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

STATE OF FLORIDA,

Plaintiff,

vs.

THOMAS ISAIAH MOSLEY,

Defendant.

_____/

PROCEEDINGS: COMPETENCY HEARING

BEFORE: THE HONORABLE SUSAN ST. JOHN
Circuit Court Judge

DATE: July 8, 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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A-P-P-E-A-R-A-N-C-E-S

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

THE COURT: Mr. Mosley is up, correct?

THE BAILIFF: We have to call him up.

THE COURT: He needs to be here in 10 minutes.

THE BAILIFF: Okay. He's here. He's just downstairs.

THE COURT: Let's have him up and in.

THE BAILIFF: Okay.

THE COURT: Good morning. You could have a seat.

All right. We're here in Case Number 23-03157CF. State of Florida versus Thomas Mosley. This is day two of our five-day competency evidentiary hearing for Mr. Mosley.

I appreciate you all making a schedule for me so I can keep track of what we're doing. My understanding is we've got, as far as doctors are concerned, Ms. McClain testifying today, who is present in court.

Does that sound right?

MS. RUSSELL: Yes, Your Honor.

THE COURT: Okay. The schedule that Ms. Seifer-Smith e-mailed in says "other business first." So what other business do we have this morning?

MS. SEIFER-SMITH: Just initially, we have a lay

witness, Sarah Franklin, who we would like to call this afternoon.

THE COURT: Yes.

MS. SEIFER-SMITH: We've requested to have her testify via Zoom. She has health issues that prevent her from traveling. When we spoke with Ms. Ellis last week about it, Ms. Ellis indicated that there was no objection from the State with respect to a link.

THE COURT: My preference on cases like this is not to do Zoom, even with an agreement, but with the health consideration out there, do you have any objection to it?

MS. SULLIVAN: No, Your Honor.

THE COURT: What is she going to be testifying to? Just historical information?

MS. SEIFER-SMITH: Yes. I imagine her testimony will be relatively short. I think perhaps a half hour. She was a special education teacher for Thomas in elementary school.

THE COURT: Okay. If you would like to send her the link, that would be fine. Jill can give it to you. I don't know it.

MS. SEIFER-SMITH: Anything else we need to discuss before we dive in with Dr. McClain?

MS. RUSSELL: Yes, Your Honor. We did file copies of three motions yesterday.

THE COURT: Yes.

MS. RUSSELL: Provided you with courtesy copies. A Motion to Exclude the testimony of Lana Tenaglia based on Daubert, a Motion to Bar the testimony of Lana Tenaglia based on the fact she shredded her notes, and finally a Motion to Exclude Testimony of Michael Railey, a Daubert motion also.

THE COURT: I did see those. My goal for the week is to try to get the doctors in and out first thing and not have any delay for them. So to the extent you want those motions heard, I would like to save those for the end of any particular day so we're not -- you know, it's hard to get everybody in here in the room at the same time, which is why it is taking five days. I'm fine giving you the time to do it, but I want to make sure, like, Dr. McClain can get in and out today, and tomorrow the doctors can get in and out.

So any motions that are heard, I would like to do them later in the day, okay.

MS. RUSSELL: Absolutely.

THE COURT: If you want to do those this afternoon, I'm fine doing them this afternoon. I

just want to make sure we get Dr. McClain in here and the other witnesses in and out, and then we can argue motions.

Does that work for you?

MS. RUSSELL: Absolutely. In fact, we can even wait until Thursday morning when we're doing the WHODAS motion with Dr. Railey here.

THE COURT: Okay. Anything from the State?

MS. SULLIVAN: No.

THE COURT: Any other business we need to handle this morning?

MS. RUSSELL: Not to my knowledge, Your Honor.

THE COURT: All right. And with that, then I'm ready for Dr. McClain, if you are.

And if I didn't already say it, Mr. Mosley is present in court this morning.

THE BAILIFF: Please stand over here. Raise your right hand to be sworn in by the clerk.

(Witness was duly sworn on oath.)

THE WITNESS: Good morning, Your Honor.

THE COURT: Good morning.

You may proceed.

MS. RUSSELL: Thank you.

DIRECT EXAMINATION

BY MS. RUSSELL:

Q. Dr. McClain, would you introduce yourself to the Court, please?

A. Yes. Dr. Valerie R. McClain. M-C-C-L-A-I-N.

Q. Dr. McClain, what is your chosen profession?

A. I'm a licensed psychologist in the State of Florida.

MS. RUSSELL: Your Honor, may I approach?

THE COURT: Yes.

MS. RUSSELL: Let the record reflect, I'm showing the witness what's been premarked as Exhibit 3, Dr. McClain's resume.

BY MS. RUSSELL:

Q. Dr. McClain, is Exhibit 3 your resume?

A. It is.

Q. And that's a full collection of your experience and your education?

A. That's correct.

MS. RUSSELL: Can we move Exhibit 3 into evidence?

THE COURT: Any objection?

MS. SULLIVAN: No objection.

THE COURT: Admitted as such.

THE WITNESS: Thank you.

(State's Exhibit 3 was received into evidence.)

BY MS. RUSSELL:

Q. Dr. McClain, tell me about your educational background.

A. I received my bachelor's, master's, and doctoral degree from Florida Tech in Melbourne, Florida. I completed my internship at Portland VA Medical Center in Portland, Oregon, specializing in neuropsychology, Post Traumatic Stress Disorder, and also in rehabilitation.

I received my post-doctoral fellowship from the Rehab Hospital of The Pacific in Honolulu, Hawaii, specializing in multicultural issues, rehabilitation, and neuropsychology.

Q. What is Psy.D.?

A. A doctor of psychology.

Q. And how is it different than a Ph.D.?

A. So in a Ph.D., there is what they call the dissertation. With Psy.D., it's focused on practicum, meaning that it is focused on actual practical experience. So we do a thesis, and then we have extra practicum that we do in lieu of a dissertation.

Q. Have you had any fellowships in forensic training?

A. So I received a neurosciences fellowship, and that was related to my undergraduate. I got a scholarship, if you will, for neurosciences fellowship during my undergraduate work, and I studied at the

Neuroscience Institute in Portland, Oregon, prior to doing my doctoral work.

Q. And what did you do for your doctoral work?

A. So my doctoral work was focused on furthering my knowledge of neuropsychology and forensic psychology. I did complete, as I noted, the internship at Portland VA Medical Center. And during that training, it spanned anywhere from debriefing Desert Storm veterans to doing work on malingering with Loren Pankratz and Larry Binder.

I also was fortunate to meet Diane Howieson and Muriel Lezak, who were forerunners in neuropsychology and offices that published, so I was fortunate to have good supervision in neuropsychology, but also broad-based clinical work in terms of actually doing therapy, post-traumatic stress groups, and doing reenactments of Desert Storm.

Q. Have you given any presentations, Dr. McClain?

A. So I try to present annually for the American College of Forensic Psychology, and that's been ongoing for over 20 years. And I try to stay very specific to relevant psychological practices and forensic issues. In psychology, I typically team up with one of my colleagues or two to do ethical vignettes and to focus on forensics and ethics.

Q. What about publications? Have you published

anything?

A. I have. I believe I published to date approximately 10 articles and/or chapters for books.

Q. Are you a member of any professional organizations?

A. Yes. I'm a member of the Florida Psychological Association and the American Psychological Association, the National Academy of Neuropsychology and the International Neuropsychological Society.

Q. Are you qualified to be appointed by the Court as a neutral for competency and intellectual disability evaluations?

A. Yes. I'm typically appointed by the Courts and specifically appointed by the Agency for Persons with Disabilities as to matters that would pertain to whether or not a person is competent relative to whether or not they're identified as intellectually disabled and/or autistic.

Q. So autism is included in that appointment?

A. Autism is included in that. Yes, it's a developmental disability.

Q. How many counties in Florida are you on the list for that court-appointed job?

A. So I went from being on 20 counties for several years to focusing specifically now on Pasco, Pinellas,

Hillsborough, and Polk County. I do maintain offices in Polk County and also in Hillsborough County, but during or post-COVID I tried to volunteer to just catch up with some of the, you know, the queue, if you were, for people who need to be evaluated for ID and autism, and we caught up somewhat. So I chose to basically just focus on four counties. I am on the court-appointed lists in Polk, Pinellas, Pasco, and Hillsborough County.

Q. So what percentage of your work is as a court-appointed neutral?

A. So my practice has changed over the last three or four years. I do, I would say, probably 70 percent court-appointed work. There is quite a bit of work to be done there, so I just have committed to be available to do the court-appointed work. The other percentage would just represent some confidential evaluations, Risk Protection Order work, psychosexual evaluations, and then I do some capital cases.

Q. Have you ever worked for the State?

A. So I was retained by the State previously on an NGI case. I'm specifically being retained on one within Pinellas County. Typically, I'm -- I could be appointed, but it would be court appointed. So I traditionally do not, or I'm not requested to do cases from the State.

Q. You wouldn't have a problem working for the

State if they asked you, would you?

A. Not at all. In Polk County, predominantly the State will call me as a second competency-appointed doctor if there's an issue of them questioning whether or not the person is actually incompetent. So I have no problem at all in working with the State or trying to just be as objective as possible.

Q. What is a neuropsychologist specifically?

A. So a neuropsychologist is a psychologist, essentially, who specializes in looking at brain-behavior relationships. For example, with individuals who have acute traumas, head injuries, strokes, systemic neurological disease processes, a neuropsychologist has specialized training in tests and a battery of tests to identify what functional deficits the individual might have.

Meaning, for example, processing, executive deficits such as planning, problems with memory, consolidation, and it just varies depending upon what type of injury the person might have or what neurological disease they have.

Q. What do neuropsychologists do with testing that's different?

A. So a neuropsychologist traditionally, like psychologists, can administer test and they have to be

specifically trained in them for interpretation and how to basically administer the test, but essentially what happens is that after the neuropsychologist performs the test, then they took at the results and they take other collateral information, such as brain imaging or historical information about medical background, and then they do correlations with do those functional deficits observed on testing coincide with or are they in agreement with what the data shows.

And a really good example is neuroimaging because that will give you structural functional deficits on a PET scan or an MRI, and it will allow you to say, Oh, yes, this is a bull's eye. This is exactly what I see on this testing or not, but that would be part of what a neuropsychologist would do.

Q. And what are the differences in education and training over and above a regular old psychologist that a neuropsychologist has?

A. So regular, traditional psychologists are surely going to be able to administer the test that they're taught in psychometrics in school. The neuropsychologist has undergone specialized supervision and training.

For example, as an undergraduate, I began to study neuropsychology and was supervised by Dr. Thomas Peek (phonetic), who was a diplomat in neuropsychology,

and I would do practicums within a psychiatric practice that dealt with some forensic issues and also child issues, developmental issues for ADHD or learning disabilities.

So that particular supervision added up over time to become proficient in being able to utilize those types of tests. Now, that was also part of my internship was to pick a place that would allow me further supervision. I mentioned earlier Dr. Howieson, and Mr. Binder and Dr. Pankratz, who specifically focused on neuropsychology and malingering testing and being able to work with a wide population, not just veterans, but other individuals in geriatric, young, or adults in terms of doing specific testing to help to define what deficits, functional deficits, the person might have and how best to recommend rehabilitation.

Q. So we talked a lot about your very broad experience. Do you think that you have specialties in your practice?

A. So, I do, and I have worked hard to maintain those specialties because everything changes. For example, the WAIS-IV is now the WAIS-5, so that requires retraining in that, which I've done. So I like to be on the edge with regard to testing that's available, neuropsychological, intellectual testing, autism testing,

adaptive testing, to help answer questions.

And what it does is it sensitizes the way that I approach cases. So I would say I specialize in intellectual disability assessments. I specialize in autism, trying to differentiate autism from other psychiatric disorders, and there may be both, realistically, but also looking at specifics.

For example, a developmental disability can -- autism with speech and language deficits, autism with limited intellect. So there's some differentials that I specialize in that help on cases involving very serious crimes, whether they're, you know, violent crimes or sexual crimes.

We're trying to make sense of how that might add to the picture as far as whether or not, one, they're competent. Could there have been issues of, you know, NGI. Could there be issues of intent that would be impacted by that developmental disability?

And then the other area that I've been trained in, I've trained for 10 years with a neurologist in neuropsychology, is to work with that treatment team. And it can -- harkening back to what I said about the convergence of data, looking at neuro imaging, for example, with neuropsychological testing whether it's in a civil case or a criminal case to see if; one, it's

factually valid; and two, how it would play out in terms of questions of criminal competency, insanity at the time.

So I stay active in those and affiliate with colleagues who also work in those areas.

Q. I want to back up. You mentioned something, the WAIS-IV to the WAIS-5. Is the WAIS an IQ test?

A. Yes. The WAIS has traditionally been -- it started with the WAIS, W-A-I-S, and then proceeded to go through a series, and we were at the WAIS-IV. It was modified and revised, and it incorporated some very important changes that will have relevance for using it for intellectual disability and during criminal competency cases.

So it's not the WAIS-5, and I have undergone training in it, and will be utilizing that now exclusively because it has advantages to being used to further differentiate certain skills and abilities, but also it incorporates some of the memory components that I think are relevant for Court, processing components, that goes beyond the WAIS-IV.

Q. And when you talked about looking at brain imaging, that would be a neurologist. You just worked with a neurologist to consider the brain imaging in conjunction with your testing; is that fair?

A. I think that's fair to say, and I want to

clarify for the Court that that means I don't look at the scan and say, This is what's wrong. I look at the impressions of the neurologist or the neuroradiologist to see what the impressions are.

Whether it is, like, frontal lobe structural damage, whether it's ischemic changes due to a stroke. Then I look at, Well, that explains why they, you know, did poorly on this particular executive functioning test.

Like verbal fluency, for example, which that particular test would be looking at the frontal lobe being able to pull information out of the temporal lobe. So it becomes important because it helps to validate the findings and look at what the real causal reason is for the deficits.

Q. So how long have you been working in forensics?

A. So I've been working in forensic -- well, in some capacity, since my undergraduate work, more specifically, during my internship and my post-doctoral fellowship. And then I specialized through training with the FBI in sexually violent crimes.

For two summers, I did intensive training with their behavioral group through Quantico, just because I was working with more violent cases, and wanting to make sure that I understood the technology that was being used on the cases.

So I've been training basically since undergraduate and have stayed active in the training and courses. I take the CEUs, of course, with my colleagues and also independently just because of certain areas I need to study on, but I maintain active evolution, if you will, of my skills in forensics. Most recently, I did, like, a panel for ethics and forensics.

Q. How many hours of competency and insanity evaluation have you done over the course of your career?

A. So in 1998, I did the training with Dr. Randy Otto through the Florida Mental Health Institute, and since that time I've stayed active doing competency assessments and testimony, and it's been thousands of cases, and at this time I've testified over -- you know, easily over 1000 times.

Q. When you say you testified, in state court? Federal court? Different states?

A. So I actually testify in both courts. I do federal cases as well and have testified in Orlando, in Jacksonville, and also in Tampa. And I have done court-appointed cases and federal appointments as well. And within the past year, I would say four appointments by the federal courts in Tampa.

Q. Okay. How many death penalty cases have you been involved in before?

A. So to date, approximately 50.

Q. You were telling me yesterday about your involvement in the Hall case?

A. Right. So I was asked to assist in the Freddie Hall case to explain to the Court, to Judge Toner, about the standard error of measurement and standard deviations, and how, at that time, the Cherry decision of an exact score of 70 was not really consistent with psychometric practice.

It was just basically to present that information. Not to evaluate Mr. Hall, but just to present, you know, historically, that it's different and it actually over time did change. That the understanding of the psychological research data became, I would say, more tangible to the audience because it was not necessarily easy to understand how there could be error of measurement, but it is generally considered that there is plus or minus 3, you know, points difference.

So they get what we call "a confidence interval," and they assign a certain value to it like, you know, .05, .01.

Q. Are death penalty cases different in your mind in terms of the way people should be evaluated?

A. Death penalty cases are different in the sense that from the get-go there is an understanding that it's,

number one, very, very serious; number two, there are certain aspects of it, such as intellectual disability and developmental disability, that can be important factors in terms of whether or not it's even appropriate to assign the death penalty.

I've been involved in cases like that where, you know, initially it's not clear. You know, especially if a person is older and it happens, and the academic records might not be as available, or some might have been destroyed by accident or otherwise, or it just wasn't addressed.

Even though they did poorly in school, the system did not, basically, do the necessary testing to find out why that person was slow or having difficulty, and so it becomes important -- staying on point, it becomes important because really, in death penalty cases, from the beginning it's always conceptually understanding that every single life factor, biological or genetic, cultural, environmental factors, family structure, history of trauma, like, the ACE factors, all of that becomes very important in the context of, you know, the case playing out, if you will. Whether the person goes to trial or whether it's the penalty phase. Whether they're competent or not.

So it's different from the standpoint of

historically it involves a lot more attention to detail and how the cases work, in terms of testing, or understanding the need for certain collateral information that would be relevant to life history and even the crime itself.

Q. How much do you charge an hour?

A. So my hourly rate is $250 per hour.

Q. And is that standard across all cases?

A. It is.

Q. I would like to just ask you a few general questions about competency, and then we'll get more into the details.

What is "competency"?

A. So competency, as it pertains to competency to proceed to trial, it's basically, you know, statutorily looking at the defendant's ability to understand their charges, to identify the seriousness of their charges, a defendant's ability to understand potentially what could happen, in terms of difference scenarios related to pleas.

For example, pleading not guilty, pleading guilty, no contest, not guilty by reason of insanity.

Then the practical understanding of the adversarial nature of the legal process, what their attorney is supposed to do for them. The State Attorney, what their role is. The Judge. Understanding what, for

example, a plea bargain is, potential pleas, as well as a jury trial, and what could happen. A bench trial.

There's a lot of different details depending upon the case. Also, the person's capacity to basically understand relevant information as far as what they're being accused of, and an independent recollection of what actually occurred.

And that, in some cases, can be complicated because there could be a head injury or there could be psychiatric issues that impact that.

A person's ability to demonstrate appropriate courtroom behavior, whether or not there is any type of limitations, even handicaps, if you will, hearing impairment, speech, you know, differences in their language, primary language, but whether or not they can sit in a courtroom, pay attention, comprehend information, and also manifest appropriate behavioral compliance in terms of not acting out, getting up, or raising their hand or blurting things out.

And then also to testify relevantly in terms of being able to, if they did take the stand or they're answering questions, for example, to the judge. If they're able to, for example, comprehend the questions, provide appropriate responses, and to demonstrate that if there is some impairment, whether it's cognitive or

psychiatric, that they're appropriately stabilized on medication, you know, and that's known so that they're able to still respond in a rational manner to the information being discussed.

