



NEWS Local News
Crime

Suspect in Dallas officer's slaying incompetent, his lawyers say

They say suspect in officer's slaying has low IQ; judge orders exam

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By JENNIFER EMILY / The Dallas Morning News

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Attorneys for a man accused of killing a Dallas police officer questioned Monday whether he is competent to stand trial.

Juan Lizcano's attorneys say the 30-year-old man is mentally retarded and has scored low on IQ tests. They say he should not face trial next month in the death of Officer Brian Jackson in November 2005 because he's too slow to understand what is happening in court or to assist with his defense.



Juan Lizcano

A judge will decide whether a jury should determine if Mr. Lizcano is competent to stand trial. State District Judge Andy Chatham said at a hearing Monday that he would appoint a doctor to evaluate him.

If the trial proceeds, jurors must determine that Mr. Lizcano understands what is happening in court and can assist with his defense.

One of Mr. Lizcano's attorneys, Brook Busbee, said his client has scored 48, 60 and 62 on IQ tests. All are below the generally accepted 70 threshold for mental retardation.

Although someone who is mentally retarded can be competent to face trial, Ms. Busbee said she believes Mr. Lizcano is not competent.

"He doesn't really get what's going on," she said. "He really cannot assist his attorneys."

Ms. Busbee said after the hearing that if a jury finds Mr. Lizcano incompetent, she hopes the staff of a state hospital would be able to teach him so that he can understand his case and be found competent later. Doctors could then determine that he can face trial.

Another attorney for Mr. Lizcano, Juan Sanchez, told Judge Chatham during the hearing that he began worrying

about Mr. Lizcano's competency during jury selection for his death penalty trial, which was to begin this week.

Mr. Sanchez said that attorneys tried to consult Mr. Lizcano to discuss which jurors they should strike and that Mr. Lizcano did not seem to understand.

Pat Kirlin, the lead prosecutor in the case, declined to comment after the hearing.

Death penalty off table

In 2002, the U.S. Supreme Court ruled that the mentally retarded could not be executed. But they can be tried for capital crimes and sentenced to life in prison if they understand the charges they face and can contribute to their defense.

Those who are found incompetent can't stand trial until they are restored to competency.

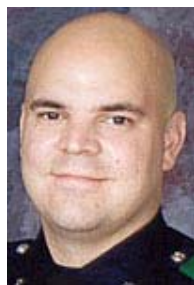
Neither the Supreme Court, the Texas Court of Criminal Appeals nor the state Legislature has laid out a definitive method to determine whether defendants are mentally retarded. But in several cases, defendants with IQs below 70 have been spared from the death penalty.

Jordan Steiker, a University of Texas at Austin law professor, said that finding a defendant incompetent based on mental retardation is rare in Texas because of "the very, very low bar" for competency.

He said it's unlikely that people whose mental retardation causes them to be found not competent would ever be restored to competency. It is not a condition that can be fixed by medication or therapy.

"If he is incapable presently ... it sounds very unlikely that anything could be done to render him competent," Mr. Steiker said.

Mr. Steiker said the court has to resolve both the issues of mental retardation and competency. Although they can be intertwined in determining competency, mental retardation is also a separate issue.



Brian Jackson

Maurie Levin, another UT law professor, said there is no standard method in the criminal courts to evaluate mental retardation.

She said that when determining whether defendants are mentally retarded, much of the focus is on their mental abilities before age 18. She said it is important to have a lengthy discussion with relatives to find out about their education. Important factors in determining retardation include knowing whether people learned to tie their shoes or learned to read much later than normal.

Officer killed

Mr. Lizcano is accused of killing Officer Jackson when the officer responded to a domestic disturbance call from Mr. Lizcano's former girlfriend. She told police that he had repeatedly threatened her at her Old East Dallas home.

Officer Jackson, 28, was shot as he and other officers searched for Mr. Lizcano outside the woman's home. The fatal shot entered through Officer Jackson's underarm, an area not protected by his bulletproof vest.

Mr. Lizcano came to the U.S. from Mexico illegally about five years ago. He was arrested on a misdemeanor terroristic threat charge five weeks before the shooting. Authorities say he threatened his girlfriend with a knife.

Days later, he was arrested on a charge of driving while intoxicated.

The federal Immigration and Customs Enforcement agency has said they did not flag Mr. Lizcano for deportation because the charges were not serious enough to come to the attention of agents at the jail.

THE LIZCANO CASE

- **What happened:**

Defense attorneys are questioning whether Juan Lizcano, accused of killing a Dallas police officer, is competent to stand trial. They say he is retarded.

- **What's next:**

A doctor appointed by the court will evaluate Mr. Lizcano and report to a judge, who will decide whether a jury must determine whether Mr. Lizcano is competent.