

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT OF
THE STATE OF FLORIDA IN AND FOR PINELLAS COUNTY
CRIMINAL DIVISION**

STATE OF FLORIDA,

CASE NO.: 23-03157-CF

v.

DIVISION: K

THOMAS ISAIAH MOSELY,
Person ID: 3322179, Defendant.

**ORDER ON DEFENDANT'S COMPETENCY TO PROCEED
RE-COMMITMENT TO DEPARTMENT OF CHILDREN AND FAMILIES**

THIS MATTER came before the Court on the issue of the Defendant's competence to proceed to trial in accordance with the provisions of Florida Rule of Criminal Procedure 3.210(b), and section 916.115, Florida Statutes. On June 14, 2024, June 20, 2024, June 21, 2024, and June 28, 2024, the Court heard testimony and argument. Having considered the testimony, evidence, argument of the parties, the record, and applicable law, the Court finds as follows:

RELEVANT PROCEDURAL HISTORY

On April 27, 2023, a grand jury charged the Defendant by indictment with two counts of murder in the first degree, a capital felony (counts one and two). On October 11, 2023, the Court found the Defendant incompetent, and on October 18, 2023, the Court issued an order finding the Defendant incompetent to proceed and committed him to the Department of Children and Families (DCF).¹ On December 14, 2023, he was transported to South Florida Evaluation and Treatment Center (SFETC). On January 12, 2024, Dr. Theresa Ascheman Jones, from SFETC, filed a sealed competency evaluation report, indicating the Defendant met the criteria for competency to proceed, and on February 1, 2024, SFETC transported him to the Pinellas County Jail.

On March 27, 2024, the Court issued an order directing examination of the Defendant for competence to proceed and appointing Dr. Precious Ogu, Ph.D., as an expert for the Court. On May 22, 2024, Dr. Ogu filed her amended competency evaluation report, and on May 23, 2024,

¹ Based on evaluations by Valerie R. McClain, Psy. D., Ryan C.W. Hall, M.D., Douglas R. Ramm, Ph.D., and Michael S. Maher, M.D.

she filed her corrected competency evaluation report.² On June 11, 2024, the Defense deposed Dr. Ascherman-Jones, which was transcribed; the transcript was filed on June 13, 2024. On June 13, 2024, Dr. Ryan C.W. Hall and Dr. Valerie R. McClain filed competency evaluations.

On June 14, 2024, the Defense filed a Motion to Exclude Testimony of Dr. Theresa Ascherman-Jones and a Motion to Preclude Introduction of Jail Calls, which the Court denied the same day after hearing argument. On June 14, 2024, Dr. Ascherman-Jones testified, on June 20, 2024, Dr. Hall testified, on June 21, 2024, Dr. Ogu testified, and on June 28, 2024, Dr. McClain testified. State investigator Howard Crosby testified as to jail calls introduced at June 14, 2024 hearing. The parties presented oral closing argument on June 28, 2024. The Defendant was present for all hearings on this matter.

FINDINGS OF FACTS

Four mental health professionals testified regarding the Defendant's competence to proceed to trial. Dr. Ascherman-Jones, from the SFETC, found him competent to proceed on all factors under rule 2.211(a)(2) and that he was malingering. The two Defense experts and the court-appointed expert agreed that the Defendant was incompetent to proceed.

Testimony

State Investigator Howard Crosby

On June 14, 2024, the State called Howard Crosby, investigator for the State Attorney's Office. He testified that he pulled jail calls from the Pinellas County Jail (PCJ) using Global Tel Link (GTL) system and accessed the calls by entering the date and the docket number corresponding with the dates and times identified by the State. He stated that each inmate is assigned a personal identification number (hereinafter "PIN"), which is the same as the inmate's docket number at PCJ. Mr. Crosby testified that he accessed the PIN for the Defendant for each call identified and when he accessed the recordings, the Defendant identified himself by voice authentication as "Thomas" with the appropriate PIN; he downloaded thirteen calls to a disc and confirmed that the recordings on the disc were the same as those he reviewed through the GTL system. The State introduced the ICM call file list showing the Defendant's first and last name and his PIN as State's Exhibit 1 and the disc of the thirteen calls as State's Exhibit 2.

The Defense moved to preclude the introduction of the jail calls on the basis that the calls did not contain any direct evidence of whether the Defendant has sufficient present ability to

² Dr. Ogu later testified that she filed the corrected report to remove the word "amended" from the title of the report.

consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational understanding of the proceedings. The Court denied the motion finding that extrinsic information is relevant in competency proceedings³ and that the Court would weigh the value of the jail calls.

