffocation." RCW 9A.36.021(1)(g). Brown requested an instruction for assault in the third degree with substantial pain. Under the proposed instruction, a person commits assault in the third degree if he or she, under circumstances not amounting to assault in the first or second degree, "with criminal negligence, causes bodily harm accompanied by substantial pain that extends for a period sufficient to cause considerable suffering." RCW 9A.36.031(1)(f). To be entitled to an inferior degree offense instruction on this type of third degree assault, the evidence must affirmatively establish Brown did not strangle Gumtow but caused her bodily harm resulting in substantial pain.

In this case, the State provided evidence from witnesses who testified Gumtow reported Brown had strangled her. On direct examination, Gumtow denied Brown had strangled her, attributing the strangulation to Mikey instead. The State repeatedly countered Gumtow's testimony with reference to her prior

statements that Brown strangled her, but Gumtow continued to deny the events and claimed she made the statements because Brown upset her when he threatened to leave her.

If believed by the jury, this testimony created the inference that Brown did not commit assault in the second degree by strangulation. In fact, based on Gumtow's testimony, Mikey caused Gumtow's injuries and Brown did not "put hands" on her. Rather than establish Brown inflicted bodily harm and substantial pain as required for third degree assault, this affirmative evidence suggests Brown never assaulted Gumtow. Therefore, the evidence does not show Brown committed only the inferior degree offense of third degree assault to the exclusion of the greater offense of second degree assault.

The conclusion Brown committed third degree assault required the jury to selectively disbelieve parts of Gumtow's prior statements and her testimony. Disbelief of evidence of guilt does not satisfy the factual element of the test for an inferior degree instruction. Fernandez-Medina, 141 Wn.2d at 456. Brown was not entitled to an instruction for third degree assault.³

B. Ineffective Assistance of Counsel

Brown argues his trial counsel was ineffective for proposing and arguing the legal standard for a lesser included offense instruction rather than an inferior

³ The State argues third degree assault is inapplicable due to the required element of "criminal negligence." According to the State, the evidence shows the strangulation was intentional. Brown correctly argues the issue of criminal negligence is immaterial in this case. Under RCW 9A.08.010(2), "[w]hen a statute provides that criminal negligence suffices to establish an element of an offense, such element also is established if a person acts intentionally, knowingly, or recklessly." Therefore, evidence Brown intentionally strangled Gumtow satisfies the criminal negligence component.

degree offense instruction. Brown acknowledges Washington Supreme Court precedent forecloses this result, but raises the claim to preserve the issue for future review. In keeping with the binding case law, we conclude counsel was not ineffective.

The Sixth Amendment of the United States Constitution and article I, section 22 of the Washington Constitution guarantees effective assistance of counsel. State v. Hendrickson, 129 Wn.2d 61, 77, 917 P.2d 563 (1996). To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove both deficient performance and prejudice. State v. Jones, 183 Wn.2d 327, 339, 352 P.3d 776 (2015).

Establishing deficient performance requires a showing that counsel's representation fell below an objective standard of reasonableness based on consideration of all the circumstances. State v. Thomas, 109 Wn.2d 222, 225-26, 743 P.2d 816 (1987). "[S]crutiny of counsel's performance is highly deferential and courts will indulge in a strong presumption of reasonableness." Thomas, 109 Wn.2d at 226. The defendant bears the burden of establishing deficient performance. State v. Grier, 171 Wn.2d 17, 33, 246 P.3d 1260 (2011).

Prejudice sufficient to support a claim of ineffective assistance of counsel occurs when counsel's errors were so serious as to deprive the defendant of a fair trial. Hendrickson, 129 Wn.2d at 78. The defendant must demonstrate a "reasonable probability that, but for counsel's errors, the result of the trial would have been different." Hendrickson, 129 Wn.2d at 78.

A claim of ineffective assistance of counsel is a mixed question of law and fact that an appellate court reviews de novo. Jones, 183 Wn.2d at 338-39.

Counsel's failure to request a lesser offense instruction does not establish prejudice, as required for ineffective assistance of counsel, where a jury has convicted the defendant of the higher offense. Grier, 171 Wn.2d at 43-44; In re Personal Restraint of Grace, 174 Wn.2d 835, 847, 280 P.3d 1102 (2012).

Because courts presume a jury acts according to the law, courts must assume the jury would not have convicted the defendant of the higher degree offense unless the State had met its burden of proof. Grier, 171 Wn.2d at 43-44; Grace, 174 Wn.2d at 847.

Here, the jury convicted Brown of second degree assault by strangulation. Without evidence to the contrary, the presumption holds the jury arrived at this verdict because the State proved beyond a reasonable doubt that Brown committed assault by strangulation. As a result, the availability of a compromise verdict would not have changed the outcome of the trial. Grier, 171 Wn.2d at 44; Grace, 174 Wn.2d at 847. Brown, therefore, cannot demonstrate prejudice from trial counsel's failure to properly request an inferior degree offense instruction.

C. Mandatory Life Sentence Under the POAA

Brown contends his mandatory life sentence under the POAA constitutes cruel and unusual punishment and the trial court erred by failing to exercise its discretion to impose a lower punishment. Brown premises this claim on his "characteristics of youth" due to his mental and intellectual deficits. The State argues the trial court had no discretion in sentencing an adult under the POAA

and a mandatory life sentence under the POAA has properly withstood constitutional challenges. We agree.

We review alleged constitutional violations de novo. State v. Siers, 174 Wn.2d 269, 273-74, 274 P.3d 358 (2012).

Under the POAA, "[n]otwithstanding the statutory maximum sentence or any other provision of this chapter, a persistent offender shall be sentenced to a term of total confinement for life without the possibility of release."

RCW 9.94A.570. The use of "shall" imposes a mandatory requirement unless a contrary legislative intent is apparent. Erection Co. v. Dep't of Labor and Indus., 121 Wn.2d 513, 518, 852 P.2d 288 (1993). Therefore, the POAA requires a life sentence for a persistent offender. This mandatory life sentence under the POAA does not violate the Eighth Amendment of the United States Constitution when imposed on a defendant who committed all three strike offenses as an adult. State v. Witherspoon, 180 Wn.2d 875, 890, 329 P.3d 888 (2014).

Brown committed the assault in this case at 27 years of age. He committed his prior POAA crimes at ages 21 and 22. As an adult persistent offender, Brown's sentence of life without the possibility of early release was mandatory and constitutional. The trial court lacked discretion to deviate from this sentence.

Brown argues his mental and emotional impairments result in a level of developmental maturity equivalent to a child, which the trial court should have considered before imposing the life sentence. The Washington Supreme Court has acknowledged an offender's age has ramifications for the Eighth

Amendment, such that criminal procedure laws must take a defendant's youthfulness into account. State v. Houston-Sconiers, 188 Wn.2d 1, 8, 391 P.3d 409 (2017) (quoting Graham v. Florida, 560 U.S. 48, 76, 130 S. Ct. 2011, 176 L.Ed.2d 825 (2010)). As a result, "sentencing courts must have complete discretion to consider mitigating circumstances associated with the youth of any juvenile defendant, even in the adult criminal justice system." Houston-Sconiers, 188 Wn.2d at 21. Brown contends the trial court should have exercised this discretion in his sentencing.

But Brown was not a juvenile when he committed any of his POAA eligible crimes. While Brown claims his mental and intellectual deficits give him "characteristics of youth," he fails to provide case law to support the exercise of discretion in sentencing adults with such disabilities. Given the lack of authority for this position, we decline to extend Houston-Sconiers to the facts of this case.

Affirmed.

Chen, J.

WE CONCUR:

Mann, ACT

Unell, J.

APPENDIX B

FILED
SUPREME COURT
STATE OF WASHINGTON
2/6/2019
BY SUSAN L. CARLSON
CLERK

THE SUPREME COURT OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

RESHAUD TODD BROWN,

Petitioner.

No. 96517-0

ORDER

Court of Appeals

No. 76891-3-I

Department I of the Court, composed of Chief Justice Fairhurst and Justices Johnson, Owens, Wiggins and Gordon McCloud, considered at its February 5, 2019, Motion Calendar whether review should be granted pursuant to RAP 13.4(b) and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the petition for review is denied.

DATED at Olympia, Washington, this 6th day of February, 2019.

For the Court

Fairhurst, C.J.
CHIEF JUSTICE

APPENDIX C

FILED

17 MAY 15 AM 9:00

Before The Honorable Judith Ramseyer
Sentencing scheduled for: Friday, 5/19/2017 at 2:45 p.m.

SUPERIOR COURT CLERK
E-FILED

CASE NUMBER: 15-1-06293-6 KNT

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

THE STATE OF WASHINGTON,

Plaintiff,

v.

RESHAUD TODD BROWN,

Defendant.

NO. 15-1-06293-6 KNT

DEFENDANT'S SENTENCING
MEMORANDUM

COMES NOW Leta J. Schattauer, appointed counsel for Reshaud Brown, and provides the following for this Court's consideration before imposing a sentence in this case.

PROCEDURAL HISTORY

Reshaud Brown was arrested on 9/21/2015 at the Howard Johnson's Inn in Kent. He was with Natalie Gumtow, his girlfriend of about 1 ½ years. The police were called by the motel lobby clerk after the clerk was told by a male guest that over the past 7 to 12 hours he had heard sounds from the adjacent room that were concerning to him. The man did not contact anyone else about the concerning sounds. Mr. Brown was arrested after Ms. Gumtow told the police he hit her and strangled her. Mr. Brown has consistently denied any assault on Ms. Gumtow, though she had called

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1 the police on prior occasions only to change her mind once she and Mr. Brown reconciled or he
2 returned to her.

3 After his arrest, Mr. Brown contacted Ms. Guntow from jail. She reciprocated. She also
4 talked on more than one occasion with the State's representatives. Ms. Guntow's victim advocate
5 is Mary Vaughn.

6 Mr. Brown's case first went to trial on 6/6/16 before The Honorable James Cayce. Pre-trial
7 matters were addressed on 6/6/16 and 6/7/16. On 6/8/16 Defense counsel advised the Court of Mr.
8 Brown's suicide attempt.¹ On 9/13/16, at Defense counsel's request, an order for a competency
9 evaluation of Mr. Brown was entered. Trial was recessed pending the competency evaluations.

10 Jolene Simpson, Ph.D., on behalf of the State, conducted a competency evaluation of Mr.
11 Brown at the King County Jail. Kenneth Asher, Ph.D., who had previously evaluated Mr. Brown,
12 again met with Mr. Brown. Dr. Simpson determined Mr. Brown to be competent.

13 Dr. Asher initially evaluated Mr. Brown in 2013 with reference to the charges he faced in
14 Cause No. 12-1-06890-5 KNT. Dr. Asher was provided with all available records related to Mr.
15 Brown, and he interviewed some family members and friends. (A copy of Dr. Asher's report dated
16 9/6/13 is attached and incorporated herein in full by this reference.) Dr. Asher determined Mr.
17 Brown qualified for the following psychiatric diagnoses: Schizoaffective Disorder-bipolar type,
18 probable Post-Traumatic Stress Disorder, Intellectual Disability, Alcohol and Polysubstance Abuse,
19 a Global Assessment of Functioning estimated in the low-40s.

20 Dr. Asher again evaluated Mr. Brown in 2016. (A copy of his report dated 8/30/16 is
21 attached and incorporated herein in full by this reference.) Dr. Asher determined Mr. Brown's

22
23 ¹ While the jail staff and the State minimized this and a previous suicide attempt
24 during Mr. Brown's current incarceration as merely "attempts", these were not the
25 first suicide "attempts" on his life. There are other documented suicide attempts by
26 Mr. Brown throughout his life.

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psychological diagnoses were the same as those he found in 2013 with the exception that his Global Assessment of Functioning was "severely impaired or worse."

Dr. Asher again evaluated Mr. Brown with regard to his competency. He administered several tests and measures, some of which had validity scales. With respect to Mr. Brown's cognition, his developmental maturity is equivalent to a 10 year old. With respect to his mental status, he is in the range indicative of dementia. Dr. Asher concluded Mr. Brown still has significant intellectual deficits; he satisfied the criteria for PTSD; and he qualifies for the following psychological diagnoses: Adjustment Disorder-depression, chronic and Psychotic Disorder, Personality Disorder - mixes antisocial and borderline, and substance abuse. Dr. Asher determined Mr. Brown was competent to proceed with trial. A copy of Dr. Asher's 12/20/16 report is attached.

