

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
OF THE STATE OF FLORIDA, IN AND FOR PINELLAS COUNTY  
CASE NUMBER CRC23-03157CFANO

STATE OF FLORIDA,

Plaintiff,

vs.

THOMAS ISAIAH MOSLEY,

Defendant.

\_\_\_\_\_ /

PROCEEDINGS: Competency Hearing

BEFORE: The Honorable Susan St. John  
Circuit Court Judge

DATE: August 21, 2025

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

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(Pages 1 to 57)

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

THE COURT: Okay. So we're here today for the final arguments on the competency evidentiary hearing set for Thomas Mosley, case number 23-003157. Mr. Mosley is present in court. State and defense counsel are present.

And anything we need to talk about before we get started?

MS. SULLIVAN: Not from the State.

THE COURT: Anything from the Defense?

MS. RUSSELL: No, your Honor.

THE COURT: Okay. The only thing I just wanted to bring up -- and I appreciate Ms. Russell, you brought it up a couple days ago when I was looking at my notes. I just thought it was worth talking before we got into final arguments. You had requested that I take judicial notice of Dr. Hall's prior testimony from the competency evidentiary hearing one. This is -- I guess some are referring to this one as the second one.

It would be my expectation to consider all of the evidence in both records when making a decision in this case. So I just wanted to make sure we had that conversation. So if there's anything you wanted to reference from the first hearing in your

1 arguments today, you're certainly welcome to do  
2 that. Okay?

3 MS. RUSSELL: Your Honor, can I just make  
4 clear that I think I also put on the record the  
5 same with regard to Dr. McClain who had also  
6 testified in the prior hearing.

7 THE COURT: Yes. And so, yeah, just to be  
8 clear, I plan on taking, to the extent it's  
9 necessary, anything that was evidence, essentially,  
10 in evidentiary hearing number one, including the  
11 ones you've asked me to take judicial notice of.  
12 Okay?

13 So, with that, I'm ready for final arguments,  
14 and so I'm ready to proceed. Who's going to go  
15 first? I don't care. I mean, really there's  
16 no -- it's not like either one of you filed a  
17 motion. It's --

18 MS. RUSSELL: All right. I'm happy to start.

19 THE CLERK: Does the Defense actually need to  
20 rest, or was it done on the record yesterday, or  
21 no?

22 THE COURT: Are both -- can we all agree we've  
23 concluded with evidence in this case --

24 MS. RUSSELL: Yes.

25 THE COURT: -- at it relates to the competency

1           hearings?

2           MS. SULLIVAN:   Yes.

3           THE COURT:    So we'll just leave it at that.

4           THE CLERK:    Okay.   Thank you.

5           THE COURT:    All right.   You're welcome.

6           All right.   Ms. Russell, I'm ready whenever  
7           you are.

8           MS. RUSSELL:   May it please the Court.

9           "I don't understand," these are the words that  
10          Thomas Mosley can sometimes express, but other  
11          times he sits quietly, afraid to ask for help.  
12          Now, Thomas Mosley's case, over all of these days  
13          of testimony that you've heard, all of the experts,  
14          you know it's a complex case, one that's probably  
15          unprecedented in the history of this courtroom.

16          He has three disabilities:   Intellectual  
17          disability; autism since birth; and schizophrenia,  
18          a psychotic break since late adolescence, mostly  
19          due to his inability to communicate.

20          And Dr. Fabian, whose testimony was  
21          essentially unimpeached in this case, explained  
22          that these three disorders are common  
23          comorbidities.   So a diagnosis of one makes the  
24          other two much more likely.   Why?   Because, quite  
25          simply, if you have intellectual disability and

1 problems thinking and you have autism and you can't  
2 communicate, a human brain often copes with  
3 psychosis.

4 Now, we've had two lengthy rounds of  
5 competency hearings in this case, and there are  
6 some things that I don't understand. This is a  
7 death penalty case, and South Florida Evaluation  
8 and Treatment Center has made a mess of these  
9 competency restoration.

10 The Court found Thomas Mosley incompetent to  
11 proceed back in October of 2023. And in his first  
12 day at South Florida Evaluation and Treatment  
13 Center, he was miraculously restored from profound  
14 psychosis in only 28 days. Now, that was  
15 Dr. Ascherman-Jones. He got there and was found  
16 competent December 14th of 2023, and she found him  
17 competent on January 11th, after he had only  
18 attended four competency classes.

19 Now, we had many days of a competency hearing  
20 with my colleague Jessica Manuele and  
21 Nichole Blaquiere, and we pled with the Court and  
22 DCF, with phone calls and emails. We begged them  
23 not to send Mr. Mosley back to the South Florida  
24 Evaluation and Treatment Center, but they sent him  
25 back a full year later, and in his second stay,

1 miraculously, in 78 days, right, December 12th  
2 through -- December 12th of '24 through  
3 February 28th of 25, Dr. Tenaglia found  
4 Thomas Mosley cured.

5 Now, maybe it wasn't that miraculous given  
6 that Dr. Tenaglia testified that South Florida had  
7 an unwritten policy that they have a 90-day target  
8 for release of all of their competency patients.  
9 Now, let's see. That's 28 days plus 78 days, 106  
10 days in total, after more that two years of  
11 repeated evaluations, hearings and arguments.

12 Another number that's important is zero,  
13 because there have been zero days of training by  
14 the APD to restore him in the case that he might  
15 have ID or autism. And, in fact, no one has even  
16 tried because although many suspected that  
17 Thomas Mosley had intellectual disability, it  
18 couldn't be diagnosed until his psychosis was  
19 treated.

20 I want to talk to you, your Honor, a little  
21 bit about competency standards. As everyone is  
22 aware, the criminal trial of an incompetent  
23 defendant violates due process, and the Dusky  
24 factors are the Dusky factors all across the  
25 nation, says the U.S. Supreme Court.



1           Thomas Mosley needs to be able to have a  
2           rational and factual understanding of all the  
3           proceedings against him. Now, Florida's six  
4           competency factors were developed in response to  
5           Dusky, and in Cooper v. Oklahoma -- that's  
6           517 U.S. 348 -- there is a preponderance standard  
7           in competency determinations. And just for the  
8           record and as of note, that's different than the  
9           standard in Rule 3.203 for intellectual disability  
10          as a bar to the death penalty where the evidentiary  
11          standard is higher, clear and convincing.

12          Now, the risks of trying an incompetent  
13          defendant are dire. That's straight out of Cooper.  
14          And Thomas Mosley is wrapped in a presumption of  
15          incompetence until you find him competent again.  
16          And that's in Dougherty v. State, 149 So.3d, and  
17          King v. State, 387 So.2d 463.

18          So, your Honor, what you have to decide is, is  
19          Thomas Mosley more likely competent than not  
20          competent here, and what are you gonna base your  
21          opinion on, after more than two years, only 106  
22          days of treatment, Doctors Torrealday and Railey?  
23          Where is the harm in giving Thomas Mosley adequate  
24          competency training geared toward ID and autism,  
25          something that we have only recently discovered

1           that he has?

2           As the Supreme Court said in Cooper, the risk  
3           of trial with an incompetent client are so dire.  
4           Nobody -- I don't think the State, not your Honor,  
5           not the next of kin, no one has an interest in  
6           trying Thomas Mosley before he is competent and if  
7           he can't communicate with his lawyers or testify.  
8           And just like at the South Florida Evaluation and  
9           Treatment Center, we now know that it's just much  
10          easier to get it right the first time.

