

Forensic Evaluation Report – José Padilla



Case 0:04-cr-60001-MGC
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Name: José Padilla
Date of Birth: 10-18-1970
CaseNo(s): 04-60001-Cr Cooke
Date of Evaluation: 10-10-06, 10-19-06

Date of Report: 12-11-2006

REFERRAL INFORMATION

Mr. Anthony J. Natale, Supervisory Assistant Federal Public Defender in the Southern District of Florida (Miami), requested that his client, Mr. José Padilla, a 36-year-old Hispanic male, be evaluated with respect to competency to stand trial. Mr. Padilla is charged with one count of Conspiracy to Murder, Kidnap, and Maim Persons in a Foreign Country (this count was dismissed by the trial court in September, 2006 but is presently on appeal), one count of Conspiracy to Provide Material Support for Terrorists, and one count of Providing Material Support for Terrorists.

Mr. Padilla was evaluated with respect to his competency stand trial on October 19th, 2006 and interaction between he and his attorney, Mr. Natale, was observed on October 10th, 2006.

NOTIFICATION

Prior to beginning the evaluation, Mr. Padilla was informed of the nature and purpose of the evaluation and the limited confidentiality of the information to be obtained. He was told that the results might be submitted to the court in the form of a written report and that, if this were to happen, copies of this report would be made available to the Federal prosecutor in addition to his attorneys. He was also informed that these results might be used in court proceedings, in the form of either the written report or testimony by the examiner. He was further informed that the information obtained might be used to help the court reach a decision regarding his competency to stand trial but that none of the

information would be used as evidence against him concerning the charges themselves. Mr. Padilla indicated that he understood the information provided in the notification and agreed to participate in the evaluation but refused to sign a notification of rights form.

SUMMARY OF ALLEGED OFFENSE

According to the indictment filed on November 17th, 2005, sometime between October 1993 (or thereabout) and November 1,2001 Mr. Padilla did: "knowingly and willfully combine, conspire, confederate, and agree with others...to commit at any place outside of the United States, acts that would constitute murder, that is, the unlawful killing of human beings with malice aforethought, kidnapping, and maiming if committed in the special maritime and territorial jurisdiction of the United States, and did commit one or more acts within the jurisdiction of the United States, to effect the purpose and object of the conspiracy" (Count 1; p. 5); "knowingly and willfully combine, conspire, confederate, and agree with others... to commit offenses against the United States, mat is, providing material support and resources, as defined in Title 18, United States Code, Section 2339A(b), and concealing and disguising the nature, location, source, and ownership of material support and resources, knowing and intending that they be used in preparation for and carrying out a violation of Title 18, United States Code, Section 956(aXI), that is, a conspiracy to murder, kidnap, and maim persons in a foreign country; and did commit one or more acts to effect the purpose and object of the conspiracy; all in violation of Title 18, United States Code, Sections 371 and 2339A(a)" (Count 2; pp. 17-18); and "provide material support and resources, as defined in Title 18, United States Code, Section 2339A(b), and did conceal and disguise the nature, location, source, and ownership of material support and resources, knowing and intending that they be used in preparation for, and in carrying out, a violation of Title 18, United States Code, Section 956(a)(I), that is, a conspiracy to murder, kidnap, and maim persons in a foreign country; all in violation of Title 18, United States Code, Sections 2339A(a) and 2" (Count 3; pp. 18-19).

Mr. Padilla was arrested on May 8,2002, at Chicago O'Hare International Airport, on a material witness warrant issued by the United States District Court for the Southern District of New York in connection with the grand jury investigation into the September 11,2001 terrorist attacks, and transported to New York. On June 9,2002 he was declared an "enemy combatant" by President Bush, was taken into custody by the Secretary of Defense, and was transferred to the Naval Consolidated Brig at the Naval Weapons Station in Charleston, South Carolina where he was held on mis status until November 20,2005 at which time the President determined mat it was in the best interests of the United States that Mr. Padilla be released from the custody of the Secretary of Defense and transferred to the control of the Attorney General for the purposes of criminal proceedings against him. It was at this time that Mr. Padilla was arrested and charged with Conspiracy to Murder, Kidnap, and Maim Persons in a Foreign Country, Conspiracy to Provide Material Support for Terrorists, and Providing Material Support for Terrorists. On January 5,2006 Mr. Padilla was transferred from the Naval Consolidated Brig Charleston to the Miami Federal Detention Center, where he has since remained in custody.

