

Exhibit G

REPORTER'S RECORD

VOLUME 1 OF 1 VOLUMES

TRIAL COURT CAUSE NO. 63490-B

THE STATE OF TEXAS

* IN THE DISTRICT COURT

VS.

* JEFFERSON COUNTY, TEXAS

MARVIN LEE WILSON

* 252ND DISTRICT COURT

* * * * *

HEARING TO DETERMINE MENTAL RETARDATION

* * * * *

On the 18th day of May, 2004, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Layne Walker, Judge Presiding, held in Beaumont, Jefferson County, Texas:

Proceedings reported by Machine Shorthand.

A P P E A R A N C E S

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5/18/04

(Open court, defendant present)

THE COURT: This is Cause No. 63490-B. The purpose of this hearing is pursuant to the Court of Appeals mandate stating that we need to have a hearing to determine mental retardation as to Mr. Marvin Wilson.

And Mr. Delee, are you ready to proceed?

MR. DELEE: Yes, I am.

THE COURT: Let the record reflect that the defendant, the applicant, Mr. Wilson, is present, along with his attorney, Mr. Jim Delee. The State of Texas is represented by Mr. Rod Conerly.

You may proceed.

MR. DELEE: I would call August Wehner to the stand, Your Honor.

(Witness sworn)

MR. CONERLY: Your Honor, if I may, The State would invoke the rule at this time.

THE COURT: Is there any other witnesses in the courtroom at this time?

(No response)

AUGUST WEHNER,
having being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DELEE:

Q. Would you state your name, please.

A. August Wehner.

Q. And August, where do you live at the present time?

A. I live in Nederland, Texas.

Q. And are you employed?

A. Yes, sir.

Q. And how are you employed?

A. I work for Dr. Wills. It's a group called Senior Connections.

Q. What is Dr. Wills?

A. He's a psychologist. I work for a company called Senior Connections.

Q. And what do you do for Dr. Wills?

A. I'm his -- I'm a therapist, but I'm also an intern.

Q. You're a therapist and what else?

A. I'm a psychologist intern -- well, practicum student.

Q. By "psychologist intern," what do you mean?

A. I'm currently enrolled in a Ph.D. program and I'm doing my doctoral practicum and in about a year, I'll start my internship.

Q. So, you work for Dr. Wills as an intern in

1 psychology; is that correct?

2 A. Yes.

3 Q. And what does your employment consist of?

4 A. Currently?

5 Q. Yes.

6 A. I provide psychological services to geriatric
7 individuals in a nursing home.

8 Q. Are you attempting to get a license in this state
9 or other states, or do you have other internships at the
10 present time?

11 A. Currently I hold a license as an L.P.C. intern.

12 Q. What is an L.P.C.?

13 A. Licensed professional counselor.

14 Q. Go ahead.

15 A. And once I finish my Ph.D. work, I will seek my
16 license as a psychologist.

17 Q. And are you trained in the taking of various
18 tests, particularly, the Wechsler test?

19 A. Yes.

20 Q. What is that test, and what's involved?

21 A. The Wechsler is the standard of our profession in
22 intelligence testing. It consists of 14 subtests. That's
23 it.

