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

STATE OF FLORIDA,  
  
Plaintiff,  
  
vs.  
  
THOMAS ISAIAH MOSLEY,  
  
Defendant.

VOLUME I

\_\_\_\_\_/

PROCEEDINGS: TESTIMONY OF  
MICHAEL G. RAILEY, SR, PH.D.

BEFORE: THE HONORABLE SUSAN ST. JOHN  
Circuit Court Judge

DATE: July 10, 2025

PLACE: Courtroom 2  
Pinellas County Justice Center  
14250 49th Street North  
Clearwater, Florida 33762

REPORTED BY: Charlene M. Eannel, RPR  
Court Reporter, Notary Public

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

THE COURT: Okay. We are back on the record.  
Are we ready to have Mr. Mosley out? Let's have  
Mr. Mosley out.

Is Mr. Mosley going to join us this morning?

MS. RUSSELL: Yes.

THE COURT: Is that the plan?

MS. RUSSELL: Yes, Your Honor. He decided to be  
here.

THE COURT: Okay.

(Defendant entered the courtroom.)

THE COURT: I'm ready if you are. All right.

Mr. Mosley, good morning. If you can have a  
seat at your table, please. All right. I promised  
the first thing we would discuss is scheduling.

So do you want to have that discussion now?

MS. RUSSELL: Yes, Your Honor.

THE COURT: All right. Dr. Hall.

MS. RUSSELL: Dr. Hall is available tomorrow,  
Friday, from 9:00 to 12:00, or on the 23rd of July  
from 1:00 to whenever we're finished with him.

THE COURT: I can make that work.

Can you make that work?

MS. SULLIVAN: Yeah. I -- my preference would  
be to get it done this week.

1           THE COURT: It would be my preference, too. I  
2           just don't know how long Dr. Tenaglia is going to  
3           take.

4           MS. SULLIVAN: That's my concern. She flies in  
5           tonight. She lands about 6:00, I think. She's going  
6           to be here -- she's getting picked up at her hotel  
7           at 8:00 a.m. by our transport people and brought here  
8           for -- to start at 9:00, was the plan. Her flight  
9           back out is a little after 7:00 p.m. tomorrow night,  
10          so she'd probably be needing to head to the airport  
11          by 5:00.

12          THE COURT: Okay.

13          MS. SULLIVAN: If we think we can accomplish all  
14          of that, I --

15          THE COURT: I am not confident.

16          MS. SULLIVAN: Me neither, and that was my  
17          concern about having Dr. Hall go first.

18          THE COURT: Yeah. So let's do July 23rd, then,  
19          for Dr. Hall.

20          MS. SULLIVAN: Okay.

21          THE COURT: I'm duty that week. I can get  
22          somebody to cover advisories that day, and I can  
23          block off 12:00 to whenever we finish.

24          MS. RUSSELL: Can I --

25          MS. SULLIVAN: One.

1 MS. RUSSELL: Yeah, he's at 1:00, but I was  
2 going to ask if maybe we could do an hour or two in  
3 the morning to get Renee Mosley in.

4 THE COURT: Fine. We'll start after the morning  
5 calendar.

6 MS. RUSSELL: Okay.

7 THE COURT: Yeah. Fine.

8 MS. RUSSELL: Just -- I'll try to get her to --

9 THE COURT: Fine.

10 MS. RUSSELL: Okay.

11 THE COURT: That's fine.

12 MS. SEIFER-SMITH: Can I have another Zoom link  
13 for Ms. Franklin, who is prepared to testify on  
14 Tuesday? Can I reach out to Jill for that?

15 THE COURT: Yes.

16 MS. SEIFER-SMITH: Great. Okay.

17 MS. SULLIVAN: On Tuesday?

18 MS. SEIFER-SMITH: I mean, I could do it.

19 THE COURT: I don't have it yet. Jill would be  
20 the person to talk to about that.

21 MS. SEIFER-SMITH: My plan was for her to  
22 testify tomorrow afternoon --

23 MS. SULLIVAN: Okay.

24 MS. SEIFER-SMITH: -- but I'm sure I could have  
25 her do it on the 23rd, just so that don't take up

1 more time.

2 MS. SULLIVAN: We could try for tomorrow, and if  
3 we finish with Dr. Tenaglia, I could do it.

4 MS. SEIFER-SMITH: Okay.

5 MS. SULLIVAN: Fine?

6 THE COURT: I'm fine either way.

7 MS. SEIFER-SMITH: Okay. Great.

8 THE COURT: However you want to do it. If we  
9 can fit it in tomorrow, I'm fine doing that.

10 MS. SEIFER-SMITH: Okay.

11 MS. SULLIVAN: And then, Your Honor, Mr. Johnson  
12 from the jail is going to head over here around 11:00  
13 this morning.

14 THE COURT: Fine. We'll take a break when he  
15 gets here and talk to him for a few minutes, as well.  
16 Okay.

17 So let's -- today, we have scheduled Dr. Railey,  
18 and we needed to handle a motion first. Just give me  
19 one moment to get all my motions together here.

20 I have the Motion to Exclude Testimony of  
21 Dr. Railey, and then I believe we still need to  
22 address the motion related to the WHODAS; this is how  
23 we're pronouncing it, right?

24 MS. RUSSELL: Yes, Your Honor.

25 THE COURT: Okay. Which one did you want to



1 start with?

2 MS. RUSSELL: We'll start with the WHODAS score  
3 sheets, if we can.

4 THE COURT: Okay. Give me one moment to find my  
5 copy of that motion.

6 Is Dr. Railey here?

7 MS. SULLIVAN: He is, Your Honor.

8 THE COURT: Okay. I don't think we've ever met  
9 before. Okay. Here it is. All right.

10 Are you arguing the motion?

11 MS. RUSSELL: Yes, Your Honor.

12 THE COURT: All right. Whenever you're ready.

13 MS. RUSSELL: Well, I mean, we did do most of  
14 the arguing of --

15 THE COURT: Yeah.

16 MS. RUSSELL: -- the motion --

17 THE COURT: If there's anything else you want --

18 MS. RUSSELL: -- prior.

19 THE COURT: -- to say, let me know.

20 MS. RUSSELL: I'll just cite to the American  
21 Psychological Association Release of Test Data and  
22 Ethics Code. I think I have provided the Court  
23 prior, which basically says that these test results  
24 and raw data may be disclosed pursuant to a Court  
25 order.

1 THE COURT: Okay.

2 MS. RUSSELL: I also have the Ethical Guidelines  
3 from the Association Of Psychology Postdoctoral and  
4 Internship Centers, which provide that these  
5 materials can be released to a qualified licensed  
6 psychologist or under a Judge's Protective Order,  
7 which specifies how these materials will be  
8 protected, who will see them, and that they will be  
9 destroyed at the end of legal proceedings.

10 THE COURT: Okay.

11 MS. RUSSELL: I don't know if Dr. Railey -- you  
12 know, I think that the State had basically agreed  
13 that they didn't have a dog in this fight, but I  
14 think Dr. Railey said that he was going to hire a  
15 lawyer and bring the person in to contest the Court's  
16 order and the Court's power to have these materials  
17 disclosed, so...

18 THE COURT: Okay.

19 MS. RUSSELL: I haven't gotten any relevant  
20 authority from him or understand what he might be  
21 relying on.

22 THE COURT: Okay. Did you have anything to add?

23 MS. SULLIVAN: I don't. I mean, Dr. Railey is  
24 here if you want to ask him and --

25 THE COURT: That's my plan --

1 MS. SULLIVAN: -- and address it.

2 THE COURT: I just didn't know if you had  
3 anything you wanted --

4 MS. SULLIVAN: I don't.

5 THE COURT: -- to add before I turn to  
6 Dr. Railey.

7 MS. SULLIVAN: No.

8 THE COURT: Okay. Dr. Railey, do you want to  
9 come up and talk to me for a minute? Good morning,  
10 sir. Can you raise your right hand, please.

11 (Witness was duly sworn on oath.)

12 THE COURT: All right. Thank you.

13 Dr. Railey, have you seen the Motion to Compel  
14 Discloser of the WHODAS 2.0 Score Sheet?

15 DR. RAILEY: Yes, I have, Your Honor.

16 THE COURT: All right. You've heard what we've  
17 been talking about a little bit this morning. We had  
18 some more extensive conversations about it a few days  
19 ago. I'll let you start off with saying whatever you  
20 want to say. I might have some questions for you,  
21 and the lawyers might have some questions for you,  
22 okay?

23 DR. RAILEY: Okay. You know, this is -- this is  
24 a gray area in the field of psychology. I mean, it  
25 just is. The bottom line upfront on this is that the

1 -- the WHODAS is a -- it's a common domain  
2 instrument. I mean, you can just Google it.

3 THE COURT: Okay.

4 DR. RAILEY: It's a two-page assessment, and the  
5 last page explains to you how to score it. It tells  
6 you what the descriptors are.

7 My issue with all of this -- and it's not this  
8 case; it's in general, is that I've seen where people  
9 are getting ahold of psychology information and not  
10 knowing how to handle it.

11 I mean, if I -- if I had a contract, and I don't  
12 -- I don't know it -- I don't understand that, so I'm  
13 going to get an attorney to do it. I'm going to hand  
14 it over to an attorney. Tax documents, I give it to  
15 my accountant.

16 I don't -- when it comes down to it, I don't --  
17 I don't -- I can't reasonably say I can't release it,  
18 but I do have that prerogative because I don't want  
19 to facilitate misuse of the information. I prefer  
20 that the information goes through a psychologist.  
21 I'm just kind of old school that way. But if she  
22 wants it, she can have it. I'll give her -- I'll  
23 give her a copy I have with me right now. But if she  
24 really wanted it, she could have just Googled it. I  
25 mean, it's common domain.

1 THE COURT: Okay. So my understanding is that  
2 you've already provided the score sheets to  
3 Dr. McClain; is that correct?

4 DR. RAILEY: I have.

5 THE COURT: Okay. Were there any sort of notes  
6 or anything related to your analysis as it relates to  
7 the score sheets that you provided to Dr. McClain  
8 that may not be in your report?

9 DR. RAILEY: No. No --

10 THE COURT: Okay.

11 DR. RAILEY: -- Your Honor, there is not.

12 THE COURT: Okay.

13 DR. RAILEY: Because how this is -- how this is  
14 scored is pretty straightforward. It's just a  
15 comment you made earlier, it's just straight math.

16 THE COURT: Okay.

17 DR. RAILEY: You know, based on your -- it's  
18 highly subjective based on your -- your assessment of  
19 -- of the domain --

20 THE COURT: Okay.

21 DR. RAILEY: -- you score from 1 to 4. 1 is  
22 minimal. 4 is extreme.

23 THE COURT: Okay.

24 DR. RAILEY: And that's what the information  
25 sheet on the back explains all of that.

1 THE COURT: Okay. And if you were to provide  
2 that to Defense Counsel, which is not something we  
3 normally do with proprietary tests --

4 DR. RAILEY: Uh-huh.

5 THE COURT: -- but if that is something that  
6 you're willing to do today --

7 DR. RAILEY: Sure.

8 THE COURT: -- what protections would you want  
9 to place for me as it relates to your score sheet.

10 DR. RAILEY: Well, Your Honor, I don't -- I  
11 don't know that I need any protection, at this  
12 juncture, because, again, one could Google this  
13 instrument and it's right there.

14 THE COURT: Well, Mr. Mosley's answers, I  
15 assume, you wouldn't --

16 DR. RAILEY: Oh.

17 THE COURT: -- not to say that anybody would do  
18 this, but you wouldn't want them to be dispensed to  
19 other people, put on the Internet. I mean, if -- it  
20 would be used for court purposes only.

21 DR. RAILEY: Well, I -- okay, Your Honor. I  
22 definitely agree with that. Although, he did not --  
23 on this instrument, it's just based on your  
24 observation of a --

25 THE COURT: Okay.

1 DR. RAILLEY: -- of an area of functionality for  
2 the individual. So it's not necessarily due to a  
3 specific answer to a question. It's due to, you  
4 know, we had an extended conversation, and I -- and I  
5 -- I reviewed, I don't know, two, three hours of  
6 video. So based on all of that, I made my  
7 assessment.

8 THE COURT: Okay.

9 DR. RAILLEY: And his mother did it based on her  
10 time with him. She made her assessment. I mean,  
11 there is a chasm of difference between, you know, our  
12 observations, but they -- they are our observations.

13 THE COURT: Okay. All right.

14 Do you have any questions for Dr. Railey?

15 MS. RUSSELL: Yes. Is he basically -- is he  
16 agreeing to --

17 THE COURT: He's going to give them to you.

18 MS. RUSSELL: -- disclose the data?

19 THE COURT: Yeah. He's going to give them to  
20 you.

21 MS. RUSSELL: Excellent.

22 THE COURT: So with that being said, I mean,  
23 just for the sake of completeness, much like a  
24 proprietary test and answers that Dr. McClain might  
25 receive, I assume you all are going to treat them

1 with the same amount of care. It's only going to be  
2 used for the purposes of Mr. Mosley's competency  
3 hearing. It's not going to be dispersed to other  
4 parties, the standard procedures that you would  
5 follow with any other sort of testing, correct?

6 MS. RUSSELL: Yes, Your Honor. Although, I  
7 think we would like to, at a minimum, mark them,  
8 admit them in evidence, and if you would like, we can  
9 have them filed under seal.

10 THE COURT: Okay.

11 MS. RUSSELL: Or kept under seal.

12 THE COURT: Are you comfortable with that.

13 DR. RAILEY: I am, Your Honor.

14 THE COURT: Okay. All right. Great. So let me  
15 give you a minute. Do you have them readily  
16 available before you today? I would -- we would need  
17 copies, so if you want, I can take them and make the  
18 copies.

19 DR. RAILEY: She can have these. I mean, she  
20 honestly could've gotten what I sent to the other  
21 psychologists, but...

22 THE COURT: Dr. McClain.

23 DR. RAILEY: Yeah. I guess it feels better to  
24 get it from me, so I'm going to go ahead and do that.

25 THE COURT: Okay. This is the entirety of.



1 DR. RAILEY: Yes. That -- the first -- I think  
2 the top document is, I think, it's five or six pages.  
3 Those are the mother's -- that -- that's her  
4 assessment.

5 THE COURT: Okay.

6 DR. RAILEY: And how -- how she provided her  
7 feedback to me. I e-mailed her a link from the  
8 portal that I use --

9 THE COURT: Okay.

10 DR. RAILEY: -- when I send out this assessment,  
11 and when she finished, the data came back to me  
12 through my -- through my testing portal.

13 THE COURT: Okay. And -- okay. Got it. So if  
14 you'd like, I will go on the back and make copies.

15 DR. RAILEY: I don't need copies, Your Honor.

16 THE COURT: They're going to need copies, so.

17 DR. RAILEY: Oh, okay.

18 THE COURT: Yeah. And I probably need one as  
19 well to follow along.

20 DR. RAILEY: Understood.

21 THE COURT: But, obviously, mine will be  
22 safeguarded, and the lawyers will do the same, okay?

23 Any questions for me before I go make copies  
24 about this?

25 DR. RAILEY: I don't have any questions.

1 THE COURT: I'll be back in just a moment.

2 Thank you, sir.

3 (Break taken.)

4 THE COURT: Okay. Motion to Exclude Testimony  
5 of Dr. Railey; is that still relevant?

6 MS. RUSSELL: Yes, Your Honor.

7 THE COURT: Okay.

8 MS. RUSSELL: Can we ask that Dr. Railey leave  
9 the room while we do this motion?

10 THE COURT: I can't hear you.

11 MS. RUSSELL: Can we ask that Dr. Railey leave  
12 the room while we argue the motion?

13 THE COURT: Sure. Dr. Railey, if you can have a  
14 seat out in the hallway, I'd appreciate it. Okay.  
15 He's in the little side room there.

16 MS. RUSSELL: That's fine. Your Honor, we feel  
17 that Dr. Michael Railey's testimony is neither based  
18 on reliable facts and data and should be excluded  
19 under Daubert.

20 Recalling back to June 26th, when Dr. Fabian  
21 gave his testimony on the identification and  
22 diagnosis of Intellectual Disability, he told us a  
23 lot of very important things.

24 Number one, a diagnosis of Intellectual  
25 Disability needs to depend on a valid IQ score. We

1 know in this case that Dr. Railey gave an IQ test  
2 less than three months after one was given at the  
3 South Florida Evaluation and Treatment Center, and  
4 that probably the score is invalid according to the  
5 WAIS manual due to the practice effect, which has  
6 been well documented and discussed by a number of the  
7 experts in this case.

8 Then Dr. Railey assessed adaptive functioning  
9 solely from prison behavior, not during the  
10 developmental period, and didn't use any standardized  
11 measures usually used for that purpose, such as the  
12 Vineland or the ABAS. He did no collateral  
13 interviews with family.

14 In fact, he scheduled collateral interviews with  
15 family, but then had them wait by the phone when he  
16 never actually followed up by calling them. Instead,  
17 he did end up giving Renee Mosley a WHODAS by e-mail,  
18 which is, again, not an accepted measure of adaptive  
19 functioning in use for Intellectual Disability.

20 None of his facts and observations were from the  
21 developmental period, which would have been 22 or  
22 below, and all of them were in the institutional  
23 setting.

24 So we believe that his testimony is not  
25 scientifically valid because it's not based on

1 reliable facts and data and it should be excluded  
2 under Daubert.

3 THE COURT: Okay. Response?

4 MS. SULLIVAN: So normally, when there's a  
5 Daubert challenge, we would have a full motion where  
6 we would call the individuals being challenged and do  
7 the whole testimony and lay the foundation and all of  
8 that.

9 In terms of efficiency, I don't really want to  
10 do that twice today if the motion is denied. My  
11 argument to the Court would need to let Dr. Railey's  
12 testimony proceed, reserve ruling on the motion, and  
13 after hearing the foundation of his training,  
14 experience, educational background, and what he did,  
15 why he did it, his assessment of Mr. Mosley, you can  
16 make a ruling on the motion of whether or not to  
17 exclude his testimony or not.

18 I don't really know how else to handle it at  
19 this point without doing something twice, if that  
20 makes sense.

21 THE COURT: Okay. Anything else you'd like to  
22 say?

23 MS. RUSSELL: No, Your Honor. But I'd also, for  
24 the record, just like to say that, also, he did no  
25 diagnosis of autism except wave his hands over

1 Mr. Mosley at the jail. No testing, no collateral  
2 interviews, no language testing, nothing, so...

3 THE COURT: Okay.

4 MS. RUSSELL: We'd add that to our motion.

5 THE COURT: All right. So, you know, part of my  
6 responsibility in hearings like this is to listen to  
7 all the doctors, including Dr. Fabian and anyone else  
8 who was either hired or appointed, and compare and  
9 contrast their testimony.

10 And you are relying on Dr. Fabian, which I  
11 understand why you are, but I haven't made a decision  
12 yet about his testimony. I need to compare what he  
13 said compared to what Dr. Railey says, and every  
14 other doctor that testifies in this case, and make a  
15 decision about -- just like I would -- you know, a  
16 jury would with a finder of fact, I can believe all  
17 of one person's testimony, none of it or some of it,  
18 depending on what they say and how they say it.

19 I'm not going to take Dr. Fabian's word for it  
20 that he should have done X, Y, and Z, just like I'm  
21 not going to take Dr. Railey's word for it that he  
22 should have done X, Y, or Z. I need to listen to all  
23 of the doctors, what they say, and what they believe  
24 is the appropriate way to conduct their evaluations  
25 and decide.

1           What I'll say is that, at the end of  
2       Dr. Railey's testimony, if you want to readdress the  
3       issue as to whether or not I can -- whether or not I  
4       should consider any of his testimony, I'll certainly  
5       allow you to make those arguments, and I'll listen to  
6       them, but I don't think I can make that decision  
7       until I actually hear him testify.

8           So if it's something where you think I should  
9       discount everything he said, just like I would any  
10      other witness -- or just like I could with any other  
11      witness, I will certainly do that.

12          So the motion is denied.

13          All right. Are we ready to get started with  
14      Dr. Railey, then?

15          MS. SULLIVAN: Yes, Your Honor.

16          THE COURT: This is your witness?

17          MS. SULLIVAN: It is.

18          THE COURT: Let's have Dr. Railey in, please.

19          THE BAILIFF: Step this way, stand right here.  
20      Face the clerk, raise your right hand to be sworn.

21          (Witness was duly sworn on oath.)

22          THE BAILIFF: Come have a seat up here. Adjust  
23      the mic. Speak in a loud and clear voice for the  
24      Court.