11          So we had Dr. Fabian here for a day of  
12          testimony back in June, and Dr. Whitney who  
13          testified just yesterday what the best practices  
14          are in diagnosing ID and autism. We need the  
15          broadest possible foundation, records, collateral  
16          interviews, appropriate testing with appropriate  
17          norms. And Drs. Whitney, Hall and McClain all  
18          adhered to those standards.

19          Your Honor, I'm gonna refer you to the  
20          strongest evidence in this case, Exhibit 4, which  
21          includes all of Thomas' elementary school records.  
22          When he attended school, he tried hard and there  
23          was no possible secondary gain in elementary  
24          school.

25          I'm gonna talk to you about intellectual

1       disability. Again, Dr. Fabian was qualified as an  
2       expert. He testified on June 26th. He talked  
3       about the best practices in ID; again, gathering  
4       records, using updated assessment measures,  
5       collateral informant interviews, assessing behavior  
6       outside of the prison setting during the  
7       developmental period. That is on his transcript at  
8       page 56 through 57, and 68 through 69.

9               And as the U.S. Supreme Court wrote in  
10       Moore v. Texas, the seminal case on intellectual  
11       disability and the death penalty, the defendant in  
12       that case, Bobby Moore, mowed lawns and played pool  
13       for money. The Supreme Court found that the lower  
14       court in Texas erred in its intellectual disability  
15       analysis twice. They kept finding that Moore was  
16       not intellectually disabled, but what the lower  
17       court did was made a big mistake of weighing  
18       adaptive strengths against adaptive deficits and  
19       coming up with some sort of equation, but that's  
20       not how it works.

21              ID doesn't mean that you're deaf, dumb and  
22       blind in all respects. People with ID can have  
23       some adaptive strengths. They can speak on the  
24       phone with their family. They can wave their arms  
25       around in a rap video. They can maybe even write a

1 sentence that says they live in Florida or  
2 Floridia, because only deficits in one domain are  
3 required and that could be either conceptual,  
4 practical or social, and that's all that's needed.

5 Now, Moore v. Texas also pointed out that  
6 people with ID also have -- often have other  
7 impairments, ADHD, depressive disorders and autism,  
8 and these are all comorbidities, not alternative  
9 diagnosis for ID.

10 Now, Dr. Fabian also told us there are three  
11 diagnostic criteria: IQ, adaptive functioning, and  
12 age of onset. Let's talk about IQ. We had  
13 Dr. Railey who came in with a 55 on the WAIS.  
14 Dr. Torrealday gave the CTONI of 54, Dr. Tenaglia a  
15 46 on the WAIS-4. And not one of these doctors  
16 used the effort measures normed for people with ID,  
17 and none of them even knew that there are embedded  
18 measures of effort in the WAIS, a fact that's shown  
19 in the academic literature that we attached to the  
20 exhibits in this case.

21 Now, Dr. McClain got a 69. She gave two tests  
22 of effort, one including the embedded measures  
23 supported by the literature. That's in Exhibit 32,  
24 by the way. And she also give the Rey 15.

25 So even if you accept that the first three

1 tests are invalid, pick a reason -- practice  
2 effect, low effort, Thomas was not stabilized on  
3 his medications, maybe he had a bad day -- but  
4 there's nothing to suggest that Dr. McClain's score  
5 is not valid, and every expert who reviewed her  
6 score agrees.

7 Let's talk now about adaptive functioning.  
8 Dr. Fabian told us that adaptive functioning is  
9 typical behavior, not maximal behavior in the  
10 community context. You can't really rely on the  
11 self-report of a person with ID because they may  
12 overrepresent their capabilities or not really  
13 understand what they're missing. For adaptive  
14 functioning, you have to look at what somebody can  
15 do alone and not with the help and support of other  
16 people. And Dr. Fabian also told us that we use  
17 accepted tests, such as the ABAS and the violent,  
18 not the WHODAS.

19 Now, back to Exhibit 4, you can read in  
20 Exhibit 4 that in the spring of Thomas' third grade  
21 year, he was absent only five times. He was tardy  
22 two times, and still in the ESE program. He was  
23 actually promoted to fourth grade based on the  
24 number of times he had been held back in third  
25 grade.

1           Now, Dr. Torrealday, Dr. Hall, Dr. McClain,  
2           and Dr. Whitney all agreed Thomas Mosley had  
3           adaptive deficits in elementary school. And, your  
4           Honor, this is the important part: All of that  
5           happened before he could even spell the word  
6           "secondary gain" or understand what that meant. He  
7           didn't learn to tie his shoos until he was 13. And  
8           Dr. McClain gave an appropriate adaptive behavior  
9           screening measure called the ABAS which also  
10          confirmed the deficits.

11           I'm sure that when the state attorneys get up  
12          here, they are gonna argue that so much of this  
13          collateral information came from  
14          Elaine Mosley (sic) and that maybe she has an  
15          incentive not to tell the truth, but she lost her  
16          grandchild, and she took the stand in front of the  
17          press. She answered all our questions, and that  
18          was really hard for her. And I know everyone in  
19          this room could sense that she was both reluctant  
20          and nervous, but she was credible and thoughtful.

21           Bernard Currington also testified that Thomas  
22          always had trouble understanding. He never read  
23          independently. He was really, really flat on some  
24          of the video visits. We also have the documents  
25          and testimony by his elementary school teachers.

1 Jessica Daws (sic) came up, and she sat here and  
2 testified that if she knew back in 2013 what she  
3 knows now about autism and speech and language  
4 delays, that she would have referred Thomas for an  
5 autism or ID evaluation. Unfortunately, she was  
6 just a brand new teacher without a lot of  
7 experience.

8 We know that the pyramid was upside down at  
9 Lakewood Elementary and there were too many kids  
10 who needed too many services and that she was  
11 discouraged from referring students for further  
12 testing for ID and autism. What she knew when  
13 Thomas was at Lakewood was all confirmed by a  
14 Dr. Amy Fritz. That's in Exhibit 13.

15 I'd like to read something from Dr. Fritz's  
16 report at page 2. She said: Remarkably, despite  
17 the strong history of scholastic failure even when  
18 provided intensive academic and therapeutic  
19 interventions, Mr. Mosley was never evaluated to  
20 determine his cognitive level. This is especially  
21 shocking given the pervasive nature of Mr. Mosley's  
22 deficits during his formative years. However, this  
23 evaluator suspects that educational team  
24 decision-making may have been partially biased  
25 because Mr. Mosley was a black student.

1           Specifically, quote, significant  
2           proportionality, unquote, legislation designed to  
3           reduce the percentage of students of color  
4           identified with special needs was introduced in  
5           2004. Enforcement of these policies varied by  
6           state and grew throughout Mr. Mosley's scholastic  
7           career. During the years that he was in school,  
8           focus both at the state and federal level was on  
9           early detection of learning needs and reducing  
10          patterns of overidentifying persons of color as  
11          being disabled.

12          Dr. Fritz also gave language and speech  
13          testing about Thomas' functioning on speech and  
14          language, completely consistent with the findings  
15          in elementary school. That's in Exhibit 13. On  
16          the PPVT, he scored a 59, which relates loosely to  
17          IQ, and on the CELF-5 she found that he had  
18          profoundly impaired language.