24 Q. What does this test tell you, or what do you
25 discover from the results of this test?

1 A. General intellectual functioning or basic I.Q.

2 Q. "I.Q." stands for what?

3 A. Intelligence quotient.

4 Q. With this test, if given properly, you can get the
5 person's I.Q.; is that correct?

6 A. Yes, sir.

7 Q. And is this the test that's currently utilized by
8 most of these psychologists and psychiatrists?

9 A. Yes, sir, it is the standard of the profession.

10 Q. Are you trained in the taking of these tests and
11 presenting these tests and analyzing the results?

12 A. Yes, sir.

13 Q. How many tests have you done up to now?

14 A. About -- between 30 and 40.

15 Q. Are you familiar with an individual by the name of
16 Marvin Lee Wilson?

17 A. Yes, sir.

18 Q. Do you see him in the courtroom?

19 A. Yes, sir.

20 Q. Would you point him out.

21 A. (Pointing) He's sitting right there.

22 Q. What is he wearing?

23 A. He's wearing a red jumpsuit.

24 Q. A jail uniform.

25 A. Jail uniform.

1 Q. Have you had occasion to consult with Mr. Wilson?

2 A. Yes, sir, I saw him one time.

3 Q. And what did you do at that time?

4 A. I administered the Wechsler intelligence test.

5 Q. And how long does this test take?

6 A. It took approximately two and a half to three
7 hours to complete.

8 Q. This test has how many subparts?

9 A. There's 14 subtests.

10 Q. And in addition to doing things, it's also a timed
11 test, is it not?

12 A. Yes, sir, there are a lot of parts that are timed.

13 Q. And I believe you said you administered a test
14 to Mr. Wilson?

15 A. Yes, sir.

16 Q. And from that did you obtain an I.Q. of
17 Mr. Wilson?

18 A. Yes, sir.

19 Q. How is the I.Q. determined in that particular
20 test?

21 A. How is it determined?

22 Q. Yeah. How is it determined when you take the test
23 and analyze it?

24 A. Well, what you do is -- when you complete the
25 test, there are raw scores that are converted to scaled

1 scores, which are then summed; and you derive I.Q. from
2 those.

3 Q. And is there such a thing called a confidence
4 factor in this test? Do you know what I'm talking about?

5 A. A confidence factor?

6 Q. Yeah.

7 A. Yes, sir, there's a confidence interval, uh-huh.

8 Q. What does that mean?

9 A. What that means is that you can derive a score;
10 but every psychological instrument has what's called
11 standard error of measurement, which means that -- in the
12 Wechsler, it's five points. So, that means that any
13 individual score could fall within plus or minus five points
14 of the score that was derived.

15 Q. And it took four hours to take this test, just
16 like anyone else; is that right?

17 A. It took about three hours.

18 Q. Now, the number that you arrived at eventually
19 becomes the I.Q.; is that right?

20 A. Yes, sir.

21 Q. And does the I.Q. have anything to do with the
22 question of mental retardation?

23 A. Yes, sir.

24 Q. And what is that relationship?

25 A. Well, in order to arrive at a diagnosis of mental

1 retardation, an individual's I.Q. score must fall below 70.

2 Q. And did you determine an I.Q. on Mr. Wilson?

3 A. Yes, sir.

4 Q. And what was that I.Q.?

5 A. 61.

6 Q. And does that indicate, from the standpoint of
7 your test, mental retardation?

8 A. Yes, from the standpoint of the test.

9 MR. DELEE: May I approach?

10 THE COURT: Yes, sir.

11 Q. (By Mr. Delee) I want to show you a copy of a
12 document and ask you if you can identify that, please.

13 A. Yes, sir, this is the protocol form for the
14 intelligence test that I gave Mr. Wilson.

15 Q. And is that the original test?

16 A. This is the original, yes, sir.

17 Q. And to the best of your knowledge and belief, this
18 was conducted in the proper sequence and proper protocol?

19 A. Yes, sir.

20 Q. And you, as a person who has given several of
21 these tests, would vouch for these results; is that correct?

22 A. Yes, sir.

23 MR. DELEE: Your Honor, at this time I would
24 tender into evidence the results of the Wechsler test
25 conducted --

1 Q. (By Mr. Delee) When did you do this test?

2 A. May the 6th.

3 MR. DELEE: -- on May the 6th of this year.

4 MR. CONERLY: No objection, Your Honor.

5 THE COURT: Let's mark that as Defendant's 1,
6 and it will be admitted.

7 MR. DELEE: And I pass the witness, Your
8 Honor.

9 THE COURT: Mr. Conerly.

10 CROSS EXAMINATION

11 BY MR. CONERLY:

12 Q. Mr. Wehner, I'm Rodney Conerly, assistant criminal
13 district attorney. We had the opportunity to meet this
14 morning. We haven't spoken before then, have we?

