

# Baker sentencing is Friday

## Defense team files post-trial motion

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The Loogootee teen who was convicted last month of murdering a neighbor couple will be sentenced in Fayette County Circuit Court on Friday. Before the sentencing proceedings, however, attorneys for Clifford W. Baker will present arguments for setting aside the guilty verdicts or granting the 16-year-old a new trial. Baker was found guilty on Aug. 23 of two counts of first-degree murder and three counts of home invasion. He was charged with fatally shooting John Michael Mahon, 60, and Debra J. Tish, 53, in their Loogootee home as they slept in the early morning hours of Aug. 4, 2010. The home invasion counts charged Baker with entering the Mahon and Tish residence, and also the home of Steve and Randy Krajefska. Baker was charged with striking Randy Krajefska in the face while brandishing a knife, causing a cut above one of her eyes. A Fayette County jury deliberated a little more than 2½ hours before returning the guilty verdicts, with that deliberation period including a lunch hour. Baker is currently being housed at the Madison County Juvenile Detention Center, where he has been held on \$2-million bond since his arrest only hours after the murders. Murder is punishable by up to 60 years in prison or natural life in prison. The trio of attorneys who represented Baker at trial filed its post-trial motion on Thursday of last week. In the motion, attorneys Monroe McWard, Mark Wykoff Sr. and Mark Havera state what they perceive to be errors prior to and during the jury trial. Baker's attorneys allege that the teen should have been tried as a juvenile "due to his age and the nature of the charge." They also claim that the court erred in not excluding Judge Michael McHaney as the trial judge. They claim that at the time of their exclusion motion, in October 2010, McHaney "was not qualified to serve as a judge of a felony trial, as he was not yet a circuit judge." They also argue that the court incorrectly allowed the testing of Baker's DNA, and that it also erred in denying a motion for the appointment of an attorney after an attorney had been privately retained. Baker's attorneys also claim that denial of their motion for the appointment of a forensic pharmacologist in January was improper, which delayed their preparation for trial and prevented a timely ruling on an expert's opinions and statistics. They also allege that the court improperly failed to require the prosecution, including law enforcement, to preserve blood and/or urine samples taken from Baker on the day of the murders. On that point, the defense attorneys claim they could have tested the samples to detect substances, including the anti-depressant Cymbalta, "which would have supported the defendant's theory of defense. They claim that the state knew about Baker's use of Cymbalta shortly after being notified of the murders, "took no steps to either test for the quantity of milligrams of Cymbalta or other controlled substances: and was allowed to argue that Baker "overdosed" on

Cymbalta. The attorneys argue that an Illinois State Police investigator could have prevented the samples from being destroyed, and that the defense was not allowed to make reference “to the state destroying the blood and/or urine samples.” Baker’s attorneys also claim that McHaney erred in denying their motion asking to have the trial moved to another county. “Many of the prospective jurors were aware of these crimes, and there was no way they could live in the Fayette County community and return any verdict except one of guilty as to all county,” the motion states. On that point, the attorneys also claim that it is a “well-accepted fact that many of the members of the community are connected or have connections to the Illinois Department of Corrections. In this environment, there was no way the defendant could have received a fair trial in Fayette County. “The jurors went as far as to ask for the courtroom to be cleared and escorted from the courthouse when they sought to return their verdict. “This clearly shows that they could only return one verdict in this community and still reside in this community,” the motion states. Baker’s attorneys also claim that the court erred in not allowing for the selection of jurors individually in the jury room and in denying a defense motion “stating that the court would need for the jurors to submit to a lie detector test to achieve the truthful answers from the jurors.” They also argue that their motion to suppress statements that Baker made on the morning of the murders was incorrectly denied, because Baker, “had not given a voluntary consent to give his statements. “Due to circumstances of his arrest, his sobriety and/or his mental condition, (Baker) could not have voluntarily given a statement nor waived his Miranda Rights. “He was in no condition to understand what his Miranda Rights were and received no help from the (state police) ‘juvenile’ officer through any of these interrogations,” the motion states. They allege that Baker’s father was prevented from being with his son during the interrogation, “thereby depriving the defendant from having his rights more fully explained to him by a family member or in the presence of a family member.” Baker’s attorneys allege that Fayette County State’s Attorney Stephen Friedel was allowed in his closing arguments theories on why Baker would have committed the murders, “when there was never a scintilla of evidence introduced in trial that the defendant was motivated to kill Mike Mahon and Deb tish.” They also contend that the court improperly barred an expert witness from giving “statistics and opinions of suicidal-homicidal-violent behavior in people who took Cymbalta.” The post-trial motion also includes claims that McHaney should have removed a juror who was formerly an employee of the Illinois Department of Corrections, “and who ultimately was the foreman of the jury.” The defense attorneys further allege that McHaney erred in not allowing the defense team to present advertisements for Cymbalta, and for not allowing their request to have the murder and home invasion counts severed.