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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 II

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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1 THE COURT: All right.

2 Cross-examination?

3 MS. MANUELE: Yes, Your Honor.

4 CROSS-EXAMINATION

5 BY MS. MANUELE:

6 Q. All right, Doctor. In forming your opinions,
7 you had indicated that your opinion of malingering one
8 of -- I think it was worded was that you're continually
9 evaluating his behaviors, correct?

10 A. Yes.

11 Q. Okay. And to be clear, you saw Mr. Mosley on
12 three days total, correct?

13 A. For formal assessment, yes.

14 Q. And, in fact, if you didn't see him for formal
15 assessment, you would perhaps see him as you were, like,
16 passing through, but you never had any interaction with
17 him, right?

18 A. Right.

19 Q. And in your testimony today, it sounds as though
20 you've indicated that you saw Mr. Mosley two different
21 times on January 9th of this year, correct?

22 A. Yes.

23 Q. You -- and that's based on because you had two
24 different notes. You have a report, and then you have a
25 psychological note, correct, in the records?

1 A. Yes.

2 Q. But those notes were both based off of one
3 meeting, correct?

4 A. I don't think so. If you're talking about the
5 two notes from January 9th?

6 Q. Yeah. January 9th, there was a -- you did your
7 big evaluation, correct?

8 A. Yes.

9 Q. And then there was also a Psychiatry Risk
10 Assessment done, correct?

11 A. Yes, but I did not conduct that. I'm not a
12 psychiatrist.

13 Q. No, I understand. Then there was also a
14 Psychology Weekly Progress Note, correct?

15 A. Yes.

16 Q. And you were specifically asked in deposition
17 that are all of those done at the same time? Everything
18 that happened on January 9th whether from you, from the
19 psychiatrist, would that have all been in one meeting?

20 And your answer was: Yes, as far as I can tell,
21 correct?

22 A. I think I -- I think I understood the question
23 to mean does my Psychology Weekly Progress Note and the
24 Psychiatrist Risk Assessment done in the same meeting,
25 which is the treatment team meeting, so that is all done

1 in that same meeting.

2 But on that date, based on the documentation, I
3 would have seen him both from my individual competency
4 assessment, as well as a treatment team meeting. So two
5 encounters within the same day.

6 Q. But would you agree as of Tuesday your testimony
7 was, yes, as far as I can tell, all of those happened in
8 the same meeting?

9 A. Yes. But my understanding of that question was
10 that you were referring to the psychiatrist encounter and
11 my encounter for the treatment team meeting. Not my two
12 separate documents that I did on that date.

13 Q. That was --

14 A. I may have misunderstood your question at that
15 time.

16 Q. Okay. And to be clear, though, just for the
17 record, the question was on page 103, line 21: So
18 everything that happened on January 9th, whether from you,
19 from the psychiatrist, that would have been all -- that
20 would have all been in one meeting?

21 And your answer is: Yes, as far as I can tell.

22 A. Okay. I believe you, if that's what you're
23 saying the deposition says.

24 Q. But you are saying you misunderstood the
25 question?

1 A. In the way you're questioning me now, it seems
2 like I may have.

3 Q. Yeah.

4 A. What I'm saying currently to clarify is that I
5 would have seen him for my formal competency assessment,
6 but also a treatment team meeting on the same date.

7 Q. Okay. So fair to say a few questions you've
8 seriously misunderstood today just alone today in covering
9 this hearing, right? There's been a couple of questions
10 that you didn't understand what we were asking, and you
11 gave an answer that you didn't understand wasn't
12 consistent; is that what I'm hearing?

13 A. Okay. Sure.

14 Q. Did you happen to record your evaluation with
15 Mr. Mosley?

16 A. No.

17 Q. Do you have any handwritten notes that you were
18 taking at that time?

19 A. Yes.

20 Q. You do have those notes?

21 A. Not personally with me, but they are part of
22 that record request that is pending, yes.

23 Q. Did you previously testify in deposition that
24 you threw away your notes after --

25 A. No. That I may have. That I -- I was not sure,

1 at that time of deposition, whether they were still in a
2 file somewhere. That I may have. That it's possible, but
3 in looking for the notes, as you requested, I did find
4 that they were within the file of the protocols of the
5 tests.

6 Q. Okay. You agree, though, in deposition under
7 oath on Tuesday your testimony was: I don't keep -- I'm
8 sorry. Page 24, starting at line 20.

9 I don't keep any handwritten documents, notes
10 that are work product that go into my report, and when I
11 finish using them, I discard them?

12 A. Yes.

13 Q. Okay.

14 MS. SULLIVAN: I would ask that you keep going
15 about what she explained. That she would check if
16 there are any more related, that she would produce.

17 BY MS. MANUELE:

18 Q. Right. You indicate under oath that you
19 discarded them, but that you would check, right?

20 A. Yes. And --

21 Q. Instead of saying, I don't know, you indicated
22 under oath that they were discarded?

23 A. That they were likely discarded, but that I
24 would check because I did not know.

25 Q. Okay. Where are the notes now?

1 A. I don't know. They -- I provided them to my
2 supervisor. I don't know where they physically are right
3 now.

4 Q. You provided them to your supervisor when?

5 A. Yesterday.

6 Q. Do you recall being approached in the side room
7 prior to getting started in this hearing today?

8 A. Yes.

9 Q. And do you recall at that time indicating that
10 you hadn't had an opportunity yet to check for anything.
11 You had given that task to somebody else?

12 A. Yes.

13 Q. But your testimony now is that you, in fact, did
14 actually look, and you're the one who found those
15 documents?

16 A. Yes.

17 Q. Okay. Any particular reason you lied to us in
18 the hallway?

19 A. I did not lie. I don't know what happened to
20 the documents since I left my office. I provided it so
21 they -- I provided an electronic copy to my supervisor so
22 she can forward them once the request is approved by our
23 legal department.

24 Q. All right. Now, you -- and of those three days
25 that you saw Mr. Mosley, as of Tuesday at the start of our

1 deposition, you didn't even remember that you were present
2 for one of those days, right?

3 A. Right.

4 Q. Ms. Russell had to point out that you -- that
5 the note actually had -- well, actually, you also forgot
6 you were even present for the December 15th evaluation,
7 right?

8 A. I don't think so.

9 Q. For the CAT?

10 A. (No response.)

11 Q. Do you recall Ms. Russell pointing out to you
12 that your name was the signature on the 12/15 CAT report?

13 A. I don't recall her having to point that out. I
14 was looking at that record as we were conducting the
15 deposition.

16 THE COURT: Is that the written report?

17 MS. MANUELE: It's the comprehensive -- it's not
18 the report that was filed with the Court.

19 THE COURT: So that's not something I'm supposed
20 to have?

21 MS. MANUELE: No. But it's essentially cut --
22 there's cut and paste.

23 THE COURT: I'm just making sure I'm not missing
24 something that I am supposed to have.

25 BY MS. MANUELE:

1 Q. One second. Well, actually, I think it comes
2 into play when you -- let me find the page. Well, let me
3 ask you if you recall this.

4 You recall having a conversation -- testifying
5 in deposition starting to go down the line of questioning
6 as to, Well, I don't -- or in your answer -- I don't even
7 know if he was competent when he first -- or if he was
8 incompetent when he first got there, correct?

9 A. Correct.

10 Q. Do you remember saying that?

11 A. Yes.

12 Q. And then Ms. Russell directed your attention to
13 the Competency Assessment Tool that was done on December
14 15th, right?

15 A. Right.

16 Q. And that Competency Assessment Tool done on
17 December 15th indicates that Mr. Mosley was not competent
18 to proceed, correct?

19 A. Yes.

20 Q. And then she directed you to your signature
21 being the note on that Competency Assessment Tool, and you
22 recall, Oh, I guess I was there? No?

23 A. I recall that she directed me to my signature,
24 but I don't recall indicating that I forgot that I was
25 present for that encounter.

1 Q. Well, I guess, technically, your statement --
2 well, one second. I will find it for you.

3 MS. MANUELE: Starting on page 30, Counsel.

4 BY MS. MANUELE:

5 Q. So you were specifically -- you were asked by
6 Mr. Russell that -- what had taken him from not competent
7 to competent in that short three and a half weeks between
8 the 15th to January 9th, correct?

9 A. Correct.

10 Q. And your answer starting at line 22 -- well, you
11 give an answer about some medication -- then starting at
12 line 22: So to answer your question about what was done
13 in that time to take him from incompetent to competent,
14 without having done a formal evaluation myself at intake
15 or prior to intake, I can't say for certain that he wasn't
16 competent when he arrived.

17 I may -- I may have seen him the first day of
18 admission. I may have found him incompetent, but we do
19 our process. We do our intake. You finished that answer.
20 But -- so you recall you said, I may have seen him. I
21 can't say for certain if I even did that evaluation,
22 correct?

23 A. No, that's not correct.

24 Q. You did not say: So to answer your question
25 about what was done in that time to take him from

1 incompetent to competent, without having done a formal
2 evaluation myself at intake or prior to intake, I can't
3 say for certain that he wasn't competent when he arrived.
4 I may have seen him the first day of admission. I may
5 have found him incompetent.

