

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.

VOLUME II
(Amended Page Numbers)

THOMAS ISAIAH MOSLEY,

Defendant.

_____ /

PROCEEDINGS: Competency Hearing

BEFORE: The Honorable Susan St. John
Circuit Court Judge

DATE: August 20, 2025

PLACE: Courtroom 2
Pinellas County Justice Center
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Clearwater, Florida 33762

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(Pages 45 to 111)

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(VOLUME II)

THE COURT: Ms. Carrier is back on zoom.
We're back from lunch. Mr. Mosley's present.
State and Defense are present.

Are we ready to proceed?

MS. RUSSELL: Yes, your Honor.

THE COURT: Okay. Ms. Sullivan, are you ready
to go?

MS. SULLIVAN: Yes, ma'am.

THE COURT: All right. Doctor, if you'd like
to come back up, please.

THEREUPON,

TYLER WHITNEY, PSYD,
the witness herein, having previously been duly sworn,
testified as follows:

DIRECT EXAMINATION (RESUMED)

BY MS. RUSSELL:

Q Dr. Whitney, we're gonna get to the competency
criteria in a second, but there were a couple follow-up
questions that I had after your testimony earlier before
lunch.

Dr. Whitney, a lot of kids want to be rappers.

1 Why is this somehow different in Thomas Mosley's case?

2 A Well, I think it has to do with a couple of
3 symptoms that Mr. Mosley exhibits as part of an autism
4 spectrum disorder. He is a black-and-white thinker, which
5 means that he understands what his end goal is but maybe
6 doesn't understand the process, and a literal thinker as
7 well, which means he has only a certain amount of
8 frustration tolerance. Okay?

9 So one of the things that I know about
10 Mr. Mosley is that he had a conversation with his mother,
11 and over the course of that conversation, he asked her,
12 Why is everybody else succeeding at becoming a rapper and
13 I'm not?

14 Well, you know, that's a very, very literal
15 statement. Okay? He's not feeling success. He doesn't
16 have an understanding of the process, and yet he feels,
17 without talking to anybody else or communicating with
18 anybody else, that everybody else is succeeding. So
19 literal thinking and black-and-white thinking.

20 Q And how does that relate to the interplay of ID
21 and autism, which are present from birth, and
22 schizophrenia which develops over time as someone reaches
23 their late teens and early twenties?

24 A Yeah. So if someone has a lower cognitive
25 functioning level, they're going to have less frustration

1 tolerance. They're going to become frustrated more
2 quickly. In the case of Mr. Mosley, the more frustration
3 you feel, the more your expectations are not met, the more
4 it depletes your psychological resources, your coping
5 strategies, your problem solving, your judgment.

6 And for this particular piece, this
7 schizophrenia spectrum disorder, the schizoaffective
8 disorder, the more stress he feels, the more he
9 decompensates. So until that psychotic break happened, he
10 was feeling a great deal of stress. The endnote of having
11 a psychotic break is having psychological stress and not
12 having the coping strategies or the coping resources to be
13 able to deal with it.

14 Q Part of that is not being able to communicate to
15 other humans.

16 A Right.

17 Q Did he say anything else or did Ms. -- did
18 Renee Mosley say anything else to you about his suicide
19 attempts and how that related?

20 A Yeah. So, in talking about, again, literal
21 processing and problem solving skills, he texted his mom
22 after one of the suicide attempts, Why did you have me?
23 Why was I born, and then also, What's my purpose here? So
24 alluding to the fact of his life. He didn't feel any
25 direction. He didn't feel any meaning to his life.

1 Q Why not?

2 A Because, again, he wasn't connecting with other
3 people. He wasn't connecting with his environment, and so
4 he was oftentimes isolated and alone.

5 Q Dr. Whitney, I want to talk to you about the
6 Florida competency criteria. Do you feel that
7 Thomas Mosley appreciates the range and nature of
8 penalties at the present time?

9 A I think, in a general sense, he does. He
10 understands the idea of, you know, going to jail or prison
11 or the death penalty from a general sense.

12 Q Do you think he understands the process of the
13 death penalty?

14 A That I do not think he does.

15 Q What do you think interferes with his ability to
16 understand the penalty that he's facing?

17 A I think two things do. I think being
18 intellectually deficient, or ID, it requires being able to
19 understand a lot of components of how that decision is
20 reached, and I think his working memory numbers aren't
21 good enough for that. From an autism standpoint, I don't
22 think that he understands well enough or would ask anybody
23 what he needs to do or what certain things mean because he
24 just doesn't ask for help as part of his autism spectrum
25 disorder.

1 Q And what about the ability of counsel to
2 adequately explain those things to him so he can
3 understand?

4 A Well, another one of the deficits of an autism
5 spectrum disorder is generalized ability. He's not able
6 to take information and generalize that after he learns
7 it. So the idea of having it explained over and over and
8 over again to him and not having it stay within his mind
9 is quite possible within autism spectrum disorder.

10 Q Why is that?

11 A Again, working memory and memory in general such
12 as rote memory, keeping information that you've learned in
13 your mind is very difficult for Mr. Mosley.

14 Q Does Thomas Mosley have the capacity to
15 appreciate the adversarial nature of the legal process?

16 A I don't believe that he does, no.

17 Q Why not?

18 A Well, I think he can be taught the different
19 people and their roles in the courtroom, but I think a lot
20 of Thomas Mosley's everyday life is adversarial because he
21 doesn't understand the people and their roles from an
22 everyday standpoint. And so to differentiate that from a
23 courtroom I think would be very difficult for Mr. Mosley.

24 Q Did you talk to him about the roles of different
25 people in the courtroom?

1 A I did.

2 Q Did he seem to understand?

3 A He nodded affirmatively to everything that I
4 said, but my question about his understanding would come
5 if I asked him to do something that would cause him to
6 have to problem solve or judgment or those kinds of
7 things. Do I think he can memorize definitions? Yes. Do
8 I think he can apply those definitions? No.

9 Q And, certainly, capacity involves being able to
10 not only parrot but to actually understand?

11 A That's correct.

12 Q Now, what about Thomas Mosley's ability to
13 disclose pertinent information to his attorney?

14 A Mr. Mosley had difficulty when he was talking to
15 me in answering some very straightforward questions about
16 emotion. He also had difficulty in talking to me about
17 time line, which is part of the criteria for both autism
18 and schizoaffective spectrum disorder. Being able to
19 understand time in terms of past, present and future is
20 difficult for Mr. Mosley. So I don't think he could
21 assist his attorney.

22 Q Why would an understanding of past, present and
23 future be important when you're the defendant in a death
24 penalty case trying to talk with your lawyers?

25 A Because you have to be able to put together the

1 sequence of what you're being accused of. You have to be
2 able to give specific details about when certain things
3 happened, and I don't believe he can do that on a
4 consistent basis.

5 Q Now, is that because of autism or intellectual
6 disability?

7 A That would be really tough to distinguish. I
8 think you'd have to give me a specific example, and I
9 would tell you what I thought based on that example, but
10 to generally say that he couldn't do it would be that he
11 couldn't do it consistently.

12 Q Now, Dr. Whitney, you and I visited with
13 Mr. Mosley earlier today, right, during the pause before
14 your testimony before we came to court?

15 A That's correct.

16 Q I'd like to talk to you about what happened
17 during that visit.

18 A Sure.

19 Q You and I went back?

20 A Yes.

21 Q And we saw Mr. Mosley?

22 A We did.

23 Q What did he say?

24 A You said hello, and then you let me ask him
25 questions, and I asked him if he had any questions, and he

1 said no. And I asked him if there's anything that I could
2 explain for him. I explained my role, what I would be
3 doing today, and he didn't have any questions.

4 You then proceeded to question him in a similar
5 manner, asked if you could answer any questions, and
6 Mr. Mosley said, Why did you give the State the rap
7 videos? And you said, I didn't. They were introduced, if
8 you remember the detective's testimony from early in the
9 investigation when they found them. And I -- and he said,
10 No. You gave them to them.

11 And his look and his demeanor changed when he
12 was turned and he was addressing you. It was much more
13 collegial, back and forth, with me. With you, it was
14 accusing, and it looked like his affect had changed to a
15 much flatter affect when he was addressing you, and he
16 repeated to say the same thing to you, You gave them those
17 videos.

18 Q So do you think Mr. Mosley thinks that I'm
19 collaborating with the State?

20 A I think he has some concerns about how they got
21 the videos, and I think he knows that you have them. So
22 he assumes that you gave them to them.

23 Q How is that an example of black-and-white
24 thinking?

25 A That's -- that's hearing the response that

1 you're given, knowing your relationship with the
2 person -- that's you and Mr. Mosley that I'm speaking
3 about -- and not using that information about your
4 relationship to factor in your response. That's simply
5 having an understanding, Mr. Mosley's own understanding,
6 and not using information that's being given to him.

7 Q So he can't generalize over a long term?

8 A That's correct.

9 Q So he doesn't understand that, even though I
10 have been to visit him in the Pinellas County Jail a
11 number of times and my efforts have always been to help
12 him, right? I'm still accused of conspiring with the
13 State?

14 A That's correct.

15 Q And would that make --

16 THE COURT: Did he actually say that? Did he
17 actually accuse her of conspiring with the State?

18 THE WITNESS: He said, You gave them the
19 videos.

20 THE COURT: Okay.

21 THE WITNESS: That's what was said.

22 THE COURT: Okay.

23 BY MS. RUSSELL:

24 Q How would that affect his ability to disclose
25 pertinent information to me and his counsel and trust his

1 counsel?

2 A I think he would be less likely to do so if he
3 believed that you were working with the State.

4 Q So you think he's incompetent on that criteria
5 too?

6 A I do.

7 Q Now, do you think that Thomas Mosley can
8 manifest appropriate courtroom behavior?

9 A I think it's difficult to say, because I think
10 he misreads social cues. And his complex combination of
11 diagnoses, both the autism, the ID and the schizophrenia
12 spectrum disorder, play into the idea that it could be
13 very unstable, and something that he perceived in his own
14 way may make him believe -- may make him believe and
15 behave differently in the courtroom.

16 Q Is that just because it's stressful, or are
17 there other reasons?

18 A I think it's a combination of diagnoses that he
19 has, and, yes, the courtroom setting is stressful for a
20 defendant.

21 Q Do you think Mr. Mosley has the ability to
22 testify relevantly?

23 A I do not.

24 Q Why not?

25 A Again, my experience with him was that he did

1 the best that he could to answer the questions. Sometimes
2 he answers the questions that I ask directly, but it took
3 subsequent questions in order to get the full answer that
4 I was looking for, and sometimes his response to my
5 questions was not what the question was asking in the
6 first place.

7 Q Dr. Whitney, you have had years of experience,
8 in fact, your entire career has been defined by being able
9 to assess and communicate with people with ASD who have
10 profound communication challenges; is that right?

11 A That's correct.

12 Q And you used special tools in order to begin to
13 try and cross over that bridge between you and
14 Thomas Mosley?

15 A That's correct.

16 Q And those are techniques that you have used over
17 decades?

18 A That's right.

19 Q And honed over decades?

20 A That's correct.

21 Q How do you think it would go in terms of
22 communication with Thomas Mosley on a witness stand
23 without those kind of techniques and warmup questions?

24 A I think it would be very difficult for him.

25 Q How would he be able to respond to

1 cross-examination?

2 A I think that would be very difficult because of
3 the adversarial nature of the court, but also because of
4 the specificity with which the questions are expected to
5 be answered. They're very specific, and, obviously,
6 attorneys can formulate questions on many different
7 levels, but I think it would be very confusing to him.

8 Q And, Dr. Whitney, if I consulted you about
9 whether or not Thomas Mosley could take the stand in a
10 death penalty trial in front of a jury, would you tell me
11 that was a good idea?

12 A I would say absolutely not.

13 Q Why not?

14 A Again, going back to the adversarial nature,
15 going back to the perceptual experiences that he has and
16 going back to the unstable nature of his schizophrenia
17 spectrum disorder.

18 Q Did you sense that there were any exaggeration
19 of symptoms in your exams?

20 A I did not.

21 Q Now, Dr. Whitney, I know that Thomas Mosley's
22 case is complicated, but I'd like to ask you if you formed
23 an expert opinion as to whether Thomas Mosley is currently
24 competent under the criteria in Florida Statute 916.12 and
25 Florida Rule of Criminal Procedure 3.211, due specifically

1 to autism?

2 A He is not competent. Based on my findings, he
3 was incompetent on five of the six points of the Florida
4 statute.

5 Q And is that due specifically to autism,
6 intellectual disability, or some sort of mental health
7 issue?

8 A Again, I think this is the complex nature of
9 this case. The best that I can do for you is tell you
10 that he was born with an autism spectrum disorder, that at
11 its current state, it requires level-two support for
12 social communication, level-one support for restrictive
13 and repetitive patterns of behavior; that he was born with
14 ID, but that he developed schizoaffective disorder through
15 the process of his development, and also has atypical
16 sensory findings, as well, that were different when he was
17 younger than they are today, but they still exist.

18 Q Dr. Whitney, you looked at a bunch of reports
19 done by other doctors in this case?

20 A I did.

21 Q I would like to ask you, from what you can tell
22 from the records and report, did Dr. Tenaglia use the type
23 of analysis and diagnosis that's also often relied on by
24 an expert like yourself to diagnosis autism?

