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IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT OF  
THE STATE FLORIDA, IN AND FOR PINELLAS COUNTY  
CRIMINAL DIVISION  
CASE NO. CRC23-03157CFANO

STATE OF FLORIDA,  
Plaintiff,

vs.

VOLUME I

THOMAS ISAIAH MOSLEY,  
Defendant.

\_\_\_\_\_ /

PROCEEDINGS: Competency Hearing

BEFORE: THE HONORABLE SUSAN ST. JOHN  
Circuit Court Judge

DATE: June 14, 2024

PLACE: Pinellas County Justice Center  
14250 49th Street North  
Clearwater, Florida 33762

REPORTED BY: CHARLENE M. EANNEL, RPR  
Court Reporter, Notary Public

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P-R-O-C-E-E-D-I-N-G-S

THE COURT: Are we ready to have Mr. Mosley out?

MS. MANUELE: Yes, Your Honor.

THE COURT: We're here on Case No. 23-03157.

Today is scheduled for a competency evidentiary hearing. Defense is present. State is present.

MS. MANUELE: Your Honor, may we approach on something just very briefly?

THE BAILIFF: Should we hold on?

THE COURT: No.

MS. MANUELE: Your Honor, could we approach for a minute?

THE COURT REPORTER: Is this on the record?

MS. MANUELE: It's more of a scheduling issue. We don't need to put it on the record.

(Off-the-record discussion held.)

THE COURT: Ms. Russell, did you indicate you had some motions that you wanted to have heard before we started the hearing?

MS. RUSSELL: We do, Your Honor. May I approach --

THE COURT: Yes.

MS. RUSSELL: -- with a courtesy copy for you.

THE COURT: Sure.

MS. RUSSELL: Your Honor, I'm just going to

1 approach with courtesy copies of both defendant's  
2 Motion to Preclude the Introduction of Jail Calls and  
3 also the Motion to Exclude the Testimony of  
4 Dr. Teresa Aschewan-Jones.

5 THE COURT REPORTER: Can you repeat that name,  
6 please?

7 MS. RUSSELL: Teresa Aschewan-Jones. That's  
8 spelled A-S-C-H-E-M-A-N, Jones.

9 THE COURT REPORTER: Thank you.

10 THE COURT: All right. Which motion would you  
11 like to start with?

12 MS. RUSSELL: Your Honor, we can start with a  
13 Motion to Exclude the Testimony of Dr. Teresa  
14 Aschewan-Jones.

15 THE COURT: Okay.

16 MS. RUSSELL: Just quickly to summarize the sum  
17 and substance of our motion. We did take Dr. Jones'  
18 deposition on Tuesday. We asked her if she had any  
19 opinion as to Mr. Mosley's current competency. Her  
20 answer in deposition was, No.

21 So we would submit that Dr. Jones' testimony is  
22 irrelevant, that presenting her as an expert witness  
23 is improper, and that she has no relevant information  
24 to offer the court.

25 THE COURT: Okay. What says the State?

1 MS. SULLIVAN: She did say that at the depo.  
2 The State's position is that that is an honest answer  
3 because she gave her evaluation and her opinion on  
4 January 9th. Her report stated the 11th. I believe  
5 that was when he was at the South Florida Treatment  
6 Center when he was sent there in December.

7 The Court and the case law provides that the  
8 Court can hear all relevant testimony, including  
9 experts and any additional evidence. Her opinion was  
10 in January. That was less than six months ago.  
11 There is nothing in the case law precluding an expert  
12 from testifying regarding their opinion in their  
13 valuation as to competency.

14 Any of the case law that was provided in their  
15 motion regarding staleness and those issues, those  
16 cases deal with when the Court is solely relying on  
17 just the stale report itself.

18 This hearing, which is going to be over the  
19 course of at least two days, will provide all  
20 different realms of relevant testimony that the Court  
21 is the finder of fact in in determining the issue of  
22 competency.

23 So, obviously, the Court is going to weigh every  
24 piece of evidence that is submitted in this case,  
25 including all of the experts that are going to

1 testify, and any additional evidence, and come to the  
2 determination regarding the competency based on all  
3 of the testimony.

4 I disagree that a state hospital's evaluation  
5 and opinion of the defendant at this time is not  
6 relevant. It's where he was sent after this Court  
7 adjudicated him incompetent. It's where he was  
8 observed and evaluated and ultimately she came to a  
9 conclusion.

10 So to preclude that piece of this entire hearing  
11 would simply not make sense and the case law does not  
12 support completely excluding her testimony from the  
13 Court being able to evaluate it and weigh it as we  
14 hear all of the evidence in this case.

15 THE COURT: All right. Anything else you would  
16 like to add?

17 MS. RUSSELL: Yes, Your Honor. The issue before  
18 the Court today is, according to *Dusky vs. United*  
19 *States*, does Mr. Mosley have the present, sufficient  
20 ability to consult with counsel, testify relevantly,  
21 and all of the other six factors under the competency  
22 statute in Florida.

23 Dr. Jones has no opinion in that regard, so her  
24 testimony would be irrelevant. She can't be  
25 presented as an expert without an expert opinion.



1 Her testimony is not relevant, not current, and  
2 actually could potentially confuse the Court and the  
3 factual situation because the report is six months  
4 old and, in fact, stale.

5 THE COURT: Okay. So I'm going to deny the  
6 motion. Dr. Jones wrote a report which I read when I  
7 received it to bring Mr. Mosley back from the state  
8 hospital, which indicated symptoms of malingering,  
9 feigning, or exaggerating symptoms, feigning a lack  
10 of knowledge, so on and so forth.

11 When there's indications of potential  
12 malingering, I don't know that we necessarily have a  
13 staleness problem in that that's something I can  
14 certainly consider when reviewing or valuating his  
15 other evaluations.

16 It doesn't mean I'm going to give it any weight.  
17 I don't know how much weight I'm going to give it  
18 because I haven't heard the testimony of Dr. Jones  
19 yet.

20 So I'll allow Dr. Jones to testify about her  
21 report and any other opinion that she wants to give  
22 me as it relates to competency with the understanding  
23 she's not going to give me an opinion as it relates  
24 to Mr. Mosley's competency today. Okay?

25 MS. MANUELE: Your Honor?

1 THE COURT: Yes.

2 MS. MANUELE: In line with that ruling,  
3 specifically being that she would be able to offer  
4 her opinion regarding malingering, which she had  
5 indicated in her report, in deposition, and in her  
6 report, she indicated that she used an instrument,  
7 the SIMS, in order to reach that determination.

8 Your Honor probably notices, though, there is no  
9 score correlated with that measure in the report.  
10 She was asked additionally in deposition if she knew  
11 what he had scored on the SIMS or the ILK. She  
12 indicated she did not have that information.

13 So pursuant to Florida Statute 90.702, testimony  
14 by experts. If scientific, technical, or other  
15 specialized knowledge will assist the trier of fact  
16 in understanding the evidence or in determining a  
17 fact in issue, a witness qualified as an expert by  
18 knowledge, skill, experience, training, or education  
19 may testify about it in the form of an opinion or  
20 otherwise if -- there's three criteria.

21 The first one is that the testimony is based  
22 upon sufficient facts or data. To date, we have not  
23 been provided those facts or data, Your Honor.

24 We -- in deposition, she indicated she didn't  
25 have the scores. That she would find the raw data,

1 and that she would send that to our experts.

2 Ms. Russell followed up -- that deposition took  
3 place on Tuesday afternoon. Ms. Russell followed up  
4 Wednesday via e-mail. Thursday via e-mail. And we  
5 just checked in with Dr. Ascherman-Jones on her way  
6 into the courtroom, she does not have any of that  
7 data to date still.

8 So we would object to her offering any expert  
9 opinion unless and until she's able to produce the  
10 data that she's relying on and give Defense Counsel  
11 an opportunity to assess that.

12 At this point, we couldn't fairly and adequately  
13 cross-examine her expert opinion because we have no  
14 indication of what that is based on. She's relying  
15 on two scored instruments, and she does not know the  
16 score.

17 THE COURT: Okay. Ms. Sullivan?

18 MS. SULLIVAN: I just want to clarify the time  
19 line of events. The depo was on Tuesday afternoon.  
20 It went from 1:00 p.m. to 4:00 p.m. During that  
21 deposition, that question was posed regarding the raw  
22 data, specifically getting that proprietary  
23 information to Dr. McClain so she could review it  
24 prior to her testimony.

25 Dr. Jones said she would get that together.

1 They followed up. She did e-mail them back -- I just  
2 want to make sure that's clear -- yesterday afternoon  
3 and informed them that that request had been made to  
4 the legal and medical department.

5 They were pulling that information together.  
6 That she cc'd the legal counsel on that e-mail so  
7 that we had her information. She was going to  
8 continue working on it.

9 Obviously, Ms. Jones had to get on a plane this  
10 morning to fly from Miami, and they're still putting  
11 that information together. It's a quick turnaround  
12 time to get what was just asked of her Tuesday  
13 afternoon. They -- she did provide the CV and the  
14 other various continuing education documents that  
15 they had requested because she had that ready, but  
16 the other information is still being put together.

17 Dr. McClain will not be testifying today. She  
18 will be testifying next week so she can look at that  
19 information and be prepared before she testifies.

20 That's the timeline of events that occurred.  
21 This hearing has been set for a long time. They've  
22 had her report since January, as they have pointed  
23 out themselves, and the depo was just done on  
24 Tuesday.

25 Ms. Jones is here. She flew here. She's ready

1 to be cross-examined, so we would ask that we just  
2 move forward.

3 THE COURT: All right. Anything else you would  
4 like to add?

5 MS. MANUELE: Yes, Your Honor. In order for an  
6 expert witness to be allowed to testify, we would be  
7 requesting the Court conduct a Daubert hearing, I  
8 suppose, then because the Court has to make a  
9 determination before she even testifies that her  
10 opinions are based on sufficient facts or data that  
11 she does not have.

12 Number two, that the testimony is deprived of  
13 reliable principles and methods. We are unable to  
14 verify any of those. The scoring is a one-sheet or a  
15 couple-page document. As she said, it's circled and  
16 scored. So having a number is something that -- I  
17 mean, for her to even render an opinion about what  
18 that instrument said is absurd without being able to  
19 have the number rely on the number scored.

20 Then also, three, that the witness has applied  
21 the principles and methods reliably to the facts of  
22 the case. And without that -- without the data, we  
23 have no idea if she applied that data and the  
24 methodology, those two instruments, to the facts of  
25 the case because it is a giant chunk, and that is,

1 according to her deposition, what she bases that  
2 malingering opinion on.

3 THE COURT: On solely those two instruments?

4 MS. MANUELE: Yes.

5 MS. SULLIVAN: I disagree with that, but she can  
6 testify to that.

7 THE COURT: Well, tell me what she says.

8 MS. SULLIVAN: I mean, it's not -- yes, but she  
9 gets to the two tests based on continual observations  
10 by the many people at the treatment facility, her own  
11 observations, her observations of his behavior, and  
12 in speaking to him during the self-report portion of  
13 the evaluation lead her to saying, I suspect  
14 malingering. I'm going to conduct the testing.

15 So to say that her finding of malingering is  
16 solely based on the two tests is not true. She will  
17 tell you that's not true. It's based on a totality  
18 of circumstances. Her own observations. His  
19 behavior with both herself and other doctors at the  
20 facility which then leads to the two tests.

21 I would also point out that she has documented  
22 in her report, while not the exact score, that the  
23 scores were higher than what is required at the  
24 threshold. She's documented that, so she's clearly  
25 looked at the data and then put it into her report so

1 that she can now refresh her recollection and see  
2 that, and she said that the scores were high enough  
3 for a finding of malingering. So that's all present.

4 What we don't have are those actual scores,  
5 which, again, were just requested on Tuesday  
6 afternoon that will be turned over so that Dr.  
7 McClain can review them. And, again, leaves the door  
8 open for Defense to comment, argue, bring out with  
9 McClain any discrepancies they see fit at part two of  
10 this hearing.

11 But, again, to just -- and in terms of the  
12 Daubert request, I think that was just put in there.  
13 Obviously, this doctor's background, training, and  
14 experience qualifying her to do any of these tests,  
15 or do what she did in this case, or evaluate the  
16 defendant in general, will be established as she  
17 starts testifying.

18 THE COURT: Okay.

19 MS. MANUELE: Your Honor, regarding the  
20 observations. She, specifically on page 65 of her  
21 deposition and also on another page, the only  
22 indication of the observations she indicates that  
23 what she finds malingering about the observations is  
24 solely the discrepancy with those instruments.

25 And so the observations alone, she, in fact,

1 says, I didn't have any nursing notes. I didn't have  
2 any of the competency trainers indicate to me that  
3 they believed he was malingering, and there were no  
4 notes to suggest anything. She specifically said she  
5 didn't get that information from them.

6 It is based on observations that she made  
7 compared to what he scored on the instruments that we  
8 are missing. So to say that it's observations would  
9 be an incomplete statement. It's specifically the  
10 comparison between the scoring and the observations.

11 THE COURT: Well, what I would like to do is do  
12 what we can today. I'm going to allow Dr. Jones to  
13 testify. You're welcome to cross-examine her on  
14 whatever you want to cross-examine her on. You know,  
15 obviously, at the end of the day, the State is going  
16 to ask that I find Mr. Mosley competent. I assume  
17 you're going to ask me to find Mr. Mosley  
18 incompetent.

19 So, you know, if the State feels like they need  
20 to call Dr. Jones back at some point, we can  
21 readdress that. I would hope that information would  
22 get provided sooner rather than later. And if you  
23 want to take an additional deposition of Dr. Jones at  
24 some point related to what you learn in those  
25 documents, I have no objection to that.



1 MS. MANUELE: Is Your Honor finding that the  
2 State, at this point, has met -- because, although  
3 you are the ultimate decider of fact as to  
4 competency --

5 THE COURT: Yes.

6 MS. MANUELE: -- you're also the gatekeeper as  
7 to evidence as to expert testimony in this case.

8 THE COURT: Sure.

9 MS. MANUELE: So if Your Honor is deciding that  
10 she is allowed to offer an expert opinion without  
11 prong one, the facts and data of which she is relying  
12 on, is that --

13 THE COURT: I'm saying she's going to testify  
14 off of her report, and if she needs to testify  
15 additionally about what's in her data, she can  
16 certainly do that later on, but I want to do  
17 something today since we've been scheduled for  
18 several months. She's been on the witness list for  
19 several months.

20 MS. MANUELE: I don't disagree, Your Honor. We  
21 would just ask, though, that she not -- that any  
22 testimony regarding the SIMS or the ILK, these are  
23 scored instruments. There is no reason that we --  
24 both sides shouldn't be afforded that score.

25 So we would ask that as to any testimony

1 regarding those two instruments, that not be allowed  
2 until she is able to provide us with the facts and  
3 data with which she's relying on.

4 THE COURT: Let's cross that bridge when the  
5 question is asked. I don't even know if they're  
6 going to ask a question about what his score was on  
7 that test, but I suspect you would want to  
8 cross-examine on that.

9 MS. MANUELE: I -- if they mention it. I'm  
10 saying that the test shouldn't come in at all. The  
11 test is only relevant if you have the score. It's  
12 not relevant to just say somebody took a test when we  
13 don't know what they scored on the test.

14 THE COURT: Okay.

15 MS. MANUELE: So I'm asking that there be no  
16 testimony about these tests that we -- of which she  
17 has not provided the data from the tests.

18 MS. SULLIVAN: The only other thing I would  
19 point out is that my understanding, in the discussion  
20 had during the depo, was the raw data from the  
21 testing itself would be turned over to the doctor  
22 specifically to ask it to be sent to Dr. McClain, and  
23 because it's proprietary information, it can only go  
24 to the doctor to review and that the State wouldn't  
25 get that anyways, and the Defense wouldn't be able to

1 look at it. It would be the doctor looking at that  
2 raw data. So --

3 THE COURT: So Dr. McClain needs it?

4 MS. SULLIVAN: Yes. So I don't know how --  
5 whenever we do this I'm ever going to have access to  
6 that information.

7 MS. MANUELE: The score --

8 MS. SULLIVAN: The Defense specifically would  
9 have access to it. It should only be Dr. McClain, or  
10 whatever doctor, having access to that information.

11 THE COURT: Okay.

12 MS. MANUELE: And that's how it's always been,  
13 but I've never seen an indication that these  
14 instruments were administered without a score.

15 THE COURT: Okay.

16 MS. MANUELE: And so although we may not be  
17 entitled to the proprietary information -- although,  
18 I'm not necessarily agreeing with that.