Thus, to summarize briefly, while Mr. Padilla has been detained for approximately 4 years 7 months at the time of writing (since May, 2002), he was only charged with the current criminal offenses about 1 year ago (November, 2005). In addition, the current position of the government is that Mr. Padilla can be detained as an enemy combatant at any time that the President wishes, and may be taken into the custody of the Department of Defense and detained indefinitely.

DATA SOURCES

Data sources that were reviewed for the purposes of this evaluation include the following:

- Special Administrative Measures restrictions document dated November 22, 2005
- Indictment, United States District Court Southern District of Florida, for Case No. 04-60001-Cr-Cooke, filed November 17, 2005
- Motion to Dismiss for Outrageous Government Conduct for Case No. 04-60001-CR-Cooke/Brown filed on or about October 5, 2006
- Mental Health Evaluation notes, from the Naval Consolidated Brig Charleston, dated: June 10, 2002; May 14, 2004; June 30, 2004; July 22, 2004; August 24, 2004; October 21, 2004; and November 19, 2004
- Department of Education GED Testing Service transcript dated July 7, 1996
- School District #428 Transcript dated June 20, 1988
- Observations of contact between Mr. Padilla and Mr. Natale on October 10, 2006 (1.5 hours)
- Interview with Mr. Padilla on October 19, 2006 (5.5 hours)
- Telephone interviews with Estela Lebron, Mr. Padilla's mother, on November 27, 2006 (.5 hours) and December 7, 2006 (1 hour)

Psychological tests administered for the purposes of this evaluation include:

- Benton Visual Retention Test
- Rey Auditory Verbal Learning Test
- Stroop Neuropsychological Screening Test
- Color Trails Test

Data sources that were requested but that, at the time of writing, had not been forthcoming:

- Any and all psychological records from the Naval Consolidated Brig Charleston where Mr. Padilla was detained from June 9, 2002 to January 5, 2006
- Any and all medical records from the Naval Consolidated Brig Charleston where Mr. Padilla was detained from June 9, 2002 to January 5, 2006
- Any and all psychological and medical records from the Miami Federal Detention Center where Mr. Padilla has been detained since January 5, 2006

BACKGROUND INFORMATION

Given that Mr. Padilla refused to speak about his background, the following information was obtained from his mother, Mrs. Estela Lebron, except where indicated. Mrs. Lebron

was cooperative; however, she appeared to be a somewhat poor historian and made it clear that she was giving her best guess on dates, ages, and timeframes.

Mrs. Lebron reported that José fathered a son while he was living in Chicago and that his son is currently 15 years old. She indicated that Jose had contact with his son while he was living in the United States and reported that she continues to have contact with José's first son. Mrs. Lebron reported that Jose" married "a Jamaican girl named Sherri" at age 21 and that the marriage lasted 7 or 8 years. She indicated that Jose and his first wife had no children and that they are currently divorced. Mrs. Lebron also reported that Jose" married a second time in 1997 while he was living in Egypt and that he and his second wife have two children (both boys, approximately 6 and 7 years old) and are still married, although his second wife still lives in Egypt.

Mrs. Lebron reported that Jose" was a kind, well-behaved child who was seen by his siblings as "mom's favorite" as he was sensitive to his mother's feelings and often watched out for her and took care of her. She reported that Josh's father died when José was very young and that José has helped her to raise her other children. She reported that he was a good student who attended a magnet school while in Chicago and received good grades. She described him as a "very smart kid" who "speaks three languages." Mrs. Lebron reported that José "got into some trouble" at age 13 or 14 and was convicted of being an accomplice to murder and incarcerated at age 15. A transcript from the school he attended during his incarceration appears to indicate that Mr. Padilla was incarcerated from age 15 to age 18 and that he received mainly As and Bs. In addition, a transcript from the Department of Education indicates that he received his GED in Florida in 1996.