25 A No.

1 Q How so?

2 A Hers was an interview, I believe I'd have to go
3 back and look at it, but I believe a Mini-Mental Status,
4 and then her opinion was based on her understanding of an
5 autism spectrum disorder, and I don't know what that is.

6 Q She did no formal testing?

7 A I would have to look to remember, but --

8 Q I can find her report for you.

9 A That'd be great.

10 Q All right.

11 MS. RUSSELL: May I approach?

12 THE COURT: Yes.

13 MS. RUSSELL: I apologize. I made a mess of
14 your box, but I promise I'll put it back together.

15 May I approach the witness?

16 THE COURT: Yes. What exhibit number is that?

17 MS. RUSSELL: This looks like State's 5.

18 THE COURT: Thank you.

19 BY MS. RUSSELL:

20 Q Dr. Whitney, I'm showing you what's been
21 premarked as State's 5, which is the report of
22 Lana Tenaglia. You've had a chance to refresh your
23 recollection. Can you tell me if Dr. Tenaglia used the
24 type of analysis relied on by an expert in autism or ASD
25 like you in making her diagnosis that Thomas Mosley did

1 not suffer from autism?

2 A She did not. She used the previous testimony of
3 other doctors, and the Mini-Mental Status, as well as
4 talking to people at the hospital that had interaction
5 with Mr. Mosley.

6 Q So she did no formal testing for autism?

7 A No.

8 Q No collateral interviews for autism?

9 A No.

10 Q No screening test for autism?

11 A No.

12 Q And she read no school records?

13 A No.

14 Q So would her feeling that Thomas Mosley doesn't
15 suffer from autism be given much weight?

16 A This wouldn't be an evaluation that I would rely
17 on for autism.

18 Q Did you read the report of Dr. Michael Railey?

19 A I did.

20 Q Did he use the type of instruments that an
21 expert like you might rely on to accurately diagnose
22 autism?

23 A No.

24 Q He did no testing?

25 A Again, I'll have to look at the report. There

1 were a lot of doctors in this case.

2 Q All right.

3 MS. RUSSELL: May I approach the clerk?

4 THE COURT: Uh-huh.

5 MS. RUSSELL: Your Honor, may I approach the
6 witness?

7 THE COURT: Yes.

8 MS. RUSSELL: State's Exhibit Number 2.

9 THE COURT: Madam clerk, can you take that box
10 down for me? Just put it somewhere, not there.
11 Thank you.

12 THE WITNESS: He did not. He relied on an IQ
13 test, but his autism analysis was based on his
14 observations of Mr. Mosley.

15 BY MS. RUSSELL:

16 Q So he did no testing?

17 A He did, it looks like, some IQ testing and an
18 expanded Mini-Mental Status Exam.

19 Q But he did no testing specifically for autism?

20 A No.

21 Q No collateral interviews?

22 A It looked like -- it looks like he relied on
23 Mr. Mosley's report.

24 Q So he did no collateral interviews?

25 A No.

1 Q And is that the type of analysis relied on by an
2 expert like you to assess autism or ASD?

3 A No.

4 Q Why not?

5 A Again, the perceptual differences make it very
6 difficult to understand the reality that Mr. Mosley is
7 living in, whether it be for mental health reasons or for
8 reasons associated with autism and ID.

9 Q Dr. Whitney, do you recall the report of
10 Dr. Torrealday?

11 A Yes.

12 Q That one I just sent you recently?

13 A Yes.

14 Q Did she use best practices?

15 A No, she did not.

16 Q Why not?

17 A Again, some of the tests she used, specifically
18 the test about legal knowledge, requires a fifth grade
19 reading level, and I would say that would be generous in
20 terms of reading comprehension based on the language
21 testing that was done by Amy Fritz.

22 Q And she also did no collateral interviews?

23 A Correct.

24 MS. RUSSELL: Give me one moment, your Honor.
25

1 BY MS. RUSSELL:

2 Q Dr. Whitney, why is it important to be accurate
3 in both diagnosing and reporting neurodevelopmental
4 disorders in a death penalty case?

5 A It's really important, number one, because this
6 starts from the date of birth, and most of the time when
7 you ask the first question to a collateral source who
8 knows the person that's being evaluated well, they can
9 speak to when they first saw differences in the individual
10 being evaluated. Usually those individuals are seen as
11 different prior to even entering grade school.

12 So when you start to see those differences
13 early, you start to see the developmental pattern. The
14 developmental pattern of a typical person goes like this.
15 The developmental pattern of an atypical person or a
16 person with an autism spectrum disorder goes like this.
17 Now, the purpose for treatment of an autism spectrum
18 disorder is to keep that gap small or to diminish the gap.

19 Q So why is it important to be thorough by using
20 tests and collateral interviews and all the things
21 specifically in a death penalty case?

22 A Because of the perceptual differences of the
23 individual with an autism spectrum disorder, they would
24 need to have the ability, the functional ability, the
25 adaptive ability, or to apply the information to make

1 decisions in the death penalty case.

2 Q Which is serious?

3 A I think probably one of the most serious.

4 MS. RUSSELL: No further questions.

5 THE COURT: Cross-examination?

6 MS. SULLIVAN: Yes, thank you.

7 **CROSS-EXAMINATION**

8 BY MS. SULLIVAN:

9 Q Good afternoon, Dr. Whitney.

10 A Good afternoon.

11 Q You're not licensed in Florida, are you?

12 A I am not.

13 Q Okay. And how many competency evaluations have
14 you done in Florida? Is this your first one?

15 A I would have to go back through. I have had
16 other cases in the state of Florida. I would have to go
17 back through and see if I was involved in the competency
18 aspect of those criminal cases.

19 Q Because there's specific Florida statutory
20 competency criteria, right?

21 A That's correct.

22 Q It's different than other states?

23 A That's correct.

24 Q Different from the states you are licensed in?

25 A That's correct.

1 Q All right. Is there any formalities you have to
2 go through in order to be able to render an opinion
3 regarding competency in the state of Florida when you
4 aren't licensed in the state of Florida?

5 A You have 15 days a year that you can practice in
6 the state without having a license specifically in the
7 state of Florida.

8 Q Okay. Did you do that? Are you complying with
9 that?

10 A I am.

11 Q Okay. You became -- it seems like you became
12 part of this case towards the end of last month, in July;
13 is that accurate?

14 A That's correct.

15 Q All right. Prior to mid-end of July, you had no
16 knowledge of this case and had never met the defendant
17 before; is that accurate?

18 A That's correct.

19 Q Looks like, according your report, you spent
20 about three hours with the defendant during your
21 evaluation?

22 A That's correct.

23 Q Was it just the one visit, except for what we
24 just heard about that happened in the back?

25 A That's correct.

1 Q And that was in the Pinellas County Jail, right
2 over here, right?

3 A That's correct.

4 Q It's not a normal environment, is it?

5 A It is not.

6 Q Mr. Mosley's been charged with two counts of
7 murder, right?

8 A Yes.

9 Q And the State's seeking the death penalty?

10 A That's correct.

11 Q You would agree that may affect his mood, those
12 circumstances?

13 A Yes.

14 Q Okay. You've seen he's had a lot of doctors
15 come visit him over the last couple years, hasn't he?

16 A Yes.

17 Q You're the end of a long cycle of doctors coming
18 in and asking him a lot of questions about his life; is
19 that fair?

20 A That is my understanding.

21 Q So, again, in terms of his affect or his mood,
22 not completely odd that he may not be in the best mood
23 talking to yet another doctor about his life, fair?

24 A Fair.

25 Q You were talking about, when you were doing just

1 your interview, your initial connection with Mr. Mosley,
2 that you would ask specific questions, and he just gave
3 you general responses. Do you recall that on your direct?

4 A I do.

5 Q Can you give me an example of what you're
6 talking about?

7 A Yes.

8 Q Okay.

9 A So one of the -- one of the questions I asked
10 him was about where he grew up, and he would say, I grew
11 up here. And I would say, Can you be more specific than
12 that? Can you tell me exactly where you grew up? And he
13 would give me the answer to the place where he grew up and
14 talk to me about -- those same questions could apply to
15 questions about school. Those same questions could apply
16 to questions about people that he knew or knows, those
17 kind of things. Those questions would start very, very
18 general, and then the qualifying or the clarifying
19 questions would get to the answer more specifically that I
20 was looking for.

21 Q But he did ultimately answer you?

22 A Yes.

23 Q Understood your questions?

24 A My belief is yes.

25 Q You said being able to connect with a person is

1 important during these types of evaluations. Do you
2 recall that?

3 A I do.

4 Q All right. So it's your testimony you were able
5 to connect with him more than other doctors who evaluated
6 him?

7 A From reviewing their reports, it appears that
8 way.

9 Q All right. You were able to connect with him
10 more than other doctors that did not see symptoms of
11 autism.

12 A I've --

13 Q That's your testimony.

14 A That's my testimony, yes.

15 Q Did you -- I know you read Dr. Railey's report.
16 Did you watch the actual evaluation, those videotapes?
17 Did you watch that interaction between Dr. Railey and
18 Mr. Mosley?

19 A Did not see the videotape of the interview.

20 Q Okay. So you can't render any opinion of how
21 they actually, because it's videotaped, conversed back and
22 forth and the rapport Dr. Railey had with Mr. Mosley?

23 A I read the report. I didn't see the video.

24 Q All right. You would agree that hallucinations
25 and delusions that make up part of your diagnosis of

1 schizoaffective disorder come from what is self-reported
2 by the defendant himself? Would you agree with that?

3 A That's correct.

4 Q You personally did not observe the defendant
5 having any hallucinations or delusions?

6 A He told me that he was but that he was not
7 following what was being said to him.

8 Q Okay. I understand he reported to you he was
9 having them. Did you see him having any delusions or
10 hallucinations or any type of internal stimuli during your
11 three hours with him?

12 A He was slow to respond, but I was looking for
13 symptoms related to autism and I wasn't -- you know, as I
14 said, I was less concerned about that, because it had been
15 disclosed, and more concerned about what may be other
16 types of underlying stimuli or response to stimuli.

17 Q All right. One of your diagnoses is
18 schizophrenia, right?

19 A Yes.

20 Q And you're a trained licensed psychologist?

21 A That's correct.

22 Q Trained to observe and see if anyone's suffering
23 from delusions or hallucinations while you're speaking to
24 them, right?

25 A Yes.

1 Q All right. But you're saying you weren't paying
2 attention for that?

3 A No, I wasn't saying that I wasn't. I was saying
4 that wasn't the primary thing that I was looking for. Do
5 I believe him when he says that he has these things? I
6 think I believe him and the collateral information that I
7 got from his mother that he reported these things to his
8 father after one of the psychiatric hospitalizations.

9 Q All right. I want to talk about his reading
10 level. You point out in your report that it was reported
11 that he has possibly a seventh grade reading level. Do
12 you recall that?

13 A I'd have to go back to look at it, but if I did,
14 then I got that off of a record.

15 Q Okay. And you had said that based on that
16 seventh grade reading level, that that would invalidate
17 most of the testing used by the forensic evaluators. Do
18 you remember saying that in your report?

19 A I do.

20 Q That reading level at one point in time was
21 determined by reading tests given to him in school. Did
22 you see that in the school records?

23 A I did.

24 Q All right. Would you -- is it fair that the
25 accuracy of that grade level, that reading comprehension

1 level highly depends on the defendant -- the defendant's
2 performance or effort that he's making while taking those
3 tests? Right?

4 A Absolutely.

5 Q All right. So if the record showed that a test
6 that normally would take between 20 and 30 minutes he's
7 completing in six to seven minutes, did that raise some
8 questions to you whether or not he's giving enough effort
9 to get an accurate result from that test?

10 A That's correct.

11 Q All right. It could play a major factor in the
12 accuracy of a reading level, couldn't it?

13 A In any testing.

14 Q All right. So when the school records
15 ultimately say that he's at a certain reading level, we
16 have to kind of question if that's fair, considering what
17 the school records also show about his effort, his lack of
18 paying attention in class, his lack of going to class, all
19 of those?

20 A His lack of learning I think could be
21 generalized to that.

22 Q The full context matters when we're looking at
23 these things, doesn't it?

24 A Yes.

25 Q So taking that reading level and your comment

1 that it would invalidate most of the testing, I want to
2 talk a little bit about some of the testing that some of
3 the doctors have done.

4 Starting with Dr. Torrealday, she gave the ILK.

5 A Yes.

6 Q That requires, from my understanding, a fifth
7 grade reading and comprehension level, right?

8 A Yes.

9 Q Okay. Those questions are read out loud to the
10 person during that test, right?

11 A Uh-huh.

12 Q Is that a yes?

13 A That is a yes. I'm sorry.

14 Q Okay. So let's say -- arguably, let's say just
15 for argument's sake he has a seventh grade reading level.
16 That test, that's valid. It's a fifth grade comprehension
17 level, right?

18 A Again, there's a lot that goes into it. Like
19 you said with the other question about seeing doctors, the
20 doctor's videotaped interview, you have to be able to see
21 the administration, all those types of things, of course.

22 Q I think that's fair.

23 The CTONI-2 type of IQ test, Dr. Torrealday did
24 that. That's used for people age six years and up, by my
25 understanding, right?