Q. Competency can change over time?

A. Yes.

Q. And what factors might influence competence?

A. Well, multiple factors. One of the basic practical ones is familiarity with material related to competency just by virtue of discussion. If the defendant is interviewed by several people over a period of time, that frequency of that discussion, if you will, can lead to them retaining more information about practical aspects of competency.

So that can affect it. Repetition. Also, whether or not they're stabilized for any mental health condition can also affect it, whether or not they have any type of systemic things that happen, like a disease process.

For example, dementia could affect it. A neurological disease process. Or actually, even medical issues like diabetes. If it's uncontrolled or if they have multiple sclerosis, those types of things can definitely affect an acute event, such as a head trauma, being injured at the jail or assaulted, suffering a

medical event, that can also affect it.

Then going to the training process, whether or not they're provided with the appropriate training within the context of a hospital setting or the community. And stabilized, for example, if it was a psychiatric reason for a lack of competence, being stabilized on appropriate meds and then going through appropriate training would be important.

If it was, for example, intellectual disability and/or autism, then having a routine that is more focused on accommodating those deficits through multisensory type of training, you know, see, hear, act out, the different aspects of competency.

So those are all factors that could affect it. If, for example, a person quits taking their medication, they can go from being competent to incompetent within a short amount of time, especially if it's a mental health issue.

Q. What about the circumstances of confinement?

A. So confinement can work -- two things. It can work to isolate the person more. They can become more depressed and less responsive to their environment; or alternatively, they could benefit from confinement just by having the structure, proper nutrition, proper sleep, medication.

Q. What about stress, does that ever influence competency factors?

A. In a multitude of ways, stress can affect competency. Stress can lead to a person becoming more depressed and less able to go forward on their case, feeling anxious and overwhelmed for just situational stressors, but there can also be stress related to physical medical problems that they have.

Stress relating to separation from family, and, of course, stress is stress-related to the case itself and the details of the case, especially in very serious crimes, like homicides.

Q. Dr. McClain, have you formed an expert opinion as to whether Mr. Mosley is currently competent under the six criteria in Florida Statute 916.12, and Florida Rule of Criminal Procedure 3.112, due to autism and intellectual disability?

And we're going to get to the details of your opinion, but I'm just curious if you have formed one?

A. I have.

Q. All right. Before we get to your professional conclusions, I would like to talk about what documents, records, interviews, and testing that you did in order to arrive at your opinion.

A. Certainly.

Q. Did you review any records?
A. I did.
Q. Which ones?
A. So the records that I reviewed are noted in my report, and I would refer to the report with the last date of visit of 6/27/25. So the records that I reviewed was: The charging documents, the Indictment --
Q. Dr. McClain, why don't we do this. Did you do a report in this case?
A. I did.
Q. And that was filed with the Court?
A. It was.
MS. RUSSELL: All right. If I may approach?
BY MS. RUSSELL:
Q. Dr. McClain, I'm going to show you what's been premarked as Exhibit 9. Is that the forensic report that you prepared in conjunction with this case?
A. It is.
MS. RUSSELL: Your Honor, may we admit Dr. McClain's report into evidence?
THE COURT: What exhibit number is that?
MS. RUSSELL: 9.
THE COURT: Any objection to Exhibit 9?
MS. SULLIVAN: No, Your Honor.
THE COURT: Okay. It will be admitted as such.

(Defense Exhibit 9 was admitted into evidence.)
BY MS. RUSSELL:
Q. All right. Dr. McClain, now you're free to refer to your exhibit. It's Exhibit 9.
In terms of the records that you reviewed --
A. Yes, ma'am.
Q. -- what did you start with?
A. So I started with referring to the charging documents, the Indictment, Notice to Seek the Death Penalty, All Children's Hospital records, BayCare records and academic records from Boca Ciega, Wellpath records from South Florida Evaluation and Treatment Center, St. Anthony's records, Pinellas County Jail records, Dr. Michael Railey's evaluation, Dr. Amy Fritz's evaluation, and Wellpath records.
THE COURT: Do you have a copy of her report for me?
MS. RUSSELL: Yes.
THE COURT: May I have it? It will be easier for me to follow along instead of writing down every record that she reviewed.
BY MS. RUSSELL:
Q. All right. Dr. McClain, you reviewed records from the Pinellas County Jail, and also from the South Florida Evaluation and Treatment Center?

A. Correct.
Q. Since Thomas Mosley returned?
A. Correct.
MS. RUSSELL: May I approach the witness?
THE COURT: Yes.
BY MS. RUSSELL:
Q. Dr. McClain, I'm going to show you what's been premarked as Exhibit 5 and Exhibit 6. Exhibit 5 are the hospital records from the South Florida Evaluation and Treatment Center. Exhibit 6 are the Pinellas County Jail records since Thomas Mosley's arrival in March of 2023.
A. Yes, ma'am.
Q. Are those records that you reviewed?
A. Yes, ma'am.
Q. In conjunction with your report?
A. Yes, ma'am.
MS. RUSSELL: We'd ask that Exhibits 5 and 6 be admitted into evidence.
THE COURT: Any objection?
MS. SULLIVAN: Can I see what is -- not the disc. Is it all of it?
MS. RUSSELL: It is only from the second stay, and I did include as a separate part in there the ones that were produced after Tenaglia's deposition.
MS. SULLIVAN: So it's everything that we have

received since the second stay?

MS. RUSSELL: Yes.

MS. SULLIVAN: And then the extra ones --

MS. RUSSELL: The extra ones that she produced during her deposition.

MS. SULLIVAN: Sorry, Your Honor. If you don't mind?

THE COURT: Take your time.

MS. SEIFER-SMITH: I have no objection to the hospital records, and then the disk was the complete Pinellas County Jail records. The thousand pages you sent me.

MS. RUSSELL: If you want to --

MS. SULLIVAN: No objection.

THE COURT: Okay. They will be admitted as Exhibit 5 and 6.

(Defense Exhibits 5 and 6 were admitted into evidence.)

BY MS. RUSSELL:

Q. Dr. McClain, what other records did you review in conjunction with your evaluation?

A. So just in terms of what I listed, I have also received the competency assessment notes that will be the hospital records. So those are inclusive in that, but to be specific.

Because I am a psychologist, neuropsychologist, I have received raw data that was provided to me relative to the evaluations by Dr. Tenaglia and Dr. Railey. Just to clarify on Dr. Railey's, it wasn't the raw data like you would typically traditionally see on the WAIS testing, it was the computerized printout of it, but I did receive the computerized printout as well for the adaptive test that he did, but I didn't see, like, the -- I think he may have administered it by computer to the parents. So all I saw was the ratings.

Q. Just to be clear, you were able to review that data, but I am not able to review the data, correct?

A. That's correct.

Q. And why is that?

A. So there are certain, what I would call, protective information, confidential information that can only be released to another qualified psychologist. So it can't just be produced to anybody, like, a layperson because the interpretation of it has to be done within the context of how it should be properly interpreted, which includes in conjunction with the person that's been evaluated.

Q. All right. Dr. McClain, as long as we're talking about it --

MS. RUSSELL: Your Honor, may I approach?

THE COURT: Yes.

BY MS. RUSSELL:

Q. I'm showing the witness what's been premarked as Exhibit 7. This is the Competency Assessment Tool, and the psychology records from South Florida Evaluation and Treatment Center. It is a subset of the papers that is in that file.

MS. SULLIVAN: No objection.

THE COURT: It's the Competency Assessment Tool and what else?

MS. RUSSELL: And psychology notes. Since the entire record is something like 350 pages, it is a little unwieldy to flip through --

THE COURT: Understood.

MS. RUSSELL: -- and this little subset is probably what we're going to be talking about the most.

THE COURT: Okay. So instead of giving me 1000 pages, you're going to draw my attention to what you believe to be the important part with Exhibit 7.

Does that sound right?

MS. RUSSELL: And you would be more than welcome to help yourself to the rest.

THE COURT: Yes, I understand. But this is a portion that you just wanted to draw my attention to.

MS. RUSSELL: That we're going to talk about, yes.

THE COURT: No objection to Exhibit 7?

MS. SULLIVAN: No, Your Honor.

THE COURT: So that's part of, actually, the larger Exhibit 5; is that correct?

MS. RUSSELL: Correct.

THE COURT: Okay.

(Defense Exhibit 7 was admitted into evidence.)

BY MS. RUSSELL:

Q. Dr. McClain, did you review any school records in conjunction with your evaluation?

A. I did.

MS. RUSSELL: May I approach?

THE COURT: Yes.

BY MS. RUSSELL:

Q. I'm showing, Dr. McClain, what has been premarked as Exhibit 4. This is Thomas Mosley's Adaptive Functioning Summary with tabs having to do with his educational records in Pinellas County.

Was that what you reviewed in conjunction with your evaluation?

A. That's correct.

MS. RUSSELL: I would like to ask that Exhibit 4 be moved into evidence?

THE COURT: Any objection to Exhibit 4?

MS. SULLIVAN: I have no objection to the records themselves coming in. I do have an objection to this Adaptive Functioning Summary that is at the beginning before Exhibit 1 starts.

My understanding when I asked Defense is that they created this summary. I think the records speak for themselves, and the records can come into evidence, but I don't know that we need a summary created by Defense outlining what they believe to be relevant in this case.

THE COURT: What's the title of the document?

MS. SULLIVAN: Thomas Mosley's Adaptive Functioning Summary.

MS. RUSSELL: Would Your Honor like to see what it looks like?

THE COURT: Sure. Who created the summary?

MS. RUSSELL: It was work product of counsel as a way to assist all of the experts in understanding the school records, which were voluminous. So, you know, we did prepare it. It was provided to each and every expert in this case.

THE COURT: Well, generally --

MS. RUSSELL: The experts read it. They relied on it. It was included in all of their evaluations.

THE COURT: Generally, with summaries, if they're going to be admitted, there needs to be a notice of a summary so opposing counsel can review the summary to ensure that it comports with all of the records that it's relying on.

Ms. Sullivan, have you seen it?

MS. SULLIVAN: Oh, I've seen it. It came with the records that I got recently.

THE COURT: When did you receive it?

MS. SULLIVAN: I received a lot of things in the last --

THE COURT: It wasn't yesterday?

MS. SULLIVAN: It was not yesterday --

THE COURT: Okay.

MS. SULLIVAN: -- I can tell you that. Other things were, but...

THE COURT: Go ahead.

MS. SULLIVAN: I just -- my argument is the records are the records. They speak for themselves. To attach a summary created by Defense Counsel highlighting in bold things that they find to be relevant, it's fine that the experts relied on this, and they can talk about the fact they relied on this, but I don't think it should come into evidence as part of the record because they're not the actual

school records. It's a summary.

THE COURT: Here is my -- I understand your objection. My concern is if they are relying on something that you believe may have skewed their analysis in some way, I don't know if that's what your argument is, that Defense Counsel is attempting to suggest what they think is important instead of having a doctor peruse the hundreds and thousands of pages, it would, I think, be important for me to see it in order to entertain any argument as to why a doctor should or should not have relied upon it.

Do you have any thoughts on that?

MS. SULLIVAN: I understand that reasoning.

THE COURT: I just -- it's hard for me to -- you know, we're going to have a lot of that, I think, over the next couple of days, as far as testing is concerned. What is available or not available to the lawyers. What's available or not available for me to review, and for me to make a decision about, you know, the manner in which any of these doctors conducted their evaluations and what they relied upon, I just think it would be important for me to see the exhibit.

Now, you can certainly argue how much weight I should give it and what it means in my analysis, if

anything. So I'll allow the exhibit in its entirety over the State's objection.

Do you want this back? I assume you want this back? Yeah, it's evidence.

MS. RUSSELL: I think that Dr. McClain has a copy.

THE COURT: Do you have your own copy?

THE WITNESS: I do, Your Honor.

THE COURT: Do you need this, or can I follow along with this?

MS. RUSSELL: You can follow along with this.

THE COURT: Okay. Thank you.

(Defense Exhibit 4 was admitted into evidence.)

BY MS. RUSSELL:

Q. All right. Dr. McClain, let's talk about Exhibit 4.

A. Yes, ma'am.

Q. I would like to walk you through some of the things that you might have looked at as you reviewed the school records.

Can I direct your attention to Tab 1?

A. Yes, ma'am.

THE COURT: Exhibit 4, Tab 1?

MS. RUSSELL: Exhibit 4, Tab 1, correct.

BY MS. RUSSELL:

Q. On page 4, there were IEPs, and it says, basically, Mr. Mosley's intervention started in the first grade in March of 2009?

A. Correct.

Q. And he struggled in school with IEPs all the way through high school, according to these records, correct?

A. Correct.

Q. On page 8, also on Tab 1, there are TOLD scores.

Do you know what the TOLD is?

A. That would be basically looking at his oral, comprehension, his listening skills, grammar and semantic skills, so it's going to give an idea of how well he can listen, comprehend, and then respond or organize his thoughts.

Q. So with those TOLD scores that are there on page 8, he took that test back in 2013?

A. Correct.

Q. And with the TOLD, the mean is 100?

A. Yes. So the average would be 100, then it's divided into standard deviations plus or minus 15 to give you ranges that would allow you to see how he is performing relative to his peers.

Q. And how did he do on that test?

A. So specific to his speaking skills, it falls at a 62, which is lower than two standard deviations from the

average range, placing him in the extremely low range. He's borderline for organizing his thoughts and organizing his understanding of language, and his listening skills are also borderline.

With regard to his semantics and spoken language, he is a 65, which would, again, be in the extremely low range.

Q. So unlike IQ, the standard deviations with the TOLD are 10, not 15, right?

A. Correct.

Q. So he was actually three standard deviations below the norm?

A. Correct.

Q. Semantics, spoken language, speaking, and pretty close to three standard deviations on listening and grammar?

A. Correct, and they do reference also the FCAT scores beneath it, which would be consistent with him having difficulty with his reading, his vocabulary in the different areas.

Q. So those FCAT scores in 2014, when Thomas was in the fifth grade, he was scoring about half of the state mean; is that right?

MS. SULLIVAN: Objection to Counsel leading. I would ask for open-ended questions.

THE COURT: Rephrase your question, please.

BY MS. RUSSELL:

Q. What did you notice about his FCAT scores on page 8 back when Thomas was in the fifth grade?

A. So, basically, the FCAT scores are designed to see if they pass or fail relative to moving forward in their academic training, and he's basically in a failure range.

Q. Did he have failing grades, Dr. McClain?

A. With regard to his grades, he did struggle with his grades. For example, I would say average to below average. He had difficulty with reading. He had difficulties with math, language arts. When he was given intensive studies, he did struggle with math with studying and got an F in math.

So there are some definite difficulties that he is having that were noted, and there's some variability with completing assignments. You know, sometimes it shows him being encouraged. Other times, he's having difficulty and giving up.

Q. So back to Tab 1 on page 9 at the top. It talked about that Thomas tried hard to complete his work?

A. Correct.

Q. So was it an issue of effort for him that you saw?

A. So it's variable, and that's noted also -- basically, I think there's some variability because it says at the bottom of the paragraph that Thomas is not motivated to complete the work. It was suggested that he takes work home.

Now, the reason he's not completing it is not obvious whether it is motivation, difficulty understanding, but there is definitely a suggestion that he's exhibiting effort to try to complete it, but then at other times doesn't appear to be able to be motivated to do it. Why that's occurring is the question since it's so variable, basically.

Q. And also on Tab 1, page 13 through 15, Ms. Behring, who had some handwritten notes. What was she seeing about his effort in school?

A. This is relative to Ms. Steiner.

Q. Oh, Ms. Steiner, correct.

A. So on Ms. Steiner's impressions, he's in sixth grade. This is dated 2/19/15. It says that he tries very hard. Doesn't always ask for help, but accepts it if offered, and that he needs time to process new concepts before he can apply them.

Then it goes on to say he's made a complete turnaround from the beginning of the school year. He used to be angry and refuse help. He seems now calm and

accepts help. He seems excited to learn things.

Q. What about what Ms. Behring wrote on page 15?

A. On page 15, Ms. Behring, B-E-H-R-I-N-G, says that Thomas is a respectful child and tries hard to complete work. He has extreme difficulty completing assignments. On his sixth grade level skills, weak with multiplication and struggles with subtraction. Then it goes on to say that he needs to work on subtraction and multiplication to learn sixth grade standards, and that he should attend tutoring on a regular basis, and he could make progress with one-to-one teaching, regular tutoring, pulled out from class to work on math.

Q. And from those educational records, he was pulled out during elementary school?

A. Yes, ma'am.

Q. What about Exhibit 2? Sorry. Tab 2. Exhibit 4, Tab 2? Those are homework that Thomas Mosley completed when he was 17 years old.

What do you notice about the complexity of his work at 17?

A. It's very simple, concrete. I also note there's difficulties with spelling that are consistently through the homework.

Q. Okay. Under Tab 3, there was a psychological report written by Ms. -- the school psychologist, Judy

Merrill.

Was there anything in that report that was important to your analysis?

A. So she's -- the doctor is basically noting that there's difficulties with his FCAT scores on the first page, which I think is important. She's also evaluating him and referred -- he's referred to her for possible eligibility for the need of specially designed instruction, so I think that's important.

In terms of other things that are important, she notes that he was enrolled in the third grade in the STAR's Dropout Prevention Class. Basically, that would allow him more contact with the teacher in less student population. So they're trying to accommodate him in a smaller group. He was noted to be behaving appropriately. Then she notes intensive instruction is being given.

Q. So those interventions are because he was struggling in school?

A. Yes. I think one thing that struck me in reading was when they said, He was able to read 27 words per minute while his peer group read 45.

THE COURT: What page are you looking at?

THE WITNESS: Your Honor, I'm looking at page 4 of the evaluation itself.

THE COURT: Thank you.

THE WITNESS: The first paragraph.

THE COURT: Thank you.

THE WITNESS: Certainly. So that was important to me just from the standpoint of where he is relative to his peers in terms of his ability to read or process written material.

BY MS. RUSSELL:

Q. And he received one-on-one intensive instruction for reading five days a week for 30 minutes to try to improve it?

A. Correct.

Q. What about moving on to Tab 4. Did you find any important information in his specific learning disabilities in language-impaired team summary?

A. Just in terms of him being able to accomplish things, that he is being provided with appropriate intervention that's being provided. It's identified that he is trying to make progress, but the intervention has not sufficiently improved the rate of learning, and additional resources are needed. That's found on page 2, part two, where it says "rate of progress."

