

IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA

23-03157-CF

Division K

UCN 522023CF003157000APC

STATE OF FLORIDA

vs.

THOMAS ISAIAH MOSLEY

PID: 3322179

ORDER DIRECTING EXAMINATION FOR COMPETENCE TO PROCEED

THIS CAUSE COMING on to be heard in the above-styled case upon the:

- Court's own motion
- Motion of the Attorney for the Defendant
- Motion of the Pro Se Defendant
- Motion of the State

to determine the mental condition of the Defendant regarding competence to proceed. The Court being fully advised, it is hereby

ORDERED:

1. That said motion is granted.

PART I. APPOINTMENT OF EXPERT FOR EXAMINATION OF DEFENDANT; SCHEDULING

2. The Court appoints DR. PRECIOUS OGU, PH.D., an expert under contract with the Court, to examine the Defendant for purposes of competence to proceed.

As of this date, the Defendant is:

Not in Custody. The expert must contact defense counsel for scheduling and must provide defense counsel and the State Attorney advance notice of any scheduled examination of the Defendant.

In the Pinellas County Jail. The expert must notify defense counsel when he or she is available to coordinate examination of the Defendant and must provide defense counsel and the State Attorney advance notice of any scheduled examination of the Defendant.

3. That the Sheriff of Pinellas County shall permit the above-named expert to enter the Pinellas County Jail as necessary to conduct the foregoing evaluation of the Defendant upon presentment of this Order.

4. Attorneys for the State and Defendant may be present for the expert's examination.

5. That a copy of the Order serves as authorization for the expert to inspect and copy any discoverable information relating to the Defendant maintained by the Clerk of the Circuit Court, State Attorney's Office, any hospital, doctor, or any health care provider, therapist, psychiatrist, psychologist, counselor, or any mental health provider, or other social or human services agency without the necessity of written consent by Defendant.

6. This cause is scheduled for a competency hearing to proceed at 8:30 am on the 14TH day of June, 2024.

PART II. EXPERT'S WRITTEN REPORT

ALL REPORTS

7. That the expert must submit a written report on the Defendant's mental condition to this Court, and provide copies to defense counsel and the State Attorney, on or before the 3RD day of June, 2024.

All information contained in the motion to determine competence of the Defendant or in any report submitted under this order that relates solely to the issues of competence to proceed, treatment, or commitment of the Defendant, shall be used only in determining the mental competence to proceed, treatment, or commitment of the Defendant. (Fla. R. Crim. P. 3.211(d)).

8. That all written reports submitted by an expert must:

- (a) identify the specific matters referred for evaluation;
- (b) describe the evaluative procedures, techniques, and tests used in the examination and purpose or purposes for each;
- (c) state the expert's clinical observations, findings, and opinions on each issue referred for evaluation by the Court; and indicate specifically those issues, if any, on which the expert could not give an opinion; and
- (d) identify the sources of information used by the expert and a presentation of the factual basis for the expert's clinical findings and opinions. (Fla. R. Crim. P. 3.211(c)).

REPORTS ON COMPETENCE TO PROCEED: MENTAL ILLNESS

The expert must first determine whether the Defendant has a mental illness. (§ 916.12(2), Fla. Stat). If the expert determines that the Defendant has a mental illness, the expert must then report on the Defendant's competence to proceed. (§ 916.12, Fla. Stat.; Fla. R. Crim. P. 3.211(a)). A defendant is incompetent to proceed if the Defendant does not have sufficient present ability to consult with counsel with a reasonable degree of rational understanding, or if the Defendant has no rational, as well as factual, understanding of proceedings against him or her. (§ 916.12(1), Fla. Stat.).

In considering the issue of competence to proceed, the examining expert must consider and include in his or her report the Defendant's capacity to:

- (a) Appreciate the charges or allegations against the Defendant;
- (b) Appreciate the range and nature of possible penalties, if applicable, that may be imposed in the proceedings against the Defendant;
- (c) Understand the adversary nature of the legal process;
- (d) Disclose to counsel facts pertinent to the proceedings at issue;
- (e) Manifest appropriate courtroom behavior; and

(f) Testify relevantly. (§ 916.12(3), Fla. Stat.).

The expert must also consider and include in his or her report any other factor deemed relevant by the expert. (§ 916.12(3), Fla. Stat.)

➤ **Should the expert determine that the Defendant is incompetent to proceed, the expert must also:**

1. Report on any recommended treatment for the Defendant to attain competence to proceed. (§ 916.12(4) Fla. Stat.; Fla. R. Crim. P. 3.211(b)).

In considering the issues relating to treatment, the expert must specifically report on:

- (a) The mental illness causing the incompetence;
- (b) The treatment or treatments appropriate for the mental illness of the Defendant and an explanation of each of the possible treatment alternatives in order of choices;
- (c) The availability of acceptable treatment and, if treatment is available in the community, the expert must so state in the report; and
- (d) The likelihood of the Defendant attaining competence under the recommended treatment, an assessment of the probable duration of the treatment required to restore competence, and the probability that the Defendant will attain competence to proceed in the foreseeable future. (§ 916.12(4)), Fla. Stat.)

2. Determine whether the Defendant meets the criteria for involuntary commitment. (§ 916.13, Fla. Stat.; Fla. R. Crim. P. 3.212(c)).

