

- b. the extent to which the technique used by the witness in forming his opinion relies upon the subjective interpretation of the expert;
- c. whether the theory has been subjected to peer review and/or published;
- d. the technique's potential rate of error;
- e. whether the underlying theory or technique has been generally accepted as valid by the relevant scientific community; and
- f. the non judicial uses which have been made of the theory or technique.

See Robinson, at 923 S.W.2d at 557.

Nenno v. State requires the following test for relevance of the testimony:

- a. whether the field of expertise is a legitimate one;
- b. whether the subject matter of the expert's testimony is within the scope of that field, and;
- c. whether the expert's testimony properly relies upon and/or utilizes the principles involved in that field.

See Nenno v. State, at 590 S.W.2d at 560.

SCHNICK requests that the Court rule on this matter prior to trial in order that the parties have reasonable time to develop litigation strategy and trial tactics before time of the transfer hearing.

4. **WHEREFORE, PREMISES CONSIDERED**, Ard Schnick, Respondent prays that this Court **SUSTAIN** his Objection to Introduction of Testimony and Evidence from Leonard Cucolo, Harry Shorts, MS, LPC, SK Harris , Mr. McKenna, Multidisciplinary Dorm Treatment Team (MDT) reviews (i.e., Case Managers, Program Specialists, Teachers, Juvenile Corrections Officers, and Psychologist), and any employee of the Texas Juvenile Justice Department and any expert's report, whether psychological, psychiatric or otherwise, to be offered at the time of the transfer hearing, whether live, by deposition, or in document form prior to the transfer hearing.

Ard Schnick further prays for all relief, general and special, at law and in equity, to which he is rightfully entitled.

Respectfully submitted,

BRIAN J. FISCHER
6200 Gulf Freeway, Suite 202
Houston, Texas 77023
(713) 520-7500
FAX# (713) 644-8080
TBA#07040750
Attorney for Respondent, Ard Schnick

CERTIFICATE OF SERVICE

I certify that a true copy of the above was served on Md. Hans Nielsen in accordance with the Texas Rules of Civil Procedure on February 14, 2015.

BRIAN J. FISCHER

TDCJ# 000000000

IN THE MATTER OF:

IN THE JUVENILE COURT OF

,
,
,
,
,

ARD SCHNICK

AMERICAS COUNTY, TEXAS

**ORDER ON OBJECTION TO INTRODUCTION OF
EVIDENCE AS PROVIDED UNDER DAUBERT, ROBINSON AND NENNO**

On the _____ day of _____, 2015, came on to be heard Ard Schnick's Objections to Introduction of Expert Testimony as provided by Daubert v. Merrell Dow Pharmaceuticals, Inc., 113 S.Ct. 2786 (1993), E.I. du Pont de Nemours & Co. v. Robinson, 923 S.W.2d 549 (Tex. 1995) and Nenno V. State 970 S.W 540 (Tex. Crim. App. 1998).

The Court is of the opinion that the Objection should in all things be **SUSTAINED**.

IT IS THEREFORE ORDERED that the Petitioner, State of Texas may not introduce testimony from the following witnesses at the transfer hearing:

1. Leonard Cucolo;
2. Harry Shorts, MS, LPC;
3. SK Harris;
4. Mr. McKenna;
5. Multidisciplinary Dorm Treatment Team (MDT) reviews (i.e., Case Managers, Program Specialists, Teachers, Juvenile Corrections Officers, and Psychologist);
6. Any employee of the Texas Juvenile Justice Department;
7. Any expert=s report, whether psychological, psychiatric or otherwise, to be offered at the time of the transfer hearing, whether live, by deposition, or in document form.

SIGNED _____, 2015.

