

1 IN THE COURT OF COMMON PLEAS  
2 PORTAGE COUNTY, OHIO

3  
4 CASE NO. 92-CR-0210

5  
6 STATE OF OHIO [

7 PLAINTIFF [

8 --vs--

COMPETENCY HEARING

9 GARY EUGENE ST. CLAIR [

10 DEFENDANT [

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13 A P P E A R A N C E S:

14  
15 ATTORNEY FOR THE STATE OF OHIO:

16 MR. ROBERT DURST  
17 Assistant Prosecuting Attorney  
18 466 S. Chestnut Street  
19 Ravenna, Ohio 44266

20 ATTORNEYS FOR THE DEFENDANT:

21 MR. JOHN N. MACKEY  
22 MS. KATHLEEN O. TARTARSKY  
23 Attorneys at Law  
24 Suite 610 - Bliss Tower  
25 Canton, Ohio 44702-1586

1 BE IT REMEMBERED, that this matter came on for a  
2 "COMPETENCY HEARING," on this 19th day of March, 1993,  
3 at 9:45 A.M., before The Honorable Joseph R. Kainrad,  
4 Judge of the Court of Common Pleas of Portage County,  
5 Ohio.

6 WHEREUPON, the following proceedings were had:  
7

8 MR. DURST:

9  
10 Your Honor, this is Case No. 92-CR-0210, the STATE  
11 OF OHIO versus GARY EUGENE ST. CLAIR. I would indicate  
12 for the purpose of the record that the Defendant is  
13 present in Court this morning together with both of his  
14 Attorneys, Mr. John Mackey and Miss Kathleen Tartarsky.

15 Your Honor, the Court has scheduled for this  
16 morning a hearing on the report which has been filed in  
17 this matter, the report having been filed by the Summit  
18 County Psycho-Diagnostic Clinic in conformance with  
19 this Court's prior Order ordering the Defendant to  
20 undergo a competency evaluation.

21 I would indicate again for the purpose of the  
22 record that earlier Defense Counsel raised the issue of  
23 competency, and that having been done this Court put on  
24 an Order referring the Defendant, Gary St. Clair, to  
25 the Summit County Psycho-Diagnostic Clinic for the

1 MR. DURST (Cont'd)

2 ~~purpose of undergoing a competency evaluation.~~ It is  
3 my understanding that that evaluation has not been  
4 completed, and the report of that evaluation has been  
5 filed with this Court, in fact, I believe it was filed  
6 on March 16th, and that is less than ten days ago, and  
7 the Court has set this hearing within the ten day  
8 period setforth in the Statute and we are now prepared  
9 to proceed.

10 Your Honor, we have a witness who I would  
11 anticipate is going to be testifying for the Court this  
12 morning, that is ~~Miss Kathleen Stafford.~~ Dr. Stafford  
13 ~~is the Director of the Summit Diagnostic Clinic.~~

14  
15 BY THE COURT: DO YOU HAVE ANYTHING YOU WANT TO  
16 SAY, MR. MACKEY?

17 MR. MACKEY:

18  
19 No, Your Honor, we are prepared to proceed on  
20 behalf of Mr. St. Clair. Miss Tartarsky and I have  
21 reviewed the report with him.

22 MR. DURST: YOUR HONOR, IT IS MY  
23 UNDERSTANDING THAT DR. STAFFORD  
24 WILL BE A WITNESS FOR THE COURT,  
25 AND WE WOULD CALL HER TO TESTIFY  
AT THIS TIME.

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TESTIMONY OF DR. KATHLEEN STAFFORD

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1 DR. KATHLEEN STAFFORD, being  
2 first duly sworn on oath to tell  
3 the truth, the whole truth, and  
4 nothing but the truth testified  
5 as follows:

6 MR. DURST:

DIRECT EXAMINATION

7  
8 Q. Dr. Stafford, for the purpose of the record would  
9 you please state your name?

10 A. KATHLEEN STAFFORD.

11 Q. And Dr. Stafford where are you presently employed?

12 A. I have several positions. I am here in my  
13 capacity today as ~~Director of the Court~~  
14 ~~Psycho-Diagnostic Clinic, which serves the Common Pleas~~  
15 ~~Courts of Summit, Stark, Medina, Portage and Geauga~~  
16 ~~County.~~ In addition I am also an Assistant Adjunct  
17 Professor of Psychology at Kent State University and a  
18 Clinical Assistant Professor at the Northeastern Ohio  
19 Universities College of Medicine.

20 Q. Before we go any further Dr. Stafford, I would  
21 like to ask some questions concerning both your  
22 educational and professional background. I believe  
23 that you are a licensed Psychologist within the State  
24 of Ohio?

25 A. That's correct.

MR. DURST:

DIRECT EXAMINATION

1  
2 Q. Would you describe for the purpose of the record  
3 here what educational background you have in connection  
4 with your Psychology License?

5 A. I have a Bachelor's Degree in Psychology from  
6 Pennsylvania State University; a Master's Degree in  
7 Clinical Psychology from West Virginia University; and  
8 a Ph.D in Clinical Psychology from Kent State  
9 University. I also completed a full year Pre-Doctoral  
10 Internship at the Cleveland Veteran's Administration  
11 Medical Center.

12 Q. And are you a Licensed Clinical Psychologist  
13 within the State of Ohio?

14 A. Yes, I am.

15 Q. And do you have a license in any other State?

16 A. I'm also licensed in the Common Wealth of  
17 Massachusetts.

18 Q. What is a Diplomat in Forensic Psychology, if I  
19 may ask?

20 A. I have a Diplomat in Forensic Psychology from the  
21 American Board of Professional Psychology. A Diplomat  
22 status is a specialty certification, which is obtained  
23 every five years Post-Doctoral, and involves a National  
24 Oral Examination as well as submission of work samples  
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MR. DURST:

DIRECT EXAMINATION

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WITNESS (Cont'd) and a variety of other kinds of qualifying measures.

Q. Do you now or have you in the past served in any teaching function related to your field of psychology?

A. Yes, I have.

Q. Could you tell us what that is? What your background of teaching is?

A. I teach graduate courses at the Department of Psychology at Kent State University. I also do some teaching for Northeastern Ohio Universities College of Medicine, and I supervise Pre-Doctoral Students at Kent State University on clinical placement. And I have given a number of presentations to professional groups.

Q. I would like to ask a few questions concerning your prior professional experience, could you outline that in a summary manner to the Court here this morning?

A. For the past fifteen years I have done Court Ordered Evaluations in a variety of Counties in the State of Ohio, and that's been my primary professional endeavor, but in addition I have also done teaching and consulting. I consult at the Massillon Psychiatric Center and at the Cleveland Veteran's Administration

MR. DURST:

DIRECT EXAMINATION

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WITNESS (Cont'd) Medical Center. I have a private practice in Clinical Psychology.

Q. Have you testified in Court before concerning matters relating to your expertise and specialty?

A. Yes, I have.

Q. Do you have any idea of how many times?

A. Probably approximately ten times a year over the past fifteen years.

Q. Do you belong to any Professional Societies or groups, the membership of which is restricted to people who share your qualifications and specialty?

A. Yes, I do.

Q. Would you tell us what those are please?

A. I belong to the American Psychological Association. I belong to the American Academy of Forensic Psychology, and I'm also Vice President of the American Academy of Professional Psychology. I serve as an Examiner for the American Board of Professional Psychology. I belong to the Ohio Psychological Association as well, and to the Ohio Association of Forensic Psychiatric Center of Directors.



MR. DURST:

DIRECT EXAMINATION

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2 Q. Dr. Stafford, I would like now to direct your  
3 attention to your present position. I believe you have  
4 already testified that you are the Director of the  
5 Summit County Psycho-Diagnostic Clinic, could you  
6 outline for the purpose of the record what your  
7 responsibilities are as Director of that facility?

8 A. I am responsible for supervising the staff and  
9 directing the operations of the Clinic. As I indicated  
10 earlier the Clinic serves the Common Pleas Courts of  
11 Summit, Stark, Portage, Geauga and Medina Counties.  
12 The Clinic also provides Court Ordered Evaluations to a  
13 number of other Courts, including Municipal Courts in  
14 that area and the Summit County Juvenile Court.

15 Q. Does your facility routinely perform competency  
16 evaluations?

17 A. Yes.

18 Q. Now, Doctor, with respect to the case we are here  
19 on this morning, State of Ohio versus Gary St. Clair,  
20 did your facility receive a referral from this Court of  
21 Portage County, Court of Common Pleas, regarding Mr.  
22 St. Clair?

23 A. Yes, we received an Order to do a competency  
24 evaluation in this matter.  
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MR. DURST:

DIRECT EXAMINATION

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Q. And did you, in fact, perform a competency evaluation on Mr. St. Clair in accordance with that prior Order?

A. Yes, I did.

Q. Again, briefly for the purpose of the record this morning, could you indicate to the Court what general issues you deal with in determining legal competency?

A. In terms of competency to stand trial we are directed by the Statute to look at the Defendant's understanding of the nature of the proceedings against him, and of his capacity to assist his Attorneys in the preparation of a defense.

Q. Now, I presume that you are not the only Psychologist within your organization who performs these competency evaluations. You have others on your staff who likewise do this from time to time?

A. Yes, that is correct.

Q. In this case, the case of Gary St. Clair, who conducted the actual competency evaluation?

A. I did.

(COURT REPORTER MARKED STATE'S EXHIBIT NO. 1)

Q. Doctor, did you prepare a written report reflecting the substance of and results of your

MR. DURST:

DIRECT EXAMINATION

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(Cont'd) ~~competency evaluation of Mr. St. Clair?~~

A. ~~Yes, I did.~~

Q. I'm going to hand you a document which has now been marked as State's Exhibit No. 1, and ask if you could take a look at that copy and identify it for us?

