

IN THE CIRCUIT COURT FOR PINELLAS COUNTY, FLORIDA
CRIMINAL DIVISION

CASE NO.: 23-03157-CF
SECTION: K
JUDGE: SUSAN ST. JOHN

STATE OF FLORIDA,

Vs.

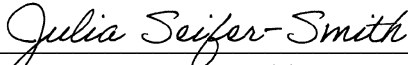
THOMAS ISAAH MOSLEY.

REQUEST FOR JUDICIAL NOTICE

THE DEFENDANT, Mr. Thomas Isaiah Mosley, by and through undersigned counsel, hereby requests, pursuant to Fla. Stat. Ann. §§90.202(6) and 90.203, that this Honorable Court take judicial notice of a motion and docket summary taken from court filings in the matter of State of Florida v. James Peoples, Case No. 24-01492-CF:

- Motion to Strike Dr. Michael Railey's Evaluation and Appoint A Neutral Expert (Ex. 1)
- Docket Summary for Case No. 24-01492-CF (attention to entry for 3/26/2025) (Ex. 2)

I do certify that a copy hereof has been furnished by email/physical delivery to the State Attorney, County Justice Center, Clearwater, Florida, on July 15, 2025.



JULIA B. SEIFER-SMITH, Attorney at Law
Fla. Bar Number: 86567, For
PUBLIC DEFENDER, SIXTH JUDICIAL CIRCUIT
County Justice Center
14250 49th Street North
Clearwater, FL 33762
Pubdef-efiling@co.pinellas.fl.us
(727) 464-6516

Exhibit 1:

Defense Motion to Strike Dr. Michael Railey's
Evaluation and Appoint A Neutral Expert

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT OF FLORIDA
IN AND FOR PINELLAS COUNTY

CASE NO.: 24-01492-CF, 24-01493-CF &
23-10740-CF
SECTION: DIVISION D
JUDGE: JOSEPH BULONE

THE STATE OF FLORIDA,
Plaintiff,

v.
JAMES RICHARD PEOPLES III (PID: 1203294),
Defendant.

_____/

**MOTION TO STRIKE DR. MICHAEL RAILEY'S EVALUATION AND
APPOINT A NEUTRAL EXPERT**

COMES NOW the Public Defender for the Sixth Judicial Circuit, moves this Court, pursuant to the Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution, Article I, Sections 9 and 16 of the Florida Constitution, Fla. R. Crim P. R. 3.210(b), and the Order Directing Examination for Competence to Proceed issued by this Court on February 9, 2025, for an Order STRIKING any report submitted by court-appointed expert Michael Railey and removing Dr. Railey from the appointment list on Mr. Peoples' case. By necessity, the Court should appoint a new expert who has not been subject to allegations of impropriety by the defense.

FACTS

1. On February 17, 2024, a couple of days after Mr. Peoples' in-custody arrest for the homicide in Case No. 24-01492-CF, the public defender's office filed an "Edwards" notice invoking his right to have an attorney present at all investigative proceedings and to protect him from self-incrimination. A copy is attached as Exhibit ("Ex.") 1.

2. Mr. Peoples was subsequently indicted for First Degree Murder under Case No. 24-01492-CF on February 23, 2024. Mr. Peoples had previously been charged in Case No. 23-10740-CF and was subsequently (on July 19, 2024) indicted on Case No. 24-01493-CF. The public defender's office was appointed in all three of his cases. Mr. Peoples currently has three open cases of serious charges in which he faces a lifetime of imprisonment.

3. Mr. Peoples has severe mental health issues that have been exhaustively documented by the many institutions from which he has received treatment. Defense counsel immediately recognized the harbingers of incompetence: engagement with internal stimuli which effects conversation and difficulty in communicating and understanding legal concepts.

4. One confidential defense expert, Dr. Allison Tarbox evaluated Mr. Peoples in person over two days, found him incompetent, and drafted a report that was filed under seal on January 29, 2025.

5. Defense counsel filed a motion requesting the appointment of experts to evaluate Mr. Peoples' competency on January 29, 2025.

6. On February 5, 2025, this Court granted the motion and appointed two doctors capable of performing mental health competency examinations, Dr. Valerie McClain and Dr. Michael Railey.

7. The Court order appointing Dr. McClain and Dr. Railey was filed on February 7, 2025. Under Part I, paragraph 5, the Court unequivocally establishes, "The expert must notify defense counsel when they are available to coordinate examination of the Defendant...The expert must provide defense counsel and the State Attorney advance notice of any scheduled examination of the Defendant." Ex. 2 (Order of Appointment, February 7, 2025) (emphasis added). The Court order complies with constitutional standards and the invocation of rights filed at the inception of this case.

