IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR PINELLAS COUNTY
CASE NUMBER CRC23-03147CFANO

STATE OF FLORIDA,

Plaintiff,

vs. VOLUME IV

THOMAS ISAIAH MOSLEY,

Defendant.
_____/

PROCEEDINGS: Competency Evidentiary Hearing

BEFORE: The Honorable Susan St. John
Circuit Court Judge

DATE: June 21, 2024

PLACE: Courtroom 4
Pinellas County Justice Center
14250 - 49th Street North
Clearwater, Florida 33762

REPORTER: Carla Jessal
Registered Professional Reporter

(Pages 357 to 455)

Administrative Office of the Courts
Court Reporting Department
Pinellas County Justice Center
14250 - 49th Street North
Clearwater, Florida 33762
Telephone: (727) 453-7233
Fax: (727) 453-7488

APPEARANCES

APPEARING ON BEHALF OF
THE STATE OF FLORIDA:

COURTNEY SULLIVAN, ASSISTANT STATE ATTORNEY
CHRISTIE ELLIS, ASSISTANT STATE ATTORNEY
Office of Bruce L. Bartlett, State Attorney
Sixth Judicial Circuit, Pinellas County
14250 - 49th Street North
Clearwater, Florida 33762

APPEARING ON BEHALF OF
THE DEFENDANT THOMAS ISAIAH MOSLEY:

JESSICA MANUELE, ASSISTANT PUBLIC DEFENDER
MARGARET RUSSELL, ASSISTANT PUBLIC DEFENDER
NICHOLE BLAQUIERE, ASSISTANT PUBLIC DEFENDER
Office of Sara B. Mollo, Public Defender
Sixth Judicial Circuit, Pinellas County
14250 - 49th Street North
Clearwater, Florida 33762

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(VOLUME IV)

THE COURT: All right. We're back on Case Number 23-03157 for day three of a competency evidentiary hearing. Mr. Mosley and his lawyers are present. The State is present.

Anything we need to discuss before we get started?

MS. RUSSELL: Yes, your Honor. At this point we would like to renew our motion to strike the testimony of Dr. Jones. We learned about an hour ago from legal counsel at the South Florida Evaluation and Treatment Center that some notes would be provided but that we would not receive raw data and test materials from Dr. Jones's administration of the SIMS and the ILK.

It seems to me that since the State put the evidence on without a foundation, at this point there is no foundation for the evidence that Dr. Jones testified to. It hasn't been produced after two weeks of requests. At this point we'd just like to ask that the testimony be stricken so we can go ahead with the rest of the hearing.

THE COURT: So when you say will not be provided to you, you mean Dr. McClain?

MS. RUSSELL: Correct. That is the position of the South Florida Evaluation and Treatment Center. I can approach with emails if you'd like to see them.

THE COURT: I take your word for it.

MS. RUSSELL: All right.

THE COURT: What says the State?

MS. SULLIVAN: We would object, as we did before, to excluding her testimony. The argument that we failed to lay a foundation I don't think is accurate. We don't have to lay the foundation about the raw data. Again, the State nor the defense attorneys are never entitled to that raw data.

THE COURT: I understand.

MS. SULLIVAN: So I would never be able to lay a foundation, even if one was required, based on the raw data and the testing materials themselves. Just so you're aware of everything, I did reach out after we got out of here last night, because I didn't know before that they hadn't received that information. I wanted to follow up. So I followed up.

About 6:30, I sent an email out saying we still don't have that information. Any update?

Get that stuff to us, please. And it was about an hour ago I got a response from the lawyer that we've been in contact with, Mr. Matthew Hatfield, and that's when he sent the handwritten notes from Dr. Jones's evaluation of Mr. Mosley. So we both -- both sides have that now.

And then he said, as far as any testing protocols, proprietary test materials, those are considered trade secret and they're unable to provide those. I followed up, just so everyone's clear, and said, Are you saying you can't provide those to the attorneys? Did you give those to Dr. McClain? And I was told, no, that was not provided, and he continued to say those would not be turned over.

So I made the efforts, but that's their final stance, and that's the lawyer from that treatment facility.

THE COURT: Okay.

MS. SULLIVAN: But we would object to -- just so I'm clear, we would object to excluding the testimony based on that. I don't think that's a valid reason to strike her entire testimony. Again, we don't have to lay that foundation with the raw data. I wouldn't have the raw data to lay

that foundation.

THE COURT: Any additional response?

MS. RUSSELL: Right, your Honor. It's not just about the raw data. Remember, Dr. Jones also said she couldn't tell us what the subtest scores were on the five subtests of the SIMS test or any data regarding the ILK.

In addition, we have real concerns with notes provided this morning. As you may recall from Dr. Jones's testimony, she cave a CAT, Competency Assessment Tool, on December 15th, when Mr. Mosley arrived. She gave another one on January 9th, three and a half weeks after Mr. Mosley had been in whatever treatment he was getting at the South Florida Evaluation and Treatment Center.

We were only really provided notes from January 9th, no notes from December 15th, which gives us additional concern that the South Florida Evaluation and Treatment Center hasn't provided what they promised they would provide, that Dr. Jones hasn't searched her files as she promised to do under oath in deposition. It's now a week past June 14th, when she agreed to produce all those things in her deposition.

THE COURT: Was that the date of her

deposition, June 14th?

MS. RUSSELL: No. That was the hearing. The deposition was on the 12th?

THE COURT: What was the date of the deposition?

MS. SULLIVAN: It was the Tuesday of that week.

MS. RUSSELL: The 11th.

THE COURT: The 11th.

MS. RUSSELL: So, when under oath on the 11th, she agreed to produce all of the notes, her CV, et cetera. We did eventually receive the CV later that week. The notes were just produced an hour ago to us, and it appears they're incomplete.

MS. SULLIVAN: And just on that point, that's their speculation that they're in complete. She was clear in her depo that she throws away a lot of the notes. She may not have a lot of the notes, but what she still had that had not been discarded, she would provide. So I have no way of -- I don't want it to be matter of fact that she just half provided. We don't know that answer, but she did say she would turn over whatever was still in paper form, and then we got that -- this today.

THE COURT: Okay. And that, my recollection,

was needed so Dr. McClain can offer an opinion about how the Florida State Hospital did their testing, in part.

MS. RUSSELL: Yes, your Honor, but also these are her handwritten notes that she used to translate into the CAT tool that were included in that --

THE COURT: I understand.

MS. RUSSELL: We've actually noticed that there are vast discrepancies between what's in this note and what's in her report, and we've now lost the opportunity to confront and cross-examine her on those notes because we weren't provided the information, because there was no real foundation set before she testified.

MS. MANUELE: And further, your Honor, I think, although in deposition she indicated that she would look and let us know, I believe her testimony in court last Friday was she, in fact, testified that the notes were destroyed. And so for us to somehow -- I mean, her under oath testimony is that it's destroyed.

And as to if that information -- yes, we would like to have an opportunity to cross-examine that information or elicit that information on the

issues with the State Hospital's methodology through Dr. McClain. However, before an expert is allowed to offer opinion, the proponent of the evidence -- the defense requested a Daubert hearing, and once such a request is made, the proponent -- before the Court allows an expert to offer an opinion, the proponent of the evidence is supposed to establish that the testimony is based upon sufficient facts or data, number one; two, that the testimony is the product of reliable principles and methods; and, three, the witness has applied the principles and methods reliably to the facts of this case. And they have failed to do that.

We have no -- especially regarding that first prong, that it's based upon sufficient facts or data, her -- she has now testified. We're a week past her testimony. We still don't have the facts and data that she is relying on in forming those opinions. It should not -- she should not have been allowed to offer an opinion prior to that foundation being laid, and certainly at this point we -- it would be appropriate, we believe, to strike it because that foundation has not been laid.

THE COURT: Okay. So she authored a report, and the report I have that was entered into evidence is dated January 9th of '24. I don't recall the exhibit number.

Dr. Jones testified to doing at least two evaluations that I recall, one in December -- I think it was the 15th -- and the other on January 9th. And she did some testing, and she testified to a variety of things that she did and some other things that were done at the State Hospital. I'm not gonna go through the entirety of her testimony. It's on the record.

But I certainly understand the defense's concern about now learning that she's not going to provide the testing to Dr. McClain. I understand that. I don't believe it to be grounds to strike her report or her testimony in that she did, in fact, conduct two -- at least two evaluations of Mr. Mosley, and her impressions during the course of those evaluations was certainly relevant, understanding that her impressions are from January and December, so they're older. However, they the still carry some relevance. And, of course, defense can always make the arguments of how much weight or consideration I can give any of these

things, depending on how this all played out with Dr. Jones.

So I know you want Dr. McClain to look at those things. She's present in court today. And like I said, I am available Tuesday, Wednesday, Thursday of next week. So if you want to give her an opportunity to review those things and digest it before her testimony, I'd be happy to give her a day next week. She can come back and do her testimony if you want to give her that time.

MS. RUSSELL: Your Honor, she doesn't have the most important thing. I mean, if she's -- we have the notes.

THE COURT: We have what we have.

MS. RUSSELL: Right.

THE COURT: We have what we have. She can look at them or not look at them, have an opinion about them or not, and then you all can tell me how much weight I should give any of this. Because, number one, I understand your position it's old and stale in the first place. Secondly, you know, the doctor yesterday, Dr. Hall, I think agrees with me that looking at historical data can somehow, sometimes be important to determine whether or not someone is really malingering or not. Dr. McClain

is nodding yes, because I think you agree with that. Otherwise we'd never order prior Baker Act records, prior medical records, prior school records. Okay?

You all have the ability to tell me -- just like we do in any jury trial, I have the ability to decide whether I believe all of somebody's statement, some of it, none of it, and attach whatever weight to it I think is appropriate or no weight at all. And I'm gonna to give you the opportunity to make those arguments.

And I understand your position, that you don't think I should give it any weight and that is the argument that you are willing to make when we have argument, but I'm not gonna strike the testimony. And I'm not gonna strike the report, but I will give Dr. McClain as much time as she needs to review the data that you did receive, understanding it is not exactly what you've asked for. That's the best I can do for you today.

So if you'd like that time, I would give you that time. I will not require Dr. McClain to testify today if she doesn't want to do that or if you don't want her to do that. And if you need a minute, that's okay.

MS. RUSSELL: Could we talk about scheduling, your Honor?

THE COURT: We sure can.