6 A. I think -- and maybe I missed a correction on
7 the errata in reviewing that deposition -- but my answer
8 was that, if I had conducted a formal complete competency
9 evaluation the day of his admission, I may have found him
10 competent at that time.

11 And I went on to explain that that treatment
12 team meeting documented in the CAT of December 15th is an
13 informal assessment. It is a mental status examination.
14 The Court sent him to the hospital as incompetent, and
15 that initial meeting is an opportunity to look for
16 symptoms that may be contributing to the finding by the
17 Court of the incompetency. So that was the way that I was
18 explaining.

19 Q. Okay. Well, let's talk about -- so that just
20 wasn't a formal competency assessment is your position?

21 A. Yes.

22 Q. Okay. You -- your employer contracts with the
23 Department of Children and Families to provide competency
24 restoration treatment, correct?

25 A. Correct.

1 Q. And as such, they have standard operating
2 procedures for you to conduct those evaluations and report
3 back to the Court, correct?

4 A. Correct.

5 Q. And your position is that you did not sit with
6 Thomas and ask him every request on the competency tool
7 during your initial assessment -- or during that initial
8 competency assessment, correct?

9 A. During the initial treatment team meeting,
10 that's correct.

11 Q. Well, or the Competency Assessment Tool that was
12 done on 12/15?

13 A. Yes. That is used to document the initial
14 encounter.

15 Q. Okay. You would agree that that would be
16 inconsistent with the standard operating procedures not
17 doing a full competency assessment?

18 A. No, I would not agree with that.

19 Q. All right. You would agree that there was --
20 once somebody is admitted to a facility that their
21 competence to proceed shall be checked on a weekly basis
22 following admission for the first eight weeks; do you
23 agree?

24 A. Yes.

25 Q. You would agree that for the first week status

1 regarding competency shall be evaluated using the
2 Competency Evaluation Administration Record, which is
3 Form CF.MH1059 Appendix A to the operating procedure,
4 correct?

5 MS. SULLIVAN: Can I ask what Ms. Manuele is
6 reading from?

7 MS. MANUELE: DCF Operating Procedures
8 CFOP155-19.

9 MS. SULLIVAN: Have you provided to me what you
10 are reading?

11 MS. MANUELE: No.

12 MS. SULLIVAN: Okay. Go ahead.

13 THE WITNESS: Yes.

14 BY MS. MANUELE:

15 Q. You agree that for the first week the status
16 regarding competency shall be evaluated using this very
17 specific form, right?

18 A. Yes.

19 Q. Or it says that Appendix A or an approved
20 alternative form, correct?

21 A. Correct.

22 Q. That is to capture all of the same information,
23 correct?

24 A. Correct.

25 Q. And that then brief checks of competency are

1 expected for weeks 2 through 8, correct?

2 A. Correct.

3 Q. The brief check shall be documented as a
4 progress note, correct?

5 A. Correct.

6 Q. So let's look at what the -- so then looking at
7 the form, what you agree standard operating procedures say
8 are done in that initial competency evaluation. You are
9 supposed to assess whether an individual has appreciation
10 of the charges, right?

11 A. Right.

12 Q. Specifically, whether they acknowledge being
13 accused of an offense, correct?

14 A. Yes.

15 Q. Whether they are able to describe the
16 allegations, correct?

17 A. Yes.

18 Q. And whether they acknowledge the consequences
19 may be harmful, correct?

20 A. Yes.

21 Q. To be clear, you had indicated that Mr. Mosley
22 said he didn't need the charges -- or he didn't need any
23 paperwork because he knew what the allegations are, but
24 you never followed up and asked him to explain those to
25 you, did you?

1 A. No, not during that encounter.

2 Q. Okay. Then in order to assess the appreciation
3 of possible penalties, you are supposed to document
4 whether the person acknowledges the possibility of
5 probation or prison, correct?

6 A. Yes.

7 Q. Whether they are able to state minimum and
8 maximum length of time for possible penalties?

9 A. Correct.

10 Q. Whether they are able to describe conditions and
11 restrictions of probation and prison, correct?

12 A. Correct.

13 Q. And whether they understand plea options or plea
14 bargaining, correct?

15 A. Correct.

16 Q. Then you're looking at understanding of
17 adversarial legal process, you are supposed to document
18 for that topic whether the person can describe the
19 attorney's job, whether the attorney's job is to help him
20 or her, correct?

21 A. Correct.

22 Q. Whether they can describe the State Attorney's
23 job is to prove him or her guilty, correct?

24 A. Correct.

25 Q. Whether they can describe the judge is impartial

1 and protects his or her rights, correct?

2 A. Correct.

3 Q. And whether he describes the jury as impartial,
4 correct?

5 A. Correct.

6 Q. Then looking under disclosed pertinent facts to
7 his or her attorney, you are to assess whether the
8 individual gives consistent, rational, and relevant
9 accounts of facts surrounding the offense, correct?

10 A. Correct.

11 Q. Which necessarily means you need to talk about
12 the facts surrounding the offense to know if they're
13 rational and relevant, right?

14 A. Right.

15 Q. You are supposed to assess whether the
16 disclosure is impaired by intellect, perception, memory,
17 or amnesia, correct?

18 A. Correct.

19 Q. You are supposed to document whether they're
20 likely to disclose to his or her attorney, correct?

21 A. Correct.

22 Q. You are supposed to -- regarding appropriate
23 courtroom behavior, you're supposed to assess whether they
24 currently behave appropriately, correct?

25 A. Correct.

1 Q. And whether they're likely to behave
2 appropriately when under stress, correct?

3 A. Correct.

4 Q. Further, regarding whether an individual has --
5 can testify relevantly. You are supposed to document
6 whether they're likely to testify coherently, relevantly,
7 and independently in court, correct?

8 A. Correct.

9 Q. And whether cognition and affect -- and to
10 assess whether cognition and affect do not impair the
11 ability to testify, correct?

12 A. Correct.

13 Q. And then there's some additional -- there's
14 other competency related issues areas for you to fill in.

15 So you would agree that you're supposed to do a
16 thorough competency assessment?

17 A. Yes.

18 Q. And your position is you just didn't in this
19 case?

20 A. I did not in this case for the initial treatment
21 team meeting, no.

22 Q. Okay. And in that initial Competency Assessment
23 Tool, you filled out the form, right?

24 A. Yes.

25 Q. And you have a form, and it says: Can the

1 defendant state his or her charges?

2 And that was answered: Questionable, correct?

3 A. Yes.

4 Q. Can the defendant describe what the charges
5 allege he or she did?

6 And it was selected: Questionable, correct?

7 A. Yes.

8 Q. Can the defendant differentiate between felonies
9 and misdemeanors?

10 And that was: Questionable, correct?

11 A. Yes.

12 Q. Can the defendant state the possible penalties
13 if found guilty?

14 And the answer was: Questionable, correct?

15 A. Yes.

16 Q. Can the defendant state the outcome of a verdict
17 guilty and not guilty?

18 The answer was: Questionable, right?

19 A. Right.

20 Q. Can the defendant state what probation means?

21 The answer was: Questionable, right?

22 A. Yes.

23 Q. Can the defendant explain what being adjudicated
24 not guilty by reason of insanity means?

25 The answer is: Questionable, right?

1 A. Yes.

2 Q. Can the defendant explain what plea agreement
3 means and his or her prerogative?

4 The answer is: Questionable, right?

5 A. Yes.

6 Q. Can the defendant describe the function of the
7 following: Judge. Was questionable, right?

8 A. Yes.

9 Q. Jury. Was questionable, right?

10 A. Yes.

11 Q. Public defender. Also questionable?

12 A. Yes.

13 Q. State attorney. Questionable?

14 A. Yes.

15 Q. Witnesses. Questionable?

16 A. Yes.

17 Q. Defendant. Questionable?

18 A. Yes.

19 Q. Can the defendant state who determines a verdict
20 if there is no jury?

21 Questionable, right?

22 A. Yes.

23 Q. Can the defendant state who sentences him if
24 found guilty?

25 Answer: Questionable, right?

1 A. Yes.

2 Q. Does the defendant understand the legal system
3 has two sides?

4 Answer: Questionable, right?

5 A. Yes.

6 Q. Does the defendant understand the judge and jury
7 are impartial or neutral?

8 Answer: Questionable, right?

9 A. Yes.

10 Q. Capacity to disclose to his attorney. Does the
11 defendant trust his or her attorney and know the possible
12 benefits of disclosing confidential information to the
13 attorney?

14 Answer was: Questionable, correct?

15 A. Yes.

16 Q. Can the defendant describe how he or she will
17 communicate with his attorney during the trial?

18 Answer was: Questionable, right?

19 A. Yes.

20 Q. Currently, has the defendant been able to
21 manifest appropriate behavior?

22 Answer: Questionable, right?

23 A. Yes.

24 Q. Does the defendant know when it is appropriate
25 for him to speak in court?

1 Answer: Questionable, right?

2 A. Yes.

3 Q. Can the defendant explain what he should do if
4 something is said in court about the case that is not
5 true?

6 Answer: Questionable, right?

7 A. Yes.

8 Q. Can the defendant state what will happen if he
9 misbehaves in court?

10 Answer: Questionable, right?

11 A. Yes.

12 Q. During -- and then regarding capacity to testify
13 the question is: During the defendant's discussion of the
14 legal situation, is his communication relevant and goal
15 directed?

