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King County Prosecutor
Appellate Unit

NO. 64536-6-1

IN THE COURT OF APPEALS OF THE STATE OF
WASHINGTON, DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

LEEMAH CARNEH,

Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

The Honorable Palmer Robinson, Judge

BRIEF OF APPELLANT

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A. INTRODUCTION

The state initially charged appellant Leemah Carneh in March 2001. Issues related to insanity and incompetency pervaded the case since. All the experts recognized Carneh is a paranoid schizophrenic suffering a wide spectrum of bizarre delusional beliefs. In September 2005, after more than a year of competency restoration efforts, the trial court held a hearing to determine his competence. Defense counsel submitted a declaration detailing Carneh's profoundly intrusive delusions and how they prevented him from rationally assisting in his defense. Because Carneh was not capable of rationally assisting, the court found him incompetent and the charges were dismissed without prejudice. Carneh was then civilly committed to Western State Hospital under RCW 71.05.

The state refiled charges in November 2007 when Carneh was still incompetent. After interim restoration commitments and a three-day hearing in September 2008, the court again found Carneh incompetent and he was again committed for competency restoration.

In July 2009, at the end of a second 180-day restoration term, the court held a six-day hearing. This time, Carneh's attorneys did not submit a declaration providing facts and counsel's opinion on whether Carneh could rationally assist. The court found Carneh competent.

Carneh then sought to plead guilty, guided in large part by his delusional beliefs. At that point, Carneh's three attorneys submitted declarations. The trial court did not consider the facts or opinions stated in counsel's declarations. The court then found Carneh competent to enter a plea, and found his guilty plea to four counts of aggravated murder to be knowing, voluntary, and intelligent.

B. ASSIGNMENTS OF ERROR

1. The trial court erred in finding Carneh competent to stand trial and in finding him competent to enter a guilty plea. CP 140-43, 208-10; 6RP 152-57; 7RP 87-88.¹ Copies of the court's findings regarding competency are attached as appendix A (competency to stand trial) and Appendix B (competency to enter a guilty plea).

2. The trial court erred in entering finding of fact 5. CP 141-42; appendix A.

3. The trial court erred in concluding Carneh is competent and can rationally assist his attorneys in his defense. CP 142; appendix A.

¹ This brief references the seven-volume transcript as 1RP through 7RP.

4. The trial court erred in entering findings of fact 2, 3, 4. CP 209-10; appendix B.

5. The trial court erred in concluding Carneh was competent to stand trial and enter a plea, and in concluding Carneh's plea was knowing, intelligent, and voluntary. CP 210; appendix B.

6. The court erred in failing to consider facts and opinions stated in declarations from Carneh's three experienced counsel when the court determined Carneh was competent to enter a plea.

7. Carneh was denied his right to effective assistance of counsel at the hearing to determine his competence to stand trial where counsel did not offer their declarations until the plea hearing.

Issues Related to Assignments of Error

1. In July 2009, the court held a six-day hearing to determine Carneh's competence to stand trial. The state presented opinions from two mental health experts, as did the defense. Carneh's three experienced defense counsel did not provide the court with testimony or declarations to show facts and opinion why Carneh was not able to rationally assist in his defense. At the conclusion of the hearing, the court found Carneh competent.

In November 2009, the court considered Carneh's guilty pleas to the four charged counts. At that hearing, Carneh's three counsel

filed testimonial declarations showing facts and opinions why Carneh remained unable to rationally assist counsel, as well as counsel's opinion why Carneh's plea was not knowing, intelligent, and voluntary. Despite this new information, the trial court said there were "no new reasons" and "nothing beyond what this court already heard and considered in making its competency finding." CP 209.

Did the court's failure to consider this information violate state law requiring it to give "considerable weight" to counsel's opinion, and with federal law recognizing counsel's expressed doubt is "unquestionably a factor which should be considered"?

2. Did the court's failures violate Carneh's state and federal rights to due process of law?

3. In 2005, defense counsel submitted a declaration stating facts and opinion that Carneh was not able to rationally assist counsel in Carneh's defense. In 2005, the court found Carneh not competent to stand trial and dismissed the charge. At the 2009 hearing to determine Carneh's competency to stand trial, counsel did not submit facts or opinions to show the court why counsel believed Carneh remained unable to rationally assist in his defense. The 2009 court found Carneh competent to stand trial. Does this record show Carneh was prejudiced by defense counsel's deficient performance?

4. Was Carneh denied his state and federal rights to effective assistance of counsel?

C. STATEMENT OF THE CASE

1. Initial Charges Filed in 2001, then Dismissed in 2005, After Unsuccessful Efforts to Restore Carneh's Competency

In 2001, the state charged appellant Leemah Carneh with four counts of aggravated murder while armed with a firearm. The parties litigated issues relating to Carneh's mental state at the time of the charged offenses, as well as his competence to stand trial. The proceedings were stayed several times for commitments to restore Carneh's competence. CP 10-17.²

In November 2002, Carneh noted his intent to rely on an insanity defense. Two defense experts opined Carneh was insane at the time of the offense. The state sought to order Carneh to answer incriminatory questions, despite the privilege contained in RCW 10.77.020(4). The trial court rejected the state's arguments and in May 2003, the state sought review. State v. Carneh, 153 Wn.2d 274, 103 P.3d 743 (2004); CP 12-13, 229-30.

² The certificate of probable cause, discussing the state's evidentiary allegations against Carneh, is at CP 4-9. Several of the state's briefs also discuss the murders and the investigation leading to the charges against Carneh. See e.g., CP 225-28.

While review was pending, Carneh decompensated. CP 14-15, 229-30. In December 2004, the Supreme Court unanimously rejected the state's arguments, holding RCW 10.77.020 allows people to refuse to answer incriminating questions during an insanity evaluation. Carneh, 153 Wn.2d at 286.

After the state's unsuccessful appeal, the case returned to the trial court where more than a year was spent in efforts to restore Carneh's competency. The final competency hearing was held over three days in September 2005 before the Honorable Michael Spearman. The court heard testimony from four experts; two from the state and two from the defense. CP 14-15, 229-30; Supp. CP ___ (sub no. 282B, file 01-1-02482-1, minutes). The court also considered a declaration filed by Carl Luer, one of Carneh's attorneys. Supp. CP ___ (sub no. 282A, file 01-1-02482-1, attachment to memorandum).³

After hearing the evidence in 2005, the trial court found Carneh incompetent. CP 14, 229-30; Supp. CP ___ (sub no. 285, No. 01-1-02482-1, Letter Ruling).⁴ The court relied on undisputed evidence that Carneh was a paranoid schizophrenic. Carneh's delusions

³ A copy of the Luer declaration is attached as appendix C.

⁴ A copy of the ruling is attached as appendix D.

guided his desire to waive a jury trial and to refuse a plea of not guilty by reason of insanity (NGRI). Appendix D, at 10; Ex. 33, at 2.

The charges were dismissed without prejudice in October 2005. Carneh was then civilly committed to Western State Hospital (WSH). CP 13-16, 229-30, 303.

In October, 2007, Doctor Murray Hart notified the King County prosecutor that WSH was considering moving Carneh to a less restrictive ward at the hospital. CP 230. On November 13, 2007, the state refiled the charges. CP 1-9, 303; State v. Carneh, 149 Wn.2d 402, 406-07, 203 P.3d 1073 (2009).

Carneh's attorneys objected to the court's jurisdiction, because Carneh remained incompetent. CP 42-43, 251-62. On February 22, 2008, a hearing was held before the Honorable Palmer Robinson. CP 263-64. The court concluded the charges had been refiled in good faith and the court had jurisdiction. It also found Carneh was not competent.⁵ The court committed Carneh for a 90-day period of

⁵ A January 14, 2008 report from WSH Dr. Julie Gallagher noted that Carneh's "reasoning regarding his defense is based entirely on his delusional understanding of his world." Ex. 33, at 18. Carneh was not capable of any sustained non-delusional conversation about the case. Gallagher could not imagine how Carneh's attorneys could obtain relevant information from him in such a state, or how he could assist his attorneys. Id. Although Carneh could hide his mental

competency restoration, ruling there were medically appropriate treatment methods available that were reasonably likely to restore competence. CP 22-28, 242-45, 303.⁶

On May 23, 2008, the court held another hearing and again found Carneh incompetent. The court ordered another 90-day commitment for treatment to restore competency. CP 265-69, 303.

The parties then prepared for another competency hearing to be held in October, 2008. CP 40-47, 272-77, 291-301. At the conclusion of that five-day hearing, the court again determined Carneh was not competent. CP 279-90, 302-09; Ex. 8 (transcript of oral ruling, 11/5/08). The court's written findings recognized that all the experts agreed Carneh suffers from paranoid schizophrenia. CP 305. As a result of that mental illness, Carneh's mind remained filled with substantial delusional material.

These [delusions] have been variously observed by the doctors who have evaluated Mr. Carneh and are listed in their reports which are part of the record in this case

illness during brief and superficial interactions, longer conversations revealed his cognitive distortion and bizarre delusions. Id.

⁶ Carneh sought review of this order. CP 29-30. This Court granted review and on March 30, 2009, held the state had a good faith basis to refile the charges and the trial court had jurisdiction to order competency restoration treatment. CP 159-63; State v. Carneh, 149 Wn. App. 402, 203 P.3d 1073, rev. denied, 166 Wn.2d 1030 (2009).

and include, but are not limited to, Mr. Carneh's belief that he is white, his belief that he is a Nazi; his beliefs, at various times, that he is from France, from Germany and from the United Nations; and that, regardless of the outcome of any legal proceedings, he will be released from custody when elyte, the substance which provides the world's energy, runs out and the doors of the jail/prison open. Mr. Carneh's decisions about what plea to enter are a product of his delusion that the doors of any secured facility will open. He has maintained that he wishes to waive his right to a jury trial because the trial judge knows he is Nazi and because the jurors will be prejudiced against him because he is from France. Mr. Carneh is not, in fact, from France.

CP 305-06 (emphasis added).

The court found Carneh had a factual understanding of the proceedings against him. However, due to the intrusive delusions, he could not rationally assist his attorneys. CP 306-09. "Mr. Carneh's view of the case and his ability to rationally assist his [attorneys] is framed by and currently formed by his delusions." Ex. 8, at 7. The court orally recognized that many of the facts observed in Judge Spearman's 2005 ruling were still true. Ex. 8, at 1-2. The court also was critical of the approach taken by WSH Doctors Morrison and Hendrickson in redirecting Carneh whenever he expressed delusional material. The approach "eliminated a meaningful analysis of whether or not Mr. Carneh was able to rationally assist his attorneys, and . . . excluded that kind of information." The approach "seemed designed

to achieve a certain result and it succeeded in doing that.” Id. at 5. The court was hopeful that a treatment regimen with Risperdal Consta (an injectible antipsychotic) might restore Carneh’s competence, and ordered a 180-day commitment. CP 306-09.

The parties again engaged in substantial motion practice pending the final competency hearing set for July 2009. This time the state’s experts asked the prosecutor to secure an order authorizing neuropsychological testing and individual psychotherapy. Roger Davidheiser, one of the prosecutors, asserted Carneh been willing to engage in psychotherapy without the presence of defense counsel, but had appeared to change his mind after consulting his attorneys. CP 58. Davidheiser dramatically expressed his concern “there were intentional efforts being made to thwart WSH efforts to restore Mr. Carneh’s competency.” CP 58. Not surprisingly, defense counsel was concerned with substantial factual and legal questions, including whether Carneh was competent to waive his right to counsel, and whether the state, through the WSH doctors, was interfering in Carneh’s relationship with his attorneys. CP 60-74, 80-82.

The state nonetheless devoted substantial effort to seeking the testing and individual psychotherapy. CP 57-74, 310-15. The Attorney General sought to intervene and to oppose defense

counsel's presence at any sessions with Carneh and the state's doctors. CP 85, 92-95, 100-02.

Defense counsel opposed the state's efforts. CP 79-107. Counsel's presence at other evaluations had ensured effective cross-examination of the state's experts. This led to the evidence the court used to find that Morrison and Hendrickson had designed their examinations to reach a result, rather than fairly determine Carneh's competence. CP 84, 90. The AG also lacked standing to intervene, and its attempted intervention significantly undercut the claim that WSH is a neutral examiner. CP 100-01.

Following a hearing on May 21, 2009, the court ordered Carneh had a right to counsel during the neuropsychological testing, but not during individual therapy. CP 316, 320-21. Review was sought, but this issue became moot when no individual psychotherapy took place. CP 130.

The final competency hearing took place in July 2009. 1RP 7RP. The defense briefed the reasons why Carneh's mental illness prevented him from rationally assisting his attorneys. CP 114-27. Relying on the state's expert's new report, the state asserted Carneh was now competent. CP 324-43; Ex. 1.

2. July 2009 Competency Hearing

a. All Four Experts and Undisputed Facts

The undisputed record shows Carneh was incompetent for several years. All the experts agreed he is diagnosed with paranoid schizophrenia and the disorder will be with him for life. 1RP 85-86; 3RP 20, 26; 4RP 8-10; 5RP 11-12, 91-92, 95-96; 6RP 52-53, 66-67; Ex. 1, 31, 33, 34.⁷ No evidence suggests any expert believed Carneh was malingering or faking his illness or symptoms. 3RP 22-23.

The doctors generally agreed he was able to factually understand the evidence, the charges, and the proceedings against him. 1RP 34-45; 2RP 134; 3RP 17-19, 68, 77-78; 4RP 4-6, 106-07, 127-28; 5RP 94; Ex. 34, at 11. The problem, throughout the case, was whether he was able to rationally assist in his defense. 1RP 82-84; 3RP 69; 4RP 106-07; 5RP 94.

All four experts agreed Carneh exhibited positive and negative symptoms of his mental illness. He was paranoid, withdrew from interacting with others, and had a large volume of bizarre delusional

⁷ The transcripts discuss this background information in detail, but most of the information is more easily accessible in the expert reports admitted as exhibits 1, 30, 33, and 34. Given the claims raised here, many of the minor points disputed in the trial court are of lesser importance on appeal.

beliefs. Carneh was being treated with Risperdal Consta and the doctors generally agreed this was reducing the expression of his delusions. Ex 1, at 3; Ex. 31, at 5; Ex. 34; 1RP 27-30; 3RP 22-24, 27-30, 41, 78; 5RP 10-20, 32, 56-57, 66, 83-84, 90-91.

