



STATE OF INDIANA)
COUNTY OF MARION)
STATE OF INDIANA)
vs.)
ELLIAHS LAMAR DORSEY)

IN THE MARION COUNTY SUPERIOR COURT
)SS: CRIMINAL DIVISION, ROOM D32
CAUSE NUMBER: 49D32-2004-MR-013622

DEFENDANT DORSEY'S NOTICE OF INSANITY DEFENSE
(Exhibit A to Defendant's Pleading #81)

The Defendant, Elliahs Dorsey, by attorneys Ray Casanova and Deana Martin of the Marion County Public Defender Agency, pursuant to Ind. Code 35-36-2-1, hereby notifies the Court and the State of Indiana of his intent to raise an insanity defense to the charges alleged in the information filed in this case.

/s/ Ray Casanova
Ray Casanova, Attorney
Marion County Public Defender Agency

/s/ Deana Martin
Deana Martin, Attorney
Marion County Public Defender Agency

STATE OF INDIANA)
) IN THE MARION COUNTY SUPERIOR COURT
)SS: CRIMINAL DIVISION, ROOM D32
COUNTY OF MARION) CAUSE NUMBER: 49D32-2004-MR-013622

STATE OF INDIANA) 5/24/23
) Under advisement until 6/2/23 PTC
)
vs.)
)
)
ELLIAHS LAMAR DORSEY)



**DEFENDANT DORSEY'S VERIFIED MOTION TO FILE BELATED NOTICE OF
INSANITY DEFENSE**
(Defendant's Pleading #81)

The Defendant, Elliahs Dorsey, by attorneys Ray Casanova and Deana Martin of the Marion County Public Defender Agency, notifies the Court and the State of Indiana of his intent to raise an insanity defense at trial the notice of which is attached hereto and marked for identification as Defendant's exhibit A and moves this Court pursuant to Ind. Code 35-36-2-1 good cause and interest of justice exceptions for permission to file this notice of insanity belatedly. In support of this motion, the Defendants states the following:

1. Dorsey was charged in April of 2020 with multiple counts of attempt murder and one count of murder.
2. The victim of the murder was an Indianapolis Metropolitan Police Officer who was killed responding to a complaint involving Dorsey thereby making Dorsey eligible for a death sentence.
3. The probable cause affidavit supporting the charges against Dorsey which was drafted by the State of Indiana alleges facts which support an inference of mental illness at the time of the offense.
4. In September of 2020, counsel for defense met with Ryan Mears and then assigned prosecutor, Ross Anderson, and provided them with Dorsey's jail and prison records

as well as a report prepared by Dr. Stephanie Callaway containing evidence that Dorsey was suffering from a mental illness at the time of the offense in support of the defense counsel's argument not to file a death request in Dorsey's case.

5. Based on the facts alleged by the State of Indiana in the probable cause affidavit and the information provided to it by defense counsel in September of 2020, the State of Indiana had notice not only that Dorsey was experiencing mental health issues at the time of the offense but also that the defense may raise an insanity defense.
6. The State of Indiana filed a death request against Dorsey in January of 2021.
7. Since Dorsey's case was eligible for a death sentence, counsel for Dorsey had to prepare, from the outset of the case, a defense for both the guilt / innocence and mitigation phases and had to ensure those defenses were consistent.
8. Mental health evidence is a mitigating factor against the imposition of the death penalty as well as a defense in the guilt / innocence phase. However, its presentation in the mitigation phase is often broader – encompassing a social history – than in the guilt / innocence phase which focuses primarily on the incident. Additionally, the relevance of mental health evidence is different in the guilt / innocence phase than in the mitigation phase. Its relevance in the guilt / innocence phase is whether it impacted the ability of the accused to appreciate the wrongfulness of their actions. Whereas, in the mitigation phase its relevance is to whether it mitigates against the imposition of the death penalty. Consequently, investigating and developing a mental health defense in a capital case – especially if that defense is relevant to both the guilt / innocence and mitigations phases – is more time consuming than in a non-capital

case and contributed, in this case, to the need for a belated notice filing of the insanity defense.

