GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF MENTAL HEALTH

July 31, 2013

Our Reference: DMH/SEH/PO/pas
Your Reference: Criminal Case Number
Report By: Ryan Chiarella, D.O.
Pius O. Ojevwe, Psy.D.

Leon Smith (#928710)
2012 CF1 15365; PDID#: 535323

The Clerk, Criminal Division
Superior Court of the District of Columbia
500 Indiana Avenue, NW, Room 4110
Washington, D.C. 20001

Dear Sir or Madam:

We wish to call to your attention the case of Leon Smith, who was admitted to Saint Elizabeths Hospital by Court order on May 20, 2013 under the provisions of Title 24, Section 531.03 of the D.C. Code for mental examination, with report due on or before June 20, 2013, with a charge of Second Degree Murder pending.

Reference is made to our most recent letter to the Court dated June 19, 2013, in which we reported that due to Mr. Smith's lack of cooperation in an evaluation, we were unable to offer an opinion regarding his competency to stand trial. Subsequently, we received notice that the case was continued until August 2, 2013.

On July 25, 2013, we (Pius O. Ojevwe, Psy.D., Clinical Psychologist, and Ryan Chiarella, D.O., Forensic Psychiatry Fellow) attempted to re-evaluate Mr. Smith's competency to proceed with his criminal case. Consistent with his presentation during previous attempts to evaluate his competency, Mr. Smith was minimally participative in the process. This level of disengagement has also been noted by his treatment team as well as the instructors of his competency groups. Initially when we approached him for the present evaluation, Mr. Smith attempted to dictate who could be in the room for his assessment, and once the evaluation commenced, Mr. Smith frequently attempted to derail all testing and questioning. This behavior appeared to be volitional and not in any way due to tangentiality related to a major mental illness. As such, it was difficult to conduct the interview to evaluate Mr. Smith's rational and factual understanding of his current legal situation. The present assessment was based on a ninety-minute interview and brief psychological testing of the defendant (though again he was marginally cooperative), interviews of his treatment team staff, and a review of his inpatient medical records, including the psychological testing completed throughout his hospital course.

Additional behavioral observations throughout the course of the present evaluation were notable. When asked what his charge was, Mr. Smith stated "Second Degree Assault." Education was provided regarding his actual charge of Murder in the Second Degree, and Mr. Smith became upset and stated, "Sounds like you're interrogating me. I'm accused of something I didn't do. You're asking too many questions, this is stupid." When reviewing competency terminologies such as the meaning of a trial, roles of major court personnel, available pleas, among other concepts, Mr. Smith claimed he did not know even the basic definition of pleas of Guilty or Not Guilty. When specifically asked what a trial meant, Mr. Smith stated that a trial is "Something that people go through in life. I've never been through a trial, so I really don't know. I've only been through the neglect system." This statement was contrary to Mr. Smith's record, which indicated that he has served five years for a previous charge and was previously detained for violation of probation. When asked about the functions of the judge, he replied, "To judge me like you're doing right now, judging me." When redirected to discuss additional information related to courtroom proceedings, he remarked, "I'm getting irritable; are we finished yet?" He frequently asked why the evaluators were "looking" at him in a certain way. Mr. Smith disrupted the interview process by making statements regarding not getting enough food or sleep. He discussed playing video games to "get things off my mind." Mr. Smith was notably unmotivated to hear or learn anything related to the legal process, and he either became argumentative or superficially cooperative with the interview. For instance, he often stated "I'm cooperating" but then talked about irrelevant topics. When redirected to questions about the court process, he frequently digressed into other personal concerns. It is important to note that throughout the course of the present evaluation, Mr. Smith did not exhibit symptoms that were suggestive of genuine acute psychiatric symptomatology. His behavior was organized and his uncooperative and petulant attitude toward the evaluation process is believed to be characterologically based, which is consistent with observations and documentations by the treatment team staff.

Earlier in his admission, Mr. Smith was referred by his treatment team for psychological testing in light of his questionable veracity in his report of psychotic symptoms, complaints of severe depression and nightmares, and problems with memory. During that evaluation he was only partially cooperative. He eventually completed two standardized measures including the *Test of Pre-morbid Functioning (TOPF)* and the *Structured Interviewed of Reported Symptoms, 2nd Edition (SIRS-II)*. Cognitive testing revealed that Mr. Smith's pre-morbid IQ was estimated to be in the low average range and he was observed to be providing poor effort throughout that testing. The results of the *SIRS-II* suggest that Mr. Smith "endorsed an unexpectedly high proportion of symptoms associated with a major mental disorder," which has been inconsistent with his presentation on the unit, and thus indicating the possibility of malingering.

As part of the present assessment, Mr. Smith was administered the *Test of Memory Malingering (TOMM)*, given his complaints of memory impairment. The *TOMM* is a 50-item visual recognition test and screening measure designed to distinguish between genuine/bona fide memory-impaired patients from malingerers. Administration of the instrument takes approximately 25 minutes. It is important to note that it took Mr. Smith approximately one hour to complete the instrument as he exhibited notable delay in his response to test items. On the *TOMM*, Mr. Smith obtained a score of 22 out of 50 on the first trial, 21 out of 50 on the second trial, and 22 out of 50 on the retention trial. The *TOMM* interpretation manual suggests that "Scoring lower than chance [i.e., lower than 25] on any trial indicates the possibility of malingering;" and "any score lower than 45 on Trial 2 or the Retention Trial indicates the possibility of malingering." Mr. Smith's scores on all three trials were significantly lower than the suggested cut off score, suggesting a deliberate attempt to malinger memory impairments

and/or an extreme lack of motivation to perform the tasks. Furthermore, in the clinical samples in which the instrument was normed, even individuals with traumatic brain injury or with dementia scored significantly higher than Mr. Smith.