Trial reconvened on 2/13/17 before this Court on the eleven (11) charges reflected in the Third Amended Information, including a charge of Assault in the Second Degree. Closing arguments were made to the jury on 3/1/17, and the jury was empaneled at approximately 3:00 p.m. Counsel was advised at approximately 9:40 a.m. on 3/2/17 that the jury had reached it verdicts. Mr. Brown was found guilty on all 11 counts. The jury was released at 10:54 a.m. on 3/2/17.

Being found guilty of Assault in the Second Degree in the instant case is Mr. Brown's conviction on a third strike offense. His previous two convictions for statutorily defined strike offenses are for the following:

Cause No. 07-C-09812-3 KNT: Mr. Brown entered a guilty plea on 10/15/07 to the charge of Robbery in the First Degree committed on 7/6/07 when he was 21 years old.

Cause No. 09-1-07924-9 KNT: Mr. Brown entered a guilty plea on 10/18/10 to the charge of Burglary in the First Degree committed on 11/12/09 when he was 22 years old.

PERSONAL HISTORY

Reshaud Brown is 29 years old (DOB: 11/20/1987). He is the son of Randy Johnson and

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Robin Brown. While in utero, his mother was shot in the head. Her care involved surgery with anesthesia and narcotic pain killers. In spite of these odds, Reshaud was born. However, he has been adversely affected throughout his life as a result. See: Dr. Asher's reports for details. At an early age Mr. Brown received counseling at the Odessa Brown clinic of Children's Hospital. With the exception of a short involvement with Sound Mental Health, Mr. Brown has not received mental health counseling. He has, from time to time, taken prescribed anti-psychotic medications. See: Dr. Asher's reports for details.

Mr. Brown went undiagnosed and untreated for many years. To this day he has not dealt with the trauma he has experienced. He had some respite from his traumatic and chaotic life when he lived with his grandmother, Lois Johnson. His grandmother, who he is still close to, took him and his sister, Sophia, in after his mother dropped them off saying she could not handle her children any longer. Subsequently his father, Randy Johnson, took over the custody of Reshaud and his sister.

Dr. Asher's diagnosis in 2013 assisted in the Defense's presentation to the State and discussions regarding a resolution of Cause 12-1-06890-5 KNT. As a result, Mr. Brown was released with credit for time served to complete the Union Gospel Mission program and participate in mental health counseling. Mr. Brown was very successful for quite some time at Union Gospel Mission. He earned the respect of those who were permanent staff and those who were served by the Mission's work. Attached are letters reflecting Mr. Brown's positive contributions.

Eventually, there was a request made of the Court for Mr. Brown to be released from his obligation to Union Gospel Mission (UGM) as a condition of his sentence. This was supported by the Mission and Sound Mental Health. Copies of the referenced comments and a summary of events to DPA Soukup are attached. Mr. Brown returned to his father's home to live. Also in the home were his father's girlfriend, Kelly Grayson Johnson, who is now his wife.

Before leaving UGM, Mr. Brown met Natalie Gumtow through an on-line dating service.

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At times they stayed with Mr. Brown's father and girlfriend, then with Ms. Guntow's mother and stepfather, and in motels in the South King County area. Both Ms. Guntow and Mr. Brown were on public assistance, to include social security benefits because of mental health issues. And, that was one of the things that attracted them to each other, they shared quite similar mental health diagnoses. This commonality provided each other with support - someone who understood them, but it also created problems for them. Mr. Brown stopped his work with Sound Mental Health; stopped his prescribed medications, as did Ms. Guntow; and both relied more and more on street drugs to regulate and control their moods. They also relied on illegal activities to provide funds in addition to the public funds they received legally.

It was not unusual when Ms. Guntow became distraught for Mr. Brown to be the one who would calm her, as Ms. Guntow's mother, Monique Allen, stated in a Defense interview of her, which is detailed in an email dated 1/17/17 to the State and attached.

Once Mr. Brown was arraigned on the charges in this matter, Ms. Guntow sought to have the no contact order lifted by the Court. The record will reflect that Defense counsel noted the mental health issues shared by Mr. Brown and Ms. Guntow and that being able to have contact would be as much a support for him as her. Ms. Guntow's request was denied by the Court.

RESHAUD BROWN'S SENTENCING REQUESTS

1. That the Court exercise its discretion and not impose a life-without-release sentence;
2. That the Court not impose a no contact order with respect to Natalie Guntow; and
3. That the Court not impose any fines, fees, or costs not mandated by law;

**LAW APPLICABLE TO AND SUPPORTIVE OF
RESHAUD BROWN'S SENTENCING REQUESTS**

The Court Not Impose a Life-Without-Release Sentence

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1 This Court has discretion to impose other than a life-without-release sentence on Mr. Brown.
2 *State v. Houston-Sconiers*, ___ Wn.2d ___, 391 P.3d 409 (2017), 2017 WL 825654, is an *en*
3 *banc* decision by the court, written by Justice McCloud; five justices concurred; Justice Madsen
4 wrote a concurring opinion in which Justice Johnson joined. The Court determined, as follows:

5 In accordance with *Miller*, we hold that sentencing courts must have
6 complete discretion to consider mitigating circumstances associated
7 with the youth of any juvenile defendant, even in the adult criminal
8 justice system, regardless of whether the juvenile is there following
9 a decline hearing or not. To the extent our state statutes have been
interpreted to bar such discretion with regard to juveniles, they are
overruled. Trial courts must consider mitigating qualities of youth at
sentencing and must have discretion to impose any sentence below
the otherwise applicable SRA range and/or sentence enhancements.

10 *State v. Houston-Sconiers*, 391 P.3d at 420.

11 The *Houston-Sconiers* opinion relies in part on the decision in *Miller v. Alabama*, 567 U.S.
12 460, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012) in its analysis of whether a life-without-release
13 sentence imposed on a juvenile is a violation of the VIII Amendment protection against cruel and
14 unusual punishment. The *Miller* court discussed at length the differences between juveniles and
15 adults with respect to “their immaturity, recklessness, and impetuosity – make them less likely to
16 consider potential punishment.” *Miller v. Alabama*, 132 S.Ct. at 2465, citing *Graham v. Florida*,
17 560 U.S. ___, 130 S.Ct. 2011, 2028, 176 L.Ed.2d 825 (2010) and *Roper v. Simmons*, 543 U.S. 551,
18 571, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005).

19 We know, based on scientific findings post-dating the *Miller* decision, that the brain
20 continues to develop long into adolescence² and beyond the artificial line drawn by the law when
21 referring to a “juvenile” and the age of “18” when it comes to the development of a person’s brain
22 and the resulting ability of the person to act maturely, not recklessly, not impetuously. The human

23
24 ² “Adolescent” is defined in Merriam-Webster as “a young person who is developing
into an adult.”

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1 brain does not reach full maturity until at least the mid-20s. Simpson, Rae, Ph.D., Young Adult
2 Development Project, Massachusetts Institute of Technology (2008).³

3 Development of the prefrontal cortex does not occur until the early 20s or later. The
4 prefrontal cortex of the brain is responsible for higher-order cognitive processes and executive
5 functioning. Poor executive functioning leads to difficulty with planning, attention, using feedback,
6 and mental inflexibility which in turn undermines judgment and decision making. Johnson, Sara B.,
7 Ph.D., M.P.H., et al., Adolescent Maturity and the Brain:, Journal of Adolescent Health 45 (2009)
8 216-221. Subsequent longitudinal studies using imaging techniques support the earlier preliminary
9 findings that brain development continues into the mid to late 20s. Lebel and Beaulieu, Longitudinal
10 Development of Human Brain Wiring Continues from Childhood into Adulthood, The Journal of
11 Neuroscience, July 17, 2011.⁴ See also: Sommerville, L., Ph.D., Searching for Signatures of Brain
12 Maturity: What are we Searching For?, Neuron, Vol. 92, Issue 6; p. 1164-1167, 21 December 2016
13 echoing the previously cited studies.

14 The *Houston-Sconiers* court recognizes that trial courts have discretion to sentence a person
15 based on the individuality of the defendant. The court's discretion is not eliminated, as evidenced
16 by the stated purpose of the Sentencing Reform Act.

17 The purpose of this chapter is to make the criminal justice system
18 accountable to the public by developing a system for the sentencing
19 of felony offenders which structures, but does not eliminate,
20 discretionary decisions affecting sentences, . . . [Emphasis added.]

21 *State v. Houston-Sconiers*, 391 P.3d at 426-427, quoting RCW 9.94A.010.

22 RCW 9.94A.535 provides a suggested, but not exclusive, list of mitigating factors for the
23 sentencing court to consider. Mr. Brown's circumstances span the list of factors but focus on his

24 ³ hrweb.mit.edu/worklife/youngadult/brain.html

25 ⁴ <http://www.jneurosci.org/content/31/30/10937>

1 mental health and his cognitive deficits, all of which put in question his responsibility for the crimes
 2 he was charged with committing at the age of 21 and 22. Even though Mr. Brown's chronological
 3 age exceeded the line drawn by the law, based on Dr. Asher's findings Mr. Brown's functioning age
 4 and mental abilities were not those of an adult. Mr. Brown was not evaluated or diagnosed until
 5 2013. And, the law grants this Court the discretion to take what is now known about Mr. Brown's
 6 life-long deficits and adjust for them by not imposing a life-without-release sentence.

7 The *Houston-Sconiers* court noted trial courts have the discretion to run sentences
 8 concurrently instead of consecutively, as mandated, for multiple serious violent offenses. *State v.*
 9 *Houston-Sconiers*, 391 P.3d at 428, citing *In re Personal Restraint of Mulholland*, 161 Wn.2d 322,
 10 166 P.3d 677 (2007) and RCW 9.94A.589(1)(b). And consistent with the purposes of the SRA,
 11 sentencing courts maintain the discretion to impose exceptional sentences, even when the sentence
 12 has enhancements. *State v. Houston-Sconiers*, 391 P.3d at 427. And this Court has the discretion
 13 to sentence Mr. Brown to a less than life-without-release term.

14 As we have said before, "[w]hile no defendant is entitled to an
 15 exceptional sentence ... every defendant is entitled to ask the trial
 16 court to consider such a sentence and to have the alternative actually
 17 considered." Grayson, 154 Wash.2d at 342, 111 P.3d 1183 (citing
 18 *State v. Garcia-Martinez*, 88 Wash.App. 322, 330, 944 P.2d 1104
 19 (1997)).

20 *Houston-Sconiers*, 391 P.3d at 427.

21 The Court Not Impose a No Contact Order with Respect to Natalie Gumtow

22 Under RCW 9.94A.505(9), the Court may impose crime-related prohibitions, to include a
 23 no contact order. *State v. Navarro*, 188 Wn.App. 550, 556, 354 P.3d 22 (2015), referencing the
 24 former RCW 9.94A.505(8) which is currently RCW 9.94A.505(8).

25 Department of Corrections (DOC) Policy will not allow Natalie Gumtow to visit Mr. Brown
 26 during his incarceration, regardless of the conditions of his sentence. DOC 450.300, II, C., a copy

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of which is attached. However, as discussed above, they support each other emotionally. So it is requested that this Court not impose a no contact order so that Mr. Brown and Ms. Gumtow can be in contact by phone and letter.

The Court Not Impose Fines, Fees, or Costs not Mandated by Law

Mr. Brown's source of financial support from public assistance terminated with his incarceration. He may be able to obtain employment once in the DOC, but his hourly wage will be minimal. So, it is requested that Mr. Brown not be responsible for non-mandatory fines, fees, and costs.

WAIVER OF APPEARANCE AT RESTITUTION HEARING

Mr. Brown understands he has a right to be present at a restitution hearing in this matter. Mr. Brown has decided to waive his appearance should a restitution hearing be held.

