STATE OF INDIANA	)	IN THE JOHNSON SUPERIOR COURT
	)SS:	
COUNTY OF JOHNSON	)	PCR CAUSE NO 41D02-1306-PC-000009
MICHAEL DEAN OVERSTREET	)	
Petitioner,	)	
	)	
vs.	)	
	)	
STATE OF INDIANA,	)	
Respondent	)	

ORDER ON PETITION FOR POST-CONVICTION RELIEF

PROCEDURAL HISTORY

On November 7, 1997, the Petitioner, Michael Dean Overstreet, was charged with Murder, a felony, and probable cause was found. On November 13, 1997, Petitioner filed a Notice to Interpose a Defense of Insanity. On April 15, 1998, the State moved to amend the charging information. That motion was granted. The amended information added Count II, Felony Murder, a felony; Count III, Rape, a Class A felony; Count IV, Criminal Deviate Conduct, a Class A felony, and Count V, Confinement, a Class A felony. In addition, the charges included the State's request for the death penalty. In March 2000, the State again amended the charges and filed a second amended death penalty request. On the State's motion, Count IV, Criminal Deviate Conduct, was ordered dismissed.

On April 24, 2000, Overstreet's trial began with the selection of a "death qualified" jury. On May 13, 2000, the jury found Overstreet guilty on all of the charged counts. Upon the return of the verdicts in the guilt stage of the trial, the case proceeded to the penalty phase. At the

conclusion of that phase, the jury recommended that the death penalty be imposed. The trial court entered an order on sentence of death on July 31, 2000.[1]

Since the time the death penalty was imposed, the Indiana Supreme Court has reviewed Overstreet's case twice. Overstreet first filed a direct appeal. On direct appeal, Overstreet raised several issues. One of those issues was whether the death penalty was inappropriate. In his appeal Overstreet argued, among other things, that the aggravating circumstances in the case did not outweigh the mitigating circumstances. In this argument, Overstreet addressed his mental health history. Notwithstanding Overstreet's arguments on all issues, the trial court's order on sentence of death was affirmed in *Overstreet v. State,* 783 N.E.2d 1140 (Ind. 2003). After the sentence of death was affirmed by the Indiana Supreme Court, Overstreet petitioned for rehearing. That petition for rehearing was denied on May 13, 2003. Overstreet then sough a writ of certiorari. The writ was denied.

After unsuccessfully pursuing his direct appeal[2], Overstreet filed a petition for post-conviction relief. The petition was filed on December 31, 2003 and subsequently amended several times. Hearing on the petition was held from August 16-20, 2004, and completed on September 13, 2004. In an eighty-six page opinion entered December 3, 2004, the trial court

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[1]The order on sentence of death bears a file-stamped date of July 27, 2000. (Tr.transcript 1285-1311), however the trial court judge referred to the sentencing hearing as having been held on July 31, 2000 in the Findings of Fact and Conclusions of Law file in *Michael Dean Overstreet v. State of Indiana,* Cause Number 41D02-0401-PC-00001, in the Johnson Superior Court.

[2]Overstreet was not totally unsuccessful in his appeal. On appeal he had argued that his sentences for rape and criminal confinement violated double jeopardy. The Supreme Court agreed with this argument and remanded the case for resentencing on the criminal confinement conviction. On remand, the court vacated the Class A felony conviction and entered judgment of conviction on that count as a class D felony.

denied all of Petitioner's post-conviction claims.

Overstreet appealed the court's December 3 determination. He had multiple claims on appeal. In one, Overstreet argued that "his death sentence 'should be prohibited under the United States and Indiana Constitutions because he is 'a severely mentally ill man.' " (Brief of Petitioner-Appellant, *Michael Dean Overstreet v. State of Indiana,* Cause Number 41S00-0306-PD-249, in the Supreme Court of Indiana at 73). He contended:

> Overstreet's execution would serve no legitimate penal objective. At the time of these crimes, Overstreet was suffering from schizophrenia. The threat of the death penalty is unlikely to deter a psychotic person from committing an offense. *Id.* at 78).

Overstreet's appeal to the Indiana Supreme Court was again unsuccessful. On November 27, 2007, the decision of the trial court was affirmed. *Overstreet v. State,* 877 N.E.2d 144 (Ind. 2008).

Following the denial of the appeal, Overstreet filed for a writ of habeas corpus in federal court. He again argued that he suffered from a severe mental illness and that his illness prohibited his execution under the Eighth Amendment.[3] He did not, however, assert a *Panetti*[4] claim. Instead he analogized mental illness to mental retardation and juvenile status. He argued that mental illness should be a categorically exempt from the death penalty. In an unreported opinion of Chief Judge Philip Simon, United States District Court for the Northern District of Indiana, Overstreet's writ was denied. *Overstreet v. Superintendent,* Memorandum Opinion, 2011 WL

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[3]This was not his only claim. He also asserted, as he had in his state petition, that trial counsel was ineffective in its presentation of mitigation evidence during the penalty phase of the trial.

[4]*Panetti v. Quarterman,* 551 U.S. 930 (2007).

836800 (N.D.Ind. 2011).Overstreet appealed Judge Simon's decision. The decision of the district court was affirmed in *Overstreet v. Wilson,* 686 F.3d 404 (7th Cir. 2012).

On May 31, 2013, Petitioner filed a Notice to the Court Regarding Intent to Submit Petition for Relief in a Death Penalty Case with the Indiana Supreme Court. Two weeks later, on June 14, 2013, Overstreet tendered a petition for post-conviction relief. The Indiana Supreme Court granted petitioner permission to file a new post-conviction petition. (Docket, Cause No. 41S00-1395-SD-00397). This cause then began with the September, 2013, filing of Overstreet's successive petition for post-conviction relief in the Johnson Superior Court. The petition alleges that Overstreet is not competent to face execution.

Under the original case management plan approved by the Indiana Supreme Court, a decision in this cause was to have been made by March 3, 2014. The evidentiary hearing on Overstreet's latest petition actually began on September 2, 2014 and ended September 5, 2014. Overstreet appeared in person and by his counsel, Steven Schutte and Kathleen Cleary. The State appeared by its counsel, James Martin, Kelly Miklos and Lyubov Gore. Overstreet presented twelve witnesses: Dr. Rahn Bailey, Dr. Robert Smith, Dr. Edmunds Haskins, Shannon Richardson, Dr. Helen Morrison, Dr. Barbara Eichmann, Dr. Michael Larson, Dr. Reynaldo Matias, Dr. Jennifer Harmon-Nary, Dr. Martha O'Danovich, Andrew Manning, Dr. George Parker and professor Gary Anderson. The State presented one witness: Dr. Shaun Wood. The parties stipulated to the admission of a six volume, 1,296 page record entitled "Joint Appendix Department of Correction Medical Records" covering Overstreet's medical records from 1999 through August, 2014. They also entered joint stipulations regarding the authenticity of the IDOC

medical records and letters received by Melissa Holland from Overstreet.[5] Petitioner introduced Ex. 1, the curriculum vitae of Dr. Rahn Bailey, M.D., Ex. 2, Dr. Bailey's competency to be executed evaluation; Ex. 3, the curriculum vitae of Dr. Edmund Haskins, Ph.D.; Ex. 4., the curriculum vitae of Dr. Helen Morrison, M.D.; Ex. 6, the competency to be executed evaluation of Dr. Morrison; Ex. 7, the curriculum vitae of Dr. George Parker, M.D.; Ex. 8, the competency report from Dr. Parker; Ex. 9, the five disc DVD of Dr. Shaun Wood's August 9, 2014 interview with Overstreet; Ex. 10, Dr. Parker's four disc DVD interview with Overstreet conducted on August 19, 2014; Ex. 11, the December 18, 2013 report of Dr. Wood's assessment of Overstreet; Exs. 12, 12A and 12B, CD and transcripts of telephone calls from May 19, 2013 to July 15, 2014 and Ex. 13, curriculum vitae of Professor Gary Anderson, Ph.D. The State introduced Ex. 4, a September 25, 2012 letter from Overstreeet to Melissa Holland; Ex. 5, the Last Will and Testament of Michael Dean Overstreet dated September 26, 2012; Ex. 6, Overstreet's November 30, 2013 letter to Melissa Holland; Ex. 7, Overstreet's December 1, 2013 letter to Melissa Holland; Ex. 8, Overstreet's letter to Melissa Holland; Ex; 9, Overstreet January 2, 2014 letter to Melissa Holland; Ex. 10, the certified appellate court record in 41A01-0011-CV-393; Ex. 11, certified appellate court record in 41A05-0902-CV-60; Ex. 12, affidavit of Pamela Barr; Ex. 13, affidavit of Jonathon Sikorski; Ex. 15 and 15A, CD and transcript of telephone calls from May 20, 1012 to April 19, 2014; Exs. 14 and 16 emails from Overstreet's email account spanning the period from January 1, 2014 to July, 2014; Ex. 17, curriculum vitae, Dr. Shaun Wood, M.D.; and Ex. 18, psychiatric case analysis prepared by Dr. Wood.

In addition to considering the evidence and exhibits present by the parties at the hearing,

[5]These exhibits were introduced as Respondent's 1, 2 and 3.

the court took judicial notice of the records in the underlying trial and the first post-conviction hearing related to this case: *State of Indiana v Michael Dean Overstreet,* Cause No. 41S00-9804-DP-00217 in the Indiana Supreme Court (lower court Cause No. 41D02-9711-CF-00158 in the Johnson Superior Court) and *Michael Dean Overstreet v. State,* Cause Number 41D00-0306-PD-249 (lower court cause number 41D02-PC-00001 in the Johnson Superior Court).

Pursuant to the briefing schedule described in the case management plan approved by the Indiana Supreme Court, Petitioner filed his proposed findings of fact and conclusions of law on October 7, 2014 (with emailed copies having been distributed on October 3). The State filed its proposed findings and conclusions on October 21, 2014 and Petitioner filed a Response thereto on October 31, 2014. To the extent that any part of these findings of fact and conclusions of law appear to have been adopted from a party's proposed findings and conclusions, the Court represents that any such finding or conclusion has been reviewed by the Court and reflects the Court's independent determination.

ISSUE PRESENTED

Whether Michael Dean Overstreet is competent to be executed, i.e., whether Overstreet's mental illness and present mental state render him not currently competent to be executed under the standard established by *Panetti v. Quarterman,* 551 U.S. 930, 127 S.Ct. 2842 (2007) and *Ford v. Wainwright,* 477 U.S. 399, 106 S.Ct. 2595 (1986).[6]

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[6]Because the court has resolved with case with reference to the the United States constitution, it declines to address the question whether an Indiana constitutional analysis would yield the same result. In Petitioner's June 13, 2013 Memorandum of Law on Competency to be Executed, Overstreet contended:

> The petition raises a single claim: Overstreet is not currently competent to be executed under *Panetti v. Quarterman,* 551 U.S. 930, 127 S.Ct. 2842, 168 L.Ed.2d 662 (2007) and *Ford v.*

BURDEN OF PROOF

Post-conviction proceedings are collateral proceedings separate and distinct from the underlying criminal trial. *Hall v. State*, 849 N.E.2d 466, 472 (Ind. 2006). The petitioner in a post-conviction proceeding bears the burden of establishing his grounds for relief by a preponderance of the evidence. Ind. Post-Conviction Rule 1(5). *Overstreet v. State,* 877 N.E.2d 144, 151 (Ind. 2007).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

OVERVIEW

In the seventeen years since Overstreet first appeared in court, his life, generally, and his mental health, specifically, have been addressed many times. Information about Overstreet has come in many forms. It has come from testimony elicited from Mr. Overstreet's friends and family. Mr. Overstreet's life has been studied by a mitigation expert and a social worker. It has come from old medical reports and from sanity evaluations prepared in anticipation of a later discarded insanity defense. In the course of his time in the criminal justice system, Mr. Overstreet

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> *Wainwright,* 477 U.S. 399, 106 S.Ct. 2595, 91 L.Ed.2d 335 (1986) and permitting his execution without consideration of the claim would violate Overstreet's rights protected by the Eighth and Fourteenth Amendments to the United States Constitution and Article One, Section Thirteen, Sixteen and Eighteen of the Indiana Constitution.

In its September 3, 2013 order granting Petitioner's request for leave to file a successive post-conviction petition, the Indiana Supreme Court appeared to have limited the scope of Overstreet's claim, noting:

> Overstreet's claim is that his mental illness and present mental state render him not currently competent to be executed under *Panetti v. Quarterman* and *Ford v. Wainwright.* (citations omitted).(*Overstreet v. State,* 41S00-1305-SD-00397).

has been evaluated (and sometimes re-evaluated) by psychiatrists and psychologists.

FACTUAL BACKGROUND-PRETRIAL

Kelly Eckart's murder has been described multiple times[7], so the Court will provide only a brief summary of the evidence presented at trial. On September 30, 1997, Ms. Eckart's body was found in a ravine near Atterbury in Brown County. Ms. Eckart had been shot in the head, raped by her assailant and strangled with a strap from her overalls and a lace from her shoes.

The case was not immediately solved. As police investigated the killing, they received a tip that led to the questioning of Petitioner's brother, Scott Overstreet. Based on the information they received from the brother, the police turned their attention to Michael Dean Overstreet, executed multiple search warrants, and developed evidence forensically linking the Petitioner to the crime. Fibers from a blanket seized from Overstreet's home matched fibers taken from Ms. Eckart's shirt, fibers from Overstreet's van matched fibers from Ms. Eckart's overalls, and DNA collected from Overstreet matched the DNA collected from Ms. Eckart's body and underwear.

At the time of Kelly Eckart's murder, Michael Dean Overstreet was a thirty year old married father of four.[8] He took care of his family (PCR transcript 389), worked fairly steadily, had friends (PCR transcript 197, 229) and hobbies. (PCR Ex. 3, PCR transcript 197, Tr.

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[7]*See, Overstreet v. State,* 783 N.E.2d 1140, 1146-1149 (Ind. 2003); *Overstreet v. State,* 877 N.E.2d 144, 149 (Ind. 2008), *Overstreet v. Superintendent,* 2011 WL 836800, 2011 U.S. Dist. (N.D.Ind. March 4, 2011). *See, also,* Michael Dean Overstreet v. State of Indiana, Cause Number 41D02-0401-PC-0001, in the Johnson Superior Court, Findings of Fact, Conclusions of Law and Judgment on Petition for Post-Conviction Relief, 4-7).

[8]Overstreet was sixteen when he met Melissa, his wife-to-be. She was thirteen. Overstreet and his wife married on August 26, 1989. Their daughter, Amanda, was born in 1990 and daughter Megan was born in 1992. The Overstreets' son, Michael, Jr. was born in 1993. Their last child, Ashley, was born in 1996. (PCR Ex 19, Michael Dean Overstreet Social History).

Transcript 146). Overstreet had not, however, made it through his thirty years unscathed. His childhood was difficult; his father was most certainly an alcoholic and his mother was most likely one. (PCR transcript 353-355). His parents' relationship was marred by domestic violence. Overstreet was sometimes the witness to, and sometimes the victim of, that violence.(PCR Ex. 19, p. 1-2).

Overstreet's chaotic childhood played itself out in a number of ways. Although a boy who began elementary school with Bs and Cs, Overstreet dropped out of, and then returned to, high school several times and never graduated. During his school years, he had other difficulties. His attendance was erratic and he had health problems. The interrelationship between Overstreet's health and school attendance is not altogether clear. Apparently, his mother's commitment to her children's education was somewhat less than firm. (PCR transcript 352-353).[9]

Whether the cause of his school absences or not, Overstreet's health problems appear to have been real. He suffered from headaches and nosebleeds. In search for a cause for these maladies, Overstreet was examined in March, 1982, at the Pediatric Neurology Clinic at Indiana University Hospital. The examination did not reveal any physical basis for Overstreet's complaints. The examining doctor noted "episodic vertigo and headaches of uncertain etiology. Suspect tension, childhood migraines. Temper tantrums; suspect adolescent adjustment reaction."

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[9]According to Overstreet's sister, Shannon Richardson, her two other siblings dropped out of school at a young age. Sonny dropped out in seventh grade; Scott dropped out in ninth and Mrs. Overstreet frequently kept Shannon home from school. (PCR transcript 353). On the other hand, by the time Overstreet was 17, his absences from school were primarily of his own doing. According the December 6, 1983 report by Emory Mills, ACSW, by that point Overstreet was spending "much of his time away from school with a 19 year old friend, virtually ignoring mother's threats of sanction if he does not attend school. Mother threatens a great deal but does not follow through with action when Dean is truant." (Tr. Ex.CC).

In September, 1983, when Overstreet was not quite seventeen, he again sought help for his headaches. Again, no physical cause for Overstreet's complaints was found. Overstreet was then referred to Dr. Robert Snodgrass, a psychiatrist. Dr. Snodgrass found no evidence of psychosis, diagnosed Dean with a generalized anxiety disorder, and recommended outpatient therapy. (PCR Ex. 19 Michael Dean Overstreet Social History, p.7; PCR transcript, 897, testimony of Dr. Ned Masbaum).

Apparently because of issues Overstreet was having at school, he was examined in November, 1983, by Joe Mazzei, Ph.D. at Adult and Child Mental Health. Although Dr. Mazzei attempted to administer the MMPI to Overstreet, he was unable to do so because Overstreet refused to co-operate. Less than a month later, in December, 1983, Emory Mills, Jr., a psychiatric social worker with Dr. Mazzei's organization, diagnosed Overstreet with "schizoid disorder of adolescence."[10] (PCR Ex. 19, p. 7-8, December 6, 1983 report, Adult and Child Mental Health Center-Franklin, Tr.Ex.CC).

In March, 1984, when Overstreet was seventeen and a half, he was referred to the Southside Youth Council. The referral was made because of Overstreet's "poor school performance and social isolation." (Psychological Evaluation March 22, 1984, Tr.Ex.CC). Overstreet met with Dan Stauber, M.A. and Dr. Paul Thorsen, a clinical psychologist. Overstreet discussed the difficulties he was having with concentration and explained: "At night he cannot sleep because he hears 'noises' and feels compelled to make sure no one is trying to break into

[10]At trial, Dr. Eric Engum explained that diagnosis to the jury. He told the jury that this disorder "basically defined the child with very few close, interpersonal relationships, somewhat socially with drawn, a lot of social anxiety, inability to relate to others. This is the person who basically sits in their room and doesn't have much contact with anybody else..." (Tr.transcript 5098-5099).

the house. He occasionally feels as if he is being followed and sometimes sees someone who looks something like a shadow. He has no idea why anyone would follow him." . *Id.* In a March 22, 1984 report, Mr. Stauber and Dr. Thorsen relayed the results of the examination of Overstreet, noting: "Although he is not overtly psychotic, Dean's recent behavior and current testing are suggestive of a prodromal thought disorder. " *Id.*

Less than a year later Overstreet was again referred for evaluation. This referral came after Overstreet brought a gun to school. Although Overstreet and his wife have different spins on what happened that day in January, 1985, both agree Overstreet brought a gun to school and Melissa reported his action to the school authorities. Overstreet, who was over eighteen by the time of this incident, was charged with Possession of a Handgun without a License. As a result of the criminal proceedings, a judge ordered Overstreet to submit to a psychiatric evaluation at Adult and Child Mental Health Center. (PCR Ex/ 19. p. 10).

This time, Overstreet was examined by consulting psychiatrist Joseph Fitzgerald. In his report of the examination, Dr. Fitzgerald remarked: "At the time Michael was seen here previously, his condition was felt to be that of a schizoid personality disorder or a schizo-type personality. I fail to detect much sign of deterioration in him in terms of moving towards a psychotic resolution under street. On the other hand, his involvement with the girlfriend to a significant degree suggest that his schizoid personality disorder is not fixed and is subject to some improvement and expansion in a more social direction." (March 13, 1985 Psychiatric Examination, Adult and Child Mental Health Center-Franklin, Tr. Ex. CC).

Overstreet was next evaluated by military personnel. This happened after Petitioner enrolled in the Navy following his expulsion from high school. Although his then-girlfriend and

wife-to-be, Melissa, was upset that Overstreet enlisted, Overstreet felt he "needed to enlist in order for them (Melissa and he) to have a successful future together." (PCR Ex. 19, p. 11). After he enlisted, Overstreet was sent to the Recruit Training Center in Orlando, Florida. He arrived there on January 6, 1986. Within a month, Overstreet was seeking help for his headaches at the Naval Hospital ER. On February 12, 1986, Overstreet was referred to a naval psychiatric technician and a naval psychologist for consultation. Although the naval consultation report noted that Overstreet's performance "has been rated as good and has been characterized by improvement in his progress," Overstreet advised Debra Reynolds, the psychiatric technician, that he was having second thoughts about being in the Navy. According to Ms. Reynolds: "He (Overstreet) does not appear to be motivated for further service and desires to be separated from the Navy." The Navy psychologist, A. S. Hughes noted that Overstreet suffered from Adjustment Disorder, moderate to severe manifested by somatic complaints of headaches and Schizotypal Personality Disorder, moderate to severe, manifested by social isolation, cague (sic) and digressive thoughts, difficulty with interpersonal rapport, poor planning skills and undue social anxiety. Dr. Hughes recommended that Overstreet be separated from the military. On February 24, 1986, Overstreet was discharged from the Navy. (February 12, 1986 Consultation Sheet, Tr. Ex. CC; PCR Ex 19, p. 11,)

On October 15, 1986, Overstreet attacked his brother, Scott, with a machete. (PCR 378). Melissa and Overstreet's mother convinced Overstreet to seek help at Valle Vista Hospital. While at the hospital, Overstreet was evaluated by Dr. Balwant S. Mallik, M.D. Dr. Mallik's

diagnostic impressions were: "Axis I-1) Dysthymic Disorder,[11] 2) Atypical Impulse Control Disorder; Axis II-Antisocial Personality; Axis III-No diagnosis; Axis IV-4-Moderate; Axis V-4-Fair."(October 23, 1986 CPC Valle Vista Hospital Discharge Summary , Tr.Ex. CC).

His 1986 stay at Valle Vista represented Overstreet's last contact with mental health professionals until he was charged with murder in 1997. In those ensuing years, Overstreet married, fathered children, obtained a GED, bought a house, and worked to support his family.

Although he was working to establish a home and a family, Overstreet's life was far from perfect. Overstreet drank. He drank often enough and to such a degree that his drinking caused him trouble with the law. Overstreet's first alcohol related arrest occurred in September, 1989. His fourth, and final alcohol related arrest came in May, 1997. (PCR Ex. 19, p. 13-16). As a result of the last arrest, an arrest for operating a motor vehicle while intoxicated, Overstreet lost both his license (Tr.transcript 146) and, as a consequence of his license loss, his long term job at ETS. (PCR Ex. 19, pp.14-15, Tr.transcript 132).[12]

CRIMINAL PROCEEDINGS
STATE OF INDIANA V. MICHAEL DEAN OVERSTREET
CAUSE NUMBER 41D02-9711-CF-00158 ("TR")

On November 7, 1997, Overstreet was charged with murder in Johnson Superior Court Cause Number 41D02-9711-CF-00158. On November 13, 1997, Overstreet, filed a Notice of Intent to Interpose a Defense of Insanity. A few weeks later, on December 9, Overstreet requested

[11]As Dr. Masbaum noted dysthymic disorder is: "...commonly known as depression." (PCR transcript 897).

[12]Overstreet lost the job in July, 1997. At the time of Ms. Eckart's murder, Overstreet was working for Olson Staffing, a temporary staffing agency. (PCR Ex. 3).

a psychiatric evaluation. In response to that request, the court appointed Ned P. Masbaum, M.D. and Don A. Olive, Psy.D to examine Overstreet and advise the court of their conclusions regarding Overstreet's sanity and competency.

Dr. Masbaum and Dr. Olive ultimately arrived at the same conclusion on competency. Both doctors found that Overstreet was competent to stand trial.

Although Dr. Masbaum and Dr. Olive arrived at the same conclusion on competency, their diagnoses of Overstreet and their conclusions on sanity were not identical. In his report dated January 5, 1998, Dr. Masbaum noted that Overstreet said he had been drinking the night Ms. Eckart was murdered. Overstreet disclaimed any memory of the night Ms. Eckart was killed. Dr Masbaum noted his diagnostic impression was Overstreet suffered from alcohol dependence.[13] The doctor further opined that "this individual was of sound mind on or about the dates of the alleged offense. He was able to appreciate the wrongfulness of his conduct at that time in accordance with I.C. 35-41-3-6." (Tr. 133).

Dr. Olive interviewed Overstreet on January 7, 1998 and filed a report of his findings a month later. Dr. Olive's diagnostic impressions on Axis I were: Major Depression, Single Episode, Moderate, Anxiety Disorder Not Otherwise Specified (by history), Alcohol Abuse (in remission secondary to incarceration) Dr. Olive deferred diagnosis on Axis II, referred to the medical history in chart when addressing Axis III, noted Incarceration as his Axis IV entry, and

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[13]Overstreet and his wife separated twice because of his alcohol consumption. Apparently at some point in the 1990s, Overstreet attended Alcoholics Anonymous for a while and had an eighteen month period of sobriety. He had resumed drinking by the time of Ms. Eckart's murder. Melissa Overstreet testified that Overstreet appeared to have been drinking when she picked him up in Atterbury and she also reported finding empty Schnapps bottles in the family van shortly after Ms. Eckart was abducted. (Tr.transcript 3825).

determined Overstreet's Axis V GAF as 55. (Tr.148).

Although he was able to form a diagnostic impression of Overstreet, Dr. Olive had more difficulty assessing sanity at the time of the offense. In their discussion, Overstreet denied killing Ms. Eckart, but again disclaimed any particular memory of the events of the evening, telling Dr. Olive: "I was out drinking that evening. My wife picked me up at Atterbury. I can't recall that night specifically. It was a typical evening I had to have someone pick me up." (Tr. 147).

Since Overstreet denied killing Ms. Eckart, Dr. Olive said that he could "only speculate as to his (Overstreet's) sanity at the time of the alleged offense." Nonetheless, Dr. Olive concluded: "...if certain allegations of witnesses are proven at trial to be true beyond a reasonable doubt, then I believe the facts demonstrate that he possessed the necessary psychological capacities for criminal responsibility." (Tr. 148).

Neither Dr. Masbaum nor Dr. Olive testified at Overstreet's trial; on April 11, 2000, Overstreet moved to withdraw the notice of intent to interpose the defense of insanity. Overstreet's motion was granted the same day. (Tr. 977, 979).

Although Drs. Masbaum and Olive did not testify at the trial, neuropsychologist Eric Engum, Ph.D. did. Dr Engum was one of three doctors (two psychologists and one psychiatrist) retained by the defense as potential witnesses. He was the only one of the three doctors to testify during the penalty phase of the trial. [14]

Dr. Engum performed an extensive examination of Overstreet. Over the course of two

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[14]The other two doctors, Dr. Robert Smith and Dr. Phillip Coons testified at Overstreet's December, 2004 post-conviction hearing. Their findings and conclusions will be discussed in more detail below.

days[15], the doctor conducted a clinical interview of Overstreet and administered a number of tests. The testing began with the administration of an I.Q. test and a Peabody Achievement test. Dr. Engum also performed neurological testing on Overstreet**.** From those tests, Dr. Engum determined that Overstreet had an I.Q within the normal range, did not have any signs of brain damage (Tr. 5074), and that Overstreet "was working well below his capabilities when he was in school, and in fact, had much greater strengths that he was able to develop as he moved through life." (Tr. 5075).

After conducting those tests, Dr. Engum then administered a number of tests designed to evaluated Overstreet's personality and emotional behavior. (Tr. 5075). Dr. Engum used the MMPI, the Millon Clinical Multiaxial Inventory, and the Carlson Psychological Survey to assist him in his evaluation. The MMPI helped Dr. Engum determine Overstreet's personality structure, the Millon addressed Axis II personality issues, and the Carlson Psychological Survey helped Dr. Engum determine Overstreet's likely performance in an institutional setting. (Tr. 5075-5086).

As part of his evaluation, Dr. Engum not only met with Overstreet and evaluated his test results, he also reviewed Overstreet's records from 1983 forward (Tr. 5078) [16] and met with

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[15]Dr. Engum performed the interview and conducted the testing on March 2 and March 3, 2000. On March 2nd he met with Overstreet from 9:30 a.m. to 6:05 pm.; on March 3td, Dr. Engum and Overstreet met from 9:25 a.m. to 5:25 p.m. (Tr.transcript 5059, 5073-4). Dr. Engum also met with Mr. Overstreet's mother, father, sister and brother-in-law for two to three hours, and spent three hours with him on a Wednesday and an hour and half with him at the prison on a Sunday. (Tr.transcript 5110).

[16]These records were contained in Tr.Ex. CC and included a six page Assessment Summary Report from the Johnson County Schools; a November 25, 1983 report of a psychological examination conducted by Joe Mazzei, Ph.D. at the Adult and Child Mental Health Center-Franklin; a December 6, 1983 report from the Adult and Child Mental Health Center-Franklin signed by Emory O. Mills, Jr., a psychiatric social worker; a January 17, 1984 report of a parent conference between Mr. Mills and Mrs. Overstreet; a March 22, 1984 psychological

Overstreet's mother.[17]

After completing the assessment, Dr. Engum diagnosed Overstreet as suffering from a schizotypal personality disorder. (Tr. 5113). He described Overstreet as "somebody with some odd beliefs, some distorted thinking, some paranoia, some suspiciousness. Also some difficulty in interpersonal interactions and interpersonal relationships." (Tr. 5117). According to Dr. Engum, Overstreet met all nine criteria for a schizotypal personality disorder, which, he told the jury, is among the most severe of the personality disorders. (Tr. 5122). [18]

In discussing his diagnosis with the jury, Dr. Engum explained that the diagnosis was more complicated than merely schizotypal personality disorder. The doctor described a meeting he had with Overstreet on March 22, 2000, a date about three weeks after Overstreet and Dr. Engum first met. (Tr. 5113). During the meeting, Overstreet decompensated and experienced a psychotic episode. According to Dr. Engum:

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evaluation signed by Daniel H. Stauber, M.A. and Paul W. Thorsen, Ph.D., a March 13, 1985 psychiatric examination report from the Adult and Child Mental Health Center-Franklin signed by Joseph A. FitzGerald, M.D.; six pages of records from the United States Navy; a five page report from the CPC Valle Vista Hospital which includes a psychiatric evaluation and discharge summary; and three documents entitled "Closing Summary". One is dated March 13, 1984, the second is dated April 4, 1985 and the last is dated September 26, 1986. All are signed by Emory Mills and seem to relate to Overstreet's consultations at the Adult and Child Mental Health Center. Each contains a diagnosis. Overstreet's 1984 diagnosis was "academic problem;" his 1985 diagnosis was "adjustment reaction; and the final, 1986 diagnosis was "adjustment reaction mixed emotional features."

