

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

L. Casey Manning, Circuit Court Judge

RECEIVED

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S.C. Supreme Court

DEMARCO BELL,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-213570

SUPPLEMENTAL APPENDIX

BENJAMIN JOHN TRIPP
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South Carolina Commission on Indigent
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S.C. DEPARTMENT OF MENTAL HEALTH FORENSIC EVALUATION1



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Mental Health

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January 20, 2011

Richard Brown
Attorney at Law
PO Box 100261
Columbia, SC 29202

Re: The State of South Carolina vs. Bell, Demarco
DMH Case #: 216-2945
Richland County, Court of General Sessions

Dear Attorney Brown:

In accordance with the court order issued by the Honorable Alison R. Lee, evaluations of criminal responsibility and capacity to conform were conducted by the South Carolina Department of Mental Health (SCDMH) pursuant to S.C. Code Ann. §17-24-10 (1976).

If the court order specifies either an "evaluation requested by either party after defendant's assertion of insanity defense" or an "evaluation requested by consent of both parties at any time," both the solicitor and the defense attorney will find a copy of the SCDMH report attached to this letter. However, if the court order specifies an "ex parte evaluation requested by defendant prior to assertion of insanity defense," only the defense attorney will find a copy of the SCDMH report attached to this letter.

This 7 page document is certified to be the original court-ordered evaluation report issued pursuant to S.C. Code Ann. § 44-23-410 (1976).

1/20/11
Date

Jeffrey E. Musick, Ph.D., ABPP
Jeffrey Musick, Ph.D., ABPP
Chief Psychologist
Forensic Evaluation Services
Department of Mental Health

cc: Brian Petranó, Assistant Attorney General, PO Box 11549,
Columbia, SC 29211

JM/tl

JSM

**CRIMINAL RESPONSIBILITY AND CAPACITY TO CONFORM EVALUATION
EVALUATION SERVICE OF FORENSIC DIVISION**

DATE OF EVALUATION: January 14, 2011

PRESIDING: Richard L. Frierson, M.D., Professor of Clinical Psychiatry
University of South Carolina, School of Medicine

OTHERS PRESENT: Cassandra Sims, LMSW

Michael Burke, Third Year Medical Student,
University of South Carolina School of Medicine

DIAGNOSES: **AXIS I:** Alcohol Dependence, in a controlled environment.
Cannabis Dependence, in a controlled environment.
Hallucinogen Abuse
Intermittent Explosive Disorder, by history
AXIS II: Antisocial Personality Disorder
AXIS III: Hypertension

OPINION REGARDING CRIMINAL RESPONSIBILITY: Responsible.

OPINION REGARDING CAPACITY TO CONFORM: Capable of conforming.

DISPOSITION: Mr. Bell has been returned to Lee Correctional Institute where he is currently serving a thirty year sentence.

CLINICAL INFORMATION: Demarco Bell is a 21-year-old African American male who was seen at the Forensic Evaluation Center pursuant to a court order from the Richland County Court of Common Pleas. This court order requests an evaluation of his criminal responsibility and capacity to conform his conduct to the requirements of the law on or about October to December 2006 pursuant to South Carolina Code Ann. § 17-24-10 (1976). He is currently charged with Arson Third Degree, Armed Robbery, Attempted Armed Robbery, Burglary First Degree (two counts), Carjacking, Kidnapping, Grand Larceny Greater Than a Thousand Dollars (two counts), and Grand Larceny Greater Than Five Thousand Dollars. He was convicted of these charges on April 28, 2008. He has currently filed for post conviction release and this order was received from the Court of Common Pleas which is handling his post conviction release (PCR) appeal.

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Prior to participating in the evaluation, Mr. Bell was warned of limitations of confidentiality. He was told that the examiners were employees of the Department of Mental Health and were not paid by his attorney or the solicitor/attorney general. He was informed that a report will be sent to his attorney. He was also informed that the examiners could be called to testify at a hearing. He understood this information and voluntarily agreed to participate in the evaluation.

SOURCES OF INFORMATION:

1. Court order requesting the evaluation.
2. Arrest Warrant K-192797 for a Felony Carjacking.
3. Arrest Warrant K-192798 for Kidnapping.
4. Arrest Warrant K-12799 for Felony Carjacking.
5. Arrest Warrant K-192800 for Kidnapping.
6. Incident Report related to a Carjacking and Kidnapping and Armed Robbery on Greenlawn Drive dated December 7, 2006.
7. Statement of Kerri Cooper.
8. Statement of Demarco Bell.
9. Arrest Warrant K-195188 for Kidnapping.
10. Arrest Warrant K-195193 for Attempted Armed Robbery.
11. Arrest Warrant K-195315 for Attempted Armed Robbery.
12. Arrest Warrant K-195316 for Kidnapping.
13. Incident Report related to Two Counts of Kidnapping dated December 7, 2006.
14. Statement of Patricia Leon.
15. Statement of Brittany Ray.
16. Statement of Reagan Bryant.
17. Arrest Warrant K-192802 for Attempted Kidnapping.
18. Arrest Warrant K-192803 for Felony Carjacking.
19. Incident Report related to Attempted Kidnapping and Carjacking dated December 8, 2006.
20. Statement of Meredith Broome.
21. Incident Report related to Carjacking and Attempted Kidnapping dated December 8, 2006.
22. Arrest Warrant K-957600 for Grand Larceny.
23. Arrest Warrant K-975608 for Burglary.
24. Case Summary related to Burglary.
25. Additional statement given by the defendant admitting to several burglaries.
26. Arrest Warrant I-957602 related to Grand Larceny Greater Than a Thousand Dollars.
27. Arrest Warrant I-957604 related to Burglary First Degree.
28. Incident Report related to Burglary dated December 11, 2006.
29. Arrest Warrant I-957601 related to Grand Larceny Greater Than a Thousand Dollars.
30. Arrest Warrant I-957605 related to Burglary First Degree.
31. Incident Report related to Burglary at 1631 Old Eastover Road dated December 2, 2006.
32. National Crime Information Center record for the defendant.
33. Medical records from Richland School District 1 including a psychoeducational evaluation.

