

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR KENT COUNTY

STATE OF DELAWARE :  
 :  
 v. :  
 :  
 WILLIAM B. IRVING :  
 I.D. No. 9705006371 :  
 :  
 Defendant. :

Submitted: April 28, 2003  
Decided: May 27, 2003

**ORDER**

Upon State's Request to Determine the  
Competency of Defendant.  
Defendant not Competent.

Stephen R. Welch, Esquire, Deputy Attorney General, Dover, Delaware for the  
State of Delaware.

Sandra W. Dean, Esquire, Office of the Public Defender, attorneys for the  
Defendant.

WITHAM, J.

### ***I. Introduction***

The Court, at the State's request, conducted a competency hearing to determine the competency of William Irving, Jr. ("Defendant" or "Irving") to stand trial on one count of felony kidnaping and one count of misdemeanor offensive touching. After holding a competency hearing and reviewing the recommendations by both experts it appears to this Court that the Defendant is not competent to stand trial.

### ***II. Background***

Irving was charged on May 11, 1997 with Kidnaping in the Second Degree and Offensive Touching. Before trial on these charges Defendant was declared incompetent to stand trial. Since that time, Irving has been held at the Delaware Psychiatric Center. Subsequently, the Defendant has been declared incompetent by the Court four times. On April 28, 2003 this Court held a hearing to once again determine whether Irving is competent to stand trial. The hearing consisted of the testimony of two doctors. Dr. Abraham Mensch testified on behalf of the defense in this case. He is licensed in Delaware as a psychologist, and has worked at numerous jobs in that capacity. Dr. Kathryn Sheneman is a licensed psychologist in Pennsylvania and is not yet licensed in Delaware. She has been working at Delaware Psychiatric Center as a Psychological Assistant.

Defendant's doctor, Dr. Mensch, concluded that Irving was not competent to stand trial at this time. Dr. Mensch reviewed Irving's prior mental health evaluations and surmised that Irving has a history of alcohol abuse and dementia

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relating to it. Irving has also been diagnosed with schizophrenia. Dr. Mensch testified that at least four prior Delaware Psychiatric Center evaluations concluded that Irving was limited in terms of his cognition and was not able to understand the court processes nor assist his attorney in his defense. Moreover, in past evaluations, Dr. Zwill and Dr. Seward concluded that Irving was now “permanently incompetent.”<sup>1</sup>

In coming to his conclusions, Dr. Mensch conducted the Wechsler Abbreviated Scale of Intelligence (WASI). Dr. Mensch also used several sub-tests from Wechsler Adult Intelligence Scale, portions of the Wechsler Memory, and the Trail Making Test. Dr. Mensch did further tests (including Competency Assessment Interview; Stroop Color and Word Test; the Short Booklet Category Test) that assess intelligence and problem-solving abilities. In addition, Dr. Mensch also performed an Emotional Problems Scale Behavior Rating, which he gave to the staff members of the hospital as well as to Irving. After performing the various tests Dr. Mensch concluded that Irving continued to suffer both visual and command auditory hallucinations. Concerning Irving’s cognitive functioning, he had in the past been diagnosed with organic brain damage. Currently, based on tests performed by Dr. Mensch, Irving’s cognitive function scores are in the *Intellectually Deficient* range.<sup>2</sup> The doctor also concluded that Defendant has very poor understanding of

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<sup>1</sup> Transcript at 7.

<sup>2</sup> This range was formerly called “*Mildly Mentally Retarded*” range.

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word meaning, poor verbal expressive ability, poor common sense, poor working memory,<sup>3</sup> and poor understanding of social customs. In addition, Dr. Mensch stated that Irving has difficulty figuring out a solution to a problem using a rule when the correct rule changed and because of this the doctor concluded that “this is really a serious weakness that would really impact his ability to make decisions, to weigh alternatives, to follow and understand information.”<sup>4</sup> In his testimony, Defendant’s expert explains his conclusions for each of the Court recognized factors for determining competency.<sup>5</sup> After reviewing the totality of his evaluation, the doctor concludes that there is a significant psychological probability that Irving does not have the capacity to understand the nature of the proceeding and he does not have the intellectual ability to assist his attorney in making a rational defense. Dr. Mensch concluded that due to Irving’s impairments he would not be a good candidate for competency training or competency restoration. He also cites two other doctors who in the record stated that Irving did not respond well to competency training at the Delaware Psychiatric Center.

Dr. Sheneman testified for the state concluding that Irving was helped by the competency group sessions and is now competent to stand trial. Dr. Sheneman explained that in order for Irving to participate in the trial process certain

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<sup>3</sup> Working memory refers to the ability to keep something in mind long enough to complete a task.