A. Yes, this is the copy of the competency evaluation I prepared in response to the Court Order.

Q. And that is your signature on the last page?

A. Yes, it is.

Q. Is that particular report, Dr. Stafford, an accurate indication of the results and nature of your competency evaluation of Mr. St. Clair?

A. Yes, it is.

Q. Dr. Stafford, given your educational experience, your license as a Clinical Psychologist within the State of Ohio, your background and educational experience in this general area, after you completed this evaluation of Mr. St. Clair, ~~did you form an opinion as to whether Gary St. Clair is at this time capable of understanding the nature and objective of the proceedings against him, and of presently assisting in his own defense in this case now pending in this Court?~~ Did you form an opinion?

1 MR. DURST:

DIRECT EXAMINATION

2 A. ~~Yes.~~

3 MR. MACKEY: OBJECTION

4 BY COURT: OVERRULED, YOU MAY ANSWER

5  
6 A. Yes, I did form an opinion.

7 Q. And can you tell the Court what is your opinion?

8 MR. MACKEY: OBJECTION

9 BY COURT: OVERRULED

10 A. ~~It is my opinion based upon my evaluation that Mr.~~  
11 ~~St. Clair does have the capacity to understand the~~  
12 ~~nature of the proceedings against him and to assist his~~  
13 ~~Attorneys in his defense.~~

14 MR. MACKEY: MOVE TO STRIKE

15 BY COURT: OVERRULED

16  
17 MR. DURST: THANK YOU, DR. STAFFORD. I HAVE  
18 NO FURTHER QUESTIONS AT THIS  
19 TIME.  
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MR. MACKEY:

CROSS EXAMINATION

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Q. Dr. Stafford, this evaluation analysis was performed at your Clinic, is that correct?

A. The bulk of the context was at the Clinic, but Steven Chermack, the Clinic Psychology Assistant, did conduct one interview at the Stark County Jail on February 10th.

Q. Under your direction or under your supervision?

A. Under my supervision.

Q. Would you tell me briefly what his qualifications are academically?

A. He has a Master's Degree in Clinical Psychology, and he is currently completing his dissertation in Clinical Psychology at Kent State University. He completed one Pre-Doctoral Placement at the Kevin Coleman Mental Health Center in Portage County, and he has been with the Summit County Psycho-Diagnostic Clinic for nearly two years now.

Q. Doctor, I want to ask you a series of questions, and I want to preface these questions, and there will be two groups of them, I want to preface these questions based upon your training, your education and your experience, and I want you to give me your opinion

1 MR. MACKEY:

CROSS EXAMINATION

2 (Cont'd) if you would based upon reasonable  
3 scientific certainty in your field. So, rather than  
4 repeat this statement for these series of questions,  
5 I'll ask you to assume that you are basing your opinion  
6 on your training, education and experience, and you are  
7 giving this opinion based upon reasonable scientific  
8 certainty in the field of psychology.

9 Doctor, do you have an opinion as to Gary's mental  
10 capacity to appreciate his presence in relation to time  
11 and place and things?

12 A. At the times that I interviewed Gary he was  
13 well-oriented at the time, place and person. He knew  
14 where he was, who he was, and what was going on around  
15 him.

16 Q. Doctor, do you feel that Gary had sufficient  
17 elementary process or mental process to apprehend that  
18 he is in a Court of Law charged with a criminal  
19 offense?

20 A. Yes, he did understand that he is charged with an  
21 offense, and that he has to go to a Criminal Court of  
22 Law.

23 Q. Did Gary understand the Judge's function during  
24 these proceedings, and, if so, what function was it?  
25

1 MR. MACKEY:

CROSS EXAMINATION

2 Q. His understanding of the Judge's function was that  
3 the Judge essentially ran the Court Room, presided over  
4 the proceedings and that the Judge was a neutral party  
5 who would listen to both sides and eventually reach a  
6 conclusion on his own.

7 Q. Doctor, what was your understanding as to Gary's  
8 ability to know, appreciate and understand the  
9 Prosecutor and what his function is during these  
10 proceedings?

11 A. I think he had a very good understanding of the  
12 Prosecutor's role in these proceedings. As he  
13 explained it to me he stated that the Prosecutor - let  
14 me refer to my report so I state it accurately and give  
15 you a sense of what he conveyed to me -

16 He said that the Prosecutor's role would be to try  
17 to convince the Jury that he is a murderer and also to  
18 try to convince the Jury to quote "hang me up."

19 Q. Doctor, did you discuss with Gary and from your  
20 discussion do you have an opinion as to whether or not  
21 he understands the rolls of his Lawyers, Miss Tartarsky  
22 and I, who have undertaken the task of defending him in  
23 this matter?  
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1 MR. MACKEY:

CROSS EXAMINATION

2 A. He did understand the roll of his Lawyers. He was  
3 able to name both of his Lawyers, and he indicated that  
4 his Attorneys had spent a considerable amount of time  
5 with him. He indicated that he has a good relationship  
6 with his Attorneys, and that he is able to understand  
7 all of what they discuss with him.

