

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.

VOLUME II

THOMAS ISAIAH MOSLEY,
Defendant.

_____ /

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

Pages 157 - 271

A-P-P-E-A-R-A-N-C-E-S

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INDEX OF PROCEEDINGS

PAGE

WITNESS CALLED BY STATE:**MICHAEL G. RAILEY, SR., PH.D**

Direct Examination by Ms. Sullivan

5

Cross-Examination by Ms. Russell

91

Certificate of Reporter

271

INDEX OF EXHIBITS**DEFENSE**

<u>EXHIBIT #</u>	<u>DESCRIPTION</u>	<u>PAGE REC'D</u>
17	Pinellas County Jail Records	161
18	Zip Drive - Interview of Mosley	235
19	Mosley DMV Record	177
20	Affidavit of Railey	179
21	WHODAS 2.0 Manual	215
22	DSM-5 Article	215
23	WHODAS 2.0 Score Sheet	252
24	Certification of Custodian	167
25A	Progress Note Client Services	170
26	Driving Offenses List	170
27A	Shape Drawing	221
27B	Sentence Handwriting	221

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

MS. SEIFER-SMITH: Your Honor, would you mind if I admitted that one exhibit, the updated PCJ records?

THE COURT: Are those the medicals?

MS. SEIFER-SMITH: The medical records.

THE COURT: Yes. What did you want to label that as? Where are we at number-wise?

MS. SEIFER-SMITH: 17. Defense 17.

THE COURT: Okay. Any objection to that?

MS. SULLIVAN: No, Your Honor.

THE COURT: All right. Do you happen to have a copy?

MS. SEIFER-SMITH: I do.

(Defense Exhibit 17 was admitted into evidence.)

THE COURT: All right. Great. Thank you. Have you -- have both sides checked to make sure that all the exhibits that you want in are in so far? I know that we talked about doing that today.

Is everything you wanted in?

MS. SEIFER-SMITH: So far, yes.

THE COURT: You have everything you want in, in, so far?

MS. RUSSELL: So far.

THE COURT: Okay.

MS. RUSSELL: We're going to have a little split

1 screen here in a moment.

2 Dr. Railey, do you still have Exhibit 1?

3 THE WITNESS: What is Exhibit 1? This? Not --
4 that didn't have a date, so I can't follow. I mean,
5 I've got electronic copies, so I don't need it.

6 MS. RUSSELL: Okay. Here's one back.

7 THE COURT: Do you have everything premarked?

8 THE CLERK: I'm pretty sure.

9 THE COURT: Okay.

10 BY MS. RUSSELL:

11 Q. Dr. Railey, I want to talk to you a little bit
12 about self-report in intellectual disability and autism
13 diagnosis. So self-report is universally disfavored,
14 right?

15 A. I -- I don't -- I'm not sure what you mean by
16 "disfavored." I mean, can you -- I mean, that can mean a
17 number of things. That's what we -- that's what we have
18 to rely on. So I kinda don't have much of a choice on
19 some of this stuff.

20 Q. Are you familiar with the AAIDD Manual, 12th
21 Edition?

22 A. Yes. Well, the manual itself. I didn't read
23 that. I didn't read that, the journal you have in your
24 hand there.

25 Q. It's a manual put out by The American

1 Association on Intellectual and Developmental
2 Disabilities.

3 A. I have not read that -- that journal. Well, I'm
4 familiar with it. I know it's published and all. I'm --
5 I am aware of it.

6 Q. Right.

7 A. Yes.

8 Q. It's actually one of the primary diagnostic
9 manuals used by people in the field for intellectual
10 disability; would you disagree?

11 A. No, I wouldn't disagree.

12 Q. Do you have a copy in your personal library?

13 A. I do have one of those. I'm not going to sit
14 here and tell you I've read it, but I do have it. Just
15 like I have the DSM, I haven't really read that either,
16 but I do have a copy of it.

17 Q. Well, so the AAIDD, the 12th Edition, does warn
18 against self-report of behavior for adaptive functioning
19 analysis in intellectual disability and autism -- well,
20 intellectual disability, right?

21 Let's keep it to that.

22 A. Okay.

23 Q. The problem is, I take it from the AAIDD Manual,
24 and tell me if you agree, is that people with intellectual
25 disability just aren't that reliable about remembering

1 facts, right?

2 A. In some cases, yes. I don't think that's
3 universally the case.

4 Q. The people with intellectual disability are also
5 very problematic in reporting accurate facts; is that
6 true?

7 A. Again, it, that -- it just depends.

8 Q. So Thomas Mosley told you he was born in San
9 Diego, right?

10 A. I can't remember that.

11 Q. Well, let's take a look at your report.

12 A. If that's what's in the report, then that's what
13 he said to me.

14 Q. On page 2, Mr. Mosley indicated that --

15 A. Yes, I see it right there.

16 Q. -- he was born and raised in San Diego,
17 California. He grew up in a household with two other
18 brothers, and he spent his early years in California.

19 A. Yes, I see that on the first -- the first
20 sentence there.

21 Q. He told you that?

22 A. Yes.

23 Q. Do you have any idea whether that's true?

24 A. That is not a detail, in all candor, that I --
25 that -- that I've studied, that -- because it, again, has

1 -- it has no bearing on his -- based on my observation, it
2 didn't -- it was not an indicator whether or not he was
3 intellectually impaired.

4 Q. Give me a minute.

5 MS. RUSSELL: May I approach, Your Honor?

6 THE COURT: Yeah.

7 MS. RUSSELL: May I have this document marked,
8 please? These are self-authenticated records from
9 his suicide attempt. I can give you a copy.

10 THE COURT: What number is this?

11 MS. RUSSELL: Exhibit 24.

12 BY MS. RUSSELL:

13 Q. So during the interview, Thomas Mosley reported
14 to you that he had a suicide attempt in 1919 or 2019,
15 right?

16 A. Yes, he did -- I do recall him reporting a
17 couple of suicide attempts, if I'm not mistaken.

18 MS. RUSSELL: May I approach the witness?

19 THE COURT: Yes.

20 BY MS. RUSSELL:

21 Q. Dr. Railey, I'm showing you what's been
22 premarked as Defense 24. Those are records from Windmoor
23 Health where his suicide attempt was actually in 2020.

24 A. Okay.

25 Q. So he was not accurate, was he?

1 A. Nope, he was not accurate.

2 Q. He also, apparently, told you at some point --
3 and I'm not sure if it's on the video or in your memory of
4 the video and the exam -- that he was really good at
5 managing money.

6 Is that true?

7 A. I don't -- I don't recall him saying that
8 strongly. I think I asked him who managed his money, and
9 he said he -- I don't recall him -- that -- that response
10 wasn't all that powerful. It was just an acknowledgment
11 of, I handle my own money. But I'm not -- I can't -- I
12 don't recall him saying he was very good at managing
13 money.

14 Q. Well, you noted that one of his adaptive
15 strengths was an ability to use money --

16 A. Yeah.

17 Q. -- right?

18 A. Yeah. Oh, yeah. If he could go and purchase
19 gas and that sort of thing, I mean, he knew how to use the
20 economy, yes.

21 MS. RUSSELL: I'm going to show him from the
22 judicial notice the overdraft from Suncoast.

23 THE COURT: All right.

24 MS. SULLIVAN: Can I just look at it?

25 THE COURT: Are you moving this --

1 MS. RUSSELL: Yes.

2 THE COURT: -- into evidence?

3 MS. RUSSELL: Your Honor, these are basically
4 former cases for that --

5 THE COURT: No. I'm asking about this, Exhibit
6 24.

7 MS. RUSSELL: Oh, yes. Can we move it into
8 evidence, please?

9 THE COURT: Any objection to 24?

10 MS. SULLIVAN: No, Your Honor.

11 THE COURT: It will be admitted as such.

12 (Defense Exhibit 24 received into evidence.)

13 THE COURT: And that's -- what was the date on
14 this, the Baker Act?

15 MS. RUSSELL: 2020.

16 THE COURT: Now, you were --

17 MS. RUSSELL: Those are basically on file,
18 nothing changed on those.

19 MS. SULLIVAN: I know, I'm just --

20 MS. RUSSELL: Okay.

21 MS. SULLIVAN: Can I just look, ma'am?

22 MS. RUSSELL: Uh-huh.

23 MS. SULLIVAN: Thank you.

24 MS. RUSSELL: That's my only copy.

25 MS. SULLIVAN: Okay. Here you go, Ms. Russell.

1 MS. RUSSELL: Thank you.

2 May I approach?

3 THE COURT: Yes.

4 BY MS. RUSSELL:

5 Q. Dr. Railey, we have a bunch of Thomas Mosley's
6 former court cases that have been filed in the record in
7 judicial notice.

8 Would it surprise you that he had a small claims
9 court action filed against him for overdrawing his
10 checking account to the tune of \$4,000 -- \$4,976?

11 A. Would that surprise me? Yeah. I -- that -- for
12 that amount of money, yeah. That's --

13 Q. So his self-report about managing money was
14 probably not too good, right?

15 A. Yeah. In this case, it definitely was not.

16 THE COURT: Where do you see those numbers at?

17 MS. RUSSELL: Those were actually court cases
18 that were filed in the court record as, you know,
19 with judicial notice.

20 THE COURT: Okay. Do you want me to take
21 judicial notice of it?

22 MS. RUSSELL: Yes.

23 THE COURT: Can you --

24 MS. RUSSELL: I'm sorry. It's -- this is Court
25 Case Number 24-001497. Suncoast --

1 THE COURT: Okay.

2 MS. RUSSELL: -- Credit Union versus Thomas
3 Isaiah Mosley. And I could mark it as an exhibit if
4 you would like, Your Honor. They were all filed in
5 the record about two --

6 THE COURT: Yeah.

7 MS. RUSSELL: -- weeks ago.

8 THE COURT: I understand and appreciate always
9 the judicial notice aspect of things. It's easier, I
10 think, for recordkeeping purposes to make it a part
11 of our record and mark it as an exhibit.

12 MS. RUSSELL: Of course.

13 THE COURT: Unless there's any specific
14 objection to it. I just think it's an easier way for
15 us to find something in the record, should we need to
16 do it later on.

17 MS. SULLIVAN: No objection. I agree.

18 THE COURT: Okay.

19 MS. RUSSELL: All right.

20 THE COURT: So --

21 MS. RUSSELL: So let's mark these as 25 and 26.

22 THE COURT: So 25 is the case number you just
23 read into the record.

24 What's 26 going to be?

25 MS. RUSSELL: Can we have 26 be a composite

1 exhibit?

2 THE COURT: That's fine.

3 MS. RUSSELL: Of driving cases ACGEI3E, ACGEI2E,
4 AD17LME.

5 THE COURT: And you did file a judicial notice
6 of those --

7 MS. RUSSELL: Yes.

8 THE COURT: -- which I did see.

9 Any objection to that coming in as Exhibit 26?

10 MS. SULLIVAN: No, ma'am.

11 THE COURT: So I can easily find stuff in the
12 record. I would --

13 MS. SULLIVAN: No.

14 THE COURT: -- appreciate it. Great. And those
15 were all driving offenses?

16 MS. RUSSELL: Yeah.

17 THE COURT: Thank you.

18 MS. SEIFER-SMITH: Would Your Honor like a
19 digital copy of that?

20 THE COURT: That would be delightful.

21 MS. SEIFER-SMITH: Absolutely.

22 (Defense Exhibit Nos. 25 and 26 were admitted
23 into evidence.)

24 MS. RUSSELL: So let the record reflect that I
25 showed Dr. Railey Exhibit 3 from the Judicial Notice

1 Packet, which has now been marked as Defense Exhibit
2 25.

3 THE COURT: Okay.

4 MS. RUSSELL: Which was the Suncoast Credit
5 Union court case.

6 THE COURT: Right. Thank you.

7 BY MS. RUSSELL:

8 Q. Now, you assumed that Thomas Mosley was a good
9 driver because he was responsible for filling up gas, and
10 he drove to work every day, right?

11 A. I had no reason to question that one. So, yes,
12 I did.

13 Q. All right.

14 MS. RUSSELL: May I approach the witness?

15 THE COURT: Yeah.

16 MS. RUSSELL: Defense Exhibit 19. It's the
17 driving record.

18 THE WITNESS: Didn't I already comment on this
19 already?

20 THE COURT: You're going to have an opportunity
21 on redirect --

22 THE WITNESS: Okay.

23 THE COURT: -- and I'm probably going to have a
24 follow-up question or two for you, as well.

25 THE WITNESS: Okay. Thank you.

1 THE COURT: Uh-huh.

2 BY MS. RUSSELL:

3 Q. So, Dr. Railey, I've given you what is Thomas
4 Mosley's driving transcript. It gives us a lot of
5 information about his history.

6 A. Uh-huh.

7 Q. It says that, basically, when he took his
8 driver's test, he had to take nine attempts to pass it.

9 Would that surprise you?

10 A. Actually -- actually, no. I mean, I -- I know a
11 number of people that have had to take it again because
12 they were -- I'm not saying that was -- this was the case
13 with him, but they were turning a mountain into -- turning
14 a molehill into a mountain, is what they were doing, but
15 I've seen that before. I've seen driving records worse --
16 worse than -- than this before.

17 Q. Well, so the interesting thing is this is
18 actually the test on signs and rules, which you have to
19 take to get a learner's permit.

20 A. Oh, yeah. Yeah.

21 Q. It took him nine times to pass. Would it
22 surprise you that he actually needed help to pass, and he
23 passed from home using a computer and some help from his
24 brother.

25 Would that surprise you, Dr. Railey?

1 A. Not necessarily. I -- it is -- it's -- now, you
2 know, the other question is, is it significant? Yeah, but
3 I -- I mean, this sort of thing -- this sort of thing
4 happens quite a bit. I don't think these are -- oh, never
5 mind.

6 Q. The other interesting thing is that Thomas
7 Mosley never actually got a driver's license.

8 A. Uh-huh.

9 Q. He only had a learner's permit for about 9
10 months.

11 A. Uh-huh.

12 Q. Does --

13 A. I hope --

14 Q. -- that surprise you?

15 A. I hope it was during the time when he was
16 driving himself, though -- he said he was driving himself
17 to work, I mean, I certainly hope that, but --

18 Q. Maybe it bears a little bit on the accuracy of
19 his self-report.

20 A. Sure. Sure.

21 Q. You would agree?

22 A. Yes. Absolutely.

23 Q. Because on page 2, you said he was using his car
24 to drive back and forth the past year and ensuring his
25 vehicle was full of gas. That that was important to your

1 assessment.

2 A. I said he was -- well, he was using his mom's
3 vehicle. But, yes, again, if it's per a self-report?
4 Yeah. It -- it's -- that would be surprising if he
5 actually didn't -- didn't even have the right to drive.

