

**ADMISSION COMPETENCY EVALUATION
SANTA CLARA COUNTY
DEPARTMENT OF MENTAL HEALTH
JUVENILE COMPETENCY RESTORATION PROGRAM**

Name: David Garcia
Date of Birth: March 04, 1995
Age: 18
Sex: Male

Date of Report: November 12, 2013
Date of Interview: October 03, 2013
Probation File: # 11-222-333
Court Petition: 8-76-JV-54321A
Examiner: Carol Guerrero-Urbanski LCSW
Judge: Samuel Brown (Dept 123)

Primary Language: English/Spanish
Probation Officer: Joseph Plant
Race/Ethnicity: Latino

[NOT FOR COURT SUBMISSION - INTERNAL PURPOSES ONLY]

CONFIDENTIALITY: The following report contains sensitive information subject to misinterpretation by those untrained in interpreting competency evaluation data. Disclosure of any material herein and placement of this report without the permission of Santa Clara County Mental Health Department, or by court order, is prohibited.

Informed Consent

Prior to beginning the interview, David Garcia was advised of the purpose of the evaluation and the limits of confidentiality. The evaluator explained that the contents of the evaluation may be disclosed to the court, both attorney's and the probation officer. However, any statements made regarding the alleged offense could not be used to prove his guilt in the court proceedings. The purpose of the Admission Competency Evaluation was explained to David Garcia as an assessment of the current level of competency and restorability along with its function to assist with providing the restoration goals for the Restoration Counselor. David Garcia shared an understanding of these facts and assented to the Admissions Competency Evaluation.

Identifying Data and Reason for Referral

David Garcia is an 18-year-old bilingual Spanish/English speaking Latino male for whom Santa Clara Juvenile Hall Mental Health has received a court order pursuant to PC 1367-1369 to arrange for the provision of competency restoration services dated July 06, 2013. David Garcia resides with a single mother who recently separated in early July from his stepfather of thirteen years. The family was attempting to secure stable housing at the time of the interview. David's mother has three children under the age of eighteen from the union with his stepfather. David ranks as the oldest in the home presently and has an adult brother who resides outside of the family home. David faces charges of one felony count of Robbery in the Second Degree, in violation of penal code 211-212.5(b). David is alleged to have taken personal property, Alcohol

from Spark and A. Townsend by means of force. There was report of a physical altercation between the accused and one of the clerks at the named store. The offense is alleged to have occurred at a College market in San Jose on December 19, 2011. The defendant was later apprehended on December 28, 2011 and charges were filed.

Sources of Data

- Reviewed San Jose Police Department Narrative reports dated October 02, 2010.
- Reviewed 1017 Psychological Assessment by John Sanchez, Ph.D. dated November 11, 2011
- Psychological Evaluation 1368 by Jacob A. Teller, Ph.D. dated February 10, 2012
- Psychological Evaluation 1368 by Paul I. Thomas, M.A., PhD. ACFE, ABPS, AAPM Licensed Psychologist dated October 02, 2012.
- Interview conducted with mother, Vanessa Cruz, and David Garcia June 07, 2013 (75 minutes).
- Conducted structured clinical interview with David Garcia on June 20, 2013 (70 minutes).

Prior Assessments of Trial Competency

There have been three Competency Evaluations prior to the order by Honorable Judge Brown for the provision of Restoration Services.

On August 10, 2012, John Sanchez, conducted a court ordered competency evaluation in which he opined that David Garcia was incompetent to stand trial. Dr. Sanchez indicated that David obtained a Full Scale Intelligence Quotient (FSIQ) score of 67 on the WAIS IV. The evaluation expanded on the responses given by David to the Fitness Interview Test, which is a structured interview with themes relevant to trial competence. Dr. Sanchez concluded that David's responses were indicative of poor verbal memory and lack of understanding in multiple legal areas. Even when brief education was provided by Dr. Sanchez in various areas, David's level of functioning did not improve. Dr. Sanchez concluded that David will require significant education to overcome his impairments in the area of the adjudicative process.

A consecutive court ordered competency evaluation was conducted by Jacob A. Teller, PhD., on August 04, 2012 in which he opined that David Garcia is competent to stand trial. Based upon his evaluation Dr. Teller believes that David exhibited full awareness of the charges against him. Dr. Teller administered the Montreal Cognitive Assessment. This is a test for identifying the possible presence of impairments in the functioning of cognitive skills of attention, perception and language. The test findings indicated that David maintains an adequate level of functioning in those fundamental areas.

On February 11, 2013, Paul I. Thomas, PhD., conducted the third court-ordered competency evaluation in which he opined that "David is quite severely incompetent." Dr. Thomas's report indicates that David's intelligence levels are variable, but are largely ranging in the "mentally-deficient level." Dr. Thomas believes that David has a very concrete level of understanding about his current legal situation, but is incapable of being fully able to adequately assist his attorney in providing his defense. Dr. Thomas administered the (WISC-III) Wechsler Intelligence Scale for Children-III. The results showed that David achieved a Full Scale IQ of 76 which falls within the

Borderline Range of Intellectual Functioning. This Full Scale IQ is made up of a Verbal IQ of 68 and a performance IQ of 90 which demonstrates a broad discrepancy between them. The report expands on the discrepancies and the characteristics of the individuals that have these greater performance ranges. In summary the report finds David to have a pattern of generalized intellectual impairment.

