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

STATE OF FLORIDA,
Plaintiff,

vs.

VOLUME I

THOMAS ISAIAH MOSLEY,
Defendant.

_____ /

PROCEEDINGS: COMPETENCY HEARING

BEFORE: THE HONORABLE SUSAN ST. JOHN
Circuit Court Judge

DATE: July 9, 2025

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

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

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THE COURT: Do we have anything else to do other than Mr. Mosley? I think we're done.

THE CLERK: We're done.

THE COURT: Okay. So a couple of things. Madam Court Reporter, this is on Mosley before I take a break. Are you ready?

THE COURT REPORTER: Yes, ma'am.

THE COURT: I asked the deputies not to bring him over -- it was actually his idea -- at 4:30 in the morning and just add him on later in the morning so he's not sitting downstairs potentially getting irritable.

MS. SEIFER-SMITH: We appreciate that.

THE COURT: I assume you would be okay with that.

MS. RUSSELL: Yes.

THE COURT: It kind of worked out because he's still not here, but as soon as he gets here, we'll get started. The deputy is going to move the extra table over next to yours, so if he wants to sit at the table by himself, as long as he's following their procedures, he will have a little more leg room, and he can sit there and be comfortable and hopefully that will help.

1 If you want him sitting there, that's fine. If
2 you don't want him sitting there, that's okay, too,
3 but we're not doing any additional security
4 procedures if he comes out and he's fine, we're just
5 going to proceed as normal. That's my plan, okay?

6 I assume -- do you want to talk to him for a few
7 minutes when he gets here?

8 MS. SEIFER-SMITH: Yes. We would like a few
9 minutes, if we could.

10 THE COURT: I'll go sit in the back because we
11 still need to get him here. When you all are ready
12 for me, let me know, and we will come back in.

13 MS. RUSSELL: Your Honor, may I approach with --
14 this is Exhibit 4 that you asked for.

15 THE COURT: Oh, thank you for doing that for me.
16 I appreciate it. Okay. Great. Now we are going to
17 take a break.

18 (Break taken.)

19 THE COURT: Is Mosley in the back?

20 MS. SEIFER-SMITH: He is.

21 THE COURT: What did you want to talk about?

22 MS. SEIFER-SMITH: So we had a conversation with
23 Mr. Mosley. We explained the accommodations that
24 have been made in this courtroom, and he was very
25 reticent. He said that he did not want to come in

1 here.

2 So the alternative was proposed to him of
3 participating by sitting in another courtroom where
4 our mitigation specialist, Jessica Carrier, would sit
5 with him. Obviously, there would be deputies as
6 well, and he could watch the proceedings from another
7 courtroom, essentially.

8 He said that he would only participate in the
9 hearing if he was able to do that second option. So
10 we wanted to, obviously, inquire of the Court if that
11 was still a possibility.

12 THE COURT: Okay. Does he want to come in and
13 tell me that?

14 MS. SEIFER-SMITH: I'm not certain that he would
15 come in here and tell you that.

16 THE COURT: I mean, here's the thing. I'm
17 trying to be as accommodating as I can. I don't want
18 any disruptions. I'm not trying to upset anybody or
19 delay any hearings, but I also need him to be
20 present. We all do. He also -- if he needs to come
21 in the courtroom, he needs to come in the courtroom
22 and he doesn't really get to decide whether or not he
23 participates or not.

24 I don't want to be that judge that forces it, I
25 don't, but I think I at least need to make a record

1 that is what he wants to do, and if he wants to sit
2 next door, I will accommodate him, but I need to at
3 least put some of that on the record.

4 So if you want to let him know that I'm going to
5 bring him out or I can just bring him out.

6 MS. SEIFER-SMITH: If we can just let him know
7 first?

8 THE COURT: Yeah. Okay.

9 THE BAILIFF: Courtroom 3 is available, if
10 that's what you decide to do.

11 THE COURT: We should probably get that
12 started in the right direction.

13 THE BAILIFF: We already have the two deputies
14 available and moved over --

15 THE COURT: You are on top of things.

16 MS. SEIFER-SMITH: Your Honor, we also just
17 wanted to let you know that he has not taken his
18 medication this morning. He did not take it last
19 night. I don't believe he has --

20 THE COURT: At some point we're going to have
21 Joel Johnson come over, I think, and he can put some
22 things on the record about what's going on over
23 there.

24 MS. SEIFER-SMITH: We had requested updated
25 records, but it was yesterday afternoon, so we don't

1 have them. I'm sure that Mr. Johnson can give us a
2 little bit more information.

3 THE COURT: Okay.

4 MS. RUSSELL: Also, Your Honor, unfortunately,
5 with all the power outages and everything, Dr.
6 McClain came over with hopes that she might be able
7 to get her testimony in. She has a hard stop at
8 11:00.

9 THE COURT: Okay.

10 MS. RUSSELL: So, unfortunately, I guess we'll
11 have to have some more conversations about what is
12 happening next.

13 THE COURT: Let's handle this first. Then we
14 will handle Dr. McClain second. Thank you for coming
15 back this morning.

16 DR. MCCLAIN: Absolutely, Your Honor. If I need
17 to, I can try to rearrange things.

18 THE COURT: That was going to be my request. I
19 appreciate it.

20 DR. MCCLAIN: Yeah. No problem.

21 THE COURT: You know the timeframes we have to
22 deal with.

23 THE BAILIFF: Courtroom 3, right next door.

24 THE COURT: How do you all do that just so I
25 know?

1 THE BAILIFF: We can turn the TV to any
2 courtroom's channel just like you can in your office.

3 THE COURT: So he will be able to watch?

4 THE BAILIFF: He'll be able to watch and hear it
5 on there. As long as we're on broadcast in here,
6 he'll hear it over there.

7 THE COURT: So what view is he going to see?

8 THE BAILIFF: I can show you. I think it will
9 be from, like, here down, right?

10 THE COURT: Just like we do for advisories.

11 THE BAILIFF: You think the view will be from
12 here to the witness stand, or the other view is from
13 here to the gallery. There's only two views, same as
14 like you did.

15 THE COURT: The TVs are not working, are they?

16 THE BAILIFF: They should be.

17 THE COURT: My TV in the back isn't working
18 because of the power outage. They're not working.

19 THE BAILIFF: It is. It's just...

20 THE COURT: There I am. He needs to see us.

21 THE BAILIFF: So we can put that on him.

22 MS. SEIFER-SMITH: Okay. He's going to come in.

23 THE COURT: We have Courtroom 3 available.

24 MS. SEIFER-SMITH: I'm sorry?

25 THE COURT: We have Courtroom 3 available.

1 MS. SEIFER-SMITH: Oh, that's convenient.

2 THE COURT: We just tested out the screen. The
3 view is going to be -- from that camera, it will be
4 me and the witness stand. The only other option
5 would be the other way --

6 MS. SEIFER-SMITH: That's weird.

7 THE COURT: He wants to see the witness, I would
8 think, more than --

9 MS. SEIFER-SMITH: Yes.

10 THE COURT: All right. Mr. Mosley, good
11 morning.

12 MS. SEIFER-SMITH: Can you say good morning?
13 No.

14 THE COURT: It's my understanding that you did
15 not want to be in the courtroom for the proceedings
16 today; is that right?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Okay. Do you want to sit next door
19 and watch on TV?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: All right. Are you going to be more
22 comfortable sitting over there?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Is there any reason you don't want
25 to try to join us for a little while today?

1 THE DEFENDANT: No. I don't want to have no
2 problems.

3 THE COURT: You what?

4 THE DEFENDANT: I don't want to have no
5 problems.

6 THE COURT: I don't want you to have any
7 problems either, but we've got you a separate table.
8 It will make it a lot easier for you to talk to your
9 lawyers, if you want to. If you need a break, you
10 can just let me know. If you start getting tired or
11 want to stand up and move around, I can take a break,
12 and you can go in the back.

13 I just want to make sure you have the option of
14 sitting in here, if that's what you want to do, even
15 for a little bit.

16 Do you want to try a little bit this morning?

17 THE DEFENDANT: No, ma'am.

18 THE COURT: Okay. We're going to put you next
19 door in Courtroom 3. You're going to have the
20 ability to watch the witness stand and me on the big
21 screen TV in Courtroom 3. There will be a deputy
22 over there. If at any time you want to come back to
23 the courtroom or talk to your lawyer -- and I
24 believe -- your name, please?

25 MS. CARRIER: Jessica Carrier.

1 THE COURT: Okay. Let Ms. Carrier know if you
2 want to come back and talk to either one of your
3 lawyers that are in the courtroom, or want to be
4 present, and she will get us to stop, and we will
5 bring you back over, okay?

6 THE DEFENDANT: All right.

7 THE COURT: Do you have any questions for me
8 about that?

9 THE DEFENDANT: No.

10 THE COURT: All right. Deputies, if we can get
11 him set up next door, please.

12 THE BAILIFF: Yes, Your Honor.

13 THE COURT: You're going to stay with him the
14 whole time, right?

15 MS. CARRIER: Yes.

16 THE COURT: All right.

17 (Defendant exited the courtroom.)

18 THE COURT: Okay. Thank you for at least
19 setting the table up in the event we needed it.

20 THE BAILIFF: Yes, ma'am. If we need to switch
21 it back, we will.

22 THE COURT: Great. Are they all set?

23 THE BAILIFF: Are we on broadcast?

24 THE COURT: I am on broadcast.

25 THE BAILIFF: Testing. Testing. You may need

1 to turn broadcast on.

2 THE COURT: Just let me know when it's working
3 next door so we can get started, okay.

4 THE BAILIFF: Yes, ma'am.

5 THE COURT: While we're waiting for that to get
6 set up, let's talk about scheduling. Dr. McClain has
7 a hard stop at 11:00. So what other -- what are your
8 thoughts? Dr. McClain is raising her hand.

9 Yes, ma'am?

10 DR. MCCLAIN: Can you pick me?

11 THE COURT: I can pick you, yes.

12 DR. MCCLAIN: Your Honor, I just alerted them at
13 the office. I can be potentially here until right
14 around 11:45, if that helps at all.

15 THE COURT: Okay. Who was on our schedule for
16 today?

17 MS. SEIFER-SMITH: Dr. Amy Fritz --

18 THE COURT: Okay.

19 MS. SEIFER-SMITH: -- for this morning, and then
20 the afternoon would be Dr. Ryan Hall.

21 THE COURT: Okay. And tomorrow we had -- here
22 is my schedule. Tomorrow, we had Dr. Railey, and
23 Friday, Dr. Tenaglia.

24 MS. SEIFER-SMITH: Yes. What we're thinking is
25 that -- since there are pending motions, including

1 Motion to Compel with regards to Dr. Railey, that the
2 motions can be handled tomorrow morning, and then
3 after that, Dr. Railey.

4 THE COURT: When do you want to put Dr. McClain
5 in there if we don't finish with her today?

6 MS. SEIFER-SMITH: Dr. McClain is not available
7 tomorrow or Friday.

8 THE COURT: I understand. Dr. McClain, I think,
9 mentioned that she might be able to rearrange some
10 things to accommodate us this week.

11 DR. MCCLAIN: I did this morning. I can be here
12 until 11:45 or 12:00.

13 THE COURT: Do you have other court appearances
14 Thursday and Friday?

15 DR. MCCLAIN: I'm actually obligated otherwise.
16 It's not court related at all.

17 THE COURT: Okay. Fair enough. Fair enough.
18 Okay. So if we don't finish with her today, this
19 morning, what do you want to do?