19 THE COURT: Okay.

20 MS. MANUELE: But even if that's, you know, the  
21 position that we're not entitled to that, that is  
22 very different than saying, This is the final score.  
23 This is the cutoff score for malingering, and that  
24 his score falls either above or below that. We don't  
25 have --

1 THE COURT: Did she testify to that in the depo?

2 MS. MANUELE: No. She said she doesn't know the  
3 score.

4 THE COURT: Does she know the score today?

5 MS. MANUELE: No. I can't imagine -- she told  
6 us she had gotten no additional information from when  
7 we met.

8 THE COURT: Does she know the score today?

9 MS. SULLIVAN: I haven't asked her about it  
10 because I was told that I wasn't going to get that  
11 information to begin with. So I thought it was just  
12 going to be turned over to Dr. McClain.

13 THE COURT: All right. So you're not going to  
14 ask her that question?

15 MS. SULLIVAN: She's going to testify to what is  
16 in her report, which is that they were elevated and  
17 high. Exactly what she said in her report.

18 THE COURT: Okay.

19 MS. SULLIVAN: Not the raw data numbers.

20 THE COURT: Okay. All right.

21 Anything else you want to add? I mean, it's  
22 really going to Dr. McClain who we were hoping to  
23 hear from today who would have been able to testify  
24 to a lot of that.

25 MS. MANUELE: Dr. McClain would be able to

1 provide us the information to cross-examine her.

2 THE COURT: Okay.

3 MS. MANUELE: But before we even get into  
4 cross-examination, she has to be able -- she has to  
5 know what facts and data her opinions are based on.

6 THE COURT: Uh-huh.

7 MS. MANUELE: And she told us in deposition she  
8 does not know that score. And so to --

9 THE COURT: She's not going to say a score  
10 today?

11 MS. MANUELE: Right. Which is why she shouldn't  
12 be offering an opinion because an opinion has to be  
13 based on reliable facts and data and what she is  
14 saying is, I don't know what that is.

15 THE COURT: Okay. All right. Well, I would  
16 hope this would have been done before today. So here  
17 we are. Do you want to go out and ask Dr. Jones if  
18 she knows the scores?

19 MS. SULLIVAN: I'll go talk to her.

20 (Break taken.)

21 MS. SULLIVAN: Your Honor?

22 THE COURT: Yes.

23 MS. SULLIVAN: I asked Dr. Jones about the score  
24 itself, and I probably won't say it as eloquently as  
25 she just did, but as my understanding was when she

1 testified at the depo that the score -- the scores  
2 themselves are also proprietary and not to be turned  
3 over. And she can come in here and give you her  
4 formal explanation of that, but that is not something  
5 that she is allowed to turn over other than to  
6 another doctor. Those scores are protected as well.

7 THE COURT: So she -- so her opinion is she's  
8 not even permitted to testify to it?

9 MS. SULLIVAN: Yes.

10 THE COURT: Okay. Let's have her in here and I  
11 will put her under oath and she can tell me that.

12 Have her at the podium.

13 Are you Dr. Aschewan-Jones?

14 DR. ASCHEMAN-JONES: Yes, ma'am.

15 THE COURT: Can you raise your right hand for  
16 me, please?

17 (Dr. Aschewan-Jones was duly sworn on oath.)

18 DR. ASCHEMAN-JONES: Yes, I do.

19 THE COURT: All right. Thank you. It's my  
20 understanding you were just out in the hallway  
21 talking about some test scores; is that correct?

22 DR. ASCHEMAN-JONES: Yes, ma'am, that's correct.

23 THE COURT: All right. Tell me about that. Is  
24 that -- who can you -- that's not in your report, any  
25 specific score. So first, is it not in your report

1 for a reason?

2 Secondly, is that something you're permitted to  
3 disclose? And under what circumstances could you  
4 disclose it?

5 DR. ASCHEMAN-JONES: Yes. So the scores are not  
6 in my report purposely because to somebody who does  
7 not have professional knowledge about the test, the  
8 scores are fairly meaningless without the  
9 interpretation that is provided in the report. So  
10 that somebody not familiar with the test can  
11 understand what the test findings were.

12 And per the test manuals, users are expected to  
13 protect the test security. My ethics code through  
14 the American Psychological Association as well has  
15 that -- that we are also supposed to protect tests.

16 THE COURT: Okay. So is it your understanding  
17 that you are not permitted to share test scores in  
18 your report or in testimony?

19 DR. ASCHEMAN-JONES: That would be my  
20 impression, yes.

21 THE COURT: Okay. My understanding is you are  
22 comfortable, however, sharing that information with  
23 Dr. McClain if requested to do so?

24 DR. ASCHEMAN-JONES: Yes. She would be  
25 considered an expert in psychology or an individual

1 who would be able to administer and interpret those  
2 measures. So, yes, she would be able to...

3 THE COURT: Okay. Ms. Sullivan, did you have  
4 any questions for the doctor?

5 MS. SULLIVAN: No.

6 THE COURT: Any questions for the doctor?

7 MS. MANUELE: Yes. Dr. Ascheman-Jones, you  
8 indicated that the scores -- your belief is that you  
9 don't even provide the scores, the total score?

10 DR. ASCHEMAN-JONES: Correct.

11 MS. MANUELE: Okay. And that is -- so you would  
12 agree, then, without us having that total score, we  
13 are unable to challenge how you got to that score,  
14 correct?

15 DR. ASCHEMAN-JONES: That -- I guess, I would  
16 say so, yes.

17 MS. MANUELE: Okay. Specifically, you indicated  
18 that the -- the testing manual itself indicates that  
19 you are not to provide those scores, correct?

20 DR. ASCHEMAN-JONES: Yes.

21 MS. MANUELE: Okay. And, in fact, what the  
22 testing manual actually indicates is that you should  
23 not post or discuss on the internet including  
24 professional websites, chat rooms, and listservs  
25 those scores, correct?



1 DR. ASCHEMAN-JONES: Correct.

2 MS. MANUELE: It does not indicate that you are  
3 not to provide those scores to Defense Counsel in any  
4 court proceedings or that you are not to disclose  
5 them in court proceedings themselves, correct?

6 DR. ASCHEMAN-JONES: I don't recall if the  
7 manual specifically discusses court proceedings.

8 MS. MANUELE: Okay. Nothing further, Your  
9 Honor.

10 THE COURT: All right. Dr. Jones, if you could  
11 have a seat out in the hall, please. Thank you.

12 All right. So what I will do is allow Dr. Jones  
13 to testify today. It sounds like you will have the  
14 ability to challenge the testing when Dr. McClain has  
15 an opportunity to review the data.

16 Again, how much weight I give Dr. Jones'  
17 testimony without hearing her testify about the  
18 testing itself that I may hear through Dr. McClain, I  
19 don't know. You all can make those arguments.  
20 Again, it's up to you all to bring back, you know,  
21 Dr. Jones if you feel like you need to, if I permit  
22 it. Okay.

23 So with that, let's move on to the next motion,  
24 please?

25 MS. MANUELE: And, Judge, just for

1 clarification, then --

2 THE COURT: Yeah.

3 MS. MANUELE: -- she will be available next  
4 Friday for additional cross-examination once we  
5 provide the data; is that correct?

6 THE COURT: No. What I'm saying is the State is  
7 the one that is asking to find competent, Mr. Mosley.  
8 I'm not going to dictate who calls what and when.  
9 And if you want to make an argument to me that you  
10 didn't get a full opportunity to do what you needed  
11 to do with Dr. Jones, that's going to help me  
12 determine the weight.

13 So it's really up to the State if they feel like  
14 they need to call her back. I haven't heard anything  
15 yet, so I don't know how much weight I'm going to  
16 give anything, right? But it's really -- yeah, I  
17 don't know what Dr. McClain is going to say when she  
18 sees the data either. Dr. McClain might be able to  
19 rebut everything that Dr. Jones says.

20 Then I have Dr. McClain's full testimony about  
21 the testing, and I might not hear everything that I  
22 need to hear from Dr. Jones to give her full -- you  
23 know, give any particular weight related to that  
24 issue for this hearing.

25 So I'm not telling anyone they have to call or

1 not call anybody. I'm just giving them the  
2 opportunity or you the opportunity, if you want to  
3 call her back based on whatever testing documents  
4 received.

5 Did that make sense?

6 MS. MANUELE: I think I do understand the  
7 Court's ruling.

8 THE COURT: All right. Let's move on to the  
9 second motion.

10 MS. MANUELE: Your Honor, the Defense -- the  
11 State provided Defense a number of jail calls this  
12 week and indicated at that time that they were  
13 intending to provide those or seek their introduction  
14 into evidence at this hearing.

15 We would ask the Court exclude any of those  
16 calls. These were not provided to any experts.  
17 These are not calls -- certainly, if there were any  
18 calls that I were like, Oh, I'm really going to pull  
19 one over on these docs or I'm pretending to be so  
20 crazy or I really understand everything that's going  
21 on and, gosh, those lawyers sure are fools, anything  
22 to that effect, absolutely, we would agree that that  
23 would be something that the Court can consider.

24 But instead, these are mundane conversations  
25 with mom. The most extent -- the extent of any legal

1 talk is that he knows the dates of his court hearings  
2 not any substantive information as to what is  
3 actually occurring or going to occur at those  
4 competency hearings because they are -- they have not  
5 been provided to any experts, and there is no expert  
6 that is saying, I relied on these in forming my  
7 opinion and that's what makes them relevant.

8 They have no bearing at all on the competency  
9 issue based on the nature of the content.

10 Essentially, they would be perhaps -- I could only  
11 see that they were relevant if they were forcing the  
12 Court to become an expert witness in the case in  
13 order to interpret those what the -- that when  
14 somebody speaks this way, they are not affected by  
15 mental illness or anything to that effect would be  
16 such a stretch it would be certainly improper without  
17 them -- without an expert opining that they matter at  
18 all. They have no relevance to this hearing today.

19 I have -- we cited to *Moore vs. Texas*. The  
20 United States Supreme Court both 2017 and 2019  
21 essentially for the proposition that's regarding  
22 intellectual disability determinations, but  
23 specifically that when the Court is using a lay  
24 opinion and factors that a lay witness would consider  
25 relevant when making a determination of intellectual

1 disability which we could argue is analogous the same  
2 as mental health.

3 Obviously, the rules allow and suggest the Court  
4 should appoint no fewer than two, no more than three  
5 experts in order to make that determination. They  
6 give criteria and minimum qualifications that the  
7 experts need to have to be performing those  
8 evaluations and evaluating that evidence to make the  
9 determination.

10 So for the following reasons, unless the State  
11 has an additional witness or some additional  
12 information other than what's being provided, we --  
13 there is no relevance that's been established.

14 THE COURT: Okay.

15 MS. MANUELE: I'm sorry. 403 prejudicial. Any  
16 confusion of the issues, certainly, again, Your Honor  
17 is the fact finder. You can't unring a bell, so to  
18 say. But also to put you in a position that you are  
19 not an expert psychologist, psychiatrist but that  
20 you're somehow supposed to make something of this  
21 when there are four listed experts that the State  
22 could certainly provide those calls to in looking for  
23 an expert opinion regarding them. It would be  
24 improper.

25 THE COURT: Okay. What says the State?

1 MS. SULLIVAN: Just so the Court has some  
2 context of what I was seeking to introduce, it's 13  
3 jail calls from the time period of February -- the  
4 first call is February 16th, '24, so after he's  
5 returned from the state hospital, to as recent as  
6 June 8th of this year.

7 What I intended -- before I argue the  
8 admissibility, what I intended to introduce to the  
9 Court are those 13 calls. I've provided Defense with  
10 time stamps to direct their attention to what I found  
11 to be relevant times during conversations. I was  
12 also going to provide that to the Court as well to  
13 direct you to the relevant times. Obviously, you  
14 would have all the calls. You can listen to all or  
15 none, but those were the specific times that I had  
16 tried to direct the Defense and the Court to.

17 Rule 3.212(a) regarding the admissibility of  
18 evidence states that the experts preparing the  
19 reports may be called by either party or the Court,  
20 and additional evidence may be introduced by either  
21 party.

22 I have found nowhere in the rule regarding  
23 competency. The statute regarding competency case  
24 law about competency that I am required to make sure  
25 that the jail calls or any other evidence that I

1 intend to introduce to the Court to consider has to  
2 be heard by the experts.

3 I am permitted, as the Defense is permitted, to  
4 give the Court any additional evidence that we find  
5 to be relevant.

6 As to -- so in terms of that argument, I don't  
7 believe I have to show or have the jail calls  
8 listened to by any experts. They can go into  
9 evidence on their own to be evaluated by the Court in  
10 its finding.

11 As to the relevance, these are calls made by the  
12 defendant, Thomas Mosley, himself. It's his voice.  
13 His conversations mostly to his mother, sometimes to  
14 his brother. It shows his interactions. Obviously,  
15 when we get to the argument point, I will have my own  
16 argument for whether or not it shows his competency.  
17 Defense will have their position on that. The Court  
18 will weigh that and consider whether it's relevant or  
19 not relevant.

20 But to preclude the State from even providing  
21 such evidence to the Court where it is the defendant  
22 in a relevant period of time, since February when  
23 he's returned, to as recent as June 8th, to hear his  
24 behavior, the way he speaks, what he speaks about I  
25 think is completely relevant to a competency hearing

1 of this defendant.

2 If the Court permits me to move them in, then I  
3 want to have a discussion of how we move them in,  
4 because I do have a witness here for that and I would  
5 kind of like to address that on the front end before  
6 we start today. But that's why we think it's  
7 relevant. The rule permits the additional evidence  
8 just as the Defense can introduce whatever additional  
9 evidence they find to be relevant. But I absolutely  
10 think his own statements and conversations are  
11 relevant to the determination of whether or not he is  
12 competent.

13 THE COURT: Did you discover over the phone  
14 calls on a disk for Defense?

15 MS. SULLIVAN: Yes. I would have -- I would  
16 move in a -- for the clerk to have, then I have your  
17 choice of a thumb drive or a disk for your review.  
18 My intention of doing that today was so in the week  
19 before we come back and have argument, if the Court  
20 wants to listen to them, that can be accomplished  
21 over the next week.

22 THE COURT: Okay. Any response?

23 MS. BLAQUIERE: Judge, on the -- Nichole  
24 Blaquiere here for the record. On the relevancy  
25 portion, the jail calls have to be such that a



1 reasonable person can view the recordings of the  
2 phone calls between Mr. Mosley and his mother or  
3 brother as evidence that Mr. Mosley had a rational,  
4 factual understanding of his case, so the competency  
5 proceedings. That is not at all evident on any of  
6 these jail calls --

7 THE COURT: I can't really make that decision  
8 until I hear them, though, right?

9 MS. BLAQUIERE: They should not be admissible.  
10 And if Your Honor did listen to them just to  
11 determine whether or not they are admissible, Your  
12 Honor, should find they're not admissible because of  
13 that, and that Your Honor should not give any weight  
14 to them whatsoever because there's nothing in there  
15 other than, in the State's view, some discussion of  
16 court dates. Nothing in there -- there's actually a  
17 multitude of evidence indicating he's incompetent,  
18 especially in those time frames the State is  
19 discussing.

20 THE COURT: It sounds like an excellent closing  
21 argument, but --

22 MS. BLAQUIERE: (Indiscernible.)

23 THE COURT: So let me say this: Competency is a  
24 legal standard not necessarily a standard by a  
25 doctor; although, we employ the use of doctors to

1 help us make competency decisions. It doesn't  
2 preclude either side from putting in extrinsic  
3 information for the Court to consider in making its  
4 legal decision about competency.

5 So I will allow the phone calls. I agree with  
6 you, you can certainly argue how much weight I should  
7 give it. It might actually back you up. I have no  
8 idea because I haven't heard any of it yet, but I  
9 will permit it.

10 I will say this, that if there's any doctor that  
11 you want to have listen to it -- I don't know if they  
12 have yet or not -- but if you want to have a doctor  
13 listen to it before they testify, I'm fine with  
14 allowing you all the time to do that.

15 So have you Dr. Hall here today. Do you want  
16 Dr. Hall to listen to the jail calls?

17 MS. MANUELE: Mr. Hall gave us some examples of  
18 things that would be relevant if it was in the call,  
19 and I can assure the Court none of those things were  
20 in the call.

21 THE COURT: Okay.

22 MS. MANUELE: So we did not ask him to review  
23 those.

24 THE COURT: If you want the time, you can have  
25 it is what I am saying.

1 MS. MANUELE: Well, one thing we were  
2 considering is -- because we're going to be asked  
3 that any calls that are introduced as evidence are  
4 played in court so that they are made part of the  
5 record.

6 THE COURT: Sure.

7 MS. MANUELE: And we're going to be asking that  
8 any calls that are played, that the entirety of the  
9 calls are played, not just a minute here or a couple  
10 minutes there. So -- which would add, I think, six  
11 hours onto the hearing.