16 Yes.

17 Does the defendant's current symptoms of mental
18 illness interfere with his capacity to testify relevantly?

19 Yes?

20 A. (No response.)

21 Q. Is the defendant competent to proceed?

22 Answer is: No, correct?

23 A. Yes.

24 Q. And that is the evaluation we started with on
25 December 15th, right?

1 A. Right.

2 Q. Mr. Mosley wasn't scheduled, therefore, not able
3 to attend any competency restoration classes until the
4 week of January 4th, correct?

5 A. Yes.

6 Q. And the week of -- and so when you say there was
7 a change from 12/15, we don't have too much information.
8 Just that he was questionable in every single area, right?

9 A. Yes.

10 Q. Now, actually, when you rendered your opinion to
11 the Court back in January, you were unaware that Mr.
12 Mosley had not yet started competency training until
13 January 4th, correct?

14 A. Yes.

15 Q. And you do have the benefit of the competency
16 training notes, right?

17 A. Yes.

18 Q. And had you reviewed those notes, you would have
19 learned that no training was offered until the week of
20 January 4th, correct?

21 A. Yes.

22 Q. So just for clarification, these notes there's a
23 date of service and they essentially do a range, like
24 January 4th to January 11th would be reported on the
25 January 11th progress note, correct?

1 A. Yes.

2 Q. Or programs note?

3 A. Yes.

4 Q. And as of January 11th, 2024, according to his
5 program's weekly notice, Mr. Mosley was scheduled for five
6 hours of competency hearing, right?

7 A. Yes.

8 Q. And he attended five hours of competency
9 training, correct?

10 A. Yes.

11 Q. And his current objective assessment was unmet,
12 correct?

13 A. According to the program's staff who documented
14 that note, yes?

15 Q. The people who do the training, right?

16 A. Yes?

17 Q. Okay. Then he also had -- there's some other
18 classes. There's anger management. Illness management
19 and recovery. Then there's also an adult basic education,
20 correct?

21 A. Yes.

22 Q. And for adult basic education, Mr. Mosley was
23 scheduled for two hours, correct?

24 A. I don't have that information in front of me,
25 but that sounds correct, yes.

1 Q. And attended those two hours -- if at any time
2 you want to refresh your recollection, I can bring them up
3 to you.

4 A. No, that's fine. The dates you're referring to?

5 Q. I'm sorry. This is January 4th through January
6 11th.

7 A. Yes.

8 Q. He had two hours of adult education, correct?

9 A. Yes.

10 Q. And the objective was, Mr. Mosley will
11 demonstrate basic reading skills, and his objective was
12 unmet, correct?

13 A. That was what was documented by the program
14 staff, yes.

15 Q. Then --

16 THE COURT: What does that mean?

17 THE WITNESS: So our program department is the
18 staff members that instruct or perform those classes,
19 they are the ones who do these -- these notes. I'm
20 not involved in that determination of whether --

21 THE COURT: So we don't know --

22 THE WITNESS: -- they've met or --

23 THE COURT: So we don't know what that note
24 means?

25 THE WITNESS: Not -- no, not really. I mean, I

1 can read it in the chart, but I don't know how they
2 determine whether it directive -- a target or
3 objective --

4 MS. MANUELE: Objective.

5 THE WITNESS: -- were met or unmet. I don't
6 know how they determine that.

7 THE COURT: So the question was what? Whether
8 he?

9 MS. MANUELE: Mr. Mosley, of the -- I'm sorry.
10 On the last one, I asked specifically about the
11 competency, the objective was unmet, and also
12 obtained -- demonstrate basic reading skills?

13 THE COURT: Reading skills, right.

14 THE WITNESS: That's what they documented, but I
15 can't say myself whether it is met or unmet. That's
16 somebody else's determination.

17 THE COURT: So you don't know what they gave him
18 to read --

19 THE WITNESS: No.

20 THE COURT: -- whether he even tried to read it?

21 THE WITNESS: No, I don't know that.

22 THE COURT: Okay. Sorry to interrupt.

23 BY MS. MANUELE:

24 Q. And then the next date of service for the
25 Programs Weekly Note is January 22nd, 2024, and that is

1 for the period of January 11th to January 19th, 2024,
2 correct?

3 A. That sounds correct.

4 Q. And, again, Mr. Mosley was scheduled for and did
5 attend five hours of competency training?

6 A. Yes.

7 Q. And he missed some classes. He missed -- oh,
8 no. I'm sorry. All five competency training. Then also
9 on his adult basic education there, his -- the goal was
10 still demonstrate basic reading skills and still unmet,
11 correct?

12 A. As documented by the program staff, yes.

13 Q. Okay. And then there's -- and, also, on January
14 22nd, the program staff also noted that barriers included
15 lack of participation, right?

16 A. That sounds correct. I don't have that in front
17 of me, but, yes.

18 Q. Poor attention?

19 A. Okay.

20 Q. And poor concentration?

21 A. Okay.

22 Q. Is that right?

23 A. I don't have any reason to think they didn't
24 document that.

25 Q. And also that he's very quiet in class, correct?

1 A. That sounds like something I recall, yes.

2 Q. Then the next date of service program weekly
3 note appears on January 25th of 2024, and that's for
4 January 15th to January 24; is that correct?

5 A. That sounds correct.

6 Q. And during that time period, Mr. Mosley was
7 scheduled and attended the five hours of competency
8 training, correct?

9 A. Yes.

10 Q. And his current objective was still unmet but
11 making progress, right?

12 A. I don't have that in front of me, but it sounds
13 correct.

14 Q. Do you want to refresh your recollection?

15 A. If you would like me to, I can.

16 MS. SULLIVAN: I mean, she didn't write it, so
17 if you want to show her what you're referring to.

18 THE COURT: Let me ask a question. Let me ask a
19 question. My understanding of what you're reading
20 from is that these were documents that had been
21 requested from the Florida State Hospital or the
22 treatment center?

23 MS. MANUELE: Yes.

24 THE COURT: Everything except for the actual
25 testing that's been provided to Dr. McClain, but

1 these are the things that you are entitled to related
2 to his time at the state hospital; is that accurate?

3 MS. MANUELE: Yes.

4 THE COURT: And so those would have been things,
5 I assume, that she reviewed in preparation of her
6 report? Yes?

7 MS. SULLIVAN: Yes.

8 THE COURT: Okay. So if you want to show it to
9 her? I'm just making sure I understand the context
10 of all of this stuff. So if you want to show that to
11 her so she can answer the question, please?

12 How many documents were provided; do you know
13 how many pages?

14 MS. MANUELE: I mean, in the grand scheme of
15 things, it's not that many.

16 MS. SULLIVAN: This gives you a visual.

17 THE COURT: Okay. So, what, an inch and a half,
18 maybe?

19 MS. SULLIVAN: Yes. And to be clear for the
20 record, the dates that you are reading off are post
21 her evaluation and opinion.

22 MS. MANUELE: Right. Exactly.

23 MS. SULLIVAN: Okay. I just want to be clear.
24 Can you just read off that's the dates that you have
25 been referencing for the unmet and all of that is

1 after her evaluation?

2 MS. MANUELE: Right, from January 11th of 2024,
3 January 22nd of 2024, and January 25th of 2024.

4 MS. SULLIVAN: So for these specific questions
5 about the unmet and everything, that's not accurate
6 what -- I don't want you to think -- that stuff, she
7 would not have reviewed prior to her evaluation.

8 THE COURT: I understand. But -- so it was a
9 poorly phrased question, then.

10 The documents that were provided, in addition to
11 her report or separate and apart from her report, are
12 all of the reports related to his time at the
13 Florida -- or the treatment center, some of which she
14 relied upon, but some of it postdates her actual
15 writing of the report.

16 MS. SULLIVAN: Yes.

17 THE COURT: But it encompasses the entire stay
18 at the facility?

19 MS. SULLIVAN: Yes.

20 THE COURT: All right. Thank you.

21 BY MS. MANUELE:

22 Q. Now, the week of January 4th, do you know
23 whether those five hours of competency training were done
24 before or after January 9th?

25 A. No, I have no idea.

1 Q. But as of January 11th, the trainer indicated
2 that competency goals were unmet; you agree with that?

3 A. Yes.

4 Q. And there's multiple notes about Mr. Mosley
5 being quiet, staying to himself, correct?

6 A. Correct.

7 Q. The -- you had indicated that your report was --
8 or your findings were based on notes and communications
9 with the staff, other staff, correct?

10 A. Yes.

11 Q. You would agree that there's no other references
12 of malingering except in your report, correct?

13 A. No, I wouldn't -- I wouldn't agree with that, if
14 we're talking about my review of all of the information
15 available. But if you're talking specifically about staff
16 at the hospital documenting malingering, okay. Sure.