25                           DIRECT EXAMINATION

1 BY MS. SULLIVAN:

2 Q. Good morning, Doctor. Get yourself comfortable.  
3 Let me know when you're ready. All set?

4 A. Okay. I guess this is good.

5 Q. All set?

6 A. All set.

7 Q. Okay. Could you please state your name and  
8 spell your last name for the court reporter?

9 A. Michael G. Railey, Sr. R-A-I-L-E-Y.

10 Q. And what do you do for a living, sir?

11 A. I'm a psychologist.

12 Q. Okay. Did you provide a CV to both the State  
13 and the Defense --

14 A. I did.

15 Q. -- in preparation for this case?

16 A. I did.

17 MS. SULLIVAN: May I approach the clerk?

18 THE COURT: Yeah.

19 MS. SULLIVAN: I'm showing Defense what's been  
20 premarked State's 1, Mr. Railey's CV.

21 May I approach the witness?

22 THE COURT: Yes.

23 BY MS. SULLIVAN:

24 Q. Dr. Railey, will you take a look at this and  
25 confirm that this is the CV that you provided to all

1 parties?

2 A. Yes.

3 MS. SULLIVAN: Your Honor, I'd ask, at this  
4 time, that we move into evidence State's 1,  
5 Dr. Railey's CV.

6 THE COURT: Any objection?

7 MS. RUSSELL: No objection.

8 THE COURT: All right. It will be admitted as  
9 such.

10 (State's Exhibit 1 was received into evidence.)

11 THE COURT: Do you happen to have a hard copy  
12 for me?

13 MS. SULLIVAN: I do.

14 THE COURT: Great.

15 BY MS. SULLIVAN:

16 Q. Dr. Railey, let's start with your educational  
17 background. Where did you go to college, and then where'd  
18 you go on from there?

19 A. Well, if I may, you indulged me, my education  
20 did not start in the classroom at Florida State  
21 University. My education in forensic psychology started  
22 in 1968 when I was 4 years old. I feel like -- well, I  
23 believe my experiences as a child growing up in the -- in  
24 the housing projects of South Florida during the Columbia  
25 cartel days, that also informs my clinical judgment as a



1 forensic psychologist.

2           So I -- I have been to drug drops. My dad was  
3 one of the biggest -- you can Google that, too -- my dad  
4 was one of the biggest drug dealers in Palm Beach County.  
5 I started school at 4 years old, not because I was smart,  
6 but my mom had to work, and so that's when I saw the first  
7 killing, you know. Right there, I saw it.

8           I have a lot of relatives who've been  
9 incarcerated and who are still incarcerated. After --  
10 after all of that, it's just been my whole life I've dealt  
11 with it. No one had a good education. My dad was  
12 illiterate, and yet, he -- he ran one of the -- I mean,  
13 Palm Beach County was his. He owned it. They never could  
14 really get him on anything.

15           He owned a nightclub. I don't know how many  
16 women he had, but he couldn't read. He couldn't read one  
17 bit. Now, in a classroom, you know, he was, frankly, he  
18 was ignorant. But in those streets, he was gifted. And I  
19 know a lot of other people like that. Again, I have  
20 relatives like that right now.

21           I had a brother like that, he's now deceased,  
22 but the reality is that's where my education started. It  
23 helped me make some decisions, too, about my own life. I  
24 can tell you that.

25           But after that, I -- I went to -- I graduated

1 from North Shore High School in 1982. I went to Florida  
2 A&M University, and I got two degrees from there. Some of  
3 this -- I've probably taken some of that stuff off my  
4 resume because it's really not relevant when I'm -- when  
5 I'm trying to impress people about my skills as a forensic  
6 psychologist.

7 But I have two degrees from there; one in  
8 education, the other, it's school guidance. I taught at  
9 Family for, I don't know, about seven years. After that,  
10 I enrolled in the counseling psychology program at Florida  
11 State University. There's so much information. I'm  
12 trying to remember everything.

13 So after enrolling at Florida State, I  
14 eventually started working in the Florida Department of  
15 Corrections. I have there, you see, several stints. I  
16 get annoyed how things work, and I'd come back, and they'd  
17 raise the salary; I go back.

18 But altogether, it's probably about 14 years of  
19 Department of Corrections I've had. Some of that was at  
20 the Northeast Florida State Hospital in Chattahoochee.  
21 Let's see. And my -- my post -- my predoctoral  
22 internship, which is required to get licensed as a  
23 psychologist after you graduate, there were -- there were  
24 two -- the two top internship choices in the country was  
25 one at The Department of Justice Bureau of Prisons or The

1 Florida State Hospital circuit.

2 I got offered both of those, but I chose the one  
3 that paid the most money. I had a family to raise. But  
4 anyways, I -- my education is not just in the classroom.  
5 That's what I'm trying to -- that's what I'm trying to  
6 portray here.

7 In all of my experiences, that's part of my  
8 education, and it also ties into how I come about making  
9 the decisions I make. The decisions I make tend to be,  
10 you know, a lot of times, not very palatable, but I  
11 believe, based on my education and training, I'm qualified  
12 to make every decision that I make.

13 And I make every decision with all the  
14 seriousness to -- to my responsibilities as a  
15 psychologist, not so much with deference to what's at  
16 stake as far as what I'm evaluating because that's not my  
17 role to do that. I mean, that's the Court's job, so I  
18 don't -- I don't really put much time into that.

19 I was invited to take a faculty position at  
20 Florida State. I taught there for about three or four  
21 years. Then after that, I was clinical faculty. So when  
22 -- when doctoral students were getting ready to enter the  
23 profession, they would spend some time with me. I would  
24 take them along with me.

25 I would allow them to conduct evaluations that

1 they were allowed to conduct. Even that was also part of  
2 my education because a -- one of my doctoral students --  
3 I've been a disability examiner since 2008, I believe, and  
4 I've been doing that for a while.

5 Then one of the -- one of the professional  
6 relations officers at The Division of Disability  
7 Determinations called me and asked me, Well, we've got  
8 this kid who we believe has autism. Would you evaluate  
9 him? I declined and I didn't want to do it because I  
10 didn't really understand that, but I had a -- but I had a  
11 practicum student who had certain dissertation topics, so  
12 I actually learned from one of my students.

13 And so since 2000 -- about 2008 or '09, I've  
14 been -- I've been -- I'm pretty skilled at diagnosing  
15 Autism Spectrum Disorder. In fact, I do that right now.  
16 In Northwest Florida, without -- without a doubt, I'm one  
17 of the go-to psychologists to provide that evaluation.  
18 That's a -- that's a neuropsychological evaluation, so I  
19 provide that as well.

20 I've also been a contracted evaluator for the  
21 Division of Vocational Rehabilitation. So I evaluate a  
22 lot of -- I mean, I -- I don't have any numbers, but I  
23 keep every evaluation I've written. So it's kind of  
24 somewhere over -- it's pretty close to a thousand, but  
25 I've evaluated -- I've helped them determine what they can

1 do for their applicants who had intellectual disabilities,  
2 as well as Autism Spectrum Disorder. So that's it in a  
3 nutshell.

4 I've attended conferences. I -- the standard  
5 bearing instrument for diagnosing Autism Spectrum  
6 Disorder, the Autism Diagnostic Observation Schedule; I'm  
7 trained in that. Every year -- I mean, the laws don't  
8 change a ton, but since -- since about 2005, I would say,  
9 I've attended the Florida Forensic Examiner Training.

10 Also, I have a -- I'm the only psychologist,  
11 according to William James College in Newton,  
12 Massachusetts, I'm the only psychologist they know in the  
13 State of Florida. I have a postdoctoral certificate in  
14 child and family forensics, so I do a lot with  
15 disabilities, disabled children, and them being abused,  
16 which is also a matter that the Courts deal with a lot.

17 I'm not sure I'm -- I think that's about it. I  
18 can't remember anything else.

19 Q. And your CV is now in evidence, so I'm not going  
20 to go through the exhaustive list of everything in here.  
21 I just want to touch on a couple more things --

22 A. Sure.

23 Q. -- if you don't mind.

24 A. Sure.

25 Q. You are a member of a few professional

1 organizations as well, right?

2 A. I'm going to end -- yes, but I'm not -- not for  
3 long.

4 Q. Okay. And then you also -- have you published  
5 your own articles?

6 A. I have.

7 Q. And just briefly, can you tell the Court the  
8 topics that you've published on?

9 A. Well, the first -- the first article I published  
10 was -- I was -- at the time that my doctoral degree was  
11 conferred, I was working in a female prison in Jackson  
12 County, Florida, Jackson Correction Institution, and I --  
13 I got permission from the Department of Corrections to use  
14 female inmates in my study.

15 So one of the things I was -- I was always  
16 interested in -- I just kind of felt like the prison  
17 system was missing a lot with the way they were handling  
18 inmates, and how they -- and what they would -- it seemed  
19 that the system was more, you know, we just kinda punish  
20 you and send you home.

21 It's kinda like a three-legged stool. So you  
22 take one of those legs, they're just going to fail. So I  
23 made some proposals in that. It's been a while since I  
24 pulled it out, but I made some proposals in there about  
25 how the Department of Corrections could restructure their

1 -- their process. It's not about letting people out early  
2 or any of that. It's about when they get out, I mean,  
3 they actually have something that they can contribute to  
4 some of the needs of society. So that was -- that was the  
5 major one.

6           Honestly, it's been a while since I've published  
7 anything. I cannot remember. I do know there was one --  
8 there was one proposal or article that had to do with -- I  
9 think it had something to do with recidivism among  
10 juvenile offenders.

11           For years, I had DJJ contract. I evaluated --  
12 there's a -- there's a law that says with kids -- you guys  
13 know better than I do, that before kids can be sent to one  
14 of those commitment programs, they have to be evaluated by  
15 a licensed psychologist. I was one of two psychologists  
16 in West Florida that had a contract to do just that.

17           And I was in contact with the -- I think it was  
18 the Rockefeller Foundation. I was going to -- I mean,  
19 there was a -- there was -- we had some -- we had some  
20 ideas about how to get this word out. I think I published  
21 an article from that.

22           Then there was another article where I was a  
23 junior author. There were a number of people on that  
24 article who -- some of them are probably -- most of them  
25 are probably dead now. They knew way more than I knew. I

1 can't remember what that article was about, but it's in  
2 there somewhere in the CV.

3 Q. You mentioned that you've been trained and have  
4 experience in evaluating individuals for possible Autism  
5 Spectrum Disorder?

6 A. Yes.

7 Q. Have you also -- learning disability evaluations  
8 in general, do you have training and experience in doing  
9 that?

10 A. Yes.

11 Q. How about intellectual disability?

12 A. Yes, all of that.

13 Q. And you said you have been trained and  
14 experienced in conducting neuropsychological evaluations,  
15 which would cover some of those --

16 A. Yes.

17 Q. -- disorders we just discussed?

18 A. Well, for sure, Autism Spectrum Disorder is --  
19 is a neurological disorder. So there's special training  
20 we have to do to -- and you can do -- you can do it until  
21 the rules catch up with you. Then you're going to get  
22 fined and probably lose your license if you're practicing  
23 something that you're -- you've not been trained to do.

24 Q. In going through your experience, it sounds like  
25 you've had an occasion to evaluate individuals who are



1     incarcerated; is that fair?

2           A.    Oh, yes.  Yes.  I -- like I said, 14 years in  
3     the Department of Corrections as a senior psychologist,  
4     that's pretty much what I did.  All of the other stuff, I  
5     had staff that would do those things, like therapy.  But  
6     when it came down to the evaluations, I was the only one  
7     at my facility that performed those.

8           Q.    And when you're doing an evaluation of somebody  
9     that is incarcerated, do you take that fact, in and of  
10    itself, into effect when you're sitting down with someone  
11    that they have been incarcerated for some reason, charged  
12    with something --

13          A.    Uh-huh.

14          Q.    -- and when you're assessing them and using your  
15    clinical judgment, are you thinking about that?

16          A.    Well, obviously, you have to keep that in mind  
17    for matters of safety and all of that, but it's just been  
18    my -- and because I -- again, going back to the way I was  
19    raised, a lot of people if they -- I mean, I've -- I've  
20    been -- I have -- I have relatives who -- who were in a  
21    similar situation that we're dealing with here and we're  
22    in -- I mean, they're out, and we're in the same room.

23                So it doesn't -- it's -- it's normal for me.  It  
24    really is.  It's -- it's normal to -- so it didn't -- in  
25    terms of, it doesn't -- it's not an audit.  It's not a

1 novel situation for me to communicate with someone like  
2 that because, I mean, that's -- that's who I am anyway. I  
3 mean, that's where I'm from. That's who I am. So it's  
4 nothing new. It's just like riding a bike, I guess it --  
5 I guess you could say.

6 Q. And have you previously been called to conduct  
7 evaluations concerning competency in the court system?

8 A. Yes.

9 Q. And have you previously been called as an expert  
10 in court regarding matters of competency?

11 A. Yes.

12 Q. Can you estimate about how many times you've had  
13 to come testify regarding your evaluations in the court  
14 system?

15 A. Oh, I don't know. Most of these are Zoom court  
16 but that counts, too, correct?

17 Q. I think so.

18 A. I don't know. In the last -- I'd say in the  
19 last 10 years, a handful of -- a handful of times, maybe  
20 15 or 20 that I've actually had to come to court because  
21 usually these things are kind of cut and dry.

22 I've done -- in the last 6 months, I've probably  
23 done several -- I've done several hundred competency  
24 evaluations, and I'd say about four or five of them, I've  
25 actually had to testify. The others were pretty

1 perfunctory, I guess. I was never called to testify.

2 Q. Obviously, we're here in the Sixth Circuit, and  
3 you were on the court-appointed list regarding this case?

4 A. Yes.

5 Q. Do you -- are you on the court-appointed list  
6 for other circuits, as well?

7 A. Well, I -- at that time, I was actually residing  
8 here. I was over in the Twelfth Circuit. But, frankly,  
9 due to some pretty significant differences of opinion, I  
10 decided to reopen my practice over in Tallahassee.

11 So currently, I'm contracted with the Third  
12 Judicial Circuit, the First, the Second, and the  
13 Fourteenth.

14 Q. Okay. And so at the time that you were  
15 court-appointed on this case involving Mr. Mosley, you  
16 were here, and you had your practice here locally?

17 A. Yes.

18 Q. And then after -- in the most recent months, you  
19 moved back up to Tallahassee and have your own practice?

20 A. Yes.

21 Q. All right.

22 THE COURT: So do I understand you're still on  
23 those court-appointed lists or you --

24 THE WITNESS: No, I --

25 THE COURT: -- you decided to do no

1 court-appointed work?

2 THE WITNESS: No, Your Honor. I -- it's -- it's  
3 always nice to be wanted. Everybody likes to be  
4 wanted. But -- but it's -- it's kind of a challenge  
5 that -- I liked it. I think it's kind of fascinating  
6 to use what I know in the best way I can.

7 But as far as I know, I should -- I'm still  
8 getting called. I've got several hearings coming up  
9 because those were -- those were evaluations that I  
10 did. So they're calling me now to -- I think in the  
11 next 30 days, I probably have about another four --

12 THE COURT: Okay.

13 THE WITNESS: -- coming up. And I think one of  
14 them is in this circuit.

15 THE COURT: Going forward, no court-appointed  
16 work for you, just private practice?

17 THE WITNESS: Well, in -- no, Your Honor. I'm  
18 -- I'm still going to be contracted with those --  
19 those --

20 THE COURT: With those circuits that you just  
21 listed?

22 THE WITNESS: Yes.

23 THE COURT: Okay.

24 THE WITNESS: Because those, in terms of driving  
25 distance and all of that, you know, I'm sort of --

1 I'm aging, so the driving gets to be a little bit  
2 more difficult.

3 THE COURT: Okay.

4 THE WITNESS: But if something is fascinating  
5 enough, I can be enticed to do it. If, Your Honor,  
6 if you -- if you're taking any notes on that, if you  
7 can let the Court Administrative know.

8 THE COURT: Thank you.

9 BY MS. SULLIVAN:

10 Q. So for the record, for the Sixth Circuit,  
11 currently, you're no longer on that court-appointed list,  
12 right, because you moved --

13 A. That's correct.

14 Q. -- up to Tallahassee?

15 A. That's correct.

16 Q. All right. Let's get into why you're here  
17 today. You were court-appointed to evaluate Thomas  
18 Mosley, right?

19 A. That's correct.

20 Q. And what date did you conduct that evaluation?

21 A. I'd have to -- can I look at my --

22 Q. Absolutely. Do you have a copy? You wrote a  
23 report?

24 A. Yes.

25 MS. SULLIVAN: And while we're doing that, if I

1 may approach the clerk, Your Honor?

2 THE COURT: Yes.

3 MS. SULLIVAN: I'm showing Defense what has been  
4 premarked as State's 2, Dr. Railey's report.

5 May I approach the witness?

6 THE COURT: Yes. Do you have a hard copy?

7 MS. SULLIVAN: I do.

8 BY MS. SULLIVAN:

9 Q. I'm showing you what's been marked as State's 2.  
10 I know you have your own copy, but for evidence, can you  
11 just confirm that's your evaluation?

12 A. That's mine.

13 Q. Okay.

14 MS. SULLIVAN: Your Honor, the State would ask  
15 to move in, as State's 2, Dr. Railey's evaluation of  
16 Thomas Mosley.

17 THE COURT: Any additional --

18 MS. RUSSELL: No objection.

19 THE COURT: -- objection to Dr. Railey's report?

20 MS. RUSSELL: No objection, Your Honor.

21 THE COURT: All right. It will be admitted as  
22 such.

23 (State's Exhibit 2 was received into evidence.)

24 MS. SULLIVAN: Here's your copy.

25 THE COURT: Thank you.

1 BY MS. SULLIVAN:

2 Q. All right. Do you have a copy of your report in  
3 front of you now?

4 A. Yes.

5 Q. Okay. What date did you evaluate Mr. Mosley?

6 A. May 12th.

7 Q. Okay. And is that of this year, 2025?

8 A. May 12th, 2025.

9 Q. Okay. Where did that evaluation take place?

10 A. At the -- at the jail.

11 Q. All right.

12 A. Pinellas County Jail.

13 Q. And what's the date of your report that you  
14 generated from that evaluation?

15 A. May 20th, 2025.

16 Q. Okay. Let's start with what, if any, records  
17 did you review prior to meeting with Mr. Mosley?

18 A. As a matter of practice, I typically -- I  
19 received the records, but, as a matter of practice, I've  
20 never ever, in my career, read anyone's record with the  
21 exception of when I was in the prison system because it  
22 was required. That was their policy.

23 But I typically don't read a record before I  
24 evaluate a person because I don't want to be prejudiced.  
25 I want to make my own decision. Then if I see something

1 that contradicts my decision, then I've got to resolve  
2 that for myself.

3 And the reason that I -- one of the things I was  
4 taught, and I totally agreed with it, is my -- my report  
5 right now is my testimony. I can't say, Well, what I --  
6 what I intended to say or anything like that. So I want  
7 it to be my thoughts based on what I saw, which -- which  
8 includes what I've read. So that's what this is.

9 But I did review -- I reviewed -- I didn't -- I  
10 didn't bring it. I didn't print everything out, but his  
11 school records. So, yes, I reviewed a plethora of  
12 information prior to -- or after evaluating Mr. Mosley.

13 Q. Okay. So you had received some school records  
14 from Defense Counsel. You reviewed that?

15 A. Yes.

16 Q. And that was Mr. Mosley from, like, grade  
17 school, third grade, up through high school?

18 A. Yes.

19 Q. Does that sound right?

20 A. Uh-huh.

21 Q. Did you review reports from other doctors that  
22 had evaluated Mr. Mosley?

23 A. I did. I did. They were -- and that's what I  
24 -- I don't have in front of me, but I do -- I do recall  
25 what stuck out to me is that there was -- I think there



1 were three reports, and of the -- of the three, two, they  
2 agreed that I think it was a not competent to proceed to  
3 trial. Then there was another one, I think it was the  
4 psychologist at the hospital who had a different opinion  
5 about it.

6 Q. Okay.

7 A. That's -- I don't remember the details about the  
8 report, but those -- that's what -- that's what sticks  
9 out.

10 Q. All right. Did you review any test results from  
11 other doctors regarding Mr. Mosley?

12 A. Well, what was in their reports, yes.

13 Q. So the State hospital report from Dr. Tenaglia,  
14 you reviewed that and --

15 A. Yes.

16 Q. -- observed her assessments and her results.

17 A. Uh-huh.

18 Q. Okay. And I think you said you looked at these  
19 records and reviewed all this after you did your  
20 evaluation of Mr. Mosley?

21 A. I did.

22 Q. Okay. So let's just jump into it. You go to  
23 the jail on May 12th of this year, and you sit down with  
24 Mr. Mosley.

25 Did you -- what was the first thing you did when

1 you sat down and began your evaluation with him?

2 A. I introduced myself. It was just, frankly, it  
3 was -- it was just like a conversation, just me  
4 socializing with someone. I think that's the best way to  
5 make an evaluation because otherwise, you know, you're  
6 looking at some sort of impression management kind of a  
7 situation. I don't like for it to be that.

8 So I introduced myself to him. I don't -- I  
9 don't have to work to act like someone who is in a  
10 different situation than I'm in, that they're -- but  
11 they're the same as me.

12 In fact, one of the things I always told -- when  
13 I was working in the Department of Corrections, you know,  
14 we're the same. You know, I don't throw my pants up in  
15 the air and jump into them. I have to put them on one leg  
16 at a time just like that. So we're the same.