1 A One of the questions I had about that, and I
2 think this is important for the record, there are four
3 different ways to give that test, and if she didn't use
4 the pantomime version, which is point and tell, there's no
5 speaking whatsoever, it would invalidate that testing
6 completely.

7 Q What if I told you she did that nonverbal type?

8 A Then I would say that it would be more valid.

9 Q All right. But, again, the CTONI-2, there's
10 essentially no limitations regarding the educational
11 background because the type that we're talking about that
12 Dr. Torrealday performed, it doesn't require the defendant
13 to read anything?

14 A Right.

15 Q All right. Dr. Tenaglia, she did the VIP.
16 You're aware the primary purpose of that is to help
17 clinicians differentiate between genuine cognitive
18 impairment and fabricated or exaggerated symptoms, right?

19 A That's correct.

20 Q And I believe it only says it's not to be used
21 with people that have significant cognitive impairments.

22 A Which is most of the malingering tests, Test of
23 Memory Malingering, VIP, all of those, yes.

24 Q Right. Okay. Are you saying that what
25 Dr. Tenaglia did there with the VIP then would be

1 invalidated, at least in your opinion?

2 A I'm really concerned about all of the testing
3 because most of them are verbally mediated, with the
4 exception of the CTONI, and the language testing by
5 Dr. Fritz shows a very, very low level of understanding.

6 Q All right. While still on the topic -- and
7 we're gonna get there. While on the topic of
8 Dr. Tenaglia's evaluation, though, if a doctor -- just in
9 a general sense. I'm not talking specific to Mr. Mosley
10 right now.

11 If a doctor does not see symptoms of let's say
12 autism, would it be appropriate to do a standardized test
13 for autism if, when they're assessing the person, they see
14 no symptoms of that type of diagnosis?

15 A I would say, yes, it would, based on the
16 developmental history that's mentioned in all of their
17 cases, which is the problem with language from an early
18 age.

19 Q What if the school records never mentioned
20 anything about autism, though, the historical data?

21 A Not about autism. About --

22 Q My question is related to autism, I'm saying, in
23 this hypothetical situation.

24 A If they didn't see anything about autism, then
25 they probably wouldn't give that test. But I think it

1 would be reasonable that they would give at least a
2 screener based on the language barriers and the reading
3 testing that was done in his early school records.

4 Q All right.

5 A And that's what Ms. Daws (sic) said. She said,
6 Had I known being a second year teacher what I know now, I
7 definitely would have made a referral for autism testing.

8 Q Okay. You saw in the school records the school
9 psychologist also was seeing Mr. Mosley, right?

10 A I did.

11 Q And there was no indication of any need for
12 autism or intellectual disability testing from that
13 psychologist?

14 A That's correct.

15 Q All right. You didn't do any cognitive testing
16 on Mr. Mosley, did you?

17 A No, I did not.

18 Q You also didn't give any effort tests to him,
19 did you?

20 A I did not.

21 Q You just said at the end of your direct that
22 it's important to be thorough in these evals, right?

23 A Yes.

24 Q All right. Were you thorough?

25 A I was.

1 Q You've read all the evaluations by the other
2 doctors, and you would agree with me that throughout
3 almost all of them, but I'll be specific, Dr. Tenaglia,
4 Dr. Torrealday, Dr. Railey, the question of his effort has
5 been seriously raised; is that fair?

6 A That is correct.

7 Q All right. But you didn't think that it may be
8 a good idea to do some sort of effort test on Mr. Mosley?

9 A I did not.

10 Q Okay. And you still think you were being
11 thorough?

12 A I do.

13 Q You stated that Dr. McClain gave the defendant
14 the GARS. But she didn't give him the GARS test, right?

15 A No, she did not.

16 Q She gave that to his parents?

17 A Yes. It's a questionnaire.

18 Q All right. I want to talk about IQ tests.

19 A Okay.

20 Q There's a few going on in the last six months.

21 A One or two.

22 Q Did you look at all of them?

23 A I did.

24 Q All the scores?

25 A I did.

1 Q And I think at this point we have four different
2 IQ scores, right?

3 A That's correct.

4 Q Okay. You're basing the fact that Mr. Mosley is
5 intellectually disabled based on these IQ scores?

6 A Yes.

7 Q Which one?

8 A Dr. McClain's is the one that I gave the most
9 credence to, the one that was most recently done.

10 Q Okay. So that's the one that jumps 23 points
11 from the first IQ test that was done on him back in
12 February, right?

13 A Yes.

14 Q Okay. It's a pretty big spread, 23 points,
15 isn't it?

16 A Yes.

17 Q Would you agree that effort plays a role in the
18 accuracy of IQ testing?

19 A I would.

20 Q And you weren't present for any of these tests,
21 the IQ tests done by any of the doctors who suspected he
22 was feigning?

23 A No, I was not.

24 Q So the only test you administered was the
25 ADOS-2, right?

1 A That's correct.

2 Q And --

3 A I also administered questionnaires to the
4 parents, but those are not to Mr. Mosley.

5 Q Okay. So but just for what you administered to
6 the defendant was just the ADOS-2, right?

7 A That's correct.

8 Q And in your report, you indicate you use
9 Module 4 of the test; is that right?

10 A That's correct.

11 Q And there's different modules that you can
12 choose, depending on the person, right?

13 A Four different modules.

14 Q Right. You chose Module 4, which my
15 understanding is for verbally fluent older adolescents and
16 adults, right?

17 A That wouldn't play with toys or manipulatives,
18 that's correct.

19 Q There are modules for people who have minimal or
20 no speech, right?

21 A 1 and 2. Module 3 is for a younger individual
22 that you would use manipulatives with, so toys, show me,
23 that kind of thing.

24 Q All right. There's a Module 2 that is for
25 people who use single words or short phrases, right?

1 A Module 2.

2 Q Okay. But you use Module 4?

3 A That's correct.

4 Q For verbally fluent older adolescents and
5 adults?

6 A That's correct.

7 Q All right. In your scoring, you scored the
8 defendant as level-one support for restricted interest and
9 repetitive patterns of behavior; is that right?

10 A That's correct.

11 Q All right. So, by my understanding, level one
12 refers to the mildest form of autism spectrum disorder,
13 right?

14 A For that particular criteria, yes.

15 Q Okay. And that's for social communication
16 interaction difficulties that require some support?

17 A That's for social communication, which I scored
18 him a level two.

19 Q Okay. And that level two, that was my next
20 question --

21 A Is for moderate impairment.

22 Q Okay.

23 A Not severe and profound, but moderate. Level
24 three is for severe and propound.

25 Q All right. So the level one sometimes is

1 referred to as that high functioning autism we were
2 talking about?

3 A Yes.

4 Q And, again, someone with autism can certainly be
5 competent, right?

6 A Absolutely.

7 Q Someone with intellectual disability can
8 certainly be competent, right?

9 A That's correct.

10 Q I don't see it in your report. So you didn't
11 review any of the State Hospital records from his last
12 visit, his most recent visit?

13 A One of the doctors wrote two reports. I think
14 it was Dr. Tenaglia, and those were both when he was
15 hospitalized.

16 Q Right. But the actual records that come from
17 the State Hospital, so nursing progress reports, the
18 day-to-day, did you look at all that?

19 A I did get some of those, yes.

20 Q And so you were able to see, over the 83 days
21 that he was there at the State Hospital, how he did with
22 his competency training, right?

23 A I did.

24 Q What he reported to nurses on a daily basis,
25 right?

1 A I did.

2 Q How he was doing, living day to day?

3 A I did.

4 Q How he communicated with peers versus how he was
5 communicating with the competency trainers, right?

6 A I did.

7 Q You reviewed all of that?

8 A I did.

9 Q Did you watch any of the -- we have here these
10 video visitations that you can do with an inmate with
11 family members. Did you watch any of those?

12 A I did not.

13 Q So you have not observed how Mr. Mosley is when
14 he's communicating with his family members or his friends?

15 A I got an understanding of that from
16 communicating with his mother and also from Mr. Mosley.
17 He told me that when he becomes upset or sad, that he can
18 get agitated, and he said -- I believe it's in my
19 report -- "I talk to my mom, and she tells me to chill"
20 was his word. And then there is another statement. I can
21 tell you what it is in my report.

22 Q But that's just you -- what he's relaying to you
23 and what his mom's relaying to you, right?

24 A That's correct.

25 Q I'm asking about you did not watch how he

1 actually behaves, how he communicates, his language when
2 he's talking his family members.

3 A The only time that I saw him was when he was
4 talking to me. And then my interaction with his mom,
5 again, was remote. It was via telephone. So it was -- it
6 was verbal communication only.

7 Q Could it be important in your overall opinion
8 and diagnosis, watching that kind of interaction,
9 with -- you know, we're talking about what you did, your
10 eval, three hours in a jail. It's not a normal
11 environment. He's never met you before, right?

12 A That's correct.

13 Q And you're another doctor that he's having to
14 talk to?

15 A That's correct.

16 Q Wouldn't it be important for you to compare that
17 to how he is on a day-to-day basis with his mom, talking
18 one on one, on a video visit?

19 A I think, generally speaking, it's better to have
20 more data. This was the limitation of my time seeing
21 Mr. Mosley.

22 Q Especially if, in those video visits, he's
23 laughing and joking at times, he's not having the flat
24 affect all the time, would that make a difference to your
25 opinion?

1 A I don't think so.

2 Q It wouldn't change it at all?

3 A No.

4 Q Okay. You diagnosed Mr. Mosley with major
5 depressive disorder without psychosis; is that correct?

6 A Correct.

7 Q So you aren't finding that he's currently
8 suffering from any psychosis?

9 A He's not. He's being medicated for that.

10 Q All right. And you've mentioned it a little
11 bit, but you're taking a lot of his early development
12 autism symptoms from the interview you conducted with his
13 mom, Renee, right?

14 A A lot from the school records, from the
15 interviews, from the other reports, the things that I saw,
16 all of it.

17 Q And you -- you said you found his mother's
18 interview to be credible. And did you talk on the phone
19 with her? Was it a phone interview?

20 A It was a phone interview.

21 Q How long did that phone interview take?

22 A An hour.

23 Q Okay. And you're taking all the behavior
24 problems that Mr. Mosley had in school, such as truancy,
25 smoking weed, avoiding academic work, as indicators of

1 autism?

2 A I'm taking it as indicators of school being a
3 non-preferred activity. He had other things he would
4 rather be doing.

5 Q This could also be considered just bad behavior,
6 couldn't it?

7 A It could be. It is what we would call, in
8 autism, inappropriate behavior.

9 Q Okay. And sometimes people just don't want to
10 comply and go school and do -- they only want to do what
11 they want to do, and it doesn't mean they're autistic,
12 right?

13 A That's correct.

14 Q They're just bad students.

15 A That's correct.

16 Q You -- all right. Let's talk about the rap
17 videos. It seems like you've had an opportunity to watch
18 the rap videos and that had to have been in the last
19 couple of days, right?

20 A That's correct.

21 Q So that took place after your evaluation and
22 after you've rendered your opinion and written your
23 report, right?

24 A No. Mr. Mosley, in the jail cell, gave me the
25 YouTube, how to -- what he was called --

1 Q Uh-huh.

2 A -- and how to look at the videos. And I viewed
3 the videos that I could find before I wrote my report.

4 Q Okay. So you're saying that, while you were
5 evaluating him at the end of July, Mr. Mosley directed you
6 to his YouTube videos?

7 A Yes, through our conversation about rap music.

8 Q Okay. What did he do? Where did you pull that
9 up? Did you have a laptop with you?

10 A I didn't have a laptop with me. He wrote it on
11 the back of the legal notepad. He wrote the address where
12 I could find it and his name, his rap name.

13 Q All right. So he directed you to his YouTube
14 page of his rap videos, his rap albums, right?

15 A Yes.

16 Q Little T Smoke, that's his rap name?

17 A Yes, it is.

18 Q Okay. He wrote that out for you, the YouTube
19 page that you could go to, to look at his videos?

20 A Yes.

21 Q And you went -- you were able to access them.
22 He gave you the accurate information it sounds like?

23 A I first -- I first tried to access it with what
24 he wrote as the YouTube -- what do you call it? I'm not
25 very good technically. The back slash YouTube --

1 Q The URL?

2 A Yeah. But I just -- in the YouTube, there's a
3 search bar, and I put in his rap name, and that came up.

4 Q All right. So you're aware Mr. Mosley's been in
5 jail for about two and a half years now, right?

6 A That's my understanding.

7 Q So two and a half years, he still recalls how to
8 direct a person to his YouTube rap album page?

9 A That's correct.

10 Q Okay. So you watched the videos. How many
11 videos did you watch?

12 A Two.

13 Q Okay. And did you watch a video that had a
14 number of people in it?

15 A I did.

16 Q Okay. Did you see a video with just Mr. Mosley
17 performing?

18 A One of the videos had a number of people in
19 them, and the other one was more, I think I would say,
20 just a collage of photos and rap music playing in the
21 background and lyrics that were hard to discern.

22 Q Okay.

23 A But clearly rap lyrics.

24 Q So it sounds like you didn't see the video where
25 he's just performing by himself that we've moved into

1 evidence.