[17]Mrs. Overstreet denied her son had any mental health issues. (Tr.5109). Dr. Engum disagreed with Mrs. Overstreeet's assessment of her son's situation.

[18]Dr. Engum also discussed Overstreet's perceptual distortions– "potentially seeing devils and angels and things like that", and said he did not consider those distortions to be "pure hallucinations." Dr. Engum included Overstreet's experience of seeing shadows out of the corner of his eyes as a perceptual distortion. (Tr.5119).

> When we were talking with him he started talking about that the crime was committed four days after the feast of, I believe, Saint Michael, and there were a lot of vague, religious references and things, and he became totally disorganized, we saw increased paranoia, suspiciousness towards you, towards myself, even towards family members...he clearly had fragmented and, I mean, just basically decompensated. **(**Tr. 5127-28).[19]

After witnessing this behavior, Dr. Engum also diagnosed Overstreet with a brief psychotic disorder. This diagnosis did not change his overarching diagnosis of schizotypal personality disorder. (Tr. 5129).[20]

POST-CONVICTION HEARING
MICHAEL DEAN OVERSTREET v. STATE OF INDIANA
CAUSE NO. 41D02-0401-PC-00001 ("PCRI")

Overstreet filed a petition for post-conviction relief on December 31, 2003. Hearing on the petition was held from August 16-20, 2004, and completed on September 13, 2004. In an eighty-

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[19]The incident occurred when Dr. Engum accompanied Overstreet's attorney, his mitigation specialist, his sister and her husband to talk to Overstreet. Apparently, the State had made a plea offer to Overstreet and his attorney wanted to talk to Overstreet about the offer. At some point just Overstreet, Dr. Engum, Shannon Richardson (Overstreet's sister) and her husband were in the room. According to Ms. Richardson: "I was getting upset because his attorneys are tell me 'He's got to do this, you've got to talk him into it.' and he wasn't budging and I couldn't figure out. So I was getting upset, you know, by talking to him. And then all of a sudden he just drew this blank look and looked at me and said something about the, some kind of angel, the Michael angel, or something, something out of the Bible that I'm not familiar with. And I looked at him and I just waved for the attorneys and doctors to come in there because he looked different and his eyes looked different to me, and I don't know where he was, I mean just out of the blue to talk about what he mentioned, and I didn't want to see that, if, if, he had the, the disorder that they said, the multiple disorder or whatever. I didn't want to see none of that. I didn't, 'cause he definitely switched something. " (PCR transcript "PCRI" 397).

[20]While his diagnosis was schizotypal personality disorder, Dr. Engum "did what's called a rule out, which means I (the doctor) do not have enough information to make that (schizophrenia) diagnosis. But that if anybody looks at him in the future, they should at least keep that as an active, viable option for a diagnosis." (Tr. 5161).

Dr. Engum later concluded that Overstreeet suffers from paranoid schizophrenia.

six page opinion, the trial court denied all of Petitioner's post-conviction claims.

One of Overstreet's post-conviction claim related to his counsels' handling of the penalty phase of the trial. Before trial, counsel had retained three doctors to evaluate Overstreet's mental health. One of the doctors, neuropsychologist Erik Engum testified at the trial. The other two doctors, Robert L. Smith, Ph.D. and Philip M. Coons, M.D. examined Overstreet before trial, but were not called as witnesses. Instead of calling Drs. Smith and Coons as witnesses, counsel stipulated that Dr. Smith had formed the same diagnostic impression of Overstreet as Dr. Engum. (Tr. 5112, 5190). The stipulation read:

> Dr. Robert L. Smith is a Ph.D. in neuropsychology. He is a licensed clinical psychologist. He met with Michael Dean Overstreet and evaluated and is qualified to do so. He has tendered an opinion on his findings, and that Dr. Smith's diagnosis is the same as Dr. Engum's. (Tr. 5112).

This was not correct. Dr. Engum diagnosed Overstreet as suffering from a schizotypal personality disorder, which is an Axis II disorder. Dr. Smith diagnosed Overstreet as suffering from an Axis I disorder. He opined that Overstreet suffered from schizoaffective disorder, a combination of schizophrenia and major depression. *See, Overstreet v. State,* 877 N.E.2d 144, 155-156 (Ind. 2008), *Overstreet v. Wilson,* 686 F.3d 404, 407-410 (7thCir. 2012).

Five doctors testified at the post-conviction hearing. Four were called by Petitioner; one was called by the State.

Dr. Philip Coons is a Professor Emeritus of Psychiatry at Indiana University School of Medicine. He is one of the three doctors retained in 2000 to examine Overstreet. Dr. Coons met with Overstreet twice in 2000; the men first met on March 5, 2000, and then again on March 29,

2000. Although retained as a possible witness, Dr. Coons did not testify at trial. When he testified at the post-conviction hearing, Dr. Coons estimated that he had participated in approximately two hundred "forensic cases." (PCRI 431). During the doctor's time at LaRue Carter Hospital (1975-1995), half of his in-patient and a third of his out-patient practice was devoted to those diagnosed with schizophrenia. After leaving LaRue Carter, Dr. Coons occasionally saw people with schizophrenia. Dr. Coons also has also treated patients with dissociative disorder and is a nationally recognized expert on those disorders. (PCRI 433).

When he testified at the post-conviction hearing, Dr. Coons explained that he had changed his diagnosis of Overstreet. In early March, 2000, after seeing Overstreet the first time, Dr. Coons diagnosed Overstreet with schizotypal personality disorder, a disorder Dr. Coons described as "a first cousin to schizophrenia." (PCRI 436, 439, Ex. 22 p.15). Dr. Coons explained that schizotypal personality disorder "...consists of all of the symptoms, all of the though disorder and the mood disorder symptoms of schizophrenia. But without the flagrant distortions of reality like delusions or hallucinations*."Id.* at 436. [21]

Sometime after arriving at that first diagnosis, Dr. Coons was asked to re-examine

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[21]Later, Dr. Coons explained in more detail:

> ...with schizotypal personality disorder you can have some of the symptoms of schizophrenia, the disordered thinking, the, it's usually vague, sometimes tangential where the person doesn't always, you know, hit or continue their train of thought, but they talk around it. Consist of some sensory, some unusual sensory experiences, such as illusions, consist of odd beliefs, you know, for instance like maybe I saw an angel or something like that. Odd behaviors, like the wiping of the table. But there's nothing frankly psychotic about it. There are not delusions or hallucinations. And in paranoid schizophrenia, what we generally see most of the time the psychotic experiences are the delusions, you know, the felling that something is not right, something is being done to the self by other folks. Sometimes that's accompanied by auditory hallucinations of threatening voices, that sort of thing. (PCRI 458-9.

Overstreet. This second examination occurred in late March, 2000 and was requested by Overstreet's counsel following Overstreet's episode with Overstreet's sister and Dr. Engum. During this second interview, Dr. Coons observed "a lot of symptoms of disassociation." *Id.* at 437, including amnesia, short fugues, depersonalization, derealization and identity fragmentation.[22] As a result of these new observations and this new information, Dr. Coons concluded that Overstreet also suffered from dissociative disorder not otherwise specified (DDNOS). *Id.* at 437-439.As Coons explained in 2004, if he had known in 2000 what he now knew, he would have diagnosed Overstreet as schizophrenic. *Id.* at 439.

There were a number of things Dr. Coons did not know in 2000. In 2004, with the post-conviction case pending, Dr. Coons was again called upon to evaluate Overstreet. Dr. Coons interviewed Overstreet on March 17, 2004. Before arriving at a conclusion in the case, Dr. Coons spent two hours with Overstreet. spoke with Mary Overstreet, read a deposition of Overstreet's ex-wife Melissa, reviewed a social history of Overstreet's life and conducted telephonic interviews with three Department of Correction employees.[23] Dr. Coons also consulted with Robert Smith, Ph.D. and reviewed Dr. Edmond Haskins' report before rendering his 2004 opinion. (PCRI 435, 445-6, PCRI Ex. 22). Armed with this information, Dr. Coons concluded that Overstreet "qualified for diagnosis for paranoid schizophrenia." (PCRI 447).

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[22]Dr. Coons explained a fugue is where Overstreet was amnesic and ended up somewhere he didn't to go. Depersonalization meant Overstreet "didn't feel like he was himself, he felt split. Derealization is where "he felt like things outside himself were unusual or strange or changed."

[23]: Leonard Ball, M.D., Steve Walton, Ph.D. and Carl Mokoff, Ph.D.

Like Dr. Coons, Robert Lee Smith, Ph.D.[24] was retained by Overstreet's trial counsel and asked to evaluate Overstreet. Like Dr. Coons, Dr. Smith was not called to testify at trial. Unlike Dr. Coons, Dr. Smith diagnosed Overstreet with an Axis I-not Axis II- disorder.[25] Dr. Smith's 2000 diagnostic impression was that Overstreet suffered from schizo-affective disorder. *Id.* at 510. More specifically, the doctor opined that Overstreet was experiencing a combination of schizophrenia and major depression. *Id.* at 522.[26]

Although Dr. Smith referred to collateral sources before arriving at this diagnostic impression, Dr. Smith primarily relied on a five and a half hour personal interview with Mr. Overstreet."(PCRI Ex. 25, p.1-2). During the course of his February 20, 2000 interview with Overstreet, Dr. Smith obtained a health history, a psychiatric history, and a substance abuse history

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[24]Dr. Smith also testified on the first day of the 2014 post-conviction hearing. Although Dr. Smith did not re-evaluate Overstreet in anticipation of the 2014 hearing, he did review the recorded interviews conducted by Dr. Parker and Dr. Wood.

[25]Dr. Coons was asked to explain the difference between Axis I and II. He responded: "...in psychiatry when psychiatrists make a diagnosis, if they make a complete diagnosis, they make diagnoses on five axes. Axis number one is, is where we find the most of the psychiatric diagnoses. Axis II is where we find personality disorder diagnoses and mental retardation." (PCRI 447).

When asked to describe the distinction between schizophrenia and a schizotypal personality disorder, Dr. Smith said: "A personality disorder is most often based upon life experiences, results from very traumatic background. It can lead to schizophrenia. It may be one of the steps towards someone becoming schizophrenic. But schizophrenia is not behavior in and of itself. It is a psychotic disorder, it's biological in nature, it's the result of changes in brain chemistry and result in hallucinations and delusions which at (sic) not present in schizotypal personality disorder." *Id.* at 515.

The DSM-5 published in 2013 no longer lists personality disorders on a separate axis.

[26]The doctor administered the Michigan Alcoholism Screening Test, the Drug Abuse Screening Test and the Substance Abuse Subtle Screening Inventory, 3rd ed. to Overstreet. Based on that testing as well as his interview with Overstreet, he also concluded that Overstreet was alcohol dependent. (PCRI 505, PCR Ex. 25 p. 1, 6-8

from Overstreet. During the course of the interview, Overstreet disclosed that angels and demons talk to him and impact his environment and behavior. (PCRI 507-508).

Four years later, Dr. Smith again interviewed Overstreet. After his April 5, 2004 interview with Overstreet, Smith opined that Overstreet's depression had abated but that the hallucinations and delusions remained. (PCRI Ex. 25 p.7, PCRI 519-20). In his report of their meeting, Dr. Smith summarized Overstreet's mental status this way:

> He was oriented to person and place, but he was uncertain regarding the day and time. He evidenced impairment in memory for both recent and remote events surrounding stressful situations. He described this as 'losing time'. He displayed and reported impairment in thought, including perseveration, disorganized speech, and loose associations. He reported distortions in perception including visual and auditory hallucinations. He displayed distortions in thought content or delusions, involving persecutory and religious themes. He displayed only mild signs of depression and denied suicidal ideation. He reported no thoughts of hurting others or of aggressive acts. Although he was agitated and anxious at times, his symptoms were related to the content of his delusions rather than an anxiety disorder. Overall, his range of affect was restricted and flat. He displayed average intellectual functioning but limited insight and judgment. (PCRI Ex. 25 at 7).[27]

Dr. Smith's diagnostic impressions were Schizophrenia-Paranoid Type, Dissociative Amnesia and Alcohol Dependence–In remission.

Dr. Edmund C. Haskins, Ph.D, agreed that Overstreet was a paranoid schizophrenic. He

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[27]Dr. Smith reported: "As early as elementary school, Mr. Overstreet reported to his family, teachers, peers and counselors that he could see ghosts and the devil. As Mr. Overstreet aged, his hallucinations and delusions progressed. He would see things that others would not see and believed that angels and devils were communicating with him. The communication from these 'spirits' led Mr. Overstreet to become extremely compulsive in his behaviors. He came to believe that there were certain 'necessary' or 'required' behaviors that he must complete or he would suffer consequences either to himself or his family. As a teenager, Mr. Overstreet experienced significant teasing by his siblings and peers for his hallucinations and delusions. (PCRI Ex. 25, p. 10).

also diagnosed Overstreet as "Schizotypal Personality Disorder by history, and Alcohol Abuse by history." Dr. Haskins, a clinical neuro-psychologist, arrived at these diagnoses after spending ten hours reviewing records submitted to him, interviewing Overstreet for three hours and testing Overstreet for an hour. (PCRI Ex. 30, PCRI 592-593). Dr. Haskins' "mission" was to "primarily assess Mr. Overstreet's psychia...psychological status. And in particular to look at the extent to which he might be suffering from schizophrenia." (PCRI 592). Throughout his June 26, 2004 interview with Overstreet, Dr. Haskins looked for both positive and negative symptomology of schizophrenia and rated the symptoms he observed in Overstreet. Dr. Haskins also gauged whether Overstreeet was malingering by assessing his description of his hallucinations and delusions.[28] *Id.* at 592-603. After meeting with Overstreet, Dr. Haskins determined that Overstreet's description of his hallucinations were not suspect. After assessing Overstreet's reports of delusions, Dr. Haskins concluded they, too, were not feigned. (PCRI Ex. 30, p. 7-8).

Reconciling the seeming severity of Overstreet's mental illness with his ability to function relatively successfully for over a decade without psychiatric intervention,[29] Dr. Haskins explained:

> Schizophrenia on its face is a severely debilitating condition that by virtue of the facts that is impairs a person's thinking ability, it impairs their perceptual ability, it impairs their judgment. It often times does result in severe behavioral dysfunction. A person who is really unable to get along at all in any capacity. There are, however, higher functioning individuals who do have this diagnosis. I consider Mr. Overstreet to be one. He clearly, on the basis of neuro-

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[28]The DSM-IV-TR defined malingering as "the intentional production of false or grossly exaggerated physical or psychologic symptoms motivated by external incentives." p. 739, *Diagnostic and Statistical Manual of Mental Disorders, 4th ed.*American Psychiatric Association, 2000.

[29]Dr. Haskins was asked "How can someone with schizophrenia hold jobs, get married and have a family at one point?" (PCRI 604).

> psychological testing that was done by Mr. Ingham (sic) back in the year 2000, has good cognitive ability when it's applied to impersonal tasks of the type that a neuro-psychologist would perform. The tasks of simple memory, attention and concentration, reasoning, (INAUDIBLE) facial processing, all the components of a neuro-psychological battery, he did very well, he was clean neuro-psychologically. However, even folks like that need help in their ability to deal with life. My strong view, based on a review of the evidence that I've seen in this case, is that Mr. Overstreet received a great deal of assistance and structure and support from his wife Melissa throughout their marriage and, even before they were married. She was a stabilizing influence in his life. She was someone who took care of him. I, I believe. She was someone who provided him with the structure that he needed by virtue of the fact that he was suffering from this severe psychiatric disorder. (PCRI 604-605).

David Price, Ph.D., was the fourth, and final, of the Petitioner's mental health experts to testify at the post-conviction hearing. Dr. Price is a clinical psychologist, a forensic psychologist, and a neuro-psychologist. (PCRI. 627). Dr Price's practice focuses primarily on "consulting in psychological and neuro-psychological injury claims, some criminal proceedings, disability claims, stuff like that." *Id.* at 628. In his work, Dr. Price is "generally called upon to determine how a person was functioning at some given point in time in the past when some event occurred, whether it'd be a criminal proceeding or some type of injury, or some incident, such as that." *Id.* Dr. Price bases that determination on what the records of that person reveals about him. *Id.* at 629.

Dr. Price followed that same process here. Although he met with Overstreet for an hour and a half, Dr. Price based his opinion primarily on his review of Overstreet's records. *Id.* at 632. Dr. Price explained: "I have talked with Mr. Overstreet, but that really wasn't necessary for my opinions since we were looking at how he was functioning prior to a given point and (sic) time." *Id.* at 675.

After reviewing Overstreet's records, Dr. Price concluded that Overstreet suffered from

either Schizophrenia Paranoid Type, Schizophrenia Residual Type, or Schizoaffective Disorder. (PCRI Ex.34 p, 2). Dr. Price testified that Overstreet's records evidenced Overstreet's transition from the precursors of schizophrenia into schizophrenia. (PCRI 636-637). As Dr. Price explained that "one of the things you look at when you look at schizophrenia is a pattern of, is the person always being diagnosed with a mental disorder." *Id.* at 641. According to Dr. Price, he counted out of "fifty-eight contacts, and it may be sixty-one now, Mr. Overstreet has been diagnosed with a (inaudible) mental disorder sixty times. Sixty to Sixty-one..." *Id.*

During his testimony, Dr. Price led the listener through Overstreet's journey from the precursors of schizophrenia into the disease. Dr. Price noted Overstreet's diagnoses of a adjustment disorder (2/12/86), adjustment reaction (9/20/86), and dysthymic disorder (10/16/86) (*Id.* at 642, PCRI Ex. 34, p. 5), generalized anxiety disorder and anxiety neurosis. (PCRI 645, PCRI Ex. 34, p 12). Dr. Price also referenced the March 22, 1984 evaluation conducted by Daniel Stauber and Dr. Paul Thorsen, Ph.D. That evaluation described Overstreet's testing results as "suggestive of a prodromal though disorder." According to Dr. Price, Overstreet's earlier diagnosis of schizotypal personality disorder was also consistent with the current diagnosis that Overstreet has schizophrenia. As Dr. Price explained:

> Schizotypal personality disorder, there are three personality disorders called cluster A, which are those that are often evolve into thought disorders. So like on a spectrum they're here and then they migrate over into being thought disorders. The paranoid personality disorder, schizoid personality disorder, and the schizotypal personality disorder, these are individuals that are seen in interactions with others as definitely odd. It influences the way they interact with their environment. They generally always present with other mental disorder, and often evolve into thought disorders. (PCR transcript at 647).

Asked to explain how a personality disorder like schizotypal personality disorder can transform into a brain-based chemical or biological disease like schizophrenia, Dr. Price responded:

> Well, stress can alter neurotransmitters. I mean that stress can cause adjustment disorders let's say. And it may just facilitate that process on. But actually, what also some happens with an evolving schizophrenic, is that the stressful situations they find themselves in are really just a reflection of the thought disorder and the poor associated judgment, and what not, that they're experiencing. They put themselves in bad situations develop as a result of having the disorder. *Id.* at 648-649.

Given the constellation of precursors identified by Dr. Price, he opined that all were consistent with, and diagnostic indicators of, Overstreet's paranoid schizophrenia.

By the time of the post-conviction hearing, all of Petitioner's mental heath witnesses had coalesced around a diagnosis of paranoid schizophrenia[30]. The State's witness, Dr. Ned Masbaum, did not agree. Dr. Masbaum conceded that Overstreet suffered from a mental disorder. He did not, however, believe Overstreet suffered from schizophrenia.

Dr. Masbaum was one of the two doctors appointed to evaluate Overstreet after Overstreet interposed the defense of insanity at trial. After examining Overstreet in January, 1998, Dr. Masbaum concluded that Overstreet suffered from alcohol dependence. (PCRI 891). By the time he was called to testify during the 2004 post-conviction hearing, Dr. Masbaum had concluded, in hindsight, that Overstreet "did have personality disorder." *Id.* at 892. According to Dr. Masbaum, Overstreet had characteristics an antisocial personality disorder, of a paranoid disorder, of a dependent personality disorder and had obsessive compulsive traits. That constellation of

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[30]Schizophrenia subtypes–paranoid type, disorganized type, catatonic type, undifferentiated type and residual type–have been eliminated in the DSM-5. *Diagnostic and Statistical Manual of Mental Disorders, 5th ed.* American Psychiatric Association;2013.

characteristics led Dr. Masbaum to opine that Overstreet suffered from a personality disorder not otherwise specified. *Id.* at 892-893.

Dr. Masbaum gave three reasons for disagreeing with the paranoid schizophrenia diagnosis. First, he explained that Overstreet's thinking and speech were not consistent with paranoid schizophrenia:

> [O]ne of the hallmarks of schizophrenia is disorganized thinking and disorganized speech And disorganized speech, of course, comes from the disorganized thinking. And this is one of the key factors in schizophrenia. Along with this is an inappropriate mood that the person conveys, inappropriate behavior, there can be delusion and hallucinations, there can be apathy, preoccupation with bizarre thinking things of that nature....He evidenced none of those things, he had no schizophrenia when I examined him. *Id.* at 896.

He also explained that Overstreet's history was inconsistent with the diagnosis.

> His medical records also concur with that and in particular he had seen several psychiatrists and I had the opportunity to review a psychiatric consultation on September 27, 1983 by Dr. Robert Snodgrass, who is well known private practitioner, psychiatrist on the south side of Indianapolis...And Dr. Snodgrass diagnosed generalized anxiety disorder. He found no evidence of a psychosis present whatsoever, there was no schizophrenia present. In addition, he was hospitalized at Valle Vista Hospital and he saw a psychiatrist there. I was able to review the records from Valle Vista. The psychiatrist is Dr. Malik, and he diagnosed (INAUDIBLE) disorder or commonly known as depression, atypical impulse control disorder, antisocial personality. He had no psychosis, no, no schizophrenia diagnosed by that psychiatrist. So that's two psychiatrists prior to the crime. In addition, the third psychiatrist, a very well respect psychiatrist, he was a child psychiatrist whom I also know personally, I also knew Dr. Snodgrass personally. Dr. Fitzgerald, now deceased, he diagnosed Michael Overstreet as schizo-affec...schizotypal personality. And perhaps schizoid personality and he also noted that when he was seen for the last time, that he was actually improving and said his personality was now fixed and he seemed to be going in a more social direction and that time. He did not diagnose schizophrenia, there was no evidence of

schizophrenia at that time. *Id.* at 896-897.

The final reason Dr. Masbaum gave for disagreeing with the other doctors related specifically to Ms. Eckart's murder. He noted:

> Again, according to the records and the retrospective diagnosis of schizophrenia at the time, which I was reading about from those other evaluations, I, I find this is not compatible based on the information I have about the crime. On two, two portions, here, one, if he had schizophrenia and how he would act, and also whether he understood the wrongfulness at the time of the crime. And these two things are deeply intertwined. The description of the crime, as everyone knows now, was such that he abducted Kelly. He subdues her by some type of blow to the head. He involved his brother and his wife at parts of the crime. In particular, had his brother come and pick him up at the hotel. Had his brother take him down to an isolated dark area in Camp Atterbury, which was ultimately determined to be the murder site. Had his brother return his van, it was, it was Michael's van, to his wife. He asked Michael, excuse me, Michael asked Scott to pick him up later at Atterbury, which he refused to so, so he instructed Scott to have Melissa, Michael's wife, come and pick him up two hours later. Well this is very significant, you know, digress at this point. This is very compulsive behavior for one thing, it's setting a schedule, and exact schedule. It's involving other people to assist. Now this is a complex operation, especially involving other people. A person who is in a schizophrenic state operates in a disorganized manner and they're incapable of careful planning of this nature. *Id.* at 899-900. [31]

Asked by counsel if Overstreet could have accomplished this in a fugue or dissociative state, Dr. Masbaum responded: "No." *Id.* at 900.[32]

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[31]The evidence upon which Dr. Masbaum based this opinion is consistent with evidence adduced at trial. *See,* Findings of Fact and Conclusions of Law p.4-7, PCRI. App.

[32]Dr. Masbaum had earlier express skepticism regarding the idea that Overstreet was in a fugue state at the time of the crime. As Dr. Masbaum noted, Overstreeet's alcohol use was "quite profound" at the time of the killing. According to Dr. Masbaum, a fugue state cannot be diagnosed if alcohol was also involved. *Id.* at 895. Both Melissa and Overstreeet reported that

The psychiatric and psychological evaluations summarized so far are all at least a decade old. They do not address the question presented here, i.e., whether Overstreeet meets the competency to be executed standard articulated in *Ford* and clarified by *Panetti.* Although these earlier evaluations and diagnoses are illuminating, they are not determinative.[33] Rather, they provide an historical context for evaluating Overstreet's current claim of incompetence, *see, e.g., Billiot v. Epps,* 671 F Supp.2d 840, 850 (S.D. Mississippi 2008), and provide insight into the course of Overstreet's illness.

SUCCESSIVE POST-CONVICTION HEARING
MICHAEL DEAN OVERSTREEET V. STATE OF INDIANA
CAUSE NO. 41D02-1306-PC-00009 ("PCRII")

Overstreeet and the Mental Health Professional at Indiana State Prison

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Overstreeet was drinking heavily on the night of the crime.

[33]In his first post-conviction petition, Petitioner raised insanity as a challenge to his execution. Overstreeet claimed that the Eighth Amendment prevented his execution because he was insane. The Indiana Supreme Court found scant evidence to support a claim under the *Ford* or *Panetti* standard. The Court noted:

> It is clear that Overstreeet suffers from a severe, documented illness and that the mental illness is a psychotic disorder that is the source of gross delusions. However, fatal to Overstreet's federal constitutional claim is that there was no evidence presented in the post-conviction court one way or the other on whether Overstreeet is aware of the punishment he is about to suffer and why he is to suffer it–the *Ford* standard as articulated by Justice Powell. Nor was there any evidence presented to the post-conviction court one way or the other on whether Overstreet's psychotic delusions 'prevent [] him from comprehending the meaning and purpose of the punishment to which he has been sentenced.' *Panetti,* 127 S.Ct. at 2862. *Overstreeet,* 877 N.E.2d at 173.

Since 2004, the mental health professionals at the Indiana Department of Correction have monitored Overstreet's disease. A number of those professionals testified at Overstreet's September, 2014 hearing. None of these witnesses performed forensic assessments of Overstreeet while he was in the witness' charge. Some of these witnesses have not been in contact with Overstreeet for a number of years. Although the testimony of these mental health professionals is not dispositive of the discrete question to be addressed here, the witnesses provide continuity in understanding the course of Overstreet's illness and help inform the opinions of the doctors who performed forensic mental health assessments on Overstreeet during the past year.

Dr. Helen Morrison wore two hats at the post-conviction hearing. Although she was one of the four doctors who conducted competency to be executed evaluations of Overstreeet within the past year, Dr. Morrison was also Overstreet's psychiatrist when she worked at the Indiana Department of Correction for a sixth month period in 2005. Dr. Morrison is currently an Associate professor in the Department of Psychiatry and Behavioral Sciences at Northwestern University Feinberg School of Medicine, the Director and Chief of Forensics in the Department of Compensation and Pension at the Jesse Brown Veterans' Hospital in Chicago, has a private practice and performs forensic evaluations.

Dr. Morrison discussed her interactions with Overstreeet during the time she worked at the Indiana State Prison. Dr. Morrison's first 2005 contact with Overstreeet came after Overstreeet had been referred to Dr. Morrison with "reemerging symptoms." (Joint Appendix "Jt.App." 224). During that period, Dr. Morrison met with Overstreeet three times and managed his medications. The IDOC records from that time quote Overstreet's disclosure that: " I hear my name being called. I thought I heard my sister but that's not possible." *Id.* at 222.. Overstreeet also reported that he

heard voices that tell him "who's good; who's bad and if the bad keep bothering me, they tell me to hurt them." *Id.* at 231. He also claimed, " I see stuff sometimes." *Id.* at 253. Among the negative symptoms Overstreeet reported (and Dr. Morrison noted) were a loss of focus and impaired sleep. *Id.* at 231. He also appeared disheveled. *Id.* at 235. After seeing him in 2005, Dr. Morrison diagnosed Overstreeet with chronic paranoid schizophrenia.(PCRII, 252).

Dr. Martha O'Danovich, Psy.D., worked with Overstreeet from July, 2007 to February, 2009. She was the first of the witnesses with whom Overstreeet shared his concern that "people weren't who they said they were." *Id.* at 451. Describing her introduction to Overstreet's imposter delusion, Dr. O'Danovich said:

> He told me that there was a way for him to be sure that his female attorney was who she said she was, or who she said she was. Something about writing. She would write something down, and he would take it back to the cell and compare it to writing that he had originally. And I asked him, I said, how do you know I am who I am or who I say I am? He said he had a way of measuring that, but he would never tell what it was. (*Id.* at 448-449).