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34. A Competency to Stand Trial Evaluation dated August 19, 2010 by the Department of Disabilities and Special Needs.
35. Medical records from Columbia Area Mental Health Center dated April 5, 2001 through September 9, 2004.
36. A social history obtained from the defendant's mother.
37. Medical records from the South Carolina Department of Corrections.
38. A one hour and forty-five minute clinical forensic interview with the defendant on today's date.

PSYCHIATRIC HISTORY: Mr. Bell has no history of prior psychiatric hospitalizations. He was treated as a child at the Columbia Area Mental Health Center from 2001 through 2004 for Attention-Deficit Hyperactivity Disorder. His compliance with follow-up treatment there was poor. He was referred there due to behavioral difficulties at school. He has no history of psychiatric treatment that predates the date of his alleged offenses.

Since being incarcerated, he has been seen by Mental Health Services in the Department of Corrections. He has given conflicting information to the treatment providers in the Department of Corrections. At times he has complained of hearing voices and seeing things but his complaints are not consistent. Most recently, he has carried a diagnosis there of Intermittent Explosive Disorder but it is unclear why he was assigned this diagnosis. Intermittent Explosive Disorder is a disorder characterized by discreet episodes of failure to resist aggressive impulses resulting in serious assaultive acts or destruction of property. The degree of aggressiveness is out of proportion to any precipitating stressor and the aggressive episodes are not better accounted for by another mental disorder such as Antisocial Personality Disorder, Borderline Personality Disorder, a psychotic disorder, mania, or other disorders. He has more recently been prescribed Divalproex Sodium (Depakote ®) which is an anticonvulsant sometime used to treat aggression. However, it does not appear that he has been compliant with this medication as evidenced by a blood level measurement done in November that showed the blood level was less than 10 mcg/ml when a therapeutic blood level should be 60 to 120 mcg/ml.

SUBSTANCE USE HISTORY: Mr. Bell says that he would drink alcohol every day prior to his arrest and states he would consume up to twelve beers a day. He denied arrests or legal difficulties related to his alcohol use. However, he has experienced alcohol-induced blackouts, and he reports both tolerance to the effects of alcohol and some mild withdrawal symptoms if he did not drink. Therefore, we are assigning the diagnosis of Alcohol Dependence, In a Controlled Environment. He reports that he has purchased alcohol at Lee Correctional Institution and states that he can purchase a gallon of inmate-made alcohol for \$25.

Prior to his arrest, he reports that he smoked up to ten blunts of cannabis on a daily basis. This would indicate significant tolerance to the effects of cannabis and he would meet diagnostic criteria for Cannabis Dependence, In a Controlled Environment. He reports that he has also obtained some cannabis in the Lee Correctional Institution.

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He also reports that he has tried cocaine and t would use ecstasy on the weekends when he would go to clubs. He states that his use of this hallucinogen has caused him trouble and led to frequent fighting. He denied other illicit drug use.

MEDICAL HISTORY: Mr. Bell states that he has hypertension for which he is prescribed the diuretic, hydrochlorothiazide. He denies other medical problems. He has a tattoo on his right hand that reads *real* and a tattoo on his left hand that reads *status*. When asked about these tattoos, he states, "I don't play and I'm not a joking guy."

FAMILY HISTORY: His mother, Doris Bell suffers from hypertension and diabetes. His father reportedly was a drug abuser and was not involved with the family while he was growing up. His parents never married. According to his mother, he viewed his maternal uncle as a father figure. This maternal uncle died six years ago. He is the youngest of three children born to his mother. He has an older sister, Tamika and an older brother, Rico. His brother was also diagnosed in the past with Attention-Deficit Hyperactivity Disorder.

SOCIAL HISTORY: His mother stated that he got along well with other children until high school when he was picked on by other kids. There was no history of abuse or neglect. He was reared by a single mother who worked as a nurse. He attended school but was placed in special education classes for a learning disorder and his disruptive behavior. A psychoeducational report from the school district indicates a measured IQ that is in the normal range. There is no history of mental retardation.