2 A I tried to, but I would have had to download
3 the -- what is it, the drive?

4 Q Yes.

5 A And I wasn't able to do that.

6 Q Okay. So he has a rap name. He's created a rap
7 name for himself, right? Little T Smoke?

8 A Yes.

9 Q You saw that?

10 A Yes.

11 Q He's in videos that are produced. I think at
12 the beginning they say it's like 33 Films.

13 A Yeah. There's something that talks about how it
14 was made or whatever.

15 Q These aren't videos that are made in someone's
16 garage with an iPhone. They're produced rap videos.

17 A I'm not sure how they're made. They're not -- I
18 mean, they're not, you know, very professionally produced,
19 but they're rap videos for sure.

20 Q Rap music, it's a form of expressive language,
21 isn't it?

22 A Yes.

23 Q You have to rhyme, right?

24 A I would say that would be a stretch in these
25 videos. They were very indiscernible in terms of what the

1 language was, the ones that I saw.

2 Q Okay. Did you consider -- so it sounds like you
3 saw at least one video where Mr. Mosley can be seen in it,
4 right?

5 A In the video, that's correct.

6 Q All right. Did you consider what he's actually
7 doing in those videos when you were you thinking about
8 adaptive functioning which is a part of intellectual
9 disability diagnosis?

10 A Yes.

11 Q Okay.

12 A I did consider what he was doing.

13 Q And that didn't change your opinion at all?
14 Seeing how he behaved out in the normal social environment
15 didn't change your opinion at all regarding intellectual
16 disability or autism?

17 A No.

18 Q Okay. You talked about how he has a desire to
19 be a successful rapper and he was kind of upset that he
20 wasn't succeeding in that; is that fair?

21 A I'd say an obsessive desire.

22 Q Okay.

23 A That's all he wanted. That was one of the
24 things that I think led to one of the hospitalizations was
25 his lack of success in that area.

1 Q Yeah. He had a dream and a goal to be a
2 successful rapper, right?

3 A That's what he wanted. That's what he expressed
4 to me.

5 Q He was -- he created a rap name for himself,
6 right?

7 A I'm not sure that he did it. I know that it was
8 part of the production. I'm not sure how all of that came
9 to be, but I know that he was involved.

10 Q Okay. He's participating in videos, and he has
11 a YouTube page that has different albums on it, right?

12 A Yeah, different videos. I don't know if they're
13 albums. I know they're videos.

14 Q And, obviously, it's something he cares so much
15 and was motivated so much about that he brought them up to
16 you during his eval and showed you how to locate them; is
17 that accurate?

18 A Yeah. Well, the first question was mine: I
19 understand that you like music. What kind? And that's
20 when he said rap. And then I told him the little bit I
21 know about rap, and it's different than the rap that he's
22 interested in but I think we made a connection via that.

23 Q When it was something he wanted to talk about?

24 A Correct.

25 Q Part of the intellectual disability diagnosis,

1 it's not just IQ score. Adaptive functioning, all these
2 other things come into it, right? One thing to consider
3 is the fact that someone has future plans, right? It's
4 part of --

5 A Yes.

6 Q He certainly had one prior to being arrested
7 that -- you know, whether or not you personally think that
8 that was a realistic goal, he had a future plan. That was
9 his dream. That was his goal, right?

10 A That's what he told me.

11 Q Okay. He certainly was able to communicate to
12 you that he was upset that he couldn't be successful about
13 that?

14 A That's correct.

15 Q Expressed that emotion to you?

16 A He expressed it to his mother. His mother was
17 the one that told me about that aspect of it.

18 Q Okay. So I just heard about this, that he was
19 mad that apparently I had the rap videos and he thinks
20 Defense gave them to me. It certainly seems like he
21 understands that what I did yesterday was move rap videos
22 of him into evidence, right? He followed that court
23 proceeding?

24 A He did. He understood that those were being put
25 into the --

1 Q To this hearing as evidence?

2 A Yes.

3 Q And you said his mood changed back there when he
4 was talking to Ms. Russell about it, right?

5 A It appeared that his affect did. I don't know
6 that you could call that mood, because affect is minute to
7 minute or immediate type of mood.

8 Q Okay. When you first talking at the beginning
9 of your direct, you were talking about how a mood -- how
10 it does or does not modulate based on factors around
11 someone in the moment when you're looking at autism,
12 right?

13 A It doesn't modulate as well as someone without
14 autism.

15 Q Okay. It sounds like he was communicating his
16 feelings or mood to the Defense in the back about those
17 rap videos, doesn't it?

18 A It does.

19 Q And you found Mr. Mosley not acceptable in all
20 the Florida competency criteria except number one right?

21 A That is correct.

22 Q And you reviewed the reports of other doctors,
23 including other hired Defense doctors, in this case,
24 right?

25 A I did.

1 Q And even the hired Defense doctors find him
2 acceptable in almost all the criteria. What seems to be
3 the sticking point is criteria four and six. But you're
4 saying only criteria one, that's what he's acceptable in?

5 A That's correct.

6 MS. SULLIVAN: May I have a moment?

7 THE COURT: Yes.

8 MS. SULLIVAN: Nothing further.

9 THE COURT: Any follow-up questions?

10 MS. RUSSELL: Just a couple, your Honor.

11 THE COURT: I may have a few when you're done.

12 **REDIRECT EXAMINATION**

13 BY MS. RUSSELL:

14 Q Dr. Whitney, you reviewed the testing results by
15 Dr. Amy Fritz?

16 A I did.

17 Q Regarding?

18 A Speech and language.

19 Q And reading deficits?

20 A I did.

21 Q Was there anything ambiguous in those, in terms
22 of Thomas Mosley's deficits?

23 A There was not.

24 Q Tell me about that.

25 A Amy Fritz saw that he had receptive and

1 expressive language disorder or disability. She also saw
2 that he had a pragmatic language disability, which I
3 addressed earlier in my testimony, that talks about the
4 application or the use of social language. So that would
5 be reading social cues and responding to those social cues
6 in an appropriate way.

7 Q And those were all shown in objective testing?

8 A That's correct.

9 Q Dr. Whitney, why does effort seem to be raised
10 over and over in your cases when people are diagnosed with
11 autism?

12 A Because it doesn't look as though the people
13 that are evaluating -- the examiner, we can't help it.
14 It's called bias. It doesn't help meet their expectation
15 of what the behavior should be. It doesn't match. And so
16 because it doesn't match the expectation, they allude to
17 the fact that he should be able to do it but he's not,
18 which infers that he's not trying.

19 Q Does Thomas Mosley try?

20 A Appears he tries very hard in the things that he
21 is interested in and that he wants to do.

22 Q Now, he's just not interested in rap. It's
23 basically an autistic obsession?

24 A And ritualistic pattern behavior, yes. They're
25 called "intense areas of interest" in autism. So that

1 would be an interest, a hobby or a habit that fixates an
2 individual with an autism spectrum disorder or they fixate
3 on that.

4 Q And that's one of the hallmark diagnostic
5 criteria for autism, isn't it?

6 A It's not one of the hallmark diagnostic
7 criterias, but it is a behavior that is part of the
8 hallmark diagnostic criteria. Ritualized, repetitive
9 forms of behavior, that's the hallmark criteria, but it
10 fits under that.

11 Q You watched the rap videos?

12 A I did.

13 Q And we've had a lot of discussion about them?

14 A Yes.

15 Q Were those videos, as the State asked you, a
16 normal social environment?

17 A They were not.

18 Q Why not?

19 A Well, I think the genre of rap would be
20 considered not a typical or a complying type of a
21 behavioral video. I think they would be seen as atypical
22 or noncompliant in terms of community standards. And the
23 other thing about rap that's really interesting is some of
24 the values are very, very different from those that are
25 seen or that are represented in a more conservative

1 community.

2 Q So as you sit here, from watching the videos, do
3 you know who produced them?

4 A His mom told me that they were cousins. But,
5 again, one of the clarifying questions that I asked her is
6 a lot of times people Mr. Mosley's age will refer to
7 people as "brothers" or "bros" or "cuz," and so I asked
8 her are these actually his cousins, and she let me know
9 that they were somehow related. It was a longer
10 explanation. So I'm not sure that I could give you
11 exactly the explanation that she gave me, but it appears
12 that there is some type of a family relationship. And
13 there was mention several times of a godmother. So I know
14 that that is part of that as well.

15 Q So you don't know if he produced the videos
16 himself?

17 A I don't.

18 Q Or if maybe other people took advantage of him?

19 A That could be a possibility.

20 Q You don't know if it was his voice on the video?

21 A I don't know if it was his voice on the video.
22 I don't know whether he was rapping or not. I know that
23 there were people that were singing, and it looked like,
24 you know, words were coming out of their mouth, but I know
25 that with technology a lot of things can appear that way.

1 As I said, the ability to understand the
2 annunciation or the way the words were being pronounced
3 was very unclear to me. I was -- I was having a difficult
4 time making out what was being said, but I know that
5 that's also popular in that genre of music.

6 Q Do you know if he had help posting the videos on
7 YouTube or if he even posted them himself?

8 A I don't know that. I know that he knew where
9 they were. That's it.

10 Q And do you know if he had assistance or help in
11 any of the production or anything in conjunction with
12 these videos?

13 A I know that he likes the idea, but I don't know
14 what specific parts of production, if any, that he did.

15 Q Give me one second.

16 Dr. Whitney, you reviewed a lot of reports and
17 you've seen a lot of experts who have given opinions in
18 this case, but you're the only specialist in autism,
19 right?

20 A To my understanding.

21 MS. RUSSELL: No further questions.

22 THE COURT: Do you-all mind if I ask some
23 questions?

24 MS. RUSSELL: No.

25 MS. SULLIVAN: No.

1 THE COURT: Dr. Whitney, what is the Atlanta
2 Autism Consortium?

3 THE WITNESS: It's a largest nonprofit
4 organization in the state of Georgia.

5 THE COURT: And what do you do for them?

6 THE WITNESS: From January of 2023 until
7 January of 2025, I was the cochair, a volunteer
8 position that I was elected to.

9 THE COURT: And you do what, though? Just
10 give me an idea what you did for them.

11 THE WITNESS: The Atlanta Autism Consortium,
12 their primary goal or objective is to create
13 educational content monthly, so either online or in
14 person or a combination of both, educational types
15 of seminars that people can attend, people can
16 listen to. And I -- as the cochair, I was a member
17 of the board. I continue to be a member of the
18 board, but, again, these are volunteer positions.

19 THE COURT: What about the Autism Innocence
20 Project? What's that?

21 THE WITNESS: The Autism Innocence Project is
22 a project that lobbies for changes in laws across
23 the country.

24 THE COURT: Like what?

25 THE WITNESS: Recognition of

1 neurodevelopmental disabilities such as autism in
2 state and federal law.

3 THE COURT: So what have you advocated for?

4 THE WITNESS: I've helped draft some
5 legislative -- state bill -- State Bill 140 in
6 Idaho was turned into the juvenile competency
7 statute in Idaho in July of 2011, and that just
8 added the competency prong, that if someone has an
9 intellectual disability, a developmental
10 disability, that you have to consider their mental
11 age in competency. That's one specifically. There
12 have been laws in Virginia that have been passed
13 that I've been consulted on for those types of
14 things as well.

15 THE COURT: Okay. You have -- in your
16 forensic experience in the past ten years, the best
17 I can tell, nine times you've testified in the
18 State of Florida. Does that sound about accurate?

19 THE WITNESS: Pretty close.

20 THE COURT: What was -- what kind of cases
21 were they?

22 THE WITNESS: Most of them were sex cases,
23 noncontact cases.

24 THE COURT: And were those cases in which the
25 defendant or the victim was potentially ASD?

1 THE WITNESS: The defendant.

2 THE COURT: Okay. And not to split hairs with
3 you, but a lot of them say things like St. Johns
4 County Superior Court. We don't have a superior
5 court. Are you talking about county court or
6 circuit court?

7 THE WITNESS: Yes, ma'am.

8 THE COURT: Okay. So just the trial court?

9 THE WITNESS: Yes, ma'am.

10 THE COURT: Okay. You also have State of
11 Florida APD Appeal James Wagner. What was that?

12 THE WITNESS: That was a denial of benefits,
13 and I was hired by the attorney that was filing
14 that appeal, to talk about the difference in the
15 Florida criteria versus the DSM criteria for
16 autism.

17 THE COURT: Have you ever done any
18 court-appointed work, any court-appointed lists for
19 competency evaluations?

20 THE WITNESS: No.

21 THE COURT: Okay. Any questions based on what
22 I've asked?

23 MS. SULLIVAN: No.

24 MS. RUSSELL: No, your Honor.

25 THE COURT: All right. Thank you, sir.

1 THE WITNESS: Am I supposed to bring this with
2 me or just leave it here?

3 THE COURT: If those were the exhibits, you
4 can just leave them there. Anything that's yours,
5 that you brought in with you, you're free to take
6 with you.

7 THE WITNESS: No, ma'am.

8 THE COURT: All right. Thank you, sir. Have
9 a good day. Safe travels home.

10 THE WITNESS: Thank you.

11 THE COURT: All right. So now's probably a
12 good time to take a quick break for everybody's
13 sake for a few minutes. Who's next on deck?