Mr. Padilla's employment history is unclear; however, Mrs. Lebron reported that José worked a series of jobs at fast food chains while living in Florida (Taco Bell, Burger King, and others she couldn't recall). She reported that he left the United States to teach English in Egypt.

Mrs. Lebron reported her belief that José has never had any substance use problems, serious injuries or illnesses, and that he has never suffered from any mental illness or received treatment for any psychological or psychiatric problems. She reported that she has tried to visit Jose at the Miami Federal Detention Center monthly and has seen him approximately 8 or 9 times; however, she indicated that she has recently decided not to visit him anymore as it is too difficult for her, emotionally, to "see José that way". When asked to elaborate, she described José as being "different" than he used to be and reported that he appears to be "depressed" and is very concerned about "being sent away to the hospital" (meaning psychiatric hospital). She reported that he is "very quiet" and that he "sounds scared" and noted that he "hardly talks now" and contrasts this to when he "used to be very outspoken" before being incarcerated. She reported that Jose "is always looking over his shoulder" (and appeared to mean that literally) and has told her that he is "scared that his lawyers are against him." She indicated that she has observed Jose" "making a face," referring to the facial ticks that Mr. Padilla evidences, and

reported that Josg did not have facial ticks prior to being incarcerated. Mrs. Lebron reported her belief that José had "an anxiety attack" while he was incarcerated at the Naval Brig and indicated that Jose had told her he had been forcibly medicated. She was unable to elaborate as she did not have any further knowledge other than what she had apparently been told by José.

The only psychological records that were received from Mr. Padilla's time at the Naval Brig are extremely sparse and contain only brief notes regarding Mr. Padilla's care. The first clinical note was dated June 10,2002 (one day after being declared an enemy combatant; I assume this to be the initial intake evaluation) and indicates that Mr. Padilla was not experiencing any mental health concerns. The second clinical note was dated May 14,2004 (almost two years later) and, except for the date, is identical to the first clinical note. The last five clinical notes are dated at approximately 1-month intervals from June 30,2004 to November 19,2004 and are identical to each other except that Mr. Padilla's mood was described as "anxious" on June 30,2004 whereas his mood was described as "elevated" on all other clinical notes. The notes provide no elaboration and include the caveat that they represent a "cursory evaluation of current mental status only." There are no clinical notes beyond November 19,2004, even though Mr. Padilla was held at the facility for an additional 13 months. In my opinion, it appears unusual that someone held in solitary confinement for upwards of 3 years would not have undergone a more thorough and regular evaluation of mental state. In addition, the records give no indication that medication was administered to Mr. Padilla, although Mr. Padilla reports that he was administered some type of drug while incarcerated at the Brig. The lack of any mention of medication being administered in the clinical notes is also concerning.

CLINICAL ASSESSMENT

Mr. José Padilla, a 36-year-old married Hispanic man, was interviewed briefly on October 10,2006 and extensively on October 19,2006; both times at the Miami Federal Detention Center Special Housing Unit (SHU). Mr. Padilla is of average height and has a slight build. He was dressed in appropriate jail uniform and was neatly groomed. He had short, spiky, dark hair, and a short, sparse mustache. Mr. Padilla's appearance was unremarkable and his appearance was consistent with his stated age of 36 years. Mr. Padilla was in handcuffs and leg irons throughout our interviews as per SHU procedure.

Although cooperative with the evaluation, Mr. Padilla was hesitant to answer many of the questions posed throughout the interviews. He indicated his wish that he not be asked anything that: (a) had been asked of him before, (b) had to do with his time at the Brig, (c) was not directly relevant to a narrow evaluation of his competency to stand trial (including his social history and background). These limitations made it difficult to complete this evaluation and various other sources of information were consulted in an attempt to create a more complete picture of Mr. Padilla and his current functioning. These sources are indicated throughout this report where appropriate.

Mr. Padilla appeared to have an adequately developed fund of information, as evidenced by his ability to answer elementary general knowledge questions. He was able to

demonstrate appropriate abstract reasoning ability, was able to correctly answer social judgment questions, and was oriented to person, place, time, and situation.