8 Q. Doctor, do you have an opinion as to whether or  
9 not Gary understands that he is expected to tell his  
10 Attorneys the circumstances to the best of his mental  
11 ability relating to the facts surrounding the time and  
12 place where this alleged violation took place?

13 A. Yes, he indicated that he was supposed to share  
14 with his Attorneys as much as he could regarding the  
15 circumstances of the alleged offenses.

16 Q. Doctor, did Gary understand, and do you have an  
17 opinion whether or not he knows the function of a Jury?

18 A. Yes, he was able to describe the function of a  
19 Jury to me. He knew that Jurors were chosen from a  
20 list of registered voters. He knew that there were  
21 procedures to qualify Jurors, and that ultimately  
22 twelve Jurors would be selected to hear the case  
23 against him, and that these Jurors were to listen to  
24 both sides and to reach an opinion.  
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MR. MACKEY:

CROSS EXAMINATION

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Q. Finally, Doctor, does Gary have memory sufficient to relate things involving this case in his own personal manner?

A. ~~In terms of his memory there is no indication of any ongoing problems with memory formation or memory retrieval with one exception, and that exception is that Mr. St. Clair states that he cannot remember anything about the circumscribed time-frame during which the alleged offenses occurred on April 5, 1990.~~

Q. ~~Doctor, in your sciences of inability to recall facts, inability to retrieve facts from one's memory described in general terms as amnesia?~~

A. In general terms.

Q. Is that correct?

A. ~~Yes.~~

Q. Are there basically two distinct categories of amnesia, one being amnesia syndrome and the other being psycho-genic amnesia?

A. ~~There are a variety of amnesias.~~ I think the amnesia you are referring to are from the Diagnostic and Statistical Manual.

Q. Well, ~~addressing your attention to the amnesia syndrome one normally finds some organic dysfunction in that regard, is that correct?~~

MR. MACKEY:

CROSS EXAMINATION

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A. Yes.

Q. And in Gary's case did you come across any evidence, either from your own testing or any information that you may have gleaned from hospital records, or other records provided to you, of any organic damage or injury?

A. I found no indication of that and I can explain just what that opinion is based on.

Q. Would you please?

A. Yes, Gary did have a hospitalization at the age of fourteen at Children's Hospital Medical Center in Akron. Prior to that time he had taken some stimulant medication under prescription to attempt to control his behavior, and at the time of the admission to Akron Children's Hospital he was withdrawn from all of that medication and there was a neurological evaluation done, which was normal, and he was discharged at that time without any further medication.

There are also a lot of records of intellectual and cognitive assessments of Mr. St. Clair over his school career, and what we did was to repeat some of those measures at this point in time and discovered that they were highly consistent with prior measures of his intellectual and cognitive functioning. None of

1 MR. MACKEY:

CROSS EXAMINATION

2 WITNESS (Cont'd) those measures indicate that there  
3 is any cognitive deficit or kind of ongoing memory  
4 deficit. What they do indicate is that Mr. St. Clair  
5 has always functioned in the borderline range of  
6 intelligence.

7 Q. So, there is no neurological evidence that Gary  
8 suffers any impairment that would lead to amnesia?

9 A. No ongoing impairment that would account for the  
10 amnesia he reports.

11 Q. So, psychogenic amnesia is an amnesia that is not  
12 attributable to any organic or any dysfunction, is that  
13 correct?

14 A. That is correct.

15 Q. There are basically four types of psycho-genic  
16 amnesia?

17 A. Well, there are a variety of psychogenic amnesias,  
18 I'm not sure if there are four listed there.

19 Q. If the Diagnostic and Statistical Manual of Mental  
20 Disorders, which you refer to as D.S.M., if they list  
21 four types of dysfunctions you wouldn't disagree with  
22 that, would you?

23 A. No, if they list four types I wouldn't disagree  
24 with that at all.  
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MR. MACKEY:

CROSS EXAMINATION

Q. The types that the manual lists are localized selective amnesia, generalized amnesia and continuous amnesia. Doctor, did you find any disturbance that would lead you to conclude that there was localized amnesia as far as Gary's inability to recall certain facts which had happened on April 4, 1990?

A. I believe it was April 5, 1990, when he has memory difficulties. Do you want me to address April 4th ?

MR. MACKEY: I WANT YOU TO ADDRESS APRIL 5TH

WITNESS: The difficulty he does present a report of total amnesia for the period of time during which the alleged offenses occurred on April 5th. It's total amnesia and its very circumscribed. I'm not sure that you characterize it as localized.

Q. What does your science define localized amnesia as being, and can you give us a common example?

WITNESS: A COMMON EXAMPLE OF LOCALIZED AMNESIA?

MR. MACKEY: YES

A. The most common example of localized or circumscribed amnesia is not really psychogenic, and that is an alcohol related blackout.