17 That's the way I approach all of my interviews.  
18 That's the way I deal with people in general. I try to be  
19 -- I -- I try to -- as much as I can, I try to treat  
20 people like I would want to be treated. So it's like two  
21 dudes having a conversation. That's what it was.

22 Q. Before you got into any testing or any of that  
23 forensic stuff with Mr. Mosley, did you just ask him about  
24 his family background and try to obtain some historical  
25 information from him?

1           A.    Yes.  That's -- that's part of the way I conduct  
2 my evaluations.  I do the history and the background first  
3 because I think it just sort of eases -- maybe if there's  
4 any tension that exists, I think it serves to ease that  
5 tension, but it also gives me my own information about  
6 what he's saying about himself.

7                   Because, frankly, sometimes when you read some  
8 of these reports, what they describe in the reports is not  
9 what I -- it's not what I see.  And, frankly, I just don't  
10 believe there's -- I don't think there's very many people  
11 in the State of Florida -- in the entire State of Florida,  
12 who have what I have and know what I know to be able to do  
13 this.

14                   So that's just -- it may sound arrogant, but  
15 that's -- that's -- that's how I see it.  I just think I'm  
16 a cut above most people who do this because of my  
17 experiences in life.

18           Q.    Now, I'm not going to have you just regurgitate  
19 what you've written in your report, it's in evidence.  But  
20 in talking to Mr. Mosley about his family and his  
21 background, what of relevance to the Court did you find in  
22 that back-and-forth just social conversation with him?

23           A.    Well, first of all, I mean, I think he has -- I  
24 think he has excellent communication skills.  We don't use  
25 the same words, but he can carry a conversation.  He can

1     carry a conversation. That's -- and that's neither here  
2     nor there, as far as I'm concerned. But he could -- you  
3     know, he -- he was respectful, but at the same time, he  
4     wasn't, you know, overly, you know, con -- deferential,  
5     you know, to an extent that it -- that it made the  
6     conversation difficult.

7                 So I'm asking about -- I'm asking about his  
8     background. I always do that. I want to know, you know,  
9     what were things like for you before this happened to you?

10                So I asked him what -- one of the questions in  
11     my evaluation that pertains to the history and background  
12     is, you know, What sort of work did you do? What's the  
13     last job you had? That's a common question I ask.

14                He told me how he worked with his dad and that,  
15     you know, he had to use -- I guess his dad went to work  
16     before he -- he did, so he would use his mom's  
17     transportation.

18                I asked him, Well, tell me how -- so what's a  
19     typical day like for you with your dad? He told me, I'd  
20     go -- get up. Go to work. Before he went back home, he  
21     would gas the car back up and take it back to his mom. I  
22     know as a kid sometimes I didn't do that. You know, you  
23     used up all your mom's gas, and she's got to go to work  
24     the next day or go somewhere, and she's -- the car is on  
25     E, but he didn't do that.

1           Then I want to know about your social life and,  
2   you know, there were some interesting things there, but it  
3   showed me that -- that he has some cognitive  
4   sophistication. I mean, he can -- he can manage -- he can  
5   juggle -- he can juggle different -- different situations,  
6   different life tasks.

7           Q.   Can you give me examples of that?

8           A.   One of -- one of the parts of the evaluation we  
9   got into, you know, his -- his social life, with regard to  
10   women. He made it clear to me that he had a number of  
11   women, and I -- and I -- I think I made a comment,  
12   something to the extent that, Well, you know, boy, that  
13   can get you into a lot of trouble. I hope you didn't get  
14   caught. He was like, No, he was able to do this  
15   successfully, and that he never got caught doing that.

16           I know guys with multiple Ph.Ds who can't get  
17   away with doing that. So that -- that was a seminal  
18   moment for me in the -- in the interview.

19           Q.   Okay.

20           A.   Those two things.

21           Q.   And when you're just having this back-and-forth  
22   conversation getting this historical information from  
23   Mr. Mosley, has your evaluation of him begun at that  
24   point?

25           A.   My evaluation begins the first time I set eyes

1 on the individual.

2 Q. Okay.

3 A. It doesn't begin when they start talking. It  
4 begins when I see them.

5 Q. So in terms of -- and we're going to get into  
6 this in more detail in a little bit, but just while we're  
7 on this topic. In terms of, obviously, when you were  
8 court-appointed, you had an order from the Court. And in  
9 the order from the Court, it was specifically asking to  
10 focus on any possible intellectual disability or autism  
11 issues, and you were aware of that, right?

12 A. Yes. Yes.

13 Q. When you begin your evaluation, are you -- even  
14 just talking to him, in a back-and-forth conversation, are  
15 you beginning your assessment into those areas during your  
16 evaluation?

17 A. Yes. And I dare say any competent psychologist  
18 does the same thing. I mean, it's -- that's -- that's not  
19 something that's just a nuance to me. Yes, that's when  
20 the evaluation starts.

21 Q. Is clinical judgment and your training a part of  
22 that assessment for intellectual disability or autism or  
23 anything that you're evaluating --

24 A. Yes.

25 Q. -- someone for?

1           A.   Clinical judgment, I mean, that's what sets me  
2   -- I mean, that's why I'm sitting in this chair today  
3   because of -- I have clinical judgment. So, yes, it does.  
4   It matters significantly as to how you approach the  
5   situation and how you assess it and what your findings  
6   are.

7                   So it plays a huge role. Otherwise, it's just  
8   information. It's -- it's just -- I mean, just like, the  
9   information on that -- on the -- even though it's pretty  
10   simplistic, but that WHODAS. I mean, to -- to the  
11   untrained person, it's just -- it's just numbers and  
12   words, numbers and big words, but you have to understand  
13   what those numbers and big words mean.

14                  And that's -- that's where -- and also, it is an  
15   ethical violation if you just -- if you administer an  
16   evaluation -- well, let's say an IQ test, and the person  
17   scores below 70, and, you go, that's it, they have  
18   intellectual disability. No. That's not how it works.

19                  You have to -- you have to make that judgment in  
20   light of everything else. So that's -- that's the  
21   important part.

22           Q.   And then whether or not you conduct further  
23   tests, actual tests for either intellectual disability or  
24   autism, is that decision made based on what clinical  
25   indicators you're seeing during this conversation in just

1 normal assessment of an individual?

2 A. Yes. And that's -- that's real important.

3 That's -- there are so many ways to get tripped up as a  
4 psychologist. You know, we get parents -- I get parents  
5 all the time, they want me to evaluate their kid for this  
6 or that. Even if they're paying with cash, certainly the  
7 insurance companies aren't going to go for that, but I  
8 can't just give you what you ask for. I have to -- I have  
9 to have -- I have to be convinced that it's appropriate  
10 because in the final analysis, if I -- if I -- it's sort  
11 of like, you know, when I went to Afghanistan, we have  
12 this thing called the Geneva Convention. And -- and I was  
13 a commander and I had people under me and I was also under  
14 someone.

15 So we all had to sign this contract that we  
16 understand that we can't -- we can't do something just  
17 because we were ordered to. It had to -- we had to run it  
18 through our own -- our own thinking and understanding and  
19 then make a decision about whether or not to comply.

20 So I cannot just because someone asked me to do  
21 something, frankly, even if it's the Court, I can't just  
22 do that if I don't see -- if I don't see the clinical  
23 indicators to do it.

24 Q. Okay.

25 A. And so as far as that, the Autism Spectrum



1 Disorder, I'm -- I mean, I'm pretty -- I'm pretty clear on  
2 that, that it's not. And part of that -- part of what  
3 helps me understand that, too, is the video -- I don't --  
4 like, I'm thinking it was somewhere around three hours, I  
5 can't remember, but I watched -- I watched all of it, and  
6 I read some inmate requests, and those aren't -- those --  
7 that is not the picture of Autism Spectrum Disorder.

8 Q. And we're going to get to that in a little more  
9 detail, but I just wanted to kind of brush over that --

10 A. Sure.

11 Q. -- that when you're beginning that beginning  
12 conversation with him, you are looking for any signs of  
13 those possible disabilities or learning disorders in  
14 deciding whether or not you do the further testing; is  
15 that fair?

16 A. That's correct, yes.

17 Q. Okay. All right. After you had your historical  
18 conversation and talked about his family and some of the  
19 social relationships, did you do -- did you go ahead and  
20 do the Mini-Mental Status Examination on Mr. Mosley?

21 A. Yes, I did.

22 Q. And can you tell the Court -- again, I don't  
23 need you to regurgitate your entire report, but any  
24 findings that you found interesting or relevant when  
25 making your competency determination during that exam?

1           A.    Yes.  The Mini-Mental Status Examination is also  
2 one of those.  It's -- I'm not sure it's easily accessible  
3 as the WHODAS, but it's pretty simplistic.  And some of  
4 the things -- I mean, I've -- I've used this with -- I use  
5 this with kids and adolescents, as well as adults with  
6 Autism Spectrum Disorders.

7                   So some of the questions, I mean, you really  
8 have to be in some state of altered consciousness to get  
9 it wrong, and some of the things he got wrong.  And I just  
10 based on everything else, our conversation, I knew -- I  
11 knew it was not accurate.  So I just said -- I looked at  
12 him and said, Don't do that.  And then we went back, and  
13 he -- he straightened it up a little bit, but then he went  
14 back to some of that responding.

15                  For instance, I asked him to -- I don't have the  
16 feedback from it, but I asked him to just write a sentence  
17 about where he lives, you know.  I have 5-year-old kids --  
18 well, maybe 6 years old, you know.  I live in a house.  
19 It's in a fun neighborhood.  That's all that is, but he  
20 couldn't -- he couldn't do that.

21                  There's a drawing that you -- that I show him a  
22 picture of and you have to draw it.  And, again, the only  
23 people that really blow this are people with significant  
24 brain injuries.  And that's one of the reasons, you know,  
25 we -- that's in there.  According to the research, only

1 people with brain injuries, they get that wrong for some  
2 reason. So they -- they can't draw it. They can't make  
3 those two shapes commingle like that. So there was --  
4 there -- there were a few things like that.

5 I read him a story and, you know, the  
6 instructions are, I'm going to read you a short story. I  
7 want you to listen carefully. And after I'm done reading  
8 it, I want you to tell me the story back as close to the  
9 same words I used as possible, and go in the same  
10 sequence. And he only got two. And that's -- you know, I  
11 mean, again, I have -- I've evaluated people with dementia  
12 who they get more than that.

13 I mean, so -- so when you -- when you  
14 superimpose this type of performance over time with other  
15 types of evaluations, it just doesn't fit. But that's --  
16 that was the performance, so that's what I -- that's what  
17 I used. But in my opinion, is that he could have done  
18 better than that.

19 Q. Now, did you notice a difference in Mr. Mosley  
20 when you were in the middle of a formal testing situation,  
21 like the Mini-Mental Exam, and then the less formal  
22 testing when you're just talking back and forth and you're  
23 kinda asking him some questions?

24 Was there a shift in how he responded to you and  
25 how he performed?

11           That's why I like to do my own evaluations by  
12 myself because I want to -- I mean, that kind of  
13 situation, it changes the data that I'm getting, but  
14 that's -- that -- those are the rules of the game, so I  
15 have to abide within that. But if I had my way, that  
16 would never happen.

17 Q. Okay. So after you did the Mini-Mental Status  
18 Examination, let's talk about your intellectual disability  
19 analysis. Did you --

20 THE COURT: Hold on. I saw Joel Johnson --

21 MS. SULLIVAN: Is he here?

22 THE COURT: -- come in at some point, and then  
23 he left. Do you want to --

24 MS. SULLIVAN: Take a break?

25 THE COURT: That's fine. I don't care if

1 Dr. Railey stays right there or if you want him to  
2 step out, that's fine, too. I just -- I don't want  
3 to waste Mr. Johnson's time. Have him come in,  
4 answer a couple questions, if you have questions for  
5 him.

6 Are you comfortable doing that now?

7 MS. SULLIVAN: Sounds good.

8 MS. RUSSELL: Yeah. Yeah.

9 THE COURT: Okay. Dr. Railey, you're welcome to  
10 stay there. If you wanted to take a brief break, you  
11 can certainly do that, but I need to get this guy  
12 from the jail hospital in and out, okay? Thank you.

13 I'll swear him in.

14 THE BAILIFF: Okay. Raise your right hand, and  
15 the Judge will swear you in.

16 (Witness was duly sworn on oath.)

17 THE COURT: Thank you for accommodating us  
18 today. I know --

19 MR. JOHNSON: Of course.

20 THE COURT: -- it's a great inconvenience for  
21 you to come over here. You've got plenty of other  
22 work to do, okay?

23 You know you were brought over today to talk  
24 about Mr. Mosley; is that correct?

25 MR. JOHNSON: Yes, Your Honor.

1           THE COURT: It has been brought to my attention  
2           that, at some point recently, he had stopped taking  
3           medication and then may have restarted taking some  
4           medication.

5           I would like for you first to, if you could,  
6           just tell me what it is Mr. Mosley is supposed to be  
7           taking, as far as it relates to; Number one, any  
8           mental health medication that he takes; and Number  
9           Two, any other just physical medication that he needs  
10          for other physical ailments?

11          MR. JOHNSON: Yes, Your Honor.

12          THE COURT: Can you tell me what those are.

13          MR. JOHNSON: I can. He is on Fluphenazine,  
14          that's an antipsychotic; he's on Trazodone, that's an  
15          antidepressant; he's on Zoloft; that's also -- it's  
16          an SSRI, another antidepressant; he's on melatonin to  
17          help with sleep, and then he takes levothyroxine for  
18          a thyroid disorder.

19          THE COURT: Okay. What does the -- tell me  
20          about the thyroid disorder; that medication does what  
21          for him?

22          MR. JOHNSON: Well, it just regulates his  
23          metabolism, like, his heart rate, and all that.

24          THE COURT: Okay. What happens if he doesn't  
25          take it? Are there any side effects to it.

1           MR. JOHNSON: Oh, absolutely. It mimics the  
2 hormones released by the thyroid. So he could have,  
3 you know, an elevated heart rate, that sort of thing.  
4 It shouldn't affect his mentation, really.

5           THE COURT: Okay. At some point, did he stop  
6 taking, whether it be mental health or his thyroid  
7 medication at any point during his current stay at  
8 the Pinellas County Jail?

9           MR. JOHNSON: Well, I went back to the middle of  
10 May, and he is pretty consistent with his a.m.  
11 medication, which is the levothyroxine. I don't see  
12 any refusals of that whatsoever.

13          THE COURT: Okay.

14          MR. JOHNSON: And then -- and then he takes his  
15 sertraline, the Zoloft. That's also given in the  
16 morning. I don't see any missed doses since the 11th  
17 of May.

18          THE COURT: Okay.

19          MR. JOHNSON: With the evening medications, the  
20 Fluphenazine and the Trazodone, as well as -- as well  
21 as the melatonin, there's quite a few refusals  
22 throughout June, mostly. There were 12 refusals of  
23 both those medications. And then in July, so far  
24 this month, he's refused four times, both those  
25 medications.

1           THE COURT:   Okay.  I don't know if this is  
2           something you keep track of or not, but as a result  
3           of not taking some of those medications periodically,  
4           has there been any other side effect issues that your  
5           department would need -- the medical department of --  
6           the medical department of the Pinellas County Jail  
7           needs to deal with?

8           MR. JOHNSON:  I --

9           THE COURT:  You know, I didn't -- I'm remiss.  
10          But at some point before we're done, I'm going to  
11          have to ask you to go over just your brief title and  
12          job description and all that.

13          MR. JOHNSON:  Yes, Your Honor.

14          THE COURT:  Okay?

15          MR. JOHNSON:  So I did take a look at his  
16          Incident Reports and that sort of thing.  I didn't  
17          see any negative, really, behavioral issues  
18          happening.  He is in a ward, so he's around other  
19          people.  That's usually a good sign as far as  
20          behavior.  He hasn't caused us any problems that I  
21          can find --

22          THE COURT:  Okay.

23          MR. JOHNSON:  -- since he's been back.

24          THE COURT:  And since we didn't do this in the  
25          beginning:  Tell me your full name, please.



1 MR. JOHNSON: Yes. My name is Joel Johnson.  
2 I'm a registered nurse. I've been working with the  
3 Sheriff's Office for almost 18 years.

4 THE COURT: Okay. So we have a hospital next  
5 door that's associated with or part of the Pinellas  
6 County Jail, and you work there, correct.

7 MR. JOHNSON: Well, I work as the case manager,  
8 but I am in the health care building.

9 THE COURT: Okay. And do you have any sort of  
10 supervisory role? I know whenever we have issues  
11 where we need someone to give us information for  
12 court purposes, you're generally the go-to guy for  
13 that, correct?

14 MR. JOHNSON: Right. Well, Jim Jones has been  
15 doing it a bit longer than I. He is a supervisor.  
16 I'm kind of -- he has sort of mentored me over the  
17 years. I don't supervise anyone.

18 THE COURT: Okay.

19 MR. JOHNSON: I'm just a case manager. I handle  
20 a lot of discharge stuff, and I've -- I've come to  
21 Court a few times --

22 THE COURT: Okay.

23 MR. JOHNSON: -- to discuss patients' cases.

24 THE COURT: Any questions?

25 MS. SEIFER-SMITH: Yes. Were you able to look

1 at the records up until this week, Mr. Johnson?

2 MR. JOHNSON: Well, I reviewed -- I reviewed a  
3 psych note. He was seen on the 28th of June by one  
4 of our counselors, and then he saw Dr. Hernandez in  
5 May.

6 MS. SEIFER-SMITH: In terms of the medication  
7 administration which logs, like, if the medication is  
8 administered or if it's refused, and there's a log  
9 for each and every time that the nurse, like, goes to  
10 the individual with their medication that they're  
11 supposed to be receiving; is that right.

12 MR. JOHNSON: That is correct.

13 MS. SEIFER-SMITH: Okay.

14 MR. JOHNSON: Yeah, I have that in front of me.

15 MS. SEIFER-SMITH: So every single time the  
16 medication is administered, that's noted. Every  
17 single time it's refused, that's also noted; is that  
18 right?

19 MR. JOHNSON: That is correct.

20 MS. SEIFER-SMITH: Okay. And in terms of the  
21 records that you saw, were you able to review those  
22 administration of medication records up through this  
23 particular week?

24 And the reason we're talking about it is  
25 because, well, we're here for a competency hearing

1           this week.

2           MR. JOHNSON: Of course. Yeah. The last date  
3           that I have on here is the 8th.

4           MS. SEIFER-SMITH: Okay. And during the week  
5           prior to the 8th of July -- I'm assuming you mean the  
6           8th of July?

7           MR. JOHNSON: Correct. I'm sorry. Yes.

8           MS. SEIFER-SMITH: Okay. And during the week  
9           prior to the 8th of July, there were repeated  
10          refusals of the -- I'm going to mispronounce this --  
11          the Fluphenazine?

12          MR. JOHNSON: Correct.

13          MS. SEIFER-SMITH: Which is an antipsychotic?

14          MR. JOHNSON: That's correct.

15          MS. SEIFER-SMITH: And the Trazodone, correct.

16          MR. JOHNSON: That's correct.

17          MS. SEIFER-SMITH: And then on the morning of  
18          the 8th, Mr. Mosley received none of his medication,  
19          correct?

20          MR. JOHNSON: Yes. I'm trying to get to the  
21          bottom of that. Generally, when they're coming to  
22          court, they get woken up really early and given their  
23          meds. For some reason, that didn't happen two days  
24          in a row.

25          MS. SEIFER-SMITH: Right. It's noted that they

1       couldn't administer because he was out of the  
2       facility.

3               MR. JOHNSON: Right. Which, generally -- I  
4       don't know what the -- again, I've got e-mails out.  
5       I'm trying to track it down. He should have been  
6       woken up early knowing that he would be coming to  
7       court. We generally give court meds a lot earlier  
8       than the regular daily meds.

9               MS. SEIFER-SMITH: And I think you mentioned  
10       this earlier, but you would certainly agree that  
11       regular regimentation of these medications is  
12       extremely important?

13              MR. JOHNSON: Oh, I'm sure it is.

14              MS. SEIFER-SMITH: Okay. And that Mr. Mosley  
15       could suffer side effects if he's not taking those  
16       medications as prescribed by the doctors?

17              MR. JOHNSON: That's probably out of my scope.  
18       I'm not a mental health provider.

19              MS. SEIFER-SMITH: Okay. I don't have anything  
20       further.

21              THE COURT: Ms. Sullivan?

22              MS. SULLIVAN: No.

23              THE COURT: Thank you.

24              MR. JOHNSON: Absolutely.

25              THE COURT: Can we, just as an aside, that was a

1 valid point. Can we make sure --

2 MR. JOHNSON: Of course.

3 THE COURT: -- he is getting his morning meds?

4 MR. JOHNSON: Yeah.

5 THE COURT: We're bringing him over -- instead  
6 of getting him up at 4:30, we have him marked and the  
7 deputies order room at 8:30. So there should be  
8 plenty of time for him to get his meds.

9 MR. JOHNSON: Absolutely. I think a lot of  
10 times, they're coming around at 9:00 or whatever to  
11 give the morning meds.