JUDGE PRESIDING

TDCJ# 000000000

IN THE MATTER OF: ' IN THE JUVENILE COURT OF
'
'
'
'
ARD SCHNICK ' AMERICAS COUNTY, TEXAS

RESPONDENT'S MOTION TO TRANSFER VENUE

ARD SCHNICK, Respondent, files this Motion to Transfer Venue and in support shows:

1. **Grounds for Transfer of Venue.**

This case is currently set for a Transfer Hearing. Respondent cannot get a fair hearing on the issue of transfer in Tarrant County, Texas because of adverse publicity surrounding the underlying trial and disposition resulting in Respondent’s commitment to TDCJ. The underlying offense and resulting trial and disposition hearing was a “high publicity” case covered by all media outlets in Tarrant County and Dallas County.

2. **Prayer.**

Respondent prays that the Court grant this Motion to Transfer Venue to avoid undue pressure on the Court as a result of the “high publicity” nature of the hearing and for general relief.

Respectfully submitted,

BRIAN J. FISCHER
ATTORNEY FOR RESPONDENT
6200 Gulf Freeway, Suite 202
Houston, Texas 77023
(713) 520-7500
FAX#(713) 644-8080
TBA# 07040750

CERTIFICATE OF SERVICE

I, **BRIAN J. FISCHER**, hereby certify that a true and correct copy of the foregoing Respondent's Motion to Transfer Venue was served on the Hans Nielsen on February 14, 2015.

BRIAN J. FISCHER

**IN THE MATTER OF
ARD SCHNICK
TJJJ# 0000000**

Ard Schnick was committed to the Texas Juvenile Justice Department, formerly known as the Texas Youth Commission, from Americas County on April 15, 2010 following his adjudication for the offense of aggravated robbery. He received a determinate sentence of 20 years. Because the offense of was a felony of the first degree, Ard was assessed a Minimum Period of Confinement (MPC) of three years.

Ard was admitted to the McLennan Orientation and Assessment Unit on April 16, 2010. He was placed at Giddings State School (GSS) on May 18, 2010. Ard has been in a high restriction facility for 23 months. Senate Bill 103 states that youth will receive credit for days spent in detention toward their minimum period of confinement (MPC). Ard received credit for 95 days in detention prior to being committed to TJJD, making his MPC January 10, 2013. However, Ard will be 19 years of age on April 29, 2012 and will not be able to complete his MPC and requires a transfer/release hearing for the purpose of release to adult parole or transfer to prison.

DESCRIPTION OF COMMITTING OFFENSE

According to records, "On 1/10/10 Ard, age 16, and 2 co-actors entered a Wag-a-Bag store with Ard and 1 of the co-actors pulling a handgun on the clerk, and demanding money and cigarettes. The store reported \$111 in cash and 2 packs of cigarettes stolen."

PRIOR DELINQUENT HISTORY

Ard's history of involvement with the juvenile authorities includes the following referrals and dispositions:

DATE	OFFENSE	DISPOSITION
October 4, 2005	Theft	Refused and Dismissed
June 20, 2007	Robbery	Adjudicated to Probation
September 25, 2007	Resisting Arrest	Refused and Dismissed
February 27, 2009	Felony Probation Modification	Adjudicated to Probation
February 27, 2009	Felony Probation Modification	Adjudicated to Probation
February 27, 2009	Felony Probation Modification	Adjudicated to Probation
February 27, 2009	Felony Probation Modification	Adjudicated to Probation
February 27, 2009	Felony Probation Modification	Adjudicated to Probation
December 14, 2009	Theft	Refused and Dismissed

PSYCHOLOGICAL EVALUATION

A psychological evaluation of Ard Schnick was conducted on November 16, 2011 and January 10, 2012 by Harry Shorts MS, LPC, psychologist at the Giddings State School. This evaluation consisted of a clinical interview, a Mental Status Exam, the Structure

Assessment of Violence Risk in Youth (SAVRY), consultation with treatment providers and educational staff, the Minnesota Multiphasic Personality Inventory-A and a review of the case file.