STATE'S BURDEN

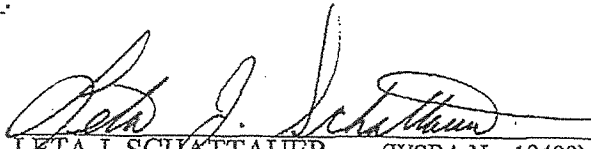
The State is required to prove two things with respect to Mr. Brown's sentencing:

1. Whether certain kinds of prior convictions exist; and
2. Whether Mr. Brown is the subject of those convictions.

State v. Knippling, 141 Wn.App. 50, 55-56, 168 P.3d 426 (2007).

The standard of proof is a preponderance of the evidence. *State v. Knippling*, 141 Wn.App. at 55.

DATED May 13, 2017.


 LETA J. SCHATTAUER (WSBA No. 19499)
 Appointed Counsel for Reshaud T. Brown

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DEFENDANT'S SENTENCING MEMO ...

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Kenneth Asher, Ph.D.
Report of 9/6/2013

DePape Associates Inc

RECEIVED 09/06/2013 17:00
206 367 1579

p.1

Kenneth N. Asher, Ph.D.
Clinical-Developmental Psychology
16840 Bothell Way NE
Lake Forest Park, WA 98155
(206) 322-4552
ken@kenasherphd.com

September 5, 2013

Law Offices of Leta J. Schattauer
119 First Avenue South, Suite 300
Seattle, WA 98104
Fax: 206-402-4467
Email: schattauerlaw@gmail.com

Re: Reshaud Brown report

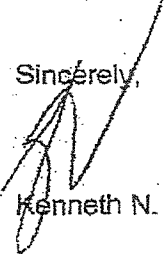
Dear Ms. Schattauer:

9/6 - Leta

Please find accompanying this note my signed report of my evaluation of your client Reshaud Brown. As before, I am available to answer any questions.

Sincerely,

9/6. corrected copy


Kenneth N. Asher, Ph.D.

DePape Associates Inc

RECEIVED 09/06/2013 17:00
2063671579

p.2

Kenneth N. Asher, Ph.D.
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ken@kenasherphd.com

PSYCHOLOGICAL EVALUATION

Name: Reshaud T. Brown
ID#: 13-019
Examiner: Kenneth N. Asher, Ph.D.

Examination Dates: April 3, 24, May 3,
and August 6, 2013
Birth Date: November 20, 1987
Age: 25 years- 7 months

King County Cause No. 12-1-06890-5 KNT

Referral and Methods

Reshaud Brown of Kent, Washington was referred for this evaluation by his attorney Leta Schattauer. He has been charged with one count of Robbery in the First Degree, for an event that took place on 8/28/12. Because of her impression of Mr. Brown during her initial interviews with him and his personal history, Ms. Schattauer became concerned with his mental condition and perception of objective reality. She requested this evaluation of his psychiatric condition, how it might have affected his alleged actions on 8/28/2012, whether it may be seen as mitigating his present charge, and if it could support a mental defense of the alleged actions.

Information from several sources was gathered for this evaluation. Mr. Brown was interviewed and examined at the Regional Justice Center detention center in Kent. His father Randy Johnson, mother Robin Brown-Lee Jones, paternal grandmother Lois Johnson, friend Carmelita Blackley, estranged wife Megan Brown, and King County Jail mental health services director Michael Stanfill, Ph.D. were interviewed by telephone. His medical and legal records were reviewed (see below). Several standardized procedures were administered to Mr. Brown, including the Wechsler Adult Intelligence Scale-Fourth Edition (WAIS-IV), a subtest from the Wechsler Adult Intelligence Scale-Third Edition (WAIS-III), portions of the Wechsler Individual Achievement Test-Second Edition (WIAT-II), and the Achenbach Young Adult Self-Report (YASR).

Background materials were provided by Ms. Schattauer. These included a referral and cover letter (with accompanying materials) from Ms. Schattauer (3/27/2013), the certification for determination of probable cause by the Kent Police Department (12/29/2012), information submitted to KC Superior Court by deputy senior prosecuting attorney Dana Cashman (n.d.), Mr. Brown's health and

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mental health records from Odessa Brown Children's Clinic (2/19/1996-1/7/2000), mental health records from Sound Mental Health (4/17/2006), health and mental records from the Washington State Department of Corrections (12/4/2007-9/29/2011), and records from King County Jail Health Services (12/21/2005-5/17/2013).

History

The following brief history is a composite based upon interviews with Mr. Brown, his family and friends, and written documents.

During Mr. Brown's mother's (presently Robin Brown-Lee Jones) pregnancy with him, she sustained a gunshot wound to her head, and was heavily medicated as a consequence; she reportedly had been using illegal drugs (crack cocaine) at that time in her life. He and his older sister lived with their mother until he was about 8 years old, when she dropped them off at their paternal grandmother's (Lois Johnson). He evidently spent some time with her after that, however. While living with his mother, he reportedly was abused by her boyfriends. He lived with his grandmother and aunt until age 12 years, when his father (Randy Johnson) took Mr. Brown into his household. Mr. Brown had almost no contact with his grandmother from then until his early-20s. Mr. Brown and his father argued a lot, and he ran away from home when he was 16 years old. He lived "on the streets," with friends, and once when he was a youth went to Mississippi with one of his mother's boyfriends who was wanted by the FBI.

Beginning in early elementary school, Mr. Brown received special education services for "learning disabilities" (records were not available to be reviewed). He did not do well and misbehaved, and left school in grade 8. He has not returned for any formal education, including high school or G.E.D. classes or vocational training. He has rarely been employed, but his jobs have included landscaping during the summer when he was an adolescent, and selling vacuum cleaner in his early 20s; the last job lasted two days. Mr. Brown survived by relying on others, i.e., father, friends, girlfriends, wife. He was told by his father and other people to go back to school to learn a trade, but did not want to because he had never succeeded before. Presently, he would like to work in a landscaping or custodial business.

During his adolescence and early adulthood, Mr. Brown enjoyed playing some sports (especially basketball). He played on a team at the local community center, but dropped out when other boys teased him for not understanding the plays. He went to church occasionally, and had a few friends, including a couple of female friends over many years. Several years ago, he married one of these friends (Megan Brown), but they broke up, with her taking out a no-contact order

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on him; Mr. Brown's explanation is that she saw him with another woman, but the reason she gave was that he was unpredictable and mean to her.

Mr. Brown has been arrested and incarcerated several times. He was first arrested at age 10 years, when his mother falsely accused him and his sister of trying to stab her. He was arrested three or four times as a youth for charges including assault, malicious mischief, and theft. As an adult, he has been arrested and convicted three times for burglary, robbery, and assault, including a stay at Stafford Creek Correction Center/Washington Department of Corrections.

Since preadolescence, Mr. Brown has worked with mental health professionals. His grandmother took him to Odessa Brown Children's Clinic, he was evaluated at Sound Mental Health, and he sought help while in jail and prison. His diagnoses have included depression, bipolar disorder, delusional disorder, schizophrenia, attention deficit disorder, personality disorder, and polysubstance abuse-dependence. Drug use has been a part of Mr. Brown's life since he was about 13 years. He smoked marijuana almost daily when he was not detained or incarcerated, as well as trying many other substances (see mental status interview). He has received substance abuse treatment several times.

In an incident occurring soon after midnight (very early morning) of 8/28/2012, reportedly three men wearing masks and carrying knives and a gun broke into the apartment of a disabled man, with the assistance of a young woman. They beat him, stole his medically-prescribed marijuana, some money, and video games, and fled. Mr. Brown's fingerprints were found on a jar that had contained marijuana, dropped outside the apartment. About two months later (11/22/2012), he was apprehended by Kent police and ran away. Three weeks later (12/13/2012), he called the detective assigned to the case, provided information that he had been at the victim's apartment building the night of the robbery but had not been involved in the robbery, and was taken in by the police.

Mr. Brown has often complained of mental health symptoms during his time in jail and prison, and has received medication. Often, however, he has denied symptoms once medical staff have spoken with him, or reported that earlier symptoms have gone away. This has been the case during his most recent incarceration, in which he has been prescribed- and then "unprescribed" neuropsychiatric medication; it is this psychologist's understanding that he has recently been put on such medication (it is not know what), and adjusting somewhat better than before.

Collateral Information

While he was living with her, Mr. Brown's grandmother took him to Odessa Brown Children's Clinic (medical file records 2/19/1996-1/7/2000; mental health

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file 6/21/1996-12/5/1997). There, he was given diagnoses of rule out (r.o.) Attention Deficit Disorder and r.o. Adjustment Disorder, with a Children's Global Assessment Scale score of 73 (some difficulty in single area but generally functioning well), and involved in counseling.

Mr. Brown sought services at Sound Mental Health (intake 4/17/2006). He was diagnosed with Post-Traumatic Stress Disorder, Major Depressive Disorder-recurrent, Marijuana Dependence, and r.o. Personality Disorder not otherwise specified, with a Global Assessment of Functioning score of 38 (some impairment in reality testing or communication or major impairment in several areas). There are no records of any treatment provided.

In his various periods of detention in the King County Adult Correction System, Mr. Brown has utilized Jail Health Services for medical and mental health complaints. In an intake and followup (12/21/2005), he was diagnosed with Depression and prescribed Paxil. In his present detention (12/20/2012-5/17/2013), as noted above, his complaints have varied from no- to serious mood and psychotic symptoms, with diagnoses ranging from none to Poly-Substance Abuse-Dependence, Adjustment Disorder-depression, and Depression nos. He has been prescribed medication, then had it discontinued, and sometimes reported (to his attorney and this psychologist) that he is not on medication when he may actually have been.

Similarly to his pattern in KCJ, Mr. Brown's symptoms while in the Washington State Department of Corrections vary greatly. In his DoC health records (12/4/2007-9/29/2011), Mr. Brown reported, then retracted having a "computer chip" implanted in his back by staff. He was diagnosed with Depression nos vs. Major Depressive Disorder, recurrent with psychotic features, r.o. Malingering with variable reporting of psychotic symptoms versus Developmental Disability, r.o. Bipolar Affective Disorder nos, r.o. Paranoid Schizophrenia, r.o. Delusional Disorder, r.o. Intermittent Explosive Disorder, r.o. Developmental Disability, and Personality Disorder nos-cluster B. He was described as noncompliant, with an enigmatic presentation, and declined psychiatric medication, which had Celexa (for depression) and Risperdal (for psychotic symptoms).

The following interviews were conducted by telephone.

Mr. Brown's father Randy Johnson described his son as "has a good heart, he tries, but has trouble with instructions, directions." He said that Mr. Brown associates with "wrong people, gets into bad situations." His son has emotional ups and down, can get depressed, and "goes on the same merry-go-round over and over again." Some of these problems are drug-related, but Mr. Johnson did not know how much his son had used drugs. Mr. Brown believes that his son began describing seeing and hearing things over seven years ago. His son has

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been in mental health treatment, but similarly to other commitments, would not follow through. He spent much of the interview talking about his son's lack of motivation and belief in himself, for which he blames himself to some extent. As of the writing of this report, Mr. Johnson had not visited his son at RJC.

Mr. Brown's mother Robin Brown-Lee Jones said that people liked him when he was a boy, although he had attentional and anger problems from his elementary school years. She recalled that he first reported both auditory and visual hallucinations (e.g., seeing a tall white man nearby) from about age 7 years, but for many years she and other people did not believe him. Ms. Jones said that Mr. Brown's father resisted following through with treatment for their son, and did not want him taking medication, so she gave him "Happy Camper" (evidently an herbal medicine), which she believes helped. He left school after grade 8, and never returned. He was destructive, but not aggressive toward others. She was aware that he used drugs beginning in adolescence, but did not know what or how much. Mr. Brown resisted the possibility that he had mental problems for a long time, but has recently begun to acknowledge the possibility. Ms. Jones visited her son at the RJC for the first time in 7/2013.

Mr. Brown's paternal grandmother Lois Johnson said that she had not spent much time with him since he moved to his father's at age 12 years. She recalled that he was a "sweet kid" with no unusual behaviors as a child, but began to have problems as an adolescent. She told the evaluator to talk with Mr. Brown's father.