6 Q. Well, it's even more surprising because you
7 wrote in your report, again, he reported using her car to
8 drive to and from work in the past year.

9 Do you know what Thomas Mosley has been doing
10 for the past year, Dr. Railey?

11 A. I don't -- in the past year?

12 Q. Yep. That's on the bottom of page --

13 A. Yeah. That's a -- that's a clerical error for
14 sure.

15 Q. -- 2.

16 A. That's a clerical error.

17 Q. Yeah. It would be because he's been doing --

18 A. Quite a bit of time.

19 Q. -- no driving --

20 A. Yeah. Yeah.

21 Q. -- since his incarceration of March of 2023.

22 A. Yeah. That's definitely a clerical error.

23 Q. Dr. Railey, let's also look at Defense
24 Exhibit 26, which are all the cases of Thomas Mosley's
25 driving record where he's had crashes, invalid licenses,

1 and a whole host of problems. Dr. Railey?

2 THE COURT: Did you send that over to me? The
3 electronic --

4 BY MS. RUSSELL:

5 Q. So you'd agree that Thomas Mosley's self-report
6 wasn't accurate in a whole number of ways?

7 A. I would, yes.

8 Q. But you still relied on it to diagnose him?

9 A. I relied heavily on his presentation. As I said
10 earlier, my interaction with him in terms of how he
11 communicated with me and -- I mean, I have -- there are
12 tons of people that, I mean, they don't tell the truth for
13 one reason or another, but that's -- that doesn't mean
14 they have -- and I'm not -- I'm not saying he doesn't, but
15 I don't think he does, but there are tons of people that
16 don't report, especially in this -- in this type of
17 environment.

18 A lot of what we get is not accurate. If -- if
19 we were allowed -- if I were allowed the time to do the
20 type of evaluation I want to do, that'd be -- that'd be a
21 different -- a different sort of thing. It would
22 certainly be a different report. Just his self-report and
23 his driving record, I mean, we -- we'd have to go and
24 gather up a lot of people that have the same combination
25 of infractions.

1 Q. So are you saying you didn't have enough time?

2 A. No. No. I'm -- I said it would be a different
3 report if I were -- if I were to do the type of evaluation
4 I wanted to do, like, actually administer an objective
5 personality measure like the MMPI or the Millon, something
6 like that, it would be a lot different, but that's not --
7 we're not -- that's not -- that's not how this works, so
8 we don't do that because I want to look at all aspects of
9 -- of the report.

10 But at the bottom, again, I'm -- I'm going to
11 fall back on this. These -- these things in isolation,
12 this -- that does not signify intellectual disability in
13 and of itself. I mean, these are just -- this is a
14 dangerous path, in my opinion, that you're taking. I --
15 it's very -- it's just troubling. I can't stop you from
16 doing it, but I'm -- I'm going to tell you right now, I'm
17 not going to go there with you.

18 MS. RUSSELL: May I approach?

19 THE COURT: Sure.

20 MS. RUSSELL: So we'd like to have move --
21 Exhibit 24 is already in -- 19 and 26 into evidence.

22 THE COURT: Yeah. 26 is the driving offenses,
23 which the State agreed can come in.

24 MS. SULLIVAN: Yes.

25 THE COURT: What was 19?

1 MS. RUSSELL: 19 was the Department of Highway
2 and Safety Motor Vehicles Report.

3 THE COURT: The DHSMV report?

4 MS. RUSSELL: Yeah.

5 THE COURT: Any objection to that?

6 MS. SULLIVAN: No.

7 THE COURT: Are you sending that to me
8 electronically, as well?

9 MS. SEIFER-SMITH: I sent all of the traffic
10 cases, the small claims court case, and I will get a
11 copy of the transcript.

12 THE COURT: Thank you. Are you sending those to
13 Section K?

14 MS. SEIFER-SMITH: I sent them to Your Honor and
15 Section K.

16 THE COURT: Perfect. Thank you.

17 MS. SEIFER-SMITH: Well, Your Honor, and Jill.

18 THE COURT: Either way. Great. Thank you.

19 (Defense Exhibits 19 and 26 were received into
20 evidence.)

21 BY MS. RUSSELL:

22 Q. Dr. Railey, let's switch gears and talk about
23 the WAIS-IV.

24 A. Sure.

25 Q. The WAIS-IV IQ tests came out in 2008?

1 A. Uh-huh.

2 THE COURT: That would be a yes?

3 THE WITNESS: Yes.

4 THE COURT: Thank you. Okay.

5 BY MS. RUSSELL:

6 Q. You can't give it twice in a year, right?

7 A. That's not accurate.

8 Q. I'm sorry?

9 A. That's not accurate.

10 Q. Tell me what is accurate, Dr. Railey.

11 A. Sure. When I mentioned earlier that I -- that I
12 did my own research, I meant research of the standards on
13 administration of the Wechsler. I'm going to read to you
14 what I found and you can -- again, this is something you
15 can verify yourself. You can do the same thing I did, and
16 you'll get the same information.

17 Q. Dr. Railey, I hate to interrupt you, but I have
18 actually had your research marked to use as an exhibit,
19 and I would like to use this one so that we can admit it
20 into evidence.

21 A. Okay.

22 Q. All right.

23 MS. RUSSELL: May I approach?

24 THE COURT: Is it the same thing that he has in
25 front of him?

1 MS. RUSSELL: I'll have him take a look at that.

2 BY MS. RUSSELL:

3 Q. Dr. Railey, I'm showing you what's been marked
4 as Defense 20. Is that the same thing we're talking
5 about?

6 A. Yep. This looks --

7 Q. All right. So, again, with the WAIS practice
8 effect, you shouldn't give the WAIS-IV, the same IQ test,
9 twice in one year?

10 A. That's not accurate.

11 Q. All right. Please, tell me.

12 THE WITNESS: Can I just read this, Your Honor?

13 THE COURT: However you want to answer --

14 THE WITNESS: Well, okay.

15 THE COURT: -- the question is fine with me.

16 THE WITNESS: Okay. I'm just going to read this
17 affidavit that I was going to have notarized.

18 Mr. Mosley was previously -- on the administration of
19 the Wechsler Adult Intelligence Scale --

20 THE COURT: Just go a little slower for the
21 court reporter, please.

22 THE WITNESS: Okay.

23 The Wechsler Adult Intelligence Scale, Fourth
24 Edition, within the past 12 months of this current
25 administration. However, due to urgent judicial

1 timelines established by this Court and pursuant to
2 Administrative Orders Number 2017-033, 2017-034:
3 Re-administration was clinically and procedurally --
4 I will strike the word required -- it was indicated,
5 I would say.

6 The American Psychological Association's
7 specialty guidelines for forensic psychology, 2011,
8 provide clear support for reassessment under -- under
9 judicial necessity, specifically Guideline 2.5, 2.06,
10 9.01.

11 And just some -- some further justification for
12 re-administration. Inaccessibility of prior results,
13 but that doesn't apply here.

14 Documented clinical events such as prior testing
15 or psychiatric hospitalization. So -- so in this --
16 this one applies here since he was -- since it was
17 administered in a hospital, then it's okay to
18 re-administer. That's what -- that's what this says
19 according to Guideline -- it's really small -- 9.01,
20 I guess.

21 Re-administration was conducted with -- I -- I
22 mean, I understood what I was doing. In fact, I'm
23 the one when -- when I talked with -- when I talked
24 with you regarding this case, I'm the one who
25 initially threw up a red flag. Oh, I really don't --

1 I don't think I would do that. At that time, I went
2 and took a look at what the guidelines say about
3 re-administration.

4 And based on my interpretation of what I found
5 here, I -- I think it was appropriate for me to go
6 ahead and re-administer it within 12 months.

7 BY MS. RUSSELL:

8 Q. Do you happen to have your WAIS Manual handy?
9 Those are the test guidelines given by the people who
10 actually authored the test?

11 A. No, I do not. There were some -- but there were
12 some things in here from Pearson that I struck, but, no, I
13 don't have my -- I don't have my -- my manual.

14 Q. Unfortunately, I'm not allowed to have it
15 because it's proprietary.

16 A. Yeah.

17 Q. But if I did have it, I would cite the portion
18 of the manual where it definitely warrants against using
19 the test more than once in a year.

20 Are you aware that that's in the WAIS Manual, --

21 A. I'm aware of that --

22 Q. -- Dr. Railey?

23 A. I'm aware that that's in the manual. I'm
24 aware -- really, if you want to take it that far, they'd
25 really prefer that it not be used in any high-stakes

1 situations such as -- such as this. Any high-stakes
2 testing, use the Wechsler, you know, this Disability
3 Terminations Evaluation, but we do those all the time, as
4 well. That's the -- matter of fact, that's the only one
5 that they will take. But, yes --

6 Q. Excuse me.

7 Dr. Railey, are you testifying that the WAIS
8 Manual says that you shouldn't give the WAIS in a
9 high-stakes situation?

10 A. That's Pearson's -- that's their position.
11 That's the company who publishes the test. I'm not sure
12 it's in the manual, but that is their position.

13 Q. Are you saying that Pearson Publishing, who
14 publishes the WAIS-IV, has a position that you are not
15 supposed to use the WAIS in a death penalty case?

16 A. I said, high stakes. I think this is high
17 stakes, in my opinion. This is really high stakes.

18 Q. So that would be true, that you're saying that
19 the WAIS Manual says that the WAIS should not be used to
20 test --

21 A. No.

22 Q. -- IQ in a death penalty case?

23 A. I'm saying high stakes. I don't know if Pearson
24 thinks that this is high stakes or not, but I do. But I
25 use it anyway because that's the instrument I had at the

1 time. I don't know --

2 Q. Dr. Railey --

3 A. -- what the intent of Pearson was with regard to
4 that. It just said, "high-stakes testing."

5 Q. Are you admitting that there is a warning in the
6 WAIS Manual about the practice effect, and that the
7 WAIS-IV should not be given more than once in a 12-month
8 period?

9 A. I think, in my opinion, it does say that, and I
10 think -- so, yes. I'll answer that question. But that
11 more applies to situations in education where you're going
12 to have an advantage from the practice effect. He gets no
13 advantage.

14 I don't know -- I can't recall what his score
15 was on the first one, but it -- but -- but the quality
16 descriptor, in other words, your IQ performance is broken
17 down into certain performance categories. In my
18 administration, as well as in the previous one, his score
19 was characterized as "extremely low." So there is no
20 significant difference between the two tests.

21 Q. Whether there's a significant difference or not,
22 are you saying that, basically, the WAIS Manual says that
23 it should not be used in high stakes, but if you do use it
24 in high stakes, it's okay to ignore the practice effect;
25 is that your testimony having --

1 A. No. I'm saying --

2 Q. -- to do with the manual?

3 A. -- I cited the APA guidelines.

4 Q. Okay. So the APA guidelines that you cite seem
5 to say that in a situation where a Court is ordering you
6 to get something done specifically, that you could repeat
7 a test; is that fair?

8 A. Yes.

9 Q. And then the practice effect wouldn't apply?

10 A. I don't think -- I'm not saying that, and I
11 don't think that's the intent of this guideline. I think
12 we have to be aware, it is our responsibility to take a
13 look at that, which I did do. And, again, I didn't --
14 there is no significant difference between the two
15 performances.

16 If there were a significant difference, then it
17 would have been my responsibility to either find another
18 route either the Stanford-Binet or go ahead and get the
19 WAIS-5 or state that in -- in my report. I didn't think
20 it was necessary to do either because the -- the
21 performances are essentially the same.

22 Q. So as you sit here now, you do not agree that it
23 would be best practice to wait a year before
24 re-administering the WAIS-IV?

25 A. I'm not saying that. That's not what I said.

1 Q. Is it best practice to wait a year?

2 A. It depends.

3 Q. What does it depend on, Dr. Railey?

4 A. It depends on the situation. Like I said, if
5 I'm -- if I'm administering this test to a -- if I get a
6 referral to evaluate a kid for, let's say, a learning
7 disability or a referral for participation in the gifted
8 program, and they had the test in 12 months, I'm
9 absolutely not taking that. I'm not going to touch it
10 with a 10-foot pole.

11 But in a situation like this, where there is no
12 benefit -- there is no benefit whatsoever for him for --
13 for the -- for the client in terms of practice effects,
14 there is no -- there's no benefit, and if I did see the
15 results, again, then it would be my responsibility to have
16 to be upfront about that and say that, Well, there is a
17 bit of a difference.

18 And at that point, I would have to come back and
19 get permission to -- for more time to do -- to do another
20 test. But, again, there was no difference in the scores.
21 I'm not sure where we're going with this, but there was no
22 difference in the scores, so there was no concern there.

23 Q. Was there no difference in the scores,
24 Dr. Railey?

25 A. In terms of the qualitative descriptors that are

1 -- that are a -- and those, I don't choose those. If you
2 score within a certain range, this is the descriptor. And
3 so his performance -- his performance -- his score was
4 deemed to be extremely low.

5 Q. But there is a difference between a 55 and a 48?

6 A. There is not a significant enough difference to
7 change the qualitative descriptor. And it -- and it does
8 not -- your -- once you get below 70, that's where the
9 problem starts.

10 So because that's where -- that's where you have
11 to start looking at whether or not someone has -- has an
12 intellectual disability. His score was -- there's --
13 there's no difference between the two. His score, it was
14 so low it's -- and it was essentially the same score. If
15 you -- if you're going to use the same qualitative
16 descriptor -- and this is part of some of my reservations
17 about people with no training and using these instruments.

18 Yeah, there's a difference in scores. I mean,
19 if he -- if he had a 45 the first time, and he gets a 46
20 this time, there's a difference.

21 Q. Fair. So --

22 A. But there's no qualitative difference.

23 Q. So you don't own the WAIS-5, now?

24 A. I do.

25 Q. You do?

1 A. I do.

2 Q. Why didn't you give him the WAIS-5?

3 A. Because -- because I was all loaded with the --
4 loaded up with the WAIS -- the WAIS-IV.

5 Q. So --

6 A. I have -- I own a -- well, I buy a prescription
7 from Pearson where I have access to every test that they
8 published. And at the time, I was not set up for that. I
9 did look at that, but I didn't see any problem with
10 re-administering it after I took a look at the guidelines.

11 Q. All right. So to avoid any semblance of a
12 practice effect or any questions about your work, given
13 the high stakes of this litigation --

14 A. Uh-huh.

15 Q. -- let's just talk about options you might have
16 had. You could have given him the WAIS-5, right?

17 A. Yep. Uh-huh.

18 Q. You could have given him the Stanford-Binet.

19 A. I don't -- I don't own that, but I don't -- I
20 don't -- most psychologists use the Wechsler because --

21 Q. But you could have given him the Stanford-Binet
22 if you --

23 A. No, I wouldn't --

24 Q. -- would have bought it?

25 A. That's \$3000. So, no, I wouldn't want to

1 administer that one, unless the Court would have been
2 willing to pay for it.