Mr. Padilla's cognitive functioning appeared to be generally intact and he appeared to be of average intelligence. He demonstrated some impairment of immediate, recent, and remote memory skills and appeared to have difficulty with concentration and attention. In addition, he demonstrated instances of perseveration (the tendency to continue or repeat a thought or a response) throughout the interview and testing.

Mr. Padilla presented with flat affect throughout the interview and was evasive, guarded, and defensive. He did not demonstrate any emotion throughout the interview, except perhaps for frustration when he perceived me as asking questions that had already been asked of him and moments of dry, inappropriate laughter when discussing his current predicament. He denied any suicidal or homicidal ideation or intent. He denied any hallucinations, thought insertion or thought broadcasting and did not appear to be responding to internal stimuli. Although difficult to evaluate given the unusual circumstances surrounding this case and the fact that Mr. Padilla was held in isolation and subjected to extended aggressive interrogation by the government, he does not appear to hold any delusional beliefs. He does believe that he is being persecuted by the government and he does demonstrate some paranoia about the government but this does not appear to be delusional in nature; I take this to be factual given the information that I have received from Mr. Padilla's defense team.

Mr. Padilla's thought style and speech productivity appeared to be reduced at the time of the interview. He spoke in a tone that was devoid of any emotion and he often veered off-topic. It was difficult to ascertain whether Mr. Padilla's tangentiality was a deliberate attempt to avoid certain questions or was a result of poor concentration and attention; however, the results of some psychological testing (discussed below in this report) lead me to believe that his tangentiality was the result of poor concentration and attention rather than a deliberate attempt to avoid questions. Mr. Padilla maintained appropriate eye contact and exhibited a suppressed level of motor activity (although it is possible that this was due to the restrictions of the handcuffs and leg irons). At times, when discussing distressing topics, Mr. Padilla would maintain a rigid, hunkered-down, body posture and would rock back and forth. Throughout the interview, Mr. Padilla would look over his shoulder at the correctional officers sitting outside the room.

Mr. Padilla demonstrated poor insight into his psychological functioning and displayed a negative reaction to any perceived suggestion that he may be having psychological difficulties. I had the opportunity to observe interaction between Mr. Padilla and his attorney, Mr. Natale, on October 10, 2006 for an hour and a half. During this time, Mr. Natale and Mr. Padilla engaged in a discussion regarding whether Mr. Padilla would agree to be interviewed by me for the purposes of this evaluation. Mr. Padilla was very concerned about talking to a mental health professional and insisted that he was not "crazy." This same theme arose again when I interviewed Mr. Padilla on October 19, 2006;

he was very concerned that he might be seen as "crazy" and was worried that he might be sent to a hospital. In addition, when I spoke with his mother on November 27 and December 7, 2006, she reiterated that Mr. Padilla was concerned about being considered "crazy" and fearful of going to a psychiatric hospital.

Mr. Padilla was defensive regarding any questions surrounding his mental health and denied experiencing any symptoms of depression or anxiety; however, given Mr. Padilla's presentation, it is my belief that he may be attempting to minimize and deny any psychological difficulties that he may be having. Mr. Padilla would display facial ticks (repetitive, involuntary spasmodic muscle movements) and appeared to become visibly distressed whenever asked about sensitive topics (his palms appeared to become sweaty as evidenced by his wiping them repeatedly, his body would tense up, and he would rock back and forth). Mr. Padilla refused to speak about his time at the Brig but it was clear that this was a significant source of stress for him. Mr. Padilla meets criteria for Post Traumatic Stress Disorder (PTSD) and should be monitored with respect to his mental state given that he also appears to be experiencing some symptoms of depression. In addition, Mr. Padilla is experiencing a significant degree of paranoid ideation; however, this may be justified given the unusual nature of his case.

Psychological Testing

Given my perception of Mr. Padilla as having difficulty with memory, attention, and concentration, I administered four brief neuropsychological tests to Mr. Padilla as a screen of his abilities in these areas. Mr. Padilla appeared to be engaged in the testing and appeared to be giving appropriate effort.