MR. MACKEY:

CROSS EXAMINATION

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Q. You did find in your history, did you not, evidence of alcohol abuse by Gary?

A. Yes, I did.

Q. Would you tell us what selective amnesia is, and give us an example of that?

A. Selective amnesia refers to amnesia for select events or occurrences.

Q. Did you find that present in your examination of Gary concerning the events of April 5, 1990?

A. I'm not sure what he reports is actually selective amnesia in that he talks about a whole circumscribed time period as opposed to just select events.

Q. ~~Would you tell us what generalized amnesia is and give us an example of that?~~

WITNESS: UNDER THE CATEGORY OF PSYCHOGENIC AMNESIA?

MR. MACKEY: YES

A. A generalized amnesia would refer to difficulty with memory over a greater period of time and over a wider variety of events.

Q. ~~So, based upon your interview with Gary you were able to conclude that generalized amnesia was not~~

MR. MACKEY:

CROSS EXAMINATION

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(Cont'd) ~~present, is that correct?~~

A. ~~That is correct.~~

Q. Could you explain what continuous amnesia is and give us an example?

A. In terms of ongoing amnesia and not being able to recall events over a long period of time.

Q. ~~Doctor, it does appear that Gary has expressed to you at least his inability to recall that events of April 5, 1990, is that correct?~~

A. ~~Yes, he did express that.~~

Q. ~~Is it true that this inability may be due to some subjectively intolerable life situation that presented itself on April 5, 1990?~~

A. ~~It's possible.~~

Q. Doctor, what does malingering mean to you in your science and in particular on the subject of psychogenic amnesia?

A. Malingering first is a voluntary fabrication of symptoms or exaggeration existing, symptoms of mental disorder for some purpose or gain. If one were to apply the concept of malingering to amnesia in this case then the supposition would be that the claim of amnesia was not credible was instead fabricated or exaggerated.

MR. MACKEY:

CROSS EXAMINATION

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Q. During your interview with Gary did you find him to be an open person in that he was going to discuss questions that you ask of him?

A. I found him to be very open and cooperative in discussing almost anything, except the circumstances of the offense.

Q. Did you find him to be credible?

A. I have some questions about the credibility of his report of this amnesia.

Q. Would you tell us what those concerns are and how you arrived at the position that you find yourself expressing these concerns?

A. Well, there are a number of reasons that I have some concern about the credibility of that claim, and one is that he expresses such a total lack of recall for any events during the afternoon and early evening of the alleged offenses, although he can recall in good detail the morning of the alleged offenses. This is also consistent with his account of prior criminal arrests and prior criminal difficulty he's been involved with. His tendency to deny or minimize his involvement in those sorts of activities. Also, there is just no reason that he can come up with to explain

MR. MACKEY:

CROSS EXAMINATION

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2 WITNESS (COnt'd) ~~this amnesia or this particular~~  
3 ~~time-frame.~~ He ~~states that he wasn't drinking that~~  
4 ~~morning and that he hadn't had the experience of~~  
5 ~~alcohol related blackouts even though he did have a~~  
6 ~~drinking history dating back to early adolescence.~~  
7 ~~So, there didn't seem to be any substance induced kind~~  
8 ~~of blackouts or explanation for that.~~

9 Another factor I considered is that ~~there is good~~  
10 ~~information that approximately sixty percent of the~~  
11 ~~people who are charged with murders don't recall or~~  
12 ~~say they don't recall significant aspects of the time~~  
13 ~~during which these murders allegedly occurred, so it~~  
14 ~~is not uncommon to have a defendant state that he~~  
15 ~~doesn't remember what happened during the time a~~  
16 ~~murder allegedly occurred.~~

17 Q. So that could very well be the case with Gary, is  
18 that what you are saying?

19 WITNESS: THAT WHAT COULD BE THE CASE WITH  
20 GARY? ~~THAT HE DOES, IN FACT,~~  
21 ~~REMEMBER AND IS JUST NOT~~  
22 ~~REPORTING WHAT HE REMEMBERS?~~

23  
24 MR. MACKEY: ~~YES~~

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MR. MACKEY:

CROSS EXAMINATION

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A. ~~Yes, that could be the case.~~

Q. ~~It could be the case that he, in fact, does not remember?~~

A. ~~That's possible.~~

Q. You described localized amnesia or circumscribed amnesia as being the most common type of psychogenic amnesia, is that correct.?

A. No, I didn't.

Q. Would you disagree with D.S.M. characterization of that as being the most common type?

A. If that is what D.S.M. says I wouldn't disagree with that, I just haven't mentioned that in my testimony.

Q. So, you are not disagreeing that it is the most common type?

A. Given that that is what the book says.

Q. Would you like to examine the text please?

A. Yes, I would.

(ATTORNEY MACKEY GAVE THE WITNESS THE TEXT)

A. O.K., the book does, in fact, state that localized amnesia is the most common type of psychogenic amnesia was that your question?