Q. Anything else?

A. So the main thing is at the very bottom where they check off and say the student's progress is not primarily the result of any of the exclusionary factors or

lack of appropriate instruction, and the student needs intervention that differs significantly in intensity and duration from that which can be provided through the general education resources.

So, again, it's really honing in on the fact that he's going to need more intensive intervention in order to remediate the deficits that they're noting in the expressive and receptive language skills.

Q. Dr. McClain, what about Tab 5? It's a Good Cause Exemption Letter. Have you seen those before in reviewing school records in Florida?

A. That's actually the first time that I've seen that.

Q. What does it tell you about how he was doing in the third grade?

A. That he's not successfully getting through the third grade, but he's exerting effort. So they're trying to move him forward.

Q. And he was moved forward under an exemption for what reason?

A. He or she took the FCAT, and so the FCAT, they scored at Level 1. They can only be promoted if they meet the good cause exemptions. So, in other words, because he didn't succeed on the FCAT, they're looking at could they, even though he didn't succeed at it, promote him.

Q. And why did they promote him? What was his exemption?

A. Basically, looking at just that he took the test, that he otherwise would be promoted.

Q. Okay. Are we looking at the same Tab 5?

A. That he's got a 504. He had a previous retention and more than two years' intensive remediation.

Q. And he actually repeated the third grade?

A. Correct.

Q. Twice?

A. Correct.

Q. Let's move on to Exhibit 6. These are reports from speech and language teachers. One at Melrose Elementary when Thomas was in the third grade the first time, and then one from Lakewood Elementary when he was in third grade the second time.

What does the report of Amy King tell you about the kind of deficits Thomas had as an elementary school student?

THE COURT: Are we on Tab 6?

MS. RUSSELL: Yes. That is Tab 6, Your Honor.

THE COURT: Thank you.

THE WITNESS: So I'm referencing page 2 under Tab 6, where they're talking about the TOLD test and looking at how he did with regard to specifics within

language and speech.

So they talk about sentence combining. Forming one sentence from two or more simple sentences, he was below average.

Picture vocabulary, selecting from six pictures the one that best represents the stimulus phrase, he was very poor on that.

Word ordering, he was very poor for that. That would be taking a random list of words to form complete sentences.

Then relational vocabulary was also poor.

Then morphological comprehension, identifying orally presented sentences was poor.

Then it goes on just to look at what we call composite performance. I don't want to miss this. Multiple meanings -- relating multiple meanings for orally presented homophones. He was average for that.

THE COURT REPORTER: Ma'am, can you speak up and slow down?

THE WITNESS: I sure can.

THE COURT REPORTER: Thank you.

THE WITNESS: So for morphological comprehension, identifying orally presented sentences is having correct or incorrect grammar.

Then there was multiple meanings, relating multiple meanings for orally presented homophones, he was actually average in that.

Then they do composite performances for listening, was very poor.

Organizing was noted as poor.

Speaking was below average.

Grammar was poor.

Semantics, very poor.

And spoken language, very poor.

And it says at the bottom: Index scores are based on a mean of 100, and a standard deviation of 15.

BY MS. RUSSELL:

Q. What does his profile on a TOLD tell you about how Thomas Mosley was communicating as a third grader?

A. So just a cumulative review to date, looking at the exhibits and the focus, his obvious language deficits, speech and language or expressive deficits are impacting his ability to progress in school, and that's something that has been consistent, basically, since he entered school.

Q. I want to ask you about the OWLS. What is that? That's also on page 2.

A. Okay. That's the Oral and Written Language

Scales. That's used to determine, like, the areas that they have difficulty, whether it's, like, in listening comprehension, oral expression, and then oral composite.

So that's going to look at, basically, their ability to comprehend and then produce responses, which just from a neurodevelopmental standpoint, has a lot to do with areas of the brain that are activated by that.

Q. How did he do on the OWLS in third grade?

A. So the OWLS put him at a 75 for listening comprehension, which would be in the borderline range. His oral expression was a 68, which is in the extremely low range. And then for oral composite, he was right on the borderline to extremely low range.

Q. Then the next report is by Jessica Daw from Lakewood Elementary. Were her findings consistent in terms of Thomas' speech and language deficits?

A. Let me turn to that. So that would be page 6. And his exceptionalities are noted for specific learning disabled and language impaired. He's age 11, fourth grade. Lakewood Elementary.

It says his IEPs. And the results are very similar in terms of the TOLD test, with finding him having difficulties in those areas.

On page 8, it notes low average to very poor. Has difficulty with expressive or receptive expressive and

organizational languages. So it would be consistent.

Q. Let's go on to Tab 7 in Exhibit 4. Thomas ended up in the 7th percentile in reading comprehension?

A. Correct.

Q. And that was in fifth grade?

A. Correct.

Q. That is a letter that the school sent to the parents to alert them that Thomas was having some real trouble with reading and spelling?

A. Correct, and they do have specific examples of the spelling errors that are included.

Q. And what are those?

A. So they're common words, then it lists how he spelled it. For example, on page 3, disinfectant is spelled D-I-S-I-N-F-A-C-T-I-N-G. Objection is U-P-J-E-T-I-O-N. Then it goes on to give some more examples.

Q. Is he a good speller for a fifth grader?

A. So the simple answer is, no. It looks like there is some trying to sound it out, if you will, but it's not correct.

Q. What about Tab 8? It's a letter from the Tomlinson Adult Learning Center that was sent to the Mosleys?

A. Yes, ma'am.

Q. Okay. Did it seem like Thomas was ever going to graduate from high school or get a GED?

A. So the important thing, I think, that I noted is that they were commenting that he is moving very slowly, not really making enough progress to retest him, and that basically he's having difficulty. They wanted to know about graduation. He basically was noted to -- they weren't sure if he would be able to do that or a traditional high school program. They're saying, at this time, that I have no confidence he will graduate from either program.

Q. Tab 9. Tab 9 is reading -- STAR Reading Report from March of 2019, when Thomas was in high school?

A. Yes, ma'am.

Q. He was 17 years old?

A. Correct.

Q. And in the ninth grade?

A. Correct.

Q. What was his reading level?

A. So the reading level was noted to be 1. Percentile rank of 1, and grade equivalent, which I think is important, of 2.7, which would indicate that he's at a second grade level.

Q. When he was 17?

A. Correct.

Q. And what about his instructional reading level in terms of -- I mean, what is an instructional reading level?

A. Basically, it would be what level, like, for example, a primer book, like, a second grade level is recommended for instruction. So they're trying to specifically recommend and tailor what type of remediation he would require to build skills.

Q. What is the first percentile in reading?

A. So --

Q. What does that statistic actually mean?

A. So percentiles refer relative to a peer group. So first percentile would simply mean that 99 percent of his peers function at a higher level relative to the individual.

Q. So that's low?

A. That would be low, yes.

Q. In terms of all of the educational records, did you see any part of Thomas' academic history where he was succeeding?

A. I did not.

Q. He was way behind in reading?

A. Correct.

Q. He was way behind in math?

A. Correct.

Q. He had speech and language difficulties?
A. Correct.
Q. He was failing his FCAT?
A. Correct.
Q. At eight years old, he had trouble learning and was recommended for exceptional student at ESE?
A. Correct.
Q. But, yet, his teachers observed him to be engaged as an elementary school student?
A. Correct.
Q. And you reviewed his Boca Ciega High School transcript in conjunction with our past hearings, right?
A. Correct.
Q. He had poor grades in high school?
MS. SEIFER-SMITH: Your Honor, again, I would ask that Ms. Russell not testify?
THE COURT: Rephrase your question, please.
BY MS. RUSSELL:
Q. Did he have poor grades in high school?
A. I'm sorry. Could you repeat that?
Q. Did Thomas Mosley have poor grades in high school?
A. He did.
Q. And he dropped out in the 10th grade when he was 17 years old?

A. Correct.

Q. Okay. I'm going to switch gears for a minute, Dr. McClain.

A. Certainly.

Q. I would like to talk to you about the medical report and competency assessments performed by Dr. Lana Tenaglia.

A. Yes, ma'am.

Q. Did you have a chance to review those?

A. I did.

THE COURT: What was the title of the document?

MS. RUSSELL: That would be Exhibit 7, Your Honor.

THE COURT: That's already in, right?

MS. RUSSELL: Yes.

THE COURT: Thank you.

MS. RUSSELL: I have an extra copy of it.

BY MS. RUSSELL:

Q. Dr. McClain, I'm going to approach and hand you what's been premarked as Exhibit 7, because I'm not sure that you have a set of Dr. Tenaglia's reports --

A. Yes, ma'am.

Q. -- separate from the full set of records from the South Florida Evaluation and Treatment Center.

Did you review raw data from Dr. Tenaglia?

A. I did.

Q. And did you review any notes from Dr. Tenaglia?

A. I don't have notes specifically written in her handwriting, no. I have the Competency Assessment Tool, which appears to just be maybe a computerized form that they click or check certain --

Q. So you have Exhibit 7, which is her Competency Assessment Tools and her computerized reports, but you did not receive or review any handwritten notes from Dr. Tenaglia?

A. No. I received raw data from the testing that was done with the WAIS-IV, with the EIP, and with the M-FAST, but I did not receive any notes.

Q. Do you routinely produce your notes in litigation like this?

A. So I'm routinely asked to produce notes for depositions, for example, and/or for the other side to look at. I try to type my notes when that's requested because I have poor handwriting, but I do try to maintain those notes simply because they could have some specific areas that are of interest as to competency or other areas.

Q. So would Dr. Tenaglia's notes be important to assess the accuracy of her diagnosis?

A. So based upon -- I'm going to base this on my

review of her report, and also on the Competency Assessment Tool. Looking at some of the comments that are made, it would be important to note what she's using to infer that Mr. Mosley is competent.

And I'm specifically referencing -- I believe it's page 3 of 5. There's a date of service of 1/30/2025, and it says that he does not -- is not competent. Mr. Mosley continues to present with a lack of factual knowledge of the legal system. He did not want to -- when asked to describe the allegations, it says he did not want to because I feel like something bad will happen if I talk about it.

I asked him what he believes will happen, and he says, I don't know. I just don't want to talk about it. But it says, overall, Mr. Mosley appears to be putting forth poor effort towards competency assessments.

So there's certain things that would be helpful to have more details about that given that there is a documented history of expressive and receptive language deficits. So it wasn't clear to me if it's articulation issues, trauma issues, that any additional notes might be real helpful in trying to figure some of that out, since it is more complex.

And the poor effort, it wasn't clear to me if it's poor effort or something more related to limited

language skills and/or trauma.

Q. Let's talk about the testing that you did in conjunction with your evaluation of Thomas Mosley.

A. Can I just pause for a minute?

Q. Sure.

A. Because I think it's important while we're on this, that there was another thing that brought me concern, and it's relevant to competency, and that is on 2/25/25, there was a notation of Mr. Mosley is competent to proceed on the basis of malingering.

So I didn't want to miss this because I didn't understand it. So I was concerned because it didn't make any sense to me. Then it talked about observations in standardized testing reveal Mr. Mosley is likely feigning psychiatric symptoms in putting forth poor effort towards assessments.

Overall, it's my opinion he likely has a factual and rational understanding of his legal charges and the legal system and has the capacity to rationally disclose pertinent facts to his attorney, manifest appropriate courtroom behavior, and testify relevantly.

So I didn't see other information to help me understand why that was the conclusion, meaning, what was he actually reporting in detail as his answers.

Q. So notes would have been helpful to get to the

bottom of that?

A. Again, I was just trying to approach it objectively to see was it because he is somehow psychiatrically impaired by something that is causing him to stop, like, the belief that something bad is going to happen if he talked about it, or was it maybe expressive language deficits, but it just would have been more helpful to understand the conclusions.

Q. Okay. Dr. McClain, you're going to get a chance to talk more about Dr. Tenaglia down the road a little bit, but I still would like to try and focus on the things that you reviewed in conjunction with preparing a report.

So can we switch gears now and talk about the testing that you performed?

A. Yes, ma'am.

Q. All right. What test did you give Thomas Mosley?

A. So Mr. Mosley when I saw him 3/28/25, I did administer the Rey 15-Item Test. The reason being, it's a very simple, concrete malingering test that brain-injured individuals, slower individuals, you can give to because it's very concrete. It's 15 items that consist of alphabet, numbers, circle, square, triangle.

He was 15 out of 15 on it. And I did it because I looked at what might be important to help clarify if he

was intentionally malingering, as noted in the hospital report, or if it maybe was related to something else, like speech and language deficits, reading comprehension level, and intellectual disability.

Then as I sat back on the case and I was trying to do a differential diagnosis, like, what is going on in this case and his diagnosis? One of the things, because of my training, that I thought of was, you know, with the expressive and receptive deficits and the social deficits that I was noting in my interactions with him and observing him, I wondered if there may be a component of autism, that he was possibly on spectrum.

So I asked permission from Defense Counsels, I would like to just -- to be certain of what's going on here, if it's psychosis versus intellectual disability versus something else, so I asked to give the parents the autism measure called the GARS, which is used in my assessments with individuals where I think there may be autism.

So I did do that testing, and that was completed by the parents. And I also did adaptive testing separate and apart from the compilation of, you know, his school records and looking at those. And this adaptive measure that I gave is a standard measure that we use to formally identify and diagnose adaptive deficits relative to

intellectual disability.

Q. Dr. McClain, can we back up? The Rey 15. You said that Thomas scored 15 out of 15?

A. Correct.

Q. What does that tell you about his level of effort on that day?

A. Based upon that particular test, it would not be suggestive of malingering. Again, no one test is going to be like the litmus test for malingering. It has to be taken in conjunction with other factors, but it did strike me that there wasn't this effort to, like, I don't remember anything, or drawing the same thing over and over, which can happen. You know, it has happened.

So that, to me, was an indicator -- one indicator, at least, that he was not malingering on that particular day with me.

Q. You mentioned the ABAS. What does that stand for?

A. So the ABAS-3 is the Adaptive Behavior Assessment System Third Edition.

Q. What is that intended to tell you?

A. So it, basically, is a measure that is completed by an informant that has knowledge of the individual within the developmental window of zero to 18, now 22, that's used to determine whether or not there were

adaptive deficits during that period of development.

It can be done, teachers can complete it, parents can complete it, individuals can complete it on themselves. I very rarely, if ever, do that, but I typically will have the parent or parents complete it because they would be most knowledgeable with regard to the onset of the deficits and what they saw is occurring.

Q. How many questions are on the ABAS?

A. So on the Adaptive Behavior Assessment System, there are 25 to 26 questions within each category. In some, there's 20, 22, but, basically, it tests multiple areas, and it helps to determine whether or not the individual is having difficulties in communication, community use, functional academics, home living, health and safety, leisure, self-care, self-direction, social and work.

So it breaks it down in a way that helps to identify where the deficits occur and overall if they fall within a range consistent with diagnosed intellectual disability.

Q. So is ABAS a specific measure for adaptive functioning with intellectual disability, or is it for any kind of disability?

A. So the ABAS can be used, for example, with autism to help tease out more of what level of autism they

have because to really -- for example, for a person to qualify for services through the Agency For Persons With Disabilities if they have autism, many individuals on the spectrum can go out and they can even hold jobs, but some or more profoundly impaired that would show up on the adaptive functioning and the autism measure so as to require, obviously, services -- specialized services.

But it can be used if there is just a question from another type of disease process, Prader-Willi, you know, different neurological disease processes for children that they would require, for instance, cerebral palsy or spina bifida, that they would require extra care in those areas.

And, again, it goes into and breaks it down so that you can see, like, even basic self-care, are they able to do that without assistance?

Q. How does the data that you get from the ABAS relate to the three domains of adaptive functioning in intellectual disability diagnosis?

A. So the way that it would relate, adaptive functioning is a very important component of the three prongs of identifying intellectual disability. And those areas, such as social, communication, practical skills, conceptual skills, have to be markedly impaired to diagnose intellectual disability.

If, for example, you have someone who is in the average range for adaptive functioning, but they have a 70 IQ, one wouldn't lean towards identifying intellectual disability because they're able to accommodate, you know.

If, for example, someone has an IQ of 60, and their adaptive deficits are, for example, 55 or lower for the different domains, then it would lean more to the conclusion that we're looking at intellectual disability, especially if it fell within that window of onset of birth to 18 to 22.

Q. So tell me about the scores on the ABAS and what they tell you?

A. Certainly. So just to reference, I'm looking at the raw data, but it's in my report, the specific percentiles, so that it can be followed.

So the specific percentiles, as we look at adaptive functioning, which was completed by the parents, just to clarify for the Court, looking at the specific areas on adaptive functioning, his basic overall adaptive functioning was extremely low.

It was at a general adaptive composite of 54, which falls at the .1 percentile. And so that's saying that overall, for this particular defendant, he's rated to be 99.9 percent slower or lower compared to his peers for his overall adaptive functioning.

And, again, just for clarification, this is based upon the rating that was done by the parents for his developmental upbringing, okay? So they're rating things on all those different levels.

Now, for conceptual skills, he's a 54 or .1 percentile, so it's very consistent.

Social skills, a 56, or .2 percentile.

And then practical skills for a 51, or a .1 percentile.

Q. Are all of those more than two standard deviations below the norm?

A. So using 100 as the average, three standard deviations, of course, would be 45. So 100 minus 45 would be at 55. So for those, we're actually looking at, roughly, three standard deviations.

Q. Does the score on the ABAS tell you anything about autism?

A. So autism, as defined in DSM-5-TR, does not rely on adaptive functioning. It can basically affect all of those areas, but it's really based more on specific criteria that look at a pattern of behaviors, including restrictive or repetitive behaviors, social deficits, maladaptive speech, behavioral anomalies.

So it's different than adaptive functioning, but adaptive functioning certainly is an important part of

that to determine what level of care would be needed and what level of assistance.

So, for example, if I were to qualify someone through the Agency for Persons with Disabilities for autism, I would also do adaptive testing to look at is it consistent with what's reported on the autism measure as far as the level of care needed. Like, requiring substantial support, requiring very substantial support. So it could be helpful in determining that.

Q. Let's talk about the GARS.

A. Certainly.

Q. What is it?

A. So the GARS is essentially a measure of autism that is based upon the DSM-5-TR that has specific areas that identify deficits commonly seen with autism. And it allows the reader, obviously, the person who has known the person within that developmental window -- it could be a teacher, it could be a parent, a grandparent -- to basically rate the person in terms of restrictive or repetitive behaviors, social interaction, social communication, emotional responses, cognitive style and maladaptive speech.

So it basically asks questions, and the format for it is describing the behavior and then asking the respondent to respond not at all like the person, not much

like the individual, somewhat like the individual, or very much like the individual.

