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vs. VOLUME II

THOMAS ISAIAH MOSLEY,

Defendant.

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

THE COURT: Okay. Ms. Carrier is on Zoom.

Dr. Torrealday, if you'd like to come back up
and have a seat.

Mr. Mosley is present. Everyone for Defense and
State is present. So if we're ready to continue,
Ms. Ellis, whenever you're ready, please.

MS. ELLIS: Thank you, Your Honor.

BY MS. ELLIS:

Q. Doctor, I believe we were talking about the Dot
Counting Test --

A. Uh-huh.

Q. -- and the head injury. It was disclosed to you
that he had hit his head on a pole when he was seven,
correct?

A. I believe seventh grade.

Q. Seventh grade, okay.

A. Uh-huh.

Q. And then you had mentioned something right
before we left about that the defendant was redirected
about an accident.

Can you tell us about that?

A. He was asked if he had been involved in any car
accidents, because he didn't initially disclose that, and
then he indicated that he had been in a serious accident.

1 Q. Okay. Who was he redirected by to talk about
2 that?

3 A. Defense Counsel.

4 Q. All right. And --

5 A. Yes.

6 Q. -- when he talked about the accident to you, did
7 he disclose any kind of head injury in that accident?

8 A. He reported having driven his car into a tree
9 and being taken to the hospital to be examined, but he
10 said it wasn't a serious -- he didn't experience a related
11 head injury, but did suffer a leg injury is what he
12 reported.

13 Q. Okay. And then, again, the conclusion of the
14 Dot Counting Test was poor effort in the learning
15 disability category, but in the normal range with --
16 normal with schizophrenia and head injuries?

17 A. Correct.

18 Q. All right. So the next test that you
19 administered is the Mini-Mental Test. Tell us about that.

20 A. Yes. The Mini-Mental Status Exam, it's a
21 screener to assess for mild cognitive impairment. It's
22 used frequently, some of those items, actually, in
23 interviews also, aside from the formal measure. And it
24 assesses some various things like recall, orientation,
25 attention, calculation, naming. It's used for, like, a

1 gross assessment of cognitive impairment.

2 Q. Okay. And what are some of the things that you
3 ask him to do in the mini-mental health test?

4 A. Sure. For example, saying -- my providing three
5 words and having him repeat them soon after relaying them,
6 my relaying them to him, and then having to recall them at
7 a later time in the interview. Asking for orientation
8 to -- to time. For example, the year or season, month,
9 day of the week, the date, and orientation to place.

10 Q. And how did he do on those first two?

11 A. Sure. Initial registration and recall of the
12 three words, he did fine. He was able to recall those.

13 Orientation to time was good. He erred on the
14 specific date by three days. He had indicated it was the
15 18th, but it was the 21st. But the year, the season, the
16 month of the year, the day of the week, he was correct in
17 reporting those.

18 Orientation to place, he was able -- he
19 identified the correct state, the correct county, the
20 correct city, the correct building, and the correct floor
21 we were on. So that was good.

22 And then he, after a few minutes -- so this is
23 administered the same for everyone. There's a
24 standardized way. So when I got back to the recall, the
25 three words that were asked to remember, he was able to

1 recall those when it came time to asking those again.

2 Q. And is this the -- is this the test that you
3 have him draw shapes in as well?

4 A. So, yes. There's other items, and that is one
5 of the items later on.

6 Q. Okay. So let's go in order, I guess, then.

7 A. Okay.

8 Q. Once you do the initial questions and the
9 memorization of the three words, then what happens?

10 A. There's additional items regarding attention and
11 calculation whereas you ask them to start with a hundred
12 and count backwards by sevens. He counted by tens on all
13 of those. He did not get any of those correct.

14 Q. Okay. Do most people get that correct, counting
15 back by sevens?

16 A. Not as often as I would like, but one or two
17 perhaps, but that one is more difficult. In the
18 interview, sometimes we can do by fives or threes to see
19 if that improves. Yeah. But sometimes one or two, 100
20 percent of them, not always. He didn't -- he answered all
21 of them by tens.

22 Q. Okay.

23 A. And then naming, which is, you know, naming
24 different parts, he did correctly. There's a repetition
25 where you have to recite a specific statement, and he has

1 to repeat it exactly correctly word by word. And he
2 swapped one word for some additional words, so he didn't
3 get that perfectly.

4 The others, you show him some geometric shapes,
5 and you give instructions to look at them and point to the
6 objects in the order that he's told to do. He was able to
7 do that.

8 He was provided a sentence asking him -- you
9 know, a very basic sentence, to close your eyes, see
10 reading, he was able to do that.

11 Writing asked -- just general ask, write where
12 you live, and he wrote he lived -- I live, I believe, in
13 Florida. You're supposed to ignore errors in grammar or
14 spelling, and he had a noun and a verb, which is the
15 requirement for that, so that was correct.

16 And then the drawing are two geometric shapes
17 that are interlocking, and you are to copy them exactly as
18 you see them, and he did not do that. He did not put the
19 same-sided figures. It was distorted.

20 Q. Okay.

21 MS. ELLIS: And may I approach the clerk?

22 THE COURT: Yes.

23 MS. ELLIS: I'm showing Defense what has been
24 premarked as State's 10A and B. May I approach the
25 witness?

1 THE COURT: Yes.

2 BY MS. ELLIS:

3 Q. Doctor, do you recognize these?

4 A. Yes.

5 Q. Are they fairly and accurately depicting what
6 you observed the defendant do on that particular day?

7 A. Yes, those are the responses to those items.

8 Q. Okay.

9 MS. ELLIS: At this point, the State would be
10 moving into evidence what's been premarked as State's
11 Exhibit 10 for identification as State's Exhibit 10.

12 THE COURT: Any objection to State's 10?

13 MS. SEIFER-SMITH: No.

14 THE COURT: It will be admitted as such.

15 (State's Exhibit 10 was admitted.)

16 BY MS. ELLIS:

17 Q. Doctor, the geometric shapes that are depicted
18 in 10B, is that what you were talking about him trying to
19 repeat --

20 A. Yes.

21 Q. -- drawing?

22 A. He is to copy -- yes. Instructed to copy it, to
23 copy the design.

24 Q. Okay. And in 10A, that's Mr. Mosley's
25 handwriting on this sheet?

1 A. Yes, in response to, "Write about where you
2 live."

3 Q. Okay.

4 THE COURT: May I see those?

5 MS. ELLIS: Yes. I actually have a copy for
6 you, too.

7 THE COURT: I appreciate that.

8 Thank you.

9 MS. ELLIS: You're welcome.

10 BY MS. ELLIS:

11 Q. And did that conclude that test, then, all of
12 the different aspects of that test?

13 A. Yes, ma'am.

14 Q. And what was your conclusion in that Mini-Mental
15 Test?

16 A. That he showed some -- he scored within the mild
17 impairment, you know, predominantly because of the
18 attention and calculation and then the drawing.

19 Q. Okay. So talk to me about that a little bit,
20 the attention and calculation.

21 A. Uh-huh.

22 Q. What does that mean?

23 A. That's that category where you're asked to count
24 backwards by sevens to be able to attend to the
25 instructions and to the task of doing their mental

1 calculations and going backwards.

2 Q. Okay. So he did poorly on that aspect of the
3 test?

4 A. Yes.

5 Q. And what other aspects, the drawing?

6 A. He did -- although he did the repetition, some
7 of it correctly, in the registration and recall, he didn't
8 provide that exact repetition of that one sentence that he
9 did. He inserted two words in place of a word that was
10 omitted, and then the drawing.

11 Q. Okay. And what does "mild impairment," mean to
12 you?

13 A. Well, it really depends on what might be going
14 on, mental health, or if there's any cognitive decline or
15 injury. This is a basic instrument just to get -- see how
16 oriented they are, and if they're able to do some basic
17 skills. I don't know that I would equate this to saying
18 that he has, like, a neurocognitive disorder or anything
19 like that, but that he did poorly on those areas.

20 Q. Okay. And, in fact, in your opinion, he does
21 not have any significant cognitive deficits, correct?

22 A. Neuro -- with respect to head injuries, no. And
23 I questioned, you know, his performance on intellectual
24 testing.

25 Q. Okay. And I believe, in your opinion as well,

1 you say that he does not have any -- he's not presenting
2 significant cognitive impairments?

3 A. I did not see any, no.

4 Q. Okay. Just to go back to the initial interview
5 that we had where my cocounsel and I were over at the
6 jail.

7 Do you recall any point in time where the
8 defendant walked out of the room and refused to cooperate
9 with us?

10 A. I believe he stepped out.

11 Q. Okay. Stepped out or -- like, tell us the
12 circumstances that you remember.

13 A. Well, I can't recall if he -- what statements he
14 may have made, if he did any, but that he didn't want to
15 move forward with the interview.

16 Q. Okay. I want to talk to you a little bit
17 because you did review all of the IQ testing, and there
18 were three WAIS IQ tests that were administered to the
19 defendant within that five-month period of time. It looks
20 like there's a 46, a 55, and a 69. And the dates that
21 they were administered were February 18th, May 12th, and
22 July 29th.

23 Does that give you any impression with that
24 disparity of 23 points, I believe that is --

25 A. Uh-huh.

1 Q. -- in a five-month period of time, does that
2 give you any indication of what's going on, or what might
3 be going on in the IQ testing?

4 A. In the IQ testing? Well, starting with the
5 first one that effort had been suspected with the first
6 administration, and some testing was done at the time to
7 assess for that as well and so that was questioned.

8 The second one was repeated almost three months
9 later, and he scored 10 points greater. I chose not to do
10 that instrument because typically, that is not
11 re-administered in that short a period of time.

12 And then the third one, he did improve. That is
13 a slightly different measure because it's the newer
14 version of the WAIS, so it does have some subscales that
15 are different, so that one can be administered.

16 I questioned the validity or -- if it's an
17 accurate representation, given the effort concerns that
18 have been raised, and that he had not been identified as
19 intellectually disabled in the school system and received
20 services when he was in school. I believe -- I think he
21 started in, like, the 3rd grade or something like that,
22 had been identified as having language impairment and
23 receiving services for that and evaluated for that. But
24 I -- intellectual disability had not been raised during
25 those years.

1 Q. And ID does not wax and wane like competency
2 might?

3 A. I mean, there's a -- there's a little bit of
4 movement. It could be plus or minus 5 points, something
5 like that, but nothing that --

6 Q. Plus or minus --

7 A. -- changes significantly.

8 Q. Plus or minus 23 points, though?

9 A. That's a bigger jump than typical.

10 Q. Correct. So that indicates something else is
11 going on?

12 A. Potentially?

13 MS. SEIFER-SMITH: Objection. Leading.

14 THE COURT: Okay. Rephrase your question,
15 please.

16 BY MS. ELLIS:

17 Q. In your mind, what's going on there if there is
18 a jump within five months of 23 points?

19 MS. SEIFER-SMITH: Objection. Calls for
20 speculation.

21 THE COURT: Overruled.

22 THE WITNESS: Again, I received just test
23 scores. I did not have anything else in addition to
24 this to see if anything else had been done. Aside
25 from that, with the exception of the Rey-15 given in

1 the last evaluation.

2 The questions I would raise is effort, to see if
3 there's genuine effort across the board. And then
4 what changes potentially could have been in the
5 WAIS-4 that -- you know, to exclude any changes in
6 the instrument to potentially explain maybe a better
7 performance in one of the domains, because it is not
8 the exact measure as the WAIS-4. The 5 is different.

9 BY MS. ELLIS:

10 Q. Okay. And, in your opinion, if someone had an
11 IQ of 46 in school, would that be identified or flagged or
12 in any way given attention to that an ID test is
13 appropriate in that situation?

14 A. In my --

15 MS. SEIFER-SMITH: Objection. This is outside
16 the scope of this doctor's ability to testify. The
17 question was with respect to in school. This is a
18 clinical forensic psychologist, not a school
19 psychologist, not somebody who is giving intellectual
20 testing in the schools.

21 So the commentary upon, like, flagging in the
22 schools, et cetera, is outside of the scope of this
23 particular doctor's purview.

24 THE COURT: Do you want to ask her some
25 questions about her qualifications? I assumed that

1 was --

2 MS. ELLIS: Sure.

3 THE COURT: -- about what she talked about early
4 on when going through her CV, and I've reviewed her
5 CV. But if you want to ask her some questions about
6 that before she answers the question that you asked
7 her, okay?

8 MS. ELLIS: Yes.

9 BY MS. ELLIS:

10 Q. Doctor, how many ID evaluations have you
11 performed in your 20 years as a licensed psychologist?

12 A. Sure. And if I can clarify, like, these
13 instruments are not only used for identification of
14 intellectual disability. They can be parts of
15 batteries --

16 Q. Okay.

17 A. -- assessing further things. So administration
18 of intellectual testing, hundreds of those, both for if
19 they ask for ID specifically or learning disorder or part
20 of a diagnostic battery. So hundreds of them.

21 Q. Okay. And have you reviewed school records in
22 those cases when determining a diagnosis?

23 A. I appreciate school records, if they're given.
24 So if they're available, I do.

25 Q. Okay. And have you given opinions for schools

1 or for children in schools based on your testing?

2 A. Directly to the schools on a -- on some of the
3 learning disability evaluations, but identifying the range
4 of intellectual abilities based on the testing, yes.

5 Q. Okay. And in your CV, is there anything that
6 you have done pertaining to giving a diagnosis in a
7 juvenile?

8 A. Yes.

9 Q. And what would that be?

10 A. Both clinical and as well as intellectual and at
11 times achievement, if it's needed for juveniles.

12 Q. Okay. And much of your CV surrounds juvenile
13 testing; is that correct?

14 A. Initially.

15 MS. SEIFER-SMITH: Objection. Leading.

16 THE COURT: Overruled.

17 MS. ELLIS: At this time, I would ask to be able
18 to ask her about --

19 THE COURT: Do you want to ask her any questions
20 about her qualifications?

21 MS. SEIFER-SMITH: I'm sorry, is Your Honor
22 asking me?

23 THE COURT: Yes.

24 MS. SEIFER-SMITH: Sure.

25 THE COURT: Okay. You are welcome to ask those

1 questions.

2 EXAMINATION*****

3 BY MS. SEIFER-SMITH:

4 Q. Good afternoon, Dr. Torrealday.

5 A. Hello.

6 Q. Dr. Torrealday, have you ever worked in a
7 school?

8 A. No.

9 Q. Have you taken any school psychology courses?

10 A. I had one in graduate school.

11 Q. Okay. One course in graduate school?

12 A. Correct. I was in the clinical program, yes.

13 Q. Okay. But just one class, it doesn't sound like
14 this was a minor or an area --

15 A. No.

16 Q. -- of expertise?

17 A. Correct.

18 Q. Okay. And none of your practicums or clinical
19 studies were in schools; is that also fair?

20 A. In the school setting, no.

21 Q. Okay. And I understand that in terms of, like,
22 your professional engagement now --

23 A. Uh-huh.

24 Q. -- your memberships are not with respect to any
25 kind of, like, school psychology placements; is that --

1 A. Correct.

2 Q. -- also correct?

3 A. That's correct.

4 Q. And so if we're talking about, like, your
5 familiarity with the schools, it sounds as though it's
6 based upon review of records that are written by other
7 people; is that fair?

8 A. For the most part, the school records that I
9 provided. I have participated in some IEP meetings, but
10 for the most part, the records that are provided in prior
11 evaluations.

12 Q. How many IEP meetings have you participated in?

13 A. Less than a dozen. Not very many.

14 Q. Okay. And -- and in your participation in those
15 IEPs, was -- tell me what your capacity was. Like, why
16 were you appearing in those?

17 A. Sure. In some of those, depending on the
18 setting, like when I was working in a residential
19 correctional, I went there as a psychologist working with
20 the youth to address any mental health needs that were
21 needed.

22 Q. Okay.

23 A. I did not, in those cases that I recall
24 correctly, do psychoeducational evaluations of those
25 youth.

1 Q. Okay. And certainly, an IEP is just one avenue
2 of advocacy for a child's needs within the school?

3 A. Yes, it's one that -- yes, that is one.

4 Q. Okay. IEP are not perfect?

5 A. No. I assume not.

6 Q. Okay. And certainly, the job of a
7 schoolteacher, the job of a speech and language
8 pathologist within a school, these can be very difficult
9 jobs, right?