MR. MACKEY: YES, YOU WOULD AGREE WITH THAT?

WITNESS: YES

MR. MACKEY: :

## CROSS EXAMINATION

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Q. D.S.M. goes on to recite "that there is a failure to recall all events occurring during a circumscribed period of time usually the first few hours following a profoundly disturbing event," you would agree with that would you not?

A. Yes, I would.

Q. You would agree with me, would you not, that a double homicide would be a profoundly disturbing event?

A. Absolutely.

Q. Would you agree with this "that selective amnesia is somewhat less common than circumscribed or localized amnesia, and this is failure to recall some but not all of the events occurring during the circumscribed period of time, do you agree with that?"

A. That's correct.

Q. Might that account for Gary's ability to recall some of the events during the early hours of April 5th, in not being able to recall some of the events that occurred later in the day?

A. Not really, what he describes is that he can remember everything up until about Noon or 1:00 o'clock on that day, and then he remembers absolutely nothing.

Q. But that's more in keeping is it not with localized amnesia?

1 MR. MACKEY:

CROSS EXAMINATION

2 A. With one important exception and that -- (did not  
3 finish)

4 Q. Would you say what that exception is, Doctor?

5 A. Sure, and that is that the underlying assumption  
6 underneath localized amnesia is that a traumatic event  
7 triggers this, and there is repression or denial or  
8 blocking or some sort of psychological process that  
9 interferes with the memory retrieval of that period of  
10 time, but what Mr. St. Clair is reporting is amnesia  
11 for a period of time that would be prior to the time  
12 this double homicide allegedly occurred as well as the  
13 time the double homicide and sometime thereafter.

14 Q. Well, then, wouldn't that be more in keeping with  
15 selective amnesia?

16 A. But it's not selective in a sense that its  
17 complete. He is reporting complete amnesia for that  
18 entire time-frame not remembering everything or not  
19 remembering some of the events of that time-frame.

20 Q. If that be the case is it your professional  
21 opinion based upon a reasonable degree of medical  
22 certainty within your field of psychology that this is  
23 a feigned or a malingering amnesia, one of convenience?  
24

25

MR. MACKEY:

CROSS EXAMINATION

1  
2 A. ~~I would say that is most likely the case,~~ but I  
3 would also qualify that by saying that its very  
4 difficult for anyone to know what another person  
5 actually does or does not remember and we are highly  
6 dependent upon that person's self-rapport for determing  
7 that, ~~but I do think in this case that it is most~~  
8 ~~likely that the amnesia is feigned or exaggerated.~~

9 Q. But doesn't your answer fall outside of the  
10 question which I put to you asking you "could you base  
11 this on reasonable scientific certainty with/<sup>in</sup>your field  
12 of psychology?"

13 A. And, yes, I can base the statement that it is most  
14 likely feigned amnesia upon reasonable scientific  
15 certainty to the limits of our knowledge.

16 Q. You may recall, Doctor, I mentioned to you earlier  
17 I was going to ask you two separate groups of questions  
18 that I was going to ask you to respond based upon your  
19 training, education and experience, and I would want  
20 you to give your answer based upon reasonable  
21 scientific certainty. So, this second set of questions  
22 that I want to ask you now keeping in mind your  
23 training, your education and experience, and that your  
24 answers will be based upon reasonable scientific  
25 certainty.

1 MR. MACKEY:

CROSS EXAMINATION

2 Q. Do you think that Gary has the ability to identify  
3 and to locate witnesses on his behalf for his defense  
4 in this case?

5 A. Well, he is able to name people with whom he had  
6 contact on that date. ~~In terms of the actual~~  
7 ~~time-frame which the alleged offenses occurred he says~~  
8 ~~that he doesn't know where he was or what he was doing.~~

9 So, it would be difficult for him to identify  
10 witnesses that might be of some use for that particular  
11 time period.

12 Q. Do you believe that it is a matter of convenience?

13 WITNESS: AS A MATTER OF CONVENIENCE?

14 MR. MACKEY: YES

15 WITNESS: AS A MATTER OF CONVENIENCE THAT  
16 HE CANNOT IDENTIFY WITNESSES FOR  
17 THAT TIME-PERIOD?

18 MR. MACKEY: YES

19 A. ~~That goes back to the issue of whether or not the~~  
20 ~~amnesia is likely to be genuine or feigned, and I do~~  
21 ~~think it is most likely that the amnesia is not~~  
22 ~~genuine.~~

23  
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1 MR. MACKEY:

CROSS EXAMINATION

2 Q. So, your answer would be it's a matter of  
3 convenience to him?

4 A. I don't think I would phrase it that way.

5 Q. Please feel free to phrase it in any way you  
6 would like?

7 A. He is not identifying any witnesses for that  
8 circumscribed time-frame because ~~he says he doesn't~~  
9 ~~remember where he was, however, he can say who he was~~  
10 ~~with around the approximate time-frame.~~

11 Q. Do you believe that Gary has the ability to  
12 relate to Defense Counsel?

13 A. Yes, I do.

14 Q. Do you believe that Gary has the ability and does  
15 trust and communicate relatively with his Counsel?

16 A. Based on his openness with me and his report that  
17 his Attorneys has spent a good deal of time with him,  
18 and his report that he continually/<sup>has</sup> some rapport with  
19 Attorney Tartarsky I would say "yes."