Carmelita Blackley has been friends with Mr. Brown since they were about 10 years old. She described him as "okay, easy to get along with, but nutty, bipolar ... he flips out." He has described hearing voices "for a long time, since he was a kid ... says the police put a chip in his back." Mr. Brown is depressed a lot, has tried to kill himself, but also gets "hyperactive, like ADD." In her opinion, Mr. Brown is "really smart ... he knows how to survive." As far as Ms. Blackley knows, Mr. Brown had not engaged in illegal activities since leaving prison in 2011(?). She did not know if he had been using drugs recently.

Megan Brown and Mr. Brown married in 2010, while he was in prison, and are in the process of divorcing. They have known each other about 13 years. She described Mr. Brown as "very complicated, I don't understand him ... he's intelligent when he wants to be ... compassionate, loyal, loves his family ... there for you when he wants to be." However, she said that he could be mean, often treated her "terrible". He has "ups and downs ... bipolar ... gets angry at everyone, sometimes got physical ... then he's teddy-bear calm, happy." Ms. Brown reported that Mr. Brown heard voices and talked to people who weren't there; she first noticed this when he was about 15 years old. He also said that he saw people, like a white man, and a husband and wife. Mr. Brown took medication when he was younger, which she thinks helped, but he stopped taking it after he

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was 18 years old. He smoked marijuana "a lot, every day," and was happiest when he was using it. Mr. Brown hung out with people who got in trouble, but Ms. Brown did not think that he got into trouble, himself.

King County Jail mental health services director Michael Stanfill, Ph.D. reviewed contacts and services with Mr. Brown since he was incarcerated in 2012. Mr. Brown had complained often of mental health concerns (e.g., varying mood, hallucinations), and had displayed some unusual, even bizarre behaviors (e.g., painting his cell with toothpaste). Often when he was interviewed by mental health staff, however, he seemed apologetic, and denied symptoms that he had described earlier. Dr. Stanfill said that Mr. Brown had been given diagnoses (in late-7/2013) of rule out Psychosis and Malingering. In 5/2013 he was prescribed risperidone, which was discontinued the same day. When the evaluator said that he had experienced Mr. Brown acting more-or-less "normal" for about 30-45 minutes during interviews, then beginning to show symptoms, the services director acknowledged that mental interviews may have taken less than about 30 minutes. He said that he would use the information in further examinations of Mr. Brown.

Observations and Interview

Mr. Brown was found to be a slender, tall, 25 1/2-year-old man. He had close-cropped hair, and was dressed in King County Detention fatigues. He was quiet, polite, became slightly more outgoing for brief periods as he relaxed, but usually was reserved if not withdrawn. His attorney Leta Schattauer was present at only the first meeting; after introducing Mr. Brown to the psychologist, she sat behind her client in a corner of the small room, and did not speak for the remainder.

Early in the first meeting, Mr. Brown was asked his understanding of the purpose of the evaluation. He replied "I'm allegedly charged with robbery in the first (when don't remember day or time ... couple of months ago (when were you arrested?) in January (2013?) yes ... brought to the RJC about a week after." The evaluator asked Mr. Brown why he had to see him (the psychologist): "The courts think I'm crazy, I have to get a diagnosis to see if they're correct." He recalled that he had had "about six or seven" evaluations in the past, the first when he was 6 or 7 years old, also at SeaMar treatment center, at Stafford Creek CC, and at SMH. He had been diagnosed at different times with schizophrenia, depression, and took Paxil about two years ago. He believes that this helped, although his father had told him that medication is not good for you because it changes your personality and character.

Mr. Brown's demeanor, affect, and attitude toward the evaluator varied widely both during several sessions and from session to session. To convey this, summaries of the meetings with him are given here (this is more detail than this

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evaluator usually provides in these reports, but it is considered important to do so in the present case).

In the first session, as was noted, Mr. Brown was pleasant and fairly cooperative, participating in the completion of several short procedures (measures of reading, listening, and picture interpretation) and agreeing to fill out a standard behavior questionnaire (the Young Adult Self-Report) by the next meeting.

At the next meeting with Mr. Brown (three weeks after the first), he was initially pleasant and appeared glad to see the evaluator. He said that he remembered meeting the evaluator, but did not recall much that had been talked about or done before. When the evaluator asked Mr. Brown if he had had a chance to fill out the YASR, Mr. Brown said that he had torn it up. When asked why, Mr. Brown simply stared at the evaluator. The evaluator had another copy of this procedure, and asked Mr. Brown if he would try to complete this, to which he consented. The evaluator proceeded to administer another set of standardized procedures (intellectual abilities), consisting of six brief activities. Mr. Brown began in a positive and cooperative manner, but he gradually became more quiet and sullen, and near the end of the fifth, said that he did not want to "do the test any more" (fortunately, this was the next-to-last test activity planned for that day, but he had no way of knowing that). The evaluator began to ask Mr. Brown questions regarding his family and biography. Once again, Mr. Brown started in a cooperative, upbeat manner, but after a while, he grew sullen again, answering the questions slowly and even reluctantly. He stated that he did not want to fill out the behavior questionnaire, but might do it with the evaluator reading it to him at the next meeting (this was acceptable, and often done if the subject's reading skills are not strong). The evaluator asked Mr. Brown if he would meet with him in a few days; Mr. Brown first consented, then accused the evaluator of being the prosecutor. The evaluator replied that he was not the prosecutor, and asked Mr. Brown if he was angry with him (possibly because some of the biographical questions covered difficult and potentially embarrassing topics), to which Mr. Brown said "sort of." He became silent, staring intently at the evaluator for a while, then at the wall behind the evaluator. The evaluator decided to end the session (much had already been accomplished), and pushed the button to call for an escort. This took many minutes, and after the evaluator tried to engage Mr. Brown in light conversation (e.g., sports, food), we waited in silence. All of a sudden, and with no obvious prompting, Mr. Brown asked the evaluator "How many people?" The evaluator asked "What!?", but Mr. Brown said "Nothing." The evaluator asked Mr. Brown if he ever hears voices in his head, at which Mr. Brown quickly and emphatically said "No!" Mr. Brown put his head down on his arms and we continued waiting for the escort. After a few more minutes, Mr. Brown lifted his head and asked the evaluator if he had seen Leta (his attorney) today. The evaluator told him that he had not, but that he had spoken with her the day before. Mr. Brown asked if the attorney was in Washington, to which the

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Reshaud Brown

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evaluator said that she was, and her office is in downtown Seattle. Mr. Brown asked the evaluator if he lives in Washington, to which the evaluator answered yes, and his office is also in Seattle. He asked if the evaluator was from here, and the evaluator replied that he was not, but he had lived here for over 20 years after living in different states. Mr. Brown said angrily but in a low voice "You're lying!" Mr. Brown replaced his head on his arms and we waited some more. He began rhythmically rocking and jiggling. After more minutes, the evaluator asked Mr. Brown if he would be more comfortable if his lawyer Leta were present next time, at which he nodded twice. The evaluator asked a couple of simple questions, but Mr. Brown did not respond. He continued rocking, and with his head down, said "I want to go home." He repeated the question about his lawyer, and complained that he had a headache. Finally (after nearly 30 minutes wait) the guard came to escort Mr. Brown back to his cell.

Following the second meeting, the evaluator informed Mr. Brown's attorney Ms. Schattauer of the events (in brief), and related the client's desire that she be present. She met with him and asked him if he would be comfortable meeting with the evaluator in the Detention Center's attorney booth with a "pass-through" slot, to which he agreed. When the evaluator came to meet with Mr. Brown in that arrangement (nine days after the previous meeting), Mr. Brown appeared very friendly and happy to see the evaluator. Very quickly, he asked why we were meeting in the booth and not the face-to-face room. The evaluator told him that he understood that this was Mr. Brown's preference upon meeting with the attorney. Mr. Brown said that he did not recall agreeing to that with Ms. Schattauer. Furthermore, he said that he did not recall meeting with the evaluator several days before, doing any testing, refusing to continue, nor even meeting with his attorney in the past few days. Asked when he had last seen her, he guessed that it had been about two or three weeks. We moved to a room with a table, and proceeded to complete the standardized abilities testing, which Mr. Brown did fairly compliantly; he refused the very last, most difficult item. The evaluator brought out the behavior questionnaire that Mr. Brown had agreed previously to have read to him, but said that he did not want to do it. The evaluator did not make an issue of this, but proceeded to conduct a mental status examination and ask other questions. During the mental status interview (results given below), Mr. Brown answered many questions, often displaying distress when talking about difficult topics. He refused to respond to a few items (e.g., fears, traumatic experiences, hallucinations). As the meeting approached about 60 minutes, Mr. Brown's mood seemed to decline. He took longer to respond to questions, needing requests to repeat some answers that he gave very softly. His affect grew more sullen, and the evaluator had to encourage Mr. Brown to continue in the last few minutes. The goals for the session were met.

The evaluator met with Mr. Brown about three months after the last meeting. By then, several people who know Mr. Brown had been interviewed, his medical

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records had been reviewed (see Collateral Information), and it was the evaluator's understanding (based on the conversation with the KCJ mental health services director) that he was probably on neuropsychiatric medication. Mr. Brown appeared to be in a good mood and glad to see the evaluator, although he could not recall his name ("the doctor"). He was happy that his mother had visited him the week before, and that his father had called him. He said that his emotions had been going up and down, and said that he had been seeing "the old white man" (he has described this to family and friends for many years, but had previously denied any hallucinations to the evaluator). He said that this vision had appeared since he was about 7 or 13 years old, he could not remember. The man says bad things to him, telling Mr. Brown that he will hurt Leta (attorney) and hurt him if he leaves jail. Mr. Brown said that the police had put a chip in his back a long time ago, which tells them where he is and what he is doing, and will hurt him. He had met with "the doctor" (not the evaluator, but detention medical staff) about taking medication, but that he was not taking any at the present. He added (spontaneously) that he had not participated in the robbery of which he is accused.

In the four meetings with Mr. Brown, he appeared to be able to participate in a productive, rational manner for about 45-60 minutes, after which he grew withdrawn, very quiet, suspicious, minimally responsive, and sometimes delusional (based on things that he said to the evaluator). This was somewhat less evident in the first meeting, in which his attorney was present, and which concluded with fairly straightforward, "easy" reading and listening procedures.

A mental status interview was given Mr. Brown, mostly in the third meeting (observations and some questions were made at other times, as well). His replies to a number of factual questions were partly correct. He accurately gave several telephone numbers. He knew his attorney's name, but had difficulty recalling the evaluator's name. Asked about friends, Mr. Brown only cited Carmelita (who was interviewed). They are not romantic. He has known her for years, and enjoys playing with her children.

When asked if he was depressed, Mr. Brown asked what that meant. The evaluator gave some simple examples, at which Mr. Brown replied that he felt that way (i.e., depressed) now, and has felt "down, sad, crying, not wanting to be around people all my life ... that's why my grandma took me to counseling (where?) at some hospital in Seattle, gave me some medicine (what was it?) I don't know." He has tried to kill himself at least twice. The first time was during adolescence, when he had been "smoking some stuff" with some other kids. He laid face-down in the bathtub, but his father found him and pulled him out (Mr. Brown was not able to say if this was intentional or if he had passed out face-down, but he recalls it as a suicide attempt). The second time was a couple of years ago, after arguing with his wife. He was too upset to sleep, and

Psychological Evaluation
Reshaud Brown

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intentionally took a lot of sleeping pills. Asked if he felt like hurting or killing himself in the present, Mr. Brown took a long pause and asked the evaluator to go on to the next question. Asked about anxiety (which the evaluator had to describe), Mr. Brown acknowledged that he feels it "a lot," sometimes around a lot of people, having to talk to people, but sometimes just alone in his room. He said that he has fears of specific things and situations, e.g., the dark, "other things, rather not say." He said that he had had bad things happen to him as a child, but did not want to talk about it. When the evaluator asked Mr. Brown if it was something that someone had done to him or that he saw happening to someone else, he stared at the evaluator for several seconds, then repeated "I don't want to talk about it." He has nightmares "almost every night." He does not sleep at night, but naps during the day. Asked if anything had ever happened to him at night, when he was in bed, he replied "I'd rather not say." Mr. Brown acknowledged that his emotions vary widely, but could not describe it beyond the evaluator's simple description. He said "I think that's why my wife and me had a falling out, she'd ask what's wrong with me." Sometimes he would provoke fights (intense arguments) with his wife, during which he did not touch her but threw things and punched holes in the wall, scaring her. He did not know if he experienced delusions or irrational thoughts ("No one ever told me"; this was before the evaluator learned of Mr. Brown's belief that he had had a chip placed in his back, among other things, which would constitute a delusion at the least). Asked about hallucinations, Mr. Brown quickly and firmly replied that he did not want to say. He denied being angry or aggressive, other than arguing often with his wife when they were together. He denied problems related to eating or food, other than not eating for several days in a row when he was depressed. His sleep pattern is unusual and irregular. He sleeps during the day to avoid having nightmares (he teared up while telling this), and sometimes does not sleep for two or more days.