The Defense objected at the hearing to introduction of the jail calls on the basis of improper authentication. Section 90.901, Florida Statutes requires as a condition precedent to admissibility that evidence be identified or authenticated, which can be satisfied “by evidence sufficient to support a finding that the matter in question is what its proponent claims.” Jackson v. State, 979 So. 2d 1153, 1154–55 (Fla. 5th DCA 2008) (quoting § 90.901, Fla. Stat.). “Evidence may be authenticated by appearance, content, substance, internal patterns, or other distinctive characteristics taken in conjunction with the circumstances. In addition, the evidence may be authenticated either by using extrinsic evidence, or by showing that it meets the requirements for self-authentication.” Id.; see also Walker v. Harley-Anderson, 301 So. 3d 299, 301 (Fla. 4th DCA 2020). “[A]uthentication for the purpose of admission is a relatively low threshold that only requires a prima facie showing that the proffered evidence is authentic...” Mullens v. State, 197 So. 3d 16, 25 (Fla. 2016).

The State sufficiently authenticated the jail calls through Howard Crosby’s testimony that he accessed the calls through the jail’s GTL system and identified the Defendant’s calls through his PIN. Upon listening to the calls, the Defendant was identified by the GTL system through voice authentication when he provided his name, “Thomas,” and his unique PIN.

Dr. Theresa Ascheman-Jones

The State called psychologist Theresa Ascheman-Jones from SFETC.⁴ Her testimony was introduced over the objections of the Defense based on staleness and her failure to provide raw data for the tests she administered to the Defendant: the Inventory of Legal Knowledge (ILK) and Inventory of Malingered Symptomatology (SIMS).⁵ She testified that she met with the Defendant for a team meeting on December 15, 2023, the day after he was admitted; the team included herself as psychologist, the attending psychiatrist, social worker, recovery plan coordinator, and possibly the unit nurse. She stated that she saw the Defendant again on December 18, 2023 for an additional

³ The two experts hired by the Defense and the court-appointed expert all agreed that when considering a person’s competency to proceed it is important to consider extrinsic and historical information.

⁴ Dr. Jones’s full *curriculum vitae* was introduced as State’s Exhibit #4.

⁵ SFETC eventually provided the raw data to the Defense shortly before Dr. McClain testified.

team meeting because a covering psychiatrist met with him initially and the regular psychiatrist wanted to meet with him. Dr. Jones testified that at intake, the admitting psychiatric provider's diagnostic impression was unspecified mood disorder and cannabis use disorder. She stated she evaluated him twice on January 9, 2024, once during the regular monthly meeting and once for her formal competency evaluation. She stated that at the time of his arrival at SFETC, the Defendant was on psychotropic medications for mood and psychosis, as well as medication for anxiety, and depression and that he remained compliant on the same medications during his stay at SFETC. Despite reports from unit nurses that the Defendant demonstrated "restful sleep," the attending psychiatrist prescribed trazadone for sleep after the Defendant reported difficulty sleeping.

She stated that the Defendant's self-reported hallucinations were atypical because they were fairly continuous and severe but acknowledged that on January 4, 2024, a student update reported that the Defendant denied having hallucinations at that time. She reported he had poor cooperation and made no attempt to respond to even basic questions like the roles of the judge and of his attorneys. In addition, she noted that at the first team meeting, she asked the Defendant if he needed a copy of the charges in this case and he stated he knew about his case and did not need documents. However, when Dr. Jones asked him about the charges against him on a later date, he could not recall, then recalled one of the charges and told her he would have to call his public defender to see what the charges are, despite having previously stated that he did not trust his public defender. He told her he had been on probation but did not know the difference between a misdemeanor and a felony.

Based on the atypical hallucinations and poor cooperation, Dr. Jones testified that she suspected malingering so she administered the SIMS, a 75-page instrument consisting of true and false statements, and the ILK, which consists of 61 questions requiring a verbal response. She stated that the Defendant scored a 39 on the SIMS and a 26 on the ILK, and that the scores indicated he was feigning, exaggerating, or guessing.⁶ She acknowledged that the SIMS was based on white female college students faking bad on the test and required a fifth grade reading and comprehension level; she was unaware of the Defendant's reading level at the time she administered the SIMS. She also acknowledged that the SIMS manual indicates that a diagnosis

⁶ Dr. Jones initially testified that she was precluded by test protocols from revealing the test scores but after reviewing the test manuals at the request of the defense, she provided the scores.

