

## FORENSIC EXERCISE

### Competence to Stand Trial

#### PARTICIPANT INSTRUCTIONS:

*You are being provided with case materials that include a summary of your client's current charges and social history. Please read the fact pattern and answer the questions following each part. You will have 10-15 minutes to read the materials and jot down answers to the questions. The trainer will give further instructions.*

#### FACT PATTERN

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##### ***Current Charges***

You represent Anthony Davis, a 15-year-old African-American male charged with First Degree Sexual Abuse While Armed, Armed Robbery, Armed Carjacking, Armed Kidnapping, First Degree Burglary While Armed and other related offenses arising out of two incidents: one that allegedly occurred this month and one that allegedly occurred last month. The government just filed a motion to decline Anthony's case for adult prosecution. The government offered Anthony a complex plea bargain in return for waiving a decline hearing and entering a guilty plea as an adult to certain charges against him.

##### ***Family History***

Anthony's family has suffered from intellectual disability, mental illness, and physical and sexual abuse for the last two generations.

Anthony's pediatrician told his mother when he was nine months old that he was not developing normally and needed tests. Fearing that her son would be taken away, Anthony's mother stopped taking him to the doctor for many years. Anthony's mother also beat him when he was younger.

Anthony had an accident when he was 10 years old in which he fell off his bicycle and hit his head. A CT scan at the hospital indicated that Anthony had brain damage.

##### ***Educational History***

Anthony repeated the fourth and fifth grades, but was not placed in special education until he reached the sixth grade. He was classified as mildly intellectually disabled on his Individual Education Program (IEP). One year later Anthony required fulltime services to address social needs, academic weaknesses, and communication deficits. Anthony cannot read or write at all.

##### ***Prior Record***

Anthony first came into contact with the juvenile justice system when he was nine years old. Prior to his current charges, Anthony had been arrested six times for offenses such as Unauthorized Use of a Motor Vehicle, Burglary, and Attempted Robbery. Anthony was found guilty in four of the cases. The issue of his competence was never raised.

## PART I: WHETHER TO SEEK A COMPETENCE EVALUATION

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The court approved evaluations of Anthony. Anthony was interviewed by Dr. Rachel Smith, a staff psychologist at the local child clinic, who advised the court that she doubts Anthony has the mental competence to participate in the legal proceedings pending against him due to “severe cognitive deficiencies.” Dr. John Goldberg, a psychiatrist with the court’s youth services division, conducted the court-ordered competence screening. After an interview and testing, Dr. Goldberg reported that Anthony was intellectually disabled and unable to assist his attorney in his defense. Dr. Goldberg recommended a more complete mental health examination.

The court then ordered an inpatient mental health evaluation of Anthony at CSTC where he

is to be evaluated by two doctors, employed by DSHS.

- ❖ *Do you want to pursue the competence evaluation in Anthony’s case? What are the pros and cons? Is the standard of competence different in a decline hearing compared to competence to stand trial?*
- ❖ *As Anthony’s defense attorney, what steps would you take and what information do you need to make a better decision about whether or not to pursue the competence question? What documents and collateral information would you gather to assist an expert in his or her evaluation? What desired qualifications do you want the expert to possess?*

## PART 2: THE COMPETENCE HEARING

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Assume you already retained experts for the decline hearing, psychiatrist Dr. Amelia Cohen and neurologist Dr. Tammy Lee. Their evaluations were expanded to include the question of Anthony’s competence after the court ordered a competence evaluation.