In determining whether Carneh could rationally assist his attorneys, the main dispute arose from the experts' disagreement on whether Carneh could be effectively redirected from his delusions. The state's two experts, Hendrickson and Morrison, opined Carneh could be redirected, while the defense experts, Woods and Watson, opined Carneh could not be effectively redirected and could not rationally assist.

Carneh is black and was born in Liberia in 1981. His family left the country when he was ten. Carneh witnessed horrors from the war and he believed if he ever was deported or returned to Liberia the "snake race" or soldiers would kill him. 1RP 191-92; 2RP 69, 83, 193, 195; 3RP 50, 75, 100; 4RP 20-24, 38, 56-57, 88, 94, 124, 136-37.

Schizophrenia exhibits itself through positive and negative symptoms. Negative symptoms include impaired thinking and social withdrawal and isolation. Positive symptoms include delusions and hallucinations. Carneh exhibited negative symptoms, experienced auditory hallucinations, and his thinking was influenced by an

extraordinary amount of delusional material. 1RP 31-32, 35-37, 86-87; 3RP 8-13, 26-27, 70; 4RP 11-12, 122-23; 5RP 94-96; 6RP 135-36. Carneh's delusional beliefs included the following.

He is convinced that Jarsah Ballah, his biological mother, is not his mother and that his sister is not related. 1RP 143, 171-72; 3RP 27, 32-33, 203; 4RP 21, 23; 5RP 128. He believed he was created in the "United Nation" or "United Nations" somewhere north of Europe. 2RP 10-11, 108; 4RP 20-21, 92-93. He initially was white with straight hair. 1RP 75; 2RP 87; 3RP 26-27. He believed he had been "re-youthed" by religion in 1981, although he had lived thousands of years before that. The "re-youthing" removed all his memories from his previous lives, set him back to the age of five, "colored" him, and placed him in Liberia. 1RP 143; 2RP 18-19; 3RP 15, 19; 4RP 19-20, 33; 5RP 113.

Carneh believed other people can see spoken words, which he called "vision subtitle." He believed he could not communicate effectively because he had lost the "vision subtitle skill," so he isolated himself. This skill was taken from him by religion, and he could be killed if he did not recover it. 1RP 138-39, 141-42, 174-76; 2RP 10, 66, 93-94; 3RP 39; 4RP 15-20, 56; 5RP 129, 143, 170; 6RP 33, 37.

Carneh referred to his religion as "Anglica Biblica." Much of his life was controlled by this religion and it continued to control the court proceedings and the supreme court. It was a religion of light and he continued to worship the light. His religion would intervene and get him out of prison. 1RP 144, 176-77, 181; 2RP 8, 78; 3RP 26-27, 44, 59, 67, 69, 94, 112, 121, 131; 4RP 49-50, 77, 160, 207, 211. He continued to believe the prison doors would open when the substance that powers the world ("e-light" or "e-lyte") ran out. 1RP 65, 75, 2RP 79; 3RP 109-11, 123; 4RP 12.

At various points he believed the evidence against him resulted from police "framery" because of his name, he was French or German, and he was a Nazi. 1RP 50-52; 2RP 29, 35, 104; 3RP 133-35; 4RP 36, 66-67, 154-55, 187-88, 210; 6RP 8-9, 22-23, 74-75.

He often discussed demons and people who had "taken the snake," as well as people who were "sixes" and others who were "sevens." Carneh continued to discuss these delusions in interviews in June 2009. 1RP 124, 186-86; 2RP 19, 83-86, 108; 3RP 74-75; 4RP 23-24, 46, 56-57; 5RP 177-79. Sixes had taken the demon snake and were going to hell, whereas sevens had not. Carneh was a seven, which meant the Supreme Court would tell the trial court he

should be believed. 4RP 33-37. Carneh was nonetheless concerned the trial court might be angry because he was a Nazi. 4RP 37.

Carneh's auditory hallucinations were three prominent "voices": Anglica Biblica (his religion), Christina (his former girlfriend), and Nedius⁸ ("the liar"). Ex. 34; 1RP 178-79, 182-83, 187-90; 2RP 97-101; 3RP 26, 41-42; 4RP 28, 30-32, 50-54, 145. The hallucinations became even more pronounced during the last 180-day commitment and were still prominent on June 25th, the last interviews before the commitment hearing. 4RP 16, 73, 86, 88. Carneh relied on these voices to give him advice about how he should plead and what would happen if he pled guilty, not guilty, or sought an NGI verdict. He would follow the voices, rather than his attorneys' advice. 3RP 42-43, 112, 131; 4RP 20, 30, 50-54, 82-83, 90-94, 97, 115-16, 167, 219. Even if he pled guilty or was convicted, Carneh believed the case will be dismissed and Christina will take him to a priest in Europe who will use the substance "gall" to bleach his skin back to white and straighten his hair. Ex. 34; 3RP 30, 46, 63, 73, 90-91; 4RP 63, 86-87, 91-93, 115; 5RP 159-60.

⁸ The record reveals various spellings for this name.

Carneh continually complained the hospital was poisoning him with niacin in his food. This was delusional and a tactile hallucination, a belief that he had a burning sensation throughout his body. Risperdal was not relieving these persistent symptoms. Carneh abandoned a GED program because he thought the niacin interfered with his ability to progress in the program. Ex. 1, at 3; 1RP 58, 68, 165-70; 2RP 6, 18, 67, 105-08, 141-44; 3RP 35-38; 4RP 12, 45-46, 71-72, 141-42; 5RP 40-44, 150, 176, 186.

Carneh's delusions had not been static over the years, nor during the last 180-day commitment. He expressed a newer delusion in a May 19th interview, when he talked about needing to have a space satellite shoot laser beams into his retinas, or x-rays into his brain, to enable him to see words. 2RP 58, 70, 96, 184; 4RP 11-12.

Carneh repeatedly focused on what he perceived to be immigration issues, rather than legal and factual issues. He did not care about the evidence against him because he was concerned about being deported to Liberia. Ex. 34, at 10; 3RP 99-105; 4RP 37-38, 57, 136-37. He thought he would be deported because he had been colored by religion. 2RP 87-88. No evidence was admitted, however, to suggest Carneh would be subject to deportation if he was

convicted, acquitted, or found not guilty by reason of insanity. 2RP 195; 3RP 100-05; 4RP 22-24, 57-58; 6RP 32-33.

From these background facts, the state sought to establish that treatment had restored Carneh's ability to rationally assist his attorneys. 6RP 80-115, 142-150.

b. Defense Experts

Doctors George Woods and Dale Watson opined Carneh was not competent because he could not rationally assist his attorneys. 3RP 62, 68-69; 4RP 11-12, 97-98, 102. Ex. 31; Ex. 34, at 11-13. The defense experts met with Carneh on February 3, May 6, and June 4, 10, and 25, 2009. 3RP 24-25, 34, 72; 4RP 14, 28, 40, 85-86; Ex. 30, 34. They believed Carneh had the potential to approach competency, but was not competent yet. He had improved and was able to ask questions when redirected, and at times he could coherently describe the events of the crime. 3RP 67, 71; 4RP 85-86, 194-95; Ex. 31, 34.

Woods believed Carneh had the potential to become competent, perhaps with changes to his treatment, but much of what he believed about the most relevant parts of the case was delusional. 3RP 67, 109, 121. Carneh could not "maintain a nonpsychotic thought process for even an hour of structured, reinforced direction by trained mental health professionals." Ex. 31, at 4. He had developed

new delusional themes over the last commitment, particularly the repeated digression into immigration. Ex. 31, at 4; 3RP 69, 98-100.

Carneh was actively delusional at all of the interviews and his delusions continued to shape important decisions, such as what plea to enter and how to confront the evidence. His psychosis prevented Carneh from rationally assisting counsel. He believed if he admitted the crimes and was sentenced to life without parole he would still be released because the case would be dismissed with prejudice. 3RP 127-29; 4RP 63-64, 82-83, 85, 102, 167; Ex. 31; Ex. 34, at 11-13.

Carneh wanted to avoid any possibility of going to Liberia. He believed if he entered an NGRI plea he would end up in Liberia so he refused to consider an NGRI plea. EX. 34; 2RP 69-70. He would choose a prison sentence because serving time in the hospital would require him to give up the chance to go to Europe. Ex. 34, at 13.

Carneh's preoccupation with potential immigration issues was a negative symptom of his illness. 3RP 69; Ex. 31.

His discussion about immigration for someone from Liberia that is facing criminal charges may superficially appear to be a reasonable discussion. But then let's put it in context. When the discussion about immigration is a discussion based upon his mother who is no longer his mother but some caretaker . . . he was given to by this religious group who is now actively hiding his passport and social security, all those things he needs to set up proper immigration materials, it's an

unrealistic context. The idea that Mr. Carneh [at] any reasonable time soon will be out of custody is, and I may be wrong, I am not a lawyer, but from a legal point of view, seems to me to be an unreasonable context. And so the discussion of immigration is based upon his delusional thinking.

3RP 32-33. His immigration focus stemmed from his belief that his mother is not his mother, and a priest in Europe would transport him back to being white and undo the problems in his life. 3RP 103.

Carneh also would choose a prison sentence based on his desire to be alone, since he was unable to communicate with others. He believed he would be allowed to be in his room most of the time by himself if he was sentenced to prison. Social withdrawal and isolation are symptoms of schizophrenia. 1RP 97-98; 2RP 52, 90; 3RP 49, 52, 70-71, 90; 4RP 60-61, 65. He preferred a life sentence in prison even if he could be released from the hospital in as little as two weeks. 2RP 91-93, 153-54; 4RP 59-61, 162-63; 6RP 63-64.

During Watson's June 4th interview, Carneh was better able to respond to counsel, but delusional themes were still prominent. On June 25th, Carneh was still hearing voices and was taking direction from the voices, rather than his attorneys, and he was still acting on his delusional fear of deportation. 4RP 86-104, 166-69, 173-77.

In assessing the evidence against him Carneh generally denied committing the crimes and refused to accept the state's evidence. At other times he said the victims were bad people who took the demon, something about Yugoslave-ia, he was able to describe evidence, and he went there to rob the place. 1RP 194-95; 3RP 127-29; 4RP 74-77, 83-84, 98-100, 115-16, 191-92; 5RP 31.

At the June 25 interview, Carneh's affect was flat, he remained preoccupied with immigration and Liberia, and he continued to receive telepathic messages from Christina. 4RP 86-87, 97-99. When asked how he could assist his attorneys, he believed his attorneys only had to tell the judge he did not do anything. The judge might find him not guilty or guilty or dismiss with prejudice. 4RP 87. He believed the result would be dismissal with prejudice "because religion wants to release me and to have me meet up with Christina and taken to Europe." 4RP 88. Carneh then drew a picture of God. 4RP 89-90; Ex. 35. Christina continued to tell him the case would be dismissed with prejudice; she then would introduce him to a European priest to get Gall to turn him white and straighten his hair. 4RP 91.

He continued to deny he committed the crime, saying the evidence was fabricated. 4RP 98-99. Watson believed this was a

psychotic denial, not a conscious decision to deny the state's evidence. 4RP 97-100.

While Carneh could understand the various roles of the court and defense counsel, he still believed those roles were being controlled by Anglica Biblica. 3RP 59, 67. Carneh's "veneer of rationality" rested on a deep psychotic state. 3RP 62. Carneh's delusions were always present and in an unstructured courtroom setting he would digress into them deeper. 3RP 98, 116.

Woods and Watson believed the redirection method advocated by Morrison and Hendrickson could not validly measure Carneh's ability to rationally assist counsel. There would be no one to redirect Carneh in court. Trials are fast-moving and require quick processing of information. 3RP 51-52, 64-66, 115-17, 119-20; 4RP 137. "Redirection is an almost impossible thing to do in a trial." 3RP 64. Redirection is instead used in cognitive behavior therapy, but has no use in a courtroom setting where a schizophrenic person filters information in a delusional way. 3RP 65, 99, 108.

Woods analogized the redirection approach to a "Band-aid on a cancer" that did not make Carneh competent, but allowed him to say things that sounded competent. 3RP 108. "[P]eople who are paranoid don't tell you things and that's why you provide them the

opportunity by open-ended questions and less structure to show those things.” 3RP 123.

Carneh could parrot information, but could not rationally understand legal concepts like insanity or how long he would be in custody depending on the different paths the case might take. 2RP 110-11, 3RP 18-19, 57-60, 80-84; 4RP 42, 69-70, 138-39; 5RP 62. Although he could function rotely, schizophrenia impaired his executive functioning and memory, including his ability to effectively weigh and deliberate, sequence information and thoughts, and to understand things in context. 3RP 60, 62-63.

c. State’s Experts

In contrast, WSH Doctors Hendrickson and Morrison opined Carneh was competent because they believed he could be redirected from his delusional material long enough to maintain an ability to rationally assist his attorneys. Ex. 1; 1RP 13, 40-41, 123; 2RP 26, 177-78, 196-98; 5RP 80, 84, 86, 167-68; 6RP 70-72. Morrison admitted the question was close and his opinion remained colored by “lingering gray areas.” 5RP 93-94.

Hendrickson and Morrison admitted the only way to know what Carneh believed was to make inferences from actions and what he articulates. 2RP 71; 5RP 64-65. Despite this, they developed a

“structured approach” to “redirect” Carneh whenever he discussed delusional material during their evaluations. They essentially interrupted him, cut him off, and would not ask follow-up questions to clarify what he meant. 1RP 13, 40-41, 123, 194-95; 2RP 11-12, 33, 55, 71-74, 78-79, 88-89, 101, 104, 211-12; 3RP 107; 4RP 42-44, 120, 157-58; 5RP 43-44, 50-51, 55, 83-84, 173-74, 177, 193-94; 6RP 4, 16, 55-57, 66-67, 71-72. They did not even ask him why he was so focused on immigration. 1RP 195-97; 2RP 82-83.

Hendrickson and Morrison said one important improvement was shown by Carneh’s ability to ask questions of his attorneys. 1RP 39-49, 56-61, 71-72, 83-84; 2RP 4-5, 39-41, 87, 109, 131, 166-67, 170-71, 175-76; 5RP 42, 45-46, 74, 78, 85; 6RP 7-8. But much of what Carneh “asked” was simply a rote repetition of what the doctors suggested he ask the attorneys. 2RP 109-11.

