

IN THE CIRCUIT COURT FOR PINELLAS COUNTY, FLORIDA  
23-03157-CF  
SECTION K

STATE OF FLORIDA

v.

THOMAS ISAAH MOSLEY Person ID: 3322179

DEFENDANT'S MOTION TO PRECLUDE INTRODUCTION OF JAIL CALLS DURING  
HEARING ON DEFENDANT'S COMPETENCE TO PROCEED

The Defendant, Thomas Mosley, by and through undersigned counsel, respectfully requests this Honorable Court exclude the introduction into evidence of any jail calls purported to be made by Mr. Mosley. Jail calls provided by the State as Additional Discovery are not relevant and should be inadmissible for the following reasons:

1. Thomas Mosley was indicted for two-counts of Murder in the First Degree on April 27, 2023. The State filed a Notice of Intent to Seek the death penalty the same day.
2. Defense counsel raised the issue of Mr. Mosley's competence to proceed pursuant to Fla. R. Crim. P. 3.210 on July 21, 2023. In connection with that filing, defense counsel filed reports of Ryan Hall, M.D. and Valerie McClain, Psy.D. under seal, both of which opined Mr. Mosley was incompetent to proceed.
3. The Court appointed Michael Maher, M.D. and Douglas Ramm, Ph.D. to evaluate Mr. Mosley for competence. Both opined Mr. Mosley was incompetent.
4. At the hearing on October 11, 2023, relying on the written reports of Dr. Maher and Dr. Ramm, this Court entered its Order Adjudging Mr. Mosley Incompetent to Proceed and committing him to the Department of Children and Families for secure placement to receive competency training (written Order filed October 18, 2023). Mr. Mosley was transported to South Florida Evaluation and Treatment Center (SFETC) on December 14, 2023.
5. Just three and a half weeks later, on January 9, 2024, Theresa Ascherman-Jones Psy.D. from SFETC opined that Mr. Mosley was competent to proceed. Mr. Mosley was returned to Pinellas County Jail on February 1, and his case was ultimately set for hearing pursuant to Rule 3.212(c)(6) on June 14 and June 21, 2024.

6. The Court appointed Precious Ogu, Ph.D. at the request of the State on March 20, 2024. She conducted her evaluation of Mr. Mosley on April 25, 2024 and opined that Mr. Mosley is incompetent to proceed.
7. There are four expert witnesses -- two licensed psychologists, a licensed neuropsychologist, and a licensed psychiatrist -- listed as expert witnesses between all parties for the upcoming hearings.
8. On June 10, 2024, the State indicated its intent to introduce jail calls of Mr. Mosley from February 16, 2024 – June 8, 2024 as evidence at the upcoming hearing. The State indicated they did not provide any of these calls to any expert witness. Therefore, no opinion offered to the Court by these witnesses relies on these calls.
9. None of the calls contain any direct evidence of whether Mr. Mosley has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him. *See Peede v. State*, 955 So. 2d 480, 488 (Fla.2007) (*quoting Dusky v. United States*, 362 U.S. 402, 402, 80 S.Ct. 788, 4 L.Ed. 2d 824 (1960)); § 916.12(1), Fla. Stat. (2008); Fla. R. Crim. P. 3.211(a)(1).
10. At the very best, the calls show that Mr. Mosley sometimes knows the **dates** of his upcoming court hearings. There is nothing in the calls to indicate he has a rational and factual understanding of the proceedings against him.
11. Unless the State is suggesting that the Court use this evidence to reach an expert opinion of its own, the calls are not relevant to any material issue. Even if the Court were to find the calls relevant, the risk of confusing the issues and misleading the factfinder significantly outweigh any slight relevance. Substituting a lay opinion, from a trial judge, of how mental illness is reflected in telephone calls from the Pinellas Jail creates a scenario akin to what the United States Supreme Court has rejected in *Moore v. Texas* (I and II) in diagnosis of intellectual disability. *Moore v. Texas*, 581 U.S. 1 (2017). *Moore v. Texas*, 586 U.S. 133 (2019) (holding court's intellectual disability determination must be informed by the medical community's diagnostic framework, rejecting the Texas's judicially created factors).
12. If it were proper or effective for the Court to render an opinion on a defendant's competence to proceed based solely on the court's review of jail calls that have not formed the basis of any offered expert opinion and do NOT involve a discussion of

competency, the Legislature certainly would not have mandated courts appoint no fewer than two, and up to three, experts to assist in competency determinations. Fla. Stat. §916.12(2).

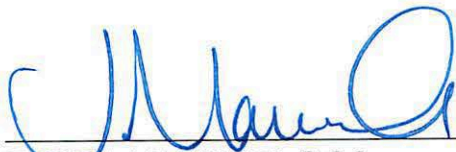
WHEREFORE Mr. Mosley respectfully requests the Court exclude from evidence any jail calls of Mr. Mosley on the basis that they are not relevant to the issue before this Honorable Court.

The defendant files this motion, and makes all other motions and objections in this case, whether or not specifically noted at the time of making the motion or objection, on the following grounds and authorities: The Due Process Clause, the Right to a Fair Trial by an Impartial Jury, the Rights to Counsel, Equal Protection, Confrontation, and Compulsory Process, the Rights to Remain Silent and to Appeal, and the Right to be Free from Cruel and Unusual Punishment, pursuant to the Federal and Florida Constitutions generally, and specifically the Fifth, Sixth, Eighth, Ninth, Tenth, and Fourteenth Amendments to the United States Constitutions, and Article I, sections 2, 9, 16, 17, 21, and 22 of the Florida Constitution.

#### NOTICE OF HEARING

YOU ARE NOTIFIED that the above will be heard before the Honorable Susan St. John, County Justice Center, 14250 49th Street North, Clearwater, FL 33762, on June 14, 2024 at 1:30 p.m.

I do certify that a copy hereof has been furnished by email/physical delivery to the State Attorney, County Justice Center, Clearwater, Florida, on June 14, 2024.



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For PUBLIC DEFENDER, SIXTH JUDICIAL CIRCUIT

County Justice Center

14250 49th Street North

Clearwater, FL 33762