And once I get the form back, I then tally the raw score for each area, and then there's a normative book, and if they -- there's four that are used if the person doesn't have speech, but there's six that are used if they have speech. So all these areas would be scored and then we get a relative percentile of likelihood associated with autism.

Q. What did the GARS tell you?

A. So on the GARS, the rating scales that were completed basically placed him at a level 2 of -- probably would be a level 1, but a level 2 is requiring substantial support. And then basically in connecting the adaptive functioning with the GARS, it looks at what would this person need to basically be able to function socially, occupationally, and communication-wise.

Q. What does it tell you about autism?

A. That he would fall within the spectrum for autism spectrum.

Q. Where does he fall?

A. That would be in a level 2 requiring substantial support. And I just want to clarify, the behaviors in the areas noted -- communication deficits were noted to be a bigger area of deficits, emotional responses, speech and

language deficits were noted. Social interaction deficits were noted, but not as much as social communication.

So there's a differentiation there. Meaning that understanding of speech and language is coming from other individuals processing and, you know, giving appropriate response is more an area of concern for him as opposed to actual interactions with peers.

Q. So since we're talking about test results, did you rely on any test results from other experts in forming your opinion?

A. So there was some concerns. The raw data that I received from --

Q. Go ahead?

A. I was just going to say that there were IQ scores produced by two experts, Dr. Tenaglia and Dr. Railey, and I believe Dr. Tenaglia first conducted testing while Mr. Mosley was in the hospital for psychiatric stabilization, and I didn't really -- I didn't consider it valid for several reasons.

But in looking at the order of testing, malingering tests were given subsequent to the IQ testing. So it was concluded he was malingering, but technically, if the evaluator is going to do the malingering test, you do them before the testing because then they would have bearing on that day and that time, whether or not they're

motivated.

So I didn't really utilize that or assume that that was accurate. I believe Dr. Railey also did testing, IQ testing, and he used the WHODAS, W-H-O-D-A-S, a disability rating scale. He did come up with results that were consistent with intellectual disability on the scores. I did not see the raw data. Again, he didn't produce the raw data. I had a computerized printout for it. So I know the one embedded measure within that test vocabulary minus digit span was within normal limits, so it didn't suggest malingering.

I don't know about the other one because I need the raw data to look at that. It would be the reliable digit span, but I do see that on the WHODAS, I believe the parents might have been sent a link to complete that, but I do not know how the part that rated Mr. Mosley was completed, whether the doctor, Dr. Railey, did it or Mr. Mosley did it, but there was extremely discrepant results with no problems at all noted on when the parents saying there were adaptive deficits and more in the severe range.

Q. Okay. That's a lot to unpack. I want to back up and ask you a few follow-up questions.

A. Sure.

Q. So when I asked you about testing with other

doctors. In short answer, you did not rely on the IQ test from Dr. Tenaglia?

A. Correct.

Q. You did rely on the IQ test with Dr. Railey?

A. Dr. Railey's interpretive is valid in his overall report, and it gave very specifics about scores. And he felt that -- he felt it was higher, basically, is what he's saying, but he didn't discredit it and say that it's not valid.

Q. And Dr. Railey's full-scale IQ score was?

A. So his full-scale IQ was a 55.

Q. And from the data, you thought that the embedded measures of malingering in the WAIS that Dr. Railey did checked out all right?

A. Correct. There's no suggestion that Dr. Railey did a specific malingering test in his report. What I noted was that he was saying -- and I'm referencing his report, page 7 of 11 -- he felt that the formal full-scale IQ of 55 should be interpreted with caution, and he states that his engagement in socially and cognitively complex tasks combined with his suspected malingering supports the conclusion that his genuine intellectual functioning is considerably higher than formal scores reflect.

But what was not clear to me was his engagement in socially and cognitively complex tasks. There is no

reference to what it is referring to. So without any type of testing, I just had concerns about some of the conclusions he made also above this scoring through autism criteria, and he's talking about things that I don't see any type of evidence for.

Q. Okay.

A. There's no reference, in other words, to school records or something that would be.

Q. All right. We can get into Dr. Railey's report in more detail later on, but since we're here on IQ and relying on his IQ score, can you tell me what is the practice effect?

A. So the practice effect, and in this particular case, because of the proximity or the time that elapsed between when Dr. Tenaglia tested Mr. Mosley, and Dr. Railey, it would be expected there would be a practice effect of 5 or more points because he's had exposure to the test while he was at the hospital, and when he came back, Dr. Railey tested him within what would be considered the too soon a window of time.

Q. Normally, you're supposed to wait how long between IQ tests if you give them the same WAIS-IV?

A. Approximately a year.

Q. And in this case, it was a matter of months. He tested him May 12th.

THE COURT: So these numerous doctors that are appointed for competency evaluations at any given time, how do I fix that?

THE WITNESS: Your Honor, that's a brilliant question. So, typically, when an individual is appointed on a case like this, which is more complex, the doctor is being able to communicate with the other doctor technically should know to do that, but the way to do it may be to say within the order itself or when someone is being appointed to make sure to touch base and find out with Defense Counsel or State, you know, what doctors have been appointed, because I routinely will ask, if it's Torrealday, for example, Dr. Torrealday, I'll ask, What test did you do? I don't want to be redundant. Or are they Spanish speaking? Then we're going to let that hold fast.

It becomes important, but I think the way, Your Honor, is to find out which doctors have been appointed for what reason. For example, traditionally, one would not do IQ testing at the state hospital if they're in there for psychiatric reasons. So that was unexpected.

THE COURT: I'm fairly certain you recommended that in the last hearing.

THE WITNESS: Correct.

THE COURT: IQ testing by the state hospital.

THE WITNESS: And neuropsych.

THE COURT: Yes.

THE WITNESS: But, traditionally, that wouldn't occur. It would occur within the context of the competency assessment.

THE COURT: We've been going for a bit. Let's take a 10-minute recess. How much time -- I don't care what the answer is. How much time do you have left for Dr. McClain?

MS. RUSSELL: I would say two hours.

THE COURT: Okay. Well, let's take a 10-minute break. We'll come back. We'll work until about noon, and then we'll take a lunch break, then come back after lunch.

(Break taken.)

BY MS. RUSSELL:

Q. Dr. McClain, I would like to start by asking you about your recommendations about IQ testing at the state hospital. Did you recommend that Thomas Mosley get IQ testing at the state hospital in the last round?

A. My summary in my report details that I recommended that he be evaluated for cognitive testing, as well as intellectual testing, not specific to the state

hospital, but that he be tested.

Q. All right. Did you review any preliminary test results from Dr. Amy Fritz?

A. I did.

MS. RUSSELL: All right. May I approach?

THE COURT: Yes.

MS. RUSSELL: I will hand you a copy.

THE COURT: What number is this?

MS. RUSSELL: This is Exhibit 8.

BY MS. RUSSELL:

Q. Let the record reflect I'm showing the witness what's been premarked as Exhibit 8, which are preliminary test results from Dr. Amy Fritz.

A. Correct.

MS. RUSSELL: We'd ask that those be admitted into evidence.

THE COURT: Any objection?

MS. SULLIVAN: Just to clarify. This is just the initial summary. She did not do a full report?

MS. RUSSELL: Correct. This is the original summary. Dr. Fritz saw Mr. Mosley in a very short amount of time. She gave us the test summary, which Dr. McClain was able to rely on in her report.

Dr. Fritz's full report was only prepared and completed last week, and at that point, I'm not sure

if it's been filed in the record yet.

MS. SULLIVAN: Perhaps not.

MS. RUSSELL: It hasn't probably been filed in the record yet, but we will file it in the record, and she's going to testify tomorrow.

THE COURT: Okay.

MS. RUSSELL: But for the purposes of relying on the report, Dr. McClain was only able to have this testing information. She didn't have the whole report.

THE COURT: Okay. Any objection to this --

MS. SULLIVAN: No objection.

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

(Defense Exhibit 8 was admitted into evidence.)

BY MS. RUSSELL:

Q. So, Dr. McClain, in conjunction with your evaluation, did you suggest that we potentially have some speech-language testing completed?

A. Yes, ma'am.

Q. Did you get results from those tests?

A. Yes, ma'am.

Q. Tell me what you took away from the testing done by Dr. Fritz?

A. So the testing was relevant to identifying and

clarifying his current functioning for speech and language relative to the academic history of having speech and language deficits. So it was helpful to see if those deficits were consistent and identified by the current speech and language therapist as compared with the past.

Q. So what did you learn from the cognitive linguistic test?

A. So, basically, that he continues to have deficits for speech and language that his functioning on what we call the Peabody Picture Vocabulary Test was a 59. So absent any of the other IQ measures that were done, this is a reference to his estimated IQ, which I felt was helpful separate and apart from teasing out with the WAIS-IV, looking at this is consistent with him having difficulty overall for his intellectual functioning, as well as the expressive and receptive deficits.

Q. Was there anything specific from the Cognitive Linguistic Quick Test, the CLQT?

A. Basically, the difficulties were with attention, memory, executive functioning, language and visuospatial skills, basically looking at overall functional cognitive skills.

Q. What about Dr. Fritz's results in the Clinical Evaluation of Language Fundamentals, the CELF-5?

A. So it basically was looking at his overall

expressive and receptive skills. So, basically, he answered 20 percent of basic recall, and simple inferential questions suggesting that -- and this is the conclusion Dr. Fritz made -- was that Mr. Mosley's expressive, receptive and pragmatic communication skills are profoundly impaired.

Q. Looking at the CELF-5, there are different subtests which tell us the age equivalent of different listening and speaking skills; is that fair?

A. That's correct.

Q. Okay. So talking about following directions, what was the age equivalent?

A. It was 7 years, 5 months.

Q. What about recalling sentences?

A. That was 12 years, 7 months.

Q. What about semantic relationships?

A. That was 7 years, 10 months.

Q. And what are semantic relationships?

A. Just understanding the relationship between words. The meaning of words within context.

Q. And that has to do with your listening comprehension?

A. Correct.

Q. What about word definitions?

A. Word definitions, he was at 12 years, 4 months.

Q. Anything about the Social Responsiveness Scale Test that Dr. Fritz gave?

A. So in terms of -- the Social Responsiveness Test was of particular interest to me in terms of differential diagnosis because of the correlation with the Autism Diagnostic Observations Schedule. So Dr. Fritz is saying that his results for expressive and receptive difficulties are very similar to individuals with Autism Spectrum, and that, basically, there was impaired range for social communications, social cognition, and social motivation, but she noted little to no presence of restrictive interest or behaviors, which is a component of autism.

So it indicated in here that his parents were given that measure to complete, and that she wanted to take a look at that to see if it was consistent with him reporting restrictive behaviors or repetitive behaviors to rule out Autism Spectrum.

Q. And are these the type of tests that are normally given and relied upon by experts who are making diagnoses of autism or intellectual disability?

A. So the ADOS, yes, it is.

Q. Anything else?

A. So the other test, these are more speech and language in terms of what I see here, but that would be the ADOS is a common one.

Q. Did you do any collateral interviews with family members, Dr. McClain?

A. So I did speak with family. I spoke on July 1st -- I spoke with mom and dad. I was able to speak with both mom and dad that day and was able to identify some examples in some areas that both parents consistently thought were affected in terms of comprehension, understanding of social situations.

For example, sports, when engaging in sports that Mr. Mosley had attempted to play football but was confused about the rules as to which way to run, and he ran it towards the other goal for the opposite team, or understanding the rules of sharing, of sharing a football, passing a football, some simple things.

Also, dad did note that he had tried to work in carpentry or tried to assist him but had a lot of difficulty understanding what to do and following through.

Mom just stated that, basically, she became aware of his language problems more when he entered formal school and started to get the notes from school, but that, you know, it wasn't as evident to her until he actually entered formal school that it was that pronounced that he had difficulties.

Q. Did it appear to you, from talking to her and reviewing the records, that she was very involved in his

educational struggles?

A. Yes.

Q. Why is that?

A. Just that she had tried to intervene to get different resources available to him and participated in the IEPs and stayed involved. She did note that there were some instances of him being bullied in school and becoming more depressed.

Q. All right. Dr. McClain, I would like to switch gears for a minute and talk about your personal evaluations of Mr. Mosley. You've done six evaluations of him over the past two years; is that right?

A. Correct.

Q. And I'd like to just note for the prior that you gave prior testimony in this case on June 28th in 2024, and that you have filed two prior reports; one on July 21st of 2023, and one on June 13th, 2024?

A. Correct.

MS. RUSSELL: So we would like to reference all of those by judicial notice.

BY MS. RUSSELL:

Q. You originally, diagnosed Mr. Mosley with schizophrenia?

A. Correct.

Q. And what else?

A. So originally with schizophrenia and depression, and then progressively, as we received more information, I did diagnose him with developmental disorder based upon additional information.

Q. Okay. We're going to get to those diagnoses right now in a bit, and we're going to ask you many questions about those, but can you just give us a brief answer: What's different now?

A. What's different in terms of?

Q. How do you go from schizophrenia to autism and intellectual disability?

A. So, basically, there's differential diagnoses, and there can be what we call "comorbidity," meaning that, for example, autism and schizophrenia can both exist at the same time.

So the delicate part is making sure to be accurate in the diagnosis so that it's not just put out there without any basis for it, but the difference is time, and the difference is that there has been some testing done. There's been review of the records and, you know, just multiple interactions with Mr. Mosley that have helped to, I think, clarify, at least for my particular purposes, diagnostic issues.

Q. And medication?

A. So, interestingly, his medication has been

changed. He was on this Zyprexa, but apparently, according to the jail records, he now is taking Prolixin instead of the Zyprexa.

Medications are prescribed. However, there has been some recent, within the month of June, refusals for those medications that have most importance for stabilization of his mental health issues. Specifically, he is on melatonin, trazodone, and Prolixin and Zoloft and those particular meds are the ones that he has been refusing recently in the jail.

Mr. Mosley had actually told me that on my last meeting with him, and so I requested the updated records to verify that was, in fact, the case, and it is noted in the jail records. He is, however, taking his thyroid medication, the levothyroxine, and I believe it is a stool softener.

Q. When did you first see Mr. Mosley after he returned following his 83-day stay at the South Florida Evaluation and Treatment Center?

A. So I believe that was 3/28/25.

Q. And how long were you with him that day?

A. I would say approximately an hour.

Q. And did you give any tests?

A. I did. I did the Rey-15 Item Test.

THE COURT: The what test?

THE WITNESS: The Rey-15 Item Test. It's a malingering screen.

THE COURT: Rey is spelled how?

THE WITNESS: R-E-Y.

BY MS. RUSSELL:

Q. And you talked about his results on that, 15 out of 15?

A. Correct.

Q. Which meant to you that he was?

A. It was not suggestive of malingering.

Q. Did you spend some time evaluating his affect?

A. Yes.

Q. What did you learn?

A. Just in terms of affect, his overall presentation was still very flat affect, in terms of his emotional expression. There was not a lot of emotional responsiveness, but there has not, to date, been any type of real variation in that. So it was consistent with my prior evaluations.

So in terms of looking at rate of speech, those types of things, he's still fairly slowed in his speech. Not a lot of production of speech spontaneously, nonetheless, answering questions.

Q. How did his comprehension seem to you?

A. So comprehension, for simple questions and

statements, was good. He did not exhibit comprehension, like, on a bigger picture, more complex things, but on simple things like, Are you eating okay? Are you sleeping okay? Asking specifics about some of the symptoms that have been problematic, such as seeing things, he was able to answer that. So I found him to be attentive or responsive. Again, simplistic.

Q. What about his presentation suggested to you that autism might be a potential problem?

A. So consistently in my interactions, I had observed times where there was avoidant eye contact. Times when there was very flat emotional expressions, such as I see, you know, even in this most recent eval.

Also, just language, expressive and receptive speech issues that I thought were very much consistent with possible autism, and also having some difficulties of understanding of social situations.

Q. What about the way he presented made you suspect that he had intellectual disability?

A. Well, that was based upon, you know, him being very simplistic in his speech, and his understanding of situations, but also the school records, quite frankly, with the degree of deficits that were noted for speech and language. And, again, it can actually just be like a learning disability, speech and language problems, but

then it can also be reflective more of an intellectual disability or autism.

So just started to open the door to is this really what we're seeing in just expressive and receptive language deficits, or is it a part of a bigger more global neurodevelopmental disorder?

Q. You saw him for a sixth time?

A. I did.

Q. June 27th?

A. Correct.

Q. How long were you with him?

A. I would say like maybe 20 minutes, 25 minutes.

Q. Did you give him any tests?

A. I did not test.

Q. How did he present?

A. So he was responsive to my questions. He volunteered about the medication, because I asked him if he was taking his medication, and he said, I haven't been taking my psych meds because of side effects. And then we just revisited the competency questions again because it had been around three months since I had talked to him.

And I found consistency in the ones where I found him to be aware of his charges, potential penalties, to understand the adversarial nature of the legal process, and I thought overall for behavior, even though he's got

some deficits, I felt he would be able to be compliant and not act out in the courtroom.

While he might have some difficulties expressing himself, that with appropriate help from attorneys could, you know, help to kind of accommodate that, to some extent. So I found him acceptable in that area, even though there were some negative symptoms of the schizophrenia and the expressive and receptive deficits that might affect his ability, for example, to understand what the judge is saying or respond appropriately.

Q. Since you used the term, can you tell us what negative symptoms of schizophrenia are?

A. Yes. Negative symptoms are in contrast to positive symptoms of schizophrenia, such as delusions, hallucinations. Negative symptoms have more to do with the lack of motivation, the lack of social responsiveness.

Things such as poor hygiene, not attending to their self-care. You know, just not engaging in the environment as much, and it can have to do with internal stimuli or just that area of the brain is impacted by the disease processed.

Q. And, in general, medications treat the positive symptoms of schizophrenia, but not necessarily the negative symptoms; is that fair?

A. Well, anti-psychotic medication would typically

deal with more of the positive symptoms. Whereas, for example, with low motivation, what would appear to be depression, it can treat with an antidepressant and make some progress, but not always.

Q. Did you write a report in this case, Dr. McClain?

A. I did.

Q. Your report is Exhibit 9?

A. Correct.

Q. How has Thomas Mosley's condition changed over the past two years you've known him?

A. So in terms of the past two years, I would say that I have seen more improvement in him, in terms of him responding more. I think that, actually, you know, there has been progress. Even though he has the positive symptoms of what we would call -- I'm going to be specific on this -- seeing blood in his eyes, seeing images of blood, those types of things, it's not something where it's constant as much as it was before. It's more specific, like, being in water, that type of thing.