3 Q. Could you have given him the Woodcock-Johnson
4 Cognitive Ability V?

5 A. I don't own that one either. And -- and the
6 Woodcock-Johnson -- well, let me just put it this way.
7 The Wechsler holds the same weight in cognitive ability
8 testing that the Autism Diagnostic Observation Schedule
9 holds when it comes to really truly diagnosing Autism
10 Spectrum Disorder.

11 So that's not a test that's widely used. I
12 don't have it. You pick one -- you pick one and you go
13 with that one. But if there were significant enough
14 demand for me to do that, yeah, that -- I would do -- just
15 like there was a significant enough demand for me to lay
16 out the cash for the ADOS. I had to go ahead. I didn't
17 have a choice, as I saw it.

18 Q. But you didn't do any of those things. Instead,
19 you just gave him the WAIS-IV again --

20 A. Yes.

21 Q. -- and now we're in the world where we don't
22 really know whether the practice effect affected this --

23 A. Well, it --

24 Q. -- or whether it's a valid score?

25 A. Well, actually, we do know. It -- it's in --

1 that -- and, again, that's the -- that's the problem with
2 people who are untrained in this area using these scores
3 and the descriptors because they all mean something, and
4 you have to understand the statistics and the significance
5 thereof to be saying things like that. But the reality
6 is, is that there is no significant difference. You know,
7 if there were, his qualitative descriptors would have
8 changed. They did not go up. They did not go down.

9 Q. So some version of the WAIS has been around
10 since about 1955, right? It's probably the oldest IQ test
11 that we have, and it's current.

12 A. The Binet was. I think the Binet is older than
13 the Wechsler.

14 Q. And both the American Psychological Association
15 and the American Psychiatric Association, the DSM-5, the
16 AAIDD, everyone accepts the WAIS, correct?

17 A. Yes, I would say so.

18 Q. And there are panels and committees and
19 researchers and educators who are all involved in the
20 development of the WAIS, both the original WAIS, the I,
21 the II, the III, the IV, and the new version, that's the
22 5, right?

23 A. Uh-huh.

24 Q. Those people are all incredibly smart?

25 A. Uh-huh.

1 Q. And they create a task that is not only used in
2 the United States, but internationally.

3 A. Correct.

4 Q. And it's known for its accuracy and its
5 thoroughness in determining IQ; is that fair?

6 A. Yes, that's fair.

7 Q. All right. I'm going to talk to you about your
8 report and your discussion of the subtest on the WAIS,
9 which starts on page 7 of your report.

10 So with the intelligence testing, you found that
11 Thomas Mosley got a 63 on the Verbal Comprehension Index.

12 A. That was his performance on it.

13 Q. But -- so that was the test. But in your own
14 personal observations and your clinical judgment, which
15 you think is probably more important than his score, you
16 said that there was a discrepancy suggesting compromised
17 effort rather than an authentic limitation.

18 So, basically, your clinical judgment meant more
19 than his score on the test.

20 A. That's not -- that's not what that statement
21 means.

22 Q. Tell me what it means, Dr. Railey.

23 A. That statement means, based on what I'm seeing,
24 based on the history of what he's done, that's -- that's
25 what it showed. Based on his conversations with me, I

1 didn't see this. And there were -- I -- you know, I --
2 I'm not allowed to record that. I wish I could have
3 recorded it. But there were times when he -- when he did
4 tank a few items, and I -- and I would -- I would give him
5 a look at -- and say, you know, don't do that. Just give
6 us your best shot. Don't do that.

7 So his performance is what it is. I mean, there
8 were times when he -- I stand by that, as well. But there
9 were times that -- that he, in my judgment, on purpose,
10 tanked a few items.

11 Q. So you also noted in the Working Memory Index
12 his score was 66, extremely low range for memory tasks,
13 and that's basically the result of the test in the WAIS,
14 which has been created and used for years --

15 A. Say that -- I'm sorry. Could you repeat that
16 last -- that's the results from what?

17 Q. From the WAIS. From the Working Memory Index on
18 the WAIS, the subtest --

19 A. Well, yeah.

20 Q. -- correct?

21 A. Okay.

22 Q. And that's his result from the test --

23 A. Uh-huh.

24 Q. -- that has been normed and worked with and
25 validated over years and years?

1 A. Uh-huh.

2 Q. By people who know a lot more about this than I
3 do, right?

4 But you say his real world behavior shows no
5 profound working memory deficit, and that's basically in
6 your assessment of his work on the WAIS. So your own
7 personal idea is more important than the test; is that
8 sort of where we are?

9 A. No, that's not where we are at all.

10 Q. So why would you include that to say that the
11 score is not valid?

12 A. Again, after watching, I don't know, three
13 hours, if -- if that's -- if it's less than that, it can't
14 be too much less than it of video and me talking to him,
15 working memory is his -- his working memory is better than
16 that. I think it is.

17 Q. Now, the WAIS --

18 A. And one other thing I want to point out. I've
19 said this -- I don't know how many times I've said it, but
20 we are responsible. And if you -- if you want to research
21 further the APA guidelines, we don't just take results.
22 We don't just do that. We have to -- we have to look at
23 the totality of everything we have.

24 Now, again, I -- you know, if you don't agree
25 with -- with my judgment, that's your prerogative. But as

1 a psychologist, it is my place to make the judgments that
2 I made.

3 Q. Right. But when you're giving a test, don't you
4 give the test and score the test, and the scores are the
5 scores?

6 A. That's not -- again, that's what I'm trying to
7 say to you. That's not how it works. We are -- we are
8 required to -- we don't just, what they call "Test and
9 tell." You have to -- you have to interpret the results
10 in light of everything else that you've experienced with
11 this person. Otherwise, anybody could just test him and
12 say, okay, your IQ is extremely low.

13 Well, what would that mean, and is that really
14 accurate?

15 Q. Dr. Railey, when we spoke on the phone, you told
16 me that you believe there were no embedded measures of
17 malingering in the WAIS; is that still your opinion?

18 A. There are no diluted indicators that -- that are
19 in this instrument that we have -- that I have. Based on
20 the scoring software I have, the scoring software that --
21 that the publisher puts out, there are no malingering
22 indicators.

23 We do have a lot of statistics that compare
24 different subtest performances, but -- but I've not
25 known -- and I haven't been taught that, and I don't think

1 I would want to do it, use someone's performance to talk
2 about malingering in general. I'm watching a person and
3 based on some of -- some of the performances, if it's not
4 matching up, it's just not matching up.

5 Q. Dr. Railey, do you ever read academic journals
6 in the field of psychology or neuropsychology?

7 A. Of course I do.

8 Q. Are you familiar with the Journal of Clinical
9 and Experimental Neuropsychology?

10 A. I am.

11 Q. I printed a number of different articles, but I
12 thought I would save time and just talk to you about one.

13 MS. RUSSELL: May I approach?

14 THE COURT: Yes.

15 BY MS. RUSSELL:

16 Q. This is a learned treatise from the Journal of
17 Clinical and Experimental Neuropsychology talking about
18 using the Digit Span Subtest for Malingering Detection.
19 People find that it is a reliable embedded measure in the
20 WAIS.

21 Does that surprise you?

22 A. I'm uncomfortable with it, but I -- I'm not
23 going to criticize anybody for using it, but I haven't,
24 and I don't -- I don't think I would -- I would do that.
25 I wouldn't do that. It doesn't surprise me, though.

1 Q. All right. I'll let you hang on to that.

2 A. But that's not something that's -- that's not
3 something that's encouraged by the publishers of that
4 test. I don't think it -- I don't -- I don't recall
5 seeing anything about using Digit Span to assess
6 malingering. If that's the case, we can -- I can use any
7 of the subtests for that.

8 Q. Well, those aren't really scientifically
9 documented as embedded measures in the WAIS. There are at
10 least reliable, Digit Span is one, and there are others
11 that are talked about in the academic literature, but it
12 seems you're not familiar with those.

13 A. Well, --

14 Q. And, apparently, you didn't use --

15 A. -- honestly, I -- you know --

16 Q. -- them in this case --

17 A. I am --

18 Q. -- correct?

19 A. And let me also say, anyone who has produced
20 articles, you deal with people who are going to fund your
21 research, that's one of the other problems we have in
22 academia. Sometimes the results aren't the results.
23 Sometimes your funding source wants to know what your
24 results are going to be before you even conduct the
25 research, and that's going to determine whether or not you

1 get your funding.

2 So, you know, you -- again, when we read things,
3 we are taught to, just because someone did this, that
4 doesn't -- that doesn't mean it's the final -- it's the
5 final say. We're still responsible to use what we know to
6 make a determination. And unless there's some kind of
7 specific rule or law that there's an ultimate that you
8 have to do it this way, then it's our responsibility to
9 make a decision. I mean, that's -- that's what we're
10 trained to do.

11 So that's why I'm not going to criticize any
12 psychologist for making the decision that they believe is
13 the right one to make because I certainly do the same
14 thing.

15 Q. Dr. Railey, I want to go back to your resumé for
16 one second. State's Number 1. Your professional
17 organizations.

18 Basically, the only membership in a professional
19 organization that you have presently is the Association of
20 Family and Conciliatory Courts; did I read that correctly?

21 A. Yep. Yes, you did.

22 Q. You haven't been a member of the American
23 Psychological Association for more than 15 years.

24 A. That's correct.

25 Q. And you're not a member of the AAID (sic)?

1 A. That's correct. But I don't have to be a member
2 to read the journals. That -- that's not a requirement to
3 -- to get access to the journals. You can -- you can buy
4 subscriptions to the journals whether you're a member or
5 not.

6 And so based on my contents, I don't -- I don't
7 give my money to those organizations because I don't
8 always agree with the position they take on things outside
9 of psychology. Like, for instance, I have a big issue
10 with the American Psychological Association because one of
11 the things they should be angling for, as in some of the
12 other states, are psychologists who are able to and are
13 trained to prescribe medication. They don't want to do
14 that. They want to talk about global warming.

15 Anyways, I'm not -- that -- that's been my
16 decision, but I do -- I read every journal that I think --
17 I think it's important for me to read. I attend workshops
18 and -- because every -- every two years, we -- we're
19 required to get 40 hours of continuing education training.

20 Q. Excellent. Thank you.

21 MS. RUSSELL: Your Honor. Can we talk about a
22 scheduling matter quickly?

23 THE COURT: Sure.

24 MS. RUSSELL: Take a quick break.

25 THE COURT: Yeah.

1 MS. RUSSELL: Ms. Daw is here, who's taking time
2 off work to do -- to be a quick adaptive functioning
3 witness. We expected that she might be ready to
4 testify at 3:00. I think I could probably get her
5 done in half an hour, is it --

6 THE COURT: How much cross-examination do you
7 have left?

8 MS. RUSSELL: I would probably say it's another
9 hour and a half or two.

10 THE COURT: Why do you need -- I mean, what are
11 you going to talk about for an hour and a half?

12 MS. RUSSELL: Okay. I mean, it's -- we still
13 have to run through all his adaptive functioning
14 analysis, the WHODAS --

15 THE COURT: Okay.

16 MS. RUSSELL: -- his malingering, the testing he
17 did, the testing he didn't do. And, you know, it
18 wouldn't actually take that long, but --

19 THE COURT: Okay. Well, I would think
20 Dr. Railey might want a little bit of a break between
21 now and the next hour and a half of
22 cross-examination.

23 THE WITNESS: I would much rather -- I've got a
24 long drive over to Jacksonville, from here. I prefer
25 not to drive at night. So I -- I would much rather

1 just get finished.

2 THE COURT: Okay. All right. Let's keep going.

3 THE WITNESS: I'd much rather just get finished.

4 THE COURT: Let's move on with Dr. Railey.

5 MS. RUSSELL: Can I at least tell Ms. Daw --

6 THE COURT: Yeah.

7 BY MS. RUSSELL:

8 Q. So, Dr. Railey, we were talking about
9 malingering. What test did you give Thomas Mosley to
10 determine if he was giving full effort?

11 A. I did not formally diagnose him with
12 malingering. So I administered nothing. That's -- that's
13 one of the instruments -- there's -- there are instruments
14 that are used for that. I did not administer any of them,
15 but, again, I'm not diagnosing him with malingering.

16 Q. Understood. I was just asking if you gave --

17 A. No --

18 Q. -- any objective testing --

19 A. -- I did not.

20 Q. -- in order to assess his effort given on your

21 WAIS --

22 A. No. No, I did not.

23 Q. -- or on your MMSE or on your clinical judgment?

24 A. I did not.

25 Q. All right. You know a lot about psychological

1 testing?

2 A. Well, I know enough to be licensed and to -- and
3 to do a good job.

4 Q. So tell me all the tests of effort you know
5 about that are normed for people with cognitive
6 impairment.

7 A. Well, the one -- I don't know all of the tests.
8 The one that I would typically use a Test of Malinger
9 Memory, that's typically the one I use.

10 Q. That's the TOMM. The T-O-M-M?

11 A. Yeah.

12 Q. And that's normed for people with cognitive
13 impairment?

14 A. It's normed for every population.

15 Q. Anyone -- any other tests that you would use --

16 A. No.

17 Q. -- for someone with cognitive impairment?

18 A. There are others, but that's the one I was
19 introduced to first. That's the one I typically like.
20 Another -- I mean, I've -- I've tried it out. I'm still
21 making decisions about it, but the Inventory of Legal
22 Knowledge, I think it's called. That's the one that sort
23 of looks specifically at -- it does have some indices in
24 it that gives some indication about malingered
25 understanding or -- or the lack thereof of the six

1 competencies.

2 Q. That's Dr. Otto's test, the ILK, Inventory of
3 Legal Knowledge?

4 A. Inventory of Legal Knowledge, yeah.

5 Q. Yeah. That's actually sort of like a basic
6 competency screening, right?

7 A. But there's also some indices that -- that take
8 a look at malingered understanding of the competencies.

9 Q. So, Dr. Railey, how much do you expect to get
10 paid for this court-ordered evaluation?

11 A. The actual evaluation?

12 Q. Well, the evaluation and testimony?

13 A. I have no clue. I have absolutely no clue.

14 Q. And does that money come to you or go back to
15 Carter Psychology?

16 A. Everything, according to the -- the agreement I
17 have with them, everything that happens outside of this,
18 it's -- I mean, they're -- they're not doing anything
19 here, so it's towards my work. So it -- so it goes to me.

20 I don't even have a -- I don't have a contract
21 in this circuit anymore, so I'm not sure. As I
22 understand, I've been told that really, I can't -- I'm not
23 supposed to even be doing this because I can't get paid.
24 I don't see how that's possible, but that's -- that is
25 what I've been told.