12 THE COURT: Okay.

13 MR. JOHNSON: So that's probably what happened.

14 THE COURT: All right. Great. Thank you.

15 MR. JOHNSON: Absolutely, Your Honor.

16 MS. SEIFER-SMITH: Your Honor, just, I guess,  
17 kind of an evidentiary point, when we put in the  
18 Pinellas County Jail records, with respect to  
19 Mr. Mosley, we did not have them up until this week.  
20 This is obviously a new issue that's arisen.

21 My copy is not in the courtroom to have it  
22 admitted as an exhibit, but I think it might be  
23 important given the circumstances that have  
24 arisen --

25 THE COURT: Uh-huh.

1 MS. SEIFER-SMITH: -- would it be possible to  
2 have that added?

3 THE COURT: I don't think there will be an  
4 objection admitting those.

5 MS. SULLIVAN: No.

6 MS. SEIFER-SMITH: Okay.

7 THE COURT: All right. So just --

8 MS. SEIFER-SMITH: Will do.

9 THE COURT: You two go over them, make sure  
10 they're complete, and I'll put them in as an exhibit.

11 MS. SEIFER-SMITH: Thank you.

12 THE COURT: Thank you, sir. Thank you for  
13 coming over.

14 MR. JOHNSON: Yes, Your Honor.

15 THE COURT: I appreciate it.

16 MR. JOHNSON: My pleasure.

17 THE COURT: All right. Back to our regularly  
18 scheduled programming with Dr. Railey.

19 Thank you for enduring.

20 MS. SULLIVAN: All right. Dr. Railey -- I'm  
21 sorry, Charlene.

22 THE COURT: We're moving on to the next --

23 THE COURT REPORTER: Thank you.

24 THE COURT: -- test, and I don't remember the  
25 name of the test. I didn't write it down.

1 MS. SULLIVAN: We were going to talk about IQ  
2 testing.

3 THE COURT: Okay.

4 BY MS. SULLIVAN:

5 Q. In your report, the next thing that you had  
6 chronologically was the WHODAS, but I'm going to skip that  
7 for a minute and come back to it, because I want to talk  
8 about what you actually did with him in that eval  
9 testing-wise, first.

10 So did you perform an IQ test on Mr. Mosley?

11 A. I did.

12 Q. Okay. And what test was that that you  
13 administered?

14 A. The Wechsler Adult Intelligence Scale.

15 Q. Known as the WAIS-IV?

16 A. Yes.

17 Q. My understanding is that there's a new WAIS, the  
18 WAIS-5.

19 A. Right.

20 Q. Are you familiar with that?

21 A. I am. Actually, I have it.

22 Q. Okay. And is that something that you've started  
23 to administer now, or are you still in training for that,  
24 or?

25 A. Well, there's really, I mean, once you --

1 there's really no training that's necessary. When a new  
2 version comes out, you have -- you have a period of time  
3 before you have to switch. And that's -- and that's up to  
4 the individual provider.

5 I haven't made the switch yet. I do have an  
6 instrument, but I have not made the switch. But it's --  
7 it -- if -- if an individual is -- and this goes to -- I  
8 want internal consistency. So is the test the same? Does  
9 it measure the same thing?

10 His score would -- his score would be the same.  
11 If someone administered him with your -- if he -- if his  
12 -- if he performs as he did on that new version, his score  
13 will be the same.

14 Q. Okay. So let's talk about the WAIS-IV that you  
15 administered. When you administered it to Mr. Mosley,  
16 were you aware that Dr. Tenaglia at the State hospital had  
17 also administered the WAIS-IV?

18 A. Yes. I know.

19 Q. Okay. And we've heard this week that it's not  
20 optimal for a WAIS-IV to be administered to somebody  
21 back-to-back in that close of the time; are you aware of  
22 that?

23 A. I'm aware that is a fallacy, but I'm aware of  
24 it.

25 Q. And is the concern for that -- we've heard the



1 term practice effects this week --

2 A. Yeah.

3 Q. -- is that one of the concerns if you  
4 administered that close together?

5 A. That's one of the concerns, but it is up to --  
6 and they're -- I mean, I have -- I've conducted my own  
7 research of the guidelines on this. Even what Pearson,  
8 the publisher of the test, says about it.

9 But the reality is when -- there are times when  
10 we have to do it, and this is one of the times, you have  
11 to look at that. So, in other words, if I look at his  
12 performance on her administration and on mine, the  
13 qualitative descriptor is identical, extremely low. That  
14 -- that's how his IQ was characterized by both  
15 administrations. So there is no statistical difference  
16 between my administration and hers.

17 Q. Okay. So you were aware that she had issued the  
18 WAIS-IV?

19 A. Yes.

20 Q. You're aware through your experience that it's  
21 not the best practice because of the practice effects that  
22 could occur to do it back to back. But when you got the  
23 results, what did you notice -- and I think you said it a  
24 little bit, but I want to kinda get detailed about it --  
25 your score versus Dr. Tenaglia's score?

1                   What did you notice about that?

2           A.    There was no significant statistical difference  
3 between the score he derived with her and with me.  
4 They're -- they're in the same category of descriptor,  
5 extremely low.

6           Q.    And were you looking -- because you knew that he  
7 had just been administered this at the State Hospital,  
8 were you looking for any signs of these practice effects  
9 that could come into play when you administer two tests  
10 close together?

11          A.    Yes.  I -- you know, I do want to, if I may --

12          Q.    Sure.

13          A.    I do want to say that I'd have to -- I'd have to  
14 push back some on the idea of not ideal, because that's  
15 not what the American Psychological Association says.  
16 That's not what the publisher of the test says.

17                   I think we -- and I'm one of those because one  
18 of the reasons I didn't -- I didn't want to evaluate -- I  
19 didn't want to use that was because I said it, but the  
20 folks that I was speaking to about that, everything they  
21 know about what you just said, they know everything that I  
22 told them, but what they don't know is everything that I  
23 know about the situation.

24                   So I conducted my own research.  I have -- I  
25 have -- I have guidelines that have been put out by the

1 American Psychological Association discussing this. And  
2 one of the allowances for doing that is when there's a --  
3 there's a forensic situation and there's a -- there's a  
4 timeline involved.

5 Q. What would be something that you were looking  
6 for that would indicate to you that we --

7 MS. RUSSELL: Objection, Your Honor. So now,  
8 Dr. Railey has testified that he has done his own  
9 research, and he has his own practice guidelines for  
10 allowing --

11 THE WITNESS: No, that's --

12 MS. RUSSELL: -- the WAIS to be given more than  
13 twice in a year. We'd like to ask that that be  
14 produced to us so that we can review it in time to  
15 cross-examine Dr. Railey.

16 THE COURT: Okay. Overruled.

17 BY MS. SULLIVAN:

18 Q. Hold on. Let me get my brain back to where it  
19 was. When you -- what type of practice effects were you  
20 looking for or that would clue you in that maybe that was  
21 in play when you administered the WAIS-5 to Mr. Mosley,  
22 and did you see them?

23 A. He would -- he would perform extremely better  
24 than he did the first time. And so typically, in the  
25 world of statistics, something is significant when -- when

1 everything is -- where standard scores are expressed,  
2 there's a standard score, and then there's a certain  
3 amount of error that's to be expected, you just accept  
4 that.

5 All right. And when scores -- when you see  
6 significant changes that are above, say, one standard  
7 deviation above the other score, then that's when you  
8 started looking in -- and it's not so much an issue in the  
9 forensic environment, but it is in the school environment  
10 where -- where people are vying for -- they want to be in  
11 the gifted program and things like that. Those are areas  
12 where I absolutely would not do it.

13 But in a situation like this, I wouldn't expect  
14 that -- for that to happen, but I did inspect the scores.

15 Q. Okay. Had you seen some indication that these  
16 practice effects were occurring, and the one example being  
17 what you just gave, the standard deviation being the way  
18 above how he performed with Dr. Tenaglia, would you have  
19 then done a different IQ test on him?

20 A. I would have had -- I would have been forced to  
21 because that -- because that informs my overall -- so I  
22 would have had to do that.

23 Q. Okay. But given the results you obtained, you  
24 did not have concerns about the practice effects and you  
25 didn't do that?

1           A.    I did not. But in retrospect, one of the things  
2   that I could have done is I could have put what I -- the  
3   statements that I have here in front of me from The  
4   American Psychological Association, I would have just  
5   simply put that in the report for the reader to -- so  
6   allay any concerns they might have regarding the practice  
7   effects. But, again, in a forensic situation, practice  
8   effects is not a concern. Malingering is a concern.

9           Q.    Okay.

10          A.    Not practice effects.

11          Q.    All right. So let's get into that. So you got  
12   an IQ score of 55.

13          A.    Yes.

14          Q.    All right. And you've broken down in your --  
15   there's different subsets of the IQ tests, and you have  
16   those results in your report.

17          A.    Uh-huh.

18          Q.    What did that score indicate to you when you  
19   compared it to just the observations you were making of  
20   Mr. Mosley in general?

21          A.    I thought I -- I didn't -- I don't -- I don't  
22   believe, and I still don't believe, it is a reflection of  
23   his true cognitive abilities.

24          Q.    Okay. In your experience and in your training,  
25   an IQ of 55, is that low?

1           A.    You know, back in -- we can't use terms now that  
2 we used to use, but there were some terms that were  
3 applied to people that scored that low. I mean, they were  
4 almost incapacitated. So, I mean, again, that's the  
5 score, so that's what I had to -- that's what I had to  
6 report, but, no. I just don't -- I don't -- I don't see  
7 it. It's not my opinion. It's based on my experience and  
8 everything else I've seen.

9           Q.    Okay. What were your findings in the area of  
10 Mr. Mosley's ability to understand and communicate with  
11 you?

12          A.    No. I'm going to have to take a little minute.  
13 So as I'm looking for this, so one of the -- one of the --  
14 one of the things with people with Autism Spectrum  
15 Disorder when it comes to socialization is that they  
16 always misinterpret social cues. They don't understand  
17 it. They don't -- they don't understand the nuances of  
18 social communication, and just based on my conversations  
19 with him, I didn't see any of that.

20                But to answer your -- you mean -- you mean on  
21 page 5; is that what you're referring to?

22          Q.    Yes.

23          A.    They understand -- okay.

24                So Mr. Mosley showed when unguarded and free  
25 from prompting to feign deficits, that he understood

1 questions posed to him and communicated coherent  
2 responses. He remained able to engage in a culturally  
3 appropriate adult dialogue, verifying that his receptive  
4 and expressive language skills did not reflect a severe  
5 deficit.

6 Q. Did that match up with the IQ score that you  
7 got?

8 A. No, it does not.

9 Q. All right. How would you describe his affects  
10 in general during the evaluation?

11 A. Well, there's a term that we use when it comes  
12 to anything psychological, and then I would say they was  
13 within normal limits. I mean, there was nothing -- there  
14 was nothing significant about it that caused -- that  
15 caused concern. He wasn't -- he wasn't overly happy. He  
16 wasn't overly sad. He wasn't -- he wasn't overly  
17 reserved. Again, he -- he understood the expectations and  
18 the boundaries, and he adhered to them.

19 Q. Okay. Did you observe during your assessment of  
20 him and in talking to him, any overt signs of autism  
21 spectrum traits?

22 A. No.

23 Q. Can you give examples of what you would be  
24 looking for when you're evaluating someone for that  
25 possible disability?

1           A.    People -- adults with Autism Spectrum Disorder,  
2   they tend to -- I mean, they -- in a job situation, they  
3   get in trouble a lot because they always say the wrong  
4   thing. I mean, they -- they're just odd in their -- in  
5   their social approach. They just don't fit in. They  
6   never can say the right thing. It like they have two left  
7   feet or two right hands. I didn't -- I didn't see -- I  
8   didn't see any of that. He communicated appropriately at  
9   all times. He interacted appropriately.

10          Q.    Okay.

11          A.    I didn't see anything that signaled to me that  
12   he was anywhere near the spectrum.

13          Q.    Did you see any evidence of psychosis or  
14   internal stimuli or anything of that nature?

15          A.    No.

16          Q.    All right. Did he tell you about any visual or  
17   hallucinations or delusions that he was suffering from?

18          A.    No. It's pretty easy, though, if someone is  
19   hallucinating. If you've ever experienced it, you never  
20   forget it. The first time you saw it, they're just  
21   some -- when it comes to perceptual distortions, I mean,  
22   there's just some oddities about it. You know, the way --  
23   the way it's like they're looking at you and they're  
24   looking at this thing, did you see what I just seen? Or  
25   when they're -- the same thing when they're hearing



1 something.

2 Now, those typically, when it comes to  
3 schizophrenia and spectrum disorders, most of the time  
4 what we're looking at is auditory and visual  
5 hallucinations. There are other ways. I mean, they could  
6 be having hallucinations along the -- any -- any of the  
7 perceptual proclivities we have, taste, smell, but those  
8 are the two, and I didn't see any indication of that.

9 Q. Okay. Did you talk to him a little bit about  
10 his history of self harm?

11 A. I always ask about that.

12 Q. Okay.

13 A. Just so -- you have to.

14 Q. And did he acknowledge to you that there was in  
15 -- at least one incident in his past where he had been  
16 Baker Acted; do you recall that?

17 A. I can't recall. But I could -- I would have to  
18 -- let's see here.

19 Q. On page 3 of your report I think is when we were  
20 back talking about his historical and backgrounds and  
21 family life.

22 A. Oh, okay. Oh, I see it. I saw it.

23 Q. If that helps you a little bit.

24 A. So, yeah. He -- so he did two hospitalizations  
25 for suicidal ideation.

1 Q. And he was open and honest with you about that  
2 situation in his life? I'm also looking at the bottom of  
3 page 3 with your behavioral observations, that --

4 A. Okay.

5 Q. -- second paragraph, if that assists you.

6 A. Okay. I mean, I'm looking at a paragraph here,  
7 the last paragraph on page 3, but it just seemed to me  
8 that there were at points in the process he was working to  
9 appear to be impaired somehow, but I just didn't see that  
10 he was. And there's no way -- you're not going to have  
11 that sort of -- you're not going to have that switch, not  
12 like that within such a short span of time.

13 Q. Okay. And I guess that leads to my next  
14 question. Your evaluation as a whole, was his behavior  
15 and his -- I'm thinking about the word -- was how he  
16 behaved consistent throughout the evaluation, or was it  
17 dependent on what part of the evaluation you were  
18 conducting?

19 A. Well, it varied.

20 Q. Okay. Can you give some examples to the Court  
21 of how that was not consistent during your evaluation?

22 A. Well, again, I mean, typically, the most salient  
23 part of it, you know, if -- the way I interview and  
24 it's -- I mean, it's not trickery. It's not manipulative,  
25 but it's, you know, if I'm -- if I'm skilled at what I do,

1 then I want to make a person at ease. And then when I --  
2 and we're just going to talk.

3 I think there were times when he was, you know,  
4 where it was formed a bit more than maybe they felt like  
5 was in his best interest, and I would see him just do  
6 that, glance over like that, before he would answer  
7 questions and those were points in time where, you know --  
8 where I had to -- you know, I had to hide all of that, but  
9 I -- that was problematic for me because I wasn't getting  
10 -- so -- so now my data is tainted at that point. That's  
11 how I see it.

12 Some of the things that he didn't see that --  
13 that didn't -- weren't necessarily perceived as revealing,  
14 he talked about freely, and that's the part about going to  
15 work and his social life and all of that, but -- but it  
16 did, it varied quite a bit during the -- during the whole  
17 process.

18 Q. Okay. I want to talk about adaptive functioning  
19 for a little bit.

20 A. Uh-huh.

21 Q. Were you assessing him regarding adaptive  
22 functioning during the evaluation?

23 A. Yes. If you -- if you take a look at the  
24 questions that are on the WHODAS or the descriptors that  
25 -- that the respondent has to respond to -- they've got to

1 rate the person on, some -- sometimes I have to ask the  
2 question. Other times, based on what you're telling me  
3 and my judgment, I can make -- I can make that -- make  
4 that leap and actually respond to that.

5 And, what -- when he would describe, you know,  
6 his daily life when he was, you know, before -- before he  
7 got incarcerated, that showed me someone who -- who can  
8 function and can function on their own. I did see school  
9 records where -- I really don't like -- one of the reasons  
10 I don't look at school records before is because that was  
11 -- you know, that was years ago.

12 I mean, if you saw what was in my school records  
13 -- I mean, the teacher would say, Well, he's not going to  
14 amount to anything. I mean, that's in my school record.  
15 So I think -- I don't think we can -- I don't think we use  
16 the background in that way.

17 I think it's -- I think it promotes stigma. It  
18 promotes putting your thumb on a person and holding them  
19 down, and that's -- that's happened for far too long, but  
20 it also can promote having a -- having an excuse. So the  
21 way he responded to the question, him -- him telling me  
22 how he did what he did, that is the assessment.

23 And after the interview, and I go back, and I  
24 listen to it -- I don't have my copy. I think it -- it  
25 may have taken me a while to fill it out because I would

1 go back and I would rewind the tape and listen to it,  
2 there were some things missing out of -- things that I  
3 remembered in the interview that were not on the tape when  
4 I -- when I got my copy of it. But those are seminal  
5 moments in the -- in the interview that there's no way I  
6 could forget it.

7 Q. Okay. So let's talk about the WHODAS test for a  
8 minute.

9 A. Uh-huh.

10 Q. Is that a test that is meant to assess adaptive  
11 functioning?

12 A. Yes. That is it -- its purpose. That is one of  
13 the least expensive ways to do it. And I learned about  
14 that test as an evaluator for a division of a dis -- I'm  
15 sorry -- the Division of Vocational Rehabilitation because  
16 it's stated pretty clearly in the DSM -- and it's been  
17 this way for some time -- but the DSM-5 clearly states  
18 that you can't diagnose intellectual disability with just  
19 an IQ score.

20 So that right there, that rule right there,  
21 recognizes that it takes more than a low -- there are a  
22 lot of functional people that have low IQ scores. So you  
23 have to look at, How do they function? How do they go  
24 through life? You know, can they -- do they need help  
25 with things? You know, do they know when to bathe and

1 this sort of thing. Those are the things you have to take  
2 into consideration because those speak to his -- his  
3 functioning. That's what adaptive functioning is all  
4 about, can you do what you need to do for yourself to get  
5 by?

6 Q. Okay. So we understand how that test works, and  
7 correct me if I'm wrong, but while you're evaluating him,  
8 you're asking him questions, you're talking to him, you're  
9 watching him, you're observing him?

10 A. Uh-huh.

11 Q. And then after your evaluation is complete, you  
12 go back, and you input your ratings on various questions  
13 that are in this WHODAS that we now have --

14 A. Yes.

15 Q. -- in front of us?

16 A. Yes.

17 Q. Okay. So one way to do that assessment is  
18 essentially him self-reporting to you some things?

19 A. Yes, his self-report.

20 Q. And then is there another way to administer that  
21 test to family members of an individual?

22 A. Yeah. The WHODAS by proxy, which is what I sent  
23 to his mom and she completed it. I think she finished  
24 hers in about 10 or 15 minutes or something like that,  
25 which, I mean, I'm not surprised. So -- because, again,

1 it's based on her experience with him.

2 Q. Okay.

3 A. That's the intent, at least, of the instrument.

4 Q. I'm going to talk about her assessment in a  
5 minute, but staying on yours, that you did after talking  
6 to him and observing him, did his results on that  
7 regarding adaptive functioning line up with his IQ score?

8 A. No.

9 Q. Okay.

10 A. No.

11 Q. How so?

12 A. I think his adaptive functioning is actual  
13 observed adaptive functioning, in my clinical judgment, is  
14 far -- is far better than what -- what his IQ score shows.

15 Q. Okay. Now, his mom, Renee Dixon, you said you  
16 e-mailed her a copy of this assessment, and that's so --  
17 it's e-mailed to her, and then she can fill it out, and  
18 then e-mail it back to you?

19 A. No. It -- what happens is it's by secure link.  
20 I have a portal that -- that pretty much I buy uses of  
21 this test so I can send it out to people. I have a  
22 portal, so I just, you know, I made Mr. Mosley one of my  
23 -- one of my patients in my portal. And I put his mom's  
24 e-mail address in there as a -- her name and e-mail  
25 address as a proxy, and I can just instruct the system to

1 send her that assessment.

2           And she -- I don't score it. Essentially, she's  
3 scoring it because she inputs the numerical rating on it.  
4 And all the -- all the computer does, or the system does  
5 is add everything up, and then it just categorizes the  
6 responses, and that's how you come up with the descriptors  
7 there at the end.

8           Q. Was there a difference in scores between your  
9 assessment and then his mom's assessment?

10          A. Significantly.

11          Q. How so?

12          A. As far as the east is from the west. And I'm --  
13 I'm not being facetious here. I mean, her -- all of her  
14 scores and some of the -- if you actually read the  
15 descriptors, if you just read it. If you look at what  
16 it's saying, when you get this -- when you mark this  
17 number, this is what it means, there's absolutely no way.