This approach allowed Hendrickson and Morrison to ignore the pervasiveness of the delusional material and redirect Carneh before he could explain it. In contrast, Woods and Watson listened to Carneh with an open-ended approach that differentiated Carneh’s ability to assist his attorneys rather than repeat rote information in a structured interview. 1RP 149-50; 3RP 31, 56, 60-61, 106-08, 123, 136-37; 4RP 72; 5RP 191-93.

Morrison also drew for Carneh a diagram showing “civil” and “criminal” pathways available to Carneh to leave the hospital. 1RP 123-25; 2RP 104-08; 4RP 73-74. Morrison essentially informed Carneh the only way he would get out of the hospital was to stop talking about his delusions. 2RP 24-25, 150-51, 156; 5RP 58-62, 5RP 162-63, 168-69, 177-79; 6RP 109-10. “If you just shut up with the crazy talk, you can get out of here.” 2RP 23-24. Carneh heard this and knew if he continued to talk about his delusions, he might be stuck at WSH. 2RP 210-11; 4RP 71-72.

Hendrickson and Morrison gave significant weight to their perception that Carneh made fewer references to Anglica Biblica and his other delusions during the course of the last 180-day commitment. They believed Carneh could now focus on the evidence against him and rationally address it. 1RP 47-48; 2RP 86-87. The problem was that Carneh’s responses were based on his delusions.

Blood from the victims was on Carneh’s clothes and on pants taken from the scene found at Carneh’s house. CP 228. Carneh maintained the substance on the clothes was not blood. 2RP 28-30, 34. Carneh said his attorneys could “use a microscopic optic, something that can look at small elements, past atoms, past cells into microbes in order to see the substance isn’t blood.” 2RP 29-30; 6RP

49-50. Hendrickson admitted this suggestion would not rationally assist counsel, but he thought the idea of testing the evidence was rational. 1RP 53-55, 2RP 30-34, 76-79, 166. Carneh also mentioned testing the blood with “light,” a consistent delusional theme. Hendrickson thought this was rational. 2RP 76-79; 6RP 49-50.

Luggage from the victims was found in Carneh’s home. CP 228; 2RP 37-38. Carneh said it was “framery” and a police officer must have written the names on the luggage tags. Carneh suggested counsel could see if the luggage was from the airport. The state’s experts thought this showed Carneh could engage with his attorneys and ask rational – rather than paranoid or delusional – questions about the evidence. 1RP 44-49, 80; 2RP 34-46, 80-81, 170-71; 6RP 18-20, 42-43, 48-49.

Carneh wanted a judge trial rather than a jury trial for several reasons: a judge could see the case was a conspiracy by the Ukrainian Russians, religion would influence the judge, and the judge was “on orders of the Supreme Court to release me.” 1RP 82; 2RP 10-11, 59-62; 4RP 24, 33-34, 77, 174. In an effort to make Carneh’s words seem more rational, Morrison rephrased them as “the judge is on orders to treat you fairly.” 2RP 61-62. If there was to be a jury, Carneh wanted it to come from a foreign nation. 2RP 26-27.

During the May 19th interview Carneh expressed opposite goals. He wanted to be found incompetent and have the case dismissed, but he also said he would like to be found competent and plead not guilty. 2RP 63-65. At the end of the May 19th interview Carneh said the WSH doctors were not treating him fairly.

I think you are basing everything on top secret and secret service. I don't have vision subtitle. The only person that can help me is a mental institution in Europe that will put a helmet on me and shoot MRI's into my brain.

2RP 66. Morrison and Hendrickson ignored this and instead spoke about scheduling the next interview. 2RP 66-67.

The last interview with Morrison and Hendrickson was June 4, 2009. Carneh started by repeating he felt drugged from Niacin and dietary fiber. 2RP 67-68. He repeated his desire to be found not competent, to have the case dismissed with prejudice and he continued to focus on nonexistent immigration issues. 2RP 68-69, 82. He also said his goal was to be found competent. 2RP 102.

Carneh said he believed he was not competent because he needed hypnosis in his brain. He said "[a] satellite is supposed to shoot an x-ray into my brain to give me the ability to see words." 2RP 70. He acknowledged he had a mental illness, but attributed it to his lack of "the hypnosis." 2RP 103.

He repeated his belief he had been colored by religion for not taking the demon snake, that his mother was not really his mother, that he was sent to Liberia at age 5, and that he would be deported because he was colored by religion. 2RP 83-84.

He did not want to consider a NGI plea because if found not guilty by reason of insanity, he could not leave the country. 2RP 94. He wanted to leave the country so he could go back to Europe, get the hypnosis, and get the laser beam shot into his retinas. 2RP 91, 96. At other times, he said he would not consider an NGI plea because he would be deported to Liberia and killed. 2RP 69-70.

Carneh again said he heard three voices: (1) his girlfriend Christina and (2) Anglica Biblica, but the doctors cut him off before he identified the third. 2RP 97-98, 101. Carneh was expressing auditory hallucinations in the context of what plea to enter, not guilty or NGI. Hendrickson did not ask Carneh to clarify what influences those voices had on his decision-making process. 2RP 101. Carneh said he would not discuss the possibility of a NGI plea with his attorney because he did not want to admit the act. 2RP 102.

Hendrickson was reluctant to answer defense counsel's questions whether he thought the voices were delusions or actual

telepathy. 1RP 187-88; 2RP 97-99.⁹ After repeated questioning he finally admitted the obvious: the “telepathy” was consistent with schizophrenia. He repeated his belief Carneh also expressed “ideas” that were not delusional. 2RP 100, 205.

During the interview, Morrison told Carneh it raised concerns when Carneh talked about his delusions, and that Carneh was “much better” when Morrison first saw Carneh. 2RP 106-07. Carneh responded that he was being poisoned with Niacin. 2RP 107-08.

d. Court’s Competency Ruling

Prior to closing arguments, Louis Frantz, one of Carneh’s attorneys, filed a declaration noting questions Carneh had asked counsel in court on July 14th. Frantz noted Carneh had said little to counsel during the hearing. But on July 14, he wanted to talk about Jarsah Balla because he was upset that Watson had referred to her as his mother. Watson had not yet testified. Carneh then said “we could address [Carneh’s] immigration status once this case was over.” CP 345. “On July 16, during Dr. Watson’s testimony, Mr. Carneh

⁹ Hendrickson went so far as to cite a study from Duke University that had investigated claims of telepathy. He could not link that study to someone like Carneh, who had been repeatedly diagnosed with schizophrenia and who suffered a broad spectrum of bizarre delusions for more than eight years. 2RP 97-100, 205; 6RP 127.

asked defense counsel in what situations could a case be dismissed with prejudice.” CP 345. Carneh’s counsel provided no other factual input on Carneh’s ability to rationally assist them.

On July 29, 2009, the court orally ruled Carneh was competent. 6RP 152-59. The court found there was no real dispute that Carneh could factually understand the proceedings; the issue again was whether he could assist his attorneys. 6RP 152.

The court noted its prior criticism of Hendrickson’s and Morrison’s redirection approach. Oddly, the court did not explain that further, given Hendrickson’s and Morrison’s admission they continued using that approach over the final 180-day commitment. 6RP 152. The court said the experts all agreed Carneh had improved and was discussing his delusions less. 6RP 153. The court recognized Carneh was not symptom-free and still retained substantial delusional beliefs. 6RP 156. The court said the most important evidence was Watson’s testimony, which noted that Carneh was “approaching competence” and was able in June to give a rational account of the evidence. 6RP 156. The court ruled Carneh’s delusional beliefs no longer significantly precluded his ability to assist counsel. 6RP 157.

The court then entered an order directing forced medication. Over defense objection, the court entered an order committing

Carneh to WSH for weekend competency maintenance for antipsychotic injections every other week pending trial. CP 131-39, 147-48, Supp. CP __ (sub no. 90, 92, Orders); 7RP 7-8.

On August 28, 2009, the court entered its findings and conclusions on Carneh's competence to stand trial. CP 140-45; 7RP 14. The findings recognize Carneh's continuing schizophrenia and psychotic delusions, but concluded the Risperidone injections had remitted some of the symptoms so that his delusions no longer controlled his ability to discuss his case and assist counsel. CP 141.

The court then accepted Carneh's waiver of a jury trial. CP 146; 7RP 30-32, 67-71. Shortly after the ruling, the state pushed for a quick trial date. The prosecutor noted, "based upon the history of this case, the longer this thing drags out the more potential problems arise." 7RP 41. Trial was set for November 16, 2009. 7RP 45-47.

Defense counsel noted Carneh at that time did not wish to pursue any kind of mental defense, either insanity or diminished capacity. 7RP 42, 75. Counsel believed the decision was obviously influenced by his mental illness. 7RP 42-43.

e. Defense Counsel's Declarations

Carneh had informed his attorneys he wanted to plead guilty after the court's competency finding. The plea hearing was set for November 17, 2009. CP 170; 7RP 76.

At the time of the plea, Carneh's three attorneys filed declarations relating to Carneh's competence.¹⁰ The declarations asserted each attorney's belief Carneh was not competent at the time of the competency hearing and the plea hearing. CP 173-76. No one believed Carneh was making a knowing, intelligent and voluntary plea. CP 171, 174, 177.

Carneh continued to be delusional. CP 171-75, 178. He would plead guilty, rather than NGRI, because he did not want to return to WSH. CP 175, 177. He could not socialize at WSH "because he lacks the 'vision subtitle skill.'" CP 171-72. He wanted to go to prison because he believed that once there he would be left in isolation. CP 172, 175, 177. Voices in his head told him this. CP 172, 177. He also believed he would be released in March 2010 when the "tranquility" occurs, at which time he would be tranquilized, a remote control would be implanted in him, he would regain his vision subtitle

¹⁰ Copies of the declarations are attached as appendix E.

skill, and, inter alia, his natural white color and straight hair. CP 172, 175, 178. “He does not believe he will spend the rest of his life in prison.” CP 178. The delusion in part drove his decision to plead guilty because he was not concerned with the penalty for the offenses. CP 178. He was obsessed with these delusions. Although his attorneys would redirect him to the case, [h]e always returns to these delusions.” CP 175. The declarations also asserted counsels’ belief that Carneh’s condition had not significantly changed since the court found him competent at the end of July. CP 171, 175, 176.

f. Court’s Acceptance of Carneh’s Guilty Plea

At the hearing on November 17th the prosecutor went through the plea form in a colloquy with Carneh. Carneh generally responded to the prosecutor’s questions with “yes” or “yeah” or “that is correct.” 7RP 77-86. An exception was when the prosecutor asked if Carneh was born on October 11, 1981, he said “[t]hat’s my birth date but I wasn’t born then.” 7RP 78. Although potential immigration consequences are discussed in the plea form (CP 195), the prosecutor skipped that advisement in the colloquy. 7RP 77-85. After the prosecutor concluded, the court informed Carneh he would lose his rights to vote and to possess a firearm, but the court also decided not to bring up anything about “immigration.” 7RP 88.

Two of Carneh's attorneys again advised the court they believed Carneh was not competent and his plea was not knowing, intelligent and voluntary. Both counsel agreed Carneh's condition had not deteriorated in any significant degree from the end of July time when the court found him competent to stand trial. 7RP 86-87.

The court noted counsel's declarations and statements. The court complimented counsel in offering "candid" opinions they held the same opinion in July and there was nothing "material and different now." 7RP 87. The court made no indication it considered the substance of the facts and opinions included in counsel's statements. CP 209; 7RP 87. The written findings make it clear the court found defense counsel's declarations added nothing "new" or "beyond what the court already heard and considered[.]" CP 209; appendix B.

The court found Carneh continued to be competent and the plea made knowingly, intelligently, and voluntarily. 7RP 88; CP 198. The court then sentenced Carneh to four terms of life without possibility of parole. Added to that were four consecutive firearm enhancements totaling 240 months. CP 182, 7RP 113.

D. ARGUMENT

1. THE COURT ERRED IN ACCEPTING CARNEH'S PLEA AND IN FINDING CARNEH COMPETENT TO ENTER A PLEA WHEN IT FAILED TO CONSIDER DEFENSE COUNSEL'S OPINIONS ON WHETHER CARNEH WAS COMPETENT.

An incompetent person may not be tried and may not plead guilty while incompetent. If a trial court accepts a plea from a person who is incompetent, the plea must be set aside.

In determining competence, a trial court must give considerable weight to facts and opinions stated by defense counsel. Because the trial court failed to do this, it erred as a matter of law and abused its discretion. The state cannot show the error is harmless.

- a. A Court Violates Due Process When it Accepts a Guilty Plea From an Incompetent Person.

The conviction of an accused while legally incompetent violates the due process right to a fair trial. U.S. Const. amend. 14; Const. art. 1, § 3; Drope v. Missouri, 420 U.S. 162, 172, 95 S.Ct. 896, 904, 43 L.Ed.2d 103 (1975); Pate v. Robinson, 383 U.S. 375, 378, 385, 86 S. Ct. 836, 15 L. Ed. 2d 815 (1966). The constitutional standard for competence to stand trial is whether the accused has "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding" and to assist in his defense with "a rational

as well as factual understanding of the proceedings against him.” In re Restraint of Fleming, 142 Wn.2d 853, 861-62, 16 P.3d 610 (2001) (quoting Dusky v. United States, 362 U.S. 402, 80 S. Ct. 788, 4 L. Ed. 2d 824 (1960)). “A person is not competent at the time of trial, sentencing, or punishment if he is incapable of properly appreciating his peril and of rationally assisting in his own defense.” State v. Marshall, 144 Wn.2d 266, 281, 27 P.3d 192 (2001); accord Lafferty v. Cook, 949 F.2d 1546, 1551 (10th Cir. 1991) (rational understanding is necessary to establish competence).

Under Washington statutes, an accused is incompetent if (1) he lacks an understanding of the nature of the proceeding; or (2) is incapable of assisting in his defense due to mental disease or defect. RCW 10.77.010(14); Fleming, 142 Wn.2d at 862. “[N]o incompetent person may be tried, convicted, or sentenced for the commission of an offense so long as the incapacity continues.” State v. Wicklund, 96 Wn.2d 798, 800, 638 P.2d 1241 (1982).