In addition to talking to Dr. O'Danovich about imposters, Overstreeet reported to her that he heard angels talk to him. Based on her experience with Overstreeet, Dr. O'Danovich diagnosed him as a paranoid schizophrenic. *Id.* at 450.[34]

Psychiatrist Barbara Eichman has worked at the Indiana Department of Correction since 2009. She provides medical management for offenders who have, or are thought to have, a mental

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[34]Based on her observations and interactions with Overstreeet, Dr. O'Danovich also diagnosed Overstreeet with dissociative disorder. As she explained, she added this second diagnosis "because unfortunately my training was not to be a scholar in the DSM. I've later come to realize that the dissociation and the derealization (not believing the situation you are in is real) and the depersonalization (not believing people are who they say they are) is also part of schizophrenia." PCRII 450.

health diagnosis. As a contract employee with the IDOC, Dr. Eichman was placed at the Indiana State Prison from October, 2009 to May, 2012. During her time at the Indiana State Prison, she was the only psychiatrist to provide services to inmates on Death Row. Consequently, while she was at ISP, Overstreeet was in her charge. Dr. Eichman described the Overstreeet as "very paranoid about leaving his cell...He was at times very isolative, very socially withdrawn, sometimes had difficulty communicating." (PCRII 314). She noted, "He was fearful about moving around other people...Sometimes his hygiene was quite poor. Sometimes his eating was quite poor. At times, he had difficult(y) communicating or didn't want to. He also had a delusion, at least on one occasion, of capgras syndrome where you believe that people who look like people you know are actually imposters." *Id.* at 315-316. Although he did not talk freely about his illness with Dr. Eichman, she was able, based on her experiences and observation of Overstreeet, to diagnose him with paranoid schizophrenia. *Id.* at 315.

Dr. Reinaldo Matias, Jr. is the lead clinical psychologist at the Indiana State Prison and also maintains a private practice in general psychotherapy and assessment. As the lead clinical psychologist, he supervises the mental health clinicians who provide the direct services to the inmates at the prison. In his eight years at the prison, Dr. Matias has not only supervised those who provided direct service to Overstreeet, but also counseled with Overstreeet three or four times a few years ago. Dr. Matias testified that, in his independent judgment, Overstreeet suffers from paranoid schizophrenia. *Id.* at 334. According to Dr. Matias, Overstreet's symptoms are clinically severe. *Id.* at 343. Asked to describe Overstreet's delusions, Matias responded: "I believe at the time (he was seeing Overstreeet for therapy) it was the issue with his sister. On other occasions he stopped seeing people when he's to believe that they're actually different people." *Id.* at 335. Dr.

Matias was asked to recount the system Overstreeet used to confirm identity. The doctor responded: "I believe, I'm not for certain about his, but I believe he would get handwriting samples, and so clinicians would write their name or something like that. And then he would compare it with other handwriting samples, and if he felt that it was the same handwriting, then he knew that that person was the same person." *Id.* at 338.

Andrew Manning is one of the mental health professionals supervised by Dr. Matias. Manning has a master's degree in clinical mental health counseling and is a licensed mental health counselor. Manning has been assigned to the Indiana State Prison for three years. His duties include participating in individual counseling with offenders as well as performing routine mental health screenings of inmates in different units. According to Manning, these screenings are very short; Manning does a visual observation of the inmate's cell, asks a few questions, and documents his findings.

Mr. Manning first met Overstreeet in October, 2011, when he performed a mental health screening of Overstreeet. In March, 2012, Manning noted in Overstreet's medical record that Overstreeet "reports visual hallucinations (has seen sister on MSU and X Row). Assumes they are real, rationalizes that his medications should be preventing any hallucinations. Reported refusing last two passes to see Dr. Matias, b/c hasn't gotten a satisfactory explanation as to why he is seeing his sister, expressed paranoid reasoning." (Jt. App., 929). The issue about his sister continued to vex Overstreeet. In the late summer of the following year, Overstreeet asked Manning to verify his sister's employment at the prison. Overstreeet told Manning "he has seen her but never is able to talk to her. He states (s)he appears as different people but he recognizes her by her 'spirit'". *Id.* at. 1111. In September, 2013, Overstreeet and Manning discussed new approaches Overstreeet could

develop to help him verify identities. *Id.* at 1131. In October, 2013, a frustrated Overstreeet ended his individual counseling sessions with Manning and claimed the sessions were not helpful. According to Overstreeet, he quit because Manning had been unable to help him verify the identity of Overstreet's lawyers. (PCRII 364).

Manning appears to be the only mental health professional at the IDOC to discuss Overstreet's pending execution with him. Overstreeet told Manning that he (Overstreeet) deserves the death penalty "if what they say are the facts of what happened" and also expressed regret for what Kelly Eckart and her family have gone through. *Id.* at 1116. When Manning asked Overstreeet about the execution, Overstreeet responded that he is looking forward to his execution. Overstreeet said that he was "ready to get out of a coma and go home." (PCR II 361). Asked to clarify that statement, Overstreeet declared: "It makes sense to me, I just can't express it" and explained that there were "multiple truths" about the situation. (Jt.App. 1111). Overstreeet did not, however, clarify his statement further. (PCRII 361).

Jennifer Harmon-Nary has completed her doctorate in clinical forensic psychology and is a post-doctoral fellow at the Indiana State Prison. Her first individual therapy session with Overstreeet was held December 6, 2013. Overstreeet and Dr. Harmon-Nary then continued to meet for about six months. Like the psychologists and psychiatrists before her, Dr. Harmon-Nary has diagnosed Overstreeet as a paranoid schizophrenic.

When Dr. Harmon-Nary and Overstreeet first met, Overstreeet explained that he had problems with "suspiciousness, racing thoughts, fast thoughts, concentration." *Id.* at 388. During his time with Dr. Harmon-Nary, Overstreeet discussed his concerns about his food and his belief that others were plotting against him. *Id.* at 390. Overstreeet also talked to the doctor about his auditory

hallucinations. When discussing the hallucinations, Overstreeet told the Dr. Harmon-Nary: "[S]ometimes they are good and I listen to them, and other times they are mean and I have ways of ignoring them." (*Id.* at 392, Jt App. 1215)(Jt. App. 1254). At that meeting in May, Overstreeet indicated he would like to meet with Dr. Harmon-Nary more often. Six weeks later, he stopped meeting with her altogether. Overstreeet later explained why he stopped seeing Dr. Harmon-Nary. He said he stopped "because of the activity in her room" which "I interpreted it as screaming. She interpreted it as a seagull....It, it, I, I heard it almost every time I was over there. It was always constantly the same thing. And then when she–she indicated that she had–she had got scared one time because she heard a screeching seagull and then that she was–heard the same thing that I heard. She just interpreted it different." (PCRII 768, Pet.Ex.10). Based on her experience with Overstreeet, Ms. Harmon-Nary agrees the diagnosis, "schizophrenia, paranoid type," is appropriate. (PCRII 388).

Dr. Michael Larson is the only psychiatrist currently assigned to the Indiana State Prison. As the only psychiatrist, he is responsible for prescribing all psychiatric medicines to the inmates. Of the sixteen hundred men at the prison, fewer than three hundred receive medication prescribed by Dr. Larson. *Id.* at 411. In his two years at the prison, Dr. Larson has met with Overstreeet quarterly. Based on his review of Overstreet's records, and as confirmed by his own observations, Dr. Larson has diagnosed Overstreeet as a paranoid schizophrenic.[35] *Id.* at 415.

Dr. Larson, who has diagnosed and treated more than a thousand patients with

[35] Overstreeet told Dr. Larson that he always hears voices.(Jt.App. 1123, PCRII 429). At one meeting, Overstreeet also disclosed that "there was material coming through" Overstreet's television. (Jt.App. 103, PCRII 48).

schizophrenia,[36] was the only doctor asked to evaluate the severity of Overstreet's symptomology vis a vis all the other schizophrenic patients Dr. Larson has treated over the years. In response to that query, Dr. Larson replied: "I have seen better, and I've seen worse, but I think he has a serious case." *Id.* at 436.

Medication at the ISP

Since 2004, Overstreeet has not only met with mental health personnel, he has also generally adhered to a medication regime.[37] He has recognized the value of the medications he has received.[38]

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[36]Counsel for the State asked Dr. Larson how many schizophrenics he had diagnosed and treated. After responding "a lot", the State sought to pin Dr. Larson down further. Dr. Larson agreed he had treated more than a thousand people with schizophrenia. When asked if the number exceeded two thousand, Dr. Larson responded: "I don't know. I have no idea." (PCRII, 435).

[37]A review of the Department of Correction medical records (Jt. App.) reveal that Overstreeet did not receive his medication during a period in March, 2004 when Overstreeet joined in a hunger strike staged by death row inmates. Because Overstreeet was not eating, the medications were stopped. The reasons for this are unclear. In November, 2004, Overstreeet reported that he was hearing voices, seeing shadows and could not concentrate. He appeared disheveled. (Jt. App. p. 193). As a result of his November 21, 2004 meeting with the mental health provider, Overstreet's medication was changed. It appears that in January, 2005, Overstreeet did not take medication for about three weeks.

In 2006, Overstreeet remained compliant with the medication regime. In January 2007, there was an interruption in his medication when a doctor failed to enter new orders. *Id.* at 371. In December, Overstreeet missed his medication for two days. *Id.* at 385. In 2008, Overstreeet appeared to take his medicine regularly. In late 2009, Overstreet's medications were adjusted because Overstreet's blood pressure was too low. *Id.* at 610. In June, 2010, he did not take his medicine for a few days because he "could not trust the nurse administering the medication." (PCRII, Pet.Ex.8, p. 9). On September 24, 2010, Overstreeet turned down medication. (PCRII, Jt.App. p. 707). He resumed all medication the next day and remained compliant until February, 2011, when he rejected medication for two days. *Id.* at 771. In July, 2011, Overstreeet again refused to take his medication. This time, the refusal lasted for several weeks. *Id.* at 818-819. 2012 was uneventful and Overstreeet remained compliant with his protocol Then, in 2013, Overstreeet began occasionally refusing to take his medicine. He refused on May 18, June 2, August 10, September 16 and October 30. *Id.* at 1068, 1080, 1102, 1119, 1140. In November, 2013, Overstreeet boycotted his medicine for almost a month. *Id* at 1154, 1168.

Although the medical records of the Department of Correction for July, 2013 are

Although the medications do not eradicate the voices in his head or the shadows that he sees[39], Overstreeet believes that the medications generally improve his ability to think more clearly and also reduce his paranoia.[40] During his periods of compliance, Overstreeet has been prescribed a

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incomplete, Overstreeet advised others that he refused his medicine in July, 2014 in a protest over an issue regarding his mail. (PCRII, Resp. Ex 12, July 28, 2014 email to Dennis Fryman).

[38]As an example, on January 31, 2006, Overstreeet submitted a request for health care and wrote: "I have not been receiving my medication...I do not function well without these." (Jt. App. 268). In his February, 2014 interview, Overstreeet advised Dr. Parker that his current medications were "helping me be not as confused...concentrate. That's quite a good benefit." He also told the doctor that with the medicine, he was experiencing "not near the amount of racing thoughts." (PCRII, Pet.Ex. 8, p.5).

[39] During a conversation with Melissa in late December, 2013, Melissa asked Overstreeet how his new medicine was working. Overstreeet responded: "...I think I talk a little bit slower. Everybody says I talk a little bit slower, a little bit clearer so. But as far as stuff going on in my head, it ain't helping none." (PCRII, Resp.Ex.15, Call 31). On January 2, 2014, Dr. Harmon-Nary met with Overstreeet. Her report of that meeting seemed to confirm the new medication was of benefit to Overstreeet. She noted: " (Overstreet's) Thought processes were less disorganized than last meeting."(PCRII, Jt. App. 1186). *See also,* PCRII transcript 428, Jt. App. 1123).

[40]Overstreet's medical records at the Indiana Department of Correction confirm Overstreet's improvement with medication. *See, e.g.,* (PCRII, Jt.App, 86 ("doing 'fair' now and since back on drugs"), *Id.* at 125 ("symptoms in remission on Trazodone and Triavil"); *Id.* at156-7 (mild anxiety but "comfortable' on Triavil/Trazodone") and *Id.* at 410 "Pt. feels psychotropics are losing some effectiveness"); *Id.* at 450 ("Client reports he is doing OK, He is not one to complain about much. States medication is managing most of his symptoms. He has learned to manage the others, sometimes better than others."); *Id.* at 625 ("Ofndr Overstreeet reported he has felt 'some improvement' now that he has been prescribed new medication, Risperdal. Ofndr stated the voices and paranoia have decreased (from a 9 on a scale of 1-10 to a 5/6, he is sleeping more soundly and is beginning to concentrate better. However he is not back to his hobbies as of yet (painting, drawing and reading). Ofndr hopes the medication will continue to improve his concentration so he can do those activities."); *Id.* at 842 ("Says his paranoia continues thought it is better on medications."); *Id.* at 1123 (...tells me he would like a slight adjustment in his meds because at times he feels more paranoid and is more impulsive and says things he regrets."); *Id.* at 1186 ("He stated while he does not feel many differences with the (new) medications, he has noticed improved concentration when writing letters and stated that others on his unit have commented that he seems calmer and less agitated."); *Id.* at 1201 ("He discussed his recent increase in medications, which he was hopeful would help with 'my focus and the racing

variety of medications including Triavane, Navane, Geodon, Thorazine, Sinequan, Prozac, Artane, Haldol, Risperdal and Cogentin. Some of these medications are anti-psychotics, some are anti-depressants, and some are designed to address side effects of other medications. The type and dosage of the medications have adjusted periodically over time. Aware of the benefits of the medication, Overstreeet has become concerned when his medication has been altered[41] or when he feared his medicine might be withheld.[42]

Notwithstanding his belief in the efficacy of his medications and his concerns with changes

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thoughts and voices.").

[41]Overstreet's reliance on the medications was reflected in his response to a change the doctors made in his meds in late 2009. Before the change, Overstreeet was taking Thorazine. Then, because Overstreet's blood pressure was thought to be impacted by the Thorazine, Dr. Myers lowered Overstreet's dosage. Overstreeet was not happy. *Id.* at 583. In a health care request he drafted after the change in his medication, Overstreeet wrote:

> My medication has been reduced by about half for my daily intake. I was stable and had a amount that worked for me. I fear the reduction will cause me to fall back into a less stable feeling and behavior. I do not function well under medicated and should see a mental health counselor. *Id.* at 597.

When his first few requests to resume his old medication regime failed, Overstreeet wrote a three page letter to Dawn Nelson and repeated his request to return to his former medication protocol:

> I have taken meds to keep me stable for years. I do not like taking meds but I know its necessary to function normally...I don't want to wait until I'm in such bad shape before getting properly medicated by suffering a psychosis, and ending up being moved or punished for complaining about my meds. *Id.* at 609-610.

By mid-January, 2010, Risperdal had been added to Overstreet's medication regime. *Id.* at 620. *See also, e.g.*, PCRII, Jt.App at 1151.

[42]In 2006, Overstreeet engaged in an exchange with the medical staff and ultimately filed a grievance over problems with his medication. (Jt. App. 268-290, PCRII, Resp.Ex. 3, p. 17).

made in his medicines, Overstreeet has, on occasion, been non-compliant with his medication regime. In July, 2011, he declined his medications for reasons not apparent from the records. In November, 2013, he stopped his medicines because he felt that taking psychotropic medicines signaled to others that he was mentally ill.[43] In July, 2014, he apparently stopped in protest against the Indiana Department of Correction administration. Whenever Overstreeet has refused medication for an extended period of time, he has always resumed his treatment regime within about month of its cessation. (Jt. App. 827, ll69).

Although Overstreeet has fairly consistently adhered to his medication regime while at the ISP, the medications have not cured his mental illness. His treatment in the past five years illustrates the difficulty his treating physicians face. During that time, two psychiatrists, Dr. Barbara Eichman and Dr. Michael Larson, have treated Overstreeet. Dr. Eichman was in charge of Overstreet's psychiatric medical management from the Fall of 2009 until 2012; Dr. Larson picked up the baton when Dr. Eichman left ISP and has remained in charge of Overstreet's care since then. Neither doctor suggested that Overstreet's response to medication either disqualified him from a diagnosis of schizophrenia or lessened the impact of his illness. Instead, both doctors have recognized that the psychotropic medications, while helpful, are not a panacea. [44] As Dr. Smith

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[43]In a November 20, 2013, telephone conversation between Overstreeet and his ex-wife, Melissa encouraged Overstreeet to resume his medications. She told Overstreeet: "You really need to take your meds I mean they will help you." Overstreeet responded: "Well, I, I don't think so. I think, I think, un I think I'm better off without them and also it shows that, that, uh, I'm actually okay. So, I mean, you know, a sick person don't need, uh, a sick person needs meds and someone that's not sick doesn't need that and I think that's....I think it's better. I think, I think, it's actually I can't wait. Well, let's see he's got, he's got problems, cause uh, uh, he, he has to do this to, to uh function well. I can function properly." (PCRII, Pet.Ex 12, Disc 22D, p. 9).

[44]When asked why Overstreet continues to hear voices while medicated, Dr. Larson explained: "That still happens in a lot of cases, because the medicines we have are not good

noted..."I think we have to keep in mind when we're talking about schizophrenia only a small amount of schizophrenics under medication are symptom free..." *Id.* at 183. Clearly, Overstreeet is in that group of schizophrenics who do not become symptom free. Nonetheless, Overstreeet, his ex-wife,[45] and the medical professionals who treat him recognize the value of the medication he

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enough. Okay? It's just that simple. They don't cure. They don't cure the illness." (PCRII 429). As the medical records and Dr. Eichmann's testimony indicate, for Overstreeet, sometimes changes in his medications can be helpful. For example, when Dr. Eichmann adjusted Overstreeet's Thorazine, he became more willing to leave his cell. (PCRII 321-22). On the other hand, finding the right medicine and the right dosage can be elusive. When Dr. Parker was asked why the Overstreet's medications did not work better, Dr. Parker replied:

> If I knew the answer to that question, I would not be here. I would be in Stockholm getting my Nobel Prize. We have a couple of dozen choices for antipychotic medications. Each individual medication has about 60 to 70 per cent response rate, which means a partial or full response in symptoms. That leaves a good third of people who don't respond to any given medication or respond only weakly.
>
> That's Mr. Overstreeet. He's been on almost every medication that's readily available over the years, at least all the ones that the DOC uses on a regular basis, and he has never been free of symptoms. He's always heard the voices. The shadow people have always been there. The imposters are always there. The medications decrease the frequency and intensity of the voices. They help him think more clearly so that he can do his art and he can write things and he can read things, but they do not by any stretch remove the symptoms....He has treatment resistant schizophrenia. That's clear, based on the medical record and his own description. *Id.* at 511-512.

[45]A week after their November 20, 2013 conversation in which Overstreeet explained his decision to stop his medication, Overstreeet had another conversation with Melissa about his medicine. He was rethinking the decision to discontinue his meds:

> DO(Overstreeet): Everything's working out pretty good. Uh, I, I, think I'm going to go over and talk to somebody maybe, uh, maybe get back to starting on my meds, it's it's, been, uh, it's bee, uh, couple weeks or something or other it's been quite some time and, uh, and, and I've been struggling with it and I, I think, you know, be, I, I mean for the lack of, uh, uh, any actual knowledge, I'd, I'd say that, you, know, uh, if, if, if anything was in my system that needed to get worked

receives.

Overstreet's Daily Life at ISP

Overstreeet lives a solitary and constricted life.[46] He spends most of his day in his cell, but is permitted some contact with the outside world. Finances permitting, Overstreeet is able to write letters, make telephone calls and, since January, 2014, exchange emails. [47] Generally, Overstreet's

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out it's it's probably all gone so I don't know.
MH(Melissa Holland): Yeah.
DO: So, I don't know, what you think, it's, a, you think it's a good idea or a bad idea, hold of a little bit?
MH: I think it's a good that you talk,
DO: Huh.
MH: I thi, I think it's a good idea that you take your medicine.
DO: Okay.
MH: You need to start taking it again.
DO: Okay, okay, well, let's see, let's see how that goes, um.
(Pet. Ex. 12, Call 30, 11/27/13, p.2-3.)

Two days later, Ms. Holland was more emphatic. Without prompting, she told Overstreeet: "I think–I think you need to go back on your medicine because you're having trouble concentrating, so.." (Pet.Ex.12, Call 36, 11/29/13, p. 13).

[46]The men on death row live in individual cells and spend twenty-one hours a day in their cells. PCRII 448. From reading Overstreet's correspondence and listening to his telephone calls, the court gleans that the three hours spent out of the cell are for showering, using the telephone and, now, writing emails. The men are let out of their cells on a schedule and not all are out at the same time. This "rec" time is not mandatory and a prisoner may elect to remain in his cell. As the staff at the ISP has noted, and as Overstreet's communications suggest, he often chooses to remain in his cell.

Overstreeet appears to have few personal visitors. In a conversation with Melissa on May 17, 2013 (Pet.12 Disc A, Call 684, p.5), Melissa and Overstreeet agreed it had been at least four years since she had last visited. On May 25, 2013, Overstreeet talked on the phone with his daughter, Megan, and noted he had not seen her since she was "tiny." (Pet. 12, Disc A, Call 707, p. 14). In a call on July 15, 2013, (Pet.12, Disc A, call 813, p. 11), Overstreeet seemed to confirm that his last personal visit was from the Frymans "a few years back."

[47]Five of Overstreet's letters to his ex-wife were admitted into evidence. The oldest was written in September, 2012; the most recent was written January 2, 2104. The emails submitted at the hearing span a time frame from January through July, 2014. The phone calls begin in May,

ex-wife, Melissa Holland ("Melissa") is the recipient of Overstreet's messages. Most of these communications address pedestrian concerns. Overstreet's discussion topics include food, books, television, children, and family illnesses.[48] He rarely directly discusses his hallucinations or delusions. As Dr. George Parker noted:

> When asked if he (Overstreeet) had talked about his experiences with his family, he replied 'I try not to.' He also does not write about these experiences because "One, they may or may not understand. Two, I'm not supposed to. Three, there's no benefit. Fourth, putting stuff out in the ether creates more problems.' As a result, 'I generally don't talk about it unless I'm specifically asked.' (PCRII, Ex.8, p.5).

Although Overstreeet does not like to discuss these experiences, his struggles periodically bleed over into his writings and his conversations. His concern about imposters was reflected in a July, 2013 conversation with Mary Overstreeet. In the conversation, Overstreeet worried that his method of verifying the authenticity of people had been compromised:

> DO: (Michael Dean Overstreeet); Oh, okay, Pamela James, uh, Mr., Uh, Mr. Morton come back and he said, uh, he said, uh,

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2012 and end in July, 2014. These exhibits primarily reflect communications between Overstreeet and his ex-wife, Melissa.

[48]Except in a limited number of instances, Overstreeet comes across as cogent and responsive in these communications. This is consistent with Dr. Smith's observation:

> For Dean (Overstreeet), if you're talking about non-emotional topics, things not related to his hallucinations or delusions, he's average intelligence. Things flow very smoothly, and he's very easy to understand. At that time, though, if you started to ask about areas related to his hallucinations and delusions, he would start to become somewhat tangential at times...The logic is not always very clear, but that makes sense. He's describing something that's not logical and not true, but he still believes it. And he thinks that his convoluted reasoning makes sense. (PCRII 182-3).

Pamela James emailed uh, uh, I'll, let's say the Public Defender's Office cause I think that's what he said but he may have said Steve Schutte or whoever, I think he said Public Defenders Office.

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MO: (Mary Overstreeet): Yeah.

DO: And he said uh, he said they said that you don't need to phone, you don't need to call. So inside my mind I just blew up, I mean I..I couldn't hear anything that he said after that. I think he walked off, and in my mind I'm just furious because I knew at that point that *everything's been exposed*, everything come together at that point. Hey, that's uh, a couple weeks before that they had confiscated uh, uh, some papers that uh, Kathleen had wrote from me. They had had possession of those for a little bit when I was out on that Attorney visit.

MO: Uh, huh.

DO: When I come back from the attorney visit shortly thereafter they had sent the paper in and it had her handwriting on it, okay, and that. All these things start to come together, all right, this all makes sense. That's why they come down here and wanted to see the signature on that, uh, that letter. All these things come together so I was, I was, furious that I had been duped and uh, that, that, they had figured out my method. I think, I think, how they had figured it out was a couple weeks prior to that I had went out to talk to a Dr. Rahn, R-H-R-A-H-N, which, uh, you know, uh, Kathleen and them guys had asked me to go out and speak with him.

MO: Uh, huh.

DO: And I agreed to do that and which I did. And they told me just be honest with him and, and, answer his questions, and, uh, whatever, uh, just be open with him with the discussion and stuff. *And I'm thinking at that point I may have told him that, you know, my method of how I confirm who the attorneys are or who, when you and Melissa and the kids and mom and dad and everybody come up how I can confirm the people are who they are.* If they write me a letter, I got copies of the signatures and, and hand writing samples and stuff like that.

MO: Yeah.

DO: *And I'm thinking maybe, I, maybe, I said something to this guy and I was furious at myself and I was furious at the fact that, that, this was all figured out, and, uh, that I had, you know, for years, this has always worked and been fool proof. I've never had any problems and then now*.

MO: Yeah.

DO: You know, everything was exposed. And, and, I was just, I was just upset about the situation, so..

MO: Yeah.

DO: I knew whoever wrote the letter, and who, you know, the letter was written, I, I , verified Steve Schutte's signature. The letter, the letter, was an actual letter from him, but whoever..

MO: Yeah.

DO: Whoever had responded to the email was different from the person that, that wrote the letter. And you know,

MO: Yeah.

DO: and that person said, and, and, Mr. Morton said they're coming up to talk to you tomorrow, so I knew whoever's coming up tomorrow ain't the same people that wrote the letter , just, you know, all kinds of other things. *Anyways, but the bottom line was, uh, the next day, well that, that, evening I was, I was, furious you know. I, I went and destroyed all my, uh, all of my handwriting samples because I know that, that all that been compromised. So I got rid of all that stuff. And I was trying to think and then now going forward how do I verify anything if I can even do that. If I can't, I don't want no visits. I don't want no legal mail. I was concerned about other people writing me letters.*
(PCRII, Pet. Ex. 12, Disk A, Call 827, July 21, 2013 p3-4). (emphasis added).

In November, 2013, Overstreeet again alluded to his worry about imposters. This time, he was talking to Melissa. Overstreeet began by telling Melissa that he might be placed on restriction. He suggested that the family should not attempt an unscheduled visit to the prison. Initially it appears

he is worried that, if his family made the trip, he might be unable to visit:

> DO (Michael Dean Overstreeet): But don't, uh, don't you guys, don't try to do no surprise visits or nothing like that okay,
>
> .
>
> MH (Melissa Holland): Okay.
>
> DO: Which I, I wouldn't expect you to do that anyways, but I just don't want you to, uh, uh, I just don't want you to do that so..

But as he kept talking, it became clear that Overstreeet was concerned with more than the possibility he might be on restriction at the time of an unplanned visit. The conversation continued:

> MH: Yeah, I'll always let you know when we're coming up.
>
> DO: Yeah, I know you do. *I just want to make sure that, uh, that whoever comes up knows that, that I need to, uh.*
>
> MH: Yeah.
>
> DO: *I need to figure things out first so.*[49]

As Overstreeet and Melissa continued to talk, Overstreet's mind returned to identity verification:

> DO: Okay, sweetheart, well, listen, I'm going to jump off now. You give all the kids hugs and kisses for me and I said thank you for wishing me a happy birthday and everything. Oh, and *I noticed that, uh, that, uh, the birthday card that mom and dad sent, I noticed you were the one that wrote all the information on there.*
>
> MH: Yeah, yeah, your mom was having some troubles and stuff so..
>
> DO: *I, I, I got, uh, I monitor those kinds of things, right, so..*
>
> MH: Yeah.

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[49]Overstreeet and Melissa touched on this in an earlier conversation as well. When discussing a planned for visit in October, 2013, Melissa to Overstreeet that she had talked to his mother and said: "If we're gonna go visit, he has to know about it ahead of time or he won't come out." (PCRII, Pet.Ex.12A, October 4, 2013, p. 4).

DO: *Immediately, as soon as I seen the writing on there I recognized it then I did my comparison.* I mean, I didn't even have to compare it cause I knew what it was, but, and then I was curious why it said mom too and you know the address up there.

MH: Yeah.

DO: *I was like that's not, that's not who wrote this letter cause I generally check these things before I even open the letter up so..*

MH: Yeah.

DO: I didn't know what the situation, so, but it's okay, I kinda figure that's what it was, so.

MH: Yeah, cause she's having trouble and stuff when she had the surgery.

DO: First, and I assumed, I assumed that, and *then I got to looking at her signature, and where she, cause she is the one who signed it on the inside.*

MH: Yeah, she did.

DO: *It, it, flowed very well and it wasn't very disruptive and it was real similar to everything, the samples that I got, so I knew she did it,* so I'm sure she did cause she's not feeling too good, but she's also capable of being functional in what she's doing too.
(PCRII, Pet. Ex. 12, Disk D, Call 17, November 17, 2013, p. 5-6). (emphasis added).

Overstreet's expressed concern about imposters is not limited worries about messages from family. He has worried about visits from his lawyers as well. In an April 5, 2014, email to Melissa he noted:

> ...all is well here and I will call in about 15 minutes. I am looking forward to my book, I figure it will be here next week. I will be sure to let you know asap. Also, I have been thinking that I should talk to you about the hearing. I think the lawyers are tring (sic) to deceive and deny. *I got some troubling info last night and I am afraid they anit (sic) who they say they are.*
> (Pet. Ex. 14A). (emphasis added).

His delusions aren't Overstreet's only problems to bleed through his communications. Sometimes, when he has communicated with family, Overstreet's thinking has been difficult to understand and his ideas challenging to sort through. For example, on November 30, 2013, Overstreeet wrote Melissa a letter that began normally enough. He started the letter:

> Hello, Beautiful Lady. I love and miss you all so much. I hope all is fine and I hope to call later today. Glad you had a good time shopping. You were always the best on with our finances. I guess I was more of a contrarian, regardless of the well intentions. I'm feeling really good and listening to music but I have been thinking a lot about something.