19          Your Honor, you need only look as far as  
20          Exhibit 19, which is the driver's test.  
21          Thomas Mosley didn't understand. All of the court  
22          records that we introduced show that Thomas had  
23          poor driving and even poorer money management. He  
24          wasn't functioning as an independent young adult.  
25          He had support for living, finances, food shopping,



1 hygiene, and he had to consistently be hounded and  
2 controlled on all of his basic activities.

3 Finally, the third criteria, age of onset  
4 during the developmental period, I'm not sure is  
5 even in contention here.

6 Thomas Mosley suffers from intellectual  
7 disability.

8 Now, three experts did testing for autism.  
9 They were the same three that suspected autism and  
10 the same three that used special means to  
11 communicate with Thomas, a person who doesn't  
12 understand words and language.

13 Now, Dr. Whitney is one of the nation's  
14 foremost experts on autism. He gave an interview,  
15 a collateral interview, and the ADAS. He also  
16 interpreted language testing from Dr. Amy Fritz to  
17 arrive at his diagnosis. Dr. McClain gave the GARS  
18 and did collateral interviews, and then Dr. Fritz  
19 did the speech and language testing we've talked  
20 about.

21 All of this testing is supported by the  
22 testimony of the special ed teachers back in third  
23 and fourth grade, Ms. Daw and Ms. Franklin, who  
24 said that the OWL and the TOLD scores in the third  
25 and fourth grade were consistent with autism, but

1 Thomas Mosley was never referred for a diagnosis.

2 Why would you discount this testimony when the  
3 alternative is to believe Dr. Tenaglia, Dr. Railey,  
4 and Dr. Torrealday, all forensic psychologists with  
5 no specialty in diagnosing autism? Those three did  
6 nothing more than pass their hands over Mr. Mosley  
7 and say he doesn't have it and he must be faking.  
8 They never asked him to get up and walk around to  
9 see the autistic gate that is so characteristic  
10 that Dr. Whitney described it. And Dr. Torrealday,  
11 Dr. Railey, and Dr. Tenaglia talked about a flat  
12 affect and a failure to engage. Those are the very  
13 symptoms of autism that they failed to diagnosis.

14 Now, Dr. Whitney, Dr. Fritz, and Dr. McClain  
15 were the only doctors who could break through to  
16 Thomas because they suspected autism as a  
17 diagnosis, and they used the specific communication  
18 techniques that they know for someone with profound  
19 speech and language disabilities and that's how  
20 they were able to communicate with Thomas. And  
21 that may be one of the reasons why Dr. McClain got  
22 a higher IQ score, because she was able to reach  
23 across the divide and understand his  
24 neurodivergence.

25 Dr. Tenaglia, Dr. Railey, and Dr. Torrealday

1       evaluated Thomas, but none of them understood at  
2       the time that they were evaluating someone with a  
3       profound speech and language disorder, someone with  
4       autism. Even Desiree Baker from Suncoast said he  
5       was so flat, it was like he didn't care.

6       Thomas Mosley didn't understand that Desiree Baker  
7       was there to help him and she was on his team.

8               Now, Dr. Tenaglia used none of the best  
9       practices for diagnosing autism, no testing, no  
10      collateral sources and, in her case, no school  
11      records. Well, actually, I think she testified  
12      that somebody at FSFTC requested the records, but  
13      they never showed up. And, of course, nobody at  
14      SFETC reached out to defense counsel to get school  
15      records which we would have happily provided. No  
16      one bothered in a death penalty case, which isn't  
17      surprising from Tenaglia's utter lack of knowledge  
18      about the procedures and seriousness of a death  
19      penalty case.

20             Now, Dr. Torrealday and Dr. Railey did no  
21      testing for autism, no collateral interviews, and  
22      they really have no expertise in autism. So  
23      there's no reason to give their missed  
24      diagnosis -- and I do think it was a missed  
25      diagnosis -- any credibility at all. Had they

1 known that Thomas Mosley had been diagnosed with  
2 autism, a fact none of us really knew until a few  
3 weeks ago, they might have come up with a different  
4 result.

5 I want to switch gears for a minute and talk  
6 about the South Florida Evaluation and Treatment  
7 Center. And we'd like to renew our motion to  
8 strike and motion to bar the testimony of  
9 Dr. Tenaglia. If you do choose to consider her  
10 testimony, your Honor, we'd ask that you give it no  
11 weight.

12 From the very outset, Dr. Tenaglia knew this  
13 case was headed for litigation. She circulated  
14 drafts of her reports to colleagues, which she only  
15 did in this case. She spoke numerous times to  
16 Dr. Jones to shore up her approach. She even read  
17 Dr. Jones' deposition. And then she shredded her  
18 notes, a violation of both Florida law and all of  
19 the ethical practices of the American Psychological  
20 Association.

21 Now, this shoddy work at South Florida  
22 Evaluation and Treatment center over two visits had  
23 really infected the entirety of Thomas Mosley's  
24 competency proceedings, and that was from the  
25 outset.

1           Even we laypeople understand it's pretty basic  
2           that people whose sole diagnosis is malingering,  
3           which by the way is not actually a DSM-5 diagnosis,  
4           aren't prescribed both antidepressants and  
5           antipsychotics. Shredding your notes, that's  
6           pretty dishonest. Not listing your diagnosis which  
7           your team psychiatrist is prescribing medications  
8           for, that's really intellectually dishonest and  
9           pretty shameful when your job is to restore a  
10          person facing the death penalty to competency in 78  
11          days or less.

12          Now, let's talk about some of those documents  
13          that Dr. Tenaglia used in her competency  
14          assessment. She did a CAT, a Competency Assessment  
15          Tool, on December 18th of '24, finding  
16          Thomas Mosley unacceptable on five criteria. And  
17          she suspected poor effort from Thomas's behavior  
18          from the outset, also which all was explained by  
19          both autism and intellectual disability that she  
20          could not detect.

21          She gave him a WAIS-4. He got a very low  
22          score, and then she diagnosed him with malingering  
23          based on invalid effort tests. She wasn't even  
24          skilled enough to know about the embedded measures  
25          for malingering that we have heard through all the

1 experts exist in the WAIS.

2 Let's talk about her psychology progress notes  
3 in Exhibit 30. On December 26th of 2024, she said  
4 she asked the patient the difference between a  
5 felony and a misdemeanor, and he stated, I don't  
6 want to answer that question. I asked him why, and  
7 he stated, I don't understand it.

8 The following week, her note, When asked how  
9 he's understanding the material, he stated, It's  
10 kind of hard. I don't understand some of the  
11 things.

12 January 10th of '25, the understanding really  
13 doesn't get any better. Tenaglia's note: He  
14 stated he, quote, doesn't really understand what's  
15 being taught in class. He then stated while in  
16 class, quote, I got a paper so I can try and  
17 understand from that, unquote.

18 Then on January 15th of '25, a note that  
19 Mr. Mosley has been attending classes, when asked  
20 if he's understanding the material taught in class,  
21 he stated, quote, Some of it, end quote.

22 January 23rd of 2025, I asked him to tell me  
23 one thing he learned in class. He told me he  
24 learned about, quote, not guilty by reason of  
25 insanity, unquote. I asked him to tell me what it

1 means, and he stated, I forgot.

2 Then there was a competency assessment tool  
3 given on the 30th of January. He was found  
4 unacceptable on five of six criteria. That was  
5 when Dr. Tenaglia actually asked him the questions.