8. Further, the Order indicates that Mr. Peoples is currently housed at the Pinellas County Jail and “[t]hat the appropriate jail authority shall permit above-named expert to enter the Pinellas County Jail as necessary to conduct the foregoing evaluation of the Defendant upon presentment of this Order.” *Id.* at Part I, para. 6.

9. Due to the seriousness of competency evaluations in first degree homicide cases, counsel’s practice is to be **present at all competency evaluations** by court-appointed doctors. This allows for an understanding of the methods and means used by court-appointed doctors and preparation for cross-examination that may eventually occur at a hearing. Information gained while witnessing a competency evaluation is so critical to the preparation of the defense that defense counsel routinely initiates the calendar dialog with experts to ensure that mutually convenient interview appointments are set.

10. On February 9, 2025, Court Administration emailed Dr. McClain and Dr. Railey to inform them of their appointment in Mr. Peoples’ case. Defense counsel reached out to both doctors the following day, indicating that counsel would be present for the examination. Ex. 3 (Email to Court-Appointed Experts, February 10, 2025). Dr. McClain responded immediately and coordinated the examination of Mr. Peoples for March 10, 2025.

11. Dr. Railey did not respond to the February 10, 2025, email. Counsel reached out to Dr. Railey again on February 26, 2025, to coordinate the examination and providing dates of availability on and after March 10, 2025. Ex. 4 (Email to Dr. Railey, February 26, 2025). On March 4, 2025, counsel received an email from Dr. Railey stating only: “I am scheduled to evaluate Mr. Peoples on Thursday (March 6th) at 9am.” And then a subsequent email correcting the time to 9.30am. Ms. DeLiberato responded that she would meet Dr. Railey in the jail lobby at 9.30am for the examination and provided her cellphone number. The morning of the examination, Ms. DeLiberato reached out to Dr. Railey again to notify him that she was running

a few minutes late and to request that he not begin the examination without her. Ex. 5 (Emails to Dr. Railey, March 4, 2025, and March 6, 2025).

12. When Ms. DeLiberato arrived at the Pinellas County Jail at approximately 9:40 a.m., the jail staff indicated that Dr. Railey had not yet checked in. Ms. DeLiberato proceeded to attorney visitation in South Division to ask Mr. Peoples to be brought down to wait for Dr. Railey to arrive.

13. When Ms. DeLiberato arrived at attorney visitation, she was informed that Mr. Peoples was on a video visit with Dr. Railey. Ms. DeLiberato requested the jail stop the video visit and send Dr. Railey to the main jail to conduct the evaluation in person, with counsel present.

14. Prior to Mr. Peoples coming down to visitation, Dr. Railey stated to counsel that he had seen Mr. Peoples on Sunday, March 2, 2025, also on video, also without giving prior notice to defense counsel as required by this Court's Order.

15. Dr. Railey violated a clear Court Order and Mr. Peoples' constitutional rights in evaluating Mr. Peoples without notice and presence of counsel.

16. As an agent of this Court, Dr. Railey violated Mr. Peoples' constitutional and statutory rights by failing to provide advance notice to defense counsel about an intention to conduct an evaluation of Mr. Peoples, failing to notify defense counsel of his evaluation, conducting an examination of Mr. Peoples without his counsel, and beginning a subsequent evaluation of Mr. Peoples without the presence of defense counsel.

17. Dr. Railey's failure to comply with the proscriptions of the United States Supreme Court and this Court's order has impermissibly violated Mr. Peoples' rights, and as a result, any report from Dr. Railey must be stricken and a new neutral expert with experience in evaluating people with severe mental health conditions should be appointed to assess Mr. Peoples' competency.

18. While undersigned counsel has not yet received a report from Dr. Railey, counsel files this Motion now so that he does not expend any more resources on this case and so that a new expert can be timely appointed.

19. Counsel has spoken to Assistant State Attorney Nash Licona and he does not oppose this Motion.

MEMORANDUM OF LAW

Permitting Consideration of Dr. Railey's Report or Testimony Regarding His March 2nd and March 6th, 2025, Evaluations of Mr. Peoples Would Violate Mr. Peoples' Fifth and Sixth Amendment Rights.

The United States Supreme Court has held that it violates a capital defendant's Fifth Amendment right against self-incrimination and Sixth Amendment right to an attorney where the defendant is subjected to a psychiatric evaluation regarding future dangerousness without informing the defendant that he has a right to remain silent and without notice to his attorney. *Powell v. Texas*, 492 U.S. 680 (1989). The guarantee of access to counsel means the accused need never stand-alone against the State in any stage of the prosecution. *Estelle v. Smith*, 451 U.S. 454, 470 (1981).