20 MS. RUSSELL: Is there an opportunity, Your
21 Honor -- well, first, let me check with the State.
22 How long do you think your cross is going to be?

23 MS. SULLIVAN: If we can get started, I can
24 probably be done and get her out of here.

25 THE COURT: I need that to be working next door.

1 MS. SULLIVAN: Is it not working yet?

2 THE COURT: No.

3 THE BAILIFF: They can see us. They can't hear
4 us. IT is on their way. They can hear us down in
5 other courtrooms, but not that one.

6 THE COURT: Is that because the judge's computer
7 isn't on?

8 THE BAILIFF: I don't believe it is a judge's
9 computer is an issue. I think it's just an IT issue.

10 THE COURT: So you think you can knock it out
11 this morning?

12 MS. SULLIVAN: I will do my best. I mean...

13 THE COURT: Okay.

14 MS. SEIFER-SMITH: We have a couple of other
15 civilian witnesses who aren't very long who we're
16 planning to come in Thursday and Friday after our
17 doctors.

18 MS. RUSSELL: Part of the issue is because of
19 yesterday's problem. Renee Mosley was here and ready
20 to testify, but since we ended the day the way she
21 did, she was unable to come and testify. So I
22 imagine she will probably be, I don't know, an hour
23 and a half all told.

24 We were wondering if it might make sense to try
25 to bring her Thursday. We have -- Jessica Daw is

1 scheduled at 3:00 on Thursday afternoon. She is one
2 of the former teachers. If we can also maybe get
3 Renee Mosley in.

4 In all candor to the Court, I would say that 90
5 percent of my cross-examination of Dr. Railey has to
6 do with his issues with his adaptive functioning
7 analysis, which has everything to do with that WHODAS
8 score sheet, which is still at issue.

9 THE COURT: Right.

10 MS. RUSSELL: Part of the problem is, I'm not
11 sure I'll be prepared, even if I produced that
12 information Thursday morning, to be able to consult
13 with our team in order to effectively cross-examine
14 him on that -- the same day.

15 So, you know, I don't know if maybe we would
16 like to move his cross-examination into next week?

17 THE COURT: I have an attempted murder starting
18 Tuesday. I'll know more about that tomorrow, but as
19 far as I know, that's going.

20 MS. RUSSELL: Understood.

21 Also, Dr. Hall -- because we're starting so
22 early with everything, Dr. Hall also said he's
23 available -- if his testimony runs over, he can also
24 make himself available either Friday morning or
25 Thursday afternoon. He's testifying in Orlando,

1 Thursday morning.

2 THE COURT: Okay.

3 MS. RUSSELL: So I haven't asked -- for Renee
4 Mosley, it's really -- she has a full-time job. Her
5 husband has just been diagnosed with cancer and he's
6 getting radiation treatments and she's the person
7 with the job and health insurance, so it's really
8 difficult for her to be -- she's been absent a lot
9 lately. Not just because of this case, but because
10 of her husband's medical condition. So it's
11 extremely difficult for her to take additional time
12 off.

13 THE COURT: I got it.

14 MS. RUSSELL: So I was trying to figure out if
15 we can actually fit her in Thursday afternoon. I
16 still hadn't heard back from her if she's even
17 available, but that's what we're trying to do, just
18 trying to make sure we can get her in before the week
19 is over.

20 I know it may be possible that Dr. Railey will
21 have to come back at any rate because of the issue
22 with the score sheets.

23 THE COURT: Just let me know when IT is over
24 there, please.

25 THE BAILIFF: Will do.

1 THE COURT: If you get any word.

2 MS. SULLIVAN: I'm going to step in the back, if
3 that's okay?

4 THE BAILIFF: The issue is coming from here.

5 THE COURT: Okay. Come on in.

6 IT PERSON: So now the audio is going out to
7 some places. I just don't know where the disconnect
8 is for Courtroom 3.

9 THE BAILIFF: We might have to go to Courtroom 7
10 or 8. We might just move him down and figure it out
11 later.

12 IT PERSON: So you're saying from Courtroom 3,
13 they can't?

14 THE BAILIFF: We can't hear any of the
15 courtrooms going. If we tap into the TV and cable --

16 IT PERSON: So that makes sense.

17 THE BAILIFF: We're going down to 7 or 8 and
18 test it out to make sure those work.

19 IT PERSON: Okay.

20 THE BAILIFF: Testing, testing, testing,
21 testing.

22 THE COURT: What courtroom are they in, 7 or 8?

23 THE BAILIFF: It looks like it's going to be
24 Courtroom 8.

25 THE COURT: Can they hear me?

1 THE BAILIFF: They can hear us in Courtroom 8,
2 yes.

3 THE COURT: Okay.

4 THE BAILIFF: Were you going to be moving him to
5 Courtroom 8, then. 10-4. Just let us know which
6 courtroom and when you guys are ready to go.

7 THE COURT: 8 is which judge normally?

8 THE BAILIFF: Labruzzo.

9 MS. SULLIVAN: I.

10 THE COURT: They are going to be down in
11 Courtroom 8. The audio is working there.

12 MS. SEIFER-SMITH: Okay.

13 THE COURT: So they just tested it. It's
14 working. They can hear me. They are going to bring
15 Mr. Mosley and Ms. Carrier down to Courtroom 8. So
16 as soon as they're there, I will be notified, then we
17 can get started.

18 THE BAILIFF: Absolutely.

19 (Break taken.)

20 THE BAILIFF: Testing, testing. Can you hear
21 us?

22 THE COURT: We are just waiting to bring him
23 over, or what's happening?

24 THE BAILIFF: They're moving him over right now.
25 Waiting on the deputies to get there. It should be

1 just a minute.

2 THE COURT: It's, like, literally right down the
3 hall.

4 THE BAILIFF: Right down the hall.

5 THE COURT: We have lots of long hallways. Can
6 you put Courtroom 8 on that TV?

7 THE BAILIFF: They're bringing him into the
8 courtroom right now. It skips over 8.

9 THE COURT: You're kidding me. This is great.
10 Great upgrade in technology we have there.

11 THE BAILIFF: 10-4. He's in there, ready to go,
12 and can hear us.

13 THE COURT: Let's have that working this
14 afternoon, please. Can they hear?

15 THE BAILIFF: They can hear us.

16 THE COURT: Dr. McClain, come on up.

17 DR. MCCLAIN: Thank you, Your Honor.

18 THE COURT: When we're done for the morning, I
19 need a deputy to come over here and tell me Mr.
20 Mosley was present, and the sound was on. I think
21 that is an accurate, obvious statement.

22 THE BAILIFF: Yes. Ma'am, if you can stop over
23 here. Face the clerk. Raise your right hand to
24 accept the oath.

25 (Witness was duly sworn on oath.)

1 THE COURT: Okay. So we left off yesterday, the
2 only thing I wrote down was "school records." That's
3 as far as we got on cross-examination.

4 So, Ms. Sullivan, whenever you are ready,
5 please.

6 MS. SULLIVAN: Thank you.

7 CROSS-EXAMINATION

8 BY MS. SULLIVAN:

9 Q. Good morning again, Dr. McClain.

10 A. Good morning.

11 Q. Let's try this again. All right.

12 So I want to start with school records. Do you
13 have those in front of you again this morning?

14 A. I do.

15 Q. I'm going to try to be clear in what I'm
16 referencing in exhibit and page number as we go through
17 this.

18 A. Yes, ma'am.

19 Q. But if at any point we're not on the same page,
20 please stop me and let me know, okay?

21 A. Certainly.

22 Q. It seems from your testimony yesterday that you
23 relied heavily on these school records in making your
24 intellectual disability diagnosis; is that fair?

25 A. I would say I took it into consideration, but

1 the intellectual disability was actually based upon my
2 adaptive testing that I did, as well as reviewing the
3 results from the speech and language PPVT score, I gave a
4 59, as well as the IQ scores by Railey.

5 These contributed more to looking at language
6 deficits, but not so much as bearing on intellectual
7 disability, since speech and language, in and of itself,
8 wouldn't be equivalent to intellectual disability.

9 Q. Okay. We're going to get through all of that,
10 but you did review these records extensively. You read
11 through all of them?

12 A. I did.

13 Q. Everything that was provided and that's now in
14 evidence?

15 A. That's correct.

16 Q. So, in part, you did consider these when looking
17 at intellectual disability and then also autism?

18 A. That is correct.

19 Q. So I want to direct your attention first to page
20 2 of your own report.

21 A. Yes, ma'am.

22 Q. And the first thing that I wanted to ask you
23 about is about halfway down on page 2 of your own report,
24 you make note that Mr. Mosley was enrolled in special
25 education classes and had an IEP specific to a learning

1 disability and speech and language delays; do you see
2 that?

3 A. I do.

4 Q. He actually was in general education classes
5 throughout school, right?

6 A. Well, he was in general education, but he has an
7 IEP is what I'm referencing.

8 Q. Right. But he did not have special education
9 classes, because there's a difference, isn't there?

10 A. So I think, though, that that is special ed.

11 Q. Okay. We're going to go through the records,
12 so...

13 THE COURT: Hold on. Hold on.

14 What?

15 THE BAILIFF: (Indiscernible.)

16 THE COURT: Is it working?

17 THE BAILIFF: Do you want to observe him now? I
18 can get it --

19 THE COURT: Is it working?

20 THE BAILIFF: I just have to plug it in
21 physically. Do you want --

22 THE COURT: We can keep going. I don't want the
23 audio. I just want to be able to visually see him
24 sitting there.

25 THE BAILIFF: Yes, Your Honor.

1 THE COURT: He was in general ed classes.

2 Your next question was what?

3 BY MS. SULLIVAN:

4 Q. That he was not in special education classes?

5 A. Well, what I reviewed says he was an exceptional
6 student education.

7 Q. So let's go through the records --

8 A. Sure.

9 Q. -- and I can kind of point out --

10 A. Sure.

11 Q. -- what I'm referencing.

12 Let's start first Exhibit 1, page 3 --

13 A. Yes, ma'am.

14 Q. -- of the records.

15 THE COURT: Are you talking about Exhibit 4, Tab
16 1.

17 MS. SULLIVAN: Yes.

18 THE COURT: Let's say specifically, please.
19 Thank you.

20 MS. SULLIVAN: It says exhibit. I'm saying
21 Exhibit 1 because at the beginning it says that.

22 THE COURT: Right. But realistically, it's
23 Exhibit 4 and there's Tabs 1 through 9. I know what
24 it says, but let's just refer to it as tabs so we
25 make a fair record.

1 MS. SULLIVAN: That's fine. I just wrote
2 Exhibit 4 at the top. I stopped doing that.

3 BY MS. SULLIVAN:

4 Q. Exhibit 4, Tab 1. Page 2 or page 3.

5 A. Yes, ma'am.

6 Q. This is back to Mr. Mosley's third grade
7 assessment, it looks like?

8 A. Yes.

9 Q. And this form, exceptional student education.
10 Academic concerns checklist. Do you see at the top there
11 where there is an intellectual disability area?