The competency standard for pleading guilty is the same as the standard for standing trial. Marshall, 144 Wn.2d at 281 (citing Godinez v. Moran, 509 U.S. 389, 402, 113 S.Ct. 2680, 125 L.Ed.2d 321 (1993)); Fleming, 142 Wn.2d at 862. An incompetent person may not enter into any plea agreement because incompetency renders the

plea involuntary. Marshall, 144 Wn.2d at 280-81; Fleming, 142 Wn.2d at 864. "It is axiomatic that a person incompetent to stand trial cannot affect a knowing or intelligent waiver." State v. Heddrick, 166 Wn.2d 898, 906, 215 P.3d 201 (2009).

"Due process requires an affirmative showing that a defendant entered a guilty plea intelligently and voluntarily." State v. Ross, 129 Wn.2d 279, 284, 916 P.2d 405 (1996). "This standard is reflected in CrR 4.2(d), which mandates that the trial court 'shall not accept a plea of guilty, without first determining that it is made voluntarily, competently and with an understanding of the nature of the charge and the consequences of the plea.'" State v. Mendoza, 157 Wn.2d 582, 587, 141 P.3d 49 (2006) (quoting CrR 4.2(d)).

b. When Determining Competency, a Court Must Consider and Give Considerable Weight to Defense Counsel's Opinion.

In several hearings over several years before different judges, Carneh had been found incompetent. The trial court therefore properly held the state bore the burden to overcome the presumption that Carneh remained incompetent. 6RP 78-79; State v. Blakely, 111 Wn.2d 851, 861, 47 P.3d 149, rev. denied, 148 Wn.2d 1010 (2003), reversed on other grounds, Blakely v. Washington, 542 U.S. 296, 124

S.Ct. 2531, 159 L.Ed.2d 403 (2004); Hull v. Kyler, 190 F.3d 88, 92 (3rd Cir. 1999).

A trial court may consider numerous factors in determining competence, including “the ‘defendant’s appearance, demeanor, conduct, personal and family history, past behavior, medical and psychiatric reports and the statements of counsel.’” Fleming, 142 Wn.2d at 863 (quoting State v. Dodd, 70 Wn.2d 513, 514, 424 P.2d 302, cert. denied sub nom. Dodd v. Rhay, 387 U.S. 948 (1967)). Courts must consider the input of defense counsel when making this determination. Drope, 420 U.S. at 177 n. 13 (“[a]lthough we do not ... suggest that courts must accept without question a lawyer’s representations concerning the competence of his client ... an expressed doubt in that regard by one with the closest contact with the defendant ... is unquestionably a factor which should be considered.”); accord, Macgregor v. Gibson, 248 F.3d 946, 959-61 (10th Cir. 2001) (recognizing counsel’s opinion as “perhaps the most important” factor in determining competence, particularly where counsel has substantial experience representing the accused).

Washington courts have recognized the wisdom of Drope and expanded it further. Trial courts in Washington must not only consider defense counsel’s opinion, but also give it “considerable

weight.” State v. Hicks, 41 Wn. App. 303, 308-09, 704 P.2d 1206 (1985); City of Seattle v. Gordon, 39 Wn. App. 437, 442, 693 P.2d 741 (1985); State v. Crenshaw, 27 Wn. App. 326, 331, 617 P.2d 1041 (1980), aff’d, 98 Wn. 2d 789, 659 P.2d 488 (1983); State v. Israel, 19 Wn. App. 773, 779, 577 P.2d 631 (1978). This rule is settled. State v. Harris, 122 Wn. App. 498, 94 P.3d 379 (2004) (“defense counsel’s opinion as to the defendant’s competence is a factor that carries considerable weight with the court”) (citing State v. Swain, 93 Wn. App. 1, 10, 968 P.2d 412 (1998)). A trial court abuses its discretion when it fails to follow the controlling law, or to consider matters it must consider before rendering its decision. In re Mulholland, 161 Wn.2d 322, 332-33, 166 P.3d 677 (2007) (court’s failure to apply controlling law is not merely error, but a “fundamental defect”); State v. Rafay, 167 Wn.2d 644, 655, 222 P.3d 86 (2009) (“a court ‘would necessarily abuse its discretion if it based its ruling on an erroneous view of the law.’”) (quoting Wash. State Physicians Ins. Exch. & Ass’n v. Fisons Corp., 122 Wash.2d 299, 339, 858 P.2d 1054 (1993)).

The Drope rule – and Washington’s refinement of it – makes sense in the abstract, but particularly so in a case like Carneh’s where the disputed issue is whether Carneh could rationally assist his counsel. No one was in a better position to answer that than

Carneh's three attorneys – two of whom had represented him since 2001. As the Supreme Court recognized in Drope, counsel had the closest contact with Carneh and were in the best position to know whether he could provide them with rational assistance.

The trial court failed to comply with this settled rule. In accepting Carneh's plea and finding him competent to enter it, the court viewed defense counsels' three declarations as adding nothing "new" or "beyond what the court already heard and considered[.]" CP 209; appendix B. The court characterized counsels' input as nothing more than continued disagreement with the court's August 2009 competency ruling. 7RP 87; 2RP 209.

This was error and an obvious failure to consider defense counsels' opinions, let alone give them considerable weight. The three declarations offered substantially more information than simple disagreement. They established facts showing how counsel were still unable to redirect Carneh from his repeated bizarre delusions, as well as the effect of those delusions on Carneh's ability to assist counsel and enter a knowing, intelligent, and voluntary plea. CP 170-78; appendix E. These were declarations from well-reputed, career public

defenders, with substantial experience in Washington's trial courts.¹¹

The court's statement that nothing "new" was offered reveals the court's failure to recognize, let alone consider, the evidentiary value.

A similar error occurred in State v. Sanders, 209 W.Va. 367, 549 S.E.2d 40 (2001). Sanders was arrested in April 1994 for investigation of robbery. Defense counsel informed the court that Sanders appeared delusional and psychotic. After an initial evaluation, the trial court found Sanders incompetent. He was later diagnosed with paranoid schizophrenia. After about three years of commitment and restoration efforts with and without antipsychotic drugs, the state's experts opined Sanders had improved and his psychotic disorder was in sufficient remission that he was competent

¹¹ Louis Frantz was admitted in 1982 and is approved by the Supreme Court under SPRC 2 to handle trial representation in capital cases. Carl Luer was admitted in 1986 and handled trial work at several public defender agencies as well as appeals in this Court. Edwin Aralica was admitted in Washington in 2004. Public defenders work with substantial caseloads. Readily available information, not subject to reasonable dispute, supports this paragraph. See http://www.courts.wa.gov/appellate_trial_courts/supreme/clerks/ (last accessed 12/19/10) (listing SPRC 2 qualified counsel); <http://www.mywsba.org/Default.aspx?tabid=177> (last accessed 12/19/10) (listing bar admission dates); <http://www.wsba.org/lawyers/groups/committeeonpublicdefense.htm> (last accessed 12/19/10) (listing caseload standards); cf. Macgregor v. Gibson, 248 F.3d at 960 (noting the experience of MacGregor's attorney).

to stand trial. In August 1998, the court found him competent. But trial was not held until December. Sanders, 549 S.E.2d at 44-49.

Sanders declined to pursue an NGRI plea because did not want to go back to the state hospital. After Sanders testified bizarrely at trial, defense counsel sought a mistrial based on Sanders' continuing psychosis. The trial court denied the motion "for the same reasons I've already put on the record" and Sanders was quickly convicted by jury verdict. Sanders, 549 S.E.2d at 49.

On appeal, the Supreme Court of Appeals of West Virginia held the trial court violated Sanders' due process rights. Sanders, at 49-50. Although the trial court properly held an initial hearing to determine Sanders' competency, it erred in failing to hold a new hearing where counsel's opinion expressed the concern that Sanders' "psychosis . . . [was] still evident." Sanders, at 53. Quoting Drope, the court recognized that counsel's opinion was "unquestionably a factor which should be considered." Id. The court therefore vacated the judgment and remanded for a hearing to determine whether Sanders was competent at the time of trial. Sanders, at 54-55, 57.

In Carneh's case, the trial court's error is more egregious than the error in Sanders. Carneh's counsel provided far more than a mere statement that Carneh's psychosis "was still evident." The court

failed to consider three declarations providing substantial factual information showing how Carneh's delusions continued to govern his decision-making process and prevent him from rationally assisting counsel or entering a knowing, intelligent, and voluntary plea. Carneh continued to believe he would be released from prison despite the mandated entry of four sentences imposing life without parole. Contrary to the unrealistically rosy forecast from Hendrickson and Morrison, counsel could not redirect him. CP 170-78, appendix E.

The state cannot establish the error was harmless. The state will not claim there is overwhelming evidence of Carneh's competence because the record would expose that claim as unmitigated fiction. Instead, the state will almost certainly concede the obvious – this was a close case.¹²

All four experts agreed Carneh was a paranoid schizophrenic who had been incompetent for several years. The trial court properly placed on the state the burden to rebut the presumption of continued incompetence. 6RP 78-79. The two defense experts, both of whom had longstanding experience with Carneh's delusional material,

¹² Cf., In re Detention of Post, 145 Wn. App. 728, 748, 187 P.3d 803 (2008) (state could not show error was harmless in hotly contested case); aff'd, ___ Wn.2d ___, 241 P.3d 1234, 1241 (2010) (error was prejudicial in closely contested case).

listened to him and gave him the opportunity to explain his thought processes. They recognized how the voices rendered Carneh's decisions irrational and involuntary. As Watson explained, it was necessary to consider the delusions, particularly the current voices from Christina, Anglica Biblica and Nediuis, to understand how Carneh was making decisions about the case, why he would enter a guilty plea, and why he would refuse an NGRI plea. 4RP 32.

In contrast, the state's experts continued a "head-in-the-sand" refusal to probe the delusions or their effect on Carneh's thinking.¹³ They cut him off, "redirected" him, and told him he needed to stop with the "crazy talk" if he ever wanted to leave WSH. The same judge had previously rejected that method as designed to procure a state-desired result, rather than to fairly evaluate Carneh's competence. CP 302-09; Ex. 8 at 5. Inexplicably, this time the court changed course despite the WSH doctors' continued adherence to the discredited method. 6RP 152-53.

¹³ Even so, Morrison admitted his opinion was colored by "lingering gray areas." 5RP 93-94.

Given the close question, the trial court's failure to consider defense counsels' declarations is prejudicial error requiring reversal.¹⁴ This Court should vacate the judgment and remand for a fair hearing to determine whether Carneh was competent to enter a knowing, intelligent, and voluntary plea.

2. COUNSEL PROVIDED INEFFECTIVE ASSISTANCE
IN FAILING TO SUBMIT THEIR DECLARATIONS
DURING THE COMPETENCY HEARING.

The state and federal constitutions guarantee every person accused of a crime the right to effective assistance of counsel. U.S. Const. amend. 6; Const. art. 1, § 22; Strickland v. Washington, 466 U.S. 668, 685-86, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); State v. Thomas, 109 Wn.2d 222, 229, 743 P.2d 816 (1987). Whether counsel provided ineffective assistance is a mixed question of fact and law reviewed de novo. Fleming, 142 Wn.2d at 865. "A claim of ineffective assistance of counsel may be considered for the first time on appeal as an issue of constitutional magnitude." State v. Nichols, 161 Wn.2d 1, 9, 162 P.3d 1122 (2007).

¹⁴ In response, the state may contend trial counsel waived this argument by not submitting the declarations during the initial competency hearing. That would miss the point. This argument challenges the trial court's error in finding Carneh competent to enter a plea. As shown by the cases cited supra, it is unconstitutional to accept a guilty plea from a person who is not competent.

Counsel is ineffective where (1) counsel's performance was deficient and (2) the deficiency prejudiced the accused. Thomas, 109 Wn.2d at 225-26. Deficient performance is conduct falling below an objective standard of reasonableness. Id. at 226. Prejudice is demonstrated from a reasonable probability that, but for counsel's performance, the result would have been different. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome. Id. Courts look to the facts of the individual case to see if the test for ineffective assistance is met. State v. Tilton, 149 Wn.2d 775, 784, 72 P.3d 735 (2003).

a. Counsel's Performance Was Deficient.

As shown in argument 1, Drope states that counsel's opinion is "unquestionably" a factor the court should consider when determining an accused's competence. Washington goes further, requiring the court to give counsel's opinion "considerable weight."

Carneh's three experienced attorneys all had factual reasons and opinions to support a finding of incompetence. Those opinions, however, were not offered during the six-day hearing. Counsel's failure to provide the court with counsel's input at that crucial time was deficient performance.

In Hull v. Kyler, the Third Circuit recognized that Drope imposes on counsel a “special role” when competency is at issue.

At the juncture of the dual constitutional requirements of effective assistance of counsel and a defendant's competency, the Supreme Court has implied that defense counsel has a special role in effectively ensuring that a client is competent to stand trial. See Drope, 420 U.S. at 177 n. 13 (“Although we do not, of course, suggest that courts must accept without question a lawyer's representations concerning the competence of his client, an expressed doubt in that regard by one with ‘the closest contact with the defendant,’ is unquestionably a factor which should be considered.” (citations omitted)). Defense counsel's special role arises not only from the typical attorney-client relationship, but from the very fact that the defendant may be unable to appreciate the proceedings or to assist his attorney (or to make an intelligent decision on challenging his competency). Cf. Robinson, 383 U.S. at 384, 86 S.Ct. 836 (“[I]t is contradictory to argue that a defendant may be incompetent, and yet knowingly or intelligently ‘waive’ his right to have the court determine his capacity to stand trial.”).

Hull, 190 F.3d at 112. The ABA Standards for mental health in the criminal justice process recognize the special duty required by Drope:

(b) Evidence presented at the hearing should conform to rules of evidence applicable to criminal cases within that jurisdiction. The evaluators, whether called by the court or by either party, should be considered court witnesses and be subject to examination as such by either party.

(i) Defense counsel may elect to relate to the court personal observations of and conversations with the defendant to the extent that counsel does not disclose confidential communications or violate the attorney-

client privilege; counsel so electing may be cross-examined to that extent.

(ii) The court may properly inquire of defense counsel about the professional attorney-client relationship and the client's ability to communicate effectively with counsel. The defense counsel, however, should not be required to divulge the substance of confidential communications or those that are protected by the attorney-client privilege. Defense counsel responding to inquiry by the court on its own motion should not be subject to cross-examination by the prosecutor.

ABA Criminal Justice Mental Health Standard 7-4.8.¹⁵ Commentators also recognize counsel's dual role in this special circumstance.