Mr. Brown acknowledged having learning problems while in school and to the present ("everything but gym"). He often has had trouble concentrating and paying attention as long as he could remember. His memory has always been poor ("My dad used to get mad at me").

Substance abuse has been a problem for Mr. Brown. He began to drink alcohol when he was a teenager, got drunk a lot with other kids, and reduced his drinking a lot "a couple of years ago." He smoked marijuana almost every day for years, and sold some to afford more. Before his arrest, he used "Sherm" often (several times/week) for a few months, cocaine (not crack) a few times, and pain pills occasionally.

By his estimate, Mr. Brown has been involved in mental health and substance abuse treatment several times, beginning in childhood. He went to SMH a few years ago, but was arrested shortly after beginning. While he feels that treatment

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has helped and would like to continue, he said that he would probably resume using marijuana and Sherm if he were back in the community.

During the standardized portion of the examination, Mr. Brown gave an adequate effort for most of the procedures, although he was slow in understanding what was required for some. Toward the end of the longest testing session, his focus and effort seemed to decrease rapidly, and in the last few items he said that he wanted to quit. He was encouraged to keep trying, which he did for a short while, then refused to continue (by this point, he had satisfied criteria sufficiently to score the procedure).

Results of Standardized Procedures

Intellectual abilities and skills

On the Wechsler Adult Intelligence Scale-Fourth Edition, Mr. Brown's Verbal Comprehension index score (VC) was 70 -- above those of 2% of people his age, his Perceptual Reasoning index score (PR) was 73 -- at the 4th %ile, and his General Ability Index (combined verbal and perceptual abilities) score (GAI) was 69 -- at the 2nd %ile.

Mr. Brown's scale score on the WAIS-IV Comprehension subtest (measuring verbal understanding, social judgement, common sense, knowledge of conventional standards of behavior) was extremely below-average, while his score on the WAIS-III Picture Arrangement subtest (measuring perceptual organization, nonverbal interpretation of social situations, and planning) was below-average.

The Mazes subtest from the Wechsler Intelligence Scale for Children-Third Edition was given to Mr. Brown. Although his chronological age exceeds the WISC-III's upper level of 16 yrs.-11 mos., this procedure's purpose in measuring perceptual-fine motor skill, planning ability, and impulse control, all under a time constraint, make it an informative procedure. In comparison with 16 yr.-11 mo. old subjects, Mr. Brown's score yielded an age-equivalent just above 6 years. Inspection of his performance reveals that he was not able to complete all of the items successfully, and lost credits due to wandering into "dead end" pathways. This suggests that in addition to his weak perceptual-fine motor abilities, it is difficult for him to inhibit his impulses.

The Wechsler Individual Achievement Test-Second Edition is an individually-administered academic skills test, providing comparisons by both age and grade. Mr. Brown was administered three subtests of reading recognition, reading comprehension (using the sixth grade stimuli), and listening understanding. His score in Word Reading had an age-equivalent of about 14 years -- at the 14th %ile, in Reading Comprehension an age-equivalent of about 12 yrs. -- at the

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2nd%ile, and in Listening Comprehension an age-equivalent of about 10 1/3 yrs -
- at the 2nd %ile.

Personality and behavior problems

Mr. Brown was asked to complete the Achenbach Young Adult Self-Report on himself. Answers to questions concerning the subject's behavioral strengths and difficulties are converted into scores on five Adaptive Functioning scales (where lower scores are considered less desirable), three Substance Use scales, and eight Problems scales (on the latter two, higher scores are considered less desirable). The scores were then compared with those of other young adults. In this way, Mr. Brown's similarities could have been determined with young people with a variety of behavior problems, as well as with the larger nonclinical population. While the Achenbach procedure is very useful at obtaining broad-based descriptions of individuals' behavior, significant scores on scales do not constitute clinical diagnoses in-and-of-themselves.

As-described above, Mr. Brown initially agreed to complete the YASR, then failed to do so, and refused to attempt it. When the evaluator offered to read it to him during one of the examination sessions, Mr. Brown initially consented, but as soon as the evaluator began to read, Mr. Brown declined to participate. Attempts were made two other times to elicit his participation in this potentially useful procedure, but he declined.

Summary and Recommendations

Reshaud Brown is a 25 1/2-year-old man, charged with robbery. He participated in an evaluation of his mental health condition. Procedures used included interviews with Mr. Brown, family members, wife, friend, and a service provider, review of records, and completion (or attempted completion) of standardized procedures of intellectual and language abilities, and personality and behavioral problems.

This young man has experienced numerous stresses while growing up, including witnessing domestic violence, possibly being abused himself, parental separation, parental substance abuse, early financial stress, growing up with a cognitive disability, emotional and psychotic problems beginning in childhood/early adolescence, and illegal activities resulting in arrest, conviction, and sentencing from adolescence to the present. He left school in early adolescence, never lived independently (other than with his wife, with whom he is separated and soon to be divorced), and very rarely worked. He has undergone several mental health evaluations since childhood, but has rarely been in treatment, including only short periods when he was prescribed neuropsychiatric medication. While it was unclear, it appears that he has recently begun taking medication again, in jail. He described frequent use of alcohol and drugs from

Psychological Evaluation
Reshaud Brown

early adolescence to early adulthood, and while he claims to have cut down the former, he was using the latter up to the time of his arrest.

Collateral informants gave a picture of a young man who is often pleasant and liked, other than when he is angry or unstable with his wife. Early caregivers recognized his depression during childhood, and several people close to him said that he has described psychotic symptoms (most often visual hallucinations quite consistent in content, in recent years bizarre delusions). It does not appear that after he left his grandmother's care in early adolescence, anyone close to him did much to help him with these concerns. As long as his basic needs were taken care of, adults responsible for him (in his childhood, adolescence, and young adulthood) or who otherwise were close to him (in young adulthood) did little or nothing to help him receive appropriate services or follow through with them (i.e., education, mental health).

The present assessment of Mr. Brown's abilities and skills indicate intellectual functioning in the mildly retarded range (i.e., in the lowest two percent of the population), with similar verbal- and nonverbal abilities. Two measures associated with social reasoning fell in the very below-average range, indicating understanding of social situations and ability to estimate consequences from prior conditions as extremely poor and immature. A perceptual-motor task associated with ability in that area, planning, and impulse-control was much lower than expected, equivalent to that of an early elementary school child. His language skills are very below-average for his age, especially his ability to understand written and spoken material. Mr. Brown refused several times to complete a standardized behavior and psychological functioning questionnaire, but his mental status interview, as well as information given directly by him at various times in this evaluation, indicated significant-to-severe problems in many areas, including depression, variable mood, suicidal tendency, anxiety, fears, post-traumatic stress, hallucinations, paranoid delusions, nightmares and other sleep disturbance, some eating disturbance (likely associated with mood), and attention, learning, and other cognitive functions. Mr. Brown described years of alcohol and drug abuse, even despite feeling that he benefited from treatment, and avowed likelihood that he would resume some of this when he returns to the community.

In parallel with the information derived from Mr. Brown's records review, direct interview, standardized test results, and collateral interviews, the impression gotten from his behavior during sessions and from session to session was dramatic and noteworthy. In at least two of the four meetings, Mr. Brown's demeanor changed from pleasant and cooperative to withdrawn, unresponsive, possibly hostile, and bizarre. He became very suspicious of the evaluator, and acted in a way that seemed to indicate that he was experiencing hallucinations. Throughout the multiple meetings with Mr. Brown, he was only able "hold it

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together" and interact in a productive, rational manner for less than an hour (usually about 45 minutes). From one meeting to the next, and from talking with his attorney to the next evaluation meeting, Mr. Brown did not remember what he had said or done before. It was only in the last session that he acknowledged experiencing psychotic symptoms for many years, and to the present. His behavior (actions, demeanor, words) evidence a high degree of instability, such that he did not recall what he had said or done a few days earlier.

Mr. Brown qualifies for several psychiatric diagnoses, including Schizoaffective Disorder-bipolar type (alternatively, his characteristics may be interpreted as a Mood Disorder (probably Bipolar Affective Disorder) and Psychotic Disorder (hallucinations and paranoid delusions), but in this psychologist's opinion Schizoaffective is a better fit), Intellectual Disability or at best Borderline Intellectual Functioning with associated adaptive skills deficits, Alcohol Abuse in remission due to incarceration, and Polysubstance Abuse in remission due to incarceration. The Alcohol and Substance Abuse have no doubt complicated Mr. Brown's already very serious mental health problems, but his mood and psychotic symptoms reportedly began before his increased drug use, and have continued with comparable severity even while he has not used while in jail. Mr. Brown's Global Assessment of Functioning (GAF) is estimated to fall in the low-40s, i.e., so impaired as to affect him in most areas.

If valid (and this psychologist believes that they are, based on multiple sources), Mr. Brown's psychological functioning and problems strongly suggest that he is not able to plan a complex series of actions leading to a goal, to anticipate fully and realistically what the outcome might be, or even to recall reliably what he had done or experienced several days or weeks later. This does not preclude the possibility that he actually engaged in certain actions, illegal or not, but that his capacity to do so intentionally is impaired by symptoms and characteristics that are part of his diagnostic conditions.

The following non-legal recommendations are based upon the above findings.

1. Mr. Brown must be given appropriate psychological and medical treatment, as well as case management. These services should take into account his significant cognitive impairments. Other factors to consider should be his early exposure to domestic violence, psychosis and mood variations, and substance abuse.
2. Mr. Brown's history of- and propensity for substance use must continue to be treated. While it probably did not create his serious psychiatric problems, it has greatly complicated his ability to manage his life, and will undermine any attempt to treat his mental health issues and improve his adjustment to the demands of adult life.

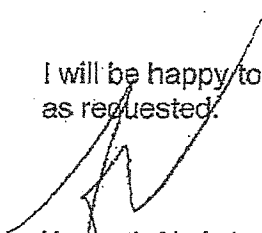
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Reshaud Brown

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3. Mr. Brown's services should include resumption of educational/vocational preparation, taking into account his special characteristics. This should also include training in adaptive skills (e.g., domestic, personal hygiene, community mobility, money management, social interaction) as well as identification of- and training for vocational activities.

4. Some of Mr. Brown's family appear to care greatly for him and support him in his difficulties. They should be involved as much as they are willing in his services and future developments.

I will be happy to provide further details on these findings and recommendations, as requested.


Kenneth N. Asher, Ph.D.
Washington State License No. 1220

Report Complete 9/6/2013 

Kenneth Asher, Ph.D.
Report of 8/30/2016

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PSYCHOLOGICAL EVALUATION

Name: Reshaud T. Brown Examination Date: June 3, 2016
ID#: 13-019 Birth Date: November 20, 1987
Examiner: Kenneth N. Asher, Ph.D. Age: 28 years- 6 months

King County Cause No. 15-1-06293-6 KNT

Referral and Methods

Reshaud Brown of Kent, Washington was referred for this evaluation by his attorney Leta Schattauer. He has been charged with eleven counts, including Assault in The Second Degree - Domestic Violence, Felony Harassment - Domestic Violence, Domestic Violence Felony Violation Of A Court Order, Domestic Violence Felony Violation Of A Court Order, Domestic Violence Felony Violation Of A Court Order, Domestic Violence Felony Violation Of A Court Order, Domestic Violence Felony Violation Of A Court Order, Domestic Violence Felony Violation Of A Court Order, Domestic Violence Felony Violation Of A Court Order, Domestic Violence Felony Violation Of A Court Order, and Tampering With A Witness; the first two occurred on 9/21/2015, while the others subsequently up to 10/30/2015. He has been detained in King County Detention (most of the time at the Regional Justice Center in Kent, for brief periods at the King County Jail in Seattle) since his arrest. As has been the case in the past, Ms. Schattauer became concerned with Mr. Brown's mental condition and perception of objective reality, leading to this evaluation of his psychiatric condition.