12 I don't know if the Court -- we were thinking --  
13 obviously, we are objecting and maintaining that  
14 objection to them coming in, but if the Court is  
15 going to allow the jail calls in, we are proposing  
16 perhaps an in-camera review for Your Honor to  
17 determine which ones are relevant, and then, based on  
18 that, that the calls that are relevant we can play  
19 them in their entirety next week.

20 THE COURT: I don't want to make a relevancy  
21 determination without you all being present. That  
22 just seems like a terrible idea.

23 If the State wants to introduce the calls,  
24 Ms. Sullivan is telling me why she believes them to  
25 be relevant. You all have heard them. If there's

1 some particular argument as to one over the other,  
2 you can tell me about it. If you want me to listen  
3 to them in their entirety, you have them in their  
4 entirety on the --

5 MS. SULLIVAN: Yes.

6 THE COURT: Okay. So we can certainly do that.  
7 How many witnesses do we have next week?

8 MS. MANUELE: Two. Dr. McClain and Dr. Ogu  
9 (phonetic).

10 THE COURT: And do you have anybody next week?

11 MS. SULLIVAN: No.

12 THE COURT: Okay. I just want to make sure we  
13 have enough time to get everything done. What time  
14 are we going to start next week?

15 MS. SULLIVAN: We were scheduled for 1:30.

16 THE COURT: Okay. So your plan is to introduce  
17 them today?

18 MS. SULLIVAN: Yes.

19 THE COURT: Okay. And not play them?

20 MS. SULLIVAN: I wasn't -- I think they'll be in  
21 the record as evidence, if I move them in. How we  
22 listen to them, I don't know that we have to all  
23 listen to them together. If they want you to listen  
24 to all of it -- I was just trying to lessen the time  
25 and go to what I was going to argue was relevant, but

1 that's fair if they want you to listen to everything  
2 that I've provided on the disk. How you do that, and  
3 when you do that and where you do that, I guess is up  
4 to the Court.

5 THE COURT: Okay. Well, it will be in the court  
6 file. I mean, it will be in evidence for anyone to  
7 listen to. I will listen to it. I'm not necessarily  
8 going to force everybody to sit here and listen to it  
9 with me, but if there's some excerpt that you all  
10 want to play, we certainly can.

11 MS. MANUELE: Your Honor, the problem is, if we  
12 don't play them in court, there's not a transcript in  
13 any -- in any future records. I mean, if the case  
14 were to go up to the appellate court, they don't pull  
15 disks from evidence to review.

16 THE COURT: Why wouldn't they do that?

17 MS. MANUELE: They almost rarely do. The video  
18 surveillance that isn't depicted, but as far as just  
19 going to get --

20 THE COURT: I would hope they would on a death  
21 penalty case that they would pull audio that the  
22 Court relied upon and listened to it.

23 MS. MANUELE: I would hope so, too, but we  
24 certainly can't make that assumption in laying the  
25 record. So we, I guess, would object to the Court

1 introducing it into evidence any of the calls that we  
2 don't play in the courtroom.

3 THE COURT: Okay.

4 MS. SULLIVAN: I would say to that about the  
5 transcript versus just the disk. One, I would hope  
6 they would listen to it.

7 Two, when you come to your decision, I would  
8 assume that in any order you would be referencing  
9 what part, if any, of those calls you found to be  
10 relevant in what was being said, which they would  
11 also be reviewing your findings, which is ultimately  
12 what they're doing is seeing if it's -- your  
13 findings.

14 So it would be in your order. Then if they had  
15 a discrepancy with what you were saying, they could  
16 always listen to the call. I don't know that we need  
17 the transcript of the actual calls.

18 THE COURT: All right. So the motion was to  
19 preclude introduction of jail calls during hearing.  
20 So I'm going to deny the motion. Again, if you want  
21 any doctor to look or review them before they  
22 testify, I'll give you the time to do that.  
23 Otherwise, I'm ready to proceed with the hearing  
24 today.

25 All right. We're ready to get started. I don't

1 care who goes first, Dr. Jones or Mr. Hall. It  
2 doesn't matter to me.

3 MS. SULLIVAN: The only thing I would ask just  
4 so I can release him if we don't need them, is the  
5 Defense going to object to me just, at this point,  
6 moving in the calls? Because if so, now I'm going to  
7 call my investigator from my office.

8 THE COURT: If that's who you want to call  
9 first?

10 MS. SULLIVAN: Yes, so I will just do that so we  
11 have the formality of it. So the State would call  
12 Howard Crosby.

13 THE BAILIFF: Stand here. Face madam clerk.  
14 Raise your right hand to receive the oath and answer  
15 out loud.

16  
17 (Witness was duly sworn on oath.)

18 THE BAILIFF: Have a seat in the witness chair.  
19 Speak in a loud and clear voice for the Court.

20 DIRECT EXAMINATION

21 BY MS. SULLIVAN:

22 Q. Good afternoon. Can you please state your name  
23 for the record.

24 A. Howard Crosby.

25 Q. Can you spell your last name for the record?

1 A. C-R-O-S-B-Y.

2 Q. Where do you work, sir?

3 A. State Attorney's Office as an investigator.

4 Q. Did the State, myself, specifically ask you to  
5 pull certain jail calls referencing a Thomas Mosley?

6 A. Yes.

7 MS. MANUELE: Objection, hearsay.

8 THE COURT: Overruled.

9 BY MS. SULLIVAN:

10 Q. And did I give you the specific dates and times  
11 of the calls that I wanted you to pull?

12 A. Yes.

13 Q. Okay. And what system did you access in order  
14 to pull those specific jail calls?

15 A. The Global Tel Link system through the jail.

16 Q. Okay. And when you access that system, did you  
17 put the -- how did you go about putting any information to  
18 pull the specific calls for this specific inmate?

19 A. I put in the dates and the docket number and  
20 corresponding with the dates you gave me and the times.

21 MS. MANUELE: Objection. Calls for hearsay.

22 THE COURT: Overruled.

23 BY MS. SULLIVAN:

24 Q. And is each inmate at the jail assigned a PIN  
25 number?



1 MS. MANUELE: Objection, hearsay.

2 THE COURT: Overruled.

3 BY MS. SULLIVAN:

4 Q. You can answer.

5 A. Yes, it is the -- the docket number is the PIN  
6 number.

7 Q. Okay. And did you access the PIN number for  
8 Thomas Mosley?

9 A. Yes, I did.

10 Q. Okay. And for all of the calls that I asked you  
11 to pull, it was 13 calls specifically, was that the same  
12 PIN number for Thomas Mosley?

13 MS. MANUELE: Objection. Calls for hearsay.

14 THE COURT: Overruled.

15 THE WITNESS: Yes, it was.

16 MS. SULLIVAN: May I approach the witness?

17 THE COURT: Yes.

18 BY MS. SULLIVAN:

19 Q. I'm going to show you two things.

20 MS. SULLIVAN: I will have these marked, Your  
21 Honor, with the clerk momentarily.

22 BY MS. SULLIVAN:

23 Q. But is this the call file list that you utilized  
24 when pulling these calls?

25 A. Yes, it was.

1 Q. And does it identify the PIN for Mr. Mosley and  
2 his first and last name?

3 A. Yes, and his docket number.

4 Q. Okay. Then once you were in the GTL system, did  
5 you, in fact, download the calls that I specifically  
6 requested you pull?

7 A. Yes, I did.

8 Q. And did you put those calls on a disk?

9 A. Yes, I did.

10 Q. And is this the disk in front of you that you  
11 put those calls on?

12 A. Yes.

13 Q. Okay.

14 MS. SULLIVAN: Your Honor, at this time, the  
15 State would move in the ICM call file list for  
16 Mr. Mosley's 13 calls and the disk itself of the 13  
17 jail calls.

18 THE COURT: Any additional objection from the  
19 Defense?

20 MS. MANUELE: Yes, Your Honor. Ms. Blaquiere is  
21 handling the objection.

22 THE COURT: Okay. Thank you.

23 MS. BLAQUIERE: Lack of authentication, Your  
24 Honor, regarding the custodian of records and  
25 identification. None has been made regarding the

1 contents of the subjects in the call, nor that  
2 Mr. Crosby is the custodian, and knows whether or not  
3 the device was recording properly.

4 There's case law that requires -- there's a  
5 non-exhaustive list of things that the Court consider  
6 in determining whether evidence has been properly  
7 authenticated, but that has not happened here in this  
8 case yet.

9 THE COURT: Okay. All right. I'm going to  
10 overrule the objection. It will be admitted as such.

11 You're going to label them what?

12 MS. SULLIVAN: We can call -- we will just start  
13 numbering them, I guess, State's 1 and 2.

14 (State's Exhibit Nos. 1 and 2 were received into  
15 evidence.)

16 THE CLERK: I can do it. Just which one did you  
17 want to be number one?

18 MS. SULLIVAN: The disk is fine. Thank you.

19 MS. BLAQUIERE: Can I voir dire, Your Honor, for  
20 the record for appeal?

21 THE COURT: You sure can.

22 MS. BLAQUIERE: Thank you.

23 VOIR DIRE EXAMINATION

24 BY MS. BLAQUIERE:

25 Q. Mr. Crosby?

1 A. Yes.

2 Q. You don't work for GTL, correct?

3 A. Correct.

4 Q. You don't know anything about their software or  
5 the proprietary information about the software, correct?

6 A. Correct.

7 Q. You only accessed the information through your  
8 own login information, correct?

9 A. Correct.

10 Q. You've never met Mr. Mosley before?

11 A. No.

12 Q. You don't know what he sounds like on -- you  
13 have no personal knowledge of what his voice sounds like,  
14 correct?

15 A. Correct.

16 Q. You have no personal knowledge of what his  
17 mother's voice sounds like, correct?

18 A. Correct.

19 Q. You have no personal knowledge of what his  
20 brother's voice sounds like, correct?

21 A. Correct.

22 Q. You have no personal knowledge if the recording  
23 was accurate? Is that something you're able to testify to  
24 today since you weren't on the phone calls?

25 A. When I pulled the recordings up and they show

1 his docket number and his -- he identified himself through  
2 his PIN number. He also said with Global Tel Link my  
3 voice and my password. Then when prompted he said his  
4 name was Thomas, and it was recorded. Then when I went  
5 back to listen, it was the same recording.

6 Q. Okay. And you weren't present when some -- when  
7 the voice authentication was made, were you?

8 A. No, he makes that.

9 Q. Okay. And you weren't present with the other  
10 end of the phone call when the conversation was occurring  
11 to whoever was being called on the jail call that you  
12 played, correct?

13 A. You said I wasn't present at their home?

14 Q. Correct?

15 A. Correct.

16 Q. Okay. You never listened to any of these  
17 conversations in real time?

18 A. No.

19 Q. Okay.

20 MS. BLAQUIERE: May I have a second, Your Honor,  
21 please?

22 THE COURT: Yes.

23 BY MS. BLAQUIERE:

24 Q. I think you just testified that you heard the  
25 name "Thomas," correct?

1 A. Yes.

2 Q. You never heard the name "Thomas Mosley,"  
3 correct.

4 A. First and last name.

5 Q. Yes.

6 A. No.

7 MS. BLAQUIERE: Okay. No further questions,  
8 Your Honor.

9 THE COURT: All right. So the same ruling.  
10 I'll draw the attention to various cases I'll put on  
11 the record: *Walker vs. Harley-Anderson* 301 So.3d  
12 299. I'll put on the record *Jackson vs. State* 979  
13 So.2d 1153, a 2008 case. And then the Mullens case,  
14 which case citation I don't recall, but it is a death  
15 penalty case. It's out of this circuit with Judge  
16 Federico. It deals with authentication of records.

17 So I think you all might be familiar with that  
18 hence the smiles on your faces. Okay. So he's  
19 testified to extrinsic evidence and distinctive  
20 characteristics that would allow for the records  
21 themselves being the documents, the PIN number, his  
22 name Thomas all lend to the authenticity of the jail  
23 calls. So I will allow it for that reason.

24 MS. BLAQUIERE: Your Honor, I would put on the  
25 record *Asencio vs. State* 244 So.3d 294, Fourth DCA

1 case from 2018 regarding that jail calls where, in  
2 that case, someone with the company -- not with the  
3 State Attorney's Office -- came and testified and  
4 that was considered okay.

5 When one of the additional factors that would be  
6 considered proper for authentication is someone with  
7 direct knowledge of Mr. Mosley's voice, and  
8 Mr. Crosby does not possess that.

9 Additionally, *Vilsaint vs. State*, 127 So.3d 647  
10 2013. A Fourth DCA case. Lists multiple factors  
11 that the person testifying has knowledge of whether  
12 the recording device was operating properly, whether  
13 the device was operated in a proper manner, whether  
14 the recording was accurate, which Mr. Crosby just  
15 testified he has no knowledge because he wasn't  
16 listening to the calls in real time, and the voices  
17 of the persons speaking were identified, which only a  
18 first name was identified, not the entire first name,  
19 and without personal knowledge of what Mr. Mosley  
20 sounds like, Mr. Crosby is unable to make that  
21 identification.

22 THE COURT: Okay. Thank you.

23 MS. BLAQUIERE: Thank you.

24 THE COURT: All right. Any additional  
25 questions?

1 MS. SULLIVAN: No, ma'am.

2 THE COURT: Any cross-examination?

3 Did you put the CDs in?

4 MS. SULLIVAN: I did.

5 THE COURT: Okay.

6 MS. MANUELE: No. We would just ask to publish  
7 the evidence.

8 THE COURT: Okay.

9 Can he be released?

10 MS. SULLIVAN: He can.

11 THE COURT: All right. Thank you.

12 Do you have a separate copy for me?

13 MS. SULLIVAN: Sure, I do. I have a disk, or I  
14 have a thumb drive. The disk is a copy of exactly  
15 what I just put into evidence.

16 THE COURT: I'd prefer a thumb drive.

17 MS. SULLIVAN: Okay. Then I also made a copy  
18 for the Court. What's in the docket is my  
19 acknowledgement of additional discovery of the dates  
20 and the times. If I can give that to you, too?

21 THE COURT: Yes.

22 MS. MANUELE: I'm confused. I thought the Court  
23 accepted the calls in their entirety, so I would --

24 THE COURT: They are in their entirety, yes.

25 MS. MANUELE: So I would object to the State



1 providing any specific -- the time stamps that  
2 they're asking to direct the Court's attention to.  
3 That would be appropriate perhaps for argument or if  
4 when they're playing the calls, they want to stop at  
5 that point, but we would object to --

6 THE COURT: Do you want to play the portions  
7 that you believe to be relevant today?

8 MS. SULLIVAN: Only if the Court wants me to.  
9 I'm -- if you don't -- if they don't want me to give  
10 you this, I'm fine with you just listening to  
11 everything I'm giving you on the thumb drive.

12 THE COURT: I'll take it.

13 MS. SULLIVAN: Then I can make my argument --

14 THE COURT: My hope is for any appellate review  
15 that the Florida Supreme Court or the Second DCA or  
16 whoever needs to look at it would listen to any piece  
17 of evidence that's put in if the Court chooses to  
18 rely upon it.

19 So I'm not going to make the State or Defense  
20 play it; however, if you all want to play them, any  
21 relevant portions you want me to listen to, I would  
22 be happy to hear it.

23 So, again, back to the doctors. We have Mr.  
24 Hall and Dr. Jones. I don't care who testifies  
25 first.

1 MS. SULLIVAN: I'll call Dr. Jones.

2 THE COURT: Okay.

3 THE BAILIFF: Step this way, stand right here.

4 Face the clerk, raise your right hand to be sworn.

5 (Thereupon, the witness was duly sworn on oath.)

6 THE BAILIFF: Come have a seat up here. Adjust  
7 the mic. Speak in a loud and clear voice for the  
8 Court.

9 DIRECT EXAMINATION

10 BY MS. SULLIVAN:

11 Q. Good afternoon again.

12 A. Good afternoon.

13 Q. Can you please state your name for the record  
14 and spell it again for the court reporter here.

15 A. Yes. Theresa Lynn Aschewan-Jones.

16 T-H-E-R-E-S-A. L-Y-N-N, A-S-C-H-E-M-A-N, J-O-N-E-S.

17 Q. All right. I want to start by talking about  
18 your background and your education. So at the beginning,  
19 where did you go to undergraduate school?

20 A. University of Minnesota.

21 Q. All right. And when did you receive that degree  
22 and what was it in?

23 A. I received a bachelor's in psychology in 2006.

24 Q. After you received your bachelor's, what did you  
25 go on to do next?

1           A.    I attended Minnesota School of Professional  
2 Psychology at Argosy University in the Twin Cities. I  
3 earned a doctorate degree in clinical psychology with a  
4 concentration in health psychology and neuropsychology.