So I think there's been some relative improvement with the medication and also just with the structured environment he's been in, but the main areas where it seems consistent with minimal progress is more of the language, speech and expressive deficits.

So that's why I really started thinking more about, you know, what is causing the issue that otherwise would allow him to go through and be fully competent to proceed. And in talking with him, you know, he maintains consistency.

I think in the areas where I found him acceptable, the biggest thing is just concerns about his ability to comprehend information, respond, and articulate responses. For example, if he were to take the stand or if, for example, on something like an insanity case, whether or not he would be able to relate and put into words his recollection and formulate his understanding of what occurred.

So those were my main concerns. It's not the basics of, you know, understanding the adversarial nature of the legal system, his charges, what could happen. I think he's good on those areas. So that's been consistent the last few times I've seen him, but the deficits for speech and language have not been remediated, so to speak.

And in the last evaluation what -- you know, what I focused on more was how could it be selectively addressed to rehabilitate those areas so that he can rationally communicate with his attorneys about the specifics on his case.

That may also be affected by his mental health

issues or beliefs about -- he talks about something bad could happen, other than the legal consequence, of course, but, you know, I'm not sure what's underlying that, but it was referenced in the hospital notes.

So I think that -- I do think he could become competent. I just think those areas represent consistent deficits for him that need to be remediated, and the focus may be -- or the answer may be to shift focus to provide him with a therapeutic environment that would help him with his intellectual deficits and developmental disability.

Q. What did you diagnose him with just briefly? We're going to go through the criteria for all of the diagnoses, but I'm just curious what you diagnosed him with?

A. So I diagnosed him with major depressive disorder with psychotic features, unspecified schizophrenia and other psychotic disorders, Autism Spectrum Disorder with intellectual language impairment, intellectual developmental disorder, generalized anxiety and cannabis use disorder, which technically would be in remission at this point.

Q. So he's got schizophrenia, autism, and intellectual disability?

A. Correct.

Q. Let's talk about your diagnosis of intellectual disability. What are the DSM-5 criteria?

A. So the DSM-5 criteria are that the person has intellectual deficits as measured by standardized instrument that are at least two standard deviations below the average, which would be 100, plus or minus 30 or 70. Then there's the standard error of measurement, which would be considered, for example, if it was 73 versus 67.

It also involves adaptive deficits, social, occupational, academic functioning are areas. Communication would be an area. It also entails that it occur within the developmental window from birth until adulthood.

Q. So a developmental window, in terms of the DSM-5, is what age?

A. 18.

Q. In terms of the new DSM-5-TR?

A. 22. It's up 22 now.

Q. Do you know anything about what the Florida law says, in terms of the developmental period for ID?

A. So I know what the American Association for Intellectual and Developmental Disabilities says in terms of that.

Q. Would it surprise you if Florida law says 18 as an age of onset?

A. It would not surprise me.
Q. Okay. What about the AAIDD criteria?
A. So that would involve the same type of deficits, but up to age 22.
Q. Did you do any IQ testing?
A. I did not test him for IQ testing.
Q. So what are you using to validate the IQ portion of the diagnosis?
A. So based upon even just the PPVT, that's what was done by the speech and language therapist, it was within that window. It was below 60, but also cumulatively looking at what they did find.

For example, Dr. Railey, that he falls in the low range across the board, I think it's important to consider that that test was done with those results barring that -- I mean, I didn't see anything suggesting he was malingering that was done, as far as testing him, in Dr. Railey's evaluation. So I found that the scores were low.

In comparison to Dr. Tenaglia's data, there was a practice effect, and if it was just purely a case of malingering, he wouldn't hypothesize that you would see that. It would just bomb it out, but I didn't see that. And the pattern -- looking at the pattern, cumulatively with the school records looking at the receptive and

expressive deficits, I think it is suggestive of intellectual disability.

Q. So with that prong of IQ, do you think that Dr. Railey's IQ score was valid, even though there was a potential practice effect?

A. I think Dr. Railey's testing, to me, looks valid, looking at the embedded measure that I saw. Again, I don't have his raw data, so I would look at things -- just for the Court's clarification, I would look at individual responses and patterns, what they call intrasubtest scatter, if I had it, because it would show if he, for example, got tough items, but failed easy items, right?

So there's another pattern of responding one can look at, which would suggest it makes no sense. So he is probably faking. But I think that, at this point in time, I think Railey's results that I see for the IQ testing would appear to be valid.

Q. And you said that the vocabulary minus digit span was normal, that's the embedded measure?

A. Correct. It would have to be over five points difference, and it's not.

Q. Let's talk about the second prong of adaptive functioning.

You did testing for that?

A. I did.
Q. And that showed?
A. That showed that he was in the low percentile, a .1 percentile overall.
Q. And you did collateral interviews?
A. Yes.
Q. And you also made personal observations?
A. Correct.
Q. Tell me what your observation is of Thomas Mosley's deficit in the social domain?
A. So in the social domain, in terms of interactions, he is able to initially acknowledge, for example, myself and/or his attorney.

As far as carrying on independent, spontaneous speech, that does not occur. I have observed and was provided with interactions with different people, video interactions, and there was some, again, responsiveness to the questions that are being asked.

So I think he's capable of communicating, but it's very simplistic and very specific. Again, that is largely probably a measure more of his limited intellect but limited expressive and receptive skills. In other words, there could be a desire to engage more, but having the capability of doing that is something different.

Q. Were there any other deficits that you noticed

in his social domain?

A. No. I think those are the primary ones in terms of just understanding, like, in social communication. One example of something I noted in an interview with counsel is, he was just talking about a hearing that had occurred and what he took from it or understood from it, and there was no awareness of what even had interacted. Meaning, that a hearing where another expert had come and talked. So I think there is some lack of ability to focus and then retain information that's going on. If the level -- the complexity is above what he's capable of understanding.

Q. What deficits did you notice and document in the conceptual domain, either through your testing with the educational records or any other materials that you used?

A. So I think that just harkening back to the academic records, just looking at, you know, while he's exerting effort to try to wrap around information in like, for example, the academic context, he's still struggling to get it to work and he's exerting effort, but it's not sticking.

So it's kind of the same pattern of exerting effort, but not sticking, as it needs to. And specific to, you know, working with legal counsel or interacting in the courtroom or going to trial, I think he still does not have that skill set that would allow him to, you know,

exercise those types of skills and abilities contextual.

Q. What other deficits did you notice in the conceptual domain? For example, reading skills? Math skills?

A. That would be more relevant to the academic records and looking at that. I think that the issue is sometimes it's confused that the person is not motivated and they're not trying, as opposed to they're not getting it or understanding it.

So I think it's an important distinction in the case because for the questions about, for example, just relative to competency, what could happen if you're found guilty? What is your lawyer supposed to do? He's getting those things, so the well-learned repetitive things he's getting.

So I think it's more a matter of leaving the practical to, you know, conceptual, being able to understand in context. If I plead out, what could happen? What does it mean if I plead not guilty? If I go to trial, what if I lose the trial and took the stand? Those types of things.

So the basics are there, but I think conceptually he's just having trouble contextually applying that and what would happen. Sometimes I think that's why, when interacting with him, it doesn't go all

the way. It doesn't connect.

Q. So, Dr. McClain, with regard to your diagnosis, I'm talking about adaptive functioning deficits that you noticed in the three domains in all the record, all the testing from the developmental period, not necessarily, like, today, now in June and July.

A. Okay.

Q. So can we go back, and can you tell me about the social deficits that you noticed in the social domain? I want to go through all three domains, if possible.

A. Okay. So in terms of social and what I noticed. Just in terms of his ability to, for example, initiate conversation, his ability to maintain conversation. It's kind of a flatliner. It doesn't happen.

Q. Right. Anything else in the conceptual domain in terms of adaptive functioning deficits during the developmental period that you noticed in your records or testing?

A. So in terms of the adaptive deficits, just his ability -- and this was noted on the parents' information that I can help to elaborate, maybe, for the Court, because I did ask them to complete that, so I did take it into consideration.

But in terms of communication, basically, some of the things just acknowledging hello, goodbye, for

example, being a part of that. Like, consistently doing. That was noted as an area of deficit.

Basically, shaking head yes or no to something that was a yes, being able to do that, shake his head yes or no.

Some things that they noted, naming the home address, including the ZIP code. Sometimes he was able to do. Naming 20 or more familiar objects was an area of concern that the parents had. Talks about educational and realistic goals was a big deficit, okay? So being able to communicate that.

In terms of, in particular, some of the social things that were noted, basically, having one or more friends was not consistently endorsed. In other words, he had difficulty making friends and keeping friends.

Another area was when asking for something, saying please. Just a normal, social etiquette was an area of concern they expressed.

Being able to express feelings, to identify feelings. Words such as angry, sad, happy, those were areas that the parent noted were issues for him. So feeling words.

In terms of makes or buys gifts for family members, offers others food or beverage. So those types of social deficits. Like, actually engaging in a

relationship and being responsive.

Q. Then what about in the practical domain during the developmental period?

A. Just in terms of work, the descriptions given about work and sports, for example, whether he had difficulty. Being able to do that. Being able to maintain employment or follow through on a task that was given to him.

In terms of home living skills, being able to assist in projects at home was noted as an area of deficit. Keeping working on important tasks. So his focus to maintain commitment to the task was an area of deficits. Putting things in their proper place was noted as an area of deficit, as well as cleaning his own personal space.

Q. So you noticed deficits in all three of the domains?

A. Correct.

Q. What about the age of onset?

A. So the age of onset, in talking with the parents, their awareness of specific deficits, mom in particular, was not until really he started school, and it was primarily for speech and language at that point in time.

Q. Does Thomas Mosley have intellectual disability?

A. Yes.

Q. Is Thomas Mosley incompetent due to intellectual disability?

A. So my opinion is that he is incompetent due to his developmental disability, and I think it's primarily intellectual disability. I do think components of the spectrum play into it, but it's heavily loaded for receptive and expressive language deficits in the social aspects of the disorder. But I think that he definitely does present with low intellect, as well as adaptive deficits.

Q. So you've tested Thomas Mosley. You've evaluated Thomas Mosley. You've read his educational and his medical records. You've interviewed family members, and you've now known Thomas Mosley for more than two years, do you feel that he is able to disclose to counsel pertinent facts at the present time due to intellectual disability?

A. So over the course of the times that I've seen Mr. Mosley, at no time has he conveyed pertinent facts relative to the offense itself, and I think that it has to do with the intellectual disability, but I also think there's a component that's related to, obviously, the offense itself, and what could be potential mental health issues around that, but that that has to be ferreted out

more to be clear so that he can articulate.

And how that should be done is, you know, I think done within the context of a hospital, obviously, because it could be extremely traumatic, also. I think relatedly, you know, that medication stabilization is still going to be an important part of this picture because the symptoms of psychosis or depression need to be kept in check while the other areas are being addressed, meaning, intellectual disability.

Q. Do you feel that Thomas Mosley is able to testify relevantly at the present time due to intellectual disability?

A. I do not.

Q. Why not?

A. Because Mr. Mosley is not demonstrating anything beyond a very concrete response. And I think that the issue would be in a context where there's compound sentences, where there's legal terminology that may be beyond what his capability of understanding is right now, that it could be difficult.

And the risk of him responding inappropriately, because he doesn't understand it, is high, or just agreeing to something that may not be really something that he should agree to but feels he should agree because of the situation.

In other words, not that he's being coerced in any way, but just that he may not understand something that's being asked. For example, if he takes the stand and something is being asked, you know, his ability to comprehend and then respond appropriately is going to be limited.

Q. Does the literature and science talk about the difficulties of people with intellectual disability testifying?

A. Correct.

Q. What does it say?

A. Well, there are several things. One is the desire to please or to respond; and another is, you know, just not comprehending it, and so being quiet, which could be perceived as not being responsive. So it kind of goes both ways.

In certain situations, it could be interpreted as deception if a person doesn't respond. That they're not responding because they don't want to get in trouble, or they, you know, know that there could be a bad legal consequence.

Q. Is that one of the reasons people with intellectual disability are exempt from the death penalty under Atkins, Hall, and Moore?

A. Well, the difficulties with intellectual

disability, comprehension, understanding, intent all of those things play into that, yes.

MS. RUSSELL: All right. I'm at a good stopping place, and when we come back, we can discuss autism.

THE COURT: Sounds good. It is noon, and we're going to come back at 1:15. Thank you.

(Lunch break taken.)

THE COURT: All right. Are you ready to have Dr. McClain back up?

MS. RUSSELL: We are.

THE COURT: Okay. Whenever you are ready.

MS. RUSSELL: Your Honor, I know that I promised we were going to start with autism, but I wanted to clear up a couple of things from the earlier testimony on intellectual disability, if I might?

THE COURT: Sure.

MS. RUSSELL: May I approach?

THE COURT: Uh-huh.

MS. RUSSELL: I'm just going to hand you copies of the two pages in the IA -- AAIDD manual and the DSM-5 that I'm going to ask some questions to Dr. McClain about.

THE COURT: What do you have? Just can you tell me the exhibit number?

MS. RUSSELL: Oh, yes. I'm sorry. Let's see.

Exhibit No. 11 is the DSM-5-TR, and Exhibit 10 is the AAIDD manual.

THE COURT: AAIDD manual. Okay.

MS. RUSSELL: Correct. Twelfth edition.

THE COURT: Thank you.

MS. RUSSELL: And, you know, I'd submit there are learned treatises. I only want to admit them into evidence so that the record can be more clear about what we were talking about.

THE COURT: Sure.

MS. RUSSELL: The State doesn't have any objection.

THE COURT: Any objection to those?

MS. SULLIVAN: No, Your Honor.

THE COURT: Okay. They will be admitted as 10 and 11.

(Defense Exhibits 10 and 11 were admitted into evidence.)

BY MS. RUSSELL:

Q. All right. Dr. McClain, you're familiar with the AAIDD manual?

A. Yes, ma'am.

Q. Twelfth Edition?

A. Yes, ma'am.

Q. I see you have your copy there in front of you.

A. Yes, ma'am.

Q. Let's talk about what's on page 30, Table 3.3, which gives examples of significant limitations in adaptive behavior in the conceptual, social, and practical domains; is that fair?

A. Correct.

Q. Are you on the page?

A. Table 3.3? Yes.

Q. Excellent.

Could you tell me what conceptual skills on that table that you have recognized in Thomas Mosley's evaluations?

A. So to give you examples of significant limitations in terms of specific examples for impaired independent planning, problem solving, or thinking abstractly, which I think applies with Mr. Mosley, especially the thinking abstractly. Difficulty with academics, reading, writing, and arithmetic. Difficulty in self-direction, planning future, life activities.

There's also difficulty noted for effectively communicating thoughts or ideas, and also difficulty in choosing good solutions when confronted with a problem or situation.

Q. And what about deficits in social skills?

A. So the deficits in social skills, based upon

both the testing administered with the parents' input, as well as my own interactions, impaired social or interpersonal skills, difficulty in working effectively with others towards group problem solving, and flexible and concrete thinking and acting during complex social situations.

There's a note of increased vulnerability, victimization, which I didn't find to apply specifically. I did not see examples, concrete examples of that in my interactions with Mr. Mosley, but it is noted in the chart.

Inadequate social responding and social judgment, I do see that and make note of inadequate social responding. Tendency to deny or minimize the disability to their detriment. I do see decreased insight and awareness on Mr. Mosley's part about the extent and nature of his deficit.

Q. That's the cloak of competency?

A. Yes.

Q. What's that again?

A. Basically, what it would be is that the person tries to appear like they're functioning normally and respond in social situations and even overcorrect or try to overcorrect and present as if they get something when they don't.

Q. And is that one why self-reported symptoms of intellectual disability are disfavored --

A. Correct.

Q. -- when used alone?

A. Correct.

Q. And is it a normal part of the diagnosis to do collateral interviews with parents?

A. Yes.

Q. And that's what the ABAS does?

A. Right. It's not just parents either, if available. It's also teachers and other individuals. Say, for example, if they're in a group home, the behavior analyst is frequently spoken to with regard to how they're progressing and addressing maladaptive behaviors. So collateral information from various sources can be very valuable.

Q. All right. What about practical skills?

A. So in terms of practical skills, that refers more to limitations in self-care, attending to hygiene. Domestic skills is keeping their area clean around them. Following through on chores is they started to finish it or do they need prompting, that type of thing.

And the adaptive behavioral measure completed by parents suggested that there were difficulties with that for Mr. Mosley.

Q. Okay. Dr. McClain --

MS. RUSSELL: May I approach?

THE COURT: Yes.

BY MS. RUSSELL:

Q. Dr. McClain, I'm handing you what's been premarked as Defense Exhibit 11, which is the front cover of the DSM-5.

A. Yes, ma'am.

Q. Along with a picture of a chart consistent with domains for mild intellectual disability. That would be Table 1 on page 39.

A. Correct.

Q. Could you look at the list of deficits in conceptual domain and tell me which of those you believe Thomas Mosley has.

A. So the primary deficits that I noted in the review of school records that we were going through earlier, section by section, was academic deficits for reading, for arithmetic, speech and language receptive, expressive deficits.

Also, the fact that even given the remediation, he didn't show improvement or very minimal improvement, so I think that also is noted there.

In terms of other, you know, like, functional use of academic skills, again, that would apply because

he's got deficits in those areas, he's not able to apply it. For example, a practical goal of getting his GED or his high school diploma.

Q. What about Thomas Mosley's deficits in the social domain?

A. So in the social domain, based upon my interactions and also looking at the autism measure that was completed by the parents and the adaptive measure, there are deficits in his ability to respond in social situations, initiate and maintain ongoing conversations.

So I see that there are definitely deficits within that area that are manifest in the school records, but also in what the parents are reporting occurred during that developmental window.

Q. Was he gullible?

A. So in terms of gullibility, I don't have a specific example of gullibility or where he would have been had by another classmate or something, but certainly the lack of ability to anticipate potential social, you know, responses would lead to be more vulnerable.

Q. What about Thomas Mosley's deficits in the practical domain listed there on Table 1?

A. Okay. So, basically, in talking with parents in the interview July 1st, 2025, that I had with them, as well as looking at their responses, to practical things

such as taking care of himself, understanding finances.

There was a good example given by father of him thinking if he made a payment for a car, it meant the car was paid for and not understanding the concept if you pay it monthly. So his knowledge of, for example, financial things is somewhat limited.

The other thing is that, practically, just being able to follow through at work, you know, through tasks to be able to maintain employment was a problem that he had.

So those are things that basically the parents had pointed out both in their completion of the measures that were provided in the practical domain within the ABAS.

Q. Did Thomas Mosley have adaptive strengths?

A. So in terms of adaptive strengths, to my knowledge, there's not something that I see that has emerged as a strong point for compensatory strategies.