10 A. I imagine they could be.

11 Q. Especially in -- in schools that are
12 underserved, underfunded; would that be safe?

13 A. That is possible, yes.

14 Q. I imagine that many of the people that you were
15 having contact with in the correctional --

16 MS. ELLIS: I'm going to object to leading at
17 this point.

18 THE COURT: What's your question? I need to
19 hear the whole question --

20 MS. ELLIS: Sure.

21 THE COURT: -- before I decide if it's leading
22 or not.

23 MS. SEIFER-SMITH: I can rephrase the question
24 so that it is not leading.

25 THE COURT: Fair enough.

1 MS. SEIFER-SMITH: How about if I do that.

2 THE COURT: Sounds good.

3 BY MS. SEIFER-SMITH:

4 Q. Would you -- well, are many of the people --
5 many of the young people that you have contact with in the
6 context of, like, a correctional or detention setting
7 coming from places that are underfunded, under-resourced?

8 A. Yes, most of them.

9 Q. So many of them are also lacking advocacy; is
10 that also correct?

11 A. Yes. In many cases, absolutely.

12 Q. And have you noted that -- in those experiences,
13 have you found that maybe those children also -- things
14 are missed with regards to their education and their needs
15 within the educational system?

16 A. That's possible, yes.

17 Q. Okay.

18 MS. SEIFER-SMITH: Can I beg a moment of the
19 Court's indulgence?

20 THE COURT: Sure.

21 BY MS. SEIFER-SMITH:

22 Q. I'm sorry. Just if I got this wrong from your
23 CV, I think that you mentioned that much of the work that
24 you did within a correctional environment with regards to
25 juveniles was not in Florida; is that right?

1 A. Correct.

2 Q. Okay. So you've never worked in the St. Pete
3 school system?

4 A. No, I have not.

5 Q. Never in the Hillsborough school system?

6 A. No, I have not.

7 Q. When you talked about attending IEPs, was that
8 in Florida or not?

9 A. Out of state.

10 Q. Okay. So in Texas or Tennessee, is that where
11 you were?

12 A. And Alabama and Rhode Island. So everywhere
13 else I've been but Florida, yes.

14 Q. Okay. Very well-traveled. So is -- is it safe
15 for us to assume then that you just cannot be aware of
16 what is flagged or not flagged with regards to students in
17 a St. Pete elementary school?

18 A. I have not seen, and I have not been trained in
19 that in the school system, so I can't say.

20 Q. Thank you.

21 A. Uh-huh.

22 THE COURT: All right. What was your -- do you
23 want to come back up?

24 MS. ELLIS: Yes. My question was, if someone
25 had an IQ of 46 in school, will the school

1 acknowledge that, or would it have been flagged, that
2 person?

3 THE COURT: Okay. And you're objecting to her
4 answer giving an opinion as it relates to that?

5 MS. SEIFER-SMITH: Yes. I mean, I would say
6 that Dr. Torrealday has not evidenced any kind of
7 personal knowledge regarding any answer to that
8 particular question.

9 THE COURT: Do you want to rephrase your
10 question?

11 BY MS. ELLIS:

12 Q. Having done hundreds of IQ examinations, a 46 is
13 considered what, in what range?

14 A. Moderate, very low.

15 Q. Okay. And if you have a moderate, very low IQ,
16 is that, in your opinion, something that schools would
17 pick up on?

18 A. That is something that would be more easily
19 identified, yes.

20 Q. Okay. After you completed your two days of
21 interviews, your testing, and your evaluations, did you
22 establish any diagnostic impressions?

23 A. Yes, I did.

24 Q. Okay. And what were those diagnostic
25 impressions?

1 A. Unspecified depressive disorder, unspecified
2 schizophrenia spectrum, another psychotic disorder. The
3 specific learning disability by history. I put in
4 malingering suspect because of suspected effort -- suspect
5 effort. And then the cannabis use disorder.

6 Q. Okay. As far as the unspecified depressive
7 disorder, what were you basing this particular diagnosis
8 on?

9 A. Sure. His history of treatment for such, his
10 self-reporting of that. He is receiving medications for
11 that. That's something that's been documented by multiple
12 mental health providers that he does experience
13 depression.

14 Q. Okay. Was he able to coherently answer your
15 questions, even reporting that he is sad?

16 A. Yes. He answered coherently, yes.

17 Q. Okay. How about the unspecified schizophrenia
18 spectrum and other psychotic disorder, what is that based
19 on?

20 A. Based on, again, self-report of the
21 symptomatology and his treatment for psychosis. It's
22 unspecified. I didn't have a specific onset. I didn't
23 have any of the initial mental health records, like in
24 adolescence or late adolescence, to know when the symptoms
25 potentially started, but that he has a history of

1 treatment of such.

2 Q. Okay. And his history of treatment is since
3 he's been incarcerated for the schizophrenia?

4 A. From what I --

5 MS. SEIFER-SMITH: Objection. That's leading.

6 THE COURT: Overruled.

7 BY MS. ELLIS:

8 Q. So the history that you're seeing that he's
9 treated for unspecified schizophrenia spectrum and other
10 psychotic disorders, did that start after his
11 incarceration for this case?

12 A. I saw it in the -- yes, in the mental health
13 records for the jail and then after.

14 Q. Okay. And that's different than the unspecified
15 depressive disorder because there is records predating
16 this case for that?

17 A. I -- my understanding or impression, there is.
18 I didn't have the hospital records provided to me.

19 Q. Okay. But he did report Baker Acts to you?

20 A. Yes, he did.

21 Q. Okay. How about the -- and you did not see any
22 internal -- him reacting to any internal stimuli in your
23 interviews?

24 A. I did not.

25 MS. SEIFER-SMITH: Objection. Asked and

1 answered.

2 THE COURT: I don't think that was. I think she
3 testified to that previously, but I don't think
4 you've asked her the question. So I'll allow it.

5 What was the answer?

6 THE WITNESS: I did not see any overt signs of
7 psychosis or responding to internal stimuli.

8 BY MS. ELLIS:

9 Q. Okay. And then you have a diagnostic impression
10 of specific learning disability, and you have in
11 parentheses, by history. What does that mean?

12 A. That there's documentation that he's had reading
13 difficulties from school. So there is a specific learning
14 disorder diagnosis in the school system dating back to his
15 IEPs until now.

16 Q. Okay. And why not put under the unspecified
17 depressive disorder also by history if there are records
18 supporting that?

19 A. I could have, but he also endorsed symptoms of
20 depression in the jail.

21 Q. All right. And then your diagnostic impression
22 of malingering. And you have suspect effort in
23 parentheses. Tell us what that is based on.

24 A. Based on the totality of his performance on the
25 testing, looking at prior evaluations that have been done

1 and testing that's been done, looking at effort. I did
2 review, you know, in some of the evaluations his level of
3 effort or involvement in training or in classes. So it
4 raised question and concern about whether these -- you
5 know, the intellect -- why I did not diagnose him with
6 intellectual disabilities to see if the testing is a valid
7 reflection of his current abilities.

8 Q. Okay. And then lastly, you have cannabis use
9 disorder in sustained remission in a controlled
10 environment. And I think we've spoken about that.

11 A. Yes. It's -- he doesn't have access to it.
12 It's not a present problem for him, but that he was
13 abusing cannabis regularly prior to.

14 Q. Okay. And do you have an opinion to a medical
15 degree of certainty as to whether the defendant is
16 competent to proceed in this case?

17 A. My opinion is that he is competent.

18 Q. And you go further to do some assessment of what
19 you believe he has. And what disorder do you believe he
20 has?

21 A. The diagnoses that I just said?

22 Q. The -- I am looking at your conclusion
23 paragraph.

24 A. Uh-huh.

25 Q. The last page of your report. Mr. Mosley has

1 been identified, and experiencing what type of language
2 disorder?

3 A. Oh, that was -- yes, in a more recent
4 evaluation, he was diagnosed with a profound mixed
5 receptive-expressive language disorder, and that -- they
6 noted secondary to a probable diagnosis of intellectual
7 disability and a profound social pragmatic communication
8 disorder.

9 Q. Okay. But he was able to complete your
10 evaluation and answer your questions appropriately?

11 A. Yes.

12 Q. What do you -- what was your conclusion about
13 his thoughts?

14 A. His thoughts, yes. Well, they were organized,
15 goal-directed, and relevant. I didn't see any evidence of
16 a psychotic thought process. You can answer questions
17 directly, briefly, but in a coherent manner.

18 Q. Okay. And how about his testing effort, both
19 with you and historical review of his testing?

20 A. Yes. That's been raised to question and --
21 question about whether it's appropriate or enough effort,
22 genuine effort in the testing.

23 Q. Okay. And ultimately, did you find any
24 significant cognitive impairment or acute symptoms of
25 mental illness that would negatively affect his capacity

1 to answer questions?

2 A. I did not.

3 Q. Okay.

4 MS. ELLIS: May I have one moment?

5 THE COURT: Yes.

6 MS. ELLIS: I have no further questions at this
7 time.

8 THE COURT: All right. Cross-examination.

9 MS. SEIFER-SMITH: If I could just take a couple
10 moments to get organized.

11 THE COURT: Sure.

12 CROSS-EXAMINATION

13 BY MS. SEIFER-SMITH:

14 Q. Good afternoon.

15 A. Hello.

16 Q. Hello.

17 A. Good afternoon.

18 Q. Okay. So I don't want to rehash everything
19 about your professional experience, but what I understand
20 is that you are a licensed clinical forensic psychologist;
21 is that right?

22 A. Correct.

23 Q. Okay. Not a neuropsychologist?

24 A. Correct.

25 Q. And there is a difference between the two; is

1 that right?

2 A. Yes.

3 Q. Can you just articulate what that is for the
4 judge?

5 A. Sure. It speaks to the specialization. So to
6 do specific forensic or neuropsychological, you can go to
7 similar doctoral programs. You can do counseling or
8 clinical psychology. The differentiation becomes
9 typically after on the internship and post-doc training,
10 where you do the additional training in your specialty
11 area.

12 So a forensic individual may go to a health
13 center that has -- provides services to corrections or to
14 correctional settings. A neuropsychologist, for example,
15 could go to a medical clinic, some can go to VAs. They
16 get the neuropsych testing. Spinal cord injuries,
17 different things like that. So the training is more
18 specialized to the area of concentration that the
19 individual is choosing.

20 Q. Okay. And what I understand in terms of, like,
21 your work on, like, neurocognitive disorders is that you
22 do screeners for neurological conditions, but for, like, a
23 full neuropsych battery, you're not capable of doing such;
24 is that correct?

25 A. I do not do those, no.

1 Q. Okay. You have to refer them out to a
2 psychologist?

3 A. I do refer them, yes.

4 Q. Okay. And so you're familiar with some of the
5 neurological screeners or the screeners for cognitive
6 disorders, and you're capable of administering those, but
7 not all of the things that were administered in the course
8 of this entire case; is that fair?

9 A. When we're speaking to, like, the speech and
10 language, for example, they do some that I don't do as
11 well.

12 Q. And I think when we were talking last week about
13 the VIP, that's something that you're not very familiar
14 with as well?

15 A. No, I haven't used it. It's one that I could do
16 if I trained and selected that. That's not -- you know,
17 that's used in forensic settings. I don't use that one.

18 Q. And I guess kind of generally, like, when we're
19 talking about not just, like, cognitive -- or neurological
20 cognitive testing.

21 A. Uh-huh.

22 Q. But any of these kind of proprietary tests, you
23 have to be trained in order to administer them; is that
24 fair?

25 A. Yes.

1 Q. And they cost money, right?

2 A. They do.

3 Q. Okay.

4 A. Most of them.

5 Q. Money that -- like, the publisher of the test,
6 they're the ones who set the cost; is that correct?

7 A. Unless it's public domain, but yes, if it's --
8 the publisher is the one that controls that.

9 Q. Okay. And so it's really kind of on, like, a
10 doctor-by-doctor basis in terms of what you decide to
11 administer in the course of your practice?

12 A. Yes. You select the instruments that you
13 choose --

14 Q. Okay.

15 A. -- to use for assessing select areas or domains,
16 yeah.

17 Q. Okay. I want to talk a little bit about your
18 background, specifically within the context of forensic
19 examinations within the courts.

20 A. Uh-huh.

21 Q. So my understanding is that you are on the court
22 appointment list here in Pinellas County, as well as in
23 Hillsborough; is that right?

24 A. And Pasco, yes.

25 Q. Oh, I apologize. Yes. So the Sixth and

1 Thirteenth?

2 A. Correct.

3 Q. Okay. And pursuant to being able to do those,
4 you did a competency training that was administered by --
5 or taught, I guess, by Dr. Randy Otto, and was it like
6 2017, 2018, something like that?

7 A. Correct. Uh-huh.

8 Q. Okay. And there was the opportunity to do that
9 training more than once, but you've only done it on one
10 occasion; is that right?

11 A. That time, yes.

12 Q. And that training is not specific to mental
13 health disorders or intellectual disability or autism
14 spectrum disorder, but broadly within the context of
15 competency; is that right?

16 A. Those are broadly identified as issues that
17 could present in competency questions.

18 Q. So there was a supposition that the practitioner
19 themselves has obviously the ability -- the, I guess,
20 professional criteria that's necessary in order to do
21 those particular examinations, i.e., mental health or
22 autism or ID; is that right?

23 A. Yes.

24 Q. And you understand that the mental health
25 examinations are separate and apart from an ID or ASD

1 assessment; is that right?

2 A. I mean, there could be overlap, but they also
3 can be separate.

4 Q. Sure.

5 A. Yeah.

6 Q. And I think we'll probably get to that but, you
7 know, in the course of our conversation and the course of
8 your work, certainly, you recognize that there is a great
9 deal of overlap or co-morbidity for, as an example, a
10 schizophrenia intellectual disability and autism spectrum
11 disorder; is that right?

12 A. Those and other disorders, yes. There's overlap
13 in diagnoses.

14 Q. And particularly with those three, you would see
15 all three of them arising potentially in one particular
16 person; is that right?

17 A. That is possible, yes.

18 Q. Okay. So I want to talk about death penalty
19 cases. My understanding is that you're not very familiar
20 with the death penalty in Florida?

21 A. I'm not involved in cases with those, no.

22 Q. Okay. So you're not certain about the legal
23 standards that exist in a death penalty case?

24 A. Correct.

25 Q. Okay. Would it also be safe to assume that

1 you're not very familiar with the types of language that's
2 used with regards to a death penalty case?

3 A. Correct.

4 Q. So the phrase aggravating factors, does that
5 mean anything to you?

6 A. I'm familiar with that, but other -- other
7 terminology probably not.

8 Q. How about mitigating circumstances?

9 A. Yes. I am familiar, yes.

10 Q. Okay. So you've heard those phrases before?

11 A. Yes.

12 Q. Okay. But can you articulate the interplay
13 between aggravating factors and mitigating circumstances
14 in a multi-part trial that's given in a death penalty
15 case?

16 A. I have not done multi-part trials and death
17 penalty. I have done mitigation evaluations, and so I am
18 familiar with that.

19 Q. Okay. It sounds like you've never participated
20 in testimony in a death penalty case?

21 A. That's correct.

22 Q. Okay. And so you're not very familiar with
23 the -- essentially the two trials that are required in
24 order for somebody to go from pleading not guilty to
25 ultimately being recommended for a death sentence by a

1 jury?

2 A. I mean, I'm aware there's two of them, but the
3 nuances, no.

4 Q. Okay. Are you aware that intellectual
5 disability can be a bar to the imposition of the death
6 penalty?

7 A. Yes.

8 Q. Okay. You are not on the court appointment list
9 for that particular type of examination; is that correct?

10 A. That is correct.

11 Q. Okay. And it sounds like that's for a
12 particular reason. You did not want to be a part of --

13 A. I did not select that as a service I provide.

14 Q. Okay. And you'd agree, certainly, that death
15 penalty cases carry the most serious and the most ultimate
16 of punishments, right?

17 A. Yes.

18 Q. Okay. And in terms of the types of intellectual
19 testing that is permitted by the courts with respect to
20 intellectual disability --

21 A. Uh-huh.

22 Q. -- can you tell me what the courts permit in
23 terms of the tests?

24 A. The criteria or the validated instruments?

25 Q. The validated instruments.

1 A. Yes. So there's really not many of them to
2 start with, but those that are comprehensive and that are
3 normed and -- or validated for assessing intellectual
4 disability. So like the WAIS, for example. The CTONI is
5 used for APD purposes. And then there's other ones, like
6 the Bender-Gestalt that's used. Those are the big -- the
7 main three ones -- three, I believe, that's used.

