**Ex. 7**

\*\*\*\*\*\*\*\*\*TO BE FILED UNDER SEAL\*\*\*\*\*\*\*\*\*

IN THE CIRCUIT COURT OF COUNTY, ALABAMA JUDICIAL CIRCUIT

CRIMINAL DIVISION

STATE OF ALABAMA, )

)

PLAINTIFF, )

)

V. ) CASE NO. CC 06-

)

XXXXX, )

)

DEFENDANT. )

EX PARTE PLEADING – TO BE PLACED UNDER SEAL

EX PARTE PLEADING – TO BE FILED UNDER SEAL

PURSUANT TO THE ORDER OF THIS COURT, THIS DOCUMENT REMAINS PRIVILEGED AND CONFIDENTIAL AND MUST NOT BE DISCLOSED OR INSPECTED BY ANYONE IN ACCORD WITH THE ATTORNEY-CLIENT PRIVILEGE, AKE V. OKLAHOMA, 470 U.S. 68, 83 (1985); UNITED STATES V. NOBLES, 422 U.S. 225 (1975), AMENDMENTS FIVE, SIX, EIGHT AND FOURTEEN OF THE CONSTITUTION OF THE UNITED STATES.

**EX PARTE MOTION K**

IN THE CIRCUIT COURT OF COUNTY, ALABAMA JUDICIAL CIRCUIT

CRIMINAL DIVISION

STATE OF ALABAMA, )

)

PLAINTIFF, )

)

V. ) CASE NO. CC06

)

XXXX )

)

DEFENDANT. )

EX PARTE MOTION FOR FUNDS FOR FORENSIC PSYCHIARIST

COMES NOW the Defendant, XXXX, by and through his undersigned counsel of records and hereby moves this Honorable Court for an Order, pursuant to the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, allocating funds for and appointing Dr. A as his forensic psychiatrist in this matter. As grounds for said motion, the Defendant states as follows:

1. XXXXX is an indigent Defendant charged by indictment with Capital Murder to wit: 13A-5-40(a)(5). Upon information and belief the State will seek the death penalty.
2. The State alleges that on -----, 2005, XXXX intentionally killed Off. by shooting him multiple times with a pistol while both were in the parking lot of a restaurant called (Restaurant) located on Lane in, AL.
3. The Defendant, XXXX is currently incarcerated in the County Jail in

-------, Alabama, and is indigent and without funds to retain any experts critically necessary to his constitutional right to a fair trial and the effective assistance of counsel

pursuant to the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution.

1. The Defendant respectfully submits that *Ake v. Oklahoma*, 470 U.S. 68 (1985), and its progeny hold that where critically necessary, the denial of necessary expenses deprives the Defendant of the effective assistance of counsel and other constitutional guarantees of a fair trial under the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution.
2. DR Y, M.D. is a bilingual forensic psychiatrist, licensed to practice medicine in California. See Affidavit of Dr. Silva, attached. Dr. Y has a Ph.D. in Psychiatry from Stanford University and is a board certified by the American Board of Psychiatry and Neurology, in both General Psychiatry and Forensic Psychiatry. Dr. Y is in private practice in San Jose, California, where he specializes in forensic psychiatry.
3. Dr. Y has conducted over 1100 Psychiatric-Legal evaluations in Criminal and Civil cases and has appeared as an expert in forensic psychiatry in over 75 criminal and civil cases.
4. As a forensic psychiatrist, Dr. Y is trained to administer tests to determine whether the Defendant, was at the time of the offense and/or currently, is suffering under a severe mental disease or defect, and thus was unable to appreciate the nature and quality or wrongfulness of his acts. Further, Dr. Y is trained to administer tests to determine the competence of the Defendant to stand trial and assist his attorneys. Further, Dr.Y is trained to detect other mental diseases or defect which may not rise to the level of insanity, but nonetheless could be mitigating in nature and degree. Such testing must be conducted in the native language of the subject.
5. In order to conduct a proper psychiatric evaluation in this case, several weeks of preparation time is required after reviewing a complete social history with attendant medical, educational, employment, legal and other documentation.
6. Given the information currently available about XXXX’s psychosocial developmental history, there is an indication of the presence of numerous risk factors for mental diseases and disorders. XXXX grew up in abject poverty and in a violent and destructive environment. He was exposed to environmental toxins, malnutrition, head injuries and the severe mental disorders of a wide array of family members, including, but not limited to XXXX’s father, his older brother, his paternal uncle, his paternal grandmother and his paternal cousin. It is likely that the family history of mental disorders impacted the Defendant’s development and it is also likely, given that these disorders are often genetically passed along that they, based on the psychosocial history developed thus far, may have been inherited by XXXX.
7. Further, it is necessary in preparing the defense of XXXX to have someone who can examine the medical history of family members, where available. Such records exist with respect to XXXX’s family members and any and all such documentation will be in Spanish.
8. Finally, the evaluation must be conducted by a mental health professional who is bilingual and bicultural. Evaluators who translate tests during their administration should be avoided at all costs. This method of evaluation is both invalid and unreliable.[1](#_bookmark0) Even an accurate translation results in the loss of subtleties and connotational nuances of