5           Q.    Okay. What year did you receive your degree?

6           A.    2014.

7           Q.    Okay. From there, did you participate in your  
8 doctoral or just maybe explain to the Court what the  
9 process is after you receive the initial degree in 2014?

10          A.    Sure. Well, during that training week, we  
11 complete practicum experiences. I completed assessment  
12 practicum in neuropsychology. I completed a therapy  
13 practicum. I completed an advanced practicum in -- with  
14 focus in neuropsychology and nursing home facility  
15 assessment.

16                    The last component of the doctoral degree is a  
17 predoctoral internship, which I completed in  
18 neuropsychology at the VA Medical Center in Chillicothe,  
19 Ohio.

20                    Following that, I completed a two-year  
21 postdoctoral residency at International Assessment Systems  
22 in Miami where the focus was on forensic assessment,  
23 psychology assessments, as well as neuropsychological  
24 assessments.

25          Q.    Okay. So your doctoral degree, is that a

1 five-year program?

2 A. It's typically completed in approximately five  
3 years, yes.

4 Q. And then the predoctoral internship, that's  
5 during --

6 A. Yes.

7 Q. -- like the five year --

8 A. -- specifically --

9 Q. I'm sorry. I won't talk over you.

10 A. That's okay.

11 Q. That's what you did at the VA center in Ohio?

12 A. Correct.

13 Q. And do you complete supervised clinical hours?

14 A. Yes.

15 Q. And is that done during the predoctoral  
16 internship or the postdoctoral residency?

17 A. Both.

18 Q. Okay. So you did that in both?

19 A. Yes.

20 Q. And do you have to sit for a national exam?

21 A. Yes.

22 Q. And you took that exam in Florida?

23 A. Yes.

24 Q. Are you currently licensed in Florida?

25 A. Yes, I am.

1 Q. When did you become certified in Florida?

2 A. My license is from November of 2016.

3 Q. Okay. Have you been continually licensed since  
4 then?

5 A. Yes.

6 Q. Is that license covered by the Florida Board of  
7 Health?

8 A. Yes.

9 Q. I want to talk about your postdoctoral residency  
10 that you mentioned.

11 Where did you complete that?

12 A. That was International Assessment Systems in  
13 Miami.

14 Q. Okay. And what type of practice is that?

15 A. It's a private practice that typically conducts  
16 psychological and neuropsychological assessments as  
17 retained by either defense or plaintiff's counsel.

18 Q. Okay. Did that deal with personal injury cases?

19 A. Often, yes.

20 Q. And how long was that program?

21 A. Two years.

22 Q. During your postdoctoral residency, did you have  
23 to get the supervised hours that we've previously  
24 mentioned?

25 A. Yes.

1 Q. How many are required?

2 A. For licensure in Florida, it's 4000. So it's  
3 not uncommon for people to complete that during a one- or  
4 two-year formal residency and often additional supervised  
5 hours, if needed, to get to the 4000.

6 Q. Okay. But you did two years in your  
7 postdoctoral?

8 A. Yes.

9 Q. And you said that working for that company it  
10 had a focus on neuropsychological work?

11 A. Yes, in many cases.

12 Q. All right. Can you tell the Court and discuss a  
13 little bit -- both your internship at the VA, what type of  
14 track were you on when you were doing your predoctoral  
15 internship at the VA?

16 A. I was in a specific neuropsychology track for  
17 that experience. So at that particular site, it was set  
18 up so that the year was divided into two major rotations.

19 So six months each, in addition to a year-long  
20 line of rotation of something like one day a week in the  
21 minor rotation for the entire year with the rest of the  
22 time spent in the major rotation and then switching  
23 halfway through the year.

24 Q. Then your postdoctorate work, did you have  
25 specific training under a neuropsychologist during that

1 work?

2 A. Yes, under a board-certified nurse psychologist.

3 Q. Okay. Did you complete a neuro practicum during  
4 your graduate work, then?

5 A. Yes.

6 Q. And when you worked at that private practice,  
7 it's -- I think the initials are IAS, right?

8 A. Yes.

9 Q. Did you have to complete clinical evaluations  
10 during that work?

11 A. Yes.

12 Q. All right. How many would you say you had to  
13 conduct in your two years working there?

14 A. That's difficult to estimate.

15 Q. Let me make it a little easier for you.

16 In a week of work there, how many evaluations  
17 would you say you're conducting?

18 A. I would say it could range from 1 to 5. We were  
19 often working on multiple cases at once, so I may be  
20 reviewing records for one case, conducting clinical  
21 assessment with testing and interview for others. So it  
22 really varied, but multiple cases per week.

23 Q. Okay. And since this was a company specifically  
24 dealing with neuropsychological and personal injury, a lot  
25 of your clinical evaluations did you have to conduct

1 neuropsychological evaluations and any testing associated  
2 with that?

3 A. Yes.

4 Q. Okay. Now, you are not -- you would not call  
5 yourself a neuropsychologist would you?

6 A. No, not currently.

7 Q. And why wouldn't you?

8 A. My current position is not that of  
9 neuropsychologist nor have I sat for board certification  
10 or completed that process.

11 Q. Okay. So unless you -- in your opinion, you  
12 were board certified, you would not call yourself a  
13 neuropsychologist?

14 A. In my opinion, yes.

15 Q. Okay. So after you did your postdoctoral work,  
16 you went to where you're currently reemployed.

17 Where is that?

18 A. South Florida Evaluation and Treatment Center.

19 Q. Okay. And when did you start working there?

20 A. January 2017.

21 Q. All right. While you've been there since you've  
22 been certified since 2016, do you have to do continuing  
23 education to maintain your license?

24 A. Yes.

25 Q. And have you done that?



1 A. I have.

2 Q. And what is the requirement?

3 A. Forty hours of continuing education every two  
4 years. Our reviewal process for the license is every two  
5 years.

6 Q. And are you up to date on that?

7 A. I am. Actually, the period for that ended May  
8 31st, so I'm currently in the next two-year cycle from  
9 that. So I haven't completed any credit this cycle, but  
10 it just started.

11 Q. So you've completed the hours required for  
12 your --

13 A. Yes. In the next two years, I need to complete  
14 40 more hours.

15 Q. Okay. In your current job at the treatment  
16 center, are you required to complete any Florida examiner  
17 training?

18 A. Yes. We are under the review of DCF and their  
19 requirement. I thought recently it was every two years.  
20 It's every two to three years. However, in my current  
21 role, we typically go with a minimum of every two years.  
22 Often, we have the opportunity to do it annually, and I  
23 take that opportunity when I'm able to.

24 Q. Okay. And are you up to date on that training  
25 and completed that --

1           A.    Yes.  My last completion of that evaluation --  
2 of that training was at the end of November, the beginning  
3 of December of 2022.  So I'm due for that at the end of  
4 the year.

5           Q.    And that training, is that -- how long is that  
6 course that you have to do?

7           A.    It typically is about three days, I believe.

8           Q.    Okay.  And what types of things are covered over  
9 those three days?

10          A.    Competency evaluation.  Rules and laws related  
11 to competency evaluations.  Often there's a special topic  
12 for, I believe, the last day of the training that might be  
13 something other than specific competency evaluations or  
14 insanity evaluations I think has been done in past years.

15          Q.    Okay.

16                    Do you belong to any associations?  Are you a  
17 member?

18          A.    Yes.  I'm a member of the American Psychological  
19 Association, as well as some of the divisions within that.

20          Q.    Okay.  What divisions, if you can recall?

21          A.    Division 22, Rehab Psychology; Division 40,  
22 Neuropsychology; and I think the Division is called Law in  
23 Psychology Division 19, if I'm recalling correctly.

24          Q.    And are the ethical rules you follow covered by  
25 that American Psychological Association?

1 A. Yes.

2 Q. Now, you're not a psychiatrist, right?

3 A. Right.

4 Q. Okay. Can you prescribe medication?

5 A. Not in Florida, no.

6 Q. Okay.

7 A. Or anywhere. No, I'm not certified to  
8 prescribe.

9 Q. Do you have an understanding, based on your  
10 background and your education, of how psychotropic  
11 medications work?

12 A. A basic understanding, yes.

13 Q. Okay. Do psychologists have the ability to  
14 diagnose organic brain conditions?

15 A. Yes.

16 Q. Given your training in both predoctoral and  
17 postdoctoral work, do you have quite a bit of -- do you  
18 think you have quite a bit of experience in that because  
19 of your specific training in neuropsychology?

20 A. Yes. I would say compared to a general  
21 psychologist, I would tend to have a bit more experience  
22 in neuropsychology and that line of assessment. In my  
23 current position, often when there is a case in which  
24 there's questions related to cognitive deficits or  
25 neuropsychological issues, I may be referred that case

1 either initially or asked to consult on that case by one  
2 of my colleagues.

3 Q. Okay.

4 MS. SULLIVAN: May I approach the witness?

5 THE COURT: Yes.

6 BY MS. SULLIVAN:

7 Q. Dr. Jones, I'm going to show you a few things we  
8 just talked about. First, is this a copy of your report  
9 documenting your evaluation of the defendant in this case,  
10 Thomas Mosley?

11 A. Yes.

12 Q. Okay. And is this a copy of your CV that you  
13 provided to both State and Defense?

14 A. Yes.

15 Q. And is this a document of your continuing  
16 education hours we talked about for your Florida examiner  
17 training?

18 A. Yes.

19 Q. Also, you provided that to both the State and  
20 the Defense?

21 A. Yes.

22 Q. Then is this a printout transcript of your 40  
23 hours of your continuing education hours completed?

24 A. Yes.

25 Q. And that would be for that cycle you just

1 referenced of May 31st of this year?

2 A. Ending May 31st of this year, yes.

3 Q. Thank you. And this, again, you provided to the  
4 State and Defense?

5 A. Yes.

6 MS. SULLIVAN: Your Honor, I would ask at this  
7 time to move these in as State's exhibits as well.

8 THE COURT: What numbers?

9 MS. SULLIVAN: I think we're on 3, 4, 5, and 6.

10 MS. MANUELE: Objection. Objection as to the  
11 report. This is obviously an out-of-court statement,  
12 so that would be hearsay. I'm going to object.

13 We have no objection to her CV.

14 We would object to the documentation of  
15 continuing education as far as the certificate goes  
16 because that would be hearsay.

17 And, likewise, with the transcript of the CLEs.

18 THE COURT: Okay. So, Madam Clerk, label the  
19 report Number 3; the CV, Number 4; the certificate,  
20 Number 5; and the printout of the continuing  
21 education as Number 6. That is the way the State  
22 read them off, so that's how I will number them.  
23 They will all be admitted over the Defense's  
24 objection.

25 (State Exhibit Nos. 3, 4, 5, and 6 were admitted

1 into evidence.

2 BY MS. SULLIVAN:

3 Q. All right. Dr. Jones, I want to start off by  
4 talking about the procedure when someone first arrives at  
5 your facility. When a person first arrives at the  
6 treatment center, what is the first thing that occurs?

7 A. They are in the admission department, which I am  
8 not involved in. So I can't say very specifically the  
9 order in which things occurred, but one of the first  
10 encounters that they will have is with the intake  
11 psychologist or psychiatric provider who conducts their  
12 intake psychiatric evaluation.

13 Q. Okay. So a psychiatric provider meets with  
14 them, and there's an intake?

15 A. Yes.

16 Q. All right. And is there an initial team  
17 meeting, of course, in addition to, or is that part of  
18 that psychiatric provider intake?

19 A. That's in addition to. So they typically will  
20 spend at least the first half of the admission day in the  
21 admissions department. My understanding is that they  
22 generally are then placed on their physical unit, where  
23 they will be staying later on that afternoon on the day  
24 they're admitted.

25 Often the following day after their admission,

1 so the second day of their hospitalization, they will be  
2 seen by the treatment team, which includes me. So I think  
3 the requirement is that they're seen within the first 72  
4 hours of admission by the treatment team. So we may see  
5 them the day after or two days after their arrival.

6 Q. Okay. And who is present for that initial team  
7 meeting that occurs either the first or the second day?

8 A. So the psychologist, and me, the attending  
9 psychiatrist, the social worker, the recovery plan  
10 coordinator, and possibly the unit nurse.

11 Q. All right. At that point, at that initial team  
12 meeting, is a competency assessment test administered?

13 A. It's an informal assessment of any potential  
14 symptoms that may be the barrier to competency for which  
15 the Court sent them to the hospital. It's not that I  
16 would sit with them and ask every question on the  
17 competency evaluation individually. It's more of an  
18 observation of their current presentation.

19 Q. Okay. And this is kind of an obvious question,  
20 but the whole reason that someone has arrived at your  
21 facility is because the Court has adjudicated them  
22 incompetent to proceed; is that fair?

23 A. Yes, in most cases. Of course, we have  
24 individuals who are committed as not guilty by reason of  
25 insanity, but the vast majority would be for incompetent

1 to proceed.

2 Q. And I can say specific to Mr. Mosley, the reason  
3 Mr. Mosley had arrived is because the Court had found him  
4 to be incompetent to proceed?

5 A. Yes.

6 Q. Is there a requirement that one of these CAT --  
7 I'm going to call it a CAT assessment -- C-A-T for the  
8 court reporter -- that one of these be done within the  
9 first few days of admission?

10 A. Yes, within five days of admission.

11 Q. Okay. So was that done in Mr. Mosley's case?

12 A. Yes.

13 Q. And then are these assessments done thereafter,  
14 and when do they occur?

15 A. Yes. So a report addressing competency status  
16 is to be completed within 30 days of admission. And  
17 currently for the Court, the requirement is that a report  
18 addressing competency is submitted within 60 days of  
19 admission.

20 Q. Okay. What was the date that Mr. Mosley was  
21 admitted to your facility?

22 A. December 14th, 2023.

23 Q. Okay. And how many times did you personally  
24 meet with Mr. Mosley?

25 A. My recollection is that I met with him once for



1 the initial meeting on the 15th of December. There was a  
2 second treatment team meeting on the 18th of December,  
3 apparently, from my records, because the initial meeting  
4 was conducted by a covering psychiatrist, whereas the  
5 regular, like, the attending psychiatrist for that  
6 treatment team, chose to have a follow-up meeting on the  
7 18th of December, and so I was present for that.

8 As well as the competency evaluation that I  
9 conducted on January 9th of 2024. And per my notes of a  
10 treatment team meeting that same day, January 9th, 2024.

11 Q. Okay. So as is the procedure, you initially saw  
12 him on December 15th for that initial team meeting that  
13 always occurs?

14 A. Yes.

15 Q. All right. But I think you just said there was  
16 a covering psychiatrist that day?

17 A. Yes.

18 Q. All right. So because of that, there was  
19 actually an additional team meeting, did you say on the  
20 18th?

21 A. Yes.

22 Q. Normally, would that occur that you would get to  
23 observe the defendant that close in time?

24 A. No, that's not typical.

25 Q. Okay. But because now the attending

1 psychiatrist was available, you guys met again?

2 A. It seems that was what happened, yes.

3 Q. All right. And then your formal evaluation  
4 occurred on January 9th?

5 A. Yes.

6 Q. Then did you say that you actually saw Mr.  
7 Mosley at a different time on January 9th as well?

8 A. Yes. I did not recall this until my notes were  
9 reviewed for the deposition earlier this week, but it  
10 appeared that we also had a scheduled treatment team -- a  
11 monthly treatment team meeting that same day. So  
12 coincidentally, I did see him twice that day, apparently.

13 Q. Okay. And that brings up a question I want to  
14 make sure we address. Any time you have interaction with  
15 any patient, but let's just talk about Mr. Mosley  
16 specifically, either yourself does or one of the nurses  
17 does, is all of this documented in his medical records?

18 A. Yes.

19 Q. Okay. So the reason why you were able to recall  
20 that you met with him twice on the 9th and then again on  
21 the 18th is because you documented your observations and  
22 that you met with him?

23 A. Yes.

24 Q. So that's a total of four times that you met  
25 with Mr. Mosley, and made observations and documented

1 those observations?

2 A. Yes.

3 Q. And I don't think I asked you this before, but I  
4 just want it clear for the record. During the course of  
5 the seven years you've worked for the South Florida  
6 Treatment Facility, have you testified in court regarding  
7 competency evaluations you've conducted?

8 A. Yes.

9 Q. Can you estimate how many times over those seven  
10 years you've testified as an expert for your competency  
11 evaluations?

12 A. It's difficult to estimate because maybe a month  
13 will pass with no hearings related to competency and some  
14 months there are multiple. I would say dozens -- dozens  
15 of times is probably an accurate estimate.