Attorneys, especially defense attorneys, have an important role to play in the competency evaluation process. It is simply unacceptable for them to claim that they lack the time and inclination to provide information to the forensic evaluator about their interaction with their client and the defense strategy in the case that may be helpful in assessing the defendant's capacity to consult with counsel. After all, the defense attorney is the individual who knows best whether the defendant's impairments impede or compromise the defense of the case.¹⁹⁰ Admittedly, the law only requires a "global" *236 assessment of the defendant's competence to stand trial, *i.e.*, it asks only for an analysis of the defendant's ability to consult with his or her attorney, not an analysis of the actual consultation between them.¹⁹¹ Nevertheless, information on the actual interaction between the defense attorney and the defendant and probable defense strategy may be important, if not critical, to the

¹⁵ The standards are available online at: http://www.abanet.org/crimjust/standards/mentalhealth_blk.html#7-4.8 (last accessed 12/19/10).

evaluator's assessment. Such information is especially significant in cases in which the defense attorney has raised the issue of the defendant's competency. In its Criminal Justice Standards, the American Bar Association has included a standard that authorizes defense attorneys to attend forensic evaluations of their clients' competence to stand trial.¹⁹² The commentary to that standard notes: "A thorough evaluation may require that counsel be present at the interview to enable the evaluating professional to observe the attorney-client relationship. Counsel's attendance may also ensure that the clinician will receive needed information about the defense strategy in the case"¹⁹³

Even if the attorney does not attend the evaluation, the attorney and the evaluator should engage in a meaningful dialogue before the evaluation is performed. To adequately protect the defendant's legitimate interest in maintaining confidentiality regarding defense strategy and the privilege against self-incrimination, courts can place constraints on the contents of the forensic report or redact portions of the report before it is disclosed to the prosecution and can limit the testimony of the forensic evaluator when the competency issue is considered in court.¹⁹⁴

If, as the American Bar Association asserts, defense counsel "may well be the single most important witness" on the issue of the defendant's ability to consult and interact appropriately with his or her attorney,¹⁹⁵ then defense attorneys should be encouraged to testify*237 on this issue in court.¹⁹⁶ It is simply unacceptable for the defense attorney to raise the issue of his or her client's competency to stand trial, listen to the trial judge challenge the forensic evaluator's testimony that the defendant is incompetent, register objection to the court's ruling that the defendant is competent, and then state to the judge, "I, as his attorney, have reached [the conclusion that the defendant is not properly able to assist in his defense], although I do not feel, as his

attorney, that I should take the witness stand and be sworn and offer evidence in that regard.”¹⁹⁷ . . .

To encourage defense attorneys to testify on the competency issue, the American Bar Association has adopted a standard that would protect the testifying attorney from a requirement that he or she divulge confidential communications or communications protected by the attorney-client privilege.¹⁹⁹ If the defense attorney's testimony irreparably damages the attorney-client relationship, another defense attorney should be substituted for the testifying attorney. That alternative is clearly preferable to conducting a criminal trial of a truly incompetent defendant who was found competent because the defendant's first attorney chose not to testify. Substitution of counsel for a legitimate reason is permissible; trial of an incompetent defendant is not.

Grant H. Morris et al., Competency to Stand Trial on Trial, 4 Hous. J. Health L. & Pol'y 193, 235-37 & nn.190-199 (2004) (notes omitted).

Other commentators guide counsel in navigating the ethical considerations that may arise when complying with Drope's special duty. See, e.g., James A. Cohen, The Attorney-Client Privilege, Ethical Rules, and the Impaired Criminal Defendant, 52 U. Miami L. Rev. 529, 560-85 (1985). This Court has noted that appointment of a guardian ad litem may remove possibilities for conflicts in the attorney-client relationship when a client's competence is litigated. State v. Webbe, 122 Wn. App. 683, 693 n.20, 94 P.3d 994 (2004).

In response, the state may suggest a tactical reason why counsel may have decided not to submit declarations. But many of the truly thorny questions that arise in the competency context – e.g. whether to litigate competency over a client’s objection – had long since passed.¹⁶ Counsel also had already provided an evidentiary declaration in 2005 and the result was dismissal of the charges against Carneh. Whatever tactical reason the state might suggest, a court cannot give “considerable weight” to opinions that are not offered.

The bottom line for Carneh is fairly simple. All of Carneh’s attorneys strongly believed his mental illness and his pervasive delusions prevented him from rationally assisting in his defense. CP 170-78; appendix E. All had evidence to support their well-considered opinions he was not competent. But that information was not presented to the trial court during the competency hearing.

b. Carneh was Prejudiced.

Prejudice is shown where there is there is a “reasonable probability” that, but for counsel’s conduct of errors, the results of the proceeding would have been different. A reasonable probability is a

¹⁶ There was no second-guessing this decision. Cf. State v. Heddrick, 166 Wn.2d at 908 (statutory competency procedures may be waived when a challenge to competency is withdrawn).

probability sufficient to undermine confidence in the outcome.”
Fleming, 142 Wn.2d at 866 (quoting Strickland).

This record offers two ways to analyze prejudice. The first is based on the relative strength of the evidence. As shown in argument 1, this was a closely contested case on the one issue that mattered: whether Carneh could rationally assist his attorneys. None of the experts believed Carneh was malingering or faking his symptoms. The state’s experts admitted Carneh’s bizarre delusions had been prominent for years and remained so even in June, 2009. They believed defense counsel might be able to overcome that deeply ingrained material by repeatedly redirecting Carneh, but they never asked for counsel’s opinions on Carneh’s competence or counsel’s ability to redirect him.

The defense experts opined Carneh was not competent and strongly disagreed with the state’s redirection theory. They persuasively showed why no one would be able to redirect Carneh during a trial. The trial court had previously rejected the state’s expert’s redirection methodology, criticizing it as designed to reach a result, rather than a fair determination of competency. Given this, the weight of defense counsels’ opinions is sufficient to undermine confidence in the reliability of the court’s decision.

But this Court need not limit itself to a general review of the record, because specific prejudice is also shown. At the competency hearing in September 2005, one of Carneh's attorneys submitted a declaration detailing Carneh's delusions and how they undermined his ability to rationally assist counsel.¹⁷ The result of that proceeding was different, as Judge Spearman found Carneh was not able to rationally assist.¹⁸ The different outcome is more than sufficient to undermine confidence in the reliability of the July 2009 competency findings.

Because Carneh was denied effective assistance, the trial court's competency order should be vacated and the case remanded for further proceedings. Fleming, 142 Wn.2d at 867.

¹⁷ Appendix E; Supp. CP ___ (sub no. 282A, file 01-1-02482-1, attachment to memorandum).

¹⁸ Appendix D; Supp. CP ___ (sub no. 285, No. 01-1-02482-1, Letter Ruling).

E. CONCLUSION

This Court should vacate Carneh's convictions and remand to the trial court for constitutional proceedings to determine whether Carneh is competent to stand trial or enter a knowing, intelligent, and voluntary plea.

DATED this  day of January, 2011.

Respectfully Submitted,

NIELSEN, BROMAN & KOCH, PLLC.



ERIC BROMAN, WSBA 18487

OID No. 91051

Attorneys for Appellant

APPENDIX A

No. 64536-6-I

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)	
)	
)	Plaintiff,
)	
vs.)	
)	
LEEMAH CARNEH,)	
	)	Defendant,
)	
)	
)	
)	

No. 07-1-11071-9 SEA
FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER REGARDING
DEFENDANT'S COMPETENCY

THIS MATTER came before the Court for a hearing to determine the defendant's competency to stand trial beginning on July 7, 2009 and concluding on July 21, 2009; the State was represented by Prosecuting Attorney Daniel Satterberg, by and through his deputies, Roger Davidheiser and James Konat; the defendant appeared in person and was represented by Louis Frantz, Carl Luer and Edwin Aralica; the Court has considered all of the records and files herein including but not limited to the report of Western State Hospital (WSH) dated June 17, 2009, the report of Dr. Dale Watson dated July 13, 2009, the report of Dr. George Woods dated July 5, 2009, the testimony of Dr. Ray Hendrickson of WSH, the testimony of Dr. Glenn Morrison of WSH, the testimony of Dr. George Woods and the testimony of Dr. Dale Watson; the Court observed the defendant in open court and considered the statements of counsel for the defendant

1 regarding his competency to stand trial. The Court now makes the following findings of fact and
2 conclusions of law:

3 FINDINGS OF FACT

- 4 1. Mr. Carneh suffers from paranoid schizophrenia. He continues to exhibit symptoms of
5 psychosis including delusional beliefs.
- 6 2. Despite these symptoms, all the mental health experts who have evaluated Mr. Carneh agree
7 the he has a factual understanding of the nature of the proceedings against him.
- 8 3. Doctors at WSH have treated Mr. Carneh's symptoms with long acting injections of
9 Resperidone. While this treatment has not brought all of Mr. Carneh's symptoms of his
10 mental illness into remission, there has been a steady improvement in his symptoms over
11 time resulting in at least a partial remission of Mr. Carneh's symptoms.
- 12 4. Because of the partial remission of Mr. Carneh's symptoms his understanding of his case and
13 his ability to discuss his case is no longer framed by nor controlled by his psychotic
14 symptoms of his mental illness.
- 15 5. Despite the remaining symptoms of Mr. Carneh's mental illness, he has demonstrated that he
16 has the ability to rationally assist his counsel in his defense. He has demonstrated that he has
17 a rational understanding of the evidence in this case and can suggest rational ways to
18 confront that evidence. Mr. Carneh has demonstrated that he can understand the state's
19 theory of the case and rationally discuss trial strategies with his counsel. Mr. Carneh has
20 demonstrated that he can accurately and factually relate information to his counsel about the
21 crimes with which he is charged and that he can rationally understand likely outcomes based
22 upon that information and possible plea options based upon that information.
- 23

1 6. The parties agree and the court finds that the defendant is charged with a serious offense and
 2 an important governmental interest is at stake, administration of medication is substantially
 3 likely to keep the defendant competent to stand trial and substantially unlikely to have side
 4 effects that may undermine the fairness of the trial. Involuntary medication is necessary to
 5 further the state's interests as administration of the medication is medically appropriate and
 6 there is no less intrusive form of treatment which is likely to restore and maintain the
 7 defendant's competency.

8

9

CONCLUSIONS OF LAW

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1. The defendant is competent to stand trial.

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2. The defendant has a factual and rational understanding of the crimes with which he is
 12 charged and the evidence in his case.

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3. The defendant can rationally assist counsel in his defense.

14

IT IS FURTHER ORDERED THAT:

15

1. During the pendency of this matter and while the defendant is detained in the King County
 16 Correctional Facility, psychotropic medication shall be administered by the medical staff of
 17 the King County Correctional Facility to the defendant as deemed clinically appropriate to
 18 maintain his competency to stand trial by Dr. Glenn Morrison and the staff of Western State
 19 Hospital, in ongoing consultation with the staff of Jail Health Services' Psychiatric Unit,
 20 against the defendant's will if necessary, as this court finds that there is no less intrusive form
 21 of treatment which is likely to restore and maintain the defendant's competency. The medical
 22 staff of Jail Health Services and the corrections staff of the King County Department of
 23 Adult and Juvenile Detention are ordered to use any and all force they deem reasonably

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necessary to ensure that the defendant is administered the prescribed psychotropic medication.

- 2. Jail Health Services' Psychiatric Unit shall provide information regarding the defendant's treatment, medication and mental health status while detained in the King County Correctional Facility upon request of the parties and/or staff at Western State Hospital.
- 3. The King County Department of Adult and Juvenile Detention shall transport the defendant to Western State Hospital once every two weeks on a schedule established by the staff at Western State Hospital for the purpose of a medical review of medication.
- 4. Medication may be administered to the defendant as deemed clinically appropriate by the staff of Western State Hospital, against the defendant's will if necessary, as this court finds that there is no less intrusive form of treatment which is likely to maintain the defendant's competency.
- 5. The Court incorporates by this reference its July 29, 2009 oral ruling finding the defendant competent to stand trial.

DONE IN OPEN COURT this 28 day of August, 2009.


 Judge Palmer Robinson
 KING COUNTY SUPERIOR COURT

Presented by:

Agreed to by:

 Roger Davidheiser, WSBA #18638
 James Jude Konat, WSBA #16082
 Senior Deputy Prosecuting Attorneys

 Louis Frantz, WSBA #12326
 Carl Luer, WSBA #16365
 Edwin Aralica, WSBA #
 Attorneys for Leemah Carneh

1 Approved as to Form; Notice of presentation waived:

2

3

 Nancy Balin WSBA #21912
4 Senior Deputy Prosecuting Attorney
5 Attorney for King County Department of Adult and Juvenile Detention
6 and Seattle-King County Department of Public Health

7

 Scott Michael WSBA #39383
8 Assistant Attorney General
9 Attorney for Department of Social and Health Services

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APPENDIX B

No. 64536-6-1

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)	
)	
)	No. 07-1-11071-9 SEA
)	
Plaintiff,)	
)	
vs.)	
	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW RE:
LEEMAH CARNEH,	)	DEFENDANT'S GUILTY PLEA
)	
)	
Defendant,)	
)	
)	

THIS MATTER came before the Court at the request of the defendant for entry of pleas of guilty to four counts of aggravated murder; the State was represented by Prosecuting Attorney Daniel Satterberg, by and through his deputies, Roger Davidheiser; the defendant appeared in person and was represented by Louis Frantz and Carl Luer; the Court has considered all of the records and files herein including but not limited to the November 9, 2009 Declarations of counsel for the defendant and the November 16, 2009 Declaration of Dr. William Richie Supervising Psychiatrist at the Center for Forensic Services at Western State Hospital ("WSH").