<sup>4</sup> Transcript at 12.

<sup>5</sup> This will be discussed in detail under Part III of this Opinion.

accommodations needed to be made including the availability of as-needed medication; a thoughtful and patient attorney; an admonition to the witnesses to speak slowly and use language the Defendant would understand; and a working hearing aid. Dr. Sheneman evaluated the Defendant over several months. In coming to her conclusions, Dr. Sheneman conducted structured interviews and utilized the McArthur Competence Assessment Tool. Dr. Sheneman did not do the formal memory and intelligence testing that Dr. Mensch conducted. Despite her conclusion that Irving was competent to stand trial, Dr. Sheneman testified that she did not have confidence that Irving could remember conversations or events from day to day.<sup>6</sup> Dr. Sheneman also testified that Irving suffered from hallucinations and paranoid delusions that were brought on by stressful situations. Although Dr. Sheneman testified that generally the Defendant is stable, she admits that he has trouble dealing with his frustration and at times hits his head against objects in frustration.

### *III. Analysis*

“Due process requires that a defendant be competent to stand trial, and [the Court] understands that the placement of an incompetent defendant before a jury on the issue of guilt or innocence does not reflect ‘a reasoned interaction between an individual and his community’ but rather societal ‘invective against an insensible

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<sup>6</sup> Specifically she testified that one could not assume Irving could remember conversations that occurred only the day before. Transcript at 50.

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object.’”<sup>7</sup> However, due process requires only that the defendant be afforded a fair, not necessarily a perfect trial, and it requires that the defendant be able to consult with his lawyer with a reasonable, not a perfect degree of rational understanding.<sup>8</sup>

Pursuant to title 11, section 404(a) of the Delaware Code:

Whenever the court is satisfied, after hearing, that an accused person, because of mental illness or mental defect, is unable to understand the nature of the proceedings against the accused, or to give evidence in the accused's own defense or to instruct counsel on the accused's own behalf, the court may order the accused person to be confined and treated in the Delaware Psychiatric Center until the accused person is capable of standing trial.

This statute has been interpreted to require that a defendant be able (1) to consult with defense counsel rationally, (2) to assist in preparing his defense, and (3) to have both a rational and factual understanding of the proceedings against him.<sup>9</sup> However, the defendant does not need to understand “every legal nuance in order

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<sup>7</sup>*State v. Shields*, 593 A.2d 986, 1005 (Del. Super. Ct. 1990).

<sup>8</sup> *Id.* *Shields* further states:

Competency is, to some extent, a relative matter arrived at by taking into account the average level of ability of criminal defendants. We cannot, however, exclude from trial all persons who lack the intelligence or legal sophistication to participate actively in their own defense. That is not the standard by which we measure competency. Should we do so, we would preclude the trial of a number of people who are, indeed, competent to stand trial as understood in the law.

<sup>9</sup> *State v. Serra*, 2002 Del. Super. LEXIS 420, \*18 (Del. Super. Ct. 2002); *see also State v. Shields*, 593 A.2d 986, 1004 (Del. Super. 1990) (citing *Dusky v. United States*, 362 U.S. 402 (1960)).

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to be competent.”<sup>10</sup> Under this statute the determination of competency is a legal not a medical question,<sup>11</sup> and the prosecution has the burden of proving competence by a preponderance of the evidence<sup>12</sup>

Determining a defendant’s mental competency to stand trial is a very fact-intensive endeavor.<sup>13</sup> In *State v. Guatney*<sup>14</sup> the Court considered twenty factors (“*Guatney* factors”) in determining competency.<sup>15</sup> In utilizing these factors to

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<sup>10</sup> *Shields*, 593 A.2d at 1004 (citing *State v. Guatney*, 299 N.W.2d 538 (Neb. 1980))

<sup>11</sup> *Shields*, 593 A.2d at 1005.

<sup>12</sup> *Diaz v. State*, 508 A.2d 861 (Del. 1986).

<sup>13</sup> *Shields*, 593 A.2d at 1005.

<sup>14</sup> *State v. Guatney*, 299 N.W.2d 538 (Neb. 1980). These factors have been recognized as factors relevant to the determination of competency in numerous Delaware cases. *See, e.g., State v. Serra*, 2002 Del. Super. LEXIS 420, \*5-\*6; *Shields*, 593 A.2d at 1010-11.