16 Q. And do you get called to testify in different  
17 jurisdictions, different circuits?

18 A. Yes.

19 Q. All right. Does your facility see patients from  
20 all different circuits, not just the sixth that we're here  
21 for?

22 A. Oh, yes. We -- from anywhere in the State of  
23 Florida.

24 Q. All right. And I guess just so we're clear for  
25 the record: Where is your facility based?

1 A. In Miami Dade County, Florida City.

2 Q. You said Miami Dade County?

3 A. Yes.

4 Q. All right. Thank you for that.

5 Going back to Mr. Mosley. You said he was  
6 admitted on December 14th. The initial treatment team  
7 meeting, is that a formal evaluation?

8 A. It's a brief meeting. Typically, it is a chance  
9 to conduct a brief mental status examination, provide the  
10 patient with information related to the facility, what our  
11 procedures are, what's expected of them, give them an  
12 opportunity to ask questions or address any concerns.

13 Q. Okay. During the initial team meetings, are  
14 there mental status exams that are performed?

15 A. Yes.

16 Q. What do those entail?

17 A. They will be asked questions by either the  
18 psychiatrist or the psychologist or both about mood,  
19 sleep, appetite. Again, any concerns. Any symptoms such  
20 as hallucinations. We observe whether there's any  
21 indication of things like delusions or paranoia. Any --  
22 we can observe speech patterns. Those are the typical  
23 things we're looking at on a mental status examination.

24 Q. Okay. Are cognitive abilities looked at during  
25 these exams?

1           A.    Yes, in a more informal manner than, say, a  
2 neuropsychological assessment.  But, yes, again, we are  
3 looking at speech, vocabulary, attention, memory.  Again,  
4 informally.

5           Q.    Okay.  And the intake psychiatric provider that  
6 you mentioned before, in your experience and in your  
7 review of the medical records and working at this  
8 facility, if any cognitive concerns were observed, would  
9 that be noted in the records?

10          A.    Yes.

11          Q.    And in your review of the records, were any of  
12 those types of concerns noted upon -- and I'm talking  
13 about just the intake or psychiatric provider?

14          A.    Not that I'm recalling or seeing in my report.  
15 The intake provider often would provide a rule out or  
16 provisional diagnosis of something related to cognitive or  
17 intellectual abilities, and in this case, that was not --  
18 that was not provided as part of that assessment.

19          Q.    Okay.  And we're going to talk about in a little  
20 bit your notes in your report about that intake.  So  
21 moving for a moment away from that, does a patient and  
22 Mr. Mosley specifically, once he's admitted and does his  
23 initial intake that first week, does he meet weekly with  
24 the psychology department?

25          A.    Yes.

1 Q. Okay. And did that occur in his case?

2 A. Yes.

3 Q. All right. Who is meeting with him weekly, and  
4 what is the purpose of those meetings?

5 A. So for any patient that could be the  
6 psychologist, me, in this case, over -- over that unit or  
7 that case, or any trainees that are supervised by me, the  
8 psychologist.

9 So, in my case, I currently have two practicum  
10 students and a postdoctoral resident who -- who were  
11 involved in conducting weekly assessments. Those are  
12 brief mental status informal meetings checking in, again,  
13 similar to the treatment team meeting, but conducted with  
14 one individual from the psychology rather than the entire  
15 treatment team.

16 Q. Okay. And again, as you mentioned before,  
17 during these weekly meetings, either it's a nursing  
18 student or a postdoctoral resident, are they making  
19 reports about these meetings with the defendant?

20 A. So it wouldn't be a nursing student. They're a  
21 practicum so --

22 Q. Yeah. Sorry.

23 A. -- in psychology. So your question was whether  
24 they would be meeting with --

25 Q. When they meet, do they make a weekly report

1 with what they observed?

2 A. Yes. They write a progress note that I would  
3 then review and sign off on.

4 Q. Okay. And if you were not there to make your  
5 own observations, are these students of yours that you  
6 supervise, are they informing you of what occurred and are  
7 you taking that into consideration when you're forming  
8 your opinion?

9 A. Yes. We typically would speak about what they  
10 documented, or I would at least read it, and if I had any  
11 questions or concerns, I would speak with them. But often  
12 they would come to me and say, Here is what occurred in  
13 this encounter, and I put a note in --

14 MS. MANUELE: Judge, I'm going to object to  
15 relevance in so far as what normally happens. It  
16 would be relevant what happened in Mr. Mosley's case,  
17 certainly not any other.

18 THE COURT: All right. So she can talk about  
19 her standard procedures, but it would be more helpful  
20 if she focused on what she did in Mr. Mosley's case.

21 MS. SULLIVAN: Okay.

22 BY MS. SULLIVAN:

23 Q. So did Mr. Mosley see people weekly?

24 A. Yes.

25 Q. Did he see your two practicum students and one

1 postdoctoral resident during his stay there?

2 A. Yes.

3 Q. Did those people that you supervise update you  
4 both with written reports and verbally about Mr. Mosley's  
5 progress while he was there?

6 A. Yes.

7 Q. And if I, at any point, make it general, make  
8 sure that it's clear that we're talking about Mr. Mosley.  
9 My intention is we're talking about everything having to  
10 do with Mr. Mosley while he is at the treatment center.

11 A. Okay.

12 Q. Okay. What other information are you gathering  
13 or reviewing as you're getting ready to do your main eval  
14 in forming your opinion?

15 A. So I reviewed the Commitment Order from the  
16 Court. I review any available demographic information, so  
17 name, birthday. I reviewed the case documents, the  
18 charges, the arrest report. I review any competency  
19 evaluations or really any psychological evaluations, but  
20 they are typically competency evaluations that are  
21 conducted prior to admission and are included in a packet  
22 with the commitment order.

23 I review the intake psychiatric evaluation  
24 conducted upon admission to the hospital. I review  
25 current medications that are prescribed, the



1 administration, and how compliant the individual is with  
2 those medications.

3 Prior to meeting with the patient -- oh, I would  
4 also review any available legal history records that are  
5 available. So looking at the Department of Corrections  
6 and the county of origin, any previous legal cases that  
7 the individual may have.

8 Q. Okay. And while Mr. Mosley was at the treatment  
9 facility, were you continually evaluating his presentation  
10 and his behaviors?

11 A. Yes.

12 Q. Okay. I think you covered most of this  
13 information, but when you're drafting your report, and  
14 you're putting together the materials that you reviewed  
15 prior to evaluation, are you making sure you put into your  
16 report everything that you have reviewed specific to Mr.  
17 Mosley before doing your evaluation?

18 A. Yes. And I should also note that I review any  
19 available documentation by the psychology or psychiatry or  
20 nursing or programs department that's available within the  
21 hospital. So any notes that occur prior to the  
22 evaluation, I would review those and summarize any notes  
23 that I find significant into the report.

24 Q. Okay. And so that includes for Mr. Mosley you  
25 reviewed all of his weekly prior reports that were

1 written, and his -- even his original intake and anything  
2 else in between you reviewed that regarding Mr. Mosley?

3 A. Yes, either prior to and/or after conducting the  
4 formal evaluation, yes.

5 Q. Okay. During your evaluation of Mr. Mosley, so  
6 we'll keep it specific, how important is it to you that  
7 Mr. Mosley -- that he self-reports to you?

8 How does that factor into your evaluation?

9 A. It's certainly considered. A clinical interview  
10 is a large part of the evaluation.

11 Q. Okay. Do you also -- did you also review what  
12 Mr. Mosley had self-reported to others at the treatment  
13 center?

14 A. Yes.

15 Q. Okay. And you were also receiving updates about  
16 Mr. Mosley from nurses and students and the postdoctoral  
17 individuals that we discussed?

18 A. Yes.

19 Q. Specific to what he is self-reporting to them as  
20 well?

21 A. Yes.

22 Q. And did you specifically note in your report  
23 that's dated January 11th of 2024, your own initial  
24 impressions upon intake of Mr. Mosley?

25 A. I believe that I did. Yes. On page 6 of the

1 second full paragraph, I summarized the encounter from the  
2 initial treatment to (indiscernible.)

3 THE COURT REPORTER: I'm sorry. Can you please  
4 speak up and repeat that?

5 THE WITNESS: Yes. I summarized the encounter  
6 of initial treatment team meeting on December 15th.

7 BY MS. SULLIVAN:

8 Q. Okay. And we'll talk about that again in a  
9 minute.

10 Did you also document in your report on January  
11 11th, 2024, your observations made by the psychiatrist and  
12 the nursing staff as well for Mr. Mosley?

13 A. On January 11th?

14 Q. In your report. I'm sorry. I'm referring just  
15 to January 11th because that's the date of your report.

16 A. Oh, yes. It includes documented observations by  
17 the attending psychiatrist and nursing staff.

18 Q. Okay. Let's talk first about the psychiatrist  
19 intake observations that you noted in your report. What  
20 information did you have from the psychiatrist?

21 Who was the psychiatrist?

22 A. So it's a psychiatric nurse practitioner in this  
23 case.

24 Q. Okay.

25 A. In my reports, I always designate whether it is

1 a psychiatrist or a psychiatric provider, so that's how I  
2 make the distinction.

3 Are you asking for the name of --

4 Q. If you don't have it in your report, that's  
5 okay.

6 A. Okay.

7 Q. But what information from that individual did  
8 you have about any possible paranoia or evidence of  
9 delusions from the defendant?

10 A. I quoted that she documented he denies paranoia  
11 and there are no evident delusions.

12 Q. Okay. How did Mr. Mosley describe his sleep and  
13 appetite to the psychiatrist provider at intake?

14 A. He described his sleep and appetite as "okay."

15 Q. Okay. How about his mood?

16 MS. MANUELE: Judge, objection to relevance.

17 Based on staleness.

18 THE COURT: Okay. Overruled.

19 BY MS. SULLIVAN:

20 Q. You can answer when you find it.

21 THE COURT: And I don't know that I -- if she  
22 said this, I don't recall hearing. The difference  
23 between a psychiatric provider and a psychiatrist?

24 BY MS. SULLIVAN:

25 Q. Can you explain that again?

1           A.    So a psychiatrist would be somebody who attended  
2 medical school.  Whereas a nurse practitioner, they  
3 wouldn't have attended medical school, to my knowledge,  
4 but I can't say specifically what their training entails.  
5 You know, did they have a background in nursing, training  
6 and nursing, and my understanding is that they have  
7 additional training and probably certification as a nurse  
8 practitioner in the psychiatric field, but I -- I don't  
9 know the specifics of that.

10           Q.    So let's be clear which one we're talking about  
11 in regards to the observations upon an admission in your  
12 report.

13           A.    Yes.  This was a psychiatric provider, not a  
14 psychiatrist.

15           Q.    Okay.  You also, I think you said, was that  
16 because that was the covering person that day?

17           A.    No.  This is an individual who typically  
18 conducts the psychiatric intake.

19           Q.    Okay.  And then you reviewed all of those  
20 records, in addition to all of the other records for Mr.  
21 Mosley for his progress reports, and you put that into  
22 your report, and we're talking about those observations  
23 upon admission?

24           A.    Yes.

25           Q.    All right.  So upon intake, just so we're clear

1 about what we're talking about. We were talking about his  
2 mood.

3 Did you answer that how he said his mood was?

4 A. No, I didn't.

5 Q. Okay.

6 A. The psychiatric provider noted that he reported  
7 his mood as "depressed sometimes."

8 Q. Okay. And how did the provider describe Mr.  
9 Mosley's thought process?

10 MS. MANUELE: Objection. Hearsay.

11 THE COURT: Overruled.

12 THE WITNESS: So she -- I quoted her in my  
13 report that her documentation stated mostly logical,  
14 goal directed, and able to verbalize needs.

15 BY MS. SULLIVAN:

16 Q. Did?

17 MS. MANUELE: We're going to object to hearsay.  
18 If she is providing information in support of an  
19 opinion, that would be one thing. But for her to  
20 just take the stand to say what other witnesses, that  
21 is certainly impermissible hearsay. Experts are  
22 allowed to rely on hearsay if it supports their  
23 opinion, but we have no opinions before us that this  
24 is in support of.

25 BY MS. SULLIVAN:

1 Q. Has all of this information that we're going to  
2 talk about coming up in your report, did you use all of  
3 this in support of your ultimate opinion regarding  
4 competency?

5 MS. MANUELE: Could we get a ruling, Your Honor?

6 MS. SULLIVAN: I mean, I'm asking?

7 THE COURT: Okay. She's got to lay the  
8 predicate to her opinion, right? So she's got to go  
9 through, I suspect, all of the information that she  
10 relied upon in making her opinion before I allow her  
11 to give one, right? I mean --

12 MS. MANUELE: No. I mean, we would --

13 THE COURT: Do you want her opinion first and  
14 then tell me how she got there? Is that what you  
15 want her to do? I think we know --

16 MS. MANUELE: We don't have an opinion in order  
17 that she's supporting, I guess. So that's --

18 THE COURT: All right. Well, I mean, if you  
19 want to ask her what her opinion is and then you can  
20 ask her your questions.

21 MS. SULLIVAN: Sure.

22 THE COURT: Okay.

23 BY MS. SULLIVAN:

24 Q. We're going to skip to the end and then  
25 hopefully get back to where we were.

1           After your evaluation on January 9th of 2023,  
2 what was your opinion of --

3           MS. MANUELE: Objection. Relevance.

4           THE COURT: Overruled.

5 BY MS. SULLIVAN:

6           Q.    After your evaluation on January 9th of 2023,  
7 what was your opinion, within a reasonable degree of  
8 medical certainty, whether the defendant was competent to  
9 proceed?

10          A.    I opined him competent to proceed.

11          Q.    Okay.

12          MS. SULLIVAN: Your Honor, may I now go back to  
13 where I was?

14          THE COURT: Of course.

15          MS. SULLIVAN: Thank you.

16 BY MS. SULLIVAN:

17          Q.    I think we were talking about -- let me find  
18 where I was. We're still talking about the psychiatric  
19 provider in that initial intake upon admission.

20                Did that individual note if the defendant  
21 reported any auditory or visual hallucinations?

22          A.    Yes.

23          Q.    Okay. Did the psychiatric provider note if  
24 those self-reports were reliable?

25          A.    I can't say whether she was referring



1 specifically to the self-reports of hallucinations. In  
2 their evaluation and the way they document it, they just  
3 have a general statement about reliability.

4 Q. And what was that statement?

5 A. Poor.

6 Q. Okay. And did the psychiatric provider note if  
7 the defendant reported any suicidal ideations at that  
8 time?

9 A. She noted that he did not endorse.

10 MS. MANUELE: Objection. Judge, hearsay. The  
11 same issue. She's not tying any of this to her  
12 opinions in the case.

13 THE COURT: Overruled.

14 BY MS. SULLIVAN:

15 Q. I'm going to ask it again because I got lost  
16 there.

17 Did the psychiatrist, psychiatric provider note  
18 if the defendant reported any suicidal ideations at that  
19 time?

20 A. Yes, she did note that he did not.

21 Q. He did not endorse any suicidal ideation?

22 A. Correct.

23 Q. At the time of that eval?

24 A. Yes, correct.

25 Q. Did the provider note if -- note how the

1 defendant described his sleeping and appetite? I think  
2 you already stated that, that was as okay?

3 A. Yes, okay.

4 Q. Okay. And what was the psychiatric provider's  
5 initial diagnostic impression of the defendant at intake?

6 A. She included two, unspecified mood disorder and  
7 cannabis use disorder.

8 Q. Okay. So now I want to move to -- you said that  
9 you saw Mr. Mosley on December 15th of 2023, the day after  
10 he was admitted?

11 A. Yes.

12 Q. Great. Did you note your intake observations of  
13 the defendant on that date?

14 A. Yes.

15 Q. And are those observations noted in your report  
16 dated January 11th, 2024?

17 A. Yes.

18 Q. Okay. And that would be your observations that  
19 were at that initial treatment team meeting that we  
20 discussed?

21 A. Yes.

22 Q. Okay. Was Mr. Mosley asked if he knew why he  
23 was sent to the hospital?

24 A. Yes.

25 Q. What was his response?

1           A.    He indicated that he was aware that he had been  
2 found incompetent to proceed by doctors, and I quoted him  
3 as specifically saying "by doctors."

4           Q.    Okay.  Was Mr. Mosley asked if he knew about his  
5 case or asked whether he needs copies of his charges?

6           A.    Yes.

7           Q.    And what was his response to that?

8           A.    He stated that he knew about his case.

9           Q.    Okay.  And after December 15th, was Mr. Mosley  
10 then observed and met with by the various medical staff  
11 we've previously talked about?

12          A.    Yes.

13          Q.    And, again, you were reviewing those reports and  
14 documents and those interactions in your final report that  
15 we're discussing right now?