17 Q. Or that he was feigning efforts or trying to
18 mislead them on his efforts in any way, there's no other
19 documentation other than yours, correct?

20 A. I will review my report looking at what I
21 included in terms of relevant documentation by other staff
22 members. I included relevant documentation by the
23 attending psychiatrist. There's nothing specifically in
24 her notes that indicate malingering that she opined.

25 Q. You said just that what?

1 A. That she opined.

2 Q. Oh, okay. Now, you're familiar that Mr. Mosley
3 has no adult criminal history, correct?

4 A. Let me review my report. I'm unclear on that in
5 regard to what I have documented based on the available
6 legal history through Pinellas Clerk of Court online
7 records.

8 Q. Okay. Now, after Mr. Mosley's initial
9 assessment, they implemented, essentially, like, some sort
10 of suicide precaution, right? He had, like, every
11 15-minute checks?

12 A. After which assessment?

13 Q. After his initial assessment?

14 A. At intake you're referring to?

15 Q. Right.

16 A. Yes, that's my understanding.

17 Q. Okay. And so until from when he got there and
18 they ordered -- or when they ordered those quarterly
19 checks on December 14th or December 15th of 2023, until
20 January 4th of 2024, he was being checked on every 15
21 minutes or a nurse would have eyes on him every 15
22 minutes, right?

23 A. I don't have a record of how long those
24 precautions lasted, but it's possible that it was from
25 those dates, yes.

1 Q. Would you --

2 MS. MANUELE: May I approach?

3 THE COURT: Yes.

4 BY MS. MANUELE:

5 Q. All right. I'm showing you a Nursing Progress
6 Note, date of service 1/4/24. And as of 1/4/24, is he
7 still on Q-15 status?

8 A. I am not -- oh, yes. Patient remains on Q-15
9 minute checks. Uh-huh.

10 Q. Okay. So at least as of January 4th, he was
11 still on it?

12 A. It appears so, yes.

13 Q. I don't have any notes from after that date, but
14 potentially long after January 4th, then; is that what you
15 are saying?

16 A. Potentially long after --

17 Q. Potentially even longer than January 4th?

18 A. It's possible.

19 Q. Okay. And all of those nursing notes,
20 essentially, there's no notes of him, like, playing chess,
21 right?

22 A. Not that I'm aware of, no.

23 Q. Even cards or anything, no indication, right?

24 A. I'm not aware of any, no.

25 Q. Every note indicates that he's sitting quietly,

1 right?

2 A. Okay. Yes.

3 Q. Maybe watching TV sometimes, correct?

4 A. Yes.

5 Q. He's always described as calm and cooperative,
6 correct?

7 A. Okay. Yes.

8 Q. He's often resting in bed?

9 A. Yes.

10 Q. And there's no notes in any of those Q-15 status
11 checks that were happening at least until January 4th to
12 indicate that he was feigning any mental health symptoms,
13 correct?

14 A. Not that I'm aware of, no.

15 Q. We had talked a lot about your training -- just
16 to kind of go back a little bit -- your educational
17 background and training in the field. You would agree
18 once you were a licensed psychologist South Florida
19 Evaluation Treatment Center was, like, your first job as a
20 licensed psychologist, right?

21 A. Yes.

22 Q. And in that position, you were never working
23 under any other -- under the supervision of any other
24 psychologist, correct?

25 A. Correct.

1 Q. And you did complete the Florida forensic
2 examiner training that is required, correct?

3 A. Yes.

4 Q. But you were also required to do a minimum of
5 six competency evaluation reports while under direct
6 supervision of a licensed psychologist or psychiatrist
7 credentialed to perform such evaluations, correct?

8 A. I mean, I'm not familiar with that requirement
9 because I've been licensed the entire time I've been in
10 this position, so...

11 Q. Right. But even being licensed to be the
12 competency evaluator -- to have the evaluator status, you
13 were supposed to do the training and do at least six
14 evaluations under the supervision of somebody else?

15 A. Okay.

16 Q. Do you agree? But you never did those, correct?
17 Not outside of any training, right?

18 THE COURT: What is your --

19 THE WITNESS: After the --

20 THE COURT: Hold on. I'm not trying to be
21 confusing. Your specific question?

22 BY MS. MANUELE:

23 Q. In addition to the Florida Forensic Examiner
24 Training Course that you're supposed to do before, you're
25 supposed to also have six evaluations -- you're supposed

1 to complete at least six competency evaluation reports
2 while under direct supervision of a licensed psychologist
3 or psychiatrist credentialed to perform such evaluations,
4 correct?

5 A. Okay.

6 Q. And you did not do that, correct?

7 A. I don't recall if anyone administratively
8 reviewed my reports after I completed that training
9 initially, which would have been back in 2018.

10 Q. Okay. You testified earlier that Mr. Mosley's
11 medication was the same when he came in versus when he was
12 discharged, correct?

13 A. Correct.

14 Q. But he actually did have a medication to aid in
15 his sleep added just the day after he told you he was
16 having trouble sleeping on January 9th?

17 A. Okay. I was not aware of that.

18 Q. Okay. So you didn't actually -- when you
19 testified for the State that his medication hadn't been
20 changed, you didn't actually look at that first to see
21 whether it had been?

22 A. No. My understanding was from the time of my
23 evaluation to -- from admission to the time of my
24 evaluation, it hadn't been changed.

25 Q. Oh, that was another question --

1 A. The medication had been changed --

2 Q. -- where you misunderstood the question?

3 A. Apparently.

4 Q. Okay. You also had indicated that you had no
5 evidence of cognitive deficits, and so that is why you
6 didn't do any additional -- any cognitive testing,
7 correct?

8 A. Yes.

9 Q. You got a packet, and you -- in your report, you
10 detail the information that you had received in that
11 packet from the Court, correct?

12 A. Yes.

13 Q. And you even specifically included -- you
14 include in your report from January 11th some excerpts
15 from those other reports, correct?

16 A. Yes.

17 Q. And you would agree when you first met Mr.
18 Mosley, you had information that Dr. McClain noted in her
19 report, Mr. Mosley presents with a history of learning
20 disability and apparent cognitive deficits for which
21 testing is appropriate to address neuropsychological
22 deficits and to determine his overall intellect, correct?

23 You actually took that out of McClain's report
24 and put that in your report, right?

25 A. Yes. That's her opinion.

1 Q. Right. So you did have evidence of a cognitive
2 deficit, right?

3 A. That somebody else has that opinion, yes, but in
4 my observation of him, I was not observing significant
5 cognitive impairment that was interfering with --

6 Q. All right. And then you also had a report from
7 Dr. Michael Mayer, correct?

8 A. Yes.

9 Q. And, likewise, you selected from his report --
10 you cut and pasted a portion into your report, correct?

11 A. Yes.

12 Q. And you indicate there that he is more likely
13 than not also suppressing additional psychotic symptoms
14 such as hallucinations... cognitive functions were
15 impaired, apparently secondary to psychotic thinking,
16 correct?

17 A. Yes.

18 Q. You also had Dr. Hall's report, correct?

19 A. Yes.

20 Q. And, likewise, you again took sections of his
21 report and inputted that into your report, correct?

22 A. Yes.

23 Q. And indicated there, Mr. Hall also noted there
24 are concerns -- quote -- there are concerns that Mr.
25 Mosley may have some degree of intellectual deficiency.

1 History is suggestive for learning disorders versus
2 intellectual deficiency dating back to childhood.

3 More in-depth neuropsychological testing would
4 be needed to better specify and identify deficits,
5 correct?

6 A. Yes.

7 Q. And those were just their opinions, right?

8 A. Right.

9 Q. Okay. So then when Mr. Mosley gets there, he
10 is -- there's the admission psychiatric evaluation that's
11 done, correct?

12 A. Yes.

13 Q. Mr. Mosley is 21 years old when he got there?
14 When this was done?

15 A. That sounds correct. I will refer to my report.
16 Yes.

17 Q. And there is a cognitive assessment that's done
18 as part of that admission psychiatric evaluation, correct?

19 A. Yes.

20 Q. And as part of that cognitive assessment they
21 actually provide some questions and answers that were
22 given, right?

23 A. Yes.

24 Q. Regarding his abstract abilities. He was asked,
25 Don't judge a book -- what don't judge a book by its cover

1 meant, and he stated, don't guess, in quotes, correct?

2 A. I don't have that in front of me, and it's not
3 quoted in my report, so I don't know.

4 Q. Would it refresh your recollection if I
5 approached?

6 A. Yes.

7 MS. MANUELE: May I approach the witness?

8 THE COURT: Yes. What are you showing her?

9 MS. MANUELE: The intake admission evaluation --
10 the South Florida Evaluation and Treatment Center
11 Admissions Psychiatric Evaluation.