18               Like, one of them has to do with mobility. I  
19 mean, he can't get around on his own. I mean, that's just  
20 not -- so in situations like that -- I mean, I've been --  
21 I've been doing this for a long time, too, when it comes  
22 to kids who get in trouble in school, and you've got to  
23 give the teacher a rating, apparently.

24               So you triangulate the data, and you sort of  
25 look at what the relationships, what the individuals are



1 saying, and, frankly, we have to look at motivation when  
2 it comes to this sort of stuff. And there's no way -- if  
3 you read those descriptors, there's no way that that is  
4 indicative of what he is.

5 I did not -- and, boy, I wish I would have -- I  
6 did not -- typically, what I would do is get disciplinary  
7 records, but I didn't do that in this case, and I'm not  
8 sure why I didn't. But I think the gentleman that was  
9 just here, he kind of spoke for me on that.

10 I mean, there are -- there are no DRs. None.  
11 And from what I know about -- I mean, inmates who just  
12 have attitude problems. You know, they're not impaired in  
13 any way. They just got an attitude problem. They're  
14 going to have those. They're going to be there. Fights.

15 I think I read one response, a text message or  
16 something, where, actually, he was helping someone  
17 understand how the prison -- how the jail culture works  
18 and when fights happen. I don't have that one in front of  
19 me, but he was explaining something. Something happened,  
20 and people get upset, and this is what happens, but I just  
21 -- I know how to stay out of the way of that stuff, was  
22 pretty much his summation, which it's smart. I mean,  
23 that's certainly what I would do.

24 Q. And I'm just looking at his mom, Renee Dixon's  
25 responses to these questions. It appears that for a

1 majority minus --

2 A. Uh-huh.

3 Q. -- maybe five to six other questions, she checks  
4 "severe" or "extreme" or "cannot do" for her answers.

5 A. Uh-huh.

6 Q. Okay. Do you -- again, you're still doing your  
7 clinical analysis and using your clinical judgment.

8 Obviously, you received these tests scores --

9 A. Uh-huh.

10 Q. -- which would indicate, if you're just looking  
11 at it on its face, that there's extreme adaptive  
12 functioning issues here.

13 A. Uh-huh.

14 Q. Did you take into consideration when you come to  
15 your ultimate conclusion regarding competency, that this  
16 is, in fact, the mother of Thomas Mosley filling this out  
17 and answering these questions?

18 A. It could have been, yes, but it could have been  
19 anyone. And, you know, I remind you what I said about my  
20 upbringing and mothers. You know, I've got -- I've got  
21 aunts who are mothers. You know, I've got a cousin who is  
22 in a similar situation, and they asked me to help, but I  
23 knew that I couldn't say what they wanted me to say.

24 There's no way I could say that stuff because, I mean,  
25 that's -- it's -- I mean, I'm not here to do that. I'm

1 here to just practice my craft, and I have to report what  
2 I get whether I like it or not.

3           There are times when I -- when I have to say  
4 stuff that I don't agree with, but that's clearly what the  
5 data says everything is consistent. So I was wrong on  
6 that one. I chalked it up to that.

7           But on this one in research, as well as in  
8 evaluations, especially when you're triangulating  
9 information, that -- her -- her response says what we call  
10 an outlier. It is a data set that is totally inconsistent  
11 with all of the other information. And what you do with  
12 outliers is you set it aside.

13           Now, you have -- now, in this case, in research,  
14 you don't even report it. But in this case, it is part of  
15 the record so everybody can see it. So it's not like I  
16 hid it, but there is no way that a report like that can --  
17 can influence everything else that I've seen.

18           It's the -- the other part about this is that my  
19 observation consists of my time with him when he knew I  
20 was -- when he maybe knew I was looking, but it also  
21 consists of way more time when nobody knew I was going to  
22 see -- I didn't know I was going to see this stuff. I  
23 didn't know. But, I mean, I could have just watched that.  
24 I could have watched those things and all the -- all of  
25 the written things that I had after, and I could have just

1 used that.

2 I mean, I made it pretty clear the only reason I  
3 did the WHODAS is because if you're going to consider  
4 intellectual disability, ethically, you have to administer  
5 something like that. I didn't have to give one to the  
6 mom, but I did it to be nice, but I didn't have to do  
7 that. Mine -- mine would stand sufficient, and -- and the  
8 way we practice would support that.

9 Q. In your review, you said you did look at the  
10 school records.

11 A. Yes.

12 Q. And I'm -- in terms of a possible intellectual  
13 disability diagnosis, did you observe anything of interest  
14 regarding his grades from, like, one quarter to the next  
15 or one --

16 A. Well, --

17 Q. -- semester to the next?

18 A. There was a lot of variance in the grades.  
19 There was no consistency one way or the other. And  
20 someone who is intellectually disabled, you know, I think,  
21 the only class -- and you can't even do it now, but back  
22 in the day when I was in school, the only class they would  
23 pass would be physical education. But now the way they do  
24 it, you can't even pass that. There's no way you can pass  
25 it if you have an intellectual disability.

1           So there were -- there were some grades that  
2 were above C, I think, at several times, and so there's no  
3 way you can achieve that. It's all -- a lot of this is  
4 about motivation and interest, but that's -- that's not a  
5 knock.

6           I mean, it -- you know, I think we all -- I  
7 mean, that's why I excelled in psychology classes, I was  
8 interested in that, but there were some other classes I  
9 bombed. And the only reason I actually passed certain  
10 classes, like statistics, is because it was tied to my  
11 success in getting a doctoral degree in psychology, so I  
12 had to.

13          Q.    In your opinion, does the Defendant meet the  
14 DSM-5 criteria for intellectual disability?

15          A.    No, he does not.

16          Q.    And in your opinion, does the Defendant meet  
17 DSM-5 criteria for Autism Spectrum Disorder?

18          A.    No, he does not.

19          Q.    All right. I want to talk about the competency  
20 criteria that you were asked to evaluate him for.

21                Did you find him to be -- what were your  
22 findings in all of the six criteria regarding --

23          A.    Okay.

24          Q.    -- competency?

25          A.    Well, my overall forensic opinion was competent

1 to proceed to trial. The placement recommendation, well,  
2 obviously, since he's -- he doesn't need any competency  
3 training, so that's not applicable. But going down to my  
4 -- my view of whether or not he is impacted by Autism  
5 Spectrum Disorder, no.

6 Whether or not his adaptive functioning skills  
7 are intact, yes, they are.

8 Intellectual disability, no.

9 Is he willing to help himself, yes. I think  
10 that's pretty clear in some of the things we just talked  
11 about. He's -- he's willing to help himself, and I think  
12 he also has excellent coping skills, anyhow.

13 One of the things people who are disabled  
14 somehow, it could be Autism Spectrum or Intellectual  
15 Disability, there's no way they would survive. They --  
16 there's no survivability for them. That's why they, you  
17 know, they would get sectioned off. Even if you go to the  
18 Department of Corrections, legally, they're supposed to  
19 have a place to place inmates like that so they don't get  
20 taken advantage of.

21 Q. In terms of Mr. Mosley's ability to disclose  
22 pertinent facts and discuss -- and testify relevantly, is  
23 it your -- what is your opinion regarding his ability  
24 versus his willingness or wanting to talk --

25 A. Yes.

1 Q. -- about those types of things?

2 A. I think he has the ability to testify  
3 relevantly. I'll just leave it at that. Yes --

4 Q. Okay.

5 A. -- he has the ability to testify relevantly.

6 Q. Okay. Did you observe some hesitation on his  
7 part during your evaluation of him wanting to talk about  
8 the facts of this case?

9 A. Yes. And -- but what I try to do -- I mean, I  
10 never -- I try to make it clear that I'm really -- you  
11 know, I don't want -- I don't want you to tell me what you  
12 did. I'm trying to understand what you know about what  
13 they're saying you did because there's a -- in the -- in  
14 the Correction's population, there's a substantial  
15 difference between the two.

16 I learned years ago that you could get someone  
17 to talk if you say, What did they say you did? I mean,  
18 they'll pretty much tell you everything. I didn't even go  
19 there because I know that his counsel would have stopped  
20 him, but I wasn't trying to get -- I don't -- I don't  
21 think I need to know that anyway.

22 I just need to know, Does he have some  
23 understanding of it? And the fact that I don't even think  
24 he had given me a cue for that. I mean, he wasn't going  
25 to talk about that anyway.

1           Q.    Okay.  Did you have any concerns at all that it  
2 was -- he was not able to talk about that or wouldn't  
3 understand or anything like that when it came to the facts  
4 of this case?

5           A.    No.  That's -- that's a smart young fellow  
6 there.  I think he understands all that.

7           Q.    Okay.  So, ultimately, do you have an opinion,  
8 within a reasonable degree of medical certainty, whether  
9 Mr. Mosley is competent to proceed in this case?

10          A.    I'm 100 percent sure that he's competent to  
11 proceed to trial.

12               MS. SULLIVAN:  I don't have any other questions  
13 at this time, Your Honor.

14               THE COURT:  All right.  It is 10 minutes to  
15 12:00.  We're going to take our lunch break now, and  
16 I will see everybody back here in an hour and a half.

17               (Lunch break taken.)

18               THE COURT:  Dr. Railey is in the back.  
19 Mr. Mosley is here.

20               Are you ready for Dr. Railey?

21               MS. RUSSELL:  Yes, Your Honor.  Can I approach  
22 quickly?  Dr. Railey provided two extra pages from  
23 his --

24               THE COURT:  Sure.

25               MS. RUSSELL:  -- WHODAS.



1 THE COURT: Okay.

2 MS. RUSSELL: And so --

3 THE COURT: And those would be for me?

4 MS. RUSSELL: -- the State made us copies so you  
5 can have one.

6 THE COURT: Perfect. Thank you.

7 Dr. Railey, come on up and make yourself  
8 comfortable. You're still under oath.

9 So just for the sake of clarity, I don't know if  
10 I -- we discussed it enough this morning, but the --  
11 do you -- are you intending on giving this WHODAS to  
12 anybody else?

13 MS. RUSSELL: No, Your Honor.

14 THE COURT: Okay. So it's going to be  
15 maintained in your custody and not to be utilized or  
16 provided to anybody else except for Mr. Mosley's  
17 testimony, is that correct?

18 MS. RUSSELL: Possibly to our experts.

19 THE COURT: I would ask that you not do that  
20 without talking to me first.

21 MS. RUSSELL: Okay.

22 THE COURT: All right?

23 MS. RUSSELL: I'm trying to think if anyone else  
24 has -- I mean, they may already have --  
25 I have a feeling --

1 THE COURT: Well, --

2 MS. RUSSELL: -- Dr. McClain has it. I feel  
3 like Dr. Hall has it.

4 THE COURT: Dr. McClain has it. I don't know if  
5 Dr. Hall has it. That's why I wanted to make sure  
6 we're clear. I would just ask that, if you're going  
7 to want to provide it to somebody else, that we have  
8 a conversation about it before you do, that's all.

9 MS. RUSSELL: Also, just for the record, I  
10 didn't upload it as a PDF in my computer because I  
11 wasn't sure if you were going to ask that copies be  
12 destroyed after. I did have a copy marked, and,  
13 obviously, when we move it into evidence, we can ask  
14 that it be put under seal.

15 THE COURT: Yes. My main concern is just what  
16 is it going to be utilized for. I understand that  
17 it's a record -- it's evidence. I would understand  
18 why you would want to keep it in some form or  
19 fashion. I just -- the only thing I want to  
20 safeguard against is its distribution without having  
21 a conversation about it first, so...

22 MS. RUSSELL: Understood.

23 THE COURT: Okay. All right.

24 So, with that, Dr. Railey, are you ready for us?

25 THE WITNESS: Yes.

1 THE COURT: All right.

2 CROSS-EXAMINATION

3 BY MS. RUSSELL:

4 Q. Good afternoon, Dr. Railey.

5 A. Good afternoon.

6 Q. My name is Margaret Russell. And I know you  
7 remember me because we met one day back in May at the  
8 Pinellas County Jail.

9 A. Correct.

10 Q. And we also had numerous phone conversations  
11 before that May 12th examination --

12 A. Uh-huh.

13 Q. -- and numerous phone conversations after; isn't  
14 that correct?

15 A. That's correct.

16 Q. All right. You filed a report in this case?

17 A. Uh-huh.

18 Q. I believe it's State's Exhibit Number 2. And  
19 you filed your report on May 20th, correct?

20 A. That's correct.

21 Q. And you understand that this is a very serious  
22 matter since it's a death penalty case, correct?

23 A. I treat all matters as serious, but I do  
24 understand that.

25 Q. Yes. And, obviously, then, you would be

1 applying the highest standards of professional  
2 responsibility and accuracy in your report?

3 A. I try to do that with all my reports, but,  
4 yes --

5 Q. Yes.

6 A. -- to answer your question.

7 Q. So on May 12th, I met you at the Pinellas County  
8 Jail, and we went over to the Health Division together in  
9 the golf cart.

10 A. Uh-huh.

11 Q. And at the State's request, I videotaped the  
12 evaluation, right?

13 A. Yes. Uh-huh.

14 Q. And all of your examination, right, your  
15 Mini-Mental Status Exam, every bit of the examination that  
16 you did, except for the administration of the WAIS, was  
17 captured on the videotape; is that correct?

18 A. I believe so, yeah.

19 Q. Okay. Now, aside from the documents you  
20 reviewed and the WAIS, everything Thomas Mosley said to  
21 you was captured on the video?

22 A. Well, I have -- I have some issues with that. I  
23 mean, there are a couple seminal things that, in the copy  
24 that I received back, I didn't -- I didn't see that on  
25 there.

1           Q.    All right.  So are you saying that you don't  
2 believe that the videotape is an accurate representation  
3 of the evaluation that --

4           A.    I don't -- I'm --

5           Q.    -- you did?  Are --

6           A.    -- I'm not sure.

7           Q.    -- you trying to say that it was altered?

8           A.    I'm not sure.  I'd have to listen to it again,  
9 which I did not do.  But I did not -- I did not hear --  
10 the night I listened to it again, when I was putting  
11 together my WHODAS assessment, I don't recall hearing a  
12 couple of things on there that I know that he said, which  
13 are cited in my report.

14          Q.    Okay.  So you did testify in direct exam, and  
15 tell me if this is correct, Dr. Railey.  "There were  
16 things in my memory that didn't end up on the tape."

17                   Is that true?

18          A.    That's true, yeah.

19          Q.    Tell me all the things in your memory that  
20 didn't end up on the videotape that was produced --

21          A.    Well, --

22          Q.    -- to you after your exam?

23          A.    Well, there were two -- and I -- and I -- and we  
24 -- this is one of the things we discussed in our  
25 conversation -- one of the post-conversations, as well.

1 There were two seminal things that he did say, I know he  
2 said, but I didn't hear them on the recording. I -- I  
3 pretty much -- I identified those, I think, in my report.

4 Q. Tell me where they are in your report.

5 A. I'm not sure, but it had to do with, you know,  
6 what he said to me about, you know, his social life and  
7 then about -- about working and how, you know, how he  
8 handled that when he was working with his dad. I don't --  
9 I don't recall hearing those.

10 Q. You don't recall hearing them on the videotape,  
11 or you --

12 A. On the videotape.

13 Q. -- don't recall hearing them --

14 A. Oh, no. I --

15 Q. -- elsewhere?

16 A. Now, those are -- there -- there's one thing  
17 you've got to understand, there's -- things that stick out  
18 like that. Those are two things I didn't forget. Those  
19 are two things that I made a mental note of just because  
20 they stuck out, like, really, really significantly. So I  
21 don't remember hearing them on the tape, but I do recall  
22 him saying it during -- during the interview.

23 Q. So when we walked in together and we sat down  
24 and I started the tape rolling because, at the State's  
25 request, I was supposed to tape as much of the interview

1 as I could, --

2 A. Uh-huh.

3 Q. -- which was everything except the WAIS because  
4 your administration of the WAIS is proprietary, correct?

5 A. Correct.

6 Q. All right. Was there any time when I wasn't  
7 running the video camera when you were talking to  
8 Mr. Mosley?

9 A. I was not paying attention, but I was focused on  
10 him. I don't -- I don't know what you were doing. I  
11 honestly do not.

12 Q. So are you telling me that you believe that  
13 there was a fabrication in the videotape?

14 A. Like I said, I can't say that. I'd have to  
15 listen to my tape, the one that I received, again. I'd  
16 have to listen to that again to be able to say that.

17 Q. All right.

18 MS. RUSSELL: Your Honor, may we retake a recess  
19 while Dr. Railey reviews the tape so that I could get  
20 to the bottom --

21 THE COURT: I would like to finish your  
22 questions, and we can discuss that at the end of this  
23 testimony.

24 MS. RUSSELL: All right.

25 BY MS. RUSSELL:

1 Q. So, Dr. Railey, I sent you a copy of the video,  
2 and you were able to review it. How many times did you  
3 review it in writing your report?

4 A. Twice.

5 Q. So in your report, there are things in quotation  
6 marks, right?

7 A. Um, either I put things in quotation marks where  
8 I clearly gave credit, this is what was said, but -- but,  
9 yes, that's typically how we do it.

10 Q. Now, if something is in a quotation marks, does  
11 that mean that those are exactly the words that were said?

12 A. Yes.

13 Q. As reflected in your report?

14 A. A direct quote, yeah.

15 Q. So we can depend on the fact that things and  
16 quotation marks that are in your report are exactly the  
17 words that came out of Thomas Mosley's mouth during your  
18 exam?

19 A. We can also depend on -- to answer your  
20 question, yes, but we can also depend on if I -- if I put  
21 something in my report, there's certainly no reason I'm  
22 going to fabricate it, and that would be utterly  
23 ridiculous to do such a thing.

24 Q. All right. Well, I'd like to direct your  
25 attention to page 2 of the report. On page 2, the first



1 paragraph under Advisement and Limits of Confidentiality.

2 Are you following me?

3 A. Yes.

4 Q. In that, you state, Mr. Mosley replied, quote,  
5 Yes, I understand you have to tell them whatever I say,  
6 and I am okay with that, unquote, right?

7 A. Uh-huh.

8 Q. That was a direct quote that's in your report,  
9 right?

10 A. Yes, it's in quotes.

11 Q. Now, would it surprise you if at second .30 in  
12 the videotape, Thomas Mosley actually only said, "Yeah, I  
13 understand."

14 A. No, it wouldn't surprise me.

15 Q. Why not?

16 A. Maybe I was typing fast. Sometime -- I'm -- I'm  
17 not sure, but I know the bottom line is that he -- he  
18 did -- he stated that he understood the purpose of the --  
19 of the evaluation.

20 Q. Let's talk about another direct quote that seems  
21 like it's not too accurate. How about page 9 of 11.  
22 Under Present Evaluation of Competency, Appreciation of  
23 the Range and Nature of Possible Penalties.

24 Are you with me?

25 A. Yes.

1 THE COURT: Give him a minute to catch up, hold  
2 on.

3 BY MS. RUSSELL:

4 Q. This is page 9 of 11, Dr. Railey.

5 A. Yes, I see it.

6 Q. Okay. Under Appreciation of the Range and  
7 Nature of Possible Penalties, you say, quote, the State  
8 Attorney is trying to get me the harshest punishment,  
9 unquote.

10 You say that was a direct quote coming out of  
11 Thomas Mosley's mouth, right?

12 A. That's either -- that's either a quote from -- I  
13 also took some quotes from -- from the report that I --  
14 the reports that I reviewed. I'm not sure which it came  
15 from, but I do lift quotes from other reports.

16 Q. Well, now, Dr. Railey, when you testified on  
17 direct exam, you said that you took the quotes directly  
18 from your examination. And I just had asked you if all of  
19 the direct quotes and all of the things that Thomas Mosley  
20 said came from your 45-minute interview before the WAIS.

21 A. Well, that was an error on my part. I do take  
22 quotes from -- from previous reports.

23 Q. Okay.

24 A. That could have -- that could have come from  
25 there as a -- as a quote. So I do lift the entire

1 statement.

2 Q. Excellent. Tell me which report that came out  
3 of Dr. Railey?

4 A. I cannot. I'd have to look through -- there  
5 were -- there were three or four reports I reviewed --  
6 three reports I reviewed, and I don't -- I don't have them  
7 in front of me. If you give them to me, I -- if we -- if  
8 I need to go through and read them, I can find it.

9 Q. Okay. Which reports --

10 A. I don't --

11 Q. -- would you like to see and try to find that  
12 quote?

13 A. I don't -- there were three reports. The one  
14 from the -- from the -- the psychologist at Chattahoochee,  
15 and there were two others, but I can't remember names.  
16 I've got a -- I mean, this is only half of what I got from  
17 you, and you also e-mailed me a ton of things. So what I  
18 do is I summarize all the documents, and that's how I've  
19 come up with -- with my report. But I can't tell you  
20 specifically which report. There were so many things I  
21 read that day, and there are so many things I've read  
22 since then, not even pertaining to this -- to this case.