14 MS. RUSSELL: Dr. Hall. As I understand, he's
15 outside.

16 THE COURT: He's ready to go? Okay. How much
17 time -- I don't care what the answer is. How much
18 time for him?

19 MS. RUSSELL: I'm hoping, for me, under half
20 an hour.

21 THE COURT: Okay. And then Dr. McClain last?

22 MS. RUSSELL: Right. She -- I think she
23 said -- I had her on deck for 3:30.

24 THE COURT: Okay.

25 MS. RUSSELL: But she said she might be

1 available earlier, depending on how things go.

2 THE COURT: Sounds great. All right. Sounds
3 good. I'll see you back here in ten minutes.

4 (RECESS)

5 THE COURT: All right. Are we ready for
6 Dr. Hall?

7 MS. RUSSELL: We are.

8 THE COURT: All right. Dr. Hall, welcome
9 back.

10 THE WITNESS: Thank you.

11 THE BAILIFF: Stand right here, sir. Face the
12 clerk. Raise your hand and received the oath.

13

14 THEREUPON,

15 RYAN HALL, MD,
16 the witness herein, having been first duly sworn, was
17 examined and testified as follows:

18

19 THE BAILIFF: Right this way, sir. You may
20 have a seat. Speak clear and loud into the
21 microphone, please.

22 THE WITNESS: Thank you.

23 **DIRECT EXAMINATION**

24 BY MS. RUSSELL:

25 Q Good afternoon, Dr. Hall.

1 A Good afternoon.

2 Q You've been qualified as an expert many times in
3 this case?

4 A Yes.

5 Q And you're here on rebuttal after already
6 testifying once?

7 A I assume so, yes. Doctor, not lawyer, so I
8 don't necessarily understand all the dynamics, but, yes,
9 I'm coming back to discuss.

10 Q And you've testified previously in this very
11 competency proceeding just a few weeks ago in July?

12 A Yes.

13 Q At that time were you able to make a diagnosis
14 of intellectual disability?

15 A No. I strongly suspected it, and I've had that
16 concern since I got started in this case, but I did not
17 have a firm IQ test which was my understanding is needed
18 to be able to firmly make the diagnosis.

19 MS. RUSSELL: May I approach the witness?

20 THE COURT: Yes.

21 MS. RUSSELL: Let the record reflect that I'm
22 showing Dr. Hall what's been premarked as Defense
23 Exhibit 42.

24 Your Honor, here's a courtesy copy.

25 THE COURT: Thank you.

1 BY MS. RUSSELL:

2 Q Dr. Hall, do you recognize Exhibit 42?

3 A Yes. It looks like an addendum which I wrote
4 after receiving the IQ test that Dr. McClain had
5 performed.

6 Q And that's a true and accurate copy?

7 A Yes.

8 MS. RUSSELL: I would like to ask that
9 Exhibit 42 be entered into evidence.

10 THE COURT: Any objection?

11 MS. SULLIVAN: No, your Honor.

12 THE COURT: Be admitted as such.

13 (DEFENSE'S EXHIBIT NUMBER 42 WAS RECEIVED IN
14 EVIDENCE)

15 BY MS. RUSSELL:

16 Q Dr. Hall, how did you amend your diagnosis in
17 this case?

18 A New information came to light which then allowed
19 me to feel comfortable to make a medical diagnosis by a
20 reasonable degree of medical certainty.

21 Q Excellent. Let's talk about what new
22 information came your way. Was there a new IQ test?

23 A That is my understanding. And, again, doctor,
24 not a psychologist. So some of the finite elements of the
25 test I may not be aware of, but my understanding is

1 Dr. -- get the name wrong -- McClain felt this it was a
2 valid IQ test using the WAIS-5. Overall total IQ score
3 was 69, which would put it usually within the range of
4 mild intellectual deficiency.

5 Q And is intellectual deficiency the same thing as
6 intellectual disability for our purposes?

7 A I believe so, yes.

8 Q And when you say it's in the range, it's two
9 standard deviations below the norm, which is 100, right?

10 A Correct. And, again, people with higher
11 statistics or understanding of some aspects of the test
12 may better be able to explain it. My understanding is
13 there is some degree of standard of error. So if you gave
14 the test back to someone again, usually within three to
15 five points, they should fall within the same range. So
16 per what they have in the DSM-5, and, again, I believe
17 that was off the WAIS-4, they say about 65 to 75 is what
18 they would consider the general range for mild
19 intellectually deficiency to fall within.

20 Q Did you do anything else in conjunction with
21 your diagnosis in your addendum?

22 A Just because intellectual disability or
23 deficiency is more than just an IQ test, I finally called
24 and spoke with his mother as well as a brother just to get
25 a better collateral of what his functioning was like prior

1 to his arrest, functioning as a child, to show that this
2 was something that carried on from early age. And,
3 previously, when I was worried more about psychosis or
4 mood disorder, I didn't feel I needed the outside
5 collateral as much because off of the direct interview I
6 was doing, I felt I had enough information.

7 Q So what did you learn when you spoke to
8 Renee Mosley?

9 A The major thing I learned that surprised me and
10 I hadn't run across or heard before is that Mr. Mosley had
11 polydactia (sic) when he was born, which means an extra
12 digit on his hand. And there are several genetic
13 conditions that can be seen with mild intellectually
14 deficiency as well as polydactia. So I can't make a
15 diagnosis at this time, but that was new information.

16 Also his father apparently had polydactia. So I
17 think one of my earlier reports noted that you sometimes
18 do need to rule out genetic conditions. So, again, I am
19 making the diagnosis of intellectually deficiency. I do
20 think certain genetic conditions need to be ruled in or
21 out.

22 Also, I heard more about his functioning, you
23 know, that he was able to shower, brush his teeth, do
24 things like that, which is not inconsistent with a mild
25 diagnosis, but he had difficulties managing money, doing

1 shopping lists, driving the car. And I know some other
2 expert said, well, he always came home with a full tank of
3 gas. When I talked to his mother, she said, no, he
4 actually kind of ran out of gas on a regular basis. And,
5 again, rough estimate, and you have to always when you're
6 talking with family take some things with a grain of salt,
7 but she estimated he ran out of gas once or twice a month.

8 So, again, I think his functioning and his
9 ability to do things unsupervised was relatively poor, and
10 that was both from his mother and his brother who I spoke
11 to independently.

12 Q What about his work as a carpentry helper?

13 A That it was highly supervised, that he didn't do
14 any independent projects, that he wasn't ever unsupervised
15 with tools, saws, hammers, that often what he did was more
16 physical labor, carry something, go get something, hold
17 something, but that he didn't necessarily have the skills
18 or the functioning to create on his own.

19 Q And he wasn't working independently really?

20 A That was the impression I had is that he was
21 basically his father's helper and his father told him what
22 needed to be done.

23 Q Did you learn anything about his gullibility
24 with his friends?

25 A And, again, some things you have to take with a

1 grain of salt, but the mother was worried that his friend
2 group often took advantage of him. She said that there
3 had been some issues as a juvenile and, you know, he would
4 be the only one apprehended where other people weren't,
5 and she felt that people, at times, had set him up. Also,
6 she said, you know, yes, he was trying to do rap, but that
7 was with two or three other individuals, and she thought
8 that they were using him because he was willing to spend
9 money to make the videos.

10 Q When did he learn to tie his shoes?

11 A She said age 13. So that was the number she
12 gave me, but I wouldn't be surprised by that based off of
13 some of the other stuff I've read.

14 Q Does that sound late?

15 A Yes. I think most people learn by about age
16 five to six, but pediatricians may be a little more up on
17 the milestones.

18 Q How did he do in sports?

19 A He did well when he was younger, but, you know,
20 if you've ever watched a pee-wee football game, there's
21 not a lot of strategy, and there's -- you know, you just
22 give a kid a ball, and they all kind of run in a huddle.
23 But when things were getting older and the game was
24 getting more complex, he was having more and more
25 difficulty and was having more difficulty working as a

1 team member.

2 Q And following the rules of the game?

3 A Was my general sense. I mean, I think he
4 understood the objectives of the game, but, you
5 know -- and this was in, I think, somebody else's report,
6 but the mother confirmed it, that he one time got the ball
7 and ran the wrong way and scored a touchdown on his own
8 goal.

9 Q How about simple shopping and money matters?

10 A She said she worried about that with him, that
11 if she gave him a list, he'd forget to get things and that
12 she'd have to count his money when he came back because
13 he'd sometimes overpay, give out the wrong bills.

14 Q Could he cook a full meal?

15 A No. He could do a microwave. He could do some
16 ramen, maybe grill a hot dog was the example she gave.
17 But when I asked could he do a full meal, could he do four
18 or five ingredients in a dish, she said that was a bit
19 beyond his abilities.

20 Q Now, Dr. Hall, you also got a copy of Defense
21 Exhibit 19.

22 MS. RUSSELL: May I approach?

23 THE COURT: Yes.

24 BY MS. RUSSELL:

25 Q Do you remember looking over Defense Exhibit 19?

1 A Yes.

2 Q What did you take from that in terms of
3 Thomas Mosley's adaptive functioning?

4 A I thought it showed that had impairments. I'm
5 assuming that wanting to drive was something he wanted to
6 do, and I know at times there's been questions on how
7 motivated he is and, if he wanted to do something or put
8 in effort in, could he actually accomplish it. And this
9 says he had to take the written test, if I'm reading it
10 right, for signs and rules nine times before he passed,
11 whereas the vision test he passed his first time.

12 So I think he really does have some difficulties
13 with academic functioning, and I believe -- and I
14 apologize, but conceptual domain is the technical term you
15 see in the DSM, and that this kind of shows that even for
16 something he wants to do, he often has difficulty even
17 when he's motivated or trying to accomplish it.

18 MS. RUSSELL: May I have a moment to confer?

19 THE COURT: Yes.

20 BY MS. RUSSELL:

21 Q Dr. Hall, was there anything about your addendum
22 or anything about the further information that you
23 gathered that changes your opinion on whether or not
24 Mr. Mosley is competent?

25 A No. I don't think it changes my initial

1 testimony from a week and a half ago. I think people with
2 intellectual disability can be found competent. I still
3 have concerns about his communication, and I listed that
4 as questionable. I didn't put that as something I feel
5 strongly can't be done. I just don't know if it can be
6 done.

7 MS. RUSSELL: Very well. Thank you, Dr. Hall.

8 THE COURT: Any cross-exam?

9 MS. SULLIVAN: Yes. Thank you.

10 **CROSS-EXAMINATION**

11 BY MS. SULLIVAN:

12 Q Hi again, Dr. Hall.

13 A Hello.

14 Q You previously testified last time that
15 intellectual disability is not a primary area of expertise
16 for you, right?

17 A Correct. Usually I have patients who have that
18 diagnosis, and I do try and treat them. They often have
19 other conditions as well. Usually, though, it's diagnosed
20 earlier in childhood. And I'm an adult psychiatrist. So
21 it's not an area that would be typically something I'd
22 focus on.

23 Q Okay. You did not meet with Mr. Mosley again?

24 A No. I met with him four or five times
25 previously. Again, I think I've always had concerns about

1 his use of language. Initially I was wondering if it was
2 more due to a depression or a psychotic episode, but
3 especially after the second or third time when he appeared
4 better from a mental health perspective but still had some
5 of the language issues, I was more concerned.

6 Q Okay. My question was you didn't meet with him
7 again in doing this report, right?

8 A No.

9 Q Thank you.

10 A I apologize.

11 Q It's okay.

12 Still you haven't done an autism test,
13 standardized test on Mr. Mosley, right?

14 A No, I haven't. I think others have done that.

15 Q My question is, have you done one?

16 A No, I have not.

17 Q Thank you. You're a psychiatrist. So you can't
18 give an IQ test, right?

19 A Correct. Usually it's psychologists that do
20 that.

21 Q You're not trained in the WAIS?

22 A No.

23 Q You weren't present for the test Dr. McClain
24 just gave at the end of July, right?

25 A If I may go back, part of my training and

1 expertise and experience, we talk about the WAIS when I go
2 through medical school, when I go to meetings, when
3 you -- WAIS is mentioned in the DSM, which is a
4 psychiatric diagnostic book. But am I certified to give
5 it, have I gone into the mechanics of it, no, but I'm
6 familiar with it familiar with what it means the same way
7 I'd be familiar with a blood test. I don't know how a
8 thyroid level is obtained, but I know what the value means
9 and what to do with it.

10 Q You weren't present for the most recent IQ test
11 by Dr. McClain, right?

12 A No, I was not.

13 Q You have no idea the effort that Mr. Mosley put
14 in during that test?

15 A My understanding is she didn't have concerns.

16 Q My question is, you have no idea, because you
17 were not present for that test, what effort level he put
18 into it, you personally?

19 A No. I wasn't there.

20 Q You're still accepting it, though, as valid?

21 A Because my understanding is she felt it was a
22 valid exam, and when I testified previously that other
23 tests that have been done where the examiners didn't think
24 they were valid, I went with their opinion there as well.

25 Q All right. We're gonna talk about that in a

1 second. But you're calling Dr. McClain's test a firm IQ
2 test. That was your testimony?

3 A My understanding is that's how she viewed it,
4 and I don't have any reason to disagree with her opinion
5 at this time.