6 On the 6th of February of 2025, she said, I  
7 asked Mr. Mosley if he's understanding what's being  
8 taught in class, and he stated, Not really. I  
9 asked him what was making it difficult, and he said  
10 Too much. It's so hard to understand.

11 The next week, Thomas' antipsychotic  
12 prescriptions were changed. And Dr. Tenaglia just  
13 Christmas treed the final CAT on February 25th,  
14 finding him acceptable on all the criteria because  
15 he's malingering. So he must know all the answers.  
16 We're not even sure she asked him the competency  
17 questions on her competency assessment tool.

18 I want to talk now about some of the State's  
19 experts, and I'm gonna start with Dr. Railey. We'd  
20 like to renew our Daubert motion and rely on many  
21 of the arguments in our Daubert motion for brevity  
22 and ask that your Honor give his testimony no  
23 weight and his report no weight as well.

24 So Dr. Railey sat on that witness stand back  
25 in July and told us all with a straight face that

1 he began his training in psychology as a  
2 four-year-old. That's the transcript at page 24.  
3 He knows everything he needs to know about  
4 psychology because his dad was one of the biggest  
5 drug dealers in Palm Beach County.

6 And then there were things in Dr. Railey's  
7 memory that he testified to, he described as  
8 flashbulb moments, that were not on the videotape  
9 of his evaluation. That's on page 93 of the  
10 transcript. He used those things both in his  
11 evaluation and his completion of the WHODAS which  
12 he used for an adaptive functioning test.

13 Now, his memory of what happened during his  
14 interview was so different from what was reported  
15 on the video, that he couldn't actually tell me if  
16 he thought that I had tampered with the videotape.  
17 He also had two copies of his resume, one without  
18 dates of employment, one with dates of employment.  
19 I wonder why he left those dates of employment off  
20 the resume that he produced to the State, given  
21 some of his checkered work history.

22 Now, even though he had access to the video,  
23 what was actually taped during the evaluation, he  
24 put phrases in direct quotes that were actually,  
25 well, not direct quotes at all. You can see that



1 in his transcript at page 99. He passed his hands  
2 over Mr. Mosley, with no objective testing, and  
3 declared he didn't suffer from autism.

4 There were so many other problems with  
5 Dr. Railey's report. First he gave the WAIS-4 less  
6 than three months after a prior test at South  
7 Florida Evaluation and Treatment Center, invoking  
8 the well-documented practice effect. We had talked  
9 about that prior to his giving the test, and he  
10 said that he thought that it would be a valid test  
11 regardless.

12 Now, Dr. Fabian told us unequivocally that the  
13 same IQ test should never be given twice within a  
14 year's period. Dr. Railey was completely unaware  
15 of the practice effect or embedded measures of  
16 effort in the WAIS that he gave. And then he  
17 assessed adaptive functioning with the WHODAS,  
18 which is not intended for intellectual disability  
19 adaptive functioning assessment and also uses a  
20 30-day window. So everything that Dr. Railey  
21 assessed was prison context outside of the  
22 developmental period.

23 And that test is supposed to be a self-report,  
24 but I gather Thomas couldn't understand the test.  
25 So Dr. Railey input the data himself in less than

1 two minutes, something we didn't discover until we  
2 won a protracted fight with him to turn over his  
3 WHODAS scoresheets, which once he finally turned  
4 them over, he scored Mosley as zero disability on  
5 every single criteria. I don't think that was his  
6 best work. And it looks like Thomas Mosley is  
7 really not the only person who occasionally  
8 Christmas trees a test, because that's exactly what  
9 Dr. Railey did on the WHODAS.

10 Now, Dr. Fabian, again, was very clear that  
11 the WHODAS is not scientifically valid for  
12 assessing adaptive functioning for intellectual  
13 disability. That's the Fabian transcript at 78  
14 through -- sorry, page 79 through 80.

15 And Dr. Railey, again, did not us best  
16 practices for diagnosing either ID or autism. Now,  
17 Dr. Railey told me he wanted to conduct collateral  
18 interviews with Renee and David Mosley. So he  
19 requested their phone numbers and asked me to set  
20 up a meeting for him. He never called them,  
21 leaving Renee and David Mosley sitting by the phone  
22 for four hours on a Sunday after church. Instead,  
23 he emailed them the WHODAS.

24 He did not administer it to Thomas Mosley's  
25 father, David Mosley, because he didn't have an

1 email address, and then he completely ignored  
2 Renee Mosley's answer. He said, basically, that  
3 her responses were not credible because they were  
4 different from the responses that he got when he  
5 Christmas treed his WHODAS scoresheet in less than  
6 two minutes.

7 Dr. Railey didn't give a single test or  
8 screening for autism. Now, Dr. Railey did do a  
9 structured interview with Mosley. So many  
10 inaccuracies in his report. He said that  
11 Thomas Mosley was born in San Diego, California,  
12 when he was born and raised in St. Petersburg.

13 I think that you should give Dr. Railey's  
14 report very little weight, your Honor. He's  
15 thankfully no longer on the court appointed list  
16 here in Pinellas County, but I don't think that his  
17 report or his testimony are worthy of your  
18 confidence in such an important matter.

19 I would like to address Dr. Torrealday and  
20 just suggest that a report written under threat of  
21 criminal contempt while on a European vacation is  
22 probably not an ideal circumstance. Dr. Torrealday  
23 did everything but admit that she was wrong in  
24 failing to diagnose ID.

25 She admitted that she had no reason to doubt

1 the validity of Dr. McClain's IQ test. She  
2 admitted that Thomas Mosley had adaptive deficits  
3 prior to the age of onset, and those were contained  
4 in the educational records. Why didn't she  
5 diagnose intellectual disability? She admitted  
6 that all the diagnostic criteria were fulfilled.  
7 So I guess we can only assume that she didn't  
8 really look at those records very carefully before  
9 writing her report.

10 Can't help but wonder how things would have  
11 been different if, at the beginning of  
12 Dr. Torrealday's interview, Thomas had followed  
13 counsel's instructions to behave and cooperate.  
14 Would things have been different? Would  
15 Dr. Torrealday have seen the flat affect and lack  
16 of engagement as signs of autism?

17 Unfortunately, it's true that if you're a  
18 hammer, pretty much everything looks like a nail.  
19 And Dr. Torrealday is court appointed, and her  
20 expertise is mostly in mental health conditions.  
21 She didn't really suspect autism from the outset.  
22 So she don't look for it. She gave no tests that  
23 would screen for autism.

24 Now, the State may characterize this as no  
25 diagnosis of autism, but in both Dr. Torrealday and

1 Dr. Railey's case, this is a missed diagnosis of  
2 autism. Perhaps, if Dr. Torrealday had had  
3 Dr. Whitney's report at the time of her evaluation,  
4 things might have turned out a little differently,  
5 but Dr. Torrealday did not understand that she was  
6 evaluating and reporting on a person with profound  
7 speech and language deficits.

8 I want to talk about a few of the  
9 miscellaneous pieces of evidence and how you should  
10 weigh them, your Honor. The State introduced into  
11 evidence videos from YouTube that are rap videos.  
12 I'm not exactly sure what they're for. I suspect  
13 that probably they're to be used in your  
14 determination of adaptive functioning and  
15 intellectual disability. We would ask, if they're  
16 for that purpose, that you give them no weight for  
17 these reasons:

18 Doctor Fabian's told us that intellectual  
19 disability is what you can do alone, in your  
20 typical performance, without assistance. Now, in  
21 those videos, and I'm not sure if you've watched  
22 them --

23 THE COURT: I have not seen the videos yet.  
24 I've watched the video visits, and, obviously, we  
25 had some jail calls from the first competency

1       hearing, but I have not watched the videos yet. So  
2       you're welcome to either play them or describe them  
3       for me.