16          A.    Yes.

17          Q.    Okay.  In reviewing, did you review notes by  
18 nursing staff as well?

19          A.    Yes.

20          Q.    Was the presence of acute psychotic symptoms or  
21 suicidal ideations ever observed and documented by the  
22 nurses?

23          A.    Not that I saw, no.

24          Q.    In your review of the notes by the nursing  
25 staff, what did the nurses document about his sleeping

1 habits and behavior?

2 A. I noted that on December 21st and 28th, the unit  
3 nurses documented that he demonstrated restful sleep, his  
4 behavior as calm, logical, thinking process. His memory  
5 was oriented.

6 Q. Okay. Regarding medications, are you aware that  
7 Mr. Mosley was already on medications when he arrived at  
8 the treatment facility?

9 A. Yes.

10 Q. Great. And did his -- to your knowledge, his  
11 medication ever change while he was at the facility?

12 A. No.

13 Q. All right. One of his medications, are you  
14 aware, was an antipsychotic?

15 A. Yes.

16 Q. And, again, that was something that he -- had he  
17 already been placed on that prior to coming to the  
18 facility?

19 A. Yes.

20 Q. Okay. Is it a good idea to remove somebody from  
21 an antipsychotic upon them entering the facility?

22 A. I'm not a prescriber, so I couldn't say whether  
23 it is a good idea. I can say that it is not common for  
24 them to --

25 MS. MANUELE: Objection. Speculation.

1 THE COURT: Do you want to rephrase your  
2 question?

3 MS. SULLIVAN: Sure.

4 BY MS. SULLIVAN:

5 Q. He remained on his antipsychotic the entire time  
6 he was there?

7 A. Yes.

8 Q. And do you have knowledge as to what that  
9 antipsychotic was meant to treat?

10 A. So when I include their current medications in  
11 my report at the time of the evaluation, I note what the  
12 indication for that medication as documented in the  
13 medical records shows. In this case, the Zyprexa Zydis,  
14 it was noted that it was prescribed for mood/psychosis.

15 Q. Okay. What other medications was he on that you  
16 noted at the time of your evaluation?

17 A. Also hydroxyzine pamoate for anxiety/EPS,  
18 extrapyramidal symptoms, or side effects and additionally,  
19 Desyrel, or it's also called trazodone for depression.

20 Q. And those are the medications that he was on at  
21 the time of your evaluation on January 9th?

22 A. Yes.

23 Q. And is there any indication in the medical  
24 records that his medications had changed from when he was  
25 first admitted?

1 A. No.

2 Q. All right. According to your review of the  
3 records, was Mr. Mosley compliant with his medications  
4 while at the facility?

5 A. Yes. The nurses documented that he was  
6 compliant.

7 Q. All right. So let's move to your actual  
8 evaluation of Mr. Mosley that occurred on January 9th.  
9 You said you met with him prior -- you met with him twice  
10 on January 9th?

11 A. Yes.

12 Q. So this was not the team meeting that you guys  
13 had?

14 A. No.

15 Q. This evaluation, is this just you and him?

16 A. Yes.

17 Q. All right. And where does that meeting occur?

18 A. We have an evaluation room, an office area. It  
19 occurred in that evaluation room.

20 Q. Do you recall the length of the meeting?

21 A. Not specifically.

22 Q. Okay. Given everything that you did during your  
23 evaluation of him, how long would that normally take for  
24 you to do?

25 A. With --

1 Q. With the understanding that you're approximating  
2 this and not giving a specific answer.

3 A. Okay. With a clinical interview related to  
4 their history, as well as the competency assessment, and  
5 then, in this case, additional psychometric test measures,  
6 I would say this would have been at least 90 minutes.

7 Q. Okay. Let's go through first in your report  
8 Mr. Mosley's self-reporting that he is providing to you  
9 during this eval on January 9th.

10 I want to start with what did he -- what did  
11 Mr. Mosley report about his family life?

12 A. He reported that he was born and raised in  
13 St. Petersburg by his mother and father. He indicated  
14 that he had been in recent contact with his parents, and  
15 they are his support system. He mentioned that he had  
16 siblings, but he's not in contact with them.

17 He did not endorse any experience of traumatic  
18 events or being the victim of abuse. No reported family  
19 history of drug or alcohol abuse. No family history of  
20 mental illness. No history of domestic violence that was  
21 reported. He reported he has never been in foster care  
22 and has not been homeless. He reported that he had not  
23 been married.

24 Q. What did he report about his education?

25 A. He reported that he left school during the 10th

1 grade.

2 Q. Did he report to you that he had been suspended  
3 in middle school and high school?

4 A. Yes.

5 Q. And for what reason was that?

6 A. Truancy.

7 MS. MANUELE: Judge, I'm going to object and ask  
8 that the witness testify off her own recollection.  
9 If she needs to refer to her report, that she let us  
10 know she is doing so.

11 THE COURT: Okay.

12 BY MS. SULLIVAN:

13 Q. Okay. When you're referring to the report, just  
14 say, I'm referring to the report, for the record, okay?

15 A. Sure.

16 Q. And what was that reason again for being  
17 suspended? If you're referring to --

18 A. I'm referring to my report, and he reported that  
19 it was for truancy.

20 Q. And what did Mr. Mosley report about his  
21 employment history?

22 A. I'm referring to my report, and he reported that  
23 he was first employed at age 19 or 20 related to trash.

24 Q. Okay. During your evaluation on January 9th of  
25 Mr. Mosley, did you do any testing regarding cognitive



1 impairment?

2 A. No.

3 Q. And why didn't you?

4 A. One, I don't routinely do cognitive assessment  
5 unless I see the specific concern related to that.  
6 Additionally, in this case, when someone is not completely  
7 cooperative or forthcoming, the possibility for the  
8 results of the cognitive assessment they're likely going  
9 to be questionable at best, in terms of reliability, and  
10 maybe invalid.

11 Q. Okay. Were those issues presenting themselves  
12 with Mr. Mosley?

13 A. I believe so, yes.

14 Q. And is that why you -- for that reason and the  
15 other reasons you stated, you didn't do any testing  
16 regarding the cognitive impairment?

17 A. Correct.

18 Q. Okay. Let's talk about his self-reporting about  
19 his mental health, physical health, and his substance  
20 abuse history.

21 Did he discuss whether he had ever been  
22 hospitalized for mental health treatment?

23 A. I'm referring to my report. Yes, he did.

24 Q. And for what?

25 A. I'm referring to my report. He reported that he

1 was first psychiatrically hospitalized in 2019 or 2020  
2 after a suicide attempt. And again in 2023 after a  
3 suicide attempt.

4 Q. Okay. The third suicide attempt that he  
5 mentioned, did he report to you that this occurred before  
6 his arrest on March 29th?

7 A. I'm referring to my report. Yes.

8 Q. And he added that it was his birthday?

9 A. Yes.

10 Q. So this would be a self-reported suicide attempt  
11 that happened when he was arrested for his current  
12 charges?

13 A. It's unclear to me in --

14 Q. And that's not a fair question. For what you  
15 knew, he said it was before -- right before his arrest on  
16 March 29th?

17 A. Before, but at -- from this, I don't know how  
18 far before. I don't know that.

19 Q. Okay. Let's see. Then I think the last thing  
20 was: Did he report any substance abuse?

21 A. Yes. I'm referring to my report. He endorsed a  
22 history of daily marijuana use beginning at age 15 or 16.

23 Q. Okay. Did you discuss with Mr. Mosley about any  
24 prior legal history?

25 A. Yes.

1 Q. Okay. And what did he report about any prior  
2 arrests?

3 A. I'm referring to my report. He reported arrests  
4 as a juvenile for trespassing and violation of probation.  
5 When I asked him what offenses resulted in him being on  
6 probation, he reported he was charged with burglary of  
7 cars and placed on probation for nine months.

8 Q. Okay. I think you said he told you he was on  
9 probation and that he violated that probation?

10 A. Yes.

11 Q. What did he tell you about that violation  
12 information?

13 A. I'm referring to my report. That it was related  
14 to not notifying the probation officer that he was truant  
15 from school. Then he was placed on an ankle monitor and  
16 then reported that he violated probation again by not  
17 charging the ankle monitor.

18 Q. Okay. You noted in your report under your  
19 diagnostic impressions section that Mr. Mosley reported  
20 atypical hallucinations while being treated.

21 Why did you find that to be atypical?

22 A. Due to the reported frequency and intensity of  
23 the hallucinations he reported the -- they were fairly  
24 continuous. I found that atypical.

25 Q. Okay.

1           A.    So in -- in the context of no observed behaviors  
2 during our interactions that would suggest related to  
3 stress or distraction or responding to internal stimuli in  
4 that way I found them atypical.

5           Q.    In your review of the records and what was  
6 reported to you by Mr. Mosley, was he reporting  
7 hallucinations that were quite severe and continuous?

8           A.    In reviewing -- referring to my report.  Yes.  
9 He made statements including that he experienced both  
10 auditory and visual hallucinations all the time.

11          Q.    Okay.  Did you ever observe any evidence of this  
12 during your time with the defendant?

13          A.    I did not.

14          Q.    Okay.  And is that one of the things that led  
15 you to say that these were atypical hallucinations?

16          A.    Yes.

17          Q.    You noted poor cooperation and effort in your  
18 diagnostic impression as well.  Can you give us some  
19 examples of when Mr. Mosley was offering poor cooperation  
20 and effort?

21          A.    Yes.  When I questioned him about information  
22 related to legal knowledge or competency, his responses  
23 were often, I don't know or really no attempt to provide a  
24 response other than I don't know.  Including related to  
25 very basic legal knowledge that most individuals can

1 demonstrate at least some knowledge of, such as the  
2 judge's role, the jury's role.

3 Q. Okay. Specifically to when you asked him about  
4 his pending charges, can you tell me a little bit about  
5 that conversation and what you found to be atypical or  
6 typical about that in relation to his poor effort?

7 A. Yes. I asked him what his pending charges or  
8 allegations against him are and he told me that he forgot.  
9 But then recalled that he saw one or he knew of one charge  
10 at least.

11 And when I asked if he could recall for me what  
12 the one charge was, he advised me that he would have on  
13 call his public defender, which I found --

14 MS. MANUELE: Judge, again, I would object.  
15 Just if the witness is reviewing her report she  
16 didn't let us know she was reading from the report.

17 THE COURT: Okay. Doctor, if you need to refer  
18 to your report --

19 THE WITNESS: Yes, I'm referring to my report.

20 THE COURT: Thank you.

21 THE WITNESS: So he advised me that he would  
22 need to call his public defender. And when I asked  
23 why, he explained that it would be to see what his  
24 charges are. I pointed out to him that prior to this  
25 he had claimed that he does not trust his public

1 defender and I found that discrepant, but when I  
2 brought that to his attention, he didn't make any  
3 attempt to reconcile that discrepancy.

4 I advised him that I had a copy of his charging  
5 and arrest documents, and I noted to him that he had  
6 indicated during the initial treatment team meeting  
7 that he knew about the case. That he -- he wouldn't  
8 need a copy as I typically would offer a copy during  
9 the initial treatment team meeting, but his response  
10 at that time was that he knew about the case.

11 BY MS. SULLIVAN:

12 Q. Okay. What did he say when you asked him about  
13 the difference between a misdemeanor and a felony?

14 A. I'm referring to my report. He claimed that he  
15 had no knowledge of what felonies or misdemeanors are, and  
16 he could not identify whether his charges were felonies or  
17 misdemeanors. That was after I had advised him that  
18 felonies are more serious than misdemeanors.

19 Q. Did Mr. Mosley make any attempt to try to define  
20 those?

21 A. No.

22 Q. Okay. Was that something that you were  
23 considering when looking at his cooperation and effort  
24 during this evaluation?

25 A. Yes.

1 Q. Did you confront Mr. Mosley with the fact that  
2 he had just told you what probation was?

3 A. Yes.

4 Q. Okay.

5 A. Well, that he had told me he had been on  
6 probation.

7 Q. Okay. When you were asking -- did you ask Mr.  
8 Mosley about the roles of the different people in court?

9 A. Yes.

10 Q. And when he gave you incorrect answers, did he  
11 make any attempt to correct any of his responses?

12 A. I believe he made an attempt related to the  
13 public defender. I'm reviewing my report.

14 Q. At first, what did he say about the public  
15 defender's role?

16 A. He indicated that he did not know, and I made  
17 some sort of challenge to this. I don't know if I asked  
18 him it again or expressed doubt that he did not know.  
19 Then he responded, my lawyer, right?

20 Q. And in this same evaluation, had you already  
21 discussed the public defender with him, or did you have  
22 any other --

23 A. I don't believe so. I would have started with  
24 questioning -- once I completed the background history  
25 interview, I would have started with asking him about the

1 roles of courtroom personnel.

2 Q. Okay. And at another point in time when we were  
3 just talking about when you asked him about the charge, he  
4 stated to you that he would have to call his public  
5 defender?

6 A. Yes.

7 Q. You noted his failure to plan ahead. Can you  
8 explain that and what you mean by that and what that has  
9 to do with his poor effort and cooperation?

10 A. I noted that in reference to the criteria  
11 related to malingering per DSM-5-TR, and my impression is  
12 that it's a failure to plan ahead. If you are telling an  
13 evaluator that you don't know information when there's  
14 documented records related to telling other evaluators  
15 that you do know that information.

16 Q. And, again, you had reviewed the prior  
17 evaluations that Mr. Mosley had undergone before he came  
18 to the treatment center?

19 A. Yes. The evaluations conducted prior to him  
20 coming to the treatment center, I reviewed those once he  
21 was assigned to my unit.

22 Q. So you were aware of, during those evaluations,  
23 things that he did provide and things that he did not  
24 provide during those evaluations?

25 A. Yes.



1 Q. All right. Given what you believe to be the  
2 poor effort and inconsistencies in Mr. Mosley's  
3 self-reporting, and then your own personal observations of  
4 Mr. Mosley, did you administer some tests to help  
5 determine if Mr. Mosley was, in fact, malingering?

6 A. I did.

7 Q. All right. Prior to administering these tests,  
8 and before we talk about what they were, did you suspect  
9 malingering based on the observations of Mr. Mosley  
10 yourself and all of the observations that were noted in  
11 his medical records?

12 A. Yes.

13 Q. Okay. And in order to confirm or come to an  
14 opinion, is that why you ultimately decided to administer  
15 some tests for the malingering?

16 A. Yes.

17 Q. What test did you administer with Mr. Mosley?

18 MS. MANUELE: Judge, we're going to object based  
19 on foundation. She indicated that she is relying on  
20 these in forming a malingering opinion. And as  
21 indicated, that data has -- or we would ask to  
22 proffer, at this point, before she offers any  
23 opinion.

24 THE COURT: Do you want to ask her some  
25 questions?

1 MS. MANUELE: Yes, Your Honor.

2 THE COURT: Sure.

3 VOIR DIRE EXAMINATION

4 BY MS. MANUELE:

5 Q. Good afternoon.

6 A. Good afternoon.

7 Q. You administered the SIMS in this particular  
8 case?

9 A. Yes.

10 Q. Okay. That's a --

11 THE COURT: Can you give me the initials?

12 MS. MANUELE: S-I-M-S.

13 THE COURT: That's what I thought. I just  
14 wanted to make sure.

15 BY MS. MANUELE:

16 Q. What does that stand for?

17 A. Structured Inventory of Malingered Symptoms or  
18 Symptomatology. I'm sorry, I don't recall the specific.

19 Q. That's all right. Symptomatology.

20 A. Yes.

21 THE COURT: Doctor, just a little louder for me,  
22 please.

23 THE WITNESS: Yes.

24 THE COURT: Thank you.

25 BY MS. MANUELE:

1 Q. And this is a 75-item instrument; is that  
2 correct?

3 A. That's correct.

4 Q. The individual taking the test either circles  
5 one of the answers given or you would do that on their  
6 behalf, right?

7 A. Yes.

8 Q. So there is a scoring sheet that is -- or a  
9 document that asks questions and then gives specific  
10 options, right?

11 A. Correct.

12 Q. What are the options that are given?

13 A. It's a forced choice. It's a true/false.

14 Q. I'm sorry?

15 A. It's true/false.

16 Q. True/false. And as far as the document that  
17 reflects Mr. Mosley's true-or-false answers, you don't  
18 have that with you today, correct?

19 A. Correct.

20 Q. You have not been able to review that in  
21 preparation for your testimony today, correct?

22 A. Right. I don't have it with me. I have  
23 reviewed it.

24 Q. You did review it prior to your testimony?

25 A. Yes.

1 Q. And what was Mr. Mosley's score?

2 A. The scores are, in my opinion, protected by test  
3 security rules.

4 Q. What is the score for -- the total score that  
5 you reached for Mr. Mosley?

6 A. The specific number?

7 Q. Yes.

8 A. Again, I do think that is protected information.  
9 I provide the interpretation because that is the guideline  
10 provided by reporting results from that measure. Nowhere  
11 in the manual does it say to report the scores. It  
12 directs the evaluator to report the interpretations of  
13 what those scores mean.