12 A. Correct.

13 Q. That's crossed out, right?

14 A. Correct.

15 Q. Then the focus is on the language impairment
16 specific learning disability?

17 A. Absolutely correct.

18 Q. Okay. And then the same Exhibit 4, Tab 1, page
19 6.

20 A. Yes, I am.

21 Q. Again, this looks like it's grade four for
22 Mr. Mosley?

23 A. Correct.

24 Q. Another reevaluation, and where it says,
25 suspected areas of disability, select all that apply, only

1 "language impaired," is checked, right?

2 A. That's correct.

3 Q. All right. There is an option to check autism
4 spectrum disorder?

5 A. Correct.

6 Q. And that is not checked?

7 A. That is correct.

8 Q. And there is an option to check intellectual
9 disability and, again, that is not checked?

10 A. That is absolutely correct.

11 Q. All right. And that is, it looks like, Jessica
12 Daw, the speech and language pathologist, took part in
13 filling out this form; do you see that there?

14 A. I do.

15 Q. Okay. I will move to page 10 of the same tab 1
16 of Exhibit 4. And, again, this is when he's in, it looks
17 like, still in grade school. At the top there, do you see
18 where it's checked, The student will participate in the
19 general statewide assessment and/or end-of-course
20 assessments with accommodations?

21 A. Correct.

22 Q. All right. So that's where when I was asking
23 you, he remained in general education classes. He,
24 meaning -- do you know what this general statewide
25 assessment is?

1 A. That would refer to the normal standardized
2 test.

3 Q. Right. So based on this reevaluation, he was
4 not moved into what's called a Florida Alternate
5 Assessment, right?

6 A. So I'm just going by what is here, and I
7 certainly would agree with you that that's what is checked
8 off.

9 Q. Okay. Then "with accommodations," meaning for
10 his speech and language tutoring?

11 A. Oh. Well, it definitely says accommodations, so
12 it doesn't specify speech and language or the specific
13 ones. It could be many different things, but it does say
14 accommodations.

15 Q. I think we get to that later, so that's fair.

16 A little bit lower in that same page 10, there's
17 options, check yes or no for what applies to the specific
18 student. And do you see the first one there it says, the
19 student has a significant cognitive disability?

20 A. Correct.

21 Q. And what is checked there?

22 A. It's checked no.

23 Q. Okay. And then right below that there's also an
24 option for the student is unable to master the grade level
25 general state content standards?

1 A. Correct.

2 Q. That's also checked, no?

3 A. Correct.

4 Q. Then moving to page 12 of Tab 1 of Exhibit 4.

5 THE COURT: What page?

6 MS. SULLIVAN: 12.

7 THE COURT: Thank you.

8 BY MS. SULLIVAN:

9 Q. And at the very bottom where it says "conference
10 notes," do you see that, Dr. McClain?

11 A. I do.

12 Q. It says, Meeting notes were sent home on
13 February 3rd and 9th. The student will receive intensive
14 reading and language arts, and a general education
15 classroom taught by an ESE-certified teacher at this time?

16 A. Correct.

17 Q. All right. So back to my beginning question.
18 It appears through these records, and as we go through it
19 it seems consistent, he remained in general education
20 classes throughout his school time; is that fair?

21 A. A general education, but a specific IEP on
22 learning disability and language impairment.

23 Q. Okay. But that's different than what it said in
24 your report, where it says special education classes with
25 the focus on speech?

1 A. So there's no intent to mislead anybody. When
2 I'm referencing that is the specific speech and language
3 impairment or learning disability.

4 Q. And that's fair. I just want to be sure that
5 we're all on the same page of what courses he was actually
6 taking.

7 You agree that a person could have language and
8 speech delays or struggles and still not be intellectually
9 disabled or autistic, right?

10 A. That's correct.

11 Q. All right. It doesn't necessarily or
12 automatically mean that a person with speech or language
13 delays has a low IQ?

14 A. That's correct.

15 Q. Or that they're incompetent?

16 A. That's correct.

17 Q. They can also be deemed competent by legal
18 standards even if they have language impairment or delays?

19 A. That's correct.

20 Q. The same on Tab 1 of Exhibit 4, moving to page
21 14. I believe this is when Mr. Mosley was in the sixth
22 grade, and it's one of his exceptional student education
23 input by a math teacher; do you see that?

24 A. I do.

25 Q. And do you see that it lists under number 2,

1 under notes and comments, about the student's performance
2 and progress.

3 Are you with me there?

4 A. I am. I see it.

5 Q. What does it say in the comment section there?

6 A. It references that he currently has a 73 or C
7 average.

8 Q. Okay. And that's in sixth grade in 2015, he was
9 getting a C average in math?

10 A. Correct.

11 Q. And right above that, there's a note, Works when
12 directed to. Completes notes and great organization on
13 math notebook.

14 Do you see that?

15 A. I do.

16 Q. And then at the end there, number 4, what does
17 it say for the comments regarding concerns regarding
18 Mr. Mosley?

19 A. Misses days and does not make up work.

20 Q. Okay. I believe you said yesterday that it was
21 your opinion that these school records show that he puts
22 forth effort in school?

23 A. Well, there was some variability referenced,
24 actually, where he was noted to not be putting forth
25 effort, but then to put forth effort. So it's variable.

1 Q. Okay. And we're going to segue into that
2 because I want to go through the record that show examples
3 of that.

4 We're going to move to the high school records
5 now, which I believe was Boca Ciega, and you reviewed
6 those as well, right?

7 A. Right.

8 Q. The same Tab 1 moving to page 23 of Exhibit 4.

9 A. Okay.

10 Q. It looks like throughout school when he was
11 having these evaluations and reevaluations, sometimes Mr.
12 Mosley was interviewed, right?

13 A. Yes, ma'am. That's correct.

14 Q. And at the top of page 23, at Tab 1, he was
15 interviewed by the VE specialist, and student transition
16 notes were completed.

17 Can you read starting with Thomas would like to
18 become and put that into the record, please?

19 A. Yes.

20 Student input. Thomas was interviewed by the VE
21 specialist, and student transition notes were completed.
22 Thomas would like to become a music engineer after
23 graduating from high school. In order to become a
24 certified technician, Thomas would need to complete or to
25 attend a two-year program like the music industry recorded

1 arts (MIRA) offered at St. Petersburg College.

2 Q. Okay. Yesterday when we were talking about, I
3 believe, Ms. Russell put into evidence the Intellectual
4 Disability Twelfth Edition paperwork where we were going
5 through adaptive behavior domain examples that you
6 considered?

7 A. Correct.

8 Q. I will put this up. I'm not sure what exhibit
9 number this was.

10 THE COURT: Tab 10, Intellectual Disability
11 Twelfth Edition.

12 MS. SULLIVAN: Thank you, Your Honor.

13 BY MS. SULLIVAN:

14 Q. You were going through some of the adaptive
15 behavior --

16 THE BAILIFF: Your Honor, they're asking if Dr.
17 McClain could speak directly into the mic so they can
18 hear over there.

19 THE WITNESS: I sure can.

20 BY MS. SULLIVAN:

21 Q. Examples of significant limitations, and some of
22 the things that you were discussing was not having future
23 plans, right?

24 A. Correct.

25 Q. Okay. It looks like, at least at Boca Ciega

1 High School, he had some future plans to be an audio
2 musical engineer and maybe get a two-year degree?

3 A. Well, it definitely suggests a plan. I think I
4 was referencing more what had actually played out as far
5 as him attempting to help his father with carpentry,
6 attempting to be on a sports team, but having difficulty
7 understanding the rules.

8 But what is referenced is that he was
9 interviewed, and that's what was put into pros there or
10 put into the writing. I didn't see any follow up as far
11 as him being able to pursue college in that manner.

12 Q. Okay. But he had a plan. He had something that
13 he was striving and looking forward to doing, right?

14 A. Well, I certainly agree with that.

15 Q. Okay. On page 24, the next page of that same
16 Tab 1, this is his science and history teacher reporting
17 various things about him, and under -- I think the second
18 full paragraph on page 24, it says, From previous IEP.

19 Did you review in here that his teacher -- his
20 history teacher reported he has appropriate social
21 interaction with his peers and teachers in class?

22 A. I did.

23 Q. Okay. And that was kind of a common theme in
24 these records, right? At times, he got along with peers.
25 At times, he would get along with teachers; is that fair?

1 A. I would say yes.

2 Q. All right. Then the other side of that is
3 what's also mentioned in here, his excessive tardiness,
4 right?

5 A. Correct.

6 Q. And that the teachers reported he does not
7 attend class and skips classes when he's seen on campus?

8 A. Correct.

9 Q. And that he also wandered around campus?

10 A. Correct.

11 Q. And that he could be defiant and just walk away
12 when being spoken to by administrators or teachers?

13 A. Are you referencing the notation of the specific
14 instances there?

15 Q. Yes.

16 A. Yes. That's correct.

17 Q. And then his language teacher, also on this
18 page, encouraged him to attend class and he would refuse?

19 A. That's correct.

20 Q. Okay. So these would be examples of when Mr.
21 Mosley was displaying poor effort towards his schooling?

22 A. Definitely displaying noncompliance.

23 Q. And I think you and I talked about this a year
24 ago, but it's fair that if you're not going to school and
25 you're not staying in class and you're not paying

1 attention in class, your grades may suffer, right?

2 A. That is correct.

3 Q. Even someone at the highest intelligence, at a
4 certain point in school, they can only get away with so
5 much, right, grade-wise?

6 A. I think I understand the question, that even
7 someone of high intelligence could fail because they don't
8 attend?

9 Q. Yes.

10 A. I would agree.

11 Q. You've got to go to class? You've got to put in
12 the work, right?

13 A. Yes, ma'am.

14 Q. You've got to know what the assignments are?

15 A. Correct.

16 Q. You've got to know what the curriculum is?

17 A. Correct.

18 Q. You've got to do the homework?

19 A. Correct.

20 Q. And if you don't do that, your grades can
21 suffer?

22 A. That can affect it, yes.

23 Q. All right. On page 25 of Tab 1, we -- on this
24 page, again, it's referencing the previous IEP evaluation,
25 and he was encouraged by all of his teachers to attend

1 class and complete his assignments.

2 At the top of that, he was interviewed again,
3 right?

4 A. Correct.

5 Q. And he again relayed his desire to be a music or
6 an audio engineer after graduating from high school?

7 A. Correct.

8 Q. And that he actually believed academics were
9 important to his future, because they could help him do
10 that?

11 A. Correct.

12 Q. And then he also started explaining things that
13 he's able to do, which I think you would agree, would be
14 kind of examples of this adaptive functioning or behavior
15 we've been talking about, right?

16 A. Correct.

17 Q. So he stated he's able to make a bed and clean
18 the house?

19 A. Correct.

20 Q. Are you with me where I am?

21 A. Yes, ma'am. I said "correct."

22 Q. He's able to wash dishes, carry out trash, and
23 babysit?

24 A. Correct.

25 Q. Mow lawns, care for a pet, cook, and do laundry

1 on his own?

2 A. Correct.

3 Q. And he has experienced accessing the library,
4 postal -- I'm assuming that's post office, sports, and
5 community group services in his community, right?

6 A. Correct. That's what it says.

7 Q. He goes to the YMCA, rap clubs, movies, sport
8 arenas for recreational activities?

9 A. That's what it says, yes.

10 Q. Then it says he acquired a State ID card, and he
11 does not require assistance with obtaining a driver's
12 license?

