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Trial for Loogootee teen set for May 31

Judge denies motions to reconsider confession, previous ruling on fitness

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VANDALIA — A judge reaffirmed a Loogootee teen accused of killing two neighbors is mentally fit to stand trial when he denied a motion to reconsider a previous fitness ruling in Fayette County Circuit Court Thursday.

The judge also refused to reconsider a ruling allowing statements, including a videotaped confession, made by Clifford Baker, who was 15 at the time, in the hours following the fatal shootings of John Mahon and Debra Tish.

Baker's attorney, Monroe McWard, made the appeal to suppress the statements after a recent psychologist's examination found Baker unfit to stand trial. McWard said the psychologist, who was not asked to give an opinion, believed the now 16-year-old could not have understood his Miranda Rights, citing his "borderline" intelligence level as a factor.

"It's something we did not anticipate," McWard said of the opinion.

Fayette County State's Attorney Stephen Friedel pointed out the information available to the psychologist was not new. He added the psychologist had little knowledge of Miranda Rights, having only read three articles on the subject.

"Every time there's a denial, there's one more witness and one more expert," he said.

On the issue of fitness to stand trial, McWard contended mental fitness is always an issue throughout court proceedings, and he felt obligated to share the psychologist's report with the court.

While Friedel conceded that may be true, he reiterated the lack of new information.

"She brings nothing new to the table," he said.

Friedel also argued the defense had the opportunity to have a second opinion after an earlier examination found Baker mentally fit.

Also Thursday, Friedel filed a couple of motions barring the defense from raising the issue of insanity once the trial begins or arguing Baker's alleged acts the morning of

Aug. 4 were reckless. Although another Baker attorney, Mark Wykoff, said the legal team has no intention of claiming insanity, but he added it is beyond his control what happens between now and the trial start date of May 31.

"I'm not a psychic," he said, referring to new circumstances that could arise.

Friedel argued insanity can only be tied to the time of the offense. Judge Michael McHaney agreed, saying any new issues concerning Baker's mental state would be considered under a fitness to stand trial, not insanity.

McHaney granted the motion.

Another motion asked the court to prevent the defense from presenting evidence showing Baker's state of mind was diminished or impaired at the time of the murders, other than through involuntary intoxication.

The motion also prevents the defense from claiming Baker acted recklessly at the time of the murders.

Citing case law, Friedel said recklessness does not exist where the result of the defendant's conduct is a certainty.

"Shooting individuals multiple times in the head at point-blank range with an eight millimeter bolt-action rifle," Friedel said, proved Baker acted with a measure of substantial certainty.

"No rational person can conclude those actions would not result in the deaths," he said.

Wykoff argued the motion was "premature and speculative," and should be saved for the trial.

"This sounds like a jury instruction argument," he said.

McHaney said he would take the motion under advisement.

More motions are scheduled to be heard next week.

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