14 Q. Nowhere in the manual does it say report the  
15 scores?

16 A. Correct. In --

17 Q. Okay.

18 A. -- the report.

19 Q. And specifically, actually in the manual, there  
20 is a section for total score interpretation, correct?

21 A. Correct.

22 Q. And they even give a sample statement and  
23 indicate that possible interpretation of such SIMS total  
24 score results may include a statement such as the  
25 following, and then it gives you a sample statement,

1 correct?

2 A. Correct.

3 Q. And that sample statement reads: The  
4 respondent's SIMS total score of, with a line to put in  
5 the total score, was significantly elevated above the  
6 recommended cutoff score for the identification of  
7 suspected malingering. And then it goes on, correct?

8 A. Okay. Correct.

9 Q. So according to the manual, it actually tells  
10 you you are supposed to give the score, right?

11 A. I don't recall that specifically, but it may.

12 Q. Would it refresh your recollection to review?

13 A. Yes.

14 MS. MANUELE: May I approach the witness?

15 THE COURT: Yes.

16 BY MS. MANUELE:

17 Q. Malingering. I'm starting on page 14, and it  
18 goes to page 15. Take a minute to review it for yourself  
19 and when you are done, just look up.

20 A. Okay. Yes, I would agree with that.

21 Q. All right. And now that you're aware that the  
22 manual actually doesn't preclude that, what is the score  
23 you reached for Mr. Mosley?

24 A. 39.

25 Q. And do you have that document today?

1 A. In front of me, no.

2 Q. When we -- just before starting your testimony,  
3 do you agree that myself and Ms. Sullivan approached you  
4 in the outside room?

5 A. Yes.

6 Q. Do you agree at that time we asked you if you  
7 knew what the score was?

8 A. I don't recall if you asked me specifically  
9 about the score.

10 MS. MANUELE: Ms. Sullivan?

11 MS. SULLIVAN: I don't think I asked the actual  
12 score. I started talking about if she could tell us  
13 the score.

14 THE WITNESS: Yes.

15 BY MS. MANUELE:

16 Q. And didn't you say you did not know what the  
17 score was as of now?

18 A. I don't recall that I said that. I think I  
19 stated that I was unaware that that was something that I  
20 ethically would be able to provide.

21 Q. And then we specifically said, Well, do you know  
22 it yourself? And you said, No, correct?

23 A. I don't recall.

24 MS. MANUELE: May I have a moment, Judge?

25 THE COURT: Yes.

1 MS. MANUELE: Judge, at this point, we're going  
2 to ask for a recess to continue her testimony so that  
3 we can review the information that she just told us  
4 was unavailable prior to starting the hearing.

5 THE COURT: A score of 39?

6 MS. MANUELE: Correct.

7 THE COURT: Okay.

8 MS. MANUELE: In fact, even just before Your  
9 Honor she said she couldn't give the score.

10 THE COURT: No, I know. No. It's certainly --  
11 that wasn't what I was expecting.

12 So what do you need a recess for? What do you  
13 want to look into?

14 MS. MANUELE: We're going to request the state  
15 hospital's complete file to, one, look into where  
16 this document had been all this time. She told us  
17 out there that she had not been able to find it or  
18 had access to it since her deposition on Tuesday.

19 So I would like to have them pull from their  
20 notes when it was accessed, but also to consult with  
21 our experts and then do additional research on what  
22 that score means, even.

23 THE COURT: Well, the documents are being  
24 provided to Dr. McClain, so here are my thoughts on  
25 this. I would like to finish what we can today. You

1 can certainly argue to me how much weight I should  
2 give this line of questioning, this form of testing  
3 done by this doctor in this manner like any other,  
4 you know -- just like and the jury instructions  
5 indicate, you know, I can consider all, part, or none  
6 of any person's testimony.

7 And how much weight I give any particular thing  
8 is certainly subject for argument. So I would like  
9 to proceed with her testimony today with the  
10 understanding that you can look into this score of  
11 39. Those documents are being provided to Dr.  
12 McClain and whoever else you want to have them, and  
13 Dr. McClain, I'm sure, would be happy to talk to me  
14 all about what she thinks the score of 39 means,  
15 including, I assume, Dr. Hall who is next to testify.

16 Now, if you need for him to come back next week  
17 because he needs to look into something related to  
18 that score, that would be fine, and I would certainly  
19 consider that, but I want to finish with her  
20 testimony today.

21 MS. MANUELE: Okay.

22 THE COURT: Were there any other questions for  
23 the purposes of the proffer that you would like to  
24 ask?

25 MS. MANUELE: May I have one moment?



1 THE COURT: Of course.

2 BY MS. MANUELE:

3 Q. So do you have the score on the ILK while we're  
4 here too?

5 A. I do.

6 Q. And what is that?

7 A. 26.

8 THE COURT: What's the ILK?

9 MS. MANUELE: Inventory of Legal Knowledge.

10 Sorry.

11 THE COURT: That's okay.

12 Anything else?

13 MS. MANUELE: No.

14 THE COURT: All right. Thank you.

15 Ms. Sullivan?

16 CONTINUED DIRECT EXAMINATION

17 BY MS. SULLIVAN:

18 Q. I want to give you an opportunity to clarify the  
19 conversations that were had prior to you testifying so you  
20 can -- we can all be clear on what you understood we were  
21 asking you.

22 A. Yes.

23 Q. What was your understanding when we -- I wasn't  
24 with you when Ms. Manuele and Ms. Russell first talked to  
25 you as they came in the door this afternoon, right?

1           A.    Right.

2           Q.    Okay.  What do you recall them asking you about  
3 the scores at that time?

4           A.    They asked whether the requested test protocols  
5 and my handwritten notes from the evaluation had been sent  
6 to the attorneys as requested.  I advised them that my  
7 supervisor, as well as our legal department and medical  
8 records, are reviewing that request and have not informed  
9 me whether or not it has been processed and whether the  
10 records had been sent.  I don't know.

11                        When you and Defense Counsel approached me  
12 regarding this -- the scores and the tests, my  
13 understanding was I was being asked if I can ethically  
14 disclose that information, and my understanding, at that  
15 time, is that I could not.

16                        Upon reviewing the manual for the SIMS, I  
17 acknowledge that it does allow evaluators to provide  
18 scores, specific scores in their reports.

19           Q.    Okay.

20           A.    At that point, I advised of the score that I  
21 recall from looking at those protocols following the  
22 deposition on Tuesday.

23           Q.    Okay.  Because I couldn't remember exactly what  
24 I asked you.  I wasn't documenting it.  I didn't know I  
25 would have to recite it two hours later.

1           But you're saying I asked you: Can you tell us  
2 the score?

3           A. That was my understanding.

4           Q. And your interpretation of that is, Can you tell  
5 me the score? As in, ethically tell me the score?

6           A. Yes.

7           Q. And once you were shown that you may be able to  
8 tell us the actual score, you're providing that to us now?

9           A. Yes.

10          Q. In terms of the other raw data and all of that  
11 information you've been willing to give that to Dr.  
12 McClain from the moment you were asked to, right?

13          A. Yes.

14          Q. When you left your office yesterday afternoon,  
15 did you make sure the appropriate people at that facility  
16 knew to get that information to that doctor?

17          A. Yes.

18          Q. Okay.

19          A. I provided those documents to my supervisor who  
20 is a psychologist and informed her of the contact  
21 information for the Defense's expert who they requested  
22 that information be sent to.

23          Q. Okay. At any point in anything you've been  
24 asked since you came in this courtroom or been right  
25 outside this courtroom, were you telling anybody that you

1 didn't know the actual score?

2 A. (No response.)

3 Q. Were you trying to express that?

4 A. No.

5 Q. Okay. You knew the score?

6 A. Yes.

7 Q. You just did not think you were ethically  
8 allowed to give the score over?

9 A. Correct.

10 Q. I just wanted to clarify that. Okay.

11 I think Ms. Manuele did some of my questions for  
12 me, but I want to kind of go back to where we were.

13 So what were the two tests that you administered  
14 regarding malingering?

15 A. The SIMS and the ILK, which is the Inventory of  
16 Legal Knowledge.

17 Q. Okay. And I think you just gave us -- I want to  
18 make sure the score is right. You just said he performed  
19 a total score of 26 on the ILK?

20 A. Yes.

21 Q. I don't know what that means. I probably -- I  
22 don't have the raw data. I'm not getting the raw data.  
23 But in your report and in your training and experience,  
24 what would you say overall about how he performed on that  
25 Inventory of Legal Knowledge, Mr. Mosley?

1           A.    So I'm referring to my report.  And that is  
2 within the range of those expected by chance, so that  
3 interpretation could be that the examinee was simply  
4 guessing or responding randomly.  It would be lower than  
5 scores typically obtained by examinees with bona fide  
6 mental disorders.  It also raises significant concerns  
7 about feigned or relevant response style.

8           Q.    And was it your opinion that based on the  
9 results of that -- that's a 61-item forced-choice measure?

10          A.    Yes.

11          Q.    So you're asking him 61 different questions and  
12 asking him to verbally respond to you?

13          A.    Yes.

14          Q.    And just to be clear, these are all -- you  
15 verbally administer these exams?

16          A.    Yes.

17          Q.    And based on how he scored, his total score, did  
18 it express to you that he understood the legal process  
19 better than what he was portraying to you during that  
20 evaluation?

21          A.    Yes.  It was suggestive of that.  So the  
22 interpretation is that if somebody scores that low, the  
23 likelihood that they are demonstrating their true  
24 abilities is lesser.

25                    In this case, that score is quite low within the

1 chance range, and it approaches the range at which the  
2 test manual indicates that you should interpret it as  
3 quite likely that they're feigning lack of legal  
4 knowledge.

5 Q. We also started talking about the SIMS.

6 Can you say what that actually stands for?

7 A. That is Structured Inventory of Malingered  
8 Symptomatology is what I believe the Defense informed me.

9 Q. And how many questions are asked during that  
10 test?

11 A. 75.

12 Q. Again, is that a verbally administered exam?

13 A. Yes. I would say it is designed to be  
14 administered such that the examinee reads the questions  
15 themselves and responds themselves by writing, but for  
16 safety measures within the hospital, we typically do  
17 administer it verbally and circle responses for them.

18 Q. Did you do that with Mr. Mosley?

19 A. Yes.

20 Q. And I think the SIMS total score was that of 39?

21 A. Yes.

22 Q. Again, I don't know what that means. But what  
23 about, in your opinion, his total score on the SIMS caused  
24 concern for malingering?

25 A. It is significantly elevated above the

1 recommended cutoff that would be suggestive of a feigning  
2 or exaggerating psychiatric -- well, actually, multiple  
3 types of symptoms, but including psychiatric. It has five  
4 scales of different subtypes of symptoms.

5 Q. Okay. Do you know the recommended cutoff score?

6 A. Yes.

7 Q. What is it?

8 A. 14.

9 Q. 14?

10 A. Yes.

11 Q. Okay. And what about the symptoms specifically  
12 that Mr. Mosley selected during this test raised suspicion  
13 of malingering?

14 A. So I can't speak to the specific symptoms, one,  
15 because I don't have the test in front of me; but, two,  
16 because, again, that's protected test carrier information.  
17 However, the scores are -- there's five subscales of the  
18 categories of symptoms that could be endorsed.

19 Q. What are the different -- what are the five  
20 subscale scores? What are the topics?

21 A. I'm referring to my report. They -- the five  
22 subscales are related to affective disorders, psychosis,  
23 low intelligence, amnesic disorders, and -- I missed one,  
24 neurologic impairment.

25 Q. Okay. Let's just say, generally, how did he

1 score individually on these different subscales?

2 A. The subscale scores were elevated on all five of  
3 those scales.

4 Q. Okay. What does that tell you?

5 A. That would suggest exaggeration or feigning of  
6 symptoms in all five categories.

7 Q. Okay. Do you know is there a recommended cutoff  
8 for these subscales as well?

9 A. There is.

10 Q. Do you know what they are?

11 A. I don't recall.

12 Q. Are they the same across the board for each  
13 subscale or are they different?

14 A. There are different.

15 Q. Do you know his individual scores for the five  
16 subscales?

17 A. No, I don't.

18 Q. Just to be clear, you don't have knowledge?  
19 It's not that you're not going to tell us?

20 A. No, I don't have knowledge.

21 Q. Okay. But all of those subscale scores, all  
22 five of them in all five of those different categories  
23 were elevated?

24 A. Yes.

25 Q. How does that compare to someone who is actually



1 exhibiting symptoms of these different subscales of  
2 various disorders, his score?

3 A. The subscores?

4 MS. MANUELE: Judge, we would object for lack of  
5 foundation. She indicates she doesn't have those  
6 numbers, so...

7 THE COURT: What was your question?

8 BY MS. SULLIVAN:

9 Q. Okay. The scores, even though you don't know  
10 the precise number, you've documented in your report that  
11 they were elevated?

12 A. Yes.

13 Q. Okay. So what does that tell you based on the  
14 elevated scores that -- let me make sure I ask it the same  
15 way again.

16 How does that compare to a person who is  
17 actually exhibiting symptoms of those various disorders?

18 MS. MANUELE: And so lack of foundation because  
19 presumably the number would determine the variance,  
20 and she's indicated she doesn't have it.

21 THE COURT: Is that number indicated in the data  
22 that you're giving to Dr. McClain, or do you not have  
23 a specific number for those five subscales?

24 THE WITNESS: I don't have a specific number,  
25 but based on the interpretation, I think I can

1 respond to the question that she's asking.

2 THE COURT: All right. Overruled. I will allow  
3 her to respond.

4 THE WITNESS: So the test is designed such that  
5 you consider the sensitivity and specificity so that  
6 they can, with those scores, capture the most  
7 accurate findings.

8 So it would include individuals who are, in  
9 fact, feigning rather than genuinely having those  
10 symptoms. So, of course, with any test, there's a  
11 measure of error. So some individuals could be  
12 inaccurately categorized as feigning or exaggerating  
13 those symptoms, but the test developers designed it  
14 such that they minimize that margin of error. That's  
15 similar across any test.

16 BY MS. SULLIVAN:

17 Q. And I'll be more specific, too, in my question  
18 because I asked you a very broad question, but let's talk  
19 about the Neurologic Impairment Scale. That's one of  
20 those subscales?

21 MS. MANUELE: Judge, we are going to object to  
22 all of this because we don't have -- she doesn't have  
23 the data. She indicates she doesn't have the scores.  
24 We don't have the data. We're objecting to any  
25 additional questioning or opinions other than what

1 she's provided on that.

2 MS. SULLIVAN: I hadn't asked my question yet.

3 THE COURT: What's your next question?

4 MS. SULLIVAN: I'm talking about what she's put  
5 into her report, which I think she's allowed to  
6 testify as to what she observed and indicated in her  
7 report. I'm not asking her about raw data. I don't  
8 have raw data, so how am I talking about it?

9 THE COURT: Okay. Overruled.

10 MS. MANUELE: So our next objection would be  
11 cumulative, then, because the report is already  
12 entered into evidence. We don't need a witness to  
13 then read us the exact same thing.

14 THE COURT: Okay. Overruled. Ask your  
15 questions.

16 MS. SULLIVAN: Thank you.

17 BY MS. SULLIVAN:

18 Q. All right. The Neurologic Impairment Scale,  
19 what about his elevated score did you notice to be  
20 inconsistent with symptomology of that type of disorder?

21 A. So that wouldn't get at specifics in terms of  
22 how his presentation, like, what specific symptoms are  
23 feigned or exaggerated. It's more that the score is  
24 elevated per the interpretative guidelines, rules of that  
25 test.

1           So it would indicate an increased likelihood  
2 that he was feigning or exaggerating symptoms of  
3 neurological impairment.

4           Q.    And was that -- I'm not going to make you go  
5 through all five of them, but was it consistent with each  
6 different subscale his scores were elevated showing he  
7 endorsed a high rate of these atypical symptoms that  
8 weren't consistent with someone with that actual disorder?

9           A.    Yes.

10          Q.    Is that a fair way to say it?

11          A.    I would say so, yes.

12          Q.    And that was for each of these subscales?

13          A.    Yes.

14          Q.    All right.  After you completed the ILK and the  
15 SIMS, what was your conclusion regarding the suspected  
16 malingering?

17          A.    (No response.)

18          Q.    What did you find about it?

19          A.    In reference to those specific tests or just in  
20 general overall?

21          Q.    After you -- that's fair.  After you've made  
22 your observations, you've seen him at the treatment  
23 facility multiple times by then, then you've administered  
24 these two different tests for suspected malingering, what  
25 was your finding as to malingering?