23 Q. Okay. When you were doing the present  
24 evaluation of competency in your report on page 9, you  
25 were looking at the six statutory factors that would --

1 A. Uh-huh.

2 Q. -- show that Thomas Mosley is competent.

3 A. Uh-huh.

4 Q. And that's what you were hired to do in this  
5 case, correct?

6 A. In addition to a couple of other things, but,  
7 yes --

8 Q. Right.

9 A. -- that's one of the things.

10 Q. Exactly. A competency evaluation. Yet you  
11 would have used some quotation from some report that you  
12 don't even remember to establish one of the six factors of  
13 competency in your report?

14 A. That is a -- that -- that report was a -- you --  
15 you gave me the report, so -- so I've examined everything  
16 you gave me. So I don't think it's inaccurate if it  
17 passed the test previously. You handed me that report.  
18 You asked me to review certain documents, and I -- and I  
19 did that.

20 Q. Okay. Just to get to it, in your own  
21 examination of Thomas Mosley, what you did was you asked  
22 him about what the role of the State Attorney was.

23 A. That was one of the --

24 Q. You did?

25 A. That was one of the three things, I believe.

1           Q.    That was one of the things that you asked him on  
2 the video.  And on the video, the words that came out of  
3 Thomas Mosley's mouth were that, they try to get you  
4 sentenced.

5           A.    Uh-huh.

6           Q.    Uh-huh.  He didn't say anything about the State  
7 Attorney is trying to get me the harshest punishment.

8           A.    I lifted --

9           Q.    A big difference.

10          A.    I lifted that report from a -- that quote from a  
11 previous report.

12          Q.    But you don't know which report?

13          A.    It's one of the three.  I'd have to find it.

14          Q.    Okay.  So the three reports would be?

15          A.    I don't know which three.  You gave me so many  
16 things to read, I can't remember which one.  I cannot  
17 remember which report.  You, yourself, know, we had a  
18 conversation about how many documents you were throwing my  
19 way and I told you I had to draw the line somewhere  
20 because I had other reports to write.  So I can't remember  
21 which report.  I cannot, but it's in one of those reports.

22                   Now, one of the things that I should have said  
23 that I didn't was based on a report from so and so.  I  
24 didn't do that.  That's the error right there.  That's the  
25 error.

1 Q. Because some people might think that that if you  
2 put direct quotations in your report, that it might have  
3 been a word that you had witnessed yourself in your own  
4 examination of Thomas Mosley.

5 A. Well, I don't -- I don't -- I don't think so.  
6 Now, without the -- without giving credit like you should  
7 do of where you got it from, because you can quote a  
8 source, but you have to say the source where you got it  
9 from, which I did not do, but that -- but that -- that  
10 quote came from one of those reports. It -- it did.

11 Q. Dr. Railey, where is your complete file in this  
12 case?

13 A. I didn't print out all of the documents you  
14 e-mailed to me, but this is -- minus the WHODAS, this is  
15 it right here, all of this stuff.

16 Q. So you don't have a complete file of all the  
17 documents that were provided to you or electronic copies  
18 on your laptop or anything --

19 A. I have --

20 Q. -- as you sit here today?

21 A. I have electronic copies, yes. I'm saying, I  
22 didn't print --

23 Q. Okay.

24 A. -- all of that stuff out.

25 Q. Okay.

1           A.    This represents the stuff you actually mailed to  
2 me -- or you -- somehow I got that -- I think I got this  
3 from you in the mail, but the other things you sent me  
4 some things electronically that I did not print out.

5           Q.    Did you also receive materials from the State  
6 Attorney --

7           A.    I'm sorry?

8           Q.    -- electronically?

9           A.    Say that again.

10          Q.    Did you also receive materials from the State  
11 Attorney electronically?

12          A.    I did.

13          Q.    Uh-huh.

14          A.    And I -- and I told you about what I received.  
15 We had a conversation about that, too.

16          Q.    All right. So you -- as you sit here today, you  
17 have no way to report to me where that quote came from,  
18 but you're sure that it came from one of the reports that  
19 you read somewhere at some time?

20          A.    It's in one of the reports that I read.

21          Q.    And it wouldn't have been one of the things you  
22 said were things in my memory that didn't --

23          A.    No.

24          Q.    -- end up on the tape?

25          A.    No. It was just those two things that I already

1 mentioned. The two things about him -- how he -- when he  
2 was working with his dad, and when he had -- his social  
3 life, when he had that. Those were the two things that  
4 stuck out, and we had a conversation about that, too. I  
5 explained that to you.

6 I told -- I told you that those are the two  
7 things that I would not forget. They're just seminal  
8 moments that you don't forget. Sort of like flashbulb  
9 memory. I remember those two things because they were  
10 pretty interesting and they stood out from a lot of other  
11 things that he said.

12 Q. Okay. Let's talk about your report on page 2,  
13 Sources of Information. So the sources of information  
14 that you used in your competency evaluation of Thomas  
15 Mosley were the Motion to Appoint Experts, previous  
16 competency and diagnostic reports filed with the Court,  
17 Defendant's available mental health and educational  
18 records, the WAIS-IV results, and collateral information  
19 obtained through interviews with Mr. Mosley's mother.

20 Now, Dr. Railey, did you have an interview with  
21 Mr. Mosley's mother, Renee Mosley?

22 A. I watched an interaction with her and her son.

23 Q. Oh. But that wasn't an interview, was it?

24 A. That -- that was a source of information.

25 Q. But was it an interview? Did you interview



1 Renee Mosley?

2 A. No, I did not. I'm -- I was referring to the  
3 tapes that I watched.

4 Q. Because you and I discussed the importance of  
5 collateral interviews in an intellectual disability  
6 diagnosis, right?

7 A. No, we did not have that discussion. I mean,  
8 I'm -- I'm not -- I know we didn't have that discussion  
9 because I wouldn't -- I don't -- I don't think you're in a  
10 position to tell me what's important in that type of  
11 interview because that's what I do for a living. So I  
12 would -- I would argue that it is not important because  
13 that's observational. So it is not important for me to  
14 interview her for intellectual disability.

15 And if -- if anything, I'm saying about this  
16 stuff, if you don't -- if you don't believe me, you can  
17 just Google it. I mean -- I mean, right now, the way the  
18 internet is set up, you get all the information you want  
19 to have, and it will certainly tell you that. I can  
20 observe someone, and I can assess their adaptive  
21 functioning skills, and that is entirely allowable in the  
22 field.

23 Q. So, Dr. Railey, we did e-mail about setting up  
24 collateral interviews with Renee and David Mosley, didn't  
25 we?

1           A.    The times that I had available -- do you recall  
2 what happened? They could not be available. We could not  
3 get our calendars together. I had -- yes, we did. We  
4 discussed sometimes in addition to getting her -- her --  
5 his dad, to -- to complete one. But -- well, he didn't  
6 have his own e-mail address so that couldn't happen, but  
7 we did try to do that.

8           Q.    So --

9           A.    But I don't -- but here's -- here's -- but  
10 here's my take on this: Outside of the information that I  
11 have -- and I'll share this with you -- that I have  
12 everything I need to -- to make a judgment on this case.  
13 I said that to you, as well.

14                   At the time, I -- and really, based on the  
15 things that he said to me, I didn't need to do a WHODAS  
16 with his -- with his mom. I did that at your insistence.

17           Q.    Dr. Railey, we set up an appointment on May 18th  
18 between 2:00 and 5:00 p.m., for you to talk to Renee and  
19 David Mosley. I sent you their phone numbers and you said  
20 that you would call them on Sunday afternoon, May 18th,  
21 between 2:00 and 5:00.

22           A.    I don't -- I don't recall that.

23           Q.    Okay. And they waited by the phone for three  
24 hours for you to call them to complete the interviews, and  
25 you never called, did you?

1           A.    I don't recall making that promise, but my point  
2   is -- my point is, is that there are -- there are other  
3   huge cases that I have -- I don't -- I don't have -- in  
4   order to establish competency and intellectual disability,  
5   for an adult, I don't -- I don't need the parents because  
6   the adult can communicate on their own.

7                   And I do not recall agreeing to to have another  
8   interview with these people. I mean, at the time, as you  
9   recall this, I mean, I probably had about -- I probably  
10  got about 15, 20 hours in this case. 15 or 20 hours to  
11  which you apologized, you understand the hard work -- the  
12  hard work that I do.

13                   Did you not say that?

14                   THE COURT: Dr. Railey, just do your best to try  
15   and answer the question.

16                   THE WITNESS: Yes, Your Honor.

17  BY MS. RUSSELL:

18           Q.    Did you review videos from --

19           A.    I did.

20           Q.    -- inside the jail?

21           A.    I -- if you're referring to the -- the -- his  
22  recorded visits with his parents and with a -- with a  
23  friend, yes, I did.

24           Q.    All right. Those don't seem to be in the list  
25  of the sources of information in your report.

1           A.    Okay.  That is an obvious error that I'm -- that  
2 I'm not trying to hide because I spoke to you about those  
3 videos.  We had a long conversation about the videos.

4           Q.    Now, you said that you don't like to review  
5 anything until you interview the Defendant; is that right?  
6 Because you want to be fresh.

7           A.    I try to do -- yes, I try to do that.

8           Q.    You don't want to have your opinion predisposed  
9 by anything?

10          A.    Yes.  By what other people are saying of the  
11 person, yes.  I try not to review other reports unless  
12 (indiscernible) --

13          Q.    But you did review the videos before you went to  
14 see Thomas Mosley.

15          A.    Those were not -- that was him.  I was -- that  
16 was direct -- I consider that a direct observation.  It's  
17 -- it's -- it's actually called a naturalistic  
18 observation.  It is the person functioning in their  
19 environment.  That is not somebody else's report.  That's  
20 his report of himself.

21          Q.    So the answer is, yes, you did review the videos  
22 before you went to see Thomas Mosley?

23          A.    Actually, I don't know that.  Actually, I don't  
24 -- I don't believe so because after we had all these  
25 conversations, I remember telling you that, Well, they

1 sent me some videos that I haven't watched, and that I  
2 eventually watched them and we then had a conversation  
3 about that.

4 I cannot remember. Well, let's just say I did.  
5 Again, that's not somebody else's report of him. That's  
6 his report of himself. That's not a report that -- that's  
7 someone who's -- who's got their own interpretive bias or  
8 what have you. That was him. That's a direct  
9 observation.

10 So that would be fair game to look at before the  
11 evaluation, but I don't recall looking at that before the  
12 evaluation.

13 Q. You don't recall telling me that you saw the  
14 videos and that was everything you needed to know?

15 A. I recall telling you I saw the videos. But it  
16 is -- they are pretty telling. That, and all of the other  
17 things that I received. The -- the inmate request. It is  
18 pretty telling. I mean, it says a lot about his level of  
19 function. It says a ton.

20 I mean, I watched one of the videos where he was  
21 talking with his mom, and they -- their house was  
22 apparently down to studs. And one of the measures of --  
23 of intellectual functioning or cognitive abilities is what  
24 we call a perceptual reading. So you can -- you can have  
25 the ability to -- to finish a novel situation that's not

1 finished. So, studs.

2 I mean, I've sat there and listened to him say,  
3 Well, I know this -- this is going to be the -- this is  
4 going to be the bedroom, right? Or this is going to be  
5 where the door goes, right? So that's -- I mean, I'm  
6 looking, and I didn't -- I didn't see it. I didn't see  
7 what he's talking about, but his mom agreed that's what it  
8 was.

9 So it did say a lot. It did say a lot. It said  
10 a ton about his -- his level of adaptive functioning. It  
11 spoke very loudly to that. And I think if you give those  
12 videos to any other competent psychologist, they'd tell  
13 you the same thing.

14 Q. Dr. Railey, I want to talk to you about your  
15 resumé.

16 A. Uh-huh.

17 Q. I'm feeling like -- that your resumé is State  
18 Exhibit 1.

19 Do you have a copy?

20 A. I -- I -- no, I don't carry my resumé around.

21 Q. Do you need a copy?

22 A. Probably because I don't -- I don't remember all  
23 the stuff that's on there.

24 MS. RUSSELL: Your Honor, may I approach the  
25 witness?

1 THE COURT: Yeah.

2 MS. RUSSELL: Let the record reflect that I'm  
3 showing Dr. Railey a copy of his resumé, which is  
4 State Exhibit Number 1.

5 BY MS. RUSSELL:

6 Q. So, Dr. Railey, I noticed that the resumé is  
7 long, and there are lots of very short appointments,  
8 especially since 2020. And --

9 A. So which -- which page are you referring to?

10 Q. Well, just in general, but I'm going to start by  
11 looking at page 4 of 10.

12 A. 4.

13 Q. Professional Experience: University teaching.  
14 Now, it says here that you were an Assistant Professor of  
15 Psychology, (Tenure Track) at Tallahassee Community  
16 College.

17 A. Uh-huh.

18 Q. But that was from 2014 to 2016. Did you ever  
19 make it off tenure track to get tenure?

20 A. I think -- I -- I think I went on a military  
21 deployment, if I'm not mistaken. I got assigned to  
22 Tripler Army Medical Center in Hawaii. I think that's  
23 when that happened. And -- and I probably just didn't go  
24 back. I'm not sure, but I do -- around this time, I had  
25 -- I had -- I had two or three military assignments. So

1 you have to -- I mean, you're gone for a period of time.

2 Q. So the question was: You were on tenure track,  
3 but you didn't get tenure, did you?

4 A. No. No. I didn't want tenure anyways. I was  
5 -- I was in the process of continuing to build my  
6 practice, but -- but, no, I didn't.

7 Q. Okay. Then from May of 2008 to May of 2009, you  
8 had a 1-year stint at Taylor Correctional?

9 A. Where were you?

10 Q. Oh, sorry. Now I'm on page 3 of 10. So from  
11 May of 2008 --

12 A. Okay. So --

13 Q. -- to May of 2009, you had a 1-year stint --

14 A. So this is missing --

15 Q. -- at Taylor Correction?

16 A. This is missing -- I don't -- I don't see dates  
17 on this one.

18 THE COURT: My copy has no dates either.

19 THE WITNESS: But that was a short stint at  
20 Taylor Correctional. Like I said, I worked for the  
21 Department of Corrections for 14 years altogether.  
22 At this present time, if I wanted to go back -- I --  
23 I get job offers from corrections at least once a  
24 week, but I don't -- I don't like the environment. I  
25 left at that time because I did not like the



1 environment, what was going on. Things were  
2 changing.

3 So that -- yeah, I left there. I left Taylor  
4 Correction. If that's what you're -- if that's what  
5 you you're getting at.

6 MS. RUSSELL: May I approach the witness, Your  
7 Honor?

8 THE COURT: Sure. What do you have?

9 MS. RUSSELL: I have a different resumé, so I'm  
10 going to ask him to authenticate it. It was the one  
11 that he e-mailed to me, so I was working --

12 THE COURT: Okay.

13 MS. RUSSELL: -- from my own records, and I  
14 guess the State doesn't have the dates for his  
15 employment, so.

16 BY MS. RUSSELL:

17 Q. Dr. Railey, is this a copy of the resumé that  
18 you sent to me?

19 A. Because I revised my resumé. This -- yeah. I  
20 don't know if I e-mailed this to you, but this -- I mean,  
21 I -- you don't do a resumé without dates. I mean, this  
22 looks more like what I -- so you're saying I e-mailed this  
23 to you?

24 Q. I'm saying that you e-mailed this copy --

25 A. This one. This right here.

1 Q. -- of this resumé with the dates that is not  
2 marked as an exhibit --

3 A. Okay.

4 Q. -- but I'm asking you to identify it for the  
5 record --

6 A. Yeah. Yeah. This -- this --

7 Q. -- so that I can mark it as an exhibit and ask  
8 you some questions about it with the dates, if --

9 A. This -- this looks --

10 Q. -- that makes sense.

11 A. Yeah.

12 Q. So is what I'm showing you --

13 A. Yeah, it's got -- it's got the dates. I mean,  
14 the assignments are pretty accurate, as far as I can tell.  
15 I don't see anything out of place.

16 MS. RUSSELL: Excellent. I'm going to premark  
17 it. Then I'm going to ask that it be entered into  
18 evidence.

19 THE COURT: I'm going to make it 1A. Are you  
20 find with that?

21 THE CLERK: Yes.

22 MS. RUSSELL: Joint 1A or?

23 THE COURT: That's fine.

24 MS. SULLIVAN: Yeah. That's fine.

25 BY MS. RUSSELL:

1 Q. Dr. Railey, I'm going to hand you an additional  
2 copy so that you won't be testifying from memory.

3 A. Uh-huh.

4 MS. RUSSELL: So can we ask that Defense 1A be  
5 entered into evidence?

6 THE COURT: I think there's a stipulation to it,  
7 but, yes.

8 MS. RUSSELL: Okay.

9 (Defense's Exhibit 1A was admitted into  
10 evidence.)

11 BY MS. RUSSELL:

12 Q. So, Dr. Railey, now that we're working with the  
13 same document, could I direct your attention again to  
14 page 3 of 10. And you did a 1-year stint at Taylor  
15 Correctional Institution, and that was from five -- May of  
16 2008 to May of 2009, right?

17 A. Yes. That -- that was -- that was the point at  
18 which, if you look back at my Articles of Incorporation of  
19 Railey and Associates, I took this position to buy me some  
20 time to actually open up my practice and get it -- get it  
21 rolling. So, yes, this is -- that's accurate.

22 Q. Okay. 16 months at Twin Oaks Liberty Juvenile  
23 Unit Specialized Treatment Program. That was from May  
24 2009 to 10/2010 --

25 A. Yeah.

1 Q. -- 16 months?

2 A. I left that assignment because I got deployed to  
3 Afghanistan.

4 Q. Okay. Then at Darnall Army Medical Center from  
5 May of 2020 to June --

6 A. Yeah. That was a --

7 Q. -- of 2021, one year.

8 A. That was a military assignment. I was assigned  
9 to the Deployment Readiness Center. That was at -- that  
10 was -- I got orders. I got military orders, so you will  
11 go. So I had to drop everything and go.

12 Q. Okay. But that was just for a year?

13 A. Yes, it was for a year.

14 Q. Okay. Then you got a job as a staff  
15 psychologist for the Department of Veterans Affairs. That  
16 was --

17 A. Yes.

18 Q. -- from June of 2022 to December of 2022. So --

19 A. Yeah.

20 Q. -- 6 months?

21 A. Oh, yeah. That was -- that was a horrible  
22 experiment. Again, that -- that job, if I want it back, I  
23 could get it. I don't want it. I don't like the way they  
24 do things, how they handle veterans. So I can't tell them  
25 what to do with their -- it's their place. So the best

1 thing to do is to leave, which is what I did.

2 Q. Then you were at Vets Recover as the Chief  
3 Clinical Officer. That was from December '23 to June of  
4 '24. Another 6-month assignment. What happened there?

5 A. Yes. You can -- you can call Colonel  
6 Kirkpatrick, and what he'll tell you is that that's  
7 substance abuse. That's not my specialty. He had a lot  
8 of fundraising to do. He wanted my help with some of that  
9 stuff, and I told him when the next opportunity came for  
10 me to leave, that's what I would do.

11 So that -- that was never intended to be a  
12 long-term stint because, again, I'm a forensic  
13 psychologist, not substance abuse. I'm very uncomfortable  
14 in that environment because, frankly, I didn't know what  
15 the heck I was doing.

16 Q. So was the next opportunity Carter Psychology  
17 Center?

18 A. Yeah.

19 Q. Is that what you jumped over to?

20 A. Yep. Yep.

21 Q. Okay. So you moved to Carter Psychology Center  
22 in August of 2024, and you stayed until May of 2025. So  
23 that was about a 9-month stint with Carter?

24 A. Yeah, I guess. Yeah.

25 Q. And when did you get on the court-appointed list

1 here in Pinellas?

2 A. I don't know. I can't recall now.

3 Q. You were on the court-appointed list about 6  
4 months, something like that?

5 A. I'll take your word for it. I -- I don't -- I  
6 don't -- I don't carry around dates like that.

7 Q. Now, you said earlier in your direct exam that  
8 you had significant differences of opinion with the people  
9 at Carter. Tell me about that.

10 A. That -- okay.

11 THE WITNESS: I signed a nondisclosure  
12 agreement. Your Honor, do I have to answer these  
13 questions?

14 THE COURT: Where are we headed with this?

15 THE WITNESS: Your Honor, it's not to --

16 THE COURT: No. No.

17 THE WITNESS: -- protect me. It's to protect  
18 them.

19 THE COURT: Not you. I'm asking the lawyer.  
20 Where are we heading for this?

21 MS. RUSSELL: Your Honor, we have some credible  
22 information that he was actually terminated --

23 THE WITNESS: I see. I see. That's --

24 THE COURT: Hold on.

25 MS. RUSSELL: -- for poor performance.

1 THE WITNESS: -- that's how they --

2 THE COURT: I'm not asking you to answer the  
3 question. Is that credible information here?

4 MS. RUSSELL: No.

5 THE COURT: Okay. Then don't ask the question.  
6 Move on.

7 MS. RUSSELL: Am I allowed to ask him if he left  
8 voluntarily?

9 THE COURT: Sure.

10 THE WITNESS: I can answer that.

11 THE COURT: Yeah.

12 BY MS. RUSSELL:

13 A. Yes, I did. In fact, it was my -- I've got  
14 e-mails and text messages to prove everything I'm saying  
15 well, I can't give them to you, but, yes, I did. It was  
16 my decision to leave.