The *Benton Visual Retention Test* (BVRT) is a measure of non-verbal memory (visual memory, visual perception, and visuoconstructive abilities) that requires the examinee to immediately reproduce from memory geometric figures that were displayed for 10 seconds and then withdrawn. On the BVRT Mr. Padilla scored at a level that suggests a strong indication of impairment in cognitive functioning. In addition, Mr. Padilla's responses showed evidence of perseveration (the repetition of responses from earlier items on later items).

The *Rey Auditory Verbal Learning Test* (RAVLT) is a measure of verbal learning and memory that requires the examinee to recall as many words as possible from a list of 15 words that are presented five times in the same order. Mr. Padilla's scores on the RAVLT are consistent with the performance of an individual who has suffered some form of brain injury.

The *Stroop Neuropsychological Screening Test* (Stroop) is a measure of selective attention and cognitive flexibility that requires the examinee to read a list of color-words (such as red, blue, etc) as quickly as possible and then to indicate the color of ink that color-words are printed in as quickly as possible. Mr. Padilla performed extremely poorly on the Stroop; his score was at the 2nd percentile and the associated probability score was .98.

indicating that there is a 98% probability that the score obtained was by a brain-damaged individual. Thus, Mr. Padilla scored at a level consistent with someone who has suffered some form of brain injury.

The *Color Trails Test* (CTT) is a measure of attention, sequencing, mental flexibility, and visual search and motor function that requires the examinee to connect, using pencil lines, 25 encircled numbers randomly arranged on a page in the proper order. Mr. Padilla scored in the Below Average range on the first part of the CTT and in the Mildly Impaired range on the second part. Although these scores are below average and represent performance at the 24th and 10th percentiles, respectively, they cannot be used to conclusively determine that mis represents cognitive impairment, especially given the test-taking circumstances in which Mr. Padilla was handcuffed.

The results from the neuropsychological screening instruments appear to indicate that Mr. Padilla may be suffering from some form of brain injury. He certainly appears to have impairment of concentration and attention, as evidenced by testing as well as his presentation during interview. There is a body of literature that describes the relation between PTSD and cognitive problems such that PTSD is related to impairments in concentration, memory, and learning and the impairments are proportional to the duration and severity of the trauma. Mr. Padilla was held in isolation and subjected to extended periods of interrogation for upwards of 3 years and currently resides in a situation that closely mimics the circumstances of his detention at the Brig (although I assume Mr. Padilla is no longer being tortured, he is being held in solitary confinement with multiple restrictions being placed on his liberty). Given this as well as the results of neuropsychological screening and my observations during interview, it is my recommendation that Mr. Padilla undergo a more comprehensive assessment of his neuropsychological functioning.

FORENSIC ASSESSMENT

The Fitness Interview Test - Revised (FIT-R; Roesch, Zapf, & Eaves, 2006) was used to structure the evaluation of competency to stand trial. The FIT-R was developed for use as an *aide memoire* to guide the evaluation of competency to stand trial and consists of sixteen different areas of inquiry, divided into three sections.

Competency to Stand Trial Title

18, United States Code, Section 4241 (a) states that a defendant may be found incompetent to stand trial if he suffers from a mental disease or defect that renders him "unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense." Mr. Padilla was evaluated with respect to his ability to: (a) understand the nature of the proceedings against him, (b) understand the possible consequences of the proceedings against him, and (c) assist in his defense.

Mr. Padilla was able to indicate the charges that he is currently facing and to give a brief, general overview of the circumstances surrounding his arrest and detention. He was able to acknowledge his role as a defendant and was able to indicate that the charges he is

facing are considered to be serious. He was able to provide the names of his attorneys and to indicate that he had met with them on numerous occasions. He was able to provide information suggesting that he understands the role of die prosecutor, judge, defense attorney, witnesses, and die police. Additionally, he was able to indicate what might be used as evidence in a case and to discuss the relative risks and benefits of various pleas. Mr. Padilla was unsure about specific aspects regarding die jury (i.e., how many people comprise a jury, how jurors are selected); however, given diat die standard for competency involves capacity, rather dian knowledge, Mr. Padilla was educated about diese aspects of die jury and, when queried at a later point in die evaluation, was able to provide die appropriate responses.