1 Q. So you've been told that you're not going to get
2 paid for your testimony here today?

3 A. No, not this particular one. I was never told
4 that, but there were some -- there were some others that
5 -- that I got subpoenas for, and I did raise the question.
6 This one was kind of at full steam, so I didn't get a
7 chance. I was doing a number of different things, so I
8 didn't really pay attention as this -- as this one was
9 developing. But I have no clue about what I'm going to be
10 paid.

11 Q. Do you remember our phone conversation when you
12 told me, Because you were not getting paid, you were not
13 willing to bend over backwards to try to make an effort in
14 your evaluations in this case?

15 A. No. No. I -- I don't recall saying anything
16 like that. I mean, that's -- wow. No, I don't recall
17 saying that at all.

18 Q. You know, it's interesting. I was so struck by
19 it when you said it, I was in my office, and I wrote it
20 down on this piece of paper.

21 A. All the -- that is -- I did not say that. I was
22 complaining about the number of documents you were
23 throwing my way. I did -- there's no way I said to you,
24 I'm not willing to bend over backwards for this case. I
25 would never say that about any case. So I did not say

1 that. I don't know what else to tell you. I didn't say
2 that. I -- if you got it written on that paper, that's
3 okay, but I didn't say it.

4 Q. Dr. Railey, you conducted no collateral
5 interviews?

6 A. I did not.

7 Q. And you asked me to make arrangements for you to
8 interview the Mosleys on May 18th from 2:00 to 5:00, on
9 Sunday afternoon, and you did not show up?

10 A. Actually -- actually, I don't -- I don't recall
11 that, but there were -- there were a ton of things going
12 on at that time. I was actually in the process of
13 relocating or reopening my Tallahassee office, so -- but I
14 -- I don't recall say -- telling you that.

15 I recall us having some back and forth about the
16 -- about how to get the -- the WHODAS to both parents.
17 That, I recall.

18 Q. Okay. So you did decide --

19 A. (Indiscernible) for that.

20 Q. -- you did decide to e-mail the WHODAS to Renee
21 Mosley?

22 A. Yes, I did.

23 Q. Right? But when I informed you that Thomas
24 Mosley's dad, David Mosley, had information about Thomas's
25 adaptive functioning and his work with him around his

1 construction business, --

2 A. Uh-huh.

3 Q. -- you didn't send him a WHODAS, right?

4 A. I did not. And the reason I didn't is because I
5 -- if I'm not mistaken, I think you mentioned to me that
6 he had problems reading as well, and he didn't even have
7 an e-mail address.

8 Typically, the way this works, you don't -- the
9 person who is -- who is responsible for completing the
10 task, you -- you send it to that person and that person
11 only. So I had problems with sending it to his -- to his
12 wife, given that she was -- I mean, how was I to know that
13 she wasn't going to do it for him.

14 Q. So you told me on the phone that, if he had
15 trouble reading and if he didn't have an e-mail address,
16 he was probably intellectually disabled, right?

17 A. No, I didn't say that, because I don't believe
18 that statement. So, no, I didn't tell you that. I'll say
19 that that would be a logical argument for your -- for your
20 -- for the prosecution to say, but I didn't say that
21 because that doesn't make any sense. I mean, that -- that
22 totally counters what I'm saying here. So I didn't say
23 that.

24 Q. You e-mailed a WHODAS to Renee Mosley to fill
25 out, but you didn't e-mail a WHODAS to Renee Mosley a

1 second time so that David Mosley could fill one out,
2 right?

3 A. No, I didn't.

4 Q. Why not?

5 A. Because, I just explained why.

6 THE COURT: If we can move on. Let's move on.
7 He just answered that.

8 MS. RUSSELL: Okay.

9 BY MS. RUSSELL:

10 Q. Dr. Railey, you're aware of the literature on
11 adaptive functioning?

12 A. Not all of it. I peruse every now and again
13 when I have time.

14 Q. So your entire analysis of Thomas Mosley's
15 adaptive functioning was from the WHODAS?

16 A. And my interaction with him.

17 Q. And your personal observation?

18 A. Yes. The -- all -- all of the video I watched.
19 Yes. By and large --

20 Q. And the videos?

21 A. And his written -- his written requests, inmate
22 requests. There were a few of those. I read -- there
23 were -- there were also some text messages. I don't know
24 who they were to, but there were text messages,
25 conversations with him and somebody on the outside.

1 Q. Was there anything else that you used in order
2 to assess his adaptive functioning?

3 A. I mean, those are the -- those are the heavy
4 hitter items I would -- I would -- as I recall.

5 Q. Okay. You'd agree that the AAIDD is the oldest
6 and largest professional society concerned with
7 intellectual disability? They've been around since 1876?

8 A. I'm not familiar with when they -- when they
9 were formulated, but I do know they exist -- they -- that
10 they've existed for a long time.

11 Q. And they're one of the foremost authorities on
12 intellectual disability, right?

13 A. I haven't seen that written anywhere, but I'm
14 not going to argue with it. I mean, there -- there are --
15 that area of -- there -- there is no known area of study
16 at the doctoral level for experts in that -- for an
17 education in that.

18 That's something that even -- even, say, a
19 school guidance counselor has to -- has to learn, you
20 know, to understand that. So, I mean, I'm not going to
21 argue with the statement if you say they are the foremost
22 -- I'll -- I mean, I'm not going to -- I'm not going to
23 argue with it.

24 Q. All right. Tell me all the standardized
25 adaptive behavior scales that you're familiar with and

1 that you use in your practice.

2 A. Well, to be totally honest with you, I only use
3 two. I use that one and then the Vineland. There is
4 another one that I use.

5 THE COURT: Can you --

6 THE WITNESS: Vineland.

7 THE COURT: Can you spell it or --

8 THE WITNESS: Yes. I'm sorry. V-I-N-E-L-A-N-D.
9 It's Vineland Adaptive Scales. That one is -- it's
10 pretty long. It's quite long.

11 When doing assessments behind the fence, if you
12 will, I mean, there's always a concern about taking
13 too long and losing, you know, just sort of getting a
14 ton of random responding, not due to any -- any ill
15 intent, but just to be done.

16 So the Vineland is generally accepted, based on
17 everything I read. I know in doing work with the
18 Division of Disability -- I keep saying that -- with
19 the Division of Vocation of Rehabilitation. That's
20 one that they were pretty -- pretty high on. So
21 that's -- so I've been using that one when it really
22 came down to it.

23 The only time when I used Vineland is when --
24 when I'm -- when I'm evaluating a kid on the outside
25 for autism spectrum, but also look at that anytime

1 there's a very low IQ score, and it's kinda hard to
2 see these things with kids.

3 So -- and -- and for a kid, the parents want to
4 answer it. So it's essentially the same type of --
5 it's just an expanded version, if you will, as the
6 WHODAS. But there are other instruments, but I don't
7 -- I don't use those. It's kind of expensive to
8 order a bunch of tests. So that's not one I use.

9 There are some others in my -- in my -- in my
10 electronic health records that I can generate, but I
11 like the WHODAS better than those, so that's what I
12 have -- tend to go with that one.

13 BY MS. RUSSELL:

14 Q. Is one of the reasons you like the WHODAS is
15 because it's free?

16 A. No. I also -- I also own the Vineland.

17 Q. Okay. So Table 3.4 in the AAIDD Manual, says
18 that there are, basically, four standardized tests that
19 are accepted for the assessment of adaptive functioning:
20 The Adaptive Behavior Assessment System, which is the
21 ABAS-3; the Adaptive Behavior Diagnostic Scale, the ABDS;
22 the Diagnostic Adaptive Behavior Scale, the DABS; and the
23 Vineland, which you have.

24 The WHODAS is not recommended by the AAID; (sic)
25 were you aware?

1 A. No, I was not aware, but I still would have -- I
2 still would have used it in this situation. If there was
3 some -- if there was some cloudiness to it, I -- I did
4 have in my arsenal, the Vineland, which was on those
5 iPads. Actually, it's on the iPads that I could have -- I
6 could have called it up whenever I wanted to, and I also
7 could have used the -- the WAIS-5, if I wanted to.

8 But I didn't see -- again, for me, I didn't see
9 any -- I did -- I didn't have any confusion about what I
10 was seeing. Everything matched up to me. I mean, his, in
11 his presentation, was enough for me to understand that he
12 can negotiate the environment successfully.

13 Q. Is the WHODAS in the DSM-5?

14 A. I'm sorry?

15 Q. Is the WHODAS in the DSM-5?

16 A. There are a lot of instruments that aren't in
17 the DSM-5. The DSM-5 is -- is not so much -- I mean,
18 there is -- they used to publish a mental measurement
19 yearbook, and that's where all the instruments are,
20 typically.

21 But the -- the DSM-5 is more for disorders to be
22 diagnosed. There may be some places in there where they
23 mention an instrument, for example, if you will, but the
24 purpose of the DSM is to -- is to help codify
25 psychological disorders.

1 Q. So you'd agree that the DSM-5 TR is
2 authoritative and important in your line of work?

3 A. Yeah.

4 Q. All right. Actually, do you have your DSM-5 TR
5 with you, Dr. Railey?

6 A. I don't travel with my DSM-5.

7 Q. All right.

8 MS. RUSSELL: May I approach the witness, Your
9 Honor?

10 THE COURT: Sure.

11 BY MS. RUSSELL:

12 Q. You know, it's interesting. The DSM-5 actually
13 has the WHODAS 2.0 in the back of it at page 854 and 855.
14 I'd like you to look at that, Dr. Railey, and tell me
15 where it says that the WHODAS should be used for adaptive
16 functioning in an intellectual disability determination?

17 A. Well, I've -- I've been using it -- it doesn't
18 say it. It doesn't say it. I've quickly scanned this, it
19 doesn't say it, but that doesn't mean you can't use it.

20 Q. That's fair.

21 A. Hang on a second. I don't want to make a liar
22 out of myself. I'm not seeing where it says you can't use
23 it.

24 Q. But it doesn't say it's --

25 A. So it's kind of neutral.

1 Q. Oh, it's neutral?

2 A. Yeah.

3 Q. Okay.

4 A. I would say -- I mean, it's silent on that just
5 because -- just because it doesn't specifically say that,
6 it doesn't mean you can't use it because, again, a lot of
7 -- you know, I can't -- I don't know what the motivation
8 was, but a lot of agencies -- a lot of state agencies that
9 I contract with, they want to have that one, so I give
10 them the one they want to have.

11 Q. Dr. Railey --

12 MS. RUSSELL: May I approach, Your Honor?

13 THE COURT: Yeah.

14 BY MS. RUSSELL:

15 Q. I'm going to show you what's been marked as
16 Defense 21 and Defense 22. That's the WHODAS 2.0 Manual.

17 A. Uh-huh.

18 Q. And an article on the DSM-5 and assessment of
19 functioning with the WHODAS 2.0.

20 MS. SULLIVAN: Mr. Russell, can I just make a
21 request?

22 MS. RUSSELL: Sure.

23 MS. SULLIVAN: Can you show me what you're doing
24 before you walk it up because I haven't seen any of
25 this, and I was just letting that go. So I'd just

1 like to see it --

2 MS. RUSSELL: Sure.

3 MS. SULLIVAN: -- before you walk up there.

4 Thank you.

5 THE COURT: Exhibit 21 is what? You just gave
6 it to --

7 MS. SULLIVAN: 21 looks like it's the WHODAS
8 2.0 --

9 MS. RUSSELL: Manual.

10 MS. SULLIVAN: -- Manual.

11 THE COURT: Okay. And the other one was what?

12 MS. SULLIVAN: It appears to be an article about
13 the WHODAS.

14 THE COURT: An article. Okay.

15 MS. SULLIVAN: And I just want to put on the
16 record, I'm not making a big deal out of it. I have
17 not been provided any of these articles, read any of
18 these articles ahead of time that's been taken up
19 there today.

20 THE COURT: Have you seen the WHODAS Manual
21 before?

22 MS. SULLIVAN: I've looked at it myself in
23 preparation for this hearing.

24 THE COURT: Okay.

25 MS. SULLIVAN: Not by Defense.

1 THE COURT: Okay.

2 MS. SULLIVAN: But the articles that have been
3 walked up to him during this proceeding have not been
4 given to me.

5 THE COURT: Okay.

6 MS. SULLIVAN: Again, I want to keep moving, but
7 I just wanted that in the record.

8 THE COURT: All right.

9 MS. RUSSELL: I feel like we might have provided
10 this manual when we attached it to the motion.

11 MS. SULLIVAN: You didn't.

12 THE COURT: She just said she's seen --

13 MS. RUSSELL: Okay.

14 THE COURT: -- the manual.

15 MS. SULLIVAN: I've seen the manual. I have no
16 issue with the manual.

17 THE COURT: It's the articles she's meaning.

18 MS. RUSSELL: Okay.

19 THE COURT: She hasn't seen them before.

20 BY MS. RUSSELL:

21 Q. So, Defense 22 and Defense 21, the WHODAS
22 Manual, and the DSM-5 Assessment article, can you show me
23 where in any of those anyone says that the WHODAS should
24 be used for the assessment of adaptive functioning with
25 intellectual disability?

1 A. I don't have time to read through those at this
2 point, but let me also say that I'm pretty sure what's in
3 there, too, is they're not saying you can't. And, again,
4 this concept of clinical decision-making is important.
5 You know, we get to choose.

6 Now, we have -- when we -- you know, when you
7 make a decision, you've got to -- if you live by the
8 sword, you die by the sword; you've got to explain
9 yourself. But just because it doesn't specifically say we
10 should, that doesn't mean you can't use it for that.

11 Again, I have -- I have, in lieu of the
12 Vineland, been asked to administer it. I didn't -- I
13 looked at it. I didn't see any problem with it. It
14 seemed like it had what we call "construct validity."

15 So did it -- did it actually depict what one
16 would look like with mild or extreme --extremely bad
17 adaptive function skills? It had content validity to me,
18 so I used it.

19 MS. RUSSELL: Oh, can we move those into
20 evidence, Your Honor?

21 THE COURT: Is there any objection to 21 and 22?

22 MS. SULLIVAN: No, Your Honor.

23 THE COURT: They'll be admitted as such.

24 (Defense Exhibits 21 and 22 received into evidence.)

25 BY MS. RUSSELL:

1 Q. So both the AAIDD 12th Edition Manual and the
2 DSM-5 express that adaptive functioning should be assessed
3 in a community setting, correct?