13 A. Yes, ma'am.

14 Q. In fact, Mr. Mosley has a driver's license; do
15 you know that?

16 A. Yes, ma'am.

17 Q. Okay. It's been a while for me, but you have to
18 get a learner's permit before you can get a driver's
19 license, correct?

20 A. That's my understanding.

21 Q. And my recollection is, in order to get a
22 learner's permit, you have to take an actual written test,
23 right?

24 A. I can only comment on what I did, but, yes.

25 Q. Yeah. The same as me.

1 But you have to take the written test. There's
2 questions and answers about traffic laws and all of that,
3 right?

4 A. That's correct.

5 Q. And then after you do that, you get your
6 learner's permit, and then you have to take the actual
7 driving test?

8 A. That's correct.

9 Q. And every state differs on what those
10 requirements are, but you have to do that in order to get
11 that driver's license?

12 A. Correct.

13 Q. And Mr. Mosley has one of those?

14 A. That is my understanding.

15 Q. And this was an actual interview that was had
16 with Mr. Mosley, and this is Mr. Mosley relaying what he
17 is able to do on a daily basis, right, per the records?

18 A. That is correct, Mr. Mosley is relating that.

19 Q. Okay. On that same page, it also lists that Mr.
20 Mosley had been absent 33 out of 128 days?

21 A. Correct.

22 Q. And it also notes that the teachers find him in
23 the hallway when he is at school. He walks out to go to
24 the bathroom and just doesn't return, right?

25 A. That's noted, yes.

1 Q. And sometimes he just doesn't do work in class,
2 he just sits there?

3 A. Those are the notations.

4 Q. All right. I want to talk about the STAR, math,
5 and reading test that he completed.

6 A. Okay.

7 Q. That's on the next page, page 26.

8 A. Correct.

9 Q. The first one it's at the bottom. It's towards
10 the bottom. It says, Thomas completed STAR testing on
11 9/13/18; do you see that?

12 A. I do.

13 Q. The first, the reading test. It says: Thomas
14 spent 6 minutes and 7 seconds to complete the assessment;
15 do you see that?

16 A. I do.

17 Q. All right. Are you aware of the average time to
18 effectively take that test is about 15 to 30 minutes?

19 A. Yes, ma'am.

20 Q. Okay. But Mr. Mosley spent 6 minutes and 7
21 seconds. Then we have his results of that putting him in
22 the 1 percentile of students nationally in the same grade,
23 right?

24 A. Correct.

25 Q. Then for the STAR math test, the same thing, he

1 spent only 7 minutes and 41 seconds to complete that
2 assessment?

3 A. That's correct.

4 Q. Again, are you aware that on the STAR math test,
5 the average to effectively take that test is about 20 to
6 30 minutes?

7 A. That's correct.

8 Q. Now, it appears in the records that the
9 defendant withdrew from Boca Ciega at some point at the
10 end of 2017 and may have done some home education; are you
11 aware of that?

12 A. I am.

13 Q. Are you aware of the reasons why that occurred?

14 A. I am not.

15 Q. There's nothing in the records to explain that,
16 is there.

17 A. I don't see anything, no.

18 Q. Then he reenrolls at the end of 2018, per the
19 records, right?

20 A. Yes, ma'am.

21 Q. So by the time he's back in school. He's still
22 in 9th grade. I'm going to move to page 34 of the same
23 Tab 1 of Exhibit 4.

24 They do an IEP re-eval with him, right?

25 A. Yes, ma'am.

1 Q. It references -- this is the same IEP
2 implemented as before, right?

3 A. Correct.

4 Q. It's still just language impairment being the
5 learning disability?

6 A. Well, the primary exceptionality is SLD or
7 Specific Learning Disability, and the secondary
8 exceptionality is language impairment.

9 Q. But, again, moving into high school, ninth
10 grade, when he reenrolls, no considerations regarding
11 intellectual disability or autism, right?

12 A. That's not checked, no.

13 Q. It also shows in these records that he was
14 seeing a school psychologist once per week, right?

15 A. Correct.

16 Q. And on page 37 of Tab 1 of Exhibit 4, there's
17 some notes there about his school psychologist, right?

18 THE COURT: What page did you reference?

19 MS. SULLIVAN: 37, Your Honor.

20 THE COURT: Thank you.

21 BY MS. SULLIVAN:

22 Q. Are you aware of that, Dr. McClain?

23 A. Yes, ma'am.

24 Q. Okay. And there's no indications in the records
25 regarding seeing a school psychologist that intellectual

1 disability or autism was raised as a potential issue,
2 right?

3 A. That's correct.

4 Q. And on page 37, it indicates he was unavailable
5 37 times for those sessions due to absences, skipping, or
6 discipline issues, right?

7 A. That's correct.

8 Q. But he did go to nine sessions with a school
9 psychologist?

10 A. Correct.

11 Q. I think they were about 20-minute sessions,
12 meeting with a school psychologist?

13 A. Correct.

14 Q. All right. Moving to page 38. Again, this is
15 more of his reevaluation once he's back in school. Did
16 you review where it said that he has been absent 39 days
17 out of 107 days so far that school year?

18 A. That's correct.

19 Q. So that's an attendance average of 64 percent?

20 A. Correct.

21 Q. Again, about the middle of that page, we spoke
22 about this before, this is another instance where it
23 indicates he can be cooperative with his peers and
24 teachers and he does show motivation, signs of motivation,
25 from time to time, right?

1 A. Correct.

2 Q. I want to move to page 45 now. Tab 1, Exhibit
3 4.

4 A. Okay.

5 Q. So he's back. He's at Boca Ciega from 2019 to
6 2020. Do you see there where, I believe it's at the
7 bottom, showed that he received a B bin math in the first
8 semester?

9 THE COURT: Page number?

10 MS. SULLIVAN: 45.

11 THE COURT: Thank you.

12 THE WITNESS: Correct.

13 BY MS. SULLIVAN:

14 Q. And 73 percent in liberal arts? Do you see
15 that?

16 A. I do.

17 Q. That's the 2019 to 2020 school year, and it's
18 tracking his progress through the quarters, right?

19 A. Correct.

20 Q. So he starts out with a B and he has a 73
21 percent in liberal arts. Then by the third quarter, he is
22 failing algebra?

23 A. Right. So that's for algebra?

24 Q. Yes.

25 A. Okay. Yes.

1 Q. So it appears, based on that example, and then
2 earlier, where he had the B in math, that he, at times,
3 can get average to good grades, right?

4 A. It definitely varies, yes.

5 Q. Okay. Again, not being in school. Not going to
6 class. Not doing the work. That could affect the grades
7 declining, right?

8 A. Yes, ma'am.

9 Q. Okay. On page 50, we, again, have some progress
10 notes regarding grades for that 2019 to 2020 school year.
11 It looks like, at the top of that page, April 5th of 2019,
12 his progress was deemed satisfactory, and that he was on
13 track to meeting his goal, and he earned a C in his
14 English class for quarter 3?

15 A. That's correct.

16 Q. But by January 20th of 2020, he's now
17 unsatisfactory and he's getting an F in reading and
18 failing English 3?

19 A. Correct.

20 Q. Then mixed into all of that are the updates
21 about his absences, his wandering around the hallways, him
22 not staying in class, right?

23 A. Correct.

24 Q. Then the last thing I would point to on this tab
25 is page 55. Again, it's giving some updates about the

1 various classes that he takes and his grades, and towards
2 the middle there it says: Thomas has a 39 percent in his
3 reading class. He has major attendance issues, and when
4 he is present, he does not complete the reading SAT
5 assignments on the computer.

6 Do you see that?

7 A. I do.

8 Q. Okay. So if someone is just not doing the
9 assignments on the computer, they aren't going to get a
10 very good grade in that class, are they? They're not even
11 trying at all?

12 A. I would agree that if they're not completing it,
13 it will affect their grades.

14 Q. Okay. I want to move to Tab 8 of Exhibit 4.
15 This was referenced yesterday. It appears to be an e-mail
16 from Patrick Jennings from the Tomlinson Adult Learning
17 Center?

18 A. Yes, ma'am.

19 Q. Part of it was referenced yesterday. I want to
20 direct your attention -- I believe Ms. Russell was
21 pointing out that Mr. Jennings was discussing that he was
22 not sure that the defendant would ever achieve passing the
23 four GED exams or a traditional high school diploma; do
24 you recall that?

25 A. Yes, ma'am.

1 Q. At the end, do you see where it says "perhaps"?

2 A. Yes.

3 Q. Could you read that sentence?

4 A. Absolutely. Perhaps down the road, he will find
5 the motivation.

6 THE COURT: Hold on. What's the issue?

7 THE BAILIFF: Dr. McClain, if you can, just make
8 sure when you're answering, answer directly into the
9 mic even when you're looking down at your paper.

10 THE WITNESS: Okay. So perhaps down the road,
11 he will find the motivation and fire he would need to
12 proceed academically, but at this moment in time, I'm
13 pretty skeptical he has that desire to pursue a GED
14 or traditional diploma.

15 BY MS. SULLIVAN:

16 Q. Okay. So, Dr. McClain, it's fair to say going
17 through these records and seeing what teachers are
18 reporting, learning centers are reporting, speech
19 pathologists are reporting, effort by Mr. Mosley is an
20 issue, right? Putting in effort?

21 A. I think that it references effort, as well as
22 they're labeling it motivation.

23 Q. Okay. I want to talk about your evaluation in
24 your report, specifically, if we can.

25 A. Certainly.

1 Q. The two tests you referenced in your report and
2 yesterday during your testimony were done with the
3 defendant's parents, right?

4 A. That is correct.

5 Q. I want to start with the Adaptive Behavior
6 Assessment.

7 A. Certainly.

8 Q. Now, that can be done either by self-report or a
9 family member, right?

10 A. That's correct.

11 Q. And you chose to do it through a family member?

12 A. That's correct.

13 Q. You didn't have the defendant do that test?

14 A. I didn't have him rate himself, no.

15 Q. Okay. And correct me if I'm wrong, but that's a
16 type of test where the person is asked to kind of rate on
17 a scale from zero, being unable to do something, up to 3,
18 can do something all the time, right?

19 A. Basically, yes.

20 Q. And his parents answered those questions, and
21 the way they answered those questions put him in about the
22 first percentile, right?

23 A. Yes, that is correct.

24 Q. Then you also had the GARS-3? G-A-R-S.

25 A. That's correct.

1 Q. That was also a test completed by the
2 defendant's parents?

3 A. That's correct.

4 Q. You did not have the defendant do that test?

5 A. That's correct.

6 Q. It can be done by self-report, right? That's an
7 option?

8 A. It can be. It could be done by self-report,
9 depending upon the language capability and comprehension
10 of the individual.

11 Q. Okay. The GARS-3, is that sometimes often given
12 to either children or parents of children early on?

13 A. Well, it will extend anywhere up to 22, 23 years
14 old.

15 Q. Okay. And, again, that's the type of rating on
16 a scale, whether a person always, often, or never does
17 something, right?

18 A. Right. Zero to 3, not at all like the
19 individual. 1, not much like the individual. 2, somewhat
20 like the individual. And 3, very much like the
21 individual.

22 Q. Okay. So these were, again, answers filled out
23 by his parents?

24 A. That's correct.

25 Q. And not by the defendant?

1 A. That's correct.

2 Q. The results listed in your report in reference
3 to the GARS-3, you indicate that Mr. Mosley showed
4 difficulties in, and then you go on to state what area was
5 assessed by the test?