MS. RUSSELL: Because, unfortunately, we really do want to get things together. And Dr. McClain, her schedule is really tight.

THE COURT: I understand.

MS. RUSSELL: And I would be happy to give us a little recess to get her the chance to read these things, but unfortunately that means she can't testify until the third week in July. I don't think that's gonna be acceptable to anybody.

THE COURT: It's not. And Dr. Ogu is going to testify first is my understanding so Dr. McClain would have a chance to look at it. Otherwise, you know, it is a death penalty case. Things get stale really fast, as we all know, and we all just have to work real hard to get Dr. McClain in here as soon as possible.

MS. SULLIVAN: Before you talk to her, because I don't want to do it while you're talking, can I make one more note for the record about something?

THE COURT: Sure.

MS. SULLIVAN: So I was reviewing the deposition because I want to make sure I'm

accurately reflecting what was said, and I just want the Court to be aware that in regards to the two malingering tests, so the ILK and the SIMS, what she said in regards to what could be provided is that she -- she says, No, I don't take handwritten notes on the protocols, just the responses are recorded.

So, essentially, it's multiple-choice tests, certain number for each test. She verbally administered it. He answered, and she circled the response. So the results that would be obtained would be the circled response, and she specifically said that she does not take --

MS. RUSSELL: I'm sorry, Counsel. Page?

MS. SULLIVAN: It's on page 25.

MS. RUSSELL: Perfect.

MS. SULLIVAN: Right at the bottom, she starts talking about that.

MS. RUSSELL: Okay.

MS. SULLIVAN: So she -- she specifically said, in regards to the tests, there are no handwritten notes to go along with that protocol. It's just the circled answers that he's verbally given. And then I guess she scores that. I'm just assuming that. So I just want that to be clear,

that there are never gonna be any handwritten notes in regards to the two tests, per her deposition. She's pretty clear on that.

THE COURT: All right. I don't need to get into the particulars of that. I've ruled. So let's decide how we're going forward.

MS. RUSSELL: Can we check with --

THE COURT: Absolutely.

MS. RUSSELL: -- the Court's calendar?

THE COURT: Sure.

MS. RUSSELL: Would the Court be available on Friday afternoon, the 28th, for Dr. McClain?

THE COURT: I have two violation of probation evidentiary hearings, but you know those things rarely go. Either way, I'd be happy to do Dr. McClain's testimony and that. We can start at 1:00. We can start at noon and go from there.

DR. MCCLAIN: I also want to offer to the Court some other options that I can work with, too, for you, your Honor, because I heard you mention, I think, Tuesday, Wednesday and Thursday?

THE COURT: I'm open Tuesday, Wednesday, Thursday, 25, 26, 27.

DR. MCCLAIN: So, on the 26th, I have a brief hearing by Zoom for Hillsborough, but I could be

here from a period of approximately 10:00 until 1:00 if that's better for you.

THE COURT: I'll make it work.

MS. RUSSELL: Unfortunately, I'm unavailable. I'm in depositions on another first degree murder case.

THE COURT: In the morning?

MS. RUSSELL: Correct.

THE COURT: Okay. Do you have any afternoon time available those three days, Dr. McClain?

DR. MCCLAIN: Your Honor, I don't have any afternoons. I've got hearings. After Hillsborough County testimony on the 28th, I'll be pretty much available from like 11:00 until 5:00.

THE COURT: I'll make it work. I mean, I've got -- I've got other stuff scheduled, but the clock is ticking and I understand that. So I will make it work.

DR. MCCLAIN: And then, your Honor, alternatively, I'm glad to delay taking off and just give, like, a whole day, Monday, July 1st, whatever works best for the Court.

THE COURT: I have about 45 pretrials Monday.

DR. MCCLAIN: Got it.

THE COURT: Friday afternoon?

MS. SULLIVAN: I can do any time next week.

THE COURT: I'll make it work.

MS. SULLIVAN: We'll make it work too. Doesn't matter.

THE COURT: I'm gonna have to move stuff around, but I understand. You know, it's competency on an important case for everybody. The clock is ticking on staleness and things of that nature. So I want to get it done. You all want to get it done. So let's do it Friday.

MS. RUSSELL: Okay. What time would you like to start, your Honor?

THE COURT: What's your first time available?

DR. MCCLAIN: Your Honor, I can be here by -- certainly by 1:00.

THE COURT: All right. Let's do 1:00 then. And if you're a few minutes delayed, I promise we won't start without you.

MS. SULLIVAN: And then can we plan on doing Dr. McClain and then going into argument that day and finishing up?

THE COURT: Sure. Okay. So are we ready to get started with Dr. Ogu then?

MS. RUSSELL: Yes, your Honor.

THE COURT: Okay.

MS. RUSSELL: If I can just talk to Dr. McClain for a minute.

THE COURT: Sure.

MS. MANUELE: And, Judge, we --

THE COURT: Okay. Ms. Manuele, did you want to say something?

MS. MANUELE: Yes, but I'm looking for a copy. Judge, we would seek to introduce as evidence the handwritten notes from the January 9th, 2024, evaluation that were provided to defense and State today by the hospital.

THE COURT: That's Dr. Jones' notes we were just talking about?

MS. MANUELE: Yes.

THE COURT: Is there any objection to that?

MS. SULLIVAN: No.

THE COURT: All right. What defense exhibit number would that be, madam clerk?

THE CLERK: 7.

THE COURT: Okay. It will be admitted as such.

(DEFENSE'S EXHIBIT NUMBER 7 WAS RECEIVED IN EVIDENCE)

MS. SULLIVAN: And then while we're doing that, before we get started with testimony, I've marked a few other things I'd like to move in

before we get started with testimony if that's okay.

THE COURT: What are those?

MS. SULLIVAN: So I mentioned it last week. That would be State's 9 is the full copy of the records from the Evaluation and Treatment Center. State would be seeking to introduce these full records as relevant to basically all of the testimony we've been doing.

MS. MANUELE: Judge, we would object to that. One, there's -- it's hearsay. It does not meet any hearsay exception. As far as the records that have been relied upon by the experts, she has testified as to those. It also appears to be incomplete.

Additionally, any records that would be introduced, those contain other hearsay statements of other witnesses that are unavailable for confrontation, so would be potentially additionally an issue violative of his confrontation clause and cumulative. She's either testified to what she relied on. So anything would be cumulative. Other stuff would be inappropriate to just introduce records containing hearsay.

THE COURT: Okay. Ms. Sullivan, what's -- what's in there?

MS. SULLIVAN: So this is everything we've been -- when I was discussing with Dr. Jones and then even with Dr. Hall yesterday, this would include basically what Dr. Jones streamlined as the procedure for when someone comes to the treatment center. It begins with a psychiatric exam by Dr. ABRAHAM, and then it has all the weekly progress notes from the nursing staff, the social workers, the doctors. There's the CAT that -- the initial CAT that the defense has already moved in separately, the CAT that was done during the eval of Dr. Jones, medications, which actually has already been moved in by defense but that's attached to the back end of this, and then his daily and weekly observations and things he's self-reporting that we've continuously referred to throughout the hearing.

THE COURT: Okay. So why don't we table that?

MS. SULLIVAN: Okay.

THE COURT: Obviously, I'm not ruling today. I'm not even gonna rule at the next hearing. So let's have that conversation -- table that for next Friday. After Dr. McClain testifies, we can talk about it. Any cases you all have on that issue, you're welcome to send them to me in advance, and

I'll read them.

Anything else we need to talk about before Dr. Ogu?

MS. RUSSELL: I don't think so, no, your Honor.

THE COURT: Okay. State, you ready to get started?

MS. ELLIS: Yes.

THE COURT: Okay.

MS. MANUELE: Judge, at this time the Defense would call Dr. Precious Ogu.

THE COURT: Okay.

THE BAILIFF: Please stand here. Raise your right hand and take the oath.

THEREUPON,

PRECIOUS OGU,

the witness herein, having been first duly sworn, was examined and testified as follows:

THE BAILIFF: You can come over here and have a seat. Make yourself comfortable. Speak in a loud and clear voice for the Court.

DIRECT EXAMINATION

BY MS. MANUELE:

Q Good morning, Dr. Ogu. Nope. Just kidding. Good afternoon.

A Good afternoon.

Q Could you please state your name for the court reporter and Court.

A Dr. Precious Ogu, last name O-G-U, first name Precious, P-R-E-C-I-O-U-S.

Q And how are you currently employed?

A I am a practicing clinical and forensic neuropsychologist licensed in the state of Florida.

Q What is a neuropsychologist?

A Neuropsychology is a subspecialty of clinical psychology. So a neuropsychologist is a psychologist who is specialized in the evaluation and sort of diagnosis of brain behavior conditions. So whereas a clinical psychologist generally is trained and credentialed in sort of dealing with clinical conditions, depression, schizophrenia, bipolar and the like, mood disorders, that kind of thing, a neuropsychologist has specialty training in addressing brain behavior conditions, essentially conditions of the brain and how that affects an individual's functioning or behavior.

Q Gotcha. And as -- as a neuropsychologist, you -- would I be correct in saying that you do

neuropsychological testing as part of your regular -- regular work?

A Yes.

Q Could you explain to the Court what that is.

A So neuropsychological testing is using sort of evidence-based, scientifically-derived measures, assessment tools to sort of examine how an individual's brain is functioning. So we're not physicians. We don't do brain scans. We don't poke and prod people. We don't give them any shots, but we administer functional evaluations of their brain functions. So we -- of their brain sort of a mechanism. So we put them through a series of tests or a test, and based on how they perform on these tests externally, we draw collusions about how different regions of their brain are working, separately or in synchrony, to sort of manifest whatever observations we're seeing in front of us.

Q And were you court appointed to evaluate Thomas Mosley?

A Yes.

Q What circuits are you currently on the list, the court appointment list?

A Court appointment list, so the Sixth Circuit, which would be Pinellas and Pasco; the Thirteenth, which would be Hillsborough; the Tenth, which would be Polk and

surrounding counties; also Twelfth, which would be Manatee/Sarasota. And I'm trying to see if I'm leaving anyone off the list. Pinellas, Hillsborough, Manatee, Polk. It would be primarily those four. So I'm licensed to work all over the state of Florida, and I do see cases all over the State, but in terms of court appointed, it would be those circuits.

Q In addition to your court-appointed work, do you do additional forensic work?

A Yes.

Q And do you also have a clinical practice?

A Yes.

