

Cause No. 3-04-1561

THE STATE OF TEXAS

IN THE 167th

VS.

DISTRICT COURT OF

RHONDA GLOVER

TRAVIS COUNTY, TEXAS

**STATE'S RESPONSE TO DEFENDANT'S MOTION TO SUPPRESS**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW THE STATE OF TEXAS, by and through her undersigned Travis County Assistant District Attorney, on this the 17<sup>th</sup> day of August, 2005, and hereby respectfully urges the court that the Defendant's Motion to Suppress is without merit and should be denied.

**I.**  
**Brief factual summary.**

On July 25, 2004, the body of James Joste was found at a house on Mission Oaks Boulevard in Travis County, Texas. Dr. Peacock, Deputy Travis County Medical Examiner ruled the death a homicide resulting from multiple gunshot wounds. Defendant Rhonda Glover was located and arrested in Hays, Kansas on federal firearms charges on July 27, 2004. On July 28, 2004, Detective Keith Walker interviewed the Defendant in Kansas. Defendant Glover made a knowing, intelligent and voluntary waiver of her right to remain silent, and agreed to speak with Detective Walker. Detective Walker captured this interview on videotape. Eventually, the Defendant confessed to Detective Walker that she shot James Joste at the Mission Oaks Boulevard house.

\* NOW AN  
INDEPENDENT  
MEDICAL  
EXAMINER

INCOMPETENT  
IN A  
PSYCHOSIS  
STATE!

Sometime later, this Court appointed Dr. Mary Anderson to examine the Defendant regarding the issue of competency. Dr. Anderson complied with the Court's

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order, reviewed the State's file and testified during the competency trial. On November 2, 2004, a jury determined that the Defendant was, not then, competent to stand trial.

**II.**  
**Motion to Suppress based on admission of portion of confession tape during competency trial.**

**A. Defendant's Argument fails the plain English test.**

The plain language of Article 46B.007 of the Code of Criminal Procedure clearly renders the defense argument moot. Article 46B.007, Admissibility of Statements and Certain Other Evidence, states:

*A statement made by a defendant during an examination or hearing on the defendant's incompetency, the testimony of an expert based on that statement, and evidence obtained as a result of that statement may not be admitted in evidence against the defendant in any criminal proceeding, other than at:*

- (1) a hearing on the defendant's incompetency; or
- (2) any proceeding at which the defendant first introduces into evidence a statement, testimony, or evidence described by this section.

(Added by Acts 2003, 78th Leg., ch. 35, Sec. 1, eff. Jan. 1, 2004.) *Emphasis added.* It is clear from the text of the article that this law applies only to statements made by a defendant during a mental health examination or made by a defendant during a competency hearing. The statements in question were made during an interview with Austin Police Detectives and not during either of the above-cited circumstances.

**B. The Defendant's motion fails the common sense test.**

**1. The purpose of Article 46B.007 is not served by suppressing confession.**

Article 46B.007 obviously was intended to encourage defendants to communicate openly and honestly with mental health practitioners. See, Texas Criminal

Procedure and the Offender with Mental Illness<sup>1</sup>. In addition, by baring statements to a mental health provider, during a competency examination, courts preserve a defendant's 5<sup>th</sup> Amendment protections. Estelle v. Smith, 451 U.S. 454 (1981). In the present case, the Defendant was not speaking with a mental health provider, and therefore, granting the Defendant's motion would not serve the public interest or the legislative intent behind the statute.

**2. The Defendant waived any objection to the admission of the tape.**

In the present case, a portion of the Defendant's confession tape was admitted at the Competency Trial, by agreement<sup>2</sup>. The Defendant agreed to the admission of the tape, yet now seeks to prohibit its use at a trial on the facts, based on the previous admission that the Defendant agreed to. The Defendant should not be permitted to hide behind a warped reading of the law in order to pervert justice.

**3. The State is required to provide evidence to the Court appointed expert.**

Article 46B.024 requires the State to provide all relevant evidence to the expert appointed by the Court. The logical extension of Defendant's reading of the law is that any material Dr. Anderson reviewed, *pursuant to this Court's Order* would be inadmissible at trial. Thus, Defendant's motion should be denied.