20 Q. Do you believe that Gary has the ability to  
21 comprehend instructions and advice given to him by his  
22 Attorneys?

23 A. Yes, I do.  
24  
25

1 MR. MACKEY:

CROSS EXAMINATION

2 Q. Do you believe that Gary has the ability to make  
3 decisions after receiving advice of his Attorneys?

4 A. He displayed a considerable amount of thinking and  
5 talking and soliciting information about his situation,  
6 and he appeared to be seriously considering information  
7 and advice that his Attorneys had given him.

8 Q. Doctor, do you believe that Gary has the ability  
9 to tolerate the stress of a trial and while awaiting  
10 trial?

11 A. Yes, I do.

12 Q. Do you believe that Gary has the ability to  
13 refrain from irrational and unmanageable behavior  
14 during trial?

15 A. I see no indication that he is irrational or  
16 unmanageable during the time we spent with him in  
17 evaluation. He is also not receiving any mental health  
18 services in Jail, and there is no indication that his  
19 behavior was unmanageable in Jail.

20 Q. As a matter of fact he sought out some  
21 psychological or psychiatric counselling while he was  
22 incarcerated in Stark County, is that correct?

23 A. In the Portage County Jail.  
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MR. MACKEY:

CROSS EXAMINATION

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Q. So, those services were available to him? And he sought those services out on his own, is that correct?

A. Yes, he did ask to speak to the Portage County Psychologist when he was in the Portage County Jail. He apparently has had no contact with the Stark County Mental Health Unit.

Q. Does Gary have the ability to disclose pertinent facts surrounding the alleged offense in this case?

A. ~~He says that he cannot remember the pertinent facts around the alleged offenses in this case.~~ Whether he has the ability to actually provide that information or not is the question.

Q. Well, I thought you had given us your opinion on that issue?

A. Yes, I have.

Q. With that in mind, with your opinion in mind, let me ask the question again. ~~Do you believe that Gary has the ability to disclose pertinent facts surrounding the alleged offense in this case?~~

A. ~~I believe he most likely does have the capacity to disclose the facts.~~

MR. MACKEY: DOCTOR, I WANT TO THANK YOU FOR YOUR CANDOR IN TESTIFYING TODAY.



MR. DURST:

REDIRECT EXAMINATION

1  
2  
3 Q. Doctor, would it be a fair characterization of  
4 your evaluation of Mr. St. Clair that he is telling you  
5 that he remembers all time-periods around the day of  
6 April 5, 1990, but for some reason unknown to him that  
7 he can't remember anything about the events of the  
8 afternoon of April 5, 1990?

9  
10 A. The afternoon and the early evening.

11  
12 Q. But he remembers before that?

13  
14 A. Yes, he was able to discuss the morning of that  
15 day with me.

16  
17 Q. And I take it that at sometime in the evening  
18 hours or the next day his memory becomes restored?

19  
20 A. Yes, he is able to talk about events that happened  
21 after that time period, or time frame.

22  
23 Q. ~~Did he tell you why it is that he cannot remember~~  
24 ~~the afternoon of April 5, 1990?~~

25  
26 A. ~~No, he had no idea why he couldn't remember.~~

27  
28 Q. Now, Doctor, again as Mr. Mackel has done, I'm  
29 going to indicate that all of my questions are prefaced  
30 with the statement that they must be based on your  
31 opinion to a reasonable medical or scientific certainty  
32 in your field.

33  
34 Do you have an opinion as to whether or not this

35

MR. DURST:

REDIRECT EXAMINATION

1  
2 (Cont'd) amnesia of the events of the afternoon of  
3 April 5, 1990, is based on any psychological or medical  
4 factor known to you?

5 A. Yes, I have an opinion.

6 Q. And, again Doctor, can you tell us what that  
7 opinion is?

8 A. I think it's -- can you repeat your question I'm  
9 sorry.

10 Q. Do you have an opinion to a reasonable medical or  
11 scientific certainty based on your expertise as to  
12 whether or not this claim of amnesia of the events of  
13 April 5, 1990, is based on any psychological or medical  
14 factor known to you?

15 A. Yes, I do have an opinion. I think its most  
16 likely not based on any mental disorder.

17 Q. Now, Doctor, we've recognize and respect your  
18 opinion, but is there any other test or evaluation  
19 process within your field of expertise, Forensic  
20 Psychology, that would be in addition to anything you  
21 have already done that would permit you as an expert to  
22 refine that opinion any?