9. Since an insanity defense often involves an admission that the incident occurred as alleged by the State, defense counsel must comply with the holding in *McCoy v. Louisiana*, 138 S.Ct. 1500 (2018) before noticing an intent to present the defense.
10. McCoy was charged with multiple counts of first-degree murder and facing a death sentence if convicted. His attorney's strategy at trial was to concede McCoy committed the murders but his mental state prevented him from forming the specific intent to kill necessary for a first-degree murder conviction. McCoy repeatedly objected to the presentation of this defense at his trial and testified that he was not present when the murders occurred presenting an unfathomable alibi defense instead. *McCoy* at 1503. The United States Supreme Court reversed McCoy's convictions and held:

[a] defendant has the right to insist that counsel refrain from admitting guilt, even when counsel's experience-based view is that confessing guilt offers the defendant the best chance to avoid the death penalty. Guaranteeing a defendant the right "to have the *Assistance* of Counsel for *his* defence," the Sixth Amendment so demands. With individual liberty – and, in capital cases, life – at stake, it is the defendant's prerogative, not counsel's, to decide the objective of his defense: to admit guilt in the hope of gaining mercy at the sentencing stage, or to maintain his innocence, leaving it to the State to prove his guilt beyond a reasonable doubt.

McCoy at 1505.

11. Developing the attorney / client relationship needed to comply with the holding in *McCoy* is time consuming especially when there are mental health considerations, and this also contributed to the need for a belated notice filing of the insanity defense in this case.

12. Dorsey was arrested and charged in this case in early April of 2020 – right at the start of the COVID-19 pandemic. The social distancing and health concerns associated with the pandemic significantly hampered counsel’s ability to schedule the clinical evaluations and testing needed to investigate and develop the mental health evidence relevant to both the guilt / innocence and mitigation phases of the trial and contributed to the need for a belated notice filing of the insanity defense. The Court is aware of some of these logistical challenges from Dorsey’s prior *ex parte* pleadings. However, if the Court requires additional information on this point before ruling on this Motion, counsel is prepared to provide it, but would request leave to do so *ex parte* as this information may implicate attorney-client privilege and/or work product.

13. Since the mental health evidence in this case is relevant to both the guilt / innocence and mitigation phases, counsel for the defense had to contact and coordinate clinical evaluations and testing from multiple mental health experts ensuring that each had the information they needed from other experts to complete their reports. This also contributed to the need for a belated notice filing of the insanity defense.

14. In addition to Dr. Callaway, the defense has already contacted several other local mental health professionals each of whom has either agreed to or already evaluated Dorsey. To ensure the appointment of *disinterested* psychiatrists and psychologist as required by Ind. Code 35-36-2-2 and since the disclosure of all mental health experts contacted by the defense may implicate attorney–client privilege and / or work product, defense counsel requests leave to notify the Court *ex parte* of the local mental health professionals already contacted.

WHEREAS, the State of Indiana had notice as early as September of 2020 of Dorsey's intent to present a mental health defense, the time needed for Dorsey to investigate and develop mental health evidence as a defense in both the guilt / innocence and mitigation phases of his case, the time needed for defense counsel to develop the attorney / client relationship needed for Dorsey to agree to the presentation of the insanity defense, that the COVID-19 pandemic complicated the scheduling of the testing and evaluations needed to develop the mental health evidence, and defense counsel had to coordinate clinical evaluations and testing from multiple mental health experts all impacting the timing of the notice of insanity defense, Defendant Dorsey moves this Court pursuant to good cause and interests of justice stated for permission to file a belated notice of insanity defense.

/s/ Ray Casanova
Ray Casanova, Attorney
Marion County Public Defender Agency

/s/ Deana Martin
Deana Martin, Attorney
Marion County Public Defender Agency

VERIFICATION

I verify, under the penalties for perjury, that the foregoing is true and accurate to the best of my knowledge and belief.

/s/ Ray Casanova
Ray Casanova, Attorney

/s/ Deana Martin
Deana Martin, Attorney

CERTIFICATION

This is to certify that a copy of the foregoing has been served on the Marion County Prosecutor's Office pursuant to Indiana Rule of Trial Procedure 85 via electronic filing on the same day it was electronically filed with the court.

/s/ Ray Casanova
Ray Casanova, Attorney