17 Q. And is it a written Nondisclosure Agreement?

18 A. Yes.

19 Q. All right.

20 A. My expellment, the practice manager can  
21 substantiate that.

22 Q. All right.

23 A. It's a one-way agreement. They can say whatever  
24 they want to say about me, but I can't tell them. That's  
25 specifically written in there. I don't -- I don't do that

1     anyway, so it doesn't matter to me.

2           Q.     Okay.

3           A.     I don't have anything.

4           Q.     Dr. Railey, do you recall giving an evaluation  
5     in the James Peoples case?  It's a murder case here in  
6     Pinellas County?

7           A.     I don't.

8           Q.     It's Case Number 24-01492-CF.

9           A.     Okay.  I don't -- I don't remember.

10          Q.     You were appointed to the case.

11          A.     Okay.

12          Q.     And then you decided to violate the Constitution  
13     by interviewing Mr. Peoples without Counsel present two  
14     times.

15                 MS. SULLIVAN:  I object to the relevance of  
16     this.  I don't know where she's going or what this is  
17     about, and how it's relevant to Mr. Mosley.

18                 THE COURT:  What are we doing here?

19                 MS. RUSSELL:  He, obviously, did not use the  
20     standard practice.

21                 THE COURT:  How would I know that?

22                 MS. RUSSELL:  Well, we can go look at the --

23                 THE COURT:  It's kind of a collateral issue for  
24     this, right?

25                 MS. RUSSELL:  I think whether --



1 THE COURT: I'm asking you -- I'm not arguing.

2 MS. RUSSELL: Okay.

3 THE COURT: I'm asking for conversation, so I  
4 understand what you're trying to do and how and if  
5 and when we can do it.

6 MS. RUSSELL: Okay.

7 THE COURT: That's all I'm asking.

8 MS. RUSSELL: Your Honor, Dr. Railey was  
9 appointed to Mr. Peoples' case while he was on the  
10 court-appointed list. He interviewed Mr. Peoples  
11 without Counsel present despite the Court order that  
12 Counsel be notified and present of his evaluation.  
13 It was brought to the Court's attention, and he was  
14 removed from the case.

15 So that's what happened in Peoples.

16 THE COURT: Okay.

17 MS. RUSSELL: And where it goes to is whether or  
18 not Dr. Railey is capable of following the orders of  
19 the Court and the rules of forensic exams.

20 THE COURT: Okay. Is there anything to suggest  
21 that he didn't follow the rules in this case?

22 MS. RUSSELL: Well, I'm going to get there.

23 THE COURT: Well, let's do that first before we  
24 get into some collateral issue. You have to make it  
25 relevant.

1 MS. RUSSELL: All right. I'll put that aside  
2 for a minute.

3 BY MS. RUSSELL:

4 Q. Dr. Railey, your website says that you are a  
5 specialist in autism.

6 A. I don't think it says -- I -- I don't -- I don't  
7 set myself up as a specialist. I know how to conduct the  
8 evaluations, but I don't think my website identifies me as  
9 a specialist.

10 In fact, I'm not even sure if on my website, I  
11 even -- if I listed it, it said I can conduct the  
12 evaluation. So, yes, I can. I can do that. I have the  
13 relevant training to do that.

14 Q. But you don't consider yourself a specialist in  
15 autism?

16 A. I don't have -- I -- I don't think I have all  
17 the postdoctoral training that I have in forensic  
18 psychology to say I'm a specialist, but I'm competent to  
19 -- to conduct that evaluation.

20 Q. Okay. So you evaluated Thomas Mosley for autism  
21 as a non-specialist, and found that he didn't have autism  
22 or Autism Spectrum Disorder; is that correct?

23 A. Yes, that is correct.

24 Q. And you did no objective testing for autism?

25 A. I did not. And the reason I did not is because

1 it did not appear indicated. And that -- that is -- that  
2 is, in and of itself, I'm -- as -- as a doctor in this  
3 case, I'm not going to put somebody through something that  
4 I -- I don't -- I don't see any clinical indication that  
5 they need it.

6 I mean, I just -- I don't -- I don't -- it says,  
7 evaluate, but that evaluation could be just about  
8 anything. I did not see -- there were no symptoms  
9 indicated there was nothing, no presentation whatsoever.

10 In my interaction with him, up to that point  
11 when I started doing the evaluation, I was prepared to do  
12 it, and there was no -- in the videos I watched, I didn't  
13 see any indication of that. And in the writing samples of  
14 his writing and requesting information about his court  
15 case, I didn't see any indication of that.

16 Now, if there -- if there were an indication of  
17 Autism Spectrum Disorder, at that point, I would have made  
18 a beeline to his -- to his mom to ask more questions, but  
19 there was just no indication of it. There was no reason  
20 to do that -- to do a MIGDAS or certainly not -- I can't  
21 do the ADOS. I can't bring that in there. I mean, those  
22 are really the -- the two most relevant evaluations to do.

23 And the ADOS is not -- you want me to roll in  
24 here with a big tub of, you know, stuff -- toys and stuff  
25 and so I -- I didn't see any need for it.

1           So if -- if there's something you can disagree  
2 with, you can disagree with my clinical judgment, but I  
3 think -- I think as a licensed psychologist licensed to  
4 practice in the State of Florida, I can make that  
5 decision.

6           Q.    You looked at no historical data for autism?

7           A.    I'm sorry?

8           Q.    You looked at no historical data to determine if  
9 Thomas Mosley had autism?

10          A.    I'm looking at his present presentation.

11          Q.    You did no collateral interviews with family to  
12 assess his autism, right?

13          A.    I'm looking at -- as an adult, I'm looking at  
14 his present presentation. I've evaluated several adults,  
15 plenty of adults, I didn't talk to their parents. I have  
16 some I've made a diagnosis and some I didn't. But he's an  
17 adult. Typically, we want to get that type of information  
18 that comes to a child because they cannot communicate as  
19 well as -- as well as an adult can.

20          Q.    So you saw no signs of speech-language delays in  
21 the school records that might have suggested autism, did  
22 you?

23          A.    His present presentation did not indicate that.  
24 It did not, so I didn't see any need to do it. I mean, --

25          Q.    Okay.

1           A.    -- when I was -- when I was a kid, I had -- I  
2    had to take speech therapy. I had speech problems. I  
3    have -- one of my sons had to do that. He's a drone  
4    technician in the Air Force now, so that -- that's --  
5    that's my -- my issue with a lot of the school record  
6    stuff is that you've got to look at where people are right  
7    now. Where is this person functioning at right now?

8                   I think it's dangerous to look at people's  
9    history and sort of keep them -- make that -- they can't  
10   live that down. His functioning right now is when I --  
11   when I interviewed him, I didn't see any indication of it.

12                  And, again, the video, I mean, the -- I don't  
13   know how long it was. I -- I wish I had wrote that down,  
14   but it was substantial, and there was no indication of  
15   Autism Spectrum Disorder whatsoever.

16           Q.    So when you said the interview is substantial,  
17   are you talking about the videos when he was talking to  
18   his mother and his brother Bernard, or are you talking  
19   about the interview that you did at the Pinellas County  
20   Jail while I was present?

21           A.    I say both were. I say both were because I -- I  
22   had a chance -- in interacting with him, I can assess this  
23   as I -- just like I can do a Suicide Risk Assessment, I  
24   can do that -- I can do that verbally. In a legal  
25   setting, though, I'm going to have to document that with

1 some -- with some data. There was no indication of it.

2 And, frankly, just the -- just the length of  
3 time that I'm looking at these videos, that was pretty  
4 significant. There's -- there's no way to argue that  
5 down. In my -- in my conscience, I could not -- I mean, I  
6 can't just -- I can't just set that aside. I can't even  
7 set aside my interaction with him. I just didn't see it.

8 So if you disagree with my clinical judgment,  
9 you know, that's one of the things, as a psychologist, I'm  
10 always accustomed to. When I tell people they don't have  
11 ADHD, well, that's -- that's a firestorm, too. But I -- I  
12 mean, you get -- it's your prerogative to disagree with my  
13 clinical judgment, but my clinical judgment stands. It  
14 stands.

15 Q. So tell me all the objective tests that you're  
16 trained to use to diagnose autism as a non-specialist in  
17 autism.

18 A. The Gillan -- Gilliam Autism Rating Scale, the  
19 Autism Diagnostic Observation Schedule, and the -- and the  
20 Montiero -- oh, gosh. I can't remember what the acronym  
21 stands for, but the acronym is MIGDAS. Those are -- and  
22 -- and to be honest with you, the only one if -- if I  
23 evaluate a kid for Autism Spectrum and I use anything but  
24 the ADOS, they're not going to be eligible for ABA  
25 services.

1           So really, what they're pushing is -- is I don't  
2 agree with it, but that's what they're pushing. So if I  
3 evaluated a kid, I would certainly use that just to --  
4 just to satisfy the political climate. But -- but the  
5 reality is, is that -- an observation tool, and there are  
6 plenty of those, as well. You don't need any training for  
7 those.

8           As a -- as a psychologist, I mean, that's  
9 something you self-train. You read the -- you read the  
10 manual and you -- and -- and you practice it with another  
11 peer and there it goes. This -- this is -- for us, it  
12 shouldn't be. If it is, we've got a problem. It's not  
13 rocket science to do this.

14           Well, for him, again, I maintain that there was  
15 no reason to administer any of those measures. I did not  
16 see anything that was worthy of that.

17           Q. Well, understanding that an autism diagnosis  
18 isn't rocket science, I'm curious if you've ever worked  
19 with a speech-language specialist in a diagnosis of  
20 autism?

21           A. Yes, I have. I -- I've -- well, I've read their  
22 information, but the speech-language pathologist is not --  
23 is not credentialed to -- to render that diagnosis.

24           Q. Understood. But have you ever worked with one  
25 outside of the context of this case --

1 A. Yes, I have one of the --

2 Q. -- in autism?

3 A. One of the -- when I'm evaluating the kid, one  
4 of the -- one of the reports I want to see is what they're  
5 saying because a lot of times they get into some in-depth  
6 things that I'm not going to see there. But, again, I got  
7 a chance to communicate with him for an extended period of  
8 time. I got a chance to watch his communication, and  
9 there was just nothing there for Autism Spectrum Disorder.  
10 There was just absolutely nothing there.

11 MS. RUSSELL: May I approach?

12 THE COURT: Yes.

13 MS. RUSSELL: May I approach the witness?

14 THE COURT: Yes. What exhibit are you bringing?

15 BY MS. RUSSELL:

16 Q. Dr. Railey, I'm going to show you what's been  
17 marked as Defense Exhibit 13, which is the report of Amy  
18 Fritz. Defense 14, Childhood Speech Language Report; and  
19 Defense Number 15, another fourth grade Speech Language  
20 Report.

21 A. Okay. So evaluation 2013, 2011, and -- okay.  
22 This one is -- okay.

23 Q. So would it change your opinion about Thomas  
24 Mosley not showing any signs of ASD or autism if you had a  
25 Speech Language Report showing that he scored only 59 on



1 the Peabody Picture Vocabulary Test, which strongly  
2 correlates to IQ, as is in that exhibit that you're  
3 looking at?

4 A. Say that it -- it strongly correlates to IQ?

5 Q. Right.

6 A. Okay. I didn't know that.

7 Q. All right.

8 A. Where did that -- I didn't --

9 Q. Well, that's in this report.

10 A. So that person said that, but I don't -- I mean,  
11 the only -- the only -- there's several instruments that I  
12 -- that I know of that correlate strongly with IQ, and  
13 I've never -- in fact, we, in psychology, we don't even  
14 use that. I mean, that -- that was shelved years ago.

15 THE COURT: We don't use what?

16 THE WITNESS: The Peabody.

17 THE COURT: The Peabody?

18 THE WITNESS: Yes. We don't use the Peabody.

19 That's not something -- I mean, actually, the Peabody  
20 is more of a projective test that, in the past, has  
21 been used to -- it was very -- it was a useful tool  
22 in determining particular girls if they -- if there's  
23 been some sexual abuse or something like that. I  
24 remember it being used, you know, in my younger years  
25 on something like that.

1 But I've never -- I've not read an article -- I  
2 cannot say with all certainty that that article  
3 doesn't exist, but I'm saying I, in my conversations  
4 with my peers and in my reading it, I've not seen  
5 anywhere where the Peabody strongly correlates with  
6 IQ.

7 And this person -- who -- if she -- I mean,  
8 she's -- I mean, no disrespect to her, but she's a  
9 speech and language pathologist. I mean, they don't  
10 have any kind of understanding of IQ. And -- and I  
11 think if you look at their -- their training, they  
12 probably -- they've not had enough coursework to  
13 understand how to use and interpret tests because  
14 really only a psychologist is allowed to do that per  
15 Florida Statute.

16 So, I mean, I see this report, but my judgment  
17 -- my judgment is my judgment. It's not going to --  
18 it's not going to change my judgment.

19 BY MS. RUSSELL:

20 Q. So the --

21 A. That's going to be up to the Court.

22 Q. I'm sorry. Go ahead.

23 A. That's going to be up to the Court. I mean,  
24 Your Honor, can -- Her Honor, can -- she can overrule my  
25 testimony -- my report, and my feelings won't be hurt for

1 that. But I'm looking at what I saw, what I observed, and  
2 that's going to stand above anything anybody else says.  
3 It just is.

4 And especially -- I mean, unless you have some  
5 argument, but with a speech and language pathologist who  
6 put this together, absolutely not.

7 Q. All right. My question was -- I'm not sure if  
8 we got to the answer -- would the fact that Thomas Mosley  
9 scored a 59 in June of 2025, so recent times, --

10 A. Uh-huh.

11 Q. -- then now. We're talking about the now. That  
12 he scored a 59 on the Peabody Picture Vocabulary Test,  
13 change your opinion about his having present symptoms of  
14 autism or ASD?

15 A. No. I've -- I've not -- I don't know of any  
16 publications that talk about the Peabody being an  
17 indicator of Autism Spectrum Disorder. I mean, I haven't  
18 read the -- I haven't read any articles that -- that say  
19 that. I mean, I've -- I've gotten training from some of  
20 the -- I mean, the best facility in the country, the ABA  
21 Center over in Atlanta. I mean, I've sat with these folks  
22 and learned from them. I've not -- I've not heard this.  
23 So I've not read it. I've not seen it.

24 So I'm not going to take it from a speech and  
25 language pathologist because -- because my understanding

1 of the construct is much more comprehensive than -- than  
2 his or hers.

3 Q. Could you turn to Table 2 on that Fritz report.  
4 Table 2. Unfortunately, it doesn't have page numbers on  
5 it, which I understand makes it a little complicated, but  
6 I feel like it's maybe on the fifth page.

7 A. Is it towards the back or in the middle?

8 Q. No, it's right in the middle, and it's Table 2:  
9 CELF-5 Subtest Scores.

10 THE COURT: Which exhibit?

11 MS. RUSSELL: It is. Can you see my --

12 THE COURT: Oh, CELF. I've got it, yes.

13 THE WITNESS: Oh, okay.

14 MS. RUSSELL: CELF, C-E- -- right.

15 BY MS. RUSSELL:

16 Q. So, Dr. Railey, as you look at that chart, you  
17 can see the raw scores and age equivalency for word  
18 classes, following directions, formulated sentences,  
19 recalling sentences, understanding spoken paragraphs, word  
20 definitions, sentence assembly, semantic relationships,  
21 and pragmatic profiles.

22 Does any of that change your opinion that Thomas  
23 Mosley might be exhibiting symptoms of autism or ASD  
24 presently?

25 A. No.

1 Q. What about a little bit further down, the  
2 results of the Social Responsiveness Scale, 2nd Edition or  
3 the SRS-2, does --

4 A. Okay.

5 Q. -- that change your opinion?

6 A. No. I -- social responsiveness. If you -- if  
7 you -- if you listen at the -- well, it's all in the  
8 transcript when you asked for my notes. He has good  
9 social responsiveness. I've seen it, you know? For  
10 instance, I mean, that was one of the big things. You  
11 know, the way -- the way he -- I mean, he can reciprocate  
12 with his mom, you know. He didn't leave her hanging with  
13 the car and all that.

14 But, no, this -- this does not change my mind.  
15 Because one of -- one of the things that I understand,  
16 okay, is that when you -- you can -- an instrument, even  
17 the ones that I administer, can be manipulated. They can.  
18 I mean, you can tank it. I mean, you can. But the one  
19 thing in all of this that cannot be manipulated is my  
20 clinical judgment based on my years of experience that go  
21 well beyond my -- my time at school.

22 Like I said earlier during direct, my education  
23 started in 1968. And in that time -- and we didn't know  
24 what Autism Spectrum was. I went to school with a lot of  
25 kids. We just didn't know what it was back then. In

1 fact, we're just finding out what it is.

2 But the one thing I do know is that this -- this  
3 -- none of this changes my mind about -- about my  
4 conclusion.

5 Q. So the results on that SRS-2, the CELF Report:  
6 Total raw score 79; T score, 74; Parent report: Raw score  
7 128, T score 81.

8 So it seems like the parent report by Renee  
9 Mosley actually had a higher score than the CELF report,  
10 right?

11 A. Uh-huh. I've seen that.

12 Q. Does that --

13 A. I've seen that tons of times. Again, I have to  
14 reconcile that with my clinical judgment, with my  
15 observation. I mean, that doesn't surprise me. I mean,  
16 CELF report, if you -- again, this is something else you  
17 can look at for yourself. You don't have to take my word  
18 for it, but in the -- in the world of psychology, anything  
19 you measure, when the -- the most problematic measure is  
20 anything that self report. Things that are more  
21 objective, statistically based. The only thing related to  
22 the observations didn't convert to statistics, but the  
23 problem is the fundamental premise that something like  
24 this is based on self report.

25 Now, if there was some sort of instrument, you

1 know, that had -- the longer an instrument is the -- the  
2 more valid it is, and we can put validity indicators in  
3 it, and we'd have a better -- we'd have a better  
4 understanding of response patterns.

5 But with something like this, we don't have a  
6 handle on that, and that's the one thing that this  
7 individual clearly doesn't understand. If you -- if you  
8 look through her resumé like you looked through mine,  
9 you'll see, like a course -- a simple basic course that  
10 are used in the interpretations of the test, that's not  
11 going to be on the transcript, and that's why they tend to  
12 -- which is why they're not allowed to make this  
13 diagnosis.

14 Insurance companies don't take it. Schools  
15 won't take it. Nobody is going to take it because they  
16 don't have -- they don't understand how to diagnose this.  
17 And that's -- that's what's giving me the opportunity to  
18 work with speech pathologists. I mean, they give me their  
19 information and I triangulate it. I look at -- I -- I'm  
20 going to -- I'm going to put most of the weight on what I  
21 -- what I'm actually seeing at the time.

22 Q. Dr. Railey, I want to switch gears for a minute  
23 and ask you --

24 A. Sure.

25 Q. -- to look at Exhibits Number 14 and 15 that you

1 have there, the two Speech Language Reports.

2 A. Okay.

3 Q. Now, those are historical data from Thomas  
4 Mosley's elementary school.

5 A. Sure.

6 Q. And you would agree that one of the incredible  
7 things about looking at historical data, right, is that  
8 malingering really doesn't come into play; isn't that  
9 right?

10 A. Malingering doesn't come into play as much, but  
11 -- but neurological maturity does. And that's why there  
12 -- that's why there are certain diagnoses we don't -- we  
13 don't diagnose. Autism Spectrum isn't one of them. We  
14 want to catch that one early, unlike ADHD and some of  
15 these other things.

16 But when it comes down to social interactions,  
17 if you haven't had in your environment when you go to  
18 school, you're not going to be able to show it. But  
19 again, this is -- this report is -- this is 20 -- that's  
20 one that's 20 -- these aren't numbered, so I don't know  
21 which one -- Number 15 is, but one is 2013. It's 2025.  
22 And the other is 2011. It's 2025.

23 So I'm looking at where he is, again, right now.  
24 I'm not going to say I don't care. If I'm -- if I'm  
25 interviewing a person for a job, and I want to see where



1 they came from, and they -- I care where they came from at  
2 that point because it shows me their -- you know, how they  
3 can -- they -- they're reliable, they can set a goal, and  
4 get to it, and make it happen.

5 But when it comes to functioning, I'm looking at  
6 -- I'm not going to -- I'm not going to dwell in his past,  
7 what he looked like back then. I looked like this, too.  
8 I can show you reports about myself, when I -- I looked  
9 like that because my environment was -- it was  
10 problematic, just to put it nicely. So I had a long way  
11 to go to -- to outrun that. So that's what -- that's what  
12 I prefer to focus on.

13 But for him, right now, that's what I saw. The  
14 video will back up what I'm saying. And, again, I think  
15 if you brought in any jury and you show that video to  
16 them, they're going to think the same thing.