4 A. Ideally, yes. There's no way to do that in a --
5 you know, in a situation like this. Ideally, that --
6 that's why I wanted -- I would want to -- ideally, I
7 wouldn't even want anyone to tell me. I want to just -- I
8 want to see it, and I want to have the -- the scoring, and
9 I just -- and I -- and I respond based on what I see.
10 Ideally, that's really the best way to do it.

11 Q. And both the AAIDD and the DSM-5 established
12 that the adaptive functioning analysis should be during
13 the developmental period, correct?

14 A. I disagree with that. I'm not -- if that's what
15 it says, okay, but -- but what that is heading to -- and
16 this is why I have a problem with some of these
17 organizations, you give people a label for life. So I'm
18 not going to sit here on this stand and have sworn
19 testimony saying, I -- yes, that's the way it is. No,
20 that is not the way it is. I don't care what that -- and
21 it's not my opinion.

22 There are people that I have -- I -- I have been
23 around for years that they started slow, but -- but if you
24 met them now, you wouldn't even know it. So I'm -- I'm
25 not going on the record saying that you -- you identified

1 this in childhood, and it stays. Absolutely not. I can't
2 say that.

3 Q. So you're saying that intellectual disability is
4 not a permanent disabled -- disabling condition?

5 A. It depends on how bad it is. If it -- if it's
6 mild, probably not. They can probably overcome it. If
7 it's severe, okay. No, there's no way. There -- but I
8 have actually evaluated people who are severe and there's
9 no question about this. That's too far to go to make it
10 out of that category.

11 So those, no. But the others, just like someone
12 with ADHD, I mean, they're -- you know, they've got a
13 better prognosis if they had a milder version of it than
14 -- than others. The same thing with autism disorder,
15 PTSD, depression. But when it's more severe like that,
16 there's just too -- there's too far to travel to make it
17 out of that -- out of the grips of that problem.

18 Q. Dr. Railey, the WHODAS is 30 days retrospective,
19 right?

20 A. Yes, it is.

21 Q. So it doesn't look to age 22, to age 21, --

22 A. No.

23 Q. -- to age 20?

24 A. But my question to you is: Why does it need to?

25 Q. Unfortunately, Dr. Railey, I'm in the position

1 of getting to ask the questions.

2 THE COURT: I think that was a hypothetical not
3 a rhetorical. I don't think he was --

4 THE WITNESS: Yes, I -- thank you, Your Honor.

5 THE COURT: I think that was a thinking point
6 for me.

7 THE WITNESS: Thank you, Your Honor.

8 THE COURT: Okay. I've got it.

9 BY MS. RUSSELL:

10 Q. All right. You said you looked at limited
11 education records in your adaptive functioning analysis,
12 correct?

13 A. Yes.

14 Q. All right.

15 A. No. I -- well, I looked at records, just to
16 inform the report. I didn't -- I didn't use those records
17 to -- I'm not going to depend on those records again. It
18 seems like we keep going in this direction. I am not
19 going to use records of the past to diagnose current
20 functioning. That, I'm not going to do. That's never
21 going to happen. So I would just -- I'll have to take the
22 -- I'll take my strike for that one.

23 Q. All right. Dr. Railey, let me just show you, so
24 I can save a lot of questioning, Defense Exhibit 4.

25 MS. RUSSELL: May I approach?

1 THE COURT: Yes.

2 THE WITNESS: This -- this looks familiar.

3 Yeah. I have this.

4 BY MS. RUSSELL:

5 Q. And your position is that there's nothing in
6 those records that's important to your adaptive --

7 A. No.

8 Q. -- functioning analysis?

9 A. That's not exactly what I said. The part -- the
10 bottom line is, the most important information regarding
11 his adaptive functioning is his current adaptive
12 functioning, as observed by myself. So I'm not saying
13 this is totally irrelevant. This may be where he was, but
14 this is not -- this is not necessarily indicative of where
15 he is now.

16 Again, it is troubling. It's -- I -- there's no
17 way I would ever agree to something like that because this
18 is what leads to stereotypes. This leads to stigmas.
19 This leads to getting people trapped in situation --
20 things that they cannot get out of. So I -- I would never
21 -- in fact, one of the reasons I went into this -- into
22 psychology, is to fight against that sort of thing.

23 Q. So there are no deficits in social, conceptual,
24 or practical domains that you took from these records in
25 terms of your adaptive functioning analysis?

1 A. No. I looked at his current functioning for
2 that. I looked at the -- whatever -- whatever the videos
3 -- whatever time there is on there. I looked at -- I read
4 the request, I read his text messages, and I talked to
5 him. So that's how -- and -- and based on how I saw
6 things, I responded to the WHODAS, and that's the way that
7 -- so that was a legitimate WHODAS by proxy, which is the
8 same thing his mother did. It's appropriate.

9 Q. Okay. Let's talk about the Mini-Mental Status
10 Exam that you gave. Do you have the picture that Thomas
11 drew in your notes?

12 A. I'm sorry?

13 Q. Do you have the picture that Thomas drew in your
14 notes or the sentence that he wrote?

15 A. I have that. Give me a second here. Let's see
16 here. Okay. I'm good. Got it.

17 Q. Do you have the picture that he wrote and the
18 sentence?

19 A. Yes. Right here. That's the picture, and
20 here's the sentence.

21 MS. RUSSELL: Can we mark them?

22 THE WITNESS: Sure.

23 THE COURT: Are you fine with that?

24 THE WITNESS: So if -- the instructions. Here
25 are these.

1 THE COURT: This is not something in your
2 report?

3 THE WITNESS: Yes, it's in there, but the
4 instructions are not to explain what the drawings
5 are. He was supposed to --

6 THE COURT: These drawings are not in your
7 report, though?

8 THE WITNESS: No. No. No.

9 THE COURT: I'm not already supposed to have
10 those?

11 THE WITNESS: No. No.

12 THE COURT: Okay. I'm just making sure.

13 THE WITNESS: No, Your Honor.

14 THE COURT: All right.

15 MS. RUSSELL: And these are not proprietary raw
16 data, right? We can mark them as an exhibit?

17 THE WITNESS: But I am going to see -- I think
18 -- didn't I give you this?

19 MS. RUSSELL: No.

20 THE WITNESS: Okay. Well, this is --

21 MS. RUSSELL: It may have gone to our experts --

22 THE WITNESS: This is a little bit higher level
23 than the WHODAS, but just with his -- you know, we
24 can go ahead and I'll follow you sort of for this
25 with (indiscernible) on reports due. Go -- have at

1 it.

2 MS. RUSSELL: Okay.

3 THE WITNESS: Yes.

4 MS. RUSSELL: So, it's not proprietary? I don't
5 have to worry --

6 THE WITNESS: I'm not going to say that. But
7 I'm just saying, Your Honor, I want to -- I'm giving
8 it to you so you're -- you're in the right.

9 MS. RUSSELL: All right. And I'm going to mark
10 them as exhibits.

11 MS. SULLIVAN: Okay.

12 MS. RUSSELL: Because I'm going to talk about
13 them.

14 THE COURT: What did you say those numbers may
15 be? 27A and B.

16 MS. RUSSELL: Yeah.

17 BY MS. RUSSELL:

18 Q. Dr. Railey, the MMSE-2 EV is advertised as a
19 screening test for Alzheimer's and dementia?

20 A. It's also a good indicator of some cognitive
21 abilities.

22 THE COURT: All right. Time out. The ladies
23 don't come back in.

24 THE BAILIFF: They're leaving for the day.

25 THE COURT: They're what?

1 THE BAILIFF: Leaving for the day.

2 THE COURT: Okay. I don't need the middle
3 finger as they're walking out the door.

4 THE BAILIFF: Oh, I didn't see that.

5 THE COURT: I did. They don't come back in
6 without talking to me first.

7 THE BAILIFF: Yes, ma'am.

8 THE COURT: Thank you. I'm not sure that it was
9 directed at me or if it was directed towards the
10 courtroom. Either way, we're not going to tolerate
11 inappropriate courtroom behavior, so there we go.
12 You ready?

13 MS. RUSSELL: Yeah.

14 BY MS. RUSSELL:

15 Q. So the MMSE is a screening test, right?

16 A. It is -- it -- it is -- it is also a good
17 indicator of, for instance, processing speed. Well, that
18 the -- this -- okay. This -- this is an indicator of
19 processing speed. Now, this is also an indication --
20 indicator of, like, where you're at right now. Like, you
21 know, I want to say three words.

22 Q. Right.

23 A. You know, can you jump? So it's -- it's the --
24 those are the hallmark uses of it, but it also can be used
25 -- in fact, any time we evaluate someone, if you have an

1 interaction with someone, you really should do some form
2 of a mental status just to kind of see where they're at.

3 This is just more than you really have to do.
4 Typically -- typically, I don't -- I don't do the full
5 MMSE's expanded version, but in this case, as well as
6 several others, I decided to -- I decided to throw that
7 in.

8 Q. So a screening test necessarily denotes that
9 you're using it to figure out if there's a problem that
10 requires more testing. Is that normally what --

11 A. Well, it's a good --

12 Q. -- the screening tests are for?

13 A. It's a good indicator. What it also can do is
14 tell me based on what I'm seeing and how this person has
15 done, Am I on the right track or do I need to look more?
16 Do I need to do something else? So that's -- that's one
17 of the other reasons I use it, as well.

18 Q. Okay. Going down on page 4 of 11 of your
19 report, just so you can follow along. On Recall: On
20 formal testing, he claimed to recall only 1 out of 3
21 words, but in less formal conversation, he demonstrated
22 that he knew the full list of words. This discrepancy
23 strongly suggests a deliberate underperformance.

24 A. Yes.

25 Q. So the three words were milk, sensible, and

1 before?

2 A. Yeah. Uh-huh. Yes.

3 Q. And he responded to you, All I know is milk,
4 comfortable.

5 A. Yes. Uh-huh.

6 Q. Now, in less formal conversations, you said he
7 knew the full list of words. Did that happen when you
8 were giving him the WAIS? Because it didn't happen on the
9 video.

10 A. Well, that's not -- between items during the
11 Wechsler, we would -- we would have brief spurts of
12 conversation just to kinda give me -- stall for me to get
13 -- to get my stuff together so that I can go to the next
14 subtest. So during our conversation, he was -- he did
15 demonstrate that he had the short-term memory.

16 Q. Right. But in your report, you said, But in
17 less formal conversation, he demonstrated that he knew the
18 full list of words.

19 A. Yes. Meaning, outside --

20 Q. So he was a repeat milk, sensible, before.

21 A. Uh-huh.

22 Q. He repeated milk and comfortable.

23 A. Uh-huh.

24 Q. Then the video was over. I never saw on the
25 video that he was able to repeat those three words. So

1 are you saying that he demonstrated that he knew the first
2 -- the full list of words in some other time when you were
3 with him?

4 A. Not these specific words, but just -- just ask
5 -- I asked him a question, and then later -- that's all it
6 is. I ask a question, it could be any question, I'll give
7 you some things to remember and then I'll ask it again.
8 That's really all it is.

9 Q. Did you do that several --

10 A. During the -- between --

11 Q. -- times when we weren't --

12 A. -- between the subtests on the Wechsler, I did
13 chat with him some more because if you look at -- let me
14 see. There were certain items that I marked. If I put a
15 question mark by that, I really had questions about during
16 the test. And if you look at your copies of it -- I'm
17 not sure. Let's see here. That's one of them, but I put
18 a question mark by the things that I really -- I really
19 questioned.

20 Q. Was that on the MMSE, or are you talking --

21 A. Yes.

22 Q. -- about the raw data from the WAIS?

23 A. The MMSE.

24 Q. All right.

25 A. That's some -- you should have a copy of that.

1 Q. I do not have a copy of it, Dr. Railey --

2 A. Oh, that's right. Well, you know, again --

3 Q. -- because it's a proprietary test.

4 A. Here you go. I'm feeling very benevolent. Here
5 you go.

6 THE COURT: Well -- all right.

7 THE WITNESS: You can have it.

8 THE COURT: Let's not do that, okay?

9 THE WITNESS: I mean, it's really --

10 THE COURT: If it's proprietary, I'm going
11 through great lengths to make sure things are
12 protected. So if they're proprietary, the doctor has
13 them. That is sufficient --

14 THE WITNESS: Can I show it?

15 THE COURT: I don't want you --

16 THE WITNESS: Can I show them just the places
17 where I marked question marks by the things I had
18 trouble with based on everything else we had done? I
19 put question marks by the things that I -- you know,
20 I wasn't -- I wasn't okay with as far as his
21 performance.

22 THE COURT: Well, do you just want to read those
23 into the record?

24 THE WITNESS: Sure. Sure. On the -- let's see
25 here. So attention and calculation. That's --

1 BY MS. RUSSELL:

2 Q. So are these things in addition to things you
3 noted in your report, or were these things in your test
4 results that you didn't mention in your report?

5 A. Well, this -- this went to inform the entire --
6 it -- it's in the writeup, everything that -- you know,
7 these are just items that I just had questions about. If
8 I -- if I could substantiate it, then I left it alone.
9 But these are things that just during the administration
10 of this, that I just had some questions about and I did a
11 few things just to try to see if -- if I was off on it.

12 But, like, on this one, you know, I -- the task
13 is to start at 100, and count back by 7. So subtract 7
14 each time. And even -- even I've evaluated people with
15 major neurocognitive disorder -- now, they don't get them
16 correctly, but they don't -- they don't respond in -- in
17 variations of 10.

18 Like, his was 97, 87, like that. That -- that's
19 kinda how he responded, subtracting 10 instead of 7. In
20 some of the worst cases of dementia that I've had --

21 THE COURT: Is that a common question? You ask
22 people to --

23 THE WITNESS: Yes.

24 THE COURT: -- count back from 100 --

25 THE WITNESS: Yes.

1 THE COURT: -- in increments of 7?

2 THE WITNESS: Yes. Now, that's part of the --
3 even -- even the --

4 THE COURT: Oh, my God.

5 THE WITNESS: -- the short -- I know. I
6 wouldn't do well either.

7 THE COURT: I would need a pencil and a pad to
8 do that.

9 THE WITNESS: Well, here's the thing --

10 THE COURT: (Indiscernible).

11 THE WITNESS: -- you could -- we don't tell
12 them, but they just figure out they can use their
13 hands.

14 THE COURT: Okay.

15 THE WITNESS: It's all about tracking the
16 information. You can use your hands. You can -- we
17 don't -- we don't tell you what you can and can't do.

18 THE COURT: All right. Okay.

19 THE WITNESS: Yeah. We -- so I have people do
20 that.

21 THE COURT: I would have failed that test, too.

22 THE WITNESS: Well, I would have to -- you know,
23 I'd have to use a calculator.

24 BY MS. RUSSELL:

25 Q. So, Dr. Railey, I don't really want you to go on

1 a big narrative about your test because I know we're all
2 cognizant of time. I did have some questions specifically
3 about what was in your report. And if you'd like to note
4 that you had questions from the data as I go through,
5 that's fine. I think some of the things that you were
6 talking about were noted in your report. So I don't want
7 to --

8 A. Oh, okay.

9 Q. -- really double-count if that sounds all right.

10 A. Okay.

11 Q. So on attention and calculation on that MMSE,
12 you said that Thomas exhibited competence in everyday
13 conversation about finances and car maintenance.