<sup>15</sup> The *Guatney* factors are as follows:

- (1) That the defendant has sufficient mental capacity to appreciate his presence in relation to time, place, and things;
- (2) That his elementary mental processes are such that he understands that he is in a court of law charged with a criminal offense;
- (3) That he realizes there is a judge on the bench;
- (4) That he understands that there is a prosecutor present who will try to convict him of a criminal charge;
- (5) That he has a lawyer who will undertake to defend him against the charge;
- (6) That he knows that he will be expected to tell his lawyer all he knows or remembers about the events involved in the alleged crime;
- (7) That he understands that there will be a jury present to pass upon evidence in determining his guilt or innocence;
- (8) That he has sufficient memory to relate answers to questions posed to him;
- (9) That he has established rapport with his lawyer;

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determine competency, the Court must consider the totality of the circumstances, and base its decision upon the facts of the particular case.<sup>16</sup> Competency does not necessarily turn upon the absence or presence of any particular factor.<sup>17</sup> Instead, the Court should base its determination on “the aggregate of a defendant’s indicia of incompetence”<sup>18</sup>

This Court now turns to an evaluation of each of the *Guatney* factors according to the facts of the case at bar. The first *Guatney* factor is whether the defendant has “sufficient mental capacity to appreciate his presence in relation to time, place, and things.”<sup>19</sup> Dr. Mensch determined that Defendant was oriented as

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- (10) That he can follow the testimony reasonably well;
  - (11) That he has the ability to meet stresses without his rationality or judgment breaking down;
  - (12) That he has at least minimal contact with reality;
  - (13) That he has the minimum intelligence necessary to grasp the events taking place;
  - (14) That he can confer coherently with some appreciation of proceedings;
  - (15) That he can both give and receive advice from his attorneys;
  - (16) That he can divulge facts without paranoid distress;
  - (17) That he can decide upon a plea;
  - (18) That he can testify, if necessary;
  - (19) That he can make simple decisions; and
  - (20) That he has a desire for justice rather than undeserved punishment.

*Id.* at 545.

<sup>16</sup> *Serra*, 2002 Del. Super. LEXIS 420 at \*18.

<sup>17</sup> *Id.*

<sup>18</sup> *Drope v. Missouri*, 420 U.S.162, 180 (1974).

<sup>19</sup> *Guatney*, 299 N.W.2d at 545.

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to place and things but not as to time. Irving has “sufficient mental capacity to understand what year it was, but not the date.” Dr. Sheneman disputes this finding, however, she testified to and made mention in her report that the Defendant does not know his own birth date and believes he is 62 years-old when all the documentation states that he is 54 years-old. The second factor to determine competency is whether defendant’s “elementary mental processes are such that he understands that he is in a court of law charged with a criminal offense.”<sup>20</sup> Both doctors concluded that Irving was aware that he would be in a court of law and was aware that he was charged with a criminal offense. However, Dr. Mensch explained that Irving did not always understand why he was charged with the offense. The third *Guatney* factor is whether the defendant “realizes there is a judge on the bench.”<sup>21</sup> Both doctors agree that Irving understands the judge’s role in the court proceeding. The fourth *Guatney* factor is whether the defendant “understands that there is a prosecutor present who will try to convict him of a criminal charge.”<sup>22</sup> Dr. Mensch concluded that Irving did not consistently understand the prosecutor’s role in the case. At times he believed that the prosecutor job was to “find him guilty and give him time.”<sup>23</sup> Dr. Sheneman testified that when she asked Irving what the role of the

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<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Transcript at 15.

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prosecutor was, he initially gave her an erroneous response but finally he could articulate the prosecutor's role in the case. The fifth factor in determining competency is whether the defendant "understands that he has a lawyer who will undertake to defend him against the charge."<sup>24</sup> Both doctors agree that Irving understands that he has an attorney who would assist him. However, Dr. Sheneman explains that Irving was "very fuzzy" on the details and cannot recall his attorney's name, but he can describe his attorney. The sixth factor is whether the defendant "knows that he will be expected to tell his lawyer all he knows or remembers about the events involved in the alleged crime."<sup>25</sup> Dr. Mensch concluded that based on the history and testing Irving has "mental defects, both psychiatric and cognitive in terms of low IQ, judgment, reasoning ability, and problem solving ability so that these would impede his ability to tell his attorney everything he knows and remembers about the events [related to] the offenses he is charged with."<sup>26</sup> On the other hand, Dr. Sheneman testified that she believes Irving understands that he is expected to assist his attorney since Irving stated that he needs to tell his attorney the whole truth of what happened. In her report Dr. Sheneman wrote " Mr. Irving was able to provide a fairly detailed understanding of his thoughts, feelings and perceptions at and around the time of the alleged offense suggesting an ability and

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<sup>24</sup> *Guatney*, 299 N.W.2d at 545.