17 Q. So the wonderful thing about historic data, when  
18 we use it in either ID or autism diagnosis is that when a  
19 child is in elementary school, there is no secondary gain,  
20 right?

21 A. No, there's not.

22 Q. Okay. There's no avoiding the death penalty or  
23 avoiding consequences, right?

24 A. Correct. Uh-huh.

25 Q. There's no trying to pretend to be something

1     you're not?

2             A.     Correct.

3             Q.     It's just you and a teacher figuring out why it  
4     is that you have a lot of deficits.

5             A.     Uh-huh.

6             Q.     Is that fair?

7             A.     Yeah.

8             Q.     So these historic records, you would agree,  
9     might be important?

10            A.     Again, if I -- if I had -- if I only had access  
11     to one set of records, current records or historical  
12     records, I'm looking at current records. I'm -- and,  
13     again, and then it's got to be something -- I'm -- I'm not  
14     going to just take anybody else's view, you know?

15                    Because the problem with a lot of stuff -- a lot  
16     of this stuff is, you know, we -- we -- this country has  
17     gone through a period of time where we -- and we're kind  
18     of getting back to that point -- we did a lot with labels.  
19     We label people, and we found out that, you know, when you  
20     get a label like this, you can't -- you can't overcome it.

21                    I've had kids diagnosed with -- with both of  
22     those, and then they get to a point when they get 18, they  
23     want to do this or do that and they want to go into the  
24     military. Then they come to me, Can you help me get this  
25     removed? So it's all about the current function.

1           I mean, if Mr. Mosley were trying to apply for  
2     some job that requires a security clearance, and they were  
3     holding this over his head, I'm pretty sure, at that  
4     point, we don't want to look at the past records. It's  
5     about where he is right now. So the same holds true for  
6     this.

7           Q.     It's interesting because fitness for duty is a  
8     lot different than a neurodevelopmental disorder that's  
9     usually present at birth.

10          A.     No, that's not what I'm saying. That is -- I --  
11     that's not -- I think you misunderstood what I was saying.

12                 I understand what fitness for duty is because I  
13     -- I do those, as well. I'm not talking about that. I'm  
14     -- what I'm talking about is ability to function. And if  
15     someone has that type of disorder, if you have that in  
16     your history, you can't even get a security clearance.  
17     You can't get one.

18                 I've had people -- we've had people enlist in  
19     the Army with that in their history, and they come for  
20     their first deployment where they -- where we look at  
21     everything, and we have to send them home and put them out  
22     of the Army. And -- and it's -- I don't agree with it,  
23     but, you know, that's what -- that's what the regulations  
24     say.

25                 So, again, it is dangerous -- it is dangerous to

1 -- I mean, we're talking, you know, it's 2025 now. That  
2 was 12 years ago. 12 years ago. So if that's what it  
3 said back then, that's what it -- I mean, I'm not going to  
4 -- I'm not disputing that that's not what he looked like.  
5 I wasn't there, so I don't know. So I don't -- let's just  
6 say that's what he looked like, but that's not what he  
7 looks like right now.

8 Q. Dr. Railey, could you look at Exhibit 14,  
9 please?

10 A. Which one is it?

11 Q. 14.

12 A. But these aren't -- oh, wait a minute. Okay.  
13 This one is numbered --

14 Q. 14.

15 A. -- but the others aren't --

16 Q. Right. It's the Language Evaluation Report --

17 A. Okay.

18 Q. -- from Melrose Elementary by Amy King.

19 A. Okay.

20 Q. Do you see that?

21 A. Yes. I got it. Oh, here it is.

22 Q. From 2011.

23 A. Uh-huh.

24 Q. If you can look at the second page of that  
25 report.

1 A. Uh-huh.

2 Q. Mr. Mosley was administered the CELF-4.

3 A. The what? Okay.

4 Q. Except really, he was -- I think it was really  
5 the OWLS and also the TOLD, the Test of Language  
6 Development Intermediate, Fourth Edition.

7 A. Uh-huh.

8 Q. Do you see how his scores were below average,  
9 very poor, poor, average, very poor, below average, going  
10 on to the next page?

11 A. I see -- I see that.

12 Q. And in the subtest on the following page,  
13 listening comprehension, oral expression, oral composite,  
14 he was three standard deviations below the norm since the  
15 standard deviation with the OWLS is 10 and not 15.

16 Does that give you any pause about his --

17 A. No, it doesn't.

18 Q. -- suffering from autism?

19 A. No, it doesn't.

20 Q. And what about --

21 A. Because one of the -- I mean, these -- the --  
22 the tests that they're using, these tests, they don't have  
23 the psychometric power to do what some of the other more  
24 popular things that we use. And this is why, you know,  
25 they're -- they can -- these are the only things they can

1 use. This is all they're allowed to use.

2 And so -- but even if -- even if these -- again,  
3 even if all this was accurate, you know, 15 years ago  
4 about him -- and, again, I'm not going to dispute that. I  
5 -- I have no place to do that, and that's not my intent  
6 here.

7 My intent is to talk about his current level of  
8 function. That's all that -- that's all I can talk about.  
9 So none of this stuff -- none of this stuff you gave is  
10 going to change my mind.

11 Q. You mentioned you've used the Gilliam Autism  
12 Rating Scale, correct?

13 A. Yes.

14 Q. Would it change your opinion about Thomas  
15 Mosley's autism or ASD to know that he was given the  
16 Gilliam Autism Rating Scale by Dr. Valerie McClain and  
17 that he was found to be a Level 2?

18 A. Wow. Well, I would say I would need to have a  
19 conversation with Dr. McClain professionally. There is --  
20 no. I mean, there's -- no. No. And, especially -- okay.  
21 I -- I want to try to say this as -- I'm sure among  
22 attorneys -- I'll just fixate it like this. I'm sure  
23 among attorneys, when things go down and things happen,  
24 there -- there's -- there's some attorneys who -- whose  
25 proficiency is more valued than others, okay?

1           So all I want to say is that -- and the Gilliam  
2 is also self-rating, which is -- which is one of the --  
3 and -- and there's no -- I mean, you just circle some -- I  
4 mean, it's self report. So that's usually used in  
5 conjunction with one of the other, for the ADOS and the  
6 MIGDAS. It's used in conjunction with that as -- as a  
7 second measure.

8           It also can be used, you give it to another  
9 parent, put them in a separate room and let them answer it  
10 on their own. But this is not going to change my mind  
11 based on what I saw and what I observed, which is the  
12 totality of my interactions with -- my face-to-face  
13 interactions with him, in addition to the video that I  
14 watched.

15           Mr. Mosley does not suffer from Autism Spectrum  
16 Disorder.

17           Q. I'm going to switch gears for a minute and talk  
18 about competency, Dr. Railey. Tell me all the factors you  
19 can think of that affect competency over time.

20           A. I'm -- I'm not -- can you -- I'm not sure I  
21 understand that question. I mean, if a person is  
22 suffering from a disorder, any -- any -- I mean, if a  
23 person is depressed, I mean, that could affect it because  
24 they're going to have poor concentration. So any -- any  
25 disorder can affect competency.

1           Q.    Is there anything else that can affect  
2 competency over time from day to day, since it can wax and  
3 wane from one week to the next or one month to the next?

4           A.    You mean to that degree to affect competency? I  
5 mean, life situations are very extreme, but, again, that  
6 ties into mental health. Mental health disorders, again,  
7 the way the person's life was going at the time, if it's  
8 extreme enough, that might -- that might do it.

9           Q.    What about medications? Would you agree that  
10 whether someone is medicated or not can affect their  
11 competency from day to day?

12          A.    Medication -- to answer you in short, yes. But  
13 the issue -- the problem with medication, again, I -- I've  
14 seen this so many times with medications. And -- and what  
15 I know about psychotic disorders and bipolar disorders,  
16 those are -- that's -- those two are considered major  
17 mental illnesses.

18                If you have those, there is a -- we're not --  
19 and I'm not talking about side effects, I'm talking about  
20 symptoms. If you have either one of those, you are absent  
21 the medication -- that's why we have a lot of people who  
22 are incarcerated because they take the medication, they  
23 feel better. Then when they feel better, they feel, Oh, I  
24 don't need this anymore because they don't like the side  
25 effects.



1           So there are a lot of people taking this  
2 medication that really don't need it. There are people  
3 like this in the community, and obviously, there are  
4 people like this who are incarcerated. And when they stop  
5 taking their medications, we don't see anything.

6           One of the things I -- and, again, I -- I should  
7 have -- I'm kinda kicking myself that I didn't, I should  
8 have got a behavior report, but I -- I heard no  
9 outstanding issues with regard to just some anecdotal  
10 information when the guys were escorting me out of the --  
11 out of place. I didn't get any bad reports about that, so  
12 it did not prompt me to -- to ask for any further  
13 information to -- to document it.

14         Q. Dr. Railey, I'm just trying to establish in your  
15 mind what a list is of all the factors that might affect  
16 competency.

17           So let's say mental illness?

18         A. Uh-huh.

19         Q. Medications?

20         A. Uh-huh.

21         Q. And whether or not, for example, people might be  
22 having side effects to the medications or whether they're  
23 not taking the medication they've been prescribed; is that  
24 fair?

25         A. That's possible. Yes.

1 Q. What about stress?

2 A. Stress? I -- I don't -- I don't know about that  
3 affecting competency.

4 Q. That's fair.

5 What about nutrition?

6 A. Nutrition? Malnourishment, yes; but he didn't  
7 have breakfast this morning, no.

8 Q. What about conditions of confinement, whether  
9 you're in a therapeutic setting at a hospital or something  
10 a little bit more violent, like, potentially a jail or a  
11 prison?

12 A. Well, I -- I think, at this point, the way the  
13 rules are set up, I mean, you can't -- there was -- there  
14 was a phenomenon where back during the time when I first  
15 started working in corrections where they had people who,  
16 you know, isolated 24 hours a day. So you can't do that.  
17 You have the ability to interact.

18 So if a person developing -- you can, when  
19 you're isolated, you know, by yourself like that, you can  
20 develop a psychotic disorder. So something like that  
21 would. But affecting competency to -- to the extent that,  
22 you know, you don't -- you don't understand what you're  
23 being charged with, you don't -- you don't know the  
24 fundamental components of a courtroom, the judge, the  
25 prosecutor, the attorney -- defense attorney.

1 I'd like to see it. I hadn't seen it. I hadn't  
2 seen it. So that doesn't say that -- that doesn't -- I'm  
3 not saying it doesn't exist. I'm just saying I have not  
4 seen it in my years of experience.

5 Q. And what about whether or not someone is engaged  
6 in therapy?

7 A. No. I mean, not necessarily. There are a ton  
8 -- I mean, most of the people I've evaluated -- and not  
9 just me, but all the other psychologists -- most of the  
10 people, they should be in therapy, but they're not. So I  
11 would -- I would have to say no to that one.

12 Q. So the order appointing you to this case gives  
13 you access to the Pinellas County Jail medical records,  
14 correct?

15 A. Correct.

16 Q. Did you review any medical records in  
17 conjunction with your opinion?

18 A. No, I did not.

19 Q. Now, you were given records from the South  
20 Florida Evaluation and Treatment Center from Mr. Mosley's  
21 last stay there just prior to your evaluation.

22 A. Yeah.

23 Q. His 83-day stay there.

24 A. Uh-huh.

25 Q. Did you review anything or did anything stand

1 out to you in those records, other than that he was given  
2 the WAIS on February 18th?

3 A. Well, I know that he was -- he -- I just had  
4 concerns about when he was administered that -- that test,  
5 and I'm not sure -- I'm not sure he was -- that was  
6 probably at the beginning. I'm not -- I'm -- if my memory  
7 is not failing me here.

8 You know, it takes some time to get to a  
9 therapeutic level on medication. And some, you know, some  
10 pretty uncomfortable things can happen during that time.  
11 So my question -- and again, you know, we had this  
12 discussion -- you know, was it a good administration in  
13 which what -- that's one of the factors that -- that  
14 caused the, okay, I'll do the WAIS again.

15 Was he really -- because at these hospitals,  
16 they just have a tendency to zonk people out on  
17 medication. They -- they do. They -- sometimes they go  
18 overboard and so you just have a bunch of zombies in  
19 there. So that was my concern on that one. But it was  
20 not my concern -- his -- his presentation was -- was  
21 within normal limits, everything about it. So I didn't  
22 see any of that with him regardless of whether or not he  
23 was -- he was taking his medication at the time.

24 I mean, he was -- he interacted just fine.  
25 There was nothing odd about his presentation, his

1 responses. Everything was what one would expect from  
2 someone who is not in danger of harming himself or someone  
3 else at the time.

4 THE COURT: You're talking about your evaluation  
5 now?

6 THE WITNESS: Yes.

7 THE COURT: Okay. I did -- I want to make sure  
8 I understood. Did you actually have a concern that  
9 while he was at the --

10 THE WITNESS: The state hospital.

11 THE COURT: -- the state hospital --

12 THE WITNESS: It --

13 THE COURT: -- that he was not properly  
14 stabilized on his medication before the WAIS, or it  
15 was just something that you had questions about?

16 THE WITNESS: It was -- it was my suspicion  
17 because, I mean, I worked at -- I -- I've worked at a  
18 state hospital, and so I know how things tend to go  
19 there. You know, when you go there, you're going to  
20 get zonked out on some medication because that's --  
21 that's the assumed reason why you're there.

22 So -- and I can't prove that, but it was -- it  
23 was suspicion.

24 THE COURT: Okay.

25 THE WITNESS: It was -- it was my suspicion.

1 THE COURT: Was there something in the records  
2 that made you think that or --

3 THE WITNESS: No.

4 THE COURT: -- it was just your concern being --

5 THE WITNESS: It was just my concern.

6 THE COURT: -- from your experience?

7 THE WITNESS: Yes. It was just my concern.

8 THE COURT: Sorry to interrupt.

9 MS. RUSSELL: No worries, Your Honor.

10 BY MS. RUSSELL:

11 Q. So are you saying that you feel that the WAIS  
12 that was administered on February 18th, from your  
13 interpretation of the records, was not valid?

14 A. No. That's -- that's not what I said. I said I  
15 had concerns about it. I cannot prove, I mean, I don't --  
16 even if I had that report, I'd have to have a medical  
17 person tell me what it -- what it says, and I would like  
18 to have seen a video of when he was taking it to be able  
19 to say something like that.

20 I'm just saying, based on my experience with how  
21 things go at the state hospitals with their -- their  
22 medication practices, it was just a question mark. And so  
23 -- and with that, it made it easier for me. And then  
24 doing -- doing some digging in -- into the -- the forensic  
25 guidelines of APA, it -- I felt like, if I ever got called

1 on the carpet about it, I could -- I could successfully  
2 defend my decision to re-administer that WAIS within 12  
3 months.

4 Q. But you never reviewed Thomas Mosley's medical  
5 records before you did anything, and so you had no idea  
6 what his --

7 A. Well, that --

8 Q. From the jail. You never reviewed his medical  
9 records from the jail?

10 A. From the jail? I never got anything from -- I  
11 -- I have -- I recall getting records from the state  
12 hospital.

13 Q. Right. But you --

14 A. I don't recall getting --

15 Q. -- didn't review any jail medical records?

16 A. No. But, again, what I'm saying to you -- you  
17 know what, to answer your question, no, I did not review  
18 any records, but his mental presentation didn't even  
19 indicate that that was necessary. I mean, we have -- we  
20 -- that was -- that -- that was -- I -- I've dealt with  
21 thousands of people who were -- who were even stable on  
22 their medications. There are -- there are things that you  
23 look for that you see when they're -- when they're taking  
24 that medication. Their -- their behaviors. There are  
25 extra parametrial effects. You know, tremors and things

1 like that that they're going to have and they can't -- you  
2 can't hide it, and I didn't see any of that with him.

3 So I didn't -- I didn't have any -- I didn't  
4 have any question about his stability.

5 Q. It's interesting, many of our psychiatric  
6 doctors and psychologists who are professionals feel it is  
7 necessary to review medical records before they do an  
8 evaluation because medications are so important to  
9 understand someone's mental state, but you do not agree?

10 A. No, that's not what I said. I saw no indication  
11 to do that. And all of the records I received, I did look  
12 at. I did watch a -- when we -- when we get a referral,  
13 we send -- we -- at the office over there at Carter  
14 Psychology, there's a standard protocol -- I don't even  
15 send the fax, but I do know the fax goes out because a  
16 copy of the request is in -- is in the -- and I don't have  
17 access to that, that's with Carter Psychology.

18 But, typically, what we do is request records.  
19 We send -- we send a record fax, a request to the jail,  
20 and typically, we get records back. But I don't -- even  
21 if we have -- I don't recall any of this being an issue.  
22 Mr. Mosley was stable at the time I evaluated him.

23 MS. RUSSELL: May I approach just to pick up  
24 those exhibits and return them?

25 THE COURT: Yes.



1 BY MS. RUSSELL:

2 Q. So, Dr. Railey, back to your report on page 5 --

3 A. Give me a second.

4 THE COURT: Is there a page you're looking at?

5 MS. RUSSELL: Oh, I'm sorry. Page 5.

6 THE COURT: We'll take a break in a few minutes.

7 You want to do it now?

8 MS. RUSSELL: Well, I have, like, five more  
9 minutes on this line --

10 THE COURT: No, go ahead.

11 MS. RUSSELL: -- of questioning, and then it  
12 will probably make more sense to break.

13 THE COURT: That's fine. Let me know when  
14 you're ready.

15 MS. RUSSELL: All right.

16 BY MS. RUSSELL:

17 A. I have it.

18 Q. Are you with me on page 5?

19 A. Yes, I have it.

20 Q. So, Dr. Railey, under your -- the heading here  
21 is your minty -- is your Mini-Mental Status Examination-2,  
22 MMSE-2 EV Results. In that part of your report, moving  
23 over to page 5, you look at processing speed.

24 A. Uh-huh.

25 Q. And you say: He was slow to complete tasks, but

1 this was not consistent with any documented neurological  
2 condition or impairment. At times, he simply did not  
3 respond until prompted multiple times to proceed.

4 A. Yes. There was --

5 Q. Correct?

6 A. Oh, I'm sorry.

7 Q. Correct? Is that right?

8 A. There were times he did stop, and I did -- I did  
9 prompt him to keep going. It was only for 30 seconds, but  
10 he did stop a couple times.

11 Q. All right. Are you aware that Thomas Mosley is  
12 prescribed antipsychotic medications at least since 2023?  
13 I think he also mentioned to you that he had overdosed on  
14 Prozac before that.

15 A. Uh-huh.

16 Q. But at least for the time that he's been in the  
17 Pinellas County Jail --

18 A. Uh-huh.

19 Q. -- he's been on antipsychotic medications?

20 A. Yes, I do.

21 Q. Okay. And he's also been prescribed  
22 antidepressants since 2023?

23 A. Uh-huh.

24 Q. And he's also been prescribed medicine for a  
25 serious thyroid -- for a serious thyroid condition, right?

1 A. Yes.

2 Q. And you're aware from looking at the records  
3 that you --

4 A. Yeah.

5 Q. -- did look at or the reports that you did look  
6 at, that he's alternatively been diagnosed with  
7 depression, bipolar, schizophrenia, learning disabilities,  
8 language delays, intellectual disability, and autism by  
9 others.

10 I understand those aren't your diagnoses, right?  
11 Is it possible --

12 THE COURT REPORTER: Can you answer yes or no,  
13 sir.

14 THE WITNESS: Yes.

15 THE COURT REPORTER: Thank you.

16 THE WITNESS: I'm sorry. Yes.

17 THE COURT REPORTER: Thank you.

18 BY MS. RUSSELL:

19 Q. Is it possible that some of the slowness might  
20 have to do with any of those conditions or potentially  
21 side effects from the medications he had been prescribed?

22 A. Well, as far as the thyroid condition, based on  
23 what the -- I did not see that -- based on the medication  
24 he was taking and when he was asked what would happen if  
25 he stopped taking it, so it sounds like he has

1 hyperthyroidism. So that would speed him up if -- if he's  
2 not treated properly.

3 So -- and -- and that wouldn't be the case for  
4 that medication because he would probably go out faster --  
5 make a lot more mistakes, but he would go out faster.  
6 I've -- over the years, just about everybody I've -- I've  
7 evaluated, I mean, they've been on heavy-duty medications  
8 like this, and I didn't -- I just didn't see that.

9 So his -- his performance in that regard did not  
10 stand out. He just -- he just stopped, and I just wanted  
11 him to keep going. So I did have to prompt him to keep  
12 going a couple of times.

13 But, again, even -- even with that, this was  
14 just the element in the report -- but in terms of -- it  
15 seems like the big issue here is whether or not he has  
16 Autism Spectrum Disorder and that exercise doesn't  
17 necessarily correlate at all with the existence of Autism  
18 Spectrum Disorder.

19 Q. All right. Thank you, Dr. Railey.

20 MS. RUSSELL: I think that Your Honor would like  
21 to take a break.

22 THE COURT: Okay. Let's take a 10-minutes.

23 (Break taken.)  
24  
25