14 Does that sort of change now that you've looked
15 at the historical data?

16 A. No. Well, he -- that was the conversation. I
17 -- it can't change the conversation. I can't go back and
18 change what he said. I mean, whether it was -- whether it
19 was him telling the truth or not, that's another story,
20 but he did say these things.

21 Q. And the last formal conversation that you're
22 talking about was all during the videotaped part of our
23 exam?

24 A. No. It -- some of it you weren't there. When I
25 started -- when I was administering the -- the Wechsler,

1 that's where you left. So between subtests, like, as I'm
2 setting up the iPads and I'm getting my utensils that I'm
3 going to need for a specific subtest, I just had a little
4 conversation as I go through that just to kind of, you
5 know, cover it up. Basically, I'm just stalling so I can
6 get my -- get my next subtest together.

7 Q. Okay. And on writing, he attempted to
8 demonstrate poor writing by claiming to forget how to
9 spell certain words. However, he was able to write his
10 name correctly with normal letter formation, suggesting he
11 has no severe defects in writing.

12 Now, is it your position that anyone who can
13 write their name has no deficits in the written abilities?

14 A. In terms of forming letters, yeah. Just because
15 a person has bad penmanship, that does not mean that --
16 even if they have bad spelling, I mean, that's not --
17 especially in the age of -- I mean, these computers do
18 everything for you with autocorrect and all of that. So I
19 did not -- I didn't -- I didn't see that.

20 But even, again, even if -- I mean, some of the
21 most intelligent people in this country, they don't have
22 good writing skills. That's why computers are so
23 prevalent. And -- and some of the more artistically
24 inclined people, they -- they're horrible at math. They
25 don't -- they just don't get it.

1 So we can't -- we can't use these individual
2 things as -- and label people. Again, that is just not
3 something that -- that I -- I'm not inclined to do. If --
4 if a person has a diagnosis and they want to get it,
5 that's just the bottom line because I know that whatever
6 -- whatever I arrive at -- whatever the conclusion is I
7 arrive at, at some point, I'm going to have to defend it.
8 I will have to defend my conclusion.

9 Q. I'm going to just show you -- I know you know
10 the drawing, Defense 27A. This is a shaped drawing. It's
11 a copying task, right? You show him this shape, and you
12 say, Thomas, draw the same thing?

13 A. Yeah.

14 Q. Now, you said on a copying task he made
15 simplistic errors that appeared contrived.

16 What about that drawing appeared contrived to
17 you?

18 A. Well, he doesn't -- to me, it does.

19 Q. Why?

20 A. Because I think some of the lines could have
21 been formed. I mean, I didn't see any -- any tremors in
22 him or anything like that. So I -- I feel like some of
23 the lines, but technically, he -- he actually scored
24 correctly. If you look at the scoring on it, you just
25 have to have two lines intersect, which I -- I think he

1 does. But just because of the -- the way it's set up, I
2 went ahead, and I did not score it in the -- in the
3 positive direction. I -- I actually subtracted a point or
4 whatever it called for, for that.

5 Q. Now, you also said that you asked about a
6 sentence. Tell me something about where you live?

7 A. Yes.

8 Q. Right? You hand him the pen and ask him to
9 write?

10 A. Yes.

11 Q. And you said a lot of times you give that test
12 to kids?

13 A. Yeah.

14 Q. And they say things like -- tell me what they
15 say.

16 A. You know. I like -- I like the neighborhood I
17 live in. I have a lot of friends in my neighborhood. I
18 like my neighborhood because I have friends there. It's a
19 simple, a real simple thing. We're talking about
20 elementary school kids, so I think for them, you know,
21 that's pretty good.

22 Q. Yeah. And Thomas wrote, according to your piece
23 of paper, I --

24 A. Actually, that's his writing.

25 Q. Right. I live in florida, small F, period.

1 Concrete?

2 A. Okay.

3 Q. Is that concrete?

4 A. Yeah, I'd say so.

5 Q. I mean, no adjectives or adverbs in that one?

6 A. No, which is why for -- for someone of -- of his
7 age, I kind of wanted to see a little bit more complexity.
8 So, again, I don't think I scored that one either. I
9 don't -- I don't think I -- I think I scored a -- yes, I
10 scored a zero for that one, as well. Even though I had
11 questions about it, I -- and the writing, and I have
12 question marks by those, I did score them zeros.

13 MS. RUSSELL: Could we ask that Exhibits 20A and
14 20B be moved into evidence?

15 THE COURT: Any objection to 20A and B?

16 MS. SULLIVAN: No, Your Honor.

17 (Exhibits 20A and B were received into evidence.)

18 BY MS. RUSSELL:

19 Q. You also checked his story memory, right,
20 Dr. Railey?

21 A. Yes.

22 Q. And during storytelling recall, according to
23 your report, he spontaneously offered more accurate
24 narrative details when engaged in open conversation about
25 related themes, further supporting the notion that he was

1 deliberately withholding correct responses, right?

2 So you said something to the effect of, Listen
3 carefully. Mr. Taylor was worried because his dog, Daisy,
4 had been missing for six hours while he searched the
5 house. His friends help by calling Daisy's name around
6 the neighborhood upset because Daisy couldn't come home.
7 He made some fliers to hand out and went to the closet to
8 get his coat. He was relieved to see his little pet
9 asleep on a blanket in the corner. Okay?

10 Tell me everything you remember about that story
11 and start at the beginning. Every little detail, just
12 whatever you can spit out.

13 Is that approximately what you asked him to do?

14 A. Yes.

15 Q. And Thomas's response was: He lost -- he lost
16 his dog. Okay.

17 A. I don't -- yeah, he lost his dog. Yeah. That's
18 what he -- that's what he said.

19 Q. He didn't remember very much of that story, did
20 he?

21 A. Well, he didn't tell me very much of what he
22 remembered. That's -- that -- I have confidence I can say
23 that.

24 Q. Is it possible that people with speech language
25 difficulties don't tell you very much about the story?

1 A. People with concrete cognitive complexity, they
2 do that. So, again, it's -- it's going to take more than
3 that one thing for me to -- for me to read where you're
4 going with this one because, you know, the way we -- the
5 conversation we had flowed like two -- two guys, you know,
6 sitting at a bar or something having a beer. It flowed
7 just as smoothly.

8 Again, the only time it -- it got interrupted
9 was when I -- you know, I think when he got a little bit
10 chatty, more so in certain instances, and then he would
11 glance over at -- he would glance over at you, and then he
12 would slow back down.

13 But, otherwise, you know, it was just two guys
14 having a conversation, which is, again, that is my intent.
15 That's the way I like it to be because I'm -- I'm trying
16 to -- I want -- as best I can, I try to get at the truth
17 of what's going on.

18 MS. RUSSELL: Your Honor, we have marked the
19 interview of Dr. Railey as Defense Exhibit 18. It's
20 a zip drive. I think we provided the video to the
21 State. If your file worked.

22 MS. SULLIVAN: It worked.

23 MS. RUSSELL: We're going to save the Court the
24 time of actually going through the video right now in
25 front of everyone, --

1 THE COURT: I appreciate that.

2 MS. RUSSELL: -- but we'd like to just admit it
3 into evidence.

4 THE COURT: Do you have any objection to that?

5 MS. SULLIVAN: No.

6 THE COURT: Okay. Do you have a copy for me?
7 Not today. It doesn't have to be right now.

8 MS. RUSSELL: Judge, just between us, we've been
9 having all kinds of problems. Like, our new office
10 policy is --

11 THE COURT: I don't need it today.

12 MS. RUSSELL: -- evidence.com.

13 THE COURT: I don't need it tomorrow.

14 MS. RUSSELL: Okay. We'll find you -- we'll
15 find you something like this, hopefully.

16 THE COURT: Before we close with Dr. Hall on the
17 23rd and all of that, I just need a copy. It doesn't
18 have to be right away. So I can review it on my own
19 time.

20 MS. RUSSELL: We'll get it. But the
21 evidence.com links are just not working for anybody.

22 MS. SULLIVAN: I'll second --

23 THE COURT: You can get it?

24 MS. RUSSELL: Yeah.

25 MS. SULLIVAN: -- what Ms. Russell said. I had

1 it. I watched it once. I wanted to put it in
2 evidence in this hearing. I tried to transfer it
3 many times over the last few --

4 THE COURT: Okay.

5 MS. SULLIVAN: -- days and it gets corrupted and
6 will not transfer onto anything.

7 THE COURT: Okay. Can you --

8 MS. RUSSELL: We'll --

9 THE COURT: Can you make your best efforts --

10 MS. RUSSELL: Yeah.

11 THE COURT: -- in the next week and a half --

12 MS. RUSSELL: Absolutely. Absolutely.

13 MS. SEIFER-SMITH: Yeah.

14 THE COURT: -- to get it done?

15 MS. RUSSELL: We will get it.

16 MS. SEIFER-SMITH: Our investigator is on it.

17 THE COURT: Thank you.

18 MS. RUSSELL: We'll get it done.

19 THE COURT: I appreciate it.

20 MS. RUSSELL: I mean, and I'm pretty sure that
21 one should be okay.

22 THE COURT: Okay. I just -- I really try to not
23 bring evidence back into chambers.

24 MS. RUSSELL: Okay. Fair enough.

25 BY MS. RUSSELL:

1 Q. You also said on the MMSE that his processing
2 speed was slow?

3 A. Uh-huh. Based on the results, yes. And this is
4 fairly consistent with what I saw. Of course, relatively
5 speaking, that -- but it was -- it was relatively
6 consistent with his performance on the -- on the WAIS
7 because there's a similar -- there's a similar task on the
8 WAIS.

9 Q. So you're saying that his thought processing
10 speed was actually consistent with --

11 A. No.

12 Q. -- his score?

13 A. His performance. His relative performance was
14 consistent. I'm -- and I'm not sure I have an accurate
15 understanding of his actual processing speed.

16 Q. Let's talk about the WHODAS. I believe that we
17 have Defense Exhibit 23, which are the scores that you
18 provided --

19 A. Uh-huh.

20 Q. -- to us earlier today.

21 A. Okay.

22 Q. So the WHODAS has 39 questions?

23 A. Somewhere in that neighborhood, yes.

24 Q. And is it possible for someone to self-report on
25 the WHODAS? That somebody could just fill it out

1 themselves?

2 A. No. You would give it to them. I -- well, I
3 guess you can interview someone, and then you give them
4 the -- so you can -- you can do that if you like, but
5 typically -- well, actually, I'm -- I'm sorry. There is
6 an interview protocol. There is.

7 Q. But you didn't do the interview protocol?

8 A. No, I did not.

9 Q. So you did your examination at the Pinellas
10 County Jail, and you reviewed the records, and then you
11 went home, and you did the WHODAS yourself for Thomas?

12 A. Yes, but I -- but I'll -- again, we have to look
13 at -- we have to also remember the video that I watched
14 and the text messages and the Inmate Request Forms, those
15 also factor into it.

16 Q. And it apparently took you 1 minute and 24
17 seconds to complete those 40 questions on his behalf?

18 A. Yes, because I already knew what my indicators
19 were going to be. I mean, I've -- I've reviewed all of
20 this stuff. So, yes, that's all it takes. You just --
21 the -- the whole entire form fits on the screen. It shows
22 up, and you just click. You read the items, and you click
23 and that's what I did. So, yes, that's all it took.

24 Q. So you read the items, and you clicked, and you
25 scored him a zero for every single --

1 A. Because I did not see --

2 Q. -- indices?

3 A. Because I did not see any dysfunctional area,
4 much -- I know that's much different from his mom who saw
5 dysfunction in every area. If you look at hers, he cannot
6 walk on his own --

7 Q. We'll get a chance to look at hers in --

8 A. -- so --

9 Q. -- a minute, Dr. Railey.

10 A. -- anyways, I'm just saying. So, yes, that was
11 my observation.

12 Q. Okay. I'm just asking about your observations
13 and about the fact that you put in all zeros.

14 A. Uh-huh.

15 Q. Let's talk about your -- some of these aspects.
16 First of all, all of the behavior that you observed and
17 the entry of the data had to do with behavior in the past
18 30 days, correct?

19 A. I'm not sure. I can't recall the date that some
20 -- because I keep saying that the -- the video that I
21 watched and all of the things that I read, I don't -- I
22 can't recall the dates on those. So that was part of it,
23 also.

24 Q. Understood.

25 A. That was with it, so within that time frame.

1 Q. Right, within that time frame.

2 And all of those interactions that you saw,
3 whether they were videos or e-mails or the behavior that
4 you observed using your clinical judgment, were in the
5 prison context, correct?

6 A. Yes.

7 Q. And not in a community setting?

8 A. No.

9 Q. And all of the things were also not during the
10 developmental period. In other words, Thomas Mosley was
11 23?

12 A. Yes. That's -- that's clearly the case. But
13 they're indicative, as I see it, of his functioning at
14 this time. It may not have been when he was, you know,
15 five years old, but, you know, neither was mine.

16 Q. Is there a column on the form of the WHODAS to
17 allow you to say, not applicable? So, in other words,
18 they may ask a question that actually doesn't apply
19 because somebody belongs in a prison or a hospital?

20 A. I can't recall. I can't recall.

21 Q. All right. Because, for example, when the
22 WHODAS says, How is he at analyzing and finding solutions
23 to problems in day-to-day life? And you put a zero,
24 Thomas Mosley really isn't experiencing day-to-day life in
25 the Health Division of the Pinellas County Jail, is he?

1 A. I'm not sure about that because one of the --
2 one of the text messaging chains, you know, he was
3 communicating with someone about some -- some fights that,
4 I guess, that were going on in his cell, and he knew how
5 to deal with that. He knew how to stay out -- steer clear
6 of it to where he wasn't part of it. So I think that's
7 pretty good.

8 Someone who has really has poor adaptive
9 functioning, they're going to have a meltdown right there
10 because of all of this drama. So I used that as one of my
11 indicators that, okay. Yes, that's intact.

12 Q. Do you even know what written things you looked
13 at? Because you're saying "text messages." I believe
14 that those were kiosk e-mails from 2023 from inside the
15 jail?