<sup>25</sup> *Id.*

<sup>26</sup> Transcript at 16.

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willingness to assist counsel.”<sup>27</sup> Nevertheless, Dr. Sheneman admitted that Irving told her that because he had been using drugs and alcohol over a lengthy period of time he has no recollection of the events that led to his arrest. His first memory was waking up in jail. Dr. Sheneman further testifies that this claimed lack of memory contrasts with some of the contemporaneous police reports in which Irving apparently acknowledged some of the details of the events leading up to his arrest.<sup>28</sup> The seventh *Guatney* fact is whether the defendant “understands that there will be a jury present to pass upon evidence in determining his guilt or innocence.”<sup>29</sup> Both doctors agree that Irving has a basic appreciation of the role of the jury. However, Dr. Mensch testified that Irving also attributed a role of the jury to the prosecutor. The eighth factor is whether the defendant has “sufficient memory to relate answers to questions posed to him.”<sup>30</sup> Based on the tests he administered, Dr. Mensch concluded that Irving did not possess the memory capacity or the receptive and expressive language skills needed to recall or adequately answer questions posed to him at trial.<sup>31</sup> Dr. Mensch further stated that there was no indication that Irving was faking his memory loss. Dr. Sheneman testified that she believed that Irving

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<sup>27</sup> Dr. Sheneman’s Psy. Report at 5 and Transcript at 59.

<sup>28</sup> Transcript at 60.

<sup>29</sup> *Guatney*, 299 N.W.2d at 545.

<sup>30</sup> *Id.*

<sup>31</sup> Transcript at 17.

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had sufficient memory to understand the question and hold it in his mind long enough to respond. However, she stated that the question may need to be repeated to Irving two or three times and rephrased in a way that he would understand. Furthermore, she testified that Irving's "ability to receive, to understand what he is hearing is impaired by virtue of the schizophrenia, possibly his brain damage issue and his limited intellect."<sup>32</sup> The ninth *Guatney* factor is whether the defendant "has established rapport with his lawyer."<sup>33</sup> Both doctors agree that when his psychiatric disorder is under control he has the ability to have a rapport with his attorney. Although there is some questions as to how functional that rapport would be given Irving's cognitive abilities. The tenth factor used to determine competency is whether the defendant "can follow the testimony reasonably well."<sup>34</sup> Dr. Mensch explains that given Irving's significant intellectual limitations it may be difficult for him to follow the testimony at trial. Dr. Sheneman also states some misgivings about Irving's ability to follow the testimony, stating that if a witness talked at a normal pace it may be difficult for the Defendant to understand it the first time he hears the testimony. Further, Dr. Sheneman states that she would be more confident that he could understand the testimony if it was repeated several times or if

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<sup>32</sup> Transcript at 62.

<sup>33</sup> *Guatney*, 299 N.W.2d at 545.

<sup>34</sup> *Id.*

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witnesses were reminded to speak slowly and tailor their language.<sup>35</sup> The eleventh factor is whether the defendant “has the ability to meet stresses without his rationality or judgment breaking down.”<sup>36</sup> Dr. Mensch stated that with proper medication it is likely that he could cope with the stresses of trial without breaking down. However, this is an area of concern for Dr. Sheneman. She testified that Irving may have difficulty coping with stress and may have hallucinations or paranoid feelings. She states that Irving could better cope with the stresses if he had access to certain medications during trial.<sup>37</sup> The twelfth factor considered in determining competency is whether the defendant “has at least minimal contact with reality.”<sup>38</sup> Dr. Mensch explained that the Defendant’s contact with reality is somewhat tenuous. Dr. Sheneman agrees that when the Defendant is having paranoid thoughts or hallucinations he steps outside of reality, yet the doctor contends that in general everyday life he is in touch with reality. The thirteenth factor is whether the defendant “has the minimum intelligence necessary to grasp the events taking place.”<sup>39</sup> Dr. Mensch testified that because of Irving’s low IQ, memory problems and lack of vocabulary skills, he did not have the minimum

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<sup>35</sup> Transcript at 64.

<sup>36</sup> *Guatney*, 299 N.W.2d at 545.

<sup>37</sup> The doctor explains that if these medication were given intramuscularly then they would take effect within minutes; however, she could not tell how long pills would take to work.

<sup>38</sup> *Guatney*, 299 N.W.2d at 545.

