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**FILED**

DEC 19 2008

DAVID H. YAMASAKI  
Chief Executive Officer/Clerk  
Superior Court of CA/County of Santa Clara  
BY Cathy Vieira DEPUTY  
CATHY VIEIRA

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA CLARA

PEOPLE OF THE STATE OF CALIFORNIA,  
Plaintiff,  
v.  
DESHAWN LEE CAMPBELL,  
Defendant.

No. : CC126494  
ORDER

This order follows reopened proceedings on Defendant's requested pretrial Mental Retardation hearing pursuant to Penal Code section 1376. There are three aspects to a mental retardation claim under the applicable statute: subaverage intellectual functioning, significant deficits in adaptive behavior, and both must be manifested before age 18. (See *People v. Superior Court (Vidal)* (2007) 40 Cal.4th 999 and *In re Hawthorne* (2005) 35 Cal.4th 40.)

After conclusion of the initial proceedings in this matter, this Court held that Defendant did not satisfy his evidentiary

1 burden on prong two -- significant deficits in adaptive behavior.  
2 In a 15 page order this Court explained the sort of proof that it  
3 believed would have been sufficient in establishing that the  
4 defendant did have significant deficits in adaptive behavior as  
5 required by Penal Code § 1376. This Court's findings were quoted by  
6 the Sixth District as follows:

7 The ABAS-II, or any of the other standardized  
8 instruments, could and should have been given to  
9 another reporter. There exists a teacher version of  
10 the ABAS-II and suitable teacher(s) and/or a mentor  
11 were identified in this case. Also, other tests were  
12 identified ... and there was not evidence that they would  
13 have had the same reporter limitations the ABAS-II did.  
14 The siblings and friends identified by Defendant might  
15 have been given a standardized instrument and although  
16 they would not have been as impartial and unbiased as  
17 the educational professionals, their answers, if  
18 consistent, would have provided what this Court finds  
19 to be necessary convergence on the standardized  
20 instruments.

21 For purposes of this hearing Defendant only needed  
22 to show adaptive deficits in two of ten domains. While  
23 the ABAS-II requirement that the reporter knows the  
24 subject across most domains makes sense considering the  
25 original purpose of the ABAS-II, such is unnecessary  
26 for an Atkins hearing. The ABAS-II domain sections  
27 appear severable and it seems logical to accept  
28 reporters in discrete domains if they have sufficient  
experience with the subject in the particular area. ...  
Keeping in mind that a defendant need only to show  
deficiencies in two domains, a defendant should choose  
to focus on the several domains in which he has the  
strongest proof and present clear and concise evidence  
in those areas instead of the seemingly scattershot  
approach taken in this case.

(*Campbell v. Superior Court* (2008) 159 Cal.App.4th  
635, 643-644.)

24 On March 10th, 2008, the Court of Appeals issued a writ of  
25 mandate directing this Court to reopen the mental retardation  
26 hearing. This order was made based on Defendant's after discovered  
27 evidence that one of the prosecution witnesses, Donald Connors,  
28

1 presented false testimony. Accordingly, this Court reopened the  
2 hearing, struck Mr. Connors' testimony, and heard additional  
3 witnesses and argument from counsel supporting their positions.  
4

5 At the reopened hearing, the defense presented Dr. Stephen  
6 Greenspan. He is an eminent expert and noted scholar in the field  
7 of mental retardation, particularly adaptive behavior. Dr.  
8 Greenspan has published extensively in this field and his work is  
9 nationally renowned. His work was oft quoted approvingly by the  
10 prosecution in the original mental retardation hearing. Dr.  
11 Greenspan has testified as an expert in previous *Atkins* hearings and  
12 has found the mental retardation claim unjustified in approximately  
13 half the cases in which he has examined defendants. He has been  
14 appointed as a neutral expert to assist courts in evaluating mental  
15 retardation claims.  
16