6 A. Correct.

7 Q. Now, that's based off what was completed by his
8 parents, right?

9 A. That is exactly correct.

10 Q. Okay. So all of those things that are indicated
11 for each different area, I think there's six total, right?

12 A. Yes, ma'am.

13 Q. All of those things that are reported there are
14 what his parents are reporting about their son?

15 A. Correct.

16 Q. And you mentioned that the defendant has
17 difficulty understanding social situations?

18 A. Yes, ma'am.

19 Q. Do you have examples of that, of your personal
20 observations of Mr. Mosley?

21 A. Just in my own personal observations and the
22 interviews with him, he is not carrying on a conversation,
23 like, continuing it. He is very flat in his affect and
24 communication. I have had to repeat things to him when
25 I've been doing basic competency questions with him.

1 He normally will not elaborate at all in terms
2 of, for example, open-ended questions. So it has to be
3 very concrete. And in terms of just looking at his
4 ability to understand, for example, when the hearing was
5 brought up that occurred, he didn't really recall anything
6 from it or understand the social impact on that for him.

7 Q. Okay. Do you ever take into consideration that
8 he just doesn't want to talk to you?

9 A. He does talk to me.

10 Q. Okay. That he may not be happy to have to talk
11 to you?

12 A. Well, I ask him, and I obtain his consent every
13 time I talk to him. So he's allowed to refuse, if he
14 doesn't want to talk to me.

15 Q. And you are able to have a back-and-forth
16 conversation with him?

17 A. A very simple one, yes.

18 Q. Did you also review the state hospital records I
19 think that are also in evidence?

20 A. Yes, ma'am.

21 Q. Did you note where staff had reported that the
22 defendant was observed laughing and talking with his
23 peers?

24 A. Yes, I noted that.

25 Q. I think it was specifically referenced in

1 January of this year. He was watching a talent show with
2 his peers at the state hospital, and he was laughing with
3 them and watching that?

4 A. That's correct.

5 Q. And there are other occasions throughout the
6 records where it's reported he's seen conversing with
7 peers, right?

8 A. That's correct.

9 Q. But then the competency trainers who are also
10 watching him will say they had difficulty getting him to
11 engage during the training?

12 A. I think they were talking about getting him to
13 engage in the content of the competency training, if I
14 understand it.

15 Q. Or just talking to him at all, really, right?

16 A. Well, I think he did show difficulties, yes.

17 Q. Difficulties, or not wanting to?

18 A. Well, I can't explain whether it was whether he
19 wanted to, didn't understand, but they did suggest that
20 there were difficulties in him participating.

21 Q. Okay. Did you also notice that there were
22 certain times, though, during competency training, I
23 guess, you could kind of bump up levels, and you may get a
24 benefit? For example, get a radio in your room.

25 Did you see that in the records?

1 A. I did.

2 Q. And Mr. Mosley, when there was an opportunity to
3 bump up a level, he engaged so he could get that radio.
4 Did you read that in the records?

5 A. I read that there are reinforcers for
6 participation, yes.

7 Q. So, again, when he's motivated, and when he
8 wants to put forth the effort, all of a sudden, he moves
9 up a level in his competency training; did you see that?

10 A. I see that that's one instance of him benefiting
11 from a reinforcer, yes.

12 Q. Okay. Going back to the GARS for a second when
13 you were assessing his parents regarding a possible autism
14 diagnosis. That's just one part or one way to assess
15 someone for autism, right?

16 A. That's correct.

17 Q. It's not a standalone tool?

18 A. No.

19 Q. I think Ms. Russell referred to having his
20 parents complete the assessment as "collateral," right?

21 A. Correct.

22 Q. But this is, in fact, really all that you did
23 regarding assessing him for autism was have his parents
24 complete the GARS?

25 A. That's correct.

1 Q. There's also another type of test you can do. I
2 think it was mentioned yesterday. It's the Autism
3 Diagnostic Observation Schedule; are you aware of that?
4 The ADOS?

5 A. Yes. That was completed by the speech and
6 language therapist.

7 Q. That's actually a widely used assessment tool in
8 determining whether or not someone may be on the autism
9 spectrum, right?

10 A. Correct.

11 Q. It actually has questions and also an
12 opportunity to make observations in doing that assessment?

13 A. That's correct.

14 Q. And you did not conduct that on Mr. Mosley?

15 A. No, I didn't. I believe it was my understanding
16 in the speech and language evaluation, that that was
17 incorporated into their evaluation.

18 Q. And that assessment would have -- it actually
19 has different modules depending on the language ability of
20 the person, right?

21 A. Correct.

22 Q. So it's not just one test for any individual.
23 If somebody very much suffers with language, there's a
24 certain module they can use, then it kind of goes up from
25 there, right?

1 A. Yes, ma'am.

2 Q. So there was an opportunity for you to give
3 Mr. Mosley that type of assessment, but you didn't do
4 that?

5 A. I actually chose an autism measure that I use
6 with the Agency for Persons with Disabilities. It's very
7 standardized and has normative data. So that was my
8 selection, and I've used it for over 15 years.

9 Q. Okay. You didn't perform any test on the
10 defendant directly, right?

11 A. I did not, other than the Rey 15-Item.

12 Q. No cognitive test?

13 A. No.

14 Q. No test related to autism?

15 A. I did not.

16 Q. And I think you said this before. Your
17 reasoning behind that is because you don't want to perform
18 a test on someone that still may be unstable from other
19 mental health disorders?

20 A. That's absolutely correct.

21 Q. Okay. But you are reviewing and relying on the
22 test done by other doctors with Mr. Mosley in your
23 evaluation; are you not?

24 A. In general, yes.

25 Q. Okay. And you even stated at the last hearing

1 that you would like to see the state hospital perform some
2 cognitive testing or IQ testing on Mr. Mosley when he went
3 back?

4 A. If he's stable.

5 Q. Okay.

6 A. In other words, let me clarify because this has
7 come up both days.

8 Q. Okay.

9 A. From the beginning, I thought it was important
10 to have neuropsychological testing done and intellectual
11 testing done with Mr. Mosley, and I preface that with
12 "once he's stable."

13 Q. Okay. You said you conducted a malingering test
14 on him?

15 A. I did. I stated that, yes. After he came back
16 from the hospital, I did the Rey 15-Item, and he was 15
17 out of 15.

18 Q. You didn't put that in your report.

19 A. I didn't put it in my report, but it definitely
20 was done.

21 Q. Okay. Is there a reason why you didn't put that
22 in your report?

23 A. No. Not in particular.

24 Q. All right. You've mentioned a couple of times
25 yesterday that the defendant is now refusing medications,

1 right?

2 A. That the defendant is now refusing?

3 Q. Yes.

4 A. Yes. That's correct.

5 Q. So that would be meds for his psychosis,
6 depression, and thyroid?

7 A. Yes, ma'am. That's correct.

8 Q. And you learned that may have started occurring
9 in June of this year?

10 A. Correct.

11 Q. Yesterday, when Mr. Mosley stood up and tried to
12 walk out of court, you mentioned that this could be an
13 effect of him not taking his meds, right?

14 A. That could be part of it, yes.

15 Q. If I told you back in May when he was being
16 evaluated by another doctor, he also walked out of that
17 evaluation, but he was still on his meds at the time,
18 would that make a difference as to if that is the behavior
19 reaction of not taking meds?

20 A. Not really, because there are multiple reasons.
21 It could be the lack of medication. It could be triggers
22 that occurred. Like, for example, just to be very
23 concrete, what I observed was, you took the podium
24 yesterday. The bailiff, I believe, was adjusting his
25 chair. You know, I don't know if he alerted him or not,

1 but there were two triggers, I think, that could have also
2 resulted in some of that, but there are multiple factors.

3 I don't think it's attributable to just one
4 thing, but certainly, him not being stabilized on
5 medication and other factors could certainly increase the
6 likelihood of that type of behavior.

7 Q. You observed that for many hours throughout the
8 course of the day, he sat there and there were no issues,
9 right?

10 A. Well, there were, though. There were issues
11 about the chair from the beginning, actually, because I
12 don't understand the exact requirements, but I believe the
13 chair is supposed to be up to the table and the feet
14 underneath the table, but there actually were issues with
15 it earlier on.

16 Q. He didn't want to push in his chair?

17 A. He didn't -- for whatever reason, I don't know
18 the proximity exactly of the chair, but there was an issue
19 about the chair and the distance from the table.

20 Q. And it was when I walked up here, the prosecutor
21 on the case, he then stood up, right?

22 A. Well, I think there were two things that
23 occurred, actually. I think you had taken the stand.
24 What I noted was I was responding to you, and I noted that
25 something had occurred out of my periphery, but I don't

1 know the exact details.

2 Q. And back in May, when he was still on his
3 medication -- I know you weren't there, but he walked out
4 of an evaluation that I was a part of. It's kind of
5 consistent with when he didn't want to do it anymore, he
6 stands up and walks out, right?

7 A. I can't infer why without talking to him
8 specifically to ask what happened. So I wouldn't try to
9 infer anything from that except that I know you told me
10 that he walked out.

11 Q. That would be consistent with the records we
12 just went through, where he, in high school before any of
13 this, when he decided, he walked out of a classroom,
14 right?

15 A. So it's consistent with behavior if he walks
16 away from something. I can't infer and do not know why.
17 I don't have a chance to interview him about why in high
18 school he walked out. Whether he couldn't get it or
19 whether he was experiencing mental health symptoms. I
20 don't know. I just know that basically the behavior was
21 he walked away.

22 Q. And it's also consistent with demonstrating an
23 unwillingness to participate in things, right?

24 A. Well, it definitely would not be participating
25 in something, but, again, I'm not going to try to infer

1 the causal reason for that because I don't know.

2 Q. And even this morning, he excused himself from
3 participating and being in this courtroom, right?

4 A. Well, this morning, what I noted was that he
5 asked the judge or the judge allowed him the condition and
6 he responded that he wanted to take the judge up on that
7 condition.

8 Q. And he actually came out here and had a
9 back-and-forth conversation with the judge? You saw that,
10 right?

11 A. Absolutely.

12 Q. He understood what she was asking him?

13 A. Yes.

14 Q. He responded appropriately?

15 A. That's correct.

16 Q. And he decided to go sit in another courtroom
17 where he is right now?

18 A. He was allowed that opportunity, yes.

19 Q. I want to talk about Dr. Tenaglia a little bit
20 because she was brought up yesterday.

21 A. Certainly.

22 Q. And you've reviewed her report, right?

23 A. Yes, ma'am, that's correct.

24 Q. Then Ms. Russell also went through her CAT
25 records from the state hospital?

1 A. That's correct.

2 Q. You said that handwritten notes would be helpful
3 to know the details of what she observed that caused her
4 to reach her conclusions regarding poor effort; do you
5 recall that?

6 A. I do.

7 Q. You've reviewed -- she actually wrote two
8 reports while the defendant was at the hospital, right?

9 A. That's correct.

10 Q. The first one was about 14 pages long?

11 A. That's correct.

12 Q. The second one, the final one finding him
13 competent was about 20 pages long?

14 A. Absolutely.

15 Q. You would agree that she explains in those
16 reports her reasons for finding the defendant to be
17 demonstrating poor effort, wouldn't you?

18 A. So I didn't pose any issue about that. I would
19 agree that she's given a detailed report. I was
20 specifically referencing the CAT notes.