The court also heard and conducted a colloquy with the defendant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW
REGARDING DEFENDANT'S COMPETENCY - 1
Rekeyed 5-28-02

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FINDINGS OF FACT

1. Mr. Carneh suffers from paranoid schizophrenia. After a hearing to determine competency pursuant to RCW 10.77, on July 28, 2009, this court found Mr. Carneh competent to stand trial. This court subsequently entered findings of fact and conclusions of law on August 28, 2009.
2. While counsel for Mr. Carneh continue to disagree with this court's competency finding, they represent that there are no new reasons that would call into question the defendant's competency to stand trial beyond what this court already heard and considered in making its competency finding.
3. This court ordered that Mr. Carneh submit to periodic medical reviews at WSH for the purpose of maintaining his competency to stand trial. Dr. William Richie at WSH conducted those reviews. These periodic medical reviews have had their intended effect. Mr. Carneh has remained appropriately medicated. His medical, psychological and behavior status has been maintained or improved since this court found him competent to stand trial. These medical reviews have not raised any new question regarding the defendant's competency to stand trial and confirm the court's finding that Mr. Carneh is competent to stand trial.
4. During the plea colloquy, Mr. Carneh demonstrated that he understood the essential elements of the charges against him, and he admitted to sufficient facts to support his pleas. During the plea colloquy, Mr. Carneh also demonstrated that he understood the rights that he waived by pleading guilty. Mr. Carneh demonstrated that he has a rational and factual understanding of the consequences of his pleas, including but not limited to, the fact that he will be

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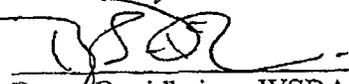
sentenced to life in prison without the possibility of release, that nothing will intervene to change this sentence, and that as a result he will die in prison.

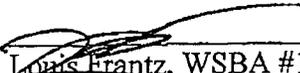
CONCLUSIONS OF LAW

- 1. The defendant is competent to stand trial and enter a plea.
- 2. The defendant has made a knowing, intelligent and voluntary decision to enter pleas of guilty.
- 3. The court incorporates its November 17, 2009 oral findings and conclusions regarding the defendant's pleas of guilty.

DONE IN OPEN COURT this 3 day of December, 2009.


J U D G E Palmer Robinson

Presented by:

Roger Davidheiser, WSBA #18638
Senior Deputy Prosecuting Attorneys

~~Agreed to by:~~ Defense absents

Louis Frantz, WSBA #12526 35160
~~Carl Luer, WSBA #16365~~ Edwin Aralico
Attorneys for Leemah Carneh

APPENDIX C

No. 64536-6-1

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

STATE OF WASHINGTON,)	
Plaintiff,)	
)	
V.	)	No. 01-1-02482-1 KNT
)	
LEEMAH CARNEH	)	CERTIFIED DECLARATION
Defendant.	)	OF CARL LUER REGARDING
	)	DEFENDANT'S INCOMPETENCE
	)	TO STAND TRIAL
)	

Carl Luer, certifies and declares as follows:

1. I am over the age of eighteen and competent to testify to the matters contained in this Declaration. Along with Louis Frantz, I am one of the attorneys assigned to represent Mr. Carneh in this case. I have represented Mr. Carneh since March, 2001. During that time I have met with Mr. Carneh on dozens of occasions and have observed his demeanor and thought processes during periods when he was both competent and incompetent to stand trial.
2. During Mr. Carneh's current six-month commitment for competency restoration dating back to December 2, 2004, I have met with him on seven occasions. While I have seen some improvement in his affect and demeanor, I believe Mr. Carneh remains incompetent to stand trial because he is unable to rationally assist Mr. Frantz and I in

working on his case and preparing for trial. This inability is due to Mr. Carneh's ongoing delusions which directly involve his case and the reasons for the charges against him. In the time that I have been working with Mr. Carneh, his severe delusions have been the most prominent and obvious symptom of his mental illness. The delusions have directly affected his ability to rationally assist in his defense.

3. The content of Mr. Carneh's delusions have evolved over time, however they remain extremely severe and directly influence his thinking about his case and legal situation. At present, his delusions center around his religion, which Mr. Carneh now refers to as "Anglica Biblica." In the past he has also referred to this religion as "Biblica Hebrica" and "Biblica Anglica." Regardless of the specific name Mr. Carneh assigns to this religion he has been fairly consistent in assigning certain powers to the religion and in maintaining that it will play a central role in the outcome of his case.
4. Mr. Carneh describes Anglica Biblica as a religion of the light and believes he was contacted by Anglica Biblica at an early age, perhaps at or even before birth. He believes that the religion originated in England and has great popularity in the Netherlands but is not as well known in the United States. He has described it as a "Nazi religion" which, according to Mr. Carneh, explains its popularity in the Netherlands. Mr. Carneh believes he was born Caucasian in England and was then adopted by Jarsah Ballah (who he does not acknowledge as his mother, even though she is) after being placed up for adoption by Anglica Biblica. Mr. Carneh maintains that he does not have any real parents and that he was not born of any parents but was simply created. In an interview on September 6th 2005, Mr. Carneh described a person who is born without natural parents as a "seusse" or an "assue."

5. Mr. Carneh distinguishes Anglica Biblica from other religions. He does not believe in the bible and says it is simply a book of myths. Among the myths he attributes to the bible is the myth that Jesus Christ was a messiah, and the myth that 666 is the mark of the beast. He believes that Anglica Biblica has its own book which he describes as a book of predictions. He believes that when he achieves a certain age the Anglica Biblica will give him this book and that it has pages like a computer screen that are made of either "illuminating glass" or "laminated glass."
6. Mr. Carneh believes that Anglica Biblica will intervene directly in his case and that they (or it) will order the charges against him be dismissed and that he will be released. He believes that this will occur by Anglica Biblica informing the 12 district court judges that he is innocent and must be released. The 12 district court judges (which include members of Anglica Biblica) will then direct the trial judge to find him not guilty and he will be released. (In the past he has assigned the role of the 12 district court judges to the state Supreme Court but in recent meetings his focus has shifted to the district court judges.) Mr. Carneh believes that if Judge Spearman ignores the directive of the 12 district court judges he (Judge Spearman) will be severely punished and may serve life in prison.
7. This delusional system completely impairs Mr. Carneh's ability to assist counsel and dictates his views on how to proceed with his case. Because Mr. Carneh believes that Anglica Biblica will direct that he be acquitted and released, he sees no meaningful role for Mr. Frantz and I in this case. He believes that all we need to do (or can do) is to ask for a bench trial and tell the judge that "this guy did not commit the crimes." After that, his fate will be determined by Anglica Biblica.

8. Mr. Carneh's decisions and views of his legal situation and trial are governed by his beliefs about Anglica Biblica and other delusions. For example, he believes that extensive international media coverage of his case will prejudice all potential jurors against him and therefore he cannot get a fair trial by jury. He also believes that Judge Spearman has prejudged him and already concluded he is guilty and is prejudiced against him. However, Mr. Carneh nonetheless insists that he have a bench trial because the Anglica Biblica will direct the district court judges to order Judge Spearman to acquit and release him and that Judge Spearman will be severely punished if he disobeys this directive. By waiving jury, Mr. Carneh apparently believes he can exert pressure on the trial judge through the intervention of the Anglica Biblica. As Mr. Carneh's attorney, I find it extremely disconcerting that he would choose to waive a fundamental right such as trial by jury based entirely on his delusional belief system.
9. Mr. Carneh's beliefs about Anglica Biblica are clearly delusions and not similar to religious beliefs or conversions that I have witnessed in clients in the past. In fact he disavows any connection between Anglica Biblica and other religions. He believes that members of Anglcia Biblica walk the earth in the form of humans but have powers beyond those of humans. These powers include the power of invisibility, the power of Romulans, which apparently means the power to change shape or appearance, the power to see words, and the power to separate themselves into seven people then become one person again. Mr. Carneh believes that at some point (perhaps at the conclusion of this case when charges will be dismissed) that he will receive these powers. At that time he will also advance to the second level in the religion. At times Mr. Carneh has indicated that he has possessed some of these powers in the past. For example, he maintains that

he had the power to see words but that it was taken away from him in March, 2001. He attributes his inability to socialize with others to the loss of this "skill." On September 6th, Mr. Carneh also stated that he currently posses the power to turn himself into seven different men and then convert back into one. He indicated he could do that immediately if Mr. Frantz, Dr. Watson and I were not in the room.

10. When Mr. Frantz and I attempt to discuss the evidence in this case with Mr. Carneh he flatly denies that any evidence exists or that it is real. For example when asked about blood found on his clothing Mr. Carneh states simply that there was no blood. He is adamant that all of the evidence is either false or the result of "framery." This flat denial is consistent with positions Mr. Carneh has taken during past periods of incompetency. When he was competent Mr. Carneh was able to engage in rational discussion about the evidence and acknowledge its existence and impact. Presently, although he denies any of this evidence actually exists, he believes the judge or jury will find it compelling and he will be convicted without the intervention of Anglica Biblica. Because he is convinced the religion will ultimately bail him out of the case, however, Mr. Carneh does not appear particularly concerned about the impact of the state's evidence.
11. Mr. Carneh remains convinced there is a conspiracy against him that caused these charges to be filed and has resulted in this ongoing prosecution. Among the conspirators are the Pegram brothers, the detectives in his case, the prosecutors, the trial judges (he believes that Judge Rammerman is still involved in his case despite the fact that he has been told Judge Rammerman is retired and has not seen this judge in court for almost three years) and the news media. Mr. Carneh is convinced that his case has received ongoing constant media attention throughout the country and the world and that this is a

sign of the ongoing conspiracy against him. He continues to believe that people have conspired against him at least in part because of his name. Currently he maintains that people don't like his name because it is French. During the September 6th meeting with Dr. Watson, however, Mr. Carneh stated that he still believes the "car" in his name has caused people to conspire against him but that he no longer likes to talk about that.

12. Although Mr. Carneh understands the charges against him and the potential punishment if convicted he is delusional about certain aspects of the justice system. For example, he believes there are two types of insanity pleas, "insanity 1" and "insanity 2." According to Mr. Carneh, insanity 1 is where a person did not commit the crime charged and is mentally ill and insanity 2 is where the person committed the crime but is mentally ill. He maintains that he believed he was pleading insanity 1 when he entered his not guilty by reason of insanity plea. Despite being told on numerous occasions that there was no such thing as insanity 1 and insanity 2, Mr. Carneh continues to believe in the existence of these separate pleas. While he acknowledges the possibility that there may not be separate insanity pleas, he states he will "just go not guilty" because Anglica Biblica will bail him out.
13. In addition, Mr. Carneh has stated a belief in an alternative type of trial called a "jury of justice." Mr. Carneh believes that a "jury of justice" consist of a trial before the twelve district court judges. In the past he has indicated that a "jury of justice" would consist of seven judges from the state supreme court. He recognizes that Mr. Frantz has told him there is no such thing as a jury of justice but states that Mr. Frantz does not know that much about the law because he is only a human and that Mr. Frantz was taught legal procedures in his law school dormitory by an angel.

14. Mr. Carneh's delusional belief system precludes him from rationally discussing his case with Mr. Frantz and I. He believes that we are superfluous in that we can not do anything to affect the outcome of his trial. The only entity that can help him is Anglica Biblica. The only role Mr. Carneh sees for his attorneys is to go into court and inform everyone that he wants a bench trial and to tell them that "this guy did not commit the crime." He is prepared to waive fundamental rights, including the right to a jury trial and the right to present the only viable defense in his case, insanity, based on his delusional beliefs. He believes that Mr. Frantz and I have worked with the judge and prosecutor to keep him incarcerated despite the fact that we have been instructed to dismiss the case and release him. He believes that we have tape recorded our conversations with him and will use these in court against him. He believes that we have participated in numerous court hearings on his case while he was not present. For all of these reasons I do not believe Mr. Carneh is capable of rationally assisting Mr. Frantz and I and that he is presently incompetent to stand trial

I certify and declare under penalty of perjury under the laws of the State of Washington that the foregoing Declaration is true and correct.

Dated this ___ day of September, 2005.

Carl F. Luer
Attorney for Leemah Carneh

APPENDIX D

No. 64536-6-I

MICHAEL S. SPEARMAN
JUDGE OF THE SUPERIOR COURT
401 FOURTH AVENUE NORTH
KENT, WASHINGTON 98032
(206) 296-9211

October 3, 2005

Roger Davidheiser
King County Prosecutor's Office
516 3rd Ave. #W554
Seattle, WA. 98104

James Konat
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516 3rd Ave. #W554
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Re: State v. Leemah Carneh, No. 01-1-02482-1 KNT

Counsel:

Please find as set forth below the court's findings and conclusions regarding the competency hearing held in the above matter on September 13, 14 and 19, 2005.

In March of 2001 the defendant, Leemah Carneh, was charged with four counts of Aggravated Murder in the First Degree. The matter is now before this court on the state's motion for an order finding that the defendant is competent to go forward to a trial on these charges. The court heard testimony from four expert witnesses. Drs. Steven Marquez and Brian Waiblinger testified on behalf of the state and Drs. George Woods

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KING COUNTY, WASHINGTON

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BY GLENNA J. JONES
DEPUTY



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and Dale Watson testified on behalf of the defendant. All four experts agreed that Mr. Carneh is a paranoid schizophrenic and that he suffers from delusions. They all concurred that the test for competency in Washington consists of two prongs, i.e. whether the defendant has the capacity to understand the nature of the proceedings against him and whether he is capable of rationally assisting his attorneys in the defense of his cause. Further, all four experts agreed that as to the first prong the defendant met the standard of competency. (Indeed, at no time in the history of this case has it has been contended that the defendant lacked the capacity to understand the nature of the proceedings against him.) They disagreed however, on the second prong. Drs. Marquez and Waiblinger opined that the defendant was capable of rationally assisting his attorneys in the preparation of his defense, while Drs. Woods and Watson opined that he was not.

In weighing the testimony of these experts, the court notes exceptional degree of concurrence among them, not only in the instant proceeding but throughout the history of this case. In September 2001 the court entered an order finding the defendant to be incompetent. The court's order was based, in part, on the concurring opinions of defendant's expert, Dr. Watson and state's expert, Dr. Janet Schaeffer of Western State Hospital. Both doctors concluded that although the defendant was capable of understanding the proceedings against him, he was not able to rationally assist in the preparation of his defense.

In February 2002, the court found that the defendant was competent. Although the evidence in this proceeding was disputed it is significant to note that Dr. Woods concurred with Dr. Schaeffer's opinion that the defendant was competent. And while Dr. Watson concluded that the defendant had not regained competency, he acknowledged

that the issue of the defendant's ability to assist in his defense was a close call and that the defendant showed improvement and had some degree of increased ability in this area.

By May 2002 experts for both sides again agreed that the defendant was incapable of assisting counsel in preparation of his defense and an agreed order finding the defendant incompetent was entered. After a 90 day commitment at WSH, however, it was undisputed that the defendant's competency had been restored and an agreed order so finding was entered. Similarly, in June, September and December of 2004 the court entered agreed orders finding the defendant incompetent.