Q. But we don't balance strengths against deficits, do we, in the diagnosis of ID? Isn't it just the presence of deficits that's relevant?

A. So it doesn't specifically look at if the person is able to compensate. I will offer to the Court and to the lawyers that we have what we call trainable mentally handicapped and educated mentally handicapped, and in that phrase is implied that, yes, they can benefit from some

training and education. Whether or not that works or not over time just depends.

But, essentially, in the records reviewed and the academic records reviewed, there were attempts to remediate his, for example, reading deficits or language deficits. They did not show, even with extra support, that he was making much headway.

Q. All right. Thank you, Dr. McClain.

I'd like to switch gears and talk to you about autism at this point.

What is autism?

A. So autism is a neurodevelopmental disorder that begins within the window of childhood. Typically diagnosed in childhood, but many times it is in adulthood where we see the higher-level spectrum diagnosed, where they're just -- families will say there is something odd about them, my child, but they don't know quite what it is. And because Asperger's is now collapsed within the autism spectrum, a higher-level autism is in the same spectrum as low-level, which is categorized.

But typically, it's seen within the window of zero to 18. And, basically, what it manifests is in six different areas, they show significant deficits for receptive repetitive behaviors, social interaction, social communication, cognitive style, speech and language

deficits.

So, basically, in the extreme cases, there could just be echolalia, for example, is a speech deficit where they don't really have spontaneous speech, but just repeat what they're being told over and over and over.

And so, basically, it involves -- it did occur within that developmental window, but if it's not better explained by something different, such as a learning disability, intellectual disability, and/or schizophrenia, so there are other rule-ins and rule-outs.

That said, being on the autism spectrum can also be with or without intellectual disability, with or without speech and language deficits, so there's qualifiers that are involved in it.

Q. You used the term "Autism Spectrum Disorder." What is -- how is that different from autism?

A. Because "spectrum" implies that it's a variety or a range of different symptoms, and also different categorically, lower level of functioning versus higher level of functioning. And I think I mentioned earlier, if the Agency for Persons with Disabilities says, "I need you to do an evaluation, Dr. McClain, for qualifying the person for services," once the basic tests are done for adaptive functioning and for autism, then it's looked at what level of need do they have, and their requirements

are that that is a high level of assistance that would be required.

For example, if the person is able to -- on the spectrum they still can, like, drive a car, they can get a job, they're able to function in the community, they wouldn't necessarily receive services because they could be on the spectrum, but they're higher level. For example, average intelligence.

So even though it's a neurodevelopmental disorder, it doesn't mean that it's equivalent to, for example, intellectual disability, because there could be very bright individuals who are also spectrum.

Q. When did you first suspect autism with Mr. Mosley?

A. So I started to think about it when I saw the persistence of flat affect, low social communication, and the degree of the deficits that I saw. And it was after he came back really from the hospital, and I kept -- I still saw that pattern.

I was concerned because I didn't want to miss something, and it's obviously there's differential diagnoses, but I thought, to be on the safe side, to provide the testing, and I requested specifically, Defense Counsel, could this be provided to the parents just to make sure I'm not missing something in the picture that is

a key to competency.

So I did ask to administer, and they did complete those measures, but, really, it was after he came back because in the initial stages, I thought, He's slow, but it could just be better explained by psychosis and receptive expressive deficits like a learning disability, if you will.

So it wasn't until I saw that really that same pattern was still there. It wasn't like the brain woke up and now it was more chatty. It was more like it's still really slow going. Even though the responses are there, and that's positive because he does move towards competency, but I really didn't, like, think about it until when he came back from the hospital this time.

Q. So what did you do to investigate your suspicions other than, obviously, you did the GARS?

What else did you do?

A. So the adaptive functioning I did because I thought it would be helpful to assess the level of need or assist if, in fact, he was on the spectrum. I also noted that in the intellectual testing that was done, there was not, like, one of the hallmark adaptive tests that had been done, and I wanted to make sure, if he was either spectrum or intellectually disabled, that the adaptive component was addressed properly, especially given the

gravity of the case or the nature of the case and the likely potential outcomes. So I incorporated that with having the parents complete the adaptive measure.

Q. Is there anything else that you did?

A. Just reassess the academic records, viewing it from a filter of could this possibly be something other than expressive and receptive language deficits because those can occur with autism, they can occur with intellectual disability, and even, to some extent, like, a (indiscernible) positive of speech can be seen with schizophrenia if the person has, like, intractable hallucinations where they're just not responding because they're otherwise engaged in their own mind.

Q. So does Thomas Mosley meet the criteria in the DSM-5-TR for autism?

A. He does.

Q. Were there any caveats there in your mind?

A. Not a caveat, but there is, I think, what I call comorbidity, and that comorbidity with the psychosis that has been evident would be that there are what I call, like, signs of schizophrenia that were evident as far as him hearing voices or continuously seeing what he describes as, you know, blood. And while that could be explained by posttraumatic stress disorder, it's a very persistent type of visual phenomenon that he's seeing or

that's reported, at least.

So simple -- going back to the question, just to make sure I'm clear, the differential diagnosis, you have to look at, well, are these deficits due to schizophrenia, or are we looking at something where he has autism with limited intellect and expressive and receptive language problems, but also has symptoms of schizophrenia or psychotic disorder. And, of course, he's been treated for that. It's been called different things in the hospital report, but he has been consistently on antipsychotic medication.

Q. At this time, do you feel that Thomas Mosley is incompetent because he cannot disclose to counsel pertinent facts --

A. Yes.

Q. -- due to autism?

A. Yes. Well, I would say due to limited intellect and autism, because both of those things are grouped together. I think he has a developmental disability that encompasses spectrum, autism spectrum, with expressive and receptive language deficits and limited intellect.

Q. And is Thomas Mosley incompetent to testify relevantly at the present time due to autism?

A. In my opinion.

Q. Now, you were sitting in the courtroom half an

hour ago when we were waiting to begin the proceedings today?

A. Yes.

Q. And I think you might have observed some things that happened over here at counsel table.

Is there anything that happened here today that might change your opinion about whether Thomas Mosley is competent to present appropriate courtroom behavior during a proceeding like this due to autism or intellectual disability?

A. So I don't think that it would change my opinion. I think, though, it does go to the issue of having him for sustained periods in the courtroom, you know, given maybe some limitations, his inability to understand social cues would be a concern. So he would have to be monitored, I think, carefully to make sure he understands appropriate compliance with the safeguards in the courtroom.

Q. Let's talk about how Thomas Mosley suffers from mental illness, which is the third component. You have autism and intellectual disability and also mental illness, right?

A. Correct.

Q. So what is mental illness?

A. Mental illness, in the DSM-5-TR, is defined as a

type of mental disorder that would impact social and occupational functioning, and there's different categorical references to it and degrees of impairment divided into things such as psychotic disorders, mood disorders as examples, but it is basically looking at how to find criteria or a checklist that allows them to define to internationally, through the DSM-5-TR, what aberrations of behavior the person is experiencing, and then to categorize it with a label, such as a mood disorder and/or psychotic disorder that allows the disorder to be treated.

Now, I will say that in DSM-5-TR, the diagnosis reviewed is medical diagnoses and underlying medical issues because it used to be, like, from here up is mental, and this is medical, but I'm only bringing it up because there are some physical issues that also can mimic those types of disorders.

But the DSM-5-TR is really a categorical, like a manual, if you will, to help to organize and categorize different types of mental disorders.

Q. So you've diagnosed Thomas Mosley with mental illness as well, right?

A. Correct.

Q. Which mental illness?

A. So in terms of the mental illness, I diagnosed him with major depression with psychotic features. I also

diagnosed him as unspecified schizophrenia spectrum and generalized anxiety disorder.

Q. And are those still his diagnoses today?

A. Yes.

Q. Have you seen the symptoms of those wane over the past two years since you've known him?

A. So I have -- I think that, in all fairness, the major depression I've seen consistently. The anxiety I haven't noted as much, even though it was diagnosed previously. I've definitely seen the major depressive disorder, and also symptoms consistent with psychosis, even being on medication.

Now, I stated earlier to the Court that he did tell me he hadn't been taking his mental health medications, so that would be a concern I would have that, you know, could amp it up, if he's not on that medication, but I have seen some consistent symptoms of psychosis and depression and those would be "the mental disorders" as compared with neurodevelopmental disorders.

Q. What are the negative symptoms of schizophrenia?

A. So as mentioned earlier, the negative symptoms are things such as inattention to your social environment, avolition or not being motivated, lack of hygiene, and lack of self-care. Basically, not really responding to the immediate environment.

Q. So how would any of the symptoms of Thomas Mosley's mental illnesses that you've diagnosed him with affect his competency?

A. So the primary way it could affect competency, in terms of mental illness, is that if untreated, for example, if he's not stabilized for his mental health issues, then his ability to be present in his situation, legal situation, meaning, conferring with attorneys, responding to State Attorney, participating in a trial, could be impaired by him being actively psychotic and possibly even at risk for acting out if he doesn't understand the situation or feels threatened in any way.

Q. And what about the negative symptoms of schizophrenia affecting --

A. So in terms of --

Q. -- his ability to testify?

A. I'm sorry for interrupting you.

So that would be manifest, for example, in not taking care of himself, if there was deterioration that started to occur as far as him not attending to his hygiene, eating, sleeping, doing the basics of his self-care, as well as not being motivated to participate in the actual proceedings itself, which can mimic depressive symptoms as well.

Meaning that fait accompli or saying, It's going

to happen anyway, so why does it matter, type of thing, which could be depression, but it also could be I'm not understanding the situation, so let's get it done with.

So there could be prematurity in his responses and choices legally.

Q. And what about consulting with counsel?

A. So the main thing with the negative symptoms, of course, would be if he's not attending to his care, if he's not taking his medication, obviously, there's going to be decompensation that's going to occur.

Q. So, Dr. McClain, based on all the records you've reviewed, the six forensic evaluations you've completed, all of your training and experience, do you have a professional opinion as to whether Thomas Mosley is currently incompetent under the six criteria in Florida Statute 916.12, and Florida Rule of Criminal Procedure 3.112?

A. Yes, ma'am.

Q. And what is that?

A. My opinion is that he is not competent to proceed at this time. While he has demonstrated progress, I think, and maintenance of his progress in several areas, including his awareness of his charges, potential penalties, the adversarial nature of the legal process, and behavior, I think he still remains in the unacceptable

range for his capacity to disclose to attorney pertinent facts, as well as his capacity to testify relevant.

Q. Dr. McClain, how do you know if it's caused by intellectual disability, autism, or mental illness?

A. So it's multifactorial. I don't think that you could pinpoint one thing. I think it's a combination of factors. He does have a documented history of mental illness preceding the crime and has been Baker Acted, so they identified concerns about, you know, obviously, self-harm, and he was hospitalized.

So I think there's clearly evidence of onset of mental illness around that window of time, and one would expect to see ongoing or mood disorder. I think that it is a combination of factors, and, obviously, they all feed into his ability to be competent, or if he does become competent, then maintaining that competency through medication management, through ongoing competency training, which can be very important, especially if it is due to intellectual disability or autism.

The consistency in that training, even when the person is back from the hospital, becomes very important in maintaining the competency. And that's one of the things with the Agency for Persons with Disabilities that is in place when they do return from the hospital is that there is ongoing maintenance to keep daily logs or weekly

logs, if you will, of one, two, three, four, five, where are they falling, which becomes important, because if the person is feigning, yet they're doing like a five, if they're getting a five, and they're telling the competency evaluator they don't know anything, then it's discrepant.

So it helps you to make a really, you know -- a comparison, a collateral comparison, but I certainly think all of the factors of autism, intellectual disability with speech and language deficits, as well as the psychosis and depression are contributing to the incompetency.

Because of the severity of the speech and language deficits, I think that that area is one area that's probably the biggest contributor is just being able to articulate, you know, details about what occurred.

And I did make it a point to ask specifically about that, what he recollected, what he was able to provide to me, in terms of what happened, independent recollection, and he was not able to produce a response suggesting that he had an independent recall of the details leading up to what occurred.

For what reason, whether it's speech or language or if he was in a psychotic episode, I'm not clear on that, or it could be both.

Q. Let's talk about effort testing.

A. Sure.

Q. As a neuropsychologist, how do you determine if someone is giving full effort?

A. So there are a variety of ways to do that and to properly assess effort. There are tests that can be given. There are also collateral information that could be compared. For example, if person is interacting differently on the unit or the pod where they're being housed and they're reading books and they're interacting normally, chuckling, laughing, you know, then you would look if they're presenting as very depressed and can't respond, you look at those type of behavioral comparisons.

But also tests that are available, for example, the tested memory and malingering; the M-FAST, or the Miller's Forensic Assessment of Symptoms Test, the VIP, or the Validity Indicator Profile; those are all examples. The simplest example, of course, is Rey 15-Item, which it's, like, a 10-second test. That basically looks at, if they bum that one, it's pretty suggestive of there's something up with them, you know, not exhibiting effort.

Q. So is it important in choosing tests of effort to choose one that's appropriately normed for someone with cognitive impairment?

A. So it is. So on some of the tests that are produced, they will have a caveat in the directions, in the manual, that says, Caution should be exercised if

someone is intellectually disabled or has some type of impairment that would be, like, a comprehension or a reading deficit because depending on how it's administered and the way, you know, that it's done, they could be not comprehending the questions properly.

Q. So it would be important to know the reading level of the person you're testing before you test them?

A. Yes.

Q. Why is that?

A. Just because their comprehension level is going to affect whether or not they can understand the question being asked, and in double negatives where they ask something. Like, for example, on the M-FAST they'll ask: Does this only occur when you're doing such and such?

So there's a two-part question. It's a compound -- like a compound question, really, because it's one and then the second part.

So it can be difficult because then you have to entertain the first part of it to respond to the second part. So there could be some difficulties with it in terms of understanding, you know, the test question.

Q. Do you use the M-FAST as a symptom validity predictor in people with cognitive impairment?

A. I don't use it with people who have cognitive impairment because of the language. I read it out loud to

them. That's how it's supposed to be done. So I don't typically use that one with people with cognitive impairment.

I tend to use the embedded measures, if I'm doing the WAIS test or the Rey 15-Item, something simple, and I also try to really look at collateral information, which can be super helpful, especially if they've been -- you know, had training before, if you will.

And I have had -- just as an example, I have had defendants who have a 50 IQ who I feel are competent. So it's not the IQ, per se, it's whether or not they're exerting good effort, whether or not they've been found incompetent previously despite the deficits. So there's many things that go into it. But it's more challenging with people with intellectual disability to decide what to use and how to approach it because, as an examiner, you don't want to miss it if they are truly acting like they don't know something when they do know it.

You know, an exposure to the legal system, how many times they've been through the legal system, that type of thing would be important, too.

Q. What about the Validity Indicator Profile or VIP, is that one that's normed for cognitive impairment, if you know?

A. So the Validity Indicator Profile is not normed

for cognitive impairment, and it does tend to rely on -- at least the verbal part of it, we're basically looking at a synonym-type comparison with vocabulary words and the vocabulary words are fairly complex.

Q. Can symptoms of depression ever be mistaken for poor effort?

A. So symptoms of depression, depression, basically, there's like a relationship between depression, dementia and delirium, but depression, typically one of the symptoms would be poor concentration, lack of motivation, those are inherent in the diagnosis. So definitely depression, intractable depression, or even resistant depression can definitely mimic lack of motivation.

And I just want to make note that with Mr. Mosley, he does have a history of hypothyroidism. That is being treated by levothyroxine, but other factors, such as that untreated low thyroid, also could mimic lack of motivation, lack of focus.

So, to my knowledge, he is taking that medication, so that wouldn't be something that would contribute at this time.

Q. What about negative symptoms of schizophrenia, are those ever confused with poor effort?

A. They are. As an example, a parent that is

trying to get their child that has schizophrenia to shower, take care of themselves. If their feet are dirty from walking outside barefoot and they won't bathe and resist, that -- that could be, you know, obviously, misconstrued as depression where it's really a symptom of schizophrenia.

Q. So if you did nothing but give a mere effort test and didn't review records or interview collateral witnesses or look seriously at what medications are being prescribed, is it possible that you might make a mistake in saying that there's poor effort and, really, it could be any one of those other things?

A. So, in all fairness, in terms of diagnostically assessing someone, all of those things need to be considered. And I think that -- I've certainly had cases where I had an initial impression, for example, in Mr. Mosley's case where it's psychosis, depression, and then further analysis looking at it like there's something else going on here after, you know, competency training and that type of thing.

But it's really important to remember that there are multi factors, like in troubleshooting or hypothesis testing, if you will, the scientific method, we're looking at, well, it could be this, but we have to rule out this. So it's like diagnostics, if you will.

Q. And, really, the scientifically valid approach is to be as broad as possible, get as much information, as many interviews, as much as you can collect, right?

A. Well, I think that goes back to what I was saying in this particular case, that the good part and the positive part is there's momentum in competency. There is four areas where he appears to be doing fairly consistently well, if you will, in that he had been taking medication up until recently, which I think was helping him. He seemed more interactive.

So I think that basically, over all of the interviews that I've had, there has been some improvement over time, even with eye contact, with, you know, making statements that are a little verbal than before. So I think that, you know, it's important, I've seen some progress with resolution of symptoms that would be important to competency, maintaining competency.

Q. Let's talk about the psychology progress notes contained in Exhibit 7 from South Florida Evaluation and Treatment Center.

Do you have those in one packet?

A. I have them, yes.

THE COURT: Do I have those?

MS. RUSSELL: I believe you do, Your Honor. And it says Competency Assessment Tool on the top, CAT.

THE COURT: Yes. Thank you.

BY MS. RUSSELL:

Q. So you reviewed the progress notes of psychologist Lana Tenaglia --

A. Yes, ma'am.

Q. -- contained in the records produced from South Florida Evaluation and Treatment Center?

A. Correct.

Q. What is a CAT or Competency Assessment Tool?

A. Essentially, that's exactly what it is. It just breaks it down into particular questions that are asked -- that the evaluator would ask the defendant, or ask in a way that would answer that question, then put the answer down.

Q. So --

A. In other words, it goes through the six different prongs, and we'll specifically look at -- so you're breaking it down to their knowledge of, for example, what their attorney does, knowledge of potential penalties, what could happen if they go to trial, their understanding of concepts such as probation, a plea bargain.

And, also, importantly whether they understand what not guilty by reason of insanity would be.

Q. So Dr. Tenaglia gave Thomas Mosley three

competency assessments, one on December 18th of '24 after he arrived?