In his psychological evaluation of Ard, Mr. Shorts noted the following: “On the day of his committing offense, 1/10/2010 Ard stated he had been drinking alcohol and using cocaine. He and 2 peers were going to rob a store to get money for drugs. He and his peers approached a store, but it was closed. They then saw a Wag-a-bag that was open. They waited for the customers inside the store to leave before entering. He said that he and his friend had a couple of BB guns that looked just like real guns. He and a peer went to the counter, pointed their guns at the clerk, and demanded all the money. Ard stated that he then demanded cigarettes. They left the store and ran to a field behind the store. He said that he was high and felt ‘untouchable’. He reported feeling anxious and happy because it was his first armed robbery. He was soon caught at his apartment complex and adjudicated to TYC.”

ACADEMIC ASSESSMENT

In the academic area Ard has made excellent progress. He earned his GED in July 2011 and earned 22 credits toward his high school diploma. He had been employed on-campus since March 2011 but due to recent behavior problems has lost his employment. Ard has received certifications from NCCER - Core Curriculum and as a Computer Service Specialist.

BEHAVIOR SUMMARY

Ard has a total of 17 documented incidents of misbehavior resulting in 13 referrals to the Security Unit and six Security admissions. Of these incidents, he had 8 incidents of disruption of program and 1 incident of assault of staff. The assault occurred on January 7, 2012 and resulted in his only Level II Hearing and his privileges being suspended for 30 days. The incident is particularly disturbing as he was participating in the Aggression Replacement Training group and in the Capital & Serious Violent Offender Orientation Program when it occurred. According to the incident report: “Upon arriving back to the dorm from the cafe students where took to check in for expectation and how major cleanup was going to be done for the morning. After grouping up to step to the back all students was asked to sit in their chair outside their room doors until Mrs. Johnson was ready to do inventory. When staff was checking rooms coming back down the hallway I noticed Ard in his room digging in his grey t-shirt. When I SK Harris checked him to give me the shirt Ard refused saying fuck no then he tried to run out of his room #1 camera #57 trying to push staff out the way being physical at that time. Ard was asked to stop and he stated hell no that when he started speaking Spanish to his peers then that is when CD ran over to assist Ard saying give it to me. That is when Ard threw the shirt to CD. Being combative with staff struggling putting up force. That is when CD took off running to the back restroom stall trying to flush the contraband. I SK Harris went back behind the restroom stall then Ard came back and started struggling with staff. That is when I hit my

right arm on the wall still trying to get the t-shirt at that time Roger started telling his peer don't worry I swallowed it. Youth PS #0000000 was physically restrained by Mr. McKenna after he attempted to assist another youth get rid of some contraband that his other peer CD tried to pass him PS began to grab a t-shirt from Ms. Adams and was lowered to the floor until I could come and assist by positioning his arms then placing a cuff onto youth. PS was then escorted from the dorm with no further issues or complaints.” His most recent placement in Security occurred just a month ago on February 24, 2012 for disruption of the campus program.

TREATMENT SUMMARY

Rehabilitative treatment progress is assessed via monthly Multidisciplinary Dorm Treatment Team (MDT) reviews (i.e., Case Managers, Program Specialists, Teachers, Juvenile Corrections Officers, and Psychologist) called stage assessments. A stage assessment evaluates Ard's progress in reducing risk factors for recidivism and increasing protective factors related to positive community reintegration. Risk and protective factors are routinely reassessed and included as part of the individual case plan. Treatment rankings are based on a scale of “1” to “4” with a final stage of “Youth Empowerment Status” in which a youth is actively preparing to be released to the community. The final Stage is Youth Empowerment Status (YES). This status ensures that youth continue to work in the program to maintain their gains, continue to reduce risk factors and increase protective factors, continue their skills development, update their community reintegration plan and circumstances change, and contribute positively to their living environment. The MDT assesses if youth are “ACTIVE” or “INACTIVE” on Youth Empowerment Status to ensure youth are continuing to maintain behavior and completing treatment tasks for that month. Ard is currently on Stage YES Inactive.