This is the second time that this psychologist has evaluated Mr. Brown, with the first, in 2013, exploring his mental development and functioning more comprehensively. The present evaluation considers his mental status in a narrower time-frame.

Mr. Brown was interviewed and examined at the Kent Regional Justice Center. In addition to a forensically-oriented mental status interview, the Saint Louis University Mental Status Examination (SLUMS) was administered to him. Records reviewed included the certification for determination of probable cause by the Kent Police Department detective Gerald Gee (9/22/2015), amended information submitted to KC Superior Court by senior deputy prosecuting attorney

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Charles Sergis (n.d.), and Mr. Brown's health records from King County Jail Health Services (2/2- to 6/13/2016).

Previous Evaluation

As-noted, this psychologist conducted an evaluation of Mr. Brown in 2013 (last examined in 8/2013), when he was 25 1/2 years old. The following summary is derived from the report of that evaluation.

Mr. Brown's intellectual functioning was estimated to fall in the mildly retarded range (i.e., in the lowest two percent of the population), with similar verbal- and nonverbal abilities. His social reasoning, planning ability, and impulse-control were found to be very impaired, and his abilities to understand written and spoken material were significantly below-average. He refused several times to complete a standardized behavior and psychological functioning questionnaire, but his mental status interview, as well as information given directly by him at various times in this evaluation, indicated significant-to-severe problems in many areas, including depression, variable mood, suicidal tendency, anxiety, fears, post-traumatic stress, hallucinations, paranoid delusions, nightmares and other sleep disturbance, some eating disturbance (likely associated with mood), and attention, learning, and other cognitive functions. Mr. Brown described years of alcohol and drug abuse, even despite feeling that he benefited from treatment, and said that he would resume some of this when he returns to the community.

Consistent with the information derived from numerous sources, Mr. Brown's behavior during sessions and from session to session varied to a dramatic and noteworthy degree. In at least two of the four meetings, Mr. Brown's demeanor changed from pleasant and cooperative to withdrawn, unresponsive, possibly hostile, and bizarre. He became very suspicious of the evaluator, and acted in a way that seemed to indicate that he was experiencing hallucinations. Throughout the multiple meetings with Mr. Brown, he was only able to "hold it together" and interact in a productive, rational manner for less than an hour. From one meeting to the next, and from talking with his attorney to the next evaluation meeting, Mr. Brown did not remember what he had said or done before. It was only in the last session that he acknowledged experiencing psychotic symptoms for many years, and to the present. His behavior (actions, demeanor, words) evidence a high degree of instability, such that he did not recall what he had said or done a few days earlier.

Based on the information available, this psychologist concluded in 2013 that Mr. Brown qualified for several psychiatric diagnoses, including Schizoaffective Disorder-bipolar type, probable Post-Traumatic Stress Disorder, Intellectual Disability or at best Borderline Intellectual Functioning with associated adaptive skills deficits, Alcohol Abuse in remission due to incarceration, and

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Polysubstance Abuse in remission due to incarceration. Mr. Brown's Global Assessment of Functioning (GAF) was estimated to fall in the low-40s, i.e., so impaired as to affect him in most areas.

Recent History

(Please see the background given in this psychologist's 2013 evaluation of Mr. Brown.)

For much of the time since his return to the community following his previous incarceration, Mr. Brown has lived with his girlfriend Natalie Guntow. Their most frequent "residences" have been various motels in south King County. During this period, they frequently used a number of illicit drugs, including methamphetamine, methadone, cocaine, and heroin, as well as unprescribed alprazolam (Xanax) and marijuana.

On the evening of 9/21/2015, Mr. Brown and Ms. Guntow were staying in a motel in Kent. A guest in a nearby room heard sounds that suggested arguing, fighting, and other concerning activity, and called the police. The Kent Police forced their way into Mr. Brown's room, and found Ms. Guntow in apparent distress. They concluded that the couple had been arguing, and that Mr. Brown had assaulted his girlfriend, threatened her with a knife, and hit her with an electric power cord. He was arrested and placed in RJC's detention facility.

According to court documents, since his arrest, Mr. Brown is accused of violating a no-contact order with Ms. Guntow. He is also accused of trying to persuade her to not testify against him in his trial.

Collateral Information

In his various periods of detention in the King County Adult Correction System, Mr. Brown has utilized Jail Health Services for medical and mental health complaints. During the present detention, he has been given psychiatric diagnoses of Post-Traumatic Stress Disorder (PTSD), Severe Anxiety with Panic, Depressive Disorder not otherwise specified (nos), Psychotic Disorder nos, Personality Disorder nos, several Substance Use Disorders (e., marijuana, benzodiazepine, amphetamine), and rule-out Neurocognitive Disorder. He has met with various medical and psychiatric service providers, and prescribed medications to improve his mood, anxiety, headaches, and sleep (including nightmares). On 5/17/2016 Mr. Brown swallowed a handful of Prazosin pills in the presence of a JHS nurse, resulting in immediate medical response. However, subsequent examination suggested that this was not a serious suicide attempt, rather a maladaptive response to stress due to his placement, treatment, and legal situation. He also said that he did not remember the suicide attempt the day

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after, but then recalled details. Mr. Brown promised to communicate better and not take such extreme steps in the future. Consequent to this incident, his psychiatric medications were changed, and as of 6/13/2016 they were amitriptyline and citalopram. Throughout the records are found note that Mr. Brown is unable to read, i.e., medication and medical instructions (this is consistent with earlier evaluation findings).

Observations and Interview

Mr. Brown was found to be a slender, tall, 28 1/2-year-old man. He had close-cropped hair, and was dressed in King County Detention fatigues. He was quiet, polite, and smiled as he recognized this evaluator, whom he had last seen about two years earlier. In general, Mr. Brown was cooperative in responding to the evaluator's questions and requests, although his mood varied widely, as noted below.

This evaluation consisted of one meeting at the Kent RJC's detention facility. He identified the evaluator as "Asher ... my evaluator." Asked who had requested this psychologist to see Mr. Brown, he replied "Leta" whose job is "help me ... argues my case; helps me." Asked what (Ms. Schattauer's) job is called, he could not come up with a reply, so the evaluator listed *judge-doctor-lawyer-police?*, at which Mr. Brown said she was "evaluator too." He added that he did not want the trial to be delayed anymore. "They're waiting for the doctor to come see me." Asked why he was in jail, he said "Because of my girlfriend ... she said I hit her with a rope or something."

He misses his girlfriend Natalie and feels that she misses him and wants him to call her. He said that calling her helps him calm down. She calls and writes him, sometimes sending him pictures.

In a mental status interview, Mr. Brown was asked if he was depressed. He said that he did not know exactly what that means, but then said that he was "like down." He eats alright, sleeps during the day, but is too nervous to sleep at night. Something at night keeps him awake; he has "visions" of one of his mother's old boyfriends who used to abuse and molest Mr. Brown as a child and young teenager. He feels that the jail guard lets this man in by giving him the keys (while relating this Mr. Brown tears up). Mr. Brown denied attempting to kill or harm himself for many years before the recent incident, although he thinks about suicide often. He acknowledged that his mood varies a lot, and that he usually gets in trouble when he is "really low ... sometimes I get agitated, upset for no reason." There are several things that he is very afraid of, including snakes, nighttime, the dark, and he likes the fact that the lights do not go all the way off at night in the jail. He also experiences anxiety "all the time," especially around people, although it is a little better when he is with familiar people, e.g., his

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lawyer, his cousin, his girlfriend. He has nightmares "all the time, almost every time I sleep, just between me and you." When asked about obsessive thoughts, Mr. Brown became very emotional and asked if he could take a break. The evaluator suggested that we do some "testing" (i.e., the cognitive examination reported below), which Mr. Brown agreed-to. When this was completed, he was able to resume the interview. This time, he said that the thought that goes around his mind a lot is about suicide. When asked about behaviors or activities that he does over and over, he cleans a lot, flushes the toilet over and over, and wipes himself with toilet paper a lot. He acknowledged frequent auditory hallucinations, at which he yells to stop or get away. While he denied visual hallucinations, at another point he reported "visions", but at this time he said that they (i.e., the appearance of his childhood abuser) were real, not imaginary. Mr. Brown's eating varies from day to day, such that when he is very worried, "food doesn't taste like food, I won't eat for a couple of days." As-mentioned above, his sleep is very disrupted by nightmares and fears of the "visitor", such that he barely sleeps during the night.

As noted earlier, Mr. Brown has abused various substances, including methamphetamine, methadone, cocaine, and heroin, as well as unprescribed alprazolam (Xanax) and marijuana. He did not endorse a desire to stop using chemicals for nonmedical purposes.

Mr. Brown has been involved in mental health treatment since his release in 2014, although not presently. He said that a female therapist from Sound Mental Health came to see him, and that they drew together while talking, which he enjoyed. He has been prescribed several neuropsychiatric medications, but after his recent suicide attempt (or gesture), he is taking amitriptyline (for headaches and sleep) and citalopram (for depression and agitation). He said that these upset him physically, and that he throws up.

After completing the formal mental status procedures (including the SLUMS, reported below), the evaluator asked Mr. Brown if he would like to draw. Mr. Brown said that he would, and that he was good at this. He was given some paper and pencils, asked if there were any colored pencils (there were not), and told the evaluator that he could draw along with him. He proceeded to draw a simple, rather tall house, with a small door and several windows with grids on them; all the lines of the house were drawn heavily, some by going over multiple times. In the upper corner of the page was a portion of a Sun with wavy rays emanating out. A drawing such as this is typically produced by children about 6-7 years old.

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Reshaud Brown

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Results of Standardized Procedures

Cognitive functioning

Due to the nature of the referral and the recency of this psychologist's earlier full evaluation of Mr. Brown, he was not administered any measures of broad intellectual abilities. While he was somewhat more responsive than three years before, he did not give an impression of functioning at a much higher intellectual level than at that earlier evaluation (i.e., mildly mentally retarded/lower borderline intellectual range). Based on this, he was administered The St. Louis University Mental Status Examination. This is a structured, standardized mental status procedure with simple, well-established norms.

Mr. Brown's score on the SLUMS was 8 out of a possible 30, far below-normal and in the range indicative of dementia. He experienced difficulties in orientation, concentration, quantitative reasoning, and short- and long-term memory.

Summary and Recommendations

Reshaud Brown is a 28 1/2-year-old man, charged with multiple counts, including domestic violence, harassment, and violation of a court order. He participated in an evaluation of his mental health condition. Procedures used included interviews with Mr. Brown, review of records, and completion of standardized procedures of cognition and development.

This psychologist performed a psychological evaluation of Mr. Brown in 2013, concluding that he had several serious problems. The reader is referred to that earlier report. In brief summary, it was concluded that Mr. Brown's psychiatric diagnoses included Schizoaffective Disorder-bipolar type, probable Post-Traumatic Stress Disorder, Intellectual Disability or at best Borderline Intellectual Functioning with associated adaptive and learning skills deficits, Alcohol Abuse in remission due to incarceration, and Polysubstance Abuse in remission due to incarceration, with a significantly impaired Global Assessment of Functioning (GAF).

Since his entering the present detention in 9/2015, Mr. Brown has not fared very well. He has reported frequent distress, and made a suicidal attempt or gesture in 5/2016, i.e., swallowing a number of Prazesin pills in front of a nurse. When he was examined by a physician the next day, his behavior and responses led to the conclusion that he had not truly intended to kill himself, but was expressing his extreme displeasure at various conditions and was using the attempt to effect improvements.

In the present examination, Mr. Brown's cognition and reasoning were significantly impaired, at a level comparable to estimated in 2013. Problems

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described in his mental status interview were very similar to the previous time, i.e., significant depression, anxiety, fears, post-traumatic symptoms, auditory and likely visual hallucinations, delusional thoughts, obsessive thoughts and compulsive (or maladaptive repetitive) behaviors, nightmares interfering with sleep, and eating disturbance. He has a recent history of substance abuse, with little likelihood of cessation outside a controlled environment. Mr. Brown's drawing (of a house) was equivalent to that produced by an average 6-7-year-old child.