16 A. I can't -- I didn't see the date, but he was --
17 he was incarcerated, yes.

18 Q. Right. Yes.

19 A. He was incarcerated.

20 Q. Right.

21 A. I didn't see the date on those, but -- I wonder
22 if we have them here somewhere.

23 Q. But those weren't text messages from outside the
24 jail. Those were kiosks from inside the jail.

25 A. Well, I'm not sure how that works. They were --

1 it was just -- it was a conversation. It seemed like the
2 person who he was communicating with was not in there.
3 That's the way it seemed. That was my impression.

4 Q. Well, but Thomas Mosley, whose behavior you were
5 observing --

6 A. Yeah. Yes.

7 Q. -- was clearly inside the Pinellas County Jail?

8 A. He was incarcerated.

9 Q. All right.

10 A. Just like all of the other defendants I've
11 evaluated using that instrument. I mean, there's no
12 way -- I can't get him out of here just to administer a
13 WHODAS. So I have to, you know, improvise.

14 Q. Right. But you could, for example, give him a
15 Vineland, which is a universally accepted --

16 A. It is.

17 Q. -- adaptive functioning measure --

18 A. It is, yeah.

19 Q. -- that looks towards the developmental period,
20 not --

21 A. If you --

22 Q. -- in the past 30 days?

23 A. If you look at the Vineland, it is just an
24 expanded version of the WHODAS. I mean, it asks -- it
25 asks a ton more questions in each area, but his

1 functioning would measure out the same way.

2 Q. What about learning a new task, learning how to
3 get a new place? How can he -- how can you really assess
4 that in the prison setting?

5 A. Well, a lot of times it's about getting along
6 with others. Knowing how to -- knowing how to -- everyone
7 says just mind your own business. And so, again, I think
8 based on his description of what was going on in the cell
9 where he was, I feel like that was a pretty good indicator
10 that he knows how to get along. He knows how to not get
11 in other people's way, not invade their space.

12 Q. Moving around his home. You can't really assess
13 that in prison, right?

14 A. No, you can't, but -- but I improvised that in
15 the -- in the correctional setting.

16 Q. Getting out of his home. You can't really do
17 that, right?

18 A. Yeah, but, again, moving around. He knows how
19 to -- it appeared to me that he knows how to -- how to
20 move around his area. I know it was a bit confined, but
21 still, someone who has really poor adaptive functioning
22 skills, they're going to freeze in the midst of all of
23 this sort of stuff. They're just not going to know what
24 to do.

25 Q. Walking long distance, such as a kilometer, how

1 does that happen in prison?

2 A. I don't see that happening. I don't see it
3 happen. I don't know -- you know, when they go outside --
4 sometimes when I'm coming in to evaluate, I can -- I don't
5 actually see them, but I can hear the voices going around
6 there. There's some kind of court or something going on
7 in there, so -- so it's possible. He does move around.
8 He gets out and moves around. I'm pretty sure I addressed
9 that issue during the -- at some point during the
10 interview or when I was administering the Wechsler.

11 Q. Staying by himself for a few days. Not possible
12 in prison, right? Making new friends, not possible in
13 prison?

14 A. I think that's possible.

15 Q. Sexual activities, not really possible in
16 prison?

17 A. No. Yeah. That's -- that's going to be in
18 here. That doesn't count against him, though. Just, you
19 know, that's not -- that's not going to count against him.
20 It shouldn't be, and I wouldn't expect him to, even if he
21 was, to tell me that he was.

22 Q. But you still put a zero for that one?

23 A. Well, it's not a problem. It's not -- it's not
24 an issue. So, again, it didn't score. It's not -- it's a
25 zero. It didn't score.

1 Q. Well, actually, --

2 A. So that means -- that means it didn't score.

3 Q. -- nothing scored. Dr. Railey, nothing scored?

4 A. Exactly.

5 Q. Uh-huh.

6 A. But that certainly didn't.

7 Q. Taking care of his household responsibilities.

8 That's not really an issue with the jail, is it?

9 A. Well, you have to take care of your area whether
10 -- how small it might be. You have property you have to
11 maintain. Now, I didn't go in his cell. I have to admit
12 that I didn't go into his cell.

13 But every -- well, many, many inmates have
14 property, and you have to protect that property,
15 otherwise, it gets taken away from you.

16 Q. But that certainly isn't a household
17 responsibility, is it, Dr. Railey?

18 A. No, it is managing your property. I would say
19 it is. I mean, it may not be for you, but to me and -- in
20 my intent to sort of extrapolate, as much as I could, what
21 being in a jail would be. What that's like as opposed to
22 being in the community, that was my extrapolation.

23 But again, even -- the point I'm trying to make
24 here is that even when you can take away all of that, if
25 you wanted to, but everything that I saw, everything that

1 I actually witnessed and that I read, it screams good
2 adaptive functioning.

3 Q. And as you sit there right now, you don't
4 actually know that Thomas Mosley wasn't in a cell at all,
5 but rather in an open pod in the Health Division?

6 A. I think I did mention that. And -- and
7 actually, I think what I said -- I said he was in a
8 confined area. That is -- I did say that.

9 Q. Because you just told me about keeping his cell
10 clean.

11 A. But I did say he was in a confined area.

12 Q. Getting all work done that's needed, in the
13 Pinellas Jail? Getting work done as quickly as needed, in
14 the Pinellas Jail? You were able to observe those in that
15 jail setting?

16 A. I didn't get any complaints about that from him.

17 Q. How much of a problem do you have because of
18 barriers or hindrances in the world around him?

19 A. Counselor, in this sense, a zero is the same as
20 a non-applicable because -- because when it's scored --
21 when it's scored, the higher the score, that's what --
22 that's the indicator for some sort of problem.

23 But I'm -- I'm pretty sure; although, I don't --
24 I'm not going to -- I'm not going to pin a flag on this,
25 but I'm pretty sure there is no category -- there is no

1 column for N/A on there. So it's like a forced-choice
2 instrument.

3 Q. Well, when I get a little further down,
4 Questions 33, 34, 35, and then 38 and 39, it talks a lot
5 about limitations due to a health condition.

6 A. Uh-huh.

7 Q. And I wonder if you consider a mental health
8 condition, right? Because you've basically not diagnosed
9 Thomas Mosley with anything, right? So none of the
10 limitations?

11 A. Again, here -- here we are. Just because a
12 person -- no, I didn't see his mental health functioning
13 impacting his ability to -- to adapt. Again, this is
14 another one of those dangerous areas. You cannot say just
15 because someone has a diagnosed mental health disorder
16 that -- that they have a problem. You can't assume that.

17 That is a -- again, that's a very dangerous
18 presumption, and it's one I would never make. If I don't
19 see it as a problem, I'm not going to code it as a
20 problem.

21 Q. But the WHODAS is generally used for health
22 disabilities, right, not mental health disabilities?

23 A. No. It is -- it is a measure of adaptive
24 functioning skills, and those are -- regardless of what
25 your diagnosis is, those are universal, adaptive

1 functioning skills. Can you -- can you do these things;
2 yes or no? That's pretty much what it comes down to.

3 Q. But it doesn't really correlate to the three
4 domains of intellectual disability, does it?

5 A. I think it does.

6 Q. Tell me.

7 A. It does. Can you function in your environment?
8 Can he function in his environment? He can. He can do
9 that. He can get along in his environment. He knows how
10 to negotiate it. He's not finding any problems. He's not
11 getting in trouble. No DRs, at least none that I've seen.
12 So I -- I think it -- I think it does.

13 Q. Now, you gave the WHODAS to Renee Mosley by
14 e-mail. She filled it out, correct?

15 A. I'm -- I presume so.

16 Q. Returned the scores to you?

17 A. Well, she didn't return them to me. That's when
18 -- when she -- when she clicks "finish," that's the result
19 because that's the way it's set up in the portal. So she
20 didn't have to go through anything to send them to me.

21 Q. Were you aware that Renee Mosley actually raised
22 Thomas Mosley in her home and knew him his entire life
23 before he became incarcerated --

24 A. Oh, absolutely.

25 Q. -- at the age of 21?

1 A. Yes. I knew that.

2 Q. So she, actually, was able to observe his
3 ability to do household chores?

4 A. Was she able to observe everything? That's
5 rhetorical. I'm sorry.

6 Q. But she did. She was able to observe, although
7 she really didn't have many observations from 30 days ago
8 because Thomas Mosley has been incarcerated since 2021.

9 A. If I'd administered the Vineland, it would have
10 been the same thing. It would have been the same thing.

11 Q. But you didn't administer the Vineland, --

12 A. No, I did not.

13 Q. -- did you?

14 A. Yeah, I did not.

15 Q. And the Vineland is actually a universally
16 accepted norm for adaptive functioning and intellectual
17 disability, whereas the WHODAS isn't, correct?

18 A. I think it is. And, again, this is one -- we
19 have people by federal mandate, again, those who are
20 receiving services from the Division of Vocational
21 Rehabilitation, so they are actually under -- they have
22 documented problems, and they are actually under the
23 Americans with Disabilities Act, and using that instrument
24 has been deemed appropriate for them. So I don't -- I
25 mean, this is appropriate for him, too.

1 Q. For general disability. Not for intellectual
2 disability.

3 A. No. For this has -- there's a combination of
4 things it takes to -- to diagnose intellectual disability.
5 You have to have a low IQ, and you have to have problems
6 negotiating your community.

7 So it's not about just that -- that's not a
8 measure, in and of itself, of intellectual disability.
9 It's part of the piece. It's part of the pie, but it's
10 not in and of itself. I mean, there are people with high
11 IQs, but they can't fight their way out of a wet paper
12 bag.

13 So you have to be careful with the way you use
14 results and that goes back to my initial argument right at
15 the beginning, I think we have too many people looking at
16 these results who really don't have any clear
17 understanding of the entire intention. These -- these
18 things can be misused.

19 So, I can't stop it, but I do everything I can
20 to not play along unless I really have to, such as a
21 situation as this.

22 Q. Give me a minute, Dr. Railey.

23 MS. RUSSELL: Can we move Exhibit 23 into
24 evidence?

25 THE COURT: That's the --

1 MS. RUSSELL: The WHODAS score sheets for --

2 THE COURT: Any objection?

3 MS. SULLIVAN: No, Your Honor.

4 THE COURT: Those are the ones that are going to
5 be sealed, Madam Clerk?

6 THE CLERK: Yes, Your Honor.

7 (Defense Exhibit 23 was received into evidence.)

8 BY MS. RUSSELL:

9 Q. Dr. Railey, you'd agree that somebody with an IQ
10 of 55 would be potentially in the range of mild
11 intellectual disability, right?

12 A. Again, not necessarily. I can't -- I can't make
13 a blanket statement like that.

14 Q. You're aware of the DSM-5 --

15 A. Of course. I have a copy.

16 Q. -- TR?

17 And that people can have some adaptive deficits
18 and some adaptive strengths, correct?

19 A. Uh-huh. Yes.

20 Q. And just because somebody might have a few
21 adaptive strengths, doesn't mean that they don't have mild
22 intellectual disability?

23 A. Yes, and the converse is also true.

24 Q. The converse would be?

25 A. Well, I mean, they could -- they could have some

1 -- some limitations, but that -- that does not necessarily
2 mean that they have a disability.

3 Q. Absolutely fair. I think you testified on
4 direct that anyone with a 55 IQ would be incapacitated?

5 A. A true 55, I -- I don't see a person like that,
6 just in their ability to socialize. I -- I don't see them
7 being able to -- being able to successfully do that.

8 So in a sense, what I'm saying is, I think that
9 under a different situation, I believe his performance
10 would be markedly better than it was in this situation. I
11 think there's obvious -- there's inherent to -- to have
12 these types of performances.

13 I mean, there's just some inherent and, you
14 know, and, based on your own words to me, I mean, if he
15 could get that, you know, he's got a -- you know, he's got
16 a tough road to travel with his charges, but at least you
17 would be able to get him -- to get him a mitigation.
18 Okay. That's -- but that's not my -- that's not my worry.

19 I'm just trying to do what, based on my
20 understanding, I don't -- I don't -- every case is
21 serious. I don't -- I don't use that to determine, you
22 know, what -- how much work I'm going to put in this one
23 or that. Everybody -- to them, everybody's case is
24 critical to them, so that's how I try to treat it because,
25 if I found myself in this situation, that's certainly what

1 I would want.

2 Q. Mild ID is still ID, right, Dr. Riley?

3 A. If that's -- if it's a legitimate diagnosis,
4 yes. Absolutely.

5 MS. RUSSELL: Did I move Defense 20 into
6 evidence, which is Dr. Railey's explanation of --

7 THE COURT: I have Exhibit 20A and B as being
8 in. Is it marked as in?

9 THE CLERK: Yeah.

10 THE COURT: Okay. Great.

11 MS. RUSSELL: I think that's all I have right
12 now.

13 THE COURT: All right.

14 MS. RUSSELL: Thank you, Dr. Railey.

15 THE COURT: Thank you. Are you going to have
16 any questions for Dr. Railey?

17 MS. SULLIVAN: No, Your Honor.

18 THE COURT: So he's free to go?

19 MS. SULLIVAN: Yeah.

20 THE COURT: Okay. I had written down some
21 questions, but I think over the last several hours,
22 you have answered all of the questions that I was
23 kind of wondering.

24 THE WITNESS: Okay. I'll definitely go ahead
25 and get those answers. If you have any more --

1 THE COURT: No, I think you've answered them
2 all. Thank you for your time. Please, drive home
3 safely.

4 THE WITNESS: Thank you. Unfortunately, I'm not
5 going home yet. I've got some work to do in
6 Jacksonville.

7 THE COURT: All right. Your witness --

8 DR. RAILEY: That's yours.

9 MS. SULLIVAN: Thank you.

10 THE COURT: Did your witness return?

11 MS. RUSSELL: Oh, good question.

12 THE COURT: And did you want to do that today?

13 MS. RUSSELL: We would --

14 MS. SEIFER-SMITH: Please, yeah. She took time
15 off work to --

16 THE COURT: I understand.

17 MS. RUSSELL: It's impossible. We'll try to
18 make it real quick.

19 THE COURT: Well, try to make it real quick,
20 then.

21 MS. RUSSELL: Okay.

22 THE COURT: Who needs a break? Madam Court
23 Reporter, how you doing? Do you got another 30
24 minutes in you? Madam Clerk, you doing okay?

25 THE CLERK: I'm good, Your Honor.

1 THE COURT: All right. Let's do it.

2 Is she out in the hall?

3 MS. RUSSELL: She was. I just texted her. She
4 will be here momentarily. Hold on. She'll be right
5 up. Sorry.

6 THE COURT: Do you have your exhibits marked?
7 Are there any for this witness?

8 MS. RUSSELL: She's just --

9 THE COURT: Okay. Have you already seen these
10 exhibits?

11 MS. SULLIVAN: No. What?

12 MS. RUSSELL: No. It's already in.

13 THE COURT: You want to look at them now?

14 MS. SULLIVAN: Already in?

15 MS. RUSSELL: Yeah, it's already in.

16 MS. SULLIVAN: I'm good. Let's just do it.

17 THE COURT: Okay. The CD with the educational
18 records on it, is there any particular program that I
19 need to use to open that? Is it Adobe, is it -- what
20 is it?