12 THE COURT: The records from her facility,
13 correct?

14 MS. MANUELE: Yes.

15 THE COURT: Okay.

16 BY MS. MANUELE:

17 Q. When you're done, if you can look up and let me
18 know.

19 A. Yes, that is what it says.

20 MS. MANUELE: Does Your Honor have any objection
21 if I just stay here for the next couple of questions
22 in case she needs to refresh --

23 THE COURT: That's fine. Sure. It's helpful if
24 she has it in front of her, I'm sure.

25 BY MS. MANUELE:

1 Q. When asked what apples and oranges have in
2 common, he stated, quote, nothing, correct?

3 A. Yes.

4 Q. When asked what planes and trucks have in
5 common, he stated, quote, nothing, correct?

6 A. Yes.

7 Q. He was able -- he was asked 7 plus 7. He was
8 able to state 14, correct?

9 A. Yes.

10 Q. He was asked how many quarters were in a dollar.
11 He said 4, that was correct, right?

12 A. Yes.

13 Q. When asked how many dimes were in a dollar, he
14 stated, I don't know, in quotes, correct?

15 A. Yes.

16 Q. In assessing his attention span and
17 concentration, he was asked to spell the word "world,"
18 forwards, correct?

19 A. Yes.

20 Q. He spelled that wrong, right?

21 A. Yes.

22 Q. Then he was asked to spell it backwards, and he
23 also spelled it wrong, correct?

24 A. Yes.

25 Q. He was asked to calculate serial 3s -- is this

1 supposed to be serial 7s?

2 A. They do --

3 Q. The math says 7.

4 A. Oh, well, then, yeah.

5 Q. And he was able to do one set -- start at 100,
6 and then you're supposed to subtract whether it's 3 or 7,
7 you're supposed to subtract that number and keep going,
8 right?

9 A. Yes.

10 Q. He started at 100. Was able to do one
11 subtraction, and that was it, correct?

12 A. Yes. Well, then, he stopped.

13 THE COURT: Wait. What's the test? I've never
14 heard of this before.

15 BY MS. MANUELE:

16 Q. Serial 7s. Could you explain serial 7s to the
17 Court?

18 A. Yes. So the examinee is asked to count
19 backwards from usually 100 by 7s. So subtract 7 from 100,
20 then 7 from the following until the evaluator tells them
21 to discontinue. It may be done in 3s.

22 THE COURT: I don't want to take that test.

23 BY MS. MANUELE:

24 Q. When asked to name three presidents he said,
25 quote, I don't know, right?

1 A. Yes.

2 Q. And when asked to name three states, he stated
3 Florida, Orlando, and Tampa, correct?

4 A. Yes.

5 Q. His insight was noted to be impaired, correct?

6 A. I don't know. I don't have it in front of me.
7 Yes.

8 Q. His reliability was poor, correct?

9 A. I'm sorry.

10 Q. Outside the cognitive assessment?

11 A. Yes.

12 Q. Okay. And he presented with flat affect and
13 depressed mood, correct?

14 A. Yes.

15 Q. Monotone speech; is that right?

16 A. I'm referring to my report. That is noted, yes.

17 Q. You would agree that evaluation, from your own
18 facility, does suggest some potential cognitive deficits?

19 A. It could, yes.

20 Q. During the 12/15/23 initial evaluation he
21 presented as guarded and provided limited responses,
22 correct?

23 A. Referring to my report. Yes, that's correct.

24 Q. And that was done with the whole treatment team,
25 right?

1 A. Yes.

2 Q. Including the psychiatrist, right?

3 A. A covering psychiatrist in this case, yes.

4 Q. Following that meeting, he was continued on
5 psychotropic medications, correct?

6 A. Yes.

7 Q. Including an antidepressant, correct?

8 A. Yes.

9 Q. An antipsychotic?

10 A. Yes.

11 Q. And an antianxiety?

12 A. Yes.

13 Q. And you had indicated that he -- in your report,
14 that he didn't report any delusions or paranoia, but you
15 agree he did report auditory and visual hallucinations?

16 A. We're still talking about the --

17 Q. On 12/15.

18 A. Okay. I'm looking at my report. I don't see
19 that I have that noted in my report regarding that
20 encounter.

21 Q. Okay. I'll come back to that when I find it.
22 Sorry.

23 Now, the -- so we have the two complete
24 competency evaluations that the competency assessment tool
25 was done. I understand your testimony is that one of them

1 wasn't complete, but we have two full competency
2 assessment tools, correct?

3 A. Yes.

4 Q. And then going back to the SOPs, you recall
5 that. Then weeks 2 through 8, you agree those are
6 supposed to be competency checks, right?

7 A. Yes.

8 Q. And those are brief assessments, right?

9 A. Yes.

10 Q. Those are specifically described as brief
11 assessments, right?

12 A. Yes.

13 Q. During those brief assessments, there's SOPs
14 that cover what's supposed to be covered during those
15 assessments. One of those things is whether -- they're
16 supposed to indicate whether the mental status is
17 improving, correct?

18 A. Yes.

19 Q. Whether competency is improving, correct?

20 A. Yes.

21 Q. And whether there's any new recommendations for
22 treatment, correct?

23 A. Yes.

24 Q. And you would agree that in none of those -- as
25 of January 4th, you got an update, correct, and he -- this

1 was from one of your students, right?

2 A. Yes.

3 Q. He presented as lethargic, correct?

4 A. Yes.

5 Q. His affect appeared blunted -- blunted and
6 incongruent to reported mood, correct?

7 A. Yes.

8 Q. He responded relevantly to questions asked but
9 with minimal detail, correct?

10 A. Yes.

11 Q. And his thought process and thought content was
12 difficult to ascertain due to his minimal verbal
13 responsiveness, correct?

14 A. Yes.

15 Q. And he denied hallucinations also, right?

16 A. Yes.

17 Q. You took issue with the fact that Mr. Mosley
18 indicated consistent or nonstop hallucinations, right?

19 How was that question asked of him?

20 A. In the January 4th --

21 Q. When you asked him, because this one he is
22 denying hallucinations, right? So I'm trying to figure
23 out how did you ask him the question?

24 A. I don't recall specifically how I asked that
25 question.

1 Q. Okay. So as far as whether he understood your
2 question, we can't really say either, right?

3 A. Right.

4 Q. You had indicated one of the -- I think on
5 direct you had said one of the things that you believed he
6 was not being forthcoming about, or you found a
7 discrepancy because he said that he wasn't getting much
8 sleep or something to that effect, right? But then you
9 found notes that indicated restful sleep?

10 A. Correct.

11 Q. You indicated that there were two nights that
12 indicated restful sleep in all of those nursing notes,
13 December 21st and December 28th, right?

14 A. Yes.

15 Q. And you would agree that you had described him
16 as not fully cooperative or forthcoming, but in no other
17 document do they describe him as "uncooperative," right?

18 A. Right.

19 Q. Okay. Now, also in those SOPs or standard
20 operating procedures, they apply to the competency
21 trainers, too, right?

22 A. Yes.

23 Q. And instructors of competency training are
24 supposed to document and progress -- or document progress
25 at least every two weeks, which is how we end up with

1 those training records, right?

2 A. Yes.

3 Q. And also, they are to notify evaluators
4 immediately upon patient appearing competent, correct?

5 A. I'm not familiar with that, but I don't have any
6 reason to think not.

7 Q. You never got any information from any trainer
8 to say Mr. Mosley had gained competency, correct?

9 A. No, because they're not formally assessing
10 competency, that's my job.

11 Q. Okay. So is it your position, then, the
12 standard operating procedure that is supposed to notify
13 the evaluator immediately upon the patient appearing
14 competent -- I'm sorry -- appeared competent?

15 Did you ever get any indication that Mr. Mosley
16 now appeared competent?

17 A. No.

18 Q. I want to go back to why we are addressing those
19 cognitive deficits. You administered the SIMS in this
20 case, correct?

21 A. Yes.

22 Q. Now, as of deposition, I think you indicated,
23 actually, that you -- you understood the question to mean
24 you didn't -- that you had the score, and when you didn't
25 give it to us in deposition, it was just because you

1 didn't think that you were supposed to, right?

2 A. In deposition, I did not recall off the top of
3 my head what the score was. I would have had to access
4 the protocol, which I did after deposition.

5 Q. Okay. But yet when we approached you first
6 thing this morning -- or this afternoon, you indicated
7 that you had not had an opportunity to assess that
8 information -- to look for that information, that you were
9 relying on somebody else doing it, right?

10 A. No. That I didn't know the status of whether
11 that information had been sent to your expert or not.

12 Q. Okay. The SIMS is a forced-choice measure,
13 right?

14 A. Yes.

15 Q. And you documented the responses in writing,
16 correct?

17 A. Yes.

18 Q. You agree you have not provided any of your raw
19 data or even your scores to anyone until -- the scores
20 today, correct?

21 A. Yes.

22 Q. You still had not submitted your raw data to
23 anybody, correct?

24 A. I submitted it to my supervisor to send once our
25 legal department approves the request.

1 Q. You would agree that there is no way for us in
2 the courtroom to check your methodology, correct?

3 A. Correct.

4 Q. Or to verify the reliability of your
5 methodology, correct?

6 A. Yes.

7 Q. And the total score is based on five subscale
8 scores, but you don't know what those are, right?

9 A. Right.

10 Q. You're aware that the SIMS is normed off of
11 college students essentially faking bad, right?

12 A. Yes.

13 Q. And, in fact, it was pretty much all white
14 female college students, right?

15 A. Yes.

16 Q. And you would agree that the SIMS is not to be
17 used unless the respondent has at least a fifth grade
18 reading and comprehension level, correct?