Q Could you explain to the Court the difference between the clinical part of your work and the forensic part.

A So the clinical part of my work is work I do with just individuals in the community outside of any sort of legal or psycho-legal context. So there is no legal question in place. These are individuals who come to me based on referrals from their doctors or their physicians with a suspicion of some sort of brain disorder happening where they would need sort of the corroboration of the neuropsychological assessment.

And my forensic work means there's a specific -- it's happening entirely in a legal context.

There's a specific legal question that needs to be answered and they require my input as a psychologist or a neuropsychologist.

Q In order to get to this point, could you give us a rundown of your educational background and experience in the field?

A Sure. The so I've been in the field of psychology for a very, very long time, but in terms of the educational path that led me to me being able to practice independently as a neuropsychologist, I have a bachelor's degree in psychology from the University of Houston. I have a master's degree in clinical psychology from the Illinois Institute of Technology in Chicago. I also got my doctorate in clinical psychology from the same institution, the Illinois Institute of Technology in Chicago.

I completed the requisite predoctoral internship in neuropsychology at the veterans affairs hospital in Chillicothe, Ohio, and then I completed the two-year postdoctoral fellowship required per guidelines in the field to be considered a neuropsychologist. I completed that two-year postdoctoral fellowship here in Tampa with Dr. Joseph Sesta based out of Apollo Beach at the time.

Q So the two years of postdoctoral fellowship, am I understanding correctly that you were doing

neuropsychological work under the supervision of a licensed neuropsychologist?

A Yes. So my two-year postdoctoral fellowship was a clinical and forensic neuropsychology fellowship. So there was the -- clinical is sort of the general sphere. Then the forensics was the added niche or added specialty for that fellowship, and it was under a licensed psychologist.

So there is no license for neuropsychology. Your credentials as a neuropsychologist is based on you meeting the -- satisfactorily meeting the requirements per guidelines in the field. So Dr. Sesta, who was my supervisor and training director, was licensed as a psychologist, and he met all the credentials to be a neuropsychologist, and that's who supervised me.

Q Regarding this case specifically, did you meet with Mr. Mosley?

A Yes, I did.

Q And when was that?

A I met with him on the 25th of April of this year.

Q Okay. And did you ultimately form an opinion as to whether you believed Mr. Mosley is competent to proceed at this time?

A Yes, I did.

Q Okay. I'm gonna discuss what your opinion is, and then we're going to go back and hit on how you got there.

Ultimately, what is your opinion on whether Mr. Mosley is competent to proceed at this time?

A My opinion is that at this time he is not competent too proceed to trial.

Q Do you believe that he is restorable?

A I do believe that he is restorable.

Q Okay. In forming that opinion, what information did you rely on?

A I relied on my interview, my competency -- forensic competency interview of the defendant and the records I received, which would be the arrest affidavits, the indictment, his medical records from the Pinellas County Jail, a series of evaluations by other doctors, competency evaluations by other doctors, Doctors Hall, McClain, Ramm, Maher, and also the report from the SFETC, the State Hospital. Also, a psychological report from 2011 from the Pinellas County Schools, it's titled a psychological report, but it was more of a psycho-educational report because it was speaking more to his sort of academic performance and abilities. And I reviewed academic records from Boca Ciega High School, as well as Wellpath medical records.

Q Why is it important to review historical records, if they're available, in addition to conducting face-to-face evaluation?

A The historical records contextualize the face-to-face observations that we're making. I think that would be the simple way to put it. If you spend an hour or two with someone, those historical records kind of fill in the gaps or sort of provide -- illuminate some of the observations you have made in that one or two hours with them. So it sort of gives you a narrative of what this individual was like or what they were going through prior to you laying eyes on them.

Q Did you ultimately form an opinion on whether Mr. Mosley has the capacity to appreciate the charges or allegations?

A I did.

Q And, correct, he was able to tell you that he was charged with murder? Is that right?

A Yes.

Q Did he ever -- was he ever able to explain to you in his own words what the factual allegations were against him?

A And I'm referring to my interview notes here. He was able to tell me he was charged with murder. He refused to talk me through or explain the acute

circumstances surrounding the alleged incident, and his reason for that was -- and I'm quoting -- I don't like speaking on it because it's emotionally too much.

Q So fair to say he never actually gave you a factual recitation of the allegations?

A No, he did not.

Q Okay. And were you able -- as far as whether he has the capacity at this time, what was your opinion on that area, whether he has the capacity to appreciate the charges of the allegations?

A My opinion was that he did. He -- he appreciated the seriousness of the charges. Based on sort of the entire interview, not just based on that one criteria, I could tell he appreciated the seriousness of what he was facing. So I did deem him acceptable on that criteria, and he just did not want to discuss the specific details.

Q Did you have the opportunity to assess whether he had sufficient understanding of the adversary nature of the legal process?

A Yes, he did.

Q In making that assessment -- well, I guess what was your ultimate opinion?

A That he was acceptable for that criteria.

Q Did you have some concerns, though, that he

might have some cognitive or intellectual deficits that could affect that area?

A And this is regarding the appreciation of the range of penalties?

Q No. I accidentally skipped that one. I'm sorry. So I skipped down to the adversary nature of the legal system.

A Oh, I apologize.

Q I'm sorry.

A I deemed him unacceptable for that criteria. And that is my fault. I was going in order.

Q My fault as well.

Okay. So regarding the adversary nature of the process, whether he knows all the parties involved and can explain their roles, that's what you're looking at there?

A Yes.

Q And that you found to be unacceptable; is that correct?

A Yes.

Q And in that regard, was there some concern that there might be some cognitive or intellectual deficits affecting that area?

A Yes, there were.

Q Okay. Based on the evaluation you did, tell me -- I guess, could you explain the difference in the

evaluation that you conducted of Mr. Mosley and what the difference of that -- between that evaluation and if you were to do a full neuropsychological exam.

A A full neuropsychological exam, the interview would be a portion of it, but I would also follow up with a wealth of neuropsychological assessments, tools to assess his overall thinking and memory functions. So we essentially take the individual's brain for a test drive. We look at -- we examine different portions of the brain, per domain. So we look at memory, but just not memory. We measure his -- and this is operationalize and quantify his verbal memory functions, his visual memory functions, because those correspond to different regions over the brain.

We would look at his frontal lobe function, being executive functions, one's ability to plan and multitask and divide their attention appropriately. We would look at his attention skills, his working memory skills, his speed of information processing. We would look at his verbal reasoning skills and visual reasoning skills. That would take hours. So that would be the difference between the -- one of the main differences between just a competency evaluation and a competency neuropsych.

Q Okay. And what if -- in order to make any

diagnosis of intellectual disability, what would need to be accomplished?

A So intellectual disability, when it comes to diagnosing intellectual disability, there are kind of two major components to it. The first would be what we're all mostly familiar with which is deriving an IQ score. That is obtained from formal, standardized IQ testing.

The second component of determining one's intellectual abilities or lack thereof would be an assessment of their adaptive functioning, and adaptive functioning is one's ability to manage independently in a given environment. So taking their IQ score and then their adaptive functioning abilities together, that would give a pretty good picture of whether they're intellectually disabled or not.

Q Okay. So based on the evaluation that was conducted, are you able to render any opinions on whether or not Mr. Mosley suffers any cognitive deficits?

A I would -- I cannot render a definitive -- or competently render a definitive opinion about his cognitive abilities without formal testing, but what I will say is, based on my experience with him and based on my review of the records, that I would -- he is someone I would recommend for further assessment. Put it that way.

Q Okay. And, likewise, would it be fair to say

that you could not render an opinion today on his intellectual functioning based solely on the evaluation that you've done?

A Correct, because I did not conduct an evaluation for intellectual abilities.

Q However, based on your observations of him and any records you reviewed, do you believe it would be worthwhile or important for that to be done at some point?

A Absolutely.

Q I got us off a little bit. So we're gonna go back to prong number two and whether he had the capacity to appreciate the range and possible penalties.

A Yeah. I deemed him -- I deemed him acceptable for that criteria.

Q Did you assess whether Thomas had the capacity to disclose to his attorney facts pertinent to the proceedings?

A I did.

Q And what was your opinion in that area?

A Unacceptable. I did not believe he met that criteria.

Q And what -- I guess did you believe that there were symptoms of his mental illness or depression that were affecting that prong?

A Yeah. My overall -- yes. My overall conclusion

regarding that particular criteria is that this is essentially an individual who, probably based on the history, has some sort of learning or cognitive or intellectual -- I'm not sure which because I didn't assess for that, but there's something going on with his ability to sort of learn and keep up with sort of complex information on a moment-to-moment basis, and I did get glimpses of that as I was trying to teach him certain things during the competency interview.

And then on top of that, there is a superimposed severe depression happening, and in individuals who don't have any cognitive or intellectual deficits, severe depression can be impairing. Some of the symptoms of major depression are memory difficulties or concentration difficulties and these cognitive symptoms. So when that's superimposed on someone who at baseline is struggling with these issues, both of those factors acting together can cause difficulty keeping up with pertinent information on a moment-to-moment basis, and that was sort of what I observed with him, and that's what influenced my opinion of that criteria.

Q And you would agree that a death penalty case -- a defendant facing the death penalty requires considerably more communication with their defense team than perhaps a regular battery charge or a burglary

charge, correct?

A I would say so.

Q In addition to just the underlying facts of the case and the evidence that would be presented, like, whether to prove his guilt or not, Mr. Mosley would have to be able to understand and speak to his attorneys about the aggravating circumstances; is that right?

A Yes.

Q As well as any mitigating circumstances, correct?

A Yes.

Q When you were -- was Mr. Mosley cooperative with you during the evaluation?

A Overall, yes.

Q Fair to say he provided simple and short answers throughout most of the evaluation?

A Yes. Oh, yes.

Q Were there often occasions where he would give you an initial answer, maybe a simple "yes" or a simple "I don't know," but if you were -- when you continued to ask questions --

MS. ELLIS: I would object to leading at this point in time.

THE COURT: Okay.

MS. MANUELE: It would be appropriate only

because the rule says that the experts are to be treated as court experts.

THE COURT: What's your question? What's the entirety of your question before I rule on it? You have to repeat it now. Sorry.

MS. MANUELE: I know. Now I don't remember.

THE COURT: All right. It was long.

BY MS. MANUELE:

Q Okay. So were there occasions where he would give you a short "yes" or -- a "yes" or an "I don't know," a very brief answer?