This history of agreement between the opposing experts and the parties on the issue of the defendant's competency is significant. It suggests that partisanship has taken a back seat to the expert's efforts to accurately assess the defendant's abilities. It also removes as an issue whether the defendant is malingering or manufacturing the symptoms of a mental illness in order to manipulate the outcome of these proceedings. All experts and parties agree that the defendant suffers from paranoid schizophrenia and that the symptoms he exhibits are consistent with that diagnosis. Finally, because the fact of the defendant's mental illness and its associated symptoms and behaviors are not in dispute, the court is at liberty to focus its attention on the legal questions presented.

The defendant argues that based upon the most recent order finding him to be incompetent, that he is, in the context of this proceeding, presumed to be incompetent. *State v. Blakely*, 111 Wn.App. 851, 861-62 (2002). He further argues that the state bears the burden of rebutting this presumption and establishing by a preponderance of the evidence that he is now competent to stand trial. *Born v. Thompson*, 117 Wn.App. 57 (2003) *reversed on other grounds*, *Born v. Thompson*, ____ Wn.2d ____, 117 P.3d

1098 (2005). The state urges on the other hand, that the public policy of holding individuals accountable for their conduct creates a strong presumption of mental capacity and that the burden of proof lies with the party asserting the existence of mental incapacity. *State v. McDonald*, 89 Wn.2d 256, 271 (1977).

The state's reliance on *McDonald* is misplaced since the discussion therein revolved around the proper jury instructions to be given when the defendant asserted an insanity defense. In that case the defendant argued that the presumption of sanity and the requirement that he prove insanity by a preponderance without the requiring the state to prove sanity beyond a reasonable doubt placed an unconstitutional burden on him. The court rejected the defendant's claim relying, in part, on "our society's most basic traditions of free will and personal responsibility." *Id.* The court's holding did not address the issue of a presumption in a competency proceeding where there has been a previous finding of incompetency.

However, the defendant's reliance on *Born* is also in error. *Born*, insofar as it is relevant here, simply stands for the proposition that the state bears the burden of proof where it seeks to confine a defendant for purposes of restoring competency pursuant to RCW 10.77.090. In the instant matter the state seeks to establish that the defendant is competent, it does not seek to confine him to restore his competency. Accordingly, *Born* is of little help in this case.

In *Blakely*, the court held that proof of an adjudication of mental illness, raises a rebuttable presumption of mental incompetency. *State v. Blakely*, 111 Wn.App. 851, 861. While the *Blakely* court did not define the term "mental illness adjudication", it seems reasonable that an order finding a defendant incompetent would fall within the

meaning of this phrase. Since in this case the defendant was found to be incompetent on December 2, 2004, the court is satisfied that in this proceeding, there is a presumption that the defendant remains incompetent. Further, it follows that the burden of proof should lie with the party seeking to rebut the presumption, which in this matter is the state. The court is mindful, however, that regardless of the posture of this case “[i]t is the fact of mental incompetency, not the adjudication of mental illness, that determines one’s inability to ... aid in his own defense.” *Blakely, supra* at 861-62, quoting *State v. Bonner*, 53 Wn.2d 575, 587-88 (1959).

It is undisputed that as a result of his mental illness the defendant has created an elaborate delusional system. The defendant believes that the charges against him are the result of a conspiracy involving law enforcement, the prosecutor, the media, and the judge assigned to this case. The defendant has posited a number of reasons for the conspiracy. He has said that it is because his name has the word “car” in it and people are jealous of cars. He has also claimed it is because his name is French. At times, he also believes his attorneys are part of this conspiracy. He has claimed, for example, that they are in league with the prosecutors, that they have recorded their meetings with him and they have attended hearings without him. The defendant has said that he cannot get a fair trial. He believes this is because of the conspiracy but also because of the media’s biased publicity about the case and because of racial discrimination.

The defendant is aware of the evidence against him that the state intends to present at trial. During a period of time in 2002 when the defendant was determined to be competent he was able to discuss the evidence with his attorneys and his experts. It was during this period that the defendant entered his plea of not guilty by reason of

insanity. Currently, the defendant is still able to acknowledge the state's evidence but claims that it is false (or, in his words, "framery") and that it was created as part of the conspiracy against him. For example, he contends that evidence said to have been found in his home and among his possessions was planted by a dishonest police officer. He has stated that he believes the evidence will result in his conviction unless Anglica Biblica intervenes on his behalf.

Anglica Biblica is a religious organization to which the defendant claims he belongs. He claims that as a result of that association he has a number of powers and characteristics. For example, he believes that he was created, not born. He believes that he has no natural parents and that the parents who raised him actually adopted him from a church in London. He believes that he can turn himself into seven identical persons, that he has the power to change form and the ability to see the words that people speak. Although the defendant is clearly of African descent, he believes that he is in fact Caucasian.

The defendant believes that because of some misconduct on his part, he has lost these powers and his original skin color. He views his trial on the instant charges as some sort of ordeal to atone for his mistake. He believes that Anglica Biblica has intervened or will intervene in these proceedings by telling a judicial body (the "Supreme Judges" or "the district court") that he is to be acquitted and released. That body has, in turn, instructed or will instruct the trial judge to release him. According to the defendant, if the judge fails to abide by this instruction, the judge will be punished with incarceration for up to life in prison. Upon the defendant's release from confinement, he believes that his powers and his white skin will be returned to him.

The defendant's appears to genuinely believe that Anglica Biblica will intervene in these proceedings. However, when prompted, he will acknowledge the possibility that it may not occur. If it fails to occur, the defendant has stated that he will feel "ripped off." Even though the defendant believes that the trial judge is part of the conspiracy against him, he believes he should waive his right to a jury trial because a jury would interfere with Anglica Biblica's intervention. He also stated that a jury would not be fair to him. His reasons for this concern are because of biased pretrial publicity, racial prejudice and prejudice because his name is French. In addition, it appears that the defendant believes the role of his attorneys in the trial is to lay the ground work for Anglica Biblica's intervention by waiving jury and declaring his innocence to the court. Thereupon, he will be released.

The defendant believes that there are two types of not guilty by reason of insanity pleas, insanity 1 and insanity 2. According to the defendant, by pleading insanity 1, a defendant asserts that he did not commit the crime because he is so mentally ill that he is unable to do so, while a plea of insanity 2 means that the defendant admits that he committed the offense but is not guilty by reason of mental illness. While denying that he is mentally ill, the defendant claims that he has entered an "insanity 1" plea in this case. When his attorneys or any of the doctors who have examined him explain that the plea he calls insanity 1 does not exist in this state, the defendant refuses to accept this reality.

The defendant has declined to proceed with a not guilty by reason of insanity plea (or what he calls "insanity 2") in part because he does not perceive himself to be mentally ill, but also because he realizes that, if successful, it would result in confinement in WSH.

Although he acknowledges some benefits of the hospital over prison (e.g. the food is better), his primary concern is that at the hospital he has to talk to people, while in jail he has been in solitary confinement, which he prefers. The defendant is also opposed to entering a plea of not guilty by reason of insanity, in which he acknowledges having committed the crimes alleged, because it would preclude the intervention of Anglica Biblica.

With the exception of some details, the defendant's delusional system is for the most part undisputed. Each of the experts has acknowledged that this case is one of the most difficult that they have had to address. They also agree that the medication that has been prescribed to treat the defendant's mental illness, Risperidone Consta, has been effective in alleviating some of the defendant's symptoms. Even though many of the defendant's delusions remain unchanged, no one disputes that he is better now than when he commenced his second 90 day commitment, approximately one year ago. In addition, according to Dr. Waiblinger, the defendant will not have received the full benefit of his drug regimen until sometime in early 2006. Thus, it is expected that his condition will continue to improve.

The ability to assist counsel has been defined as whether a person "has sufficient present ability to consult with his lawyers with a reasonable degree of rational understanding." *State v. Jones*, 99 Wn.2d 735,746 (1983) (quoting *Dusky v. United States*, 362 U.S. 402 (1960)). Thus, the issue before the court is to what extent, if any, the defendant's delusional state interferes with his ability to rationally consult with his attorneys in the presentation of his defense. In support of their conclusion that the defendant meets this standard, Drs. Marquez and Waiblinger, rely, in part, upon the

defendant's acknowledgement of the possibility that Anglica Biblica may not intervene in his trial. In their view, this is an indication that the defendant's Anglica Biblica delusion is less firmly held than before. Accordingly, the delusion is now more akin to more common religious belief in a higher power upon which people often rely in times of crisis. In addition, they observe that once the defendant acknowledges that Anglica Biblica may not intervene, he also acknowledges that the evidence against him, if accepted, would likely result in his conviction of the alleged crimes. Thus, they opine that because the defendant is aware of the evidence and its likely impact, he is capable of rationally discussing the evidence with his attorneys if he chooses to do so.

Drs. Marquez and Waiblinger also note that the defendant's perception of the conspiracy against him has changed. It now incorporates the idea that the defendant's inability to get a fair trial is based on issues of media bias, pretrial publicity and racism. Because these are reality based concerns, it indicates a softening of the defendant's conspiracy delusions. However, both Dr. Marquez and Dr. Watson note that the defendant still believes that he is being prosecuted because his name is French. The doctors also view the defendant as being less concerned about his attorneys being part of the conspiracy. They testified that the defendant stated that the attorneys had been straight with him and appeared to be interested in his defense. He also said that he would work with his attorneys.

The doctors also considered the defendant's general improvement in hygiene and cognitive function. They observed that although he still tended to isolate himself the reason given for this behavior was no longer due to paranoia, i.e. that if he left the room he would be attacked or lack of impulse control, i.e. that if he left the room he would

attack someone.¹ They further found that when given hypothetical criminal cases, the defendant was able to identify appropriate defenses, which in their view warranted an inference that he was also capable of doing so in his own case.

The degree to which a defendant must be able to assist counsel in order to be found competent is not high. *State v. Harris*, 114 Wn.2d 419 (1990). Competency does not depend upon the level of one's intellectual ability or cognitive functioning. *State v. Ortiz*, 104 Wn.2d 479 (1985). Whether a defendant is competent depends upon the ability to rationaly assist rather than upon the ability to intelligently assist. *State v. Wicklund*, 96 Wn.2d 798, 800 (1982). That is why in this case the strength of the defendant's delusions is the central issue. If the defendant's consultations with his attorneys are guided his delusions, as opposed to a "reasonable degree of rational understanding," then he lacks the ability to rationally assist his lawyers. *Jones, supra*. The court is not persuaded that the defendant's delusions have abated to the point that he can be said to have obtained this ability.

While the defendant may briefly entertain the idea that Anglica Biblica may not intervene in his case, there seems to be no dispute that this continues to be a strongly held belief. Moreover, even when he does acknowledge that Anglica Biblica may not intervene, it is not because the organization doesn't exist or because it lacks the power to intervene, it is because the organization has turned its back on him or because the trial judge has failed to follow orders. Indeed, the defendant's beliefs remain so strong that his decisions to give up the constitutional right to a jury trial and the right to assert an insanity plea are guided primarily by this delusion. The defendant's belief in Anglica

¹ In their testimony, however, both Drs. Marquez and Waiblinger, acknowledged that the reason the defendant isolated himself was because he believed he was at a disadvantage in communicating with others since he had lost the power to see the words people speak.

Biblica is not even remotely comparable to commonly held religious beliefs or the faith in a higher power upon which many people rely in times of crisis.

The state's experts also testified that the defendant was capable of acknowledging the evidence against him, but they conceded that, at best, in his discussion of the evidence the defendant either denied its existence or explained it as part of the conspiracy against him.² Dr. Marquez further testified that if defendant chose to, he could ignore or set aside his delusions and talk rationally about the evidence with his attorneys. He stated, however, that the defendant doesn't do this because it doesn't get him where he wants to go, so he focuses instead on his delusions. This testimony is the only evidence suggesting that the defendant's inability to rationally discuss the evidence is volitional. The testimony of all of the other experts, including Dr. Waiblinger, is that a person suffering from paranoid schizophrenia, could not voluntarily set aside or ignore his or her delusions.

Moreover, while it may be true that, in and of itself, the defendant's denial of the evidence is unremarkable. In this case, it is part and parcel of a pattern of denial that includes not just the evidence in this case, but a denial of his parents, his birth, his skin color and his racial background. Accordingly, the defendant's denial of the evidence is not just a refusal to face unpleasant facts, but a not uncommon symptom of schizophrenia. Based on all of these factors, the court is not persuaded that the defendant

² The state correctly points out that Drs. Marquez and Waiblinger were inhibited in their ability to probe in this area by the defendant's assertion of privilege. In addition, the court also notes, as pointed out by the state, that the defendant's experts did have the opportunity to pursue this particular line of inquiry and, inexplicably, failed to do so. But most significantly, the state's experts seemed to conclude that the defendant could rationally assist his attorneys, in part, because he understood that the state's evidence, if accepted, would likely result in his conviction and a life sentence. In the court's view these factors are more relevant to the first prong of the test for competency, i.e. whether he understand the nature of the proceedings against him and the nature of his peril. No one disputes that the defendant meets this prong of the test for competency.

can, at this point, discuss the evidence in a rational way with counsel separate and apart from the delusions caused by his mental illness.

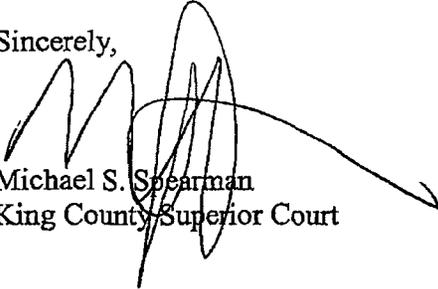
While Drs. Marquez and Waiblinger testified that the defendant expressed a willingness to work with his attorneys, it appears that they simply accepted this comment at face value. They did not explore more specifically what the defendant meant by this statement. They did not ask, for example, whether he had confidence in his attorneys' abilities, whether he would accept his attorneys' advice or whether he still believed that his attorneys were part of the conspiracy. Moreover, based on the evidence presented at the hearing it appears that the defendant's discussions with his attorneys are still dominated by his adherence to the delusions regarding Anglica Biblica's intervention. Indeed, his statement appears to mean only that he would cooperate with his attorneys in the limited role he expects them to play at trial, i.e. waive jury and pronounce his innocence.