According to his treatment team, since his current admission, Mr. Smith remains largely evasive, dismissive and uncooperative with all clinical assessments. He continues to complain of bizarre experiences such as hallucinations, nightmares and paranoia; however, the treatment team staff have not observed any behavioral indications consistent with these reported symptoms. In fact, the team documents that Mr. Smith is rational, coherent, organized and goal directed. His functional abilities, including his capacity to attend to his activities of daily living, acquire new information, interact with peers, communicate his needs to staff and play video games for lengthy periods of time, all appear intact, and he has consistently been able to regulate his emotions and behaviors when upset, which is indicative of his capacity to exercise behavioral control.

In considering Mr. Smith's demeanor/presentation and the issue of his competency to stand trial, a functional assessment of his competency was deemed necessary in this regard. Therefore, we believe the following information about the defendant's functional abilities is particularly relevant: Mr. Smith's ability to learn and follow unit rules and regulate his behavior, sustain attention on tasks, and ability to problem solve. Per his inpatient medical records, Mr. Smith has consistently demonstrated the ability to learn and follow unit rules as evidenced by his ability to set boundaries with regard to proper communication with staff, waiting patiently to play video games or watch movies as well as learning and adhering to rules for phone use. He has learned and adhered to a daily schedule to include knowing precise meal times. During the course of the present evaluation, Mr. Smith routinely looked at the clock and on several occasions reprimanded the evaluators for causing him to miss his scheduled lunch. With regard to his ability to sustain attention, Mr. Smith is regularly noted to be seen in the unit milieu calmly playing video games or watching movies for hours consecutively. In reference to Mr. Smith's ability to problem-solve, on one occasion, Mr. Smith overheard a peer describing his concerns about not having the means to take the bus home after discharge. Mr. Smith suggested, "You need to speak with the nurse so she can give you a metro card with money for transportation." This behavior is indicative of adaptive/functional living abilities and fairly intact cognitive skills. He also has the capacity to regulate his behavior and cooperatively work select members of his treatment team. According to medical records from Community Connections, Mr. Smith has been able to maintain consistent engagement with his case manager in the community for years and has been able develop a working relationship with his substance abuse group facilitator while in the hospital, all of which suggests he is capable of developing a collaborative relationship with counsel.

During his detainment at the Central Detention Facility, Mr. Smith initially participated in a Comprehensive Intake Assessment where he endorsed mild anxiety. Mr. Smith was subsequently seen five more times for follow up. During these evaluations he requested a variety of medications to aid with his additional complaints of nightmares and depressed mood. These evaluations were described to him as "mental health assessments," and each evaluator documented an absence of hallucinations, delusions, abnormal thought content as well as appropriate speech, affect, motor activity, hygiene, insight and judgment. On May 20, 2013, Mr. Smith underwent a competency screening at the D.C. Superior Courthouse cellblock, and after the evaluator established the purpose of the evaluation, Mr. Smith subsequently began endorsing symptoms of depression, paranoid ideations and hallucinations. This further illustrates the clinical impression of his treatment team that Mr. Smith avoids certain staff

members and topics, endorses certain symptomatology, and is uncooperative with competency to stand trial and other psychological assessments with the intention of remaining in the hospital and/or avoiding prosecution.

All factors considered, it is opined that Mr. Smith is malingering incompetence to stand trial, though this does not imply the complete absence of psychiatric symptoms. He does present with some psychiatric symptoms (irritability, anger, anxiety) but these symptoms do not appear to significantly affect his capacity to proceed with trial. It is further opined that he understands the nature and gravity of the proceedings against him, is capable of learning information requisite for participating in his defense, working with his counsel in a rational manner to assist in his defense, and is able to maintain appropriate courtroom decorum. His lack of motivation, less than optimal cooperation with various evaluation attempts, and agitated and quarrelsome demeanor are believed to be a willful and intentional attempt to feign incompetence. Thus, it is opined that Mr. Smith has a factual as well as rational understanding of the proceedings against him and has sufficient present ability to assist his attorney in the preparation of his defense.

Mr. Smith is currently diagnosed with Malingering (psychosis and memory impairment), Cannabis Abuse, Alcohol Abuse, Personality Disorder Not Otherwise Specified with Antisocial Features, and a rule out diagnosis of Post-traumatic Stress Disorder. He is currently receiving medications for treatment of his mood and anxiety symptoms and physical conditions. It is recommended that he remain on medication for treatment of his condition. However, he does not need to remain hospitalized for maintenance of competence.

In accordance with procedures for criminal defendants adopted by the Superior Court and approved by the Board of Judges, please make arrangements for taking this person into custody for further disposition.

Sincerely,

Ryan Chiarella, D.O.
Forensic Psychiatry Fellow

Pius O. Ojevwe, Psy.D.
Licensed Clinical Psychologist

Reviewed by:

KyleeAnn Stevens, M.D.
Director of Forensic Services

For:

Patrick J. Canavan, Psy.D.
Chief Executive Officer
Saint Elizabeths Hospital

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