He was expelled several times for fighting and walking out of class. He states that he ran away from home as early as age 12. He admits to truancy, fire setting, and cruelty to animals. He reports that he would kick and shoot dogs and cats. He reports that he was involved with DJJ at one time. He states he has one prior charge as an adult.

He has not held competitive employment. He worked at Burger King for one month but he states he quit because "they were trying to play me." He states that he was asked to wipe down the walls. He reports, "I signed up to flip burgers not to wipe down walls."

He has never been married. He reports that he has had a girlfriend and has been sexually active. He states he was treated for one STD. He reports that he has no children although he has told a counselor in the Department of Corrections that he does have a child. When asked about hobbies, he stated he likes to "run the street, drink, and party." He reports that he is in the general population at Lee Correctional Institution. He denies involvement in gang activity.

MENTAL STATUS EXAMINATION: On today's date, he was alert and oriented to person, place, day, and date. He was able to register three objects but could not recall any of them at five minutes. This appeared to be the result of poor effort rather than actual memory disturbance. He could not name the current President and mistakenly named the current President as Bush.

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However, he was able to name several rap artists. His ability to concentrate was surprisingly good as evidenced by his ability to spell his first name backwards without error. He was unable to perform a calculation. He was able to count some change. His ability to think abstractly was very limited as evidenced by his interpretation of proverbs and similarities. When asked to describe his mood, he reports "depressed and grumpy and don't give a shit." He had a sullen affect throughout the interview. He did make eye contact. However, he was minimally cooperative with the interview. He denied current suicidal or homicidal ideations. He reports auditory and visual hallucinations but his report of these hallucinations is not typical for mental illness and fits a pattern commonly seen in persons who are feigning mental illness. For example, he reports he sees a little "elf" in the corner of his room. He hears voices that are "bickering" but he cannot make out what they say. He could not describe in detail the elf that he sees. Fantastical hallucinations such as persons of abnormal size are most consistent with feigning of mental illness. He reports difficulty sleeping in prison but reports a good appetite.

DIAGNOSTIC FORMULATION: The diagnoses of Alcohol Dependence, Cannabis Dependence, and Hallucinogen Abuse have been outlined above.

We are noting the diagnosis Intermittent Explosive Disorder, by history, given that this has been assigned in the Department of Corrections. However, it would appear that his aggressive outbursts might be better explained by an underlying Antisocial Personality Disorder.

Mr. Bell had clear early indications of a Conduct Disorder prior to age 15 as evidenced by his juvenile history of getting into trouble at school and in the community. His mother describes him as very strong willed, hyperactive, and destructive from an early age. He has continued to engage in activities which are grounds for arrest and has not maintained normal adult role responsibilities such as employment. Therefore, it is our opinion that he meets diagnostic criteria for Antisocial Personality Disorder.

CONCLUSION REGARDING CRIMINAL RESPONSIBILITY: Mr. Bell denies all of the allegations against him. He stated he pled guilty with an expectation of getting fifteen years but instead got thirty. He states he never confessed but "just agreed with what they said." He firmly denies the Kidnapping and Carjacking charges.

He does not categorically deny being involved in the burglaries. However, all of the burglaries were done with a codefendant. It is unlikely that two individuals would engage in criminal activities that are motivated by a delusion or based in mental illness. Furthermore, the items that were taken from the burglaries would indicate that items were taken for their monetary value. This would also be highly suggestive of a non-psychotic motive. The burglaries were done on homes where no one was present. The one time that they encountered a third party in the house, they allegedly fled which would indicate an effort to avoid being caught. Furthermore, the alleged carjackings occasionally involved a codefendant as well as a request to go to an ATM machine to withdraw money. This also would indicate a monetary motive rather than a motive based in mental illness.

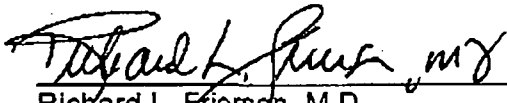
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In any event, it is our opinion that Mr. Demarco Bell was not experiencing a psychotic mental illness at the time of the alleged offenses. He did not report auditory hallucinations or other psychotic symptoms related to the alleged charges against him. It is our opinion that he was not mentally ill to an extent that he would have lacked ability to distinguish legal and moral right from legal and moral wrong or to recognize the particular acts and charges as legally and morally wrong. Therefore, it is our opinion that he would have been criminally responsible pursuant to S. C. Code Ann. §17-24-10.

CONCLUSION REGARDING CAPACITY TO CONFORM: Likewise, we find no evidence of an irresistible impulse, command hallucination, or compulsion related to the charges that he is facing. He reported that when he gets depressed all he wants to do is use drugs to ease his mind. In regard to the burglary, he states, "It's a chance that happened—I don't remember—I did so much stupid shit." We find no evidence that Mr. Bell would have lacked the capacity to conform his conduct to the requirements of law on or about October of 2006 through December 2006.



Richard L. Frierson, M.D.
Professor of Clinical Psychiatry
University of South Carolina, School of Medicine

RLF/lb

D: 01/14/11

RT/EM: 01/18/11

F/EM: 01/19/11 (RLF)

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