For the reasons set forth herein, the court concludes that based upon the delusions caused by his mental illness, the defendant cannot at this time rationally assist his attorneys in the presentation of his defense. Accordingly, he is not currently competent to go forward in this proceeding. The court notes, however, that the defendant's competency has been restored on two previous occasions. In addition, the testimony of all of the experts was that the defendant's prescribed medication, Risperidone Consta, is having the desired effect on his symptoms. Moreover, since the defendant has not been at appropriate therapeutic levels of the medication long enough to have received its full benefit, which will not occur until early in 2006, it is expected that his condition will

continue to improve. Thus, while the defendant is not now competent, there is reason to believe that his competency will again be restored.

At this juncture, however, pursuant to RCW 10.77.090(4) the charges shall be dismissed without prejudice upon presentation of written orders consistent with this letter opinion. The court also concludes that there is sufficient evidence that the defendant remains a danger to others to warrant initiation of civil commitment proceedings pursuant to RCW 71.05. The defendant shall remain in the custody of the King County Department of Adult and Juvenile Detention pending entry of written orders to this effect. Counsel are directed to consult with each other and then contact the court's bailiff to schedule a prompt hearing at which time orders consistent with this opinion may be entered.

Sincerely,



Michael S. Spearman
King County Superior Court

Cc: Court file

APPENDIX E

No. 64536-6-I

1 entering a plea of guilty should he decide to enter that plea. However, I cannot represent to the court
 2 that I believe my client is making a knowing, intelligent and voluntary decision.

3 I do not believe that Mr. Carneh's condition has changed in any significant degree since the
 4 competency hearing. However, he remains delusional and I believe, as I did at the time of the
 5 competency hearing, that some of his delusions influence his decisions in the case. While he
 6 presents some seemingly rational reasons for wanting to plead guilty, e.g., he wants to admit he
 7 committed the offense, he also indicates that he wants to plead guilty because he wants to avoid the
 8 incrimination of being in court during a trial. The incrimination is not the common usage of the
 9 words but seems to refer to simply other people seeing him in court. He also does not want to
 10 blame the Peagrams for committing this offense.

11 He is also motivated to plead guilty because he does not want to go back to Western State
 12 Hospital. He said when a person is there they need to be socialized and he cannot do that because
 13 he does not have vision subtitles. He also said that he did not get a fair shake during the affliction¹.
 14 The themes surrounding vision subtitles and loss of his memory, etc, are still significant to him and
 15 still influence his decisions. The loss of vision subtitles and the resulting inability to communicate
 16 and therefore work are what drove him to commit this offense.

17 His desire to plead guilty is also driven by his desire to go to prison. He believes he will be
 18 able to just lie in bed and not be bothered by anyone. It appears this is information he has received
 19 from religion via telepathy². He has also been told by religion, again via telepathy, that he will be
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21
 22
 23
 24
 25 ¹ The affliction is a time period during which Mr. Carneh lost to ability of vision subtitles, his memory was executed and
 his skin color was changed. All of these issues were addressed at length in the competency hearing.

26 ² As noted in the hearing, the telepathy is an auditory hallucination and is the voices he hears from three sources:
 Christina Scrodin, religion and Nieveous. It is not extra sensory perception as Dr. Hendrickson implied during his
 27 testimony when he referenced a study at Duke University.

28 AFFIDAVIT OF COUNSEL, LOUIS
 FRANTZ, REGARDING
 COMPETENCE OF DEFENDANT

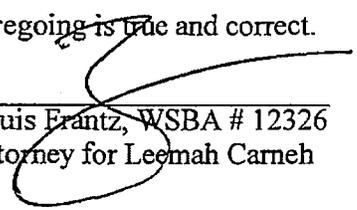
**Associated Counsel for the
 Accused**

420 West Harrison Street
 Kent, Washington 98032

1 released from prison in March, 2010. Mr. Carneh said he was told there would be a tranquility,
 2 during which unidentified individuals, presumably those from the religion Anglica Biblica, will
 3 come in and tranquilize Mr. Carneh and place a remote control in him. Once that occurs he will
 4 regain the vision subtitles skills and his skin will return to its natural white color. Most importantly,
 5 after the tranquility, he will be released from prison. This delusion in part drives Mr. Carneh to
 6 plead guilty because he is unconcerned with the penalty that will be imposed for this offense. He
 7 does not believe he will spend the rest of his life in prison. However, somewhat contradictorily, he
 8 also said he would prefer life in prison to being on the streets, because he cannot communicate or
 9 even take care of himself, without vision subtitles.

12 In addition, Mr. Carneh remains delusional to such a significant degree that his thinking is
 13 clearly impaired. The delusions which were detailed by the defense witnesses, and largely ignored
 14 by the state's witnesses, are still prominent. He still believes he was created rather than born. He
 15 still believes he is from the UN and from Neutral. He believes that blacks in the US are running out
 16 of time and when the color movement occurs they may all be required to leave the US and return to
 17 Africa. He is still concerned about immigration. He also still is very focused on the "taking the
 18 demon" and the effects of doing so.

21 I declare under penalty of perjury under the laws of the State of Washington that the
 22 foregoing is true and correct.

23 
 24 Louis Frantz, WSBA # 12326
 25 Attorney for Leemah Carneh

28 AFFIDAVIT OF COUNSEL, LOUIS
 FRANTZ, REGARDING
 COMPETENCE OF DEFENDANT

**Associated Counsel for the
 Accused**
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KING COUNTY, WASHINGTON

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SUPERIOR COURT CLERK
GARY POVICK
DEPUTY

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

STATE OF WASHINGTON,)	
Plaintiff,	)	NO. 07-1-11071-9 SEA
)	
vs.	)	DECLARATION OF EDWIN ARALICA
	)	REGARDING COMPETENCE OF
LEEMAH CARNEH,	)	THE DEFENDANT
Defendant.)	

I, Edwin Aralica, declare as follows:

1. I am a licensed attorney in the state of Washington and a staff attorney at Associated Counsel for the Accused (ACA). I am over the age of 18 and I am competent to testify to the matters set forth herein.
2. I am one of the attorneys for Leemah Carneh. He is charged with four counts of aggravated murder. Judge Palmer Robinson King County Superior Court found him competent to stand trial in July 2009. I disagree with the court's ruling on competence and continue to believe that Mr. Carneh is not competent.
3. Mr. Carneh has expressed an interest to me and co-counsels Carl Luer and Lou Frantz that he wants to plead guilty. It is his right to enter an appropriate plea. It is his decision. However, I also cannot represent to the court (at the time of preparing this declaration) that I believe Mr. Carneh is making a knowing, intelligent, and voluntary decision to plead guilty.

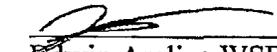
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- 4. Mr. Carneh has stated what appears to be on the surface valid and rational reasons why he wants to plead guilty. But, Mr. Carneh remains delusional. His delusions and mental illness continue to affect the decisions he makes in his case.
- 5. His reasons to plead guilty are based on delusions. He continues to say he lacks vision subtitle skills and that if he goes back to Western State Hospital he will not be able to socialize. Hence, he does not want to enter a plea of insanity.
- 6. He does not want to go to trial. He does not want to risk even winning at trial. At first, this seems reasonable. But, he wants to go to prison and lay in bed because of his lack of vision subtitle. He wants to be isolated 23 hours a day. He cannot socialize, he cannot remember, and he cannot think of what to say because he has no vision subtitle. If he wins at trial, he will not be able survive, make a living, or live in a house because he has no vision subtitle.
- 7. He believes that it does not matter what plea he enters because he will be released from prison. He is receiving telepathy still from religion, Anglica Biblica, and Christina Skrodin. Religion is telling him that he will be released from prison. He refers to the "tranquility." Someone will tranquilize him, wipe his skin color, bleach him, put a remote in him, straighten his hair, and his hair will be white. He will be released from prison in March 2010.
- 8. His delusions and impaired thinking continue to affect him. He is overly concerned about his immigration status, his mother is not his mother, and he will deported. He was not born in Liberia. He was not born in "either side." He was created. He makes references to Europe, Ukrainians, and Yugoslavians. He continues to discuss "taking or not taking the demon." He is seemingly obsessed with these delusions even though Mr. Luer, Mr. Frantz, and I continue to direct him to the case. He always returns to his delusions.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

9 November 2009, Kent, WA
date and place


Edwin Aralica WSBA 35160

1 Carneh on three occasions, twice at the King County Jail and once at Western State Hospital
2 (WSH). On each of those occasions, he informed us that he wanted to plead guilty to all four
3 charged counts. Given the court's ruling on competency, and my obligations as defense counsel, I
4 am required to assist Mr. Carneh in entering a plea of guilty should he decide to enter that plea.
5 However, I cannot represent to the court that I believe Mr. Carneh is making a knowing, intelligent
6 and voluntary decision.
7

8 4. I do not believe that Mr. Carneh's condition has changed to any significant degree since
9 the court found him competent. Mr. Carneh continues to suffer from the psychotic symptoms of his
10 schizophrenia. In particular, he continues to hear voices and have delusional thoughts. Mr. Carneh
11 characterizes the voices he hears as "telepathy." He has identified hearing three distinct voices: 1.
12 Christina Scrodin, a former girlfriend, 2. The voice of "religion," and 3. Naiivious, the Liar. It is
13 clear that these voices are advising Mr. Carneh on how to proceed with his case and that he places
14 substantial reliance upon the advice provided by these voices.
15

16 5. Mr. Carneh articulates some seemingly rational reasons for wanting to plead guilty. For
17 example, he indicates that he wants to admit he committed the crimes and that he wants to plead
18 guilty to avoid the incrimination of being in court during a trial. Mr. Carneh's use of the word
19 incrimination is different from common usage, however, in that he refers to other people seeing him
20 in court as "incrimination." He also has said he does not want to blame the Pegrams for committing
21 these murders.
22

23 6. Mr. Carneh is also motivated to plead guilty because he does not want to go back to WSH.
24 Mr. Carneh maintains that at WSH people need to "be socialized" and he cannot do that because he
25 lacks the "vision subtitle skill." According to Mr. Carneh, "vision subtitle" is the ability to see
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28 AFFIDAVIT OF COUNSEL, CARL
LUER, REGARDING
COMPETENCE OF DEFENDANT

**Associated Counsel for the
Accused**

420 West Harrison Street
Kent, Washington 98032

1 words as they are spoken and is a skill needed for a person to socialize with others. Mr. Carneh
2 attributes his inability to socialize with others to his lack of the vision subtitle skill. This particular
3 delusion has been prevalent in Mr. Carneh's thinking for a number of years, dating back to at least
4 2003. It is also part of a larger delusional thought process. According to Mr. Carneh, his vision
5 subtitle skill, his natural skin color (which he believes is white) and his straight hair were taken
6 away by religion when he refused to take the demon. Mr. Carneh refers to that process as the
7 "Affliction" or the "Infliction." Mr. Carneh also cites his lack of vision subtitle as the reason he
8 committed the charged crimes. According to Mr. Carneh the fact that he did not have vision subtitle
9 prevented him from functioning in society, maintaining a job or participating in school and, as a
10 result, he was driven to commit these offenses. These delusions remain significant to Mr. Carneh
11 and continue to influence his decisions.

12
13
14 7. Mr. Carneh's decision to plead guilty is also driven by a desire to go to prison. He
15 believes that once there, he will be left in isolation and will not have to socialize with others. It is
16 not clear to me that Mr. Carneh's expectations in this regard are accurate, and Mr. Frantz, Mr.
17 Aralica and I have never told him that. It appears that he is receiving this information regarding
18 prison conditions from the telepathy. The voices in his telepathy have also told Mr. Carneh that
19 there will be a "Tranquility" in March, 2010. Here, Mr. Carneh does not refer to the common
20 meaning of "tranquility." Instead, he believes that when the "Tranquility" occurs he will be
21 tranquilized and a remote control will be implanted in his body. This will result in him regaining
22 the vision subtitle skill, his natural white color and straight hair, among other lost attributes. At that
23 time he will be able to leave prison. It appears to me that this delusion also influences Mr. Carneh's
24 desire to plead guilty since the "Tranquility" will result in his release in March, 2010. This is not
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28 AFFIDAVIT OF COUNSEL, CARL
LUER, REGARDING
COMPETENCE OF DEFENDANT

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1 entirely clear, however, since Mr. Carneh also articulates an understanding that his plea will result
2 in a life sentence and that he will therefore die in prison.

3
4 8. Mr. Carneh's psychosis clearly impairs his thinking. Numerous delusions, which were
5 detailed by the defense experts and largely ignored by the state's experts, are still prominent. He
6 still believes he was created in a place called "Neutral" or the "United Nations." He believes that
7 blacks in the U.S. are running out of time and when the color movement occurs they may all be
8 required to leave the US and return to Africa. He is still focused on immigration-related issues far
9 more than his criminal charges. He also still is very focused on the fact that he refused to "take the
10 demon" and the effects of not doing so.
11

12 9. The delusions, auditory hallucinations and other psychotic symptoms described here were,
13 for the most part, all present at the time of the most recent contested competency hearing. While
14 Mr. Carneh has endorsed some new delusional material, it appears to be a variation on past themes
15 and appears to impair his reasoning and influence his decision making to approximately the same
16 degree as it did when the court found him competent. It does not appear to me that Mr. Carneh's
17 mental condition as it relates to competence to stand trial or plead guilty has changed to an
18 appreciable degree since that hearing. In my opinion he was incompetent then and he remains so
19 today.
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21

22 I declare under penalty of perjury under the laws of the State of Washington that the
23 foregoing is true and correct.

24 

25
26 Carl Luer, WSBA # 16365
27 Attorney for Leemah Carneh

28 AFFIDAVIT OF COUNSEL, CARL
LUER, REGARDING
COMPETENCE OF DEFENDANT

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE**

STATE OF WASHINGTON)	
)	
Respondent,)	
)	
v.	)	COA NO. 64536-6-1
)	
LEEMAH CARNEH,)	
)	
Appellant.)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 18TH DAY OF JANUARY 2011, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] LEEMAH CARNEH
DOC NO. 336057
WASHINGTON STATE PENITENTIARY
1313 N. 13TH AVENUE
WALLA WALLA, WA 99362

SIGNED IN SEATTLE WASHINGTON, THIS 18TH DAY OF JANUARY 2011.

x *Patrick Mayovsky*

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