A Yes.

MS. MANUELE: I'll break it up.

THE COURT: Please.

BY MS. MANUELE:

Q And then you had to essentially, like, follow up with multiple additional questions to kind of pull the information out of him?

A Yeah. That's a good description of what it's like to interact with the defendant.

Q Okay. Did you ever get the sense that he was one to freely volunteer and offer information?

A No.

Q Did you have any concerns about his capacity to manifest appropriate courtroom behavior?

A No.

Q Whether he has the ability to testify relevantly, did you assess that prong?

A Yes.

Q And what is your opinion?

A That he does not, primarily because of the issues I mentioned earlier with just me questioning his baseline cognitive and intellectual abilities and then the effect of the superimposed severe depression, suicidal thinking is having on him, just thinking and memory at this time.

THE COURT: Doctor, you are very soft-spoken. So if you wouldn't mind just getting a little closer to the microphone.

THE WITNESS: Sorry about that.

THE COURT: Thank you.

BY MS. MANUELE:

Q Could you explain again the issues as to why you find he is -- does not have the capacity to testify relevantly at this time.

A Primarily because of my concerns or just suspicions about what his baseline cognitive or intellectual abilities are, and the effect that the superimposed severe depression could be having on just his general thinking and memory abilities at this time.

Q Did you reach a diagnosis for Mr. Mosley?
A Yes.
Q And what was that?
A So I diagnosed him with major depressive disorder, severe, with psychotic features, and cannabis use disorder in sustained remission in a controlled environment, and then I also noted a historical diagnosis of unspecified schizophrenia and unknown specified anxiety disorder.
Q Could you explain what major depressive disorder with psychotic feature entails --
A So --
Q -- or how you reached that diagnosis?
A Sure. So major depressive disorder, MDD, with psychotic features is a mental illness where the major depression or the sad mood, suicidality and hedonia, the major symptoms of major depression are the primary presentation or the prominent presentation, and there are also elements of psychosis, but those are not the main presentation of the individual's condition.
Q And just to be clear, major depressive disorder is one of the mood disorders; is that right?
A Yes.
Q Could you explain or give some examples of psychosis or the psychotic features.

A Those would be, for example, perceptual disturbances, like hallucinations, seeing things others cannot see, hearing things others cannot hear, feeling things on your body that are not apparent to anyone else. You could have delusional thinking, you know, paranoia, delusions of persecution, delusions of grandeur, essentially these fixed beliefs that are sort of impermeable to reason or rationality or evidence to the contrary.

You could have sort of -- there is a mood component to it where you could have the individual be withdrawn, asocial, amotivated, avolitional behavior. Can't get them to do anything. They can be catatonic. Those would be just some examples of psychosis. Essentially behaviors that indicate this individual is at this time just disengaged from reality.

Q Okay. So I think it's fair to say that we probably -- most people think of, like, the hallucinations and delusions when they think of psychosis.

A Yes.

Q But what I hear you saying is there is also kind of negative symptoms or, like, quieter symptoms --

A Yes.

Q -- perhaps, and that would be like being withdrawn, disengaged, asocial?

A Yes.

Q Are those -- would I be correct that there's a decent amount of overlap between those kinds of psychotic symptoms and the symptoms that one might experience with major depressive disorder?

A Yeah.

(BEEPING NOISE)

THE COURT: What is that?

MS. MANUELE: I wasn't sure.

BY MS. MANUELE:

Q In order to -- for you to perform some of the additional testing used to make -- to render any complete opinion on cognitive or intellectual -- well, actually, could you explain to the Court the difference between when we say "cognitive" and "intellectual," kind of the difference between the two terms?

A Sure. So the difference is kind of practically or theoretically slight, but there is a difference. So with intellectual capacity, we're talking about sort of a more fixed ability to process information, to reason. And then when we're talking about cognitive abilities, we're talking more thinking and memory, sort of more -- that has more sort of a moment-to-moment influence on a person's functioning. And a good way that I like to describe this to people is, in my clinical practice, I have individuals

who I'm evaluating for dementia, and they are sort of halfway through the dementing process where their IQ is still holding on pretty intact. Their IQ is still average or high average, but they can't remember anything for more than ten minutes or than five minutes. So the IQ is sort of a more fixed, stable. It's kind of the kind of car you have, and then the cognitive is sort of what kind of gas you put in it, what can that car do in that moment.

So you could have people who have a traumatic brain injury. They're very smart. They were doing all these great things before their injury, and after you evaluate them post-injury, their IQ is still holding on pretty well, but those more moment-to-moment things like thinking, memory processing speed, those are affected. So they're both brain functions. They just sort of diverge.

Q Gotcha. And in order for you to make any official diagnosis regarding either of those, you would need to do the additional testing, correct?

A Yes.

Q Is there any concern -- or, I guess, somebody with major depressive disorder, is there -- would that at all affect any validity of testing? Does it matter if they're being treated for their depressive disorder?

A Yes. So severe -- any sort of severe emotional stage of any kind can affect test performance, just.

Primarily the way we describe it in the field is just in terms of effort. So if you're not motivated, if you're not inspired to relate to the person who's giving you the test, if you're not inspired to try your best because of whatever reason, that could effect how you're responding on the test, and that could create a flawed estimate of exactly where that particular ability lies. So that is one way that, for example, a mood disorder can affect -- and it could be anxiety, depression, anything. If it's sort of interfering with your ability to put forth your best effort, which is what we're assessing at the time, then the results are not valid.

And another way that sort of these disturbed emotional states or mental states can affect test performances is -- we see this a lot in people who have psychosis, where there is sort of the constant companionship of the hallucinations, the running commentary of auditory hallucinations, the constant distraction by visual hallucinations. If I'm trying to test your attention or measure your attention, it's hard for you to attend to what I'm trying to test you with when you're constantly distracted by all these other perceptual disturbances. So that's another thing that could sort of interfere with your ability to put your best effort towards the testing.

Q Do you have any suggestions or how would you -- how would you try to mitigate any interference?

A Using the example of depression, if someone is too depressed that their performance on testing is not valid, then treating the depression and reducing those symptoms would give you a better chance of obtaining valid testing the data.

Q Gotcha. Did you have any concerns about whether Mr. Mosley was malingering during your evaluation?

A I personally did not.

Q Okay. You had mentioned in your report that malingering should potentially be assessed in the future if he were not to make improvements.

A Yes.

Q Is that based on -- I just want to make sure. So is that based on just what the State Hospital said, or was that based on your personal observations?

A A little bit of both. So not on my personal observations, but more my personal approach to the idea of malingering, especially in a psycho-legal context. Primarily it was based on the fact that another doctor at the State Hospital, who I presume is very skilled and good at what they do, had that as a concern. So I did want to account for that. That is historical information that I did want to account for in my opinion. But also, speaking

with him at my evaluation, I did not suspect that, but I did have to respect the fact that -- the context. You know, this is an individual who's facing two of the most severe charges a person can face.

So whenever an individual is claiming to have any sort of deficits, intellectual, cognitive, emotional, given that context, I don't think that the idea of malingering is sort of unreasonable or unfounded. But I did not have that concern based on my evaluation of him, but I did want to account for it because it had been brought up by another doctor.

Q Okay. And as far as Dr. Theresa Aschman Jones, do you know anything about her personally or professionally, as far as whether she is, in fact, qualified or not, or is that an assumption based on her title?

A Is Dr. Jones the State Hospital doctor?

Q Yes. I'm sorry.

A That's okay. I don't know any -- I never met her, don't know her.

Q Okay.

A So that would -- sorry. To answer your question, that would be an assumption. That's sort of my default assumption when --

Q Okay.

A -- someone is a doctor and credentialed, et cetera.

Q Did you have any indication that, when you were meeting with Mr. Mosley, he was exaggerating any psychiatric symptoms?

A No.

Q Or exaggerating any cognitive deficits?

A No.

Q Or exaggerating any intellectual deficits?

A No.

Q Are you familiar with the SIMS?

A Yes.

Q Okay. Well, I guess, in your line of work, is it fair to assume that you've administered the SIMS a time or two?

A A time or two, yes.

Q Have you ever offered an opinion based on the SIMS where you did not provide the score of the -- that you had received?

A I don't think so, and the reason I say I don't think so, it's because whenever there's a test where the results are summed up in a number, I report -- in interpretation of the test, I would report the number. That's sort of my default. That's just the way I do things. So I can't think of a situation where I would

report an opinion on a test that has a score without reporting the score.

Q Okay. And do you -- is it -- do you know, is it possible to obtain the full-scale score without knowing what the subscale scores are on the SIMS?

A I've never seen that be the case. If you were to score it by hand or through the computerized scoring, when you print out the computerized sort of scoring reports, it lists the subscale scores and then the total score. So I don't -- I've never seen a case where the total score would be reported without the subscale scores.

Q Okay. And, likewise, is it your understanding that the score is what is considered proprietary?

A Proprietary meaning to the test developers or the authors of the test?

Q Yes. Yes. Correct. I'm sorry.

A Yeah. So my understanding is the proprietary information is the test protocol itself, the items on the test, the test manual, the -- sort of the information that goes into the interpretations. Scores are meant to be reported. So they wouldn't be proprietary. That's the point to the scores, so you can share it with people who have a vested interest in the score.

Q Gotcha.

THE COURT: What about the actual test itself?

THE WITNESS: The actual test itself is proprietary and the reason for that being -- not just malingering, but any test that we use, we don't want that getting into the public domain because people can rehearse the test. They can study the test. It makes it sort of useless to us. If you know what we're going to ask you, it loses the novelty. And if you're studying up for a test, then we're not getting your sort of genuine ability on that test. We're just getting what you studied for.

BY MS. MANUELE:

Q Fair to say when you pull out the SIMS or, likewise, any kind of malingering screen, you don't say, Now I'm gonna give you a test to see if you're faking it, right?

A No.

Q And you just kind of work it in with the other questions or say, I have an instrument now for you to fill out, right?

A That's an idea. And the tests have instructions that you should read verbatim. So, generally, they don't typically say, I'm going to test you to see if you're faking.

Q And you did opine that you believe Mr. Mosley,

at this point that he is restorable; Is that correct?

A Yes.

Q Would you agree that he's going to require actual competency restoration training in order to potentially reach that level?

A I think so, yes.

MS. MANUELE: May I have a moment?

THE COURT: Yes. And I'd like to ask a few questions before you start your cross.