A. Correct.

Q. One on January 30th after he had been there --

A. Correct.

Q. -- for a bit then. One on February 25th?

A. Correct.

Q. All right. I want to talk to you about the initial CAT given on December 18th.

A. Okay.

Q. I know the writing is really small and hard to read.

A. I want to make sure I have that one. Is that the one that is very, very small?

Q. It's the one that's actually sideways, and we didn't have anything to do with it.

A. Oh, okay. Yes, now I see it. Okay. 12/18.

Q. It was the way the documents were produced to us from South Florida.

A. Okay. Well, I've got all three, then.

Q. Okay. What do you notice about the results of Competency Assessment Tool that was given on the 18th of December?

A. So in terms of the results, it basically is breaking it down into the different categories, and

basically, it's saying unacceptable for awareness of charges. It does say acceptable for identifying charges, but not able to describe them or to differentiate between felonies or misdemeanors.

So even though there's an awareness of the charge itself, there isn't the ability to break it down.

And then secondarily, potential penalties is described as unacceptable.

Then questionable on the outcome of a verdict, guilty or not guilty.

Questionable on the concept of probation.

Unacceptable on can the defendant explain what NGI is or not guilty by reason of insanity. And also, a lack of awareness of plea bargain.

Then it goes on to describing the functions for the judge, acceptable; the jury, unacceptable; public defender, acceptable; state attorney, unacceptable; witnesses, unacceptable.

And then for, Can the defendant state who determines a verdict if there is no jury? That was unacceptable.

Can the defendant state who sentences if guilty?

Yes, acceptable.

Does the defendant understand the legal system has two sides? Unacceptable.

Does the defendant understand the judge and jury are impartial or neutral? And it said unacceptable.

Capacity to disclose to attorney, it has no.

For defendant trusting his attorney and knowing the possible benefits of disclosing confidential information to his attorney. If not, assess rationality or lack of rationality of reason on that.

Q. Okay.

A. And then that was unacceptable.

Can the defendant describe how he or she will communicate with his attorney during the trial? That was unacceptable.

On capacity to manifest appropriate behavior. Overall, it was acceptable, with the exception that it says: Can the defendant state what will happen if he or she misbehaves in court?

Then capacity to testify relevantly. During the defendant's discussion of the legal situation, is communication relevant and goal-directed? The answer was yes.

And then, Does the defendant's current symptoms of mental illness interfere with his or her own capacity to testify relevantly? And it said, No.

Q. How did things change with the competency assessment on January 30th?

A. Let me just read one thing, then I'll address that.

Okay. So going to the other ones. So in terms of the first part, appreciation of the charges, it was consistent with the prior one in December.

Q. Appreciation of possible penalties?

A. Appreciation of the charges, it was consistent.

So appreciation of possible penalties. So in one area, it went down, on defendant's state the outcome of a verdict, guilty, not guilty. That was unacceptable.

Probation, remained questionable.

Consistency was noted for being unacceptable for explaining not guilty by reason of insanity, and what a plea bargain is.

On the third one, he had been acceptable on the judge, but now it was questionable whether he understood or not.

The jury remained unacceptable, in terms of understanding. It was unacceptable now, his understanding of the public defender, but acceptable on his understanding of the state attorney. So it kind of flip-flopped on that one.

Then on witnesses, it remained unacceptable.

On the role of the defendant, it became acceptable.

Can the defendant determine who determines a verdict if there is no jury? That was still unacceptable. He was previously able to say who sentences him if found guilty, but now it said he's unacceptable on that.

In terms of understanding the legal system has two sides, it remained unacceptable. As did the impartial or neutrality of the judge and jury, were both unacceptable.

And then on Part 4, he went from unacceptable in terms of trusting the attorney and knowing the possible benefits of disclosing confidential information from acceptable to questionable.

And then it remained consistent on, Can the defendant describe how he or she will communicate with his attorney during trial?

On behavioral, it went from being acceptable on the first three to questionable on, Can the defendant explain what he or she should do if something is said in court about the case that is not true?

And then the other remained consistently unacceptable for, Can the defendant describe what could happen if he or she misbehaves in court?

And then the last prong for capacity to testify relevantly was consistent with during the defendant's discussion of the legal situation, his communication is

relevant and goal-directed, that was yes.

Whereas, Does the defendant's current symptoms of mental illness interfere with his or her capacity? It said, No.

Q. Do you see the comment on the following page? Is the defendant competent to proceed? The answer is, No?

A. Correct.

Q. And then there's a comment added, it looks like, on January 31st of 2025?

A. Let me see if I have that in front of me.

Q. It's just on the second to last page of the Competency Assessment Tool.

A. Let's see here. 130.

Oh, okay. So is it --

Q. Progress notes --

A. Yes.

Q. -- 1/31/25.

A. Yes, ma'am. Are you referring to the paragraph that was noted there?

Q. Yes.

A. Yes, ma'am.

Q. What do you notice?

A. Mr. Mosley continues to present with a lack of factual knowledge regarding the legal system. He knew his legal charges. When asked to describe the allegations

associated with his legal charges, he stated that he did not want to because I feel something bad will happen if I talk about it.

I asked him what he believes will happen. He stated, I don't know. I just don't want to talk about it.

Overall, he appears -- or Mr. Mosley appears to be putting forth poor effort towards competency assessments.

Q. What's your reaction?

A. So I don't really have a reaction. I'm just reading it and wondering, since it's consistent with the other one, that he's not competent, what the poor effort is based on?

Because -- the only reason I'm going to say that is because, for example, in the school records, he's putting forth effort, but making minimal progress. So the question I would have is, is it poor effort, or he's just not comprehending things? Because it's pretty consistent results from the two administrations of the CAT.

Q. Would it help to have Dr. Tenaglia's notes to be able to figure that out?

A. Either notes or just to comment on what led to that opinion.

Q. Looking at page 4 of 5 of that particular CAT, Dr. Tenaglia also noted that Thomas Mosley was having

hallucinations, right? Thought content, hallucinations?

A. Correct.

Q. Moving on to 26 days later, Competency Assessment Tool given February 25th of '25, right?

A. Correct.

Q. And was that after Thomas Mosley was given the WAIS?

A. Yes. He was given the WAIS, I believe, 2/18 of '25.

Q. 18 days after he was still incompetent by Dr. Tenaglia's own report, correct? The Competency Assessment Tool?

A. Correct. I'm just verifying the exact date. So it has -- let's see. This testing occurred 2/18 of 2025, so it was.

Q. He was given one final Competency Assessment Tool February 25th of '25?

A. Correct.

Q. What do you notice about his performance on the six criteria?

A. So across the board, he's gone from unacceptable on those that he was found unacceptable on or questionable to acceptable across the board. So everything changed from what it was to being completely acceptable.

Q. And was there a comment that accompanied that?

A. So, yes, on page 3 of 5. It said that, Mr. Mosley is competent to proceed on the basis of malingering. Observations and standardized testing revealed Mr. Mosley likely feigning psychiatric symptoms and putting forth poor effort towards assessments.

Overall, it is my opinion that Mr. Mosley likely has the factual and rational understanding of his legal charges and the legal system, and has the capacity to rationally disclose pertinent facts to his attorney, manifest appropriate courtroom behavior, and testify relevantly.

Q. What is your reaction to that note?

A. So, again, I don't have a reaction, but I was confused, only because -- so as of 1/30/2025, he was unacceptable and not competent, and less than a month after, he's across the board acceptable.

So -- and the conclusions were based upon him likely malingering, but I didn't see any evidence or descriptive details of how he had demonstrated his competency. Meaning, how was that conclusion reached? Unless it's the -- unless it's the assumption that it's explained because these tests say he was malingering that were given to him.

So it was confusing because I didn't see anything in the notes to suggest, you know, there was a

marked increase in his knowledge of this or that. So -- because of him not doing well on the malingering test could be for a variety of reasons. So I just had concerns because it was just less than three weeks ago -- around three weeks, where he was having hallucinations, or that was noted.

So I just don't --

THE COURT: Did she say she observed him having hallucinations or that he reported self-hallucinations?

THE WITNESS: So, Your Honor, it looks --

THE COURT: There's a difference.

THE WITNESS: Right. Right. I agree completely.

He continues to report.

THE COURT: Okay. So she didn't actually observe any?

THE WITNESS: No, not to my knowledge. And I don't have any descriptors suggesting she did.

BY MS. RUSSELL:

Q. So was that competency assessment on February 25th of '25?

A. That's correct.

Q. Consistent with your evaluation of Mr. Mosley when you saw him at the Pinellas County Jail?

A. So parts of it were. The parts that were were his appreciation of the charges, his appreciation of potential penalties, his understanding of the legal process, and his capacity to manifest appropriate courtroom behavior.

The parts that weren't were capacity to disclose to his attorney pertinent facts, and capacity to testify relevantly.

Q. I'd like to ask you some questions now about the Psychology Weekly progress notes that are also contained in that packet.

In general, do you see the format of a note in that there is a list of medication and then a note about his progress?

A. I don't know if I have that in front of me.

Q. That's at the very end of the -- you don't have it?

THE COURT: Is it on one of the sideways pages?

MS. RUSSELL: Yes, it's on that there.

THE COURT: Because I'm not sure that I have it either.

Can I see what you're looking at?

MS. RUSSELL: Yeah. Sure. It's at the end of the Competency Assessment Tool.

THE COURT: The last page that I have is dated

12/26 of '24. I don't think that's what you want me looking at.

MS. RUSSELL: So the psychology progress notes -- you're right, these copies are so bad -- it says page 1 of 2. I can show Your Honor, it's the --

THE COURT: What's the date on that one?

MS. RUSSELL: It starts with, it looks like, 1/6 of 2025. And they're sideways --

THE COURT: Okay. Yep, I've got Psychology Weekly progress notes.

MS. RUSSELL: Yes.

THE COURT: I've got 12/26 of '24, 1/2/25, 1/10/25, 1/15/25 -- is that the one I should be looking at?

MS. RUSSELL: Yes. 12/26, 1/2, 1/10, 1/15, 1/23, 1/30, and 2/6.

THE COURT: Yep, I've got them. Yep, they're at the end.

Do you not --

THE WITNESS: I don't have them.

THE COURT: Okay.

MS. RUSSELL: I'll hand you what's been marked as Exhibit 7.

THE COURT: And you want to draw my attention to which date? Or --

MS. RUSSELL: Let me just give it to --

THE COURT: Sure.

MS. RUSSELL: Let me just give it to Dr. McClain and then I can...

BY MS. RUSSELL:

Q. So as we understand it, these progress notes were made on a weekly basis for the first six weeks that Mr. Mosley or Thomas Mosley was there, and then after that, discontinued.

Looking at the progress notes, Dr. McClain, on December 26 of '24, which may be further down in the packet. These are just basically produced the way they were produced to us by South Florida, which was disheveled.

A. Yes, ma'am.

Q. But do you see the psychology progress note from December 26 of '24?

A. I do.

Q. Okay. Dr. Tenaglia reported that when Thomas was asked the difference between a felony and a misdemeanor, he said -- what did he respond?

A. There's a quote that says, I don't want to answer that question. And I asked, Why? And he stated, I don't understand it.

Q. All right. Moving on to the progress notes

January 2nd of 2025. He reported to Dr. Tenaglia, who was asking how was he understanding the material taught in competency classes.

A. So basically, what it's stating is that he said, It's kind of hard. I don't understand some of the things.

Q. What about the progress note January 10th of 2025?

A. In terms of what his response was to the material?

Q. Yes.

A. He stated he doesn't really understand what's being taught in class. He stated that while in class, I got a paper so I could try to understand from that.

Q. He was trying to understand?

A. Correct.

Q. What about the progress note on January 15th of '25.

A. So when asked -- Mr. Mosley has been attending classes. When asked if he is understanding the material taught, he stated "some of it."

Q. What about the progress note from January 23rd of '25?

A. I asked him to tell me one thing he has learned in class. He told me he learned about not guilty by reason of insanity. I asked him to tell me what it means,

and he stated he "forgot."

Q. What about progress note from January 30 of '25?

A. Mr. Mosley continues to present with a lack of legal knowledge. He does not appear to be putting forth adequate effort.

Q. And then February 26th of '25?

A. I asked Mr. Mosley if he is understanding what is being taught in class and he stated, "not really." I asked him what is making it difficult for him to understand and he stated, "It's too much and it's hard to understand."

Q. Dr. McClain, in reading those records and looking them over and knowing what you know about Thomas Mosley's cognitive ability and his autism, what can you tell me about how he understood competency restoration classes?

A. So it's pretty straightforward. I think he's saying he's not understanding it and he's not retaining it, which I think would be consistent with the academic records. There is things he's retaining, that he's retained.

So I think it's the more difficult concepts that would go along with trial, not guilty by reason of insanity, which is not an easy concept. You know, I've had cases involving autism where it's very difficult for

them to really understand at the time they were mentally impaired, but now they're stabilized on medication, but it was at that time.

So there's a lot of complexities in those concepts, so I think there is definitely effort because he's retaining information certainly in the most recent evaluation that I have of him. So I don't think it's like a flat-out refusal to, you know, participate. I think he's actually legitimately saying I'm having difficulty understanding that and retaining it because it's a more complex concept.

But as far as effort, I mean, if he is, hypothetically, not participating at all and refusing to put forth effort, you would expect to see just more of flat liner of "I don't know," "I don't know," "I don't know," you know?

So I don't think it's consistent with that. I think it goes more to the deficits that are contributing to why he's not able to bring in new information and retain it over time to produce, you know, the synthesis of the output from, like, a question on the stand, which is really done more, like breaking it down to remediating for intellectual or language deficits.

Q. What parts of the brain and what skills are required to answer a question on the witness stand?

A. So that's a great question. So there is organs -- or there's -- let me put it this way. There are parts of the brain, receptive and expressive parts of the brain. Broca's area is a simple area for producing speech. Wernicke's is receptive speech. Okay. So understanding things.

So those two work -- those are the primary areas for language production. So if there is impairment or breakdown there, there's, like, a disconnect that occurs to where you can't produce the output because you're not synthesizing the input, you know, which is kind of inherent in the speech and language reports.

And then there's another area of the brain that is called, you know, the parietal-temporal-occipital, which is used for reading. So if there's a breakdown in that area and you have reading comprehension problems, it also affects the comprehension and consolidation of those memories to be able to produce and recall, for example, reading comprehension, what did you learn from the paragraph. Right?

So there's areas of the brain, but basically, for an individual to pull from memory consolidation, the frontal lobe is accessed. That's the retrievable center to where you give a cue and go, What is a plea bargain? And it spins and it goes back and goes, Well, that is, you

know. Or, What does your lawyer do for you, your public defender? Spins, and can give that response.

So more concrete materials repeated over time can be learned, but the more abstract things, you know, like, what happens, for example, with a bench trial as compared with a regular trial with jurors, that type of thing would be more difficult for the person to synthesize and understand.

MS. RUSSELL: May I approach?

THE COURT: Yes.

MS. RUSSELL: Thank you, Dr. McClain. We are done with Exhibit 7.

BY MS. RUSSELL:

Q. What is neuropsychological testing, Dr. McClain?

A. So neuropsychological testing is testing that is utilized to determine brain behavior relationships and how the brain functions. So it's broken down into functional tests that would assess different capacities.

For example, immediate memory, short-term memory, long-term memory, attention, concentration, language skills, overall intellect in comparison to memory functioning, but it's basically looked at as a way of determining an individual's strengths and weaknesses cognitively.

Q. So as a forensic neuropsychologist, your

strength and one of your great sort of passions -- right? -- is to figure out what is the appropriate test for any given situation; is that fair?

A. So it's fair to say that my training was such that I was trained to think functionally. Like, if the question is -- even competency, as an example. Competency. If the person has a head injury, can they benefit from competency restoration training?

Well, if the brain is not intact and there is significant memory impairment, no matter how much you try to stuff stuff in there, they're not going to retain it.

So I've been trained to be a functional neuropsychologist, so I look at what would be relevant in any particular case. So it's different, for example, in a forensic context, executive functioning, because important memory functioning, whereas if I were to assess in a civil case for overall damages, you know, it would be more broad-based, like the total person what have they lost, et cetera, in terms of their capacity.

Q. But choosing an appropriate test for the appropriate circumstance, that is part of the art and science of what you do; is that fair?

A. I think that's fair to say, whether it's forensic or otherwise.

Q. Let's talk about the WAIS.

A. Sure.

Q. What do we use the WAIS for?

A. So I typically utilize the Wechsler Adult Intelligence Scale for assessing a person's overall intellect and their strengths and weaknesses in the breakdown of verbal and nonverbal skills, as well as processing speed and working memory. So there's the total, like, FSIQ or full-scale IQ, but then there's -- can be strengths and weaknesses on the different components of it.

Q. Is the WAIS the gold standard for determining IQ?

A. Typically, it's the WAIS or the Stanford-Binet. There are some other shorter versions of the test, but to get a real view of the person's overall abilities, usually a more lengthy test like Stanford-Binet-5 or the WAIS-IV or V. Now the V.

Q. Do most experts in the field rely on a WAIS score in order to determine IQ?

A. So typically to determine IQ, one would rely on a formal test to do that, whether it's administered during their academic, you know, upbringing, like the IEP, psychological testing. But, yeah, typically that would be used to determine their overall intellectual capacity.

Q. Dr. McClain, you first saw Thomas Mosley when he

returned from South Florida Evaluation and Treatment Center in March of 2025?

A. Correct.

Q. Is there a reason why you didn't give him a WAIS then?

A. So just to really clarify my history with Mr. Mosley and my recommendations, I from, I think, the beginning of it thought it was important to determine cognitively what is going on and his intellectual functioning, but I certainly didn't want to test him at a time initially when I thought he was unstable or not stable as to his mental condition.

Following the return from the hospital, he had essentially been given the WAIS while he was at the hospital, so it would be inappropriate for me to administer it again, especially the WAIS-IV. And so I did not administer testing to him.

I also thought there were still some residual symptoms that he was exhibiting in terms of the mental health symptoms. And I try to be careful about when I do that testing to get as accurate a measure as I can because the goal is if they're higher functioning, catch it. You know, get it that they're higher functioning as compared with if it's attributable to them not being stabilized for some reason on medication.

But it had just been administered is the simple answer to the question.

Q. So it would be important for someone to have their mental health condition stabilized before they got an IQ test like the WAIS?

A. That's correct.

Q. Okay. Do people often give effort testing in conjunction with the WAIS?

A. Yes.

Q. How?

A. Well, the WAIS is a unique instrument in that it does have embedded measures that can be taken into consideration, along with an additional malingering test. But typically, you would want to do any effort testing prior to administration of the WAIS.