6 Q Okay. So as you just stated, despite many
7 effort tests being given by other doctors showing that
8 this defendant exhibits poor effort and feigning, you are
9 taking Dr. McClain's word for it that it's a valid IQ test
10 in reaching your new diagnosis?

11 A I am accepting that she felt this was a valid
12 test, and that if it's thought to be a valid test and I
13 have no indication that it's not, then why wouldn't I
14 accept it or use it?

15 Q Okay.

16 A And also, just because someone doesn't do well
17 on one test doesn't mean that they're feigning at later
18 tests.

19 Q Well, we do have a 23-point jump now to this IQ
20 score, right?

21 A Between two different instruments, yes.

22 Q So, arguably, yes.

23 A Two different locations and two different
24 evaluators. So there could be multiple reasons for that.

25 Q All right. So 23-point jump. So admittedly

1 there's a little more effort being given for the test with
2 Dr. McClain, right?

3 A I'm assuming.

4 Q Because if the tests were invalid -- the tests
5 were considered invalid by the prior administrators due to
6 suspected lack of effort. That's what their opinion is,
7 right?

8 A I'd have to go back and reread it. I think some
9 of them thought it was due to intentional lack of effort
10 rather than just lack of effort.

11 Q I agree with that.

12 THE COURT: What's the difference?

13 THE WITNESS: One is malingering and one is
14 just not caring. One is intentionally trying to do
15 poorly.

16 THE COURT: I'm not trying to split hairs.

17 THE WITNESS: I appreciate that.

18 THE COURT: Let me just -- and I'll explain
19 why I'm asking the question, because I've heard
20 some testimony related to the word "malingering"
21 specifically meaning an exaggeration of symptoms,
22 which I think some doctors differentiate from lack
23 of effort.

24 THE WITNESS: Correct.

25 THE COURT: Okay. So if someone is lacking

1 effort, not putting forth effort, why does putting
2 the word "intentional" in front of it make any
3 difference? Do you qualify that to be malingering
4 or feigning or something different? And I'm not
5 arguing. I'm just asking.

6 THE WITNESS: No, and I'm trying to make sure
7 I can answer in a clear way. So, going back to
8 some of the previous testimonies, for example, one
9 of the tests that was talked about was a forced
10 choice test where somebody said his score was about
11 50 percent, and she thought that indicated
12 malingering, and I said, no, that could indicate
13 lack of effort, that they just Christmas treed it
14 but weren't intentionally trying to make themselves
15 look sicker than they were or weren't intentionally
16 trying to highlight symptoms that would suggest a
17 greater illness or problem.

18 And, again, I think he has trouble with
19 instructions. I think he has trouble with
20 comprehension, and because of that, he just doesn't
21 put forth effort, which may be different than
22 intentionally trying to look ill.

23 THE COURT: I believe I understand your
24 answer. Thank you. Sorry to interrupt.

25 MS. SULLIVAN: That's okay.

1 BY MS. SULLIVAN:

2 Q So I think -- I think we kind of landed on the
3 end there. But the administrators who gave those IQ
4 tests -- and, specifically, just so we're clear, I'm
5 talking about Dr. Railey, Dr. Tenaglia -- they thought
6 those results were invalid because of effort concerns?

7 A They -- and I think there was also concern that
8 those numbers didn't reflect his potential, and I think I
9 said last time I testified that I agreed with that. I
10 didn't think he had a 54 IQ. I thought that was too low.

11 Q And that was my next question. You were not of
12 the opinion that his IQ is actually in the high 40s or low
13 50s, right?

14 A No. I think I said last time I thought he was
15 probably somewhere in the 60s range.

16 Q All right. So, in terms of Dr. Railey and
17 Dr. Tenaglia and their opinion that he is feigning effort
18 on these IQ tests, they're right on that, but in their
19 other opinions they are incorrect? Is that your opinion?

20 A And, again, I don't mean to quibble (sic). I
21 don't think it was an accurate measure of his capability.
22 Now, feigning versus poor effort, you know, I think people
23 can have legitimate discussion on that.

24 Q Okay. But considering all of that that's
25 happened in just the last few months, because these tests

1 have been administered all within a five- to six-month
2 range, now Dr. McClain coming in and doing another IQ test
3 close in time to the other IQ test, getting a score of 69,
4 just looking at that score on its face, you are of the
5 opinion that's a valid score and it's so valid that you've
6 now changed your diagnosis or come up with a diagnosis
7 finally?

8 A Yes, in the sense that she felt it was valid.
9 And she's the one that administered the test. So I do
10 have to rely somewhat on the honesty of the person doing
11 the test. Two, that value was what I kind of assumed his
12 general range was. Now, again, I think I've said this
13 also earlier. Psychiatrists sometimes have to be careful
14 because we don't always judge IQ correctly, but, yeah, I
15 did not think, off of my interactions with him, that a 54
16 was an appropriate IQ. It could have come back at 76. It
17 could have come back at 61. But at 69 is about where I
18 thought he would fall range wise. So it felt consistent
19 with what my observations were, felt consistent with other
20 records I reviewed such as his educational history over a
21 span of years.

22 So, again, unless there was reason for me not to
23 accept this or to feel that it's invalid -- and other
24 people who have administered said we didn't feel this was
25 a valid representation, and I didn't incorporate those in

1 my opinion one way or the other. This time somebody says
2 it's a valid test, and, yes, it would fit in with my
3 opinion. It would fit in with what I've been concerned
4 about. And I also tried to reach out and get more
5 collateral and the collateral seemed to match the findings
6 and plus the history that Dr. McClain had.

7 Q So in terms of that collateral information you
8 obtained, you spoke to Mr. Mosley's mother and then one of
9 the brothers. Do you know which brother you talked to?

10 A I apologize. I'm bad with names. I think it
11 was one of his elder brothers. He said -- I think he said
12 he worked for the VA. I don't remember the name, though.

13 Q And you've listed out your conversation there,
14 but you did just say on direct that you were taking
15 everything with a grain of salt. What do you mean by
16 that?

17 A In an ideal world, I would have loved to have
18 had these conversations a week and a half prior to the
19 charges, and the fact that charges are over them, I have
20 to acknowledge, you know, what parent isn't gonna want to
21 try and be somewhat helpful for their child. So I do
22 acknowledge that. And there's been other cases where I've
23 talked with a parent and got a history, and then when they
24 came in to testify and were under oath, what they told me
25 was different than what they said in court.

1 So but what they said to me seemed consistent
2 with records from when he was in childhood prior to the
3 charges, seemed consistent with what other evaluators had
4 had in the sense of difficulties with languages,
5 difficulties in school, limitations in some degrees of
6 functioning.

7 And, yes, there are some who feel that there was
8 either poor effort or feigning, and that is out there.
9 I'm not running from that, but this seemed to be a valid
10 test and seemed to be consistent in the general sense of
11 what my interactions with him have been. So I don't have
12 any reason to question it at this time.

13 Q And a lot of the stuff, I know you have your
14 opinion of the school records. You and I have exhausted
15 that conversation. So I'm not gonna do that again with
16 you. But in terms of some of this stuff that his mom and
17 brother are reporting to you, a majority of it, it's not
18 anything that you can really go back and see if there's
19 support for it in records. I mean, whether or not he's
20 running out of gas, what he brings back from the store,
21 what he doesn't bring back, what he can cook, that's
22 really all you can do is just take Mom's word for it. You
23 can't look at any records to support that, right?

24 A No. And, unfortunately, that's the nature of
25 autism, because we often given instruments, screens, or

1 interview parents, whether it's in a court situation or
2 not. Also same is true with intellectual deficiency. We
3 sometimes have to rely off the reports of collaterals.

4 Q And then the driver's test, I mean, you have to
5 study to pass a driver's test. It's not a very -- you
6 have to study and learn some traffic laws and that kind of
7 thing to take that test, right?

8 A For the most part, yes. And I've had patients
9 that do have autism that have studied and passed it on
10 their first go, but they had greater difficulty than the
11 average person. But most people, from my personal
12 experience when I was around the age of getting a driver's
13 test as well as when I talked with patients and parents of
14 children getting the driver's test, to fail it nine times
15 seems a bit extreme. Once, twice, even somebody with test
16 anxiety, usually they change, learn or find a better way
17 to prep for it by the fifth, sixth or seventh time.

18 Q Yeah, if you want to prep for it.

19 A If you want to pass.

20 Q Right. Okay. And then finally --

21 A And I apologize, but the driver's test is not a
22 test anyone's forcing him to take. So if he keeps doing
23 it, the assumption to some degree is that he wants to be
24 able to drive.

25 Q I understand your opinion on that.

1 Last thing I want to talk to you about is this
2 new part about being born with an extra finger on his
3 right hand. Again, this was something that was reported
4 to you by his mom and brother, right?

5 A Correct. His mother brought it up at first, and
6 I was like -- I was surprised because I try and get a
7 birth history every time, and then I realized the person I
8 got the birth history was from Mr. Mosley, and he may not
9 have known or not have remembered.

10 Q Okay.

11 A And his brother, who again was an older brother,
12 said, yeah, he did have an extra finger. I forgot to ask
13 the mother on which exact side of the hand it was. The
14 brother thought it may have been on the small finger side,
15 the pinky finger. I wish I could remember the anatomical
16 name. You know, and that may or may not be important.

17 Q Okay. And, again, you didn't have any medical
18 records to support that. It's just what was being
19 reported to you by family members?

20 A That was what was being reported to me. I did
21 ask his counsel if we had any birth records from them, and
22 I was told they were unavailable.

23 Q Thank you, Dr. Hall.

24 THE COURT: Any redirect for Dr. Hall?

25 MS. RUSSELL: Briefly, your Honor.

REDIRECT EXAMINATION

BY MS. RUSSELL:

Q Dr. Hall, when someone has three co-occurring diagnoses, schizophrenia, ID, autism, is there a reason why an IQ test might not be valid other than poor effort?

A And, again, I don't administer these. So this is a general statement. People who are more aware of the instruction manual, things like that, may be able to give better answers. But trying to give an IQ test, if somebody's in the middle of a psychotic crisis or hasn't come out fully of a psychotic crisis, may lead to poor results.

MS. RUSSELL: Give me one minute to approach the clerk.

THE COURT: Yes.

MS. RUSSELL: May I approach the witness?

THE COURT: Yes.

BY MS. RUSSELL:

Q Dr. Hall, just to refresh your recollection about Dr. McClain's IQ test results, did she give effort testing in conjunction with her WAIS-5 IQ test?

A Yes. She did a Rey 15-Item, which is a basic effort test.

Q And does that help you have more confidence that her result might have been accurate?

1 A Yes and no. And this is one of those things
2 I've written articles looking at malingering, and I think
3 a lot of people, if you're doing a full neuropsychologic
4 testing, often like to do two validity measures. So,
5 again, not being a psychologist, I want to be careful and
6 not comment on what someone else's practice was and why
7 she only chose one, but I would have loved to have had a
8 second one. But he did pass one, so, again, I don't have
9 any reason to not believe or trust this one.

10 Q Thank you. And, Dr. Hall, part of your concern
11 with the WAIS-4 given by Dr. Tenaglia in February of 2025,
12 followed by the WAIS-4 given by Dr. Railey in May of 2025,
13 was the practice effect.

14 A Some of it's the practice effect. Some of
15 it -- and I want to be careful and not sound like I'm
16 criticizing another expert, but I'm not sure Dr. Railey
17 got the best history, and I don't know if he had trouble
18 understanding him or why there was such divergent
19 backgrounds such as where he was born and, you know,
20 whether or not he was able to put gas in the car. So I
21 have questions on just that day, that interaction, of what
22 was going on there. I don't know.

23 The earlier one, I think there were medication
24 changes around the time that the test was done.

25 Q But Dr. McClain gave a WAIS-5, which is a

1 different test than the WAIS-4.

2 A Yes. And, again, I don't mean to say that it is
3 better, but it is newer and it's been more recently
4 standardized, and I don't think there would be as much of
5 a practice effect, in a global opinion, because it's a new
6 version of the test. So it's not the same questions or
7 potentially the same questions necessarily over and over
8 again.

9 MS. RUSSELL: May I have a moment?

10 THE COURT: Yes.

11 MS. RUSSELL: All right. No further
12 questions.

13 THE COURT: All right.

14 Dr. Hall, thank you for your time.

15 THE WITNESS: Thank you. Okay to leave the
16 exhibits here?

17 THE COURT: Okay to leave the exhibits there.

18 THE WITNESS: Thank you.

19 THE COURT: And what time did you think
20 Dr. McClain might be ready?

21 MS. RUSSELL: Well, she told me 3:30, your
22 Honor, and I texted her, but I haven't heard back.
23 If I can step in the back and call her at work.

24 THE COURT: Sure. She was gonna Zoom in,
25 right?

1 MS. RUSSELL: Zoom, correct.

2 THE COURT: Okay. All right. So you want me
3 to take a break while you get that set up?

4 MS. RUSSELL: Sure.

5 THE COURT: Everyone's gonna have to get on
6 their computers and log onto the Zoom. Okay?

7 (RECESS)

8 THE COURT: Dr. McClain, can you hear me?

9 THE WITNESS: Yes, your Honor.

10 THE COURT: All right. Great. And everybody
11 can hear Dr. McClain. Everyone can see
12 Dr. McClain. Yes?

13 MS. ELLIS: Yes, your Honor.

14 THE COURT: Yes?

15 MS. RUSSELL: Yes.

16 THE COURT: Okay. All right. Dr. McClain,
17 raise your right hand for me, please.

18

19 THEREUPON,

20

21 VALERIE MCCLAIN, PSYD,
22 the witness herein, having been first duly sworn, was
23 examined and testified as follows:

24

25 THE COURT: All right. Thank you.

And, Dr. McClain, can you see Mr. Mosley?