Based on these evaluations, the Honorable Judge Samuel Brown, of the Superior Court of Santa Clara County, ordered the provision of restoration services to this youth on July 06, 2013. The youth has been awaiting entry to the program and the case will be assigned by the manager of the program Joel Setter, LCSW, following completion of the Admissions Competency Evaluation.

Mental Status Examination

David Garcia is an 18 year-old, bilingual Spanish/English speaking Latino male. He was interviewed at a county out-patient clinic. He is somewhat stocky. He was well groomed and meticulously dressed. He was polite and cooperative during the interview yet would frequently comment “what does it matter”, to the questions asked. His eye contact was good and his responses fairly concrete. When he spoke, he used an appropriate tone of voice with little affect in his expressions. This evaluator encouraged David to speak in either language if he so desired. He spoke only in English sharing that he mainly speaks Spanish to his parents. His attention appeared to lag and at one point he asked to leave the interview prematurely. When questioned as to the reason why he wanted to leave so abruptly he claimed to have come without having breakfast and that he was hungry. Once he was provided a snack he tolerated further questions. His social judgment and understanding seemed poor in particular when David demonstrated delinquent decisions while accompanied by peers who negatively influence him.

David was oriented to person, place, and situation; however he did not know the date or the day of the week. He seemed to put much effort into the questions asked and was clearly not evasive. His thought process appeared to be slow or confused about the meanings to the questions asked yet he never asked for further explanation. He demonstrates some poverty of thought content. For example he deliberates in his selected responses. He seemed to be mentally confused or suspicious about the questions regarding the legal concepts even when efforts were made to reassure him that this evaluator was a neutral third party. He presented as calm and collected, giving very genuine responses. When queried about proverbs and abstract reasoning David was not able to expand on their interpretations. He denied suicidal or homicidal intent or ideations and referred to his mood as “ok.” He commented that it “sucks” that his mother and stepfather have recently separated. He denied any knowledge that they had problems in their marriage. He expressed remorse for his actions and reported that the store clerk was his father’s friend. There were no apparent hallucinations or delusions. Malingering was not suspected. There were no problems with motor skills.

During the interview, David would sometimes make grammatical errors or confuse words. His immediate memory was poor and he was unable to recall various experiences related to the arrest and the charges. When there was mention of the police report data he seemed to be genuinely struggling with the incidents that are alleged to have occurred. His intelligence seemed to be limited and impaired although he attempted to engage in the explanation of material covered. He frequently responded “ok” as though wanting to present as quick learner.

Education and School History

David is scheduled to return to Broadway Continuation School in mid-August. David's mother reported that her son repeated first grade and was qualified under the classification of a student with a Specific Learning Disability in March 2003. He has received Speech and Language services beginning in the third grade and was exited in 7th grade. The triennial psychoeducational evaluation done by San Jose Unified School District in November 2011 showed low-average verbal skills and nonverbal skills to be within the average range. These correlate closely to the findings written in the competency evaluations. David also showed difficulty with short-term auditory memory. The academic testing administered showed skills within the deficit range in all areas with the exception of writing. David has attended multiple high school settings and participated in the independent studies program at Liberty High. These academic placement changes occurred when disciplinary problems erupted, suspensions were refused, and there was continued defiance. A behavioral support plan was established and later a disciplinary hearing was held which recommended Broadway High School. The final setting David was enrolled at during the 2012/2013 academic school year was Broadway. He entered Broadway in November 2012. His history of school problems demonstrates poor insight and judgment, for example when he refuses to adhere to the disciplinary actions that are imposed by those administered. The social emotional questionnaire Behavioral Assessment Scale for Children (BASC) self-report section indicates David is dealing with a significantly high sense of inadequacy. For example when David responded, "I never seem to get anything right; even when I try hard I fail."

Medical and Psychiatric History

David's mother reported that her son has never had psychiatric treatment or hospitalizations in the past. He has not participated in psychotherapy or has ever been evaluated for psychiatric medications. When David was queried further about any mental health treatment he denied having any previous treatment.

Competency to Stand Trial

The following results were assessed using a structured clinical interview. When a diagram of a courtroom was presented, David was quickly able to identify it as such. He was not able to list all of the people that are present when he attends court. He identified where all parties sit in court proceedings. When queried about the roles of the courtroom personnel David demonstrated minimal understanding of the adversarial role of the D.A. stating that "he's not for me." He understood that the judge has to decide if he's guilty or innocent and then decides on the penalty.