**C. Defendant's argument fails the case law test.**

The Defendant has not cited any precedent or case law in support of her motion. In fact, the undersigned was unable to locate any cases directly on point. However, the Texas Court of Criminal Appeals has reaffirmed the plain meaning of 46B.007. In

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<sup>1</sup> Professors Brian Shannon and Daniel Benson, National Alliance for the Mentally Ill (Texas bar Foundation), 2005.

<sup>2</sup> Competency trial transcript, page 13, lines 1-8.

Mitten v. State, 145 S.W.3d 225 (2004), the Court held that statements made to a psychologist during a competency examination is not admissible at trial.

**II.**  
**Motion to Suppressed based on previous finding of incompetent to stand trial**

A jury found that the Defendant was incompetent to stand trial on November 2, 2004. No verdict or ruling has ever held that Defendant was incompetent on July 27, 2004, the day she gave her confession to Detective Walker. Dr. Anderson testified that the portion of the video show to the jury was an example of the tangential thinking displayed by the Defendant.<sup>3</sup> Dr. Anderson never testified that the Defendant was incompetent at the time she gave her confession to Detective Anderson. Nor did Dr. Anderson testify that she relied solely on the video taped confession. Furthermore, Dr. Anderson did not testify tangential thinking is definitive proof of incompetence. No further discussion of this issue is warranted. Defendant's motion to suppress should be denied.

WHEREFORE, PREMISE CONSIDERED, the State of Texas respectfully moves this Honorable Court to deny Defendant's Motion to Suppress.

Respectfully Submitted,



Douglas K. O'Connell  
Assistant District Attorney

**CERTIFICATE OF SERVICE**

By my signature above, I certify a copy of this response was faxed to the Defense Attorney of Record on this day.

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<sup>3</sup> Competency trial transcript, page 12, lines 15-23.

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**TRAVIS COUNTY, TEXAS**

**ORDER**

Having considered the foregoing Defendant's Motion to Suppress, it is the conclusion of this Court that the motion is entirely without merit and is not worthy of any further consideration. Therefore, the Defendant's Motion to Suppress is **DENIED**.

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Mike Lynch  
Presiding Judge

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**NOTICE REGARDING MEDICAL EXAMINER'S REPORT**

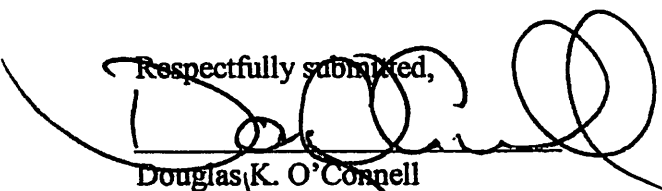
COMES NOW THE STATE OF TEXAS by and through her Assistant District Attorney, who respectfully notifies the Court., the Defendant and Defendant's Attorney, that the State believes the Dr. Peacock's Autopsy Report contains an error. Specifically, page 2, item 8, reads:

Gunshot wounds #10, #11, #12 – There is a cluster of gunshot wounds about the right elbow. Gunshot wounds #10 and #11 intersect overlying the protuberance of the left elbow, and both show exit with destruction of the tip of the elbow. Gunshot wound #12 is through and through on the anterior aspect of the left elbow from the radial to the ulnar aspect.

The correct version should read:

Gunshot wounds #10, #11, #12 – There is a cluster of gunshot wounds about the right elbow. Gunshot wounds #10 and #11 intersect overlying the protuberance of the right elbow, and both show exit with destruction of the tip of the elbow. Gunshot wound #12 is through and through on the anterior aspect of the right elbow from the radial to the ulnar aspect.

Respectfully submitted,

  
Douglas K. O'Connell  
Assistant District Attorney  
Travis County, Texas

Filed in the District Court  
Travis County, Texas  
Aug. 22, 2005  
10:00 A.

CERTIFICATE OF SERVICE

My signature above certifies that a true and correct copy of the foregoing motion  
was delivered by HAND to attorney for Defendant,  
SAWYER, on 9/22/05.