8 Q. So I want to talk a little bit about -- well, I
9 guess kind of generally in terms of competency and
10 capacity.

11 A. Uh-huh.

12 Q. Would you agree that in determining somebody's
13 competency, their capacity to understand is critical?

14 A. Yes.

15 Q. Okay. And, in fact, the phrase appreciate is --
16 is one of the words that's used, like, in the six
17 criteria. And that word has a pretty specific meaning;
18 isn't that right?

19 A. Yes.

20 Q. Okay. And appreciate is to recognize the full
21 worth of something, right?

22 A. Uh-huh.

23 Q. Is that a yes?

24 A. Yes.

25 Q. Sorry, for our record.

1 And so for somebody to appreciate, it would be
2 for them to understand fully; is that right?

3 A. Yes. To understand, yes.

4 Q. Okay. And so there would be a difference
5 between, like, a deficit in knowledge and a capacity to
6 understand. Would you agree that those two things are
7 different?

8 A. They could be separate, uh-huh.

9 Q. I'm so sorry, we were just talking over each
10 other.

11 A. I said they could be separate, yes.

12 Q. Okay. And so if it's just a deficit in
13 knowledge, that implies that somebody can be educated; is
14 that fair?

15 A. Yes, if it's a deficit in knowledge of
16 information.

17 Q. Okay. So what you would want to see if it is
18 simply a deficit in knowledge is whether or not somebody
19 has the capability of, like, taking in information, right?
20 Receiving information. Is that fair?

21 A. Yes. Yes, uh-huh.

22 Q. Okay. Processing that information, and then
23 articulating that information back to the examiner in a
24 way that is comprehensive, cohesive, and particularly
25 tailored to the question; is that fair?

1 A. The level of comprehension or how -- you know,
2 how robust it is could be a question, by being able to
3 demonstrate understanding of the material.

4 Q. Okay. And so when we talk about receiving
5 information, that is something that could be impacted by,
6 like, receptive language deficits, correct?

7 A. Yes, it could.

8 Q. That's why we say receptive language and that
9 we're talking about somebody's ability to take on
10 information, process it, et cetera; is that fair?

11 A. Correct.

12 Q. Okay. And then when we're talking about
13 expressive language, right, like, that's returning the
14 information that they learned back to the examiner; is
15 that fair?

16 A. Yes.

17 Q. Okay. Now, if somebody has cognitive
18 impairments, then their learning, their education could be
19 negatively affected, right?

20 A. Yes. Being capable -- their capacity to learn
21 or being able to learn, yes.

22 Q. Right. They just may not have the ability to
23 learn; is that right?

24 A. In some cases, yes.

25 Q. Okay. And so if somebody has a cognitive

1 impairment like intellectual disability or autism spectrum
2 disorder, they could have trouble receiving information
3 and remembering information, and then returning that
4 information verbally; is that fair?

5 A. Yes, especially depending on the degree of
6 deficit.

7 Q. Okay.

8 A. Uh-huh.

9 Q. And so when we're looking at somebody's
10 capacity, so their ability to either learn or not learn --

11 A. Uh-huh.

12 Q. -- in the context of competency, you really want
13 to have the best possible, like, testing environment for
14 that examination, for that interview; is that fair?

15 A. That's true in general for testing.

16 Q. Okay. Yes. So not just in the forensic
17 setting.

18 A. Correct.

19 Q. Right?

20 A. Yes.

21 Q. Okay.

22 A. They can have the appropriate environment or the
23 best possible environment.

24 Q. And certainly, things that can affect competency
25 because we talk about competency generally waxing and

1 waning, right?

2 A. Correct.

3 Q. Okay. And that when we talk about competency,
4 the reason that it's assessed kind of on an ongoing basis
5 is because somebody's competency on Thursday could be
6 different than it is on Monday; is that fair?

7 A. Potentially.

8 Q. And that could be for a whole host of reasons;
9 is that also fair?

10 A. Yes.

11 Q. Okay. Like whether or not they are on the right
12 medication?

13 A. That is possible, yes.

14 Q. If they are medication compliant on the correct
15 medication?

16 A. Yes.

17 Q. If that medication has changed?

18 A. Yes, it's possible.

19 Q. If that medication is even achieving any kind of
20 efficacy in dealing with whatever it's prescribed for; is
21 that fair?

22 A. That is possible, yes.

23 Q. Okay. And certainly, somebody's mental health
24 can have an effect on their competency?

25 A. Yes.

1 Q. Their cognition, like their -- their capacity,
2 that can have an effect on their competency, right?

3 A. Yes.

4 Q. Their stress and ability to deal with stress can
5 also affect competency, right?

6 A. Yes.

7 Q. Okay. So environment also has an effect, right?

8 A. Yes, potentially.

9 Q. Okay. So I think we spoke -- or you spoke kind
10 of at length about the number of records that you had
11 received in preparation for your examination. And that's
12 listed on page 1 and 2 of your report; is that fair?

13 A. Yes.

14 Q. Okay. Had you read all of these items before
15 having any kind of contact with Mr. Mosley?

16 A. The ones that were provided to me prior to. I
17 don't have the dates of when -- some were received shortly
18 thereafter. I even received something today. So I
19 reviewed them as I received them.

20 Q. I think what you received today was the actual
21 formal report by Dr. Michael Railey; is that right?

22 A. Yes.

23 Q. You had previously received raw data from
24 Dr. Railey?

25 A. Just the -- yes. Just the output of the scores.

1 Q. Okay. And in terms of, I think, things that you
2 received after would have been obviously in the report by
3 Dr. Amy Fritz, the speech and language pathologist; is
4 that right?

5 A. That is one, yes.

6 Q. As well as a short one-page summary by
7 Dr. Valerie McClain from July of this year; is that
8 correct?

9 A. Correct. Yes.

10 Q. And a report by Dr. Whitney?

11 A. Correct.

12 Q. Is that fair?

13 A. Yes.

14 Q. Do we now have kind of the total of the records
15 that you had prior to coming in to testify this afternoon?

16 A. Yes.

17 Q. Okay. And so included in those records were,
18 like, a package of school records as well with regards to
19 Mr. Mosley, right?

20 A. Yes. Uh-huh.

21 Q. Okay. And your order permits you to access
22 Pinellas County jail medical records; is that right?

23 A. Correct.

24 Q. Okay. And I think you mentioned on direct that
25 in terms of those particular records, that you would have

1 looked at them kind of historically to see what was going
2 on with him, but also up into the point in time that you
3 saw him at the jail in May of this year; is that right?

4 A. Yes. So when you request a -- you know, you can
5 request all of them up until the date of request.

6 Q. Okay.

7 A. Yes.

8 Q. And specifically, what you would have been
9 looking at would have been, like, the medication records
10 indicating what medications were prescribed, what was
11 actually administered, i.e., if he is medication
12 compliant, as well as any notes from -- from the jail?

13 A. Correct.

14 Q. Okay. And I just wanted to touch briefly on
15 during direct you indicated that in none of the Pinellas
16 County jail records was there any kind of indication of,
17 like, a concern about intellectual disability; is that
18 right?

19 A. I don't recall seeing that, no.

20 Q. Okay. In all of the work that you've done in
21 this context, have you ever seen something like that?

22 A. I have seen questions raised in some cases. I
23 wouldn't say it's super frequent, but where, you know,
24 question, you know, is there developmental delay or any
25 cognitive concerns, but it's not often.

1 Q. Is that typically in a circumstance where
2 somebody is just like grossly unable to meet their daily
3 living requirements, like they're not showering, they are
4 unable to, like, eat with other people, et cetera?

5 A. That and also in communicating. So when the
6 providers communicate with them, they don't seem to
7 understand, you know, what's being asked or why they're
8 there or emotionally they'll show -- they just don't seem
9 to have grasp or have an understanding of what's going on.

10 Q. Okay. So that's probably indicative of pretty
11 gross impairments, so really significant intellectual
12 disability, would you --

13 A. Questions for cog -- they don't say in there
14 what level --

15 THE COURT REPORTER: Excuse me. I didn't get
16 the end of your question.

17 THE WITNESS: Sorry.

18 BY MS. SEIFER-SMITH:

19 Q. So what you just described, an inability to
20 understand things from the care provider, that would
21 indicate pretty gross cognitive impairment?

22 A. Potentially. Sometimes it's the emotional
23 aspect to the mental health that's interfering but not
24 being able to comprehend or understand what's going on.

25 Q. Mild intellectual disability is still

1 intellectual disability, right?

2 A. Yes.

3 Q. Okay. And so somebody with intellectual
4 disability might be capable of having just basic
5 communication with a care provider?

6 A. Simplistic, yes, but basic communication.

7 Q. And usually, the care providers are just going
8 through a sheet, checking off boxes. They're not engaging
9 in really protracted, prolonged intake interviews with
10 people?

11 A. I can't really speak to how long because it
12 depends on the setting and where they have it. If it's,
13 for example, like south side or something like that, it
14 will probably be more brief.

15 Q. Well, certainly, you've seen the medical
16 records. There's not a great deal of information in there
17 regarding somebody's history, is there?

18 A. The initial eval possibly had the most. But
19 after that, for the follow-ups, it doesn't typically have
20 a lot.

21 Q. But they don't even have the amount of
22 information that, like, your report has regarding
23 somebody's history, does it?

24 A. The initial eval might have -- be more
25 comparable, but following, no.

1 Q. Okay. And I think you said that in the hundreds
2 of assessments for intellectual disability and ASD in a
3 jail setting that you've only seen a flag or a concern
4 about developmental delays on one or two occasions?

5 A. A few more than that, but it's not many.

6 Q. Okay. And just because there's not a flag or a
7 concern raised by the jail doesn't mean that that person
8 is not intellectually disabled; is that fair?

9 A. That's fair.

10 Q. I want to talk about your initial interview with
11 Mr. Mosley. So Mr. Mosley was a perfect stranger to you
12 when you were appointed on the case; is that fair?

13 A. Yes.

14 Q. Okay. So you were meeting him for the very
15 first time?

16 A. Correct.

17 Q. Okay. And that initial meeting was kind of
18 fraught by some issues; is that fair?

19 A. It went differently than usual, yes.

20 Q. So my understanding is that the way that it was
21 planned was that you, two attorneys from the State
22 Attorney's Office, Ms. Russell, Defense Counsel, and
23 Mr. Mosley were going to meet in a conference room at the
24 jail in the health unit; is that right?

25 A. Yes.

1 Q. Okay. And that did not go as planned?

2 A. Correct.

3 Q. Okay. Upon Mr. Mosley arriving, seeing all
4 these people in the room, he was very reticent to
5 participate in the examination; is that right?

6 A. Correct.

7 Q. I think you described him as quite guarded and
8 unwilling to engage; is that fair?

9 A. Yes.

10 Q. Okay. Unwilling to speak?

11 A. Correct.

12 Q. Uncomfortable?

13 A. Yes.

14 Q. A failure to make eye contact with people?

15 A. He did not make contact with everybody, no.

16 Q. He was -- I think you described on direct that
17 he was also looking around quite a good deal, but not
18 actually making eye contact?

19 A. Correct.

20 Q. And he was very, very quiet?

21 A. Yes.

22 Q. In fact, throughout his engagement with you,
23 would you agree that he was monosyllabic?

24 A. Yes, he didn't say very much.

25 Q. Okay. And he was a bit of an obstructionist on

1 that occasion, the 8th of May; is that right?

2 A. Didn't cooperate with the process.

3 Q. Right. He did not want to meet with you with
4 the prosecutors present; is that fair?

5 A. Correct.

6 Q. Okay. And so he did not engage in problem
7 solving, how to make that work, but rather it was the
8 attorneys that had to engage in the problem solving; is
9 that also fair?

10 A. Yes.

11 Q. Okay. And so ultimately, he did agree to allow
12 your examination to go forward; is that right?

13 A. Ultimately, yes.

14 Q. Okay. And that was without the prosecutors?

15 A. Correct.

16 Q. And once the examination began, you moved from
17 that conference room into -- into the multipurpose room
18 back on the unit; is that right?

19 A. Yes.

20 Q. Okay. And so I think it might be helpful to
21 describe that particular unit and that particular room.
22 Can you help me out with that?

23 A. Sure.

24 Q. Okay.

25 A. It was in the Health Services Building.

1 Entering the unit, you have the officer station. On both
2 sides, there are pods where the various individuals are
3 housed. We entered to the one on the left. It's an open
4 bay, an open bed pod. Some individuals were laying down,
5 others were sitting watching TV, interacting. And we used
6 the testing -- the testing, the multipurpose room that is
7 immediate to the left with -- that has a door, that has a
8 window, that's open to the day room.

9 Q. So I think, actually, the entire wall that faces
10 the day room is all glass or plastic, but, like, it's all
11 clear, right?

12 A. Yes.

13 Q. It's not --

14 A. Going in, yes.

15 Q. Okay. So both the wall and the door, totally
16 opaque, you can see from the multipurpose room into the
17 day room and vice versa; is that right?

18 A. Yes.

19 Q. And the television that you described, that's
20 also on the same wall as the door to get into the
21 multipurpose room?

22 A. Correct, above it.

23 Q. Okay. It's not a particularly large room, is
24 it?

25 A. No.

1 Q. Room for a table and a few chairs; is that
2 right?

3 A. Correct.

4 Q. Okay. And so because one of the walls is glass
5 or totally transparent, it's possible to, I guess, kind of
6 move the chairs around so that, you know, somebody is not
7 facing the glass; is that right?

8 A. Potentially, yes.

9 Q. Okay. But you didn't do that?

10 A. I sat on -- with my back to the wall and then on
11 the side, one of the times.

12 Q. Okay. All right. So once you were meeting with
13 Mr. Mosley in that particular room, he was cooperative,
14 right?

15 A. He cooperated.

16 Q. He answered the questions you asked him?

17 A. He did.

18 Q. And in answering those questions, he responded
19 very simplistically, right?

20 A. Basic answers, yes, briefly.

21 Q. When you say with basic answers, I think we
22 talked earlier, like monosyllabic answers. So, like, he
23 would answer with just one word if that word was
24 sufficient to provide an answer; is that fair?

25 A. A word or a phrase or so. It wasn't like

1 elaborate or long sentences, no.

2 Q. Okay. And you conducted, like, a kind of
3 historical questions with him in order to get information
4 from him about -- about himself; is that fair?

5 A. Yes.

6 Q. And this information you would have been able
7 to, I guess, like verify or confirm based on other records
8 that you had received, correct?

9 A. Yes.

10 Q. Okay. And so I want to talk about some of the
11 things that he told you.

12 A. Sure.

13 Q. So he -- well, he told you that he had never
14 lived independently?

15 A. Correct.

16 Q. Okay. And independently is not a word that he
17 used himself?

18 A. I asked if you ever live alone -- have you ever
19 lived on your own is the question typically I ask.

20 Q. Okay. And he indicated that he had never lived
21 anywhere but with his parents.

22 A. Correct.

23 Q. Is that right?

24 A. Yes.

25 Q. So never lived with a girlfriend; is that right?

1 A. He did not say that, no.

2 Q. Never lived with friends?

3 Okay. And -- and you would frequently have to
4 use, like, different words in order to, like, prompt an
5 answer from him because his vocabulary is very, very
6 small; is that right?

7 A. Rephrasing questions, yes.

8 Q. So like the word allegation.

9 A. Uh-huh.

10 Q. He might not necessarily know what allegation
11 is. So it would be like, do you know what your
12 allegations are, what you're accused of, what they say
13 that you did?

14 A. Correct.

15 Q. That's how you would ask that question in order
16 to prompt an answer; is that fair?

17 A. Yes.

18 Q. And that was true both within the examine -- or
19 the interview regarding his history, as well as during the
20 competency questions; is that fair?

21 A. Yes. If needed, yes, I would do that.

22 Q. Okay. And I want to talk about, like, his
23 orientation in terms of -- yeah, like, so orientation.
24 You want to know, like, if he's oriented to, like, time,
25 place, and reason why you're there, right?

1 A. Correct.

2 Q. Okay. And so with respect to time, I think you
3 told us that he knew the year and the month --

4 A. Uh-huh.

5 Q. -- but he did not know the day.

6 A. Correct.

7 Q. Is that correct?

8 A. Yes.

9 Q. Okay. And initially, with regards to the month,
10 he said 5.

11 A. Uh-huh.

12 Q. And you said, what does 5 mean? And it was only
13 then that he said May; is that right?

14 A. Yes.

15 Q. Okay. That's kind of an odd answer, isn't it,
16 to say 5?

17 A. I mean, he's not the only one. It's not the
18 typical answer, but he's not the only one who's used a
19 number for it.