David identified his charge as "I think armed robbery because I hit a guy." He did not know the difference between a felony and a misdemeanor. He reported he had not heard the term misdemeanor. He believed he has only one charge. David denied familiarity with the words competent and incompetent. He had no recollection of being ordered to the Competency Restoration Program. He believed he has to see a restoration counselor from a program because he is charged with breaking the law. He commented "these words are hard" during the interview. When provided education about the legal terms he would say "ok" as though wanting to reassure this evaluator that he was putting effort into understanding the concepts covered. He was able to identify some of the people in the courtroom such as the judge, lawyers and an interpreter for his mother. He referred to the judge as being on his side. This demonstrated that he knew there are

sides in the courtroom yet he clearly did not understand the District Attorney held the responsibility to prove his guilt. He further conveyed awareness that, “the judge hears what’s going on and if something bad has been done by someone than he gives them a punishment.” He elaborated that the judge uses a “stick to go bam if something bad happens during court.”

David identified himself as the victim. When queried further about what injuries he sustained he stated none. There was clarification provided as to the difference between the victim and the defendant.

David could not recall when or how he was arrested. He did not have knowledge about being informed of his Miranda rights. There was some indication that David does not realize that he actually has a choice regarding his plea or that there are clear specific plea options he could consider. He further demonstrated a lack of awareness that he has an independent responsibility to make a decision regarding his plea.

When queried about the juvenile court trial process David demonstrated little knowledge about the difference between a hearing and a trial. He was unable to expand on the court procedures. He clearly demonstrates impairment in this area.

In the area of assisting the Defense Attorney, David commented that “I guess I need an attorney if I have to go to trial.” He could not name his attorney yet knew he was represented by a female. When asked about how attorneys help you, David stated “because they’re good people.” He was unable to provide further information regarding his lawyer’s role (i.e., how she might defend him against his charges) even when further education was provided.

When queried about the role of the probation officer David reported “they check on you and want to know if you’re doing drugs.” He demonstrated some understanding that P.O.s have a supervisory role. Yet, he was not clear about their case management role with the courts.

Overall, David’s understanding of the court process and proceedings is significantly impaired at this time. He struggled with expanding in the domains of Possible Pleas; Guilt and Punishment Penalties; Assisting the Defense Attorney; and Participating in the Juvenile Court Hearings. His responses were concrete and factual in nature. He was unable to recall many of the details of his arrest and the information he reported was inconsistent with the police reports. Thus, he may lack the ability to verbally express himself. Language functioning as indicated by the psychological testing administered is delayed. David may have difficulty in the area of communication and the verbalization of the court concepts and proceedings. He has slowly begun to develop the ability to think abstractly with the examples provided and apply them to his case.

Conclusions

David Garcia is an 18-year-old male who has been charged with the crime of one felony count of Robbery in the Second Degree, in violation of penal code 211-212.5 (c), a felony. David’s responses to the structured interview questions for competence demonstrated a limited understanding of the judicial and criminal proceedings. David did not demonstrate an understanding or appreciation of the legal process nor does he demonstrate the capacity to make

legal decisions as he goes through adjudication. Although his perceptions are based on concrete ideas and factual understanding, he does struggle with language processing and an ability to recall previously provided education on various legal concepts. These limitations can impact his decision making in the court proceedings. David demonstrated a lack of understanding regarding many legal concepts. This may be likely influenced by his verbal deficits. His responses to the structured interview questions regarding competency indicated David does not have a rational understanding of the following domains: understanding the nature of the proceedings; the seriousness of his charges; unclear about his plea options; and punishments and plea bargains. David does not possess the capacity to assist his attorney. David exhibited very basic knowledge of some facts and procedures in the adjudication process in juvenile court yet he was unable to demonstrate decision-making abilities related to the rational understanding.

It is the opinion of this writer with a reasonable degree of certainty that he does not have the current capacity to assist his attorney with the legal proceedings against him. In sum, it is this evaluator's opinion that during the evaluation David demonstrated a minimal understanding of some of the court processes which are crucial in the trial proceedings.

David responded fairly cooperatively to most of the questions asked and material covered. However he questioned the relevance regarding several of the inquiries made by this evaluator. According to the psychological testing administered by previous competency evaluators and the psychoeducational testing done in November 2011 by San Jose Unified School District, David's verbal comprehension and cognitive testing both fell within the deficient range. The Full scale IQ of 76 that Dr. Thomas's testing results indicated placed David within the borderline range of intellectual functioning. David also does show significant difficulty with short-term auditory memory and verbal delays that could impede competency. He exhibits difficulty in the area of communication with vocabulary, semantics, grammar and fluency. He struggles with presenting his thoughts in an organized manner so there will be challenges in assisting David to remember information and relay it to others in a form that is comfortable. David does exhibit a number of strengths that will assist with moving towards competency and this evaluator believes David can benefit from restoration sessions. David has attended all of the scheduled appointments independently and puts forth tremendous effort to learn the material covered. David does attempt to communicate honestly and genuinely with this evaluator. Repetition of the legal concepts may enhance his ability to achieve both (1) the capacity to formulate a factual and rational understanding of the proceedings against him and (2) the capacity to consult with and assist his attorney with a reasonable degree of rational understanding within the foreseeable future.

It is this evaluator's opinion to a reasonable degree of certainty that the restoration services may be able to remediate David's competency to stand trial. In conclusion, The Santa Clara County Department of Mental Health will arrange for the delivery of these services.

Respectfully submitted,

Carol Guerrero-Urbanski LCSW
Juvenile Forensic Evaluator