17 Dr. Greenspan adopted a much more comprehensive approach to his  
18 task than his predecessors. He interviewed and administered  
19 adaptive behavior instruments to eight informants.<sup>1</sup> He also  
20 reviewed voluminous records in this case. Dr. Greenspan interviewed  
21 the defendant. He also administered the Street Survival Skills  
22 Questionnaire (SSSQ) and the dot counting test, a malingering test,  
23 to Defendant. Based on all these sources, the overall pattern of  
24 scores, and their substantial congruence, Dr. Greenspan formed an  
25 expert opinion that Defendant has significant deficits in adaptive  
26 behavior.  
27

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28 <sup>1</sup> Vineland Adaptive Behavior Scale, second edition, (Vineland-2).

1 The operational definition in the AAMR's Red Book for adaptive  
2 functioning is significant deficits of approximately two standard  
3 deviations below the mean.<sup>2</sup> This is usually established through a  
4 quantitative index such as the Vineland-2, which was used by Dr.  
5 Greenspan, or the ABAS-2, used by his predecessors. To qualify  
6 under the Vineland-2 an appropriate score on either the composite or  
7 one of three subdomains (conceptual adaptive skills, practical  
8 adaptive skills or social adaptive skills) is necessary. Defendant  
9 scored a 68 on the SSQ which is two standard deviations below the  
10 mean. Dr. Greenspan also administered a portion of an instrument<sup>3</sup>  
11 which he is developing as a direct measure of adaptive functioning  
12 which is not yet normed. The purpose of this instrument is to  
13 assess the ability to make good decisions in complex or simple  
14 social situations. Dr. Greenspan stated this is a central issue in  
15 evaluating adaptive behavior. Defendant got zero credit on the five  
16 items presented to him. In Dr. Greenspan's opinion this result  
17 provided additional support for his determination the defendant had  
18 significant deficits in adaptive behavior.

19  
20 Dr. Greenspan subsequently revisited three teachers who had  
21 evaluated defendant at different ages during the developmental  
22 period by giving them a different version of the Vineland, the  
23 teacher rating form.<sup>4</sup> These results<sup>5</sup> supported Dr. Greenspan's  
24 earlier conclusion that defendant met prong two of *Atkins*.

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<sup>2</sup> A score of below 70.

27 <sup>3</sup> "Recognition of Social Danger."

28 <sup>4</sup> He had previously given them the survey form version of the Vineland-2.

1 The People's evidence consisted of two witnesses, Drs. Karen  
2 Salekin and William Lynch, who had previously testified at the  
3 original hearing. Dr. Salekin's testimony was critical of the use  
4 of adaptive behavior instruments retrospectively. Despite Dr.  
5 Salekin's negative comments about using rating instruments  
6 retrospectively, she conceded that this practice is strongly  
7 recommended by the Red Book in *Atkins* cases and that she still uses  
8 them. She has no problem with the Vineland being included in the  
9 mix of information used by an evaluator but only with the emphasis  
10 given to it. She admits that hers is the minority view within the  
11 profession.

12  
13 The Peoples other witness, Dr. Lynch, administered two adaptive  
14 behavior instruments to two of Defendant's other teachers. This  
15 minimal rebuttal evidence from the prosecution, when balanced  
16 against the weight of Defendant's evidence, seems anomalous,  
17 incongruent, and insufficient to detract from, or call into  
18 question, Defendant's substantial showing during the reopened  
19 hearing. It should not be overlooked that Dr. Greenspan's testimony  
20 does not stand alone but rather is corroborative of, and corroborated  
21 by, the prior defense experts to have testified. In contrast, the  
22 People's experts neither examined Defendant nor administered any  
23 tests to him. Therefore, unlike Dr. Greenspan, they were unable to  
24 offer a diagnosis of Defendant for *Atkins* purposes. Defendant has  
25 fully addressed this Court's concerns as noted and outlined in the  
26 prior court order. The People have not meaningfully countered this

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27 <sup>5</sup> See exhibits AAA-DDD.  
28

1 convincing evidence.