1 THE WITNESS: Yes, ma'am.

2 THE COURT: All right. And, Mr. Mosley, can
3 you see Dr. McClain?

4 THE DEFENDANT: Yeah.

5 THE COURT: Okay. Let's get started then.

6 MS. RUSSELL: Your Honor, should I do
7 questioning from the podium? I'm just not sure
8 what's best for the court reporter.

9 THE COURT: She's gonna be able to hear you
10 from either. The microphones are getting picked up
11 and broadcast. So I think that will be fine.

12 **DIRECT EXAMINATION**

13 BY MS. RUSSELL:

14 Q Good afternoon, Dr. McClain.

15 A Good afternoon.

16 Q It's Margaret Russell by Zoom, and just for the
17 record, the reason you're appearing by Zoom this afternoon
18 is because you were unavailable to appear this week in
19 person?

20 A Correct.

21 Q In Pinellas County?

22 A Correct.

23 Q And you had several other prior obligations?

24 A Yes, that's correct. I had a homicide trial in
25 Polk County, and I also had a hearing in Brevard County.

1 Q Dr. McClain, you've been previously qualified as
2 an expert and testified in this case already?

3 A Yes.

4 Q And have you done further work on the case since
5 you last testified?

6 A Yes, I have.

7 Q What did you do?

8 A I conducted the WAIS-5, the Wechsler Adult
9 Intelligence Scale Version 5, and I also did the Rey
10 15-Item test which is a brief screen for malingering.

11 Q And you did both of those tests on the same day?

12 A Correct.

13 Q What did you learn after you gave Thomas Mosley
14 the Rey 15?

15 A The Rey 15 was 15 out of 15 and was within
16 normal limits and not indicative of malingering.

17 Q And what did you learn when you gave him the
18 WAIS-5?

19 A The WAIS-5 was administered to include all the
20 tests that contribute to the full-scale IQ. There is also
21 five separate component tests or measures that it breaks
22 down into, meaning scales that comprise the full-scale IQ,
23 that also completed the subtests necessary to obtain those
24 measures as well.

25 Q And what was his full-scale IQ score?

1 A So the full-scale IQ score was a 69, which is in
2 the second percentile.

3 Q And is that consistent with two standard
4 deviations below the norm?

5 A It is.

6 Q And what does that mean to you?

7 A When I conduct intellectual testing, I'm looking
8 at what the average IQ would be for normative groups or
9 comparisons, and I compare the individual I'm testing to
10 those normative groups in order to find out at what
11 percentile level or how they compare with the average.

12 Q Dr. McClain, we're gonna use screen sharing to
13 show you what's been previously marked as Defense Exhibit
14 40. Dr. McClain, do you recognize Exhibit 40?

15 A Yes, I do.

16 Q What is it?

17 A So what is in front of me is a summary of my
18 test results completed July 28th of 2025.

19 Q Dr. McClain, did you also author an amended
20 report?

21 A Yes, I did.

22 Q Dr. McClain, Ms. Seifer-Smith is going to show
23 you what's been previously marked as Defense Exhibit 41.

24 MS. RUSSELL: May I approach?

25 THE COURT: Yes.

1 BY MS. RUSSELL:

2 Q Dr. McClain, what's different about Exhibit 41
3 compared to the report that was previously filed in this
4 case?

5 A So the difference is that, within this report,
6 the date of the report is 7/29/25. It includes the date
7 of testing of 7/28/25, and I've also included the test
8 results from the WAIS-5.

9 Q Did you have any concerns about effort on
10 Thomas Mosley's performance on the WAIS-5?

11 A So what I did was actually look at embedded
12 measures within the WAIS-5, which includes the reliable
13 digit span, which was a 7, and also I looked at this index
14 called vocabulary minus digit span or digit sequencing as
15 they now call it, which was within normal limits. There
16 is a slight variation reliable digit span because of
17 intellectual disability, meaning that, for individuals who
18 have any type of neurological or limited intellect,
19 there's a slight variation, but he's right within the
20 range you would expect.

21 The other thing that I did was look at what we
22 call intrasubtest scatter, which would be if he would get
23 difficult items and then miss easy items and it was a
24 consistent pattern of doing well until he was no longer
25 able to perform well. So there was not the scatter you

1 would see if he were faking or just what we would call
2 Christmas treeing on an intellectual measure.

3 Q So, Dr. McClain, you gave not only one but
4 several measures of effort, the Rey 15 --

5 A Correct. Correct. Within the WAIS-5, there are
6 the same measures that were within the WAIS-4, and I try
7 to stay on top of the literature relevant to how the
8 various embedded measures as well as malingering measures,
9 in general, could be impacted by any type of neurological
10 and/or intellectual disability.

11 Q And the Rey 15 as well?

12 A Correct.

13 Q So is there any doubt in your mind that your
14 test was valid?

15 A No. Within a reasonable degree of psychological
16 certainty, after both computer scoring and hand scoring
17 the WAIS-5 as well as reviewing the malingering embedded
18 measures and the Rey 15-Item, I think within a reasonable
19 degree of psychological certainty the results are valid.

20 Q Does that change your opinion about
21 Thomas Mosley's competency in any way?

22 A It does not change my opinion as to overall
23 competency, but it does help to strengthen my opinion as
24 to potential restorability.

25 Q How's that?

1 A With regard to the IQ test result, the overall
2 performance on the WAIS-5 was significantly higher as
3 compared with the prior testing that had been done both in
4 the hospital and by Dr. Railey, and it would suggest that
5 he does have the capacity -- if he's provided with
6 accommodation for what has been noted in his school
7 records with receptive and expressive deficits and overall
8 decreased functioning, it does give a good prognosis for,
9 if he's provided with the proper training, he could be
10 restored to competency.

11 Q Dr. McClain, at this point I would like to move
12 into evidence Defense Exhibit 41.

13 THE COURT: Any objection?

14 MS. SULLIVAN: No.

15 THE COURT: It will be admitted as such.

16 (DEFENSE'S EXHIBIT NUMBER 41 WAS RECEIVED IN
17 EVIDENCE)

18 MS. RUSSELL: And, Dr. McClain, we don't have
19 any further questions at this time.

20 THE COURT: And, Dr. McClain, thank you for
21 making yourself available via Zoom today. I
22 appreciate that.

23 Any cross-examination from the State?

24 MS. SULLIVAN: Yes.
25

CROSS-EXAMINATION

BY MS. SULLIVAN:

Q Hi, Dr. McClain.

A Hello. Good afternoon.

Q It's Ms. Sullivan. Can you hear me okay?

A I can hear you really well. Thank you.

Q Okay. Great.

The first thing I want to talk about is your newest report dated -- I think we just put that in as 41, Defense 41.

THE COURT: Yes. Yes.

BY MS. SULLIVAN:

Q Dated 7/29/25. It is -- it is very similar to your prior report, but I wanted to ask you about a couple things. Specifically, I noted that you previously talked about how you would notice that Mr. Mosley was -- appeared distracted by internal stimuli. That's no longer in this report. I was just wondering if -- why it's not in your report anymore and if you saw it during this seventh evaluation.

A Thank you for the question. I -- when I was working with him on the testing, I did not note that behavior or him looking to the sides such as responding to something that wasn't there. There was good interaction, good focus, feedback from him. So I did not note that in

1 this evaluation when I tested him.

2 Q And I think this is the seventh time you've seen
3 Mr. Mosley, right?

4 A That is correct.

5 Q And I believe, every other time, you had noted
6 that you were seeing internal stimuli; is that accurate?

7 A That is absolutely correct.

8 Q And previously the explanation you would give
9 for not doing any testing on Mr. Mosley was because you
10 would have to deem him stable enough to do that, right?

11 A Yes. And on that point, I had asked
12 specifically to wait until he was back on his medication,
13 because as I testified previously, he was not taking his
14 medication, which was a big concern for me in terms of
15 reliability and validity of test results. So he had been
16 taking his medication, and I did ask for a two-week window
17 where he would be, so that I could ensure that I would get
18 good test findings.

19 Q But you did still report that during all
20 evaluations. So I'm assuming you mean during this most
21 recent one, the seventh one, he's still reporting that
22 he's experiencing auditory and visual hallucinations. Is
23 that accurate?

24 A That is correct.

25 Q All right. I want to talk about your Rey 15

1 test for a minute.

2 A Certainly.

3 Q You found he was -- he scored a 15 out of 15.

4 So that's a perfect score, right?

5 A That's correct.

6 Q And that that is within normal limits, right?

7 A That is correct.

8 Q Now, I understand that that test can detect
9 malingering, but the -- my understanding is the Rey 15 is
10 a memory test. It's a tool for cognitive screening, is it
11 not?

12 A That's absolutely correct.

13 Q And it's used a lot of times to try and diagnose
14 possible early dementia or Alzheimer's, things like that,
15 right?

16 A Well, it would be used -- the Rey 15 is not
17 specific to diagnosing Alzheimer's or dementia. It's a
18 brief screening measure for malingering. As far as if it
19 could be used that way, technically it could be applied
20 that way because there are 15 items. So if a person
21 genuinely had dementia or genuinely had some cognitive
22 impairment, technically you could apply it that way.

23 Q Yeah. And if you actually look up the Rey 15
24 memory test, it says it's a tool for cognitive screening,
25 doesn't it?

1 A Correct.

2 MS. RUSSELL: Objection. Can you tell her
3 where you're looking it up?

4 MS. SULLIVAN: She answered, "correct."

5 THE COURT: She already answered the question.
6 So, okay, let's move on.

7 BY MS. SULLIVAN:

8 Q The finding within normal limits, that actually
9 means someone is exhibiting a healthy cognitive function,
10 doesn't it?

11 A So that in and of itself cannot extrapolate to
12 what we would call healthy cognitive functioning. It
13 could be contributory, but you could pass the Rey 15-Item
14 Test and still have cognitive impairment.

15 Q All right. On his particular test, though, he
16 scored a 15 out of 15. So what does that mean? You
17 showed him 15 -- or you told him 15 items, and then he had
18 to repeat them back to you?

19 A No. He draws them out. It's a visual test.

20 Q Okay. So, visually, you -- well, why don't you
21 just explain it to me? What did he have to do?

22 A Sure. So there are 15 items on a piece of paper
23 that are put in front of the person, and they're asked to
24 remember the items that are on the page in front of them,
25 and there's a 10-second presentation, then it's taken

1 away, and then the person has to copy in any order the
2 items that were on that page.

3 Q So it requires both recalling memory and then
4 also drawing?

5 A That would be correct.

6 Q All right. Let's move to the IQ test.

7 A Certainly.

8 Q I could be wrong, but when you previously
9 testified, had you started administering the WAIS-5 yet,
10 or were you still doing the training for it?

11 A No, when I testified previously, I hadn't
12 started administering it.

13 THE COURT: Had or had not?

14 THE WITNESS: Had not.

15 BY MS. SULLIVAN:

16 Q Is this first administration of the WAIS-5 for
17 you then on Mr. Mosley?

18 A Yes. I've not administered the WAIS-5 with him.

19 Q I'm sorry?

20 A I'm trying to make sure I understand. Are you
21 asking is this the first time that I've administered the
22 WAIS-5?

23 Q Yes.

24 A Yes, absolutely correct.

25 Q Okay. And I understand it's a newer version

1 than the WAIS-4, and I know that we've talked previously
2 that administering the same test, so the WAIS-4, within a
3 year is not recommended because of practice effects,
4 right?

5 A Correct.

6 Q Is it also not really recommended to administer
7 a different version of the same instrument because there
8 could still be some practice effects there?

9 A So the reason that I did the WAIS-5 was that
10 because the prior testing done was deemed to be invalid,
11 and it was suggested that Mr. Mosley was not, in fact,
12 exhibiting good effort. So those results would not be
13 considered to be comparison points because they were
14 considered to be invalid by Dr. Railey and also
15 Dr. Tenaglia.

16 THE COURT: How would that change the practice
17 effect? He's hearing the questions.

18 THE WITNESS: Your Honor, so the items on the
19 WAIS-5 have some overlap, but they are also
20 different items. So there's a combination of some
21 of the past items and different items. There could
22 still be a practice effect, and if there was, it
23 would simply be a change of approximately three to
24 five points. It would be -- that it would be
25 gains, which consistently all of the results are

1 gains as far as his scores if you make the
2 comparison points with the prior testing that was
3 done.

4 BY MS. SULLIVAN:

5 Q So there is some overlap. What are -- now that
6 you've done the WAIS-5 and you've previously --

7 A I'm sorry?

8 Q Now that you've administered a WAIS-5 -- and I'm
9 assuming you've administered the WAIS-4 a few times. Is
10 that fair?