BY MS. MANUELE:

Q In addition to competency restoration training, would you agree that he's also going to need psychotropic medication?

A Yes.

MS. MANUELE: May I have this premarked, whatever number we're on?

THE COURT: You're up to 8 and 9.

MS. MANUELE: This is the report and her CV.

THE COURT: Okay. Which report?

MS. MANUELE: Dr. Ogu only wrote one report.

THE COURT: Well, I had two, and there was one that said amended and one --

MS. MANUELE: Oh, okay.

BY MS. MANUELE:

Q Let's talk about your amended report.

A Yes.

Q You filed a report and then you got an amended report.

A Yes.

Q What is actually different between the two?

A The initial report was mistitled. So I fixed the title and I resubmitted it. Nothing about the content of the report changed. It was just the title. The title indicate that it was a reevaluation, I think, and that was not the case. So I just changed that. That's the only thing that changed between the two. Everything else in the report was exactly the same.

Q Okay.

THE COURT: So which one are you putting in?

MS. MANUELE: It's titled Amended Competency Evaluation Report.

THE COURT: And that's going to be Defense Exhibit what?

MS. MANUELE: Defense Exhibit 9, and her CV is Defense Exhibit 8.

THE COURT: Okay. Any objection to those?

MS. SULLIVAN: So you're putting in the one, the first one she filed, not the second one she filed?

MS. MANUELE: I think the second one is the

one that says amended.

THE WITNESS: No. The second one is the one that just says -- the title would just be Competency Evaluation Report.

MS. ELLIS: One's the 21st and one's the 23rd.

THE COURT: The correction was there was never a reason to put amended in the title. So you took amended out?

THE WITNESS: Yes. So the amendment was taking away the word "amended" from the title.

THE COURT: I got it. So Defense 9 is the report, and 8 is the CV.

MS. MANUELE: And at this time Defense would move to introduce what's been premarked as 8 and 9.

THE COURT: Any objection to 8 and 9?

MS. SULLIVAN: No.

THE COURT: They will be admitted as such.

(DEFENSE'S EXHIBIT NUMBERS 8 AND 9 WERE RECEIVED IN EVIDENCE)

MS. MANUELE: I have no further questions, Doctor. Thank you.

THE COURT: Dr. Ogu?

THE WITNESS: Yes, Judge.

THE COURT: You talked a lot with Ms. Manuele about generally psychosis and psychotic features.

THE WITNESS: Uh-huh. Yes.

THE COURT: But I didn't hear you specify exactly what you observed from Mr. Mosley as it relates to psychosis.

THE WITNESS: So, in Mr. Mosley's case, it primarily would be the hallucinations. So he reported definitely auditory hallucinations. And let me refer to my notes to see -- and also visual hallucinations as well, hearing voices telling him to kill himself. So he did report auditory and visual hallucinations that have been ongoing with him since his teenage years and are ongoing currently.

THE COURT: So you read Dr. Hall's reports?

THE WITNESS: Did I read Dr. Hall's reports?

THE COURT: Yes. He had two of them.

THE WITNESS: I have one report from Dr. Hall from July 17th, 2023.

THE COURT: Okay. That's not the one I'm referring to. In there he talks about -- and he testified about this a little bit yesterday -- intrusive thoughts versus delusions and how you tell the difference.

THE WITNESS: So intrusive thoughts versus delusions, delusions would be fixed beliefs that an

individual has that are completely impermeable to any sort of interventions and evidence to the contrary, like believing that this computer does not exist when everyone in the room can see it exists. You can tap on it and hear the sound and the individual is insisting it's not there, that would be a delusion, that fixed belief that seems sort of immoveable to any logical reasoning or evidence to the contrary.

And intrusive thoughts is just sort of a thought process. It's a thought that you can't let go of. It's sort of endogenic. It comes from you. It's a thought that you can't let go of even though you try to suppress it.

THE COURT: Could that be the reason Mr. Mosley doesn't want to talk about the facts of this case?

THE WITNESS: Because of the intrusive thoughts?

THE COURT: Sure.

THE WITNESS: Meaning the intrusive thoughts are telling him not to discuss the case?

THE COURT: No. What you told me earlier, which was -- you quoted him: I don't like speaking about it because it's emotionally too much.

THE WITNESS: I interpreted that actually to be more of just the depression and the overwhelm he's feeling regarding the charges that he's facing.

THE COURT: Because the -- I'm not being argumentative. I'm just legitimately asking questions. Okay?

THE WITNESS: Of course. Yes, please.

THE COURT: In some of the reports, it talks about him seeing blood. You know what the allegations are.

THE WITNESS: Yes.

THE COURT: And he doesn't want to talk about the facts of this case because it's emotionally too much. He's reported difficulty sleeping. Dr. Hall mentioned the potential for intrusive thoughts versus delusions. We talked a little bit about that yesterday, and he indicated -- I'm paraphrasing -- that it's hard to tell the difference sometime, but that's seemed to have waned since the last time he had seen him recently, around the same time you did.

THE WITNESS: Uh-huh.

THE COURT: So I'm just wondering if you had an opinion on that one way or the other, about

whether or not these are the true type of delusions where someone thinks Elvis is talking to them in jail, right, or, you know, he's just so depressed because of the allegations and what the fact pattern is, that it's intrusive. He doesn't want to talk about it. He's too emotional. He'd rather just not participate.

THE WITNESS: I actually didn't deem or don't deem the defendant to be delusional. He didn't give me any reason to think he's delusional. I didn't assess him to be delusional. I assessed him to be just primarily severely depressed and suicidal, with these sort of elements of auditory and visual hallucinations that have plagued him for a very long time.

THE COURT: So the psychosis, if I understood the various ways you could define someone or categorize psychosis, one of them I think you indicated, disengaged from reality?

THE WITNESS: Yes.

THE COURT: Doesn't want to participate?

THE WITNESS: Yes.

THE COURT: So you would consider his psychosis to be more like that than somebody who thinks Elvis is talking to him over at the jail?

THE WITNESS: I think his psychosis is more of the -- sort of the hallucinations. I think that --

THE COURT: What's the difference between a hallucination and a delusion then?

THE WITNESS: A hallucination is a perceptual disturbance. It has to do with the senses, so seeing, hearing, feeling, feeling things that aren't there, seeing things that aren't there, hearing things that aren't there. Delusion is more of a thought process. It's a belief system that someone has. I didn't get any sort of odd belief systems from the defendant. I definitely did flag him as having these hallucinations.

In terms of -- and please correct me if I'm wrong. You're asking about his reticence to disclose sort of a narrative and why that may be the case?

THE COURT: I'm trying to figure out, number one, out of all of the ways you've explained that someone could be labeled as having psychosis, have you -- how does he fit into that, number one, and number two, whether or not you think he's truly delusional, although you're differentiating now between delusions and hallucinations, versus having intrusive thoughts. Because the intrusive thought

seems to be, from what I've been hearing so far, consistent with somebody who just doesn't want to talk or think about his case, because, like I said, it's emotionally disturbing, having trouble sleeping, just wants to disengage. So those are the things I'm trying to work through.

THE WITNESS: I see.

THE COURT: Okay?

THE WITNESS: Regarding your first question, in terms of how does he fall under the category of psychosis, it would be the hallucinations.

THE COURT: Okay.

THE WITNESS: Regarding the second question, in terms of him refusing to talk about cases, when I -- talk about the case, when I asked him to give me a narrative of what happened and how did you get arrested with this, he gave a clear reason and says, I don't want to talk about it because it's upsetting. That's not a delusional process. That is essentially he's stating a volitional reticence to discuss the case. So I didn't even put that under the category of psychosis. He's refusing to disclose because it's upsetting to him.

THE COURT: Okay. All right. I think those are all of my questions.

Cross exam? And, of course, if you have any questions that you want to ask her related to that, you sure can.

CROSS-EXAMINATION

BY MS. ELLIS:

Q Doctor, I just wanted to clarify a few things of what you just testified to.

A Uh-huh.

Q You said that the psychosis was based off of hallucinations?

A Yes.

Q Okay. But you personally did not witness any hallucinations?

A I did not observe him responding to anything or, you know, interacting with any sort of perceptional disturbances while I spoke with him, but his history, his account of his own history and also the medical records from the jail support that is someone who is experiencing hallucinations.

Q Okay. So that's purely based on the history. You -- he denied having hallucinations to you?

A No. He reported them. Based on his report of his own history and the medical records.

Q So in your report, it says that the content would have been abnormal. He reported suicidal ideations,

correct?

THE COURT: What page are you looking at?

MS. ELLIS: I am on page 4.

BY MS. ELLIS:

Q So he did report suicidal ideations to you, correct?

A Yes.

Q He denied homicidal ideations?

A Yes.

Q Correct? He denied hallucinations in all modalities?

A Yes, during the evaluation.

Q That's what I'm talking about.

A Yes.

Q So during your evaluation, he denied all hallucinations?

A Right, for the time that I spent with him.

Q Okay. And you personally, during that evaluation, did not observe any perpetual (sic) disturbances?

A Perceptual disturbances, no, I did not. I didn't see him interacting with anything that wasn't there or acting oddly or bizarrely in that sense.

Q So the psychosis that you're saying is part of the major depressive disorder is 100 percent based on the

history or the records you reviewed?

A Yes, and his report that he has had visual and auditory hallucinations since his teenage years.

Q But not at the time of the evaluation?

A Not in that window.

Q Okay. So you met with the defendant on April 25th, '24?

A Yes.

Q And how long was that meeting for?

A I would estimate it to be between an hour and a half to two hours.

Q And was that at the Pinellas County Jail?

A Yes.

Q And defense was present at that evaluation, correct?

A Yes.

Q All right. The state attorney was not -- we were not present at that evaluation?

A No.

Q And that's because it's your policy that we would have to reach out to you to arrange to go to that?

A Yes. Usually, when I receive the order, the order is sent out to all parties. So whichever party wants to be present for the evaluation, as is their right, they let me know so I can keep them in the loop in terms

of scheduling.

Q But it is in that order that you are to -- you must provide advanced notice to both the defense and the state attorney of that evaluation.

A Oh, my understanding is that the order going out was the notice that I would be going to evaluate the defendant.

Q But you have to provide them the actual schedule of the evaluation. That's what it says in the order.

MS. MANUELE: Objection. Relevance.

THE COURT: Overruled.

BY MS. ELLIS:

Q Would you like to see the order?

A I have the order.