20 Q. So it's an atypical answer?

21 A. More frequently, people state the name of the
22 month, yes.

23 Q. Right, okay. And in terms of orientation as to
24 why you all were there, like why this examination or
25 interview is taking place, he simply said judge?

1 A. The judge, yes.

2 Q. Okay. And you wrote -- like, this was -- this
3 was not a good understanding of why you were there; is
4 that -- is that a good takeaway?

5 A. Yes, he didn't elaborate.

6 Q. Okay. And so you asked him to elaborate, right?

7 A. Uh-huh.

8 Q. Is that a yes?

9 A. Yes.

10 Q. Okay. And then he said -- so you asked him, do
11 you know why I'm here? And then he said two words, right?

12 A. Yes. The judge.

13 Q. And then he said two words again when you asked
14 him to elaborate; is that right?

15 A. Uh-huh.

16 Q. He said to ask?

17 A. Uh-huh.

18 Q. Is that a yes?

19 A. That is correct.

20 Q. Okay. So you followed up again; is that right?

21 A. I did.

22 Q. Okay. And then he finally said, you're a doctor
23 to ask questions about me.

24 A. Correct.

25 Q. And that was it, right?

1 A. Correct.

2 Q. No further elaboration as to the purpose of your
3 visit, correct?

4 A. Correct.

5 Q. He never said anything about competency?

6 A. No.

7 Q. At this time he never said anything about the
8 hospital, right?

9 A. He told me he had gotten back from the hospital,
10 but not in that answer.

11 Q. But that was not part of the answer to this
12 question?

13 A. No.

14 Q. Okay. So no elaboration as to, like, the
15 purpose of your visit having anything to do with his
16 ability, his capacity to go forward to trial; is that
17 right?

18 A. Correct. He did not elaborate on that.

19 Q. Okay. And I think you said that during the
20 course of, like, the entirety of the interview, both on
21 the 8th as well as on the 21st, he asked you two
22 spontaneous questions; is that fair?

23 A. Yes.

24 Q. So in the course of conversing with him over
25 the, maybe, two hours, I think you said that you were with

1 him --

2 A. Uh-huh.

3 Q. -- he asked you, do you have any children, and
4 have you been doing this a long time; is that right?

5 A. Correct.

6 Q. Okay. That was the extent of information that
7 he was seeking from you, right?

8 A. Correct.

9 Q. Indicative of kind of not being great at
10 carrying on a conversation, right?

11 A. He didn't spontaneously start any conversations,
12 and I didn't ask beyond, you know, the interview
13 questions.

14 Q. Let's talk some more about the interview portion
15 of your examination.

16 A. Uh-huh.

17 Q. In terms of medical issues, he identified for
18 you that he had a thyroid issue that was being managed?

19 A. Yes.

20 Q. Okay. Or maybe it's not managed, but that was
21 being treated.

22 A. Correct.

23 Q. Okay. And you're aware that hypothyroidism or
24 diseases having to do with the thyroid can trigger
25 symptoms mimicking psychological symptoms; is that right?

1 A. That is possible, yes.

2 Q. Okay. So like fatigue, depression, low or flat
3 affect, that can arise both from psychological, mental
4 health issues, as well as from the medical issue that
5 Mr. Mosley suffers?

6 A. It's possible, yes.

7 Q. Okay. Okay. And then in terms of the mental
8 health, he endorsed psychotic symptoms; is that right?

9 A. He did.

10 Q. And those were consistent -- in terms of the
11 hearing voices and seeing blood in his eyes, that's
12 consistent with what has been reported to each and every
13 other doctor that has examined him; is that right?

14 A. Those have been reported before, yes.

15 Q. Okay. And that the voices tell him to kill
16 himself?

17 A. I have seen that, yes.

18 Q. And so he has passive suicidal ideations at the
19 moment because he does think about harming himself?

20 A. Yes, he did.

21 Q. But he has no plan at the moment?

22 A. Correct.

23 Q. Okay. So he told you that he is not listening
24 to those voices but that they continue to exist?

25 A. He said the last was that -- the morning of the

1 evaluations, yes.

2 Q. And he also told you about the visual
3 hallucinations; is that right?

4 A. Correct.

5 Q. Okay. You asked him how he was feeling; is that
6 right?

7 A. I did.

8 Q. And you did that on both occasions, the 8th and
9 the 21st?

10 A. Yes. Uh-huh.

11 Q. Okay. On the 8th, he told you, well, I'm in
12 jail, right?

13 A. Uh-huh.

14 Q. Like he's depressed because he was in jail?

15 A. Correct.

16 Q. And on the second occasion that you spoke to
17 him, he said, I don't know how I feel, like I don't know
18 how to put it in words?

19 A. Yes, and he can't explain it in words. I don't
20 know how I feel.

21 Q. Okay. And you asked him to elaborate, and he
22 was unable to do so?

23 A. Correct. It didn't go beyond that.

24 Q. Okay. You asked him -- during the feelings
25 part, you asked him about anxiety and depression; is that

1 right?

2 A. I did, yes.

3 Q. And when you asked him about anxiety, he said, I
4 don't know what that means.

5 A. For the word anxiety, yes.

6 Q. Correct. So the word anxiety, he does not know
7 what that means?

8 A. He asked what it meant, yes.

9 Q. And were you able to provide him with an
10 explanation?

11 A. Yes. I broke it down, yes.

12 Q. Okay. And you're aware from the records that he
13 has been treated for anxiety?

14 A. Correct.

15 Q. Okay. And when you asked him about depression,
16 you don't just use the word depression, you use the word
17 sad; is that right?

18 A. Sad -- depression or sadness. Most often
19 sadness, yes.

20 Q. Okay. And that -- and he didn't say that he was
21 depressed; is that right? Like, he didn't use that
22 particular word?

23 A. No. Sadness, when I asked that, he said yes, he
24 was sad. He experienced sadness.

25 Q. He experienced sadness, not depression?

1 A. Correct.

2 Q. Okay. And that's a much more simplistic word
3 than depression?

4 A. Well, it was a yes answer, you know, to the
5 question. And then I asked, how often? He said every
6 day.

7 Q. Okay. You talked to him about his educational
8 history?

9 A. I did.

10 Q. Okay. And a lot of the information that he gave
11 to you in the course of your conversation was not borne
12 out in the actual records that you received; is that
13 right?

14 A. That he attended the high -- not all of it, but
15 yes, some of it.

16 Q. Okay. And so he had told you that he completed
17 the 10th grade and started the 11th grade?

18 A. He did, uh-huh.

19 Q. That is not true per the records that you
20 received?

21 A. He gave contradictory information I saw in the
22 records, but based on the school records, that's not
23 accurate.

24 Q. And in terms of identifying the high school that
25 he went to, he actually told you Bogey High School.

1 A. Uh-huh.

2 Q. And you just happened to know from doing this
3 work long enough that Bogey is Boca Ciega?

4 A. Correct.

5 Q. So he didn't say Boca Ciega High School?

6 A. No, he said Bogey.

7 Q. Okay. He did not tell you that he repeated the
8 9th grade?

9 A. He said the 3rd.

10 Q. But from the records, you know that he actually
11 repeated the 9th grade a number of times, right?

12 A. He did, yes.

13 Q. Okay. And you asked him about special classes
14 or special education, correct?

15 A. Correct.

16 Q. And initially, you actually crossed out no in
17 your notes because he answered no; is that right?

18 A. To special education, yes.

19 Q. But in your review of the records, you know that
20 to not be true?

21 A. And I asked him if he received help because
22 special education, those terms, using different language
23 to ask for -- to assess it, received any special help in
24 any classes, and that's when he said yes.

25 Q. And he just told you that he received help in

1 4th and 5th grade; is that right?

2 A. 4th to 5th grades. He couldn't remember more
3 beyond that.

4 Q. Okay. He -- well, you actually wrote that he
5 denied receiving additional help in high school. That's
6 what you wrote in your report?

7 A. Yes, that's what he reported.

8 Q. Okay. But in the records, it indicates that he
9 was actually receiving help from 3rd grade all the way
10 through high school, correct?

11 A. Correct. Uh-huh.

12 Q. In fact, his most recent IEP was from March of
13 2020, just prior to COVID shutting the schools down; is
14 that right?

15 A. Correct, yes.

16 Q. And, in fact, he was administered a number of
17 tests throughout his educational career, indicating
18 really, really poor performance in school; is that right?

19 A. Yes. Particularly in the reading, yeah.

20 Q. Okay. I think that one of -- one of the tests
21 indicated that -- in March of 2020, that he was still like
22 kindergarten level for reading.

23 Do you recall reading that?

24 A. I do recall reading that.

25 Q. Okay. And that he had taken the Florida

1 Standards Assessments in 2019. He needed a level 3 to
2 pass, and he had a Level 1.

3 A. Yes, his reading is poor.

4 Q. So he was doing very, very poorly in school?

5 A. Yes, in those --

6 Q. Okay.

7 A. -- domains, yes.

8 Q. And he did admit that he neither reads nor
9 writes well, correct?

10 A. He said not so well, yes.

11 Q. Okay. And I think when we spoke last week, you
12 indicated you didn't have him read anything in terms of
13 any of the testing or conversation that you had?

14 A. That is correct.

15 Q. And the one thing that he wrote was that one
16 sentence that we discussed earlier, and we'll get to; is
17 that right?

18 A. Yes.

19 Q. Okay. So really minimal in terms of your
20 engagement with him on reading and writing; is that fair?

21 A. Correct.

22 Q. Okay. You would, of course, agree with me that
23 a trial, not necessarily a death penalty trial, but a
24 trial just generally, deals enormously with language,
25 correct?

1 A. Yes.

2 Q. And so you would certainly expect that a death
3 penalty trial, a two-phase trial, is going to deal with
4 language over the course of many weeks, correct?

5 A. Yes.

6 Q. It's going to be a lot of people talking, right?

7 A. Correct.

8 Q. It's going to deal with a lot of paper, right?

9 A. Yes.

10 Q. And it's going to involve the requirements of,
11 you know, comprehension of what's going on on a pretty
12 high level; is that fair?

13 A. Yes, you have to follow along and understand.

14 Q. Okay. Okay. And I know you indicated, and we
15 talked a little bit during my voir dire earlier, that in
16 terms of the records, the school records, you said you did
17 not see IQ testing in those records; is that right?

18 A. Correct.

19 Q. The school records specifically?

20 A. Yes.

21 Q. Okay. And you didn't see a suggestion of
22 intellectual disability?

23 A. In the school records or in general?

24 Q. In the school records.

25 A. I can't recall. I know there was for an

1 evaluator's, you know, with court stuff.

2 Q. Right. And so I think you said on direct that
3 you -- well, actually, you just said that you did see that
4 there were significant concerns by some of the evaluators
5 regarding cognition. So impairments, potentially
6 intellectual disability.

7 A. It was raised.

8 Q. Okay. And it was raised not just by Defense
9 experts but also by court evaluators as well; is that
10 correct?

11 A. I can't say for certain. I can look at the
12 evaluations and tell you if it was both.

13 Q. Okay. So Dr. Maher indicated concerns about --

14 A. Yes.

15 Q. -- cognitive impairment?

16 A. Yes. He was court appointed. Uh-huh.

17 Q. Dr. Precious Ogu also indicated concerns about
18 cognitive impairment?

19 A. Yes.

20 Q. Specifically, intellectual disability; is that
21 fair?

22 A. Uh-huh.

23 Q. Is that a yes?

24 A. Yes.

25 Q. And both of those doctors were court appointed?

1 A. Correct.

2 Q. Okay. So concerns about intellectual disability
3 wasn't just being raised from the Defense; is that fair?

4 A. It was raised at that time as well, yeah.

5 Q. Okay. And those were in, I think, like 2023 and
6 2024; is that right?

7 A. Correct.

8 Q. Okay. Regarding -- and this is still within the
9 context of your interview with Mr. Mosley. You asked him
10 some questions about employment; is that right?

11 A. Yes.

12 Q. Okay. You never reviewed any employment
13 records?

14 A. No, I did not have any.

15 Q. Okay. And never saw any yourself; is that
16 right?

17 A. No.

18 Q. Okay. And you never spoke to any collateral
19 sources, like employers, friends, family?

20 A. No, ma'am.

21 Q. Okay. So this was just based upon, like, his
22 self-report; is that right?

23 A. Correct. Yes.

24 Q. Okay. And what Mr. Mosley identified for you in
25 terms of his employment history was two years as a

1 carpenter intern?

2 A. Correct.

3 Q. Intern is kind of a funny word to use for
4 carpentry, isn't it?

5 A. I'm not familiar with it, but yes, that's
6 unusual, I would think.

7 Q. Okay. So you didn't know that he was working
8 for his father?

9 A. I did not.

10 Q. Okay. And that during the time that he was
11 employed by his father, that he was not a reliable worker,
12 that he could not complete jobs?

13 A. No, I did not know that.

14 Q. Okay. He also identified working for Waste
15 Management?

16 A. Yes.

17 Q. Okay. And you don't know what kind of job he
18 was doing?

19 A. No.

20 Q. So you don't know that he was just emptying
21 garbage cans?

22 A. No.

23 Q. Okay. I think you indicated that he did not
24 know why he left or stopped working?

25 A. He couldn't remember.

1 Q. Okay. That was only a couple of years ago,
2 right?

3 A. Yes.

4 Q. Okay. And so he hadn't indicated if he was
5 fired, meaning, like, asked to leave a job, right?

6 A. No, he said he couldn't remember the
7 circumstances.

8 Q. Okay. So he can't remember the circumstances of
9 leaving a job just a few years ago?

10 A. Can't remember why I left.

11 Q. Okay. It sounds like maybe he's a poor
12 historian with regards to things.

13 A. I mean, he answered questions briefly, so he
14 didn't elaborate for a lot of the areas.

15 Q. I want to talk to you about medication.

16 A. Uh-huh.

17 Q. You indicated in your report that you asked him
18 if he was taking any medication; is that right?

19 A. Correct.

20 Q. And that he was able to name two medications for
21 you; is that right?

22 A. Yes.

23 Q. Okay. So what he named for you was Trazodone
24 and Melatonin; is that correct?

25 A. Correct.

1 Q. Okay. Now, he was actually on one, two, three,
2 four, five medications at the time of your evaluations.
3 Do you recall seeing that in the Pinellas County jail
4 records?

5 A. I have, yes. He was taking more than three for
6 sure.

7 Q. Okay. My understanding from my review of the
8 jail records indicate that he was on, and I apologize for
9 mangling these, Levothyroxine Sodium, which is for the
10 thyroid disorder; is that right?

11 THE COURT: Can we spell that for Madam Court
12 Reporter?

13 MS. SEIFER-SMITH: Let's do that.

14 L-E-V-O-T-H-Y-R-O-X-I-N-E, sodium.

15 BY MS. SEIFER-SMITH:

16 Q. He was also taking Sertraline; is that right?

17 Do you see that?

18 A. The Sertraline, yes.

19 Q. Okay. Which is otherwise known as Zoloft?

20 A. Correct.

21 Q. And that's an antidepressant; is that right?

22 A. Correct.

23 Q. Okay. He was also prescribed and taking
24 Fluphenazine?

25 A. Uh-huh.

1 Q. F-L-U-P-H-E-N-A-Z-I-N-E. Which is an
2 antipsychotic; is that right?

3 A. Correct.

4 Q. Okay. He was taking Melatonin, a sleep aid?

5 A. That's prescribed for that, yes, typically.

6 Q. And also taking Trazodone, which is an
7 antidepressant and sleep aid; is that right?

8 A. Yes, it's used for that.

9 Q. So he was only able to name two of five
10 medications?

11 A. Yes. The two that I listed, yes, ma'am.

12 Q. Okay. And I think you -- you indicated that
13 there had been instances of him not engaging in great
14 hygiene in the records?

15 A. Yes, refusing to come out to shower.

16 Q. Okay.

17 A. Or not coming out. Refusing is my word. Not
18 coming out to shower when given the opportunity.

19 Q. Okay. But on the days that you met with him,
20 his -- I think you indicated that his hygiene was fair?

21 A. Fair. He wasn't malodorous. His uniform was
22 not dirty. His presentation was -- it was okay.

23 Q. So not good, but fair?

24 A. I mean, not out of -- not an outlying
25 presentation. There wasn't anything to indicate concern

1 in his presentation.

2 Q. Okay. So in terms of the breakdown between the
3 two -- the two meetings with Mr. Mosley, it was -- it
4 sounds like the interview occurred on the 8th of May.