4             MS. RUSSELL: I'll just describe them.

5             THE COURT: Okay.

6             MS. RUSSELL: Intellectual disability is what  
7       you can do alone, in your typical performance,  
8       without assistance. Now, in the videos, what you  
9       see is Thomas Mosley dancing around and mouthing a  
10      few words. And when you do look at those videos,  
11      look closely because in one of them there are two  
12      people singing, and I want you to look how  
13      Thomas Mosley compares in his activities in singing  
14      to the other rapper who seems much less impaired.  
15      Does he know the words?

16            Now, Thomas is moving around, holding a  
17      bottle, sitting in a car. He has no idea -- you  
18      know, we have no idea who's doing the voiceover,  
19      who wrote these raps, who directed, filmed and  
20      edited the videos, not even who actually physically  
21      posted the videos on YouTube.

22            We have no idea who or how Thomas was assisted  
23      in the video process, if at all, if he was even  
24      involved in the video process. So I feel -- we  
25      feel that they have zero evidentiary value except

1 to demonstrate the autistic obsession that  
2 Dr. Whitney talked about. Likewise, you've seen  
3 the video calls. Thomas is completely lost when  
4 his mom is showing him that house renovation. He  
5 can't figure out where the door is to his childhood  
6 home where he has lived.

7 I'd also like to address that, throughout  
8 these proceedings, there's been an insinuation that  
9 the experts paid by the Defense are paid for their  
10 experience -- or paid for their opinions and not  
11 for their experience and expertise. Dr. Fabian,  
12 Dr. Whitney, and Dr. Fritz, Dr. Hall, these are all  
13 incredible national-caliber experts. They  
14 routinely testify all over the country. They were  
15 bound by their ethical rules, and we tried to find  
16 the best people we could, to do the best and most  
17 thorough job we could, and some of those people  
18 live outside of Florida. They've done really  
19 thoughtful evaluations, and we all are very, very  
20 grateful for the work that they've done in this  
21 case and the light that they have been able to  
22 shed.

23 100, 93, 86, 79, 72, 65, it's not hard if you  
24 practice.

25 THE COURT: I haven't practiced.

1 MS. RUSSELL: But Thomas couldn't get it right  
2 even after doctors gave him the MMSE more than  
3 seven times. More often than not, he misspelled  
4 "world" backwards and forwards over and over. You  
5 only have to look at Exhibits 27-A and 27-B. He  
6 did the same test twice and couldn't spell,  
7 punctuate, or capitalize "Florida" properly, even  
8 with practice. And look at the drawings. Those  
9 were all done within weeks of each other, and that  
10 is something he faired very poorly on.

11 So has the State met the burden? Have they  
12 offered you proof that Thomas Mosley has been  
13 restored to competency? Dr. Tenaglia said that she  
14 has no current opinion on competency. Well,  
15 there's Dr. Railey. I don't think I need to say  
16 more about his very unscientific methods or his  
17 credibility.

18 And Dr. Torrealday found Thomas Mosley  
19 competent, though he confused the roles of  
20 courtroom personnel, the seriousness of the crimes,  
21 he basically gave one-word answers in her  
22 evaluation. And Dr. Torrealday herself seemed to  
23 have very little understanding of how the criminal  
24 process is really different and infinitely more  
25 complex in a death case.



1           Thomas Mosley does not understand. He thinks  
2           his lawyer is collaborating with the State. Do you  
3           think an eight-year-old can face off against a  
4           seasoned state attorney on cross-examination? Can  
5           a second-grader assist counsel in interpreting  
6           hundreds of pages of police reports, depositions,  
7           transcripts and discovery?

8           Now, Dr. Amy Fritz did language testing. I'm  
9           just gonna refer you to her report, page 6, where  
10          she has the CELF-5 subtest scores. None of Thomas'  
11          age equivalents are over 12. Word classes,  
12          following directions, sentence assembly are all age  
13          seven and eight. Those are the skills that he  
14          would need if he were going to testify. On the  
15          pragmatics profile of the CELF, Thomas Mosley  
16          scored under age three in terms of his  
17          functionality.

18          Look at the school records. Look at the  
19          testimony and the testing of Amy Fritz.  
20          Thomas Mosley is so low functioning, he cannot  
21          testify relevantly or consult with counsel with any  
22          degree of rational understanding as required by  
23          both the Florida and the U.S. Constitutions. Could  
24          he get there? Maybe he could learn to understand  
25          if he got restoration training through APD,

1            hopefully for more than 106 days over two sessions.

2            I've represented Thomas Mosley since the very  
3            beginning of this case. He does not understand,  
4            and we all thought it was because he suffered from  
5            schizophrenia. In this case we didn't understand  
6            that it was actually intellectual disability and  
7            autism.

8            Thomas Mosley was born with an extra finger,  
9            exactly like his illiterate father. He couldn't  
10           tie his shoos until he was 13 years old, and he  
11           continually failed at school, even elementary  
12           school, before he could read the word "secondary  
13           gain." Ms. Daws (sic), the inexperienced  
14           special ed teacher at Lakewood Elementary, gave him  
15           speech and language testing that she now recognizes  
16           are the harbingers of autism.

17           Renee and Bernard said he always struggled at  
18           home, never learned to read. His mother even took  
19           him to Sylvan Learning Center in elementary school  
20           to try to bolster his performance, but he couldn't  
21           learn. He failed the third grade at three  
22           different schools. He was intellectually disabled  
23           and autistic. So he didn't understand.

24           Now, ID and autism are present from birth, and  
25           the elementary school records are unimpeachable.

1 Things get a little muddier when you get to high  
2 school, as so many other factors can be at play as  
3 children age. But, your Honor, when you look at  
4 Exhibit 4, you have all the evidence you need of  
5 adaptive deficits in social, practical, and  
6 conceptual domains when he was a young child. He's  
7 had those IEPs since first grade, long before  
8 anyone could have anticipated his current charges.  
9 And all of the doctors agree that those deficits  
10 existed, except Dr. Railey.

11 Now, as Thomas grew older, his circumstances  
12 really never improved. His communication  
13 challenges made school next to impossible. He was  
14 gullible. He struggled with reading at an  
15 elementary school level even when he was in high  
16 school. He couldn't hold down employment, reliably  
17 make change, understand finances, even pass a  
18 simple test for his driver's license, something,  
19 like every young man, he was really motivated to  
20 do, because he didn't understand. For Thomas, it's  
21 not about the effort. It's about the ID and autism  
22 he was born with.

23 Now, Renee Mosley has been his mother for her  
24 entire life. She knows he doesn't understand. And  
25 why? Because she's his mother. No one knows him

1       better. And although she made sure he had a bible  
2       while he was in jail and prays with him after phone  
3       calls, reciting the 23rd Psalm that she's committed  
4       to heart, perhaps the saddest thing is that after  
5       23 years Thomas can't understand her words of faith  
6       and comfort. So we'd like to ask the Court to  
7       please find Thomas Mosley more likely than not  
8       incompetent.