21 Q. Okay.

22 A. So that's different. That's -- what I'm trying
23 to allude to, and I want to make sure I understand is,
24 sometimes there will be, like, behavioral observations and
25 notations that are actually handwritten, and that's what I

1 was referencing.

2 Q. Right. But as a doctor, you do this every day.
3 You may have handwritten notes, and then you generate a
4 report, right?

5 A. That's correct.

6 Q. And in this case, Dr. Tenaglia, she apparently
7 had handwritten notes, but then she also generated very
8 lengthy reports detailing her observations of the
9 defendant and her reasons behind her opinion that he's
10 demonstrating poor effort, right?

11 A. Well, that would be my understanding, yes.

12 Q. Okay. And there seems to be some assumption
13 here that her handwritten notes are going to be different
14 or not the same as what she's putting in her report, but
15 not from you, right?

16 A. I'm not making any assumption, and I would not
17 do that. That would be a hypothetical I wouldn't go to,
18 and it's not ethical to do that.

19 Q. Okay.

20 A. As a doctor to another doctor, I show due
21 respect, and I haven't interviewed her about her way of,
22 you know, producing a report or why the notes were
23 shredded. So I'm not going to make an assumption about
24 that.

25 Q. Good. Your handwritten notes, when you

1 incorporate them into a report, they reflect what you
2 wrote down in handwriting, right?

3 A. That's correct.

4 Q. If a doctor doesn't see indicators of
5 intellectual disability or some severe cognitive defect,
6 the tests that Mr. Mosley was given at the hospital are
7 appropriate tests, right? If that doctor is not seeing
8 indicators of intellectual disability?

9 A. No, I would disagree because it's not just
10 intellectual disability. It's also speech and language
11 levels.

12 Q. Okay.

13 A. So reading levels become very important in how
14 the test is administered. So, obviously, if there's
15 content on the test, then it's a higher level of
16 comprehension. It could be a problem, and it could create
17 a false positive for malingering. And the same is true
18 for, you know, reading vocabulary, what level of
19 vocabulary they are. So it's not even about intellectual
20 disability. It's just about, do they have the capacity to
21 understand, comprehend, and read these items.

22 Q. Okay. But my question is: If a doctor when
23 they are observing personally an individual, they do not
24 see indicators of a severe cognitive impairment. The
25 tests that were provided to Mr. Mosley would be valid

1 tests?

2 A. If it was a different person. If it was not
3 Mr. Mosley.

4 Q. All right.

5 THE COURT: What do you mean by that answer? I
6 don't know what that means.

7 THE WITNESS: The State asked me a question and
8 was asking about would that test be valid to use with
9 someone if they didn't have those deficits? The
10 answer would be, of course.

11 THE COURT: Well, I think that's what she's
12 asking you.

13 MS. SULLIVAN: Yeah.

14 THE WITNESS: I wasn't sure, Your Honor, if she
15 was asking --

16 THE COURT: We're not talking about what you
17 think or opine about Mr. Mosley's condition. She's
18 asking if Mr. Mosley, or anyone else, was not
19 cognitively impaired, those would be appropriate
20 tests to give?

21 THE WITNESS: And I would agree with that.

22 THE COURT: Okay.

23 THE WITNESS: If they're not cognitively
24 impaired.

25 THE COURT: All right. That was the way I

1 understood that question --

2 MS. SULLIVAN: Yes. Absolutely.

3 THE WITNESS: I didn't quite understand if you
4 were saying with Mr. Mosley --

5 THE COURT: No.

6 BY MS. SULLIVAN:

7 Q. Well, I am. You know, she did do those tests
8 for Mr. Mosley. But take your opinion of what Mr.
9 Mosley's deficits are and put it over here. And if a
10 separate doctor looking at him says, there are no
11 indicators of cognitive impairment, those would be valid
12 tests to give him, taking your opinion away from it?

13 A. So I want to be really clear on this.

14 So if, in fact, if it was an assumption, but
15 there was data that suggests there were speech and
16 language deficits based on academic records, then my
17 opinion would be that it's important to be aware of those
18 deficits before selecting the test in the first place.

19 Q. All right. I think we're talking about the same
20 thing, and I'm just going to move on.

21 There was also some questions about the order in
22 which Dr. Tenaglia did her tests?

23 A. Correct.

24 Q. She did the WAIS, then she did the VIP and the
25 M-FAST, right?

1 A. That's correct.

2 Q. And there was some talk about that you're
3 supposed to do maybe the effort test and the malingering
4 test first, then move to the IQ test?

5 A. Correct.

6 Q. The testing manuals actually say, and
7 specifically to the VIP, the VIP is a well-validated test,
8 right?

9 A. Yes, I've used it.

10 Q. And it is to be used concurrently with
11 administered tests, right?

12 A. Correct.

13 Q. That's what the manuals say concurrently?

14 A. Correct.

15 Q. You can't do two tests simultaneously, right?

16 A. Of course not.

17 Q. It's impossible. So one has to come before the
18 other?

19 A. Correct.

20 Q. So when the test manual, what's asked in the
21 protocol concurrently, one of those has to go first,
22 right?

23 A. Yes.

24 Q. And it does not say that the VIP has to go
25 first?

1 A. It doesn't say in the manual, no.

2 Q. In fact, the VIP is meant if you do a test and
3 you suspect that someone is giving poor effort, then you
4 issue the VIP. That's why that's coming into play, right?

5 A. So I have familiarity with the VIP, and I've
6 worked for 10 years with a neurologist, and typically the
7 order of test is to assess response set. Meaning, their
8 motivation to respond to items prior to administering the
9 core cognitive tests.

10 So whether or not Dr. Tenaglia selected -- for
11 whatever reason, she did it in that order, it's just not
12 typical and not what is normally practiced.

13 Q. But the manual of protocol calls for it to be
14 done concurrently, and does not require that the VIP be
15 done before the WAIS?

16 A. I don't think the manual specifically says do
17 the VIP before the WAIS, or do the WAIS before the VIP.
18 So I'm not arguing that point. I'm saying standard
19 practice and practical sense would suggest that you want
20 to make sure the person is motivated before you would do a
21 cognitive test that would have implications as to overall
22 intellect.

23 Q. So you're saying that a doctor is supposed to go
24 into an evaluation assuming that someone is not going to
25 try hard and is going to exhibit poor effort?

1 A. No, I'm not saying that at all. I'm saying that
2 if, in fact, the person is going to do, for example,
3 intellectual testing and they're in a psychiatric facility
4 where they're on medication, there are certain stability
5 factors that would impact testing.

6 So if the person is stable, that's great. Go
7 ahead and do that test, but if there are reasons that they
8 would think that there was some type of malingering in
9 standard protocol and forensics, there are assumptions
10 that you should do some malingering testing if it is
11 suspected.

12 Q. The defendant, it was mentioned yesterday, he
13 was at the state hospital for 83 days, right?

14 A. Right.

15 Q. He was being observed every day, and that's
16 documented in the records?

17 A. Correct.

18 Q. He was being observed by social workers, nurses,
19 doctors, right?

20 A. That is correct.

21 Q. How many hours total have you spent with the
22 defendant in the last two evals that you've done?

23 A. I would say in the last two evaluations specific
24 face to face, approximately an hour and a half.

25 Q. Okay. So there's some implication that 83 days

1 is a short time, but the state hospital had eyes on him
2 for much longer than your two evals, the most recent ones,
3 right?

4 A. I would agree.

5 Q. I want to talk about Dr. Railey. He came up
6 yesterday. You stated that you don't know what he based
7 his finding of zero deficits with social interactions on,
8 right?

9 A. That's absolutely correct, I don't.

10 Q. Okay. Did you read his report?

11 A. I did.

12 Q. Did you get his transcribed notes from that
13 evaluation?

14 A. I did.

15 Q. Did you see the conversations that him and Mr.
16 Mosley were having with each other during that eval?

17 A. I sure did.

18 Q. Was it surprising, given your impression of the
19 defendant, that Mr. Mosley and Dr. Railey were able to sit
20 across from each other for some time and have casual
21 conversations and laugh about prior girlfriends with each
22 other?

23 A. I'm not. I was not there. I don't have a
24 video, but it didn't surprise me.

25 Q. Okay. A different kind inter -- you know, just

1 assuming that's true, I'm not going to hold you to it, but
2 if that occurred, it seems like a different interaction
3 than you and Mr. Mosley had?

4 A. I would say that's a very different interaction.

5 Q. Okay. That would exhibit his ability to have
6 social interaction with someone he just met, right?

7 A. Assuming that that's true, yes.

8 Q. Okay. Again, that's all I'm asking you to do.
9 I know you didn't see it, but it is in his report and his
10 transcribed notes that they were talking about his prior
11 girlfriends and his work and him gassing up his mom's car
12 after he borrowed it, right?

13 A. Yes, ma'am. That's correct.

14 Q. That would seem that him and Dr. Railey had a
15 rapport with each other, right?

16 A. Assuming, yes.

17 Q. That seems to be very different from maybe the
18 rapport that you and Mr. Mosley have?

19 A. I would agree.

20 Q. Okay. Would someone with intellectual
21 disability or autism be able to have such different
22 interactions with one doctor versus another?

23 A. Hypothetically, a person can have different
24 interactions. Again, I wasn't privy to his nor was he to
25 mine, but I can tell you that my interactions with Mr.

1 Mosley were completely different.

2 Q. Okay. The WHODAS testing. It's an open source.
3 The manual and the test, they are online. I don't think
4 anybody is disagreeing with that, right?

5 A. Correct.

6 Q. The individual person's score sheets, the
7 answers?

8 A. Correct.

9 Q. Those are not online, right?

10 A. Not to my knowledge.

11 Q. Those are not put online for public
12 distribution. They're, essentially, the raw data answers
13 to the test, right?

14 A. I would assume so, yes.

15 Q. Okay. So when we're talking about the WHODAS
16 test is an online source and available to the public,
17 those score sheets, the answers the individual gives, are
18 not online?

19 A. I really -- I don't use the test, so I'm not
20 certain about that. I'm not sure how Dr. Railey
21 administered it, so I don't want to opine on that, so that
22 might be a better question for him. All I know is what I
23 received, and what I was commenting on was the overall
24 rating.

25 Q. Would you put the score sheets of someone that

1 you evaluated online?

2 A. So that would only occur if I was entering data
3 to be scored.

4 Q. Okay.

5 A. And it goes just to a specific source that would
6 score it.

7 Q. Right. Not open source, not on the internet,
8 right?

9 A. That's correct.

10 Q. Okay.

11 A. Absolutely.

12 Q. Okay. What consistent symptoms of psychosis and
13 depression have you seen with Mr. Mosley?

14 A. So the main symptoms that I've seen are what I
15 noted in the report, which would be that he reports seeing
16 blood and, at times, he has heard voices, you know,
17 focused on rage, but it is primarily been seeing blood in
18 his eyes, and specifically when he has been in the shower
19 or water is affecting him.

20 Q. And that's something -- you've seen him six
21 times now over the last year. That's something he
22 consistently reports to you, that he's seeing blood, and
23 the water, and all of that. He says that to you every
24 time, right?

25 A. Correct, and that at times he heard voices

1 telling him to harm himself.