5 A. Uh-huh.

6 Q. Is that right?

7 A. Yes.

8 Q. Okay. On that occasion, you did not administer
9 any kind of testing; is that right?

10 A. Correct.

11 Q. Okay. So no effort testing whatsoever?

12 A. Correct.

13 Q. Okay. When you met with him again, it was about
14 two weeks later on the 21st; is that right?

15 A. Correct.

16 Q. Okay. And on that occasion, you administered
17 four tests?

18 A. I did, yes.

19 Q. Okay. The CTONI, the MMSE, the ILK, and the dot
20 counting?

21 A. Correct.

22 Q. Okay. And that's the sum and total of the
23 psychological testing that you did; is that right?

24 A. That was the testing, yes.

25 Q. Okay. So I think we spoke about this a little

1 bit earlier, but you agree that there are a number of
2 things that can affect testing, either in a forensic
3 setting, as well as just in an office, like certainly how
4 somebody is doing on that particular day, what the
5 environment is, medication compliance if they're taking
6 medication, alertness, attention, sleep. Would you agree
7 that all of those things can impact how somebody performs
8 on a test?

9 A. Yes, they could have an impact.

10 Q. Okay. And I want to talk a little bit, too,
11 about, like, schizophrenia. Schizophrenia has both
12 positive and negative symptoms; is that right?

13 A. Correct.

14 Q. Can you just talk to me about, like, what that
15 means in terms of positive versus negative symptomology
16 and what medication attends to?

17 A. So antipsychotic should address both. They're
18 to address all the symptoms of schizophrenia. But so you
19 have those symptoms that are overt, that are reported,
20 that you can see, like responding to internal stimuli,
21 visual hallucinations. And then you have those that are
22 negative, so the more blunted affect, poverty of thought,
23 not being very verbose or talking much. You could see it
24 also in presentation, not taking care of themselves. So
25 those that are more positive symptoms that are reported

1 and seen versus those that are not as obvious.

2 Q. Okay. And certainly, negative -- negative
3 symptoms of schizophrenia could impact somebody's testing
4 on psychological instruments as well as intellectual
5 instruments?

6 A. Oh, symptoms of schizophrenia can, yes.

7 Q. Okay. And so effort testing. Effort testing
8 would be administered when there is a concern about
9 somebody putting forth, like, appropriate motivation to
10 complete tests.

11 A. Yes.

12 Q. Is that fair?

13 A. Yes.

14 Q. Okay. And it has to be -- or it should be, its
15 best practice to do it on the same day as the test about
16 which you want to know if the person is putting forth
17 effort; is that fair?

18 A. Ideally, yes.

19 Q. Okay. And would you agree that it's probably a
20 good idea to do that effort testing first so that you know
21 if that is, in fact, the right day to do the intellectual
22 or other test?

23 A. Well, typically, it's also prompted by
24 performance on instruments. So oftentimes you have -- you
25 give an instrument that could raise question or concern

1 about that. Then to do the effort. Not necessarily that
2 first.

3 Q. Okay. But it wouldn't -- it would not be
4 beneficial to do effort testing on a different day than
5 the actual test about which you have potential concerns?

6 A. Well, it was done the same day as the IQ testing
7 that was done.

8 Q. Yours, yes.

9 A. Yes. So I did it with my testing, yes.

10 Q. Right. But you noted that at SFETC,
11 Dr. Tenaglia did a VIP a different day completely than the
12 WAIS-4?

13 A. I believe it was two days later.

14 Q. Yeah.

15 A. Something like that, I think.

16 Q. And so there would be concerns about the
17 validity of that effort testing actually applying to the
18 intellectual testing?

19 A. Potentially. I think there's a lot of unknown
20 variables of how he was doing and those kinds of things.
21 I don't know why it was split to a second day.

22 Q. That information didn't come to you?

23 A. No.

24 Q. Okay. But in terms of your practice, it's --
25 you find it important to do the testing the same day?

1 A. That's the practice I have, yes.

2 Q. Okay. Now, the WAIS-4 you are familiar with; is
3 that right?

4 A. Correct.

5 Q. Okay. You have administered this test in your
6 practice?

7 A. The 4, yes.

8 Q. I imagine many times?

9 A. Yes.

10 Q. Okay. And you're not aware of any embedded
11 measures of effort within the WAIS-4?

12 A. Correct.

13 Q. Okay. Now, you were able to review the raw data
14 and the report from the South Florida Evaluation and
15 Treatment Center administered and written by Dr. Tenaglia;
16 is that right?

17 A. Yes.

18 Q. Okay. You received both of those things?

19 A. The raw data and then the report?

20 Q. Yes.

21 A. Yes.

22 Q. Okay. Now, my understanding from our
23 conversation was that you didn't see anything in the
24 testing to indicate that her scoring was invalid?

25 A. That her scoring was invalid, no.

1 Q. Okay. So the only reason that you're
2 questioning effort is because of what she ultimately
3 writes later in her report?

4 A. She had some observation with the testing and
5 then with the other -- the conjunction of VIP, other
6 testing, yes, her conclusion.

7 Q. I'm sorry, what was her observation within the
8 actual testing?

9 A. Of the performance of how he performed on some
10 of the instrument -- subtests of like the blocks, how
11 unusual, didn't seem to be -- I can use the word -- look
12 at the words that she -- it was in her report.

13 Q. Okay.

14 A. His approach to that test, for example, that
15 subtest.

16 Q. She didn't provide any other examples of
17 performance on the subtests?

18 A. I'd have to look. That's the one that stands
19 out.

20 Q. Okay. You never spoke with Dr. Tenaglia; is
21 that right?

22 A. Excuse me?

23 Q. You never spoke to Dr. Tenaglia?

24 A. No, I have not.

25 Q. Okay. And in terms of, like, your review of the

1 raw data itself, there's nothing to indicate that that was
2 an invalid score?

3 A. No, not the scoring.

4 Q. Okay. And my understanding is that was -- it
5 was the raw data, Dr. Tenaglia's report, and Dr. Ascherman
6 Jones' report that you received from SFETC?

7 A. Yes.

8 Q. Okay. So you never received, like, the full
9 corpus of his reference while he was at the hospital?

10 A. In -- there were some mental health records with
11 the psychiatry, prescribing, and diagnosis, while he was
12 there. I don't know if that was all of the records,
13 because I don't know how many there were, but there were
14 some notes in there from the path.

15 Q. So are you aware that he was prescribed -- the
16 same week that he was given the WAIS-4, that he was
17 prescribed a new antipsychotic?

18 A. I was not.

19 Q. Okay. Are you not because you didn't get those
20 records or just not as familiar with them?

21 A. No, I didn't see that.

22 Q. Okay. And certainly, being prescribed a new
23 antipsychotic, especially at a high dose, that can affect
24 somebody's ability to perform on intellectual testing?

25 A. Potentially, yes.

1 Q. Okay. Okay. And in terms of Dr. Railey, you --
2 I think you said initially you received the raw data from
3 Dr. Railey and only just received his report today?

4 A. Correct.

5 Q. Okay. Now, when we spoke last week, I think you
6 indicated that from what you had in the raw data, there
7 was nothing to indicate that this score of 55 or the
8 administration by Dr. Railey was invalid; is that fair?

9 A. I didn't get any observations or any other
10 testing or information that may have gone with it. I just
11 had the scores.

12 Q. Okay. Anything different regarding that opinion
13 that you have, having received his report now today?

14 A. Having read this, he questioned the effort in
15 general. But with respect to the scores, let me look
16 here. I don't believe he gave -- let me see here. That
17 he questioned it being an accurate representation of his
18 abilities.

19 Q. Without any kind of empirical data from, like,
20 effort testing; is that right?

21 A. Based on his performance in the evaluation, I
22 believe.

23 Q. Okay. So just based on, like, how he's
24 answering questions?

25 A. So given his -- yes. I mean, I could read what

1 he put, that his observations of his problem solving and
2 ability to answer questions and accuracy and suspicion of
3 intentional underperformance, he questioned the accuracy
4 of the testing.

5 Q. Okay. But that's not based on anything
6 empirical?

7 A. I don't believe there was any formal testing
8 given.

9 Q. Okay. Now, you're familiar with the practice
10 effect. I think you talked a little bit about this on
11 direct; is that right?

12 A. Correct.

13 Q. So the practice effect is why you chose not to
14 administer the WAIS-4 when you saw Mr. Mosley; is that
15 right?

16 A. Correct.

17 Q. Okay. And the practice effect supposes that if
18 somebody is given any sort of test instrument, but I guess
19 we'll specifically talk about the WAIS-4, within a certain
20 time period, that you would expect them to do better
21 because they had just been tested; is that right?

22 A. That is the typical, yes. There's a learning
23 process, typically.

24 Q. Okay. And so correct me if I'm wrong, but my
25 understanding is that the publisher indicates that you

1 should not give the WAIS-4 again within a calendar year?

2 A. Correct.

3 Q. Okay. And so Dr. Tenaglia had given the WAIS-4
4 on February 18th; is that right?

5 A. Yes.

6 Q. Dr. Railey gives the WAIS-4 again on May 12th?

7 A. Correct.

8 Q. And so you decided not to give the WAIS-4?

9 A. Correct.

10 Q. Okay. And you do not yet -- you haven't been
11 trained yet on the WAIS-5; is that right?

12 A. Correct.

13 Q. Okay. But the WAIS-5 is obviously -- it's the
14 same publisher, it's the Wechsler?

15 A. Sure. And I did check. You don't need formal
16 training on it if you've been trained on the 4, but they
17 do recommend it because there are some subtest
18 differences. So there's some overlap, but there are some
19 changes to the 5.

20 Q. And you haven't -- or I don't know about today,
21 but when we spoke, you hadn't purchased the WAIS-5?

22 A. Correct. We have a window of time to be able to
23 transition from instruments to newer versions before it
24 becomes outdated and not best practice to use them.

25 Q. So it wouldn't have been available to you to

1 test Mr. Mosley with the WAIS-5 anyway?

2 A. I could have. I hadn't started using it yet.

3 Q. Okay. As far as you know, the WAIS-5 is -- it's
4 the same publisher, it's just a new edition?

5 A. Correct.

6 Q. It has similar subtests, the 5 to the 4; is that
7 right?

8 A. In addition of a few other ones, yes.

9 Q. So potentially, there could be a practice effect
10 by the administration of the WAIS-5 as well as the WAIS-4
11 within that time period?

12 A. I think in a limited -- in the subtest, that
13 seemed to be similar, yes.

14 Q. Okay. So in -- and when we talk about the
15 practice effect, there's the presumption that somebody is
16 going to score between potentially five and ten full-scale
17 IQ points better based upon their familiarity with the
18 testing; is that right?

19 A. Improved performance is what you look at, yes.

20 Q. So just kind of generally improved performance?

21 A. Improved. Typically, if you've been exposed to
22 something and have had experience with it, when you see it
23 again, that you have the benefit of having gone through
24 it, so typically the performance is expected to be better.

25 Q. Okay. And that's what we see in terms of the

1 full-scale IQ scores from February up until July of this
2 year, right?

3 A. Well, besides the two in February and -- they
4 did go up, yes. Not significantly, yes. But there's an
5 incremental increase.

6 Q. Well, it's a 46 to a 55 --

7 A. 55.

8 Q. -- and then a 69.

9 A. Correct.

10 Q. Okay. And obviously, the 69 was on the WAIS-5,
11 which is a different instrument?

12 A. Correct.

13 Q. Okay. And you received the raw data -- or you
14 received the raw data from Dr. McClain; is that right?

15 A. I did.

16 Q. Okay. And nothing to indicate that her testing,
17 her administration, her scoring was invalid, correct?

18 A. Nothing to indicate that, no.

19 Q. And she actually did a -- an effort test on that
20 very same day, correct?

21 A. She gave the Rey-15, yes.

22 Q. Okay. Which is a test of effort?

23 A. Typically for memory impairment but can be used
24 for effort.

25 Q. And she indicated that there was no question

1 regarding malingering?

2 A. She said no signs of it, yes. No evidence of
3 it.

4 Q. Okay. And you're aware that the VIP, which is a
5 test that was used by Dr. Tenaglia, is not normed for
6 persons with intellectual disability, correct?

7 A. Yes. And that's true for several things,
8 several item -- tests.

9 Q. And there was obviously a question about whether
10 or not Mr. Mosley was intellectually disabled at the time
11 that that test was given, correct?

12 A. Yes, I believe so, why they did the testing with
13 him.

14 Q. Okay. Let's talk about your testing.

15 A. Sure.

16 Q. Okay. So because the WAIS-4 was not available
17 to you, you decided to do -- to administer a different
18 intellectual test?

19 A. Correct.

20 Q. The CTONI?

21 A. Correct.

22 Q. Okay. And my understanding is that is a
23 pictorial test; is that right?

24 A. Yes. Non-verbal pictorial.

25 Q. Okay. So no reading, no writing?

1 A. Correct.

2 Q. Okay. And Mr. Mosley was quiet and cooperative
3 throughout the administration of this test?

4 A. He was.

5 Q. Okay. When you and I spoke, you indicated that
6 the total of that particular day, the 21st, which was your
7 testing day, about 45 minutes to an hour with Mr. Mosley?

8 A. Yes.

9 Q. Okay. And he was cooperative throughout?

10 A. Yes. He answered questions and participated.
11 He didn't refuse or say he wasn't going to do what was
12 asked of him.

13 Q. He didn't require encouragement?

14 A. To do the testing, no.

15 Q. Okay. And the only time when you indicated that
16 he had attention and effort -- questionable attention and
17 effort was when he was, like, obviously distracted; is
18 that right?

19 A. Yes, he was distracted, uh-huh.

20 Q. So it wasn't -- you're not talking about effort
21 in terms of, like, the testing. It was that he was
22 noticing things that were not part of the testing itself;
23 is that right?

24 A. Yes, he was distracted.

25 Q. Okay. And you talked about that on direct, but

1 it was just the people who were behind you were visible to
2 him and not to you. And I think you also discussed it
3 when we spoke last week, that those people became
4 louder -- increasingly louder and louder; is that right?

5 A. I could hear speaking, but I couldn't make
6 out -- I wasn't really paying attention and making out
7 what they were saying. But yes, they were responding. It
8 appeared to be to something on the TV or something going
9 on.

10 Q. Okay. And I think that the previous examination
11 that you had with him on the 8th was in the morning; is
12 that right?

13 A. Yes.

14 Q. Usually a quieter time at the jail?

15 A. They're sleeping, yes.

16 Q. And when you saw Mr. Mosley on the 21st, it was
17 at about 3:00 p.m.?

18 A. Yes, it was afternoon.

19 Q. Okay. I think 3:00 p.m. is about when trays go
20 out for dinner?

21 A. Around that time.

22 Q. So usually people are awake, they're up and
23 about?

24 A. There's more activity, yes.

25 Q. Okay. And the way that you had been situated

1 within that specific room, your back was to the day room,
2 but Mr. Mosley was facing the day room?

3 A. I was -- I was -- so think of it as a U-turn.
4 Although I was on the side, my back was towards it because
5 I had the testing stimuli, so was I angled. I could not
6 see what was behind me.

7 Q. But Mr. Mosley was facing this way?

8 A. He was facing, yes.

9 Q. Okay. So even when he was looking at you, he
10 would beyond you been seeing the people behind you?

11 A. Yes, he would be able to.

12 Q. Okay. So when you talk about questionable
13 attention, and effort, that was only with respect to the
14 distractibility of the environment?

15 A. Yes, that's where it was -- where I saw that,
16 yes.

17 Q. Okay. So you didn't actually have concerns that
18 he wasn't putting forth effort or that he wasn't motivated
19 to take the tests?

20 A. He was cooperative.

21 Q. Okay. And nothing in his verbalization or
22 behavior throughout the TONI -- the CTONI, excuse me,
23 indicated that he was intentionally answering anything
24 incorrectly?

25 A. He didn't make any verbalizations to indicate

1 there was something else going on with him, so he was
2 responding appropriately -- I mean appropriately in the
3 sense of I asked him -- you know, showed him the stimuli
4 and he provided an answer.