9           THE COURT: Thank you, Ms. Russell.

10          State?

11          MS. SULLIVAN: Thank you, your Honor.

12          As Ms. Russell pointed out, the Court's job is  
13       to determine whether the defendant has the  
14       sufficient present ability to consult with counsel  
15       with a reasonable degree of rational understanding  
16       and whether the defendant has a rational as well as  
17       factual understanding of the pending proceedings.

18          We have Dr. Tenaglia, the State Hospital  
19       doctor; Dr. Railey, a court-appointed doctor, not a  
20       State doctor; and Dr. Torrealday, another  
21       court-appointed doctor, all saying that  
22       Thomas Mosley is competent to proceed in this case.

23          All three of them questioned the level of  
24       effort during the evaluations and the cognitive  
25       testing, which was then confirmed by the scores on

1 the effort tests. The effort tests used were  
2 appropriate based on their assessments. None of  
3 these doctors felt that his cognitive abilities  
4 were so significant as to not warrant the tests  
5 that they administered, and none of these three  
6 doctors observed symptoms of autism during their  
7 personal one-on-one observations with the  
8 defendant.

9 Going back a few weeks ago, we started with  
10 Dr. Fabian. After four hours of a PowerPoint  
11 presentation, going on a journey through the DSM-5,  
12 we found out that he had not done an evaluation of  
13 Thomas Mosley. He had not done any testing of  
14 Thomas Mosley. He had never met him. I'd ask the  
15 Court to give no weight to Dr. Fabian's testimony  
16 when considering whether or not Thomas Mosley is  
17 competent to proceed, because that's what we're  
18 here for.

19 We've also heard from Dr. Hall two times,  
20 Dr. McClain two times, and Dr. Whitney, all saying  
21 that Thomas Mosley is incompetent, all three being  
22 hired by the Defense in this case.

23 Dr. Hall is unable to answer a straightforward  
24 question from the State, from me personally,  
25 without adding or qualifying whatever he wanted to

1 relay about the defendant. Oftentimes what he was  
2 trying to relay was not related to the question I  
3 was asking at all.

4 Dr. McClain never did testing on the defendant  
5 until mid July, just a few weeks ago, when all of a  
6 sudden she had found that he is now stable enough  
7 to do an IQ test. The test she did for malingering  
8 is a basic memory test, the Rey 15, which actually  
9 shows he's within normal limits, meaning healthy  
10 cognitive function, which she confirmed for me  
11 yesterday on cross-examination.

12 Dr. Whitney did not give any effort tests,  
13 despite reviewing all the records showing that  
14 effort had been questioned by the other doctors  
15 appointed in this case and the State Hospital. He  
16 administered Module 4 of the ADOS standardized  
17 autism test, which is for verbally fluent  
18 individuals. He did not review video visits to see  
19 the difference in how he communicates and how the  
20 defendant reacts to his family versus the doctors  
21 during evaluations.

22 His schizoaffective diagnosis is based on the  
23 self-reported hallucinations of the defendant that  
24 he's consistently repeated for two years now  
25 despite different kinds of antipsychotic

1 medications at different dosages, and no other  
2 doctor besides Dr. McClain has personally observed  
3 these hallucinations.

4 While even Defense doctors find the defendant  
5 acceptable in all criteria except four and six,  
6 Dr. Whitney found him only acceptable for criteria  
7 one. And then yesterday we found out during  
8 cross-examination that, in fact, the defendant  
9 himself told and showed Dr. Whitney his rap videos  
10 and where to access them on his YouTube page.

11 Dr. Fritz, a speech pathologist, I'd like to  
12 note that during the second day of the testing with  
13 Mr. Mosley, he abruptly discontinued the testing.  
14 Her example, I'd like to remind the Court of how  
15 slow she had to speak to Mr. Mosley is not at all  
16 consistent with how his family or other doctors  
17 have spoken to him, and he has understood and  
18 engaged in conversations just fine at the pace that  
19 his family and other doctors speak to him.

20 I would also like the Court to keep in mind  
21 that his scores on these language tests highly  
22 depend on his level of effort, which has been  
23 called into question by numerous other doctors, the  
24 State Hospital, and the court-appointed doctors,  
25 and then confirmed with effort and malingering

1 tests. Dr. Fritz also told the State that she did  
2 not take into consideration at all that he was  
3 currently incarcerated when reaching her opinion of  
4 the defendant.

5 In the area of psychosis, the State would  
6 argue that that's a nonissue at this point.  
7 Anything related to psychosis is self-reported,  
8 and, again, only Dr. McClain is the one seeing any  
9 evidence of psychosis. However, then Dr. McClain,  
10 on the seventh time she's evaluated the defendant  
11 over the past two years, when she finally did some  
12 testing on the defendant, all of a sudden the  
13 internal stimuli that she has said has been present  
14 every other time she evaluated the defendant is  
15 gone; yet, on that seventh evaluation, he's still  
16 reporting the same hallucinations that he's been  
17 repeating every time to all the doctors for two  
18 years.

19 He even told Dr. Torrealday that he has these  
20 hallucinations on the mornings of an evaluation  
21 with a doctor. The consistency with which he  
22 reports the same hallucinations regarding seeing  
23 blood in his eyes or in the shower and hearing  
24 voices telling him to kill himself is relevant  
25 evidence of malingering those psychotic symptoms.



1           In the area of depression, again, I would  
2           argue that at this point it's a nonissue regarding  
3           his competency. At the State Hospital this time  
4           around, he was put on the highest doses of meds for  
5           depression and was still reporting the same  
6           symptoms despite that. His self-report of his  
7           depression is not reliable. None of the doctors  
8           that testified seemed concerned -- from both  
9           Defense doctors to the court-appointed doctors  
10          seemed concerned with his level of depression at  
11          this time.

12          And to be fair, one could be expected to have  
13          some level of depression given the circumstance  
14          that Mr. Mosley finds himself in. But if you  
15          contrast that with the evidence reported by the  
16          defendant himself that he's eating, he's sleeping  
17          well, he's watching TV and enjoying the TV shows  
18          that he's watching in the jail, he's laughing and  
19          joking on video visits with his family, he's making  
20          jokes about haircuts with his brother and his  
21          father, the level of the depression that the  
22          defendant may have is not the level where it is  
23          impairing the capacity to be competent.

24          The school records, we talked a lot about the  
25          school records. They were heavily relied upon by

1 the Defense doctors. No indications of  
2 intellectual disability or autism are existing in  
3 those records. And, yes, Ms. Russell talks about  
4 what the teachers say now versus what they did  
5 then, but the school psychologist that actually met  
6 with the defendant during his childhood, not just  
7 teachers, did not see any indication or raise any  
8 concerns for intellectual disability or autism.

9 What the school records do show, which is a  
10 continuing theme of the defendant's poor effort,  
11 bad behavior, unwillingness to do anything  
12 Mr. Mosley doesn't want to do. On numerous  
13 occasions as I went through with Dr. McClain the  
14 first time she testified, the school records, I  
15 noted his lack of effort and motivation. I argue  
16 his reading level should be taken with caution  
17 considering how fast he completed those STAR  
18 reading tests. And he even tried to tell the State  
19 Hospital at one point he could not read and then  
20 was observed reading while he was in competency  
21 training.

22 It's not really surprising that he failed at  
23 school when he failed to go to class, when he  
24 walked out of class, when he didn't participate in  
25 class, wouldn't turn on his computer at times. But

1 the records also show something else that  
2 Ms. Russell didn't mention. He was capable of  
3 getting decent grades at some point in time. Those  
4 existed, those records that they put into evidence,  
5 but then when you see the absences pick up, when he  
6 is walking out of class, the grades fall.