2 Q. And that's all self-reported by Mr. Mosley
3 claiming he has those hallucinations and visions?

4 A. That is correct.

5 Q. You stated in your report that at times you've
6 seen that he is distracted by internal stimuli. Did you
7 see that in the last two visits?

8 A. The last two visits, less so. The last two
9 visits, I think I said there was noted improvements in his
10 ability to stay focused. He wasn't really responding in
11 that way.

12 Q. So it's your testimony that even at these last
13 two visits, you're still seeing internal stimuli?

14 A. To some extent, but not as much. He actually
15 could say that there were times when he did not have those
16 particular signs or symptoms.

17 Q. Okay.

18 A. So there was improvement.

19 Q. What about the depression, what consistent
20 symptoms do you see with depression?

21 A. A flat affect. Passive suicidal ideation.
22 Slow, slow, meteoric responding. Slow verbal responding.

23 Q. The hospital records, the psychiatrist. Did you
24 review the medications that he was put on?

25 A. That is correct.

1 Q. Did you see in there that the psychiatrist
2 reported that he put him on varying types of
3 antidepressants and at different levels, right?

4 A. That's correct.

5 Q. And sometimes he maxed out the allowable dosage
6 for the antidepressant, right?

7 A. Correct.

8 Q. Then Mr. Mosley was still reporting the same
9 exact consistent depressive symptoms that he has all
10 along, right?

11 A. That's correct.

12 Q. And that the psychiatrist even noted that that
13 was unusual because he had maxed him out, and there was no
14 change at all?

15 A. Correct.

16 Q. And those hospital records also indicate that he
17 sometimes reports his visions in seeing blood when he is
18 near water and sometimes he says, no, I'm good. No
19 hallucinations?

20 A. Absolutely correct.

21 Q. He's never been observed to be having visions or
22 delusions or hallucinations, right, in the hospital
23 records?

24 A. Noted -- you mean reported?

25 Q. Not by him. Other people have never observed

1 him to be in some type of delusion or having --
2 experiencing some type of hallucination?

3 A. That's correct.

4 Q. Okay. You, yourself, have never observed him
5 having a hallucination or a delusion or some type of
6 vision?

7 A. Not specifically seeing him, for example, stare
8 off as though he's responding to something. So, no, I
9 have not seen that. He's at least maintained some basic
10 eye contact when I've talked with him. I haven't seen him
11 turn away or look as if he's seeing something else in his
12 head.

13 Q. He reports sometimes that he isn't sleeping or
14 eating. He says that consistently to the nurses at the
15 state hospital, right?

16 A. Correct.

17 Q. But they watch him, as we talked about, 83 days
18 they monitor him and they document what they see him
19 doing, right?

20 A. Correct.

21 Q. And they reported that he sleeps six to eight
22 hours a night, and he eats all his food?

23 A. Correct.

24 Q. And they never observed an issue with sleeping
25 or eating?

1 A. Correct.

2 Q. Overall, you're still finding him unacceptable
3 in Criteria 4 and 6, right?

4 A. That's correct.

5 Q. The same as last year, that's what you found him
6 unacceptable in?

7 A. That's correct.

8 Q. You would agree that Criteria 4 and 6
9 specifically very much have to do with talking about the
10 facts of these two homicides, don't they?

11 A. I would say so, yes.

12 Q. All right. And it's your opinion that it is
13 strictly that he's unable to do that? He's unable to talk
14 about the facts of these homicides?

15 A. So I wouldn't say that that's the unique factor
16 impacting it. Talking about it is one thing, but the
17 expressive and receptive language deficits I think would
18 impact his ability to testify as well. And I think that
19 his ability to convey the information to his attorneys
20 would be important in his defense, especially if, for
21 example, there's a consideration of a not guilty by reason
22 of insanity.

23 Q. Not guilty by reason of insanity was something
24 that he did learn while he was at the state hospital,
25 right?

1 A. Except that he forgot what it was.

2 Q. He was able to repeat it back to other doctors
3 who evaluated him since he's been back, correct?

4 A. Correct. He was not able to describe to me in
5 detail what it was, but in general, he was.

6 Q. To other doctors?

7 A. Yes.

8 Q. So when he remembers something, it does -- it's
9 kind of a selective thing for Mr. Mosley, isn't it?

10 A. So I'm not sure about that --

11 Q. Okay.

12 A. -- being in context of a selective memory.
13 Meaning, does he sometimes recall it and not recall it,
14 or, like, do you mean is he selectively picking out things
15 to remember when he wants to?

16 Q. Your opinion is that Criteria 4 and 6 is an
17 inability to do something, right?

18 A. My opinion is that, at present, when I saw him,
19 he was not able to convey to me relevant facts pertinent
20 to his defense, nor did he display thought processes and
21 cognitive capabilities if he were to take the stand and
22 actually be able to comprehend and respond to information.
23 So my opinion is that certainly when I met with him, he
24 did not have that capacity.

25 Q. Okay. And it is not at all a consideration of

1 yours that he just doesn't want to talk about the facts of
2 his case to anyone?

3 A. Well, I certainly think that's a consideration
4 he wouldn't want to talk about the facts of the case, but
5 I think there are other factors affecting that as well.

6 Q. Okay. And when you take that opinion and you
7 match it up with the poor efforts in school, him walking
8 out of classrooms, him walking out of courtrooms, him
9 walking out of evaluations, isn't it arguable that it is
10 that Mr. Mosley decides when and what he wants to talk
11 about?

12 A. Well, I think that's certainly going to be a
13 factor that's important in his defense, and I certainly
14 think that's in play, to some extent, but I think the
15 other factors that have bearing are also that he does have
16 limited language expressive and receptive skills, and that
17 he also is psychiatrically impaired, which I think is
18 affecting his ability to relay information as well.

19 MS. SULLIVAN: I don't have any other questions,
20 Your Honor.

21 THE COURT: Dr. McClain, it is a couple minutes
22 after noon. If you need to go, I understand and will
23 respect your time. I assume you have some
24 cross-examination for her. So we're going to talk
25 about --

1 THE WITNESS: Okay. Your Honor, I asked them
2 downstairs -- there was a person that came out of
3 town to the Public Defender's Office for me to see,
4 and I've asked permission to stay present until I can
5 be released and then come down to their office.

6 THE COURT: So do you want to stay and finish?

7 THE WITNESS: I would rather stay and finish for
8 the sake of Court.

9 THE COURT: Let's do it, then. Thank you for
10 that accommodation. I appreciate it.

11 THE WITNESS: Absolutely.

12 THE COURT: About how much -- and I don't care
13 what the answer is. Just ballpark a time frame for
14 me.

15 MS. RUSSELL: I appreciate your patience, Your
16 Honor. I don't think it will be long. I imagine 10
17 or 15 minutes.

18 THE COURT: We discussed frequent breaks, so I
19 just want to make sure we can break for lunch soon so
20 Mr. Mosley could get something to eat. What's going
21 on next door?

22 MS. SEIFER-SMITH: It looks like they're just
23 taking a stretch break. I'm not sure.

24 THE COURT: Can you radio her? We're going to
25 finish, so they need to have a seat and be ready.

1 THE BAILIFF: Deputy Torres.

2 THE COURT: We need to finish, folks. I need
3 you to have a seat and be ready, unless you want to
4 stand, ma'am.

5 Are they ready to go?

6 THE BAILIFF: Yes.

7 THE COURT: All right. Let's do it. We're
8 going to finish up.

9 REDIRECT EXAMINATION

10 BY MS. RUSSELL:

11 Q. Dr. McClain, thank you again for making the
12 extra time --

13 A. Absolutely.

14 Q. -- accommodating us on your schedule. We will
15 try to keep it brief.

16 Ms. Sullivan asked you if the only thing you did
17 to diagnose Mr. Mosley with autism was the GARS?

18 A. Correct.

19 Q. Is that correct?

20 A. No.

21 Q. What other things did you do in order to
22 evaluate Mr. Mosley for autism?

23 A. So I reviewed the academic records, the records
24 regarding the expressive and receptive language deficits.
25 I've also reviewed the evaluation and the results of the

1 speech and language therapist, which this issue came up
2 when I was conferring with Defense about seeing if he was
3 still consistently impaired in terms of his speech and
4 language or receptive and expressive deficits.

5 I also completed the adaptive measure to try to
6 get an understanding of areas of communication in social
7 areas that might have been impaired during that
8 developmental window.

9 Q. What about your clinical judgment; did that have
10 any part of your analysis?

11 A. So I think I've stated on record that it wasn't
12 until he came back from the hospital that I actually
13 thought that there were issues that needed to be addressed
14 as to developmental disability specific to autism and/or
15 intellectual disability.

16 And so my clinical impressions are just looking
17 at all of the different information started, basically, a
18 process of thinking about hypothetically could this be a
19 diagnostic issue where it's not being addressed? And as
20 was noted by the State, the school records don't have any
21 check for intellectual disability or autism. That does
22 not mean that it's not there, but it wasn't assessed.

23 So what became important was making sure I
24 wasn't missing something and not exercising or taking
25 steps to try to see if, in fact, there was evidence that

1 he had a developmental disability.

2 Q. What kind of skills does testifying take,
3 understanding that someone who testifies is always going
4 to be subject to cross-examination by a well-informed
5 State Attorney?

6 A. Well, simply put, obviously, the ability to
7 comprehend information, the vocabulary that's used, the
8 questions, the intonation of the questions, then to
9 research memory bank to be able to respond whether it's
10 concerning facts of the case or the actual proceedings.

11 So it would be understanding comprehension would
12 be involved, as well as speech production and language
13 production. Understanding, you know, how to respond. It
14 would also be important to be able to behaviorally control
15 oneself, as far as understanding that under stress there
16 might be a reaction depending upon any mental health
17 issues or what coping skills the person has.

18 Q. So that would be hard for someone with a
19 cognitive impairment, intellectual disability or autism,
20 right?

21 A. It would be difficult also for someone who has a
22 mental health issue that could affect their ability to
23 regulate their behavior and whether they're medicated or
24 not medicated.

25 Q. Let's talk about raw data. There are a few

1 reasons why raw data is not produced to non-practitioners
2 like lawyers, right?

3 A. Correct.

4 Q. Would one be test security?

5 A. That's correct.

6 THE COURT: What was your question? I didn't
7 hear your question.

8 MS. RUSSELL: Would one be test security.

9 THE COURT: Test security. Okay.

10 BY MS. RUSSELL:

11 Q. What is "test security," Dr. McClain?

12 A. Test security is that basically there is a
13 commitment to preserve the integrity of the test and
14 confidentiality of the test and exclusive rights should go
15 to the individual who purchases the test, but also if the
16 results are to be relayed to another individual, that
17 person has to be qualified in order to be able to review
18 that information.

19 But test security can also have to do with
20 making copies of things, putting it on the Internet
21 inappropriately that would also be major ethical
22 violations.

23 Q. Also, those responses on test answer sheets
24 might contain protected medical information, right?

25 A. Correct.

1 Q. So that's another reason why it wouldn't be
2 publicly produced?

3 A. It could be one of the reasons, yes.

4 Q. Are there any other reasons why they have these
5 rules about raw data in your line of work?

6 A. Well, there is, you know, of course, HIPAA
7 protecting a person's rights to confidentiality on any
8 medical test, lab results, any type of psychological test.
9 So there's very strict guidelines about that.