19 A. Yes.

20 Q. And you have absolutely no idea what Mr.
21 Mosley's reading level is, correct?

22 A. Correct.

23 Q. Okay.

24 A. Aside from the information that he apparently
25 attended the 10th grade.

1 Q. And were you aware that he was 20 years old when
2 he stopped going to school in the 10th grade?

3 A. I am aware of that per the Defense in
4 deposition, yes.

5 Q. Okay. And would you agree that if you were made
6 aware of school records or any records suggesting a
7 history of cognitive deficits, that you may very well
8 interpret all of those "I don't knows," and short
9 non-responsive answers differently?

10 A. Yes, it is possible I could.

11 Q. You essentially determined that Mr. Mosley
12 understood the questions that you were asking in the SIMS
13 because he didn't specifically tell you he didn't
14 understand, correct?

15 A. Yes.

16 Q. And you would agree that it is not uncommon with
17 individuals with low intellectual functioning that that is
18 a common response, to say I don't know or nothing versus
19 guessing and getting an answer wrong?

20 A. I don't know that it is any more common.
21 They're both -- both would be common. They may say, I
22 don't know, or they may guess incorrectly or not respond.

23 Q. You would agree that, according to the SIMS
24 manual itself, one should not diagnose malingering with
25 only this instrument, correct?

1 A. Correct.

2 Q. It's a screening tool, correct?

3 A. Correct.

4 Q. In fact, what the manual says is if you get a
5 score that suggests malingering, like you have indicated
6 that you did, right?

7 A. Yes.

8 Q. You are to actually go on to do additional
9 testing, correct?

10 A. Yes.

11 Q. And you did not in this case, correct?

12 A. I administered the ILK.

13 Q. That is not one of the options that it gives
14 you, is it?

15 A. It is another measure that looks at effort.

16 Q. Okay. You remember that from the manual?

17 A. That it specifically talks about the ILK? No.

18 Q. It does give some specific options, right? And
19 ILK is not one of them?

20 A. Okay.

21 Q. Is that right?

22 A. I have no reason to disagree with that.

23 Q. Okay. You're supposed to do a more extensive
24 evaluation of malingering after what screening measure,
25 right?

1 A. Yes.

2 Q. Okay. And as far as the ILK, we don't have that
3 data, right, to know what the responses were?

4 A. Right.

5 Q. The Court is not able to determine the
6 reliability of the methodology you used based on not
7 having that data, you would agree, right?

8 A. Okay. Yes.

9 Q. You would agree, also, that there is lots of
10 evidence that the SIMS may overestimate feigning in
11 certain individuals, correct?

12 A. That it can, yes.

13 Q. And one of the situations in which -- or one of
14 the groups that's often indicated is -- I'm sorry.

15 One of the groups that over-feigning is often
16 indicated amongst are those with intellectual disability,
17 correct?

18 A. Yes.

19 Q. And also those with schizophrenia, correct?

20 A. Yes.

21 Q. You are aware that prior to you meeting with Mr.
22 Mosley, Dr. McClain provided a diagnosis of unspecified
23 schizophrenia and other psychotic disorders?

24 A. I'm referring to my report. And, yes.

25 Q. You are aware that Mr. Hall provided a

1 diagnostic impression consisting of psychosis, NOS, rule
2 out schizophrenia?

3 A. Yes. Referring to my report, I'm aware of that.

4 Q. Okay. And you are aware that Dr. Mayer offered
5 a diagnostic impression of schizophrenia as well, correct?

6 A. Yes, as I refer to my report.

7 Q. Okay. Now, what does it mean "rule out
8 schizophrenia"?

9 When a doctor writes that, what does that mean?

10 A. It's essentially that that's a diagnostic
11 impression for consideration. That they may not be
12 demonstrating all of the necessary symptoms, or they have
13 not met the time requirements of duration for
14 demonstrating those symptoms. It is a diagnosis to
15 consider.

16 Q. Okay. And in order for somebody to meet a
17 diagnosis of schizophrenia, there is a duration of
18 supervision or observation tracking of symptoms, if you
19 will, that's required, right?

20 A. Yes.

21 Q. And the continuous signs of disturbance should
22 persist for at least six months, correct?

23 A. Yes.

24 Q. Fair to say, you never observed Mr. Mosley for
25 six months, so you certainly cannot rule out any diagnosis

1 of schizophrenia, correct?

2 A. That is fair, yes.

3 Q. And, additionally, psychogenic seizures is the
4 third condition that the SIMS may overestimate feigning in
5 that group of patients, correct?

6 A. I'm not specifically aware of that, but, it can.

7 Q. Okay. I guess it doesn't matter whether you're
8 aware Mr. Mosley has seizures, then -- or has had seizures
9 in the past, you don't know either?

10 A. I don't know.

11 Q. Now, you indicated that in your January 9th
12 evaluation, that's when you were concerned with his
13 efforts and being forthcoming, correct?

14 A. Yes. I'm sorry.

15 THE WITNESS: Can I request a brief recess?

16 THE COURT: Sure.

17 THE WITNESS: May I speak to you off the record,
18 please?

19 THE COURT: No, you cannot. Do you need to use
20 the restroom?

21 THE WITNESS: No, I have concerns about time
22 limitations in terms of --

23 THE COURT: What are your concerns?

24 THE WITNESS: That I will miss my flight.

25 THE COURT: What time is your flight?

1 THE WITNESS: I think it's 7:48.

2 THE COURT: Did you book her flight,
3 Ms. Sullivan?

4 THE WITNESS: It's the last flight out of here,
5 and I --

6 MS. SULLIVAN: She booked it. It's at 7:48.

7 THE WITNESS: I don't have accommodations --

8 THE COURT: What time do you need leave here to
9 get to the airport?

10 THE WITNESS: My understanding is it's 40
11 minutes to the airport and --

12 THE COURT: Tampa?

13 THE WITNESS: Yes.

14 THE COURT: -- or across the street?

15 THE WITNESS: Tampa.

16 THE COURT: Okay. So let's -- how do you want
17 to do this, then?

18 MS. SULLIVAN: I don't know how much longer Ms.
19 Manuele has. I think she's still okay right now
20 getting to her flight, but I don't --

21 MS. MANUELE: I think I can be done in about 10
22 minutes.

23 THE COURT: You will be done by 6:00?

24 MS. MANUELE: Yes.

25 THE COURT: Okay. Do you want to do -- are you

1 going to have any redirect?

2 MS. SULLIVAN: I'm going to have just a couple
3 minutes. Not long.

4 THE COURT: Well, my hope is we can wrap
5 everything up by 6:00 and get you out of here.

6 THE WITNESS: I appreciate it.

7 MS. SULLIVAN: Yes --

8 THE WITNESS: This just said 1:00, and I --

9 THE COURT: We're going to get you out of here.
10 I understand. So let's get going. I want to finish
11 her testimony, and then we'll talk about what we're
12 going to do with Dr. Hall afterwards.

13 BY MS. MANUELE:

14 Q. Now, as to malingering, I think you previously
15 said that's not a diagnosis, right.

16 A. Correct.

17 Q. And a feature of malingering should be
18 considered if there's any combination of the following,
19 and the DSM gives you four things, correct?

20 A. Correct.

21 Q. And one of those number four is the presence of
22 antisocial personality disorder, correct?

23 A. Yes.

24 Q. You agree, you did not diagnose Mr. Mosley with
25 antisocial personality disorder, so that one you were not

1 applying, correct?

2 A. Agreed. Correct.

3 Q. The other is a lack of -- another one is the
4 lack of cooperation during the diagnostic evaluation and
5 complying with the treatment regime, correct?

6 A. Yes.

7 Q. You would agree that Mr. Mosley, based on the
8 records, attended every competency class he was given the
9 opportunity to and took the medication that was asked of
10 him, correct?

11 A. Yes.

12 Q. So that second half doesn't apply, but the lack
13 of cooperation during diagnostic evaluation, you would
14 agree that lack of cooperation during an evaluation could
15 be a symptom of depressive disorder, correct?

16 A. Yes.

17 Q. Lack of concentration and attention, correct?

18 A. Yes.

19 Q. And another of the four is a marked discrepancy
20 between the individual's claimed stress and the objective
21 findings and observations and that's based on the
22 hallucinations you had indicated, correct?

23 A. Yes.

24 Q. But you would agree there are multiple places in
25 the records where he denies currently having those

1 hallucinations, correct?

2 A. Yes.

3 Q. And the context -- the media -- the
4 medical/legal context of presentation, whether he's
5 referred by an attorney or a clinician for examination or
6 the individual self-refers, you would agree he was at the
7 hospital through no request or doing of his own, correct?

8 A. I would agree, but as was discussed in the
9 deposition, I do think he meets criteria for that in that
10 this is a medical/legal context. These examples provided
11 by the DSM are simply that, examples of what is a
12 medical/legal context. It is not an exhaustive list.