5 Q. I think you indicated no embedded measures
6 regarding effort in the CTONI?

7 A. Correct.

8 Q. Okay. So in order to, I guess, kind of test for
9 effort, that's why you would like verbalizations or
10 behavior, that's --

11 A. Yes. You look at the totality of the approach
12 to testing, attention and those things as well.

13 Q. And all of those things were appropriate?

14 A. Besides the distractibility, yes.

15 Q. Okay. Okay. And he did quite poorly on that
16 exam?

17 A. He did.

18 Q. He obtained a score of intellectual disability?

19 A. He did.

20 Q. And you indicated that this is comparable to a
21 score on the WAIS in terms of intellectual functioning?

22 A. Yes, you can make comparisons across the board,
23 typically.

24 Q. And this is actually consistent with his scores
25 on other tests, right?

1 A. More or less, yes.

2 Q. So his score on the WAIS-4?

3 A. Yes.

4 Q. His score on the WAIS-5?

5 A. The WAIS-5 was a little higher but still in the
6 ID range.

7 Q. And are you familiar with the Peabody Picture
8 Vocabulary Test?

9 A. Many years ago.

10 Q. Okay.

11 A. Yes.

12 Q. That was administered by Dr. Fritz?

13 A. Yes.

14 Q. And I think mentioned in her report?

15 A. Yes.

16 Q. And he also scored in the very poor range on
17 that as well?

18 A. Yes, he did.

19 Q. Okay. So in terms of his intellectual testing,
20 that has all been consistently within the intellectual
21 disability range?

22 A. From the testing that I saw, yes.

23 Q. Okay. Okay. Let's talk about the Mini-Mental
24 Status Examination. So this is a screener for mild
25 cognitive impairment, but not developed for intellectual

1 disability or autism spectrum disorder; is that right?

2 A. It's not created for that, no, not for those
3 individuals.

4 Q. So if I'm getting this right, it's more for an
5 assessment of whether or not somebody has a cognitive
6 impairment due to a traumatic brain injury?

7 A. Possibly age-related decline, those kinds of
8 things, too.

9 Q. Okay. Mr. Mosley is 23 years old.

10 A. Correct.

11 Q. You don't expect --

12 A. No.

13 Q. -- age-related decline?

14 A. No.

15 Q. Okay. And so my understanding is that you
16 decided to do this pursuant to the indication that he may
17 have suffered some head trauma; is that right?

18 A. Yes. And it has another measure of orientation
19 in some -- some of the tasks that he was asked to do
20 already, so to have another opportunity. But yes, based
21 on his report of a concussion and being knocked out, I
22 administered it.

23 Q. And ultimately, he scored for mild cognitive
24 impairment; is that right?

25 A. Yes, at the range of that.

1 Q. So that's still impairment, right?

2 A. Based on the screening, yes.

3 Q. Okay. Just briefly, the recall of three words.

4 A. Uh-huh.

5 Q. That's like, you give him three words, he has to
6 repeat them back to you, and then you check on that
7 several minutes later; is that right?

8 A. Correct.

9 Q. The total time that's given over to this test is
10 about 15 minutes; is that right?

11 A. In entirety, yes.

12 Q. Yes. And I think you told me last week that
13 your administration of this test with Mr. Mosley was a bit
14 shorter because he is not very verbose?

15 A. Well. On this one, it does -- this -- the MMSE
16 does not require elaborate answers, so this one, you know,
17 took about the same amount of time that others would do
18 just because there's single-word answers typically that
19 are given. He could have elaborated on them, but they're
20 not much shorter than what you see.

21 Q. Fair. I guess what I'm getting at is the
22 three-word recall --

23 A. Uh-huh.

24 Q. -- you do kind of an initial check to make sure
25 that they remember them kind of immediately with you, and

1 then you do some other tasks and go back to those three
2 words?

3 A. Yes.

4 Q. And it's just a few minutes later --

5 A. Correct.

6 Q. -- because the total time for the test is only
7 15 minutes; is that right?

8 A. Correct.

9 Q. So in terms of testing somebody's recall and
10 ability to, you know, like -- like we talked earlier about
11 receptive expressive language, so taking on that
12 information, processing that information, and then using
13 it later --

14 A. Uh-huh.

15 Q. This is just within 15 minutes; is that right?

16 A. Yes, it would be short-term recall.

17 Q. So extremely short term?

18 A. Short term, yes.

19 Q. So not necessarily applicable to the
20 complexities of a multi-week trial?

21 A. Those, I think, would involve intermediate and
22 long term --

23 Q. Right. And this is just testing --

24 A. -- recall. This is short term, yes.

25 Q. Okay. And Mr. Mosley did very poorly on the

1 math components of this portion of the exam?

2 A. Uh-huh.

3 Q. And I want to go over some of this with you.

4 And I apologize because I believe that there were math
5 components that were a part of this exam, as well as a
6 part of your conversation with Mr. Mosley on the 8th.

7 A. Okay.

8 Q. So I'm hoping that we can maybe talk about those
9 together.

10 A. Sure.

11 Q. So, again, Mr. Mosley cooperated throughout, no
12 pushback, no refusals, right?

13 A. Correct.

14 Q. Okay. And so in terms of the calculations, we
15 talked about the starting at a hundred and counting back
16 by sevens.

17 A. Yes.

18 Q. Okay. And I think what I heard you say is that
19 usually people get one or two of those correct?

20 A. One or two, yes.

21 Q. Okay. So it's not like one or two of the people
22 that you talk to but of all the people that you talk to,
23 they'll get to --

24 A. No, typically --

25 Q. -- 93 and then maybe they get to 86 and then

1 struggle beyond that?

2 A. Yes, sevens are difficult for a lot of people.

3 Q. They are. And he did really poorly?

4 A. He did.

5 Q. Okay. So initially, he just went down by
6 threes. So the first number that he gave to you was 97?

7 A. Yes.

8 Q. And then he went down by sevens, so the next
9 number was 90?

10 A. No, he went down by tens.

11 Q. Oh, okay, after that. So went from 93 to 83?

12 A. He went from 97 to 87.

13 Q. Okay. So he's really not doing well?

14 A. No, he did not get credit for any of those.

15 Q. You also had him do serial fives?

16 A. In the interview part.

17 Q. Okay. So same kind of question.

18 A. Correct.

19 Q. Go backwards from a hundred, subtracting five
20 each time?

21 A. Correct?

22 Q. Are those the instructions?

23 A. Yes. Sevens, as I said, tend to be more
24 difficult for people, so I try fives and sometimes threes.

25 Q. Okay. He did not do well with the fives?

1 A. No, he did not.

2 Q. Okay. Then to make it easier for him, you asked
3 him to do serial tens?

4 A. Yes.

5 Q. Okay. He made it to 70 --

6 A. And then he --

7 Q. -- then no further?

8 A. Correct.

9 Q. So really, he was only able to do three
10 iterations of that, right?

11 A. Yes. He went to 50 after 70.

12 Q. Okay. You asked him some other calculation
13 questions. I think this might have been part of the --

14 A. Mental status.

15 Q. -- interview?

16 A. Yes.

17 Q. So you asked him, like, if you buy something
18 that costs 78 cents and you give the cashier a dollar,
19 what is your change?

20 A. Correct.

21 Q. What was his answer?

22 A. A penny.

23 Q. That's not correct, is it?

24 A. Correct.

25 Q. That is indicative of an inability to manage

1 finances, right?

2 A. To do -- yes. Counting change, yes.

3 Q. Okay. And so that's something important in
4 terms of, like, cognitive impairment, but specifically in
5 terms of somebody's adaptive deficits for a
6 determination --

7 A. Potentially, yes. And it's long-term, yes.
8 Managing money is one of them.

9 Q. Okay. You also asked him to do some very simple
10 addition; is that right?

11 A. I did.

12 Q. He was not able to do that?

13 A. He did one of them. The other one he got
14 incorrect.

15 Q. Okay. The other one he said, I have no idea?

16 A. Well, I gave him -- well, there's several. So
17 one, very simple addition, he said no idea, and then he
18 guessed a number, which was incorrect. And then I gave
19 him basic addition, like two plus three and one plus two.
20 He got one of those wrong. He got one correct.

21 Q. Which one did he get wrong?

22 A. Wrong, two plus three.

23 Q. What did he say?

24 A. Six.

25 Q. That's not correct, is it?

1 A. No.

2 Q. That's pretty simple math, isn't it?

3 A. Yes, I would consider that simple math.

4 Q. Okay. Now, there were a couple of attention
5 questions which I think you mentioned on direct is about
6 attending to information, holding information, and then
7 responding.

8 A. Uh-huh.

9 Q. So like -- so what we've discussed with regards
10 to receptive language, taking that information onboard,
11 processing it, returning it in a useful manner, right?

12 A. Uh-huh.

13 Q. So spelling world backwards, that's one of those
14 tests, right?

15 A. That is one.

16 Q. And I think -- was that part of the
17 conversational examination --

18 A. Yes, part of the mental status.

19 Q. -- by the MMSE?

20 A. Correct.

21 Q. Okay. He spelled world backwards incorrectly;
22 is that right?

23 A. He did, yes.

24 Q. How did he spell it?

25 A. W-L-O-R-D.

1 Q. Okay. And separately, you asked him to spell
2 the word bird.

3 A. I did.

4 Q. And he did not spell that correctly?

5 A. Correct.

6 Q. How did he spell it?

7 A. Bord, with an O.

8 Q. And so you have concerns about his functioning
9 in a few realms that you mentioned. Attention and
10 calculation and visuospatial. And that was like the
11 interlocking geometric shapes.

12 A. Correct.

13 Q. Okay. And I think that's 10A or B, if I can --
14 10A and B, yes.

15 So both of these are part of the MMSE; is that
16 right?

17 A. Yes.

18 Q. Okay. So talking about 10B, which is the
19 geometric shapes, he is given the stimulus, right, the
20 interlocking shapes, and asked to copy that particular
21 shape; is that right?

22 A. Correct.

23 Q. And there are two iterations on here hand-drawn.
24 Those were done by him?

25 A. Yes.

1 Q. Okay. And they're not great representations of
2 the drawing above, are they?

3 A. No, they're not.

4 Q. Okay. In particular, both of the, I guess, test
5 prompts, those are both pentagons, right?

6 A. Yes.

7 Q. So five-sided?

8 A. Correct. Interlocking, uh-huh.

9 Q. And one of the shapes that Mr. Mosley drew in
10 the first iteration has many more than five. Would you
11 agree with that?

12 A. Yes.

13 Q. Okay. The other shape is slightly closer.

14 A. That's a little bit closer, yes.

15 Q. And then he did a second iteration. Was that
16 pursuant to a prompt by you or was that just something
17 that he voluntarily did?

18 A. He did it.

19 Q. Okay. So the -- the test only calls for one
20 version, and he did two?

21 A. Yes. And I gave him a pencil.

22 Q. Okay.

23 A. Yeah.

24 Q. So he's not necessarily following the prompts in
25 doing two iterations rather than one anyway; is that

1 right?

2 A. Say that again.

3 Q. So the prompt says for him to copy it one time.

4 A. Uh-huh.

5 Q. Is that right?

6 A. Yes. To copy it. Usually, it's one time.

7 Q. Okay. Usually, it's one time, and he did two.

8 A. He did two.

9 Q. Okay. His second iteration is no better.

10 A. It is not acceptable for scoring, uh-huh.

11 Q. Okay. So he has some pretty significant
12 concerns for you with regards to his visuospatial, I
13 guess, cognition, right?

14 A. This is a poor performance for that, yes.

15 Q. Okay. Then 10A, you asked him to write
16 something?

17 A. I did.

18 Q. Okay. And so it's a written response pursuant
19 to a test prompt, correct?

20 A. Correct.

21 Q. Okay. And the test prompt doesn't tell him how
22 to answer it, just to write kind of whatever comes into
23 his head?

24 A. There's -- write about where you live. And I
25 get all kinds of responses. Whatever he wants to write

1 for that.

2 Q. Okay. So have you gotten responses that are
3 like multi, multi-sentence or multi-phrase long?

4 A. No, not multi-phrase -- or multi-sentence, but a
5 longer sentence, yes, with a little bit more detail,
6 sometimes addresses, sometimes -- you know, it varies.
7 But a longer sentence, yes, in some cases.

8 Q. And I think you said on direct that there is no
9 points off for typos or grammatical errors. You're just
10 looking for a noun and a verb.

11 A. Correct.

12 Q. That's the only thing?

13 A. Subject and a verb, yes.

14 Q. Okay. And so what Mr. Mosley wrote was, I live
15 in Floridia; is that right?

16 A. Correct.

17 Q. Live is capitalized, correct?

18 A. Correct.

19 Q. Floridia is not capitalized?

20 A. Correct.

21 Q. And Floridia is not spelled right because --

22 A. That's correct.

23 Q. -- we're assuming it's Florida?

24 A. Yes.

25 Q. Okay. And there is no punctuation?

1 A. Correct.

2 Q. Okay. And in terms of his performance here --

3 THE COURT: Ms. Seifer-Smith, can I interrupt
4 for a moment?

5 MS. SEIFER-SMITH: Yes, of course.

6 THE COURT: We've been going for almost an hour
7 45 minutes, so I think we should probably take a
8 break.

9 Madam Court Reporter, are you okay with that?

10 THE COURT REPORTER: Oh, yes.

11 THE COURT: All right. Let's take ten minutes.

12 (Break taken.)

13 THE COURT: Mr. Mosley is back in the courtroom.

14 Ms. Seifer-Smith, would you like to continue?

15 MS. SEIFER-SMITH: Yes.

16 BY MS. SEIFER-SMITH:

17 Q. I think we covered everything regarding the
18 MMSE. It sounds like the next test that was administered
19 on the 21st was the Inventory of Legal Knowledge; is that
20 right?

21 A. Yes, that was the next one.

22 Q. Okay. My understanding of that particular test
23 is it's very formulaic, it's 60 questions. You have to
24 ask them exactly as they are written, and you're looking
25 for a true/false response from the examinee; is that

1 right?

2 A. Correct.

3 Q. Okay. And it's like a booklet, you read out the
4 question exactly as it's written and then look to the
5 examinee for their answer.

6 A. Yes, it's a standardized wording that's used,
7 and then it's true and false response item.

8 Q. Okay. And this is a test for effort
9 specifically to legal criminal contexts, right?

10 A. Yes.

11 Q. And it is not normed for people with cognitive
12 impairments like intellectual disability?

13 A. Although it's used in settings that do train and
14 work with individuals with intellectual disability, it's
15 not normed for ID.

16 Q. And so what that means is that it can return
17 false positives, so indications that somebody is
18 malingering, which would be false, because of their
19 cognitive impairment?

20 A. It wasn't normed. So in the initial
21 development, it was not tested out or -- yeah, like tested
22 out with a population of intellectually disabled
23 individuals. So it's not normed. There isn't reliability
24 data and things for that population.

25 Q. And you'd agree that it's important for a test

1 to be normed for the population to which they're being
2 administered?

3 A. Yes.

4 Q. Okay. And I think you might have mentioned this
5 on direct, but the kind of like baseline grade level
6 that's required for the ILK is 5th grade; is that right?

7 A. Correct.

8 Q. And it's really questionable about whether or
9 not Thomas Mosley has a 5th grade reading and
10 comprehension level?

11 A. Yes. I've seen various -- various grade levels,
12 but yes, within the elementary school range is what I've
13 seen for him.

14 Q. So his reading -- his reading comprehension,
15 his -- yeah, his reading comprehension, his language could
16 really be below 5th grade, so below the baseline required
17 for --

18 A. I have seen some numbers for that, yes.

19 Q. Okay. And he -- he engaged with you on the
20 test, right?

21 A. He cooperated.

22 Q. He answered the questions that you asked him?

23 A. It's purely true/false, so yes.

24 Q. But you knew that he was engaging and not just,
25 like, answering true or false because there were occasions

1 when you had to repeat questions, right?

2 A. Yes.

3 Q. Or he would say, I don't understand, which would
4 prompt you to repeat the question; is that right?

5 A. Asked for repetition. I can't explain it any
6 other way. I have to provide the item to him as everybody
7 else. But it was repeated, yes.

8 Q. So even if he says, I don't understand in
9 response to one of the questions that you ask, pursuant to
10 the testing requirements, you can't rephrase it, use --

11 A. No.

12 Q. -- different language?

13 A. I cannot.

14 Q. You have to repeat it.

15 A. That is correct.

16 Q. Okay. And that occurred on multiple occasions
17 throughout your administration of the test?

18 A. I can tell you exactly how many. On seven
19 occasions.

20 Q. Okay. And he -- he scored low on the test?

21 A. Yes. On the cusp, yes.

22 Q. Okay. And I think you said that his score might
23 indicate some questions about effort; is that right?

24 A. Yes.

25 Q. Okay. But we already talked about some of the

1 concerns about a false positive of effort regarding
2 somebody who's intellectually disabled, right?

3 A. That is possible, yes.

4 Q. Okay. And during the competency portion of the
5 exam, he also got things wrong during your conversation,
6 correct?