The Florida Supreme Court has extended this protection to defendants in the context of competency determinations, writing that while "[p]sychiatric evaluations conducted *in good faith and with proper authorization*," can be acceptable processes employed by the prosecution in determinations of competency or sanity, the failure to provide notice to defense counsel as to such runs afoul of a defendant's constitutional protections. *Holland v. State*, 636 So.2d 1289, 1292 (Fla. 1994) citing *Walls v. State*, 580 So.2d 131, 135 (Fla. 1991) (emphasis supplied by the *Holland* court).

In *Holland*, at his first appearance, the defendant invoked his rights to remain silent and to counsel; during that proceeding, the judge stated that he would sign an order prohibiting law enforcement interviews outside the presence of Holland's attorney. *Id.* at 1291. The following month, a contract psychiatrist, Dr. Abbey Strauss, evaluated Holland in the jail on two separate occasions ostensibly for the determination as to whether he could be put into the jail's general population. *Id.* No notice was provided to Mr. Holland's attorney for either of the examinations. *Id.* Dr. Strauss was later contracted by the State on the issues of competency and sanity and testified at both a competency hearing (in which he was the only doctor to opine that Holland was competent), and subsequently in trial was an essential prosecution witness on the issue of insanity. *Id.* The Florida Supreme Court found that the use of Dr. Strauss's testimony both at the competency hearing and during the trial was an impermissible error for it violated Holland's rights as under the fifth and sixth amendments of the U.S. Constitution and Article I, Section 9 of the Florida Constitution. *Id.* at 1292-93.

A skillful advocate, present at a competency evaluation, can learn what exact behaviors the expert rests his or her conclusions on and challenge the expert's conceptual framework. *See Quiet Eyes: The Need for Defense Counsel's Presence at Court-Ordered Psychiatric Evaluations*, 16 Cap. Def. J. 421, 437 (Spring 2004). Since an expert would never be able to remember all the facts from a forensic interview, presuppositions and theoretical viewpoints might lead the expert to disregard facts or omit observations when drafting a final report. *Id.* Other experts might depart from best practices and actually shape the accused's behavior by asking triggering and leading questions, engaging the defendant on one response but not another, or affecting the accused's responses through the interviewer's passive characteristics. If a defendant is battling mental health symptoms or memory deficits resulting from TBI, an experienced advocate is the only person who can recognize and document the subtle prejudice in any examination. Undocumented

errors, omissions, and biases during an exam deprive a defendant of a meaningful opportunity for cross-examination during a competency hearing, in clear violation of the Sixth Amendment. *See Sylvestre v. State*, 286 So. 3d 287 (4th DCA 2019) (applying this reasoning in allowing videotaped evaluations of psychiatric evaluations).

Mr. Peoples timely invoked his constitutional rights at the inception of these cases. In its February 7, 2025, Order, this Court required Dr. Railey to notify counsel and allow counsel to be present during the evaluation of Mr. Peoples. Rule 3.210(b) also states that counsel for the State and Defense may be present. Indeed, defense counsel habitually requests that all court-appointed experts include counsel for every interview in homicide cases. Lost forever is defense counsel's opportunity to document, respond, and cross-examine Dr. Railey on his methods at the March 2, 2025, video examination, or at the beginning of his March 6, 2025 evaluation. Given the seriousness of this violation of Mr. Peoples' rights, and the risk that Dr. Railey's entire competency evaluation has been polluted by his failure to follow the be stricken, and a new expert should be appointed in his stead. r. Railey's report and future testimony should

WHEREFORE, the undersigned respectfully requests this Motion to STRIKE Dr. Michael Railey's appointment of February 7, 2025, be granted and that a neutral, unbiased expert be reappointed to provide Mr. Peoples the full and fair competency assessment he is entitled to under the Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution, Article I, Sections 9 and 16 of the Florida Constitution, and Fla. R. Crim P. R. 3.210.

CERTIFICATE OF GOOD FAITH

I HEREBY CERTIFY to this Court that this Motion to Strike Dr. Michael Railey is made in good faith.

CERTIFICATE OF SERVICE

I do certify that a copy hereof has been furnished by email/physical delivery to the State Attorney, County Justice Center, Clearwater, Florida, on March 10, 2025.