In evaluating the Defendant to determine whether the Defendant may be involuntarily committed, the appointed expert must determine and report on whether:

- (a) The Defendant has a mental illness and because of the mental illness:
 - i. The Defendant is manifestly incapable of surviving alone or with the help or willing and responsible family or friends, including available alternative services, and without treatment, the Defendant is likely to suffer from neglect or refuse to care for herself or himself and such neglect or refusal poses a real and present threat of substantial harm to the Defendant's well-being; or
 - ii. There is a substantial likelihood that in the near future the Defendant will inflict serious bodily harm on herself or himself or another person, as evidenced by recent behavior causing, attempting, or threatening such harm;
- (b) All available, less restrictive treatment alternatives, including treatment in community residential facilities or community inpatient or outpatient settings, which would offer an opportunity for improvement of the Defendant's condition have been judged to be inappropriate; and
- (c) There is a substantial probability that the mental illness causing the Defendant's incompetence will respond to treatment and the Defendant will regain competency to proceed in the reasonably foreseeable future. (§ 916.13(1)(a)-(c), Fla. Stat.).

REPORTS ON COMPETENCE TO PROCEED: INTELLECTUAL DISABILITY OR AUTISM

The expert must first consider whether the Defendant meets the definition of intellectual disability or autism (§ 916.3012(2), Fla. Stat.). If the expert determines that the Defendant has intellectual disability or autism, the expert must then report on the Defendant's competence to proceed.

(916.3012, Fla. Stat.) A defendant whose suspected mental condition is intellectual disability or autism is incompetent to proceed if the defendant does not have sufficient present ability to consult with the defendant's lawyer with a reasonable degree of rational understanding or if the defendant has no rational, as well as factual, understanding of the proceedings against him or her. (§ 916.3012(1), Fla. Stat.)

In considering the issue of competence to proceed, the examining expert must consider and include in his or her report the Defendant's capacity to:

- (a) Appreciate the charges or allegations against the Defendant;
- (b) Appreciate the range and nature of possible penalties, if applicable, that may be imposed in the proceedings against the Defendant;
- (c) Understand the adversarial nature of the legal process;
- (d) Disclose to counsel facts pertinent to the proceedings at issue;
- (e) Manifest appropriate courtroom behavior; and
- (f) Testify relevantly. (§ 916.3012(3)(a)-(f), Fla. Stat.).

The expert must also consider in his or her report any other factor deemed relevant by the expert. (§ 916.3012(3), Fla. Stat.)

➤ **Should the expert determine that the Defendant is incompetent to proceed, the expert must also:**

1. Report on any recommended training for the Defendant to attain competence to proceed.

In considering the issues relating to training, the examining expert must specifically report on the following. (§ 916.3012(4), Fla. Stat.).

- (a) The intellectual disability or autism causing the incompetence;
- (b) The training appropriate for the intellectual disability or autism of the Defendant and an explanation of each of the possible training alternatives in order of choices;
- (c) The availability of acceptable training and, if training available in the community, the expert must so state in the report; and
- (d) The likelihood of the Defendant's attaining competence under the training recommended, an assessment of the probable duration of the training required to restore competence, and the probability that the defendant will attain competence to proceed in the foreseeable future. (§ 916.3012(4)(a)-(d), Fla. Stat.)

2. Determine whether the Defendant meets the criteria for involuntary commitment.
(§ 916.302, Fla. Stat.)

In evaluating the Defendant to determine whether the Defendant may be involuntarily committed, the appointed expert must determine whether:

- (a) The defendant has intellectual disability or autism;
- (b) There is a substantial likelihood that in the near future the Defendant will inflict serious bodily harm on himself or herself or another person, as evidenced by recent behavior causing, attempting, or threatening such harm;
- (c) All available, less restrictive alternatives, including services provided in community residential facilities or other community settings, which would offer an opportunity for improvement of the condition have been judged to be inappropriate; and
- (d) There is a substantial probability that the intellectual disability or autism causing the Defendant's incompetence will respond to training and the Defendant will regain competence to proceed in the reasonably foreseeable future.
(§ 916.302(1)(a)-(d), Fla. Stat.)

PART III. PAYMENT OF EXPERT

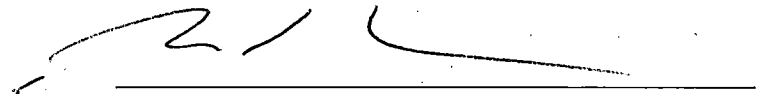
The expert will be paid in accordance with the current Administrative Order regarding payment of appointed experts and the terms of his or her contract with the Sixth Judicial Circuit, except when the Agency for Persons with Disabilities is appointed pursuant to section 985.19, Florida Statutes, the Agency shall pay for such examination.

The expert must submit his or her appropriate invoice with an attached copy of this Order Directing Examination for Competence to Proceed to:

West Pasco Judicial Center
Administrative Office of the Courts, Fiscal Office
7530 Little Road, Room 203
New Port Richey, FL 34654

If the expert also examined the Defendant for sanity, then the expert must submit the portion of his or her bill concerning sanity to defense counsel.

DONE AND ORDERED in chambers at Clearwater, Pinellas County, Florida, this 26th day of March, 2024.


For SUSAN ST. JOHN, Circuit Court Judge

cc:

Dr. Precious Ogu, Ph.D., Expert for the Court
Courtney Sullivan, Assistant State Attorney
Jessica Manuelé, Assistant Public Defender
LS Blätter, Court Administration