

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

STATE OF FLORIDA

vs.

THOMAS ISAIAH MOSLEY Person ID: 3322179

MOTION TO EXCLUDE TESTIMONY OF
DR. THERESA ASCHEMAN-JONES

The Defendant, by and through undersigned counsel, respectfully requests this Honorable Court exclude the testimony of Theresa Ascheman-Jones as irrelevant and unreliable for the following reasons:

1. Mr. Mosley was indicted for two-counts of Murder in the First Degree on April 27, 2023. The State filed its intent to seek the death penalty the same day.
2. Having shown psychotic symptoms since his arrest, the Court found Mr. Mosley incompetent on October 11, 2023. No fewer than four forensic experts, including two medical doctors (Michael Maher, M.D. and Ryan Hall, M.D.), a neuropsychologist (Valerie McClain, Psy.D.) and a Psychologist (Douglas Ramm, Ph.D.) universally determined that Mr. Mosley was suffering from mental illness that resulted in delusions and psychosis prior to the Court entering its Order of Incompetency to Proceed.
3. Mr. Mosley arrived at the South Florida Evaluation and Treatment Center ("SFETC") on December 14, 2023. Mr. Mosley's incompetence was documented on December 15, 2023.
4. On information and belief, without any changes to his medication and four days of competency training, Dr. Jones found Mr. Mosley restored to competency in three and a half weeks, on January 9, 2024.
5. Mr. Mosley was returned to the Pinellas County Jail on February 1, 2024.
6. Three experts have evaluated Mr. Mosley since his return from SFETC. They have all filed reports under seal in this case. They have all opined that Mr. Mosley is incompetent to proceed.

7. Ryan Hall, M.D. is a board-certified Psychiatrist. He evaluated Mr. Mosley on March 5 and May 29, 2024. Dr. Hall concluded that Mr. Mosley is incompetent due to a major mental disorder.
8. Valerie McClain, Psy.D. is a forensic neuropsychologist. She evaluated Mr. Mosley on March 1 and May 31, 2024. Dr. McClain concluded that Mr. Mosley is incompetent due to Major Depressive Disorder and Unspecified Schizophrenia.
9. Precious Ogu, Ph.D. is a forensic neuropsychologist. She evaluated Mr. Mosley on April 25, 2024. Dr. Ogu concluded that Mr. Mosley is incompetent due to Major Depressive Disorder and Unspecified Schizophrenia.
10. The Court has scheduled hearings on June 14 and June 21, 2024 to determine if Mr. Mosley is **presently competent** to proceed under Rule 3.211. “The test for whether a defendant is competent to stand trial is ‘whether he **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.’” *Peede vs. State*, 955 So.2d 480, 488 (Fla.2007) (quoting *Dusky v. United States*, 362 U.S. 402, 402 (1960)) (emphasis added); *see also* Fla. R. Crim. P. 3.211(a)(1).
11. Theresa Ascherman-Jones is a psychologist at SFETC. She authored the report finding Mr. Mosley competent **more than six months ago** on January 9, 2024. She has not interviewed or evaluated Mr. Mosley since that time.
12. In a deposition on June 12, 2024, Dr. Jones explained factors that can influence competency status over time. *See* Jones Deposition at 38 (attached as Exhibit 1). Competency status changes due to changes in medication, therapy, circumstances of confinement, organic brain conditions, and many other factors. *Id.*
13. During the deposition, counsel asked Dr. Jones, “Do you have any opinion as to whether Mr. Mosley is competent right now?” Dr. Jones answered, “No.” *Id.* at 39. She agreed that an expert cannot extrapolate a competency finding from observations that are six months old. *Id.*
14. Irrelevant evidence is not admissible. Fla. Evid Code § 90.402. A witness may not testify without personal knowledge. *Id.* at § 90.604.
15. If a witness is qualified as an expert, opinion testimony may be offered if it is the product of reliable methods and based upon sufficient facts or data. *Id.* at § 90.702 (1)-


- (2). But expert witnesses may ONLY testify if specialized knowledge will assist the Court in determining a fact in issue. *Id. DeLisle v. Crane*, 258 So.2d 1219 (Fla. 2018).
16. A trial judge has a critical gatekeeping role to ensure that any and all scientific evidence is relevant and reliable. *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579, 590 (1993) (expert testimony which does not relate to an issue in the case is, “not relevant and, ergo, non-helpful”); *Kemp v. State*, 280 So.3d 81, 89 (4th DCA 2019) (an expert’s opinion must be based upon knowledge not merely, “subjective belief or unsupported speculation”).
17. Dr. Jones’ report is stale. Florida law bars the consideration of stale evaluations in competency determinations. *In re Commitment of Reilly*, 970 So.2d 453, 455 (Fla. 2d DCA 2007) (six-month old report found stale because, “the trial court's focus must be on the defendant's mental state at the time of the proceeding in question, not at some time in the past, and stale mental health reports will not support an adjudication of incompetency”); *Brockman v. State*, 852 So.2d 330, 333–34 (Fla. 2d DCA 2003) (holding that expert witness reports from four and eleven months prior to trial regarding the defendant's competence, “were simply too old to be relevant to a determination of [the defendant's] competency to stand trial”).

WHEREFORE, this Court should exclude all testimony by Theresa Ascherman-Jones as irrelevant to Mr. Mosley’s present state of competency. Both Dr. Jones’ report and her conclusions are stale and she has testified under oath to having no opinion regarding the competency issue before the Court.

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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