7 His school records represent what happens when  
8 a student choose not to learn, not to participate,  
9 and, of course, his educational records suffered as  
10 a result as any person's would. What the records  
11 did not show is that the defendant's failure at  
12 school was a result of intellectual disability or  
13 autism. The records just do not support that when  
14 all of the records are taken into context.

15 What we've seen during this hearing and the  
16 hearing last year and in all the collateral and  
17 historical evidence involving Thomas Mosley is  
18 that, from the time he was young, if he didn't want  
19 to do something, he wasn't gonna do it. His mom  
20 even talked about this during her testimony. He  
21 has consistently shown bad behavior when it comes  
22 to school and listening to his parents, and it  
23 brings us to the present day when, even during this  
24 hearing, when he decided he didn't want to be in  
25 the courtroom, he tried to get up and walk out,

1       just like he got up and walked out of the  
2       evaluation the prosecutors tried to attend with  
3       Dr. Torrealday because he didn't want us there and  
4       he didn't want to talk with us being present.

5             Autism, Dr. Tenaglia, Dr. Railey,  
6       Dr. Torrealday, in their assessment which they are  
7       trained to do, during their evaluations, found no  
8       symptoms of autism. The Defense doctors relied  
9       heavily on what is being reported by family members  
10      in coming to their conclusion related to autism.

11            Dr. Whitney is the only one that administered  
12      a standardized test directly to the defendant. His  
13      scores on that should be taken with caution, given  
14      all the other relevant evidence regarding effort.  
15      And, again, Dr. Whitney did not do any effort test  
16      to confirm whether or not that standardized autism  
17      test was being accurate or not.

18            Dr. Hall, again, he did not do standardized  
19      autism tests with the defendant or his parents. He  
20      even testified he had to take the family members'  
21      information with a grain of salt, and he explained  
22      the reasons for that.

23            And, also, when Renee Mosley Dixon came and  
24      testified, Ms. Russell said that she was credible  
25      and she was upset. She also had to have me walk up

1 her sworn statement that she gave me right after  
2 these homicides occurred, because what she was  
3 saying under oath during this hearing was different  
4 than what she said under oath to myself and  
5 Ms. Ellis during a sworn statement.

6 Dr. McClain did not do standardized autism  
7 tests with the defendant, just his parents. It's  
8 been mentioned a few times that she did the GARS  
9 test, but she did that with his parents. McClain  
10 never did a standardized autism test with  
11 Mr. Mosley personally.

12 Dr. Whitney, again, he did do the standardized  
13 autism test, but he used that Module 4 when he had  
14 three other options and he chose the highest  
15 module.

16 His parents continually point out issues with  
17 socializing with peers. Again, Dr. Hall put it you  
18 take that with a grain of salt, but you also look  
19 at the school records, his time at the State  
20 Hospital, the video visitations, showing the  
21 opposite of having issues with socializing with  
22 peers.

23 Again, Mr. Mosley tends to do what he wants to  
24 do. He wants to talk to peers, whether he's in  
25 jail, whether it's during a talent show at the

1 State Hospital; or even during an evaluation, he  
2 would rather focus on what the inmates are doing in  
3 the day room and what they're watching on TV than  
4 talk to Dr. Torrealday.

5 An important thing in the State Hospital  
6 records show that when the defendant wanted a radio  
7 in his room, that meant he had to move up a level  
8 in his competency training, and it was only then  
9 that he then put forth the effort in training so  
10 that he could get that reward.

11 State Hospital records also show that he is  
12 not consistent in what he knows about the legal  
13 system from one training to the next, which is  
14 consistent with when he talks to different doctors  
15 at evaluations. It's showing further relevant  
16 evidence of feigning effort.

17 Intellectual disability, it's not reliable  
18 testing that has been conducted due to the  
19 defendant feigning and poor effort exhibited, and  
20 that's confirmed by the malingering and the effort  
21 testing. We essentially have four IQ scores  
22 throughout this hearing, 46, 55, another 55 from  
23 Dr. Torrealday on the CTONI, and then Dr. McClain's  
24 coming in at the end of July on the WAIS-5 at a 69.

25 I would urge the Court to take consideration

1        regarding his effort when considering the weight of  
2        these scores. The court-appointed doctors question  
3        if the test results accurately reflect his  
4        abilities, and they suspect effort is lacking when  
5        getting those scores.

6                And then the fact that Dr. McClain testified  
7        yesterday that she finds her score of 69 to be  
8        valid despite the wide spread in the scoring in a  
9        time period of about five months should be  
10       considered when evaluating any findings by  
11       Dr. McClain.

12               When it comes to adaptive functioning, it  
13       plays a big part in the intellectual disability  
14       diagnosis. It's not just about an IQ score. And  
15       those IQ scores should be strongly questioned  
16       regarding their validity at this point, all of  
17       them. But Dr. Hall, he did not do standardized  
18       testing or have family do standardized adaptive  
19       functioning tests.

20               He changed his diagnosis to intellectual  
21       disability just recently, an area he admittedly  
22       does not have an expertise in or practice in  
23       frequently, and he did that based on McClain's  
24       representation that her score is valid. So  
25       Dr. Hall changing his diagnosis I would argue

1       should be questioned when all -- it all depends on  
2       McClain's representation that that 69 is a valid  
3       score.

4             Dr. McClain did not do standardized adaptive  
5       functioning tests with the defendant, just his  
6       parents. And then Dr. Tenaglia, Dr. Railey, and  
7       Dr. Torrealday saw no issues with adaptive  
8       functioning. And Dr. Railey specifically found  
9       that the defendant's mother, Renee Dixon Mosley, on  
10      the WHODAS, the score was completely out of the  
11      range of what he observed when he evaluated the  
12      defendant.

13            Dr. Tenaglia reviewed the hospital records.  
14      She spoke to those who observed the defendant from  
15      day to day. She reviewed the nursing progress  
16      notes. She talked to the competency trainers. And  
17      she learned that he did socialize with peers. He  
18      did participate in training when he wanted to, when  
19      there was a reward at stake. He was able to  
20      function appropriately with his daily living while  
21      at the State Hospital. He was able to feed  
22      himself, shower. Dr. Torrealday reviewed the  
23      Pinellas County Jail records and saw there were no  
24      issues with his daily functioning in the Pinellas  
25      County Jail.



1           Prior to his arrest, he was able to work until  
2           he made the choice that he either didn't like the  
3           job or want to do it anymore. He drove a car. And  
4           him taking many times to pass the test needs to be  
5           considered in the context that he never in his life  
6           has seemed motivated to study for something, and  
7           that driver's test is something you have to study  
8           for. And it goes in line with how he's conducted  
9           his life is that he wants it, he's gonna go try to  
10          do it, but you have to study to pass tests. You  
11          have to put forth effort to pass tests, and  
12          Mr. Mosley just decides he wants to be able to do  
13          something and drive a car, but he has not over his  
14          lifespan shown that he wants to do the effort  
15          required to make successful outcomes.

16          The way he talks and acts on video visits when  
17          it's something he wants to talk about, he wants to  
18          know about, when family members show up during the  
19          video visits, he wants to hear what they're doing,  
20          what they're up to, he's engaging with them. He's  
21          having conversations. He's smiling. It's a  
22          different Thomas Mosley than the one that we've  
23          heard about over the last two months that shows up  
24          to an evaluation seeing blood in his eyes and being  
25          sad.