Respectfully submitted,
Sara Mollo
Public Defender for the
Sixth Judicial Circuit
By:

s/ *Julia Seifer-Smith*

s/ *Maria DeLiberato*

Julia B. Seifer-Smith
Maria DeLiberato
Assistant Public Defenders
Florida Bar Nos.: 86567, 664251
County Justice Center
14250 49th Street North
Clearwater, FL 33762
Pubdef-efiling@co.pinellas.fl.us
(727) 464-6516

Exhibit 2:

Docket Summary – Case No. 24-01492-CF

(Attention to Entry for 3/26/2025 – Court Order Granting
Defense Motion to Strike Dr. Michael Railey's Evaluation)

SECTION D
CASE SUMMARY
CASE No. 24-01492-CF

STATE OF FLORIDA
vs.
PEOPLES, JAMES RICHARD

§
§
§
§
§
§
§

Location: **Section D**
Judicial Officer: **BULONE, JOSEPH A**
Filed on: **02/16/2024**
LAB REPORT NUMBER: **24-000293**
MEO M22-01020 and M22-01021
UNIFORM CASE NUMBER: **522024CF001492000APC**

CASE INFORMATION

Offense	Statute	Deg	Date	Case Type:	FELONY
Municipality: ST. PETERSBURG					
1. MURDER IN THE FIRST DEGREE	782.04(1)(A)3	F9	04/23/2022	Case Status:	02/16/2024 OPEN
OBTS: 5210151840 Sequence: 1 ACN: SO1946583					
Arrest: 02/15/2024 FL0521400 - ST PETERSBURG POLICE DEPT					

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number	24-01492-CF
Court	Section D
Date Assigned	02/16/2024
Judicial Officer	BULONE, JOSEPH A

PARTY INFORMATION

STATE **STATE OF FLORIDA**

Lead Attorneys
LICONA, CARLOS
Retained
727-464-6221(W)




DEFENDANT  **PEOPLES, JAMES RICHARD**

SEIFER-SMITH, JULIA B
Public Defender
727-464-6516(W)
















DATE

EVENTS & ORDERS OF THE COURT













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02/16/2024	ADVISORY - MALE, FELONY (1:30 PM) (Judicial Officer: ZUROWESTE, ELIZABETH) <i>SPN/PersonID: 1203294</i> <i>Case Number: 24-01492-CF</i> <i>Name: PEOPLES, JAMES</i> <i>Booking Number: SO1946583</i>
02/16/2024	 COMPLAINT & ADVISORY
02/16/2024	ORDER OF PROBABLE CAUSE FOUND
02/16/2024	 PD APPOINTED WRITTEN PLEA NG BY PD & DEMAND FOR DISCOVERY <i>PROVISIONAL</i>
02/16/2024	ADV HRG - NO CHANGE IN BOND
02/19/2024	OFF-CALENDAR (8:30 AM) (Judicial Officer: BULONE, JOSEPH A)
02/19/2024	STATUS CHECK SET <i>FILING OF INFORMATION</i>
02/20/2024	 DEFENDANT'S INVOCATION OF CONSTITUTIONAL RIGHTS









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03/18/2024	STATUS CHECK/CONFERENCE (8:30 AM) (Judicial Officer: BULONE, JOSEPH A) Events: 02/19/2024 STATUS CHECK SET <i>FILING OF INFORMATION</i>
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03/19/2024	 NOTICE OF REQUEST FOR COSTS OF PROSECUTION
03/21/2024	 ANSWER TO DEMAND FOR DISCOVERY
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03/22/2024	 ANSWER TO DEMAND FOR DISCOVERY
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06/04/2024	 ACKNOWLEDGMENT OF ADDITIONAL DISCOVERY
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08/15/2024	PRE-TRIAL HEARING SET <i>BRING</i>

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09/24/2024	 ORDER <i>FOR FULL TOXICOLOGY DISCOVERY FROM PINELLAS COUNTY FORENSIC LABORATORY</i>
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12/09/2024	NOTICE <i>RESENT TO PCJ</i>
12/12/2024	 NOTICE RETURNED NOT SERVED
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01/21/2025	 ACKNOWLEDGMENT OF ADDITIONAL DISCOVERY
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01/29/2025	 SEALED PSYCHOLOGICAL EVALUATION
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02/05/2025	COMPETENCY EVALUATION ORDERED
02/05/2025	COURT APPOINTS DOCTOR <i>TWO DOCTORS FROM THE LIST</i>
02/05/2025	HEARING SET <i>COMPETENCY</i>
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SECTION D
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02/11/2025	 NOTICE RETURNED SERVED
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03/10/2025	 EXHIBIT <i>3</i>
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03/26/2025	ORDER COMMITTING DEFENDANT TO DCF <i>(DEPT CHILDREN AND FAMILIES)</i>
03/26/2025	STATUS CHECK SET <i>COMPETENCY</i>
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SECTION D
CASE SUMMARY
CASE No. 24-01492-CF

04/28/2025



ORDER OF INCOMPETENCE AND COMMITMENT TO DCF

10/06/2025

STATUS CHECK/CONFERENCE (8:30 AM) (Judicial Officer: BULONE, JOSEPH
A ;Location: CJC COURTROOM 9)

Events: 03/26/2025 STATUS CHECK SET

COMPETENCY