2

3 Based on the totality of the evidence presented at the original  
4 and reopened Atkins hearings, defense counsel has met their burden  
5 of demonstrating, by a preponderance of the evidence, that Defendant  
6 is mentally retarded and this Court hereby so finds.

7

8 Counsel and Defendant are ordered to appear in this Court on  
9 January 12, 2009, to begin the trial in this matter.

10

11 DATED: 12/19/, 2008

  
DIANE NORTHWAY  
JUDGE OF THE SUPERIOR COURT

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**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA CLARA**

(ENDORSED)  
**FILED**  
DEC 19 2008

DAVID H. YAMASAKI  
Chief Executive Officer/Clerk  
Superior Court of CA County of Santa Clara  
BY: CATHY VIEIRA DEPUTY

People of the State of California,  
Plaintiff,

vs.

Deshawn Lee Campbell,  
Defendant.

) CASE NO. CC126494  
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**PROOF OF SERVICE OF  
ORDER OF COURT**

CLERK'S CERTIFICATE OF SERVICE

THE UNDERSIGNED STATES:

"I AM A CITIZEN OF THE UNITED STATES, OVER 18 YEARS OF AGE, EMPLOYED IN SANTA CLARA COUNTY AND NOT A PARTY TO THE WITHIN ACTION; THAT MY BUSINESS ADDRESS IS THE HALL OF JUSTICE, SAN JOSE, CALIFORNIA; THAT I SERVED THE WITHIN NOTICE, (ORDER OF COURT) CAUSING TO BE PLACED A TRUE COPY THEREOF IN ENVELOPES ADDRESSED TO THE PARTIES AND APPLICABLE AGENCIES INDICATED BELOW, WHICH ENVELOPES WERE THEN SEALED AND POSTAGE FULLY PREPAID THEREON AND THEREAFTER DEPOSITED IN THE UNITED STATES MAIL AT SAN JOSE, CALIFORNIA, (OR PERSONALLY DEPOSITED INTO THE APPROPRIATE INTER-DEPARTMENTAL COURIER RECEPTACLE(S) FOR DELIVERY OR PERSONALLY DEPOSITED INTO THE APPROPRIATE INTER-OFFICE PICK-UP BOX WHERE APPLICABLE) ON DATE SHOW BELOW; THAT THERE IS REGULAR DELIVERY SERVICE BY THE UNITED STATES MAIL AT THE PLACE SO ADDRESSED OR THAT THERE IS REGULAR DELIVERY SERVICE BETWEEN THE COURTHOUSE AND BELOW-LISTED AGENCIES, OFFICES OR DEPARTMENTS."

I declare under penalty of perjury that the foregoing is true and correct.

DAVID H. YAMASAKI  
CHIEF EXECUTIVE OFFICER/CLERK

BY: CATHY VIEIRA  
Cathy Vieira, Deputy Courtroom Clerk  
Hall of Justice

EXECUTED ON December 19, 2008  
at San Jose, California

<p><u>Attorney(s) for Defendant</u> Edward M. Sousa 93 Devine Street San Jose, CA 95110</p> <p>Stuart D. Kirchick 1143 Story Road, Ste. 210 San Jose, CA 95122</p> <p align="right">by First Class Mail</p>	<p><u>Plaintiff:</u> Lane Liroff Office of the Deputy District Attorney of the County of Santa Clara</p> <p align="center">Placed in Inter-Officer Pick-Up Box</p>
<p><u>CJIC - Hall of Justice</u> 190 West Hedding Street San Jose, CA 95110</p> <p align="right">Placed in Inter-Office Pick-Up Box</p>	<p><u>Research - Hall of Justice</u> 190 West Hedding Street San Jose, CA 95110</p> <p align="right">Placed in Inter-Office Pick-Up Box</p>