11 A Yeah. So I've administered the WAIS-4 hundreds
12 of times, and the past are similar with the exception of
13 those different stimuli items on it. So the way it's done
14 is that there's different -- for example, on the
15 vocabulary items, there's different words used. So it's
16 not the same words used that are on the WAIS-4.

17 Q What other differences did you notice?

18 A Another difference is that there's what we call
19 Running Digits, which is a test that's completely
20 different, that basically asks the person to remember the
21 last three to four to five digits. So it's a totally
22 different subtest that was not on the WAIS-4.

23 Q And then what are -- what was overlapping? What
24 are you seeing that's still similar between the WAIS-4 and
25 the WAIS-5?

1 A Well, I think the main thing that's overlapping
2 is the names of the tests. Like some of subtests are the
3 same, such as Similarities, and there are some similar
4 items on that one. But, again, there's differences. It
5 breaks out and there's different comparisons. So that
6 would be something that, again, test items are different.

7 Block Design is still Block Design. Matrix
8 Reasoning is still the same type of test. Digit
9 Sequencing is different in that it can -- it basically
10 consist of Digits Forward and Digit Sequencing, and it
11 doesn't include Digits Backward. So Digits Backward is a
12 separate subtest figure out of Digit Sequencing.

13 In terms of the overall number of factors that
14 contribute into the record forming the full-scale IQ,
15 there are seven that figure into the full-scale IQ as
16 opposed to ten previously.

17 Q All right. So is it your opinion that you have
18 no concerns administering the same instrument, just a
19 different version, so close in time to two previous
20 administrations of a WAIS instrument? You're comfortable
21 with that?

22 MS. RUSSELL: Objection. Her testimony isn't
23 that they are the same instrument. I think it's a
24 mischaracterization.

25 MS. SULLIVAN: It's the same instrument. It's

1 a different version.

2 THE COURT: Okay. Answer the question, if you
3 can, Dr. McClain.

4 THE WITNESS: I think I -- I think I didn't
5 quite get the full question. It was something
6 about comfortable.

7 BY MS. SULLIVAN:

8 Q Yes. So is it your opinion -- are you
9 comfortable with the fact that you administered the
10 WAIS-5, given those overlapping features you just
11 testified to, so close in time to administration of two
12 different WAIS-4 tests?

13 A Within a reasonable degree of psychological
14 certainty, I am confident in the validity of the testing
15 that was done.

16 Q And is it your opinion that the IQ score by
17 Dr. Tenaglia of a 46 and Dr. Railey's IQ score of a 55,
18 those were not valid scores?

19 A That is correct.

20 Q And would that be due to the fact that the
21 doctors were opining that he was feigning effort, possibly
22 malingering?

23 A That is correct.

24 Q So now we have another -- and then also I don't
25 know if you've reviewed Dr. Torrealday's report. Have

1 you?

2 A I have.

3 Q So she did the CTONI and got a score of 55. Did
4 you see that?

5 A I saw that.

6 Q And she also opined that that -- she was worried
7 about malingering as well. Do you believe that's not a
8 valid score as well?

9 A So, just to clarify, the CTONI, it's a test that
10 takes about 15 minutes to do, and so it's a different type
11 of measure of intellect. But looking at the overall
12 score, I don't think it's an accurate representation of
13 his actual ability. I think it's very low.

14 Q And, again, would that be because he -- there's
15 the opinion that he is feigning effort and malingering on
16 that test as well.

17 A So, in looking at it, the one concern that I had
18 is it doesn't flesh out the different skills and abilities
19 that a lengthier intelligence test will. So the
20 comparisons can't be made. But I do think that the score
21 is very low.

22 Q Okay.

23 THE COURT: You think that Dr. Torrealday's
24 score is low?

25 THE WITNESS: Correct.

1 THE COURT: Okay. I just -- we're using
2 pronouns. I just want to make sure we're all on
3 the same page.

4 THE WITNESS: Yes. Yes, your Honor. To
5 clarify, I think Dr. Torrealday's results -- and I
6 do have her raw data -- would suggest that -- that
7 the results are lower, lower than what would be
8 expected.

9 THE COURT: Okay. Thank you.

10 THE WITNESS: Certainly.

11 BY MS. SULLIVAN:

12 Q When you are giving the opinion that those three
13 scores, so just to be clear, Dr. Railey's score,
14 Dr. Tenaglia's score and Dr. Torrealday's score, are low,
15 is that because what you're seeing of Mr. Mosley in
16 adaptive functioning and assessing him, that doesn't line
17 up with the score that he's generating?

18 A That's correct.

19 Q All right. So here's my question to you,
20 Dr. McClain. We essentially now have four scores, three
21 coming from a WAIS instrument and one coming from the
22 CTONI.

23 Your score is, from where we started, about 23
24 points higher than Dr. Tenaglia's score, right?

25 A That is correct.

1 Q Taking all the scores and all the tests that
2 have been administered to this defendant in a span of
3 about five months into context, how can you not question
4 the validity of your score coming back as an IQ of 69?
5 When you look at all the opinions, the malingering tests,
6 the effort tests, how can you not question in some way
7 that IQ score of 69? How are you so confident in its
8 validity?

9 A Because of the embedded measures that were
10 examined, as well as the Rey 15-Item Test.

11 Q So we've -- he's been evaluated -- I don't -- I
12 would be estimating, by seven, eight doctors at this
13 point, and almost all those doctors find that he puts
14 forth poor effort. And it's not just they're eyeballing
15 him and saying that. They're administering tests.

16 Why do you think that Mr. Mosley, when he's with
17 you, all of a sudden exhibits effort that nobody else has
18 seen in this hearing?

19 MS. RUSSELL: Objection to the
20 mischaracterization of the testimony in the record
21 that all of the doctors have found that he is
22 putting forth poor effort.

23 THE COURT: Overruled.

24 BY MS. SULLIVAN:

25 Q You can answer.

1 A So, in answer to your question, I have no -- I
2 don't make the assumption that he's exerting better effort
3 with me. I'm simply commenting on the performance, and it
4 is what it is. In terms of looking at some of the
5 malingered measures, such as the ILK, Dot Counting, they
6 all are impacted by limited intellect.

7 So, in other words, the formulation that it's
8 low effort based upon malingering measures would have to
9 be cast within the context of apparent limited intellect.
10 But as far as assuming that he's specifically working
11 better with me, I don't assume that at all. I have to
12 base it upon what the results were.

13 Q All right. I don't have any other questions.
14 Thank you.

15 THE COURT: Any redirect for Dr. McClain?

16 MS. RUSSELL: Briefly, your Honor.

17 THE COURT: Sure.

18 **REDIRECT EXAMINATION**

19 BY MS. RUSSELL:

20 Q So, Dr. McClain, you're familiar with the WAIS-4
21 and the WAIS-5.

22 A Correct.

23 Q And is that -- is the WAIS-5 a different test
24 for purposes of the practice effect?

25 A So in terms of looking at practice effects, one

1 would compare WAIS-5 with WAIS-5. For example, if I
2 re-administered the WAIS-5, I would expect a lot of
3 practice effects from that. When there's two different
4 versions, like the WAIS-4 compared with the WAIS-5, there
5 are some significant differences, and there's also a
6 different amount of subtests that are contributing to the
7 overall full-scale IQ. So, typically, you would look
8 within the same test itself and re-administering that
9 test.

10 Q And that's what's generally accepted in your
11 community of psychology --

12 A Correct.

13 Q -- and psychometric testing?

14 A That's correct.

15 Q And that's seven versus ten subtests?

16 A Correct.

17 Q That sounds pretty different.

18 A It's a different number of subtests that are
19 contributing to the overall full-scale IQ. And the item
20 content is also different, which means that, for example,
21 vocabulary, they're different words they're asked to give
22 the definition of or to describe.

23 Q In your line of work as a neuropsychologist who
24 specializes in giving psychometric testing, part of your
25 specialty is to make sure that you're giving the right

1 test in the right circumstance; is that fair?

2 A Correct.

3 Q So one of the things you always make sure to do
4 is to see if a certain test is actually appropriately
5 normed for the person it's being given to?

6 A That's correct.

7 Q So, Dr. McClain, what happens if you give tests
8 not normed for people who are cognitively impaired to
9 people who are cognitively impaired?

10 A So it's a complex area, but to say it simply, by
11 reviewing the manual and knowing the limitations, if
12 there's psychometric adjustments, the test can be used,
13 but it has to be used with a comparison group to where the
14 test has been administered to similar individuals, such as
15 giving, for example, the Dot Counting Test to individuals
16 who are intellectually impaired versus of average
17 intelligence, or the ILK which has limitations with regard
18 to intellectual ability because of the nature of the
19 questions that are asked by the examiner.

20 So some tests can be used, but they have to be
21 compared with a normative group, and in some of these
22 situations, that normative group does not exist.

23 Q You're familiar with the Dot Counting Test?

24 A I'm familiar with the Dot Counting Test. That
25 also has limitations for intellectual ability. Very

1 simple test but still is noted in the literature to have
2 limitations.

3 Q And you're familiar with the ILK, or the
4 Inventory of Legal Knowledge, that's Dr. Otto's test?

5 A That's correct.

6 Q And is that normed for people with cognitive
7 impairment or intellectual disability?

8 A No. It's noted in the manual that there are
9 limitations.

10 Q And none of the IQ tests given to Thomas Mosley
11 put him outside of the range of two standard deviations
12 below the norm, did they?

13 A Could you say that again?

14 Q None of the IQ tests given over this period to
15 Thomas Mosley have ever put him above two standard
16 deviations below the norm?

17 A Have never put him above that. That's correct.

18 Q Now, one I'd like to say final but it may not
19 be. Why might there be a delta in the IQ scores between
20 what was done at the South Florida Evaluation and
21 Treatment Center and what was done by you?

22 A Why might there be a?

23 Q Significant difference.

24 A For many different reasons. I think the
25 biggest -- the biggest thing that I see is stabilization

1 on medication, the context of where the person's at.
2 There are many different factors that would affect
3 test-taking and results. I would certainly think that
4 efforts were probably taken to try to provide the best
5 testing environment for Mr. Mosley, but there are multiple
6 factors that are at work, including receptive and
7 expressive language deficits. So that in and of itself
8 can affect motivation or apparent motivation in terms of
9 understanding questions, understanding the context of
10 those questions.

11 There's also mental health issues and psychosis
12 that is variable in its stability, and there's social
13 deficits that have also been noted. So there's multiple
14 factors. It's not one solution, but there can be varying
15 results. It's also been noted on multiple occasions that
16 his motivation/participation has varied. So that also can
17 obviously be a factor that's gonna affect the results.

18 Q Give me one minute, Dr. McClain.

19 Thank you, Dr. McClain. We don't have any
20 further questions.

21 THE COURT: Dr. McClain, thank you for your
22 time today.

23 THE WITNESS: You're welcome, your Honor.
24 Thank you.

25 THE COURT: I was not expecting to be done at

1 4:00. Just so we're clear for the record purposes,
2 I don't know that we talked about this on the
3 record, but you-all reached out to Jill requesting
4 Dr. McClain appear via Zoom for today's purposes,
5 correct?

6 MS. RUSSELL: Yes.

7 THE COURT: And the State agreed to Zoom
8 appearance, even though it's really not my
9 preference on a death penalty case, being that
10 we're on day nine, I think, or eight. You-all
11 agreed and I agreed that Dr. McClain would appear
12 via Zoom today, Correct?

13 MS. SULLIVAN: Yes.

14 THE COURT: All right. Great. Anything else
15 we need to talk about for today?

16 MS. SULLIVAN: Not from the State.

17 THE COURT: All right. So tomorrow we're
18 gonna do final arguments. What time would you-all
19 like to start?

20 MS. SULLIVAN: Whenever you want to. You have
21 a calendar, right?

22 THE COURT: I do, and I'm doing Judge Meyer's
23 calendar in the morning as well. So I'm double.
24 I'm double duty tomorrow, which is fine, but I can
25 start after that, or we can start at 1:00. It

1 doesn't matter to me.

2 MS. SULLIVAN: Yeah, because I think we had
3 talked about 1:30, which is what I had planned for,
4 if that's okay.

5 THE COURT: Yeah. It's up to you. 1:00 or
6 1:30, it doesn't matter to me.

7 MS. SULLIVAN: I can do 1:00, if you think
8 you'll be --

9 MS. RUSSELL: I don't expect that, at least
10 from our end, we'll be taking more than about an
11 hour, an hour and a half.

12 MS. SULLIVAN: Well, we can plan for 1:00, and
13 if your calendar's running long and you want to
14 push us back to --

15 THE COURT: Sounds good.

16 MS. SULLIVAN: -- Jill can let us know.

17 THE COURT: Sounds great. That work for
18 everybody?

19 MS. SULLIVAN: Yes.

20 THE COURT: Okay. So let's -- deputies, can
21 we have -- Mr. Mosley does not need to be here at
22 8:30.

23 THE BAILIFF: Yes, your Honor. I'll have him
24 on the call of court for the afternoon.

25 THE COURT: Perfect. Great. All right.

1 Sounds good. I will see you all tomorrow then.

2 Thank you.

3 (VOLUME II CONCLUDED)

4 (PROCEEDINGS CONCLUDED)

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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 27th day of August, 2025.

/s Jennifer Fleischer
Jennifer Fleischer
Registered Merit Reporter