The letter took a different turn as Overstreeet explained what he had been thinking about:

> I think I shouldn't have told you about the wraiths. You know they beckon me to become the reverant that I've begged for and you've waited for so long. I'm afraid and can't jeopardize that at any cost, even if it means that I can't share the wonder and beauty with you right now. Baby, I want to share my awareness and if I could only explain the great truth and enlightenment associated with all that is awaiting me, I can only explain in terms you may be able to relate, it's like the quickening that a new mother feels for their first pregnancy or maybe would even with every child. It's a introit every waking moment of grimace faces and shaped screaming and calling my name with such anger and distaste hurling insults, threats, promises and ultimatums leaving me without any refuge and overwhelming all my sense yet I can't explain it, that the threat of eternal silence if I tell or complain seems the worse? I am inundated with abstruse sights, sounds, smells and even feelings, anywhere from aesthetic to grotesque, but yet all seem to be a total affront to the light. Amorphous spirits. allusive beings and "ever-presences" that gathers strength through my existence and cogitation. Mostly banished to the shadows however always watching, waiting and preparing to escape either when I'm weak, not on guard or disobey. Both demons and angels will appease and beguile by coerced thoughts and movements. A seamless endless battle for every waking hour in transforming every memory, sight, sound, identity and emotion with all fraught with deception and lies. Logic and reason are no longer benign, leaving the troposphere of my soul

with the black and spoiled rime for pain and darkness.[50]

Overstreeet abruptly switched topics and wrote:

> I think Athana (his cat) wants to say "Hello" she won't stop rolling on the paper/clipboard as I try to write. I have to do all my letter this morning even though they don't go out to Monday... (PCRII, Resp. Ex. 6).

He then continued on, discussing routine events before ending the letter. (PCRII, Resp. Ex. 6).

In March, 2014, Overstreeet ("O") seemed to believe he had come upon a one sentence answer to existence. As he explained to Melissa ("M") in a telephone call:

> O: Hey, it's just me again real quick. Hey, I just wanted to, I wanted to read you the thing that I wrote down that–that I get–I was supposed to tell you before we even got off on all that other–
>
> M: Oh, yeah?
>
> O: –stuff. Yeah, Tell–tell me what you think of this. Hold on a second.
>
> M: Okay.
>
> O: I got–I got–I got to get there I can get my eyes to focus on it. I said, "the reality of the world of consciousness that exists completely free of the limitations of the physical brain–" Do you want me to

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[50]When discussing Overstreet's belief he is in purgatory, Dr. Morrison testified that Overstreeet said he "occupies a realm that is ghost, demons, spirit, wraith" and walks in "the spirit world." *Id.* at 276. *See, also,* PCRII, Pet.Ex. 6.

In Dr. Parker's opinion, this paragraph in the letter to Ms. Holland "describes very eloquently the life Mr. Overstreeet leads, and it's just a wonderful display of both the torment that he experiences from the auditory and visual hallucinations, the shadow people and the angels and demons, as he calls them, the constant comment that he receives from the voices, he instructions, the commands, how difficult that is, and that it's always present for him. It does not abate, it sometimes gets better. It sometimes get worse, but it's always there, and it shows I think a remarkable way the disorganization of his thinking, because you can see how it just flows out. It just spills out. It's not organized neatly. It just goes in one long stream of consciousness and then jumps at the end. But that segment itself shows evidence of a disorganized thought process, because of the way it moves and the odd words that are used..." (PCRII. 954).

repeat that?

M: Yeah.

O: Okay. “The reality of the world of consciousness that exists completely free of the limitations of my physical brain.” Does–does that make..

M: Okay.

O: Does that make any–do you understand what I’m saying?

M: Not really, to an extent, yes, but not totally.

O: Okay, I’m going to say it one more time. “The reality of the world of consciousness–“. You understand all that , right?

M: Yeah, pretty much.

O: “The reality of the world of consciousness exists--”

M: Yeah, what’s going on everyday around you and everything.

O: Yeah. Your consciousness. The reality of your consciousness. You know what consciousness is, surely?

M: Yeah.

O. Surely, you know what consciousness is. Do they teach that in medical school?

M: To an extent.

O: Okay. “The reality of--”

M: They touch base on little things here and there, I mean, in nursing school.

O: Okay. “The reality of the world of consciousness that exists completely free of the limitations of my physical brain.”

M: Okay.

O: Do you understand what that–does that–does that–does that make perfect sense to you?

M: It–it's a little confusing in the wording.

O: Okay. How–how should I word it more clearly?

M: I have no idea to be honest with you.

As Overstreeet continued to explain his statement to Melissa, he stressed the importance of this epiphany:

O: ...And my complete statement would be, "The reality of the world of consciousness that exists completely free of the limitations of my physical brain." So that right there justifies and explains everything in a basically, you know, taking everything and you keep–you keep–you know like you chomp away at a–chomp away at something until you get it down to the–it's the finest portion of the common denominator–well, common denominator probably is not the–would "common denominator" be the proper term, or the most minute sum of–of a concept? Does that make any sense? Am I making any sense right now?

When Melissa was still unable to understand, Overstreeet dictated his sentence to Melissa and noted its significance:

...If everybody understood that right there, then everybody would be onboard with everything. The attorneys would be on board with everything. Everybody would be on–the judge would be onboard with everything. Everybody would be on board with everything..Kelly's mom and dad would be onboard with everything on that. If everybody understands that right there, everybody would be on board with everything and everybody would know exactly what–what's going on and–and why we need to go the route that –that needs to be done. Does that make sense?
(PCRII, Pet. 12, Call E145, March 3, 2014 p.1-5).

Overstreet's Self-Assessment of his Competency to be Executed

Notwithstanding his diagnosis of paranoid schizophrenia–a diagnosis he acknowledges–Overstreeet wants to be perceived as mentally healthy and competent to be executed. After learning of Dr. Rahn Bailey's February, 2013 assessment, Overstreeet was distressed and told Melissa:

> I was really disappointed in that uh, that thing. The report that that doctor did. I, you know, I, I was looking so forward to uh, to sending that to you and, and you know, telling mom about it and everything. I thought man, that's, you know, cause uh, mentally I feel like I've been doing really good, right?....I talked to that doctor and I thought he said I was competent. I. I clearly feel I'm competent. So I , I don't know what. I mean, I don't know why they are saying I'm not. (PCRII, Respon Ex. 15A, Call 12, May 17, 2013, p.1).

Although he was upset with Dr. Bailey's assessment, Overstreeet agreed to meet with Dr. Bailey at the end of May, 2013. Overstreeet described the May meeting with his ex-wife, telling her:

> I told him that I didn't appreciate being called incompetent. Told him I didn't like, uh, you know, uh, just the things that I felt like, you know, he, he stated that weren't, weren't, uh, I don't want to say they weren't true. It was, that uh, that it just, uh, made me sound like I was confused and I feel like, you know, personally I feel like I'm, I feel better than I've ever felt in, you know, a long time. (PCRII, Respondent Ex. 15A, Call 19, June 2, 2013, p.3).

He later complained to Melissa:

> ...[T]hey're makin' sound like I'm really mentally ill. And I, I don't feel like that's the case. *Id.* at 5

As the year progressed, Overstreeet continued to be concerned that he was perceived as mentally ill. Consequently, Overstreeet decided to stop taking his medication. He later discussed his decision with Dr. Jennifer Harmon-Nary. According to Dr. Harmon-Nary's notes of their December 6, 2013 discussion:

> ...He (Overstreeet) stated he recently stopped taking his medication because he did not feel like they were working and also

> because 'if you take migraine medication people think oh, he has migraines. If you take cancer medications, people think oh, he has cancer. I didn't want them to think anything about my medications.' He stated that he does not have a mental illness, but that he struggles with 'suspiciousness, I have problems with identity. If you are not who I think I won't come over here'. He also stated he has problems with 'fast thoughts, thinking too much, having problems, concentrating and focusing' Overstreeet stated that he sleeps well and has 'a great appetite as long as the food is not tainted or poisoned. I can tell.' He agreed to meet with psychiatry to discuss other medication options and also said that he enjoyed speaking with MHP and was willing to meet again in one month to follow up.
> *(* PCRII, Jt.App. 1169).

Around this same time, Overstreeet traveled down another road in his quest for competence. He contacted Nick Griemsmann. Mr. Griemsmann has a website in which he explains how "Father God healed (him) of 'incurable' schizophrenia." www.thefathersfriends.org. Although Overstreet's letter to Griemsmann was not introduced into evidence at the post-conviction hearing, Griemsmann's response was admitted. In his letter to Overstreeet, Mr. Griemsmann told Overstreeet that "even if you think you killed an 'angel', God has forgiven you." Mr. Griemsmann also advised Overstreeet that the "freedom I received is possible for anyone who believes in Jesus" and enclosed two books and a CD on the subject. (PCRII, Resp.Ex.8).[51]

Dr. Wood discussed this briefly with Overstreet. Dr. Wood asked Overstreet if he ever wrote to "Like radio hosts or people that are connected to the shadow world or angels and demons information or.." (PCRII 695). Overstreet told him:

> There was also a guy that was–his name was Nick. I can't even pronounce his last name. It was like G-r-e- or G-r-i-e-blah-blah-blah-m-a-n-n. Something like that. I seen him on Sid Roth's It's Supernatural. It's a – it's a religious program on TBN, and it also comes on the church channel. He had one segment on schizophrenia and, uh, and was able to –he had to find an invention that was a cure for schizophrenia, and I asked–I wrote him a letter asking him how I could do that. And he sent me some books and stuff. Is that the kind of stuff you're talking about. *Id.* at 695.

Although Overstreeet does not appear to have continued his correspondence with Mr. Griemsmann, he did not abandon his attempt to establish his competency. In June, 2014 Overstreeet sent this court a letter. He mailed it directly to the court from the DOC. The letter bore the date of June 16, 2014 and read:

> Dear Judge Jane Woodward Miller
>
> My name is Michael Dean Overstreeet and I am suppost (sic) to be coming to your court soon. I have asked my family to not come to South Bend for those court hearings and I believe if I show up that they may attempt to come too, and I fear that may result in negative events. I fear for their safty (sic).
>
> I would like to clearly state that I'd provide no purpose for being present and that I am completely and fully competent. I believe I can and would be able, if I haven't already passed my competent test. I should NOT be treated ANY different then anyone else. Thank you for your time and consideration.

After signing his name, Overstreeet added a few additional comments. They were:

> That's what the hearing is for–the lawyers said they claim I'm not competent.
>
> I AM Fully Functional And completely aware of everything
>
> It serve no purpose. Thank you.
>
> I AM Prepared to sign any necessary waiver. (Overstreeet initialed this)
>
> P.S. I currently cannot accept legal mail at this time, is there a website my family might be direct too? (For your court). Thank You.

At a hearing on August 4, 2014, the Court questioned Overstreeet about the first two

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Dr. Wood asked if Overstreeet remembered what Mr. Griemsmann had said in the letter. Overstreeet replied, "No, I sent all that garbage to Melissa." *Id.*

paragraphs of the letter. When the Court asked Overstreeet to explain what he meant when he claimed he was fully competent. Overstreeet responded:

> I understand things that not everybody understands everything that's going on, and I think I have a better understanding than most people what's going on. And I was trying to convey that I know exactly what's going on, even though I didn't explain everything probably proper in the first paragraph. I know exactly what's going on, and I believe it's a complete, competent, full competent, understanding of everything that's going on.
> (PCRII transcript of August 4, 2014 hearing, p. 18).

Asked to explain his comment that he "had passed my competent test", Overstreeet replied:

> When I think about that I think about like somebody eating bugs and stuff like that, and I don't do anything like that or things that people that are incompetent and, you know, don't know how to fill out a commissary form or to write a letter or read a book or anything like that. I can do all of those things. *Id* at 19.

Overstreeet reaffirmed his belief in his competency when he later spoke with Dr. Shaun Wood, the psychiatrist retained by the State to perform a forensic mental health assessment. During his August 9, 2014 interview with Overstreeet, Dr. Wood asked Overstreeet how he felt "about your defense counsel trying say...that you're not competent or that you're not competent to understand the current sentencing for the crime that you've been convicted of." Overstreeet told Dr. Wood:

> ...I disagree with them, and they know that I disagree with them...I don't think they understand. I don't think really anybody understand all–everything that's going on...I'm not very good at communicating and explaining things. To be honest with you there's–there's things that I'd–I'd rather not tell people and stuff like that. So I, I try, I try not to, I try not to share too much with that for a number of reasons. But that also makes, makes it hard for people to understand unless they've already got some kind of insight. And if they've already got some kind of insight, then I really don't need to explain things to them anyways.
>
> ..[A]s far as the, the, the, we always say we've agreed to

> disagree because, and don't get me wrong, I think they've got my interests at heart. I've always think that they have my best interests at heart, be we just agreed to disagree that, you know, it's like when you have football teams, you know, we're just like sports lovers and we just, like two different sports teams, you know, I think different than they do.
>
> ...And I don't hold any bitterness against them. Sometimes I get aggravated and I think that, you know, because I tell the, you know, I, when I think of competent, I think of somebody who smears poop on the wall and eats bugs and stuff like that.
>
> ...I don't do anything like that.
> PCRII 668-9, Pet.Ex. 9).

Dr. Wood then asked Overstreeet why his attorneys are claiming he is not competent and Overstreeet responded:

> Uh, probably because I'm schizophrenic, or they say that I'm schizophrenic or suffer from schizophrenia or some form of mental illness.
> (PCRII transcript 669).

Overstreet's Desire to be Executed

Overstreeet is aware his pending petition calls his competency to be executed into question. *See, e.g.* PCRII, Resp.Ex.15, Call 661 5/07/13, p. 3,(Overstreeet is relaying conversation with attorneys: "'[H]e goes, we know you say you're competent, we know you know you say you understand the facts of the case or whatever and he said, ah...but you, ah..we don't believe you have a rational understanding what's taken place..."); Resp.Ex.15, Call 662, 5/07/13 p.4, (In a later call to Melissa, Overstreeet reads Melissa part of a letter from his attorney: "...[I]t says question is whether you are competent to be executed. There are two parts to that: know that the State plans to execute you, and have a rationale understanding of the State's reason for execute.").

Although in the past, Overstreeet would refer to his execution as an execution, in recent

months he has generally referred to it as his transition. As his correspondence frequently reflects, Overstreeet is anxious to be executed and looks forward to his "transition." [52] On March 7, 2014, Overstreeet wrote to Melissa:

> ...I think things are finally starting to move forward, and I'm advised, plus all the increased activity has convinced me things are getting closer and moving in the right direction. *I feel really good about this transition and getting back to normal and seeing everyone finally, I can't wait!!!!*
> (PCRII, Resp. Ex. 14A).

In a March 12, 2014 email to Melissa, Overstreeet discussed the upcoming change of judge in the post-conviction case and added:

> *...I can't wait to get this started so to make the transition. I feel I have have been prepared and everyone is waiting.* I'm so excited for all of this....*Id.*

On May 17, 2014, he sent the following email to Melissa:

> I love you so much. I just keep telling myself that it will all change soon and things are going to be so much better. *I just pray the delays are soon behind us and God grants me the wake up.* I know I don't deserve it, well...I love you all so much. *Id.* (emphasis added).

On May 20, 2014, Overstreeet wrote to his ex-wife:

> *I miss you all so much. I can't wait until it's all over and I can move on with the transition.* I pray everyday nothing happens where it gets put off any longer. All these guys try to confuse me by talking about all the junk with executions being put off for whatever reasons and they may stop it completely. I pray it doesn't and try to cooperate and comply with everything to avoid that. *Id.*

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[52] Overstreet's telephone conversations are consistent with his written correspondence. For example in a March 3, 2014 telephone call, Overstreeet was discussing his execution and told
Melissa: "I just wish, I just wish we could get this going. I wish it was already over with so we could be together and get this thing going." (PCRII, Pet. Ex. 15, Call 37, p. 14).

Forensic Assessments–Competency to be Executed

Dr. Bailey and Dr. Morrison

In anticipation of this post-conviction proceeding, four psychiatrists evaluated Overstreeet. All four doctors understood that mental illness does not provide a categorical exemption from execution. All four doctors appropriately articulated the constitutional standard for execution. Petitioner retained and presented testimony from three of the four doctors: Dr. Rahn Bailey, Dr. Helen Morrison and Dr. George Parker. Dr. Bailey was the first of the three to examine Overstreeet. Dr. Bailey's assessment served as the basis of Overstreet's request for permission to file a successive petition for post-conviction relief. As a result of Overstreet's request, the Indiana Supreme Court granted Overstreeet leave to file a petition addressing his competency to be executed.

Dr. Bailey is a psychiatrist who received his training in forensic medicine from Yale University. He has been a faculty member at Louisiana State Medical School, University of Texas-Houston Medical School and is currently on the faculty at Meharry Medical College in Nashville, Tennessee. He served as the Director of Law and Medicine at LSU and UT. He ran an inpatient schizophrenia unit while in Texas and was medical direct for the Bryce State Psychiatric Hospital in Alabama. He is currently Chairman of Psychiatry at Meharry and teaches clinical and forensic psychiatry. Throughout his career, Dr. Bailey has been involved in forensic work. In the past nineteen years he estimates he has performed over a thousand forensic evaluations. He has participated in competency for execution evaluations in Texas and Ohio. (PCR II transcript 16-18, 24, 26). When asked to describe the suggested standards for conducting forensic mental health assessments, Dr. Bailey listed five components for the examination: (1) In order to improve the quality of the interview, collateral data should be reviewed in advance of the interview; (2) the

interview should be conducted on two or more occasions in order to get a better sense of the interviewee's normative experience; (3) the interview should include a quality general psychiatric evaluations "so as not to miss things like the diagnosis of schizophrenia or bipolar disorder or an understanding of how past psychiatric concerns or experience or history are relevant with the current time and course;" (4) the interview should also include a quality current mental status exam; and (5) the evaluation should include and assessment of how the current legal standard is "understood in reference to this person's symptomotology." *Id.* at 36-37. As Dr. Bailey explained, when determining Overstreet's competency to be executed, he had to evaluate whether "the individual know(s) the issue regarding the State('s) plan to execute them, and really concerns regarding whether they have a rational understanding of why and what theat means." Dr. Bailey attempted "as best as possible to ask him (Overstreeet) his understanding of the series of events that led to him being in prison on death row, by the time I saw him. Concerns regarding his thoughts regarding his current legal matter having been ongoing again by that time, over a decade. Issues regarding how he understood the process and what it meant to him and really what his idea of execution really meant and what would occur post execution." *Id.* at 27-28.

Dr. Bailey examined Overstreeet in 2013 and met with him three times that year. Before meeting with Overstreeet, Dr. Bailey read the then available collateral material. *Id.* at 61. The first two meetings occurred on February 19 and 20, 2013. (Overstreeet told Dr. Bailey that he remained awake between the meeting on the 19th and the meeting on the 20th so he could insure that Dr. Bailey was not an imposter when he returned the second day. *Id.* at 55. The third interview was on May 31, 2013. *Id.* at 40. During his interviews, Overstreeet displayed "a referential response to stimuli." "Small things in his environment probably bothered him, as if he was hearing them or seeing them

differently than another would in the same setting or that I was." *Id.* at 44. Notwithstanding these distractions. Overstreet was co-operative and tried to answer the questions asked of him.

During their meetings, Dr. Bailey assessed Overstreet's current[53] psychiatric symptoms. He found that Overstreeet had racing thoughts "all the time", suffered from anxiety, was actively responding to internal stimuli during the interview,[54] expressed paranoid ideas, suffered from hallucinations and delusions, and demonstrated disorganized thought process evidenced by thought blocking and thought derailment. The mental status examination Dr. Bailey performed revealed Overstreeet was anxious, fearful and showed difficulty sustaining an emotional response. According to Dr. Bailey, Overstreeet displayed a psychotic thought process and an impaired memory. Dr. Bailey also found that Overstreet's abstracting ability was impaired. (PCRII, Pet.Ex.2, 13-14).

Based on his interviews with Overstreeet and his review of the collateral materials described in his report,[55] Dr. Bailey's diagnosis and opinions are these: Overstreeet is a schizophrenic who

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[53]"Current" means within thirty days of their meeting. (PCRII, Pet. Ex. 2, p. 12).

[54]Overstreet "occasionally looked around the room interacting as if someone or something else is present." (PCRII Pet.Ex.2, p.18). This behavior was also observed by Dr. Morrison (PCRII, Pet.Ex.6, p.2), Dr. Wood (PCRII 697) and Dr. Parker. Only Dr. Wood doubted whether he was responding to a hallucination. *Id.* at 914.

[55]The collateral materials included post-conviction mental health and social history reports from Dr. Coons, Dr. Haskins, Dr. Price, Dr. Smith, Dr. Engum, and the social history prepared in anticipation of the 2004 post-conviction hearing; the post-conviction testimony of Steve Brock, now Judge Teresa Harper and Dr. Masbaum; trial reports of Dr. Smith, Dr. Engum, Dr. Masbaum and Dr. Olive, Overstreet's Indiana Supreme Court and federal court reported cases; Overstreet's Indiana State Prison mental health records (PCRII, Pet.Ex. 2, p.2); the trial testimony of Mary Overstreeet, Patricia Browning; the depositions of Dr. Larson, Dr. Matias, Andrew Manning; the reports of Dr. Morrison, Dr. Parker and Dr. Wood; the deposition of Dr. Wood and the recorded interviews of Overstreeet conducted by Dr. Wood and Dr. Parker. (PCRII transcript p. 31-34). Dr. Bailey also reviewed Mr. Overstreet's letters, emails and phone calls. *Id.* at 39. None of these materials altered Dr. Bailey's opinion. Asked if his review of the materials

suffers from auditory hallucinations, visual hallucinations, paranoia and delusions, all "classic psychotic symptoms" of schizophrenia. (PCRII 45, 54, 60, Pet.Ex. 2, p. 12-13).[56] As Dr. Bailey explained, hallucinations and delusions are separate and distinct symptoms. Hallucinations are "false sensory experiences" like hearing voices or seeing something, whereas a delusions are based in thought.. Delusions are "false, but fixed and intractable beliefs in things that are not based on fact." Paranoia involves issues of unrealistic fearfulness or suspiciousness not based on factual reality of life. *Id.* at 49-51. When delusions and hallucinations both occur, "the problem is more manifest and more severe. " *Id.* at 54, and "the overall prognosis of ever getting better is substantially worse." *Id.* at 60.

One of Overstreet's delusions bears directly on the question to be answered here. Although Overstreet's presentation was "very irrational and a psychotic one" *Id.* at 127, Dr. Bailey was able to determine that Overstreeet believes "that he (is) not alive, that he (is) in a coma and that after the execution this entire state or so called realm of life that he was in would go away and he would come back different...Clearly he thought he was in a coma. It was the language he used, and he thought that this coma was going to end post execution. Made it very clear that he had his own ideas, his own mindset of what being in a coma meant and what execution meant and how he would be as an entity

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generated after his 2013 report had changed his opinion, Dr. Bailey responded: "No. My conclusion regarding his competency would not be affected or changed. The records could be supportive...would be supported." (PCRII 35). When asked, "Even though Dr. Wood disagreed with you?". Dr. Bailey answered: "I think that the disagreement would be on the final answer. But by supporting I mean that there's information in much of what I've reviewed even subsequent to the report that is–subsequent to my report–that's supporting of my final determination." *Id.* at 35.

[56]Dr. Bailey understood, however, that Overstreeet "could meet the competency to be executed standard even with a schizophrenia diagnosis." *Id.* at 83.

post execution...My understanding was that he really thought he was in a coma. He described the coma as not being in a physical state where you can't see or talk but you can breathe and you're prostrate in a hospital bed, but that he was there but not really there. At times he described being quote, already dead, end quote. That the person or the life that we understood was not there, that somehow he was different...that once the execution happened that he would kind of would come back to real life. That was my best understanding of what he meant by being in a coma and how the execution would end this period of being in a coma." *Id.* at 57-59. Although Overstreeet understood he was to be executed and that in an execution a person dies and "he spoke about it in reference to him," *Id.* at 145, the "idea (Overstreeet) communicated to me very clearly that he believes that after the execution he will still function in a realm of life similar to the realm of life that we think of as reality now" and believes that following his execution "this bad part of life, this coma period, would be over." *Id.* at 81. When describing his current situation and his expectations post-execution, Overstreeet was "literal," "concrete," "irrational," and consistent over multiple interviews. *Id.* at 81-82. According to Dr. Bailey, Overstreeet is not "competent to be executed, based on the standards as they currently exist." *Id.* at 45, 83, 85.

Although Dr. Bailey's assessment of Overstreeet was completed more than a year before the September, 2014 post-conviction hearing, Dr. Bailey reviewed Overstreet's more recent IDOC records, transcripts of emails and phone calls, reports and depositions of other doctors and the recordings of Overstreet's August, 2014, interviews with Drs. Parker and Wood before testifying. (*Id.* at 32-35, 39). His review of these materials did not alter Dr. Bailey's diagnosis of Overstreeet or his opinions about Overstreet's condition.

Dr. Helen Morrison was the psychiatrist who managed Overstreet's psychotherapeutic

medicines for six months in 2005. Overstreet's counsel originally contacted Dr. Morrison because of her 2005 involvement with Overstreeet. Counsel then asked Dr. Morrison, who has been informally involved in several competency to be executed cases, *Id.* at 268, to perform a forensic evaluation of Overstreeet. As Dr. Morrison noted in her formal report, the purpose of her evaluation was "[t]o determine in accordance with the federal standard for competence to be executed, does Mr. Overstreeet understand that he is to be executed, that the execution is imminent and does Mr. Overstreeet have a rational understanding of why the State of Indiana is planning to execute him." (PCRII Pet.Ex. 6).

Dr. Morrison performed the forensic assessment of Overstreeet on December 27, 2013. (PCRII 251). Although Dr. Morrison planned to conduct a second interview with Overstreeet after she reviewed the collateral information, she became ill and was unable to return to the Indiana State Prison to conduct a another interview. *Id.* at 254. Consequently, Dr. Morrison's assessment is based on a single interview and a subsequent review of collateral information. That information included Overstreet's Indiana State Prison medical records, the reports of Dr. Smith, Dr. Engum, Dr. Price, Dr. Coons, Dr. Haskins, Dr. Bailey and Dr. Wood; the recorded interviews of Overstreeet conducted by Dr. Wood and Dr. Parker; the July 1, 2004 social history prepared by Emily Haile; depositions of Dr. Wood, Dr. Larson, Dr. Matias and Andrew Manning; a collection of offender grievances filed by Overstreeet; telephone recordings, emails and letters written by Overstreeet, and the reports of Dr. Bailey, Dr. Parker and Dr. Wood. (PCRII, Pet. Ex. 6. PCRII 254, 256-7).

During their December, 2013 interview, Overstreeet was hyper-vigilant and responded to stimuli "not apparent in the external environment." (PCRII Pet. Ex. 6). Dr. Morrison described Overstreet's affect as paranoid and related his thought process was "disorganized, formal thought

disorder, switches from one topic to another (derailment) (loose associations), oblique and unrelated answers to questions (tangential thinking)." *Id.* Dr. Morrison diagnosed Overstreeet with chronic paranoid schizophrenia and characterized his mental illness as chronic and severe. *Id.* She determined that Overstreeet had multiple thought delusions. Specifically, she found that Overstreeet had delusions of thought control, delusions of persecution, a paranoid delusion about being poisoned by medication, capgras delusions "which is him believing that people were being substituted for people that he knew," and a cotard delusion, "which is a delusion that he was dead, that he was not alive, that he was in a coma or not responsive to what was going on" and that he would be brought back to life, reunite with his family and be a participant in the family." (PCRII 263, Pet.Ex. 6).[57]

Dr. Morrison explained that Overstreeet has been told that he committed the murder, rape and confinement of Kelly Eckart, and believed he was on death row because he killed an angel, *Id.* at 274. According to Dr. Morrison, Overstreeet wants to be executed. Overstreeet believes his execution will bring him out of the state he is in, "bring him back to life, will bring him back to his family and will make him whole again." *Id.* at 264. According to Dr. Morrison, Overstreet's cotard delusion leaves him unable to understand his punishment. Rather "[h]e talked only about his execution would remove him from purgatory, where he's aware he is dead. That would return him to life." *Id.* at 276. Overstreeet told Dr. Morrison: "When I am executed I will return to be a Dad, an uncle, I will be alive again." (PCRII Pet.Ex.6).

Dr. Parker and Dr. Wood

Dr. George Parker and Dr. Shaun Wood were the final psychiatric witnesses presented at the

[57]In Dr. Morrison's opinion, the disclosures that Overstreeet made to her are consistent with Overstreet's August, 2014 disclosures to Dr. Parker and Dr. Wood. (PCRII 265).

post-conviction hearing. Dr. Parker was the last of the witnesses called in Petitioner's case-in-chief; Dr. Wood was the sole witness for the Respondent. Both doctors are experienced in their field.

Dr. Parker, a 1990 graduate of the University of Massachusetts Medical School, is board certified in general psychiatry and forensic psychiatry. Although he once provided direct treatment to patients, he has not been involved in direct treatment for eight or nine years. Dr. Parker is currently a Professor of Clinical Psychiatry at the Indiana University School of Medicine. He is also the Director of Forensic Psychiatry at the medical school and teaches a class in Psychiatry and the Law at Indiana University's Robert McKinney School of Law. In addition to his responsibilities at Indiana University, Dr. Parker serves a the medical director for the Indiana Division of Mental Health and Addiction. (PCRII 467-468, 560, PCRII Pet. Ex. 7).

Dr. Parker's experience in forensic assessments spans a period of more than twenty years. During that time he has performed close to two thousand criminal forensic evaluations. While the majority of these assessments have addressed defendants' competency to stand trial, Dr. Parker has performed "several hundred" sanity evaluations. Dr. Parker is also the psychiatrist appointed by the Indiana Supreme Court to assess Norman Timberlake's competency to be executed. (PCRII 476-481), and, thus, was the only witness at the Overstreeet hearing with prior experience in an Indiana competency to be executed hearing.[58]

Dr. Shaun Wood, a 1994 graduate of Indiana University School of Medicine, is board

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[58] *See, Timberlake v. Indiana,* 858 N.E.2d 625 (Ind. 2006). In this pre-*Panetti* case, Dr. Parker was asked by the Indiana Supreme Court to assess Timberlake before the Court determined whether to grant Timberlake leave to file a successive post-conviction petition to challenge his competency to be executed. Dr. Parker opined that, although Timberlake had "an active and severe form of a serious mental illness, namely, chronic paranoid schizophrenia," his illness did not interfere with Timberlake's ability to understand his execution under the standard articulated in *Ford. Id.* at 628.

certified in psychiatry and is licensed to practice in Indiana. Dr. Wood has a clinical practice and is the Medical Director of Psychiatry at the St. Vincent Medical Center in Indianapolis. (PCRII 815, Resp.Ex. 17). He has limited experience in forensic psychiatry and is not board certified in that area. Dr. Wood has been involved in three capital cases. He apparently testified in one case as a resident and was retained by the Indiana Attorney General in another.[59] Dr. Wood indicated he has played a role in two other criminal cases, "one had to do with substance abuse problems and assault and battery," the other "had to do with a grand jury investigation." (PCRII 821). Although his experience in criminal forensic examinations is limited, Dr. Wood has diagnosed "thousands" of people with schizophrenia during the course of his practice. *Id.* at 819.