Q Okay. So you did not provide us any kind of advanced scheduling saying when this evaluation was going to be taking place?

A I did not. My understanding was that if there was an interest in being present, that it would be made known to me in the few weeks between when I received the order and when I went to see the defendant.

Q Okay. And can you sort of speak up a little bit?

A Sorry. My understanding is that if there was an interest in being present for the evaluation, it would be

made known to me in the few weeks between when I received the order and when I conducted the evaluation.

Q All right. And a part of that order, it is both for mental health testing and for intellectual disability testing?

A It was to evaluate his competency to proceed.

Q Okay. But part of that is the mental health testing, as well as the intellectual disability testing.

A It can be.

Q Okay. You testified, on direct, of the things you reviewed prior to your evaluation, including the arrest affidavit, the indictment, Pinellas County Jail records, prior psychological reports from 2011, academic records and the Boco (sic) records and Wellpath?

A Yes.

Q Did you ever review any jail phone calls?

A No, none of that was made available to me. I was not aware that there were jail phone calls to review.

Q Are did you ever review any truancy records?

A No. All the records I reviewed to inform my opinion are the ones that are outlined in the report. So I did not review truancy records. I was not aware of truancy records.

Q Okay. You diagnosed Mr. Mosley with a cannabis disorder, but I believe you said he's in a controlled

environment. So it's in remission.

A Right.

Q And that, just to be clear, is not affecting his competency at this point in time because he is in a controlled environment?

A Yeah. I did not deem him to be under sort of the acute influence of cannabis, no.

Q All right. And then you also diagnose him with an unspecified anxiety disorder, and you make a note of it and say "by history." What do you mean by making a note and saying "by history"?

A That's -- it's a historical diagnosis. It's a diagnosis that he either reported to have or the records indicated he has before I laid eyes on him, before I had a chance to evaluate him.

Q Okay. So the fact that you wrote the unspecified anxiety disorder is by history but the major depressive disorder does not have that same designation, what does that mean?

A It means that in evaluating him, I concluded that he does have major depressive disorder with psychotic features. In evaluating him, I didn't see an anxious person, but he did report that that's a diagnosis that he's had in the past, and I did want to account for that as part of his mental health history.

Q Okay. And when you say you diagnose him with a major depressive disorder, severe, with psychotic features, what are the psychotic features that you are observing that is not part of the history?

A You mean what did I observe with speaking to him?

Q Yes. Because you didn't have "by history" after that, correct?

A Yes.

Q So what are you basing your present diagnosis on that is not part of his history?

A Based on the jail medical records and also his own report of his history. It is not -- a psychotic person is not obligated to manifest in terms of psychosis in a two-hour window for that the diagnosis to be legitimate.

Q Okay. But you didn't mark after that that you're relying on the history of it, correct?

A I don't understand the question. I'm sorry.

Q So in your diagnostic impressions where you say unspecified schizophrenia and other psychotic disorder, parentheses, by history, and unspecified anxiety disorder by history --

A Yes.

Q -- you are not making that same designation, "by

history," in the major depressive disorder.

A No, because based on the interaction that I had with him, based on the assessment I did of him, I am confident in that diagnosis. Even if he came to see me in a clinic outside of here, I would still ask about his history. I would ask for prior reports or prior evaluations that have been done on his mental health. So incorporating that into a current conceptualization of his mental health does not make it a historical diagnosis. It makes it a legitimate diagnosis that's made using all the information I had available to me.

Q So if Mr. Mosley were to tell you in your evaluation that he's had these things in the past, that would be enough to not rely on the history because you're learning it in your current evaluation?

A If he had told me that he's suffered from these symptoms in the past, well, I would have to take into account the information that I had available to me and including, for example, the jail medical records which are more sort of recent sort of observations of his behavior and his mood functions. So, yes, I would have to take all of that in together, in addition with whatever he told me, and if there was consistency, which there was in this case, I would be confident in that diagnosis.

Q And as far as -- you keep saying the jail

medical records. What are you relying on in the jail medical records besides him self-reporting? Is there any corroboration of anything that he is self-reporting?

A In the jail medical records?

Q Yeah. We'll start with the jail medical records.

A Let me pull that up and look here, because it was 614 pages. I don't have that off the top of my head. So give me a moment. It does account for the sort of suicidal behavior. It reported suicidal behavior. You could see the medical intervention he received. So that's sort of objective. Let me see --

Q And that would have been prior to his arrest, right, all of the suicidal?

A Yes, prior to his arrest, but he himself also reported a history of this, and he did show me sort of scars on his hands. I can't determine the age of the scars, but he did show me scars on his hands that sort of indicated a history of suicidal behavior or self-harm at least.

Q And the scars on his hands, did you read anything about the actual offense and the murder, about how he had the injuries to his hands?

A Yes. I remember reading in one of the affidavits that these are injuries that could be caused by

someone who was stabbing somebody else.

Q But he is still reporting that to you to be a suicide attempt?

A He didn't point out a scar and say this is suicide and this is stabbing. He just showed me his hands and said, you know, he does have a history of self-harm.

Q So anything else corroborating in the jail records his self-reports?

A I'm still -- I'm sorry. Give me a second. I'm still scrolling. It's a lot of pages. If I'm going to answer, I want to be sure on the record. So just please bear with me.

It's mostly just the staff's assessment of sort of where he is at this time, of his sort of mental status and emotional functioning.

Q Okay. Nothing corroborating those delusions or hallucinations besides what he's self-reporting?

A Yeah. I'm not seeing anyone here saying they saw him, like, talking to an empty room or anything like that.

Q And there's a spectrum of what you could see from major depressive disorder, correct, like the symptoms that people are showing?

A Yeah. Most psychiatric conditions exist on a spectrum.

Q So it could be somebody that's catatonic, that's that depressed, or somebody that's interacting with people that you would never even know was depressed?

A Correct.

Q And you would still classify that person that's interacting in a setting and you wouldn't know he was depressed as a -- you could still classify them as a major depressive disorder?

A Yes, because it depends on sort of them meeting the criteria or not.

Q Okay. And let's talk about that criteria. You have to find five out of the nine to -- for the first criteria of the major depressive disorder. Which five are you looking at for Mr. Mosley?

A With Mr. Mosley, he definitely had the depressed mood. He had the low energy, the difficulty thinking or concentrating and making decisions, recurrent thoughts of death or suicide, loss of interest or pleasure he did endorse. So he did essentially describe a very high level of anhedonia, which is just lack of caring about anything or ability to get enjoyment or pleasure out of anything. He did express a lot of guilt. The jail medical records did indicate irritability on his part and --

Q In what way?

A Irritability in what way?

Q Yeah.
A Like being irritable or being agitated when asked a question or asked to do things.
Q And do you know what date that would have been?
A I would have to scroll again through the 614 pages. Give me a moment search for it.
Yeah, he's noted as irritable on -- I'm trying to see if I can decipher what date this is. This would be on -- in April of last year. And let me see when else, because it's noted in multiple instances. The --
Q What's the most recent that he's been irritable?
A Let me see. I'm still looking, by the way. It's a very long document.
That would be June 2023.
Q Okay. And you said a depressed mood, and that is looked at for most of the day, nearly every day, and is indicated by both how he subjectively feels, if he's saying he's sad, if he's saying he's hopeless --
A Uh-huh.
Q -- empty, and also observations by others?
A Yes.
Q Okay. Were there records in there of observations by others saying he had a depressed mood almost every day and nearly every day?
A The jail medical records actually diagnosed him

with adjustment disorder with mixed anxiety and depressed mood.

THE COURT: I didn't hear what you said, and if you could slow down just a little bit.

THE WITNESS: The jail medical records actually diagnosed him with adjustment disorder with mixed anxiety and depressed mood, and he was noted as depressed, listless, slow moving, devoid of energy.

BY MS. ELLIS:

Q When was that?

A As recently as -- let me do a lot more scrolling.

Well, the depressive episodes were in the records as recently as March of this year.

Q And what are they noting in March of this year?

A That diagnosis of other specified depressive episodes.

Q But they don't tell you exactly what they're observing in those depressive episodes?

A Not in the specific March date that I'm looking at, but I am still scrolling.

As of February 23rd of this year, he displayed a flat affect and depressed mood, shared the voices are telling him to hurt himself. Medication is only working a

little bit. And that would be as recently as February.

Q And you said markedly dismissed interest in pleasure in almost all activities, and that would have to be most days, nearly every day?

A Yes.

Q And what are you basing that on?

A On my conversation with him, my evaluation of him.

Q So that was an hour to two-hour -- or hour-and-a-half to two-hour conversation with him?

A Yes, but that would be asking him how he's been feeling recently. Unless I followed him around for two weeks or three week straight or I moved into the jail with him, my best sort of method of inference is based on the records and also asking him how he's been feeling.

Q Okay. But the records, as well, did you have any indication that that was the case in any of the records?

A Yes. If the records are diagnosing him with a depressive condition, yes.

Q But no specific observations that he has diminished interest or pleasure or doesn't want to participate in anything in the jail?

A No, I didn't observe him having diminished -- or I didn't see anyone observing him having an instance of --

specific instance of diminished pleasure in the jail.

Q And what were the other criteria? So you have the mood. You have the diminished interest.

A The suicidality.

Q The suicidality, which is the recurrent thoughts of death, not just fear of dying --

A Uh-huh.

Q -- and recurrent suicidal ideations.

And he -- did he voice that to you, the suicidal ideations, in your evaluation?

A Several times.

Q And what did he say specifically?

A He said -- he made a lot of statements about wanting to die, not caring the outcome of his case, not caring that the death penalty's in question. He made a lot of statements about how he just wants to die, how voices were telling him to kill himself. Let me see what else.

I don't care about anything right now. I'm depressed. I want to die anyways. I've been feeling like that even before everything happened.

Q Okay. And so we have depressed mood, markedly diminished interest or pleasure is what you're relying on and the recurrent thoughts. What else?

A Difficulty thinking or concentrating and making

decisions.

Q And how did you observe that?

A Just in trying to interact with him, trying to walk him through the competency criteria, trying to teach him new things that he may not have known before. He was having a very hard time keeping sort of his thoughts organized or learning.

Q Would you say that he wasn't putting his best effort forward?

A I can't say that. I didn't suspect that.

Q You can't say you wouldn't suspect that?

A I can't say that, and I did not suspect that.

Q Oh, okay. Sorry.

THE COURT: I'm confused because of the double negative.