7 A. A few.

8 Q. Okay. So it could also be indicative of his
9 failure to understand things about the system, correct?

10 A. It is. It's looking at the response style, so
11 like greater than chance responding, but it could also be
12 part of that.

13 Q. Which is a really different thing than what
14 you're looking at in the examination portion, like the
15 conversational portion.

16 A. Correct, they're different, uh-huh.

17 Q. Okay. Okay. And the Dot Counting Test --

18 A. Uh-huh.

19 Q. -- is an effort test, correct?

20 A. Correct.

21 Q. And this was also done while they're -- while
22 you were in the same room that you described with the kind
23 of distractions available behind you; is that right?

24 A. It didn't happen again, the loud -- the loud
25 voices or, you know, the noise. That happened during the

1 CTONI. But the same people were there. The inmates all
2 of that was the same.

3 Q. So in terms of it affecting Mr. Mosley's, like,
4 ability to put absolute full attention on this particular
5 test, you can't say for certain?

6 A. He didn't appear as distractible as he did for
7 the CTONI, for example.

8 Q. The Dot Counting Test is a relatively short
9 test?

10 A. Yes.

11 Q. Okay. And you can score for certain types of
12 categories?

13 A. Correct.

14 Q. Three of which I think you described on direct;
15 is that right?

16 A. I looked at three, yes.

17 Q. Okay. So you looked at TBI?

18 A. The head injury, yes.

19 Q. In terms of, like, the scoring cut-offs; is that
20 right?

21 A. Correct.

22 Q. And he scored within normal limits for that?

23 A. Correct.

24 Q. Okay. He also scored within normal limits for
25 schizophrenia; is that right?

1 A. Correct.

2 Q. So indicating that he was putting forth best
3 effort with respect to that test?

4 A. It was not a -- like, not a concern with respect
5 to that -- that group that it's normed for. Uh-huh.

6 Q. Okay. With regards to a learning disability, it
7 was slightly above, it wasn't grossly above; is that
8 right?

9 A. It was above the cut-off but not exaggeratedly
10 above.

11 Q. Okay. And you did not do a score for
12 intellectual disability; is that right?

13 A. Because that isn't a comparison. The learning
14 disability is.

15 Q. Okay. Because there is no particular norming
16 for intellectual disability with this test?

17 A. It's not exclusionary, so there are some
18 populations that are excluded from testing on this one,
19 and ID is not one of them.

20 Q. Okay. So I want to talk about the -- well, I
21 mean, you talked about the diagnoses in direct, so we're
22 not going to go over those, like, in too much detail.

23 But I guess for unspecified depressive disorder,
24 you indicated on direct that this would be a diagnosis
25 that you made according to history and according to, like,

1 your observations within the records, within your
2 conversation with Mr. Mosley; is that fair?

3 A. Yes.

4 Q. Okay. The unspecified schizophrenia and other
5 psychotic disorder, the same?

6 A. Yes.

7 Q. Right, in terms of what you're relying on for
8 that particular diagnosis?

9 A. Yes.

10 Q. Okay. The specific learning disability, this is
11 from history only, right?

12 A. Yes.

13 Q. Okay. Because you didn't administer any
14 particular testing regarding a learning disability?

15 A. Correct. I mean, that would have been done if
16 you do achievement in addition to IQ testing, and I did
17 not look for learning disabilities. So that's
18 predominantly from the school records and his history of
19 identification in the schools.

20 Q. Okay. And we'll talk about -- well, so the
21 malingering diagnosis or suspected effort. I think you
22 indicated on direct that this is because of his
23 performance on the testing and prior evaluations. Am I
24 getting that right?

25 A. So his presentation with me, the testing, as

1 well as prior testing and observations that were part of
2 the evaluations that were done also in the State hospital
3 over course of the amount of time he was there.

4 Q. So, I mean, you weren't a party to -- you
5 weren't involved in this case until Mr. Mosley returned
6 from the State hospital, correct?

7 A. Correct.

8 Q. Okay. And you didn't actually meet him until
9 May 8th for that first initial --

10 A. That is correct.

11 Q. Okay. So, I guess, I'm just trying to
12 understand why you're diagnosing him pursuant to his
13 performance on tests that were done by other people for
14 whom you don't have, like, perfect record data and prior
15 evaluations that you weren't part of.

16 A. Sure. So you take in the totality of the
17 information that's available. The performance in State
18 hospitals is important because they do have 24/7
19 observation, both when there's direct contact with the
20 mental health providers, evaluators, and then outside of
21 that context, which is the social environment, interaction
22 with other individuals that are in the milieu that are
23 there to see, you know, how cooperative they are, how they
24 engage, how attentive, those kinds of things. And I think
25 that is pertinent because this -- you know, he was being

1 evaluated and observed for competency. And then his
2 performance with me.

3 Q. So I'm going to get to his performance with you
4 in just a second because I want to unpack what you just
5 said.

6 A. Sure.

7 Q. So I think -- you also mentioned on direct that
8 one of the things that you were looking for with regards
9 to, like, prior evaluations, et cetera, is you're looking
10 at the training and the classes, like his attendance, what
11 he's doing; is that fair?

12 A. Uh-huh.

13 Q. I think you mentioned that; is that right?

14 A. Yes. And level of cooperation and --

15 Q. Okay.

16 A. Yes.

17 Q. So in the records that we received from the
18 South Florida Evaluation and Treatment Center, it
19 indicated that when he was being administered the
20 competency assessment tools on multiple occasions, he was
21 saying, I don't understand, I don't understand, I don't
22 understand. He was getting things wrong on multiple
23 occasions, which would indicate a problem with expressive
24 and receptive language, correct?

25 A. Well, it could.

1 Q. Especially with regards to competency testing,
2 right?

3 A. Yes. And that's why it's important to see how
4 he communicates and how he does outside of the limited
5 evaluation portion.

6 Q. Right. So if we're looking at the totality of
7 how he's doing at the hospital, reviewing all of those
8 competency assessment tools, what he's doing in class, the
9 observations of people when he's saying, I don't
10 understand, when he's having his medication adjusted, but
11 then a conclusory report saying he's competent even though
12 all of these things are present, that becomes a little bit
13 suspect, doesn't it?

14 A. Well, it talks about the level of participation,
15 also, and completion of training requirements, and how
16 cooperative with the training, which does raise questions
17 about effort.

18 Q. And I think you already discussed that some of
19 those observations can be applicable to negative symptoms
20 of schizophrenia, right? Anhedonia, low affect, fatigue,
21 depression, that those are really things that were being
22 observed?

23 A. Correct. The question would be is it in all
24 contexts of the hospital. If that level of poor
25 participation, level of minimal engagement, et cetera, is

1 within all aspects of the State hospitalization, where it
2 looks like he interacts and socializes and those things
3 fairly normally. So the effort is there, the attention,
4 the investment, and interest is there. So you look
5 about -- across not just the evaluation but in other
6 contexts. Can medication affect that? Of course.

7 Q. Let's talk about his performance with you.

8 A. Sure.

9 Q. Because you said that this was a concern because
10 of his engagement with you. Now, my understanding of the
11 testing is that he was putting forth effort.

12 A. He was cooperative.

13 Q. He was cooperative.

14 A. Uh-huh.

15 Q. And that in terms of questions about effort,
16 those were on tests that are not normed for somebody with
17 intellectual disability?

18 A. The DCT can be used for -- it does not exclude
19 intellectual disability.

20 Q. Okay. And he was -- I think you indicated he
21 was, like, right on the cusp with regards to learning
22 disability?

23 A. He was above the cut-off by a few points. He
24 was not extreme, but he was above the cut-off.

25 Q. Okay. And that's a counting test, right?

1 A. It's an effort test.

2 Q. Okay.

3 A. Yes.

4 Q. But the test itself, he's given a stimuli, it's
5 a number of dots, he has to count the dots. And the
6 question is whether or not he is -- he's able to do that
7 correctly?

8 A. Effort, yes.

9 Q. Okay. So, like, if he's getting the number of
10 dots right and how long it takes him to complete?

11 A. Correct. Uh-huh.

12 Q. Okay. He did really poorly at visuospatial
13 testing with you, right? His drawing is terrible.

14 A. Yes, those drawings were.

15 Q. Okay. And all of his engagement on the math
16 questions, he also did really poorly, correct?

17 A. Yes. But this is a very simplistic test.

18 Q. Okay. I understand that it's --

19 A. Okay.

20 Q. -- just counting, but it's -- it's similar to
21 some extent, right?

22 A. Much more simple, but it's in the math category.

23 Q. Okay.

24 A. Some of them will have even like five items that
25 people count one, two, three, four, five. It's very

1 simplistic.

2 Q. The Dot Counting Test was the last one that you
3 administered?

4 A. Correct.

5 Q. Okay. And is it safe to say, too, that, like,
6 you and Mr. Mosley, like, didn't start off on the greatest
7 of footing from May 8th, given the context for that
8 initial exam?

9 A. I mean, I don't think it was negative, anything
10 that -- between us, you know. The circumstances, setting
11 up the start of the evaluation was not typical.

12 Q. Okay. Not ideal, certainly?

13 A. No.

14 Q. And certainly, some people who are probably low
15 functioning might attribute, you know, like, negative
16 feelings towards somebody who is associated with that kind
17 of negativity, right?

18 A. I don't know if it's only ID, but in general,
19 yes, people can associate.

20 Q. Okay. And so that can also affect their ability
21 to put forth best effort?

22 A. Potentially. Uh-huh.

23 Q. Okay. Now, about this specified learning
24 disorder. I'm really curious why you did not have a
25 diagnosis of intellectual disability because he

1 consistently scored as intellectually disabled across
2 every single metric that has been administered to him over
3 the course of the past year, right?

4 A. Past year, yes.

5 Q. Okay. Every single score was in the
6 intellectual disability range, right?

7 A. Correct.

8 Q. Okay. And the DSM-5 tells you that there are
9 three overarching criteria that need to be met in order
10 for a diagnosis of intellectual disability; is that also
11 right?

12 A. Correct.

13 Q. Okay. And so the first one would be an IQ score
14 two standard deviations below the mean, correct?

15 A. Correct.

16 Q. He meets that, yes?

17 A. Based on the testing that's done in the last
18 year, yes.

19 Q. Okay. And based on your own testing on CTONI?

20 A. Yes. In the last year, yes.

21 Q. Okay. So he meets that first criteria. The
22 second criteria is with respect to adaptive deficits,
23 correct?

24 A. Correct.

25 Q. Okay. He also exhibits significant adaptive

1 deficits?

2 A. Based on the packet that I have, there are some
3 deficiencies.

4 Q. Not just the packet that you have, but also the
5 testing that you've done, right, his inability to engage
6 in basic math, so finances, et cetera, right?

7 A. For that more complicated math, yes.

8 Q. Okay. And this would have occurred during the
9 developmental period, right? Like, the packet that you
10 have from school, that's obviously the developmental
11 period, right?

12 A. Yes.

13 Q. Okay. If this -- none of this has attributed to
14 a head injury that occurred when he was like 21 years old,
15 right?

16 A. Not 21. He reported one when he was younger,
17 but I don't have any records speaking to the degree or
18 nature of that injury.

19 Q. So my understanding, too, is that in terms of,
20 like, the corpus of information that you have to
21 potentially make an intellectual disability determination,
22 this was just done based on, like, your conversation with
23 Mr. Mosley and a review of the records, is that right?

24 A. My interaction and assessment of him, as well as
25 review of all the records I have, yes.

1 Q. Okay. So you would agree that under those three
2 criteria, he does meet the definition of intellectual
3 disability?

4 A. If the testing is believed to be valid, yes.

5 Q. Do you not believe the validity of your testing?

6 A. I suspect effort.

7 Q. Okay.

8 A. Not -- the effort, that's the question, is the
9 real representation of his abilities.

10 Q. You saw that there was testing that was done
11 throughout the course of his educational career, right?

12 A. Speech and language, yes.

13 Q. Some of those tests can also be applied as
14 intellectual testing because speech and language
15 pathologists are not -- they're not trained to give
16 intellectual tests, like intellectual function tests,
17 right?

18 A. I don't believe they are, no.

19 Q. So they have to give speech language tests,
20 which are -- which can be indicative of intellectual
21 performance for language, correct?

22 A. It can suggest there might be issues, but it
23 can't formally diagnose.

24 Q. Okay. Based on those scores, which are from as
25 early as 3rd grade, they indicate the same kind of

1 impairments that were evidenced with Dr. Fritz, as well as
2 evidenced with each and every one of those formal
3 intellectual tests, correct?

4 A. That's why he was diagnosed with a specific
5 learning disorder, yes.

6 Q. Okay. But he's also scoring in the same way on
7 the formal intellectual tests, like the WAIS-4 and the
8 WAIS-5, right?

9 A. In the recent year, yes.

10 Q. Okay. Now, you had the opportunity to speak
11 with David and Rene Mosley --

12 A. No, I did not.

13 Q. Mr. and -- okay. But you did not?

14 A. I did not speak with them, no.

15 Q. We provided you with contact information for the
16 Mosleys?

17 A. Yes, you did.

18 Q. Okay. And typically, it's encouraged for an
19 intellectual disability diagnosis to seek out information
20 from collateral sources, correct?

21 A. Yes, and to get history of school and then
22 adaptive, uh-huh.

23 Q. Okay. And that's because self-report by
24 somebody who is suspected of being intellectually disabled
25 is questionable because of, I guess, the characteristic of

1 like self-reporting at higher confidence levels in their
2 abilities than is --

3 A. It could be, yes.

4 Q. And that would be true potentially for ASD as
5 well; is that right?

6 A. Yes.

7 Q. Okay. Now, with regards to autism, you did not
8 conduct any kind of assessment with regard to autism; is
9 that right?

10 A. I did not.

11 Q. And the order itself said to conduct a
12 competency examination with respect to intellectual
13 disability or autism?

14 A. Correct.

15 Q. And my understanding from our conversation last
16 week was the reason that you did not do any formalized
17 autism testing was because you suspected that what could
18 also be seen as autism was negative symptoms of
19 schizophrenia; is that right?

20 A. Yes, the negative symptoms of a mental illness.

21 Q. Okay. But you didn't do any kind of formalized
22 testing with regards to autism?

23 A. No, I did not do testing.

24 Q. Okay. And I know that you're familiar with some
25 of the different testing itself that can be administered

1 either to the examinee or to a collateral source, right?

2 A. Yes.

3 Q. Like the CARS, the GARS, the ADOS?

4 A. Correct.

5 Q. Okay. And, in fact, is it correct to assume
6 that you yourself have administered those types of
7 instruments in the course of your career?

8 A. Some of them, not all of them, but yes.

9 Q. Okay. And so you have those available to you if
10 you were, in fact, going to do an autism assessment?

11 A. If I believe, yes, that that was needed, yes.

12 Q. Okay. Just none was done in this case?

13 A. Correct.

14 Q. Okay. And you had the opportunity to review
15 Dr. Tyler Whitney's report; is that right?

16 A. Yes, I was provided with it.

17 Q. I know it wasn't memorialized in your report,
18 you received it later. But you're familiar with the type
19 of tests that Dr. Whitney administered?

20 A. The ADOS, yes.

21 Q. The ADOS, yes?

22 A. Uh-huh.

23 Q. And you don't take any kind of issue with the
24 testing or the administration or ultimately Dr. Whitney's
25 findings that Mr. Mosley should be diagnosed with ASD?

1 A. Based on this testing, I don't have questions
2 about it.

3 Q. Okay. And Dr. Whitney actually spoke with the
4 Mosleys as well, didn't he?

5 A. That's my understanding, uh-huh.

6 Q. So Dr. Whitney's findings that Thomas Mosley
7 should be diagnosed with ASD is based upon a comprehensive
8 review of all the data that was available to you, as well
9 as a full autism spectrum examination of Mr. Mosley
10 through both himself and his parents, correct?

11 A. It was review of records, the testing, and the
12 parents, yes.

13 Q. Okay. I'd like to talk to you now about your
14 competency assessments.

15 A. Uh-huh.

16 Q. Well, first I'd like to ask, it's been about
17 three months since you've seen Mr. Mosley; is that right?

18 A. Correct.

19 Q. I think almost to the day. And we've talked a
20 little bit, too, about how competency can wax and can
21 wane, correct?