ARD has participated in the CoNEXTions Program and specialized treatment. Ard completed the Alcohol & Other Drugs Treatment Program (AOD) in February 2011 and the Aggression Replacement Training (ART) group in January 2012. He also completed the Capital & Serious Violent Offender Orientation Program (C&SVOTP) and was admitted into the C&SVOT Group in February 2012. A review of his MDT history shows that he earned Stage 3 in August 2010, Stage 4 in December 2010, and Stage YES in February 2011. Since that time he has been on Inactive status from March 2011 through April 2011 and June 2011 through September 2011. He was once again placed on Active status in October 2011 and remained on Active status until January 2012 when he was placed on Inactive status again and remains there to date.

Ard is currently being recommended for release to TDCJ-PD by staff at the Giddings facility and it is believed his risk factors can be managed in the community. It should be noted Ard Schnick's release packet was submitted from Giddings State School to TJJD's Executive Administration in January 2012 for review and approval for release to Texas Department of Criminal Justice-Parole Division. Ard was involved in staff assault and possession of contraband (which was never recovered) and his recent placement for

disruption of program is a concern given that he had already completed the AOD and was in ART program when this incident occurred. These incidents have demonstrated problems with authority and question true internal change. It is particularly disconcerting that these incidents have occurred while his packet was being processed for his returned to court. Given that he continues to engage in behaviors similar to his pre-TJJD offending patterns in a highly structured, closely supervised secure juvenile facility, placement in a less secure environment would appear to place the welfare of the community at risk. As a result TJJD's Executive Administration support a recommendation that he be referred to juvenile court for a recommendation of transferred to the Institutional Division of the Texas Department of Criminal Justice.

RECOMMENDATION

Ard Schnick participated in the offense of the aggravated robbery. He has completed approximately 23 months of his 20-year sentence at this time. His recent behavior prior to his court hearing is cause for concern that he might relapse in his other offending patterns. Thus, it is the recommendation of the Texas Juvenile Justice Department that Ard Schnick be transferred to the Institutional Division of the Texas Department of Criminal Justice prior to the completion of his three-year minimum period of confinement Institutional Division.

DISPOSITION OPTIONS

Should it be the decision of the Court to grant the release to TDCJ-PD, Ard would be initially returned to the Giddings Facility. In accordance with the Texas Human Resource Code, Sec.61.0841, the Texas Juvenile Justice Department provided the TDCJ-PD Records Office with a copy of all pertinent information about Ard including all information located in the masterfile, medical file and academic file. This information, along with the explicit recommendations of the TJJD, will be used by the Texas Board of Pardons and Paroles to assign the most appropriate parole conditions.

TJJD will recommend to The Texas Department Criminal Justice-Parole Division and the Texas Board of Pardons and Paroles that, in addition to general parole rules, Ard should be assigned the following special conditions:

- "S"--Releasee shall attend substance abuse programming and submit to random drug screens;
- "O" – Anger control training/ counseling;
- "O"--Releasee shall maintain stable employment; and
- "SISP" – (Super Intensive Supervision Program) -- SISP is the most restrictive parole program that TDCJ-PD has. An electronic monitor will be attached to the student's ankle prior to his release from the institution. This monitor tracks his whereabouts like a global positioning system would. Each week, the parole officer and student will make up a schedule of where he is allowed to go. Basically, this is work, school, parole officer and counseling--no extra curricular activities. He must go from home to each location by the most direct route with

no stops in between. This requires a great deal of planning and forethought on the part of the offender. Students placed on SISP are usually on this level of supervision for a minimum of one year.

Ard's release plans, should he be released, is to reside of his uncle, James Taylor. He would seek to gain immediate entry into the Texas Workforce Apprentice Program in order for him with employment assistance.

Ard will remain under the supervision of TDCJ until the completion of his 20-year determinate sentence. Currently, this discharge date is January 10, 2030. Should Ard violate the conditions of his TDCJ Parole resulting in parole revocation at any time during the time remaining on his sentence, he would be remanded to TDCJ-ID and would forfeit all accumulated parole time.

Should it be the decision of the Court to transfer Ard Schnick to the Texas Department of Criminal Justice-Correctional Institutions Division prior to the completion of his three year minimum period of confinement, he will be returned to the Giddings State School. He would then be transferred to the Texas Department of Criminal Justice-Correctional Institutions Division would be effected upon the receipt of the Court's written Order of Transfer and the completion of necessary transportation arrangements. This would be accomplished in approximately one week after the hearing.