The following are conclusions reached by the **defense experts** after evaluation:

### *Psychological, Neurological and Psychiatric Evidence*

- Based on interviews and tests, Dr. Cohen concluded that Anthony suffers from a mental impairment that severely affects his cognitive and language-related skills.
- Anthony’s history and the results of the testing show that he suffers from brain damage or dysfunction, especially to the left hemisphere.
- Anthony exhibits symptoms of chronic depression, or mood disorder, that affects his attention and responsiveness both in interacting with others and in performing tasks.
- Tests revealed that Anthony is within the low-average range of intellectual functioning – comparable to that of the average seven-year-old child.
- When interviewing Anthony, the experts also observed that Anthony had extreme difficulty following the flow and process of their conversation. Even when questions were re-worded in a very simplistic way, Anthony still had a hard time understanding what was being asked.
- Dr. Lee ordered a full neuropsychological exam due to the possible head injury Anthony sustained during the bicycle accident. She found

that Anthony has difficulties in attention and orientation. Anthony's short-term memory is intact, but he gets overwhelmed by the challenge of some questions and gave responses that indicate attention deficit, executive control problems, frontal lobe issues and right hemisphere difficulties affecting visual and spatial skills.

- Anthony had no rational understanding of the pending legal proceedings when questioned during interviews. Moreover, Anthony factually understood very little.

The following are conclusions reached by the **government experts** after evaluation:

- Despite recent testing indicating Anthony's cognitive deficits (stated in the defense experts' conclusions), one of the government's experts points to the test results from Anthony's fifth, sixth and seventh grades. Anthony's scores were not as severe those years, and the government's experts suggest that Anthony may be malingering on the recent tests, despite never having interviewed Anthony.
- The second government expert found Anthony's competence to fluctuate, and that his "present" ability was sufficient for competence after interviewing him. He also found that there was no question that Anthony fully understood the full range and nature of possible penalties that might be imposed in the proceedings against him.

You discovered that there are transcripts of interviews conducted with Anthony by the government's second expert. Your experts read the transcripts and disagreed with the government's conclusion. Your experts believed that the interviews were consistent with their own opinion, and it did not make sense, in view of the transcripts, that the government's expert came to such conclusions.

## *Transcript of Interview from March 15, 2010*

Q. If you're sitting in Court and a witness was telling a lie about you, what would you do?

A. You can't do nothin'.

Q. Would you try and tell someone?

A. What?

Q. Would you try and tell someone that the witness was lying?

A. I would tell my lawyer, but they probably wouldn't believe anything.

Q. But you would talk to your lawyer?

A. Yeah.

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Q. What do you think is the worst that can happen to you as a result of the charges?

A. I'll get a lot of time.

Q. Do you know how much time you could get?

A. My lawyer showed it to me on a piece of paper.

Q. And how much time was that?

A. She told me 50 years.

Q. What are you charged with right now?

A. First degree sexual assault.

Q. What else?

A. I don't know.

Q. Kidnapping?

A. Kidnapping.

Q. Armed carjacking?

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A. I guess.

Q. Yeah, and armed robbery?

A. I think I have a robbery charge.

Q. Threats to do bodily harm. Two different events, right? Two different sets of charges, correct?

A. Mmhmn.

Q. You're shaking your head yes. My understanding is that the first set of charges involves breaking into someone's apartment and that allegedly a young woman was sexually assaulted. That is what you are charged with, right?

A. Ummm.

Q. Is that right? Is that what you are charged with?

A. Think so.

Q. Ok, and the second set of charges involve you approaching some men with a gun, forcing one of them into a car. Is that what you were charged with?

A. Think so.

## *Transcript of Interview from April 7, 2010*

Q. Remember when I asked you before if you were in court with your lawyers and someone on the stand was testifying and they were telling lies about you and how you would handle it? What would you do?

A. I don't know.

Q. Would you jump and yell in the courtroom?

A. I don't know.

Q. Would you tell your lawyer?

A. I don't know.

Q. When you say you "don't know" what does that mean?

A. I don't know what I would do.

- ❖ *You are surprised to discover that there is no legal authority establishing who has the burden of proof as to competence in your jurisdiction. How would you argue to the court that the government has the burden to prove your client's competence?*
- ❖ *Using the information provided by your experts, in addition to your numerous attempts to communicate with Anthony and explain the nature of the charges against him without success, what would you argue to the court regarding Anthony's competence?*
- ❖ *How would you challenge the government's experts and their conclusions at the competence hearing?*