22 A. It can, yes.

23 Q. Okay. And so today as we sit here, do you have
24 any current opinion regarding Mr. Mosley's competence?

25 A. I could only speak to the time I saw him.

1 Q. Okay. And that was three months ago?

2 A. Correct.

3 Q. So he could very well be not competent to
4 proceed today?

5 A. I mean, is it possible, yes.

6 Q. Okay. Now, in terms of the six criteria, I want
7 to go through them one by one. So we spoke a little bit
8 earlier about the particular definition of appreciate,
9 which is to fully know and to fully engage with, to fully
10 understand; is that right?

11 A. Say that again.

12 Q. The definition for appreciation.

13 A. Oh, appreciation. Uh-huh.

14 Q. You would agree with that definition?

15 A. Yeah, fairly. Uh-huh.

16 Q. And so in order for somebody to appreciate the
17 charges or allegations against them, that means that they
18 have to fully understand the allegations, the accusations
19 against them, correct?

20 A. Yes.

21 Q. Okay. And in terms of your conversation with
22 Mr. Mosley, it was just that he is charged -- he
23 acknowledged being charged with two counts of first-degree
24 murder?

25 A. Correct.

1 Q. Okay. So he said, they say I killed two people
2 when you asked him to elaborate; is that right?

3 A. Correct.

4 Q. And elaborated absolutely no further than that,
5 correct?

6 A. No, he did not want to discuss it further.

7 Q. He never said what he's accused of in terms of,
8 like, how the killings took place?

9 A. No, that was the extent of what he talked about.

10 Q. He never said who he's accused of killing?

11 A. No.

12 Q. He never named the victims in his case?

13 A. No, he didn't say anything more than what I put
14 in there.

15 Q. And in particular, one of the reasons why that
16 might be important both -- for both phases of a death
17 penalty trial is because the age of a victim can also be
18 an aggravating factor. Are you aware of that?

19 A. Yes.

20 Q. Okay. So in terms of appreciating the charges
21 or allegations against a person, it's important both for
22 them to go to trial, as well as them to go forward to a
23 sentencing trial in a death penalty case?

24 A. Yes.

25 Q. Would you agree with that?

1 A. Uh-huh.

2 Q. Okay. And there was no assessment as to whether
3 or not he understood the aggravating factors in this
4 particular case?

5 A. No, he would not discuss it further.

6 Q. You never asked him, do you know what the
7 aggravating factors are?

8 A. No. He didn't go past what are the
9 allegations -- you know, what are they accusing you of
10 doing, any more than that. That's what he gave me. And
11 that he wasn't ready to talk about it.

12 Q. Did you ask him, do you know what the
13 aggravating factors are in your case?

14 A. No.

15 Q. Okay. Do you know that in a death penalty case,
16 that the State is required to file a notice of intention
17 to seek the death penalty, listing the aggravating factors
18 that they're going to prove?

19 A. Yes, I am aware of that.

20 Q. So you would have had that available to you had
21 you decided to ask him what the aggravating factors are?

22 A. Right. I didn't get that far. And for basic
23 competency, typically delving that far into it hasn't been
24 the case.

25 Q. So he was also asked about the difference

1 between a felony and a misdemeanor; is that correct?

2 A. Correct.

3 Q. Okay. And he reported that one has a higher
4 charge in terms of his differentiation of one --

5 A. Yes.

6 Q. -- versus the other?

7 A. Correct.

8 Q. And then he told you that the one with the
9 higher charge is a misdemeanor; is that right?

10 A. He did. Uh-huh.

11 Q. And that's incorrect?

12 A. That's incorrect, yes.

13 Q. And he's also given that same answer on other
14 occasions; is that right?

15 A. I don't know. In mine, that was the only time.
16 He may have with other evaluators. I'm not sure.

17 Q. Okay. So if he did give that same answer, that
18 would be consistent across evaluations, right?

19 A. If it's the same answer, yes, it's consistent.

20 Q. Okay. And so he is answering things incorrectly
21 with regards to an appreciation?

22 A. In that respect, yes.

23 Q. In terms of appreciating the range and nature of
24 possible penalties that can be imposed, it sounds like
25 this part of the conversation was very simplistic; is that

1 fair?

2 A. Uh-huh. He answered it directly.

3 Q. Okay. He said what exactly?

4 A. He's facing the death penalty or be sentenced to
5 prison for life.

6 Q. Okay. Did he say he could be sentenced to
7 prison for life? Like, were those his words?

8 A. There's -- I asked if he could be sentenced to
9 prison. And his response, there's no reason for that.
10 What's the point of getting life? I'm going to die
11 anyway.

12 Q. Okay. That's not really an articulation, like
13 I'm going to be -- I could be sentenced to only two things
14 if I'm convicted of first-degree homicide: The death
15 penalty or life imprisonment without the possibility of
16 parole; is that fair?

17 A. What was the question?

18 Q. So that's a different articulation what he told
19 you, right?

20 A. Compared to?

21 Q. Compared to having only two potential options.

22 A. Those are the responses. He recognized that he
23 could be sentenced to prison, as well as the death
24 penalty.

25 Q. Okay. He never actually discussed with you the

1 process by which somebody can go from pleading not guilty
2 to being sentenced to death?

3 A. No. He was very brief in his responses. He did
4 not, no.

5 Q. Did you ever ask him, do you understand the
6 process by which somebody can go from pleading not guilty
7 to being sentenced to death?

8 A. I did not.

9 Q. Okay. So you never ascertained whether or not
10 he actually has a full appreciation, i.e., a full
11 understanding of the process going from an entry of a plea
12 of not guilty to being sentenced to death by a judge?

13 A. No. For a death penalty case, no.

14 Q. Okay. In terms of his understanding of the
15 adversarial nature of the legal process, he got a number
16 of things wrong in this particular section; isn't that
17 right?

18 A. A few.

19 Q. Okay. He initially said that the judge's role
20 is to sentence, which is correct, right?

21 A. Correct.

22 Q. But he also got some things wrong with respect
23 to the judge, right?

24 A. One part, yes.

25 Q. Okay. He said that the judge is on the State's

1 side, which is incorrect?

2 A. That is correct.

3 Q. Okay. So a judge is a neutral arbiter, right?

4 A. Uh-huh. Yes.

5 Q. And typically, people who are returned from the
6 hospital who have engaged in multiple competency classes
7 will say the judge is the referee because that's like the
8 basic phrase that they're given, isn't it?

9 A. Oftentimes.

10 Q. He didn't say anything about the judge is the
11 referee, the judge calls --

12 A. No.

13 Q. -- the balls and the strikes?

14 A. No.

15 Q. Okay. In fact, what he said is that the judge
16 is on the State's side. People try to get you indicted
17 and sent to prison, found guilty. So his belief is that
18 the judge is part of the process that is indicting him,
19 trying him, and ultimately sentencing him, correct?

20 A. That is -- sentencing, going against him, yes.

21 Q. Okay. So the only part that he got right was
22 the sentencing?

23 A. He said that correctly, yes.

24 Q. But that was the only part that he got right
25 with respect to the judge?

1 A. Right. His view was that the judge was -- if
2 you sentence someone, that they're going against you, yes.

3 Q. Okay. And you write that he identified, quote,
4 the lawyer, my lawyer, end quote, is the defendant in his
5 case?

6 A. Yes, that's often confused when you ask, do you
7 know who the defendant in your case is? Very often they
8 say my -- the Defense Attorney because of the similarity
9 in the words.

10 Q. So he confused two similar words?

11 A. Yes.

12 Q. Defendant and Defense Attorney.

13 A. Yes.

14 Q. Those are -- I mean, like you and I certainly
15 understand the difference, right?

16 A. Yes. It's a common mistake.

17 Q. Okay. We would expect most people to understand
18 the difference between a defendant and the Defense
19 Attorney?

20 A. Yes.

21 Q. And certainly, the language that's used in court
22 is more complicated than just defendant, Defense Attorney,
23 right?

24 A. Yes. Uh-huh.

25 Q. So he reported that they try to prove my

1 innocence in court. Now, that is not the burden that's on
2 the Defense, correct? That's a misstatement of the
3 burden.

4 A. Uh-huh.

5 Q. Is that right?

6 A. Yes.

7 Q. Okay. So he didn't say that the State has to
8 prove his guilt beyond a reasonable doubt?

9 A. No. I very rarely get that response from
10 people.

11 Q. Okay. And when you was -- when you asked him
12 about the role of the prosecutor, he basically gave a
13 definition of a witness, correct?

14 A. Well, the part about listening to the case.

15 Q. That would be the definition of a witness,
16 right?

17 A. That they listen to the case? Everybody in the
18 courtroom, I think, listens to the case. He said that
19 the -- some people that listen to the case. I asked why,
20 if it did or not, and they try to send you to prison.

21 Q. So I guess rather that would be a definition of
22 the jury rather than the prosecutor if somebody is tasked
23 with, if their role is to listen to the case, right?

24 A. I mean, that's part of the jury's job, but
25 others in the courtroom as well.

1 Q. The role of the prosecutor is simply to listen
2 to the case, not to put on the case?

3 A. No, that's part of it. He didn't go into
4 putting on the case. It's -- he's describing as listening
5 to the case and asking why to see if you did it or not and
6 try to send you to prison. And then he said, they're on
7 the other side.

8 Q. But then he ultimately said they're trying to
9 prove that he's not guilty.

10 A. He did. He did say that.

11 Q. Okay. So he's getting a number of things wrong.

12 A. But he did clearly demonstrate understanding
13 that they're against him.

14 Q. Okay. I guess just -- what I'm getting at is
15 he -- and I understand that this is kind of a more
16 complicated moving parts section of your examination with
17 Mr. Mosley. But a number of these things are really
18 critical. They're pretty simple, and he got them wrong.
19 And he also had gotten them wrong on prior occasions in
20 other competency assessments with other people. So I
21 would think that that indicates a lack of understanding,
22 wouldn't you?

23 A. It could. I mean, this is all in the umbrella
24 of, like, the effort and how -- how much effort he's
25 putting into the process.

1 Q. Why would it be indicative of effort rather than
2 indicative of true receptive and expressive language?
3 Like, why is that effort rather than capacity?

4 A. It's hard to tease apart. But because there's
5 been evidence that he has had -- sorry -- limited
6 participation or effort in the training and evaluations,
7 you have to have that in the back of your mind as a
8 possibility.

9 Q. Capacity to disclose to counsel facts pertinent
10 to the proceedings at issue --

11 A. Yes.

12 Q. -- now. He didn't discuss any events regarding
13 the allegations with you, correct?

14 A. He did not.

15 Q. Okay. In fact, his conversations with you were
16 incredibly simplistic, very brief, right?

17 A. Yes, they were brief.

18 Q. Okay. He's reticent to admit to any kind of
19 information about himself, right?

20 A. He briefly answered questions.

21 Q. Okay. So how does this then get extrapolated
22 out to his ability to disclose facts that are relevant to
23 his Defense?

24 A. Well, he answered questions coherently. They
25 were goal directed. There wasn't any evidence of a

1 thought disturbance. He was -- recognized what he's
2 charged with and basic allegations against him. Part of
3 it is how much willingness or effort he's putting in into
4 being able to disclose those things.

5 Q. So I guess -- my concern again is if he does not
6 have the capacity to do so or, like, if he is struggling
7 so much with this receptive and expressive language
8 ability to communicate with others, then how is he going
9 to disclose facts relevant to his Defense?

10 A. Well, I believe I saw in other evaluations where
11 he was much more conversant with other individuals than he
12 was with me on being able to communicate relevantly, more
13 openly, more open dialogue. It was brief with me.

14 Q. What evaluation was that?

15 A. Well, Dr. Railey is that -- made note of that
16 and then the State hospital.

17 Q. Okay. I'm not so sure that that's true.

18 Okay. I want to talk about the capacity to
19 testify relevantly. So we've been over this a number of
20 times.

21 A. Uh-huh.

22 Q. You said that his responses have been brief and
23 simplistic, correct?

24 A. Yes.

25 Q. Okay. And you referenced a moment during the

1 examination portion of your conversation with Mr. Mosley
2 where he was redirected to talk about a car accident that
3 he had not brought up himself; is that right?

4 A. Yes.

5 Q. Okay. Now, redirection cannot occur in the
6 course of testimony in a trial, right?

7 A. Correct.

8 Q. Okay. And so if somebody needs to be redirected
9 in order to provide relevant -- relevant information, if
10 they're relevantly testifying, they're not -- they're not
11 competent to testify.

12 A. I don't -- and I saw it on one occasion of
13 having to need redirection. I based it on his ability,
14 his understanding of what it involves generally, and
15 having the capacity to do so, to answer questions directly
16 coherently. I do think questions need to be worded more
17 simply, not have multi-pronged questions, but more
18 simplistically, he's able to answer questions
19 appropriately.

20 Q. But, I mean, his answers to everything
21 incredibly simple, incredibly brief with an inability or a
22 profound unwillingness to elaborate, correct?

23 A. He did not elaborate.

24 Q. Okay. The language that is used in court is
25 complex, right?

1 A. Yes. More than everyday language, yes.

2 Q. Sure.

3 A. Uh-huh.

4 Q. And so he's not going to be on the stand for the
5 entirety of the trial, but the premise of testifying is
6 the ability to take on all the information that comes out
7 during the trial and then to be able to respond to it
8 through questions while he's on the stand, right?

9 A. Uh-huh.

10 Q. Is that a yes?

11 A. Yes.

12 Q. Okay. If his capacity is such that he is not
13 going to understand most of what is discussed during the
14 course of a trial, how could he possibly testify
15 relevantly?

16 A. Relevantly and simplistically, yes, I think he
17 can.

18 MS. SEIFER-SMITH: If I can just beg a moment of
19 the Court's indulgence.

20 THE COURT: Sure.

21 BY MS. SEIFER-SMITH:

22 Q. I just have one additional question. I think we
23 touched upon it earlier.

24 With regards to the WAIS-5 and the data that you
25 received from Dr. McClain.

1 A. Yes.

2 Q. You have nothing to indicate that her test was
3 not valid, correct?

4 A. Based on the scores that I got, no. I mean,
5 there wasn't observations or additional to the report, the
6 Rey suggests that he --

7 Q. That he put forth best effort?

8 A. He didn't malingering.

9 Q. I'm sorry, that he did not malingering?

10 A. Correct.

11 Q. Okay. So -- and that was Dr. McClain?

12 A. Yes.

13 Q. So there was nothing to indicate that you had
14 that Dr. McClain's score on the WAIS-5 is not valid?

15 A. Correct.

16 Q. So there's every indication that it is a valid
17 score?

18 A. There's nothing to indicate -- yes, there's
19 nothing to indicate it's not valid.

20 Q. Okay.

21 MS. SEIFER-SMITH: I don't think I have anything
22 further.

23 THE COURT: Any redirect?

24 MS. ELLIS: No, Your Honor.

25 THE COURT: Dr. Torrealday, thank you. Before

1 you leave, as it relates to the Order to Show Cause,
2 2500017, I'm finding Dr. Torrealday to be in
3 compliance. Authored a report, sat for deposition,
4 testified today. Order to Show Cause is dismissed.

5 Thank you, Doctor.

6 THE WITNESS: Thank you.

7 THE COURT: All right. Any other business we
8 need to address for today?

9 MS. SEIFER-SMITH: Yes, Your Honor.

10 MS. RUSSELL: Briefly.

11 THE COURT: Sure.

12 MS. RUSSELL: Seeing the way things went today,
13 I was wondering if it might be possible for us to
14 start a little earlier tomorrow. Dr. Whitney is
15 available all day, so it's just whenever we tell him.

16 THE COURT: We can start right after the morning
17 calendar. I'm fine with that.

18 MS. RUSSELL: Would that be --

19 THE COURT: How many do I have tomorrow? I
20 think I kept it light.

21 THE CLERK: We have 21 pretrials, three motions,
22 and four add-ons.

23 THE COURT: All right. Well, let's shoot for
24 ten. Does that work for everybody?

25 MS. ELLIS: Yes.

1 MS. RUSSELL: Yes, Your Honor.

2 THE COURT: We'll try for 10:00. Thank you.

3 MS. RUSSELL: We appreciate it. Thank you, Your
4 Honor.

5 THE COURT: Yeah. Have a good day, everybody.

6 (Proceedings concluded for 08/19/25.)
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CERTIFICATE OF REPORTER

STATE OF FLORIDA)

COUNTY OF PINELLAS)

I, CHARLENE M. EANNEL, RPR, certify that I was authorized to and did stenographically report the foregoing proceedings; and that the transcript is a true record of the proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties hereto, nor am I a relative or employee of such attorney or counsel, nor do I have any interest in the outcome or events of this action.

DATED this 8th day of September, 2025.

Charlene M. Eannel, RPR

CHARLENE M. EANNEL, RPR