Although their backgrounds are different, there was some commonality between the two doctors. Both psychiatrists interviewed Overstreeet twice. Dr. Parker first interviewed Overstreeet on February 28, 2014; Dr. Wood first interviewed Petitioner on December 7, 2013. In August, 2014, each doctor returned to the Indiana State Prison and again interviewed Overstreeet. Dr. Wood conducted his second interview of Overstreeet on August 9, 2014; Dr. Parker conducted his second interview on August 19, 2014.

Both doctors were able to appropriately articulate the substantive standard for competency to be executed. Dr. Parker described his understanding of both *Ford* and *Panetti.* As he explained, the concurring opinion in *Ford* set out the first standard ("and I use the term cautiously because it comes from a concurring opinion." *Id.* at 485) for competency to be executed: "[I]t was whether the person

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[59]In his first capital case, Dr. Wood apparently testified about something that happened when he was treating the defendant in the case. The details were unclear. (PCRII 822). The other case was a post-conviction hearing involving the capital case of Roy Lee Ward. *See, Ward v. State, 969 N.E.2d 46* (Ind. 2012).

understands that he's been convicted of a particular crime and that he's been sentenced to death because of that." *Id.* at 485. Then, in *Panetti,* "the majority opinion to me basically seems to say, yeah, *Ford v. Wainwright* is good, but it doesn't go far enough, and you have to consider how delusional the person is in general about life as well as court issues, and that can be a factor in determining whether somebody's competent to be executed. ...so the presence of delusions or delusional system as it relates to his understanding of the case and the sentence...you have to...understand how the delusion interacts with his understanding of the crime and of the sentence." *Id.* at 485-486. Dr. Wood explained his understanding this way: "[T] the standard is that in the *Panetti* case the outcome was to define a person as able to be sentenced to death or not, based upon whether or not they understood the crime they'd been convicted of, whether they could logically connect their sentence to that crime and then whether they understood the basics of their sentence and whether or not that chain of logical thought process and understanding was reasonably speaking unfettered in any significant way by a severe mental health problem." *Id.* at 830.

Finally, both doctors recorded their August interviews with Overstreeet. These recordings were admitted at the post-conviction hearing. (PCRII, Pet. Ex 9 and 10). When viewed in combination, these recorded interviews provide the most comprehensive–and unfiltered–view of Overstreet's world and thought processes.

Voices[60]

[60]After repeated viewings of the videotaped interviews as well as intensive review of the records, this Court has concluded that Overstreeet makes certain language choices that specifically relate to his auditory hallucinations. When he speaks in the passive voice and makes statements like "I was warned", "I was instructed, " and "I was informed,", "I learned", he is discussing messages and/or directions he has received from the voices. If he is asked about the voices, he will refer to them as a category–angels and demons–but doesn't distinguish, in his conversations, between what an angel said or what a demon said. Overstreeet told Dr. Parker

Presumably because of Overstreet's longstanding experiences with angel voices, demon voices, shadow people and imposters, both Dr. Parker and Dr. Wood discussed these phenomena with Overstreeet. Overstreeet told Dr. Parker that the voices of the angels and the demons are "for the most part" always with him. (PCRII 791).

The angel and demon voices talk to Overstreeet and provide him information.[61] Sometimes, the information they provide is helpful. For example, their voices help him discern imposters. As Overstreeet told Dr. Wood, he received information about a specific imposter from:

> The same place I get information generally when–when–about people that are not who they say the are and things like that..[W]e'll just say it's like an angelic realm of types, of sorts, it's not divine. There's a difference between divine and angelic.. *It's – it's–it–I just get the information sometimes...through communication. I – I hear the information.*
> (PCRII 668, Pet.Ex.9). (emphasis added).

As Dr. Wood explored this further, he tried to clarify the source of the communication received by Overstreeet. Overstreeet and he engaged in the following exchange.

> WOOD: Where do you hear it?

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that he can recognize individual voice among them and that the voices sometimes talk to each other. He believes "they whisper about me all the time." (PCRII, Pet.Ex.8, p.3). In the recorded interviews, Overstreeet appears, at times, to suggest he is constrained by the voices from providing too much information.

[61]When Dr. Parker speculated that the angel voices would be nicer than those of the demons, Overstreeet corrected him, explaining:

> That's a misconception. People think that angels are good–angels are all good and demons are all bad, and demons can be–they can have good traits and angels can have bad traits...It's like a person. A person can be–have multi-facets to them and they're equally–equally the same.
> *Id.* at 756-7.

> OVERSTREEET: What do you mean, where do I hear it? Well, I mean, I just–I have access to that information. That's – that'd probably be the better–accurate way to say it.
>
> WOOD: Where do you get information, though?
>
> OVERSTREEET: From an angelic realm. I know it's confusing, but I–I mean, that's why I won't talk about it.
>
> WOOD: Do you mean angels talk to you or –
>
> OVERSTREEET: Yeah.
>
> WOOD: *How do they talk to you?*
>
> OVERSTREEET: *Kind of like you talking to me.* I mean, or, the way anybody else talks. I mean, that's – talking is–it's not–it's not special information. I'm not special. I just – I – I'm able to pick up on information and I pick up on it. I can't explain it. I don't know how to explain it. It's not a delusion, it's not a hallucination, it's not an auditory hallucination. It's –it's honest -to-God fact...
> *Id.* 668-669. (emphasis added).

Sometimes, the voices are critical of Overstreeet. As an example, Overstreeet recounted the problem he had after writing to the Court about his competency. His June, 2014 letter to the Court resulted in his transport to court for an August 4, 2014 hearing. Overstreeet blamed himself for, in his mind, almost causing a delay in the September post-conviction hearing. As he told Dr. Parker:

> I believe that I had provided too much information and now what was resolved became unresolved and–and it was my fault. And I–I was warned against that in the first place, and...
> *Id.* at 753. [62]

After being asked how he was warned, Overstreeet described the circumstances surrounding the warning. He told Dr. Parker:

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[62]Overstreeet believes bad things may happen if he resists the voices. He tries to negotiate with them sometimes to avoid bad consequences. (PCRII, Pet.Ex.8, p3).

> Well, they had took me to South Bend for a hearing on this particular–on this particular topic and–and although I normally couldn't understand–or I didn't get any indication –I had got an indication that it was resolved, you know, in a –in a manner that made everything okay...I–I thought everything was resolved and then I, you know, started providing information that information led to inquiries and then I felt by providing information this–this took place and I thought, well, in court they were going through these proceedings and everybody was screaming at me.
> *Id.* 753-754.

Dr. Parker asked Overstreeet who was screaming. Overstreeet responded:

> ...Everybody in the courtroom was screaming,[63] you know, you fucked up, you know, you shouldn't be talking about this because they (the lawyers and court) started talking about the delay and everything, saying–saying that we're going to need more time to do this and I was under the impression that they were making–that they were going to put this hearing off that's supposed to be in September and this was all supposed to be–supposed to all be resolved as quick as possible. And they were telling me–see, told you not to do this, and I wrote the judge and warned her or asked her that–or I don't remember exactly who–how I phrased the letter, but I–I advised her that there could be difficulties with–with–with the proceeding if–certain things took place–And I know I'm being a little evasive, and I'm not not trying to be evasive. I'm just trying not to say specific words....And–but–and I thought, okay, now–now, I mean– Kathleen (Cleary, the State Public Defender seated next to Overstreeet at the hearing) and all had started talking about we're going to need more time to do this and we want to talk to another doctor and delay here and deadlines–extension here and all this stuff. And I just couldn't hear with everything that was going on.
> *Id.* at 754-755.

Dr. Parker inquired:

> Did the other people in the courtroom hear those voices?

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[63]The State suggests that Overstreeet is referring to a malfunction in the Court's audio equipment during the hearing. The malfunction resulted in an abundance of static or white noise coming through the speakers during part of the hearing. It is difficult to imagine how Overstreeet could have rationally interpreted this noise as audible invectives.

Overstreeet replied:

> Oh, I'm sure they did. They said they didn't. They should have. If they didn't—well, I—I have to assume probably they didn't due to the fact that Kathleen leaned over and said–asked me if I had any questions and I told her I couldn't hear what was going on and I asked her if she could explain it to me afterwards or something to that effect. *Id.* at 755-756.[64]

Overstreeet is accustomed to perceiving things in ways others cannot recognize or do not acknowledge. He is no longer interested in talking about this phenomenon with his fellow inmates at the ISP. When explaining that the information receives is not a hallucination, Overstreeet told Dr. Wood:

> To be honest with you I don't care whether people believe me or not I'm tired of trying to justify it. I've tried to do all these things. *Id.* at 689.

As the interview with Dr. Wood continued, Overstreeet stated:

> ...Well, I get–I get pissed, you know. I argue with these guys back there all the time, because, uh, and I don't do it anymore, but I used to, uh–I would take my TV and set it out on the range because sometimes just unplugging it myself doesn't stop the information from coming through the TV. So I'll take it and I'll put it on the range or the–I just–I get it out of the cell and I have to listen to them guys piss and moan and jokes and cracking–cracking this and cracking–they don't really need more because after I have a talk with a couple of people the–nobody else want to talk about that sort of thing, so I don't make–but that's kind of ridicule that I've suffered because of–because

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[64]Overstreeet returned to this topic later and described how the voices chided him:

> They (the lawyers and judge) was talking about delaying the–delaying the–the hearing for the execution and stuff, and they were, you know, talking about extending deadlines and stuff like that. *And I was just getting screamed at and stuff for–for, you know, being told I fucked up getting everything in a timely manner*. (*Id.* at771). (emphasis added).

of–

Q: Your experience?

A: –my experiences...
Id. at 689-690.[65]

Overstreeet accepts some of the responsibility for the failure of others to understand his experiences. As Overstreeet later commented, he would not have these problems if he were better able to communicate. Overstreeet told Dr. Wood:

> [T]his is not–I mean, this is certainly not uncommon or unusual. I've read and heard many stories of many people. It's not–it's not something that's–that's unique or–or–just like the last time you and I were talking about shadow people you said you knew a little bit about that, and I think we even talked about Coast to Coast and stuff like that because they discuss those. That–that just tells me this is a worldwide phenomenon, you know, and it's the same way with like people stuff through angels and stuff like that. I'm reading a book right now about a little Lithuanian girl–well, she's actually American but she's from Lithuanian descent–but she had a visitation from God–I mean, I've never had a visitation from God–I'd love to have a visitation from God–but nobody calls her crazy and things like that, and she's got just unbelievable talent. And you know what I mean, it's just proof of the divine so—but, you know, maybe because I'm not a very good communicator and she's probably a good communicator and she has very good talents they don't call her schizophrenic. *Id.* at 691.

Shadow People

As Overstreeet explained to Dr. Wood, the shadow people are unrelated to the angels and the demons: "...I think they're totally and completely different entities. I don't think that they have any (relationship to the angels and demons). I mean, it's like rabbits and squirrels." Overstreeet then

[65]Overstreeet told Dr. Parker that he has had other problems with his fellow inmates on Death Row. According to Overstreeet, "they won't even let me rec with anyone else. The guys don't want to rec with me anymore" which "makes me feel abnormal. I troubles me immensely. I just wish it'd go back to normal. Asked what he meant by normal, Overstreeet replied "nobody talking about it, asking me about it, knowing about it." (PCRII, Pet.Ex. 8, p.5).

immediately corrected himself: “You know, uh, you know, I–I don’t –well, rabbits and squirrels is a bad example because they’re both rodents, but...They’re (angel and demons/shadow people) not related in any way...” (PCRII Pet. Ex. 9, transcript 698-9).

Discussing his encounters with the shadow people, Overstreeet told Dr. Wood:

> *I’ve been seeing them since I was a kid.* Uh, I–they used to follow me around all the time and I knew what they were or anything until someone told me. *I mean, I always told people that the shadows follow me around, but I didn’t know that it was a world phenomenon until I’d heard it,* in In Search of..–no, it wasn’t In Search of –some–I don’t know, it might have been Ghost Hunters or some—something and it was like an Eureka moment. I was like, see? I mean, all this time you’ve been telling me I’ve been hallucinating and that I’ve seen things that are not there or I’ve seen things that other people don’t see. And I’ll–I’ll–I’ll be the first to admit sometimes I see things that other people don’t see. Doesn’t mean it’s not there, it just means they don’t–they’re–they can’t receive that information. Now, I–when I–I say–*they say it’s a hallucination, but I just say that they’re not capable of receiving that information*.
> *Id.* at 696. (emphasis added).

Dr. Wood asked Overstreeet if he were in danger from the shadow people, and Overstreeet answered:

> Am I in danger? I used to think that–that, uh–that, uh, that they were going to hurt me or hurt my family and things like that. I used to think that they were always chasing me around because I could never evade them. But, uh, I’ve come to learn that I–I actually think they, in some circumstances, it’s good. For example, I, I, I know that I, I sleep on the floor in my cell and when I’m laying there, uh, I’ll see them walking up and down the range or moving across the range, and I know generally sometimes it, it, it, I don’t, I don’t fear them.
> *Id.* at 701.

Summarizing his feelings toward the shadow people, Overstreeet explained to Dr. Parker: “it’s just like the dentist. Yeah, they just–they exists. They don’t–I’m–I’m indifferent to them....they’re like mice.” (PCRII, Pet.Ex. 10, p. 769).

Imposters

Although he may not be bothered by the shadow people, Overstreeet finds imposters troublesome. He tried to talk to Dr. Wood about a particular imposter, his uncle's girlfriend. The following dialogue ensued:

> OVERSTREEET She just ain't who she says she it.
>
> WOOD: Who is she?
>
> OVERSTREEET: Huh?
>
> WOOD: If she is not who she says she is, who is she?
>
> OVERSTREEET: Well, she's someone other than who she says she is.
>
> WOOD: Well, who does she–let's put it this way, who does she say she is?
>
> OVERSTREEET: That–I'm not going to say that. I'm not going to say the name that they call her. I'm just going to–you can contact my mother and–
>
> WOOD: You don't even like saying her name?
>
> OVERSTREEET: I won't say her name.[66]

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[66]Although Overstreeet did not explain why he would not say the name, the explanation for his refusal may be found later in his conversation with Dr. Wood. When Dr. Wood and Overstreeet were talking about Overstreet's belief that his sister Shannon works at ISP, Dr. Wood asked Overstreeet why he did not just ask his sister if she worked at ISP. Overstreeet cautioned: "Sometimes you're not supposed to do that. There could be negative–negative results when you do that. It's kind of like two atoms colliding. If the positive and negative–I've confused you ain't I...Let's, let's say–let's say if–if two things–and we'll just say–we'll just, for the sake of conversation, say a negative and a positive are like–a genuine and an imposter. And the two of them, they, they connect with, with, uh, whether they connect with a word or connect with a thought or connect with a, a, a conversation or for some reason there's a bond between those two, uh, it's, it, there could be negative, uh, negative, uh, results come from that. It'd be like two atoms colliding. (PCRII transcript 719-720).

WOOD: Okay. I guess–but when–ignoring, ignoring the name, who does she portray herself as, like what kind of person does she portray?

OVERSTREEET: She portrays herself as my uncle's girlfriend or wife. I don't know whether they're married or not.

.

WOOD: Okay. Who do you think she really is as a person.

OVERSTREEET: She's not who she says she is. And I–I'm sorry I can't go any further than that. I mean, she's not–she's not the being that she says she is, that everybody thinks she is. I've warned people, I've told them, and–and nobody wants to listen and that's on them and now that's on somebody else's head. So, I mean–

WOOD: What–What do you think she is?

OVERSTREEET: Huh?

WOOD: What do you think she is?

OVERSTREEET: She's–she's an imposter; she's not–she's a demon of some sort.

WOOD: Okay. Why do you think she's a demon?

OVERSTREEET: I don't think it; I know it.
Id. at 685–6.

When he met with Dr. Parker, Overstreeet relayed the details of an even more recent experience he had had with imposters. Overstreeet told Dr. Parker that in the weekend before their August meeting:

> ...[S]ome stuff was going on and there was people walking in front of my cell and they wouldn't –they wouldn't look at me or acknowledge at me when I would yell at them, you know...[T]hey were no further from me to you and they didn't seem–they were giving indications that they weren't who they say they were...So that's why I was screaming at them...And they wouldn't acknowledge me and they wouldn't look at me.
> (PCRII, Pet.Ex.9, p.745-6).

Overstreeet explained to Dr. Parker that things were getting worse with the imposters: "...it's just

more increased activity and so on and so forth." *Id.* at 744. Overstreeet indicated that he was thinking "that maybe the next step is to try to catch and interrogate one...I'm waiting on instructions and if so to understand exactly the parameters and what I need to do and then I'll set everything into motion to try to facilitate that." *Id.* at 764-765.

As their interview continued, Dr. Parker and Overstreeet returned to Overstreet's idea of interrogating the imposters. Dr. Parker asked Overstreeet what he hoped to learn from interrogating an imposter. Overstreeet answered:

> I don't know, and that's why I've got to find out. I've never–I've never tried to interact with one like that before. I'm–I'm–I'm contemplating on what I need to do. And that's why I asked you earlier, you know, when we were sitting there kind of chit chatting. You–if your job is to question people for a living or try fishing for some information on how to accurately interrogate something within a few couple minutes because that's going to be about all the time I'm going to have–before–before it either gets reinforcements or I'm stopped from you know, questioning it and I need to get as much accurate information as quick as possible. *Id.* at 790-1.

The Crime, the Punishment and the Connection

During their August, 2014 interviews with Overstreeet, both Dr. Parker and Dr. Wood explored Overstreet's understanding of the crime he committed and the punishment he faces. While on a superficial level Overstreeet clearly understood that he had been convicted of the murder, rape and confinement of Kelly Eckart and clearly understood that the death penalty had been imposed, his full explanation of events was labyrinthine and difficult to sort through. As Dr. Parker observed, when interviewing Overstreeet, the interviewer has to drill down to get the whole story.

Early in his conversation with Overstreeet, Dr. Wood was able to establish that Overstreeet understood why he was on death row. *Id.* at 645-646. But, as the interview continued, it was apparent

that Overstreet's overall understanding of his situation was far more complex.

Overstreeet told Dr. Wood that he (Overstreeet) is in a coma, in purgatory, and awaiting his execution. In an attempt to determine what Overstreeet meant by purgatory, the doctor and Overstreeet engaged in the following exchange:

> WOOD: Now, when you say it's kind of like being in purgatory her, do you mean that the bizarre nature of being stuck in here and locked away from the world and just sort of paying penance in a mild sense that it's kind of like being stuck in purgatory.
>
> OVERSTREEET: *It is purgatory.*
>
> WOOD; How is it purgatory?
>
> OVERSTREEET: This is where I'm supposed to be right now and–and–
>
> WOOD: Who–who decided that you're supposed to be here right now?
>
> OVERSTREEET: Well, I assume God has decided I'm supposed to be here.
>
> WOOD: Okay. And why–why would God..
>
> OVERSTREEET: I'll say higher power. Some people don't like to say God.
>
> WOOD: Okay. The word "God" works for me.
>
> OVERSTREEET: Okay.
>
> WOOD: I think most of us understand God equals higher power, and vice versa.
>
> OVERSTREEET: Yeah. (INDECIPHERABLE)
>
> WOOD: Why–why would God want you in purgatory?

> OVERSTREEET: For all the atrocities that I've ever done[67] and everything that–and everything that–I'm not a nice person. I'm–I'm not a nice person. I don't do nice things sometimes. I try to be nice to people, but I can be very unpleasant and all. And it's not recent, though. I've–I've been an unpleasant person for many years from an adolescent and stuff like that.–There's–there's any number of reasons. I mean, I–I don't know. I've searched the Bible for–for specific reasons, and uh, you know, I can find numerous ones.
> (PCRII 705-706, Pet.Ex. 9). (emphasis added).

Overstreeet advised he would stay in purgatory until he was executed. He indicated that his executed body would disintegrate or deteriorate. Dr. Wood then asked what would happen to Overstreeet "as an entity." Overstreeet said that he will then "make the transition." And transition to "whatever's next." *Id.* at 708. As Overstreeet explained:

> And I don't know what's next. I could go home, I could wake up in a coma, I could go to hell, I could go to heaven. I may end up in purgatory again. I don't know how many purgatories there are. I just don't know. But I'm excited about the thought of–
> *Id.* at 708.

Dr. Wood interjected:

> This process ending in purgatory here?

Overstreeet responded:

> Yeah. Well, not necessarily here, but more what's to come next. I–I think it's going to be better. It might be worse. You know, what I always say, could it always be worse. Eh, you know, it could always be better, too.
> *Id.* at 709.

After a brief discussion of Buddhism and Christianity initiated by Dr. Wood, the two men

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[67] Later in their conversation, Dr. Wood suggested that "God's put you here in purgatory for a series of things in the course of your life...sort of biggest culminating one was unfortunately the murder of Kelly Eckart." Overstreeet demurred and indicated that he believed the atrocities against Melissa could be "applicable" to his placement in purgatory. *Id.* at 723.

moved on to a variety of seemingly unrelated subjects. They engaged in discussions about Star Trek, about a former employer of Overstreeet who reminded him of a Star Trek captain, about James Bond, about television and radio shows that support beliefs in shadows and demons,[68] about a premonition of death Overstreet's grandmother once had, about changes in the interview room since the time Overstreeet and Dr. Wood met in December, 2013, about Overstreet's firm, fixed belief that his sister walks the range and works at the ISP, about Overstreet's remorse over the "atrocities" he committed against his ex-wife ("I've hurt Melissa in–in a few manners and a few things...I think she said that I choked her one time and stuff like that." *Id* at 723). Then they returned to Kelly Eckart's death.

> WOOD : ...All right, so what–what I'm try to–the main question I need to help the judge understand in this case really is all about do you understand why you're–you've been sentenced to death? I mean, essentially, is there anything else that gets in the way of your understanding of it. Because from our perspective and the legal system and anybody in my medical system that looked at what's going on, they would say there's only one reason you've been sentenced to death, and that's it.

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[68]After telling Overstreeet that some people would listen to Overstreeet and "automatically couch it in terms of okay, that's a delusion", Dr. Wood noted that there are "national syndicated talk shows, you've got multiple people who are published in the area, it's often in the paranormal area." Overstreeet agreed: "It's absolutely comforting to sit and think that you are not different." *Id.* at 715-716. Dr. Wood continued,: "Yeah. And I can see why for you it's comforting and it probably–was it comforting when you found out there's–there's a whole group of people around the world and the US that sort of have the same belief system around angels, demons and shadow people that you do?" Overstreeet responded, "Yeah. I–I grew up in that environment. I mean, my mom and grandma and stuff like that, uh, I mean, we've always been firm believers in–I mean, angels and God and the power of the Lord and Jesus and all that stuff. Even though it ain't like we attended church three days a week and stuff like that. This–This–this is not something that's just occurred. I mean, my grandma used to tell me that when, you know, uh, when I initially would try to explain things to people that they were like, you're schizo or–and I found comfort in the fact that my grandma said no, there are angels who talk to people and she gave me an example that an angel did talk to people sometimes. So I found very good comfort." *Id.* at 716-717.

OVERSTREEET: [Nodding]

WOOD: You were convicted of murdering Kelly Eckart

OVERSTREEET: [Nodding]

WOOD: And you were convicted as a consequence of that conviction, you were sentenced to death.

OVERSTREEET: [Nodding]

WOOD: Now, the question is, do you understand why you've been sentenced to death? Why you believe you've been sentence to death.

OVERSTREEET: I thought we just went through that.

WOOD: No. I know–I just want to make this clear because this is the big question that everybody's questioning your competence on.

OVERSTREEET: Okay. I–

WOOD: Why were you sentenced to death?

OVERSTREEET: By the State of Indiana.

WOOD: But why did you get sentenced by the State of Indiana?

OVERSTREEET: Because I was convicted of murder, rape and confinement of Kelly Eckart—

WOOD: Okay.

OVERSTREEET: –of Franklin, Indiana.

WOOD: Is there any other – any other logical explanation for you being put to death?

OVERSTREEET: Just what I told you earlier.

WOOD: Which is–

OVERSTREEET: My–that–I–I–I think– we did just have a big, long conversation about all that stuff. I mean–

WOOD: Right. No, we talked about shadow people and angels and demons and God and somehow that–

OVERSTREEET: Right. You need to make a transition and stuff like that–

WOOD: Yeah.

OVERSTREEET: –being in purgatory and atrocities and stuff like that.

WOOD: Right. So when you think about other pieces that help understand the concept of being put to death, in some sense you see–when you're sort of hemming and hawing about the other pieces, the–the other piece, really, do you–I'm guessing here–is you see really part of what's going on as God–God acting through the state to move you on from purgatory into the afterlife whatever that may be?

OVERSTREEET: That–you could probably put it like that.

WOOD: Is that–

OVERSTREEET: That would probably be a fair–fair, uh–

WOOD: Is that representable of your thinking king of, sort of?

OVERSTREEET: I–I can see where you could come up with that conclusion. Does that make sense, or is that too vague?

WOOD: No, but does it represent what you're thinking, though? Because I–what I think about it doesn't matter.

OVERSTREEET: Well–

WOOD: It's what you're thinking and that's what I'm trying to understand.

OVERSTREEET: –I think it does matter because I–I can only base my information off other people providing that informa–I–I can only–I can only either confirm or deny information that other people say, uh, only by getting their interpretation. Can I say, okay, yeah, I

understand that or I don't understand it? I'm not making any sense right now, am I?

WOOD: No. I hear you.

OVERSTREEET: I–I know what–I know what, uh, I know what I'm trying to say, and I don't know how to say it properly. It–it's multifaceted. That's–that's the only way I can properly say it and–and–

WOOD: What's multi-facted?

OVERSTREEET: Uh, this whole experience. Everything that's happened before, everything that's happening now, everything that's going to happen tomorrow. Everything's multifaceted. It's all connected. It's like having cancer. I mean, the cancer could have been because I smoked cigarettes or maybe because I lived next to a –a power plant. And if you want to say that–that I have cancer because I smoked and this other guy wants to say that I have cancer because, uh, you know, I had, uh, led an unhealthy, uh, nutritional life, and I didn't exercise and things, I don't think either of you is wrong. And whatever the reason I think I got cancer is irrelevant. I got cancer.

WOOD: Okay.

OVERSTREEET: That's– that's kind of what–the way I look at it. I–I–I know what a lot of people think, what they think. I know what other people think, and, uh, and I respect all those opinions and everything. *But, don't –don't tell me that I have to think that way. I–I'll respect that–or I'll–I'll respect that, but–*

WOOD: Well–

OVERSTREEET: I'm–I'm–I'm not–I don't know where I got cancer; I just know that I got cancer and–

WOOD: No. I under–I hear what–I understand what you're trying to say, that there–there are a multitude of different factors–

OVERSTREEET: Yeah.

WOOD: –a multitude of different factors in life that sort of feed into a–

OVERSTREEET: Right, and you want to focus–and I don't

mean you in particular, but a lot of people want to focus on murder, rape and conviction–or murder, rape and confinement of Kelly Eckart, a Franklin College student. Some people want to focus on, uh, other things. Even other people want to focus on other things. And each–each and every one of those are valid concerns for those individuals. And I have the utmost respect for them and I don't think you're trying to trick me or anything by the conversations that we're having with–you know, cancer is cancer and regardless of what caused it, uh, you've just got to see it through And that's kind of–that's kind of how I, I am right now. You know, if–if–if– it if it boils down to me sitting and tell you, okay, it's because murder rape and confinement of Kelly–I think her middle name was Nicole. I don't know, I keep thinking Nicole, but I think it was Kelly Nicole Eckart–or if it's because of, you know, I think that I'm in a coma and sitting a comatose state in a hospital bed say at St. Vincent's or whatever, and uh, and, uh, Melissa and my mother are in my bedside ready to pull the plug,–whatever the circumstances are, maybe it, it's time to pull the plug. And that's what I'm trying–and I know that, you know, you guys are like life sustaining–life-sustaining, uh, instruments of trying to, uh, you know, even though you are a doctor, attorneys are kind of like life-sustaining instruments, too, because they're constantly performing CPR on essentially a corpse.–and I've been a corpse for a long time, and sometimes it's just time to–to call it–

WOOD: Now, when –when you say you're a corpse, though, do you mean you're a corpse because you're currently sentenced to death and it's just a matter of time before that's done?

OVERSTREEET: *No*, I just–that just could be one of the –one of the facets of things going on.
Id. at 726-732.(emphasis added).

Like Dr. Wood, Dr. Parker attempted to obtain as clear a picture as possible of Overstreet's perceptions. When Dr. Parker and Overstreeet were talking, they segued into a somewhat convoluted discussion of Overstreet's connection with Kelly.

PARKER: ...And you had been sentenced to death for what reason?

OVERSTREEET: Murder, rape and confinement of Kelly–I believe her middle name's Nicole–Eckart:

PARKER: Okay–And we talked about that incident.[69]

OVERSTREEET: Yes, sir.

PARKER: And I asked you if you had killed Kelly Eckart.

OVERSTREEET: Yes, sir.

PARKER: And what did you say?

OVERSTREEET: I said they say that I did
Id. at 773. .

After Overstreeet explained he had no actual recollection of the crimes, Dr. Parker continued:

PARKER: ...But yet you feel you have a connection to Kelly Eckart?

OVERSTREEET: I–I explained what I thought was the connection, yes, sir.

PARKER: Okay. Could you explain that again, please?

OVERSTREEET: As far as the coma or the death?