1 Steven López and Augusto Romero, *Assessing the Intellectual Functioning of Spanish-Speaking Adults: Comparison of the EIWA and the WAIS*, PROFESSIONAL PSYCHOLOGY: RESEARCH AND PRACTICE 19:3, 1998, 264.

speech.[2](#_bookmark1) Changing the manner in which a test is administered without re-standardizing the tool also challenges the validity of the results.[3](#_bookmark2)

1. A client’s language use must be thoroughly considered and assessment tools must be used that reflect the appropriate level of language proficiency.[4](#_bookmark3) Evaluations conducted in the client’s second language lead to unreliable results. First, some studies have shown that patients interviewed in their second language manifest fewer psychotic symptoms.[5](#_bookmark4) Moreover, defendants who describe traumatic events in their second language may have a flatter affect, and show less emotion, than when they describe those same events in their native language. Additionally, stress, fatigue, or emotionally tense situations can bring out hidden language deficiencies, which are often

masked by good pronunciation and accuracy under normal circumstances.[6](#_bookmark5) An evaluator who is not completely knowledgeable about the complexities of language and its effect on mental health assessments will be ill prepared to provide an accurate assessment of your client’s disorders.

Effective communication with the individual being tested is crucial if a valid evaluation is desired, as miscommunication can lead to misdiagnosis.[7](#_bookmark6) The Spanish language varies greatly in pronunciation, idiomatic phrases, and connotation, depending

2 Richard C. Cervantes and Frank X. Acosta, *Psychological Testing for Hispanic Americans,* APPLIED & PREVENTIVE PSYCHOLOGY 1, 1992, 215.

3 Fernando Melendez, *Forensic Assessment of Hispanics, in* NEUROPSYCHOLOGY AND THE HISPANIC PATIENT 327 (Marcel O. Pontón & José León-Carrión, eds., 2001).

4 Marcel O. Pontón, *Research and Assessment Issues with Hispanic Populations, in* NEUROPSYCHOLOGY AND THE HISPANIC PATIENT 41 (Marcel O. Pontón & José León-Carrión, eds., 2001).

5 Rose Marie Perez Foster, *When Immigration is Trauma: Guidelines for the Individual and Family Clinician*, in AMERICAN JOURNAL OF ORTHOPSYCHIATRY, 71(2), April 2001, at 161.

6 S. Dornic, *The Bilingual’s Performance: Language Dominance Stress, and Individual Differences, in*

LANGUAGE INTERPRETATION AND COMMUNICATION 198-215 (D. Gerver & H. Sinaiko, eds., 1078).

7 Pontón, *supra* note 8 at 44.

where it is spoken. Ideally, evaluators should have first-language fluency, not only in Spanish, but also in the idiomatic and regional language of the client.[8](#_bookmark7)

1. It is anticipated that psychiatric testing, a review of mitigation documentation, conducting appropriate interviews with the client and certain family members, consultation with counsel, preparation of reports, and a review of certain documentation related to the facts of the case will require roughly 100 hours of time at a cost of approximately $25,000 inclusive of all travel expenses.

WHEREFORE, PREMISES CONSIDERED, this Honorable Court is respectfully requested to authorize funds in the amount of $25,000 to pay for the above-described services in order to aide undersigned counsel in preparing the defense of XXXX.

RESPECTFULLY SUBMITTED,

RICHARD S. JAFFE

J. DEREK DRENNAN

BRUCE GARDNER

8 Richard H. Dana, *Culturally Competent MMPI Assessment of Hispanic Populations*, HISPANIC JOURNAL OF BEHAVIORAL SCIENCES 17:3, August 1995, 307.

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*THIS MOTION IS NOT BEING SERVED ON OPPOSING PARTY.*