Leonard Cucolo, Court Liaison

Date

IN THE MATTER OF: ' IN THE JUVENILE COURT OF
'
'
'
'
ARD SCHNICK ' AMERICAS COUNTY, TEXAS

RESPONDENT'S MOTION TO CHANGE FACTS

ARD SCHNICK, Respondent, files this Motion to Change Facts and in support shows:

1. **Grounds for Change of Facts.**

This case is currently set for a Transfer Hearing. The facts that currently exist regarding the report of TJJD states that transfer of Respondent to TJJD-ID is recommended by TJJD.

a. The facts as they exist are highly prejudicial to Respondent and will likely result it Respondent being transferred by the Court to TDCJ-ID.

b. Respondent moves the Court to grant his Motion to Change Facts as follows:

1. Respondent did not commit any security violations while at TJJD. In the alternative, and not waiving any of the foregoing, if Respondent did commit any security violations while at TJJD, they were minimal and not to the extent as set forth in the TJJD Report. In the alternative, and not waiving any of the foregoing, Respondent is not the resident evaluated by Harry Shorts, MA, LPC. In the alternative, and not waiving any of the foregoing, if Respondent was the resident evaluated by Harry Shorts, MA, LPC, the evaluation should state that Respondent is not likely to recommit any offenses. In the alternative, and not waiving any of the foregoing, the recommendation of TJJD for transfer of Respondent to TDCJ-ID should state tha Respondent should be granted parole.

2. **Prayer.**

Respondent prays that the Court grant this Motion to Change Facts and for general relief.

Respectfully submitted,

BRIAN J. FISCHER
ATTORNEY FOR RESPONDENT
6200 Gulf Freeway, Suite 202
Houston, Texas 77023
(713) 520-7500
FAX#(713) 644-8080
TBA# 07040750

CERTIFICATE OF SERVICE

I, **BRIAN J. FISCHER**, hereby certify that a true and correct copy of the foregoing Respondent=s Motion to Change Facts was served on the Hans Nielsen on February 14, 2015.

BRIAN J. FISCHER

IN THE MATTER OF:

IN THE JUVENILE COURT OF

,
,
,
,
,

ARD SCHNICK

AMERICAS COUNTY, TEXAS

RESPONSE TO RESPONDENT, ARD SCHNICK’S NOTICE OF OBJECTION TO INTRODUCTION OF TESTIMONY AS PROVIDED UNDER DAUBERT, ROBINSON AND NENNO AND REQUEST FOR "GATE KEEPER" HEARING

1. The State of Texas, by its Assistant District Attorney, files this Response to Respondent, Ard Schnick’s Notice of Objection to Introduction of Testimony as Provided Under Daubert, Robinson and Nenno and Request for “Gate Keeper” Hearing and shows the Court as follows. This case is presently set for a transfer hearing on February 17, 2015.

2. Pursuant to Texas Family Code Section 54.11(d), Hearsay is admissible at the transfer hearing. Also see *In the Matter of T.K.C., Jr.*, 877 S.W.2d 43 (Tex. App-Beaumont 1994, no Writ). *C.D.R. v. State*, 827 S.W.2d 589 (Tex.App.-Houston (1st Dist) 1992, no writ) and *In the Matter of J.M.O.*, 980 S.W.2d 811 (Tex. App.-Dan Antonio 1998, pet denied).

3. **WHEREFORE, PREMISES CONSIDERED**, The State of Texas requests that the Court deny Respondent, Ard Schnick’s Notice of Objection to Introduction of Testimony as Provided Under Daubert, Robinson and Nenno and Request for “Gate Keeper” Hearing.

Respectfully submitted,

HANS NEILSEN
Assistant District Attorney

CERTIFICATE OF SERVICE

I certify that a true copy of the above was served on Mr. Brian J. Fischer in accordance with the Texas Rules of Civil Procedure on February 14, 2015.

BRIAN J. FISCHER