As an example, with intellectually disabled individuals, I might do the Rey 15-Item first to determine, well, if they're going to be trying to pull a fast one, I'd you like to know before I exert all this effort and getting invalid results, because that can offer nothing to, like, the question of intellectual disability if they're invalid and they underestimate the person's ability. And I've had that happen.

Q. So the effort testing should come first, and then the WAIS?

A. That's the standard procedure, yes.

Q. Because you can only give the WAIS once every year?

A. Basically, the year. It's within a year.

Q. Or else there could be issues with their practice effect?

A. Correct.

Q. Okay. Is there any reason that you can think of that you would give malingering tests after the WAIS?

A. Not that I can think of. The -- it would not make sense to me to do that. I'm not privy to maybe Dr. Tenaglia's reasoning on that so I don't want to comment on it, but typically, that wouldn't be standard protocol.

Q. And is it fair that giving an effort test, like not only a couple days later, might not actually be a true reflection of the effort given on the day the WAIS is given, correct?

So if you give an effort test days or maybe a week later, is it fair to say that those same lack-of-effort conditions existed on the same day when the WAIS was given?

A. The answer is no.

Q. Why not?

A. Because it is within that simple time, like a

snapshot of time, that it could -- their motivation, their effort could vary according to a number of factors, medication, mood, attitude. So it could vary for various reasons, so it's best to get it within the window within which you're working with the individual.

Q. Dr. McClain, are you familiar with the WHODAS 2.0?

A. Yes.

Q. What is it?

A. It's an adaptive measure that's used by the World Health Organization for rating disability in various areas.

Q. So it's for general disability?

A. Yes. It's applicable to general disability for a variety of reasons.

Q. And it's retrospective 30 days, right?

A. Correct.

Q. And is it open source?

A. It is.

Q. So anybody can pull that manual off the internet?

A. It can be pulled off the internet. And you can even start an administration of it on the internet.

Q. And it's free too, right? It costs nothing.

A. It doesn't cost anything to get it off the

internet.

Q. Other measures, the ABAS or the GARS, for example, that you use, are those expensive?

A. So the initial investment in the test and the manual is fairly costly. The adaptive measure has a whole range of age range, 0 to 69. And it has different for the teacher, for children, for parent versus individual. So it costs more because that's, you know, the initial investment in having the specific protocols because it's not acceptable to copy a form and, you know, you have to pay for it, and one should. But the manual helps you to look at the specific scoring that goes on, so you have the normative data on there.

Q. And that you have to pay for?

A. Right. There's an initial cost for the testing kit itself. And then once you run out of the forms itself, then you want to buy more forms, basically.

Q. How much does it cost?

A. I think the overall kit that I bought was right around $400 or so for adaptive measure.

Q. So is the WHODAS a scientifically valid test for adaptive functioning in intellectual disability?

A. So I'm not aware of it being a scientifically valid instrument. It is an adaptive measure. I will say that adaptive measures still remain subjective. There's

just normative data, for example, on the violent or the, you know, ABAS, if you will, the Adaptive Behavioral Assessment. But as far as scientifically valid, it's more face valid from the standpoint of a rating system to look at different areas of impairment.

Q. But it's not specifically made for adaptive functioning in intellectual disability assessments?

A. That's correct.

Q. And, in fact, the AAIDD 12 says so much, correct?

A. Correct.

Q. All right. What are some other scientifically valid tests that are available to assess adaptive functioning in intellectual disability specifically?

A. So the Vineland is available, and that would be another one that would be good to use. Those are typically the ones that I use are the Vineland or the ABAS.

THE COURT REPORTER: Can you spell ABAS?

THE WITNESS: Yes, ma'am. It is A-B-A-S.

THE COURT REPORTER: Thank you.

THE COURT: When we finish up today, we're going to give Madam Court Reporter the acronyms.

MS. RUSSELL: I would be happy to.

BY MS. RUSSELL:

Q. And that's pretty consistent with your approach, to give the test as directed to collateral informants like parents or teachers?

A. That would be correct.

Q. Okay. Did you read the report of Dr. Lana Tenaglia?

A. Yes.

Q. Her final report that was filed with the Court on February 28th?

A. Yes, ma'am.

Q. Okay. Was there anything in it you took issue with?

A. So in terms of the conclusions of -- I had some concerns about the conclusions as to overall competency based upon my review of the information, the test -- the raw test data, the malingering measures, and also the fact that actually had been prescribed medication but that appears to be something that is not really validated by diagnostics that she's doing. So I just had concerns about her conclusions in terms of that. But...

And again, it's more based upon the context of the academic history, review of academic history and collateral information would cast concerns about how valid, for example, the malingering measures on are in terms of whether he could comprehend the items. But also

assuming competency absent any real evidence other than believing because of malingering he's therefore likely competent, because a person could be exaggerating also to some extent but still be legitimately not competent.

So just overall, just concerns about that. And then, for whatever reason that I'm not aware of, administering, for example, the malingering measures subsequent to the WAIS-IV, which I'm not certain why that was administered.

Q. Is there a danger to making a diagnosis with testing and present observations without any collateral informants, any school, driving, or employment records, or any collateral interviews with any other people?

A. Yes.

Q. What is that?

A. Misdiagnosis.

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

A. Yes.

Q. That was filed in the record?

A. Yes, ma'am.

Q. Was there anything that you took issue with in his report?

A. It falls along the same lines for his interpretations because his interpretations, he's assuming in his report that Mr. Mosley is malingering, but the data

suggests he's functioning very low. And also, his adaptive assessment says there's no deficits whatsoever. However he completed that, I'm not certain.

You know, there's one of the WHODAS that says no deficits whatsoever completed for Mr. Mosley, then there's another one completed by the parents who go into, I would say, moderate to severe deficits for his adaptive functioning. So there's, like, a big discrepancy.

And there's also a line-by-line thing that Dr. Railey references as far as what he can do and kind of itemizes there's no problems in those areas in terms of social communication, higher-level cognitive processing, and to say that he can actually do those things, which I'm not sure what that was based on.

Q. Do we even know who bubbled out that answer sheet with the raw data in WHODAS 2.0?

A. I'm assuming -- and I don't know for sure, but I'm assuming the parents completed the one that was dated, I believe, the 25th of May. I've got one that is dated the 20th of May, time taken 1 minute, 24 seconds to complete. This says the client was Thomas Mosley, the assessor was Michael Railey. And so it goes into cognition, overall disability, mobility, self-care, getting along, life activities and participation. And the descriptor says no deficits.

Q. But we don't know who filled that sheet out?

A. I'm not certain, no. But just as an example, and this is important, and I'm only going to share because I think it's important to note the flesh of the domain. Like, cognitive domain says, The client's cognitive functioning is within the nonrange.

Descriptive none indicates the client experiences few or no significant difficulties in cognition and communication. They demonstrate typical cognitive and communication abilities, including understanding instructions, processing information, engaging in problem-solving activities effectively. Their cognition enables them to comprehend information, make decisions, and communicate effectively in various contexts, fostering independence and participation in daily activities of professional endeavors.

So it's a lot. And it was completed in one minute, and I just wasn't certain how there were no deficits when I compare and contrast with the academic records that no deficits in communication and speech and language and social interaction.

Q. Does Dr. Railey note in his report that he received the same educational records that you got?

A. Let me double-check.

Q. Dr. McClain, if you don't know, that's all

right.

A. I'm not certain, but it was my understanding he was provided with the records, but I wanted to make sure and look at his report. I will find it and look.

Q. All right. While you do that, I'm going to check with my cocounsel and see if I have any additional questions.

A. Let's see here.

THE WITNESS: Your Honor, I was just going to reference the document reviewed on page 3 of 11 on Dr. Railey's report, records reviewed, with reference to the educational records said the defendant's limited educational records. So I don't know if it was the full packet or...

MS. RUSSELL: Excellent. Dr. McClain, I don't have any further questions for you. Thank you so much.

THE WITNESS: Thank you. Sure.

THE COURT: All right. Now is a good time for a ten-minute comfort break. I'll see you back in 10 minutes.

(Break taken.)

THE COURT: We are back in session.

All right. Ms. Sullivan, whenever you are ready.

MS. SULLIVAN: Thank you, Your Honor.

CROSS-EXAMINATION

BY MS. SULLIVAN:

Q. Good afternoon, Dr. McClain.

A. Good afternoon, Ms. Sullivan.

Q. That was about four hours of testimony. I have many notes. I'm going to try to stay topic by topic and not jump around.

A. Yes, ma'am.

Q. But if at some point you're unclear of what we're talking about, please just stop me and I will clarify. Okay?

A. Thank you. I appreciate it.

Q. Where I'd like to begin is talking about the school records that we went over a little bit earlier this morning.

A. Yes, ma'am.

Q. Do you still have your packet with your exhibit tab --

A. I do.

Q. Okay. I'm going to try to reference it by exhibit and the page number so that we're all on the same thing. But again, if at some point you're not clear of where I am, please just stop me.

A. Yes, ma'am.

THE BAILIFF: Sit down. Sit down.

MS. SEIFER-SMITH: This is --

THE BAILIFF: Sit down.

(Defendant was escorted out of the courtroom.)

THE COURT: Okay. So we're going to take a break until a deputy can tell me what happened. My attention was on Dr. McClain and Ms. Sullivan. There's now probably 10 deputies in the courtroom. We all probably need to clear out, so if there's an issue. Then if you all need to talk to your client, you can.

Let's take 10 minutes, please.

(Break taken.)

THE COURT: Okay. So who -- where is the deputy that was in here?

THE BAILIFF: I'll find him, Your Honor.

THE COURT: I want to just make a record.

MS. SEIFER-SMITH: Well, I'm happy to make a record.

THE COURT: I am going to let you say whatever you want. Let me talk to him first, and then I'll let you respond with anything that you want to say.

MS. SEIFER-SMITH: Okay.

THE COURT: All right. Deputy, just put your name on the record, please.

THE BAILIFF: Deputy Shaun Atkinson.

THE COURT: So when we came back from the break, I was looking at Ms. Sullivan and Dr. McClain, so I didn't really know what was going on over at defense table.

Just so we're clear for the record, Mr. Mosley is not in the room right now. I just want to make a record as to what happened and get an idea from the lawyers how they want to proceed.

So what happened at the table?

THE BAILIFF: Yes, ma'am. The defendant is supposed to be sitting up underneath the table, slid all the way in in the chair. He refused to slide his seat forward. When the deputy tried to slide the seat forward for him, he stood up and backed up against the deputy. At that time, he was placed in handcuffs and taken out of the room.

THE COURT: Did he say anything?

THE BAILIFF: He did not say anything. I asked him if he wanted to be a further part of the hearing, and he said he did not. Then we put him in the --

THE COURT: I'm talking about when he was over there.

THE BAILIFF: Over there? No, he didn't say anything, just was not cooperative.

THE COURT: Okay. All right.

Did you want to say something?

MS. SEIFER-SMITH: Yes. I would like to say a few things. Julia Seifer-Smith, Assistant Public Defender, for the record.

I've been sitting at the counsel table with Mr. Mosley all day today. As I think most of the people in this room understand, we're here for a competency hearing. We're litigating the question of whether or not Mr. Mosley understands a great many things regarding the proceedings just generally with respect to trial, and one of those issues is whether or not he has the capacity to manifest appropriate courtroom behavior.

He has been here for hours and hours today, and he has steadily declined. I have watched him decline. I have been taking notes about his physical behavior in Court, putting his head down, leaning back. I think that Your Honor saw him leaning back in his chair at some point this afternoon.

Specifically with regards to his behavior this afternoon, it has definitely devolved after lunch. Mr. Mosley was spoken to before we came in, while we were on break, about the need to be entirely under the -- under counsel table in terms of his legs. He

ired that it's uncomfortable, it's really tight. We talked about it. He did not necessarily want to do it. There was a compromise that he was allowed to have his chair a couple inches out.

He has been fidgeting. He has looked as though he is physically uncomfortable all afternoon. And I don't believe that he moved particularly much in the chair, but that the deputy did get up, shoved -- started to shove the chair underneath counsel table and that is when things went haywire.

I attempted to explain earlier to the deputies that I did not do -- I will admit, I did not do it at -- in a very protracted way, that the reason that we're here is because of Mr. Mosley's profound deficits and his inability to understand things.

And so I think that if I was given more time to explain to all the courtroom personnel what the specific problems are regarding Mr. Mosley, perhaps we would be in a different situation.

However, what I've observed is that Mr. Mosley has had a really hard time this afternoon. I do not think that he understands much of the proceedings, except that it's making him very physically and emotionally uncomfortable. We've attempted to go into the back to speak with him. I think that it is

essential that he is a part of every proceeding in this case. It is a death penalty case.

THE COURT: I agree.

MS. SEIFER-SMITH: I figured that Your Honor would. And what we would like to do is to have a bit more time to speak with him. I know that it's been a very long day for everybody, but if we could have some more time with him, and we would like Dr. McClain, who has seen him on at least six occasions and has obviously seen him all day in court today, to speak with him in the back as well.

THE COURT: Okay. Ms. Sullivan, let's start with do you have any objection to Dr. McClain speaking with him this afternoon?

MS. SULLIVAN: No.

THE COURT: Okay. Second question is, is there anything related to what happened this afternoon that you need to put on the record?

MS. SULLIVAN: The only thing I would like to -- obviously, I was focused for what --

THE COURT: Right.

MS. SULLIVAN: -- just happened so I probably saw what Dr. McClain and Your Honor saw in regards to that. What I did observe, just to add to what Ms. Seifer-Smith said, right after lunch, I was

sitting here, and I heard the deputy telling him to move his chair in. They were talking back and forth about that, and I did hear Mr. Mosley say to the deputy, "You got a problem, take me out of the courtroom."

That's the only added thing that I observed regarding the chair issue and then, obviously, what just occurred after.

THE COURT: Okay. So I am comfortable with ending for the day if you don't think Mr. Mosley is capable of coming back out. I'm not going to make that decision. I'm going to allow you to tell me what you want to do.

But while we're all here before you give me an answer, Dr. McClain?

THE WITNESS: Yes, Your Honor.

THE COURT: What's your schedule like for the rest of the week?

THE WITNESS: So, Your Honor, I'm not available Thursday or Friday at all.

THE COURT: Okay.

THE WITNESS: I could possibly be available tomorrow morning.

THE COURT: Okay. All right. How do you want to proceed? Do you need a few minutes to talk to

Mr. Mosley? Do you want Dr. --

MS. SEIFER-SMITH: Yes.

THE COURT: -- McClain to go back with you now?

MS. SEIFER-SMITH: Yes. Both of those things.

THE COURT: Both of those things?

MS. SEIFER-SMITH: Yes.

THE WITNESS: Do you want to try and proceed for the rest of the day?

MS. SEIFER-SMITH: I think we would like to.

THE COURT: Okay.

MS. SEIFER-SMITH: We have our next witness here and available. We would like to proceed with regards to the witness on Zoom. Obviously, she's on Zoom. I'm going to find out about her availability.

THE COURT: Okay.

MS. SEIFER-SMITH: It doesn't matter when she testifies in terms of order.

THE COURT: I'll stay in the back until you all are ready to come back in. Okay?

MS. SEIFER-SMITH: Thank you.

THE COURT: All right.

MS. SEIFER-SMITH: And I just wanted to say too, I agree with what Ms. Sullivan put on record. That was something that occurred earlier.

THE COURT: All right. Thank you.

Okay. I will be back whenever you all ask for me.

(Break taken.)

THE COURT: You can have a seat. Thank you.

Are we bringing Mr. Mosley back out?

MS. SEIFER-SMITH: I don't think that's a good idea right now.

THE COURT: Okay. So here are my thoughts. We're going to call it a day.

MS. SEIFER-SMITH: Okay.

THE COURT: I want to have a conversation now about what if this happens tomorrow morning. It is my expectation that I will require him to be here in the morning. The options are he comes in and we try it again. Maybe everything will be fine. If that doesn't seem like it's going to work, you all can tell me how it's going in the morning. If we need to get a small table to put next to yours so he can sit there and have a little more leg room, I'm fine with that. We've done that on larger trials or with more attorneys. We get a longer defense table. Perhaps that would make him more comfortable.

If there's going to be a behavior issue -- there really hasn't been a behavior disruption issue today other than that last incident. If he needs to sit

next door and watch on TV, it's not my preference because y'all aren't here to talk to him and -- but I'm also not going to let him decide whether or not we're having proceedings, right?

I kind of need to do this. We have many doctors lined up with very specific time frames that we're operating under, and it might be actually easier for him to sit next door.

Again, I'm open to any suggestions you all have. Those are the two best ideas that I've had so far about if he doesn't want to come in tomorrow and can't sit quietly. Those are my two options.

MS. SEIFER-SMITH: We certainly appreciate any and all accommodations. Another suggestion that I would have is perhaps more frequent breaks.

THE COURT: Sure. I'm always fine for a break.

MS. SEIFER-SMITH: I think we probably all are.

THE COURT: Yes.

MS. SEIFER-SMITH: We can speak to him.

Go ahead.

MS. RUSSELL: The other thing, Your Honor, that we learned during the break and that we also learned from Dr. McClain's testimony is that Mr. Mosley has not been taking his medication. We learned on the break that he hasn't been taking his thyroid

medication.

So there is an additional actual medical reason why this may be occurring at this point --

THE COURT: Okay.

MS. RUSSELL: -- and that may have changed some of the things that we're dealing with.

THE COURT: I understand. Okay. So those are just some things to think about. If anyone has any additional ideas, I'm open to suggestions on how we can proceed. But he needs to be present in some way or fashion.

Taking more breaks is fine. We'll do that anyway. Getting a second table if you want it, I'll order it. If he needs to sit next door, we'll do that. Anything else that you can think of in the overnight, let me know in the morning and we'll address it.

Before I forget, Exhibit 4 has 10 tabs. I do not want to take this back in chambers with me.

Can you reproduce this for me so I can have a copy?

MS. RUSSELL: Sure. Absolutely.

THE COURT: It doesn't need to be tomorrow, but at some point, I need to write an order, but I don't like taking evidence back to my office. So if you

have a copy for me at some point, that would be great.

Okay. Anything else we need to talk about?

MS. SULLIVAN: No, Your Honor.

THE COURT: Okay. I'll see you all bright and early at 8:30.

MS. SULLIVAN: Thank you, Your Honor.

(Proceedings were concluded for 07/08/25.)

CERTIFICATE OF REPORTER

STATE OF FLORIDA)

COUNTY OF PINELLAS)

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

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

DATED this 28th day of August, 2025.

Charlene M. Eannel, RPR

CHARLENE M. EANNEL, RPR