13 So I would say he does meet that criteria
14 related to malingering.

15 Q. Well, to be fair, the DSM does not say you
16 should determine somebody is malingering, if there's a
17 combination of those, right?

18 The DSM says that malingering should be strongly
19 considered if any combination of the following is noted,
20 right?

21 A. Exactly, yes. Strongly suspected, not strongly
22 considered. Malingering should be strongly suspected if
23 any combination of the following has --

24 Q. That's what you have in your report.

25 A. -- noted.

1 Q. Would you like to review the DSM?

2 A. Yes. It's possible the language changed between
3 the previous manual versus this one.

4 Q. Okay.

5 A. Yes. Strongly considered per the current
6 manual. Thank you.

7 Q. Thank you. And I think we covered the
8 individuals doing the weekly competency checks. Your
9 students, none of them indicated that they had concerns of
10 malingering, correct?

11 A. No.

12 Q. And there was no evidence of malingering in any
13 of the Psychology Weekly Progress Notes, right?

14 A. No.

15 Q. Or in any of the training notes, correct?

16 A. No. Correct.

17 Q. You mentioned that, in deposition, that you had
18 reason to look because of other evaluators and then we
19 ultimately got back to -- you were talking about
20 Dr. Ramm's report when you said that, correct?

21 A. Right. Yes.

22 Q. And what Dr. Ramm included in his report -- the
23 only time he includes malingering in his report, he
24 indicates that while his claims to be amnesic for the
25 events could be an effort at malingering or a symptom of

1 PTSD, it is reasonable to conclude that this deficiency in
2 his memory constitutes a current lack of capacity.

3 So he threw that in as an option and said it
4 might be malingering, it might be PTSD, right?

5 A. Right.

6 Q. The poor participation, I think you agreed, can
7 be a sign of major depressive disorder, correct?

8 A. Yes.

9 Q. It can also be a sign of cognitive impairment,
10 correct?

11 A. Yes.

12 Q. And you would also agree that somebody could be
13 malingering and also be incredibly mentally ill, correct?

14 A. Yes, I agree with that.

15 Q. And somebody could be malingering and be
16 intellectually disabled, correct?

17 A. Correct.

18 Q. You -- regarding Mr. Mosley facing -- whether he
19 understands the nature of the charges and the possible
20 penalties, you're aware Mr. Mosley the State is seeking
21 the death penalty against him, correct?

22 A. Yes.

23 Q. You are aware that there's only two possible
24 penalties for first-degree murder in Florida?

25 A. Yes.

1 Q. Life without parole and death, correct?

2 A. Correct.

3 Q. So you would agree if an individual facing the
4 death penalty indicates belief that they should be able to
5 go home because they've already served a year, that would
6 be inconsistent with understanding the penalties they are
7 facing, correct?

8 A. Yes, if they -- if that's their general
9 understanding and being genuine in their responses, sure.

10 MS. MANUELE: May I have a moment?

11 THE COURT: Yes.

12 BY MS. MANUELE:

13 Q. I'm going to show you a copy of the CAT from
14 12/15 and see if it accurately reflects the one from the
15 hospital --

16 A. Okay.

17 THE COURT: You want that marked as?

18 MS. MANUELE: Defense 1.

19 Do you have any objection to her, if she
20 authenticates it, we can bring up a single-sided
21 copy?

22 MS. SULLIVAN: Can I see what it is?

23 MS. MANUELE: Yes.

24 THE CLERK: I can actually staple at the bottom.

25 MS. MANUELE: Are you sure?

1 THE COURT: Are you going to ask that be
2 admitted?

3 MS. MANUELE: Yes.

4 THE COURT: Is there any objection to that?

5 MS. SULLIVAN: I'm just confirming that it is
6 what I have in my records.

7 THE COURT: Okay.

8 MS. SULLIVAN: Okay. The double-sided threw me
9 off there.

10 THE COURT: Is there any objection to Defense
11 Exhibit 1?

12 MS. SULLIVAN: I'm okay with those two things,
13 just so the record is clear.

14 THE COURT: All right. So that is Defense 1 and
15 2. 1 is the 12/15 CAT, and the second one is what?

16 MS. MANUELE: Medication records from the
17 hospital.

18 THE COURT: From which hospital?

19 MS. MANUELE: Sorry. South Florida Evaluation
20 Treatment Center.

21 THE COURT: Okay. Thank you.

22 (Defense Exhibits 1 and 2 were admitted into
23 evidence.)

24 MS. MANUELE: I think it might just be the
25 discharge. Oh, no. It's all of them.

1 THE COURT: Is that the one that gets attached
2 to the report sometimes, that one, or something
3 different?

4 MS. MANUELE: There's additional.

5 THE COURT: Okay.

6 BY MS. MANUELE:

7 Q. Is that a fair and accurate depiction of the
8 copy in the state hospital records that you relied on?

9 A. Yes.

10 MS. MANUELE: At this time, Defense would seek
11 to move in Defense 1 as Defense 1.

12 MS. SULLIVAN: No objection.

13 THE COURT: Admitted.

14 BY MS. MANUELE:

15 Q. Then I'm showing you what's been premarked as
16 Defense Exhibit 2. Is that a fair and accurate depiction
17 of the medical records or medication records that are
18 contained in the South Florida Evaluation and Treatment
19 Center file?

20 A. Yes.

21 MS. MANUELE: At this time, I would seek to
22 introduce those.

23 THE COURT: Any objection?

24 MS. SULLIVAN: No objection.

25 THE COURT: It will be admitted as such.

1 MS. MANUELE: I think I'm done. Sorry.

2 BY MS. MANUELE:

3 Q. You would agree that, as you sit here today, you
4 have no opinion whether Thomas Mosley is competent today,
5 right?

6 A. I would agree with that, yes.

7 Q. And you would agree also that you cannot
8 extrapolate somebody's competency from observation six
9 months ago, correct?

10 A. Yes.

11 MS. MANUELE: No further questions.

12 THE COURT: All right. Thank you.

13 Redirect.

14 REDIRECT EXAMINATION

15 BY MS. SULLIVAN:

16 Q. I want to clarify something Ms. Manuele was
17 asking you. I think she was talking about nursing notes.
18 You reviewed -- I don't expect you to have it memorized
19 now, but prior to doing your evaluation of Mr. Mosley, you
20 reviewed all nursing notes, weekly progress reports,
21 psychiatry updates, and all of that?

22 A. Yes.

23 Q. All of the records --

24 A. Yes.

25 Q. -- that have to do with Mr. Mosley and his time

1 at the treatment center?

2 A. Yes.

3 Q. So that would include every single day a nurse
4 did a progress note and checked in with him and saw how he
5 was doing?

6 A. Yes.

7 Q. And you reviewed that prior to doing your
8 evaluation?

9 A. Yes.

10 Q. So in terms of sleep, I think Ms. Manuele was
11 saying that there were only two occasions, and she named
12 some dates later in December and January where he had said
13 he had restful sleep?

14 A. I believe she was referring to the ones that I
15 quoted in my report dated December 21st and 28th, which I
16 noted.

17 Q. Right.

18 A. I believe the nursing staff would be the one who
19 said that it was restful sleep rather than a quote
20 directly from the patient.

21 Q. Okay. But you reviewed all the nursing progress
22 notes and you wouldn't disagree with them if it is
23 multiple nights starting on his first, second, and third
24 night there he's reporting that he slept very well six to
25 eight hours a night?

1 A. He may have. I don't recall that specifically.

2 Q. So you're not committing to it; it was just on
3 two occasions, nurses said he slept well?

4 A. No.

5 Q. Okay. I just want to make sure that's clear --

6 A. No, I --

7 Q. -- that it's not just two nights?

8 A. No. I didn't include every single note that I
9 reviewed. I included which notes that he had apparently
10 demonstrated restful sleep, but that may not have been the
11 case the entire time he was there. I don't know.

12 Q. And in terms of the suicide risk and the
13 placement. That was in part that, upon admission, he
14 self-reported that his wounds were self-inflicted to his
15 hands?

16 A. That was my understanding.

17 Q. Okay. And because of that as a precaution, he
18 was put on suicide watch?

19 A. That's my understanding.

20 Q. But in your review of the records prior to doing
21 your evaluation, you did not note that he reported any
22 suicide ideations?

23 A. No. I saw no record of that.

24 Q. And at one point I think he was kept on that
25 one-to-one check, but they were checking daily and noted

1 that he did not report any and didn't have a risk of
2 suicide? They just wanted to keep that on as a
3 precaution?

4 A. That's my understanding.

5 Q. That's all that I have.

6 THE COURT: Is she released?

7 MS. SULLIVAN: Yes.

8 MS. MANUELE: Well, we would ask that she remain
9 on standby. Released from the building to fly
10 home --

11 THE COURT: I want her to fly home today.

12 MS. MANUELE: 100 percent. I'm just asking that
13 she stay on standby should we need her next week for
14 anything.

15 THE COURT: Ma'am, make your flight. You're
16 free to go. Okay. Thank you. The lawyers will stay
17 in touch with you about next week, okay?