PARKER: How it happened–how you came to be–

OVERSTREEET: Well, for one–one–you know, you asked I think your specific question was what was the first time you had heard–heard–the term Kelly Eckert, and I had told you that–that one of the–without being a specific date or time because I don't have that information, that it could have been either when I shot myself after trying to clean my guns in my bedroom and–and her story was on the news on TV or, you know, it would have been, you know–

PARKER: So how would that connect you to Kelly Eckart?

OVERSTREEET: *That would have been the last thing I saw before I died*.

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[69]The video equipment malfunctioned twice during Dr. Parker's interview with Mr. Overstreeet. By this point in the interview, Dr. Parker was basically reviewing some earlier, unrecorded topics that Overstreeet and he had covered earlier.

PARKER: Okay. So how would that–again, how would that connect you to Kelly Eckart because she was already missing and possibly dead by that point.

OVERSTREEET: Well, I–I'm not rationalizing how that, you know, all that information. You–your specific question was when was my first recollection.

PARKER: Mm-hmm.

OVERSTREEET: And my first recollection would have been–or, you know, that scenario that we're discussing, it would have been–

PARKER: Okay.

OVERSTREEET: –that, that's the answer.

PARKER: Well, I think I also asked you have any–or did you have any physical connection to Kelly Eckart?

OVERSTREEET: Not that I'm aware of.

PARKER: Okay. So, would, then, you end up connected to her in some other way?

OVERSTREEET: Oh, was you talking about the DNA?

PARKER: I–up to you. I–I hadn't heard about DNA.

OVERSTREEET: Well, I don't know what the question is, then. You're–it's a vague question–I–

PARKER: Well, I'm sorry. You said you were not physically connected to her?

OVERSTREEET: Yeah.

PARKER: But yet you've also said at one point that –that you were somehow intertwined with Kelly Eckart.

OVERSTREEET: Right. There's a bond there with the thing, we were discussing many different things. We're kind of–you're doing an all-encompassing question instead of being very specific. When I

say very specific, are you talking about, you know, if you're saying–you asked me if there was a connection prior to–or was it–something or other came out. And I was like, you know, yeah, I guess there could have been, you know, some kind of interaction. But that–my recollection is that particular time and that that point, you know, whether it would have been after she was–come up missing and she was in the newspaper and the TV like I was saying--

PARKER: Mm-hmm.

OVERSTREEET: --and you know, that–that could have been the other scenario where I shot myself in the face or head, then the connection would have been the television. *You know, there's a multitude of connections that–depending on what the –the actual–*

PARKER: Okay.

OVERSTREEET: *–what the actual realm we're in.* Does that, –I–

PARKER: Okay.

OVERSTREEET: –you, know, I–I–and I apologize if I'm–I'm confused or your question. Your–your question kind of clumped in multiple things.

PARKER: Okay.
Id. at 774-777.

Overstreeet then focused on the physical connection with Ms. Eckart:

.

OVERSTREEET: And one of the things, one of the physical connections that they say took place was semen in–or DNA, the semen in the body and on the underwear.

PARKER: Okay.

OVERSTREEET: Those would be physical connections.

PARKER: Okay. *Do you have any recollection of that?*

OVERSTREEET: *No, and you didn't ask if I had any recollection of that earlier.*

PARKER: Okay.

OVERSTREEET: You were asking what the physical connections were.

PARKER: Okay.

OVERSTREEET: I'm trying to ask–answer your question.

PARKER: Thank you.

OVERSTREEET: And if I'm sounding like I'm being rude, I'm not trying to be rude.

PARKER: No, no.

OVERSTREEET: It–I'm a little bit more confused now than I was earlier not by the questions, but the–just a lot of stuff. This – is a very quiet room, so you can hear a lot of stuff going on.

PARKER: Oh, yeah. Okay. I hadn't –hadn't thought about that as a possible consequence.

OVERSTREEET: Yes, sir.

PARKER: Okay. And Kelly Eckart, you thought, might not have been who she said she was?

OVERSTREEET: I was explaining to you how I believe that she might have been an angel.
Id. at 778-779. (emphasis added).

As their conversation continued, Overstreeet discussed the jury selection during his trial and connected it back to his coma:

PARKER: And what happened during the–the jury selection?

OVERSTREEET: We picked up jurors to do my trial with.

PARKER: Okay. And you remember one of them in particular?

OVERSTREEET: I remember most of them.

PARKER: Okay. But one of them you had a particular reason for.

OVERSTREEET: Well, several of them I had a particular reason. We discussed the one that I–I said was Melissa.

PARKER: Could you explain that, please?

OVERSTREEET: Yeah. *We were talking about the–the fact that–that I immediately recognized that–that, that was Melissa's spirit trying to help facilitate my getting out of a coma*[70] *and–and I was very encouraged going into the the trial until she had an asthma attack –and was–was removed. And at that point, I realized that Melissa had–had failed at her attempt to try to get the–the plug unpulled.* But, you know, I also remember my mother-in-law being there, and she's –you, she's a great woman and everything, but she's a little judgmental and she's stubborn, so she was there. I remember people that I was friends and family with–

PARKER: Okay.

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[70]Later in their conversation, Overstreeet talked a little about this idea he is in a coma. He explained how when he was in custody, awaiting trial, he put his arm in a jail door to determine whether he was real:

> I–I–they had an electronic door–what do you call it, bars where they open and shut. Well anyways, I was standing there and just a random thought come to my mind at that particular minute to seek confirmation or a way to find confirmation and–and I said okay, if this–if I'm really not dead–if I'm dead, I'm not going to feel this If–if I'm really not here, if I'm not in this realm, if I'm not in this world, you know, I'm not going to feel this. So I stuck my arm in there and the door shut on my arm and either the indicator light or whatever was showing that the door wasn't shut so they reopened it and I pulled my arm out, and I was moving my arm up pretty good, but I didn't feel a think.

Dr. Parker asked, "So what'd that tell you?" Overstreeet responded:

> It told me that I was right..That I'm either dead or not real..Or maybe in a comatose state kind of. I don't know what–I don't know that much about comatose state and there's not very much literature about it, so you don't know what takes place during a comatose state, and I've not been given much instructions on it." *Id.* at 787-788.

OVERSTREEET: –being there, too, so I–I thought I had everybody–I thought everybody was–I thought everybody was, you know, pulling together at my bedside.

PARKER: Okay. Your bedside? What do you mean?

OVERSTREEET: If I'm in a coma, I'm probably at a hospital bed.

PARKER: *Okay. And that juror being excused, that meant–*

OVERSTREEET: *Confirmation that–that first of all, I was correct and second of all, that–that, you know, it's just–just–that Melissa had failed.*

PARKER: Okay.

OVERSTREEET: That's you know, and I–I didn't hold her responsible for it–I just, you know, my–my mother had succeeded at that time at keeping me on life support. (*Id.* at 780-782).(emphasis added).

Dr. Parker then turned to the question of execution, asking Overstreeet:

PARKER: Okay. So what would happen if the death sentence is carried out on you?

OVERSTREEET: What would happen if the death sentence is carried out on me?

PARKER: Mm-hmm.

OVERSTREEET: Well, I mean, that's what we're trying to get done.

PARKER: Okay. So what's going to happen to you?

OVERSTREEET: From that standpoint?

PARKER: Mm-hmm.

OVERSTREEET: Can–can you–ask– answer me–ask the question again.

PARKER: Are you having trouble with the background noise?[71]

OVERSTREEET: A little of that and I'm–I've got to be very guarded on–on what information I provide. I would rather not provide you any information than provide information that's going to–

PARKER: Okay.

OVERSTREEET: –expose too much.

PARKER: You mentioned earlier that you would make a transition.

OVERSTREEET: Yes, sir.

PARKER: Okay. What does that mean? When you used the word transition, what do you–what do you mean?

OVERSTREEET: That means to facilitate change.

PARKER: Okay. So change of what kind? What's going to happen?

OVERSTREEET: *–Well, one, I'll either go back home like I said–*

PARKER: Okay.

OVERSTREEET: –talking about, you know, I was explaining how, you know, about the kids are either still young–I don't know how– *I don't know how coma time works.*

PARKER: Okay.

OVERSTREEET: You know, my kids could still be–they could still be children.

PARKER: –So if you come out of the coma, where will you be?

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[71]Dr. Parker is referring to the voices Overstreeet seems to be hearing, not actual noise.

OVERSTREEET: *At–I can either go home or – or if they pull the plug and–and–and they, you know, maybe I'll go to either purgatory or heaven or hell.*[72]

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[72]Two years ago, in July, 2012, Overstreeet spoke with Melissa and expressed a more traditional understanding of his execution. He told Melissa:

> I, I'll share something with you that happened to me the other day. And see, I didn't, I didn't know my mail, my appeal had been denied until you told me, and uh, apparently everybody back here already knew it but nobody said anything to me. Then when I called, when I called my attorney, she was making excuses why they hadn't told me or anything else so I, I, I don't know. But anyways, you know, I got to ponderin', hey, you know, I'm lookin' at months now. It's no longer years. It's months. And I went outside, you know, just to kinda soak up the beautiful day, cause it was early in the mornin'. It was, uh, I don't know, probably around 70 degrees so, it was real comfortable in the sun, just barely comin' over the wall at the time and I had my cat out there and I was thinkin' abut all the different things that you know, that I'm gonna miss and stuff and the hardest part's going to be my family of course. That, you know, other than that I f–I feel God I'm ready at any point, you know, so I'm, I'm fine with that and uh, and you know, I, I , I've led a rough life so, it you know, there's there's un, there's been a lot of things that, that uh, you know, that I, I didn't always treat people as nice as I should've, you know what I'm saying? And, and I, I've I've put myself in a position where that, that, people have lost their lives because of my actions and you, know, and that weighs heavy on a person that's gettin' ready to die because you don't, you don't, you don't know how you're going to be judged about those incidents, you know what I'm saying?...But uh, I was sitting out there and ponderin' all the different things and I was like well you know, if, uh, if, if, whatever happens, you know, I'm okay with it. I'm, I'm acceptin' that and you know, for the first time that I had uh ever seen since I've been here, there was a dragonfly come over and land right almost next to the table where I was at and that dragonfly got up and flew around. And I've always heard dragonflies that are, are, a metaphor for (spirits) and, and I was thinking that was kind of like a sign to me saying', you know, everything's all right. We–we'll see how things go. You know what I'm saying? PCRII, Resp. Ex. 15, Call 3, 7/23/12).

Around that same time, Overstreeet drafted a will (PCRII, Resp. Ex 5, will dated 9/26/12)

PARKER: Okay.

OVERSTREEET: *And all this would start all over again if –if it is–you know, if I do end up having to go in purgatory.*

PARKER: Because you're in purgatory now?

OVERSTREEET: *I'm in purgatory now.*
Id. at 782-84.

Later, Dr. Parker asked:

PARKER: *...if you come out of the coma where will you be when that happens?*

OVERSTREEET: Physically?

PARKER: Yes.

OVERSTREEET: *Well, probably the hospital or a nursing home or a convalescent home and then hopefully I will be able to recover from that and go home to my house if–*

PARKER: As–as a physical being of–

OVERSTREEET: Yes. And the–

PARKER: –Michael Overstreeet?

OVERSTREEET: *Michael Dean Overstreeet. And if I couldn't –if I'm not going to recover, make a physical recovery and if I'm just going to stay in a hospital bed, in fact, I–I would hope that–I would–I would hope that I would die instead of–instead of be a vegetable in a*

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and discussed having his cremated body encapsulated in medallions that his children could wear. (PCRII, Resp. 15, Call 4).

So, how does Overstreeet draft a will when he believes he is dead and in a coma? There are a couple reasonable explanations. One is that the coma delusion is of more recent origin than the will. Schizophrenics can develop new delusions over time. (PCRII 186). Another is that there is nothing inherently inconsistent with drafting a will and believing himself in a coma. Overstreeet sometimes contemplates heaven and hell as a places to which he might transition post-execution.

hospital bed.
Id. at 784-785. (emphasis added).

Dr. Parker asked Overstreeet how he knows all this. Overstreeet responded:

> OVERSTREEET: *Well, first of all, most of it, it's been explained to me* and I've done a little deduction.
>
> PARKER: Okay. *Who has explained it to you?*
>
> OVERSTREEET: *People we were talking about earlier: angels and demons and stuff.*
>
> PARKER: Okay. So the angels and demons have explained this to you–
>
> OVERSTREEET: Sure.
>
> PARKER: –bit by bit over the years or–
>
> OVERSTREEET: Well–
>
> PARKER: –all at one time?
>
> OVERSTREEET: No, it's–it's been–for the most part it's been for, you know, it's kind of like having conversations. I mean, you and I have a conversation. You know, it's more limited with you and I because you and I only have met a couple of times.
>
> PARKER: Right.
>
> OVERSTREEET: But, you know, people have a – you have interaction with every day, you know. I can't tell you when I had that conversations.
>
> PARKER: Right. Do you learn more each time you heard it?
>
> OVERSTREEET: Mm-hmm. With every conversation I get more information–
>
> PARKER: Okay.
>
> OVERSTREEET: –or, you know, either that information is reiterated or–an sometimes it's updated because sometimes, you know,

everybody gets confused about stuff sometimes.
Id. at 785-786.

The Opinions of Drs. Parker and Wood

Dr. Parker's Opinion

Dr. Parker interviewed Overstreeet twice. The first interview was conducted on February 28, 2014; the second interview on August 19, 2014. In addition to interviewing Overstreeet, Dr. Parker reviewed a number of documents relating to the case. Some he relied upon in reaching his opinion: the Indiana Department of Correction medical records for Overstreeet from December, 2003 to August, 2014; transcripts of telephone conversations between Overstreeet and his family from May to October, 2013; Overstreet's emails for the period from January to July, 2014; and letters and documents written by Overstreeet from September 2012 to November 2013. Others he reviewed for background information: reports of Dr. Masbaum, Dr. Olive, Dr. Coons, Dr. Engum, Dr. Smith, Dr. Price, Dr. Haskins, Dr. Bailey, Dr. Wood, and Dr. Morrison; an email from Dr. Bruce Seidner; a social history of Overstreeet prepared by Emily Haile; prior testimony from Mary Overstreeet, Patricia Browning, Jefferson Qualls, Dr. Masbaum, Andrew Manning, Dr. Matias, Dr. Larson and Dr. Wood; and the August, 2014 recording of Dr. Wood's interview with Overstreeet. (PCRII transcript p.489-494, PCRII Pet.Ex. 8).

Based on his interviews with Overstreeet as well as on the collateral sources that he explicitly relied upon, Dr. Parker concluded that Overstreeet suffers from schizophrenia. According to Dr. Parker (and in accord with the DSM-V), there are five "cardinal symptoms of schizophrenia: delusions, hallucinations, disorganized thinking, disorganized behavior and negative symptoms. Dr. Parker opined that Overstreeet has all five. (PCRII 510-11, 530-532).

Dr. Parker explained that Overstreeet uses the terms angels and demons to identify the source

of the auditory hallucinations that have plagued Overstreeet since he was young. The shadow people are visual hallucinations of indistinct figures. Overstreeet is "absolutely certain" that his hallucinations are real and "is always looking for clues that other people see them (the visual hallucinations), too, or hear the angels and demons." *Id.* at 499-501. According to Dr. Parker, Overstreeet has, throughout his life, looked "for confirmation of what he already knows as his psychotic experiences." *Id.* at 501. In his search for confirmation of his experiences, Overstreeet reads and listens to radio shows that could provide him with information about the phenomena he experiences. *Id.* at 515-516.

The imposters are a delusion. Overstreeet believes that the imposters "monitor him. They're watching him. They're keeping track of him. And he tries to identify them, of course, and has developed various schemes over the years to do that. But he has to be very careful about that, because if he talks about those schemes, the imposters hear that and they adapt, and he has to find a new system...He doesn't want to confront the imposters, and he's not tried to chase them. But he's worried that he might be told to try to interrogate one." *Id.* 503-504. As Dr. Parker explained: "[H]e lives in a very different world. There are threats from all possible sorts of sources, and that's his daily existence, day to day, hour to hour, minute to minute." *Id.* at 527.

When asked to explain Overstreet's reluctance, yet ultimate willingness, to talk to his interviewers about the voices, shadows and imposters, Dr. Parker explained:

> It's an interesting mix, because he's certain that talking about them causes bad things to happen. So if he talks about his symptoms, bad things in the world will happen to him, to his family, to others. So if he has met with a mental health professional or an attorney and has talked about some of these matters and he hears about something bad happening in the world shortly thereafter, he's going to know, not think, he's going to know that was because he had done that.
>
> ...(But) He's painfully honest, and he's very concrete and

> throughout this whole process which he doesn't agree with, this whole evaluation of competence to be executed, because he wants to be executed and we'll talk about that, I'm sure, but he figures that this is a necessary procedural formality for that to happen. And so he's cooperating to try to get it over with. But if you don't ask him, he won't talk about it. And if you don't ask him multiple levels of detail, you won't get the multiple levels of detail. You get the top answer and if you want to go behind it, you have to keep asking very direct questions.
> *Id.* at 504-505.

Despite Overstreet's illness, he has a factual understanding of his conviction and sentence. Overstreeet was able to tell Dr. Parker that he (Overstreeet) had been sentenced to death for the murder, rape and confinement of Kelly Eckart, and knows that the execution will be carried out by means of a lethal injection. *Id.* at 548. Overstreeet does not, however, believe he killed Ms. Eckart. Rather, he believes he has been "intertwined" with her. *Id.* at 550. Dr. Parker reported:

> He (Overstreeet) thinks it might be because he shot himself accidentally while cleaning his deer hunting rifle at the same time that the television news was talking about Kelly Eckart, and that's somehow how they became intertwined in some psychological or psychic fashion. *Id. at 550.*

Dr. Parker further described the "complex and delusional explanation" Overstreeet offered as the reason for his placement on Death Row and the consequence of his execution:.

> As a result of this (his shooting/death), he has been in purgatory ever since, and he believed his execution would actually lead to his release from purgatory, and a return to life in the 'real world'. In particular, he believed a likely outcome of his 'transition' would involve coming out of his coma in a hospital bed or nursing home and after rehabilitation he would go home with his family in his actual body. (PCRII, Pet.Ex. 8, p. 19).

As Dr. Parker explained, Overstreet's illness impacts all aspects of his understanding of the crimes he committed and the punishment he will receive and "[t]he schizophrenia and the

hallucinations and the delusions and the disorganized thinking that is part and parcel of that. That is the ground that he's working with. The fertile ground that this stuff has all come from. He's trying to explain, understand, where he is, but he's doing it through his own unique way. Which is very influenced by his schizophrenia and not a rational understanding." *Id.* at 560.

Overstreeet literally believes he is in a coma, dead and in purgatory. *Id.* at 551. That is the delusion, "the fixed belief is where he is now, where he believes he is now. He knows he is. He's in purgatory. He's in a coma, and he's going to come out of that coma when he's executed." *Id.* at 558. Asked to describe the basis for his opinion that Overstreet's delusion places a link between his crimes and the punishment so far from reality that Overstreeet cannot comprehend the meaning and purpose of the execution, Dr. Parker responded:

> ...I go back to Mr. Overstreet's understanding of the crime, which he's not at all sure that he committed, and that involved an angel that was destroyed by him in some indeterminate way. And the punishment of being sentenced to death for that murder, rape and confinement, as he uses as a pat phrase, is to a certain extent perverted by the delusions that he has about his current existence and what will happen to him in this strange, current coma–like or death–like situation when he's lethally injected and executed or murdered by the state.
>
> Because of the delusions and the hallucinations, the whole web of psychosis, he doesn't fully understand the crime itself. He has a rather unique interpretation of what's going to happen as a result of the punishment, based on that crime, and that's pretty far removed from the real world. I mean that's a bizarre delusion that we're talking about. *Id.* at 564-565.

Dr. Wood's Opinion

Dr. Wood's first report was prepared after he met with Overstreeet in December, 2013. In that report, Dr. Wood concluded that Overstreet's diagnosis was "a bit of a confounding factor." (PCRII, Pet.Ex. 11). Although in his first report, Dr. Wood noted that Overstreeet "has over his life from childhood on had beliefs about angels, demons and shadow people who influence the world in

different ways," Dr. Wood determined that these were beliefs that Overstreeet experienced "in a faith like construct." *Id.*[73] Based on that first interview and the review of collateral materials,[74] Dr. Wood concluded that Overstreeet suffers from schizotypal personality disorder. (PCRII at 832).[75]

Before preparing his second report, Dr. Wood interviewed Overstreeet again and reviewed additional materials. These materials included the reports of Dr. Parker and Dr. Morrison, Overstreet's email correspondence, Overstreet's letter to this court, the interviews recorded by Dr. Wood and Dr. Parkers, the post-conviction testimony of Dr. Coons, Dr. Haskins, Dr. Smith, Dr. Engum and Dr. Masbaum, the pretrial reports of Dr. Masbaum and Dr. Olive, the

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[73]At the post-conviction hearing, Dr. Wood described his initial diagnostic impression of Overstreeet this way:

> My first impression was that he clearly had a lot of symptoms that were bordering on delusional. Initially sitting with him talking about hearing voices in his head and having some particular unique thoughts that in our society there are actually large groups of people, nationally as well as internationally, that have the same belief systems. It's a little difficult to automatically jump to the idea that some of his beliefs are delusions, as opposed to off the beaten track, commonly held beliefs. PCRII 832.

[74]Before he wrote his first report, Dr. Wood reviewed the opinion in *Panetti v. Quarterman,* Overstreet's DOC reports from February 2006 through January 2008 and September 26, 2013 through October 18, 2013, Defendant's trial exhibit CC (a collection of documentation of previous treatment and evaluations, transcripts of telephone conversations Overstreeet conducted from the ISP, Dr. Bailey's evaluation, the Indiana Supreme Court opinions in *Overstreeet I* and *Overstreeet II,* and the State's Appellee brief in *Overstreeet II.* (PCRII Pet.Ex. 11).

[75] When asked to describe the distinction between schizophrenia and a schizotypal personality disorder, Dr. Smith said: "A personality disorder is most often based upon life experiences, results from very traumatic background. It can lead to schizophrenia. It may be one of the steps towards someone becoming schizophrenic. But schizophrenia is not behavior in and of itself. It is a psychotic disorder, it's biological in nature, it's the result of changes in brain chemistry and results in hallucinations and delusions which at (sic) not present in schizotypal personality disorder." PCRI. at 515.

depositions of Dr. Parker, Dr. Matias, Dr. Larson and Mr. Manning and Overstreet's will. (PCRII Resp.Ex. 18).

Describing his second interview with Overstreeet, Dr. Wood recalled: "[W]e talked about angels and demons. We talked about shadow people. We talked about something that I'm not entirely sure if it's a unique and separate entity as far as a delusion or not, but the concept of other people being imposters. Which is a bit tied into the angels and demons piece...." (PCRII 857). Dr. Wood seemed somewhat uncertain about role of the imposters, noting later: "I see it as delusional generally speaking and, it would be I see it really as an extension of the shadow people slash angels and demons piece, unless you want to go with a totally unique split and say now it's third and separate construct." *Id.* at 858. Ultimately, Dr. Wood concluded: "...I sort of look at that (imposters) a bit in the construct of the angels and demons, as opposed to the shadow people. Although, I guess, that may be a part of it as well." *Id.* at 899.

Whatever the number or alignment of delusions, Dr. Wood determined that Overstreeet suffers from delusional disorder.[76] Dr. Wood, however, minimized the significance of the diagnosis

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[76]Although the reasons for his change in diagnosis were not explained either in Dr. Wood's second report or in his testimony at trial, the change in diagnosis may have triggered by Overstreet's disclosures during his second interview. about the imposters. There was no reference to imposters in Dr. Wood's first report, nor discussion of them in Dr. Wood's summary of his first interview. In his second report, Dr. Wood amended his interview summary and noted:

> Mr. Overstreeet endorsed a life long belief in shadow people, and the existence of angels and demons. He denied fear of these beings and sees them as part of our world that he and others are able to see and recognize. The belief is well developed and has been present in a more limited form since his early life. He believed that they are able to communicate with him via various means. He believes they are able to pose as people at times. (PCRII Resp.Ex. 18).

This has led this court to conclude that, despite multiple references to imposters/Capgras syndrome in the IDOC medical reports, Dr. Wood did not discuss imposters with Overstreeet

contending that diagnosing Overstreeet was essentially an "intellectual exercise, " (PCRII, Resp.Ex. 18), and a "red herring."[77] (PCRII 831). The real question, according to Dr. Wood, is not the name of the illness. Rather, the focus should be on how Overstreeet lives his life with his illness and the impact of his illness on his understanding of reality:

> ...[R]eally the most pertinent factor and the most important thing isn't the specifics of the diagnosis. It's the degree to which that diagnosis and those symptoms impair his capacity to understand reality and function today, and that I see as the most pertinent question. *Id.* at 831-832.

Dr. Wood viewed functional impairment, not psychiatric diagnosis, as the measure of the

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during his first interview. Perhaps Dr. Wood was not aware of this information in the records. When asked what he reviewed before the first interview, Dr. Wood reported:

> I don't recall exactly what I reviewed before I went up to meet with Mr. Overstreeet. I know I briefly reviewed a little bit just to see diagnostically what a few people that thought about, and I know that I had reviewed *Panetti,* the basics of the *Panetti* case., so that I understod the question. But I didn't laboriously go through, because I wanted at least initially an opportunity to meet with him that wasn't particularly biased by a lot of different symptoms and past experiences of other professionals that had evaluated him. PCRII 833.

While it is certainly understandable that Dr. Wood did not want the opinions of others to influence his diagnostic impression of Overstreeet, his cursory review of the collateral materials did lead to what appears to be a failure to address a major piece of Overstreet's delusional system. This failure undermines this court's confidence in the depth of Dr. Wood's first interview with Overstreeet.

[77]Indeed, Dr. Wood offered a number of possible diagnoses for Overstreeet. In December, 2013, he diagnosed Overstreeet with schizotypal personality disorder; in his second report he diagnosed him with delusional disorder. During the course of his testimony, Dr. Wood indicated that "in all fairness, his illness is probably somewhere between delusional disorder, depending on the way you want to look at it" or paranoid schizophrenia, *Id.* at 845, and ultimately concluded that: "I am not going to argue that schizophrenia is an inappropriate diagnosis." *Id.* at 903. Dr. Wood contended, however, that if Overstreeet is schizophrenic, his schizophrenia is "mild." *Id.* at 845. According to Dr. Parker, schizophrenia is not an illness that is characterized as mild or not mild. It is a disease in which people either respond well to medication or not. *Id.* at 965.

severity of Overstreet's mental illness. In assessing Overstreet's ability to function, Dr. Wood relied not only on his interview of Overstreeet, but also on his review of the collateral sources he consulted.[78] After synthesizing this data, Dr. Wood opined that Overstreeet is not functionally impaired. Because of this, Dr. Wood (unlike the State)[79], does not believe Overstreeet suffers from a severe mental illness.[80] (PCRII, Resp.Ex. 18).

On the question of the interrelationship between Overstreet's illness, his delusions and his understanding of his status on death row, Dr. Wood was firm:

> [I]n no way, shape or form do the angels and demons or the shadow people or the imposters in any way, shape of form color, impair or interfere with his capacity to understand that he got convicted of a murder, he's been sentenced to death, and he's going to

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[78]Although Dr. Wood prepared two reports of his interviews, his reports did not incorporate any material from the collateral sources he reviewed. When asked to explain what collateral sources he relied upon in arriving at an opinion in this case, Dr. Wood responded he relied on Overstreet's " records from jail, medication records, communication records with family via email or other people or telephone calls via recording that I reviewed. The, I believe, depositions of the treaters at the jail." (*Id.* at 828). Respondent's Exhibit 18 indicates that Dr. Wood also reviewed relevant reported cases, Defendant's trial exhibit CC, transcripts of Overstreet's telephone conversations; the reports of Dr. Parker, Dr. Morrison and Dr. Bailey, the State's post-conviction appellee brief, Overstreet's email correspondence; Overstreet's letter to this court; the recorded interviews of Overstreeet conducted by Dr. Wood and Dr. Parker, the post-conviction testimony of Dr. Haskins, Dr. Smith, Dr. Engum and Dr. Mausbaum; the pretrial competency and sanity evaluations by Dr. Olive and Dr. Mausbaum; the depositions of Dr. Parker, Dr. Matias, Dr. Larson and Andrew Manning; five letters from Overstreeet to Melissa Holland and Overstreet's Last Will and Testament dated September 26, 2012.

[79]In its proposed findings of fact and conclusions of law, the State seemed to concede that Overstreeet is severely mentally ill. (PCRII, State Proposed Findings of Fact and Conclusions of Law 79, 108). The State's position is in accord with the Indiana Supreme Court, when it noted in *Overstreeet II* that it is "clear that Overstreeet suffers from a severe, documented mental illness and that the mental illness is a psychotic disorder that is the source of gross delusions." 877 N.E.2d At 173.

[80]According to Dr. Wood, "If it is schizophrenia ...it's clearly the mildest version of schizophrenia you can have..." *Id.* at 846

end in his physical life, at least, when his sentence is carried out. *Id.* at 859.

Dr. Wood's written reports track his ultimate conclusion at the post-conviction hearing. Although his diagnosis of Overstreeet changed from December, 2013 to August, 2014, his conclusion remained the same:

> Mr. Overstreeet clearly understands the connection between his murder conviction and his sentence of death. The review of the multiple hours of interview, repeated evaluations, historical mental health care records, and the additional listed records and information consulted affirm this. His diagnosis is a bit of a confounding factor due to the overlap of diagnostic criteria and the interpretation between schizotypal personality disorder, delusional disorder and schizophrenia. This is well evidenced by the multiple evaluations I reviewed and the various opinions regarding his diagnosis. This clarification of diagnosis in this case is an intellectual exercise that does not affect the determination of Mr. Overstreet's functional understanding as required by the *Panetti* case. *The confounding number of conflicting diagnoses make the conclusion that Mr. Overstreeet is a severely mentally ill professionally questionable.* Mr. Overstreet's memory difficulty regarding the murder is most reliably explained, in the context of his life and symptoms, by immature defense mechanisms. He clearly, with evident purpose, acted in ways to conceal the evidence and anticipate the consequences. This behavior demonstrated well organized behavior and thought process. Mr. Overstreeet continues to demonstrate consistent reality based behavior and his thought processes regarding his behavior are unaffected by the delusions he shared with me. (PCRII, Resp.Ex. 18). (emphasis added).