With regard to his ability to understand die nature of die proceedings against him, it appears mat Mr. Padilla has a factual and rational understanding of his case. He was able to relate die facts of his arrest and demonstrated an appropriate understanding of die adversarial nature and die object of die proceedings, including an understanding of die arrest process, die nature and severity of die current charges, die role of key participants in die legal system, die possible pleas, and court procedure. He does not appear to hold any irrational or delusional beliefs about die court process or die charges against him, although he does present with a significant amount of (probably-justified) suspicion regarding his case.

Mr. Padilla was able to engage in a discussion regarding the possible penalties and consequences should he be found guilty as charged; however, he did indicate his belief that die government is pursuing him vehemently and that even if he were to be found not guilty he may still be sent back to die Brig. Although this may sound delusional in nature, it is my understanding from information provided by Mr. Padilla's defense counsel tiat Mr. Padilla is correct in his assertion that he may be sent back to die Brig at any time, regardless of die outcome of his criminal trial.

Mr. Padilla was able to demonstrate an understanding and appreciation of die personal importance of die legal proceedings against him as well as the possible consequences. He was able to engage in a discussion of die range and nature of possible penalties.

Mr. Padilla was unable to provide a detailed account of his history over die last several years. He would become visibly distressed when asked about his time in the Brig and was able to provide only limited information as it was too distressing for him to provide detailed information. To be clear, Mr. Padilla refused to answer many questions about mis time period; however, die rationale he gave for not answering was that "it is all in die past" and that he has a "deep belief diat tiere is a purpose for everything." The visible distress diat he experienced when asked questions about sensitive topics appeared to be mainly physiological (in die form of facial ticks, sweaty palms, tense body posture, and rocking back and form) as he maintained little or no emotion throughout die interview.

Mr. Padilla asserted his belief that he is being watched closely and that he may be returned to the Brig at any time. He also reported his belief that he would be killed upon his return to the Brig. Mr. Padilla refused to answer any questions regarding his actions and/or the events surrounding the charges that he currently faces; again, becoming visibly distressed when asked about these topics. He reported that he would rather go back to the Brig than to have to testify in his own defense as he would have to "relive it all over again."

His attorneys have reported that they are unable to obtain relevant and important information from Mr. Padilla and that they often have the experience of "groundhog day" with Mr. Padilla—reliving the same situations and conversations over and over with him. They report the experience of "having to start over" every time they speak with him. These experiences appear to be consistent with the perseveration observed during interview and testing with Mr. Padilla.

Mr. Padilla reports being suspicious of everyone, including his attorneys, and stated that he does not know who he can and cannot trust. He indicated that he was unsure of whether his attorneys might really be federal agents posing as his attorneys in an attempt to continue their interrogations of him. While this sounds delusional in nature, I do not believe this to be the case. It appears as if Mr. Padilla is simply unable to fully trust anyone (save the few exceptions that he noted, which included his mother and his family members) after his experiences in the Brig.

With respect to the ability of Mr. Padilla to communicate with his attorney and to assist in his own defense, it appears that while he has the ability to communicate, in general, he is incapacitated by his PTSD in communicating relevant information important to the preparation of his defense.

SUMMARY AND RECOMMENDATIONS

In summary, Mr. Padilla is a 36-year-old Hispanic male who appears to be in a fragile psychological state and who meets criteria for a diagnosis of Post Traumatic Stress Disorder. In addition, he appears to have some cognitive deficits such as impairment in memory, concentration, and attention that may or may not be related to the PTSD.

Mr. Padilla appears to be able to understand the nature and object of the proceedings as well as the possible consequences of the proceedings; however, his ability to communicate with and assist his attorneys appears to be impaired. Specifically, he appears to be incapacitated by Post Traumatic Stress Disorder, stemming from the circumstances surrounding his time at the Brig, and, as a result of this incapacitation, is unable to assist his attorneys by providing relevant information to his defense.

As a forensic psychologist, I recognize that the determination of a defendant's competency to stand trial is a legal matter for the court to decide. Therefore, the opinions rendered above in regard to this issue are of an advisory nature only. I will be happy to provide the court with any further information, records, or testimony that it may require.

Respectfully submitted,

Patricia A. Zapf, PhD

Licensed Psychologist