1 A. That he was malingering.

2 Q. Okay. Am I correct in saying that malingering  
3 is a finding, it's not a specific diagnosis?

4 A. Correct. It's a clinical issue for  
5 consideration for the DSM-5-TR.

6 Q. So let's get to your competency assessment tool  
7 or the CAT. Did you administer one of those to the  
8 defendant during your evaluation?

9 A. Yes. It's an assessment tool. It's different  
10 than, you know, the psychological measures that we just  
11 discussed. It's -- I think it's best described as a  
12 flexible interview tool.

13 Q. All right. And we previously discussed this CAT  
14 he was administered at his initial intake?

15 A. Yes.

16 Q. All right. So this would be the second one that  
17 he received?

18 A. Yes.

19 Q. Let's talk about his capacity to appreciate the  
20 charges. I'm just going to go in order for the criteria.

21 Did you notice any discrepancies about what he  
22 said at his intake versus what he was saying to you during  
23 this evaluation?

24 A. Yes.

25 Q. And if you need to refer --

1 A. Yes.

2 Q. -- to be specific --

3 A. Yes.

4 Q. -- just let us know you are doing that.

5 A. I'm referring to my report. And to clarify your  
6 question, it was related to the first factor on the  
7 competency assessment related to appreciation of legal  
8 charges?

9 Q. Yes.

10 A. Okay. Yes.

11 MS. MANUELE: Judge, I'm going to object as to  
12 these are opinions from January, and these would be  
13 stale specifically regarding those elements, so...

14 THE COURT: Okay. Overruled.

15 BY MS. SULLIVAN:

16 Q. You can continue.

17 A. Yes. At the time of the intake treatment team  
18 meeting, he indicated to me, apparently, when I offered a  
19 copy of the charges or asked whether he would need one,  
20 that he knew what the case was about.

21 Q. Okay. And he had already indicated to you  
22 previously that he was charged with murder, or you had  
23 noted that in the intake findings?

24 A. No, not -- not in the intake findings. So when  
25 I asked something along the lines of, Do you need a copy

1 of your case documents, or do you know what the case is  
2 about? He indicated that he knows what the case is about.  
3 Not -- he didn't tell me what the case was about at that  
4 time.

5 Q. Okay. When you asked him about did he  
6 acknowledge that he was charged with murder during your  
7 evaluation on January 9th?

8 A. Yes.

9 Q. Sorry. I probably confused that. On January  
10 9th, he told you that he was charged with murder?

11 A. Yes.

12 Q. But previously he had kind of gone back and  
13 forth about it even in the same eval?

14 A. Right. He didn't specifically say what the  
15 charges were. Just when I asked generally, Do you need a  
16 copy of documents related to the case or do you know what  
17 the case is about? He indicated, I know what the case is  
18 about.

19 THE COURT: What day are you talking about?

20 THE WITNESS: Sorry. December 15th.

21 THE COURT: Okay. She's asking about January  
22 9th. Right?

23 THE WITNESS: Right.

24 MS. SULLIVAN: Yes.

25 THE COURT: I'm getting confused on the dates

1 and she keeps going back to that and I don't know  
2 what date she's talking about.

3 BY MS. SULLIVAN:

4 Q. As we're doing this, because I am asking you  
5 about two separate, right, because of the inconsistencies.

6 A. Right.

7 Q. When you're telling me something that he said at  
8 intake, just tell me that it's on the December 15th date.  
9 And if you're switching to what he told you since he  
10 talked to you both times, say January 9th, just so we are  
11 clear.

12 A. Okay.

13 Q. So just to clarify for the record: What  
14 discrepancies about his pending charges did you notice  
15 between intake on December 15th and your evaluation on  
16 January 9th?

17 A. Okay. So on the intake treatment team meeting  
18 on December 15th, when I asked, Do you need a copy of your  
19 charging and arrest documents, or do you know what your  
20 case is about? His response was that he knew what the  
21 case was about.

22 So when I evaluated him on January 9th and  
23 asked, What are the pending charges? He initially said, I  
24 don't know, then indicated that he knew he had one charge.  
25 When I asked what that one charge was -- I'm referring to



1 my report -- that is when he said he had to call his  
2 public defender. When I asked, Why? He explained, To see  
3 what the charge was.

4 And then I pointed out that at some point during  
5 this evaluation he had indicated he doesn't trust his  
6 public defender. He didn't explain that to me. I then  
7 advised him that I had a copy of the charging and arrest  
8 documents.

9 And I questioned him about why he had informed  
10 me on intake that he didn't need a copy of these documents  
11 and that he had indicated that he -- at that time at  
12 intake, he knew what the case was about. He explained  
13 that he did not -- he didn't want to know about the case  
14 and that was the reason for the statement on intake.

15 Then I advised him of the pending charges and  
16 related allegations, and he acknowledged that his charge  
17 was murder.

18 Q. Okay. Given what --

19 THE COURT: What does that mean, he acknowledged  
20 he was charged with murder? Did you tell him that  
21 and he agreed with you or did he volunteer that?

22 THE WITNESS: I -- from reading this, I can't  
23 recall. I can't tell.

24 THE COURT: Okay.

25 BY MS. SULLIVAN:

1 Q. Given what -- I'm sorry.

2 MS. SULLIVAN: Did you have any more questions?

3 THE COURT: No.

4 BY MS. SULLIVAN:

5 Q. Given what Mr. Mosley was able to self-report to  
6 you about his personal and family mental health history,  
7 in your opinion, did you believe his answers or his lack  
8 of knowledge to be a genuine response?

9 A. No.

10 Q. Okay. Was he able to fairly easily talk to you  
11 about his family history, his personal history, his mental  
12 health history?

13 A. Yes.

14 Q. Did he have any issues with his memory and  
15 repeating back past events in his life?

16 A. Not that specifically stood out to me, no. Not  
17 that I could gather.

18 Q. Did you see a difference when he is talking  
19 about those types of things in his behavior and what he  
20 was willing to say to you versus when he started talking  
21 about his own case? His willingness to talk to you at all  
22 about it?

23 A. Yes.

24 Q. Okay. Did you observe any current symptoms,  
25 from your standpoint as a psychologist, that would

1 preclude him from understanding this type of information  
2 regarding his legal charges?

3 A. No.

4 Q. Okay. And for this capacity, this criteria, did  
5 you find his capacity acceptable or unacceptable?

6 A. Acceptable.

7 Q. Okay. Let's move to the second one. Again, I'm  
8 just going in order. Capacity to appreciate penalties.

9 Did you attempt to ask Mr. Mosley -- I know  
10 we've talked about the probationary sentence conversation  
11 you had with him on January 9th.

12 Did you attempt to talk to him about any  
13 additional questions regarding possible penalties?

14 A. Yes.

15 Q. And what was his response, or how did he react  
16 to that?

17 A. I'm sorry. That was after discussing probation  
18 with him or including the discussion of probation?

19 Q. Well, you had previously -- you talked to him  
20 about probation. And we talked about that already.

21 A. Yes.

22 Q. That he had talked to you that he had been on  
23 probation and an ankle monitor?

24 A. Right.

25 Q. Did you ask him additional questions beyond

1 that? Was he willing to talk to you or was he evasive  
2 with you, I guess, is my question?

3 A. I am referring to my report. He was evasive.

4 THE COURT: Ms. Sullivan, we've been going since  
5 about 1:30.

6 MS. SULLIVAN: Uh-huh.

7 THE COURT: So I think it's probably a good idea  
8 that we take a 10-minute break for the sake of the  
9 court reporter, if nothing else. Come back in 10  
10 minutes.

11 Doctor, you're still on the stand. Don't talk  
12 to anybody about your testimony. If you need to use  
13 the restroom, you can. Do not talk to anybody about  
14 your testimony, okay? All right. Thank you.

15 We'll take a 10-minute break. Mr. Mosley, if  
16 you need to use the restroom, now would be a good  
17 time to do it.

18 THE BAILIFF: All rise. Court is in recess for  
19 10 minutes.

20 (Break taken.)

21 THE COURT: You can have a seat. Thank you.

22 BY MS. SULLIVAN:

23 Q. Ms. Jones, I know the court reporter asked you,  
24 but if you can keep your voice up a little bit because I'm  
25 having trouble hearing you sometimes. So thank you.

1 A. Okay.

2 Q. All right. I think we were in the middle of the  
3 second capacity to appreciate the penalties when we  
4 stopped.

5 A. Okay.

6 Q. Overall, when he -- we talked about his -- he  
7 had talked to you about his probationary sentence -- now I  
8 remember.

9 During the evaluation, did you direct Mr. Mosley  
10 to the fact that you had previously discussed probation  
11 with him and asked him to describe what that is?

12 A. Yes.

13 Q. Okay. Was that during this January 9th eval?

14 A. Yes.

15 Q. Had he explained to you, did you note in your  
16 report what his description of what "probation" was?

17 A. Yes.

18 Q. What did he say?

19 A. I'm referring to my report. He explained,  
20 quote, You got to do what they tell you. When I asked him  
21 to elaborate he added, Be home at a certain time. Charge  
22 your ankle monitor.

23 Q. And then did he advise you as to what a possible  
24 consequence of a violation of probation could be?

25 A. Yes. When I asked he replied that one could go

1 back to jail.

2 Q. Okay. All right. Now, did you attempt to ask  
3 Mr. Mosley additional questions related to possible  
4 penalties?

5 A. Yes.

6 Q. What was his response to that?

7 A. He indicated that he didn't know the additional  
8 penalties.

9 Q. Okay. Is that specific to what penalties his  
10 charge, specific charges could carry?

11 A. I don't recall if I asked what other possible  
12 penalties could anyone face with felony charges or these  
13 types of charges or if I asked him specifically in his  
14 case, but he didn't give me any response about other  
15 possible penalties either way.

16 Q. All right. So when you say he didn't give you a  
17 response, is that he just didn't answer you?

18 A. I don't recall if he didn't answer or if he  
19 said, I don't know.

20 Q. All right. But either way, you didn't get an  
21 answer to that?

22 A. Right.

23 Q. And this is just after you had the probation  
24 conversation?

25 A. Yes.

1 Q. At some point during this same conversation  
2 you're having about penalties on January 9th, did he  
3 indicate to you that he did not want to respond to any  
4 additional questions?

5 A. I'm referring to my report. Yes.

6 Q. All right. Did you observe during your  
7 evaluation on January 9th any current symptoms that would  
8 preclude him from understanding the type of information  
9 you were asking about appreciating the penalties?

10 A. No.

11 Q. And did you find his capacity acceptable or  
12 unacceptable for this criteria?

13 A. Acceptable.

14 Q. All right. Moving to the capacity to appreciate  
15 the adversarial nature of the legal process. Can you tell  
16 the Court how Mr. Mosley responded when you asked him  
17 about the various roles of the people in the courtroom?

18 A. Yes. So I first asked about the role of the  
19 judge, and he responded, To be honest with you, I don't  
20 know.

21 Q. Okay. And then did you prompt him a little bit  
22 more, and did he give you a further response?

23 A. I'm referring to my report. Yes. And he  
24 responded, quote, On the case, helping me.

25 Q. Okay. Did you ask him at this point about the

1 public defender and who that was?

2 A. After that, I believe I asked about the jury's  
3 role -- and I'm referring to my report -- and after that,  
4 I asked him about the role of the public defender.

5 Q. Okay. Let's talk about the jury's role because  
6 I did skip that. I'm sorry. What did he say about the  
7 jury's role?

8 A. I'm referring to my report. He described the  
9 jury's role as, quote, make sure I'm in court. I advised  
10 him that that was incorrect, and he did not correct  
11 himself or attempt to respond.

12 Q. Okay. And then the questioning about the public  
13 defender, what was his response about who that is?

14 A. I'm referring to my report. He initially  
15 indicated that he did not know, and I challenged him on  
16 this in some way. I don't recall if I asked it again or  
17 if I otherwise expressed out that he didn't have  
18 information about the public defender's role, and at that  
19 point, he responded, My lawyer, right?

20 Q. Okay.

21 THE COURT: Ms. Sullivan, her report is in  
22 evidence?

23 MS. SULLIVAN: Yes.

24 THE COURT: I don't know that I need her to read  
25 it to me.



1 BY MS. SULLIVAN:

2 Q. Okay. Let me just ask you a general question  
3 about this criteria to summarize. When you're asking him  
4 these questions, the responses that you're getting, are  
5 they consistent or inconsistent with your previous review  
6 of responses he's given to these types of questions?

7 A. I'm not sure if I understand that question.

8 Q. Is he answering consistently with how he  
9 previously has talked about these different types of  
10 people in the courtroom?

11 A. We wouldn't have previously discussed the roles  
12 of the people --

13 Q. I'm asking -- I'm sorry.

14 I'm asking more when you reviewed his records  
15 and other people he spoke to over the course of his  
16 treatment?

17 A. Okay. My recollection was that other evaluators  
18 indicated that he demonstrated better knowledge of those  
19 roles than when I evaluated him on the 9th of January.

20 Q. Okay. And so for this criteria, did you find  
21 him acceptable or unacceptable?

22 A. Acceptable.

23 Q. And did you take into consideration his  
24 performance on that ILK when looking at this criteria?

25 A. Yes.

1 Q. Number 4: Capacity to disclose pertinent facts  
2 to his attorney. Again, you asked him pointed questions  
3 and how did his responses compare to the way he was  
4 responding when discussing his personal history?

5 Was there a difference?

6 A. Yes. So he indicated when I asked him about his  
7 perception of his attorney or willingness to work with  
8 them that he did not trust them. When I asked why, he  
9 mentioned how he was raised.

10 And I questioned him about that because  
11 previously in discussing his history and his upbringing,  
12 he did not endorse any concerns related to the way he was  
13 raised. So I wasn't sure what he was referring to with  
14 that.

15 Q. Okay. Did he demonstrate any genuine symptoms  
16 that would interfere with his ability to disclose facts of  
17 his case to his attorney if he chose to do so?

18 A. I did not observe him to, no.

19 Q. So for this, did you find his capacity  
20 acceptable or unacceptable for that criteria?

21 A. Acceptable.

22 Q. All right. Capacity for appropriate courtroom  
23 behavior. Did you find his capacity acceptable or  
24 unacceptable for that criteria?

25 A. Acceptable.

1 Q. Then capacity to testify relevantly. Did he  
2 demonstrate any genuine symptoms that you observed that  
3 would interfere with him providing relevant testimony if  
4 he chose to do so?

5 A. No.

6 Q. Okay. Did you find his capacity acceptable or  
7 unacceptable for that criteria?

8 A. Acceptable.

9 Q. All right. We've talked about your finding of  
10 malingering. Based on your evaluation of Mr. Mosley and  
11 the review of all of the materials you had both before he  
12 arrived and during his time at the treatment center, what  
13 was your diagnosis for Mr. Mosley?

14 A. Unspecified -- I'm sorry. I'm referring to my  
15 report -- mood disorder.

16 Q. Okay. And did you base that finding or that  
17 diagnosis on his presentation, his history, and also the  
18 DSM-5-TR criteria?

19 A. Yes.

20 Q. You did not make a diagnosis of major depressive  
21 disorder?

22 A. No, I did not.

23 Q. And why were you unable to do that?

24 A. The criteria for that disorder are quite  
25 specific. Individuals need to meet criteria for specific

1 symptoms or criteria, and there are some that are required  
2 to make that diagnosis. There are others that can be a  
3 part of their clinical presentation. So there's a  
4 specific number of criteria that need to be met in order  
5 to meet criteria for that diagnosis.

6 Also, it's difficult to come to a clear  
7 diagnostic impression when there are concerns about the  
8 reliability of one self-report related to their symptoms.

9 Q. Okay. And what presentation that you observed  
10 of Mr. Mosley aligned with your diagnosis of unspecified  
11 mood disorder?

12 A. He did report depressed mood at times. He did  
13 report sleep impairment or insomnia, difficulty sleeping  
14 at times or a history of. So those are -- those are  
15 consistent with an unspecified mood disorder diagnosis.

16 And that diagnosis is -- it's fairly general in  
17 terms of what is required. It's a less -- it's -- less is  
18 required, in terms of symptom presentation, to meet  
19 criteria for that diagnosis compared to major depressive  
20 disorder.

21 Q. Okay. And I know I already asked you this  
22 towards the beginning, but after your evaluation on  
23 January 9th, what was your opinion whether or not Mr.  
24 Mosley was competent to proceed?

25 A. I opined that he was competent to proceed.

1 MS. SULLIVAN: All right. I have nothing  
2 further.

3 VOLUME I CONCLUDED  
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