Based, then, on his entire interview of Overstreeet and his clinical assessment of Overstreet's condition, Dr. Wood concluded that Overstreeet rationally understands his pending execution.

Analysis

Michael Dean Overstreeet is a mentally ill man who wants to be executed. Despite Overstreet's determination to face a lethal injection, three psychiatrists have said he is not competent to do so; one has opined that he is. Unlike other psychiatric experts in other competency to be executed cases (*See, e.g. Comm. v. Banks,* 29 A3d 1129, 1146 (Pa. 2001), *Billiot v. Epps,* 671 F. Supp2d 840, 878 (S.D. Miss. 2009), the State's expert disagreed not only on the ultimate opinion reached by Petitioner's doctors, but also on a number of the subsidiary issues. Dr. Wood's opinion

challenged : (1) Overstreet's diagnosis, (2) the severity of Overstreet's illness, and (3) Overstreet's concreteness of thought and speech. The Court addresses each of these separately.

(1) The Diagnosis

In the past decade, a number of psychiatrists and psychologists have assessed Overstreeet. All but one diagnosed him as a paranoid schizophrenic. That lone dissenter was Dr. Wood.

After their first meeting, Dr. Wood concluded that Overstreeet had schizotypal personality disorder. When Dr. Wood was asked about his original schizotypal personality disorder diagnosis, he explained: "My first impression was that he clearly had a lot of symptoms that were bordering on delusional. Initially sitting with him talking about hearing voices in his head and having some particular unique thoughts that in our society there are actually large groups of people, nationally as well as internationally, that have the same belief systems. It's a little difficult to automatically jump to the idea that some of his beliefs are delusions, as opposed to off the beaten track, commonly held beliefs." *Id.* at 832.

After his second interview with Overstreeet, Dr. Wood changed his diagnosis. Even with the change in diagnosis, Dr. Wood remained convinced that Overstreeet did not suffer from either visual or auditory hallucinations: Dr. Wood questioned whether the shadow people were "full-fledged" visual hallucinations, *Id.* at 913, and whether the voices Overstreeet hears are "auditorily perceptible." *Id.* at 835.[81] Consequently he viewed them as delusions at least in part connected to the

[81]During their recorded interview, Overstreeet described the shadow people to Dr. Wood. Despite Overstreet's description of the shadow people, Dr. Wood viewed them as a delusion rather than a visual hallucination. Dr. Wood viewed what other doctors described as auditory hallucinations as questionable hallucinations. During Dr. Wood's recorded interview with Overstreeet, Overstreeet discussed his attempts to silence the voices by unplugging his television and placing it on the range. The ISP medical records contain an earlier report that Overstreeet believed voices were coming through his television. (Jt.App. January 2013). The medical records

imposters.

On cross-examination, Overstreet's counsel tested the doctor's opinion:

> Q: Now, do you follow the diagnostic criteria, the DSM-IV-TR or the V?
>
> A: We're still operating on the DSM-IV concepts. We haven't switched over to the V yet.
>
> Q: An would you agree with me that if someone's delusion is considered bizarre, they can not fall under the diagnosis of delusional disorder, under the DSM-IV-TR?
>
> A The split's supposed to fall between bizarre versus not bizarre delusions, yes.
>
> Q: So if you diagnosed delusional disorder, you found that his delusion is not bizarre?
>
> A: Well, if I recall correctly, I talked about the fact that his delusion has a bit of a confusing point, because it's actually culture bound and accepted by large groups. It waxes and wanes into areas that seem at times a bit bizarre and other times don't. It incorporates things that may be hallucinatory experiences as part of the symptom. So it intimates a semantic point. Is it schizophrenia, or is it delusional disorder?[82]

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reviewed by Dr. Wood also describe Overstreet's efforts to muffle the sound of the voices by wrapping a towel around his head. Despite these descriptions and records. Nonetheless, Dr. Wood questioned whether the voices were hallucinations since they were not "auditorily perceptible."

[82]While exploring the doctor's thought process on the issue of bizarre vs. non-bizarre delusions, the cross-examiner later engaged in the following exchange with Dr. Wood:

> Q: In DSM-IV-TR, bizarre delusions are those that are considered implausible by people who are in the patient's culture, and this is generally taken to mean something that is judged physically impossible. Do you agree with that statement.
>
> A: Kind of, sort of.
>
> Q: You don't agree with this, or you do?
>
> A: The problem is you're trying to read essentially a definition in a Miriam Webster Dictionary and apply to the broad spectrum of a language used throughout the entirety of a nation. If you take that definition and expand it a bit into the way that we

> Q Did you not say that the most accurate diagnosis is delusional disorder?
>
> A: I believe, that in my opinion, considering all the factors, yes.
>
> Q: So, it's a non-bizarre delusion, in your view?
>
> A: Kind of sort of, yes.
> *Id.* at 897-898.

Dr. Wood ultimately opined the diagnosis did not matter: "You treat the two (schizophrenia and delusional disorder) the same, so I don't see it as pertinent." *Id.* at 899.

In some sense, Overstreet's diagnosis does not matter. The name of his illness does not

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> would use it in psychiatry, you have to appreciate that there are all kinds of interesting odd ball cultures that exist in our nation just specifically, and that the things that he believes in are on angels and demons and shadow people. Actually, I wouldn't have realized this until I looked into it. They exist. I mean I guess I'm not surprised, because if you watch much sci-fi and I kind of like Sci-Fi channel, and that stuff's all over it and it's been popularized like mad in the course of the last five to ten years, because Sci-Fi channel has grown that genre of television hugely. *Id.* at 907-908.

On redirect, counsel for the State asked about the concept of shared beliefs. Dr. Wood responded

> [L]ike in Mr. Overstreet's case I think the angels and demons piece is really sort of an offshoot of western Christian theology. A particularly unique little group of people, but it's still l sort of a nationally or internationally sized group as far as people that are interested and follow it. You know, I think some people in that group probably have a belief system that most people would look at and maybe bat and eye a little bit but wouldn't get too comfortable about. But then other people, like Mr. Overstreeet, clearly elicit a more sort of confused, you know, how reality based that is versus how psychotic is that? And that's why I see it as just a bit of a confounding factor. *Id.* at 922.

The problem with this line of thinking is that it ignores the reality of how Overstreeet became interested in these groups, radio and television shows. He heard the voices and he saw the shadows and then his family told him they were angels, demons or devils. Overstreet's experiences preceded his interest in the possible explanations. His later explorations in to materials he found in books, on the radio and on television followed. He looked to the media for confirmation of what he already knew, from personal experience, to be real.

determine Overstreet's competency. The question here is whether his psychotic state prevents him from having the ability to rationally understand the State's plan to execute him.

But, in another sense the diagnosis does matter. As Dr. Bailey explained, "Schizophrenia is a bigger diagnosis, because it also implies that the level of impactfulness, the seriousness, the severity, the extremity is at the greatest amount, as compared to other forms of psychiatric diagnoses. One could have a delusional disorder and function well in all other areas of life...(With) schizophrenia you generally see an unraveling in many different areas of how the brain should work and how they should function all at the same time. Cognition. How they think." *Id.* at 76-77.

The Court agrees with what Dr. Parker said when he spoke more particularly to the impact on this case:

> You start with the basic assessment of Mr. Overstreeet. Psychiatric evaluation. I believe, as I've tried to explain, that he meets criteria for a diagnosis of schizophrenia and that affects his daily existence. And that letter that we talked about at the very beginning of this testimony,[83] I think, is good support for that. If you understand or accept that Mr. Overstreeet has daily hallucinations, auditory and visual, daily concerns about imposters, daily difficulty with concentration and focus, you can then connect some of the statements he makes about his understanding of his crime and of his sentence back to the psychosis that he lives with on a daily basis.
>
> If you minimize all the psychosis, you can talk about the crime and the punishment without making reference to it, and I think that's what Dr. Wood did. He said, "Well, that's a red herring. He's not that ill, it's a very mild schizophrenia, at best. It might be delusional disorder. It might be schizophrenia, it, it's not bad. It has no functional impairment on him.
>
> I disagree. I think there's significant functional impairment. I think there's significant cognitive impairment, and that is fundamentally important to the assessment of his competence to be executed.

[83]Dr. Parker is referring to the letter (Resp. Ex. 6) about spirits and wraiths that Overstreeet sent to his ex-wife in late 2013.

Id. at 970-971.

Excluding Dr. Morrison, the Petitioner presented six witnesses who worked with Overstreeet at the ISP: Dr. Martha O'Danovich, PsyD., Dr. Reynaldo Matias, PhD., Dr. Barbara Eichmann, M.D., Dr. Jennifer Harmon-Nary, PhD., Dr. Michael Larson, M.D. and Andrew Manning. All six witnesses are experienced, competent professionals. Some were responsible for Overstreet's medical management; all were responsible for Overstreet's mental health care. None had an allegiance to either party to this suit. All, exercising independent judgment, diagnosed Overstreeet with paranoid schizophrenia. Their testimony alone, which the court found both credible and persuasive, leads the court to conclude that Overstreeet suffers from paranoid schizophrenia.

(2) Severity of Overstreet's Illness

Overstreeet presents fairly well. On the recorded interviews, he was able to interact appropriately and respond to factual questions. While he was not particularly attentive to the court proceedings and often appeared hyper-vigilant to his surroundings, he was not disruptive. His demeanor was at times disconcerting–his movements are somewhat erratic and he scratches himself with an intensity that can be painful to watch; however, these mannerisms are apparently the result of the medication he is taking. On the surface, at least, Overstreeet does not appear floridly psychotic. From that perspective, it would not be difficult for a layman to assume that Overstreeet is not severely mentally ill and embrace Dr. Wood's conclusion on this issue.

Dr. Wood, of course, went beyond the superficial in arriving at his conclusion regarding the severity of Overstreet's illness. Dr. Wood seemed to rest his conclusion on four factors: (a) Overstreet's lack of thought impairment; (b) his lack of overt negative symptoms of schizophrenia; ©) his absence of severe symptomotology, and (d) the lack of progression of his illness. *Id.* at 834-

835, 844, 849-850, 868-869, 921.

(a). Thought impairment. Dr. Wood does not believe Overstreeet's thinking is impaired. He revisited this topic several times as he discussed Overstreet's diagnosis and ability to function. According to Dr. Wood, Overstreeet has "no thought impairment, [h]asn't had any thought impairment and that's repetitively clarified over the course of time. Nothing severe. " *Id.* at 844. Throughout his testimony, Dr Wood remained committed to this idea. Recounting his first interview with Overstreeet, Dr. Wood reported:

> I mean essentially, that his thought process was totally intact. I mean, in thought disorders, there are sort of two basic areas in which positive symptoms are. One is thought process, and another is thought content.
>
> In his (Overstreet's) case, there was not a malady whatsoever in thought process, and really in all the records I've reviewed to date there's not legitimate, consistent, wasn't classic and was more classic of character disorders as opposed to full fledged thought disorders where somebody's having clear, well-formed visual hallucinations or clear auditorily perceptible auditory hallucinations.
> PCRII 834-835.[84]

The records reviewed by the Court are at odds with Dr. Wood's assertion. Overstreeet has hallucinations. He believes he sees and hears things that are not real. He had his first visual hallucination as a youth. (Tr. 5078, PCRI. 372).When Overstreeet was a child, he drew pictures of the caped and faceless figures that followed him. (Tr. 5048). While he no longer discusses the form of the shadow people he sees, the shadows remain. Overstreeet discussed the shadows with both Dr. Wood and Dr. Parker and described how they remain on the periphery of his daily life.

The voices are more intrusive. No one, other than Dr. Wood, challenged whether the voices

[84]Dr. Wood did not specifically define what he meant by thought impairment, so this Court attempted to glean his meaning from the context in which it was mentioned.

are "auditorily perceptible." Each mental health treatment plan generated at the the IDOC listed "auditory hallucinations" as an offender problem. From 2004 on, the records have consistently contained references to either discussions about, or the need to address, Overstreet's auditory hallucinations. For example, a November 23, 2004 entry read: "Hearing voices at night (cursing and critical content)." On May 25, 2005, a doctor made the following entry: "Has been hearing voices and seeing things." On October 24, 2005, another doctor noted: "A.H. (Voices, threatening, etc.) V.H. (seeing non-existent things)." Once the IDOC medical records went electronic, the existence–although not the content–of Overstreet's auditory hallucinations– was routinely noted. (Jt.App.)[85]

According to the records, the voices are sometimes manageable with the medicines. *Id.* at 969. Sometimes they are not. Over the years, Overstreeet has employed a number of non-pharmaceutical strategies to deal with the voices. In 2004, Overstreeet described four strategies he used to diminish the voices. One he employed pre-incarceration; he would drink alcohol. The other three strategies were (1) he would distract himself by engaging in some other activity; (2) he would pray; (3) he would yell "no" at the voices. (PCRI 597-598, Jt.App. 1215). He has since developed additional tools. Sometimes, he lays down in an attempt to quell the voices. (Jt.App. 136). In 2012, Overstreeet told Dr. Matias that he covers his head with a towel to block out auditory hallucinations. *Id.* at 913. In August, 2014, Overstreeet told Dr. Wood that he has put his television out on the range to stop the voices he hears coming from his unplugged TV (PCRII 690).

Dr. Smith, who evaluated Overstreeet in 2000 and in 2004, also disagreed with Dr. Wood's

[85]Dr. Wood even acknowledged that there were references to the hallucinations in the records. PCRII 900-901.

assertions that Overstreet's hallucinations are not well formed:

> ...[M]y experience with Mr. Overstreeet is that he was not at all vague about these hallucinations. He was quite specific about all of them. Now, he hates talking about them, and I understand that. He told me that....He apparently told Dr. Parker and probably other people, as well. Because he sees that as just reinforcing them, and it gets him into trouble with these demons, because the demons don't like him talking about them. So he has a certain reluctance to divulge these things, and it requires some probing and prodding and coaxing to help him feel comfortable enough to talk about these things. In my experience during the interview I did with him, he was very explicit and very clear about these.
> PCRII 213.

Dr. Parker objected to Dr. Wood's overarching claim that Overstreet's has no thought impairment:[86]

> Mr. Overstreeet has been treated for hearing voices for many, many years. He has mentioned visual hallucinations. He has talked about being confused and sometimes having poor concentration which, I think, represents disorganized thinking. So there's very clear evidence that there's a broad range of symptoms of psychosis that have been the focus of treatment based on the medical records..
> *Id.* at 961.

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[86]Dr. Parker's position appears more consistent with the description of paranoid schizophrenia found in the amicus brief jointly filed by the American Psychological Association, the American Psychiatric Associating and the National Alliance on Mental Illness. According to the amicus brief:

> Psychotic disorders such as schizophrenia distort the mind in certain ways while leaving other functions generally intact... [A]n individual with paranoid schizophrenia may possess 'a relative preservation of cognitive functioning.' DSM IV-TR, 313. Yet such a person, plagued by a delusional psychotic disorder, may have no ability to apply his cognitive functions to test the veracity of the conclusions that he draws, while the *process* of a person's thinking appears normal, the *content* of the thoughts defies accepted reality.
> Brief of Amicus Curiae, *Panetti, supra,* at 10.

On the other hand, Dr. Parker agrees that Overstreet's thought process is generally organized: "I mean he speaks in coherent sentences." However, "[h]e talks about stuff that to a mental health professional suggests psychosis." *Id.* at 524-525.

Based on the facts outlined above, the Court finds Overstreet's illness has resulted in impairment in his thinking and credits Dr. Parker's opinion on the issue. Dr. Parker's opinion is supported not only by other doctors currently or previously retained by Overstreeet, but also the reports of the doctors who have treated Overstreeet at the IDOC.

(b). Negative symptoms. Dr. Wood claimed that Overstreeet has not suffered from severe negative symptoms of schizophrenia, noting: "There's no overt evidence of any severe negative Symptomotology. I mean he never has a problem with bathing or hygiene, which is one of the other classic pieces of negative Symptomotology."[87] *Id.* at 850.

There are two classes of symptoms in schizophrenia. Positive symptoms, like hallucinations and delusions, which reflect an exaggeration of normal functions. Negative symptoms reflect a loss of function. *Id.* at 207. They are behaviors that take away from the interpersonal experience like decreased eye contact and a flat affect. Avolition, apathy, anhedonia (a lack of interest in things) and a lack of empathy are also considered negative symptoms of schizophrenia. *Id.* at 137, 140-14.

The IDOC records contradict Dr. Wood's contention. These credible records, which span

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[87]According to Dr. Edmund Haskins, a neuropsychologist who tested and interviewed Overstreeet in 2004: [T]he hallmark of paranoid schizophrenia is the prominence of hallucinations and delusions, positive symptoms, with a relatively fewer and much less prominent negative symptoms. ...My reading of his history and background suggests that when he's (Overstreeet) under particular stress he tends to decompensate. He tends to have much more trouble functioning and becomes much more withdrawn. So there may be a tendency toward negative symptoms, at times, but I think much more prominent and primary of his symptoms are the positive ones." PCRII 208.

more than a decade, contain documented evidence of Overstreet's negative Symptomotology. Among the notations are these:

- "gets so nervous can't leave cell,"[88] Jt. App. 38;
- sleeping as much as twenty hours a day, *Id.* at105;
- confusion and inability to sleep, *Id.* at 231;
- disheveled appearance, *Id.* at 235;
- constricted effect and minimal eye contact, *Id.* at 354;
- blunted affect and indifferent mood but improved eye contact; decrease in ability to concentrate, "avolition in terms of engaging in activities he typically uses to cope with hallucinations, appears to be experiencing increase in both positive and negative symptoms of psychosis.", *Id.* at 355;
- "He reported going to recreation last week, saying 'Everyone was surprised to see me out. I never come out if I don't have to.'" *Id.* at 625;
- "affect still flat but not as severe as prior sessions" *Id.* at 637;
- "has been more isolated, denies depression, saying 'I just like to be by myself.'" *Id.* at 712;
- "MH has been receiving reports from custody that offender is not doing well... disheveled... sometimes staying up all night babbling to self, *Id.* at735;
- "patient affect flat", *Id.* at 765;
- "has great difficulty getting out of cell, does not like leaving it at all" *Id.* at 776;
- "Ofndr's mood and affect significantly better than last couple of months. Even smiled

[88]By refusing to leave his cell, Overstreeet would be left unable to shower.

which is extremely rare...", *Id.* at 798;

- "His mood remains depressed on presentation. He is interpersonally shy/awkward, often hanging his head and averting his gaze as we speak."*Id.* at 907;
- "refused to respond to attempt to engage him," *Id.* at 933;
- "very uncomfortable leaving his cell," *Id.* at 941;
- "refused to respond to multiple attempts to engage him" *Id.* at 977;
- "Overstreeet has been difficult to engage with. We have tried to reach out to him a few times apparently paranoia gets in the way." *Id.* at 1108;
- "Discussed how his blunt responses create conflict and cause uncertainty in other people..." *Id.* at 1138;
- "Patient's affect is constricted." *Id.* at 1169;
- affect constricted, speech pressured and excessive, *Id.* at 1237.

The medical records were mirrored in the testimony of at least one of the IDOC doctors. Although most of the doctors who testified at the post-conviction hearing were not asked about Overstreet's negative symptoms, Dr. Eichmann discussed a few. Dr. Eichmann is the psychiatrist who provided medical management to Overstreeet from Fall of 2009 through Spring of 2012. She described Overstreeet as paranoid about leaving his cell, fearful of moving around other people, isolative, very socially withdrawn, and as sometimes having difficulty communicating. [89]

[89]To the extent that Dr. Wood's opinion encompasses symptoms that relate to Overstreet's functional capacity and quality of life, his opinion also conflicts with recorded communications from Overstreeet. In his letters and telephone conversations with Melissa. Overstreeet has discussed his inability to eat. his failure to sleep and his confusion and inability concentrate. *See, e.g.* PCRII, Resp. Ex. 15 Call 7, 3/26/13, p.8 ("...I, uh, I just been struggling. I can even hardly read my books anymore. But, uh, I struggle to do any kind of drawing or anything like that"); Resp. Ex 15. Call 31, 12/29/13 p.2 (Overstreeet has begun a new

Dr. Wood was particularly struck by Overstreet's ability to maintain relationships with his family and empathize with others. He contends these qualities militate against a diagnosis of schizophrenia. A lack of empathy and an inability to maintain relationships with others are, indeed, negative symptoms of schizophrenia. Overstreeet does not display these negative symptoms. He has clearly cares about his ex-wife and family. Brief emails and time limited telephone calls attest to his concern for them. However, Overstreet's ability to maintain long distance relationships and display empathy to those he loves are not disqualifiers for a diagnosis of schizophrenia. The inability to form relationships and an inability to express or feel empathy are negative symptoms, not the sine qua non, of the diagnosis. (PCRII 533). As Overstreet's ISP treatment provider, Dr. O'Danovich, explained: "They (schizophrenics) don't just lose their humanity because they hallucinate...It depends on the individual. I mean we have those lists of criteria for diagnosing so that everybody's kind of on the same page, but they're not black and white. Any individual with a label or a psychosis is going to manifest symptoms differently based on their past history, based on their early childhood experiences, based on what's going on with them at the time." *Id.* at 453-454.

For the reasons described above, including the information culled from Overstreet's records at

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medicine–"I think I talk a little bit slower. Everybody says I talk a little bit slower, a little bit clearer so. But as far as stuff going on in my head, it, it ain't helping none."): Resp.Ex.15 Call 33, 2/13/14, p.3 ("I'm talkin' too quick, thinkin' too fast and I'm getting everything mixed up. What was I at?" Later, discussing his talk with his attorney "The, if they want to file something on that or whatever, I–I'm not sure exactly what was related. I mean, you know me, I, I, I hear the words, but it, whatever..."); Resp.Ex. 16 email 2/17/14 ("medication not working well, I think maybe it ain't suppost to?"); Resp.Ex. 16 email 2/26/14 (haven't been able to sleep or eat "too much activity"): Resp.Ex.16, 3/9/14, ("think I have been up for day or day and a half?...funny, I'm not tired but I know I need to sleep each day"): Resp.Ex.16 email 4/28/14 (not feeling to good. Trying to stay to myself, very confused and don't want to be around nobody. Need to eat something. Don't recall last time I ate? I am not even hungry but I think it's been a long time since I ate?"): Resp.Ex 16 email 5/17/14 ("been trying to read, having a hard time focusing").

the Indiana Department of Correction, the Court finds Overstreeet has displayed negative symptoms of his illness during his time at ISP. While Overstreet's negative symptoms may wax and wane, they are a part of his illness.

©) Consistent absence of severe Symptomotology Dr. Wood explained:

> Insomuch as you look at Mr. Overtreet's behavior over the entirety of the time that he's been serving his time in Michigan City, he's not on a routine basis, in any way, shape or form, suffering and behaving and interacting with others and receiving the consequences for that like he's psychotic. I mean, he may have beliefs about imposter or angels and demons or shadow people but he's not solitary in a routine or regular basis because he goes off on somebody because he thinks they're an imposter.[90] He's not cachectic and dying of malnutrition because he thinks he's being starved. He's not horribly agitated and unable to sit still and talk with you in a logical fashion because of anything impairing his function.
>
> I mean there's a routine and regular consistent absence of severe Symptomotology, and like I was saying, I wouldn't admit him to a

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[90]Dr. Bailey, who has had experience "in all the key inpatient psychiatric type settings" including prison (the New Town Prison in Danberry, Connecticut) and inpatient hospital (Bryce State Psychiatric Hospital in Alabama) may have had an explanation for this. As he explained people medicated in a controlled environment present differently than those off the street.

> [T]he primary goal of inpatient psychiatric hospitalization, whether you're in a jail setting, a prison setting or a hospital setting, is safety and stability. So medicines that are given are geared to decrease the thoughts that might lead to behavior that is out of control Talking too loud, moving too fast or being impulsive or irrational or fighting or violence or threatening verbalizations. All of those are the primary behaviors that antipsychotic medication are given to subside in an inpatient psychiatric setting.
>
> In addition, the setting itself very often provides structure...A third thing, obviously, is that the structure also provides some medical engagement....So that type of a closed but stabilized environment, we find that to be helpful, as well. So three or four different things happen in an inpatient psychiatric setting immediately, let alone if you're on medicine over time that we think help to decrease or dissipate the risk of violence or aggression or irrational. acts.
> (PCRII 73-73).

> hospital. So to suggest that he's severe or even moderate to severely impaired isn't legit I can't. I can't see that. *Id.* at 869.

Dr. Wood is correct in his claims: Mr. Overstreeet is not starving. On the other hand, Overstreeet is able to eat because he believes he can discern when others are attempting to poison him. (Jt.App. 1169). Overstreeet is not generally a discipline problem on death row. On the other hand, Mr. Overstreeet routinely keeps to himself, isolated in his cell in the most solitary area of the prison. (PCRII 315-316). Given where and how he lives, his lack of significant disciplinary issues does not weigh significantly in the decision this Court must make today. . Dr. Wood is correct in noting that Overstreeet has not engaged with those he sees as imposters. On the other hand, the evidence shows that Overstreeet does not want to engage with them and has developed a fairly elaborate system to avoid encounters with them. (PCRII 338, 449, Pet. Ex. 8, p.4). And while Dr. Wood would not admit Overstreeet to St. Vincent Hospital if he appeared at the hospital's door, *Id.* at 844, 869, 928),[91] this

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[91]Several times throughout his testimony, Dr. Wood indicated that Overstreet's GAF was too high to be admitted to his hospital. GAF stands for global assessment of function. Until the most recent revision of the DSM, the GAF was the fifth diagnostic axis. The GAF is a scale designed to rate the social, occupational and psychological functioning of an individual as rated on a hypothetical continuum of mental health symptoms. Dr. Wood described the GAF as "an objective piece of information I can use to describe his level of function and the degree of symptom severity", *Id.* at 931. The DSM-5 Task Force jettisoned the GAF, deciding that the GAF "was not an adequate instrument for assessment of psychiatric functional impairment". It was excluded in the DSM-5 "for several reasons, among which were its lack of conceptual clarity (i.e. including symptoms, suicide risk and disabilities in its descriptors) and questionable psychometrics in routine practice.... As a result of these and other concerns, leaders of the task force opined, "the use of Axis V global measures of "functioning" for our patients is outdated and was properly abandoned by the DSM-5 Task Force. www.jaapl.org/content/42/2/173.full.pdf (Journal of American Academy of Psychiatry and the Law). Discussing the GAF, Dr. Parker noted: "I'm glad it's gone. It's not in the DSM-V. They dropped it, and there's a reason for that. It's a crude scale. ...and nobody really get good training on how to do it reliably. It's inherently unreliable, and that's why it got dropped for DSM-V." PCRII 967.
Dr. Wood did not explain how the GAF might be affected by Overstreet's daily life on death row, nor was there any testimony suggesting Dr. Wood attempted to talk to any of the mental health professionals at the prison to determine how the GAF is used in a prison setting.

court is not persuaded that admission to St. Vincent's should be the measure of Overstreet's illness. As his records reveal, Overstreet's mental illness has persisted over time despite the best efforts of his treatment providers to develop an effective medication regime to control his symptoms. Consequently, Overstreeet remains actively psychotic, burdened by hallucinations and delusions. As Dr. Bailey noted, a patient residing in a highly controlled environment who receives antipsychotic medicine may look different from, but is no less mentally ill than, he would appear in either a less-structured environment or if left unmedicated. (PCRII 73-74).

The Court does not consider the metric Dr. Wood used or his overall position on this issue persuasive. Overstreeet is routinely beset by voices, shadow figures and imposters. His illness dictates how he behaves, what he believes and who he trusts. This Court finds those to be severe constraints on his life.

(d). Progression of Disease. Describing what he perceived as the lack of progression in Overstreet's disease, Dr. Wood declared "I mean he had beliefs in shadow people and angels and demons even as a child to some degree, and it has not progressed in any severe way, in any way shape or form to impair his ability to relate, communicate of effectively deal with things." *Id.* 843-844. The Court is not certain what to think of Dr. Wood's declaration. Dr. Wood is correct in one sense. Overstreeet continues to believe in shadow people, angels and demons. They are a constant in his life. Has the intensity, frequency or duration of Overstreet's hallucinations has changed of the years? The answer to that question is unknown. No one asked him.

In late 2013, Dr. Wood indicated that he intended to speak with Overstreet's treating physician, but did not do so. (PCRII 896).

And what about his delusions? It seems unlikely that, even if Overstreeet had an imposter delusion when he was young, it permeated his life as it does today. He distrusts the mail, he distrusts people around him, and now he is worried he may have to capture and interrogate one. It is difficult to imagine that Overstreeet could have functioned in his daily life in the outside world if his delusion about the imposters had been as pervasive then as it is now.

Furthermore, to the extent that the progress of Overstreet's disease can be measured by the history of his diagnoses, Dr. Wood's opinion conflicts with Overstreet's history.

- In 1983, Dr. Robert Snodgrass diagnosed Overstreeet with generalized anxiety disorder.
- Later that year, Emory Mills, Jr. diagnosed him with schizoid disorder of adolescence.
- In 1984, Overstreet's behavior and testing results were considered "suggestive of a prodromal thought disorder" by Dr. Paul Thorsen.
- In 1985, Dr. Fitzgerald felt Overstreet's condition had stabilized and that his "schizoid personality disorder is not fixed and is subject to some improvement."
- In 1986, Overstreeet was discharged from his military enlistment with a diagnosis Adjustment Disorder, moderate to severe and Schizotypal Personality Disorder, moderate to severe.
- Later that year, Dr. Blawant Mallik diagnosed Overstreeet with Dysthymic Disorder, and Atypical Impulse Control Disorder, Axis I disorder and the Axis II disorder, Antisocial Personality.

For the next decade, Overstreeet had no contact with the mental health profession. After Kelly Eckart's murder, Overstreeet again came in contact with mental health diagnosticians.