MS. ELLIS: Yes.

THE COURT: Is it possible he wasn't putting forth his best efforts or not possible?

THE WITNESS: It's always a possibility, but I did not -- that was not a differential that I had during that evaluation.

THE COURT: You didn't pick up on that?

THE WITNESS: No, I did not suspect that.

BY MS. ELLIS:

Q And the second criteria for that is that it

affects his social or occupational or other functioning in life. What observations did you make to diagnose him with a major depressive disorder, that it was significantly affecting?

A If his major depressive disorder is significantly affecting, while in this -- more relevance to what we're here for, his ability to understand and assist, that would be a big indication of that.

Q But the criteria is how it's affecting his daily life, so either occupationally -- which he's in jail, so he doesn't have an occupation -- socially, or some other way. In what way are you saying that these five criteria that you've outlined are significantly affecting his functioning in his daily life?

A If your mood is so depressed that you're suicidal, you don't care if you live or die, you're not interacting with people who are trying to interact with you, you know, presumably in your best interest, I would say those are indications of someone's day-to-day functioning being affected. If you're so depressed that you can't motivate yourself to interact enough to help yourself when you're facing such serious charges, I would read that as an indication that your sort of daily life is being affected.

And it's a very restricted scope when you're in

custody and you wouldn't really have a chance to see you at work or interacting with, you know, family and stuff. So we draw the best conclusions we can with the information that we have available.

Q You're talking about interactions, like, with his lawyers and with you?

A With me, uh-huh.

Q And would it be fair to say he doesn't want to interact with you when it comes to talking about his case?

A He interacted with me for the duration of the evaluation. So I wouldn't say he didn't want to interact with me. He didn't want to discuss specific things. Most specifically, he didn't want to give me an account of the circumstances surrounding the alleged offense and his arrest, but I wouldn't say he didn't want to interact with me, because he sat with me until I dismissed him.

Q He interacted with you in every other aspect except for the fact he did not want to give you the circumstances surrounding his case?

A Yes, as I indicated in the report.

Q You found that his appearance was normal, correct?

A For the setting that he was in, which is, you know, being in jail.

Q And he was taking care of his basic needs?

A I'm sorry. What do you mean by that?

Q I'm just going right off of your checklist on page 4, as far as his appearance, his arousal, his orientation, his attention. So he is able to take care of his basic needs even in this depressive state that he's in?

A Well, basic needs are showering, using the bathroom, I would say. So I didn't see any indication to --

Q Okay.

A -- point to the fact that he wasn't able to, like, brush his teeth or feed himself.

Q Okay. But he was able to do all of that. There was no indication that he had any trouble doing anything like that?

A As far as I can tell, but that is a very low bar in terms of brushing your teeth and wiping when you go to the bathroom.

Q I understand, I'm just saying he's not in such a depressed state that he can't do any of that?

A Right.

Q All right. He was alert and oriented without stupor, correct?

A He. Wasn't stupefied. He wasn't staring into space. He was able to -- regardless of what his response

was, he was able to sort of respond to what I was saying and interact with me.

Q And he was able to stay on task without redirection?

A Yes.

Q You said he was verbal, receptive, and expressed -- expressive language was intact?

A Yes.

Q He had a normal thought process, which was linear, coherent, goal directed and meaningful ideas.

A Yes.

Q He was cooperative, compliant, and engaged with you, correct?

A Yes.

Q As far as your training and experience, you trained under a neuropsychologist in your fellowship, correct?

A Yes.

Q Are you board certified in neuropsychology?

A No. Board certification is not a requirement to practice as a neuropsychologist, and those who obtain board certification, it's not typical in the early phases of your career. So there's no abnormality there.

Q Okay. You said in the early stages of your career. When you've been practicing longer, do you

normally get board certified?

A Some people do. Not everyone does. I think, to the best of my recollection, the current board certification rate for neuropsychology is like 50 percent of practicing neuropsychologist, but don't quote me on that because that is just the best of my recollection. I don't have it in front of me, that number.

Q Okay. And you've mentioned a couple times that you've had concerns for learning disabilities, limited cognitive and intellectual abilities of Mr. Mosley?

A Yes.

Q But you didn't do any follow-up testing on him?

A No. The kind of comprehensive testing it would take to answer that question is well beyond the scope of a standard competency evaluation. It's very labor intensive, very time intensive, very cost intensive.

Q Okay. But the order actually does say that you are appointed to do intellectual disability testing and mental health testing.

A To render an opinion on his intellectual and mental status as it relates to competency to stand trial.

Q So how do you render an opinion on intellectual disabilities without doing any testing?

MS. MANUELE: Judge, I'm gonna object. The order was not for that.

THE COURT: Well, here's -- here's what I'm looking at. The --

MS. MANUELE: It's the --

THE COURT: I can pick off two lists, right? I can pick off the mental illness list, and I can pick off the intellectual disability list. And so I'm looking at the order, and there's a paragraph in here that deals with reports on incompetence to proceed and intellectual disability, but --

MS. MANUELE: If I may.

THE COURT: I think I understand your point, because I picked her off the mental illness list, and I think what doctors are required to do is determine whether or not they're doing the right eval., mental illness or intellectual disability, and if they've been characterized ID before their eighteenth birthday, we usually pick off a different list.

MS. MANUELE: That is true, but that is beyond where we're at here. It's a standard order that court admin issues. And then if you look on the last page of the order, that's how you know if you're doing an intellectual disability or a mental illness. Because it says if you're doing a competency evaluation for intellectual disability,

payment -- you will be paid by the Agency for Persons with Disabilities. If you're doing it for mental illness, you will be paid by Pasco. And then the very next line is, you will submit your payment to Pasco.

So that's how the expert knows what evaluation they're doing. The standard generic order contains the language for both incompetence due to mental illness and intellectual disability. It's not until you get the last page that tells them where to submit their payment that tells them what kind of evaluation is supposed to be conducted.

MS. ELLIS: I would argue, your Honor, that this does not tell her what type of evaluation to be conducted. The order has you looking for both in this order.

THE COURT: My understanding -- you all are welcome to disagree with me -- is that I pick off a list, mental illness or ID, and I can only use the ID list if there's been diagnosis of ID before the eighteenth birthday. Otherwise, the doctors on the ID list won't do any of the testing necessary to determine an intellectual disability, because then we're in the realm of -- and this is the problem we've had for years, right? Somebody gets a

traumatic brain injury when they're 19, they're not gonna be on the ID list. They're gonna be on the mental illness list, and the doctor is gonna have to determine whether or not there's any cognitive impairment, right? And it gets really messy in that regard.

But for the purposes of whether I pick off the mental illness list, which is what I did in this case -- or I don't pick the doctor. They get randomly assigned, but I make that determination the name is to come from that list. There's supposed to be a preliminary review to see if there is ID, but I don't expect them to do any testing in regards to that. Because we've had them get kicked back before where the doctor goes, I think this is ID, not mental illness, and they don't do their eval.

MS. MANUELE: They do have separate lists.

THE COURT: Correct.

MS. MANUELE: And based on the motion to appoint -- because whoever the moving party is is supposed to indicate what they're asking for the appointment of.

THE COURT: Correct.

MS. MANUELE: I -- we don't disagree that

there is evidence that he may very well have an intellectual disability. The State's who asked to have him appointed. I'm unaware that they also had a good-faith belief that he might be intellectually disabled, but certainly, if that's their position, then, yes, we should have had a doctor from that list.

I think Dr. Ogu would meet that qualifications, but based on what they asked for, he was only found incompetent due to mental illness at the time. Our belief and based on the order was that they were asking for a doctor only on the mental illness list. That's -- the order that went to Dr. Ogu is that she's doing that. She's not submitting payment to the agency. If she were submitting payment to the agency, it is because of the more thorough, complex evaluation.

THE COURT: I think we're saying the same thing.

MS. MANUELE: I think so.

THE COURT: What's your point?

MS. ELLIS: My point is just that if she saw cognitive disabilities or intellectual disabilities, that she should have brought it to someone's attention that can I do additional

testing, and instead we're in this position where she's saying there might be, but I haven't done the testing for it.

THE COURT: Okay. So let's just all be clear. He was not -- it is my understanding that he was not in any way -- I hate using the word "labeled," but at any time declared intellectually disabled before his eighteenth birthday.

MS. MANUELE: I actually cannot confirm that for your Honor. He may have been. We're still looking through records. I can tell you he was never a client at the Agency for Persons with Disabilities. So he was not receiving APD services.

THE COURT: Okay. All right. That answered my question.

MS. ELLIS: And I'm not gonna go farther than that. That was just the point I was making.

THE COURT: All right. Point made.

BY MS. ELLIS:

Q Doctor, are you aware of any of the symptoms of any of the medications that he's on?

A No. I'm not trained or credentialed in pharmacology in any way. So I wouldn't even be able to confidently or competently speak on that.

Q Okay. So you can't tell if any of them cause depression or if any other medical condition like a thyroid being abnormal would cause any of these type of symptoms?

A I don't have that training. I don't have that competency. I didn't go to school for that. So no.

Q Okay. But you can opine as to him being on psychotropic meds would help him?

A If you're major -- if you have major depression and you take medication for depression, theoretically and it's been proven that that would help you. If you have a psychotic disorder and you take medication for psychosis, that should improve those symptoms. So yes.

Q Okay. But you can't prescribe the medications nor say which medications would help him in this situation?

A No, other than saying he needs medication for mood or for psychosis, I can't speak with that as to any more specifics because, again, I don't have the competency or training to do that.

Q Okay. And let's talk about malingering. You are qualified to do malingering tests, correct?

A Yes. That's -- most testing psychologist are, if not all.

Q All right. And how do you determine whether

some one is malingering?

A It would be -- I would use multiple sources of information.

Q Like what?

A Standardized testing or standardized testing tools. First of all, it depends on what kind of malingering I suspect, if I suspect cognitive malingering or psychiatric malingering, because that would also depend on what stools I use. If I suspected psychiatric malingering, I would use, like, an M-FAST or, like, the SIMS that was referenced earlier. If I saw -- or even the MMPI. If I suspected cognitive malingering, I would use the MSVT. There are multiple cognitive malingering -- multiple tools that are aimed at -- or measures that are aimed at assessing test-taking effort from a cognitive perspective.

Q Okay. And you did not do any malingering tests on Mr. Mosley?

A No, because I did not suspect he was. I didn't have a reason to.