15 A. No, sir.

16 Q. You say in your experience you've given 30 or 40
17 I.Q. tests?

18 A. The Wechsler I.Q. test.

19 Q. The Wechsler? Are there other tests?

20 A. There are others.

21 Q. Did you -- in reviewing -- did you do anything
22 besides the I.Q. test?

23 A. No, sir.

24 Q. But in the course of the I.Q. test, you spoke
25 with Mr. Wilson. You asked him questions, and he responded?

1 A. Yes, sir.

2 Q. When you asked him questions, did he respond
3 directly?

4 A. (No response)

5 Q. Was he coherent in his answers?

6 A. Yes, sir, he responded to me.

7 Q. Did you have to keep coming back to the subject
8 you were talking about, or could you ask him a question and
9 he'd answer a question?

10 A. I'd ask him a question, and he would answer it.

11 Q. In psychology do you agree with the American
12 Association of Mentally Retarded Persons criteria for the
13 finding of mental retardation?

14 A. Yes, sir.

15 Q. Do you know what that is?

16 A. Yes, sir.

17 Q. Do you know what the tests are for that?

18 A. For mental retardation?

19 Q. Yes.

20 A. Yes, sir.

21 Q. Could you tell us.

22 A. The main one in our profession is called the
23 Vineland Scales of Adaptive Behaviors.

24 Q. But the American Association of Mentally Retarded
25 People have come up with a standard or a determination and

1 so has the American Psychiatric Association and so has the
2 Court of Criminal Appeals. Have you read any Court of
3 Criminal Appeals cases on mental retardation?

4 A. No, sir.

5 Q. All you gave Mr. Wilson was an I.Q. test. That's
6 it.

7 A. That's it.

8 Q. In your opinion, can you base a determination of
9 mental retardation on an I.Q. test alone?

10 A. No.

11 Q. So, when you said that he was mentally retarded,
12 what you meant was his I.Q. fell in the range of mildly
13 mentally retarded.

14 A. Yes, sir.

15 Q. So, in order to make a proper determination of
16 mental retardation, you would have to take in other factors,
17 including adaptive behavior.

18 A. Yes, sir.

19 Q. And did you do any adaptive behavior tests?

20 A. No, sir.

21 Q. So, you really don't have the criteria because --
22 based on the standards, you don't have the other criteria to
23 come up with that determination.

24 All you're telling the Court is that you went to
25 death row this month, you gave Mr. Wilson an I.Q. test and

1 he scored 61.

2 A. That's correct.

3 MR. CONERLY: Pass the witness, Your Honor.

4 THE COURT: Mr. Delee.

5 REDIRECT EXAMINATION

6 BY MR. DELEE:

7 Q. Actually you didn't go to death row. He was here
8 in Jefferson County.

9 A. Right, he was in Jefferson County.

10 MR. DELEE: I have nothing further.

11 MR. CONERLY: Nothing further, Your Honor.

12 THE COURT: Sir, you may step down. Is he
13 excused?

14 MR. CONERLY: I have no objection to that,
15 Your Honor.

16 THE COURT: Mr. Delee.

17 MR. DELEE: That's fine.

18 THE COURT: You're excused, sir.

19 (Witness steps down)

20 THE COURT: Call your next witness.

21 MR. DELEE: I call Roy Wilson, Your Honor.

22 (Witness sworn)

23 ROY WILSON,

24 having being first duly sworn, testified as follows:

25

1 THE STATE OF TEXAS:

2 COUNTY OF JEFFERSON:

3
4 I, Jami Anderson, Official Court Reporter in and for the
5 252nd Criminal District Court of Jefferson County, State of
6 Texas, do hereby certify that the above and foregoing
7 contains a true and correct transcription of all portions of
8 evidence and other proceedings requested in writing by
9 counsel for the parties to be included in this volume of the
10 Reporter's Record, in the above-styled and numbered cause,
11 all of which occurred in open court or in chambers and were
12 reported by me.

13 I further certify that this Reporter's Record of the
14 proceedings truly and correctly reflects the exhibits, if
15 any, admitted by the respective parties.

16 I further certify that the total cost for the preparation of
17 this Reporter's Record is \$ _____ and was paid/
18 will be paid by _____.

19 WITNESS MY OFFICIAL HAND this the _____ day of
20 _____, 2004.

21
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23
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