18 THE WITNESS: Thank you.

19 THE COURT: Okay. Let's have a conversation
20 about Dr. Hall.

21 MS. RUSSELL: Can we just --

22 MS. MANUELE: She's going to check with him.

23 THE COURT: He's been here.

24 MS. MANUELE: I knew he was. I thought maybe --

25 MS. RUSSELL: Your Honor, Dr. Hall is good. I

1 think that we could probably wrap up my part.

2 THE COURT: I have been in court since 8:30 this
3 morning. Not to complain, but my ability to pay
4 attention is waning significantly. I seriously --
5 I've been in court for 10 hours. Aside from the
6 small lunch break, which I reviewed my notes for this
7 case, I'm out of gas.

8 MS. MANUELE: That's okay.

9 THE COURT: I would love to finish, and I hate
10 wasting people's time, but if you want me to pay
11 attention and focus, I need to be able to do that.

12 MS. MANUELE: Yes. We want that.

13 MS. RUSSELL: Yes.

14 THE COURT: So what do you want to do for Dr.
15 Hall?

16 MS. RUSSELL: That said, Your Honor, the finder
17 of fact needs to be focused. Dr. Hall has incredible
18 testimony that will break things wide open.

19 THE COURT: I want to be able to pay attention
20 to it.

21 MS. RUSSELL: Exactly. It is important. That
22 being said, though, we're going to have to request
23 the Court indulgence. Dr. Hall -- I'm struggling to
24 find a date for Dr. Hall.

25 THE COURT: I'm going to do gymnastics to make

1 his testimony fit into my schedule because I
2 understand he's been sitting here all day. I assumed
3 he wanted to sit in and listen to this anyway for
4 purposes of his testimony, but I'm going to
5 accommodate him.

6 I know trying to schedule our calendars is like
7 cat herding, but, again, I'm going to be as flexible
8 as I can. Competency, the clock is ticking, and I
9 understand that. So if I have to move stuff around,
10 I will. All right.

11 So tell me what you want to do. He doesn't have
12 to tell me today. If he wants to come next Friday,
13 great. Hopefully, those testimonies will be shorter
14 next week. If not, between now and then, you can
15 tell me some other dates that are available, and I
16 will make it work. If I have to cancel trials to get
17 it done, I will do that because, again, the clock is
18 ticking on competency findings.

19 DR. HALL: I'm not the keeper of my schedule
20 book, so I don't know what it looks like.

21 THE COURT: You don't have to answer that
22 question today. All right. You have a couple days
23 to figure it out. We're going to reconvene next
24 Friday. Maybe I will see you then and maybe I won't.
25 Okay.

1 DR. HALL: Fair enough. Okay. Sounds good.

2 THE COURT: Sorry to inconvenience you, Doctor.
3 I hate doing it to you but --

4 DR. HALL: I understand it happens.

5 THE COURT: -- I think you want me to listen.

6 Anything else we need to talk about before next
7 Friday?

8 MS. SULLIVAN: The only thing, I just mentioned
9 to Ms. Manuele as she was moving in parts of the
10 mental health records, I am inclined -- I couldn't do
11 it today because I don't have a clean copy, but I'm
12 inclined to ask to move into evidence the mental
13 health records, all of which Dr. Jones said that she
14 reviewed prior to her evaluation.

15 THE COURT: Okay.

16 MS. SULLIVAN: I would have to -- I am going
17 to -- mine has tabs and stuff, so I'm --

18 THE COURT: I understand.

19 MS. SULLIVAN: I don't know if they're going to
20 object or not. I still think it is relevant, even if
21 they do object, so I plan on bringing a clean copy of
22 those records next week and move those in for your
23 consideration.

24 THE COURT: Sounds good. I will see you all
25 next Friday. Do you want to start at 1:00 instead of

1 1:30?

2 MS. MANUELE: I don't know what your morning --

3 MS. SULLIVAN: I know you were talking about a
4 trial with Mr. Bennett, but if that goes away, could
5 we start earlier?

6 THE COURT: Well, maybe you can help in that
7 regard. Talk to Ms. Williams about that.

8 MS. RUSSELL: May we just have this marked as
9 Defense 3?

10 MS. MANUELE: 3.

11 THE COURT: All right. Are we off the record
12 for Mr. Mosley yet or no?

13 MS. MANUELE: No, Your Honor.

14 MS. RUSSELL: If you can just give us a minute
15 for this one exhibit.

16 THE COURT: Defense 3. Any objection to Defense
17 3?

18 MS. SULLIVAN: No. They told me it is something
19 he did today.

20 THE COURT: Okay.

21 MS. RUSSELL: I'm going to put this on the
22 record what it is, Your Honor.

23 THE COURT: Sure.

24 MS. RUSSELL: I showed the State Attorney Mr.
25 Mosley's notes. I know in the past oftentimes Courts

1 look at the defendant's demeanor while they are in a
2 competency hearing, if they are taking notes, et
3 cetera. We want to make sure that Mr. Mosley's notes
4 were in evidence today.

5 THE COURT: All right. Thank you. Appreciate
6 it.

7 (Defense Exhibit 3 was received into evidence.)

8 MS. MANUELE: I was going to ask, if trial did
9 work out, I have ability on Thursday.

10 THE COURT: So do I. Just to next week --

11 MS. MANUELE: I don't know if any of the doctors
12 are available, but we can certainly reach out and see
13 if they are available to come Thursday instead of
14 Friday to try to split it up.

15 MS. SULLIVAN: My next week is wide open.

16 THE COURT: So the only thing I have is Hastin.
17 Just so we are clear, Hastin wanted to -- the
18 agreement originally was withholds on misdemeanors,
19 and they're fighting now about guilty versus no
20 contest. Mr. Bennett was trying to get on the phone
21 with Mr. Davidson, who apparently was not in the
22 office today. So Emily is prepping over the weekend
23 and meeting with her witnesses tomorrow. So they
24 were going to come back if they worked it out and I
25 haven't seen them. I told them I need to take a

1 break to do a plea so there we are.

2 MS. SULLIVAN: Okay.

3 THE COURT: You're welcome to work on that.

4 MS. MANUELE: Come on and get us in Thursday.

5 THE COURT: I don't have a dog in that fight.

6 MS. SULLIVAN: It's supposed to start on
7 Tuesday?

8 THE COURT: Yes.

9 MS. SULLIVAN: What's the charge?

10 THE COURT: It's an aggravated assault with wife
11 and young children who will be testifying. Ex-wife.
12 So there's a family case and a dynamic that is
13 voluminous. So good luck with that. Me, as well.

14 So if that goes away, I have a possession trial
15 on Wednesday. This is kind of more important than
16 that. So other than that one case starting Tuesday,
17 I've got the week available. I just have an
18 appointment out of the office Tuesday at 4:00. I
19 told the lawyers I need to leave at 3:15, but other
20 than that I'm yours all week if you need me.

21 MS. SULLIVAN: I would just say, why don't you
22 guy -- since it is those doctors' schedules, get with
23 them. If they're available any other days of the
24 week, let me know, and I will come in with you. I'm
25 wide open. So if they can do it, I can do it.

1 MS. MANUELE: Okay. Do we want -- on Friday,
2 you said you have a whole calendar on Friday, too, or
3 we can start earlier on Friday if we can't get
4 another day?

5 THE COURT: I don't have my calendar in front of
6 me.

7 MS. MANUELE: Okay.

8 THE COURT: So I don't know how much I have.
9 But if I'm done at 11:00, I'm happy to start at
10 11:00.

11 MS. SULLIVAN: Yeah. I think even if we can't
12 start any other day, trying to start earlier on
13 Friday would be --

14 THE COURT: I'm fine with that.

15 MS. SULLIVAN: Because I think it will be a long
16 day.

17 THE COURT: I thought I had it scheduled that
18 way anyway, that after the morning calendar, we were
19 going to get started. That's fine with me.

20 MS. SULLIVAN: Okay.

21 THE COURT: Do you all want to come in next week
22 early and let me know what you want to do?

23 MS. MANUELE: If we can get in contact with the
24 doctors, we will reach out. If we can get an answer
25 by Monday, hop in Monday.

1 MS. RUSSELL: Hopefully by Tuesday for sure.

2 THE COURT: Sounds good.

3 MS. RUSSELL: We're still not really sure with
4 Dr. McClain --

5 THE COURT: I know. I get that. Okay. But at
6 least we can maybe get Mr. Hall and Dr. Ogu done.
7 All right?

8 THE CLERK: Do you guys want your evidence to
9 roll into the hearing on Friday?

10 THE COURT: Yes. Everything needs to come back
11 Friday. Thank you. Ma'am Court Reporter. We are
12 officially off. I will see you all next week.

13 (Hearing was concluded for June 14, 2014.)
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CERTIFICATE OF REPORTER

STATE OF FLORIDA)

COUNTY OF PINELLAS)

I, Charlene M. Eannel, RPR, Stenograph Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true record of my stenographic notes.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED this 24th day of June, 2024.

CHARLENE M. EANNEL, RPR