1           And the rap videos, yes, we put those in for  
2           adaptive functioning purposes. I think it very  
3           much goes towards that. It shows him participating  
4           with others, socializing with others. It shows  
5           that he can memorize lyrics. He can rap lyrics.  
6           He can perform them. He can do that while driving  
7           a car. One of the videos put into evidence is just  
8           Mr. Mosley himself. It's a rap video just of him,  
9           on his own, no one else to compare it to. Just the  
10          real Thomas Mosley driving his car, rapping,  
11          rapping around boats, doing what he loves to do,  
12          what he had a dream to do.

13                That's not an autistic obsession. It's a  
14          genuine desire that Thomas Mosley had in his life,  
15          and he actually had some success at it. He was  
16          able to have a YouTube page with albums. These  
17          were produced. Not saying he was a rap star by any  
18          means or that he was awesome at it, but he had a  
19          goal, and to call that just an autistic obsession  
20          and toss it to the side, you have to give weight to  
21          that.

22                That's showing him in his society, in his  
23          community, what he knew. Dr. Whitney says that's  
24          not a normal societal community, but that's  
25          Dr. Whitney's opinion on that. This is

1 Thomas Mosley's friends, his peers, doing something  
2 he wanted to do, and when he wants to do something,  
3 he performs it well, and that's what you see in  
4 those rap videos, and that's what you see in those  
5 video visits. It's relevant evidence of his  
6 adaptive functioning, and it shows the difference  
7 between the man that walks into this courtroom and  
8 the man that's out there doing what he wants to do  
9 and the dream that he had.

10 Language impairment, that alone does not equal  
11 intellectual disability or incompetence.

12 Dr. Fritz's opinion regarding the significance of  
13 any language delay does not align with what can be  
14 seen in other evaluations with other doctors, what  
15 can be heard on the visits and the rap videos.  
16 And, again, the reliability of her test results  
17 should be questioned considering all the other  
18 evidence of the defendant displaying poor effort  
19 and feigning.

20 There's a Supreme Court case that I referenced  
21 last year. It's Peede, P-E-E-D-E, v. State, and  
22 that's 955 So.2d 480. It was when a trial court  
23 found the defendant competent and it was sent up to  
24 the Florida Supreme Court. And on page 9 of the  
25 case -- and I have a copy for your Honor I can give

1       you -- the court states: The trial court  
2       subsequently found the defendant competent to  
3       proceed, concluding that the defendant could assist  
4       his attorneys, if he wanted to, but is instead  
5       choosing not to discuss the facts of this case.  
6       The court said it was clear that the defendant is  
7       not incompetent, simply uncooperative. The court  
8       stated that any difficulties in communicating with  
9       counsel were of the defendant's own choosing rather  
10      than due to any mental defects.

11           The court further pointed out that a trial  
12      Court's decision does not constitute an abuse of  
13      discretion unless no reasonable person would take  
14      the view adopted by the trial court, and that it is  
15      the duty of the trial court to determine what  
16      weight should be given to the conflicting  
17      testimony.

18           And when we were here last year, the State  
19      made the argument that it seemed the question  
20      really came down to whether the defendant was  
21      unable or unwilling to participate in his legal  
22      case, and this time around the court-appointed  
23      doctors, along with the State Hospital doctor, all  
24      conclude that, if the defendant chooses to put  
25      forth the effort and participate, he has the

1 capacity to do so. And those opinions are  
2 supported by the relevant evidence contained in the  
3 State Hospital records, the school records, the  
4 standardized testing, and the video visits.

5 There's not enough credible evidence that the  
6 defendant is at this present time suffering from a  
7 psychotic disorder, major depression that is  
8 impeding his ability to be competent, intellectual  
9 disability, or autism. What is clear and  
10 convincing is that the defendant is competent to  
11 proceed, and any illusion that he is not is due to  
12 his own malingering and his own feigned effort that  
13 is supported by the assessments of the  
14 court-appointed doctors and the supplemental  
15 testing they conducted on the defendant.

16 Thank you. And may I approach with this case  
17 law?

18 THE COURT: Yes, please.

19 MS. SULLIVAN: I gave a copy to Defense  
20 already.

21 THE COURT: Thank you.

22 Any rebuttal argument from Defense?

23 MS. RUSSELL: May I have a minute to confer?

24 THE COURT: Yes, ma'am.

25 What page did you refer me to?

1 MS. SULLIVAN: Page 9, your Honor.

2 MS. RUSSELL: Your Honor, I don't believe we  
3 have anything further.

4 THE COURT: Okay.

5 MS. RUSSELL: I also have copies of the cases  
6 that I cited.

7 THE COURT: I would be happy to take those  
8 from you.

9 MS. RUSSELL: Unfortunately, I don't have  
10 copies for the State. So I'm just gonna show them.

11 MS. SULLIVAN: It's okay. Just go ahead and  
12 give them to the judge.

13 MS. RUSSELL: Okay.

14 THE COURT: You already read the cites into  
15 the record, I believe, correct?

16 MS. RUSSELL: I hope so.

17 THE COURT: I'll just do it again.

18 MS. RUSSELL: Okay.

19 THE COURT: All right. So you gave me Byron  
20 Keith Cooper, 116 Supreme Court 1373. It's  
21 517 U.S. 348, and that's a 1996 case; Dougherty v.  
22 State, 146 So.3d 672, Florida Supreme Court case;  
23 387 So.2d 463, King v. State, a First District  
24 Court of Appeals case from 1980; Moore v. Texas,  
25 586 U.S. 133, a 2019 U.S. Supreme Court case;

1 another Moore v. Texas, 581 U.S. 1, 2017 case,  
2 U.S. Supreme Court. And I believe that's it.

3 Okay. All right. So the transcripts are  
4 starting to come in. You cited some of them. I  
5 think we're all getting them at the same time.  
6 There's still a few more outstanding, and obviously  
7 I need this week's stuff transcribed. So my hope  
8 of -- we previously discussed I was gonna try and  
9 be done by today with my order. Obviously I can't  
10 do that.

11 So any day of the week better for you-all to  
12 come in? I'm just gonna set it pretrial/status  
13 check on my order. That way I have a deadline, and  
14 I can make sure you-all have received it.

15 MS. SULLIVAN: It really depends on the week  
16 for us, our schedules.

17 THE COURT: September 15th is a Monday.

18 MS. RUSSELL: Yes, your Honor.

19 MS. SULLIVAN: The 15th works.

20 THE COURT: Is that okay, 8:30? Okay we'll do  
21 status check pretrial for Mr. Mosley. He'll be a  
22 mandatory bring for that day, and we'll go from  
23 there. All right? Thank you, everybody.

24 MS. RUSSELL: Thank you, your Honor.

25 MS. SULLIVAN: Thank you.

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(PROCEEDINGS CONCLUDED)



**CERTIFICATE OF REPORTER**

STATE OF FLORIDA       )

COUNTY OF PINELLAS   )

I, Jennifer Fleischer, Registered Merit Reporter,  
certify that I was authorized to and did stenographically  
report the foregoing proceedings and that the transcript  
is a true record.

DATED this 26th day of August, 2025.

/s Jennifer Fleischer  
Jennifer Fleischer  
Registered Merit Reporter