- While he was at the Reception and Diagnostic Center, Dr. Dan Olive diagnosed Overstreeet with Major Depression. (Jt. App. 20).
- Later, Stephana Sheets, MSN, RN. CNS, diagnosed him with major depression with psychotic features and a personality disorder with paranoid features. (Jt.App. 38).
- While in custody, Overstreet began treatment with Dr. Stephen Walton. Toward the end of Overstreet's treatment with Dr. Walton, the doctor noted that Overstreet's "cognitive and perceptual distortions have worsened." (PCRI Ex 16).
- By the time of his trial in 2000, two doctors–Dr. Eric Engum and Dr. Phillip Coons, diagnosed Overstreeet with schizotypal personality disorder. A third doctor, Dr. Robert Smith, diagnosed Overstreeet with schizoaffective disorder, a more serious diagnosis than that arrived at by Drs. Engum and Coons.
- Dr. Smith and Dr. Coons returned for Overstreet's 2004 post-conviction hearing. Both now diagnosed Overstreeet with schizophrenia.
- At the 2004 hearing, Dr. Smith noted the documented support that Overstreeet "has a severe psychiatric illness that has grown progressively worse over time." PCRI 523-524.

On the basis of the records of former treatment providers as well as the testimony of Dr. Smith in 2004, this court cannot agree with Dr. Wood's opinion. The Court finds that Overstreet's mental illness has progressed since he was a child.

(3) Concreteness of Thought and Speech

As a result of the June, 2014, letter he wrote claiming competency, Overstreeet was transported to court for an August 4, 2014 hearing. At that hearing, Overstreeet maintained that he

understood the purpose of his upcoming post-conviction hearing. Although he believed he was competent, Overstreeet agreed to meet one more time with Dr. Parker and Dr. Wood. (PCRII, August 4, 2014 transcript, p. 10-23). And he did. Overstreeet met with Dr. Wood on August 9, 2014; he met with Dr. Parker on August 19, 2014.

When Overstreeet met with the doctors in August, this is the story he told: Overstreeet believes he shot himself in the head and became intertwined with Ms. Eckart as a result of that shooting. Overstreeet explained that he has entered a different realm. According to Overstreeet, he has entered the realm of purgatory. As the angels and demons have explained to Overstreeet, he is a physical being in purgatory.[92] In this realm, he has been convicted of the rape, murder and confinement of Kelly Eckart. While he understands there is physical evidence that supports that conviction, he does not believe that he actually committed the crimes.

Overstreeet will remain in purgatory until his execution. At the time of his execution, he will be given a lethal injection. His body in purgatory will die. Somehow, as Overstreeet dies in the purgatory realm, the plug will be pulled in the pre-coma realm and he will make a transition in that realm. After his transition in his pre-coma realm, he will either return to his former life, go to heaven, go to hell or return again to purgatory. If he returns home, he believes he will be reunited with his family, although he is uncertain what his children's ages will be because he does not know how "coma time" works.

So, was Overstreeet speaking metaphorically when he said he was dead and in a coma or was he relaying his fixed, if false, belief in the current state of his being? Dr. Wood believes Overstreeet

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[92] "In this realm of purgatory I'm physical. I mean, and I'll –when I get into–go home I'll be in a physical realm. If I go into hell, I'll be in a physical realm....It's all kind of relative." *Id.* at 785.

was speaking metaphorically;[93] Dr. Parker disagrees.[94] There is collateral evidence to support both positions. In 2012, Overstreeet wrote a will, discussed the possibility of a memorial cook-out and planned to have his ashes transformed into necklaces. He has acknowledged the Eckart family's pain and the comfort they might receive from his execution.[95] Those actions could reflect a rational

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[93]According to Dr. Wood: "He (Overstreeet) clearly talks about the experience (of being dead and living in purgatory) in more of a metaphor. I don't know that he'd sit there and say, you know, this is a clear metaphor, no, I know I'm alive. But then again I don't know that he's quite that articulate to be able to do that." (PCRII 878). *See also, Id.* at 915-916, *Id.* at 929-930, *Id.* at 939.

[94]According to Dr. Parker: "[W]hen he (Overstreeet) says it is purgatory, that's what he means. It is purgatory. It's not that he thinks it's purgatory. It's not that it's like purgatory It is purgatory. He's very clear about these things. It's the same thing when I talked in my second interview about the shadow people and the angels and demons and the increased activity that he was talking about It's not that he thinks they're there. They are there. We just don't see them, other people in the room. He would be thrilled if we did notice them, because that would mean that they were there. That would confirm that they were there. But it's not a maybe. It is. It just is." *Id.* at 969-970.

[95]Overstreeet became particularly focused on this beginning in the Spring of 2014. During that time, Indianapolis reporter Tim Evans apparently wrote an article about the upcoming competency to be executed hearing and interviewed Ms. Eckart's mother as part of the story. In the article, Evans reported that Ms. Eckart's mother believed Kelly was not at peace. After learning of the article, Overstreeet wrote to Evans:

> ...after reading your article i was very troubled by the fact that it was mentioned that Kelly was not at PEACE as stated by her mother. that I need to help and didn't realize and i agree 100% it is necessary and is best and must that she is. please advise me best how i should help and not everyone will give me any input on how to or the best advise or information in such matters. thank you for your time and understanding. i do want to help and no one explained to me that someone wasn't at PEACE or rest that i honestly recall but they may have an i didn't respond properly it is very import. if you wish to explain to Melissa (i provided her email already but can resubmit) i am open to all suggestions. thank you for your time. Thank you, m.d.overstreet.(PCRII, Resp.Ex. 14 A).

On July 12, 2014, Overstreeet wrote another email to Evans and explained:

> ...nobody really understands all that is truly happening nor can anyone explain things to everyone's satisfaction. regardless no

understanding of life. On the other hand, in order to believe Overtreet was speaking metaphorically during his August, 2014 interviews, one has to dismiss the beliefs surrounding his core delusion as mere metaphysical musings. But those beliefs cannot be dismissed; they complete the picture of his perspective on his plight.[96]

> way should ever doubt any of the decisions, choices or actions that they have had to make in this scenario playing out, becomes because some were not just hard but also emotional and spiritual in nature. all were absolutely necessary to facilitate this transition. HELL is not deep enough for all the atrocities that I am bound to. while PURGATORY has brought constant reflection yet increased confusion it failed to bring any answers. i have and will continue to pray that doesn't continue to delay the next transition any longer i beg it take place for the consolation, comfort and hopefully the PEACE necessary for ALL those with any connection to the situation. i believe with this passage that there will be resolution to many if not all of the outstanding questions and it is the right thing to do. i hope others feel the same and can appreciate the necessity. thank you again for helping me focus in that direction. sincerely, m.d.overstreet. *Id.*

Three days later, Overstreeet again wrote to Evans, explaining how he had been contacted by someone from the media who wanted to interview him.

> ...which doesn't make any sense to me and may be another trick, but I got to thinking it equally could be a test or opportunity to brake the bonds that have continued to chain me to this place and another necessary action to to alter the previous failed transitions. I do feel a bit confused that I may have lost my direction but doing my best to comply. I feel this may also help oppose the agents, I have to talk to Melissa about this. thank you. m.d.overstreet. *Id.*

[96]The Court's understanding of Overstreet's delusion (and his beliefs that surround it) leaves questions unanswered. It would have been helpful to know more about Overstreet's will and his plan to have crosses made of his ashes. At the time he executed the will and planned for his ashes was he merely following the instructions or suggestions of others? Was he making arrangements for his property in purgatory? Or, could he, at least at that point, a rationally comprehend what was to happen to him? It would have helpful to understand more about how his multiple levels of existence work. What does he think will happen to the other people in purgatory? More particularly, what will happen to Overstreet's family, when he makes the

Those in the legal profession are not qualified either conduct forensic mental health assessments or to form diagnostic impressions of patients. Those in the legal profession are, however, human beings. Just as we ask jurors to bring their common sense and experience gained from day to day living to the jury box, so must we bring those qualities to cases like those at bar. This Court was fortunate to have had the opportunity to review approximately four hours of interviews of Overstreeet. Because Overstreet's two August interviews were recorded, this Court was able to assess not only the

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transition? Does everyone else just disappear? Does his purgatory family remain condemned to purgatory?

Although it would have been helpful to know these answers, the answers to these questions are not determinative to the court's opinion here. This Court's view on the unanswered questions is akin to that of Dr. Bailey's when he was asked about Overstreet's will and planned disposition of his ashes. Dr. Bailey had not been aware of this information when he interviewed Overstreeet. when asked about the importance of that information, Dr. Bailey responded:

> ...I think that all of it is important. I think that all of it does challenge one's conclusion, I think, on both sides. I absolutely think that information about the execution does have merit and it is important for us, as an expert, to think about and try to make heads or tails of why a person would think that way. Or why Mr. Overstreeet, particularly, would act in a certain way, and is that consistent with the other things that he's said or done.
>
> For me, as I heard the story about the ashes and the cremation and how they would be distributed, because I heard that after I had seen him, I have not talked to him since I had heard that, for one thing. But the questions that you could certain(ly) ask are, you know, how might you engage with that after the execution? His answer was to be, as it was to me back in May of 2013, that he would still have some impact on it, some influence on it, be able to do something about it. That is a different story than this idea that he'd have somebody else make that decision.
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> I think that those, again, are issues of, for me, that address someone who's showing remarkable difficulty in logical thinking. (PCRII 149-150).

Because Overstreeet was not asked about the questions the Court has posed, this Court can only speculate on how he might respond to such questions. In circumstances such as these, where there is no suggestion of malingering by Overstreeet and where each side was given the opportunity to pursue the issues further, the Court will not rest its determination on questions not asked of "someone who's showing remarkable difficulty in logical thinking."

content of Overstreet's statements, but also the context in which they were given and Overstreet's demeanor when expressing his ideas. In those August interviews, Overstreeet was earnest, honest and literal in his responses to the questions asked of him.[97]

Overstreeet had no incentive to leave matters unclear during the interviews with Dr. Wood and Dr. Parker. Overstreeet knew what was a stake. This man, who wants to be executed, knew that the doctors who interviewed him would ultimately be asked to render an opinion regarding his competence to face a lethal injection. When given the opportunity to clarify whether he was speaking metaphorically, Overstreeet made it clear that he was not. When asked what he believed, he told a tale that began with his shooting, that centered on a coma and death, and that will end with his transition, to heaven, to hell, to purgatory or to his family. Overstreet's story is not a metaphor, nor are his ideas theological speculations about life after death, about heaven and hell, or about reincarnation. Based on Overstreet's answers and response style in the August interviews, and based on this Court's review of all of the materials presented at the hearing, this Court concludes Overstreeet means exactly what he said: he is dead, in a coma. And that is a delusion.

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[97]Dr. Bailey perceived Overstreet's answers during their interviews similarly. Dr. Bailey engaged in the following exchange on direct examination:

Q: And we talked earlier about your opinion that he (Overstreeet) wasn't speaking metaphorically when he told you he was in a coma. That was, he believes that he i literally, as we speak today, he is literally in a coma and this is all happening around him, I guess?

A: That was my understanding. That his comments were literal and we use the word in psychiatry, being concrete, very often inflexible and unchangeable, like a delusion. But concrete in that they don't really make sense within the context of all of the other things one has to be mindful of. I thought all those comments were very concrete. He described them very consistently, again, over multiple evaluations when I saw him. (PCRII 81-82).

Assessment of the Experts

Because the opinions of the doctors are not in accord, the Court must decide which opinions to credit. In making this determination the court has relied not only on its assessment of the reports and testimony of the doctors, but also on its independent review of the telephone calls, emails, letters, IDOC reports, and recorded interviews of Overstreeet. The Court has also relied on its own observations of, and in court interactions with, Overstreeet. *See, Paul v. United States,* 534 F.3d 832, 853 (8th Cir. 2008) ("[I]t is not inappropriate for the court to consider its own observations of the petition, and even to disagree with experts on mental functioning when warranted.") *See also, Billiot v. Epps,* 671 F.Supp.2d 840, 870 (Where experts disagreed on ultimate opinion whether defendant was competent to be executed, "the court is compelled to credit one set of opinions over the other. To make this decision, the court has conducted its own review of Billiot's medical records and has considered its own observations of Billiot at the competency hearing.").

The Court has considered the testimony and reports of Dr. Bailey and Dr. Morrison as helpful and corroborative of Dr. Parker, but not as compelling. Dr. Bailey's interviews with Petitioner were more than a year old by the time the post-conviction hearing was held. Dr. Morrison had the advantage of a history with Overstreeet, but she was only able to interview him once. That interview, too, was remote in time from the post-conviction hearing. Furthermore, Dr. Morrison's report did not contain the kind of detailed support for her findings that would be expected from a forensic mental health assessment addressing competency to be executed. Neither Dr. Bailey's testimony alone, Dr. Morrison's testimony alone, nor their testimony and reports in concert would have been sufficient to enable Petitioner to meet his burden of proof here.

Ultimately, this Court has focused its attention on the opinions of Dr. Parker and Dr. Wood.

Both doctors interviewed Overstreeet twice. Both doctors testified at length during the post-conviction hearing. Between the two, they provided a full elucidation of the issues that need to be addressed here.

Experience. There is a significant difference in level of forensic experience between the two doctors. Dr. Parker is board certified in forensic psychiatry and has been practicing and teaching in the field for over twenty years.[98] In contrast, Dr. Wood has very limited experience in this forensic psychiatry. He is not board certified in the field and has, in fact, participated in only five criminal cases. While certainly there was a value in having had a practicing clinical psychiatrist like Dr. Wood assess Overstreeet, there was a marked difference in experience level between the two doctors.

Thoroughness of Reports. Just as their experience in criminal forensic examinations varied, so did the doctor's approach to the reporting process. Of the two doctors, Dr. Parker prepared the far more thorough report. From Dr. Parker's perspective "the whole issue with forensic psychiatry is that we're sort of a bridge between the two worlds" of law and psychiatry. *Id.* at 475. When preparing a report, Dr. Parker would rather "put it all out there, and then have that there as the basis for my opinion and then say, okay, this is my opinion, this is why I think so. And then everybody else who reads the report can be the judge of whether that makes sense or not." *Id.* at 631. In his nineteen page

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[98]He is the psychiatrist the Indiana Supreme Court selected when it needed a forensic assessment of Norman Timberlake. *See, Timberlake v. State,* 858 N.E.2d 625 (Ind. 2006). Dr. Parker's name frequently appears in appellate cases. *See, e.g., Conley v. State,* 972 N.E.2d 864 (Ind. 2012)(Court appointment. Dr. Parker diagnosed defendant with depression with psychotic features, but defendant was sane at the time of the offense). *Corcoran v. State,* 820 N.E.2d 655 (Ind. 2005) (Called by petitioner in post-conviction hearing. Dr. Parker testified that petitioner suffered from paranoid schizophrenia, was able to appreciate the gravity of his position and consequence of waiving post-conviction review, however "he would rather die than admit schizophrenia might be contributing to his desire to die."). *Laux v. State,* 985 N.E.2d 739 (Ind.App. 2013)(Called by State. Dr. Parker testified at the penalty stage of Life Without Parole trial).

report, Dr. Parker assessed Overstreet's mental status at the time of the examination, provided detailed descriptions of relevant portions of the interviews he conducted, and also summarized what he considered to be pertinent portions of Overstreet's psychiatric history, his Indiana Department of Correction medical records, his email correspondence and telephone calls. Dr. Parker clearly and cogently tied the collateral materials and Overstreet's interviews to his opinion and provided the most in depth analysis of the question to be addressed by the Court. While a lengthy report does not guarantee an accurate assessment, it does suggest that its author personally conducted a thorough review of the collateral sources.[99] The decision the Court must make here is of great consequence; by its nature it involves a matter of life and death. In this court's view, the gravity of the issues before the court should be reflected in a complete, comprehensive and considered report.

Ultimately, after reviewing all of the testimony and other evidence presented at trial, the experience of the doctors, the thoroughness of their reports, and the congruence of each doctor's opinion with the facts as this Court has found them, the Court finds Dr. Parker's opinion the most credible and persuasive of the expert opinions presented at the hearing.

CONCLUSIONS OF LAW

Overstreeet believes he is competent and wants to be executed. There is no evidence to

[99]The Court felt no such reassurance upon its review of Dr. Morrison's report, although perhaps the brevity of the report is attributable to Dr. Morrison's illness. Because of her illness, she was only able to interview Overstreet once. In addition, her illness may have made it difficult to prepare a report that more thoroughly reflected her opinions in the case. Dr. Bailey's report, while lengthy, devoted much of its attention to a very well-written summary of the facts presented at trial and did not provide the court with reference to the specific portions of the collateral materials upon which he relied.

suggest that he is feigning his behavior, misleading his evaluators, or misstating his desires.[100] Unlike other cases, in other states, this case is not clouded by concerns about malingering.

Four psychiatrists were charged with evaluating Overstreet's competence to be executed. All four psychiatrists demonstrated an appropriate understanding of the *Ford/Panetti* standard. Three of the doctors concluded that Overstreeet was a paranoid schizophrenic with a specific delusion that made him incompetent for execution; one of the doctors disagreed. All of the psychiatrists were sincere, experienced in their disciplines and confident in their opinions. "As is often the case when courts are called upon to decide issues involving psychiatry and a party's mental state, the decisional task under *Ford* and *Panetti* is not an easy one." *Commonwealth of Pennsylvania v. Banks,* 29 A.3d 1129, 1146 (612 Pa. 56 (2011). Nor is it a decisional task that can be resolved by merely embracing the most persuasive psychiatrist's opinion. Rather, the Court must bring, and has brought, its independent judgment to a review of the evidence presented by both parties at hearing and to the determination of whether Overstreeet is competent to be executed.

That determination must begin with an understanding of the law. In *Ford v. Wainwright,* 477 U.S. 399 (1986), the United States Supreme Court was asked to decide whether the Eighth Amendment protects the insane from execution. In a fractured decision, the Court determined that it did. Justice Marshall began the plurality opinion by declaring:

> For centuries no jurisdiction has countenanced the execution of the insane, yet this Court has never decided whether the Constitution forbids the practice. Today we keep faith with our common-law heritage in holding that it does. *Ford* at 401.

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[100] *See, e.g., Gore v. State,* 120 So.3d. 554 (Fla. 2013), *Green v. State,* 374 S.W.3d. 434 (Tx.Ct.App. 2012). *See also, Panetti v. Stephens,* 727 F3d. 398 (5th Cir. 2013), *Wood v. Thaler,* 787 F.Supp.2d. 454 (W.D. Tx. 2011).

Justice Marshall then offered a historical perspective on the prohibition against the execution of the insane and reviewed a variety of common law justifications for the ban. Deterrence was dismissed as a justification for execution of the insane because "whatever deterrence value is intended to be served by capital punishment" execution of the insane will not deter those who are insane, and execution of the sane is sufficient deterrence for those who are sane. *Ford* at 407. Retribution is not served because "the moral quality of executing the insane is less than that of the crime." *Id.* at 408. Other rationales for the prohibition of the execution of the insane speak to broader societal mores. The most basic of those rationales is this: executing the insane offends humanity. *Id.* at 407.

After reviewing the rationales behind the prohibition against the execution of the insane, the *Ford* Court determined that this logic moored in the common law was a logic embraced equally by the Eighth Amendment. The plurality opinion concluded by reaffirming the guiding force behind its holding:

> Today we have explicitly recognized in our law a principle that has long resided there. It is no less abhorrent today than it has been for centuries to exact in penance the life of one whose mental illness prevents him from comprehending the reasons for the penalty or its implications. *Id.* at 417.

The plurality opinion painted, in broad outlines, constitutional parameters of the execution ban. What the it did not do, however, was to provide particularized guidance to the states to help them answer the question of insanity in this constitutional context. Rather, the plurality left to the states "the task of developing appropriate ways to enforce the constitutional restriction upon its execution of sentences." *Id.* at 416-417.

Justice Powell concurred in the result reached by the plurality. He, too, noted that the prohibition against execution of the insane is moored in several rationales, He then turned his focus to

a specific rationale, retribution, and stated: "[T]oday, as at common law, one of the death penalty's critical justifications, its retributive force, depends on the defendant's awareness of the penalty's existence and purposes. " *Id.* at 421. He reasoned that without awareness, the retributive force of the death penalty is lost.

Awareness served as the basis for a substantive standard described by Justice Powell: "If the defendant perceives the connection between his crime and his punishment, the retributive goal of the criminal is satisfied. And only if the defendant is aware that his death is approaching can he prepare himself for his passing. Accordingly, I would hold that the Eighth Amendment forbids the execution only of those who are unaware of the punishment they are about to suffer and why they are to suffer it." *Id.* at 422.

In the years following the *Ford,* lower courts looked to Justice Powell's formulation as the substantive standard for competency to be executed. Then, in 2007, the United States Supreme Court revisited the issues. In *Panetti v. Quarterman,* 551 U.S. 930 (2007), petitioner Panetti argued that the substantive standard was being interpreted too narrowly and did not capture the mentally ill who could articulate a superficial understanding of their execution but who, because of their mental illness, could not rationally understand the punishment they faced and why they faced it.

The Supreme Court agreed and clarified the concept of awareness. Although again declining to "attempt to set down a rule governing all competency determinations," *Id.* at 960-961, the Court held that the Constitution requires that a person facing execution not only be aware of the punishment he is about to suffer and why he is to suffer it, but also have a rational understanding of the connection between his crimes and his execution. *Id.* at 959.

Indiana has not before faced a *Panetti* claim in this procedural posture. In *Overstreeet v.*

State, 877 N.E.2d 144 (S.Ct. 2008) ("*Overstreeet II"*), Overstreeet argued that he should be categorically exempt from execution because of his severe mental illness. He offered substantial evidence in support of his mental illness claim. The Indiana Supreme Court agreed that Overstreeet suffered from "a severe, documented mental illness." *Id.* at 172. However, the Court rejected Overstreet's categorical exemption argument and found Overstreeet had failed to state and prove a particularized *Panetti* claim. The Court then laid out an analytical framework to address *Ford/Panetti* claims. According to the Indiana Supreme Court, a prisoner is not competent to be executed if (1) he suffers from a severe, documented mental illness; (2) the mental illness is a source of gross delusions; and (3) those gross delusions place the "link between a crime and its punishment in a context so far removed from reality" that it prevents the prisoner from "comprehending the meaning and the purpose of the punishment to which he has been sentenced. *Id.* at 172.

Under the analytical framework articulated by the Indiana Supreme Court in *Overstreeet II***.** Overstreeet must pass through the three analytical gates: he must suffer from a severe, documented mental illness, he must suffer from gross delusions caused by that mental illness, and those gross delusions prevent his rational understanding of his crime and punishment.

Severe, Documented Mental Illness

The threshold question this Court must address is whether Overstreeet suffers from a severe documented mental illness. In reality, there are two parts to question: Is Overstreeet mentally ill and, if so, is his mental illness severe.

Since early in this millennium, doctors schooled in the sciences of medicine and psychology have almost universally diagnosed Overstreeet as a paranoid schizophrenic. At the 2003 post-conviction hearing, Doctors Phillip Coons, Smith, Haskins and Price all agreed with the paranoid

schizophrenia diagnosis; only Dr. Masbaum, who had not recently interviewed Overstreeet, did not. From 2004 forward, the mental health professionals at the IDOC consistently documented and independently confirmed a paranoid schizophrenia diagnosis. In anticipation of the 2014 post-conviction hearing, four new psychiatrists–Bailey, Morrison, Parker and Wood–performed evaluations of Overstreeet. Three of these four doctors also diagnosed Overstreeet with paranoid schizophrenia, a severe psychiatric disorder that impairs thought, perception and judgment. Dr. Wood did not agree. As the lone dissenter, ultimately diagnosed Overstreeet with a delusional disorder, a diagnosis less serious that schizophrenia. For the reason previously set forth, the Court finds schizophrenia to be the more appropriate diagnosis.

Overstreeet spends at least twenty hours a day by himself. He lives in a world where voices tell him what to do and criticize him when they feel he has erred. Shadow people populate his world with such frequency that they no longer bother him; he views them, instead, like mice. He has a system for verifying mail. Even birthday cards from his mother have to be scrutinized for their validity. His fellow inmates on death row won't "rec" with him because of his insistence in his beliefs. Despite his isolation, this man, whom the records suggest receives few visitors, will not come out from his cell unless he knows a visit has been planned and the identity of the visitor confirmed Instead, he spends his days in his cell and shelters in place, seeking refuge from an interior world he cannot escape.

It is, indeed, true that Mr. Overstreeet can carry on telephone conversations, write letters and send emails that are comprehensible; however, Overstreet's perception of the world is driven by his mental illness. His auditory hallucinations inform, instruct and criticize his behavior. Those hallucinations provide content to his delusions, by enlightening him and alerting to events that

surround him. His disease impairs this thinking, his perceptions and his judgment.

In a conclusion consistent with that of the Indiana Supreme Court in *Overstreeet II* (and seemingly conceded by the State), this Court concludes Overstreeet suffers from a severe mental illness.

Mental Illness is the Source of Gross Delusions

A petitioner's awareness of the State's rationale for an execution is not the same as a rational understanding of it. Delusions or other psychotic symptoms cannot simply be discounted because a petitioner has a cognitive awareness of his circumstances. Instead, delusions are relevant to determine whether they "put an awareness of a link between the crime and its punishment in a context so removed from reality that punishment can serve no proper purpose." *Panetti,* 551 U.S. 959-960.

Overstreeet knows that he has been convicted of the murder, rape and confinement of Kelly Eckart. Overstreeet knows that he has been sentenced to death. Overstreeet knows the State will use a lethal injection to carry out that sentence. Overstreeet also knows he is in a coma, dead. He also knows that he is in purgatory. He also knows that he may rejoin his family after he is executed.

Overstreeet believes that he is in a different realm than he was before Kelly Eckart was killed. He believes he is now in purgatory--not in a place like purgatory--but in purgatory. He believes that he has been placed there by God and "it is the place I am supposed to be right now." (PCR 706). Overstreeet believes he has to remain in purgatory until he "can be executed." When he is executed, he will make a transition. After the transition, he "could go home, I could wake up in a coma, I could go to hell. I could go to heaven, I may end up in purgatory again." . When Overstreeet speaks, he is not speaking metaphorically. The content of his words, their context, and his demeanor reflect Overstreet's fixed and false belief in his coma state. That delusion has resulted in the Byzantine

universe Overstreet's mind has created.

Rational Understanding of Link Between Crime and Punishment

The Court could focus solely on Overstreet's belief that an afterlife, of whatever sort, awaits him after execution.. With this as the singular focus, one could argue that Overstreet's belief merely reflects a difference in degree, rather than in kind, from the beliefs of many. As the Eleventh Circuit acknowledged: "...[N]early every major world religion– from Christianity to Zoroastrianism–envisions some kind of continuation of life after death, often including resurrection...It is beyond the ken of courts to measure the rationality of religious belief. What will happen to us after we pass through the dark curtain of death is the ultimate non-justiciable question." *Ferguson v. Secretary, Florida Department of Correction,* 716 F3d 1315, 1342-43 (11th Cir. 2013).

However, here we are dealing with more than Overstreet's belief regarding what he will transition to after his execution. Here, Overstreet's beliefs encompass not only what he will transition to but also where he will be transitioning from.

No rational understanding can begin with a belief that "I'm dead, in a coma." No rational understanding can contemplate that execution will be a transition from purgatory. No rational understanding can encompass the possibility of a corporeal return to family. Overstreet's delusion has become so entangled with his factual understanding of his circumstances that his delusion and his understanding cannot be separated. Overstreeet knows he has been convicted of Kelly Eckart's murder and sentenced to death, but he also "knows" he is currently in a coma and dead. Overstreeet knows he will be executed for the crimes he committed, but he also "knows" he is in another realm. Overstreeet knows he may go to heaven, may go to hell, may go to purgatory again, but he also knows–and this is his fervent hope–that may return, as a physical entity, to his family after his

execution.

Overstreet's understanding of his execution is not rooted in religion, in philosophy or in reasoned, if unusual, subjective beliefs. His understanding of his execution is a delusion informed by his auditory hallucinations and born from a schizophrenic mind.

In *Panetti,* the United States Supreme Court determined that no retributive purpose could be served "if the prisoner's mental state is so distorted by a mental illness that his awareness of the crime and punishment has little or no relation to the understanding of those concepts shared by the community as a whole." 551 U.S. at 958-959. We have that situation here. Because of his severe mental illness and the delusion it engendered, Overstreet's awareness of the crimes and punishment have little or no relation to the understanding of those concepts shared by the community as a whole.

Overstreeet does not have a rational understanding of the link between his punishment and his crime.

This Court concludes Overstreeet has proved, by a preponderance of the evidence, that he is not presently competent to be executed.

SUMMARY

Whether because of an immature defense system, a dissociative state, or an excess consumption of alcohol, Overstreeet does not consciously remember Kelly Eckart's death. A failure of memory not uncommon in criminal cases. A lack of memory, standing alone, would not disqualify any defendant from prosecution, conviction or the imposition of a sentence, including a sentence of death. But Overstreet's lack of memory does not stand alone. Rather, it is the genesis of a complex, delusional explanation he has developed to account for that which he does not remember.

In 1997, Overstreeet abducted, raped and killed Kelly Eckart, a young woman not yet out of

her teens. In 2000, a jury took an oath to well and truly try Overstreet's case and found Overstreeet guilty of the crimes with which he was charged. The jury then recommended the death penalty be imposed. Judge Cynthia Emkes, when asked to make the most serious of all judicial decisions, sentenced Overstreeet to death. Time has not altered the facts that served as the basis for the findings of guilt, the recommendation of the jury or the validity of the sentence imposed judge. But time, and his disease, have altered Michael Dean Overstreeet. He is not currently competent to be executed.

CONCLUSION

For the reasons set forth hereinabove, Petitioner's Petition for Post-Conviction relief is ORDERED granted.

_____
Jane Woodward Miller
Special Judge, Johnson Superior Court

Copies to:

Kathleen Cleary
Steven Schutte
Indiana Public Defender
One North Capitol, Suite 800
Indianapolis, IN 46204

Kelly A. Miklos
James Martin
Indiana Attorney General Office
Fifth Floor
302 W. Washington St.
Indianapolis, IN 46204