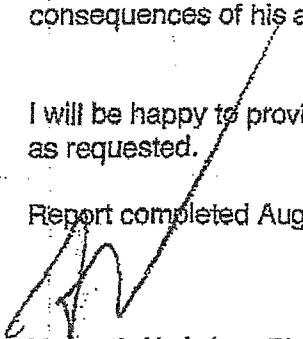
Based on the information above, Mr. Brown's existing psychological diagnoses are supported in large part. At this point, they are given as Post-Traumatic Stress Disorder, Intellectual Disability or at best Borderline Intellectual Functioning with associated adaptive skills deficits, Schizoaffective Disorder-bipolar type, Alcohol Abuse in remission due to incarceration, and Polysubstance Abuse in remission due to incarceration. His Global Assessment of Functioning (GAF) continues to be severely impaired or worse.

Mr. Brown's recent suicidal gesture appears to have been an effort to affect conditions about which he was unhappy, while not being a serious suicide attempt. It suggests an intention to use his symptoms or mental health-related behavior to manipulate events and distort the manner in which he is perceived. However, this seems to collapse when he is challenged or does not get the effect that he hoped for. Nevertheless, he is still considered to validly satisfy criteria for the serious conditions given above. Furthermore, there is nothing in Mr. Brown's psychological/psychiatric history (including those with standardized procedures) that indicates that his actual cognitive abilities and capacity to reason and solve problems are higher than that measured.

Mr. Brown is a complicated young man with extremely low intellectual abilities whose reasoning is further compromised by more emotional factors. As a result, he is likely to have great difficulty making complex decisions. This should be taken into account in understanding limitations in his ability to anticipate likely consequences of his actions as well as explaining legal options to him.

I will be happy to provide further details on these findings and recommendations, as requested.

Report completed August 30, 2016


Kenneth N. Asher, Ph.D.
Washington State License No. 1220

8/31/2016

Gmail - State v. Brown



Leta Schattauer <schattauerlaw@gmail.com>

State v. Brown

Leta Schattauer <schattauerlaw@gmail.com>

Wed, Aug 31, 2016 at 10:28 AM

To: "Charles K. Sergis II" <charles.sergis@kingcounty.gov>

Hello !! Attached is Dr. Asher's report dated 8/30/2016.

Law Offices of Leta J. Schattauer, PLLC

Attorney at Law

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Kenneth Asher, Ph.D.
Report of 12/20/2016

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PSYCHOLOGICAL EVALUATION

Name: Reshaud T. Brown

Examination Date: November 29, 2016

ID#: 13-019

Birth Date: November 20, 1987

Examiner: Kenneth N. Asher, Ph.D.

Age: 29 years- 0 months

King County Cause No. 15-1-06293-6 KNT

Referral and Methods

Reshaud Brown of Kent, Washington was referred for this evaluation by his attorney Leta Schattauer. He has been charged with eleven counts, including Assault in The Second Degree - Domestic Violence, Felony Harassment - Domestic Violence, eight counts of Violation Of A Court Order, and Tampering With A Witness; the first two occurred on 9/21/2015, while the others subsequently up to 9/6/2016. He has been detained in King County Detention (most of the time at the Regional Justice Center in Kent, for brief periods at the King County Jail in Seattle) since his arrest. Ms. Schattauer requested a psychological evaluation of Mr. Brown's competency to assist her in his defense and to stand trial on the aforementioned charges.

This is the third time that this psychologist has evaluated Mr. Brown, with the first (in 2013), exploring his mental development and functioning more comprehensively and the second (earlier this year) considering his mental status in a narrower time-frame.

Mr. Brown was interviewed and examined at the Kent Regional Justice Center. He was administered several standardized procedures, including the Saint Louis University Mental Status Examination (SLUMS), the Developmental Test of Visual-Motor Integration (VMI), the Rey 15-Item Test for Malingering (Rey 15), and the Structured Inventory of Malingered Symptomatology (SIMS). In addition to the records reviewed and listed in this evaluator's earlier evaluations, additional records reviewed included King County Jail- and jail medical records, Mr. Brown's telephone calls from jail, and a report of a competency evaluation by Jolene Simpson, Ph.D. (10/7/2016).

Mr. Brown's background has been reviewed multiple times by this psychologist, Dr. Simpson, and others, and by-and-large will not be repeated here. Other than

Psychological Evaluation - 11/29/2016
Reshaud Brown

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brief reference to pertinent earlier conclusions (mostly by this psychologist), this report will focus mainly on information gathered and conclusions drawn from the 11/29/2016 examination.

Previous Evaluations

As-noted, this psychologist conducted evaluation of Mr. Brown in 2013 (last examined in 8/2013, when he was 25 1/2 years old), and earlier in 2016 (last examined in 6/2016, when he was 28 1/2 years old). The following summaries are derived from the reports of those evaluations.

In 8/2013 Mr. Brown's intellectual functioning was estimated to fall in the mildly retarded range (i.e., in the lowest two percent of the population), with similar verbal- and nonverbal abilities. His social reasoning, planning ability, and impulse-control were found to be very impaired, and his abilities to understand written and spoken material were significantly below-average. He refused several times to complete a standardized behavior and psychological functioning questionnaire, but his mental status interview, as well as information given directly by him at various times in that evaluation, indicated significant-to-severe problems in many areas, including depression, variable mood, suicidal tendency, anxiety, fears, post-traumatic stress, hallucinations, paranoid delusions, nightmares and other sleep disturbance, some eating disturbance (likely associated with mood), and attention, learning, and other cognitive functions. Mr. Brown described years of alcohol and drug abuse, even despite feeling that he benefited from treatment, and said that he would resume some of this when he returns to the community.

Consistent with the information derived from numerous sources, Mr. Brown's behavior during- and between sessions varied to a dramatic and noteworthy degree. In at least two of the four meetings, Mr. Brown's demeanor changed from pleasant and cooperative to withdrawn, unresponsive, possibly hostile, and bizarre. He became very suspicious of the evaluator, and acted in a way that seemed to indicate that he was experiencing hallucinations. Throughout the multiple meetings with Mr. Brown, he was only able to "hold it together" and interact in a productive, rational manner for less than an hour. From one meeting to the next, and from talking with his attorney to the next evaluation meeting, Mr. Brown did not remember what he had said or done before. It was only in the last session that he acknowledged experiencing psychotic symptoms for many years, and to the present. His behavior (actions, demeanor, words) evidenced a high degree of instability, such that he did not recall what he had said or done a few days earlier.

This psychologist concluded in 2013 that Mr. Brown qualified for several psychiatric diagnoses, including Schizoaffective Disorder-bipolar type, probable

Psychological Evaluation – 11/29/2016
Reshaud Brown

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Post-Traumatic Stress Disorder, Intellectual Disability or at best Borderline Intellectual Functioning with associated adaptive skills deficits, Alcohol Abuse in remission due to incarceration, and Polysubstance Abuse in remission due to incarceration. Mr. Brown's Global Assessment of Functioning (GAF) was estimated to be so impaired as to affect him in most areas.

In Mr. Brown's 6/2016 evaluation (by this psychologist), he was detained under the present charges. Procedures used at that second time included interviews with Mr. Brown, review of records, and completion of standardized procedures of cognition and development.

From his arrest in 9/2015 to the time of the second evaluation, Mr. Brown reported frequent distress, and made a suicidal attempt or gesture in 5/2016. When he was examined later, it was concluded that he had not truly intended to kill himself, but was expressing his extreme displeasure at various conditions and was using the attempt to effect improvements.

Mr. Brown's cognition and reasoning in 6/2016 were significantly impaired, at a level comparable to estimated in 2013. Problems described in his mental status interview were very similar to the previous time, i.e., significant depression, anxiety, fears, post-traumatic symptoms, auditory and likely visual hallucinations, delusional thoughts, obsessive thoughts and compulsive (or maladaptive repetitive) behaviors, nightmares interfering with sleep, and eating disturbance. He had a recent history of substance abuse, with little likelihood of cessation outside a controlled environment. Mr. Brown's score on the SLUMS fell in the range indicative of dementia, and he produced a drawing was equivalent to that of an average 6-7-year-old child.

Based on the information gathered, Mr. Brown's psychological diagnoses largely similar to those offered three years before, i.e., Post-Traumatic Stress Disorder, Intellectual Disability or at best Borderline Intellectual Functioning with associated adaptive skills deficits, Schizoaffective Disorder-bipolar type, Alcohol Abuse in remission due to incarceration, and Polysubstance Abuse in remission due to incarceration. His Global Assessment of Functioning (GAF) continued to be severely impaired or worse.

Mr. Brown's suicidal gesture appeared to have been an effort to affect conditions about which he was unhappy, while not being a serious suicide attempt. It suggested an intention to use his symptoms or mental health-related behavior to manipulate events and distort the manner in which he is perceived, but seemed to collapse when he was challenged or did not get the effect that he hoped for.

In Dr. Jolene Simpson's 10/2016 competency evaluation of Mr. Brown, she interviewed him, reviewed written records, reviewed recordings of his telephone

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calls from the RJC, and administered a portion of the Revised Competency Assessment Instrument (R-CAI). Based on all of the information available, she offered diagnoses of Amphetamine-, Opiate-, and Benzodiazepine Use Disorders in remission in a controlled environment, history of Alcohol Use Disorder, Personality Disorder-Unspecified with Antisocial and Borderline Traits (provisional), rule-out Malingering, rule-out Adjustment Disorder with Depressed Mood, rule-out Post-Traumatic Stress Disorder, and rule-out Borderline Intellectual Functioning. She considered whether Mr. Brown was legally competent (incompetency was defined as lacking the capacity to understand the nature of the proceedings against him ... or to assist in his ... own defense as a result of mental disease or defect). She noted that Mr. Brown was aware of some facts regarding the legal and criminal process and of his case, and could be educated on some of them to provide more accurate responses to her questions but not on others. She concluded that he demonstrated a good basic understanding of the legal system despite lacking some factual and procedural information, retained some erroneous beliefs but nevertheless should be able to work with his attorney in his case, and was not significantly impaired in competency-related capacities his mental or cognitive conditions. She recommended that he be evaluated by a Designated Mental Health Professional, despite prior opinions that his suicidal gestures and attempts were likely intended to manipulate and express dissatisfaction.

Observations and Interview

This evaluation consisted of one meeting at the Kent RJC's detention facility. Mr. Brown recognized and appeared to be happy to see this evaluator when he entered the room. No one else was present. He was cooperative in responding to the questions and requests, and maintained a more even, positive mood than in most of the earlier meetings.

Mr. Brown readily recalled the evaluator's name as "Dr. Asher" and identified the date as "November 11th" (it was 11/29). He continues to stay awake most of the night, due to his fear of "visits" from "the old man," and sleeps or naps during the day. He complained of headaches, including at the time of the examination, and said that his prescribed amitriptyline helped a little bit. Asked how he had been spending the time, Mr. Brown said that he had had some visitors, but mostly he drew, watched television, and talked about football with a fellow detainee. This led to a several-minute conversation about football. This evaluator brings up "small talk" topics such as sports as ways to relax evaluation subjects and open up conversations, but in numerous earlier meetings with Mr. Brown since 2013 he had not shown much interest in- nor knowledge of football or other sports. In this meeting, however, he said that he liked football and was happy to talk about local teams. However, in our discussion, he did not know the differences between

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college and professional teams ("Do the Huskies play the Seahawks?"), nor even what the idea of a professional sport meant.

After several minutes conversation, Mr. Brown was given a copy of this evaluator's forensic evaluation consent form. Mr. Brown asked that it be read to him as he read silently. In responses to items, he said that his attorney ("Leta") had asked for it. *In order to understand what is going on in your legal case?* – "No". *To test your competency or capacity?* – "Maybe". He knew that his last evaluation was "Last month, a lady" (did not know her name) came in, also requested by his lawyer. He appeared to understand other key elements of the consent form, i.e., his right not to answer questions and to have an attorney present, that the evaluation was not part of any treatment and that information that he gave would not be held in confidence, that he felt that he understood what was being described and that he agreed to participate.