<sup>39</sup> *Id.*

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intellect needed to understand the events of a trial. Dr. Sheneman states that the Defendant does have sufficient mental capacity to understand events and has a degree of adaptive behavior. Her conclusions are based at least in part on the fact that Irving is currently president of his unit at the psychiatric center and in the past Irving has held jobs and will describe past events. The fourteenth factor is whether the defendant “can confer coherently with some appreciation of proceedings.”<sup>40</sup> Dr. Mensch testified that Irving demonstrated significant intellectual and judgmental limitations that would interfere with his ability to appreciate the proceedings against him. The fifteenth factors utilized to determine competency is whether the defendant “can both give and receive advice from his attorneys.”<sup>41</sup> Dr. Mensch concluded that due to the Defendant’s intellectual handicaps it would be difficult for him to consistently give and receive advise from counsel. Dr. Sheneman has stated that Irving probably could give and receive advise from his counsel. The doctor explains that at the psychiatric center Irving is able to carry on a give and take conversation. However, Dr. Sheneman can not be sure how Irving will cope with being in a less structured environment, such as the courtroom. The sixteenth factor is whether the defendant “can divulge facts without paranoid distress.”<sup>42</sup> When taking his medication both doctors agree that normally Irving can divulge facts

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<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

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without paranoid distress. However, if he is not medicated, and sometimes even though he is medicated, Irving suffers from paranoia. Further, Dr. Sheneman admitted that Irving may have paranoid reaction during trial to the jury or to a witness and that even though Irving may understand that some of his thoughts are paranoid he can not put those thoughts into perspective.<sup>43</sup> The seventeenth factor used to determine competency is whether the defendant “can decide upon a plea.”<sup>44</sup> Dr. Mensch concluded that Irving did not have sufficient decision making abilities nor intellectual abilities to make an informed, rational decision upon a plea that would serve his best interests. The eighteenth factor is whether the defendant “can testify, if necessary.”<sup>45</sup> Both doctors agree that there is some doubt that the Defendant has the capacity to testify. Dr. Mensch explained that Irving lacks the language capabilities – both receptive (understanding what is being asked of him) and expressive (being able to express his thoughts to others) – to testify.<sup>46</sup> Dr. Sheneman also expresses concerns with Irving’s ability to handle the stresses of testifying.<sup>47</sup> The nineteenth *Guatney* factor is defendant’s “ability to make simple

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<sup>43</sup> Transcript at 72-74.

<sup>44</sup> *Guatney*, 299 N.W.2d at 545.

<sup>45</sup> *Id.*

<sup>46</sup> Transcript at 20.

<sup>47</sup> Transcript at 74.

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decisions.”<sup>48</sup> Dr. Mensch testified that he doubts Defendant’s ability to make decisions regarding any aspect of his life. Dr. Sheneman thinks Irving could make decisions regarding the trial if his attorney patiently made certain that he understood the decision and its consequences. The twentieth and final factor is whether the defendant “has a desire for justice rather than undeserved punishment.”<sup>49</sup> Dr. Mensch explained that Irving only marginally demonstrated the mental capacity to understand concepts such as desire for justice or undeserved punishment. According to Dr. Sheneman Irving does understand this concept and has repeatedly expressed his desire to continue with the trial on the current charges.

Upon reviewing Dr. Mensch and Dr. Sheneman’s responses to each of the *Guatney* factors, it is apparent that the State has not proved beyond a reasonable doubt that Irving is competent to stand trial. The State’s expert admits that at times of high stress, like a trial, the Defendant may have hallucinations and paranoid delusion. In addition, the State’s doctor states that the Defendant would probably have trouble following the testimony if the witnesses spoke at a normal pace and that sometimes Defendant loses touch with reality. Moreover, the Prosecutor in his summation even stated that “In light of the about 10 evaluations saying he’s not competent and the responses that Dr. Sheneman gave, recognizing her, I think sincere opinion that [Irving] may be competent, I think the record at this point is

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<sup>48</sup> *Guatney*, 299 N.W.2d at 545.

<sup>49</sup> *Id.*

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such that he probably should be found incompetent to proceed. . . . based upon Dr. Mensch's evaluation and also on some of Dr. Sheneman's answers, the State is not confident that we've met our burden."<sup>50</sup> Given Dr. Mensch's credentials and the myriad of tests he performed on the Defendant, this Court is persuaded by Dr. Mensch's evaluation and testimony which concludes that the Defendant is not competent to stand trial.

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<sup>50</sup> Transcript at 92.

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***IV. Conclusion***

In conclusion, having weighed the experts' opinion in light of the *Guatney* factors, this Court concludes that the prosecutor has not meet his burden. Therefore, this Court determines that the Defendant is not competent to stand trial. Defendant shall continue to be held by Delaware Psychiatric Center until further order of this Court.

IT IS SO ORDERED.

s/s William L. Witham, Jr.

J.

dmh

oc: Prothonotary

xc: Order Distribution

File