10 Obviously, in forensic cases, the rules change
11 in terms of releasing raw data for the purpose of another
12 evaluator looking at the work that was done, making sure
13 that it's scored correctly. But there are exceptions,
14 even where the Court can mandate that certain information
15 be released if they decide that it's important in a case.

16 Q. And in general, a Court can order that
17 information be produced?

18 A. That is correct. In other words, if the Court
19 can say -- the judge can say, I order you, Dr. McClain, to
20 produce that, I absolutely have to comply with the law.

21 Q. Dr. McClain, are there any alternative
22 explanations for lack of motivation?

23 A. So, yes. A lack of motivation, obviously, could
24 be they just don't want to do it, so they're not going to
25 do it because they don't want to do it. It can also be

1 that they don't have the capacity to do it, don't
2 understand it, or have tried before to do it and now shut
3 down because they aren't getting it or don't understand.

4 Q. And that might happen if you were 17 years old
5 and still in the ninth grade?

6 A. Well, it might happen for sure if there is
7 difficulties in school. It becomes a learned
8 helplessness, if you will. Depression sets in if I can't
9 do the work. Anxiety sets in. Then there's a fear of
10 failure that can go along with that.

11 So there are many different reasons besides just
12 I don't want to do it. I don't want to, but that
13 certainly could be one.

14 Q. Is flat affect also a negative symptom of
15 schizophrenia?

16 A. It is.

17 Q. Are there any other negative symptoms of
18 schizophrenia that can often be confused with a lack of
19 effort?

20 A. Motivation. Avolition. That basically is
21 saying not initiating, not doing certain things. And with
22 schizophrenia, it has more to do with what they call
23 prodromal or negative symptoms.

24 Q. Dr. McClain, I want to talk to you about what is
25 in the AAIDD 12.

1 A. Yes, ma'am.

2 Q. Okay. This gives basic structure for how one
3 might be evaluated for intellectual disability, right?

4 A. Correct.

5 Q. What does the AAIDD say about relying solely on
6 self-report with someone with intellectual disability?

7 A. That's not sufficient.

8 Q. Why not?

9 A. Because their insight and ability to identify
10 deficits or strengths is impacted by their limited
11 intellect, and there could be a tendency to overreport
12 what they're capable of. You know, being aspirational,
13 but not reality or underreporting.

14 Q. Is that what we call the "cloak of competence"?

15 A. Correct.

16 Q. What does the AAIDD say about looking only at
17 adaptive functioning in institutional settings like
18 prisons and hospitals?

19 A. So, basically, that would not be an appropriate
20 reference point from the standpoint of, number one, it's
21 not within that developmental window, typically, of zero
22 to 18 or 22. It can be, but their early onset of the
23 adaptive deficits is important because it goes to a less
24 structured environment, typically.

25 Whereas, in a structured environment, there's a

1 time management that's already in place for you. Eat
2 breakfast then, you eat lunch then, you shower then, you
3 go out for rec or whatever occurs. So it's different, and
4 it's not going to be a reflection of that window of time
5 in which you would have seen deficits in the first place.

6 Q. Prison is a little like the ultimate group home,
7 right?

8 A. Well, I don't know about that, but I think there
9 are some similarities from the standpoint of a place
10 that's designated as a place to be where your needs are
11 going to be met to some extent. There's supervision. I
12 mean, there's group homes and group homes for intellectual
13 disability, but then there's prisons, you know, a
14 different time of context.

15 Q. And, again, at South Florida Evaluation and
16 Treatment Center, a hospital, an institutional setting
17 wouldn't really be considered a community setting to
18 assess adaptive functioning?

19 A. I would agree with that.

20 Q. What does the DSM-5 say about self-report?

21 A. So, basically, essentially, the DSM-5, whatever
22 diagnosis one is going to give, obviously advocates that
23 you should use standardized measures and measures that
24 would be, for example, with ID, intellectual disability,
25 there would be standardized measures to effectively assess

1 actual adaptive functioning as you would with intellectual
2 disability.

3 MS. RUSSELL: Give me a minute, Dr. McClain. I
4 need to try and find Exhibit 11.

5 Might I approach the witness?

6 THE COURT: Yes.

7 BY MS. RUSSELL:

8 Q. Dr. McClain, I'm showing you what has been
9 entered into evidence as Exhibit 11.

10 A. Yes, ma'am.

11 Q. Which is the adaptive functioning page in the
12 DSM-5-TR talking about mild intellectual disability, and
13 the adaptive deficits that result.

14 A. Correct.

15 THE COURT: Under which heading are you looking
16 at?

17 MS. RUSSELL: I'm looking at the conceptual
18 domain.

19 THE COURT: Thank you.

20 BY MS. RUSSELL:

21 Q. So looking at page 39 of the DSM-5-TR, I would
22 like to ask you if you can explain if there's any reason
23 why Thomas Mosley would not have been identified or
24 diagnosed with intellectual disability when he was in
25 elementary school?

1 A. So I think the primary reason, in looking at the
2 records, is that it was quickly identified that he has
3 speech and language impairment, and he was slated into
4 that category. There was no evidence that he was ever
5 tested for his Aurora intellectual ability, but there were
6 clearly significant deficits for expressive and receptive
7 language.

8 So what the reasoning was, I'm not sure, but I
9 do know that it bears out that he definitely had deficits
10 that would make one question, you know, what else is going
11 on?

12 Then there's also motivational variability that
13 is seen. There's a lot of absences. There's a lot of,
14 you know, tardiness. So finding out the rhyme and reason
15 in that, and that seems to increase as he gets older, is
16 the pattern. That would have been after repeatedly
17 failing more grades.

18 But I think the other thing is that just with
19 what I've reviewed, in looking at this page, I think there
20 was definitely areas that would have suggested it's
21 something more than just speech and language, but
22 certainly we have that to look at showing that it stayed
23 the same. It really didn't improve much over time.

24 Q. And is it true, Dr. McClain, that sometimes
25 those conceptual deficits are not necessarily apparent in

1 young children because they begin to fall behind as they
2 get older and things get more complex?

3 A. I think there is truth in that, yes.

4 Q. And isn't that really what the DSM-5 says, on
5 page 39, when it's talking about the conceptual domain and
6 deficits?

7 A. I think the complexity of the materials
8 referenced there, in terms of peer interactions, academic
9 interactions, and otherwise.

10 MS. RUSSELL: Give me one moment to consult with
11 Ms. Seifer-Smith.

12 BY MS. RUSSELL:

13 Q. Dr. McClain, is the WAIS an IQ test?

14 A. Yes.

15 Q. It's not given as a test for malingering, right?

16 A. No.

17 MS. RUSSELL: Thank you very much.

18 THE WITNESS: Certainly.

19 THE COURT: I have one question. Can I ask my
20 one question?

21 MS. RUSSELL: Of course.

22 THE COURT: All right.

23 Dr. McClain, I heard a lot about the practice
24 effect for tests.

25 THE WITNESS: Correct.

1 THE COURT: Let me make sure they can hear me.

2 We talked a lot about the practice effect for
3 testing. What effect, if any, does 16 hours of our
4 prior competency evidentiary hearing, plus whatever
5 we've done this round, of Mr. Mosley's sitting and
6 listening in court, what, if anything, could he have
7 learned?

8 THE WITNESS: Your Honor, I certainly think he
9 could have learned the basics from just being in the
10 courtroom of his attorney, the state attorney, the
11 judge. Looking at what's going on, in terms of the
12 focus of, you know, his attorneys being here. The
13 competency issues. So I think there is an awareness
14 of that.

15 THE COURT: Could he have learned how to not be
16 competent sitting in court and listening to us?

17 THE WITNESS: Your Honor, I think that
18 defendants can learn that not only in court, but
19 around their peers that they're interacting with.

20 THE COURT: What, if any, consideration do you
21 think I should give that?

22 THE WITNESS: I think you should give it
23 consideration in the totality and the motivational
24 factor as well.

25 THE COURT: Do you have any questions based on

1 what I've asked?

2 MS. RUSSELL: No.

3 THE COURT: It's okay if you do.

4 MS. RUSSELL: Well, I did miss -- well --

5 THE COURT: If you missed a question, go ahead.

6 BY MS. RUSSELL:

7 Q. Dr. McClain, I would like to talk to you about
8 yesterday and the behavior that you observed yesterday
9 afternoon.

10 A. Okay.

11 Q. Did that change your opinion about Thomas
12 Mosley's ability to behave appropriately in court?

13 A. It didn't change my opinion, but I think it's a
14 consideration that obviously the Courts have accommodated
15 in trying to accommodate, and I think that's an ongoing
16 concern in a case like this.

17 Q. Did you have any -- did you notice anything
18 about tactile issues?

19 A. Well, just that I brought up an issue with
20 reference to any type of quick movement. Any movement
21 that might occur for Mr. Mosley that he's not aware of or
22 that might occur without announcing it verbally that, for
23 example, to be moved or jolted could be reactive for him,
24 or he could react to that. Just to be announced and make
25 sure there is good verbal contact going on, you know, eye

1 contact, before initiating movement with him, just to
2 avoid anybody getting injured, including himself.

3 Q. Do you have any other concerns about what
4 happened yesterday?

5 A. I think that the potential for something like
6 that to happen can happen with triggers that occur, but I
7 also think if he's unmedicated, that could be another
8 factor. It's clear that he's demonstrated the ability to
9 exercise a choice to put himself in a better position to
10 behave appropriately, so that's a good sign.

11 MS. RUSSELL: Excellent. Thank you, Dr.
12 McClain.

13 THE WITNESS: Certainly.

14 THE COURT: Did you have any questions based on
15 what I've asked?

16 MS. SULLIVAN: No.

17 THE COURT: Thank you, Dr. McClain.

18 THE WITNESS: You're welcome, Your Honor.

19 THE COURT: All right. We're going to take an
20 hour and a half for lunch. It's 12:20. I will see
21 everyone back in an hour and a half.

22 What I would like to have happen is Mr. Mosley
23 to be invited back to court here live in person. If
24 he doesn't want to come, that's fine. He can stay
25 where he is. My observations as he's been sitting at

1 the table comfortably with his third lawyer watching.

2 I don't see any behavioral issues going on.

3 He has been visible to us in Courtroom 8 from
4 the large screen TV in our courtroom, and he's been
5 able to see and listen to the proceedings here on his
6 TV in Courtroom 9.

7 Did you want to say something to me?

8 THE BAILIFF: I was going to ask if you still
9 wanted them --

10 THE COURT: Yes. And if the lawyer is having
11 trouble hearing, that's who I need to tell me that
12 they're having trouble hearing, okay? So just let
13 the deputies know and they'll let me know and we'll
14 adjust the microphone here, okay? Can you nod yes?

15 MS. CARRIER: Yes.

16 THE COURT: Okay. Great. Thank you.

17 MS. SEIFER-SMITH: Your Honor, just to clarify.
18 Ms. Carrier is not an attorney. She's our mitigation
19 specialist, so I think that's why she was
20 uncomfortable speaking on the record.

21 THE COURT: No problem. She's part of our team.

22 MS. SEIFER-SMITH: She certainly is.

23 THE COURT: She's part of the group here for
24 Mr. Mosley. She's one of your nonlawyer mitigation
25 specialists who has been sitting in throughout the

1 proceedings and is sitting with him today, taking
2 notes. They seem to be sitting at the table fine.

3 I will see everyone in an hour and a half.

4 Thank you.

5 (Lunch break taken.)