21 MS. SEIFER-SMITH: I'm sorry. With what?

22 THE COURT: There's a CD that you put in --

23 MS. SEIFER-SMITH: Oh, it's --

24 MS. SULLIVAN: That's the jail records, isn't
25 it? That's the jail records.

1 MS. SEIFER-SMITH: That's the jail records. I
2 think it's just because there's so many. It's what
3 (indiscernible) used.

4 MS. SULLIVAN: I think it's an Adobe PDF.

5 MS. SEIFER-SMITH: It should be.

6 THE COURT: I thought this was school records.

7 MS. SEIFER-SMITH: No. You have the school
8 records in the binder.

9 THE COURT: So what's in the jail -- that I
10 have, yeah. What are -- what's on the CD, then?
11 Like, I -- you just said jail records, but like what?

12 MS. RUSSELL: Thousands of pages of the jail
13 medical records.

14 THE COURT: Medical records?

15 MS. RUSSELL: Yeah.

16 THE COURT: Got it. Okay.

17 MS. RUSSELL: Like, all his prescription
18 medications going all the way back to 2023.

19 THE COURT: Got it. Okay.

20 MS. RUSSELL: Which --

21 MS. SEIFER-SMITH: I don't know that we made a
22 copy for Your Honor.

23 THE COURT: You did not. I'm just --

24 MS. SEIFER-SMITH: Okay.

25 THE COURT: -- at some point, you gave it to

1 me --

2 MS. SEIFER-SMITH: Do you want a copy?

3 THE COURT: -- so I'm going to look at it.

4 Yeah. If you have it on a CD for me.

5 MS. SEIFER-SMITH: I'm not sure that we do, but
6 we can make one.

7 THE COURT: But, yeah. Again, now, as long as I
8 have it before I close this hearing out --

9 MS. SEIFER-SMITH: Okay.

10 THE COURT: -- that would be great. So if
11 you're going to give it to me, I'm going to look at
12 it.

13 MS. RUSSELL: Do you prefer paper, or?

14 THE COURT: It doesn't matter. If I need it, I
15 can print it easily enough, so...

16 MS. RUSSELL: Okay.

17 THE COURT: I probably won't. I'm old school
18 prefer paper, but I'm getting better at reviewing
19 online stuff.

20 Is she here?

21 MS. RUSSELL: Yeah, she's here.

22 THE COURT: All right. Are you ready to get
23 started?

24 MS. RUSSELL: Yes, we are.

25 THE COURT: All right.

1 MS. RUSSELL: So we will call Jessica Daw to the
2 stand.

3 THE BAILIFF: Right this way, ma'am.

4 THE COURT: All right. Thank you for waiting
5 all day or most of the day.

6 THE BAILIFF: Right up here for me, sir. Once
7 you get over here, if you can face the clerk, raise
8 your hand and accept the oath.

9 (Witness was duly sworn on oath.)

10 THE BAILIFF: Come over here. Have a seat. Make
11 sure you answer in a loud and clear voice for the
12 Court.

13 THE COURT: Spell the last name for me?

14 MS. RUSSELL: D-A-W.

15 THE COURT: Whenever you're ready.

16 MS. RUSSELL: Do you need to swear the witness,
17 or was she sworn?

18 THE COURT: I think she just got sworn.

19 MS. RUSSELL: She got sworn. Okay. Excellent.

20 DIRECT EXAMINATION

21 BY MS. RUSSELL:

22 Q. Ms. Daw, would you please introduce yourself to
23 the court reporter and spell your name, please?

24 A. Hi, my name is Jessica Daw. And it's
25 J-E-S-S-I-C-A. Daw, D-A-W.

1 Q. Ms. Daw, tell me what your chosen profession is.

2 A. I was a speech language pathologist.

3 Q. And what do you do now?

4 A. I'm a medical editor.

5 Q. Let's talk about your educational background.

6 Where did you go to college?

7 A. I went to Purdue University, where I got my
8 bachelor's in science and communication in science
9 disorders, and a bachelor's in English literature. I also
10 got a master's of public health and community health at
11 Purdue University.

12 Then I got my master's of science in speech
13 language pathology at the University of South Florida.

14 Q. When did you start working on speech language
15 therapy graduate work?

16 A. I was accepted to the program in 2000 -- August
17 of 2010.

18 Q. And how long did it take you to get your
19 master's?

20 A. Sorry. August 2011 -- no. '10. '10. Three
21 years. I graduated in August of 2013.

22 Q. Was there ever a time in your career when you
23 were a teacher in Pinellas County?

24 A. Yes. I -- that's where I started my speech
25 language pathology career. So I worked for Pinellas

1 County Schools from January of 2010 until August of 2016,
2 I believe.

3 Q. And were you -- what did you teach?

4 A. I was a -- first, I was a bachelor's level
5 speech language pathologist. And I was -- I worked with
6 kids in the special education program that were diagnosed
7 with speech and language disabilities.

8 Q. And how did that work?

9 A. So we -- as speech language pathologists, we
10 typically were assigned a caseload of kids that were
11 already diagnosed with the speech language impairment at
12 our school. Then we also worked with -- with the whole
13 school on a -- like a larger level of any kids that would
14 be referred to us. It was called MTFs. So I forget what
15 the acronym stands for, but I would attend, like, some
16 school-based leadership meetings for kids that would be
17 referred to us.

18 But I've always had an assigned caseload of kids
19 that were already diagnosed with speech and -- speech and
20 language -- or -- speech or language disabilities.

21 Q. And where did you work?

22 A. I worked at a lot of schools. New Heights
23 Elementary, Lakewood Elementary, Fairmount Park
24 Elementary, Oak Grove Middle School, Osceola Fundamental
25 High School, and then I -- I filled in at a few places.

1 Q. So when you were working at Lakewood, was that
2 at the very beginning of your career?

3 A. It was near the very beginning. New Heights
4 Elementary was my first placement, and Lakewood was my
5 second, and I was in graduate school at -- when I was
6 working at Lakewood Elementary.

7 Q. So you didn't get your graduate degree until
8 after you left Lakewood?

9 A. Right.

10 Q. And after that, did you continue by moving to
11 different places in the country to pursue your chosen
12 career of speech and language?

13 A. Yeah, I did. I worked -- I moved to Chicago,
14 and I worked for Chicago Public Schools, and I was the
15 lead speech language pathologist there. And my husband
16 got a job back in Florida, so I came back to Florida, and
17 I did teletherapy inside of working for Pinellas County
18 Schools.

19 MS. RUSSELL: Your Honor, may I approach the
20 witness?

21 THE COURT: Yes.

22 BY MS. SULLIVAN:

23 Q. I'm going to show you, Ms. Daw, what's been
24 marked as Defense Exhibit 15.

25 Do you recognize Defense Exhibit 15?

1 A. Yes.

2 Q. What is it?

3 A. This is the Language Reevaluation Report that I
4 wrote.

5 THE COURT: Wait. Language evaluation?

6 THE WITNESS: A speech -- sorry -- speech
7 language -- Speech Language Reevaluation Report that
8 I wrote when I was working at Pinellas County
9 Schools.

10 BY MS. RUSSELL:

11 Q. Did you ever teach Thomas Mosley?

12 A. Yes.

13 Q. When?

14 A. Two -- 2000 -- I think it was --

15 THE COURT: Does your report have a date on it?

16 THE WITNESS: It does.

17 THE COURT: The date on your report is what?

18 THE WITNESS: 5/29/2013.

19 So this was the second year that I had him, so
20 2000 -- I would've started August, 2011. I think
21 that was right.

22 BY MS. RUSSELL:

23 Q. Did you have Thomas Mosley for more than one
24 year?

25 A. Yes. I had him in third and fourth grade, and

1 this is a fourth-grade reevaluation report, so...

2 Q. And how long did you meet with him?

3 A. He had language therapy for 60 minutes twice a
4 week -- or 60 minutes a week, but it was twice a week for
5 30 minutes.

6 Q. What do you remember about his demeanor?

7 A. He was quiet. He used simple sentences. I did
8 a lot of the, like -- like, question asking. He didn't
9 ask me a lot of questions. He was respectful. He kind of
10 had a flat affect. He didn't really seem happy. He
11 didn't really seem sad, but it was -- it was more like
12 flat. Flat.

13 Q. Did you ever think of him as a follower?

14 A. Yes.

15 Q. Why is that?

16 A. There -- we -- I saw him in a small group. So a
17 group of, like, four or five, maybe some -- maybe a little
18 bit long -- bigger than four or five kids, but I saw him
19 in a small group. And there was another student in that
20 group that he was also in class with. And those -- Thomas
21 and the other students -- it seemed like Thomas was always
22 following that other student.

23 The other student would say something, and then
24 Thomas would say something, but it was rare that Thomas
25 would, like -- like, initiate kind of anything first.

1 Q. Did he have lots of friends?

2 A. I don't think so.

3 Q. What makes you say that?

4 A. I didn't see him, like, chatting with students
5 in our group. We -- I would see him interact with that
6 one classmate, but I -- I really didn't -- he really
7 didn't kind of initiate social conversations with the
8 other kids.

9 Q. Did he try hard in his work with you in Special
10 Ed?

11 A. I always thought he always tried hard.

12 Q. Did you ever have occasion to give him any
13 testing?

14 A. Yes.

15 Q. In your report?

16 A. Yes.

17 Q. What test did you give him?

18 A. I gave him the TOLD, the Test of Language
19 Development Intermediate, 4th Edition.

20 Q. Now, at the time, what did those results tell
21 you?

22 A. At the time, the results told me that he had
23 average to very poor language skills, depending on the
24 domain, but his overall language was low.

25 Q. Now, knowing what you know now with all the

1 additional years of experience that you had teaching both
2 in Pinellas County and in Chicago, as well as finishing
3 your graduate degree, is there anything that you see now
4 that didn't jump out at you when you were a brand-new
5 teacher?

6 A. Yes.

7 Q. What's that?

8 A. His language development, according to the test
9 scores, is -- is uneven. We have a splinter strength area
10 in word ordering, and then we have ranging below poor,
11 very poor, other areas of language.

12 Also, his -- his language scores as -- of his
13 total language score on this test, the total spoken
14 language score of 65 would be very concerning to me now.

15 Q. Concerning for what diagnosis?

16 A. So anytime we see a language score below a -- at
17 or below 70, we always worry about cognitive language
18 impair -- or cognitive impairments. Language can be
19 higher than cognition, but a spoke -- a total language
20 score -- a total spoken language score of 65 would be a
21 red flag for cognitive impairment. And then the uneven
22 language development would be a red flag to maybe look
23 more for, like, Autism Spectrum Disorder.

24 Q. Now, understanding the environment in Lakewood,
25 back in the years when you were teaching there, was it a

1 pretty great school?

2 A. No.

3 Q. What was it like?

4 A. It was -- it was not what you think of with like
5 a typical elementary. It was -- a lot of the kids were
6 below expectations in reading and math. There were tons
7 of new teachers all the time. There were -- teachers quit
8 a lot. There was high turnover. And there -- it -- no,
9 it wasn't a good school.

10 Q. So if you had suspected that Thomas had
11 cognitive difficulties, why wouldn't he have been
12 identified as somebody with a potential intellectual
13 disability or someone with autism?

14 A. So at that school, I remember being -- I did
15 bring kids up. So I did try to refer some kids. I can't
16 exactly remember what -- who I referred and when. But
17 when I did bring the kids up, I was told that our pyramid
18 of our -- our school was upside down.

19 So I was told that, like, at most schools, you
20 have not really a lot of needs at the bottom of the
21 pyramid. Like, 80 percent of your kids are in general ed,
22 and they're doing fine, and they don't need any other
23 support.

24 And then 20 percent of our kids are in what's
25 called Tier Two, and that's the kids that need, like, a

1 little -- the extra help. They don't need special
2 education, but they need some extra help.

3 And then at the top of the pyramid is only
4 supposed to be 10 percent of kids -- like, based off, I
5 guess, the research of kids that are in special education.
6 I was told our school was upside down. So only, like -- I
7 don't have the exact numbers -- but, like, only, like, 10
8 percent of our kids were meeting expectations, and the
9 bulk were, you know -- like, the bulk was, like, either
10 really struggling or really, really struggling.

11 So our school didn't look like other schools in
12 terms of, like, the multi-tier system of support. And
13 then, also, I was told we couldn't label every black kid
14 with further disabilities.

15 Q. Did it have to do with funding, or what was
16 the --

17 A. I don't think it there -- I don't think it was
18 necessarily funding. There was -- there was something
19 with the district that had come out in about 2010 that was
20 -- I don't exactly remember it -- about not labeling too
21 many kids.

22 Q. So you felt like you were discouraged from --

23 A. I was discouraged. And I do remember one time I
24 talked to the school psychologist about -- I can't
25 remember exactly what kid or -- I don't know if it was

1 Thomas, but I -- I don't think it was Thomas, actually --
2 but I -- she told me that, like, if they -- it was not
3 really worth further investigation of cognitive impairment
4 for kids that are able to, like, do functional life
5 skills. Like check the mail or, like, whatever that life
6 skill is for their age, that they wouldn't qualify.

7 So, like, without -- without having, like,
8 testing, she kind of told me that if kids can do these
9 functional skills, that they don't qual -- they wouldn't
10 qualify.

11 Q. So did it make any sense to you that you
12 shouldn't refer a child for more testing on intellectual
13 disability or autism because they can check the mail?

14 A. It didn't -- it didn't make sense to me.

15 Q. Did you ever find out if Thomas Mosley could
16 check the mail?

17 A. I didn't.

18 MS. RUSSELL: Give me one second, Ms. Daw.
19 Thank you so much. I'm done with my questions, but
20 the State attorney may have some.

21 THE WITNESS: Okay.

22 THE COURT: Any questions?

23 MS. SULLIVAN: I don't have any questions for
24 this witness.

25 THE COURT: Thank you, ma'am. Thanks for your

1 patience today. All right. So we are done for the
2 day. I'll see you all tomorrow morning, bright and
3 early, 9:00 a.m. Have a good night, everybody.

4 MS. SULLIVAN: You too.

5 MS. RUSSELL: Thank you, Your Honor.

6 (Hearing was concluded.)
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CERTIFICATE OF REPORTER

STATE OF FLORIDA)

COUNTY OF PINELLAS)

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

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

DATED this 17th day of August, 2025.

Charlene M. Eannel, RPR

CHARLENE M. EANNEL, RPR