The standardized and structured procedures listed in the Methods section above were given to Mr. Brown. He engaged in these willingly, although at times appeared tired and was allowed two brief rests.

Results of Standardized Procedures

The standardized and structured procedures were given to Mr. Brown in the following order: Developmental Test of Visual-Motor Integration (VMI), Rey 15-Item Test for Malingering (Rey 15), Structured Inventory of Malingered Symptomatology (SIMS), and Saint Louis University Mental Status Examination (SLUMS). They are reported below as the group of measures primarily intended to assess malingering, effort, and sincerity of reporting (Rey 15, SIMS) and the group primarily measuring cognition and mental status (VMI, SLUMS), followed by Mr. Brown's responses to the set of competency-related questions.

Evaluation attitude, effort, and possible malingering

The Rey 15-Item Test for Malingering is a brief measure of visual perception, short-term memory, and symbol-writing. While seemingly somewhat challenging, it is simple enough that the majority of individuals who are not severely impaired are expected to attain scores of 9 or higher. Mr. Brown appeared to apply himself in a thoughtful manner, but attained a score below the suggested level. This suggests that he was not putting forth a full effort or was feigning difficulty.

The Structured Inventory of Malingered Symptomatology consists of numerous statements that might be endorsed or rejected in certain frequencies by individuals with different disorders often found in clinical and forensic populations (e.g., head injured, psychotic, cognitively disabled, mood problems). Endorsement of items above certain levels call into question the respondent's sincerity and validity of self-reporting, and are suggestive of malingering or

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symptom exaggeration. Mr. Brown's SIMS results (he read the questions, assisted by the evaluator) yielded scores above cutoff levels in four out of five scales as well as the total score. Thus, malingering or exaggeration should be considered.

Cognition and mental status

In the Developmental Test of Visual-Motor Integration, the individual must copy-draw an series of geometric designs (Mr. Brown was presented the designs from most- to least-difficult. Performance on this procedure provides an estimate of his perceptual-fine motor skills and developmental maturity, in comparison with those of young people from preschool to early-adolescence. In comparison with a sample of 16-year-olds, Mr. Brown's standard score on the VMI was 73 (100 is average) -- at the 49th %ile. His skills were equivalent to those of a 10-year-old youth.

As in the 6/2016 evaluation, Mr. Brown was administered The St. Louis University Mental Status Examination. On this is a structured, standardized mental status procedure with simple, well-established norms, he attained a raw score of 8 -- far below-normal and in the range indicative of dementia. In the present examination, his raw score fell in the range between 14 to 19 -- at the upper end of the below-normal range, indicative of dementia. The higher score resulted from Mr. Brown's responses on several items for which he said he did not know, and was asked to guess or try to answer.

Competency-related questions

Asked what were the charges against him, Mr. Brown replied "assault, domestic violence, no-contact violations, and witness-tampering." Asked if these actions of which he is accused are right or wrong, he began to describe the initial incident, i.e., the alleged assault, saying "She said I grabbed her, hit her ... pointed a nail-gun at her." When asked if he had been told the charges, he said that his lawyer had given him "a paper."

Mr. Brown was asked if he could say that he had not committed the illegal action, to which he replied "yes." He was asked what a person charged with a crime who says he did not do it can he do -- "Say they're not guilty." *Can the police or anyone else make you say that you did something wrong?* -- "Yes, some people are innocent but are found guilty, but I'm innocent ... (the police) could make me say I'm guilty by paperwork, the prosecutor."

Asked what his "rights" mean and if he knew what his rights are, Mr. Brown replied "Rights? I don't know ... right to have an attorney, if you don't have money (what if you don't have money?) you have to have insurance (what else?) can't make you talk unless you're on the stand, police can't make you talk."

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Mr. Brown was asked about the roles of various people and the trial process.

Trial? – “When people like me come into a courtroom, the prosecutor says everything about the charge, the jury finds out whether you’re guilty or not.”

Guilty? – “You did it.” *What can you say?* – “My attorney defends me (how?) bring in my girl, tell the truth.” *What does the prosecutor do?* – “Try to convict me, find me guilty.” *What happens in court?* – “The judge, prosecutor, attorney make decisions.” *What does the judge do?* – “Does what the prosecutor does.” *What does the jury do?* – “Jury is in between, neutral, they decide, not the judge.”

Witnesses? – “Tell their side of the story.” *What does your lawyer do?* – “Defend me (how?) by evidence ... that helps us, how I’m innocent, the facts.” *How does the judge or jury make decisions?* – “Go into a room, talk, hear everybody’s feelings about it, make a group decision.” *How does your lawyer help you? What can you do to help your lawyer do her job?* – “Listen to her, tell her my side of the story, think about things to give her more information.”

Next, Mr. Brown was asked if he was found guilty of what he was charged with, what might happen to him, and what is the worst that might happen? – “I go to prison (how long?) for the rest of my life.” *Are there ways that you can avoid the worst outcome?* – “My girl is trying to tell the truth, that I didn’t do it, but they’re not listening. I could ask if I could go back to the Union Gospel Mission.” Have you been told that you can make an arrangement to avoid going to trial? – “No, not on this case.” How would that work? – “I’m not guilty, so I wouldn’t do that, I would only take a deal if I’m innocent (if you are innocent?). yes.”

Summary and Recommendations

Reshaud Brown is a 29-year-old man, charged with multiple counts, including domestic violence, harassment, violation of a court order, and witness-tampering. He participated in an evaluation of his competency to assist his lawyer and stand trial, including a review of his mental health. Procedures used included interviews with Mr. Brown, review of records (including other recent evaluations), and completion of standardized procedures of cognition, mental status, and validity of participation/malingering.

This psychologist performed psychological evaluations of Mr. Brown in 2013, and earlier in 2016, concluding that he had several serious problems. The reader is referred to the earlier reports. In brief summary, in the evaluation of several months ago, it was concluded that Mr. Brown’s psychiatric diagnoses included PTSD, Intellectual Disability or at best Borderline Intellectual Functioning, Schizoaffective Disorder-bipolar type, Alcohol Abuse in remission due to incarceration, and Polysubstance Abuse in remission due to incarceration, with a significantly impaired Global Assessment of Functioning (GAF).

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A competency evaluation performed in 10/2016 by psychologist Dr. Jolene Simpson offered diagnoses of Amphetamine-, Opiate-, and Benzodiazepine Use Disorders in remission in a controlled environment, history of Alcohol Use Disorder, Personality Disorder-Unspecified with Antisocial and Borderline Traits (provisional), rule-out Malingering, rule-out Adjustment Disorder with Depressed Mood, rule-out Post-Traumatic Stress Disorder, and rule-out Borderline Intellectual Functioning. Noting that Mr. Brown was aware of some facts regarding the legal and criminal process and of his case, and could be educated on some of them to provide more accurate responses to her questions but not on others, Dr. Simpson concluded that he demonstrated a good basic understanding of the legal system despite lacking some factual and procedural information, retained some erroneous beliefs but nevertheless should be able to work with his attorney in his case, and was not significantly impaired in competency-related capacities his mental or cognitive conditions.

The present evaluation corresponded to this evaluator's previous evaluations of Mr. Brown in some ways, but differed in at least two important ways. First, it included several procedures intended to provide information on the possibility that he was distorting responses, not putting forth a sincere effort, exaggerating clinical symptoms, or otherwise malingering. Second, a set of questions was presented concerning Mr. Brown's understanding of the legal process and his particular legal situation.

In this examination, Mr. Brown seemed to be somewhat more even-tempered and euthymic than previously; he did not go into periods of silence or "shutting down", and appeared to try to answer most interview questions. During a discussion with Mr. Brown early in the session, he talked about a topic in which he had not shown any interest or knowledge previously (i.e., football). However, his knowledge and understanding of this topic was very poor and superficial.

On two measures specifically intended to reflect on an individual's likelihood of distortion, underperforming, or malingering, Mr. Brown's scores suggested that he was, indeed, exaggerating symptoms or presenting himself excessively negatively.

On two measures intended to measure Mr. Brown's developmental maturity and skills, he scored poorly. On one drawing procedure, his score was very close to that obtained in an earlier evaluation on a full intelligence test. On another standardized mental status procedure that had been given several months earlier, Mr. Brown scored much higher in absolute points, yet still in the very below-normal range (again, indicating dementia).

At this point, Mr. Brown's mental health diagnoses are offered again, using the ever-increasing body of information (and opinions). A number of standardized

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procedures have been administered to him since 2013 (mostly by this psychologist), including measures of cognition and possible malingering. Dr. Simpson provided several cogent criticisms and alternative perspectives, which must be considered. The validity/malingering measures strongly suggest that Mr. Brown's psychological problems are not as severe as suggested by his self-report and test performance, but there remains a basis in his behavioral consistency in these two information sources. He is still seen to have significant intellectual deficits, reaching the (formerly) borderline level and still meriting a DSM-5 diagnosis of Intellectual Disability Disorder (borderline range). He satisfies criteria for PTSD. His complex intertwining of affective and psychotic symptoms may be "disentangled" to separate diagnoses of Adjustment Disorder-depression, chronic and Psychotic Disorder. His longstanding problems with illegal and socially problematic activities, highly volatile relationships, and extreme moods satisfy criteria for Personality Disorder-mixed antisocial and borderline. Finally, Mr. Brown's substance use history and abuse indicate Amphetamine-, Opiate-, Benzodiazepine- and Alcohol Use Disorders in remission in a controlled environment.

On a set of competency-related questions, Mr. Brown demonstrated some awareness of the roles of key people in the legal system, knowledge of the legal process, and of the management of his present case. He knows that a trial is where decisions of guilt or innocence are made by a jury, with opposing efforts by a prosecutor and his attorney, using facts and witnesses' statements. He still thinks that a judge is more-or-less against him, and that he can be made to testify by the prosecutor. He was somewhat unclear regarding his rights, how decisions are made in court, and under what conditions he could take a plea arrangement. Mr. Brown's responses to these questions were not simple, and he appeared to be both thoughtful and "serious" in his answers. In this psychologist's opinion, his limitations were credible. Nevertheless, even with his limitations in information and deficiencies in reasoning, Mr. Brown should be deemed competent to assist his attorney and stand trial. In court, his attorney and the judge should attend to his apparent mental state at the moment, and be prepared to give Mr. Brown brief breaks approximately each hour of the proceedings.

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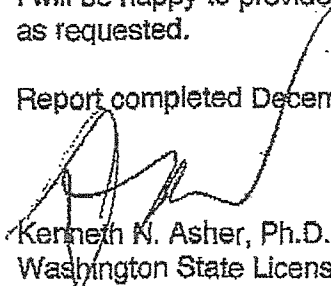
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I will be happy to provide further details on these findings and recommendations,
as requested.

Report completed December 20, 2016



Kenneth N. Asher, Ph.D.
Washington State License No. 1220

12/20/2016

Gmail - State v. Brown



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State v. Brown

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Tue, Dec 20, 2016 at 4:31 PM

To: "Alexandra E. Voorhees" <alexandra.voorhees@kingcounty.gov>

Bcc: "Kenneth N. Asher, Ph.D." <ken@kenasherphd.com>

Well, I guess I jumped the gun when I sent Dr. Asher's most recent report this morning. He made some revisions, signed his report, dated it 12/20/16, and faxed it this afternoon. The same is attached.

As I understand it (and if you need more information, we can schedule a time for you to speak with Dr. Asher), there is a difference in the description of intellectual functioning between the former DSM-IV and the current DSM-V. I understand that Dr. Asher has made a more detailed comment about this on Pg. 9 of the attached report, 1st para., beginning on line 7: "he is still seen to have significant intellectual deficits . . ."

I asked Dr. Asher about your question whether Mr. Brown is "competent". He addressed that in more detail at pg. 9, 2nd para., beginning at line 11: "Nevertheless, even with his limitations in information and deficiencies in reasoning, Mr. Brown should be deemed competent . . ."

Sorry to be adding even more pages to the discovery, but hopefully the above addresses your question; and it is my understanding Dr. Asher wanted to clarify in this report what Mr. Brown's intellectual status is with respect to the current diagnostic descriptors.

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Dr. Asher's report (signed - final) 12-20-2016.pdf
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