23 Maybe a better way of asking the question is, ~~is~~  
24 ~~there anything else that could be done in your field of~~  
25

1 MR. DURST:

REDIRECT EXAMINATION

2 (Cont'd) ~~expertise to further delve into this~~  
3 ~~question as to whether it is feigned or, in fact, real?~~

4 A. ~~Well, there are a couple of techniques that are~~  
5 ~~sometimes used to facilitate recall for people who say~~  
6 ~~they cannot remember events' -- (did not finish)~~

7 MR. MACKEY: I WILL OBJECT YOUR HONOR, I THINK  
8 THE QUESTION IS BASED UPON A  
9 REASONABLE DEGREE OF MEDICAL AND  
10 SCIENTIFIC CERTAINTY WITHIN YOUR  
11 FIELD. SO, I WOULD ASK THAT THE  
12 QUESTION BE ANSWERED WITH THAT  
13 QUALIFICATION IN MIND.

14 BY THE COURT: IF YOU CAN ANSWER IT THAT WAY.

15 Q. If you can answer it that way, Doctor, please do?

16 A. ~~I don't believe there are any other diagnostic~~  
17 ~~assessment techniques that could be used to more~~  
18 ~~clearly reach an opinion on that issue.~~

19 Q. Doctor, may I presume that you took this claim of  
20 amnesia into consideration during the course of your  
21 evaluation of Mr. St. Clair, and the opinion which you  
22 have already rendered in this Court, that opinion being  
23 based on a reasonable scientific or medical certainty  
24 took that claim into consideration?  
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MR. DURST:

REDIRECT EXAMINATION

A. Yes, it did.

Q. And, again just for the purpose of the record, what is your opinion based on that criteria of whether or not Gary St. Clair is presently competent within the meaning of the law on this issue?

A. It is my opinion that Gary St. Clair is presently competent to stand trial.

THANK YOU, DOCTOR, THE STATE HAS NO FURTHER QUESTIONS.

BY THE COURT: ANYTHING FURTHER, MR. MACKEY?

MR. MACKEY:

RE CROSS EXAMINATION

Q. Dr. Stafford, is it your opinion based upon reasonable and scientific certainty, and based upon your education, training and experience that he has no memory impairment, is that correct?

A. He has no ongoing memory impairment, that's correct.

THAT IS ALL THE QUESTIONS I HAVE.

1        MR. DURST:

2                    Your Honor, at this time the State would move to  
3 offer into evidence for the purpose of this hearing  
4 only the document which has been previously marked  
5 State's Exhibit No. 1, and I believe that is actually a  
6 Court Exhibit, and that is the report that Dr. Stafford  
7 had previously filed with this Court.  
8

9                    BY THE COURT:        ANY OBJECTION, MR. MACKEY

10                   MR. MACKEY:         WE HAVE NO OBJECTION, YOUR HONOR

11                   BY THE COURT:        IT WILL BE RECEIVED INTO EVIDENCE  
12 SUBJECT TO BEING HELD IN  
13 CONFIDENCE BY THE COURT AND WILL  
14 NOT BE PLACED IN THE GENERAL  
15 FILE.  
16

17                   BY THE COURT:        IS THERE ANYTHING FURTHER?

18                   MR. DURST:           NOT BY THE STATE, YOUR HONOR

19                   MR. MACKEY:         YOUR HONOR, THERE IS NOTHING ELSE  
20 CONCERNING THIS ISSUE.

21        BY THE COURT:

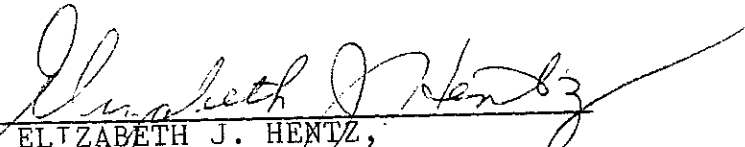
22                    THE COURT WOULD FIND BASED UPON THE TESTIMONY  
23 RECEIVED HEREIN AND THE REPORT WHICH IS THE EXHIBIT AND  
24 UNDER ALL THE CIRCUMSTANCES THAT THE DEFENDANT IS  
25 COMPETENT TO STAND TRIAL AS PRESCRIBED BY LAW.

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STATE OF OHIO [ : SS  
PORTAGE COUNTY [

C E R T I F I C A T I O N :

I HEREBY CERTIFY THAT THE FOREGOING  
CONTAINS A TRUE AND COMPLETE TRANSCRIPT OF  
THE "COMPETENCY HEARING" HELD ON MARCH 19,  
1993, IN THE STATE OF OHIO vs. GARY ST.  
CLAIR, TOGETHER WITH OBJECTIONS AND  
EXCEPTIONS MADE TO THE INTRODUCTION OR  
EXCLUSION OF EVIDENCE DURING SAID HEARING  
AS THE SAME WAS REPORTED BY ME.

  
ELIZABETH J. HENTZ,  
OFFICIAL COURT REPORTER,  
COMMON PLEAS COURT,  
PORTAGE COUNTY, OHIO.