Q And, I mean, it's in the history, correct, that there could be malingering in this case?

A It's in the history. But competency is a here-and-now determination. It's not retroactive. So I was based on the -- on my opinion of his abilities here

and now and his sort of capacity or performance here and now. I didn't have that theory to test. So I had no need to test it.

THE COURT: So you don't think the history of potentially feigning symptoms would be important in your evaluation today, for example?

THE WITNESS: I assigned it some weight, which is why I referenced in my report that if he were to get -- attempt restoration and it failed, then that would sort of take on sort of increased importance and that should be sort of looked into more in depth. But at the time that I evaluated him, based on my results or based on my findings at the time, I did not suspect that he was malingering, and I did not test him for that.

BY MS. ELLIS:

Q So you're saying that, basically, if we sent him to the State Hospital and they find malingering again, you think that history would warrant malingering tests?

A I think then that would constitute a pattern and that malingering should be taken more seriously and explored further at that time.

Q Okay. But the history of the State Hospital saying that there is malingering is not enough to trigger a malingering test for you at this point in time?

A No, because that's their assessment of him at the time that they saw him.

MS. ELLIS: May I have one moment, your Honor?

THE COURT: Yes.

MS. ELLIS: I have no further questions at this time.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MS. MANUELE:

Q Other than the report that came back from the hospital from January of 2024, did you observe any other indication from the hospital records or anything that would suggest he was malingering?

A To the best of my recollection, all the doctors that had -- the multiple doctors that had evaluated him before I saw him deemed him incompetent to proceed, and I don't recall any of them raising malingering as a suspicion.

Q Okay.

A To the best of my recollection at this time.

Q Okay. And then in the hospital, they opined that he was malingering; is that right?

A Yes.

Q And they used the SIMS to reach that and then ILK. But fair to say they didn't provide you any scores?

A No, were there is no scores stated in the report.

Q And I think you previously testified that it would be certainly outside of your practice to try to analyze the results of the assessment tool without having the score on the assessment tool, right?

A Correct, because the score is the quantification of whatever behavior we're measuring. It's how we -- it's the -- it's sort of the data that we need to compare them -- to compare that performance or that behavior as observed to sort of a normative or reference group. So without that score, without condensing the behavior down to that numerical score that we can compare, it's difficult to make that sort of statistical comparison.

Q Okay. And so --

THE COURT: If you have the score, would it have made a difference?

THE WITNESS: If it was a case of me sort of reviewing another doctor's work, I would need the score so I could sort of assess for myself based on interpretation, based on the manual, based on my methods of inference, to see where this individual falls relative to whatever cutoff there is or relative to whatever the comparison or normative group is.

THE COURT: So you would need more than just the base score. You would need the notes surrounding the score?

THE WITNESS: At the minimum, I would need to see the raw data, which is the protocol and how the questions were responded to, and what I would do personally would be to rescore it and see if I've arrived at the same score, the same conclusion that the other doctor did, and then make my interpretations from there.

THE COURT: Okay.

BY MS. MANUELE:

Q So fair to say there's some subjectivity in the scoring process?

A There can be. There can be. It's not out of the realm of possibility. But, again, my default assumption is all doctors know what they're doing, but it doesn't hurt to have a second set of eyes on it when the stakes are this high.

Q Gotcha. And I think we hashed out the intellectual -- the State had referenced whether you had any evidence of psychosis at the jail. Is the fact that he is currently --

MS. ELLIS: Objection. Leading.

MS. MANUELE: Right.

THE COURT: Okay. It's cross-exam.

MS. ELLIS: No, it's not.

THE COURT: Or no. You called her, right?

MS. MANUELE: Right, but per the rule, all the court-appointed experts are treated as court experts.

THE COURT: But you called her as a witness, right?

MS. MANUELE: Right, but that's what I'm saying. Per the rule in the hearing, it says that they're all treated as --

THE COURT: Rephrase your question.

BY MS. MANUELE:

Q Is evidence that somebody is being prescribed antipsychotic medication -- if somebody is being prescribed antipsychotic medication, is that evidence that somebody is observing psychosis?

A Yes, especially in the setting where this medication is being supervised by medical staff. If they are giving you antipsychotics, these are medications that are pretty potent. So if you're being given antipsychotics --

MS. ELLIS: I'm gonna object to outside her scope of expertise.

MS. MANUELE: She asked for evidence in the

jail records that would -- evidence of psychosis from the jail records, and so I'm eliciting that, that he is being prescribed an antipsychotic.

THE COURT: Okay. She also said she's not trained in pharmacology.

MS. MANUELE: Right. So I'm not asking the effects of the meds, solely that she --

MS. ELLIS: You are.

MS. MANUELE: -- observed what he was being prescribed.

THE COURT: But she doesn't -- she doesn't prescribe it. So the conditions under which someone would prescribe it, would she have the ability to answer that? Because I think doctors will sometimes prescribe medications off self-reports, right?

Because I think your question was -- I'm not arguing. I'm asking. I'm not trying to be argumentative. I think your question was would a doctor have to observe something to require that sort of medication. Did I rephrase your question right?

MS. MANUELE: I don't think so, but maybe so, to be fair.

THE COURT: Go ahead and ask your question

again.

BY MS. MANUELE:

Q Regarding -- the State asked if there was evidence of psychosis in the jail records. Is the fact that somebody is being prescribed an antipsychotic evidence that they are experiencing psychosis or have recently experienced psychosis?

A It could be, if not psychosis, well, some sort of mental disturbance that warranted the administration of such serious medication.

MS. MANUELE: May I have a moment?

THE COURT: Yes.

BY MS. MANUELE:

Q Doctor, let me ask you this. There was a couple questions -- why is it -- you had mentioned that you have -- you reviewed five other doctors' reports that had indicated Mr. Mosley was not competent over the last year.

A Yes. That would be four: From Hall, McClain, Ramm and Maher.

Q Okay. Why is it that, although you're -- all of you are mental health professionals and have degrees and lots of years of experience. Why are your opinions different, if you will, slightly?

A Different in what way? I'm sorry.

Q Well, I guess, like the Court had inquired about

what Dr. Hall had indicated might be --

A I see --

THE COURT: Intrusive thoughts.

BY MS. MANUELE:

Q -- intrusive thought versus a -- and you said, Well, I see that not as a delusion, how that works out.

A Sure. That's a good question. So someone who is mentally ill may not present in the exact sort of narrow set of ways every time you see them. If you look -- interact with the individual at different points over a time or across time, that presentation, although the underlying diagnosis may be the same, it may present itself -- present itself a little differently each time. That would be -- that may be one reason why, because we arrived at the same conclusion, but it looks like the way things were sort of manifested in the moment may have been different from doctor to doctor, and that is -- that is -- that happens. That's not an abnormality.

Someone who's psychotic may be flagrantly hallucinating one day and you see them three days later, and they're more withdrawn, and you see them three days later, and they're more catatonic. It's not going to present itself the same way every time. That's why the criteria for these disorders, it's a list, and it could be whatever particular constellation from that list that you

meet when you encounter the patient at any given time.

Q And fair to -- so I guess mental health is kind of a complex issue, fair to say?

A To put it mildly, yes.

Q And based on those -- how you describe people presenting different over time, that alone, does that -- would it cause you any great concern, or is that something you would expect to see some variances?

A I would expect to see some variances. There is no way to predict that on the 12th of October, this person is going to be having auditory hallucinations, and on the 15th of October, they're going to be more withdrawn. It's just -- there's no way to predict that. The disorder is the disorder, and depending on environmental factors, level of stress, different things, it will show itself maybe a little differently each day, even though, as I say, the underlying diagnosis is the same.

Depression can look many different ways. You can have a high functioning depressed person, as the State referenced earlier. You can have a depressed person who on certain days cannot get out of bed, but it's the same depression that they're suffering from.

Q Thank you, Doctor.

MS. MANUELE: I don't have any other further -- any other questions.

THE COURT: So I think that's it for Dr. Ogu? All right. Thank you, Doctor.

THE WITNESS: Thank you.

THE COURT: Okay. The plan is -- well, it's only 3:00. So if Dr. McClain wanted to testify today, that would be fine. If she does not want to testify today and wants to testify next Friday, that is fine with me. I'm here all day. Whatever you all want to do.

MS. RUSSELL: We appreciate that, your Honor. I think we're gonna take you up on the 28th so she'll have the time to review the notes that we got.

THE COURT: That's fine. All right. Anything else we need to talk about for today's purposes then?

MS. ELLIS: Not from the State.

MS. MANUELE: Two seconds?

THE COURT: Sure.

MS. MANUELE: Your Honor, we don't have anything else.

THE COURT: Can we make sure for the clerk and just go in over what's in and what's out, just to make sure everything is marked and we're all in agreement? I think the clerk had a couple

questions.

THE CLERK: Yeah, I do. Defense 7, is it in?

THE COURT: Defense 7 was Dr. Jones' notes, and those are in.

THE CLERK: Those are in. Okay. So 7, 8 and 9 --

THE COURT: The only thing that should not be in right now is State's Exhibit 9, which we're going to talk about next Friday.

MS. SULLIVAN: We're just gonna do these for ID.

THE COURT: What?

MS. ELLIS: One was the Court order for competency which we didn't enter in.

THE CLERK: Truancy petition.

MS. SULLIVAN: Yeah, that's his truancy paper. We haven't gotten into it yet.

THE COURT: Okay. So those are not in. I wasn't even aware of those.

MS. SULLIVAN: I hadn't gotten to talk about that.

THE CLERK: And then that also is not in.

THE COURT: Correct. Anything else we need to talk about?

MS. MANUELE: You said 1:00 on Friday?

THE COURT: Yes, please. And if Dr. McClain is a couple minutes late, obviously we'll -- she is coming from Hillsborough, I think, right?

MS. MANUELE: Yes.

THE COURT: Right. We'll try to start at 1:00, but she might be a couple minutes delayed. Okay? All right. I'll see you all next Friday then.

(COURT IN RECESS)

(VOLUME IV CONCLUDED)

CERTIFICATE OF REPORTER

STATE OF FLORIDA)

COUNTY OF PINELLAS)

I, Jennifer Fleischer, Registered Merit Reporter, certify that I was authorized to and did prepare the foregoing transcription of Carla Jessal's stenographic notes to the best of my ability.

DATED this 16th day of July, 2024.

/S Jennifer Fleischer

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Jennifer Fleischer
Registered Merit Reporter