

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

FILED
U.S. DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA
NOV 14 2007 4:00 PM
NO. 04-787

KEVAN BRUMFIELD

CIVIL ACTION

VERSUS

NO. 04-787

BURL CAIN

ORDER

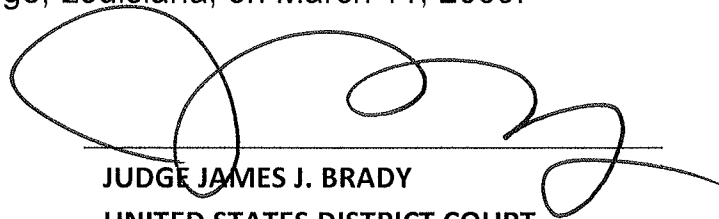
Upon consideration of Petitioner's Motion to Allow Video Recording of Respondent's Expert's Evaluation (Doc. 57),

IT IS HEREBY ORDERED that the Motion is GRANTED. In order for Dr. Hoppe's testimony about his evaluation of Mr. Brumfield to be ruled as admissible scientific evidence, the following factors set out by the United States Supreme Court in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S.Ct. 2786 (1993), must be considered: 1) whether Dr. Hoppe's theory or technique can be and has been tested; 2) whether Dr. Hoppe's theory or technique has been subjected to peer review and publication; 3) the known or potential rate of error along with the existence and maintenance of standards controlling the technique's operation; and 4) whether Dr. Hoppe's theory or technique enjoys general acceptance within a relevant scientific community.

A video recording would aid Petitioner in determining whether a *Daubert* challenge to Dr. Hoppe's testimony is appropriate or not, and Respondent has failed to cite any case law that would move this court to prohibit Petitioner's counsel from so doing. Petitioner's counsel is thus authorized to be present in

the monitoring room during Dr. Hoppe's evaluation and is authorized to video record the evaluation on March 13, 2009.

Signed in Baton Rouge, Louisiana, on March 11, 2009.

A handwritten signature in black ink, consisting of several large, overlapping loops and a long horizontal stroke extending to the right.

**JUDGE JAMES J. BRADY
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA**