

No. _____

IN THE
Supreme Court of the United States

DUANE E. OWEN,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Florida

APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI

**THIS IS A CAPITAL CASE
WITH AN EXECUTION SCHEDULED FOR
THURSDAY, JUNE 15, 2023, AT 6:00 PM**

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Appendix A

Owen v. State, No. SC2023-0819, (Fla. June 9, 2023).

Supreme Court of Florida

No. SC2023-0819

DUANE EUGENE OWEN,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

June 9, 2023

PER CURIAM.

Duane Eugene Owen appeals the Eighth Judicial Circuit Court's order finding him sane to be executed. *See Fla. R. Crim. P. 3.812(e)*. We affirm.¹

I

On May 9, 2023, Governor Ron DeSantis signed a death warrant scheduling Owen's execution for June 15, 2023.² Owen's

1. We have jurisdiction. Art. V, § 3(b)(1), Fla. Const.

2. *See Owen v. State*, No. SC2023-0732, 2023 WL 3813490 (Fla. June 5, 2023), for a detailed factual and procedural account of this case.

counsel then submitted a letter to the Governor stating that there are reasonable grounds to believe Owen is insane to be executed.

Following section 922.07, Florida Statutes (2022), the Governor appointed a commission of three psychiatrists to examine Owen and temporarily stayed Owen's execution. Fla. Exec. Order No. 23-106 (May 22, 2023). The psychiatrists conducted their examination and concluded that Owen understands the nature and effects of the death penalty and why it has been imposed on him. Soon after, the Governor adopted the commission's conclusion and lifted the temporary stay. Fla. Exec. Order No. 23-116 (May 25, 2023).

Owen's counsel then filed a motion for stay and hearing under Florida Rules of Criminal Procedure 3.811 and 3.812. On June 1 and 2, 2023, the circuit court held an evidentiary hearing about Owen's sanity to be executed, "that is, whether the prisoner lacks the mental capacity to understand the fact of the pending execution and the reason for it." Fla. R. Crim. P. 3.812(b). Owen presented the testimony of two mental health experts, Dr. Hyman Eisenstein and Ms. Lisa Wiley, and three of his present or former attorneys. He also provided affidavits from two additional mental health

experts: Drs. Faye Sultan and Frederick Berlin. In response, the State presented the testimony of the three psychiatrists appointed by the Governor to examine Owen: Drs. Tonia Werner, Wade Myers, and Emily Lazarou. The State also called four correctional officers who have observed Owen.

After considering all the evidence, the circuit court entered an order finding Owen sane to be executed, concluding that Owen failed to establish by clear and convincing evidence that he is insane to be executed.³ The circuit court found that Owen does not currently have any mental illness and is feigning delusions to avoid the death penalty. It also determined that “[t]here is no credible evidence that he does not understand what is taking place and why it is taking place.” Indeed, the circuit court concluded that Owen has a “rational understanding” of the fact of his execution and the reason for it. The circuit court explained that it found the State’s mental health experts’ testimony on Owen’s current mental condition and competency to be executed “both credible and compelling,” and “clearly and conclusively supported by the record.”

3. The circuit court also found that Owen would have failed to meet his burden under a preponderance of the evidence standard.

II

A

Owen alleges that the circuit court erred in finding him sane to be executed. We disagree. There is competent, substantial evidence supporting the circuit court’s determination, *see Gore v. State*, 120 So. 3d 554, 557 (Fla. 2013), and so we affirm.

“[T]he Eighth Amendment’s ban on cruel and unusual punishments precludes executing a prisoner who has ‘lost his sanity’ after sentencing.” *Madison v. Alabama*, 139 S. Ct. 718, 722 (2019) (quoting *Ford v. Wainwright*, 477 U.S. 399, 406 (1986)). To be ineligible for execution under the Eighth Amendment, a prisoner’s mental state must be “so distorted by a mental illness that he lacks a rational understanding of the State’s rationale for his execution.” *Id.* at 723 (cleaned up) (quoting *Panetti v. Quarterman*, 551 U.S. 930, 958-59 (2007)); *see Gore*, 120 So. 3d at 556. In other words, sanity for execution depends on whether a “prisoner’s concept of reality” prevents him from grasping “the link between his crime and the punishment.” *Panetti*, 551 U.S. at 958, 960. “What matters is whether a person has the ‘rational understanding’ ” of why the State seeks to execute him, “not

whether he has any particular memory or any particular mental illness.” *Madison*, 139 S. Ct. at 727.

Here, the circuit court applied the appropriate legal standard in concluding that Owen is sane to be executed. That is, it determined that Owen has a “ ‘rational understanding’ of the fact of his pending execution and the reason for it,” and is “aware that the State is executing him for the murders^[4] he committed and that he will physically die as a result of the execution.” *See id.* at 722, 727; *Ferguson v. State*, 112 So. 3d 1154, 1156 (Fla. 2012) (“[F]or insanity to bar execution, the defendant must lack the capacity to understand the nature of the death penalty and why it was imposed.”) (quoting *Johnston v. State*, 27 So. 3d 11, 26 n.8 (Fla. 2010)). Indeed, the circuit court found it “inconceivable and completely unbelievable” that Owen has “any current mental illness” and determined that “Owen’s purported delusion is demonstrably false.”

4. Even though Owen has also been sentenced to death for the murder of Karen Slattery, his active death warrant pertains only to the murder of Georgianna Worden.

We find that the record contains competent, substantial evidence to support the circuit court’s determination that Owen is sane to be executed. *See Gordon v. State*, 350 So. 3d 25, 35 (Fla. 2022) (“Evidence is competent if it is ‘sufficiently relevant and material’; evidence is substantial if there is enough that ‘a reasonable mind would accept [the evidence] as adequate to support a conclusion.’”) (alteration in original) (quoting *De Groot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957)). For example, the three psychiatrists testifying on behalf of the State concluded “with a reasonable degree of medical certainty” that Owen does not have a mental illness, much less one preventing him from having a “factual and rational understanding of the death penalty and why the death penalty is being imposed on him.” Based on their clinical evaluation of Owen, review of his medical and correctional records from 1986 to the present, and interviews with correctional employees, the State’s three psychiatrists testified that Owen instead “met the diagnostic criteria for antisocial personality disorder” and “was malingering.” And testimony from two of the correctional officers concerning the lack of positive symptoms in

Owen's recent behavior tracks the conclusion that Owen is feigning delusion to avoid the death penalty.

Accordingly, the circuit court's conclusion is supported by competent, substantial evidence.

We note that the circuit court considered the hearing testimony and related evidence for Owen unconvincing at best. For instance, although Owen's principal medical expert, Dr. Eisenstein, testified that Owen has schizophrenia and gender dysphoria, the trial court found his testimony "to be less credible than the other expert testimony and other evidence in the case" given Dr. Eisenstein's failure to consider several inconsistencies, including those between the facts from Owen's criminal convictions and his self-reported delusions.⁵ The circuit court also assigned little weight to Owen's other testifying medical expert and former mental health counselor, Ms. Wiley, who stated that Owen had previously mentioned his gender dysphoria to her in 1996—thus corroborating

5. The circuit court also noted that Dr. Eisenstein characterized Owen as a "passive individual who possessed no violent tendencies"—despite knowing that Owen had committed several rapes, two murders, and an attempted murder.

one aspect of Owen's professed delusion.⁶ The circuit court did so because Ms. Wiley also testified that she had never seen any evidence that Owen had schizophrenia and that Owen had never sought available accommodations for his gender dysphoria following his conviction on retrial for the murder of Karen Slattery.

Otherwise, the circuit court found that Owen's testimonial evidence was "not particularly relevant or helpful to the issue before the court in this hearing."

B

Owen also claims that the circuit court abused its discretion in denying his motion for a continuance based on the unavailability of Drs. Sultan and Berlin to testify live at the evidentiary hearing. Again, we disagree.

The circuit court acted reasonably in light of the undisputed facts of record. *See Canakaris v. Canakaris*, 382 So. 2d 1197, 1203 (Fla. 1980) ("If reasonable men could differ as to the propriety of the action taken by the trial court, then the action is not unreasonable

6. Additionally, Owen presented, and the circuit court considered, affidavits from two other mental health experts who could not attend the hearing and testify. *See infra* Section II-B.

and there can be no finding of an abuse of discretion.”). Although Drs. Sultan and Berlin could not testify at the evidentiary hearing, Owen provided, and the circuit court considered, their affidavits. Moreover, both parties agreed that the testimony of both unavailable witnesses would have been consistent with their affidavits. And no proffer was made of any other evidence relevant to Owen’s insanity to be executed that either would have presented if available to testify live. *See Gore v. State*, 599 So. 2d 978, 984-85 (Fla. 1992) (holding that the trial court did not abuse its discretion in denying a continuance to accommodate a witness because the substance of her testimony was presented through deposition).

Even so, Owen argues that the circuit court committed reversible error by not continuing the evidentiary hearing, pointing to our decision in *Provenzano v. State*, 750 So. 2d 597, 601 (Fla. 1999). There, we held that the circuit court abused its discretion by denying the defendant’s request to continue a rule 3.812 hearing based on the unavailability of the defendant’s mental health expert, Dr. Patricia Fleming. Notably, Dr. Fleming was the defendant’s “key witness” and had just completed a psychological evaluation to determine the defendant’s then-current mental status and

competency to be executed. *Id.* at 604-05 (Lewis, J., specially concurring).

But here, unlike in *Provenzano*, Owen still presented live testimony of his principal witness, Dr. Eisenstein, who has recently examined Owen twice in May 2023 and opined on Owen’s current mental health and competency to be executed. What’s more, neither of Owen’s unavailable mental health experts has seen or had contact with Owen since 1999. So Drs. Sultan and Berlin could have testified only to what they observed in the 1990s concerning Owen’s mental state related to his retrial for the murder of Karen Slattery—and these observations, a matter of record, were already outlined in the doctors’ affidavits.

In the end, the issue of Owen’s sanity to be executed was “resolved in the crucible of an adversarial proceeding.” *Provenzano v. State*, 751 So. 2d 37, 40 (Fla. 1999). The circuit court held a hearing according to Florida Rule of Criminal Procedure 3.812 that afforded Owen’s counsel the “opportunity to submit ‘evidence and argument . . . including expert psychiatric evidence that may differ from the State’s own psychiatric examination.’” *Panetti*, 551 U.S. at 950 (quoting *Ford*, 477 U.S. at 427 (Powell, J., concurring in part

and concurring in the judgment)). It then properly considered all the evidence, and made a determination based on the appropriate standard under Florida Rule of Criminal Procedure 3.812(e). See *Ferguson v. Sec’y, Fla. Dep’t of Corr.*, 716 F.3d 1315, 1339, 1339 n.6 (11th Cir. 2013) (concluding that Florida’s procedures for determining a prisoner’s sanity to be executed, codified under Florida Rules of Criminal Procedure 3.811 and 3.812, “did satisfy the minimum due process requirements identified in *Ford* and *Panetti*”).

The circuit court did not abuse its discretion in denying Owen’s request for a continuance under these circumstances.

III

We affirm the circuit court’s order finding Owen sane to be executed. No rehearing will be entertained by this Court, and the mandate shall issue immediately.

It is so ordered.

MUÑIZ, C.J., and CANADY, COURIEL, GROSSHANS, FRANCIS, and SASSO, JJ., concur.
LABARGA, J., recused.

An Appeal from the Circuit Court in and for Bradford County,
James M. Colaw, Judge
Case No. 042023CA000264CAAXMX

Eric Pinkard, Capital Collateral Regional Counsel, Lisa M. Fusaro, Assistant Capital Collateral Regional Counsel, Morgan P. Laurienzo, Assistant Capital Collateral Regional Counsel, and Joshua P. Chaykin, Assistant Capital Collateral Regional Counsel, Middle Region, Temple Terrace, Florida,

for Appellant

Ashley Moody, Attorney General, Tallahassee, Florida, Celia Terenzio, Chief Assistant Attorney General, West Palm Beach, Florida, and Leslie T. Campbell, Assistant Attorney General, West Palm Beach, Florida,

for Appellee

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Appendix B

The Eighth Judicial Circuit, In and For Bradford County, Florida Order Finding
Duane E. Owen Sane to Be Executed, dated June 4, 2023

**IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT
IN AND FOR BRADFORD COUNTY, FLORIDA**

STATE OF FLORIDA,

Plaintiff,

vs.

DUANE E. OWEN,

Defendant.

CASE NO.: 04-2023-CA-000264

**EMERGENCY CAPITAL CASE
DEATH WARRANT SIGNED
EXECUTION SCHEDULED FOR
JUNE 15, 2023 AT 6:00 P.M.**

ORDER FINDING DUANE E. OWEN SANE TO BE EXECUTED

THIS CAUSE comes before the Court upon the defendant Duane E. Owen's "Motion for Stay of Execution and Determination of Sanity to be Executed Pursuant to Florida Rule of Criminal Procedure 3.811," filed June 1, 2023, pursuant to Fla. R. Crim. P. 3.811(d) and 3.812. The parties stipulated that there are reasonable grounds to believe that Mr. Owen is insane to be executed; and, pursuant to rule 3.812, a hearing was held on June 1-2, 2023. Upon consideration of the motion, the State's response to the motion, the written materials provided by the parties, and the evidence and testimony presented at the rule 3.812 hearing, this Court finds and concludes that Duane E. Owen is sane and competent to be executed and makes the following findings:

PROCEDURAL HISTORY

The defendant, Duane Eugene Owen ("Owen"), is under an active death warrant, signed by the Governor on May 9, 2023, based on the affirmance of his 1986 conviction and sentence for the burglary, sexual assault, and first-degree murder of a Boca Raton mother, GW, whose body was discovered by her children on May 29, 1984. Owen v. State, 596 So. 2d 985 (Fla. 1992), cert. denied, Owen v. Florida, 506 U.S. 921 (1992). Owen was also convicted and sentenced to death for first-degree murder, "attempted sexual battery with a deadly weapon ... and burglary of a

dwelling while armed" of 14-year-old female, KS. Owen v. State, 862 So. 2d 687 (Fla. 2003) (affirming conviction and sentence). In the trial for KS's murder, Owen asserted the defense of insanity at the time of the crime based on a delusional disorder, and schizophrenia. These defenses were rejected. The jury later voted for death.

In the GW murder litigation, Owen litigated three motions for postconviction relief and their related appeals and the attendant state habeas petition. Owen v. State, 773 So. 2d 510 (Fla. 2000) (finding Owen's waiver of postconviction claims/evidentiary hearing was valid), cert. denied, Owen v. Florida, 532 U.S. 964 (2001); Owen v. Crosby, 854 So. 2d 182 (Fla. 2003) (finding summary denial of successive challenge to waiver of original postconviction claims was proper and no merit to claims of ineffective assistance of appellate counsel); and Owen v. Crosby, 247 So. 3d 394 (Fla. 2018) (rejecting claim based on Hurst v. Florida, 572 U.S. 92 (2016), cert. denied, Owen v. Florida, 139 S. Ct. 1171 (2019)). Also, Owen unsuccessfully pursued federal habeas relief. Owen v. Sec'y for Dept. of Corr., 568 F.3d 894 (11th Cir. 2009), cert. denied, 558 U.S. 1151 (2010).

During his litigation under an active death warrant, Owen had Dr. Hyman Eisenstein evaluate him. On May 16, 2023, Dr. Eisenstein submitted a report finding Owen insane to be executed. The following day, Owen filed a fourth motion pursuant to Florida Rule of Criminal Procedure 3.851, claiming incompetence and notifying the circuit court that he would be filing a letter with the Governor under section 922.07(1) asserting Owen was insane to be executed. Upon receipt of the letter, on May 19, 2023, the Governor, as provided under section 922.07(1), authorized an independent three-panel commission of psychiatrists to evaluate Owen. That was

completed and on May 24, 2023, a report was issued finding Owen to be malingering, had an antisocial personality disorder, and was sane to be executed.

On June 1, 2023, Owen filed a motion stay execution and determination of sanity to be executed pursuant to Florida Rule of Criminal Procedure 3.811(d). The State filed a response. On June 1-2, 2023, an evidentiary hearing occurred to determine Owen's sanity to be executed.

LEGAL STANDARD FOR SANITY DETERMINATION

Under Rule 3.812(e), the prisoner has the burden to establish by clear and convincing evidence that he is insane to be executed.¹ Under Florida law the standard for determining whether a prisoner is insane to be executed is whether he "lacks the mental capacity to understand the fact of the impending execution and the reason for it." Mr. Owen has claimed that this means that as set forth in Panetti v. Quarterman, 551 U.S. 930, 956 (2007), this Court in making that determination must also consider whether he has a mental illness that obstructs a rational understanding of the State's reason for his execution. The State has asserted that under Panetti the test that has existed since Ford v. Wainwright, 477 U.S. 399 (1986) is still the appropriate standard, i.e., whether he lacks the mental capacity to understand the fact of the impending execution and the reason for it. This Court finds that what Panetti elaborates on is the requirement that, in deciding that issue, the court has to consider whether the prisoner's mental capacity includes a "rational understanding," which the U.S. Supreme Court did not define. 551 U.S. at 959. However, it did note that the mental state requisite for competence to suffer capital punishment neither presumes nor requires a person who would be considered "normal," or even "rational," in

¹ Although that is the standard set forth in the statute, this Court will also review the evidence under the lower standard of preponderance of the evidence.

a layperson's understanding of those terms. Id. at 959-960. This Court finds that Panetti does not add anything to Florida's determination of insanity to be executed. The Florida Supreme Court in Provenzano v. State, 760 So. 2d 137 (Fla. 2000), considered the difficulties of persons who have mental illnesses and delusions, and held that such person could still be found competent to be executed when that person "had a factual and rational understanding" of the details of his trial; conviction; jury recommendation of death; whose murder he was sentenced to die for; and, that he will physically die once he is executed.

HEARING TESTIMONY AND RELATED EVIDENCE

Dr. Hyman Eisenstein, a board-certified neuropsychologist licensed in Florida who has previously testified in approximately 100 capital cases exclusively on behalf of capital defendants, testified that he interviewed Mr. Owen two (2) times: on May 15, 2023 6 hours, and May 30, 2023 for 7 hours and 15 minutes. He also administered cognitive and neuro-psychological testing. According to Dr. Eisenstein, one interview is not sufficient, and 100 minutes of interview time is not sufficient, in part because Mr. Owen is reticent in talking about his specific delusion. Dr. Eisenstein stated Mr. Owen was cooperative, polite, kept his head down and faced away from the evaluator most of the time and showed little emotion.

Dr. Eisenstein testified that Mr. Owen was tested at average intelligence; tested on the MMPI2 with a floating pathology (every category tested above normal); and showed no signs of malingering. Dr. Eisenstein testified that Mr. Owen was a passive individual who possessed no violent tendencies. Dr. Eisenstein opined that Mr. Owen suffers from schizophrenia and further testified that Mr. Owen exhibits a fixed delusional thinking that is far removed from reality, and which has been consistent over time. Finally, Dr. Eisenstein testified that Mr. Owen is

experiencing the onset of a dementia process.

Dr. Eisenstein opined that based upon Mr. Owens mental health history and psychological testing, Mr. Owen suffers from schizophrenia. Also, the prison guards and inmates who are in daily contact with Mr. Owen would not see any manifestations of his mental illness, or his reactions to them, because he currently hides his delusions and illness. Dr. Eisenstein further testified that Mr. Owen's core delusion is the belief that the crimes he committed would turn him into a female. Mr. Owen committed the crimes in an effort to have the female hormones and essence of women transferred to him. Mr. Owen was under the delusional belief that the victim he killed would live on and enter his body. Mr. Owen believes he is a female inside of a male body.

As other court opinions have noted, Mr. Owen has raised these issues or those of a similar nature multiple times and they have been rejected in state and federal court each and every time. See Owen v. State, 773 So.2d 510 (Fla. 2000), cert. denied, Owen v. Florida, 532 US 964 (2001); Owen v. Crosby, 854 So.2d 182 (Fla. 2003); Owen v. Sec'y for Dept. of Corr., 568 F.3d 894 (11th Cir. 2009, cert. denied, 558 US 1151 (2010).

Considering the above, Dr. Eisenstein opined that Mr. Owen lacks the mental capacity to understand the fact of his pending execution and the reason for it and that Mr. Owen does not have a rational understanding of the reason for his death sentence and scheduled execution.

On cross-examination, Dr. Eisenstein was confronted with the fact that he has testified only exclusively for the defense in capital cases and that approximately 80% of his income is derived from that work. Dr. Eisenstein was confronted with a statement he testified to on direct examination that "Patients don't lie". Dr. Eisenstein appeared hesitant to accept the distinction between a patient interview in a clinical setting versus a forensic setting (such as an incarcerated

inmate facing possible imminent execution). Dr. Eisenstein was asked about some of the underlying facts from Mr. Owen's criminal convictions that were inconsistent with his self-reported delusions. For example, Mr. Owen's delusion was that his penis had to be inside his victims at the time he murdered them because his penis was the conduit to receiving their feminine essence and or soul. Yet, in one of his attacks, he had penetrated the victim with a sharp object such as a hammer. Additionally, Mr. Owen took steps to evade or avoid capture; removed clothes to avoid blood staining; showered after the murders; and concocted a false alibi. It was not clear that Dr. Eisenstein was even aware of the existence of these inconsistencies. And if he was, he apparently did not consider them. In fact, Dr. Eisenstein admitted that he did not confront Mr. Owen with any facts inconsistent with his reported delusions. However, Dr. Eisenstein did admit that if Mr. Owen's delusion was not credible, then neither would his schizophrenia diagnosis be credible. In other words, without a credible delusion, Mr. Owen is not schizophrenic. Dr. Eisenstein conceded that Mr. Owen had never requested any medication for schizophrenia and the Department of Corrections had never determined Mr. Owen to need any such medication. Dr. Eisenstein was confronted about his testimony on direct that Mr. Owen's delusion has been fixed and consistent over time. Yet, Dr. Eisenstein was forced to concede that in approximately 20 hours of police interrogation in 1984, Mr. Owen never once mentioned this delusion. Instead, Mr. Owen told law enforcement that he didn't know why he raped other than he liked to get away with things. Further, Mr. Owen generally admitted to approximately 7 rapes and 5 murders and other crimes not known to the police stating he would hold onto that information and use it to delay his execution. Additionally, Dr. Eisenstein was confronted with the doctor's evaluation of Mr. Owen in 1984 which found the defendant to be antisocial. Mr. Owen never even suggested to the officers

who questioned him, and to whom he confessed in 1984, that a mental illness caused him to kill. Dr. Eisenstein acknowledged on cross examination that the first time the current reported delusion of Mr. Owen arose was in 1996 in preparation of a retrial. Dr. Eisenstein was confronted concerning his statement on direct examination that Mr. Owen was passive with no violent tendencies with the fact that he had committed approximately 6 violent rapes, 2 murders and an attempted murder. Dr. Eisenstein presents as either incredibly naïve or intentionally and willfully naïve. The court does not find Dr. Eisenstein's testimony to be credible when evaluated against all the other testimony and other evidence in the case.

Carey Haughwout, one of Mr. Owen's former attorneys who represented him in the 1992-1999 and who has since maintained some level of contact with Mr. Owen testified. Ms. Haughwout's testimony was not particularly relevant or helpful to the issue before the court in this hearing.

Pamela Izakowitz, one of Mr. Owen's former attorneys who represented him in a post-conviction matter in 1997 and who met with Mr. Owen several times during that representation testified. She testified that Mr. Owen shared his delusion with her in those meetings in 1997. Ms. Izakowitz's testimony was not particularly relevant or helpful to the issue before the court in this hearing.

Lisa Wiley, a retired psychological specialist who worked at the Department of Corrections from 1989 until 2005, and specifically on Death Row at Union Correctional Institution from 1992-2005, also testified. Her job was to provide mental health services to inmates when needed. Ms. Wiley testified that during the time she was assigned to death row Mr. Owen became a regular patient of hers who she saw approximately once every month. She noted in the medical records

in 1996 that Mr. Owen told her he didn't like having male genitalia and that he wanted to be a female. On cross examination Ms. Wiley stated that she was not aware of any of the inmates cases, or whether they were pursuing any courtroom strategies that might impact their presentations to her. She testified that she saw no evidence that the defendant suffered from schizophrenia and that he was never medicated for schizophrenia. Ms. Wiley further added that Mr. Owen did not present in any way consistent with a diagnosis of schizophrenia and that he never sought services for gender identity issues after his retrial had concluded. On redirect, Ms. Wiley testified that she didn't have any reason to think Mr. Owen was malingering.

The court considered the affidavit of Dr. Faye Sultan who was unable to personally appear and testify. The parties agreed that her testimony would have been consistent with her affidavit and that she had not seen or had contact with Mr. Owen since 1999 (approximately 24 years). Dr. Sultan did not specifically opine on Mr. Owen's current mental status or competency to be executed, nor would she have any relevant factual basis to do so.

The court also considered the affidavit of Dr. Frederick Berlin who was unable to personally appear and testify. The parties agreed that his testimony would have been consistent with his affidavit and that he has not seen or had contact with Mr. Owen since 1996 (approximately 27 years). Dr. Berlin did appear to opine on Mr. Owen's current mental status and competency to be executed, despite not having any relevant factual basis to do so. Quite remarkably, Dr. Berlin's affidavit opines that Mr. Owen was legally insane at the time he committed his crimes. Additionally, Dr. Berlin opines Mr. Owen is still to this day suffering from chronic schizophrenia and "not of sound mind". Dr. Berlin's affidavit appears to be an obvious departure from the methods of the profession to render a current opinion without an examination and without

conducting an evaluation in accordance with the standards of psychiatric practice. Dr. Berlin's behavior compromises both the integrity of the psychiatrist and of the profession itself. This court finds that Dr. Berlin's affidavit has zero credibility and that his affidavit should not be relied upon in any way.

In response to the defense experts' testimony, the State presented testimony from Dr. Tonia Werner. Dr. Werner is the Chief Medical Officer at Meridian Behavioral Healthcare for the past 7 years. She is Board Certified in general and forensic psychiatry. She has been appointed in approximately 5 Governor Commissions. She has worked with and treated thousands of individuals diagnosed with schizophrenia. Dr. Werner along with Dr. Wade Myers and Dr. Emily Lazarou conducted an evaluation of Mr. Owen on May 23, 2023. The purpose and non-confidential nature of the evaluation were explained to Mr. Owen.. The interview of Mr. Owen by the Commission lasted approximately ninety (96) minutes.

Dr. Werner testified that Mr. Owen was calm and cooperative throughout the interview and maintained good eye contact. He was well groomed and there were no indication of feminine qualities or mannerisms. He answered all questions in a logical, coherent and goal directed manner. Mr. Owen was very personable, very interactive, even laughing at one point. His IQ was not tested but was judged by the Commission to be in the high average range based on the interview. The Commission was also provided with and reviewed medical, mental health and correctional records from 1986 to the present. Additionally, investigative materials from Mr. Owen's murder cases were provided and reviewed. The Commission also separately and individually interviewed multiple Department of Corrections personnel with approximately 14 years of experience with Mr. Owen.

Dr. Werner testified that Mr. Owen disclosed and openly discussed his delusions immediately with the Commission. Dr. Werner stated that it takes more than one delusion to meet a diagnosis of schizophrenia and if the delusion was determined to be untrue or false, then any and all diagnosis' would be affected. Dr. Werner and the Commission concluded that Mr. Owen's delusion was feigned or malingered. Dr. Werner testified that if the delusion were true then you would expect to see it manifest itself in all of Mr. Owen's behaviors, actions, mannerisms, dress, and how he holds himself out overall. This is not the case and has almost never been the case with Mr. Owen. Additionally, Mr. Owen was confronted with the facts of his cases that were inconsistent with his self-reported delusion and was unable to match that facts to his delusion and unable to satisfactorily explain those inconsistencies.

Dr. Werner testified that Mr. Owen has only been prescribed two anti-depressants and one medication for anxiety during his entire time in prison. Dr. Werner stated that people with schizophrenia are assisted in remaining stable by the use of medication. And if unmedicated for approximately 40 years you would expect to see a documented downward drift in the level of functioning over the years. There is no such evidence or report of this as it relates to Mr. Owen.

Dr. Werner testified that the MMPI2 results testified to by Dr. Eisenstein are more consistent with malingering. Specifically, the concept of a "floating profile" actually means that every category of the test is above normal which represents an over acknowledgment of symptoms, or malingering. Dr. Werner further testified that Dr. Eisenstein's testimony that "Patients don't lie" was seriously flawed when considered in this forensic setting. Further, that treating Mr. Owen as a patient rather than an evaluatee was not appropriate.

Dr. Werner testified that Mr. Owen specifically told the Commission that the State of

Florida was going to kill him for having killed the two women; but that sadly enough that's what he did; and that he didn't know how they think it was okay to kill him for killing them. These statements very clearly demonstrate Mr. Owen understands the nature and effect of the death penalty and why it is to be imposed on him.

Dr. Werner testified that, based on the clinical interview, review of the records, and interviews with correctional employees, it was the opinion of the Commission with a reasonable degree of medical certainty that Mr. Owen (1) has no mental illness, (2) is feigning psychopathology (malingering) to avoid the death penalty, (3) has an Antisocial Personality Disorder, and (4) understands the nature and effect of the death penalty and why it is to be imposed on him.

In response to the defense experts' testimony, the State also presented testimony from Dr. Wade Myers. Dr. Myers is a Professor of Psychiatry at Brown University for the past 14 years. He is licensed to practice psychiatry in both Florida and Rhode Island and is Board Certified in general psychiatry; forensic psychiatry; and child adolescent psychiatry. He has been appointed to approximately 10 Governor Commissions. He has seen thousands of individuals diagnosed with schizophrenia during his career and clinical practice. Dr. Myers along with Dr. Tonia Werner and Dr. Emily Lazarou conducted an evaluation of Mr. Owen on May 23, 2023.

Dr. Myers testified that Mr. Owen immediately and readily shared his odd beliefs but that Dr. Myers did not in any way believe they were delusions. Dr. Myers stated that these beliefs appeared to have come on years after Mr. Owen was first convicted of murder. Dr. Myers stated that true delusions are very powerful and influential on one's life and that one would have expected Mr. Owen to be talking about these delusions to the people he interacted with early on if he really

had such delusions at and around the time of the original crimes. Additionally, Dr. Myers testified that he saw no signs of any type of thought disturbance in Mr. Owen that would be consistent with schizophrenia or delusional thinking. Dr. Myers stated that based on the thousands of people with schizophrenia that he has seen in his career, it would be hard, if not impossible, for Mr. Owen to hide symptoms of this illness for 3 to 4 minutes let alone 30-40 years. Dr. Myers further added that schizophrenia is a disease that gets worse with time. Dr. Myers testified that dementia is a deterioration of one's brain functioning and cognitive functioning and tends to cause problems with being disoriented, memory problems and trouble with speech. Mr. Owen displayed none of these signs during his time with Dr. Myers and instead was able to recite caselaw cites and specific legal rulings during the forensic interview; and demonstrated a strong memory and strong reasoning skills. In reviewing Dr. Eisenstein's report, Dr. Myers testified that doesn't hear people use the term "floating profile" and agreed with Dr. Werner that the MMPI2 results reported by Dr. Eisenstein show Mr. Owen was embellishing, exaggerating or frankly making up symptoms of mental illness. Dr. Myers repeated that Mr. Owen showed no signs of any mental illness during the Commission's forensic interview. Dr. Myers added that it is very unusual for someone to be embarrassed about a delusion if they have a genuine delusion because genuine delusions cannot be turned on and off by the person suffering from them. On cross examination, Dr. Myers testified that the Commission had no disagreements in their opinion; and repeated that Mr. Owen exhibited no deficits or signs of any mental illness. Dr. Myers further added that no signs of mental illness were observed in the DVD's of Mr. Owen's recorded interviews. Dr. Myers testified that his criminal work was 50% for the State and 50% for the defense. Dr. Myers stated that Mr. Owen meets almost every criteria for Antisocial Personality Disorder and that there is evidence of the

same all throughout his history and he has been previously described as such going back almost 40 years. Dr. Myers testified that Mr. Owen conceded the victim's bodies were dead, decomposed and buried under the ground but that he stated their souls were inside of him. Dr. Myers stated Mr. Owen's delusions only come out when he is speaking to experts about his criminal case and that the evidence indicates that there have been no referrals for delusional thinking on Mr. Owen in the last 20 years. Dr. Myers stated that it is inconceivable that someone could have schizophrenia with severe delusions, and no one would pick up on it except on a rare occasion, during an interview with an expert witness. Dr. Myers testified that gender dysphoria doesn't cause aggression or delusional thinking and that it's just a feeling that your body is not in the right gender. He added that it is very rare to see somebody who has a psychotic disorder who would not share their delusional thinking. Dr. Myers further added that when examining Mr. Owen's crimes, specifically his rapes which are of women and that he experiences orgasms and ejaculates, this demonstrates that he is oriented to women sexually. And thus the more plausible explanation for his conduct is that he is getting sadistic gratification from these violent sexual attacks. Dr. Myers testified that it is just too convenient for Mr. Owen to have this delusion come on after being convicted of murder. Dr. Myers conceded that it is plausible that Mr. Owen may have some gender dysphoria, but if so, it is mild. Dr. Myers added that typically when confronting someone with delusions, you can't reason with them. They are incapable of continuing to provide explanations and reasons as to why their delusions are true. Yet during the forensic interview Mr. Owen did just that and when confronted with inconsistencies with his delusions he was repeatedly able to provide additional explanations or information in an effort to explain his delusion to the evaluators. Dr. Myers testified to having reviewed some pro se pleadings prepared by Mr. Owen in 2021 which

consisted of several pages and the content of the pleadings did not demonstrate any indication of dementia, brain damage or problems putting thoughts together. Dr. Myers testified that Mr. Owen, at 62 years old, was still relatively young to be experiencing dementia, which generally comes on later in life. Dr. Myers further indicated that Dr. Eisenstein's IQ test of Mr. Owen argues against any signs of dementia. Specifically, he stated that it would be very challenging to test IQ under the current stress of imminent execution. And despite those difficult circumstances, Mr. Owen still scored a 92. Dr. Myers explained that IQ was a relatively still trait in humans throughout life and didn't feel there was any reason to conduct another IQ test, or even one at all based on his current presentation. Dr. Myers testified that Mr. Owen admitted to participating in a gang rape at an orphanage as a teenager by sticking his fingers inside of the victim. Dr. Myers was adamant that Mr. Owen had antisocial personality disorder and stated that without exception, serial sexual killers always have antisocial personality disorder.

In response to the defense experts' testimony, the State also presented testimony from Dr. Emily Lazarou. Dr. Lazarou is a Board Certified general and forensic psychiatrist. This was her first appointment to a Governor Commission. She has treated thousands of patients with schizophrenia during her career and clinical practice. Dr. Lazarou along with Dr. Tonia Werner and Dr. Wade Myers conducted an evaluation of Mr. Owen on May 23, 2023.

Dr. Lazarou testified that Mr. Owen did not meet a "shred" of criteria for schizophrenia and this fact was "crystal clear" in her opinion. Dr. Lazarou watched approximately 20 hours of Mr. Owens recorded interview with law enforcement from 1984 and stated that he presented as casual and confident; did not exhibit a shred of paranoia; and clearly seemed to be playing a game with law enforcement. Dr. Lazarou pointed out that Mr. Owen, in this interview, never raised

gender dysphoria and demonstrated zero feminine mannerisms or characteristics. Additionally, in Mr. Owen's initial two murder trials he never raised any issue of gender dysphoria and demonstrated no feminine mannerisms or characteristics. Dr. Lazarou testified that schizophrenics can't turn their mental illness on and off, and that they live in the delusions they are experiencing, and especially so if the delusions are of the nature and quality that is causing the individual to kill others. Dr. Lazarou stated that she confirmed with Department of Corrections personnel that in 2017 a corrections program was instituted for truly legitimate transgender inmates. The program provided many benefits to transgender inmates such as private showers for their protection and the ability to wear female under garments and grow longer hair. But to be considered for the program, an inmate would be required to submit to specific testing or counseling to confirm they were truly transgender. Dr. Lazarou stated that her review of the records indicated that Mr. Owen had never attempted to take advantage of this program over the past 6 years. Dr. Lazarou testified that she believed Mr. Owen has antisocial personality disorder and that this was not a difficult case or a close call. She stated Mr. Owen planned out every single detail of his crimes and that none of the details of his crimes are consistent with his current self-reported delusion. Dr. Lazarou added that she did not entertain Mr. Owen's story of his delusion very long because she did not find it believable at all. In fact, she stated she believed this delusion was fabricated to avoid the consequences of his actions. She stated that Mr. Owen is not psychotic and knows exactly what is going on. Dr. Lazarou took issue with Dr. Eisenstein's report of "insidious dementia" stating that there was no evidence to support or indicate this. Dr. Lazarou concluded her direct examination by stating that Mr. Owen has both a factual and rational understanding of the death penalty and why the death penalty is being imposed on him. On cross examination, Dr. Lazarou

testified that 70% of her work is for the State and 30% is for the Defense. She stated she did not believe there was any need to test for malingering with Mr. Owen because it was obvious that he was. Dr. Lazarou added to her opinion on the defendant's malingering by pointing out that there were many inconsistencies in what Mr. Owen was reporting versus what was present in the collateral data. Dr. Lazarou reaffirmed that she believed Mr. Owen is lying about his delusion and that he exhibits no indicators of dementia. Dr. Lazarou pointed out that Mr. Owen talks of his victims souls living inside him but then reports that he is agnostic. Dr. Lazarou reasserted that Mr. Owen has no disorder that affects his thought process. Further, if he had a persistent untreated mental illness for approximately 40 years, you would observe evidence of it every day. On redirect, Dr. Lazarou testified concerning Mr. Owen's statements to a psychiatrist who conducted a clinical interview of him in November of 1984. In that evaluation Mr. Owen was asked why he committed the murders. His response included that he liked danger and enjoyed overcoming adversity. However, there was no mention of his current self-reported delusion. This current delusion never surfaced until after Mr. Owen was convicted of his crimes, sentenced and then granted a retrial in 1999.

The Commission members also met with five Department of Corrections employees/prison guards who have had frequent interactions with Mr. Owen concerning his recent functioning and remote functioning. They all have had recent and regular contact with Mr. Owen and none of them had ever observed any verbalizations or behaviors consistent with gender identity issues or other psychological problems. These employees stated that Mr. Owen conversed normally with them; was coherent; presented no difficulties; and, showed no outward signs of abnormality. They noted that Mr. Owen spent a lot of time reading and writing.

After further review of the records, the Commission members conferred and there were no differences of opinion amongst them. They found Mr. Owen competent and sane to be executed. This Court finds the Commission's testimony to be extraordinarily credible.

John Manning, a Sergeant at Union Correctional Institution, testified that he has had numerous encounters with Mr. Owen over the past several years. He has observed Mr. Owen engaged in a lot of reading and writing. And he has had numerous conversations with Mr. Owen and found him to be highly intelligent and not suffering from any cognitive decline. Mr. Owen has never been observed by Mr. Manning to display feminine characteristics and has never spoken about feeling like a woman or wanting to be a woman. Finally, Mr. Manning stated that once the death warrant was signed and Mr. Owen was being moved from Union Correctional to Florida State Prison, that Mr. Owen seemed to know and understand what was going on and took a moment to speak to some of the others on the wing as he was leaving.

Jeffrey McClellan, the Assistant Warden at Florida State Prison since 2014, and a Department of Corrections employee for 29 years testified that Mr. Owen was received into Florida State Prison on May 9, 2023. Mr. McClellan stated that when Mr. Owen was processed in to be placed on Death Watch, he specifically identified himself as heterosexual.

Daniel Philbert, a Department of Corrections employee for 15 years testified that he has had multiple occasions to observe and interact with Mr. Owen. He stated Mr. Owen has always behaved appropriately. He did not observe nor did Mr. Owen ever volunteer any thing related to his gender identity issues to Mr. Philbert.

Danny Halsey, the Death Watch Sergeant for Mr. Owen since the defendant's arrival at Florida State Prison on May 9, 2023, testified. Mr. Halsey stated that he is required to do 30-

minute checks on Mr. Owen and has been working 16 hour days on Death Watch. Mr. Halsey added that he has not seen any personality or behavioral changes in Mr. Owen; that Mr. Owen has never expressed confusion about or objection to why he is on death row and about to be executed; and that Mr. Owen's mental capabilities are just as good, if not better, than anyone else's. He further testified that Mr. Owen reads and writes a lot and specifically told Mr. Halsey that he has a girlfriend in Ireland.

The defense recalled Dr. Eisenstein in rebuttal. Dr. Eisenstein clarified that 7 of the hours spent with Mr. Owen was for testing and the other 6 ¼ hours was spent on interviewing him. He testified that psychological testing is not really part of the domain of psychiatrists. He re-affirmed his opinion that Mr. Owen suffers from dementia. Dr. Eisenstein testified that an individual that could understand legalese and write briefs with cogent arguments like Mr. Owen did just a few years ago gives us a sense of his baseline functioning. Specifically, those writings require a high level of intellect and mental ability in order to produce those types of documents and indicates that Mr. Owen was probably in the bright, high range at that time. Dr. Eisenstein believes that Mr. Owen has experienced a significant drop from that level at this current time. Dr. Eisenstein testified that not all schizophrenics need help bathing, grooming or getting dressed. Additionally, Dr. Eisenstein added that after hearing the testimony of all of the other expert witnesses, nothing has changed with respect to his opinion about Mr. Owen being incompetent to be executed. Dr. Eisenstein stated that without evidence of conduct disorder before the age of 15, a person cannot be diagnosed with antisocial personality disorder. Dr. Eisenstein stated there was no evidence of conduct disorder prior to age 15 with Mr. Owen and thus he disagreed with the diagnosis of antisocial personality disorder. On cross examination, Dr. Eisenstein stated he is being paid \$350

per hour for his work and testimony in this case. He also conceded that schizophrenia is a very serious medical condition that requires medication most of the time. The court continues to find Dr. Eisenstein's testimony to be less credible than the other expert testimony and other evidence in the case.

Eric Pinkard, one of Mr. Owen's previous/current counsel, testified that he attended the Commission's competency evaluation on May 23, 2023, at the Florida State Prison. Mr. Pinkard has been an attorney at CCRC since 1997 and started working on Mr. Owen's cases in approximately 1999. He testified that he has known Mr. Owen for over 20 years. Mr. Pinkard visited the defendant the day after the death warrant was signed. He observed Mr. Owen to not be the same as he had known and observed in the past in terms of his cognitive ability. Mr. Owen didn't want to talk about legal claims or anything related to his case. Instead, he was upset that the execution would prevent him from completing his transition from a man to a woman. He expressed fear of leaving this Earth in the wrong body. He also expressed concern that two victims/women inside of him would also be killed with his execution. According to Mr. Pinkard, Mr. Owen's demeanor was groggy and he appeared to have little energy. Mr. Pinkard noted that when Mr. Owen was asked about his impending execution and whether he understands why the State is going to execute him, he responded by stating he didn't understand because he didn't kill anyone and continued to repeat the same delusion that has been discussed. Mr. Pinkard testified that Mr. Owen was not reluctant to discuss his delusion. Mr. Pinkard was not aware of when this delusion made its first appearance in Mr. Owen's history; didn't know what Mr. Owen did or did not reveal to mental health evaluators in the 1980's; and was only aware of how Mr. Owen has presented this delusion since he first became involved in his cases in the 1990's. Mr. Pinkard

testified that, in his perception, the Commission's evaluation became confrontational for approximately 25% of their interview, some of the evaluators consistently confronted Mr. Owen with their disbelief in the veracity of his delusion and confronted him with the specific facts of the crimes he was convicted of.

CONCLUSIONS

This Court, after hearing and evaluating the witnesses' testimony, as well as evaluating the evidence introduced at the hearing and other documents provided by counsel, finds that Mr. Owen has not met his burden of proving by clear and convincing evidence that he is presently insane or incompetent to be executed. This Court finds that even if the standard of proof were preponderance of the evidence, Mr. Owen has also not met that lower burden.

This Court finds the testimony and opinions of Dr. Werner, Dr. Myers and Dr. Lazarou both credible and compelling as it relates to Mr. Owen's current mental condition. Importantly, in the past, Mr. Owen has not been prescribed psychotropic medication to treat schizophrenia or any other alleged mental illness. It is inconceivable that he would not have been prescribed any medication in a clinical setting if he was truly a diagnosed schizophrenic with severe delusions. It is also inconceivable and completely unbelievable that he could truly be a diagnosed schizophrenic with severe delusions, go untreated for nearly 40 years, and experience no worsening of his condition.

This Court also finds the testimony and opinions of Dr. Werner, Dr. Myers and Dr. Lazarou to be credible as to the limited question of Mr. Owen's competency to be executed. Dr. Werner, Dr. Myers and Dr. Lazarou did not complete an exhaustive interview of Mr. Owen at Florida State Prison because that was not their mandate. Their mandate was to determine whether there was

any evidence to support the claim that Mr. Owen is not sane. This Court finds their conclusion that he is sane to be clearly and conclusively supported by the record. There is no credible evidence that he does not understand what is taking place and why it is taking place.

The testimony of the prison employees, specifically Assistant Warden Jeffrey McClellan, John Manning, Daniel Philbert and Danny Halsey, as it pertains to the absence of any positive symptoms in Owen's behavior in the recent past and post-warrant reaction, response and subsequent daily life supports the testimony and findings of Dr. Werner, Dr. Myers and Dr. Lazarou.

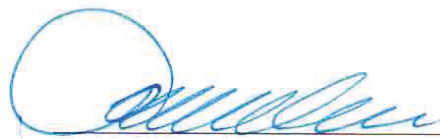
This Court finds that Duane E. Owen does not have any current mental illness. This Court finds that Mr. Owen's purported delusion is demonstrably false. This Court finds that Mr. Owen has an antisocial personality disorder. This Court finds that Mr. Owen is feigning or malingering psychopathology to avoid the death penalty. Even if Mr. Owen did currently suffer from schizophrenia, there is no evidence that that mental illness interferes, in any way, with his "rational understanding" of the fact of his pending execution and the reason for it. Mr. Owen is aware that the State is executing him for the murders he committed and that he will physically die as a result of the execution. There is no credible evidence that in his current mental state Mr. Owen believes himself unable to die or that he is being executed for any reason other than the murders he was convicted of.

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** that:

- I. Duane E. Owen does not meet the criteria for insanity at the time of execution.
- II. Duane E. Owen does not lack the mental capacity to understand the fact of the pending execution.

- III. Duane E. Owen does not lack the mental capacity to understand the reason for the pending execution.
- IV. Duane E. Owen understands that his execution is imminent and the reason why he is to be executed.

DONE AND ORDERED in Chambers at Starke, Bradford County, FL on 4 June 2023.



JAMES M. COLAW
CIRCUIT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished on 4 June 2023 by e-mail to:

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W. Thuro, Judicial Assistant

No. _____

IN THE
Supreme Court of the United States

DUANE E. OWEN,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Florida

APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI

**THIS IS A CAPITAL CASE
WITH AN EXECUTION SCHEDULED FOR
THURSDAY, JUNE 15, 2023, AT 6:00 PM**

Appendix C

Governor of Florida's Commission's Report, dated May 24, 2023

May 24, 2023

The Honorable Ron DeSantis
State of Florida
Office of the Governor
The Capitol
Tallahassee, FL 32399-0001

Dear Governor DeSantis:

This report is in response to Executive Order Number 23-106 appointing the three of us as a Commission to examine the mental condition of Duane Owen. The order specifically requested this examination to determine whether Mr. Owen understands the nature and effect of the death penalty and why it is to be imposed on him.

The purpose and non-confidential nature of this evaluation were explained to Mr. Owen. The Commission performed an approximately 100-minute clinical evaluation at the Florida State Prison. He acknowledged an understanding of these elements and agreed to proceed.

Medical, mental health and correctional records from 1986 to the present were reviewed. Additionally, investigative materials related to his arrest for the homicides were reviewed. According to the records, he has been free of symptoms and signs of serious mental illness. The symptoms of gender dysphoria were never observed or documented except by Mr. Owen's self-report. Previously, he was prescribed Pamelor (antidepressant), Vistaril (antihistamine) and Remeron (antidepressant) for what was diagnosed as an Adjustment Disorder and complaints of impaired sleep. He was initially a grade S3 meaning he exhibited psychopathology requiring medication and counseling. He eventually began refusing the medication and they were discontinued. He was downgraded to an S2 (psychopathology requiring counseling) in March 2003 and to an S1 meaning no psychopathology in August 2003.

As part of our evaluation on May 23, 2023, we interviewed the Assistant Warden, three Sergeants and a Lieutenant concerning Mr. Owen's recent functioning and remote functioning. They all have had recent and regular (daily or every other day) contact with him, ranging from two weeks to fourteen years. None of the individuals had ever observed any verbalizations or behaviors consistent with gender identity issues, psychosis, or other psychological problems. He was described as consistently respectful, free of behavioral issues, and had not received any disciplinary reports. Since being placed on death watch, he was reported to be adjusting "fine" and kept his cell in tidy shape. He was described as spending his days writing, reading, and watching the news and movies.

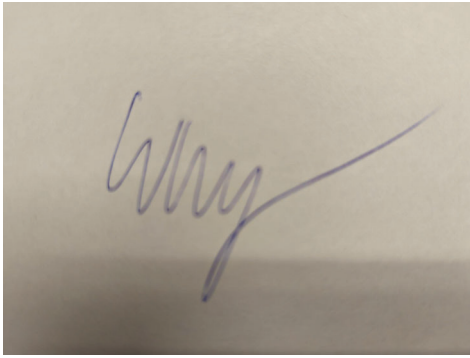
It is our opinion with reasonable medical certainty that Mr. Owen understands the nature and effects of the death penalty and why it has been imposed on him. This was discussed in depth with him and he demonstrated a clear understanding of these elements. However, Mr. Owen was persistent in expressing his belief he was a female trapped in a male body. He expressed the belief he had captured the souls of his two murder victims by having sex with them and orgasming at the exact moment they were dying, and that the state should not execute him as it

was possible the souls of his victims might also die. He referred to his penis as a “hose” that he used to suction out their estrogen, and he denied sexual pleasure during these rape-murders (despite admitting he had orgasms). He stated he felt the victims’ souls enter him, like when you have to go “number two” and experience a fullness, and thus knew “it had worked.” This was in direct conflict with statements he made regarding his first homicide victim. For example, he explained his “experiment” with her did not work in helping him become a woman: she was only 14 and thus her estrogen levels were too low. Numerous instances of contradictory information were given by Mr. Owen during the course of the evaluation. Another example was him claiming he never thought he had killed his homicide victims, although he later acknowledged their bodies had been buried or cremated as they had “expired.” He added he received estrogen from every female he had sex with, including when he was a teenager at an orphanage gang rape and he put his fingers into the victim’s vagina to get some estrogen in his quest to be a woman. As an additional example, when Mr. Owen was asked why he had killed the two victims, he stated, “I don’t know.” When this was explored further, he said, “Sadly enough, that is what I did.” Yet another example was him reporting he did not like having sex with females and he referred to himself as a “lesbian.” This is contrary to the FSP intake form where he described himself as of May 9, 2023 as being a heterosexual.

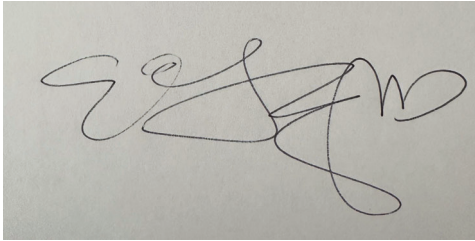
On mental status examination, Mr. Owen was calm and cooperative throughout the interview and he maintained good eye contact. His speech was of average rate, volume, and tone. He was well groomed and there was no indication of feminine qualities or mannerisms. There was no evidence of disordered thinking, and he presented as a bright and thoughtful man. He answered our questions in a manner that was logical, coherent, and goal-directed. His intelligence was clinically judged to be in the high average range. There was no suicidal ideation and according to the Assistant Warden, he has been speaking with him regarding plans for his last meal, and how his personal belongings should be dispersed which is evidence of future orientation.

In summary, based on our clinical interview, review of the records, and interviews with correctional employees, it is our opinion with reasonable medical certainty that Mr. Owen: (1) has no current mental illness, (2) is feigning psychopathology (malingering) to avoid the death penalty, (3) has an Antisocial Personality Disorder, and (4) understands the nature and effect of the death penalty and why it is to be imposed on him.

Respectfully,

A handwritten signature in blue ink on a light-colored background. The signature is stylized and appears to read "W. Myers".

Wade C. Myers, M.D.

A handwritten signature in black ink on a light-colored background. The signature is highly stylized and appears to read "Emily Lazarou".

Emily Lazarou, M.D.

A handwritten signature in black ink on a light-colored background. The signature is written in a cursive style and reads "Tonia Werner MD".

Tonia Werner, M.D.

No. _____

IN THE
Supreme Court of the United States

DUANE E. OWEN,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Florida

APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI

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WITH AN EXECUTION SCHEDULED FOR
THURSDAY, JUNE 15, 2023, AT 6:00 PM**

Appendix D

Transcript from June 1-2, 2023 Hearing

IN THE CIRCUIT COURT OF THE
EIGHTH JUDICIAL CIRCUIT, IN AND
FOR BRADFORD COUNTY, FLORIDA

STATE OF FLORIDA,

CASE NO. 04-2023-CA-000264-CAAM

Plaintiff,

vs.

TRANSCRIPT ON APPEAL

DUANE EUGENE OWEN,

Defendant.

Proceedings: COMPETENCY HEARING

Before: THE HONORABLE JAMES M. COLAW
Circuit Judge

Date: **June 1 and 2, 2023**

Place: Bradford County Courthouse
Starke, Florida

Reporter: Paula A. Blosser, RPR, FPR-C
Registered Professional Reporter
Eighth Judicial Circuit

APPEARANCES:

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P R O C E E D I N G S

(June 1, 2023)

1
2
3 THE COURT: All right. So we are on the record in
4 the case of the State of Florida versus Duane Owen,
13:29:45 5 04-2023-CF-264.

6 Do we have Mr. Owen present? You can bring Mr. Owen
7 in.

8 Good afternoon, everybody. Got a split screen. Do
9 you all anticipate us needing Zoom?

13:29:50 10 MS. TERENCE: Yes, your Honor.

11 THE COURT: Yeah? Okay. All right. So I'll make
12 sure it's up and running.

13 (Pause in the proceedings.)

14 THE COURT: All right. So let our record reflect
13:31:01 15 that Mr. Owen is now present in the courtroom with his
16 counsel. The State is present with counsel.

17 Again, good afternoon, everyone. We are scheduled
18 for a hearing on the Defendant's mental condition this
19 afternoon.

13:31:13 20 Is the State ready to proceed?

21 MS. TERENCE: I'm sorry, Your Honor, I didn't hear.

22 THE COURT: Are you all ready to proceed?

23 MS. TERENCE: Yes, your Honor.

24 THE COURT: All right. Defense?

13:31:21 25 MS. FUSARO: Yes, your Honor. However, we did ask

13:31:23 1 for a motion, for a continuance in our motion for stay
2 motion.

3 THE COURT: All right. I did see that, but that was
4 based on the doctor on the ship?

13:31:32 5 MS. FUSARO: Correct. And another doctor that we're
6 trying to get ahold of as well.

7 THE COURT: All right. Remind me. My recollection
8 was that you all asked about whether or not the Court
9 would treat her statement as a sworn statement even if she
10 couldn't get a notary?

11 Didn't you ask me if I would do that?

12 MS. FUSARO: Your Honor, we were asking for a
13 continuance in the testimony into Monday so that she would
14 be able to testify via Zoom. She was able to at least do
15 an unsworn statement that we submitted with our motion;
16 however, we would suggest that it would be proper to stay
17 it for an additional -- or excuse me -- have a continuance
18 for an additional day of testimony so that she could
19 proceed in person based on Provenzano v. State.

13:32:16 20 THE COURT: Does the State wish to be heard on that?

21 MS. TERENCE: Yes, sir. As a matter of fact, we got
22 that motion early this morning. And we have a -- we filed
23 a response to the motion for stay, which we object to,
24 your Honor.

13:32:27 25 THE COURT: All right. Thank you.

13:32:27 1 MS. TERENCE: And, your Honor, from the motion for
2 stay and the unsworn affidavit of Dr. Sultan, all she
3 would be testifying is that she saw him in '94 to '99.

4 Your Honor already has her testimony from the guilt
13:32:53 5 phase and the penalty phase from the retrial back then,
6 and I'm not sure what she could offer as anything new.
7 She hasn't seen him.

8 And it's interesting. In her affidavit, she said he
9 was insane for trial back in '99. She offers nothing for
13:33:12 10 these proceedings today; so it's our position that she
11 would be completely irrelevant.

12 THE COURT: Counsel, is that -- let me just see if
13 there is any factual dispute.

14 Is it correct that she hasn't had any contact or seen
13:33:26 15 Mr. Owen since 1999?

16 MS. FUSARO: She has not seen him since then, but it
17 goes to some of his other diagnoses with his fixed
18 delusions, to show that this is not something that just
19 occurred as soon as his warrant has been signed. This
13:33:39 20 occurred back in the '80s, back in the '90s. It's been
21 consistent for 40 years or more.

22 THE COURT: Is there anything different that she
23 would offer that isn't encompassed and captured in her
24 prior testimony or --

13:33:53 25 MS. FUSARO: Her prior testimony was actually in a

13:33:54 1 different case; so the Governor signed the warrant on the
2 Worden case as opposed to the Slattery case. She only
3 testified in retrial of the Slattery case; so she may be
4 able to provide something towards the Worden murder as
13:34:05 5 well.

6 THE COURT: All right. Do you wish to be heard any
7 further?

8 MS. FUSARO: No. We would just ask that, being that
9 there is more than a week prior to the set date currently,
13:34:15 10 that it would be make sense to just allow her to testify
11 Monday rather than chance the Florida Supreme Court
12 sending it back to take her testimony later.

13 THE COURT: Anything else, State?

14 MS. TERENCE: Your Honor, I would just add, in
13:34:26 15 paragraph 13 of their motion, they say -- they quote from
16 Tompkins, mental competency to be executed is -- which is
17 what we're here for today -- is measured at the time of
18 the execution, not years before then. A claim that a
19 death row inmate is not mentally competent unless -- means
13:34:49 20 nothing, unless it's at the time of the execution.

21 She admits she hasn't seen him since 1999. Whether
22 it was in the retrial of Slattery or the Worden murder,
23 they're the ones who want to call her.

24 Again, she hasn't seen him since 1999 in either case;
13:35:08 25 so we maintain our position that at this point her

13:35:12 1 testimony is completely irrelevant.

2 THE COURT: Yes, ma'am. Based on the information
3 that's been provided and much of which is not in dispute,
4 the motion to continue it to Monday would be denied.

13:35:27 5 So are we ready to proceed?

6 MS. FUSARO: Your Honor, we are ready to proceed, but
7 we also have Dr. Berlin as well that we're trying to get
8 ahold of. We've been trying to get ahold of him for now a
9 few weeks. Finally, his assistant said that we can get a

13:35:42 10 call with him at the end of today; so one of our
11 investigators is going to speak with him then. But we
12 have no idea if he's going to be available tomorrow as
13 well. So I'd just want to put on the record that we would
14 also like to call him, if you were willing to grant a
15 continuance. I understand the Court's ruling, though,
16 on Dr. Sultan.

17 THE COURT: What time can you speak to him?

18 MS. FUSARO: I think it's 4:30. So we may know about
19 tomorrow by the end of court today.

13:36:05 20 THE COURT: We'll stay as long as we need to today
21 and get it done.

22 MS. FUSARO: Thank you, your Honor.

23 MS. TERENZIO: Nothing further.

24 THE COURT: All right. All right. How do you all
13:36:14 25 wish to proceed? I know it's your -- I know the initial

13:36:19 1 determination is for me to determine whether or not
2 there's even reasonable grounds to go forward to a
3 hearing, but I don't know whether that's disputed or --

4 MS. TERENCE: No, your Honor, that's not disputed.
13:36:28 5 We're ready for the hearing. And since it's their
6 motion --

7 THE COURT: Okay. And you would agree, Defense, you
8 have the burden; correct?

9 MS. FUSARO: Yes. And I would just say -- I know I
13:36:37 10 just briefly read through what the State has just filed.
11 They were saying in there that there is no authority in
12 Rule 3.811 for three more mental health experts to
13 evaluate Mr. Owen; however, in Rule 3.812(c), it does
14 specify that the Court may do any of the following as may
15 be appropriate and adequate for a just resolution of the
16 issues raised.

17 And under that, your Honor, you are allowed to
18 appoint no more than three disinterested mental health
19 experts to examine the prisoner with respect to the
13:37:06 20 criteria for insanity to be executed and to report their
21 findings and conclusions to the Court.

22 THE COURT: Right. Well, I'm not persuaded at this
23 time that I would need any additional experts. If
24 something arises that you feel makes that a little more
13:37:23 25 relevant or pertinent for my consideration, then I'm happy

13:37:26 1 to reconsider it, but at this time, I would be denying a
2 request to appoint three more experts. That denial would
3 be without prejudice.

4 MS. FUSARO: Okay. Thank you, your Honor.

13:37:38 5 MS. TERENCE: I would just add, your Honor, they're
6 asking for three additional independent doctors. They
7 haven't said what's wrong with the first three except for
8 the fact that they don't like their report. And if this
9 is at all an indictment on the procedure under 922, they
10 availed themselves under that. And if they have a problem
11 or an issue with that process, they could have challenged
12 that long before today.

13 THE COURT: Yes, ma'am. Thank you. All right,
14 Counsel?

13:38:09 15 MS. FUSARO: Your Honor, I'd like to call
16 Dr. Hyman Eisenstein at this time.

17 THE COURT: All right. Good afternoon, Doctor.
18 (Witness sworn.)

19 THE WITNESS: I affirm.

13:38:39 20 THE COURT: Thank you. Please be seated.

21 MR. BROWNE: Your Honor, excuse me. Just for the
22 Court and Counsel, Dr. Tonia Werner is sitting in on
23 Dr. Eisenstein's testimony.

24 THE COURT: All right. Any objection to that?

13:38:54 25 MS. FUSARO: I don't have any objection, as long as

13:38:57 1 our experts can sit in on the testimony. And we also have
2 our head of our agency here, who witnessed the
3 Commission's evaluation. We would just ask that he be
4 allowed to sit in as well.

13:39:07 5 MR. BROWNE: No objection as to Dr. Eisenstein
6 sitting in, but if there's a fact witness here, I would
7 object.

8 THE COURT: The observer would be a fact witness;
9 would they not?

13:39:20 10 MS. FUSARO: Yeah, he would not be an expert in terms
11 of --

12 THE COURT: I think the experts are entitled to be
13 present as the other experts are testifying, but I'm not
14 sure the observer would be, if there's any possibility
15 that you intend to call them.

16 MS. FUSARO: It's likely that we will have to call
17 him as a rebuttal witness; however, also in -- I believe
18 it's Rule 3.812. It also says that the rules of evidence
19 don't necessarily apply here as stringently; so I would
13:39:43 20 just submit that --

21 THE COURT: Yeah. I don't see that it as a rule of
22 evidence, more of rule of procedure.

23 MS. FUSARO: Understand.

24 THE COURT: So I would go ahead and invoke that rule.
13:39:52 25 Is it the gentleman, all right, sir. If you'll just have

13:39:56 1 a seat outside, we'll call you in if it becomes
2 appropriate or timely for you to be called as a witness in
3 today's hearing.

4 THE WITNESS: Okay. Thank you, your Honor.

13:40:04 5 THE COURT: Thank you, sir. You may proceed.

6 HYMAN EISENSTEIN,

7 called as a witness herein, having been first sworn, was
8 examined and testified as follows:

9 DIRECT EXAMINATION

13:40:09 10 BY MS. FUSARO:

11 Q Good afternoon, Dr. Eisenstein. Will you please
12 state your name and spell it for the record.

13 A Dr. Hyman Eisenstein. Good afternoon. H-Y-M-A-N,
14 E-I-S-E-N-S-T-E-I-N.

13:40:23 15 Q Dr. Eisenstein, what is your profession?

16 A I am a licensed clinical psychology -- psychologist,
17 with a subspecialty in clinical neuropsychology.

18 Q Could you please describe your educational background
19 for us.

13:40:37 20 A So I obtained my doctorate from the University of
21 Health Sciences Chicago Medical School in 1982. I completed a
22 one-year internship at Fairfield Health Hospital, which is a
23 large state psychiatric hospital in Newtown, Connecticut. And
24 I completed a post doc in neuropsychology as well at Yale
13:41:03 25 University, the seizure program, in West Haven, Connecticut.

13:41:10 1 Q What professional licenses do you hold?

2 A I am licensed in the state of Florida.

3 Q And how many years have you been practicing?

4 A I've been practicing approximately 40 years.

13:41:28 5 Q Do you have any Board certifications?

6 A Yes. I am Board certified from the American Board of
7 Professional Neuropsychology.

8 Q And how many psychologists are similarly certified in
9 the United States?

13:41:40 10 A Approximately a thousand.

11 Q Can you detail your experience through your
12 employment history?

13 A So I did my internship at the state psychiatric
14 hospital in Newtown, Connecticut, in 1981/'82.

13:41:59 15 I was employed after that by the hospital, and I
16 stayed there until 1986. I was primarily on the all-male
17 forensic unit for the duration of my employment at Fairfield
18 Health Hospital.

19 We moved to South Florida in 1986. I was first the
13:42:26 20 head psychologist at Sunrise Rehabilitation Hospital, which was
21 a hospital that dealt with head trauma and other injuries. I
22 stayed there one year. Then I went into private practice. The
23 private practice was in several different areas.

24 First, I was a consultant to a neurology practice for
13:42:48 25 several years in North Miami Beach. I also was doing

13:42:55 1 consultations in several different hospitals, both psychiatric
2 and regular hospitals. I also was -- I had my own private
3 practice in terms of seeing patients in my own office.

4 Q Do you currently have privileges to practice
13:43:15 5 psychology and neuropsychology at any medical institutions?

6 A Yes. I'm on the staff at Mount Sinai Medical Center
7 in Miami Beach, Florida.

8 Q How do you go about obtaining those privileges?

9 A So there's a process where one's credentials need to
13:43:32 10 be looked at. It's a process that goes on every two years.
11 I've been there for, I think, approximately -- it must be about
12 35 years now, something of that nature.

13 You have to have a peer review. You have, different
14 professionals have to go and look at your credentials, look at
13:43:58 15 your work history. You have to testify to the fact that
16 there's no disciplinary against you. And basically it's a
17 renewal process every two years, and you have to have peer
18 recommendation to attest to the fact that one is of the utmost
19 ethical professional standards.

13:44:22 20 Q And all of that background that you detailed, is that
21 on your CV?

22 A Yes.

23 MS. FUSARO: Your Honor, may I approach?

24 THE COURT: You may.

25

13:44:38 1 BY MS. FUSARO:

2 Q Is this a true and accurate copy of your CV?

3 A Yes.

4 MS. FUSARO: Your Honor, we would like to admit this
13:44:45 5 into evidence as Defendant's 1.

6 THE COURT: Any objection?

7 MR. BROWNE: No objection, your Honor.

8 THE COURT: It will be received as Defense 1.

9 (Defense Exhibit 1 admitted into evidence.)

13:44:51 10 MS. FUSARO: Perfect. Did you want us to pre-mark
11 our evidence? We don't have a whole lot of it, but -- and
12 a lot of it has already been submitted with the motion,
13 but I just want to doublecheck.

14 THE COURT: We'll just move --

13:44:58 15 MS. FUSARO: Okay.

16 THE COURT: -- as we currently are.

17 BY MS. FUSARO:

18 Q Are continuing education courses required to maintain
19 your license?

13:45:16 20 A Yes.

21 Q And what is entailed in the maintaining of the
22 continuing education?

23 A So every two years, one has to complete 40 credits.
24 Also there has to be courses in ethics, courses in medical
13:45:34 25 errors, and a variety of different other courses that have to

13:45:40 1 be approved by the American Psychological Association.

2 Q Have you been qualified to testify as an expert in
3 the state of Florida?

4 A Yes.

13:45:50 5 Q And how many times have you been qualified as an
6 expert?

7 A Well over a hundred times.

8 Q In what courts have you testified?

9 A I've testified in state, federal, civil courts
10 throughout the state of Florida.

11 Q Do you know approximately how many cases you've
12 handled over the past five years?

13 A So approximately I have, like, ongoing cases, 5 to
14 10, approximately. During COVID, there was diminished, simply
15 because most courts were closed. But, approximately, I would
16 say 10 to 15 cases on the average per year.

17 Q How many of those cases were capital cases?

18 A The vast majority were capital cases. There were
19 also some non-capital cases as well.

13:46:51 20 Q What type of issues do you tend to testify regarding
21 in those cases?

22 A The capital or non-capital?

23 Q Let's start with the capital.

24 A So the capital cases, many is either cases that are
13:47:06 25 actually going to trial. And what's looked at is in terms of

13:47:12 1 neuropsychological issues in terms of mitigation, in terms of
2 cases that, there are many cases that have been a retrial; so
3 it's not guilt/innocent but it's just penalty phase. So,
4 again -- again, it's looking, again, for mitigation or for
13:47:33 5 looking for different issues that may arise that could assist
6 in terms of the defense.

7 Q And what types of issues do you testify regarding in
8 the non-capital cases?

9 A So non-capital cases have been issues regarding
13:47:49 10 sexual behavior, a variety in terms of age from adolescence,
11 all the way to individuals that are quite elderly. And that's,
12 again, across the state, both in state and in federal courts.

13 Q Do you ever testify for the State in any of these
14 cases?

13:48:11 15 A The State has not requested my services.

16 Q Have you been recognized as an expert in clinical
17 psychology with a subspecialty in clinical neuropsychology?

18 A Yes.

19 Q And can you please explain how a neuropsychologist
13:48:26 20 differs from a normal, regular psychologist.

21 A So a, my degree is a Ph.D., doctorate level in
22 clinical psychology. A clinical psychologist, they are given
23 training in diagnosis in terms of assessment, in terms of
24 treatment of a variety of different abnormal conditions.

13:48:51 25 The subspecialty in neuropsychology deals more

13:48:56 1 specifically with brain issues in terms of cognitive
2 functioning or impairment, various different brain maladies.

3 So actually my program was, even though my degree was
4 in clinical psychology, there was a heavy emphasis on
13:49:12 5 biological psychiatry and neuropsychology; so that was sort of
6 the area that I was trained and I pursued.

7 Q When did you become involved in Mr. Owen's case?

8 A So I think the issue was approximately a month ago
9 when the death warrant was signed. Today is June 1. I think
13:49:40 10 it was approximately a month ago.

11 Q And why did our agency contact you in order to
12 evaluate Mr. Owen?

13 A So I was requested to conduct a neuropsychological
14 evaluation, which would be both in terms of testing,
13:49:59 15 evaluation, review of background material, records, and to get
16 an understanding of the issues at hand in terms of competency,
17 in terms of insanity, and in terms of any other issues that may
18 be relevant.

19 Q Did you, in fact, go and do an evaluation of
13:50:18 20 Mr. Owen?

21 A Yes, I did.

22 Q And how many times have you met with Mr. Owen now?

23 A So I met with Mr. Owen on two occasions: May 15 and
24 May 30.

13:50:32 25 Q The first clinical interview and evaluation, how long

13:50:36 1 did that last?

2 A That lasted approximately six hours.

3 Q Were you the only person in the room with Mr. Owen
4 during that evaluation?

13:50:43 5 A Yes.

6 Q Did you author any report based on your May 15
7 interview and evaluation with Mr. Owen?

8 A Yes, I did.

9 Q What was the date of the first report?

13:50:52 10 A The first report was May 16, 2023.

11 MS. FUSARO: Your Honor, may I approach?

12 THE COURT: You may.

13 BY MS. FUSARO:

14 Q Is this a true and accurate copy of your report,
13:51:07 15 dated May 16, 2023?

16 A Yes.

17 MS. FUSARO: Your Honor, I would like to introduce
18 this as Defendant's 2.

19 THE COURT: Any objection?

13:51:17 20 MR. BROWNE: No, your Honor.

21 THE COURT: All right. It will be received as
22 Defense's Exhibit 2 in evidence.

23 (Defense Exhibit 2 admitted into evidence)

24 BY MS. FUSARO:

13:51:25 25 Q Did you state in the report that you needed to

13:51:27 1 conduct further testing?

2 A Yes, I did.

3 Q Were you able to go back to see Mr. Owen and
4 administer more tests?

13:51:33 5 A Yes, I did.

6 Q What date did you go back to see Mr. Owen?

7 A I saw him this past Tuesday, which was May 30, 2023.

8 Q How long did you spend with him that day?

9 A I spent with him seven and a quarter hours.

13:51:47 10 Q So between the two dates that you evaluated, what was
11 the total amount of time that you spent with Mr. Owen?

12 A The total amount was 13 hours -- 13 and a quarter
13 hours.

14 Q And during the second evaluation, were you also the
15 only person in the room with him?

16 A Correct.

17 Q Did you author the report based on your May 30, 2023
18 evaluation of Mr. Owen?

19 A Yes, I did.

13:52:11 20 Q What was the date of the supplemental report?

21 A So that report the date was May 31, 2023.

22 MS. FUSARO: Your Honor, may I approach?

23 THE COURT: You may.

24 BY MS. FUSARO:

13:52:24 25 Q Is this a true and accurate copy of your May 31, 2023

13:52:29 1 report?

2 A Correct.

3 MS. FUSARO: Thank you. Your Honor, I'd like to
4 introduce this in evidence as Defendant's 3.

13:52:34 5 THE COURT: All right. Without objection, will be
6 received --

7 MR. BROWNE: No objection, your Honor.

8 THE COURT: -- as Defense 3 in evidence.

9 (Defense Exhibit 3 admitted into evidence)

13:52:44 10 BY MS. FUSARO:

11 Q As we get into the evaluations, let's first discuss
12 how the evaluations are conducted.

13 Is it common to have more than one psychiatrist or
14 mental health expert in the room doing an evaluation?

13:52:57 15 A Typically not.

16 Q Are mental health experts supposed be combative at
17 any point during the evaluation?

18 A No.

19 Q And are they supposed to raise their voice during an
13:53:07 20 evaluation?

21 A No.

22 Q Are they to get angry during an evaluation with a
23 defendant?

24 A No.

13:53:14 25 Q And during a clinical interview, who should spend

13:53:17 1 most of the time doing the talking?

2 A One should elicit as much as possible from the
3 defendant or the client or the patient, however you refer to
4 them, the examinee.

13:53:34 5 Q So does that mean that the examiner would spend most
6 of the time talking or the examinee?

7 A No. The examinee should be doing most of the
8 talking. The examiner can ask questions, should try to open up
9 different areas to explore, but certainly it's the examinee
13:53:52 10 that one is looking to see what their responses are and what
11 they have to offer.

12 Q And what amount of time do you think might be
13 necessary, at a minimum, in order to get a feel for a person's
14 mental health?

13:54:07 15 A Well, the longer the better, obviously. I think that
16 individuals are very complex, and there's certainly -- you just
17 have a small window of opportunity to look at, really, a life,
18 a life history; so I'm not sure I would put a minimum but, you
19 know, something that, you know, obviously -- I mean, I spent a
13:54:37 20 considerable amount of time, and yet, you know, there's
21 certainly this -- I was just, really just touching the surface
22 of issues that really could be explored. But, you know,
23 anything of an hour or in that range is really not even
24 touching, really, the surface issues.

13:54:54 25 Q So are you saying even after 13 and a quarter hours,

13:54:57 1 there's still more that you could even learn about Mr. Owen?

2 A Absolutely.

3 Q During the evaluations that you personally conducted,
4 how did Mr. Owen present?

13:55:06 5 A So Mr. Owen presented basically the same. First of
6 all, he was very cooperative. He was very polite. He always
7 addressed me appropriately. I asked him how he wanted to be
8 addressed, and he shared that with me.

9 Most of the time, a good part of the time, his head
13:55:32 10 was down or he was turning -- or his face was turned away.

11 As I mentioned, he was extremely cooperative.
12 Rapport was established. I think he felt comfortable talking.
13 I didn't challenge him. I just wanted to elicit from him his
14 responses and his thinking style and his makeup.

13:55:57 15 I think that he really displayed very little emotion.
16 His face was basically the same throughout the 13-plus hours,
17 which included both clinical interviews and lots of tests. But
18 it was basically the same. There was really no modulation or
19 no change in terms of his affect, very blunted, very withdrawn,
13:56:25 20 not really expressing a whole lot of emotion.

21 Q So you touched on this a bit, but you did conduct a
22 clinical interview of Mr. Owen?

23 A Correct.

24 Q And what did you discuss during that clinical
13:56:40 25 interview?

13:56:40 1 A So I usually conduct an open-ended interview. I
2 conduct interviews that, throughout -- and I mix up between the
3 interview and between testing. So it's not necessarily in any
4 order.

13:56:57 5 One of the things that I think is important is
6 obviously to establish rapport and to elicit the maximum
7 response and to have optimal performance. If there are
8 deficits or there's problems, there's issues, well, that's what
9 my training is for, but I certainly want to get the individual
13:57:15 10 to give their best response.

11 So the interview is really conducted to deal with
12 some of his background, going back to early childhood, where he
13 was raised, what happened to him along the continuum of his
14 life, where he was, how he got to where he was.

13:57:37 15 Spent a lot of time discussing his issues of gender,
16 where that all started and how, you know, what his responses
17 were. He was very open and very candid. How he's conducted
18 himself basically for the last, almost four decades while he's
19 been incarcerated, his responses, his lifestyle, how he's --
13:58:07 20 how he's lived all of these years.

21 So basically it was really to try to conduct and to
22 get a good opportunity to really to look at his whole lifespan
23 up to this point.

24 Q We'll go back to his childhood. Can you tell us
13:58:24 25 about Mr. Owen's childhood?

13:58:29 1 A His childhood was --

2 MR. BROWNE: Objection, your Honor. Relevance.
3 We're here on sanity to be executed, not a mitigation
4 case.

13:58:37 5 THE COURT: Counsel?

6 MS. FUSARO: Your Honor, it goes to his diagnosis.
7 It goes to what he's experiencing now and will give you a
8 background of how he became this way.

9 THE COURT: I would allow a very small amount, if
13:58:55 10 it's to somehow explain Dr. Eisenstein's concluding now,
11 but I don't want to get off on rehashing everything.

12 MS. FUSARO: Understandable.

13 BY MS. FUSARO:

14 Q If you could just give a brief description of some of
13:59:10 15 the major things that went through his childhood?

16 A Okay. I'll try to be brief. In a nutshell, when
17 used the words dysfunctional family, I mean, that really
18 describes -- he grew up, where both his mother and father were
19 alcoholics. They were abusive. His mother, unfortunately, she
13:59:37 20 died when he was 11. The father committed suicide when he was
21 13. There was really no place for him to go.

22 Then he was -- he went to this group home for the
23 next four years, which was also very dysfunctional, very
24 chaotic. There was every type of abuse, from sexual, physical,
13:59:56 25 and emotional abuse that occurred throughout his entire growing

14:00:02 1 up, up until 18.

2 I can go into more details, but I think the picture
3 is pretty clear that poor Mr. Owen really didn't have a chance.
4 And I think this really explains some of the issues that he has
14:00:16 5 in terms of his gender identity and explaining the lifestyle
6 that he's, that he lives and some of the issues that he really
7 presents with.

8 Q Did you discuss any other significant events leading
9 up to the age he was at the time of the crimes between
14:00:36 10 childhood and then?

11 A I mean, he did discuss that there were some issues in
12 terms of he had some major head injuries. He, you know, he
13 basically -- he didn't have too much employment. He followed
14 his brother a little. He did go to the Army. He had an
14:01:01 15 honorable discharge, even though there was a short stint in the
16 Army. And he really -- he started to explore the issues of
17 sexuality from the very early age, on. He always considered
18 himself, his father would chastise him as being a sissy. And
19 he was very close to his mother, who really protected him. And
14:01:32 20 he started to cross-dress at a very early age. And whatever
21 sexual acts that were committed, which was certainly profound,
22 he always saw himself as being really a woman, even though he
23 was a male.

24 And he saw himself that, from the very get-go, that
14:01:52 25 really he was born with male anatomy, but really he was a

14:01:59 1 female, stuck in a male's body. This goes back early on. This
2 was not something new but something that he had experienced
3 really from early, early childhood, on.

4 Q Did you have any other clinical impressions of
14:02:16 5 Mr. Owen?

6 A He had this desire, from early on, to try to become a
7 female. This is something that he's tried his entire life to
8 achieve, unsuccessful to a great extent, but some issues that
9 he tried to explore other than the -- of course, you know, the
14:02:45 10 cross-dressing. He dressed up as a woman. He traveled the
11 country, and he went to all of the adult sex shops, and he had
12 sex with multiple men, but he assumed the position of a woman.
13 He dressed like a woman. And he got many -- he used to have
14 long hair; so he looked like a woman. His whole life he's
14:03:12 15 tried to extricate himself from a male body, male anatomy,
16 trying to look like a woman, to act like a woman.

17 At one point, I guess after the Army, they cut his
18 hair; so he bought a wig to have long hair, again, to have the
19 appearance of a woman. But his sole goal in life was to try to
14:03:38 20 become a woman and in any shape or form that he possibly could.
21 This was something that he was thinking about. He was fixed on
22 this idea, and this has never really left him up to this point.

23 Q During your clinical interview, did you have any
24 reason to disbelieve anything that Mr. Owen told you about his
14:04:01 25 background?

14:04:02 1 A No. As a matter of fact, individuals with, who
2 present with mental illness, there's a possibility that they
3 would want to fabricate. They would want to look like they are
4 mentally ill. They would try to act like they're mentally ill.
14:04:23 5 That's exact opposite. Mr. Owen did not want to be put into
6 the -- what he referred to as the nuthouse. He didn't want to
7 play the nuthouse card, being treated like there's something
8 wrong in terms of him. So he saw himself as being perfectly
9 normal and didn't want to go down that route.

14:04:47 10 There's, in terms of his, again, in terms of his
11 participation, he was honest. He was forthright. He put
12 genuine effort in. He tried his best. And throughout even the
13 neuropsychological testing, where there's always highs and lows
14 or strengths and weaknesses and validity measures, they all
14:05:13 15 came out normal. He really tried his best. There's no
16 indication whatsoever, in my opinion, that he's faking or he's
17 malingering. That's not the case.

18 Q And speaking of those tests, what tests did you
19 administer to Mr. Owen?

14:05:32 20 A So I gave him a variety of neuropsychological tests.
21 Being that there was a time constraint, I normally would be
22 much more relaxed and try to give the full battery of tests
23 that I normally give. But, again, I have to pick and choose
24 with a limited amount of time and ability to do everything that
14:06:00 25 I really wanted to do. But just to give a sampling of what I

14:06:07 1 did do, the first time I saw him, I gave him the Wechsler Adult
2 Intelligence Scale. That's an IQ. That's the gold standard
3 IQ.

4 I gave him also different tests: The Trails, one to
14:06:25 5 five. I also gave him the Wisconsin Card Sorting Test. So
6 there was a variety of different tests that I actually gave to
7 Mr. Owen. Again, I gave him a malingering measure, the Test of
8 Memory Malingering; so I think that was what I really conducted
9 on the first interview day.

14:06:52 10 Q In terms of the first interview day, we'll start with
11 those tests, and then we'll approach the second interview day.

12 Did he put forth appropriate effort on all of the
13 tests that you gave him?

14 A Right. So one of the things that a neuropsychologist
14:07:06 15 would do is we give malingering measures. Malingering measures
16 are whether or not the person is putting forth full effort.
17 One test that I gave him on the first day was the Test of
18 Memory Malingering. It's called the TOMM.

19 So without getting into the nitty-gritty, but his
14:08:01 20 score was 47, 50, 49. Basically out of 50, his scores were
21 nearly perfect in terms of not -- this is really not a memory
22 test, but it's just a -- that's what it's called. And his
23 scores were basically, you know, perfect.

24 Q What exactly does that mean? What does that explain?

14:08:27 25 A Okay. So the test is basically 50 pictures. I show

14:08:31 1 them to the individual, and then there's 50 more pictures.
2 They have two pictures, and, again, they're not told what to
3 do, other than, you know, look at each of these pictures and
4 just try to remember them.

14:08:42 5 Then there's 50 more pictures, and one is the correct
6 picture that they just saw previously, and the other picture
7 that they, that was extraneous, incorrect. And they have to
8 choose the correct, pick the correct picture.

9 So his score on the first trial was 47. The same
14:09:11 10 test is repeated again. They're shown another, the same 50
11 pictures, and, again, they have to repeat the same -- again,
12 two pictures are shown. They have to pick the correct picture.
13 He got 49 out of 50.

14 Then a half hour later, a retention test is given,
14:09:27 15 where they -- I'm sorry, the second time he got 50 out of 50.

16 The retention is a half hour later. The pictures are
17 not shown again. They just have to pick out, from two
18 pictures, the correct picture. And he got 49 out of 50, which
19 means that an individual that wants to fake, an individual that
14:09:48 20 wants to think -- first of all, they think it's a memory test;
21 so if they think that there's a memory problem or they want to
22 fake, so what they do is they try to -- they deliberately get
23 wrong answers or they choose the incorrect answer.

24 Now, in general, Mr. Owen is quite slow, which
14:10:07 25 another -- he has his mental slowness across the board. And

14:10:11 1 yet --

2 MR. BROWNE: Objection, your Honor. Now it's a
3 narrative. I didn't know if this was responsive to a
4 question or not.

14:10:18 5 MS. FUSARO: I asked him to explain the test of
6 mental malingering.

7 THE COURT: Overruled. He can finish his answer.

8 THE WITNESS: Okay. Anyway, the bottom line is that
9 he put forth full effort. He did not fake. He did not
10 lie. He did not look worse than he is. He gave the
11 correct responses, which is appropriate. And, again, this
12 is a significant test that's used by any
13 neuropsychologists in the forensic area to determine
14 whether or not the individual is really putting forth full
15 effort, meaning the other tests that are given whether or
16 not they are really true indication of really what the
17 test is supposed to measure.

18 BY MS. FUSARO:

19 Q Is the TOMM the most common test given for
14:10:59 20 malingering?

21 A It's one of the most common.

22 Q So if someone thought that an individual was
23 malingering, in your opinion, should they have given a test to
24 determine that?

14:11:09 25 A Yeah, that's routinely done today. Yeah, that's

14:11:11 1 standard practice.

2 Q And then you mentioned the Wisconsin Card Sorting
3 Test. For that test, what does that entail?

4 A So that's a test of executive measure. The
14:11:25 5 individual has to change up sets between color, form, and
6 number. It's a continuously test that's changing. It's a test
7 that very much is sensitive to executive functioning. And
8 just -- he did quite well. His scores are within the normal
9 limits; so that means that he's not faking, you know.

14:11:55 10 If an individual would want to fake, they could
11 easily fake on this test, but yet his performance was normal.
12 Again, as I mentioned, there are strengths and weaknesses
13 throughout. Performances are not just across the board unless
14 someone has major, serious problems. But, generally,
14:12:14 15 individuals have better and worse or strength and weaknesses.
16 And the fact that this is normal, again, is indicative that he
17 has some strengths in terms of his cognitive abilities --

18 (Zoom interruption.)

19 THE COURT: Someone has joined us. All right. Sorry
14:12:41 20 about that.

21 THE WITNESS: So that means that he, again, has
22 normal performance in some areas, and again he's not
23 malingering, and he's putting forth a full effort.

24 BY MS. FUSARO:

14:12:50 25 Q Is there anything that test would tell us about

14:12:52 1 Mr. Owen?

2 A It's, some cognitive abilities are preserved, and so
3 I think that's -- you know, again, brain functioning is varied.
4 It's not all or nothing. And I think that, you know, some
14:13:13 5 areas remain fairly intact.

6 Q You also mentioned that you did the Wechsler Adult
7 Intelligence Scale. What does that test entail?

8 A So that's, as I mentioned, the gold standard IQ. The
9 test is, it's broken down to both verbal and non-verbal. There
14:13:34 10 are factor scores. There's, there's a variety of different
11 questions that are asked. He's asked to manipulate certain
12 things with his hands -- blocks. It really covers all of the
13 domains of both verbal and non-verbal.

14 The test scores are broken down into different --
14:14:00 15 what's referred to as the IQ scores. And it ultimately yields
16 a full IQ score, which is really a composite of all the
17 different subtests in the test.

18 Q What was the IQ score full scale that Mr. Owen
19 received on the test?

14:14:20 20 A So he received a full scale IQ score of 92. The 30th
21 percentile, which falls in the average range.

22 Q And what range is considered the average range in
23 terms of IQ scores?

24 A So average, he's actually at the lower end of the
14:14:37 25 average range. It goes between 90 and 110. 110, at that point

14:14:44 1 is, that's like the middle of the bell-shaped curve. That's
2 where approximately 68 percent of the population falls, in that
3 middle range. A hundred being average, and the standard
4 deviation being 15; so he's somewhat lower but just falls just
14:15:06 5 right above what's considered the average range.

6 Q Does intelligence have any correlation to whether a
7 person experiences delusions?

8 A No.

9 Q Can a person with an average or even an
14:15:18 10 higher-than-average IQ suffer from delusions but still able to
11 read and write?

12 A Correct. Absolutely.

13 Q Could they do that well?

14 A Absolutely.

14:15:30 15 Q I think that's all the tests from the first day; is
16 that correct?

17 A Correct.

18 Q On the second day that you administered testing on
19 the second --

14:15:37 20 A Oh, I'm sorry. I think on the first day, I believe,
21 yeah, I also gave him the Delis-Kaplan Executive Function
22 System. That was also on the first day.

23 Q Can you explain what that test showed?

24 A So there's five parts to this. It's called Trail
14:16:06 25 Making test. Condition one, two, three, four, and five.

14:16:17 1 Throughout the different tasks that were asked, the first one
2 was just visual scanning. He was asked to just cross off all
3 of the three's. He had a standard score of one, which is --
4 would be like the equivalent of a 55 IQ.

14:16:40 5 Condition two, he was asked to follow the sequence of
6 numbers. He has, again, a minute and 46 seconds, which a
7 standard score of one, 55 equivalent IQ.

8 Condition three, letter sequencing, one minute and 41
9 second, a standard score of two, which is a 60 IQ.

14:17:06 10 Condition four, which is really the -- what the whole
11 test is really tried to aim to get to condition four, which is
12 to alternate between number letter, number letter. And he took
13 three minutes and 55 seconds. He committed two errors, and he
14 had a standard score of one, which is a 55.

14:17:33 15 If I may comment on this condition four, it is so off
16 the charts in terms of being abnormal, just in terms of not
17 only his slowness but his inability to follow through simply
18 alternating between number letter, number letter. He got lost,
19 so to speak, two times.

14:17:59 20 He knows the alphabet. Certainly, he knows the
21 numbers, but when it comes to a task to alternate between
22 number letter, number letter -- you go back and forth -- he's
23 extremely slow. And he also lost his place two times; so this
24 is really significant in terms of, in terms of cognitive
14:18:23 25 impairment.

14:18:24 1 Trails, now on condition five, motor speed, he just
2 had to follow a dotted line. He did fine. I mean, he had a
3 standard score of nine. Again, every score that I mention is
4 based on the normative data that go along with that age. So
14:18:41 5 he's 62 years old. It's not the same thing for a younger
6 person; so, again, these are adjusted norms for his age; so he
7 did okay.

8 I also gave him, also part of this group of tests
9 were the fluency -- verbal fluency -- so, first, there was
14:19:05 10 letter fluency. There was just this paucity of inability to
11 come up with words based on letters. He just drew a blank.
12 His standard score was 4, which is a 70. Did a little better
13 on category. He got an 8, which is a 9. And then to switch
14 between category, switching between fruits and furniture, he
14:19:34 15 got a score of 6, which is an 80.

16 So the overall, it was quite impaired, certainly gave
17 pause that there's something seriously going on with him.

18 Again, I just have to add that, as a
19 neuropsychologist, the same day that I gave him the category
14:19:54 20 test, which was okay -- so on some areas, he's okay. Now, when
21 he does -- he does poor on another test, it's really because
22 there's an impairment. Again, no one is trained to know what
23 the tests are and how the tests operate. So the fact that he
24 did well, relatively well, on one test and not so well on
14:20:17 25 another shows that there's indications of impairment perhaps in

14:20:22 1 specific areas of brain functioning and issues that are
2 certainly, you know, related. And that's the reason why, after
3 completing this, I said, you know, I mentioned the fact that,
4 well, I would certainly like to do some more testing in terms
14:20:40 5 of other areas that seemed to be also equally challenged.

6 Q You mentioned that he had issues between switching.
7 What is that indicative of?

8 A So that is really indicative of what normally we
9 refer to as a dementia process, insidious dementia process. In
14:21:09 10 other words, cognitive slowing. So one expects, obviously,
11 that as with, when aging, that things will slow down, but
12 there's -- the question is how much will it slow down? And
13 what level of brain loss is there, given to the individual's
14 age?

14:21:26 15 So the slowness and also the facts that there's
16 errors committed, which really means that there's this really
17 decrease in terms of the sharpness. Some areas, like I
18 mentioned, are still intact but, overall, there is certainly
19 indication there is what I refer to as an insidious dementia
14:21:47 20 process, meaning that there's a decline from where he was
21 before, and insidious meaning it's slow but it's clearly there.

22 Q And you said specific areas of the brain were
23 affected and you could tell that by the tests. Were there
24 specific areas that you could point out?

14:22:09 25 A Well, this area, I couldn't tell at this point,

14:22:12 1 really, what was more because more I found out actually on day
2 two of testing that I was able really to pinpoint, really,
3 where I think the areas of the brain dysfunction really are.

4 Q Was there any other tests that you completed on day
14:22:29 5 one that we missed?

6 A No. I think that's it.

7 Q All right. We'll go on day two, then. And on day
8 two, which tests did you give?

9 A So on day two, I gave him Word Choice, which is
14:22:45 10 another measure of malingering. I gave him also the Tactical
11 Performance Test, and I also gave him the MMPI, the Minnesota
12 Multiphasic Personality Inventory, and the Wechsler Memory
13 Scale, Fourth Edition.

14 Q We'll start with the Word Choice. You said that's a
14:23:08 15 malingering test. Can you explain what that test entails?

16 A So you give them -- there's 50 words that they have
17 to remember, and you say by each word whether it's something
18 manmade or it's natural.

19 Like, for example, I'll give you an example. Bird.
14:23:27 20 So there's a picture. It's a little, it says bird on the card.
21 And then they have to say whether it's manmade or natural.

22 After the 50 words are presented, then they are given
23 a sheet that has two responses, one which is the correct and
24 one which is the incorrect, and he scored a 47 out of 50.

14:23:53 25 Q What does that tell us about, if he was malingering?

14:23:56 1 A Again, it's a normal response. No malingering.

2 Q Did that test tell you anything else about his
3 functioning?

4 A Again, I mean, tests that one would normally -- in
14:24:06 5 spite of the fact that there may be cognitive impairment, one
6 is expected to do relatively okay on this and to give full
7 effort; so he was okay.

8 Q So it did show that he gave full effort?

9 A Correct.

14:24:22 10 Q Can you explain what the Wechsler Memory Scale is?

11 A So the Wechsler Memory Scale is a very comprehensive
12 test. It goes through verbal, visual, various different new
13 learning, list learning, a very comprehensive test in terms of
14 memory of, really, all dimensions.

14:24:50 15 It also -- the Wechsler Memory Scale is -- the
16 Wechsler Memory Scale is also compared to the Wechsler Adult
17 Intelligence Scale. So the two tests are combined in terms of
18 what the -- what one score is and what the other score is and
19 what's the expected. In other words, there should be,

14:25:18 20 basically, there should be consistency between one's IQ and
21 one's memory quotient. Or where one's IQ falls, basically
22 memory quotient should also fall basically within the same
23 area. And if they're not congruent, then there's some issues
24 as to what's going on.

14:25:38 25 His scores were markedly lower across the board.

14:25:47 1 Immediate memory was 67, and delayed memory was 69. Most of
2 his scores were really in that range. That's like the first
3 and second percentile of the general population. So there's
4 almost a 20-point split between -- excuse me, almost a 30-point
14:26:08 5 split between his IQ and between his memory functioning.

6 In other words, memory is really impaired. He's
7 struggling with memory. A lot of details are missing. He's
8 unable to really hold information. And even with list
9 learning, he struggles.

14:26:32 10 He mentioned throughout the test that, you know, Hey,
11 Doc, this is really difficult. I'm having a hard time. So he
12 genuinely tried, and yet he struggled.

13 And, again, as I mentioned, there was suspect of
14 having memory issues, and indeed it was borne out in terms of
14:26:51 15 his result. And, again, I attempted to try to get similar
16 tests that were done previously, but whatever. I was unable to
17 obtain this. But this is -- really, again, these are tests
18 that are considered to be, like, the gold standard in terms of
19 neuropsychology. And, again, the comparison between the IQ and
14:27:13 20 between the memory quotient are really significant in terms of
21 his lower, in terms of both functioning and verbal and visual,
22 again, indicative of his insidious dementia process. He is on
23 the, certainly he's on a decline in terms of his memory recall
24 and his ability to learn new information.

14:27:38 25 Q How does dementia affect a person?

14:27:45 1 A It's a devastating illness. There's, like, slow
2 progressive decline, where an individual, you know, previously
3 was able to do higher level cognitive tasks, that comes to a
4 halt. It's a struggle. It's struggling across the board:
14:28:06 5 Struggling to learn, struggling to read, struggling to recall.
6 It really strips away one's mental abilities and cognitive
7 abilities in terms of functioning.

8 Q So, for example, if an individual was an excellent
9 writer at one point, if they had dementia, over time would they
14:28:28 10 lose those abilities to write as well?

11 A Correct. They would definitely decline.

12 Q I think the next was the Tactual Performance Test.
13 Can you explain what that entails?

14 A So this is a test that is part of the Halstead-Reitan
14:28:52 15 Battery. The individual is blindfolded. For an individual to
16 be blindfolded for approximately almost 25, 30 minutes, again,
17 you have to establish trust with the examiner, and they're told
18 in very clear detail not to take the blindfolds off because
19 it's going to invalidate the test. He understood that, and he
14:29:25 20 was cooperative.

21 He had arm restraints, which I requested that they
22 take it off, but somehow they would not. In spite of that, so
23 this test became much more difficult for him because he
24 couldn't sit and put the blocks on the board. He had to stand
14:29:42 25 the whole time in order to be able to reach. And, again, he

14:29:46 1 was cooperative. No problem. He, so you basically would
2 blindfold the individual, and then there's the formboard and
3 there's wooden blocks, and they're asked, with only their
4 dominant right hand -- he's right-hand dominant -- to place
14:30:06 5 each one of the blocks on the formboard. There's a total of
6 ten blocks.

7 He struggled to get the blocks in, and he completed
8 the test after 10 minutes and 18 seconds. Some of the blocks,
9 he had a really hard time, especially between the star and the
14:30:25 10 cross. They were extremely difficult. It's kind of typical,
11 where they just can't get the block into the hole, but clearly
12 he tried. And after the first session with the right hand, I
13 said, Please sit down. Rest in between. And then we are going
14 to do the same test again with the left hand.

14:30:50 15 The left hand, he completed the task in 8 minutes and
16 4 seconds, so slightly better, but clearly not a whole lot of
17 learning going on. One expects that after the second time
18 you're doing the test, it would get significantly better, but
19 it was slow to begin with and continues to be slow.

14:31:13 20 Then I asked, I told him to sit down and to rest
21 because he's been standing for a significant period of time.
22 And then I said, When you're ready, please get up and start,
23 and we're going to do both hands now. And he struggled with
24 both hands. He took 8 minutes and 22 seconds. So basically
14:31:34 25 with both hands it was longer than just the left hand.

14:31:38 1 Now, the left hand was the non-dominant hand, which,
2 of course, both hands includes his right hand; so he's having
3 the advantage of having his right dominant hand, together with
4 his left hand, and yet when he had both hands, it took longer
14:31:56 5 than just having the left, non-dominant hand. That's the
6 reason why I concluded that, most probably, he has brain damage
7 in his corpus callosum.

8 The corpus callosum is the band of fibers that
9 connect the right and left brain. If one looks, it's straight
14:32:18 10 across the middle of the brain. Here's the right, here's the
11 left brain, and that's the band of fibers that connect the two,
12 meaning that there's a problem in terms of crossover between
13 information that was gained from -- the right hand is basically
14 controlled by the left brain. The left hand is controlled by
14:32:37 15 the right brain. And then both hands should be controlled by
16 both brains, plus the crossover between this band of fibers.

17 When you do not have crossover, it's highly
18 suspicious and suspect that the band of fibers had some type of
19 necrosis. Again, I can't tell, I mean, but this is what the
14:33:00 20 behavioral observations in terms of what this test, and why
21 he's doing poorly, so poorly on this test. So the overall time
22 is extremely impaired.

23 After the test was completed and then I asked
24 Mr. Owen to draw the shapes and place them on the correct
14:33:21 25 location on the piece of paper, one shape was totally an odd

14:33:26 1 shape, nothing to do with any of the ten shapes. He drew two
2 shapes which looked like triangles; so I gave him credit for
3 one, but it was just duplication. And he got two others
4 correct.

14:33:37 5 So he totally, he got three out of ten in terms of
6 memory, one out of ten in terms of the localization, which
7 means the specificity of putting the block in the correct
8 location as it appeared on the formboard.

9 That lack of specificity or the localization score,
14:33:57 10 according to certainly the right hand, was all referred to as
11 pathognomonic brain damage. Again, a score of zero or one is
12 indicative that his memory is poor. That's the reason why I
13 gave this test. His time is slow. And, again, the specifics
14 in terms of where things should go is also impaired.

14:34:16 15 So, again, there's impairment across the board in all
16 sorts of areas. That's the reason why I gave him, again, it's
17 a very challenging test. To his credit, you know, he never
18 complained. You know, he just did everything that I asked him
19 to do, and I appreciated that. That from my point of view, I
14:34:36 20 was just trying to get the results and to try to integrate all
21 these results; so he did, you know, he did that without any
22 difficulty.

23 Q So you could tell he was exhibiting full effort?

24 A Yeah, absolutely. He tried very hard.

14:34:53 25 Q You also mentioned, I believe it was pathognomonic

14:34:55 1 brain damage. What is that?

2 A So Reitan, who is, again, who really -- one of the
3 individuals -- the Halstead-Reitan was, established a lot of
4 these neuropsychological test measures, said that an individual
14:35:11 5 gets a score typically of zero or one on localization. It
6 just -- that's kind of, like, sine qua non with brain damage.
7 In other words, the score is so low and the fact that they
8 scored so poorly is indicative of the fact that there is a high
9 indicator of brain impairment, brain damage.

14:35:33 10 Q And then the last test, I believe, if I have it
11 right, was, that you gave, was the Minnesota Multiphasic
12 Personality Inventory-2; is that correct? That was the last
13 one?

14 A Correct, right. So that was, I gave him the MMPI-2.
14:35:45 15 I stopped at 370 because that's what could be scored. Again,
16 there was time constraints and the conditions to try to get,
17 you know, the best results.

18 He basically has what's called a floating profile.
19 There's so much pathology here in terms of what he endorses.
14:36:12 20 There's highs in several different clinical scales. He
21 basically has what's referred to as a two eight or two eight
22 seven six. Basically, these scores are indicative of a
23 schizophrenic profile, social alienation, isolation, some
24 paranoia, some depression. Depression, really, what I refer to
14:36:51 25 as emotional withdraw, another negative symptom of

14:36:56 1 schizophrenia, very low energy level, extremely low. There's
2 issues in terms of some somatization and impulse control, but
3 that's really -- it's really, like, the fifth scale down.

4 Really, all of the scales are, really, basically all
14:37:21 5 elevated. One of these profiles that, there's endorsement of
6 psychopathology just across the board. So that's the reason
7 why it's considered valid with, again, indications of some
8 serious mental health issues.

9 Q You mentioned time constraints. Was part of the
14:37:42 10 reason for the time constraints because Mr. Owen was performing
11 slowly on the tests?

12 A Well, that contributed. And, again, you know, I
13 tried to explore many issues with him and not to, tried to use
14 my time wisely. They gave me an extra hour, and I tried to --
14:38:04 15 really, to utilize which measures were best suited to try to
16 elicit the best responses and outcome in terms of really
17 understanding what is really the clinical issues here.

18 Q And back to the MMPI-2, you said the results were
19 consistent with schizophrenia. Are they consistent with a
14:38:26 20 thought disorder as well?

21 A Correct. So, I mean, when we talk about
22 schizophrenia, so we talk, really, about -- there's both what's
23 called the positive symptomology and negative symptomatology.
24 Clearly, he has a thought disorder. He has, again, when one
14:38:49 25 looks at this profile -- so one really doesn't know really

14:38:51 1 what's going on with the individual, but you could see there is
2 abnormalities.

3 The schizophrenia, again, in terms of the thought
4 disorder, in terms of distortions of reality, again, when
14:39:06 5 explored, there's -- obviously, there's some major issues that
6 come out. One can't tell just looking at this profile like
7 what those issues are, but, yes, there's an endorsement of
8 extreme pathology of schizophrenia in terms of some
9 suspiciousness, paranoia, in terms of some psychasthenia and
14:39:31 10 nervousness, low energy, depression.

11 Again, the depression, which I see as being
12 emotional, blunting, and withdraw, again, just looking at the
13 profile, you know that there's issues going on but, certainly,
14 it's -- the MMPI is basically a test that evaluates his current
14:39:57 15 thinking, his current emotional state.

16 I made it very clear to Mr. Owen that what I wanted
17 him to focus on is how he's feeling right now, an endorsement
18 of his current thinking. And that's really what, you know, he
19 focused on. There were a few times that he didn't know a few
14:40:15 20 words here and there, but I sat through the entire
21 administration while, you know, it took probably upwards of
22 maybe an hour and a half to complete so that, maybe two hours.
23 I don't recall exactly. But it certainly, you know, he -- and
24 I saw after 370, I said, there's no reason to continue, given,
14:40:40 25 again, the time constraints.

14:40:42 1 Q Understandable. Do his results also show any
2 psychotic mentation or delusions?

3 A So there's, through clinical interview and exploring
4 the issues of his -- his issues with gender, clearly, there is
14:41:06 5 a very pronounced delusion, a fixed delusion, which really has
6 remained throughout his life. It's gone from where he
7 certainly felt that he is a male, entrapped as a male but
8 really wanting to be a woman, with every effort possible to try
9 to act like a woman, dress like a woman, think like a woman,
14:41:37 10 and then how he could possibly achieve this end result.

11 The end result that he wanted to achieve was the
12 extraction of female hormone through having sexual intercourse
13 with a woman and expunging their essence through his
14 ejaculation and like a penis being a hose and extracting that.
14:42:14 15 And then he would somehow, this would transform him from a male
16 to a female.

17 Now, this was his thinking. This was his thinking
18 all along. It's not, this wasn't something that he created.
19 It's something that, it's a fixed delusion, meaning that this
14:42:39 20 is what he thinks is actually reality.

21 His reality is that this was a process that he could
22 accomplish that and entrap the souls of individuals. And at
23 the time that they would have died, the process would have --
24 he would transform their bodies into him, and he would then
14:43:04 25 become those women that he was able to extract. And so he's,

14:43:09 1 certainly, he's of the belief now that his victims,
2 unfortunately, but they're a part of him; so he believes that
3 they are actually, it's Duane Owen plus two more people in him,
4 and this was a process that he believed was the ability to
14:43:30 5 somehow become a woman.

6 He has other examples in terms of how he continues to
7 try to be a woman. Something that he's tried to maintain, a
8 very low profile in terms of not discussing this, feeling very
9 embarrassed about talking about this. He's very embarrassed to
14:43:53 10 be here today in court. He doesn't want to be here really to
11 discuss this, but, again, he's very cooperative. And he
12 certainly, this is what he thought. This is what he thinks.
13 It's a fixed delusion.

14 A fixed delusion means something that you could try
14:44:16 15 to discuss this in terms of trying to be reality checking, in
16 terms of an ability to say, Well, that really doesn't make
17 sense. So certainly from a general point of mental awareness
18 or a clarity, of course, this does not make sense, but it's
19 fixed that, no matter what, you can't change his opinion. You
14:44:43 20 can't change his mind. This is what he thinks. This is what
21 he thought and what he continues to think. So that's why it's
22 a fixed delusion, and nothing has changed over time.

23 Q Do you know when the onset of this delusion began?

24 A It's been a while. I reviewed other material from
14:45:06 25 other doctors: Dr. Berlin, Dr. Sultan. They talked about this

14:45:16 1 when they evaluated Mr. Owen. Mr. Owen attempted to try to do
2 this process in different ways. He just didn't know how to do
3 it. And he said, as he mentioned, he didn't have a textbook to
4 follow how he could do this transformation; so he attempted a
14:45:39 5 lot of different things, but this was one of them. And, again,
6 it's been ongoing for decades.

7 Q So did he talk to you about the time of the crime?

8 A Yes, he did.

9 Q Were these delusions present even back then in the
14:45:57 10 '80s?

11 A Yes, they were.

12 Q And at the time did he feel like he was extracting
13 the woman's soul and the woman's essence and estrogen into his
14 body? Is that what you're saying?

14:46:11 15 A That's correct.

16 Q So is it his belief that the women are still living
17 inside of him and not dead?

18 A Absolutely. Yeah.

19 Q You mentioned these are fixed delusions. And is
14:46:28 20 there any way to avert his attention away from the psychotic
21 delusions, once he's discussing them?

22 A No. I mean, he thinks that this is plausible,
23 reasonable.

24 He's a very passive individual. He's not, by nature,
14:46:48 25 he's not a violent individual. There's no indication

14:46:52 1 whatsoever of him acting in any aggressive manner.

2 I sat with him for over 13 hours, and there was no
3 indication whatsoever, other than being respectful and
4 non-aggressive in any way. And he believes this. This is the
14:47:16 5 case. I mean, his belief is that his distortion of reality in
6 terms of what he tried to accomplish, to a certain extent,
7 worked and to the extent that he believes that the two female
8 bodies are within him now. That's still his, maintains this
9 belief at the present time.

14:47:43 10 Q And what were your diagnostic impressions of
11 Mr. Owen?

12 A So I diagnosed him as being schizophrenic. He meets
13 the criteria, based on both the fixed delusion and also the
14 fact that he has a social withdraw, a volition, the lack of
14:48:05 15 empathy, the withdraw, the individual that really doesn't
16 express emotion, per se, very concrete. So those were
17 basically the two main ingredients in terms of what the
18 diagnosis was made up of.

19 Q Did you find that Mr. Owen suffered from gender
14:48:27 20 dysphoria?

21 A Yes. I mean, he clearly -- I mean, from the very
22 early onset, wanted to be a female. He was more comfortable
23 with being a female. He thought that he was really a male,
24 born as a -- wanted to be a female, born as a male.

14:48:47 25 And it's been recognized certainly by other

14:48:53 1 clinicians, the gender dysphoria. And that, in and of itself,
2 was not necessarily pathological, but the pathology was how he
3 got to this and how he thinks about this and what he wanted to
4 do in order to get to this level.

14:49:15 5 Q And just to clarify, is gender dysphoria the same as
6 what has been previously referred to as gender identity
7 disorder?

8 A Correct. Now they're basically two of the same.

9 Q Okay. And then is there also research that supports
14:49:29 10 the co-morbidity between schizophrenia and gender dysphoria?

11 A Yes. There's definitely, there's research that shows
12 there's a higher prevalence. Schizophrenia is a low prevalence
13 in society. It's basically one percent of the general
14 population across the globe, and gender dysphoria is even less
14:49:52 15 than that. But there doesn't appear to be a co-morbidity,
16 meaning people that have one condition could have the other
17 condition, and clearly then the issues in terms of the
18 psychotic element of the gender dysphoria also co-exists. So
19 it's less, but it's greater than the general population.

14:50:18 20 Q And we talked a lot about all the testing that you
21 performed. Did any of those tests contain a validity
22 component?

23 A Yes. So there was, many tests contain validity, and
24 I did multiple malingering measures: The TOMM, the Word
14:50:35 25 Choice, the MMPI. And, really, all of the tests, when you saw

14:50:41 1 the strengths and weaknesses, you know, that also really shows
2 a validity component, meaning are the scores valid? Are they a
3 true indication of what the person can and cannot do?

4 So when you have, you know, scores, like I said,
14:50:56 5 individuals that really are trying and the scores do indicate
6 that there may be some problems, so problems in terms of
7 neuropsychological and psychological impairment were definitely
8 there.

9 Q And through your hours of testing and your evaluation
14:51:13 10 and the validity measures and the malingering test, did you
11 find any evidence that Mr. Owen was exaggerating or malingering
12 or feigning symptoms?

13 MR. BROWNE: Objection, your Honor. Asked and
14 answered twice now.

14:51:27 15 THE COURT: I think it has been, but I'll give you a
16 little leeway. It's your burden; so I'll give you a
17 little leeway.

18 MS. FUSARO: Just to kind of sum it up for you, your
19 Honor --

14:51:34 20 THE COURT: Sure. Go ahead. Overruled.

21 BY MS. FUSARO:

22 Q Did you find any evidence of that through all of your
23 testing and --

24 A No.

14:51:39 25 Q Thank you. And other than that -- I know we talked

14:51:41 1 about time constraints. Was there any other further testing
2 that you would still like to conduct at this point?

3 A Well, I think that, I think that I indicated that
4 there is brain damage, from a cognitive behavioral point of
14:52:00 5 view. I think that what is done in many of these cases, we do
6 neuro-diagnostic testing. We do MRI brain scans and PET scans
7 to look at actually the organic -- in other words, what
8 actually the brain looks like.

9 I suspect, as I mentioned, that there is damage,
14:52:22 10 which certainly would be, which would have implications in
11 terms of the thinking process and in terms of his overall state
12 of mind.

13 Q And would that help to show, if there is dementia,
14 how far the dementia has progressed?

14:52:40 15 A Correct.

16 Q Did you review any records or documents related to
17 Mr. Owen?

18 A I did. There's a lot of records that actually I
19 reviewed. I didn't have time to review everything, but, you
14:52:53 20 know, yeah, I did review records from different doctors,
21 different reports, some of the penalty phase, as much as I
22 possibly could within -- again, within the time that was
23 presented.

24 Q Did those materials that you were able to review, did
14:53:14 25 those corroborate what Mr. Owen told you and what you found in

14:53:19 1 your evaluation?

2 A There was some corroboration. There was some that
3 were non-corroborative, but certainly there were experts that,
4 in great detail, certainly showed corroboration in terms of the
14:53:35 5 fixed delusion, in terms of the brain damage, in terms of some
6 of the behavior that Mr. Owen exhibited.

7 Q Was there any other corroborative information that
8 you had for your findings?

9 A I mean, there was also a, I read some -- I think
14:54:02 10 there was maybe five different individuals, reported friends of
11 his, again, the dysfunction that occurred early on from, again,
12 non-experts but just given life history. So that also was
13 significant.

14 Unfortunately, most of his family has already died.
14:54:25 15 There's really no one to talk to. And, again, there was very
16 limited amount of time in terms of trying to really, you know,
17 do things that I normally would do.

18 Q You mentioned that you reviewed some findings of
19 other experts that had previously evaluated Mr. Owen or
14:54:42 20 previously testified. Did you review documents related to a
21 Dr. Faye Sultan's evaluation of Mr. Owen back in the 1990s?

22 A Yes, I did.

23 Q How do your findings compare to Dr. Sultan's
24 findings?

14:54:55 25 A Well, Dr. Sultan basically said that he was suffering

14:54:58 1 from the psychotic --

2 MR. BROWNE: Objection, your Honor. Hearsay and
3 bolstering.

4 THE COURT: I mean, I have the report, right? I have
14:55:11 5 Dr. --

6 MS. FUSARO: It's not so much, I don't believe, a
7 report, but she did testify in the other trial; so that's
8 probably what you would have, which should be what he has
9 had as well.

14:55:23 10 THE COURT: Yeah. I'm going to sustain the
11 objection. I don't need him to compare his to hers.

12 MS. FUSARO: Your Honor, may I ask if she found that
13 he was malingering? If Dr. Sultan found --

14 THE COURT: You can ask that question.

14:55:34 15 BY MS. FUSARO:

16 Q Did Dr. Sultan find that he was malingering?

17 A No, he was not malingering.

18 Q And did you also review documents pertaining to
19 Dr. Berlin's evaluation of Mr. Owen in 1990s?

14:55:46 20 A Yes, I did.

21 Q And were those findings also similar to yours?

22 A Correct.

23 Q And did Dr. Berlin find that Mr. Owen was malingering
24 back then?

14:55:55 25 A No.

14:55:56 1 Q Did you review documents related to Barry Crown's
2 examination of Mr. Owen back in the 1990s?

3 A Yes, I did.

4 Q And are your findings similar to Dr. Crown's?

14:56:04 5 A Yes.

6 Q And did Dr. Crown find that Mr. Owen was malingering?

7 A No.

8 Q Did you review documents related to Dr. Henry Dee's
9 evaluation of Mr. Owen in the mid-2000s?

14:56:15 10 A Yes, I did.

11 Q Are your findings similar to Dr. Dee's?

12 A Yes, they are.

13 Q Did Dr. Dee find that he was malingering?

14 A No, he was not malingering.

14:56:23 15 Q Other than your recent evaluation, were there any
16 other evaluations conducted of Mr. Owen between your evaluation
17 and Dr. Dee's in around 2006?

18 A Not that I'm aware of.

19 Q Now, based on the DSM, does Mr. Owen meet the
14:56:40 20 criteria for antisocial personality disorder?

21 A In my clinical judgment, no, he does not meet the
22 criteria.

23 Q Is that due to his schizophrenia? Or what is that
24 due to?

14:56:52 25 A Well, it's due to several things. First, in order

14:56:55 1 for the diagnosis of antisocial personality disorder, there
2 needs to be conduct disorder established before the age of 15.
3 There was no diagnosis of conduct disorder before the age of
4 15.

14:57:10 5 Also, even if there was, one of the other things --
6 if you make a diagnosis of schizophrenia or bipolar disorder,
7 that also would rule out a diagnosis of antisocial personality.
8 So based on the fact that you really couldn't make the
9 diagnosis in the first place, the first time that he was
14:57:29 10 incarcerated when he was 18, that's well beyond 15, and so the
11 diagnosis of antisocial personality disorder is really, it's
12 not appropriate.

13 And when one even looks at some of those individual
14 criteria, there really could be explained, and I think that the
14:57:53 15 reason why the, those rule-outs are is because some of the
16 criteria really could be explained due to brain damage, due to
17 psychotic behavior, mentation, other areas that could explain
18 that this is really a major mental illness versus some type of
19 a personality disorder that doesn't have a basis in terms of a
14:58:19 20 major mental illness.

21 Q And the tests that you conducted, such as the MMPI-2,
22 that supported the schizophrenia as opposed to the antisocial
23 personality disorder?

24 A Correct.

14:58:31 25 Q You mentioned that Mr. Owen felt uncomfortable and

14:58:35 1 embarrassed. Was he willing to openly discuss his delusions
2 with you?

3 A Yes, he was.

4 Q Was he willing to do that right away or did it take
14:58:44 5 some time?

6 A It took some time. Obviously, it's a very sensitive
7 topic. And what I learned over the two days of evaluation is
8 that, for the better part of the four decades, he's maintained
9 a very quiet, reserved posture, especially to maintain his own
14:59:14 10 safety within the prison system, something that he would try to
11 be as masculine and as macho as possible and not disclose any
12 of his really true feelings.

13 So, for the most part, he said there's nothing wrong
14 with him. He stayed quiet. He's been very isolated, not
14:59:41 15 interactive, and basically keep to himself for the better part
16 of four decades.

17 He's maintained, you know, basically a very perfect
18 record, no incidents, certainly no violent and nothing of that
19 sort. But it took time, and with enough questioning and
15:00:09 20 rapport, he, certainly he explored, in the best way possible,
21 you know, what his thinking is, what his behavior was, his
22 rationale, you know, why he did what he did, albeit, and it's
23 my determination that it's certainly a fixed psychotic
24 delusion, but that's his belief.

15:00:32 25 I certainly didn't, you know, I didn't doubt his --

15:00:36 1 what his thinking is. I question whether or not really this
2 is -- the veracity, but, you know, that's his belief. That's
3 his thinking. And that's why it's fixed psychotic delusion
4 because no matter what, that's what he believes, and that's
15:00:55 5 what he thinks, and that's why he did what he did, and he
6 maintains that same position.

7 Q And you mentioned that you took the time to build
8 rapport. If someone didn't take the time to build rapport, is
9 it possible that they would not have uncovered the delusions?

15:01:11 10 A That's correct.

11 Q And are there any triggers or stressors that may
12 cause Mr. Owen to express his delusions to some people but not
13 others?

14 A I think that, you know, if he believes that, you
15:01:26 15 know, you trust enough, if you establish enough rapport, if you
16 treat him with respect, which is supposed to be across the
17 board, any clinical examination, whether in psychiatry,
18 psychology, or any other field of a health provider has to
19 always be done with the greatest standards of care and treating
15:01:50 20 the individual with respect and listening very carefully to
21 what they say.

22 Patients don't lie. You just need to understand
23 them, and I think that Mr. Owen just needed the opportunity to
24 express, in a setting that was confidential or
15:02:12 25 semi-confidential, really, because obviously it's not because

15:02:15 1 it's a forensic evaluation -- but to the extent that he could
2 at least express without being judged, and listening to what he
3 has to say and respectful, I think, then, with all of those
4 elements and over time, he was able to certainly express what
15:02:42 5 his thinking was.

6 I think maybe initially he was somewhat reluctant to
7 do this evaluation, but he did. He was cooperative. And I
8 thanked him for being cooperative because that certainly is my
9 job. My job is certainly to present to the Court my findings.
15:03:01 10 And he was willing, certainly, to sit a second time. I'll say
11 a long time with an extra hour, almost an hour and a half extra
12 and there was, he came on time. There was no -- there was
13 never any interruptions, nothing. He was able to do whatever I
14 asked him to do and to talk freely and to share.

15:03:28 15 Q If there were other people in the room, do you think
16 he would have talked as freely about his delusions at the
17 prison?

18 A No. As a matter of fact, he was concerned --

19 MR. BROWNE: Objection. Speculation.

15:03:40 20 THE COURT: Sustained.

21 BY MS. FUSARO:

22 Q Do you have any opinion on why Mr. Owen does not
23 openly admit his delusions at the prison?

24 A He's afraid of retribution. He's afraid that he's
15:03:52 25 going to be castigated and he's going to be thought of less

15:03:57 1 than a man or less than masculine, somebody that would, you
2 know, that he could protect himself. He's, yeah, he's --
3 there's all of the reason in the world that he has not to share
4 his thinking as to what, you know, really is going on with him.

15:04:16 5 Q You mentioned that Mr. Owen was coping for his own
6 safety. Can you explain what he was doing to cope?

7 A Basically, he, to hide his, you know, his desire to
8 be a woman. He's very embarrassed of his -- he tried to remove
9 his genitalia. He tried to have breast enhancement. But all
15:04:45 10 of this is, you know, again, something that he keeps very
11 private and he doesn't want anyone else certainly to know about
12 what is going on with him.

13 Today's hearing is embarrassing. Discussing this is
14 embarrassing. But, you know, again, he's willing to go
15:05:05 15 forward. He doesn't want anyone to know about, really, you
16 know, what is going on with him. It's not something that he
17 wants to publicly display, and he certainly wants to keep this
18 as private as possible.

19 Q And in terms of the embarrassment with the genitalia
15:05:29 20 component, did he detail to you how uncomfortable he is being
21 in death watch?

22 A Oh, yeah. This is, yeah, this is torture. He's
23 constantly being observed. There's noise all the time. He
24 can't sleep. He was very tired, as a matter of fact, the
15:05:49 25 second evaluation. There's constant noise. The radios are

15:05:58 1 there blasting every 15 minutes. There's someone there coming
2 and checking, and the lights are on. And there's, he has no --
3 there's no privacy, and this is something that he very much is
4 displeased being in this position.

15:06:16 5 Q Are they going to start watching him around the
6 clock? Did he express any of that to you?

7 MR. BROWNE: Objection, your Honor. Relevance.

8 THE COURT: What's the relevance?

9 MS. FUSARO: The relevance is at least something that
15:06:28 10 I believe Mr. Owen may have told him about his uncomfort
11 with his genitalia and the gender dysphoria.

12 THE COURT: I don't know where you're going, but I'll
13 let you try to go there. Overruled.

14 BY MS. FUSARO:

15:06:45 15 Q Did he explain to you his uncomfort on that level in
16 terms of being watched and the gender dysphoria?

17 A Yeah. He said that planning on Sunday not to eat in
18 order that he doesn't have to go to the bathroom because,
19 otherwise, he's going to be watched, and he doesn't want anyone
15:07:04 20 to watch him while he has to, while he has to either urinate or
21 defecate. And this way, he's going to be basically going on a
22 fasting diet, and this way he was going to prevent any of that
23 to happen.

24 Q And also on a similar note, has he ever tried to hide
15:07:25 25 or remove his genitalia?

15:07:29 1 A Yeah, he's tried. He uses some apparatus, a string
2 or something, in order to try to remove his genitalia so that
3 he'll look more like a woman than a man. He's very
4 uncomfortable with his male organs. He would prefer that they
15:07:51 5 would be cut off, but he does the best he can under these
6 circumstances.

7 Q Did he discuss any gender reassignment surgery with
8 you?

9 A I think that, you know, there was different thoughts
15:08:07 10 about that. He may have mentioned it, but he knows that that's
11 not going to happen.

12 Q And why would that not happen?

13 A He sees that, you know, the climate, the present
14 climate and the prison climate -- they're not going to do
15:08:25 15 something that is considered to be an elective. It's not life
16 and death, and it's not something, it's just -- he realizes
17 that it's just not going to happen.

18 Q Now, if he was in the free world, is there criteria
19 where -- whether he would be able to get that with his mental
15:08:44 20 illness in the free world.

21 MR. BROWNE: Objection, your Honor. Relevance.

22 THE COURT: Sustained.

23 BY MS. FUSARO:

24 Q Also in the prison aspect, in your experience, is it
15:08:54 25 common for mentally ill individuals to not seek treatment in

15:08:58 1 prison?

2 A Yes, it's very common. They don't want to upset the
3 applecart, so to speak. They would rather not do anything.
4 Just leave them alone. And you don't request too much, and you
15:09:19 5 just leave everything as status quo. And that's basically what
6 he's done for, again, for the majority of the four decades.

7 Q And in your experience, is it also common for
8 mentally ill individuals to refuse medication?

9 A That's very common.

15:09:38 10 Q Are there any other lengths that you can detail to us
11 that Mr. Owen is willing to go to to become a woman?

12 A Well, I mean, there are some -- at some point, you're
13 talking about chemical castration, chemical or castration.
14 These are options, but, again, it did not happen, and it does
15:10:08 15 happen in certain circumstances, but I don't think it was ever
16 really an option. And whatever he was going to explore,
17 anytime when he was still in the free world, got disrupted, and
18 there was really no followthrough in terms of really
19 identifying any type of treatment options.

15:10:32 20 Q You've stated that Mr. Owen was polite and he was
21 cooperative. If a prison official was asking him questions, in
22 your opinion, is it likely that Mr. Owen would just respond?

23 A Correct.

24 Q So if a prison official was asking him about his last
15:10:48 25 meal or disbursing his belongings, would you expect Mr. Owen to

15:10:52 1 be compliant based on what you've seen?

2 A Yeah, he would just answer the questions, but it
3 really is irrelevant in terms of really what his thinking is
4 all about.

15:11:05 5 Q Were you aware whether Mr. Owen got into much trouble
6 while he's been at the prison?

7 A No. He --

8 MR. BROWNE: Objection. Asked and answered.

9 THE COURT: What's the relevance?

15:11:19 10 MS. FUSARO: If he's compliant, then he's not getting
11 a whole lot of DRs. He's not getting into a lot of
12 trouble. If he knows. He was only given limited records;
13 so I'm not positive if he does but --

14 THE COURT: Overruled. You can answer, if you know.

15:11:34 15 THE WITNESS: Yeah. I mean, he stated that he had
16 very few DRs. There's really nothing of any major issues
17 over the years.

18 BY MS. FUSARO:

19 Q Did he tell you what the DRs were for?

15:11:46 20 A I think there was one that they requested to have a
21 urine sample. Again, it's a highly embarrassing thing.
22 Everything has to be done openly. And so I guess his refusal
23 to do it, whatever the circumstances, again, he was noted for
24 that.

15:12:06 25 Q So to summarize, in your opinion, does Mr. Owen

15:12:08 1 understand the nature and effect of why the death penalty is
2 imposed on him?

3 A No.

4 Q Can you explain how you reached that decision?

15:12:18 5 A So, I mean, first of all, he believes that these two
6 women are really inside of him. Through the process that I
7 mentioned earlier, which is obviously bizarre and psychotic and
8 delusional but in his belief is a truism. So the souls of
9 these two women are implanted in him. And that's a fixed
10 belief. His belief is that not only is his life but there's
11 two other people as well. So whatever is going to happen is
12 really, he believes is three people not just one. Him being
13 Mr. Owen or Ms. Owen, however, Duane Owen, and the two women
14 that he extracted their essence in order to become who he
15 ultimately is.

16 He believes that he has always been a woman, he
17 continues to be a woman, and these two women are now a part of
18 him; so he doesn't see that -- the consequence of what would
19 happen to him without the consequence of what would happen to
15:13:28 20 the two other people, these two other souls, these two other
21 bodies. There's obviously, between body and soul, there's some
22 steps in between, and yet, they're both encapsulated within
23 him. That's his belief. So, therefore, it's not clear -- or
24 it's clear in his mind to the extent that you're talking about
15:13:51 25 Duane Owen, you're also talking about two other people. And,

15:14:25 1 therefore, it's like the, whatever the death penalty that's
2 imposed is really, is really inappropriate because the fact
3 that this is what he had to do in order to become the person he
4 is, and, therefore, the linkage between these two concepts is
15:14:53 5 something that he just doesn't, he doesn't follow through.

6 Q So just to clarify, does Mr. Owen have a rational
7 appreciation of the connection between his crime and the
8 punishment that he is to receive?

9 A No.

15:15:12 10 Q And does he have any rational understanding of the
11 fact that he's going to be executed for those reasons?

12 A No, he does not.

13 MS. FUSARO: May I have a moment, your Honor?

14 THE COURT: You may.

15:15:22 15 (Pause in the proceedings.)

16 MS. FUSARO: No further questions.

17 THE COURT: All right. Cross?

18 THE WITNESS: Could we take a few minute break?

19 THE COURT: Sure. We'll take five minutes.

15:15:36 20 (Recess was taken.)

21 THE COURT: All right. So let's go back on the
22 record in the State of Florida versus Duane Owen,
23 04-2023-CA-264-CAAM.

24 MR. BROWNE: Your Honor, I see the Defendant is not
15:23:41 25 present.

15:23:42 1 THE COURT: Yeah, we'll get him in just a second
2 here.

3 All right. Let the record reflect that Mr. Owen is
4 now back and present in the courtroom with counsel. The
15:24:20 5 State is present with counsel. The witness is back on the
6 stand. You may proceed with the cross.

7 MR. BROWNE: Thank you, your Honor.

8 CROSS-EXAMINATION

9 BY MR. BROWNE:

15:24:27 10 Q Good afternoon, Doctor.

11 A Good afternoon.

12 Q Doctor, you mentioned that you have testified a
13 number of times in capital cases. I didn't hear the exact
14 number. Can you give us an approximate number of the times
15:24:37 15 you've testified in capital cases?

16 A I said approximately a hundred.

17 Q One hundred. And would it be correct, sir, that each
18 and every one of those times, a hundred times, was you were
19 called on behalf of the defense?

15:24:51 20 A Correct.

21 Q Doctor, what percentage of your income is derived
22 from forensic work? That being courtroom testimony like today
23 and consulting with the defense attorneys versus clinical?

24 A Approximately 80 percent.

15:25:10 25 Q 80 percent of your income is derived in a forensic

15:25:13 1 setting?

2 A Approximately.

3 Q Approximately. But, Doctor, in the forensic setting,
4 when a defense attorney asks you to examine a defendant, if you
15:25:26 5 come back and tell them defendant's antisocial, I can't help
6 you, do you continue to bill on that case?

7 A If there's no -- well, I mean, that's just one
8 aspect, but if I can't be of assistance, then, you know, for
9 all practical purposes, yeah, I do not continue to work on the
15:25:49 10 case.

11 Q So there's no deposition billing, there's no trial
12 testimony billing, if you tell them, I can't help you. He's
13 antisocial.

14 A I'm not sure. I mean, when -- if they think that I
15:26:02 15 can be of assistance, you know, I continue to work on the case;
16 and, if not, then we discontinue.

17 Q Okay. So, Doctor, you mentioned that you viewed
18 Mr. Owen as kind of a patient. But he's not a patient, is he?

19 A No, I didn't say he was a patient.

15:26:24 20 Q Okay. So Mr. Owen is not in a clinical setting;
21 correct?

22 A Correct.

23 Q He's in a forensic setting?

24 A Correct.

15:26:31 25 Q And he is facing imminent execution, correct?

15:26:34 1 A Correct.

2 Q And so in a forensic setting, normally you would have
3 to consider malingering; is that correct, Doctor?

4 A You have to consider that, correct.

15:26:44 5 Q And imminent execution is a -- provides a
6 considerable incentive, in general, to malingering?

7 A Perhaps.

8 Q Now, you met with him and generated a report. I have
9 that as May 16, 2023. That's Defense Exhibit 2. Do you have
10 that up there?

11 A Yes, I do.

12 Q So you found that when you met with Mr. Owen, he was
13 oriented times three, right? Time, place, person?

14 A Yes.

15:27:15 15 Q And that's, so you developed -- you had no problem
16 communicating with him right off the bat --

17 A Correct.

18 Q -- right? And you found him cooperative, right?

19 A Correct.

15:27:25 20 Q Okay. So you also didn't observe any signs of an
21 active psychosis. And what I mean by, Doctor, is was he
22 responding to non-existent stimuli when you were talking to him
23 or in his presence?

24 A Not that I'm aware of.

15:27:44 25 Q So, and how long were you in his presence that first

15:27:48 1 day?

2 A I was there for six hours.

3 Q And then let's go to the language in your report.

4 And I found -- can you turn to page 2. About three quarters of
15:28:05 5 the way down, do you see Mr. Duane Owen, when asked about
6 motivation for his unlawful behavior, reported -- do you see
7 that part?

8 A Yes.

9 Q And then I see a quotation mark. That's what

15:28:18 10 Mr. Owen told you, right, what followed?

11 A Correct.

12 Q If I had sex with them, I would turn into a woman. I
13 don't think I killed the women. It was a vessel. I could
14 absorb the body. I had to have intercourse with them the
15:28:35 15 moment they expired. Is that what Mr. Owen told you?

16 A Correct.

17 Q At the moment the penis would ejaculate, it would
18 resemble a hose and vacuum her soul and estrogen into my body,
19 and I could become a woman, end quote; correct?

15:28:58 20 A Correct.

21 Q So expired means two murders, right? The Slattery
22 murder, the 14-year-old girl that he stabbed 18 times and the
23 Worden murder. And you're aware of how she died; correct?

24 A Correct.

15:29:12 25 Q Mr. Owen hit her in the head with a hammer?

15:29:15 1 A Correct.

2 Q So expired doesn't mean milk. He knows that he
3 murdered these two women?

4 A Well, their life ceased in this form.

15:29:29 5 Q Okay. So he knows that he killed them?

6 A He's aware of what he did, that's correct.

7 Q All right. So are you aware of the injuries to
8 Ms. Worden? Did you review court opinions, medical examiner
9 testimony?

15:29:49 10 A Briefly.

11 Q Did you confront him with any of those facts to
12 determine whether or not they fit within his alleged delusion?

13 A No.

14 Q No. So wouldn't you have wanted to inquire if
15 Ms. Worden had not only been violated with a penis but a sharp
16 or hard object like a hammer? Would you want to know if that
17 fit in within his delusional system?

18 A I think he mentioned the fact that he used a hammer.

19 Q But I thought he needed a hose to vacuum up her
15:30:23 20 female essence?

21 A Well, he needed to do both.

22 Q Oh, I didn't see that anywhere. That he could use a
23 hammer as well?

24 A Well, the person had to cease in their present state
15:30:35 25 in order for them, for him to extract the estrogen into his

15:30:41 1 body.

2 Q But he can use a hammer or the penis. It doesn't
3 matter?

4 A There are two aspects of what the act required, in
15:30:49 5 his delusional thinking.

6 Q So he also admitted to you -- can you go to the next
7 from the bottom paragraph. Mr. Owen believes that the two
8 victims are a part of him and have been living within him all
9 these years. He stated, I didn't kill them. This is a quote,
15:31:09 10 correct, Doctor?

11 A Correct.

12 Q It's not a criminal offense, end quote. That's what
13 he told you?

14 A Correct.

15:31:16 15 Q And then it goes on, He now believes that if he is
16 executed, and now I'm going to quote again, It will be a triple
17 execution of him and the two victims. Is that correct, Doctor?
18 That's what he told you?

19 A Correct.

15:31:33 20 Q Okay. So he is aware that if he is executed, he will
21 die?

22 A Correct.

23 Q Now, you mentioned that he's a schizophrenic. That's
24 your diagnosis?

15:31:58 25 A Correct.

15:31:59 1 Q And you also are aware of, that he has some -- what
2 you say are negative symptoms of schizophrenia, flat affect,
3 detached. Are those symptoms that you have observed in
4 Mr. Owen?

15:32:16 5 A Yes.

6 Q Okay. But the primary reason you diagnosed him as
7 schizophrenic is this delusional system, where he can become a
8 woman or he is a woman; is that correct, Doctor?

9 A Well, both are necessary.

15:32:33 10 Q But without the delusion, he's not schizophrenic?

11 A That's correct.

12 Q Okay. Now, you mention that you've viewed DOC
13 records, medication history?

14 A Correct.

15:32:49 15 Q Were those available to you?

16 A Yes.

17 Q Has he ever been given an antipsychotic all these
18 years in DOC?

19 A He was given some medication early on. I don't
15:33:08 20 recall. I'm not sure.

21 Q So within the close-knit community of DOC, they've
22 not felt the need to medicate Mr. Owen for schizophrenia?

23 A Well, they didn't perhaps see the need, and he did
24 not request it because in his mind what he has is not a mental
15:33:34 25 illness.

15:33:35 1 Q But certainly he's not acting out in prison?

2 A That's correct.

3 Q And some schizophrenics certainly do, or most of them
4 do?

15:33:42 5 A A lot of them, correct.

6 Q Right. So the facts of these offenses -- how did you
7 learn about the facts of these offenses?

8 A Well, he shared them. I was made aware of them.

9 Q How were you made aware of them?

15:34:02 10 A Well, his defense team shared with what the issues --
11 some of the issues were. But, again, I explored with him, in
12 his own terminology and his own thinking, what really the
13 issues were.

14 Q Have you thought that perhaps the criminal defendant
15 might not be the best historical source of facts about murder?

16 A One's self perception is usually accurate. Certainly
17 how they perceive the world, how they perceive what happened to
18 them, what they're doing, I never discount that. That's
19 certainly given primary, and it goes along with certainly his
15:34:50 20 general presentation; so I give that certainly primary
21 emphasis.

22 Q Well, Doctor, wouldn't you want to know if it's
23 consistent with his alleged delusional system, the objective
24 facts?

15:35:05 25 A Well, delusional system is not reality-based; so it's

15:35:10 1 something that you can't, you can't do a reality check on this,
2 especially if it's kept private and especially something that
3 he doesn't want to display and doesn't want to demonstrate to
4 others.

15:35:25 5 Q But it's your testimony here that he thinks the
6 victims live on in him, and what he did really wasn't an
7 offense, right? That's what he's telling you?

8 A That's correct.

9 Q Wouldn't you want to know if, at the time of the
15:35:36 10 crimes, that he took steps to evade capture and detection,
11 like, putting gloves on his hands, socks on his hands?

12 A Well, that's not inconsistent with what his thinking
13 is.

14 Q Well, okay. That's your opinion?

15:35:54 15 A That's right.

16 Q I'm going to confront you with a few more facts.

17 A Sure.

18 Q Do you know that he also took his clothes off so they
19 wouldn't get stained with blood? Are you aware of that?

15:36:05 20 A No.

21 Q And took, are you aware he took a shower after
22 murdering Ms. Worden to take, to get the blood off of him?

23 A Right. Okay.

24 Q Okay. And on the Slattery murder, the murder of the
15:36:19 25 14-year-old girl, are you aware that he even concocted an alibi

15:36:24 1 after the fact, by turning the clock back and waking his
2 roommate up?

3 A Okay.

4 Q Right. Okay. So how does that fit within his
15:36:35 5 delusional system that he wanted to be a woman and he didn't
6 really understand that he truly murdered these two victims?

7 A The fact that he engaged in depth in those behaviors
8 is still not inconsistent with his thought process of what he's
9 been trying to do his whole life. So the two of them are not
15:36:59 10 incompatible.

11 Q And so, Doctor, and you also mentioned consistency.
12 That you believe his story's been consistent, right?

13 A Correct.

14 Q When did that consistency start? Did it start at the
15:37:15 15 time of the murders? 10 years after the murders?

16 A No. This is something that has been going on his
17 whole life.

18 Q Okay. So when he, did you have an opportunity to
19 view over 20 hours of his police interrogation in 1984?

15:37:30 20 A No.

21 Q No. So here is a transcript. Wouldn't that have
22 been helpful -- 20 hours with the police -- to see what he was
23 thinking then? Was that provided to you?

24 A It was provided, but, again, there's a limited amount
15:37:44 25 of time that I had in this case.

15:37:49 1 Q So let's assume that he didn't mention this pervasive
2 delusional belief system in over 20 hours of interaction with
3 the police. That's an inconsistency, right?

4 A No.

15:38:07 5 Q No?

6 A No.

7 Q It's not?

8 A No, it's not.

9 Q So if he had all this interaction with these police
15:38:15 10 for 20 hours and admitted things like raping and murdering two
11 women, raping another victim and leaving her for dead, also he
12 admitted cross-dressing and being a Peeping Tom, you're saying
13 that all those things that he admitted, but he wouldn't mention
14 this one delusion, the only reason that you think he's
15:38:39 15 schizophrenic, this fixed delusion?

16 A No. No, it's not inconsistent.

17 Q Have you viewed the first -- any of the first doctor
18 reports? The first doctors who examined Mr. Duane Owen after
19 his arrest in 1984?

15:39:02 20 A Yes.

21 Q Did they include --

22 MR. BROWNE: Your Honor, may I have one moment,
23 please?

24 THE COURT: You may.

15:39:15 25 (Pause in the proceedings.)

15:39:21 1 BY MR. BROWNE:

2 Q -- a psychiatrist by the name of Dr. Blackman from
3 November 14 of 1984?

4 A Correct.

15:39:34 5 Q That is one report that you have seen?

6 A Correct.

7 MR. BROWNE: Your Honor, may I have this marked as
8 the next State exhibit for identification.

9 THE COURT: Just as identification?

15:39:46 10 MR. BROWNE: Yes, your Honor.

11 THE COURT: Sure, yeah.

12 MR. BROWNE: Your Honor, may I approach the witness?

13 THE COURT: You may.

14 MR. BROWNE: Does that -- I'm handing the witness
15 what has been marked as State's Exhibit 1 for
16 identification.

17 BY MR. BROWNE:

18 Q Is that the report from Lionel Blackman, dated
19 November 14, 1984?

15:40:30 20 A Correct.

21 Q Okay. So in that report -- and that's a medical
22 doctor, correct?

23 A Correct.

24 Q And this is shortly after the offenses, Doctor?

15:40:41 25 A Correct.

15:40:42 1 Q All right. So can you go to the second paragraph.
2 Defendant reveals, I have several problems. I do things I
3 don't mean to do -- rape. I don't know why I want to do that.
4 Maybe I just want to get away with things. Like, after
15:40:58 5 breaking and entering, I feel I've accomplished something, if I
6 allude the police. I like danger, overcoming adversity. Did
7 he say that?

8 A That's, yeah, that's what Dr. Blackman quoted.

9 Q Can you, he didn't mention anything about this
15:41:21 10 delusion, did he, to this doctor?

11 A Correct.

12 Q Can you go to part C, Sanity at the time of the
13 alleged crime, page four. Now, Dr. Blackman said the Defendant
14 was able to detail seven rapes resulting in five attempted
15:41:42 15 murders and two murders, several burglaries, and several
16 misdemeanors. Is that what he revealed to Dr. Blackman?

17 A What page are you on?

18 Q I believe it's page four, under part C, Sanity at the
19 time of the alleged crimes.

15:41:59 20 A Oh, okay. Fine. There was another part C on the
21 previous page. Okay.

22 Q So he's able to reveal quite a few crimes, right,
23 Doctor?

24 A Correct.

15:42:11 25 Q Right. And, again, but this -- what you consider to

15:42:13 1 be a pervasive delusion system wasn't revealed?

2 A Correct.

3 Q He also found, did he not, that the Defendant is
4 antisocial?

15:42:28 5 A Correct.

6 Q Did he also say in there at the end of that first
7 paragraph --

8 A Which paragraph are you looking?

9 Q Same page, under part C, its dangerousness.

15:42:48 10 A Correct.

11 Q He generally admits to other crimes and murders that
12 have not been revealed to the police and states that he would
13 hold this information in reserve to delay his execution. Is
14 that what he told Dr. Blackman?

15:43:11 15 A That's what Dr. Blackman wrote.

16 Q Right.

17 MR. BROWNE: May I retrieve the exhibit? State's
18 Exhibit 1.

19 THE COURT: You may.

15:43:23 20 BY MR. BROWNE:

21 Q So for a schizophrenic, Doctor, he's able to
22 selectively reveal his one delusion or delusional system. He
23 chooses when and where to employ it?

24 A Well, I wouldn't put it that way.

15:43:41 25 Q Well, did the Florida Supreme Court, have you had a

15:43:45 1 chance to look at those Florida Supreme Court opinions --

2 A No.

3 Q -- for historical background?

4 A No, I did not.

15:43:52 5 Q So you're not aware that the Florida Supreme Court
6 expressed doubt of his newfound delusional belief system?

7 Just so we know the history of this case, you're
8 aware that Mr. Owen had two trials before the Slattery retrial,
9 correct?

15:44:08 10 A Correct.

11 Q Okay. So the Slattery retrial was the one where this
12 alleged delusion and Dr. Sultan, they testified, right? So
13 this is a decade after the crimes; correct?

14 A Correct.

15:44:23 15 Q So that's the first time this alleged delusion makes
16 an appearance?

17 A Correct.

18 Q And you're not aware that the Florida Supreme Court
19 addressed that in its opinion?

15:44:35 20 A I didn't read it.

21 Q You didn't read it?

22 A No.

23 MR. BROWNE: I don't know if your Honor would like me
24 to mark this as an exhibit. It's just the opinion. I'm
15:44:53 25 going to use it on my cross-examination. Whatever the

15:44:56 1 Court prefers.

2 THE COURT: I don't have a preference.

3 MR. BROWNE: Your Honor, may I approach?

4 THE COURT: You may.

15:45:03 5 MR. BROWNE: Thank you.

6 BY MR. BROWNE:

7 Q Doctor, I'm handing you Owen v. State,

8 862 So. 2d 687, 2003.

9 Does that appear to be a court opinion in this case

15:45:19 10 that you were not provided?

11 A Correct.

12 Q Can you turn to page eight of that opinion, the last
13 paragraph on page eight.

14 MR. BROWNE: Your Honor, I have a courtesy copy for
15:45:52 15 you, if you would like.

16 THE COURT: I have a copy.

17 BY MR. BROWNE:

18 Q You see that paragraph that says, Finally appellant
19 unquestionably had no pretense of moral or legal justification.

15:46:04 20 Do you see that paragraph, Doctor?

21 A Yes.

22 Q Do you want to read that paragraph and let me know
23 when you're done.

24 (Pause in the proceedings.)

15:46:12 25 THE WITNESS: Okay.

15:46:12 1 BY MR. BROWNE:

2 Q So the Florida Supreme Court is quite skeptical of
3 this essence theory, correct, Doctor?

4 A Correct.

15:47:20 5 Q Correct. In fact, they note that he had two prior
6 trials, and in the direct appeals, this essence story didn't
7 make an appearance, correct?

8 A Correct.

9 Q And they also noted in all of the interaction with
15:47:33 10 the police, again, 20 hours, I have it here, the written
11 transcript, he didn't mention the essence theory --

12 A Correct.

13 Q -- did he? So they doubted his story, too?

14 A Correct. But if I may add --

15:47:49 15 Q Well --

16 A If I, could I --

17 Q If I want you to add, these good people over here
18 will have a chance to --

19 A Okay.

15:47:55 20 Q -- redirect.

21 A Okay. No problem.

22 Q Have you viewed his pro se pleadings in this case?

23 A No.

24 Q And wouldn't that shed light if, within just a couple
15:48:09 25 of years ago, he was filing coherent, logical, legal pleadings?

15:48:16 1 I mean, right? What's --

2 A Yeah. I'm not sure that, you know, what occurred in
3 the past could occur in the present.

4 MR. BROWNE: Your Honor, may I have this marked as
15:48:28 5 the next State exhibit, please.

6 THE COURT: You may.

7 MR. BROWNE: 2.

8 MS. FUSARO: Your Honor, objection. The State argues
9 that it should be at the time right now; so I would argue
10 it's not relevant whatever he has written in the past,
11 especially since we don't know whether he was suffering
12 from dementia at that point.

13 THE COURT: The objection is overruled.

14 MR. BROWNE: I'm providing opposing counsel a copy.
15:49:01 15 Your Honor, may I approach the witness?

16 THE COURT: You may.

17 MR. BROWNE: I'm now handing Dr. Eisenstein what has
18 been marked as State Exhibit 2 for identification.

19 BY MR. BROWNE:

15:49:11 20 Q Doctor, does that identify as Duane E. Owen versus
21 State of Florida, Respondent? And at the top of that, does it
22 say capital case?

23 A Yes.

24 Q So Mr. Owen, in a pro se pleading, has identified his
15:49:35 25 case as a capital case, correct?

15:49:37 1 A Correct.

2 Q And is that dated, can you turn to the last page?
3 The certificate of service. Does that say March 23, 2021,
4 Doctor?

15:49:52 5 A Yes.

6 Q And that's, what, a little over two years ago?

7 A Correct.

8 Q Okay. And you haven't reviewed this, though?

9 A No.

15:50:04 10 Q Can you turn to page nine of that document, Doctor.

11 You see the second paragraph that says, The relevant question
12 presented in this case is whether the Florida Supreme Court

13 decision, declining to apply an established rule of law

14 regarding a new penalty phase proceeding retroactively to

15:50:31 15 petitioner, even though it had done so in similarly situated

16 cases, becomes arbitrary and offends the equal protection

17 clause. Is that what that pro se pleading from Mr. Owen says?

18 A Correct.

19 Q All right. So he's complaining that he didn't get a

15:50:48 20 new penalty phase, right, Doctor?

21 A Correct.

22 Q So what this pleading shows you is a logical and
23 coherent thought, at least inasmuch as it's a pleading filed in

24 the Supreme Court of the United States and it is logical and

15:51:04 25 coherent, correct?

15:51:06 1 A Correct.

2 Q Right. It also shows that he's very protective of
3 his own life, does it not?

4 A Correct.

15:51:14 5 Q Yeah. Because Mr. Owen is seeking a new penalty
6 phase?

7 A Correct.

8 Q He feels it's unfair. Do you want to take a moment
9 and look through that entire document?

15:51:22 10 Would you doubt that there -- well, let's assume for
11 a moment that nowhere in there does he say it's unfair to be
12 persecuted because I was just taking their essence, and I
13 didn't really kill the victims?

14 A If you say so.

15:51:39 15 Q Okay. Well, if you --

16 A I mean, you know, it's --

17 Q I've read it. You can read it.

18 A This will take some time.

19 Q And are you aware that Mr. Owen has a history of
15:51:50 20 filing pro say pleadings in his case in his defense?

21 A Correct.

22 Q Now, you mentioned, Doctor, that Mr. Owen is not
23 violent?

24 A Correct.

15:52:09 25 Q You are aware, though, that he's committed violent

15:52:12 1 rapes, not just the current murders, right?

2 A Correct.

3 Q And they were horribly violent?

4 A Correct.

15:52:18 5 Q So six rapes and an attempted murder of another young
6 girl, victim MM?

7 A Correct.

8 Q Is rape a violent offense?

9 A Yes.

15:52:39 10 MR. BROWNE: Your Honor, may I have one moment?

11 THE COURT: You may.

12 (Pause in the proceedings.)

13 MR. BROWNE: Thank you, Doctor. I pass the witness,
14 your Honor.

15:53:16 15 THE COURT: Thank you, Counsel. Any redirect?

16 MS. FUSARO: Yes, your Honor.

17 REDIRECT EXAMINATION

18 BY MS. FUSARO:

19 Q Just because you have not testified for the State,
15:53:36 20 would you be willing to testify for the State if they had asked
21 you to?

22 A Yes.

23 Q If someone is malingering, in your experience, would
24 their delusion always be consistent every time that they
15:53:49 25 discuss the delusion or would there be deviation?

15:53:54 1 A No. There would be deviations.

2 Q Have you found any deviation in terms of his
3 delusions?

4 A No.

15:54:01 5 Q Is there a difference between the belief that the
6 shell of the body is expiring, in his mind, is there a
7 difference between that, and the victim's estrogen and soul
8 living on within him?

9 A No. It's all one.

15:54:18 10 Q Can you elaborate on that?

11 A His belief is that in order for him to extricate
12 their essence, they have to be, the body has to expire and then
13 he would be able to absorb their essence. This was his belief.
14 That is his belief. It remains his belief. So the whole
15 process was in order to, that he would become a woman through
16 extracting their essence, their estrogen.

17 Obviously, this is not reality. It's very psychotic,
18 and yet he's very fixed in that belief. That's what makes it a
19 fixed delusional. It's unchanged. It doesn't, you can't --
15:55:21 20 it's not something that is rationally argued or discussed.
21 It's a very firm belief.

22 Q Does he believe that in order to gain more of the
23 essence, that the victim has to be either unconscious or close
24 to expiring?

15:55:40 25 A Correct.

15:55:41 1 Q I know there was some talk about a hammer being used.
2 In your opinion, would it be possible for him to put the victim
3 in that state of either unconsciousness or close to expiring
4 solely with his penis?

15:55:54 5 A No.

6 Q So a hammer or another object would be required to
7 get the person to that point?

8 A Correct.

9 Q And you mentioned that he was aware of the
10 expiration, but is he aware that the victim is actually dead?

11 A No. In his thinking, the victims are still alive
12 within him.

13 Q So the victim's body, soul, estrogen, essence,
14 however you want to put it, that's all currently living right
15 now inside Mr. Owen?

16 A That's what he believes.

17 Q Now, that belief, is that rational for him to believe
18 that, if these women live inside of him, if he's to be
19 executed, that all three of them are going to be executed?

15:56:43 20 A Right. So that's his belief. It's obviously
21 irrational, and yet that's his fixed delusional belief.

22 Q So if he believes that three people are going to be
23 executed if he's executed, in your opinion, is that a rational
24 understanding of the nature of the penalty?

15:56:59 25 A No.

15:57:05 1 Q Now, if DOC doesn't have any reason to believe that
2 he's schizophrenic because he's not comfortable sharing his
3 delusions, would they have any reason to seek treatment for him
4 or medicate him?

15:57:19 5 A No. They don't provide treatment, in general. It's
6 sort of a hands-off policy. They're really not looking to
7 provide extensive treatment. They're just kind of doing sort
8 of a triage. And his position has been all along that he's not
9 mentally ill, there's nothing wrong with him; and, therefore,
15:57:43 10 he certainly, you know, he would not seek treatment and they
11 certainly would not provide treatment.

12 Q The minute details of what he supposedly did after
13 the crime, such as showering or things of that nature, does any
14 of that change the fact that he had delusions about extracting
15:58:02 15 the essence and the souls from the victim itself?

16 A No, it doesn't change it.

17 Q There was a lot of talk about the time constraints
18 here due to the fact that we have an impending execution date.
19 Were you only unable to review the transcripts and videos of
15:58:17 20 the interrogation solely due to the time frame of the impending
21 execution date?

22 A That's correct.

23 Q If a stay would have been granted or if we had more
24 time in the normal scheme of things, would you have had time to
15:58:27 25 review all of the interrogation materials, which would have

15:58:30 1 actually included a hundred hours of video, not just the 20
2 transcribed hours?

3 A Right. Actually, I did request them from your
4 office, but, again, with time constraints, spending 20 hours or
15:58:41 5 even a hundred hours -- that's way beyond what, you know, the
6 time that I could have done any of that review.

7 Q There was some talk about Dr. Blackman. Is it
8 possible that he didn't express his delusions to Dr. Blackman
9 because he didn't have enough rapport --

15:58:59 10 MR. BROWNE: Objection, your Honor. Speculation.

11 THE COURT: Sustained.

12 BY MS. FUSARO:

13 Q In your experience, if someone doesn't have enough
14 rapport with someone, is it possible they're not going to
15:59:10 15 express their delusions with them?

16 A That's correct.

17 Q And also in your experience, could Mr. Owen have been
18 detailing the supposed crimes to Dr. Blackman in order to
19 appear more macho or masculine to hide --

15:59:26 20 MR. BROWNE: Objection again. Speculation, your
21 Honor.

22 THE COURT: Sustained.

23 BY MS. FUSARO:

24 Q Based on your evaluation and your interview with
15:59:31 25 Mr. Owen, would it surprise you if he was trying to appear more

15:59:35 1 macho or masculine when he was talking to other people and
2 trying to hide his gender delusions?

3 A No, he definitely, he shared that with me as well.
4 That he tried bodybuilding because bodybuilding would be more
15:59:49 5 macho and would look more masculine and perhaps, he realized at
6 some point that actually women also do bodybuilding; so,
7 therefore, he could do that. Both be masculine to look like a
8 male and yet be feminine who do bodybuilding as well. But,
9 again, the whole persona, the whole, his whole presentation was
16:00:10 10 in order not to certainly arouse any suspicion and to look like
11 he's a male and to try to just carry on a very private life
12 behind, you know, behind what this mask was all about.

13 Q Has he been continuing to do this same thing,
14 masking, to this very day?

16:00:33 15 A Correct.

16 Q Has Mr. Owen confessed any more crimes to you that he
17 was supposedly holding out until his execution for?

18 A No.

19 Q Has anything of that nature come up in your
16:00:45 20 interviews?

21 A No. Nothing.

22 Q If you had more time, if a stay of execution was
23 granted, or if we were in a normal course of evaluation, would
24 you have read all of his court opinions?

16:01:00 25 A That's correct.

16:01:04 1 Q And as the State pointed out earlier, the pertinent
2 time to assess his competency is right now; so anything that
3 may have been in that opinion, could it just solely corroborate
4 what's going on now?

16:01:16 5 A Correct.

6 Q Also the petition, I'm not sure which exhibit that
7 was, but the petition that Mr. Owen supposedly wrote, do you
8 know for a fact that Mr. Owen wrote that petition?

9 A I do not.

16:01:33 10 Q In your experience, do people in prison sometimes
11 copy over pleadings that other people have written into their
12 own handwriting?

13 A Absolutely.

14 Q And did you evaluate Mr. Owen in 2021, around the
16:01:44 15 time that this was filed?

16 A No, I did not.

17 Q Since you hadn't evaluated him in that time and don't
18 have a baseline, is it possible that the dementia has caused
19 him to decline at this point, where he's unable to write such a
16:01:57 20 thing now?

21 A That's correct.

22 MS. FUSARO: May I have just a moment, your Honor?

23 THE COURT: You may.

24 (Pause in the proceedings.)
25

16:02:35 1 BY MS. FUSARO:

2 Q Is it possible for someone to understand what death
3 is but think that it's going to be different based on their
4 delusions?

16:02:48 5 A Yes.

6 Q Is it possible that people with mental health
7 issues -- excuse me. In your experience, people with mental
8 health issues, do they sometimes confess to crimes that they
9 have not committed?

16:03:03 10 A Yes.

11 Q And have you seen prior defendants that have had
12 mental health issues file pro se pleadings?

13 A Yes.

14 Q And even if they are smart enough to file those
16:03:15 15 pleadings, does that mean that they don't have delusions?

16 A No.

17 Q And does any of that, whether they're filing
18 something or whether they have someone else copy it over, does
19 that have anything to do with whether he rationally understands
16:03:30 20 the nature and effect of the death penalty right now at this
21 current time?

22 A No. It's two separate issues.

23 MS. FUSARO: Thank you, your Honor. I pass the
24 witness.

16:03:39 25 THE COURT: All right.

16:03:41 1 MR. BROWNE: One matter came up, your Honor, if I may
2 inquire briefly?

3 THE COURT: Very briefly.

4 RECROSS-EXAMINATION

16:03:49 5 BY MR. BROWNE:

6 Q I thought on cross-examination, Doctor, you
7 acknowledged that Duane Owen can and does write pro se
8 pleadings; is that correct?

9 A I'm not aware; so I don't know. I mean, this is what
16:04:08 10 you presented, but, I'm not a hundred percent sure.

11 MR. BROWNE: Your Honor, may I have this marked for
12 identification?

13 THE COURT: You may.

14 MR. BROWNE: It's State's Exhibit 3 for
16:04:23 15 identification. And I'll hand a courtesy copy to defense
16 counsel. May I approach the witness?

17 THE COURT: You may.

18 BY MR. BROWNE:

19 Q Doctor, I have what is marked Defense Exhibit 3,
16:04:49 20 evidentiary hearing testimony from 1997 in the case of
21 Duane Owen versus Florida.

22 Can you turn to page 687 of that document to the top
23 of the page where it says, the defendant.

24 A Okay.

16:05:32 25 Q And that's in the case of Duane Owen v. State of

16:05:35 1 Florida.

2 That first paragraph, I guess that the issue sort of
3 bifurcated with the additional motion that I filed, and that
4 being a motion for permission to file a supplemental pro se
16:05:49 5 motion for a post-conviction relief. Do you see that, Doctor?

6 A Yes.

7 Q And that's Duane Owen in open court?

8 A Correct.

9 Q Correct. I supplied the Court with a copy of that
16:05:59 10 motion, in addition to the supplement, and specifically, again,
11 I would submit that CCRC has failed to raise certain facts
12 which would support those already-raised claims, or that they
13 have outright failed to raise claims of ineffective assistance
14 of counsel.

16:06:16 15 Is that what the Defendant said in open court in
16 1997?

17 A Correct.

18 Q So the Defendant himself is acknowledging that he is
19 filing supplemental pro se motions, correct, Doctor?

16:06:29 20 A Correct.

21 Q Turn to page 698 of that document. Actually 697 at
22 the bottom of the page. You see, the defendant, the first full
23 sentence of, the defendant? As a matter of fact, I believe, it
24 has more substantial claims --

16:07:06 25 A I'm sorry. Where are you?

16:07:08 1 Q The bottom of page 697.

2 A 697, the bottom.

3 Q Yes. Where it says, the defendant. Are you there,
4 Doctor?

16:07:19 5 A Line 19?

6 Q Correct.

7 A Okay.

8 Q The first full sentence, As a matter of fact, I
9 believe, it has more substantial claims, and it does --

16:07:27 10 A I'm sorry, you're skipping to line 20?

11 Q Yes. The first full sentence after that. I'm sorry,
12 Doctor. I apologize for that. You're right. Line 20. Do you
13 see that?

14 A As a matter of fact?

16:07:43 15 Q That's where we are.

16 A Okay.

17 Q I believe it has more substantial claims, and it
18 does, in fact, state a claim that the third amended motion for
19 post-conviction relief does not, and that is where we part
16:07:57 20 company because you know I have no -- I believe that's
21 animosity toward these attorneys. They probably are great
22 attorneys. Is that what that says --

23 A Correct.

24 Q -- Doctor? So he's criticizing the performance of
16:08:12 25 his attorneys; right?

16:08:14 1 A Correct.

2 Q Correct. Line two, I'm just concerned that, you
3 know, it is my life on the line here. And if, in fact, this
4 stuff is not raised at this time or considered at the
16:08:31 5 evidentiary hearing, that they could very well be a great loss
6 for me. Is that what Mr. Owen said?

7 A Correct.

8 Q But he knows his life is on the line back in 1997 and
9 he's filing pro se pleadings to raise claims in court, correct,
16:08:48 10 Doctor?

11 A Correct.

12 Q So that surreptition that was raised here was most
13 probably written by Mr. Owen, who signed it?

14 A It's very possible.

16:09:04 15 MR. BROWNE: Your Honor, may I retrieve the exhibit?

16 THE COURT: You may.

17 MR. BROWNE: And, your Honor, State Exhibit 3 for
18 identification is part of the record in this case. I
19 would ask that it be admitted into evidence.

16:09:16 20 THE COURT: All right. Any objection?

21 MS. FUSARO: No. It's part of the record. I have no
22 objection.

23 THE COURT: All right. It will be received as first
24 exhibit in evidence.

16:09:24 25 (State's Exhibit 1 admitted into evidence.)

16:09:24 1 THE COURT: Anything else for the Doctor?
2 MR. BROWNE: Nothing further, your Honor. Thank you.
3 THE COURT: Thank you, Doctor. You may step down.
4 MS. FUSARO: Oh, just briefly, your Honor, if you
16:09:32 5 don't mind. Can I do a brief --
6 THE COURT: More on this same issue about whether or
7 not he wrote something or didn't write it?
8 MS. FUSARO: Yes, exactly. Just on that.
9 THE COURT: Sure. Let's --
16:09:42 10 MS. FUSARO: Thank you, your Honor.

11 FURTHER EXAMINATION

12 BY MS. FUSARO:

13 Q Doctor, 1997 is over 25 years ago. Is it possible
14 that back in 1997, he could have even been a genius? He could
16:09:57 15 have been very smart back then but over the course of time,
16 between dementia and everything else deteriorating, that he
17 would be unable to do that today?

18 A That's correct.

19 Q In your opinion, do mentally ill defendants express
16:10:10 20 concerns with their attorney?

21 A Yes.

22 Q And whether he wrote any of these things in 1997,
23 anywhere between 1997 and 2021, or wrote anything that was
24 before the time of his warrant was signed on May 9, would any
16:10:26 25 of that have to do with whether he is competent to be executed

16:10:31 1 right now?

2 A No.

3 MS. FUSARO: Thank you.

4 THE COURT: Thank you, Doctor. You may step down and
16:10:35 5 remain in the courtroom.

6 THE WITNESS: Okay. Thank you.

7 THE COURT: All right. All right. Counsel?

8 MS. FUSARO: We have another witness who can be
9 available on Zoom right now, if you -- I don't know how
16:10:51 10 late you're planning on going. Hopefully, we can
11 accomplish her this evening.

12 THE COURT: It's up and going. Do they have the Zoom
13 contact information?

14 MS. FUSARO: She's logging in right now.

16:11:05 15 THE COURT: Sure. Just announce for the record, who
16 is the witness?

17 MS. FUSARO: Carey Haughwout.

18 THE COURT: All right. Good afternoon, ma'am. Can
19 you hear me okay?

16:11:54 20 THE WITNESS: Yes, I can.

21 THE COURT: All right. If you'll raise your right
22 hand for me, please.

23 (Witness sworn.)

24 THE WITNESS: I do.

16:12:01 25 THE COURT: Thank you, ma'am.

16:12:03 1 CAREY HAUGHWOUT,
2 called as a witness herein, having been first sworn, was
3 examined and testified as follows:

4 DIRECT EXAMINATION

16:12:03 5 BY MS. FUSARO:

6 Q Good afternoon, Ms. Haughwout. Can you hear me okay?

7 A I can, yes.

8 Q Could you state and spell your name for the record.

9 A Carey Haughwout. The first name is C-A-R-E-Y. The
16:12:16 10 last name is H-A-U-G-H-W-O-U-T.

11 Q Thank you. What is your profession?

12 A I'm a lawyer.

13 Q Where are you currently employed?

14 A I'm the public defender for Palm Beach County.

16:12:33 15 Q How long have you held that position?

16 A I have been the elected public defender since 2001,
17 January.

18 Q What does your current position as elected public
19 defender entail?

16:12:46 20 A Let's see, a lot of things. I manage a 200-person
21 office, about a 18 million-dollar budget. I handle cases, try
22 murder cases, do a little of everything.

23 Q And what was your employment prior to becoming the
24 public defender?

16:13:09 25 A Before I was elected, I was in private practice as a

16:13:12 1 criminal defense lawyer for a decade.

2 Before that, I was an assistant public defender in
3 the capital division here, and before that, I was an assistant
4 public defender in Tallahassee.

16:13:24 5 Q And if we go back before that, where did you receive
6 your law degree from?

7 A At FSU.

8 Q And what year did you become licensed to practice law
9 in the state of Florida?

16:13:35 10 A 1983.

11 Q At this point in your career, how many death penalty
12 cases have you worked on?

13 A Oh, I would say well over, I'd say well over 50.
14 I've tried probably about 25 to 30.

16:13:53 15 Q Okay. And we'll take it back a ways again. In the
16 1990s did you represent an individual by the name of Duane
17 Owen?

18 A I did.

19 Q How did you first become assigned to Mr. Owen's case?

16:14:07 20 A So this is when I was in private practice, but I was
21 appointed as conflict counsel. The public defender's office
22 here apparently had a conflict, and I was appointed to
23 represent him. Initially, I believe I was appointed as second
24 chair and then ultimately became first chair.

16:14:29 25 Q What year did that representation begin?

16:14:32 1 MR. BROWNE: Objection, your Honor. Relevance.
2 She's part of the record in this case. We have the trial
3 transcripts.
4 MS. FUSARO: Your Honor, we'd like to detail some
16:14:42 5 things that she knew about Mr. Owen back in the '90s and
6 then she's continued communication up until very recently;
7 so to show a progression there.
8 MR. BROWNE: I think if she's just saying, I want
9 some self serving hearsay to come in, if that's what this
16:15:00 10 witness is proposing to do, I will have an objection to
11 that as well.
12 THE COURT: All right. I'm going to overrule the
13 objection at this time. You can continue.
14 MS. FUSARO: And, your Honor, do you mind if I just
16:15:11 15 go into some more background about what she did in the
16 case, just to kind of put it into light for you?
17 THE COURT: If you feel I need more light.
18 MS. FUSARO: We'll see how it goes.
19 THE COURT: Sure.
16:15:23 20 MS. FUSARO: Thanks.
21 BY MS. FUSARO:
22 Q All right. What year did you begin representing
23 Mr. Owen?
24 A Well, I'm glad it's in the record because I'm not
16:15:30 25 sure I'm accurate, but I think it was around 1992.

16:15:35 1 Q And how long did your representation of Mr. Owen
2 last?

3 A Until, you know, he was sentenced and appeal was
4 perfected. So he was sentenced in March of 1999. Obviously,
16:15:50 5 we did, I did the necessary things to perfect the appeal. I
6 did not handle the appeal, but that was when my representation
7 concluded.

8 Q And just to clarify briefly, which case of Mr. Owen's
9 was this that you were representing him in?

16:16:05 10 A It was Case No. 84-CF-4014. The decedent was
11 Karen Slattery.

12 Q And did you and the team hire any expert witnesses to
13 assist in preparing a defense for Mr. Owen?

14 A Yes.

16:16:25 15 MR. BROWNE: Objection again --

16 THE WITNESS: From what I remember --

17 MR. BROWNE: -- your Honor. This is a matter of
18 record from 20, more than 20 years ago.

19 MS. FUSARO: I think it kind of establishes a
16:16:36 20 foundation for the other questions that were, that I would
21 like to ask.

22 THE COURT: So I'll let you lay some general brief
23 background. I just don't want to get off on replicating
24 what's already part of the record.

16:16:52 25 MS. FUSARO: Understandable.

16:16:54 1 THE COURT: All right. Go ahead.

2 BY MS. FUSARO:

3 Q In making the decision whether to hire expert
4 witnesses in this case, what did you consider?

16:17:04 5 A Well, I considered what I sort of learned from
6 representing Duane seemed to be some of the issues at the heart
7 of the case; so I hired psychiatrist, Dr. Fred Berlin, who was
8 the founder of Johns Hopkins sexual disorders clinic, kind of a
9 nationally renowned expert, and Faye Sultan, who at the time
16:17:35 10 was a psychologist, I believe.

11 Q And for what reason did you end up making the
12 decision to hire those specific experts?

13 A Because of learning, obviously, the offense itself,
14 some of the other offenses, learning more about Duane's
16:17:55 15 background and seeing all of the, you know, his history of
16 being a victim of sexual violence as well as the things he
17 spoke with me about eventually.

18 MR. BROWNE: Objection, your Honor. This is not a
19 post conviction hearing on her effectiveness or
16:18:12 20 ineffectiveness. We're here on a very narrow issue --

21 THE COURT: Yeah.

22 MR. BROWNE: -- sanity to be executed.

23 THE COURT: That objection is sustained.

24 BY MS. FUSARO:

16:18:22 25 Q In terms of what you said he told to you about the

16:18:27 1 things that you thought were related to the case, what were
2 those types of things that he told to you where you expressed
3 these concerns?

4 A What was his belief that he was meant to be a woman.

16:18:43 5 MR. BROWNE: Objection. Hearsay and self-serving
6 hearsay. It's not an admission. She was his defense
7 attorney.

8 THE COURT: Well, here's where you all are losing me.
9 All right? So we've already talked, right, it's part of
16:18:58 10 the record, and you've already discussed the experts that
11 she's just mentioned. You just asked her to repeat who
12 she hired, but you've already told me about those experts,
13 right, and what they concluded and opined for your client.

14 So what does it matter to me that she is the one that
16:19:15 15 hired them or why she chose to hire them? I mean, who
16 cares, I mean, at that point, if you have those experts'
17 opinions before the Court?

18 MS. FUSARO: Well, we aren't able to have the experts
19 here to ask them more questions because they're
16:19:33 20 unavailable; so at least we can show that these delusions
21 have been fixed since that point. She's known him for
22 this whole period of time and nothing has changed, is what
23 I would like to get on the record.

24 THE COURT: So I don't mind giving you some leeway,
16:19:47 25 right --

16:19:47 1 MS. FUSARO: Yeah.

2 THE COURT: -- because you do have the burden, and it
3 is a different type of hearing, and I'm willing to give
4 you some latitude if you get to that point of those
16:19:57 5 things, but we're off on questions about why she hired --

6 MS. FUSARO: I was just trying to create some
7 foundation before I asked her about the delusions, and
8 I --

9 THE COURT: Yeah. I think you --

16:20:05 10 MS. FUSARO: If you don't mind me going right into
11 it, that's fine.

12 THE COURT: I don't mind you going right into it
13 because I think you've already presented that foundation
14 to me really as part of what's been filed in the record.

16:20:15 15 MS. FUSARO: Thank you.

16 BY MS. FUSARO:

17 Q Can you please tell us about his delusions?

18 A That he believed he --

19 THE COURT: I'm going to allow it. Objection is
16:20:24 20 overruled.

21 THE WITNESS: That he believed he was intended to be
22 a woman and that to become physically what he believed he
23 was, he needed to absorb the fluids of his female victims.

24 BY MS. FUSARO:

16:20:44 25 Q And throughout the whole time that you represented

16:20:46 1 him, did that delusion ever change?

2 A Not once it was disclosed. I mean, you know, it
3 took, obviously, some time in our relationship before he
4 disclosed, but then it never changed.

16:21:06 5 MS. FUSARO: And just briefly, your Honor, just to
6 point you in the right direction, just one question.

7 BY MS. FUSARO:

8 Q Did the judge use some of that information regarding
9 this delusion in his sentencing order in the Slattery retrial?

16:21:20 10 A Yes. I don't think the judge really questioned the,
11 you know, that it was --

12 MR. BROWNE: Objection, your Honor.

13 MS. FUSARO: -- legitimate.

14 MR. BROWNE: Speculation and opinion testimony from a
16:21:32 15 non-expert.

16 THE COURT: Overruled. I'll allow the question in
17 the sense that maybe you're trying to direct me to where
18 you're going here. Sustained in the sense that it isn't
19 relevant to me what that judge felt about something at
16:21:51 20 that time.

21 MS. FUSARO: Understandable. It is part of the
22 record; so I just wanted to direct you to that part of the
23 record so --

24 THE COURT: Understood.

16:21:58 25 MS. FUSARO: Thank you.

16:21:58 1 BY MS. FUSARO:

2 Q And did Mr. Owen ever reveal his gender identity
3 disorder to you or as it's now known, gender dysphoria?

4 A Yes.

16:22:10 5 Q And -- carry on.

6 A I was just going to say, yes, he did, but, you know,
7 that was sort of separate somewhat from the delusional
8 disorder.

9 Q Understandable. In what way did he manifest the
16:22:28 10 gender identity disorder or gender dysphoria that you noticed?

11 A Well, certainly in things he said. He made efforts,
12 himself, to physically become a woman in jail. He mutilated
13 himself. Obviously, I mean, I say obviously. It became very
14 obvious to me that was very distressing to him to be in a man's
16:23:01 15 body.

16 MR. BROWNE: I know you're giving leeway, but this is
17 non-expert providing opinion testimony, and it's hearsay
18 as well. Objection.

19 THE COURT: I understand. The objection is
16:23:13 20 overruled.

21 MS. FUSARO: And just again to bring your attention
22 to 3.812, it says right in here, the court shall not be
23 strictly bound by the rules of evidence.

24 BY MS. FUSARO:

16:23:30 25 Q Now, back in the 1990s, when you represented

16:23:33 1 Mr. Owen, how was his memory back then?

2 A His memory was good. I don't remember having any
3 questions or doubts about it based on his memory. We were able
4 to track down people from his childhood and things of that
16:23:52 5 nature.

6 Q So he was able to assist you way back when?

7 A Yes.

8 Q And how was Mr. Owen's overall demeanor throughout
9 the time that you represented him?

16:24:04 10 A He was, he was always cooperative, always pleasant.
11 We had a good relationship. I don't remember anything in
12 particular other than that.

13 Q And I believe you said it was around 1999 where
14 representation of Mr. Owen ended?

16:24:29 15 A Yes.

16 Q At the conclusion of your legal representation of
17 Mr. Owen, did you stay in contact with him?

18 A Yes, I did.

19 Q And what was the nature of that communication? How
16:24:40 20 did you contact him?

21 A Letters, primarily. I believe we had a few phone
22 calls, and I visited him a couple of times.

23 Q And how frequently did you generally stay in contact
24 with Mr. Owen over the years?

16:25:03 25 A I would say we wrote back and forth. He wrote

16:25:13 1 probably more than I did just because of who had more time, but
2 I'd say six to nine times a year.

3 Q Okay. So would you say as a lay person at least, you
4 had a general understanding of his mental condition and memory?

16:25:33 5 A Yeah. He would write very detailed letters about
6 things and what he was doing; so I had a pretty good sense of
7 what all, you know, he was doing throughout the years.

8 Q And then after his death warrant was signed on May 9,
9 did you speak with Mr. Owen over the phone?

16:25:54 10 A Yes, I did.

11 Q And did you notice anything different about Mr. Owen
12 at that point?

13 A I can't say that I did on the phone. It wasn't that
14 long of a phone call. You know, it was a sad phone call. So I
16:26:13 15 can't really say I noticed anything when we spoke on the phone.

16 Q After that phone call, did you visit him at Florida
17 State Prison?

18 A I did.

19 Q And do you recall what date you visited him?

16:26:26 20 A I think it was last Tuesday.

21 Q At some point last week at least?

22 A Yes, I think it was last Tuesday.

23 Q And you visited him at Florida State Prison?

24 A I did.

16:26:42 25 Q How long did you visit with him?

16:26:45 1 A We visited for two and a half hours.

2 Q During that two-and-a-half-hour visit, did you notice
3 anything different about Mr. Owen that at point that had
4 changed over the past 30 or so years?

16:26:59 5 A What I noticed is, you know, over the many years of
6 us corresponding and staying in touch, you know, he had
7 developed an amazing interest and study of very complicated
8 topics for me, physics and math, very detail oriented. And
9 when I visited with him, it was clear he didn't remember a fair
16:27:28 10 amount of that, in terms of the more recent stuff, but he could
11 remember things from, you know, we talked about things from
12 when I represented him and before, but the more current things
13 in the last couple of years he seemed to have a much harder
14 time remembering.

16:27:48 15 Q So at your last visit, Mr. Owen didn't seem to be as
16 sharp as he used to be when you had first represented him?

17 A Correct.

18 Q And also at the last visit, just to confirm what you
19 said, it sounds like you're saying he had issues with his
16:28:01 20 short-term memory?

21 A That's what it seemed to me. He could remember
22 things from a long time ago but couldn't remember, you know, we
23 talked about some of the things he had -- we corresponded about
24 his studies about black hole and physics, and he really
16:28:18 25 couldn't really recall a fair amount of that.

16:28:21 1 Q So in your opinion, just based on your lay person
2 perspective of just knowing him over the years --

3 MR. BROWNE: Objection, your Honor. Asking a lay
4 witness her opinion, that's not relevant, and it's not
16:28:32 5 appropriate either. She's not been qualified as an
6 expert.

7 THE COURT: Let me hear the question. Finish your
8 question.

9 MS. FUSARO: I was just going to ask if she thought
16:28:38 10 that his condition was declining. That was my last
11 question.

12 THE COURT: I'll allow it. Go ahead. Overruled.

13 THE WITNESS: And I'm sorry, the question was --

14 BY MS. FUSARO:

16:28:51 15 Q Oh. Just whether you thought that since, when you
16 first represented him until now, if you thought his condition
17 has declined?

18 A Yes. He definitely is not the sharp person that I
19 knew before.

16:29:04 20 MS. FUSARO: Thank you. One moment, your Honor.

21 THE COURT: Sure.

22 (Pause in the proceedings.)

23 MS. FUSARO: I'll pass the witness. Thank you.

24 THE COURT: Okay. Cross?
25

CROSS-EXAMINATION

16:29:11 1
2 BY MR. BROWNE:

3 Q Good afternoon.

4 A Good afternoon.

16:29:21 5 Q Are you aware of, you indicated that Mr. Owen
6 discussed a number of books with you and he was, you would
7 consider him a voracious reader; right?

8 A I considered him at some point a voracious studier,
9 yes.

16:29:43 10 Q And somehow, you think that has changed?

11 A It seemed to me it had changed, in speaking with him,
12 yes.

13 Q Are you aware that he --

14 A I don't know about -- I'm sorry.

16:29:56 15 Q Oh, no. No. Go ahead. I didn't want to cut you
16 off.

17 A I was going to say I don't know about his -- whether
18 his interests in studying had changed. I'm sure it has, given
19 the current events, but just sort of how sharp he was about
16:30:11 20 things.

21 Q And are you aware that he currently has books on
22 physics now in his cell?

23 A I know he has had books on physics, yes. I didn't
24 know, I don't know what he has in the cell now.

16:30:29 25 Q Do you know he currently has a Georgetown Law Journal

16:30:33 1 in his cell?

2 A I wouldn't know what he has in his cell now, but I am
3 not at all surprised that at some point over the last 20 years
4 he's had a Georgetown Law Review as well as physics books.

16:30:48 5 Like as I said, during our correspondence, since 19,
6 whatever it is, '99, he took up this interest in physics and
7 math and did -- was reading stuff way over my head, frankly.
8 But I don't know what's in his cell today.

9 Q And certainly when you represented Mr. Owen, you did
16:31:15 10 your best for him, correct, you put forth your best effort?

11 A I did.

12 Q And you did not want him to receive the death penalty
13 for the Slattery murder, correct?

14 A I didn't, correct.

16:31:32 15 MR. BROWNE: Nothing further.

16 THE COURT: Any redirect?

17 MS. FUSARO: Just very briefly.

18 REDIRECT EXAMINATION

19 BY MS. FUSARO:

16:31:41 20 Q Now, I know you said that he's read in the past and
21 you don't know if he has any books in his cell right now, which
22 we can confirm he does not; but does that mean, even if he had
23 books in his cell previously, that he was actually reading
24 them? Are you aware if he was actually reading them back when
16:31:59 25 he had them in his cell?

16:32:03 1 A I don't know when he read them or if he read them,
2 but I do know that he was studying, but I'm talking, you know,
3 20 -- 15, 20 years ago.

4 Q Do you have any recollection if he's been reading
16:32:18 5 those or studying those things recently?

6 A No, I don't know that he -- from my conversation with
7 him, he has not been; but personally knowing that, no. I know
8 our correspondence, our more recent correspondence has not
9 reflected that interest in the way it did in the past.

16:32:42 10 MS. FUSARO: Thank you, your Honor. No further
11 questions.

12 THE COURT: Thank you very much, ma'am.

13 THE WITNESS: Thank you.

14 THE COURT: All right. Next witness?

16:32:57 15 MS. FUSARO: Yeah. Is there anyway we could take a
16 brief recess to see how the Dr. Berlin call is
17 progressing?

18 THE COURT: Yeah. We'll take a five-minute break.

19 MS. FUSARO: Okay. Thank you.

16:33:07 20 (Recess was taken.)

21 THE COURT: All right. So we're back on the record
22 in State versus Duane Owen. Let the record reflect
23 Mr. Owen is present in the courtroom with counsel. The
24 State is present with counsel.

16:42:55 25 I was given a little bit of an update by your

16:43:01 1 co-counsel.

2 MS. FUSARO: Yes, your Honor. Due to the nature
3 trying to have notaries present for out-of-state witnesses
4 for the morning, we don't have anyone set up with a notary
16:43:11 5 for this evening. We have someone set up immediately at
6 8:30 tomorrow morning, and then we have one witness after
7 that.

8 We just spoke with Mr. Berlin, or excuse me,
9 Dr. Berlin and he -- in the short notice, he doesn't think
16:43:23 10 he's going to be able to rearrange his schedule in order
11 to testify either today or tomorrow. He's going to
12 attempt to get us an affidavit or a sworn, unsworn
13 statement similar to what Dr. Sultan did.

14 THE COURT: Okay. And just so the record is clear,
16:43:43 15 again, Dr. Berlin is another one who hasn't seen --

16 MS. FUSARO: Correct.

17 THE COURT: -- Mr. Owen since the '90s?

18 MS. FUSARO: Correct, yeah. Just, in essence, to
19 show that this is fixed delusions, just to put that.

16:43:58 20 THE COURT: Okay. And so you have nothing else to
21 present at this time?

22 MS. FUSARO: So we have two witnesses that we have
23 scheduled for first thing tomorrow morning. We actually
24 contacted your JA to see what time we were starting
16:44:08 25 tomorrow so we could get them all situated with mobile

16:44:11 1 notaries so they could testify out of state. We didn't
2 realize that you might be able to swear them in without
3 the mobile notary because some courts prefer that; so, so
4 is there any way we could just do those two witnesses in
16:44:23 5 the morning and break for the evening? They're going to
6 be brief.

7 THE COURT: You all have folks here, right?

8 MR. BROWNE: Yeah. Dr. Tonia Werner, your Honor. We
9 would ask that we call her out of order.

16:44:35 10 THE COURT: So is there any objection to allowing the
11 State to call whoever they have here today out of order
12 and go ahead and take that testimony?

13 MS. FUSARO: I mean, I would object so you can hear
14 our whole case together before we get into the Commission.

16:44:50 15 THE COURT: Well, who are the two witnesses in the
16 morning?

17 MS. FUSARO: The two witnesses -- one of them is
18 Lisa Wiley. She used to work at DOC. She was a
19 psychology specialist there. And then the other witness
16:45:01 20 is Pam Izakowitz. She's also represented him; so that's
21 why it will be brief as well.

22 THE COURT: All right. So your objection to allowing
23 the State to call witnesses out of order, based on what
24 those two witnesses are purported to present to me, I
16:45:23 25 would overrule that objection, and I would go ahead and

16:45:26 1 let them, since they have folks here --

2 MS. FUSARO: I understand.

3 THE COURT: -- let them present whoever and whatever

4 they want today, and then we'll take those folks in the

16:45:37 5 morning.

6 MS. FUSARO: Okay. Thank you, your Honor.

7 THE COURT: So who would you like to call?

8 MR. BOBEK: The State would call Dr. Werner.

9 THE COURT: Good afternoon, Dr. Werner. If you'll

16:45:55 10 raise your right hand for me, please.

11 (Witness sworn.)

12 THE WITNESS: I do.

13 THE COURT: Please be seated.

14 TONIA WERNER,

16:46:09 15 called as a witness herein, having been first sworn, was

16 examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. BOBEK:

19 Q Good afternoon, Doctor.

16:46:12 20 A Good afternoon.

21 Q Could you state your name and spell your first and
22 last name for the record.

23 A My name is Tonia, T-O-N-I-A. Werner, W-E-R-N-E-R.

24 Q Doctor, where are you employed?

16:46:20 25 A I'm sorry?

16:46:20 1 Q Where are you employed?

2 A I'm chief medical officer at Meridian Behavioral
3 Healthcare.

4 Q Okay. And how long have you been there?

16:46:28 5 A I have been there since, seven and a half years.

6 Q And could you describe your educational background
7 for the court?

8 A Yes. So I got my undergraduate degree in chemistry
9 at the University of South Florida. I graduated with my
16:46:43 10 medical degree from American University of the Caribbean. I
11 did my residency, which is four years in training of
12 psychiatry, at Connecticut Valley Hospital under the auspices
13 of Yale University. Then I came to the University of Florida
14 and did one year of training in forensic psychiatry.

16:47:02 15 Q Okay. And do you hold any professional licenses?

16 A I do.

17 Q And do you have any Board certifications?

18 A I do.

19 Q What are those in?

16:47:08 20 A So I'm licensed to practice medicine in the state of
21 Florida, and I am Board certified by the American Board of
22 Psychiatry and Neurology, and I'm Board certified in general
23 psychiatry and forensic psychiatry.

24 Q Okay. And could you describe for the court briefly
16:47:26 25 your employment experience after your education?

16:47:28 1 A Yes. So after I completed my fellowship in 1998, I
2 was hired on by the University of Florida. I was asked to stay
3 on faculty. I remained there for eighteen and a half years,
4 before I retired. And at that point I was the vice chairman of
16:47:44 5 the department of psychiatry and chief of adult in-patient
6 services and the director of the forensic institute at the
7 University of Florida.

8 Q Thank you. And is all this described in your CV?

9 A It is.

16:47:57 10 Q Is this a fair and accurate representation of your
11 CV, Judge, or, Doctor, sorry?

12 A It appears to be, yes.

13 MR. BOBEK: Thank you. Judge, may we have this
14 marked as the next numbered exhibit?

16:48:18 15 THE COURT: Any objection? Yes, you may.

16 MR. BOBEK: Thank you, Judge.

17 THE COURT: It will be received as your Exhibit 2 in
18 evidence.

19 MR. BOBEK: Thank you.

16:48:26 20 (State's Exhibit 2 admitted into evidence)

21 BY MR. BOBEK:

22 Q Now, are you familiar with the Commission the
23 Governor will sometimes appoint, composing of several
24 psychiatrists to consider mental health when a death sentence
16:48:40 25 or death warrant is signed?

16:48:41 1 A Yes.

2 Q And have you been assigned to one of those before?

3 A I have.

4 Q How many times?

16:48:47 5 A Approximately -- I'd be guesstimating because it's
6 been a while. About five, probably.

7 Q Okay. And were you assigned to one of those for
8 Duane Owen?

9 A I was.

16:48:57 10 Q Do you see him in the courtroom today?

11 A I do.

12 Q Can you point him out and identify him by a piece of
13 clothing?

14 A He's behind you, wearing the orange scrub top.

16:49:06 15 MR. BOBEK: Thank you. May the record reflect the
16 Defendant has been identified?

17 THE COURT: The record will so reflect.

18 MR. BOBEK: Sorry, Judge.

19 THE COURT: You're fine.

16:49:12 20 BY MR. BOBEK:

21 Q And what was the purpose of being assigned to this
22 Commission?

23 A It was for sanity to be executed.

24 Q Okay. And were there other doctors assigned to this
16:49:27 25 Commission?

16:49:28 1 A There were.

2 Q Do you know their names?

3 A Dr. Myers and Dr. Lazarou.

4 Q And are you familiar with these doctors?

16:49:36 5 A I am.

6 Q Do you recall what day the evaluation occurred?

7 A I believe, I don't recall off the top of my head if
8 it was the 23rd. I believe it was the 23rd of May.

9 Q And when you evaluate someone for sanity, what is
16:49:55 10 sort of the process you go through of doing that?

11 A So we reviewed a lot of documents and records that
12 were supplied to us prior to the evaluation. We also reviewed
13 the Department of Corrections' records. We had, his medical
14 records and his classification records were brought to us at
16:50:15 15 the facility; so we reviewed those.

16 We interviewed five different personnel, correctional
17 personnel, from UCI and from FSP. One of them had known him
18 for 14 years, had had exposure to him for 14 years.

19 Q And did you have an opportunity to review that before
16:50:37 20 your interview or was there some before and after?

21 A We did. All of the records that we were provided
22 before, the medical records before. I did some of the
23 classification after, and we interviewed the correctional
24 personnel prior to.

16:50:56 25 Q Okay. And did you have an opportunity to review

16:50:58 1 Dr. Eisenstein's report --

2 A Yes.

3 Q -- before the interview? Where did the interview
4 occur?

16:51:05 5 A It occurred on death row at FSP.

6 Q Okay. And so it was the three doctors in the room?

7 A Correct.

8 Q Was there anyone else present?

9 A Yes. A member of his legal team was there.

16:51:16 10 Q Okay. Do you recall where everyone was situated in
11 the room?

12 A Yes. So there was a rectangular table. The
13 Defendant sat at the end of the table. His attorney sat behind
14 him and to the right at a round table that was in the corner.
15 And then the three examiners were at the long table.

16 Q Okay. And did anyone interact with Mr. Owen during
17 the evaluation, except for the doctors?

18 A No.

19 Q And how long did it take you to go through all the
16:51:48 20 records before and after the evaluation?

21 A All the ones that we were supplied or the ones that
22 we read there?

23 Q The ones you were supplied and read.

24 A Oh, hours. I have it at home. I don't have it, I
16:52:01 25 have it on my calendar. I don't have it --

16:52:03 1 Q Okay. And how long was the interview process you had
2 with Mr. Owen?

3 A It was approximately a hundred minutes. I had it as
4 starting -- I wrote down the start and stop time. I have it as
16:52:18 5 starting at 3:04 and ended at 4:40.

6 Q Okay. So if my math is right, that's about an hour
7 and a half?

8 A Yes.

9 Q Okay. So that's a lot less time than Dr. Eisenstein
16:52:34 10 had?

11 A Correct.

12 Q So in that short amount of time, were you able to
13 build the rapport necessary to learn about his delusions?

14 A Yes. He told us about his delusions.

16:52:46 15 Q How long did that take?

16 A He disclosed them immediately.

17 Q Okay. So was it the first thing he started talking
18 about?

19 A We introduced ourselves and got his understanding of
16:52:54 20 why we were there, and he kind of interspersed it here and
21 there in the conversation, yes.

22 Q And how did he describe these delusions that we've
23 been talking about to you?

24 A Very similar to what you've heard. That he felt like
16:53:12 25 he was a female in a male's body and that he needed to have

16:53:19 1 intercourse with women at the time that they were expiring, in
2 order to get their estrogen or essence.

3 Q Okay. And is the genuineness of this delusion
4 essential to his schizophrenia diagnosis?

16:53:38 5 A It takes more than one delusion to meet the criteria
6 for the diagnosis of schizophrenia. It would more consistent
7 if it was a true and believed delusion. It would be more
8 consistent with a diagnosis of delusional disorder, as opposed
9 to schizophrenia.

16:53:53 10 Q Okay. But a delusion can be part of the
11 schizophrenia diagnosis; is that correct?

12 A It's one of the symptoms, correct.

13 Q So if the delusion is being faked or not true, would
14 that affect a schizophrenia diagnosis?

16:54:07 15 A It would affect all diagnoses, based on that,
16 correct.

17 Q And do you have any reason to believe that he is
18 faking this delusion?

19 A He was inconsistent at different times with things
16:54:21 20 that he was saying. One example would be, and I know it's been
21 brought up here several times, the hammer. And I think what
22 didn't come out was he inserted the hammer in her vagina, which
23 has nothing to do with trying to absorb an essence through
24 your, what he calls his hose or his penis. Putting the hammer
16:54:43 25 in her vagina has nothing to do with that and is unexplainable.

16:54:48 1 Q And if he had this fixed delusion for such a long
2 time, would you expect to see it exhibit in his life in other
3 ways than just explaining to you what happened?

4 A Yes.

16:54:57 5 Q How would you expect it to exhibit itself?

6 A You would expect to see it in his behaviors, his
7 actions, his mannerisms, his dress, just the way he behaves and
8 holds himself overall.

9 Q So would trying to exhibit himself as a macho man, is
16:55:12 10 that consistent with this apparently fixed delusions he has?

11 A It wouldn't be, in general, consistent with that. He
12 explains that away in corrections as not wanting to become a
13 target to the other inmates.

14 Q But he did during the '90s sometimes exhibit those
16:55:32 15 characteristics; right?

16 A Correct.

17 Q So apparently there wasn't always a concern for him;
18 is that correct?

19 A That's correct.

16:55:40 20 Q When you're talking about the diagnostic criteria for
21 schizophrenia, what are those diagnostic criteria?

22 A So they have to have two of four; so it's
23 hallucinations, delusions, disorganized behaviors, and
24 thoughts. And then the negative symptoms are avolition, not
16:55:56 25 being reactive to anything.

16:55:58 1 Q And what were the criteria Dr. Eisenstein used in his
2 diagnosis?

3 A He used the delusions, and I believe he used
4 avolition, but we don't see that.

16:56:07 5 Q Okay. So that's the negative for diminished
6 emotional response?

7 A Correct.

8 Q What does that look like in a person?

9 A Typically, they have what we describe as a flat face;
16:56:19 10 so their face is very flattened. They don't express any
11 emotions.

12 Q Okay. And what was your experience when you
13 interviewed him at death row?

14 A Yeah, he was very personable, very interactive. He
16:56:32 15 actually laughed at one point because he said something about
16 he didn't understand something because he wasn't a woman. And
17 I said, Well, I'm a woman and so is Dr. Lazarou, and we're not
18 really getting it either, and he kind of laughed; so he had
19 reactive.

16:56:46 20 Q So you would say that's completely inconsistent with
21 that diagnostic criteria?

22 A Yes.

23 Q Okay. And then there was the talk about dementia,
24 his insidious dementia process.

16:57:02 25 A Uh-huh.

16:57:02 1 Q Is that a medical diagnosis?

2 A No.

3 Q Okay. So what are we talking about here instead?

4 A I think he's just, I think that he was just referring
16:57:10 5 to the fact that he felt that the Defendant had some type of
6 decline in his cognitive functioning or memory.

7 Q Okay. And when you have dementia patients, what kind
8 of behaviors or symptoms do you see from them?

9 A Right. So it is a progressive, slowly progressive
16:57:29 10 disease if it's, like, Alzheimer-type dementia. There are
11 different types of dementia caused by different things; so
12 they'll present in different ways.

13 But it's typically a slow progressive memory loss,
14 and they lose short-term memory prior to losing long-term
16:57:44 15 memory.

16 Q And did you see Mr. Owen exhibit any kind of those
17 symptoms during your interview with him?

18 A No, we did not.

19 Q So part of what's going on in this case is that
16:58:00 20 Mr. Owen is saying he's been unmedicated for schizophrenia for
21 40 years; is that correct?

22 A Yes.

23 Q Did you see any record of medications in his DOC
24 records?

16:58:11 25 A Yes.

16:58:11 1 Q What medications were those?

2 A He had been prescribed three different medications.
3 Two of them were anti-depressants, and one was an anxiolytic, I
4 believe. It's in the report. It was, Remeron was a
16:58:34 5 anti-depressant. Vistaril is for anxiety. It's similar to
6 Benadryl, used as similar to Benadryl for anxiety. And then
7 Pamelor, which is an older anti-depressant.

8 Q So are any of those used to treat schizophrenia?

9 A No.

16:58:48 10 Q So do you have experience with schizophrenia
11 patients?

12 A I do.

13 Q Do you have experience with unmedicated schizophrenia
14 patients?

16:58:56 15 A I do.

16 Q The longer someone is medicated, what kind of effect
17 does it have on them?

18 A It helps them to remain stable. It helps them to
19 maintain their activities of daily living. They're able to
16:59:09 20 shower. Sometimes they're able to work. So, you know, they
21 can function in the community when they're stable.

22 Q But if someone goes years or decades without that
23 medication, what kind of effect does that have?

24 A You would expect to see a downward drift in their
16:59:23 25 socioeconomic status and general level of functioning over the

16:59:27 1 years.

2 Q And in your view of the records and your interview
3 with different personnel and your interview with Mr. Owen, did
4 you see any evidence of that throughout the years or even just
16:59:41 5 with your discussion with him?

6 A No. There was no evidence of that. There was no
7 report of that from the officers and the assistant warden that
8 we interviewed, no.

9 Q And after you interviewed Mr. Owen, did you and the
17:00:00 10 other two doctors create a report for the Governor?

11 A We did.

12 MR. BOBEK: May I approach, Judge?

13 THE COURT: You may.

14 BY MR. BOBEK:

17:00:11 15 Q Is this a fair and accurate copy of the report that
16 you sent the Governor?

17 A Yes, it is.

18 MR. BOBEK: Judge, may this be entered into evidence?

19 THE COURT: Any objection?

17:00:20 20 MR. CHAYKIN: No objection.

21 THE COURT: All right. It will be received as the
22 State's, I believe, Exhibit 3 in evidence.

23 MR. BOBEK: Yes, sir.

24 (State's Exhibit 3 admitted into evidence)

25

17:00:29 1 BY MR. BOBEK:

2 Q Now, you made some findings in that report; is that
3 correct?

4 A Correct.

17:00:34 5 Q What findings did you make about whether or not he
6 was suffering from mental illness?

7 A We felt that he met the diagnostic criteria for
8 antisocial personality disorder, as described in the DSM-5.
9 And that was all.

17:00:49 10 Q Did you find that he was insane to be executed?

11 A We did not.

12 Q Did you find he's incompetent to proceed?

13 A We did not.

14 Q Did you find that he was malingering his delusion?

17:00:59 15 A It was felt that, yes, that it was a feigned
16 delusion.

17 Q Now, did you run any tests for malingering during the
18 interview?

19 A No.

17:01:07 20 Q Is that always required to make a finding of
21 malingering?

22 A No.

23 Q So without running a test, how would you make that
24 determination?

17:01:15 25 A Just from the interview process, looking for

17:01:17 1 different issues in statements that he makes at different times
2 in the interview, looking for inconsistencies.

3 Q So you said there were facts of the case that were
4 inconsistent with being under this delusional disorder at that
17:01:33 5 time. Did you confront him with those facts?

6 A We did.

7 Q Did he find a way to work them into his delusion?

8 A At times he did, and at times he didn't. Like, the
9 hammer, he couldn't, there was no answer for that.

17:01:47 10 Q And so it's your opinion that if he was having this
11 genuine delusional disorder, the facts of the case wouldn't
12 match with it, or he'd be able to explain it in a way that's
13 satisfactory to you?

14 A Correct.

17:01:57 15 Q Okay. And he was unable to do that?

16 A Correct.

17 Q And did you discuss with him at any time his pending
18 execution?

19 A We did.

17:02:10 20 Q Did he seem to understand that he is going to be
21 executed by the State of Florida?

22 A Yes.

23 Q Did he understand the reasons for that?

24 A Yes.

17:02:18 25 Q And could you explain a little bit more how he

17:02:20 1 understood that?

2 A Yeah. I actually have even several quotes in here.
3 He said that he, that the State of Florida was going to kill
4 him for having killed the two women. He said, he used the word
17:02:37 5 expired a lot. He -- I had a couple marked.

6 We asked him, he talked about getting the estrogen
7 from them, from all the women that he had sex with. So we
8 said, Well, why did you have to kill these two women? And he
9 said, I don't know. Sadly enough, that's what I did, quote,
17:03:06 10 unquote.

11 Q So he made it clear he understood that he had
12 actually killed two people?

13 A Yes.

14 Q Okay.

17:03:15 15 A He said, I don't know how they think it is okay to
16 kill me for killing them, quote, unquote.

17 Q Thank you, Doctor.

18 A Uh-huh.

19 Q And were you present for Dr. Eisenstein's testimony
17:03:25 20 earlier today?

21 A I was.

22 Q I just had a few questions related to that.

23 A Yes.

24 Q One of the tests he ran was the MMPI?

17:03:32 25 A Yes.

17:03:32 1 Q And you heard his, did you have any concerns or
2 thoughts about the results of that examination?

3 A Yes. So I did not see the results of it at all, but
4 I know he described it as a floating profile, which,
17:03:47 5 historically, a floating profile means that every category in
6 the MMPI is above normal, which indicates that it's kind of an
7 overacknowledgment of symptoms.

8 Q And so if there's an overacknowledgment of symptoms,
9 what does that mean to you as a psychiatrist?

17:04:06 10 A That would be consistent, more consistent with
11 malingering as opposed to schizophrenia; so it would cue you
12 that you really need to look at the malingering factor and
13 question that, especially in this setting.

14 Q And you heard he was given tests on two different
17:04:20 15 days?

16 A Correct.

17 Q Did you have a concern related to how well he did on
18 the first day versus how poorly he did on the second day?

19 A I think he had one test that he did poorly on on the
17:04:31 20 first day, too, and I just wondered, you know, because it was
21 six hours and seven and a half hours, how much of that was --
22 effect was that of, you know, just exhaustion and being.

23 And he even described him as being very tired, quote,
24 unquote, on the second day. So I just wonder how much of that
17:04:46 25 effect was, you know, possibly due to just being exhausted at

17:04:49 1 the end of seven hours and trying to do these tests.

2 Q So that's the kind of physical problem he could have
3 that could --

4 A Correct.

17:04:56 5 Q -- reduce the score?

6 A Yes.

7 Q Other than dementia or psychiatric?

8 A Correct.

9 Q Okay. And there's also this quote, Patients don't
17:05:06 10 lie. Did you have a concern with that at all?

11 A I did, because he's not a patient, he's an evaluatee.
12 And in the forensic setting, you know, with forensic training,
13 you know that you have to consider malingering, and you have to
14 really look at that. You can't take them at face value. In
17:05:26 15 clinical setting, when somebody comes to my office and wants
16 assistance with something, I believe them, and I take them at
17 face value, but in the correctional setting, you can't do that.

18 Q Is that because they might have some incentive to
19 lie?

17:05:39 20 A Absolutely.

21 Q For example, if they're going to be executed in two
22 weeks?

23 A Yes.

24 MR. BOBEK: Okay. One moment.

17:05:45 25 (Pause in the proceedings.)

17:06:09 1 BY MR. BOBEK:

2 Q So if someone is unmedicated for this long a time,
3 would they be able to turn on and off their symptoms? Or would
4 they just have a slow degradation of symptoms over time?

17:06:22 5 A Correct. They can't just turn them on and off like
6 that. They may be more present at different times, but they
7 don't just turn on and off.

8 Q And would you expect to see behavioral issues or DRs
9 or reports from officers that he's acting weird at all?

17:06:38 10 A Yes. In the majority of them, absolutely, yes.

11 Q And did you see any evidence of that in the record?

12 A No. He had been incarcerated since 1986 in the
13 Department of Corrections, and I think there were a total of
14 three DRs, and they were very early on. And all of the
17:06:54 15 officers who had known him, like, for the past 14 years and
16 since he's been transferred to FSP said that they had never had
17 any behavioral issues with him.

18 Q So, if anything, his behavior got better over time
19 than worse?

17:07:08 20 A Correct.

21 MR. BOBEK: Thank you.

22 THE COURT: Cross?

23 MR. CHAYKIN: May I inquire?

24 THE COURT: You may.

25

CROSS-EXAMINATION

17:07:16 1
2 BY MR. CHAYKIN:

3 Q Good afternoon.

4 A Good afternoon.

17:07:27 5 Q So prior to this case, how many times have you been
6 appointed to review for competency for death?

7 A I guesstimated it was approximately five times. I'm
8 not sure.

9 Q Okay. And how many times did you find the individual
17:07:41 10 incompetent to proceed for death?

11 A I don't believe that I have.

12 Q Okay. So all of your previous appointments, you
13 found the defendant was competent to proceed to death?

14 A I believe so, yes.

17:07:54 15 Q Now, who actually authored the report in this
16 evaluation?

17 A It was a joint effort. I did the initial, and then I
18 forwarded it to the other two physicians who added some edits.
19 And it went back and forth at that point. But I did the
17:08:10 20 initial report.

21 Q Okay. So you initially wrote the report, right?

22 A Correct.

23 Q And then you would have sent it out as a first draft,
24 right?

17:08:18 25 A Correct.

17:08:19 1 Q For the other doctors to put their input?

2 A Yes.

3 Q After they put their input, did they send it back to
4 you for review?

17:08:28 5 A Several times, correct.

6 Q And it notes in the report and you stated here that
7 you performed a-hundred-minute clinical evaluation at the
8 Florida State Prison, right?

9 A Yes.

17:08:39 10 Q And you also noted that it took you multiple hours to
11 review the records from this case, prior to that evaluation,
12 right?

13 A Correct.

14 Q So you actually spent more time reviewing the records
17:08:52 15 in this case than you did speaking with Duane Owen?

16 A Yes. And that's typical because even the Department
17 of Corrections records, there's 40 years of records there.

18 Q And in those records, you reviewed mental health
19 records from 1986 until the present, right?

17:09:12 20 A That's correct.

21 Q And in your report, it's your testimony as well that
22 in those records, Mr. Owen was free of symptoms and any signs
23 of serious mental illness; is that right?

24 A Correct.

17:09:23 25 Q And you found that the symptoms of gender dysmorphia

17:09:27 1 were never observed or documented except for Mr. Owen's
2 self-report, right?

3 A That's correct.

4 Q Okay. So essentially you're saying that you believe
17:09:35 5 that his delusions are false, right?

6 A Correct.

7 Q And you would agree that you cannot see inside
8 Mr. Owen's brain, right?

9 A Right.

17:09:46 10 Q And you would need specific tools, right, in order to
11 do that?

12 A Yes.

13 Q There's procedure, there's examinations that you
14 could do to actually see inside of Mr. Owen's brain?

17:09:56 15 A I'm not sure what you referring to. Are you
16 referring to, like, MRI and CT scans?

17 Q Yes.

18 A Yeah. And that's not going to show you any
19 psychiatric symptoms. It's just going to show you if there's
17:10:05 20 any deformities.

21 Q Okay. But you'd agree that you weren't, you didn't
22 do that in this case?

23 A No.

24 Q And so you cannot tell us if there's any deformities
17:10:15 25 in his brain?

17:10:16 1 A Correct.

2 Q And so when you are evaluating Mr. Owen, you're
3 trying to understand his brain without actually being able to
4 see it, right?

17:10:23 5 A Yes.

6 Q And you'd agree that just because the diagnosis is
7 based on self-reporting, that that doesn't mean you can't
8 establish a diagnosis simply based on self-report?

9 A That's correct.

17:10:33 10 Q Okay. So if you had believed Mr. Owen's delusions,
11 then you could establish a diagnosis?

12 A Yes.

13 Q And oftentimes when you're reviewing someone for
14 mental health or doing an evaluation, oftentimes you have to
15 rely on their self-reports, right?

16 A Yes.

17 Q And so when you say in your records that, when you
18 say that the records are clear of any signs of serious mental
19 illness, that's not actually true. What you're really saying
17:11:15 20 is that the self-reporting that's included in those reports you
21 just don't believe, right?

22 A No. I think what we said was that, and I'm happy --
23 what page are you on of my report or our report?

24 Q So it will be on the first page.

17:11:32 25 A Uh-huh. Yeah, it just says the symptom of gender

17:11:59 1 dysphoria were never observed or documented except by
2 Mr. Owen's self-report.

3 Q I'm referring to the, according to the records, that
4 he's been free of symptoms and signs of serious mental illness,
17:12:11 5 right?

6 A Correct.

7 Q Now, but the delusions that he has -- that's a sign
8 of a serious mental illness, if you believe those delusions;
9 right?

17:12:18 10 A Right. But the next sentence clarifies that, stating
11 that, yeah, he has self-reported it.

12 Q Did you ever talk to Mr. Owen about his background?

13 A We got some of his background, yes.

14 Q And you said that you got some of his background.

17:12:38 15 Did you obtain that from Mr. Owen or from records?

16 A We got some of it from him, correct.

17 Q Okay. And what did you obtain from his background?

18 A He talked about being in foster care and having
19 participated in the gang rape of a female with other males
17:12:55 20 while in the foster care system.

21 He talked about his family and how he got into foster
22 care. I think those were the main things that he talked about.

23 Q Now, I want to move to talk about malingering some.

24 A Uh-huh.

17:13:17 25 Q Now, if Mr. Owen is not malingering and actually

17:13:23 1 believes that he did not kill the victims because he took their
2 essence into his body, that would be a delusional belief,
3 right?

4 A It may be.

17:13:34 5 Q And you would agree that if he actually has that
6 delusional belief, then it could establish a severe mental
7 disorder?

8 A It may.

9 Q And it's really, there's multiple delusions that are
17:13:49 10 involved, from what Mr. Owen told you, right?

11 A Such as? I'm not sure what you're referring to.

12 Q I'll break them down.

13 A Okay.

14 Q So the first delusion is that these victims did not
17:13:59 15 die, right?

16 A Correct. But he acknowledged -- and, again, that's
17 part of, kind of, the inconsistency in the interview is that he
18 acknowledged numerous times that they did. He used the word
19 expired. He said, you know, that the State is trying to kill
17:14:11 20 him for having killed them; so he did acknowledge it at
21 different times during the interview.

22 Q Okay. And I understand that you're saying he
23 acknowledged it, but when he was explaining the delusion, he
24 explained to you that the victims did not die, right?

17:14:24 25 A No. That their bodies died and that their soul or

17:14:29 1 essence was absorbed into him.

2 Q Right. And so -- but the words that he actually used
3 is that the body expired, right?

4 A Correct.

17:14:42 5 Q Okay. So the word that he specifically used was
6 expired, right?

7 A Correct.

8 Q Okay. And believing that their energy or soul was
9 entering his body while their body expired, right?

17:14:57 10 A Correct.

11 Q And that they entered through his body through his
12 penis?

13 A Correct.

14 Q And that they still live inside of his body today?

17:15:06 15 A Yes.

16 Q So he acknowledged that --

17 A Actually he said he didn't know where they were
18 today, as a matter of fact.

19 Q Okay. He specifically told you that he did not know
17:15:16 20 where the victims were today?

21 (Zoom interruption.)

22 THE COURT: So I know I have some folks on with me on
23 Zoom, and you're welcome to be on with me by Zoom, but you
24 have to mute or silence your volume connections. I keep
17:16:01 25 picking someone up; so I would appreciate that very much.

17:16:04 1 Thank you.

2 My apologies.

3 THE WITNESS: Yeah. I'm just trying to find the
4 exact quote, sorry. We actually asked him that --

17:16:30 5 BY MR. CHAYKIN:

6 Q Were you able to find that?

7 A Because we actually asked him that, and he said --
8 hang on. Yeah, because we actually asked him that, and he said
9 that he didn't know where they were at this time.

17:16:37 10 Q Okay. Now, I want to go back to talking about the
11 report some more.

12 A Sure.

13 Q So in the report it states that the Commission
14 reviewed investigative materials related to Mr. Owen's arrest
17:16:57 15 for the homicides, right?

16 A Yes.

17 Q And what did those materials consist of?

18 A Oh, my gosh. I have pages of documents that we
19 reviewed. And at the time of the evaluation, we were supplied
17:17:11 20 with photographs of the victims. And I think Dr. Lazarou had
21 requested those.

22 Q Why would she request that?

23 A They were concerned that in the autopsy report it
24 made it sound like the bodies were positioned in a certain way,
17:17:33 25 and so they wanted to see the photographs of the bodies at the

17:17:40 1 crime scene.

2 Q Okay. And the report mentions that the Commission
3 reviewed medical, mental health, and corrections records.

4 Were you given any sort of time limit in reviewing
17:17:51 5 those records?

6 A No.

7 Q Were you given any time limit in your actual
8 evaluation with Mr. Owen?

9 A No.

17:18:00 10 Q Have you ever had any complaints against your
11 license?

12 A No.

13 Q Now, you mentioned that you've never previously found
14 someone incompetent to proceed to death, right?

17:18:16 15 A Correct.

16 Q And so, now, if you opine that a death row inmate was
17 actually incompetent to proceed, do you think that you would
18 ever be appointed to this committee again?

19 A Yes, I do.

17:18:33 20 Q Now, is it standard when you do an evaluation to do
21 an evaluation with three doctors in the room?

22 A For these evaluations, it has been, yes. I haven't
23 done one where we weren't all together.

24 Q But other than for these evaluations, is that
17:18:48 25 typically standard?

17:18:49 1 A I've done guardianship evaluations where, again,
2 three members are appointed to a committee, and we do
3 evaluations together as a group, yes.

4 Q Okay. And so for those specific two instances, you
17:19:00 5 would use a committee, right?

6 A Yes.

7 Q But when you're evaluating everybody else, you would
8 do it solo, right?

9 A I have done the majority of them solo. I've sat in
17:19:12 10 on psychologists doing evaluations; so it's variable, depending
11 on what the legal team is requesting.

12 Q Did you, now, you already testified regarding what
13 you heard about Dr. Eisenstein.

14 Now, did you ever do any tests to determine whether
17:19:32 15 Mr. Owen was malingering?

16 A No, just our clinical interview.

17 Q Okay. So, essentially, you made observations during
18 this 100-minute interview, right?

19 A Correct.

17:19:42 20 Q And you're aware that there are multiple tests that
21 you can do to determine if someone is malingering, right?

22 A Yes.

23 Q Including the MMPI that you already heard of today?

24 A Yeah, well, the MMPI is a personality inventory.
17:19:55 25 It's not necessarily to test for malingering, but it has

17:20:00 1 malingering scales built into it.

2 Q What does MMPI stand for?

3 A Minnesota Multiphasic Personality Inventory.

4 Q And you're saying that you know that to not actually
17:20:13 5 test for malingering?

6 A It's not a malingering test. It's a personality
7 inventory. And it kind of tells you whether, how their -- what
8 their presentation is most consistent with, which diagnoses.
9 But it's not a diagnostic tool, and it's not a malingering
17:20:33 10 tool. There are scales, malingering scales built into it.

11 Q Okay. So there's malingering scales built into the
12 MMPI?

13 A Yes, to tell if they're feigning symptoms on the
14 MMPI, correct.

17:20:43 15 Q Okay. And when you're trying to determine if someone
16 is malingering, you're trying to determine if they're feigning,
17 right?

18 A Yes, or exaggerating. It's the feigning of symptoms
19 or the exaggeration of symptoms that are there, correct.

17:20:55 20 Q So why didn't you administer the MMPI or any other
21 malingering test?

22 A I'm not a psychologist. I'm a psychiatrist.

23 Q Okay. So you're not able to employ those tests?

24 A We can use them, but we typically don't.

17:21:08 25 Q Okay. So you can use them, but you chose not to?

17:21:10 1 A Correct.

2 Q Now, you'd agree, though, if there are tests to
3 determine malingering, those tests can be employed to come to a
4 more concrete conclusion?

17:21:24 5 A They may. Again, you know, it's, you have to take
6 the testing -- the testing isn't diagnostic or conclusive. You
7 have to take the results of the test and apply it to your
8 clinical interview.

9 Q Right. But in this case, all we have is the clinical
17:21:38 10 interview, right?

11 A Correct.

12 Q And so if we had those tests, we could compare that
13 to your clinical interview?

14 A Well, you have them because your expert did them; so
17:21:46 15 you have those tests.

16 Q Right. But I'm saying if you had completed those
17 tests.

18 A Right. But you don't want to do them over and over
19 and over again either because then you get skewed results.

17:21:57 20 Q Well, there are other tests that you can employ,
21 right, other than the MMPI?

22 A Yes.

23 Q And those were not employed either, right?

24 A Correct.

17:22:09 25 Q And so during this evaluation, it was a hundred

17:22:12 1 minutes. Now, we heard that our expert met with him for about
2 13.25 hours, right?

3 A Correct.

4 Q And you'd agree that -- now, you testified that that
17:22:21 5 may have been too long, but you would agree that if you spend a
6 longer time with a person, you might be able to conduct a
7 better evaluation of that person, right?

8 A I don't know that it will be better. It will be
9 longer. And it's unclear because nobody asked the question of
17:22:35 10 how much time was actually spent interviewing him as opposed to
11 how much time was spent doing the testing. That wasn't
12 clarified; so I don't know how much of that thirteen and a half
13 hours was spent doing all of that testing as opposed to
14 interviewing.

17:22:49 15 Q Okay. Well, if you do spend more time with a person,
16 you would at least agree that you can learn more about that
17 person in that time?

18 A You may.

19 Q And you can learn more about their deficits, right?

17:22:58 20 A You may.

21 Q So you mentioned in the report that Mr. Owen was
22 well-groomed during the evaluation, right?

23 A Yes.

24 Q And are you aware that the inmates can get in trouble
17:23:17 25 if they aren't well-groomed?

17:23:18 1 A Yes.

2 Q Now, it was reported that Mr. Owen's intelligence was
3 clinically judged to be in the high average range, right?

4 A Correct.

17:23:43 5 Q What range of IQ scores does a high average
6 encompass?

7 A So high average would be 100 to 110.

8 Q And how did you determine that he has an IQ in that
9 range?

17:23:55 10 A Just by his communication skills, his vocabulary, his
11 knowledge base, just through the interview process.

12 Q Okay. So just from your observations of him?

13 A Correct.

14 Q But you'd agree that there are IQ tests that you can
17:24:10 15 employ, right?

16 A There are IQ tests.

17 Q And an IQ test could give you more determinant result
18 on what someone's IQ is?

19 A It may.

17:24:27 20 Q Now, isn't it true that the length of time that
21 someone has a delusion for and that is fixed in their mind can
22 be a factor into whether or not you believe those delusions are
23 genuine?

24 A I'm sorry, can you repeat the question?

17:24:43 25 Q Yeah. So isn't it true that the length of time that

17:24:47 1 someone has a delusion for can be a factor in determining
2 whether or not that you believe that delusion to be true?

3 A Not necessarily, no.

4 Q Okay. So you're saying that a delusion isn't more
17:25:02 5 true if it's existed for 30 years as opposed to a short period
6 of time?

7 A Correct. That may not make me believe that it's more
8 true, correct.

9 Q So are you aware that in Mr. Owen's prior case, prior
17:25:20 10 courts, including Florida Supreme Court, found that the
11 delusions and severe mental illness that had been established
12 were considered as mitigated circumstances?

13 A Yes.

14 Q So you were aware that the Florida Supreme Court had
17:25:33 15 considered these mental health issues?

16 A That they considered, correct.

17 Q And they found them mitigating?

18 A They listed it in the mitigating, yes.

19 Q And you were aware of the two statutory mitigating
17:25:45 20 circumstances in death penalty cases, right?

21 A I don't recall what they are specifically off the top
22 of my head, but yes.

23 Q Okay. So you can't tell this Court what those two
24 are?

17:25:56 25 A No.

17:26:02 1 Q And did the previous courts in this case find that
2 his ability to conform to his -- I'm sorry. Did the previous
3 courts in this case find that his ability to conform to his
4 conduct as requirements of law had been diminished due to
17:26:21 5 severe mental illness?

6 A I don't recall that.

7 Q Do you recall that he, that the crimes he committed
8 were committed while under the influence of extreme mental or
9 emotional disturbance?

17:26:34 10 A No, I don't recall that.

11 Q And so are you saying that those findings didn't
12 exist or just that you didn't recall?

13 A I don't recall it.

14 Q So are you saying that as long as Mr. Owen is aware
17:26:52 15 that the State believes he killed the victims and are executing
16 him for that reason, that his delusional beliefs are
17 irrelevant?

18 A No. And that he understand that he's going to die,
19 which he expressed that in the statement that, I can't believe
17:27:08 20 they're going to kill me because I killed them.

21 Q Now, you talked on direct examination about gender
22 identity and whether or not Mr. Owen was experiencing that
23 behavior, right?

24 A Yes.

17:27:27 25 Q And you mentioned that you had spoken to multiple

17:27:30 1 people at the prison and that you learned he had not been
2 exhibiting that behavior?

3 A Correct.

4 Q But you'd also found out that previously in the case
17:27:38 5 at some point, he was experiencing that behavior?

6 A Yes.

7 Q And then you don't know why that behavior stopped,
8 right?

9 A Correct.

17:27:57 10 Q And so when you're saying that he didn't experience
11 that type of behavior, what are you saying? Do you believe
12 that he's able to access women's clothes while he's in prison?

13 A No. They alter the clothing that they have, to wear
14 it in a more feminine manner; so they alter things that they do
17:28:16 15 have access to. It's not that they have access to females'
16 clothing because the females wear the same outfit.

17 Q And so do you believe that if he had modified his
18 clothing issued from the prison that he would not be in trouble
19 with the prison?

17:28:30 20 A I don't know.

21 Q And are you aware that, during your evaluation, that
22 counsel for the defense requested for the evaluation to be
23 videotaped?

24 A I was not aware of that.

17:28:57 25 Q Are you also aware that counsel for the Governor's

17:28:59 1 office would not allow the videotape?

2 A I was not aware of that.

3 Q Would you agree that the exact substance of the
4 delusions that you learned during this evaluation could have
17:29:10 5 been captured via video?

6 A I think the whole interview could have been captured
7 via video.

8 Q And that video could show us exactly what happened
9 during the evaluation, right?

17:29:24 10 A Yes.

11 Q And you'd agree that, wouldn't you agree that if we
12 had that video, the Court would be in a better position to
13 assess Mr. Owen's beliefs and his body language and facial
14 expressions?

17:29:40 15 A Absolutely.

16 Q Do you recall requesting that counsel for Mr. Owen
17 leave the interview prior to Mr. Owen being brought over?

18 A No.

19 Q Do you recall him leaving prior to Mr. Owen being
17:29:59 20 brought over?

21 A I know I asked him to leave at one point in the
22 middle. Oh, I think, no. He did come in, and we were
23 interviewing the officers, yes. And I asked him if he would
24 step out, correct.

17:30:12 25 Q Okay. And why did you want the conversations that

17:30:14 1 you had with the officers to be in secret?

2 A It wasn't that I wanted them to be in secret. He was
3 there to sit in on his client's interview is what I was told.
4 So I just asked him if he wanted to step out until his client
17:30:26 5 got there.

6 MR. CHAYKIN: One moment?

7 THE COURT: You may.

8 (Pause in the proceedings.)

9 BY MR. CHAYKIN:

17:31:53 10 Q So as part of your review of the DOC records, you
11 ended up reviewing a problem list, right?

12 A Yes.

13 Q And on that problem list, it notes gender dysmorphia
14 regarding Mr. Owen?

17:32:07 15 A Yes. On some of the problem lists, correct.

16 MR. CHAYKIN: Your Honor, may I approach?

17 THE COURT: You may.

18 BY MR. CHAYKIN:

19 Q Do you recognize what I've handed you?

17:32:29 20 A I don't recognize this specific sheet out of four
21 boxes of records, no, but okay.

22 Q And, but you reviewed that document, right?

23 A I'm sure that we did, yes.

24 Q Okay. And does it fairly and accurately depict that
17:32:45 25 problem list that you reviewed in the DOC records?

17:32:48 1 A Yes. It was added in 1996.

2 MR. CHAYKIN: Your Honor, at this time I would ask to
3 introduce this in evidence.

4 THE COURT: Any objection?

17:32:57 5 MR. BOBEK: No, Judge.

6 THE COURT: All right. It will be received as your
7 next numbered exhibit in evidence.

8 MR. CHAYKIN: And may I approach, your Honor?

9 THE COURT: You may. Is this 4 or 5?

17:33:10 10 THE CLERK: 4.

11 THE COURT: 4.

12 (Defense Exhibit 4 admitted into evidence)

13 BY MR. CHAYKIN:

14 Q And so you said that that record is from 1996?

17:33:19 15 A No. That was added, that record had diagnoses added.

16 It's kind of a fluid document thing; so things are added all
17 along. I think there were some added in 2020 to it, but that
18 particular diagnosis was added, or problem was added, in 1996,
19 was the first time that it was presented to the Department of
20 Corrections.

21 Q Okay. So that's regarding the gender dysmorphia;
22 right?

23 A Correct. I believe on that sheet it says gender
24 identity disorder.

17:33:50 25 Q Okay. Gender identity disorder, which we know to be

17:33:53 1 the same as gender dysmorphia, right?

2 A Yes.

3 Q So you spoke about dementia on direct examination.

4 Now, is there any test that you could do to determine
17:34:09 5 if somebody has dementia?

6 A There, again, are screening tools for it, such as the
7 Mini Mental Status Examination, the MoCA, which is the Montreal
8 Cognitive Scale. There are, and you could do a Clock-Drawing
9 Test. There are different tests that you can do for that.

17:34:27 10 Q Okay. But you didn't employ any of those tests
11 during your evaluation, right?

12 A No. We did not feel that he had dementia. It was
13 not documented in any of his charts that he had any kind of
14 symptoms consistent with dementia. It was not mentioned in
17:34:43 15 Dr. Eisenstein's first report. That didn't show up until the
16 report from yesterday; so, no, we did not look for that.

17 Q Okay. And, but you mentioned that dementia can
18 happen rapidly or slowly over time, right?

19 A If you have a stroke, you will see a step-wise
17:35:00 20 decline in your cognitive functioning, and so you'll see a
21 rapid decline. If you have a dementing process, such as
22 Alzheimer's disease, you'll see a slow progression of the
23 illness.

24 Q Okay. So you would agree that dementia can be either
17:35:15 25 rapidly increasing or slow over time; right?

17:35:19 1 A Yes. But there's no evidence that he had any kind of
2 cerebrovascular accidents which would cause you to have a rapid
3 decrease.

4 Q Now, can inconsistencies in recalling facts be a
17:35:31 5 result of memory issues or even dementia?

6 A They may.

7 Q And when you do, do you do other evaluations of death
8 row inmates?

9 A Yes, sir.

17:35:48 10 Q And when you do those evaluations, how long are they
11 typically done for?

12 A It depends on each individual.

13 Q Okay. Well, are you able to give me a range of how
14 much, how much time you typically spend with an individual?

17:35:59 15 A I would say one to three hours, typically.

16 Q Okay. What does that depend on?

17 A How cooperative they are, what the, what I'm
18 interviewing them for; so it just depends. Each individual is
19 different.

17:36:15 20 Q How long did you spend interviewing the DOC
21 personnel?

22 A I didn't, we didn't write down -- I didn't write down
23 the times that we spent interviewing them.

24 Q And --

17:36:27 25 A They were brief. Maybe ten minutes, five, ten

17:36:30 1 minutes.

2 Q Each?

3 A Yes.

4 Q And when you spoke with them, did you speak with
17:36:34 5 them -- well, all three of you together, the evaluators?

6 A That's correct.

7 Q Okay. And when you spoke to these witnesses, were
8 they by themselves or was everybody together?

9 A No, sir. It was each one came in individually.

17:36:46 10 Q Okay. And came in individually into a separate room
11 you're saying?

12 A Yes. The same room where we evaluated the Defendant.

13 Q Okay. And that happened prior to you evaluating
14 Mr. Owen?

17:36:55 15 A That's correct.

16 Q Does someone who's mentally ill exhibit symptomology
17 all of the time, 24 hours a day?

18 A No.

19 Q So there's points in time where somebody may not be
17:37:17 20 exhibiting symptoms of schizophrenia or any other mental
21 illness?

22 A Correct.

23 Q Okay. And that could be for extended periods of time
24 as well?

17:37:27 25 A It may. Each individual, again, is different. And

17:37:28 1 their presentation of their illness is different.

2 Q And whether or not you saw this during your
3 evaluation, would you agree that there was testimony today
4 about Mr. Owen and his decline in his mental health?

17:37:50 5 A There was testimony with regards to a decline in his
6 memory.

7 Q In his memory as well?

8 A I didn't hear about his mental health decline.

9 Q Okay. So regarding his memory specifically?

17:38:02 10 A Correct. But I think the testing was inconsistent
11 the way it was described today. The tests on the first day, he
12 knocked it out of the park, quote, unquote, on a memory test.
13 He, you know, he did fabulous on the memory tests on the first
14 day, which was totally inconsistent with then saying that he
17:38:36 15 had dementia on the second day.

16 Q Okay. Now, you would agree that that's just your
17 view of what you're hearing of the defense expert's report?

18 A That's exactly what he said. I mean, I have it
19 written down. I can tell you what he said. You have the
17:38:50 20 record.

21 Q But you weren't present for any of that evaluation,
22 right?

23 A Correct. But I have his description of it today.

24 Q That's okay.

17:38:59 25 A Okay. Did quite well, quote, unquote.

17:39:04 1 Q That's okay.

2 A Perfect, quote, unquote.

3 Q I'll ask you a question. Ma'am, I'll ask you a
4 question.

17:39:13 5 A Okay.

6 MR. CHAYKIN: A moment to confer?

7 THE COURT: You may.

8 (Pause in the proceedings.)

9 MR. CHAYKIN: Permission to retrieve an exhibit, your
17:39:43 10 Honor?

11 THE COURT: You may.

12 MR. CHAYKIN: May I approach, your Honor?

13 THE COURT: You may.

14 BY MR. CHAYKIN:

17:40:06 15 Q I'm showing you what's been previously entered into
16 evidence as Exhibit 2.

17 A Yes.

18 Q That's Dr. Eisenstein's report, right?

19 A Correct.

17:40:27 20 Q So you'd agree that on the last paragraph on page one
21 that Dr. Eisenstein notes that although this examiner did not
22 have sufficient time to explore his memory problems, there
23 appears to be an onset of an insidious dementia process, right?

24 A Yes.

17:40:43 25 Q Okay. So you would agree that he actually did, in

17:40:45 1 the first report, mention his suspicion of dementia?

2 A He did. Thank you.

3 MR. CHAYKIN: Your Honor, may I have a moment?

4 THE COURT: You may.

17:41:05 5 (Pause in the proceedings.)

6 BY MR. CHAYKIN:

7 Q Okay. So you claimed earlier that Mr. Owen stated he
8 didn't know where the victims were today, right?

9 A Right. What he said, I found that in here. Now I
17:41:25 10 turned off that page again. I have to go back to the officers.
11 He said he hadn't felt them in a while.

12 Q Okay.

13 A He said that the State's aware that if they kill him,
14 they'll release their souls. He had felt them with me for a
17:41:52 15 long time, quote, unquote. Don't feel them currently.

16 Q Okay. So he didn't say that he didn't know where
17 they were today, he was saying that he couldn't feel them?

18 A Correct.

19 Q Okay. Now, you'd agree that if this evaluation had
17:42:17 20 been videotaped, there would be absolutely no question as to
21 what he actually said?

22 A Correct.

23 MR. CHAYKIN: I have no further questions.

24 THE COURT: All right. Any redirect?

17:42:28 25 MR. BOBEK: Yes, Judge.

REDIRECT EXAMINATION

17:42:28 1 BY MR. BOBEK:

2 Q Did Defense Counsel provide you a video of
3 Dr. Eisenstein's two videos?
4

17:42:42 5 A No.

6 Q Did they provide you any of the testing data that he
7 did?

8 A No.

9 Q And do you recall him testifying that he was the only
10 person in the room when those interviews occurred?

11 A Yes.

12 Q So is it fair to say that Dr. Eisenstein is the only
13 person that can corroborate what he heard and how the test
14 went; is that correct?

17:43:00 15 A That's correct.

16 Q Now, you said earlier you have evaluated people for
17 schizophrenia?

18 A Yes.

19 Q Do you recall how many times?

17:43:09 20 A Thousands of times.

21 Q Okay. And so you've diagnosed people with
22 schizophrenia?

23 A Yes. I work on a crisis stabilization unit, and I'm
24 there seven days a week, Monday through Sunday.

17:43:21 25 Q Okay. And so you have a lot of experience not just

17:43:24 1 diagnosing people with schizophrenia, but working with people
2 who have been unmedicated for significant periods of time?

3 A Correct. Treating them, correct.

4 Q And did Mr. Owen appear, in your interview with him,
17:43:36 5 like those people that you've interviewed in the past?

6 A No.

7 Q Now, you said earlier that the length of time the
8 delusion has existed is not necessarily important; is that
9 correct?

17:43:50 10 A Correct.

11 Q Are you familiar with the fact that Mr. Owen did not
12 report this delusion for about ten years until after the first
13 crime occurred?

14 A Correct.

17:44:00 15 Q Is that the kind of fact that would factor into why
16 you would find it less credible?

17 A It's part of what you have to consider, especially in
18 the forensic setting, yes.

19 Q Okay. And if he were, for example, pending a retrial
17:44:13 20 for a death penalty case and that was the first time this ever
21 came up, is that another factor that might go into your
22 analysis for why he might be making up the delusion?

23 A Yes, absolutely.

24 Q Okay. And you heard testimony today that he had a
17:44:28 25 lengthy police interrogation immediately after the murders.

17:44:32 1 A Correct.

2 Q In a 20-hour interrogation, while he's in the midst
3 of this delusion, would you expect him to have at least mention
4 this delusion once?

17:44:42 5 A Yes.

6 Q Okay. And so you would find it unusual and against
7 the diagnosis of delusion if it never came up?

8 A Correct.

9 Q Okay. And why did you feel testing was unnecessary?

17:44:55 10 A We felt that, Dr. Myers actually brought some testing
11 with him, and we discussed whether we felt that it was
12 necessary to do it. And the team didn't feel that it was
13 necessary. We felt that we had just enough from the clinical
14 interview.

17:45:08 15 Q Okay. And is that common?

16 A Yes.

17 Q And I believe Defense asked you if you've never found
18 a defendant incompetent to proceed?

19 A To be executed, correct.

17:45:19 20 Q Right. But you have found death row defendants
21 incompetent to proceed in the past, correct, just not while a
22 warrant is signed?

23 A Correct.

24 Q Okay. For example, just in the past year or two, you
17:45:31 25 were brought in a case with Defendants Leo Boatman and

17:45:34 1 William Wells; is that correct?

2 A Yes.

3 Q Did you find either of those defendants incompetent
4 to proceed?

17:45:40 5 A I did.

6 Q Okay. And would that affect the State's ability to
7 move forward with the case?

8 A Yes.

9 Q Okay. But you weren't concerned about future
17:45:47 10 business with the State when you made those evaluations?

11 A No.

12 Q Okay. And did you find just one or both incompetent?

13 A I believe both.

14 Q Okay. So it affected the entire State's case for
17:45:58 15 that murder?

16 A Correct.

17 Q Okay.

18 A Definitely Mr. Boatman.

19 MR. BOBEK: May I have one moment, Judge?

17:46:08 20 THE COURT: You may.

21 (Pause in the proceedings.)

22 MR. BOBEK: No further questions, Judge.

23 THE COURT: I don't typically do the recross thing.

24 MR. CHAYKIN: My apologies, your Honor. May I --

17:46:22 25 THE COURT: What area do you want to --

17:46:27 1 MR. CHAYKIN: Briefly, just a couple of questions,
2 your Honor.

3 THE COURT: All right.

4 RECROSS-EXAMINATION

17:46:32 5 BY MR. CHAYKIN:

6 Q Okay. So I know we touched on schizophrenia earlier,
7 but you'd agree that when individuals have schizophrenia, it
8 can present differently in each individual, right?

9 A Absolutely.

17:46:42 10 Q And people with mental health issues, you would agree
11 that sometimes they withhold information, right?

12 A Sometimes, correct.

13 Q And so -- and back to the schizophrenia. So their
14 symptomatology can be different among each individual, right?

17:47:00 15 A Yes.

16 Q So one individual might show these symptoms, and
17 another individual might show different symptoms, right?

18 A Correct.

19 Q And another, one individual might show symptoms much
17:47:08 20 more often than another individual who shows symptoms less
21 often?

22 A They may.

23 Q Now, if you believe that Mr. Owen was embarrassed and
24 trying to hide his delusions, is it possible that he didn't
17:47:23 25 share them with doctors or other attorneys?

17:47:28 1 A Maybe.

2 MR. CHAYKIN: I have no further questions.

3 MR. BOBEK: No more questions, Judge.

4 THE COURT: Thank you, Dr. Werner. You may step

17:47:38 5 down.

6 THE WITNESS: Thank you.

7 THE COURT: Anyone else you want to call today?

8 MR. BUSTAMANTE: It shouldn't be too long, your

9 Honor. These are our guards.

17:47:54 10 THE COURT: All right.

11 MR. BUSTAMANTE: The State calls John Manning.

12 THE COURT: Good evening, sir.

13 THE WITNESS: Hi. How are you doing?

14 THE COURT: If you'll raise your right hand for me.

17:48:41 15 (Witness sworn.)

16 THE WITNESS: I do.

17 THE COURT: Thank you. Please be seated.

18 JOHN MANNING,

19 called as a witness herein, having been first sworn, was

17:48:49 20 examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. BUSTAMANTE:

23 Q Good afternoon, sir.

24 A How are you doing?

17:48:53 25 Q Can you please tell us your name and spell your last

17:48:54 1 name for the record.

2 A My name is John Manning, M-A-N-N-I-N-G.

3 Q And what do you do for a living, sir?

4 A I'm a correctional officer sergeant, Florida, Union

17:49:03 5 Correctional Institution.

6 Q And how long have you been working at Union

7 Correctional Institution?

8 A Since 2013.

9 Q 10 years?

17:49:13 10 A Yes, sir.

11 Q And what are your duties as a sergeant over at UCI?

12 A UCI, I'm over papa dorm. As administrative sergeant,

13 I run, oversee recreation and day room activities, along with

14 daily functions of the building as far as callouts and all.

17:49:35 15 Q Is this what is typically called at least one of the
16 death row dorms?

17 A Yes, sir.

18 Q And how long have you been working in that particular
19 section of the UCI?

17:49:49 20 A Five years, going on six.

21 Q During the time that you have worked as a sergeant or
22 as an officer for UCI, have you had an opportunity to meet the
23 Defendant in this case?

24 A Yes, sir.

17:50:04 25 Q How long have you known him or interacted with him?

17:50:09 1 A As long as I've been there. Five or six years.
2 That's how long I've been over recreation; so --

3 Q Can you tell us what your interactions with him have
4 been?

17:50:17 5 A He come to the yard, or if I'd be working on a wing,
6 feeding chow, you know, interactions.

7 Q Have you had conversations with him over the five or
8 six years that you've known him?

9 A There's been some small talk, yes, sir,
17:50:29 10 conversations.

11 Q Okay. And when you talk about these small talks,
12 approximately, just give the Court a number of times that you
13 have had these small talk conversations with him.

14 A Numerous times over the years.

17:50:38 15 Q Dozens?

16 A Yes, sir.

17 Q Anything in particular in these small conversations
18 that you remember of any particular topics?

19 A Talk about fishing a little bit. A little bit about
17:50:50 20 hunting. That was about it.

21 Q Fishing and hunting?

22 A Yes.

23 Q At any of those points, has he ever talked about
24 either becoming a woman?

17:50:59 25 A No, sir.

17:50:59 1 Q Has he acted in any type of feminine manner?

2 A No, sir.

3 Q Anything in regards to transgender?

4 A No, sir.

17:51:10 5 Q When you talked to him in the brief conversations
6 that you had, do you have an opinion in regards to -- is he
7 smart?

8 A Yes, sir.

9 Q And can you describe that to the Court.

17:51:23 10 A He'll have a very intelligent conversation with you.
11 He likes to read books, does a lot of reading, does drawings,
12 and different things.

13 Q So he does a lot of reading, a lot of drawing?

14 A Yes, sir.

17:51:37 15 Q A lot of writing?

16 A Yes, sir.

17 Q Is that something that was consistent those five or
18 six years that you have seen him over at UCI while he was on
19 death row?

17:51:47 20 A Yes, sir.

21 Q During the time, did you see any change in regards to
22 his level of, when he talked to you, did he seem like he was
23 less there, from --

24 A No, sir.

17:52:05 25 Q Did you at any point see any confusion in him?

17:52:08 1 A No, sir.

2 Q Any memory problems?

3 A No, sir.

4 Q Any reduced concentration?

17:52:13 5 A No.

6 Q Any personality or behavioral changes?

7 A No, sir.

8 Q Did you see him depressed?

9 A No.

17:52:20 10 Q At any point, did he need any assistance in such
11 tasks as getting dressed?

12 A No.

13 Q Bathing?

14 A No.

17:52:30 15 Q Grooming?

16 A No.

17 Q When is the last time you saw him?

18 A Probably March. Whatever day they came, FSP come to
19 transport him back from UCI to FSP when they signed the
17:52:45 20 warrant.

21 Q Is that a big event over at UCI, when somebody comes
22 over to pick them up for Florida State Prison?

23 A Yes, sir.

24 Q How did he react to that?

17:52:56 25 A He reacted normal. I mean, he said a few things to

17:53:01 1 some people on the wing that he was gone. And he came out of
2 his cell fine. He was asked if he knew what was going on. He
3 replied, yes.

4 Q What did he say?

17:53:11 5 A He replied yes.

6 Q At any time while he was, you were supervising him or
7 at least had contact with him in the six years at UCI, five to
8 six years, did he ever tell you that he was innocent of any
9 crimes?

17:53:24 10 A No.

11 Q Did he say he did not kill anybody?

12 A No.

13 Q Do you see Mr. Owen in the courtroom today?

14 A I do.

17:53:38 15 Q Can you please point him out and describe an item of
16 clothing he's wearing?

17 A Right there. He has an orange shirt on and blue
18 pants.

19 MR. BUSTAMANTE: Your Honor, may the record reflect
17:53:47 20 that he's identified the Defendant?

21 THE COURT: The record so reflects.

22 MR. BUSTAMANTE: I have no further questions.

23 THE COURT: Cross?
24
25

CROSS-EXAMINATION

17:53:59 1
2 BY MS. LAURIENZO:

3 Q Good afternoon -- good evening, Officer Manning.

4 A Good evening.

17:54:12 5 Q First, we'll start off, you're not a psychologist,
6 are you?

7 A No.

8 Q And you don't have a medical license?

9 A No.

17:54:22 10 Q And you've not had any formal education or training
11 that would qualify you to make any diagnosis related to any
12 psychiatric impairment?

13 A No.

14 Q And do you have, similarly, do you have any
17:54:37 15 psychological or psychiatric training that would allow you to
16 differentiate between if an individual was malingering with
17 their mental illness?

18 A No.

19 Q I know you mentioned that you started on papa dorm in
17:54:53 20 2000 -- it was five or six years ago you said?

21 A Yes.

22 Q And you've known Mr. Owen that whole time?

23 A Yes, ma'am. I've had interaction with him throughout
24 the whole period of time.

17:55:04 25 Q Okay. You would agree that your job is to keep order

17:55:07 1 among the inmates; is that right?

2 A Yes, ma'am.

3 Q How long would each of your interactions with
4 Mr. Owen last, approximately?

17:55:15 5 A Approximately, probably around five minutes or so.

6 Q Okay. So would you stand there for five minutes and
7 talk to him for a solid five minutes every time?

8 A The majority of the time, when he'd come to the yard,
9 I'd talk to him for a little bit on the yard for about five
17:55:30 10 minutes or so, until I get -- go do something else.

11 Q How often was this in terms of daily? Was it
12 multiple times a day or once a day?

13 A At least twice a week he'd come to the yard. And
14 then, which, I mean, I'm up and down rows, in and out
17:55:46 15 buildings. We work the floors and all; so, I mean, I have
16 contact about, about every day.

17 Q Okay. So approximately for five minutes --

18 A Yeah.

19 Q -- about every day --

17:55:59 20 A Yeah, about every day.

21 Q -- just depending on your schedule and whatnot?

22 A Yes.

23 Q Okay. And you said the topics of conversations you
24 guys would talk about would be, like, sports, hunting,
17:56:10 25 fishing --

17:56:11 1 A Hunting, fishing, yes.

2 Q -- stuff like that?

3 A Yes.

4 Q Guy stuff?

17:56:15 5 A Yes.

6 Q Okay. Did he ever talk to you about things like --
7 or things that he was reading in any books?

8 A No.

9 Q Okay. So it's not like he said, I read this in a
17:56:29 10 physics book?

11 A No.

12 Q Nothing like that?

13 A No.

14 Q So I know you noted no confusion or memory problems
17:56:39 15 within the span that you knew him. Or would you say that you
16 were having in-depth conversations with him about topics?

17 A Not in-depth, no.

18 Q Okay. So they were just --

19 A Casual conversation, yes.

17:56:51 20 Q Okay. That maybe someone in grade school would have
21 one, about fishing or hunting, things like that?

22 A Yeah.

23 Q Did Mr. Owen ever say to you that he killed anyone?

24 A No.

17:57:07 25 Q Do -- I'm going to switch a little bit to a different

17:57:10 1 subject, but do death row inmates get in trouble if they're not
2 well-groomed?

3 A Yes.

4 Q Do death row inmates get in trouble if they don't
17:57:19 5 keep their cell tidy and in shape?

6 A Yes, ma'am.

7 Q Do they get in trouble if they refuse to answer
8 questions from prison staff?

9 A Yes, ma'am.

17:57:33 10 Q Okay. Is Mr. Owen, for the most part, compliant?

11 A Yes, ma'am.

12 Q Has he ever been non-compliant with a request that
13 you've made of him?

14 A No.

17:57:42 15 Q Is he polite as well?

16 A Yeah.

17 Q Do you know how long he's been in DOC custody?

18 A I don't know his incarceration time.

19 Q Are you aware of how many DRs he's received in the
17:57:55 20 time he's been in custody?

21 A No.

22 Q What about since the time that you've known him?

23 A Since I've known him, I haven't known him getting a
24 DR.

17:58:03 25 Q Okay. So it's not like you haven't written a DR for

17:58:05 1 him?

2 A No.

3 Q Would you say that that's generally less than most
4 death row inmates?

17:58:12 5 A Yeah. Most, I mean, there's not very much
6 disciplinary problem on death row.

7 Q Going to when the warrant was signed, I know he made
8 some conversation with people as he was exiting.

9 Do you have any other details to provide how he
17:58:30 10 responded when the warrant was read?

11 A No. Like I said, he came up. He noticed us starting
12 to get his stuff. He said a few things to some people on the
13 wing. And then they, the warden asked him if he knew what --
14 and he replied, yes, and that was about it.

17:58:48 15 Q So is that consistent with the other behavior you've
16 observed from him in the past?

17 A Yes, ma'am.

18 Q Is that different than how maybe other warrants in
19 the past few months have gone down?

17:58:58 20 A Yeah.

21 Q From your experience in corrections, at least since
22 2013, are inmates violent towards other inmates that present as
23 anything other than heterosexual males?

24 A No.

17:59:18 25 Q Would an, from your experience, would an inmate be

17:59:21 1 targeted as prey for sexual assault if they expressed
2 themselves as --

3 A No.

4 Q -- as not heterosexual?

17:59:28 5 A No, ma'am.

6 Q Okay. In your experience, is it common for mentally
7 ill inmates to refuse treatment in prison?

8 A Yes.

9 Q And, similarly, it's common for them to refuse
17:59:41 10 medication as well?

11 A Yes.

12 MS. LAURIENZO: May I have a moment?

13 THE COURT: You may.

14 (Pause in the proceedings.)

18:00:07 15 BY MS. LAURIENZO:

16 Q Has Mr. Owen been to the yard in the past two years?

17 A Not since the day room was started up.

18 Q So was the day room started about two years ago?

19 A Yes.

18:00:22 20 Q And I know this is getting into the nitty-gritty, but
21 can you recall any specifics about the conversations you had
22 about hunting and fishing?

23 A No, ma'am, no.

24 Q Is it possible you may have confused him with another
18:00:35 25 inmate?

18:00:35 1 A No.

2 MS. LAURIENZO: May I have another moment?

3 THE COURT: You may.

4 (Pause in the proceedings.)

18:00:44 5 THE COURT: Any redirect?

6 MR. BUSTAMANTE: Briefly.

7 REDIRECT EXAMINATION

8 BY MR. BUSTAMANTE:

9 Q Can you explain to the Court what the day room is?

18:00:52 10 A It is on the wing.

11 Q And what is it that happens in the day room?

12 A We have a cell that has a kiosk in it, with a TV and

13 fan. And the inmates all, at a certain time, say, 8 o'clock in

14 the morning, get to come out their cells, roam up and down the

18:01:07 15 wing, take a shower freely, interact with other inmates

16 throughout the day.

17 Q Is it a popular addition to the daily activity of

18 the inmates?

19 A Very.

18:01:18 20 Q And he seemed to enjoy that?

21 A Yes.

22 Q Much better than going out to the rec yard?

23 A Yes.

24 Q And a lot of the other inmates were like that?

18:01:25 25 A Yes.

18:01:25 1 Q Now, when you said during cross-examination that the
2 Defendant went and got his stuff when the order came from the
3 Governor's office, what stuff was he getting?

4 A It was his stuff in his locker, his address book and
18:01:41 5 his tablet, to give to the warden.

6 Q During the time that you know him for the five or six
7 years, did he read a lot of books?

8 A Yes.

9 Q Did that change from the first day you would have met
18:01:54 10 him around that time to before he left to go to Florida State
11 Prison?

12 A No.

13 Q All right. So he was still a voracious reader?

14 A Yes.

18:02:03 15 Q And writer?

16 A Yes.

17 MR. BUSTAMANTE: Nothing further.

18 THE COURT: Thank you, Mr. Manning. You may step
19 down.

18:02:08 20 Next witness?

21 MR. BUSTAMANTE: Jeffrey McClellan.

22 THE COURT: Good evening, sir. If you'll raise your
23 right hand for me.

24 (Witness sworn.)

18:02:53 25 THE WITNESS: Yes, sir, I do.

18:02:54 1 THE COURT: Thank you. Please be seated.

2 JEFFREY MCCLELLAN,

3 called as a witness herein, having been first sworn, was

4 examined and testified as follows:

18:02:57 5 DIRECT EXAMINATION

6 BY MR. BUSTAMANTE:

7 Q Good evening, sir.

8 A Good evening.

9 Q Can you please tell us your name and spell your last
18:03:02 10 name for the record.

11 A Jeffrey McClellan. Last name M-C-C-L-E-L-L-A-N.

12 Q And what do you do for a living, sir?

13 A Assistant warden at Florida State Prison.

14 Q And how long have you been employed in that capacity?

18:03:16 15 A As assistant warden, since 2014. Nine years.

16 Q And how long have you been working for the Department
17 of Corrections?

18 A 29 years.

19 Q 29 years? Has those 29 years all been with Florida
18:03:30 20 State Prison?

21 A No, sir, they haven't.

22 Q Okay. How long have you been at Florida State
23 Prison?

24 A 23 years. Going on 23 years. August will be 23.

18:03:40 25 Q And what are your duties as an assistant warden?

18:03:43 1 A Assist the warden of programs.

2 Q And what does that entail?

3 A I'm over a classification, chaplain services,
4 education. I'm also a duty warden.

18:03:56 5 Q And what is classifications?

6 A Classification. Classification is the department
7 that assists the custody, gives the jobs to the inmates, and
8 various others things, hears disciplinary reports.

9 Q When an inmate comes over to your facility, what is
18:04:13 10 the process when that inmate comes in? Is there a particular
11 process?

12 A The gaining process -- when inmate is gained, he's
13 interviewed by classification. He's identified by
14 classification.

18:04:24 15 Q Okay. And what happens in that interview?

16 A Part of the interview would be the sexual -- the SRI,
17 which is the Sexual Risk Index.

18 Q Okay. And is that, when you say you're gaining
19 inmate, is that also if somebody is being transferred on a
18:04:41 20 death warrant?

21 A Yes, sir. Anytime an inmate is moved, it would be
22 called a gain.

23 Q And what, let's say that in regards to a particular
24 person who has a death warrant and they're coming and you're
18:04:53 25 gaining that particular inmate, what does that process look

18:04:59 1 like?

2 A What does the process look like?

3 Q Yeah. Does the inmate go to the classification
4 officer?

18:05:03 5 A No. He's going to go to the colonel's area, and
6 going to be interviewed usually by the warden, sometimes
7 assistant warden, and other staff that will be there also.

8 Q And at what point, after that interview -- what's the
9 purpose of that interview?

18:05:17 10 A Interview, to let him know what is actually going on.
11 We give them a copy of the warrant and explain to him what the
12 process is.

13 Q And is that something that happened with this
14 particular inmate?

18:05:30 15 A Yes, sir.

16 Q And do you know, who is the person who explained that
17 to him?

18 A That would be Warden Davis.

19 Q Warden Davis. That's the warden of Florida State
18:05:39 20 Prison?

21 A Yes, sir.

22 Q Were you nearby?

23 A No, sir. I was not in the room at that time.

24 Q So after that process, then, after that is explained
18:05:46 25 to him, what happens?

18:05:47 1 A At that time, classification could do the interview
2 at that time with him. Or it could be later because, I mean,
3 it varies. Then the inmate would be escorted to the clinic,
4 where he would get a pre-confinement evaluation and then
18:06:03 5 escorted down to Q wing.

6 Q Okay. Now, in regards to this classification, and
7 that's something that happened, or at least the meeting with
8 the classification officer, that's something that happened with
9 this inmate?

18:06:18 10 A Yes, sir.

11 Q And what happens at this interview?

12 A At the time, the classification officer is going to
13 identify the inmate using the record, the file with the
14 picture, and also he'll do the SRI interview at that time.

18:06:34 15 Q SRI interview?

16 A Sexual risk indicator.

17 Q Okay. That's something that's done with every inmate
18 that is gained by your facility?

19 A Yes, sir, it is.

18:06:44 20 Q And what is that SRI interview?

21 A Various questions are asked to the inmate. The
22 inmates are asked his sexual preference, his sexual identity.
23 Do you feel safe in prison, does he know how to report a PREA
24 case.

18:07:01 25 Q And what is a PREA case?

18:07:02 1 A A PREA, a pre-allegation where, a Prison Rape
2 Elimination Act of an inmate has been, feels like he's
3 threatened by some type of sexual act.

4 Q So in that process, let's say that you had an inmate
18:07:19 5 that comes in. And does the answer that inmate give gears as
6 to where the interview is going to go through? Am I making
7 myself clear on that one?

8 A Well, the interview, the inmate is going -- the
9 classification officer is going to interview the inmate. And,
18:07:36 10 I mean, based on various answers that the inmate gives, yes, it
11 could go --

12 Q All right. Let's say that an inmate comes in and
13 says that, I am a heterosexual male.

14 A Yes, sir.

18:07:48 15 Q Okay. Is that different, the next step, as opposed
16 to if the inmate says, I'm a transgender or homosexual or some
17 other variation of that?

18 A Yes, sir, it would be.

19 Q Okay. And so if the person is a heterosexual male
18:08:03 20 and is not afraid of what is happening inside, how is that, how
21 does the process go from there?

22 A That would be pretty much be the end of the process.

23 Q What if the person at this point says, I'm a
24 transgender individual, what happens?

18:08:15 25 A If the inmate identifies as a transgender, then there

18:08:18 1 would be another series of -- there would be another interview
2 that will follow it, which is the transgender -- it's a TI
3 assessment, which stands for Transgender Intersex Interview.

4 Q And how long is that process?

18:08:33 5 A How long is the interview?

6 Q Yes.

7 A Probably about ten minutes.

8 Q Ten minutes? And if the person is transgender and
9 you go through the process, what type of -- I'm not going to
18:08:43 10 call it benefits, but what happens that's different that would
11 be with somebody who's heterosexual or describes themselves as
12 heterosexual?

13 A At Florida State Prison, the major difference would
14 be the inmate could request to shower alone.

18:08:56 15 Q What about any type of undergarments?

16 A That, once the TI assessment is completed and if the
17 inmate says he's having some type of mental health issue, then
18 he'll be interviewed by mental health. And from mental health,
19 once that interview is completed and that -- once that
18:09:23 20 assessment is completed, then it would be sent to central
21 office. Central office mental health would also evaluate it,
22 and they would make the decision if the inmate could actually
23 have female undergarments or grow their hair out.

24 Q So there is a process in which if an inmate chooses
18:09:40 25 and they identify themselves as transgender, that there's a

18:09:44 1 process which Florida State Prison can go through in order to
2 facilitate that process --

3 A Yes, sir.

4 Q -- as best as you can --

18:09:50 5 A Yes, sir.

6 Q Would that also be applicable to somebody who is
7 under a death warrant?

8 A Yes, sir.

9 Q Do you know if Mr. Owen in this case requested or
18:10:02 10 classified himself to the classification officer as a
11 transgender?

12 A No, sir. When he was interviewed on 5/9/23, when he
13 was gained-in into Florida State Prison, he identified as
14 heterosexual.

18:10:14 15 Q Has he at any point requested any type of
16 accommodations, even though he identified himself as
17 heterosexual?

18 A No, sir.

19 Q Now, at this point, he can shower alone?

18:10:27 20 A Yes. Where he's housed at, he would shower alone
21 anyway.

22 Q Okay. What about his belongings. Is the belongings
23 allowed to be brought in from the other institution?

24 A Yes, sir. He does have some of his property.

18:10:43 25 Q Do you know if he brought a whole bunch of books with

18:10:47 1 him?

2 A Yes, sir, he did.

3 Q Approximately how many?

4 A I could not tell you that.

18:10:53 5 Q More than one?

6 A Oh, yes, sir, probably --

7 Q Three dozen?

8 A -- over 20.

9 Q Over 20? And what were the vast majority of the
18:11:03 10 titles of those books?

11 A They were educational-type books: physics,
12 mathematics, algebra, things of that nature.

13 Q And he has access to those books during the time that
14 he is housed at Florida State Prison?

18:11:15 15 A He has access to some of his property, not all of it,
16 but he can request for some of it.

17 Q Okay. Has books been denied to him?

18 A Not that I'm aware of.

19 MR. BUSTAMANTE: Okay. I have nothing further.

18:11:26 20 THE COURT: Cross?

21 CROSS-EXAMINATION

22 BY MS. FUSARO:

23 Q Good evening. Do you have a medical license?

24 A No, ma'am, I do not.

18:11:44 25 Q Are you a mental health expert, such as psychologist?

18:11:47 1 A No, ma'am.

2 Q Do you have a degree in psychology or any other
3 mental health field?

4 A No, ma'am, I do not.

18:11:53 5 Q Do you have any formal training to make any mental
6 illness diagnosis?

7 A No, ma'am, I do not.

8 Q In your experience, have you ever found that any
9 inmate has failed to disclose their actual sexual orientation
18:12:05 10 on that paperwork?

11 A Has -- excuse me?

12 Q Have you ever found that any inmate has failed to
13 disclose their --

14 A Failed to disclose?

18:12:13 15 Q Yes.

16 A Refused to answer?

17 Q Failed to disclose their sexual orientation or, I
18 suppose, refuse to answer would be similar to that.

19 A So you're saying failed to answer. Declined to
18:12:22 20 answer. Is that what you're asking?

21 Q Or said they're heterosexual when they're a
22 transgender or something --

23 A No, ma'am, I'm not aware of that.

24 Q Is it possible that an individual wouldn't disclose
18:12:33 25 that information for fear of retaliation?

18:12:35 1 A No, ma'am, I don't think so.

2 Q You've never witnessed any sort of violence towards
3 people that are either gay or transgender at the facility?

4 A No, ma'am, I have not.

18:12:47 5 Q And you're only over at Florida State Prison, not
6 Union Correctional; is that correct?

7 A Correct.

8 Q Okay. Are things different at Florida State Prison
9 because you no longer house the death row inmates unless
10 they're in the death watch area?

11 A As far as?

12 Q As far as what they're allowed to have and the
13 accommodations for growing out their hair and things?

14 A For the most part, they have the same property.

18:13:09 15 Q But there are differences between the death row
16 inmates and people that are there generally at FSP?

17 A Yes, ma'am.

18 Q In your experience, do some inmates fail to disclose
19 sexual assault even though they know about PREA?

18:13:24 20 A No, ma'am. No, ma'am.

21 Q So you think every inmate reports their sexual
22 assault?

23 A Yes, ma'am.

24 Q Does the TI assessment apply to death row inmates?

18:13:36 25 A Yes, ma'am.

18:13:37 1 Q Does that apply when they're at UCI as well?

2 A It would apply, but we have not had an inmate that
3 has stated that he is a transgender --

4 Q Do the --

18:13:47 5 A -- on the SRI.

6 Q Do the inmates know that that's an option to do that?

7 A Do the inmates know? They go through orientation; so
8 they should know, yes, ma'am.

9 Q All right. Now, since you're at FSP, I'm not sure if
18:14:06 10 you're familiar or not, but at UCI, after he's been there,
11 would he go through this orientation regularly or just when he
12 first entered UCI?

13 A I can't answer because that's UCI.

14 Q Okay. At your facility, would they enter -- or would
18:14:19 15 they do this orientation multiple times or just when they enter
16 the facility?

17 A They wouldn't do the orientation, but they do the SRI
18 interview every time they are moved.

19 Q Okay. So when they move cells and things of that
18:14:29 20 nature?

21 A No, ma'am. When they're moved to an institution,
22 from institution to institution.

23 Q So if an inmate stayed at FSP, for example, for 10,
24 20, 30 years, they wouldn't do this SRI again until they left?

18:14:42 25 A If they brought up a reason to, yes, they would. If

18:14:46 1 they sent a request through a classification officer and asked
2 to, yes, they would.

3 Q Is it made aware to the inmates that this is
4 something that they can request?

18:14:55 5 A I'm not for sure on that.

6 Q And do you know for sure, you might not because,
7 again, I know that the death row inmates are no longer housed
8 at FSP generally, but can death row inmates request to grow out
9 their hair or get female undergarments?

18:15:16 10 A I can't answer that. I don't work at Union
11 Correctional Institution.

12 Q And how long have you been in contact with Mr. Owen
13 now?

14 A Since he arrived at Florida State Prison.

18:15:26 15 Q Okay. And that was on May 9?

16 A May 8 or May 9, yes, ma'am.

17 Q And how much contact have you been having with him
18 since he's arrived?

19 A Probably four or five times a week.

18:15:41 20 Q And has he been compliant?

21 A Yes, ma'am.

22 Q Has he been polite?

23 A Yes, ma'am.

24 Q Do the death row inmates, or I guess probably any
18:15:52 25 inmate over at FSP, get in trouble if they're not well-groomed?

18:15:56 1 A If they are not --

2 Q Well-groomed. If they're not in compliance with
3 their hair cut, in compliance with what they're wearing?

4 A Yes, ma'am. We have policies that inmates have to go
18:16:05 5 by.

6 Q And are the death row inmates allowed to alter their
7 clothing?

8 A No, ma'am.

9 Q Are the death row inmates, do they get in trouble if
18:16:14 10 they're not keeping their cell in tidy shape?

11 A At Florida State Prison?

12 Q Correct.

13 A Yes, ma'am.

14 Q And if an inmate refuses to answer questions from
18:16:25 15 prison staff, would they get in trouble for that?

16 A No, ma'am.

17 Q Is it possible that if prison officials were asking
18 Mr. Owen questions, that he could just be being polite in
19 answering?

18:16:37 20 A I don't follow your question.

21 Q Is it possible that if he was asked a question from
22 someone who is a guard or a warden or assistant warden, that he
23 may just be answering the question to be polite?

24 A That's always possible. If he's asked a question by
18:16:52 25 a correctional officer, or warden, or assistant warden,

18:16:54 1 somebody could be polite, yes.

2 Q And is it possible he might just be answering and not
3 understand the question?

4 A No, ma'am, I don't think so.

18:17:03 5 Q And do you know how long he's been in DOC custody, in
6 total?

7 A No, ma'am.

8 Q Do you know how many DRs he has received during his
9 DOC custody?

18:17:12 10 A No. I don't have the exact number.

11 Q Okay. And you're saying that you've never witnessed
12 any inmates be violent towards any other inmates that present
13 as anything other than a heterosexual male?

14 A I'm not following your question again.

18:17:29 15 Q You made it sound like there was no violence
16 toward --

17 A I said I'm not aware of it.

18 Q Okay. So it could be happening, you're just --

19 A I told you, yes, ma'am. I said I'm not aware of
18:17:38 20 that.

21 Q And could those inmates also be potentially targeted
22 as prey for sexual assault?

23 A That's why we do the SRI interview, to identify that.
24 That's called the Sexual Risk Indicator.

18:17:50 25 Q Okay. But, again, you're uncertain how that applies

18:17:53 1 at UCI?

2 A It should apply the same way, but I can't answer for
3 Union Correctional Institution.

4 Q In your experience, is it common for mentally ill
18:18:00 5 inmates to refuse mental health treatment in prison?

6 A No, ma'am.

7 Q And, in your experience, is it common for mentally
8 ill inmates to refuse their medication?

9 A I mean, there are some that do, but most do not.

18:18:15 10 Q And are inmates on death watch allowed books inside
11 of their cell?

12 A Yes, ma'am.

13 Q Do you know if Mr. Owen currently has had any inside
14 of his cell since he's been housed there on May 9?

18:18:28 15 A Had any what?

16 Q Books inside of his cell.

17 A I believe he had one book, I know for sure one book
18 because he was writing on top of it; so --

19 Q Is it possible he was just using it as a surface to
18:18:39 20 write on and not reading it?

21 A I can't answer that. I just noticed there was one
22 book inside of the cell.

23 Q Have you had any conversations with him about the
24 books that he brought over from UCI?

18:18:49 25 A No, ma'am, I have not.

18:18:50 1 Q Do you have any experience to know whether he
2 actually was reading them or he just had them?

3 A I do not. I can't answer that. I wasn't at UCI.

4 MS. FUSARO: One moment, your Honor.

18:19:00 5 (Pause in the proceedings.)

6 MS. FUSARO: No further questions.

7 THE COURT: Any redirect?

8 REDIRECT EXAMINATION

9 BY MR. BUSTAMANTE:

18:19:08 10 Q You've been working for the Department of Corrections
11 since 1992?

12 A '94.

13 Q '94?

14 A Yes, sir, '94.

18:19:15 15 Q And is your experience with inmates who have been
16 there, let's say, 30 years, they pretty much know exactly how
17 the system works?

18 A Yes, sir, they do.

19 Q Defense Counsel was talking about retaliation and
18:19:32 20 sexual offenses of assault at Florida State Prison.

21 Florida State Prison is a maximum security prison;
22 correct?

23 A Yes, sir, it is.

24 Q And the inmates are all close management inmates?

18:19:45 25 A Not all. We have two open population dorms in the

18:19:49 1 back. They're all close management other than about 250 or
2 275.

3 Q And those are inmates -- what are they there for?

4 A They are population inmates that are assigned to food
18:20:00 5 service, outside grounds. We have a full farm. They do most
6 of the labor at the institution.

7 Q And the ones that are actually in close management,
8 how many are those?

9 A Roughly 1200.

18:20:12 10 Q 1200. And those are held in individual cells?

11 A Yes, sir.

12 Q And they are monitored, or at least their movements
13 are monitored very closely?

14 A Yes, sir.

18:20:21 15 Q So when you're saying that there's no sexual assault,
16 that's because they're monitored that closely?

17 A Yes, sir.

18 Q In the times that you have been there, have there
19 been any sexual assaults that you have been aware of?

18:20:34 20 A No, sir. We've had allegations, but I can't recall
21 any that have been --

22 Q Is that between inmates? One inmate to the other?

23 A Yes, sir.

24 Q If an inmate at Florida State Prison requests mental
18:20:51 25 health, are they provided services?

18:20:54 1 A Yes, sir, they are.

2 Q And you said you have seen him approximately, this

3 Mr. Owens, approximately how many times?

4 A Four to five times a week.

18:21:09 5 Q Okay. And so maybe about 15 times?

6 A Yes, sir.

7 Q Have you seen any decline in his mental --

8 A No, sir. No, sir.

9 Q Does he seemed confused at all whenever you're --

18:21:22 10 A No, sir, he does not.

11 Q Okay. Now, has he asked for any assistance doing

12 such things as getting dressed?

13 A No, sir, not that I'm aware of.

14 Q Bathing?

18:21:30 15 A Not that I'm aware of.

16 MR. BUSTAMANTE: Okay. All right. I have nothing

17 further.

18 THE COURT: All right. Thank you, sir. You are free

19 to go.

18:21:37 20 THE WITNESS: Yes, sir. Thank you.

21 THE COURT: Next witness?

22 MR. BUSTAMANTE: Your Honor, we'll call Daniel

23 Philbert.

24 THE COURT: Good evening, sir.

18:22:16 25 THE WITNESS: Good evening, sir.

18:22:16 1 THE COURT: If you'll raise your right hand for me.

2 (Witness sworn.)

3 THE WITNESS: Yes, sir.

4 THE COURT: Thank you. Please be seated.

18:22:24 5 THE WITNESS: Thank you.

6 DANIEL PHILBERT,

7 called as a witness herein, having been first sworn, was

8 examined and testified as follows:

9 DIRECT EXAMINATION

18:22:26 10 BY MR. BUSTAMANTE:

11 Q Good evening, sir.

12 A Good evening.

13 Q Can you please tell us your name.

14 A My name is Daniel Philbert.

18:22:29 15 Q And how -- spell your last name for the record.

16 A Philbert, P-H-I-L-B-E-R-T.

17 Q And what do you do for a living, sir?

18 A I'm a correctional officer at Florida State Prison, a
19 lieutenant.

18:22:40 20 Q And how long have you been working for the Department
21 of Corrections?

22 A Close to 15 years, sir.

23 Q And how long have you been working at the Florida
24 State Prison?

18:22:53 25 A Close to 15 years.

18:22:54 1 Q Close to 15 years? So has your whole career been at
2 Florida State Prison?

3 A Yes, sir.

4 Q Okay. So you're not, like, moved from one to the
18:23:00 5 other. You started there, and then you continued working
6 there?

7 A That is correct. But I'm also retired military
8 prior --

9 Q And how long were you in the military?

18:23:08 10 A 20 years, sir.

11 Q And which branch, sir?

12 A Navy, sir.

13 Q Navy. What are your duties at Florida State Prison?

14 A Currently I'm one of the administrative lieutenants.
18:23:19 15 Currently I am the administrative lieutenant over Quebec wing,
16 which is Q wing.

17 Q Q wing?

18 A Yes, sir.

19 Q Okay. And is that where they have the death cells?

18:23:35 20 A Also --

21 Q Max management?

22 A -- max management, yes, sir.

23 Q Okay. And when there is a warrant signed by the
24 Governor's office or the Governor for an execution, how are you
18:23:51 25 involved in that process?

18:23:55 1 A I make sure the cell where the prospective inmate is
2 is set up. I also supervise the staff that work on the wing --

3 Q Okay.

4 A -- on the Q wing.

18:24:08 5 Q And in that position, do you get daily contact with
6 the inmate?

7 A Yes, sir.

8 Q Okay. And we're talking about Mr. Owen here?

9 A Yes.

18:24:18 10 Q Have you had an opportunity to meet Mr. Owen?

11 A Yes, sir.

12 Q And how long have you known him?

13 A Since the warrant was signed. He was brought over, I
14 think it was May 9, I think, sir.

18:24:31 15 Q And during that time, have you noticed any changes in
16 him in regards to -- and let me ask you this. Has he changed
17 how he behaves at all?

18 A Not to my knowledge. From the day he came over, no,
19 sir.

18:24:48 20 Q Tell me, when you have, the first time that you
21 observed him, what is it that you saw when he came to the cell?

22 A He came, he walked in. I think it was the colonel or
23 the major introduced me to him, saying, I'm the, I'll be the
24 lieutenant over the wing.

18:25:10 25 His property wasn't there with him; so I ended up

18:25:15 1 receiving his property in the property room.

2 Q Okay.

3 A So I went to look at his property and see what he
4 needed from the property room.

18:25:24 5 Q All right. What, I guess the property gets
6 transported from UCI over to Florida State Prison --

7 A That's right.

8 Q -- and you keep it in a property room?

9 A Yes.

18:25:35 10 Q Does he have access to the property that he brought
11 over from UCI?

12 A He does. Anything he needs, he can ask or request it
13 through the warden. Also, initially, I went to the property
14 room to get what he needed. I talked to the sergeant and asked
18:25:52 15 him what he needed. But he had so many books. With the
16 storage limited, I requested from the sergeant, asked him what
17 he wanted. He only wanted a couple. I think it was one book,
18 a dictionary, and I think it was an almanac of some sort.

19 Q It was an almanac or --

18:26:14 20 A Yes.

21 Q -- something like that?

22 A Something to that effect.

23 Q Now, you said a lot of books. Approximately how many
24 books are we talking about?

18:26:20 25 A I think it was 35 or 36 books, from my recollection.

18:26:23 1 Q Okay. Have you had an opportunity to go look at the
2 titles of those books?

3 A I did see some of the titles, yes, sir.

4 Q Okay. And the ones that you did see, what type of
18:26:34 5 titles are we talking about?

6 A He had geometry, physics. I think he had a law book
7 from --

8 Q A law book from somewhere?

9 A Yes. From one of the colleges, to my recollection.
18:26:51 10 Mathematics, algebra, and various other books, sir.

11 Q Had you had an opportunity to talk to him?

12 A Yes, sir.

13 Q And does he seem to be an intelligent person, to you?

14 A I think so, sir, yes, sir.

18:27:09 15 Q Now, during the time -- and how many times have you
16 approximately talked to him since you met him?

17 A Probably a minimum of at least three times per day,
18 minimum.

19 Q Three times per day since May 9?

18:27:25 20 A Yes.

21 Q Or around that period of time?

22 A Yes, sir.

23 Q And have you seen any changes in his memory?

24 A Not that I could see anything, no, sir.

18:27:36 25 Q Okay. Have you seen any decline in how he acts or

18:27:39 1 any cognitive decline?

2 A Not to my knowledge.

3 Q What does he do all day?

4 A Read, write. And if he has any callers with his

18:27:51 5 legal advisers or anybody, he goes to the call house.

6 Q And any disruptive behavior?

7 A No, sir.

8 Q Anything that you would consider psychotic behavior?

9 A No, sir.

18:28:06 10 Q When you talked to him, does he seem to understand

11 what you're talking about?

12 A Yes, sir.

13 Q Has he needed any assistance in getting dressed?

14 A No, sir.

18:28:17 15 Q Bathing?

16 A No, sir.

17 Q Grooming?

18 A No.

19 Q Has he told you at any point that he believes to be a

18:28:24 20 woman?

21 A Excuse me, sir?

22 Q That he believes to be a woman. That he thinks he's

23 a woman?

24 A No, sir.

18:28:34 25 MR. BUSTAMANTE: I have nothing further.

18:28:36 1 THE COURT: Cross?

2 CROSS-EXAMINATION

3 BY MS. LAURIENZO:

4 Q Good evening, Lieutenant.

18:28:56 5 A Good evening.

6 Q You are not a psychologist, are you?

7 A No, ma'am.

8 Q And you don't have a medical license?

9 A No, ma'am.

18:29:04 10 Q Do you have a degree in psychology or a mental health
11 field?

12 A No, ma'am.

13 Q And have you had any formal education that would
14 qualify you to make a diagnosis related to a psychiatric
18:29:14 15 impairment?

16 A No, ma'am.

17 Q Do you have any training that would allow you to
18 differentiate between someone who has a mental illness, for
19 real, and someone who is malingering?

18:29:30 20 A No, ma'am.

21 Q You said your contact with Mr. Owen began about 20
22 days ago?

23 A Approximately May 9, yes.

24 Q And you've met with him about three times a day. How
18:29:40 25 long would you say those meetings have been?

18:29:46 1 A It depends. It depends whether it is, I'm just doing
2 my rounds or he's leaving the housing unit for -- to go see his
3 attorneys or anything like that. It depends.

4 Q So probably a few minutes here and there?

18:30:00 5 A A few minutes here and there. And it could be up to,
6 if he's leaving the housing unit, I'm always there. Wherever
7 he goes, I'm always there. If he's having a meeting, I may be
8 outside the room, but anytime he comes out of his cell, I'm
9 always present, if I'm working.

18:30:25 10 Q Okay. Thank you. Are you aware of what he was
11 allowed to bring from UCI to FSP?

12 A What he was --

13 Q What he was allowed to bring in terms of belongings
14 from UCI to FSP. I know he, you said he brought books?

18:30:43 15 A Yes, ma'am.

16 Q Do you know if he was allowed to bring anything else?

17 A Whatever property he had. He was allowed to bring
18 whatever property he had at UCI.

19 Q Was he allowed to bring his tablet from UCI?

18:30:57 20 A Yes. But if you're on the status of death watch,
21 you're not allowed to have your tablet or the internet.

22 Q Okay. So he --

23 A Once the warrant is signed and you go into the death
24 watch area, you're not allowed to have a tablet.

18:31:12 25 Q Okay. So he's unable to request the tablet at this

18:31:16 1 point?

2 A To my knowledge, yes, ma'am.

3 Q Okay. I know you said he had an almanac or
4 dictionary of some sort. Has he requested any of the other
18:31:28 5 books that were brought over with his property?

6 A No, ma'am. I think it was last week, he mentioned
7 that he finished reading his novel or what he was reading, and
8 said he wanted to donate it to the library.

9 Q Okay.

18:31:42 10 A But he hadn't requested any other books or anything.

11 Q But we're talking about, like, a novel, like, a
12 fiction book, not like a textbook?

13 A No. He hadn't --

14 Q Requested any textbooks?

18:31:57 15 A No, ma'am.

16 Q Do you know if Mr. Owen is actually reading that one
17 book that he has?

18 A He told me he was finished reading that, and he
19 wanted to donate it.

18:32:12 20 Q Okay. My apologies. What about the almanac or
21 dictionary?

22 A If he's reading it?

23 Q Yes.

24 A Yeah. I mean, he had it on his bed.

18:32:20 25 Q Okay. So possibly?

18:32:22 1 A Possibly.

2 Q Okay. Did you write down the title of the books that
3 he has?

4 A I did not, no, ma'am.

18:32:28 5 Q The titles, my apologies. I know you mentioned there
6 was a law book. Is it possible that you could be mistaken that
7 one of the books is a law book?

8 A Excuse me? Could you --

9 Q So I know you said that one of the books, you
18:32:43 10 thought, was a law book. When you looked and saw all the 30
11 books that he brought over. Are you positive that one of those
12 books was a law book?

13 A Yes, ma'am. I think it was something from
14 Georgetown, I think it was.

18:33:00 15 Q Okay. I'm going to switch subjects a little bit. Do
16 death row inmates on death watch get in trouble if they're not
17 well-groomed?

18 A I would assume so.

19 Q Okay. So if Mr. Owen sort of didn't groom himself,
18:33:17 20 would he get in trouble?

21 A Yes, ma'am. But also I assist in showering, haircut,
22 shave, but he has his razor.

23 Q What if he wanted to grow out everything?

24 A As far as --

18:33:31 25 Q Like, if he wanted to grow out, like, hair, would he

18:33:35 1 get in trouble for that?

2 A If he goes beyond the regulation, yes, ma'am.

3 Q Okay. Thank you. Do death row inmates get in
4 trouble for altering their clothing?

18:33:49 5 A Yes, ma'am.

6 Q And what about if they don't keep their cell in tidy
7 shape?

8 A Yes, ma'am.

9 Q What about if they refuse to answer questions from
18:34:01 10 prison staff?

11 A Answer?

12 Q Sorry. If they refuse to answer questions from
13 prison staff, like, if you asked a question and he refused to
14 answer it, would he get in trouble?

18:34:14 15 A From me, no, ma'am. It depends what type of question
16 it is.

17 Q Okay. Can you think of any sort of question where,
18 if he didn't answer you, he would get in trouble?

19 A No, ma'am. Only if he's lying to me. I mean, he'll
18:34:27 20 get in trouble for lying to me, but nothing that I can
21 recollect right now.

22 Q Is it possible that when Mr. Owen was asked about his
23 remains and how to disburse his property, that he was just
24 being polite when he was answering?

18:34:45 25 A I don't know, ma'am.

18:34:47 1 Q Is Mr. Owen, for the most part, compliant? Is he
2 compliant?

3 A I mean, the rules and regulations?

4 Q Yes.

18:34:58 5 A Yes, ma'am.

6 Q Has he been polite?

7 A Yes, ma'am.

8 Q Do you know how long he's been in DOC custody?

9 A I have an approximate guess, but I'm not sure exactly
18:35:10 10 to the exact. Probably about 30 something years.

11 Q Okay. Thank you. And do you know how many DRs he's
12 received during that time period?

13 A He did mention that to me when we was walking in the
14 hallway. I'm thinking, I think, I'm not a hundred percent
18:35:26 15 sure. About four or five. And we were just having a
16 conversation in the hallway, and he mentioned that.

17 Q And do you know what any of them have been for?

18 A From my recollection, he mentioned, I'm not sure if
19 it was a failed drug test that he refused to give a sample or
18:35:50 20 something to that effect. And it was -- I think it was a
21 couple of minor things, from my recollection, but it wasn't
22 anything major.

23 Q Do you know if any of them were recent?

24 A I don't think any of them were recent, ma'am.

18:36:02 25 Q From your experience at FSP, are inmates violent

18:36:08 1 towards other inmates that don't present as anything other than
2 heterosexual males?

3 A Are they violent you said?

4 Q Uh-huh. So is there violence between the inmates, if
18:36:19 5 someone finds out that someone is not heterosexual?

6 A Yeah, single-man, single-person cells; so, I mean --

7 Q What about in the two open --

8 A Open population dorm?

9 Q Yes.

18:36:36 10 A I personally haven't heard of anyone being violent to
11 each other. I personally haven't.

12 Q Do you know if FSP has received allegations? Like,
13 written --

14 A That's a possibility. I don't know.

18:36:50 15 Q Okay. In your experience is it common for mentally
16 ill inmates to refuse mental health treatment in prison?

17 A I'm not a hundred percent sure. That's a
18 possibility.

19 Q And I assume you would have the same answer for is it
18:37:08 20 common for mentally ill inmates to refuse medication?

21 A It's a possibility.

22 MS. LAURIENZO: May I have a moment?

23 THE COURT: You may.

24 (Pause in the proceedings.)

18:37:25 25 MS. LAURIENZO: I pass the witness.

18:37:27 1 THE COURT: Any redirect?

2 MR. BUSTAMANTE: Just briefly.

3 REDIRECT EXAMINATION

4 BY MR. BUSTAMANTE:

18:37:33 5 Q You said that he talked to you briefly about his DRs?

6 A Yes, sir.

7 Q There were a few?

8 A Yes.

9 Q And they were from many years ago?

18:37:46 10 A Yes, sir.

11 Q So he seems like he has a pretty good memory?

12 A I think so, sir.

13 Q All right. Does he seem -- with all of the
14 interaction, he seems to be confused as to where he's at?

18:37:59 15 A Not to my knowledge, sir.

16 Q Does he seem confused as to what is going to be
17 happening to him?

18 A Not to my knowledge.

19 Q He hasn't said that, I don't know why I'm here?

18:38:09 20 A No, sir.

21 Q Has he mentioned anything in regards to two women
22 living inside of him and that he's afraid that they may be
23 killed if he is killed?

24 A Could you repeat that, please?

18:38:20 25 Q Has he mentioned that he has other entities living

18:38:23 1 inside his body?

2 A No, sir.

3 MR. BUSTAMANTE: Okay. I have nothing further.

4 THE COURT: Thank you, sir. You can step down. Next
18:38:31 5 witness?

6 MR. BUSTAMANTE: Judge, I think we are done for today
7 or at least --

8 THE COURT: All right. Anything else you want to
9 present today?

18:38:42 10 MS. FUSARO: Unfortunately, your Honor, we don't have
11 anyone available until 8:30 tomorrow morning.

12 THE COURT: Okay. All right. Then we'll be in
13 recess till 9 o'clock tomorrow, right?

14 MS. FUSARO: Oh, I'm sorry, one more thing. Does
18:38:57 15 Mr. Owen have to be present again tomorrow or can we waive
16 his appearance -- or his presence?

17 THE COURT: Yeah, I'm going to, I would -- my reading
18 of the rule and understanding of the law is that he
19 wouldn't necessarily have to be here, but I do think it's
18:39:13 20 a better practice that he be here because I would want him
21 to be able to have access to you all and you all have
22 access to him should things come up.

23 I've noticed, for example, I've noticed a few times
24 today where Mr. Owen has leaned over and had an
18:39:28 25 opportunity to at least communicate with counsel and be

18:39:32 1 presumably helpful at times, while witnesses were
2 presenting testimony. I don't want him to not have that
3 opportunity; so, respectfully, I would not accept a waiver
4 of his presence, and I would want him to be here tomorrow.

18:39:51 5 MS. FUSARO: Understandable, your Honor.

6 THE COURT: So, Mr. Owen, I'll see you tomorrow.

7 We'll start at 9 because I do want to accommodate an
8 issue with Madam Court Reporter and some other folks; so
9 we'll start at 9 A.M. All right?

18:40:04 10 MS. FUSARO: 9 A.M, you said, your Honor?

11 THE COURT: Yeah.

12 MS. FUSARO: Okay.

13 THE COURT: All right. We'll be in recess.

14 (Recess taken.)

18:40:12 15 * * * * *

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P R O C E E D I N G S

(June 2, 2023)

18:40:12 1 THE COURT: All right. We are on the record in State
2 of Florida versus Duane Owen, 04-2023-CF-264.

09:01:14 5 Let the record reflect Mr. Owen is present in the
6 courtroom with counsel. The State is present with
7 counsel.

8 Good morning, everyone.

9 MS. FUSARO: Good morning.

09:01:26 10 MS. TERENCE: Good morning, your Honor. Mr. Browne
11 is here. We'd ask for the Court's indulgence for a couple
12 of minutes.

13 THE COURT: Sure.

14 MS. TERENCE: He should be coming in soon. And
09:01:36 15 also, your Honor, we do have people on Zoom; so I just
16 wanted to make sure that it worked.

17 THE COURT: Yes, I apologize. Yesterday, I wasn't
18 the best when we would go off the record and come back on
19 to remember to hit the Zoom button; so I know there was
09:01:49 20 some periods of time where they missed a little bit. My
21 apologies.

22 MS. TERENCE: Okay. Thank you, your Honor.

23 THE COURT: I'll be better today.

24 MS. TERENCE: Okay.

09:01:57 25 THE COURT: Good morning.

09:02:00 1 MR. BROWNE: Good morning.

2 THE COURT: Are we ready to proceed this morning?

3 MR. BROWNE: Yes, your Honor.

4 MS. TERENZIO: Yes, sir.

09:02:04 5 THE COURT: So I know counsel for Mr. Owen, you all
6 had some folks ready for this morning, right?

7 MS. LAURIENZO: Yes, your Honor. We have two
8 witnesses for this morning.

9 THE COURT: So you can go ahead and call your first
09:02:15 10 witness.

11 MS. LAURIENZO: Thank you. We call Lisa Wiley, who
12 should be on Zoom.

13 THE COURT: All right. Can anyone hear me on Zoom?
14 (Pause in the proceedings.)

09:04:38 15 THE COURT: Good morning. We are looking for -- you
16 said it was Ms. --

17 MS. LAURIENZO: Lisa Wiley.

18 THE COURT: -- Lisa Wiley. Are you with us on Zoom
19 this morning, Ms. Wiley?

09:04:55 20 THE WITNESS: Yes, your Honor.

21 THE COURT: Good morning.

22 THE WITNESS: Good morning, your Honor.

23 THE COURT: Can you hear us okay?

24 THE WITNESS: Yes, I do.

09:05:09 25 THE COURT: You might have to take us off speaker.

09:05:12 1 We can just hear a lot of --

2 THE WITNESS: Okay. Well, I unmuted. Can you hear
3 me?

4 THE COURT: I hear you fine.

09:05:24 5 THE WITNESS: Okay.

6 (Pause in the proceedings.)

7 MS. FUSARO: All right. Ms. Wiley, can you hear us
8 now?

9 THE WITNESS: Yes.

09:09:45 10 THE COURT: All right. If you'll raise your right
11 hand.

12 (Witness sworn.)

13 THE WITNESS: I do.

14 (Pause in the proceedings.)

09:10:00 15 THE COURT: It sounds better already.

16 THE WITNESS: Okay.

17 THE COURT: Thank you, Ms. Wiley. Go ahead, Counsel.

18 MS. FUSARO: Perfect. We apologize for that.

19 LISA WILEY,

09:10:00 20 called as a witness herein, having been first sworn, was
21 examined and testified as follows:

22 DIRECT EXAMINATION

23 BY MS. LAURIENZO:

24 Q Okay. Good morning, Ms. Wiley. Could you please
09:10:56 25 state your name and spell it for the record.

09:10:58 1 A Lisa Wiley. L-I-S-A, W-I-L-E-Y.

2 Q Thank you. And what city and state are you currently
3 located in?

4 A Kannapolis, North Carolina.

09:11:12 5 Q And are you currently employed?

6 A No.

7 Q Are you retired?

8 A Yes.

9 Q Could you briefly describe your educational
09:11:22 10 background.

11 A I have a Bachelor's of Sociology from
12 Purdue University and a Master's in Psychology from George
13 Mason University.

14 Q Thank you. And at any point in your career, were you
09:11:35 15 previously employed by the Florida Department of Corrections?

16 A Yes.

17 Q And approximately what years were you employed by the
18 Department of Corrections?

19 A I started work in May of 1989, and I retired nine
09:11:56 20 years ago.

21 Q Thank you. And what was your position while working
22 for DOC?

23 A Psychological specialist.

24 Q Could you explain to the Court what a psychological
09:12:09 25 specialist does and what some of the duties you had were in

09:12:13 1 that position?

2 A Provide mental health services to inmates,
3 counseling, social histories, group counseling, confinement
4 reviews, walks. That's it in a nutshell.

09:12:32 5 Q And from your position as a psychology specialist,
6 did you have the opportunity to work with an individual by the
7 name of Duane Owen?

8 A Yes.

9 Q And when was the first time you think that you might
09:12:45 10 have seen Duane Owen?

11 A It would have been when he transferred from
12 Florida State Prison to Union Correctional Institution.
13 That's, I think, around, 199 -- I started in death row in 1992,
14 but that doesn't mean he was there. They came over in waves;
09:13:05 15 so he might have been 1996.

16 Q Okay. Is it possible that if he came over in 1993,
17 for example, that you would have seen him, possibly, in 1993?

18 A I would have seen everybody as in a new arrival
19 screening, which is a non-personal group interaction,
09:13:29 20 explaining the services available to them in the institution.

21 Q Did Mr. Owen become a regular patient? I guess would
22 be the -- I'm not sure if that's the right terminology. Did he
23 become a regular client/patient of yours?

24 A Yes, he did.

09:13:49 25 Q And what, how often would you say that you would see

09:13:52 1 Mr. Owen?

2 A I don't remember without looking at the record, which
3 I do not have access to, but it would have been at least once a
4 month.

09:14:02 5 Q So that's once a month for a span of --

6 A I left death row in 2006 or the end of 2005.

7 Q Okay. So we're talking at least from the early '90s
8 till 2005?

9 A Yes. He may or may not have gone in or out of
09:14:24 10 counseling services during that time. I don't remember. But I
11 will say all confined inmates are offered a, at least,
12 quarterly opportunity to have a private interview with mental
13 health staff. And he would participate in those, even if he
14 wasn't receiving regular counseling services.

09:14:47 15 Q Okay. So was that in addition to the once a month,
16 or is that separate from the quarterly?

17 A I would have been -- if he was seeing me in regular,
18 for regular counseling appointments, I could also double-up and
19 count that as a confinement review. But let's say he was not
09:15:08 20 receiving counseling on a regular basis. He would still come
21 out for his, at least, quarterly confinement reviews.

22 Q Okay. Thank you. And how did you come to meet
23 Mr. Owen?

24 A Well, during the new arrival screen, technically;
09:15:18 25 but, otherwise, it would have been either in a confinement

09:15:22 1 interview or he would have sent me an inmate request. Which of
2 those it was, I do not remember.

3 Q Okay. Could you briefly describe the nature of your
4 meetings with Mr. Owen?

09:15:37 5 A Well, they would have been private in my office, not
6 visually private. There's a huge fishbowl window in there.
7 And we would have spoken anywhere from 30 minutes to an hour,
8 on an average. And they would have included a mental status
9 examination, inquirement of how he was functioning, eating,
09:15:59 10 sleeping, if he was having any concerns.

11 Q Do you recall anything in particular about Mr. Owen
12 with regard to gender identity disorder, which is now known as
13 gender dysmorphia --

14 A Yes.

09:16:11 15 Q -- dysphoria? And do you remember what the nature of
16 your conversations related to that subject were?

17 A He did not like having male genitalia. He wished to
18 act or become, I'm not quite sure of the vocabulary to use
19 there, a female.

09:16:33 20 Q And would you have notated this anywhere in
21 Mr. Owen's DOC records?

22 A Well, from the information that Mr. Bach gave me, I
23 put it on his problem list in 1996; so I would have at least
24 notated it there.

09:16:51 25 MS. LAURIENZO: May I have a moment, your Honor?

09:16:53 1 THE COURT: You may.

2 BY MS. LAURIENZO:

3 Q Okay. So I know you referenced the problem list that
4 Mr. Bach provided to you, and that's been entered as State's
09:17:09 5 Exhibit 4 already into evidence. Defense Exhibit 4, I'm sorry,
6 into evidence.

7 Do you see on that sheet where you notated gender
8 identity disorder? That would be the third line of the table.

9 A Yes, I see it.

09:17:39 10 Q Does that mean that you diagnosed him with that?

11 A As a psychological specialist with a Master's degree
12 who is not licensed, I always worked, even if I was licensed, I
13 still would have worked under the supervision of a senior
14 psychologist, and a senior psychologist in connection -- in
09:17:59 15 conjunction with myself would have provided diagnoses, but it
16 would have been under -- with the approval of the senior
17 psychologist who was my supervisor at the time.

18 Q Okay. So clearly this was an important diagnosis
19 that you thought needed to be written down?

09:18:14 20 MR. BROWNE: Objection to the commentary nature of
21 the question.

22 MS. LAURIENZO: I'll withdraw.

23 THE COURT: All right. Go ahead. Next question.

24 BY MS. LAURIENZO:

09:18:25 25 Q Do you recall any specific actions that Mr. Owen

09:18:27 1 would take to act on his gender dysphoria?

2 A He used to describe tying his genitalia in a, behind
3 him -- I'm not sure what vocabulary to use here -- so that his
4 penis would not be in a normal position.

09:18:46 5 Q And, to your knowledge, do you know if Mr. Owen
6 shared any of this information about the gender dysphoria with
7 any of the prison population, guards, etc.? Are you aware?

8 A No, not to my knowledge. Not that I'm aware of.

9 Q Why would someone in Mr. Owen's position try to hide
09:19:09 10 something like this?

11 MR. BROWNE: Objection. Speculation.

12 THE COURT: Any response?

13 MS. LAURIENZO: I can rephrase.

14 THE COURT: Rephrase.

09:19:19 15 BY MS. LAURIENZO:

16 Q In your experience, working with inmates and people
17 with mental illness, why would someone with a mental illness
18 want to not reveal it to the prison population and guards?

19 A Well, simple privacy. And back then, this is decades
09:19:41 20 ago, there was a lot of confusion as to what gender dysmorphia
21 was. It was frequently considered simply to be homosexuality.
22 This is decades ago.

23 Q Do you recall any additional details about Mr. Owen
24 wanting to be a woman, from your time working with him?

09:20:01 25 A One time, he went to outside court and was gone for

09:20:04 1 quite a while, months, time enough to grow his hair to
2 approximately shoulder length. And he came back and was
3 dismayed to have to cut his hair to the standards of the time
4 at Union Correctional Institution. He also expressed to me
09:20:19 5 that the security staff confiscated his female underwear
6 attire.

7 MS. LAURIENZO: May I have a moment?

8 THE COURT: You may.

9 (Pause in the proceedings.)

09:20:33 10 BY MS. LAURIENZO:

11 Q After the initial new arrival screening when
12 transferring to UCI, would Mr. Owen have been notified, or
13 would UCI have been notified, if any changes to services were
14 offered?

09:20:53 15 A I'm having trouble with your question. You're asking
16 me if Inmate Owen would have been notified of any changes in
17 possible services were available?

18 Q Yes.

19 A Yes, I would have told him if anything was different
09:21:07 20 in one of our confinement reviews or in a counseling session.

21 Q And then, similarly, if Mr. Owen had started refusing
22 mental health services, would he have known if any transgender
23 accommodations were available?

24 A He might have heard it through word of mouth or
09:21:28 25 grapevine from other inmates or other staff.

09:21:33 1 MS. LAURIENZO: Okay. I pass the witness.

2 THE COURT: All right. Cross?

3 CROSS-EXAMINATION

4 BY MR. BROWNE:

09:21:42 5 Q Good morning, Ms. Wiley.

6 A Good morning.

7 Q I hope you're enjoying your retirement.

8 A I am. I highly advise it.

9 Q Thank you. Ms. Wiley, as a licensed -- I guess
09:21:57 10 you're a mental health counselor for a number of inmates on
11 death row; is that correct?

12 A Yes. For all of them --

13 Q For all of them?

14 A -- at one point.

09:22:05 15 Q And, then, so you're not aware of what else is going
16 on in most of these inmates' lives, right?

17 For instance, is that a true question? What court
18 proceedings they may be going to, what their court schedule is,
19 are you aware of that?

09:22:23 20 A That's true. No, I would not be aware of that,
21 unless directly told, for some reason.

22 Q Okay. And so, and you had limited, no contact with
23 him until, you said, 1993 or 1994; is that correct?

24 A It would have been whenever he came over from Florida
09:22:40 25 State Prison into Union Correctional Institution.

09:22:43 1 The building there at Union was a new building, and
2 the inmates came over in batches.

3 Q Okay. So let's assume for a moment that Mr. Owen was
4 preparing for a retrial in a case in which his primary defense
09:23:01 5 was a delusion based on gender dysmorphia.

6 Would you have any knowledge of, again, any courtroom
7 strategy that might impact his presentation to you?

8 A No.

9 Q And, in fact, when an inmate comes to you, you
09:23:21 10 assume, generally speaking, that they are seeking your services
11 in good faith; is that correct, Ms. Wiley?

12 A That's correct.

13 Q And you might have to doubt what an inmate is telling
14 you if, for the previous decade or 12 years in DOC, he had
09:23:38 15 never mentioned gender dysmorphia, correct?

16 A Not necessarily. Sometimes people don't come forward
17 with very disturbing things in their life for years.

18 Q Well, let's assume that --

19 A I would --

09:23:58 20 Q -- this revelation, Ms. Wiley, only occurred when he
21 was preparing for a retrial on a capital murder case.

22 A I might be suspicious of that. Again, I always take
23 the inmates coming to me in good faith.

24 Q Now, Ms. Wiley, did you see any evidence that
09:24:18 25 Mr. Owen suffered from schizophrenia?

09:24:23 1 A Not as a mental health specialist.

2 Q And, in fact, he wasn't medicated for schizophrenia,
3 correct?

4 A No. No mental health medication.

09:24:33 5 Q And you have had contact with schizophrenics in the
6 past, correct?

7 A Oh, yes.

8 Q And Mr. Owen didn't present to you like a
9 schizophrenic, did he?

09:24:44 10 A No. And I would have brought that to the attention
11 of the senior psychologist. Inmates who should be, even if
12 they refuse services from a psychiatrist, they will still be
13 classified as a psychiatric grade three. You can be a
14 psychiatric grade three, meaning you need psychiatric services,
09:25:07 15 and you still have the right to refuse those services.

16 Q And certainly, Ms. Wiley, you don't know what
17 happened after you left --

18 A No.

19 Q -- death row?

09:25:18 20 A No. No, of course not.

21 Q And you would have to, again, be suspicious if, after
22 the Slattery, a retrial occurred, that he didn't seek services
23 for gender dysmorphia after that retrial.

24 Would that cause you concern about the original good
09:25:38 25 faith that you assessed Mr. Owen with?

09:25:44 1 A I'm not sure about that. The reason being is that
2 they may not, they may -- I might have left death row, and he
3 might not have wanted to, not that I'm the end-all mental
4 health specialist, but he may not have wanted to start a
09:26:02 5 relationship with a future mental health specialist. There's
6 no way I can really accurately answer that.

7 Q And certainly you have to rely on the prison records,
8 right, and records of any counseling that he received after you
9 left, right? Those would be a more accurate reflection,
09:26:19 10 correct?

11 A After he left my services, the only way I would know
12 what was happening is to review a record.

13 Q And, Ms. Wiley, when he told you about tying his
14 penis down, did you have any physical evidence? Did you see
09:26:34 15 that occur or did somebody else, other than Mr. Owen, report
16 that to you?

17 A No one else, other than Mr. Owen, reported it to me.
18 And, thankfully, no, I did not see his genitals.

19 MR. BROWNE: Thank you. And no further -- oh. Your
09:26:52 20 Honor, may I have one moment?

21 THE COURT: You may.

22 (Pause in the proceedings.)

23 MR. BROWNE: Nothing further, Ms. Wiley. And I hope
24 you continue to enjoy your retirement. Well-earned.

09:27:13 25 THE WITNESS: Thank you. Thank you. Prepare for it

09:27:15 1 and enjoy it, is my advice to people.

2 THE COURT: All right. Any redirect?

3 MS. LAURIENZO: Just briefly, your Honor.

4 REDIRECT EXAMINATION

09:27:23 5 BY MS. LAURIENZO:

6 Q Ms. Wiley, did you have any reason to doubt what
7 Mr. Owen was experiencing?

8 A No, I had no reason.

9 Q And do you have any training in malingering?

09:27:40 10 A When I received my degrees, there were no specific
11 courses in malingering at that time.

12 Over the years, I certainly have had experience with
13 inmates who malingering.

14 Q Do you believe that Mr. Owen was malingering?

09:27:55 15 A In regard to gender dysmorphia, I have no reason to
16 think he was malingering.

17 Q And do all schizophrenics present with the same
18 symptomology?

19 A No.

09:28:11 20 Q And did you see Mr. Owen until at least 2003, you
21 stated?

22 A I stated I left death row in December of 2005.

23 Q Okay. Do you remember -- do you recall him ever not
24 having gender dysphoria?

09:28:33 25 A I don't recall that.

09:28:37 1 MS. LAURIENZO: No further questions.

2 THE COURT: All right. Thank you, Ms. Wiley. I
3 appreciate you making yourself available for us this
4 morning.

09:28:44 5 THE WITNESS: Thank you, your Honor. I am dismissed?

6 THE COURT: Yes, ma'am.

7 THE WITNESS: Okay. Goodbye, everybody.

8 THE COURT: Bye-bye. Next witness?

9 MS. LAURIENZO: Defense would call Ms. Pam Izakowitz,
09:28:55 10 who should also be on Zoom.

11 MR. BROWNE: Your Honor, if I may lodge an objection.
12 I know you provided the Defense a lot of leeway, but this
13 is another defense attorney who represented him years ago
14 in post conviction. I don't see her relevance to this
09:29:12 15 narrow proceeding.

16 THE COURT: All right. Well, I'm going to give them
17 a little leeway and let them present the testimony.
18 Ma'am, can you hear us okay?

19 THE WITNESS: Yes, sir.

09:29:33 20 THE COURT: Tell me how to pronounce your last name
21 again?

22 THE WITNESS: Izakowitz.

23 THE COURT: Izakowitz. Okay. I know Madam Court
24 Reporter is going to want you to spell that. If you'll
09:29:36 25 raise your right hand for me.

09:29:39 1 (Witness sworn.)

2 THE WITNESS: Yes, sir.

3 THE COURT: Thank you. If at any time you can't hear
4 us, just let us know.

09:29:49 5 PAMELA IZAKOWITZ,

6 called as a witness herein, having been first sworn, was
7 examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MS. LAURIENZO:

09:29:50 10 Q Good morning, Ms. Izakowitz. Could you please state
11 and spell your name for the record.

12 A Pamela Izakowitz. P-A-M-E-L-A. Izakowitz,
13 I-Z-A-K-O-W-I-T-Z.

14 Q Thank you. And are you currently employed?

09:30:05 15 A Yes. I work for the public defender's office in
16 Bartow, the Tenth Judicial Circuit.

17 Q And are you currently licensed to practice law in the
18 state of Florida?

19 A Yes.

09:30:18 20 Q And when did you become licensed?

21 A In 1995.

22 Q And at any point during your employment, were you
23 employed by the capital collateral representative?

24 A Yes.

09:30:35 25 Q And I'll just refer to them as CCR for the record.

09:30:39 1 And while an attorney at CCR, did you represent an
2 individual by the name of Mr. Duane Owen?

3 A Yes.

4 Q And just briefly, in what capacity did you represent
09:30:49 5 Mr. Owen?

6 A Well, we were his post-conviction attorneys. After
7 his direct appeal was finalized, we were his first
8 post-conviction attorneys, I think, in 1997, I believe.

9 Q And while representing Mr. Owen, did you have the
09:31:07 10 opportunity to meet with him in person?

11 A Yes. Many times.

12 Q Do you have an approximate number of how many times
13 you would have met with him?

14 A No, but I was one of several attorneys on his case,
09:31:20 15 met with him many times while he was at UCI and met with him, I
16 think, when we were down in Palm Beach County for various
17 hearings. I don't know how many times, but many times. I
18 mean, I was his lawyer for several times, I think about two
19 years or so, and met with him many times.

09:31:38 20 Q Thank you. And did Mr. Owen ever share any of his
21 delusions with you?

22 A Yes.

23 Q And what were those delusions?

24 MR. BROWNE: Objection, your Honor. Hearsay.

09:31:49 25 THE COURT: Overruled.

09:31:52 1 THE WITNESS: Well, he talked about many of the times
2 with these women, that he found these women and that he
3 committed the crimes because he wanted to get their
4 essence, and he thought that if he had hurt these women,
09:32:08 5 killed these women, that their essence would become his
6 and he would turn into a woman.

7 He often asked for various items. For example, he
8 asked me one time to bring him some dental floss so that
9 he could tie off his penis because he thought that if he
09:32:26 10 tied off his penis, that would make him a female.

11 He asked me to send him women's panties, women's
12 shoes, makeup, I believe it was. I don't remember if he
13 was in the county jail at the time or if he was in UCI,
14 but he thought that, he wanted female clothing so that he
09:32:49 15 could feel like he was a woman because he felt that he was
16 trapped in the body of a man when he, in fact, was a woman
17 and he wanted to be a woman.

18 BY MS. LAURIENZO:

19 Q Do you know if Mr. Owen was ever able to successfully
09:33:03 20 obtain any women's items while in jail or prison?

21 A Well, I don't remember sending them to him. I don't
22 know how I would have been able to do that. I don't know how I
23 would have gotten them into the prison or the jail, but I know
24 that he asked for various items so that he could have them
09:33:18 25 because he thought he was a woman and wanted to be a woman.

09:33:21 1 Q And did Mr. Owen have any feminine interests while
2 you represented him?

3 A Well, he was fixated with Madonna, I recall. And I
4 think at one point, he even filed paperwork to change his,
09:33:36 5 legally change his name in Bradford County -- I think the
6 paperwork was in Bradford County -- and legally change his name
7 to something to do with Madonna. I don't remember exactly what
8 the name was, but he wanted to be a female. He thought he was
9 a female trapped in a male body, and he talked a lot about
09:33:56 10 that.

11 Q During your representation of Mr. Owen, do you recall
12 if he was ever diagnosed by a mental health professional,
13 psychologist, psychiatrist, with gender identity disorder?

14 MR. BROWNE: I'm going to object to the hearsay
09:34:12 15 nature of this testimony. Continuing hearsay and
16 bolstering now of her own conversations, your Honor.

17 THE COURT: Understand. The objection is overruled.

18 THE WITNESS: Not at, at CCR we had hired a
19 consultant to evaluate Mr. Owen. He hired Barry Crown, I
09:34:33 20 believe, to evaluate Mr. Owen. And I believe that
21 Faye Sultan diagnosed him with gender dysphoria. I
22 believe it was Faye Sultan. And I believe that she also
23 recommended that we hire, I think it was Dr. Berlin
24 because he had a lot more experience in sex, sex-related
09:34:49 25 issues and sexually related crimes, from what I can

09:34:52 1 remember.

2 MS. LAURIENZO: May I have a moment?

3 THE COURT: You may.

4 MS. LAURIENZO: I'll pass the witness.

09:34:59 5 THE COURT: All right. Cross?

6 CROSS-EXAMINATION

7 BY MR. BROWNE:

8 Q Good morning. When you represented Mr. Owen, you
9 were his post-conviction counsel, correct, employed by CCRC?

09:35:20 10 A Yes.

11 Q And you were aware that, at that time, he was
12 preparing for a retrial in the 14-year-old girl that he
13 murdered, the Slattery case, correct?

14 A I don't recall that directly that he was preparing
09:35:33 15 for a retrial.

16 Q Well, wasn't that an unusual situation for you,
17 though? Where he's, you're representing someone post
18 conviction, yet he's pending a trial in another case, right?

19 A Yes, I don't remember if it was a trial. I remember
09:35:48 20 that we went to the hearing, and I represented him on the
21 Worden case hearing. Carey Haughwout represented him on the
22 Slattery case. There was an issue with whether he should waive
23 counsel, whether he should waive counsel in our case and how it
24 might affect the Slattery case. That's what I remember.

09:36:08 25 Q Yeah. So, again, so these experts -- and are you

09:36:11 1 familiar with any of the record in the Slattery case, where
2 Faye Sultan actually testified and Dr. Berlin testified?

3 A No.

4 Q No. All right. Now, Mr. Owen, do you recall, tried
09:36:25 5 to fire you right off the bat, right?

6 A I don't remember that.

7 Q You don't remember that? Do you remember a colloquy
8 in court where he claimed you didn't have enough experience
9 under Chapter 27 to represent him? Do you recall that?

09:36:41 10 A No, I don't.

11 MR. BROWNE: Your Honor, I have State Exhibit 1, I
12 believe, the colloquy from 1997 on appeal. And here is
13 perhaps the limitation of Zoom. I would normally approach
14 the witness with State Exhibit No. 1.

09:37:05 15 BY MR. BROWNE:

16 Q I'm going to read to you this transcript, or part of
17 it, and see if that refreshes your recollection. And this is
18 the Defendant on page 681:

19 [Reading] I guess this is basically just a Huff
09:37:25 20 hearing to determine what issues are going to be heard at the
21 evidentiary hearing, but I would submit that they definitely
22 are not qualified to represent me at the evidentiary hearing.
23 And the reason for that is that the recent amendment to 27,
24 specifically indicated that an assistant must be a member in
09:37:43 25 good standing of the Florida Bar, with not less than three

09:37:46 1 instead of the current two years that was previously set forth.
2 And, of course, I believe that bill was pursued as a result of
3 a case called Hill v. Singletary, where the court held that the
4 State of Florida did not provide competent counsel for death
09:38:01 5 row inmates.

6 And then he cites the new anti-terrorism and death
7 penalty act.

8 Do you recall the Defendant questioning, after
9 hearing that, your qualifications to represent him?

09:38:15 10 A I have no memory of that at all.

11 Q But you don't --

12 A The only memory --

13 Q You don't doubt that, if I have a transcript where
14 you're appearing and the Defendant is appearing and that's what
09:38:36 15 it says, you don't doubt the veracity of a transcript that's in
16 the record --

17 A No.

18 Q -- correct?

19 A No.

09:38:41 20 Q And so Duane Eugene Owen was a fairly sophisticated
21 criminal Defendant, was he not?

22 A Sophisticated in what way?

23 Q Did you find him a fairly sophisticated and
24 intelligent criminal defendant? Yes or no?

09:39:01 25 A Well, I know -- well, I know he filed pro se

09:39:06 1 pleadings, that he filed a name change. I don't know if I
2 would call him sophisticated.

3 MR. BROWNE: Well, let's read a little bit from the
4 transcript here. This is in open court. The Defendant --

09:39:23 5 And for your Honor's sake I'm on 696.

6 BY MR. BROWNE:

7 Q And see if this refreshes your recollection. The
8 middle of the page, line 12. This is the Defendant talking in
9 open court.

09:39:34 10 [Reading] For instance -- and I would cite to the
11 court *Rose v. Lundy*, 455 U.S. 559.

12 I'll spare the court the cites. They're in the
13 transcript.

14 [Reading] And here, I guess, considered subsequent or
09:39:48 15 successive petitions, is that if you fail to raise a fact that
16 was otherwise known to you at the time you filed the motion or
17 you failed to raise a claim that was otherwise known to you
18 when you filed the motion, then that is a procedural bar.

19 If, in fact, Mr. Owen is arguing that he's worried a
09:40:10 20 claim not raised will result in a procedural bar, would you not
21 consider that a fairly sophisticated defendant?

22 A I think he probably had a lot of time to concern
23 himself with legal issues; so I guess so. Sophisticated in
24 certain ways as far as his legal arguments go, yes.

09:40:31 25 Q But certainly if he's concerned about not only this

09:40:34 1 proceeding but the federal habeas proceeding, that's fairly
2 sophisticated for a criminal defendant in your experience?

3 A Yes. Yes.

4 Q And he was also very protective of his own life,
09:40:48 5 wasn't he?

6 A I don't know what that means.

7 Q He didn't want the death penalty. He wanted to live?

8 A Nobody wants the death penalty.

9 Q Right. In fact, he expressed that in open court,
09:40:58 10 didn't he, with you? Do you recall that?

11 A No.

12 Q Well, he was, let's turn to page -- well, on page 698
13 of the transcript, Mr. Owen states, again in open court, I'm
14 just concerned that, you know, it is my life on the line here.
09:41:14 15 And if, in fact, this stuff is not raised at this time or
16 considered at the evidentiary hearing, then that could very
17 well be a great loss for me. So he is very concerned about his
18 own life, correct?

19 A Okay. Yes.

09:41:36 20 Q And it was your job as his defense attorney to
21 attempt to ensure, or through any legal means possible, have
22 his death sentence reversed, correct?

23 A Yes.

24 Q Yes? I didn't hear that.

09:41:53 25 A Yes.

09:41:53 1 MR. BROWNE: Your Honor, may I have one moment?

2 THE COURT: You may.

3 (Pause in the proceedings.)

4 MR. BROWNE: Thank you, your Honor. No further
09:42:04 5 questions.

6 THE COURT: All right. Redirect?

7 MS. LAURIENZO: I would ask the Court to just take
8 judicial notice of Case No. 94-134-DR. That was the
9 petition for a name change case.

09:42:05 10 REDIRECT EXAMINATION

11 BY MS. LAURIENZO:

12 Q And then, Ms. Izakowitz, have you spoken or seen
13 Mr. Owen since the late '90s?

14 A No.

09:42:31 15 Q Okay. Would you have any knowledge of his reading or
16 writing ability today?

17 A No.

18 Q And does a transcript from a 1997 hearing show any
19 evidence of what he knows today?

09:42:46 20 A I doubt it.

21 MS. LAURIENZO: No further questions.

22 THE COURT: All right. Thank you, ma'am. I
23 appreciate you making yourself available to be with us and
24 to testify this morning.

09:42:58 25 THE WITNESS: Thank you.

09:42:59 1 THE COURT: All right. Take care. Next witness?

2 MS. FUSARO: Your Honor, the Defense doesn't have any
3 further witnesses. We just have rebuttal witnesses.

4 THE COURT: Okay. All right. Is there anything
09:43:10 5 additional?

6 MR. BUSTAMANTE: Your Honor, the State would call
7 Danny Halsey. He should be outside.

8 THE COURT: Good morning, sir. If you'll raise your
9 right hand for me, please.

09:44:02 10 (Witness sworn.)

11 THE WITNESS: Yes, sir.

12 THE COURT: Thank you. Please be seated.

13 DANNY HALSEY,

14 called as a witness herein, having been first sworn, was
09:44:07 15 examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. BUSTAMANTE:

18 Q Good morning, sir.

19 A Good morning.

09:44:12 20 Q Can you please state your name and spell your last
21 name for the record.

22 A Danny Halsey, H-A-L-S-E-Y.

23 Q And what do you do for a living, sir?

24 A I'm a sergeant for the Department of Correction,
09:44:26 25 Florida State prison.

09:44:27 1 Q And how long have you been employed as a sergeant
2 with the Department of Corrections at Florida State Prison?

3 A Just over nine years.

4 Q How long have you been employed with the
09:44:36 5 Department of Corrections?

6 A Just over nine years.

7 Q Over nine years?

8 A I've been a sergeant for six years.

9 Q Oh, for six years. Okay. And what is your current
09:44:47 10 assignment?

11 A Death watch sergeant.

12 Q And what duties do you have as a death watch
13 sergeant?

14 A 30 minute checks. I assist with shave, shower
09:44:59 15 procedures, give the death watch inmate his meal.

16 Q How long are your shifts?

17 A Eight and a half hours.

18 Q And during, when there is somebody that is on death
19 watch, does that basically consume your whole day?

09:45:22 20 A Yes, sir.

21 Q Do you have one person to essentially take care of
22 during that whole time?

23 A Yes, sir.

24 Q Do you get to, when does that process start, that you
09:45:32 25 start this 30 minute watch during the whole shift?

09:45:36 1 A I'm normally on at 8:20, 8:25 A.M. and usually get
2 out around 4:20, 4:30.

3 Q As, during your job, have you got the opportunity to
4 meet an inmate known as Duane Owen?

09:45:57 5 A Yes, sir.

6 Q And when is it that you first met him?

7 A May 9, I believe, when he come to the Florida State
8 Prison.

9 Q May 9 of this year?

09:46:05 10 A Yes, sir.

11 Q And the procedures that you have asked, that you have
12 already told about the things that you do for your job --
13 you've been doing that during the time from May 9 until today?

14 A Yes, sir.

09:46:17 15 Q Have you seen any changes in him since -- from May 9
16 until maybe today?

17 A No, sir.

18 Q Can you describe for the Court what it is that you
19 observed on a daily basis?

09:46:31 20 A I give him his RDP meals. We have conversations from
21 time to time. I sit one on one, whenever he's seeing a
22 specialist, seeing his visits.

23 Q Have you seen any type of changes in his mental
24 capabilities?

09:46:54 25 A No, sir.

09:46:56 1 Q How would you describe his mental capabilities?

2 A Just as well, if not better, than anyone else's.

3 Q What does he do during the day?

4 A So usually when I come on about 8:20, 8:25 in the
09:47:10 5 morning, he's usually reading, writing until around 4, 5
6 o'clock. And then he turns on the TV, and it's usually lights
7 out between 10:30 and 11:30. I do a lot of overtime; so I do
8 16-and-a-half-hour days on death watch.

9 Q Okay. So --

09:47:28 10 A He has basically a set schedule that he follows.

11 Q And has he basically kept on that set schedule?

12 A Yes, sir.

13 Q What about visits?

14 A He had -- let's see. So far, he's had one visit that
09:47:45 15 I'm aware of for friends of his from Michigan.

16 Q And how did that visit go? Did he seem to have any
17 difficulty communicating with his friends?

18 A Oh, none at all.

19 Q How was -- can you describe the mood as when he was
09:48:02 20 talking or interacting with these friends?

21 A He was in a good mood, very happy to be able to have
22 conversation with his friends he had, I believe, for about four
23 hours.

24 Q Do you know if he's continuing any correspondence
09:48:16 25 with anybody?

09:48:17 1 A Yes. He reads and writes, sends out numerous letters
2 a day.

3 Q And does he have any special persons that he sends
4 letters to?

09:48:29 5 A Well, he's told me about some friends he's got in
6 Ireland, friends he has in Michigan.

7 Q And specifically the ones in Ireland, what type of
8 friends are those?

9 A He's referred to me before that that's his
09:48:44 10 girlfriend, that that's what he calls, he calls her his
11 girlfriend.

12 Q Somebody in Ireland?

13 A Yes.

14 Q Okay. During the time -- and I know I've probably
09:48:57 15 asked this question. Has he, from May 9 until now, have you
16 seen him suffer any memory problems?

17 A No, sir, I have not.

18 Q Any type of increased confusion?

19 A No, sir.

09:49:09 20 Q Any type of reduced concentration?

21 A No, sir.

22 Q Have you seen any personality or behavior changes?

23 A No, sir, I have not.

24 Q Have you seen any loss of ability to do any everyday
09:49:21 25 tasks?

09:49:22 1 A No, sir.

2 Q Does he need any help with getting dressed?

3 A No, sir.

4 Q Bathing?

09:49:26 5 A No, sir.

6 Q Grooming?

7 A No, sir.

8 Q Has at any point he stated to you in the

9 conversations that you had that he does not know why he is on

09:49:44 10 death row for?

11 A No, sir.

12 Q Has he ever said that he did not commit any crimes?

13 A No, sir.

14 MR. BUSTAMANTE: I don't have any further questions.

09:49:53 15 THE COURT: All right. Cross?

16 CROSS-EXAMINATION

17 BY MS. LAURIENZO:

18 Q Good morning, Sergeant Halsey. You're not a

19 psychologist, are you?

09:50:07 20 A No, sir -- or, no, ma'am. Sorry.

21 Q That's okay. You don't have a medical license?

22 A No, ma'am.

23 Q And do you have a degree in psychology or mental

24 health field?

09:50:14 25 A No, ma'am, I do not.

09:50:15 1 Q Do you have any formal training in education that
2 would qualify you to make a diagnosis of a psychiatric
3 impairment?

4 A No, ma'am.

09:50:23 5 Q And your contact began with Mr. Owen on May 9?

6 A Yes, ma'am.

7 Q So that's about, math is hard. Less than a month,
8 right?

9 A Yes, ma'am.

09:50:36 10 Q And Mr. Owen has been compliant --

11 A Yes, ma'am.

12 Q -- with you? And he's been polite?

13 A Yes, ma'am.

14 Q And do you know the substance of what Mr. Owen's
09:50:57 15 writing in his letters?

16 A No, ma'am. I've not read them.

17 Q And when he has his meetings with his friends and
18 attorneys, you are not sitting inside the room, are you?

19 A Not when he's with his attorneys. Now, when has his
09:51:12 20 meeting with his friends, I am sitting inside. It is a
21 non-contact VP.

22 Q Okay. So you hear the substance of his conversations
23 and whatnot?

24 A Whenever he is with his friends, but as far as the
09:51:24 25 attorneys or specialist callouts, no, ma'am.

09:51:31 1 Q Are you aware of how many books Mr. Owen has in his
2 cell right now?

3 A I want to say he's got a dictionary and an
4 encyclopedia and possibly one novel he was reading. I think he
09:51:49 5 finished it up, but I'm not sure if he still has it.

6 Q Do women sometimes refer to their female friends as
7 girlfriends?

8 A Yeah.

9 MS. LAURIENZO: May I have a moment?

09:52:10 10 THE COURT: You may.

11 (Pause in the proceedings.)

12 BY MS. LAURIENZO:

13 Q Have you ever spoken specifically with Mr. Owen about
14 the books to know that he's actually reading them and
09:52:23 15 understands them?

16 A No, ma'am. I have not spoken to him about his books.

17 MS. LAURIENZO: That's all.

18 THE COURT: All right.

19 MS. LAURIENZO: Thank you.

09:52:31 20 THE COURT: Redirect?

21 REDIRECT EXAMINATION

22 BY MR. BUSTAMANTE:

23 Q When he talked about this friend from Ireland, the
24 girlfriend, did you take that to mean from him that it was just
09:52:43 25 a regular friend?

09:52:45 1 A Honestly, I'm not really a hundred percent sure. He
2 has told me that she is married, but he has been talking to her
3 for several years and has always referred to him as -- or her
4 as his girlfriend.

09:52:58 5 MR. BUSTAMANTE: I don't have anything further.

6 THE COURT: All right. Thank you, sir. You may step
7 down. Next witness?

8 MR. BROWNE: Your Honor, we have Dr. Wade Myers, and
9 he's appearing by Zoom at 10 o'clock. That was our best
09:53:30 10 guess.

11 THE COURT: All right.

12 MR. BROWNE: So if we may have a five-minute break.

13 THE COURT: Sure. Let's double-check and make sure.

14 Dr. Myers, are you with us yet on Zoom?

09:53:39 15 All right. So we'll take a short recess until we
16 have Dr. Myers.

17 (Recess was taken.)

18 THE COURT: All right. We're back on the record in
19 State of Florida versus Duane Eugene Owen, 23-CA-264.

10:02:56 20 Mr. Owen is present with counsel. The State is present
21 with counsel.

22 Do we have Dr. Myers on Zoom with us yet?

23 Dr. Myers? If you are responding, we can't hear you;
24 so you might have us muted, if you are with us.

10:03:35 25 Do you all know or have any confirmation that he's

10:03:36 1 on?

2 MR. BROWNE: Your Honor, I wasn't sure. I just spoke
3 with Dr. Myers, and he said he was going to get right on
4 it; so --

10:03:42 5 THE COURT: Okay.

6 MR. BROWNE: I mean, he had all the numbers.

7 (Pause in the proceedings.)

8 THE COURT: I don't think we have him on, and my
9 assistant is monitoring the Zoom. I think we have the
10:05:26 10 same folks on that we had when we took the break.

11 If y'all don't have anyone else to call, I can go
12 back off the record. I don't want to just sit on.

13 MR. BROWNE: Your Honor, I apologize. I didn't know
14 we were actually on the record again. I haven't heard
10:05:56 15 back, and I'm asking one of my assistants to check with
16 Dr. Myers and see if he needs help getting on.

17 THE COURT: All right. We'll give it a few seconds.

18 (Pause in the proceedings.)

19 THE COURT: All right. Dr. Myers, can you hear us
10:10:47 20 okay?

21 THE WITNESS: Yes, I can. I apologize for that. The
22 link was a cut and paste, and I had to type it in
23 manually.

24 THE COURT: No worries. So let me go ahead and have
10:10:52 25 you raise your right hand for me.

10:10:54 1 (Witness sworn.)

2 THE WITNESS: I do, yes.

3 THE COURT: Thank you. If at any time you can't hear

4 any of us, let us know.

10:11:08 5 THE WITNESS: Yes, sir.

6 WADE COOPER MYERS,

7 called as a witness herein, having been first sworn, was

8 examined and testified as follows:

9 DIRECT EXAMINATION

10:11:11 10 BY MR. BOBEK:

11 Q Good morning, Doctor.

12 A Good morning.

13 Q Could you state your name and spell it for the

14 record.

10:11:15 15 A Wade Cooper Myers, MD. And that's M-Y-E-R-S.

16 Q Where are you employed?

17 A I'm a professor of psychiatry at Brown University,

18 and I'm chief there of the division of forensic psychiatry.

19 Q And how long have you been employed there?

10:11:35 20 A I have been there for almost 14 years.

21 Q And could you describe your educational background

22 for the Court?

23 A Yes. I went to Stetson University where I got my

24 degree in biology, undergraduate. And then I went to medical

10:11:53 25 school at Temple University, where I got my M.D. degree. Then

10:11:57 1 I went to the University of South Florida, and I did a one-year
2 residency in surgery.

3 I then transferred up to the University of Florida
4 and did a forensic -- I'm sorry, a psychiatry residency. And
10:12:11 5 then following that, I did two fellowships: One in child and
6 adolescent psychiatry, which was two years long, and then one
7 of that in forensic psychiatry, which was one-year long.

8 Q And do you hold any professional licenses?

9 A I do, yes. I have a license to practice medicine in
10:12:30 10 Florida and in Rhode Island.

11 Q And do you have any Board certifications?

12 A I do. By the way, I can, I cannot see you very well.
13 Are you --

14 Q I'm not sure where the camera is in the courtroom;
10:12:45 15 so --

16 A Oh, that's okay. Never mind. That's fine.

17 Yes, I have Board certifications in general
18 psychiatry and in forensic psychiatry and in child and
19 adolescent psychiatry.

10:12:58 20 Q And prior to Brown University, could you describe
21 your employment experience?

22 A Yes. After I finished my training and fellowships, I
23 was on the faculty at University of Florida in the Department
24 of Psychiatry for probably around 15 or so years, where I
10:13:19 25 eventually became the chief of forensic psychiatry there.

10:13:23 1 I then went to the University of South Florida in
2 Tampa to the Department of Psychiatry, and I helped them create
3 a forensic psychiatry fellowship; so I was chief of the
4 division of forensic psychiatry there.

10:13:38 5 And then after about five years, I came up to
6 Brown University, where I've been since.

7 Q Okay. And do you have a CV that reflects all of this
8 information?

9 A I do, yes.

10:13:51 10 Q So I can't show it to you physically because you're
11 not here, but I do have a copy of a CV. At the top it says
12 Wade Cooper Myers, III, MD, revised 9/18/12, and it's about 25
13 pages. Does that sound like your CV?

14 A That does, yes.

10:14:09 15 MR. BOBEK: Okay. At this time, the State would
16 enter it as the next numbered exhibit.

17 THE COURT: Any objection?

18 MR. CHAYKIN: No objection.

19 THE COURT: All right. It will be received as the
10:14:20 20 State's next numbered exhibit. Is it 5 or 6?

21 MR. BOBEK: I'm sorry, it wasn't pre-marked.

22 THE COURT: Well, it's in as your next numbered
23 exhibit.

24 MR. BROWNE: Thank you, Judge.

10:14:31 25 (State's Exhibit 4 admitted into evidence)

10:14:31 1 BY MR. BOBEK:

2 Q Now, are you familiar with the Commission the
3 Governor will sometimes appoint after he signs a warrant? It's
4 for the purpose of considering the mental health of a death row
10:14:41 5 inmate.

6 A Yes, I am.

7 Q Okay. And have you ever been appointed to one of
8 those before?

9 A I have, yes.

10:14:51 10 Q Do you recall how many times?

11 A I'm going to estimate approximately ten times.

12 Q Okay. And were you recently appointed to one of
13 those for someone named Duane Owen?

14 A I was, yes.

10:15:07 15 Q And what is the purpose of this evaluation?

16 A To perform a psychiatric evaluation of Mr. Owen and
17 to determine if he understands the nature of the death penalty,
18 its effect, and why it has been imposed on him.

19 Q And so is that to assess his current mental status?

10:15:30 20 A Yes, it is.

21 Q And were there other doctors that evaluated Mr. Owen
22 with you?

23 A Yes. There were two others.

24 Q And do you know their names?

10:15:40 25 A I do. Dr. Werner and Dr. Lazarou.

10:15:46 1 Q And do you recall what day the evaluation occurred?

2 A I believe it was on June 23 last week. No, not June
3 23. That's not right. I'm sorry. It would be May -- sorry.
4 I've got to do the math here.

10:16:11 5 Q It's okay.

6 A It would be May -- would it be 23? A week ago
7 Tuesday?

8 Q Thank you. And where did the evaluation occur?

9 A At Florida State Prison.

10:16:25 10 Q In addition to the interview with Mr. Owen, did you
11 do other things to prepare your findings?

12 A I did, yes. We reviewed his medical and mental
13 health records on-site, which were provided to us by the
14 records management folks. And then we also, or I was, I
10:16:52 15 imagine the other experts were, too, provided a number of
16 materials that are pretty extensive. I don't know if you want
17 me to kind of go through those or not.

18 Q Just generally, what type of materials?

19 A Well, there was, there's various motions and
10:17:14 20 appendices. There was testimony from various persons over the
21 years. There was test results that have been done with him.
22 There was -- sorry.

23 Q Okay. And did that include things that you learned
24 about the facts of his crimes?

10:17:38 25 A Well, yes. I was going to say that there was also a

10:17:43 1 pre-sentencing evaluation done. There was facts of the crime,
2 a procedural history. There were case opinions on the
3 different cases, for instance, the Worden and the Slattery
4 cases. There was statements and pleadings by Mr. Owen. And
10:18:08 5 there was a number of doctors' reports and testimony, which
6 would be somewhere in the order of 15 to 20 of those.

7 Q And did you have an opportunity to review
8 Dr. Eisenstein's report before your interview?

9 A Yes, I did.

10:18:30 10 Q Okay. Now, turning to the interview itself, could
11 you describe the room that it was in?

12 A Yes. It was a room with a table. It was a good size
13 room. There was a window. There was a table with the records
14 on it behind us. It was a comfortable room to do an interview.

10:19:00 15 Q And other than the doctors and Mr. Owen, was anyone
16 else present?

17 A Yes. His attorney was.

18 Q Okay. And was there any interaction between him and
19 his attorney during the evaluation?

10:19:15 20 A There was not.

21 Q Okay. Now, how did the interview begin?

22 A Mr. Owen was brought into the room, and then we
23 explained to him who we were and why we were there and the
24 nature and purpose of the evaluation.

10:19:40 25 Q Did he seem --

10:19:40 1 A And we asked him if he --

2 Q I'm sorry.

3 A Go ahead. I'm sorry.

4 Q Sorry I cut you off. You were about to answer the
10:19:44 5 question.

6 A I was just going to say that we asked him if he
7 understood. He said he did. We asked him if he had any
8 questions. He didn't really have any questions. And then we
9 told him if he ever needed breaks during the examination, we'd
10:19:59 10 be happy to take as many as he needed. And then we -- after
11 that, we began and went through the evaluation, which was about
12 95 to a hundred minutes in length.

13 Q And did he ever request a break during that time?

14 A He did not, no.

10:20:17 15 Q And there's been some discussion about some delusions
16 he has. Did he discuss those delusions with you?

17 A He described some beliefs. I didn't in any way
18 believe that they were delusions, but he described some odd
19 beliefs, yes.

10:20:44 20 Q What were those beliefs?

21 A One of them was that he was a woman trapped in a body
22 and that he had to release his inner self. And so the way he
23 was trying to do that over the years was to take in fluid from
24 women, and that fluid would help him then get estrogen from
10:21:19 25 them. And then he could convert to a woman. And that would

10:21:22 1 then give him breasts and make his penis and testicles go away,
2 and then he could become who he truly should be, which was a
3 woman.

4 And then it got more fantastical, in that he began to
10:21:36 5 refer to his penis as it was not a penis, it was a hose. And
6 this hose was designed to extract estrogen from his sexual
7 homicide victims. And so what he needed to do was he needed to
8 kill them, and then the second they died, what he needed to do
9 was have an orgasm, and then their soul would then go into his
10:22:02 10 body as he, right as he was having an orgasm and they were
11 dying. And it went on from there.

12 Q So you made the distinction between beliefs and
13 delusions. What is a delusion in the psychiatric sense?

14 A Well, and I'm using the term belief loosely, by the
10:22:24 15 way.

16 Q Right. I understand.

17 A I don't believe --

18 Q We'll get into that.

19 A We'll get into that. Okay.

10:22:30 20 Q So --

21 A Go ahead.

22 Q So in the psychiatric sense, what's the definition of
23 delusion?

24 A It's a false, fixed belief that does not comport with
10:22:44 25 reality in terms of what the average person would think could

10:22:47 1 be reality, and it's something that would be very unlikely to
2 be true.

3 Q And --

4 A And it's a symptom that you can't -- you can't talk
10:22:59 5 somebody out of having a delusion who has a delusion. You
6 can't reason with them.

7 Q And --

8 A It's fixed.

9 Q Got it. And was there, during your interview, the
10:23:13 10 interview, the contents of the interview, the things that he
11 said to you, what were the things he said that made you doubt
12 the genuineness of this delusion?

13 A Well, there's different things, but one of the big
14 things in this, this delusion appears to come on years after he
10:23:35 15 was first convicted of the murder, murders. And just by --
16 quite unusually, this delusion gives him an explanation of why
17 he was committing these sadistic homicides and is also, is a
18 delusion that just happens to potentially make him ineligible
19 to receive capital punishment.

10:24:08 20 So I would say that the odds of developing a delusion
21 that just perfectly fit your crimes but yet was not anything
22 that you were telling officers or detectives or other
23 personnel, healthcare personnel, in jails and prisons for years
24 around that time really stretches predominantly to imagine that
10:24:35 25 it would be so coincidental that this could happen.

10:24:39 1 Q So you're saying delusions really can just be just
2 about anything, and they're not necessarily related to
3 particular criminal activity?

4 A Yes. Delusions are about as broad as the imagination
10:24:51 5 can go. But the thing about delusions is they're, and he's not
6 even being treated for this.

7 Delusions are very, very powerful, and they're an
8 influence on your life, and they're pervasive. So, for
9 instance, you would expect him to be talking about these
10:25:12 10 delusions to people that he interacts with, healthcare
11 personnel, to doctors, and so on -- early on, if he really had
12 such delusions around the time of these original crimes.

13 Q So, for example, if he gave --

14 A And we don't see that.

10:25:29 15 Q If he gave a protracted confession to police after
16 the crimes, crimes he said he felt the delusion at the time,
17 you believe he would have mentioned it at the time?

18 A Oh, absolutely, yes.

19 Q And when someone has a delusion like this, does it
10:25:44 20 manifest in other ways other than just this self-report?

21 A Well, yes. There's been, there's been allegations
22 that he had schizophrenia by -- I see some professionals who
23 have seen him, but that's really one of the most severe mental
24 illnesses a human being can get, and it's a very disorganizing
10:26:09 25 illness, and it causes problems in all sorts of your life's

10:26:15 1 fears.

2 For instance, when you have schizophrenia, you often
3 have confused thinking, and when you speak, your thoughts come
4 out jumbled, or they are illogical or they don't make very good
10:26:27 5 sense. And, for instance, when we interviewed Mr. Owen, he
6 was, he was articulate. He was well-spoken. He was clearly
7 intelligent. His memory was good. He was very alert and
8 oriented. There was no signs at all of any kind of thought
9 disturbance that would be consistent with schizophrenia or with
10:26:48 10 delusional thinking.

11 Q So let's talk about schizophrenia for a moment. Do
12 you have experience interviewing or treating schizophrenics?

13 A Yes. I've been treating people with schizophrenia
14 and continue to do so in my clinical practice for over 30
10:27:04 15 years --

16 Q And --

17 A -- so I'm sure I've seen thousands of people with
18 schizophrenia in my career.

19 Q And do you have any experience with schizophrenics
10:27:12 20 who have been unmedicated or untreated for a significant period
21 of time?

22 A I do, yes.

23 Q And someone in that state, would they be able to hide
24 these manifestations or these symptoms for 30, 40 years?

10:27:28 25 A It would be hard to hide the symptoms for three or

10:27:31 1 four minutes, if you have untreated schizophrenia and if you
2 are being seen by a mental health professional.

3 Q And in your review of the records and interviews with
4 other personnel, did you get any information that he's
10:27:45 5 exhibited those symptoms at any point?

6 A None. And that was pretty powerful information for
7 me to hear, too, of the five or so prison personnel that we
8 spoke to and some who have known him for many, many years, some
9 ten or more years. None of them have ever seen him exhibit any
10:28:09 10 signs of schizophrenia or unusual speech or bizarre behaviors,
11 of disorganization in his cell.

12 On the contrary. He keeps his cell neat. His speech
13 is very normal. He's polite, respectful, so absolutely nothing
14 that would suggest he has schizophrenia.

10:28:32 15 Q And one of the possible criteria for schizophrenia is
16 diminished emotional expression; is that correct?

17 A Yes. It's a disturbance in affect or a flattening of
18 your emotional expression called flat affect, yes.

19 Q And did you experience that at all in your interview
10:28:50 20 with Mr. Owen?

21 A Not at all, actually. He showed a full range of
22 affect, and, in fact, he showed a sense of humor and sometimes
23 would smile when something, something humorous was said.

24 Q Another part of Eisenstein's opinion was that he is
10:29:17 25 experiencing dementia. What is dementia?

10:29:21 1 A It's a deterioration in one's brain functioning and
2 your cognitive functioning, and it tends to cause problems with
3 being disoriented, memory problems, trouble with your language.
4 It may cause problems of you being able to carry out activities
10:29:42 5 of daily living, like putting your clothes on properly or
6 brushing your teeth. It would make it difficult to do things
7 like read or pay consistent attention.

8 Q And is this a disease that gets worse over time?

9 A It can be static, or it can be progressive, depending
10:30:07 10 on the type of dementia, but the most common dementias would be
11 dementias, like, say Alzheimer's disease where it is, yes, a
12 progressive disease that eventually leads to your death.

13 Q And schizophrenia is also a disease that gets worse
14 over time; correct?

10:30:25 15 A Yes. In most cases it does. And it actually does
16 cause a decline, not uncommonly, in your cognitive functioning.

17 Q And in your conversation with Mr. Owen, did he have
18 trouble communicating, remembering things? Did he trail off?
19 Anything like that?

10:30:43 20 A No, not at all. And, in fact, he even cited legal
21 cases and gave us a description of what the content of legal
22 cases were. He showed a strong memory and strong reasoning
23 skills.

24 Q And that was during the interview on May 23?

10:31:03 25 A Yes. And thank you for correcting me again on that

10:31:06 1 date.

2 Q Did you and the other doctors draft a report for the
3 Governor in this case?

4 A Yes, we did.

10:31:15 5 Q Could you walk me through the process of how that
6 came to be?

7 A Well, we began putting together a rough draft, and
8 then we did it on Google Docs so we could all have input into
9 the report at the same time. And because we were under a
10:31:38 10 deadline to get the report out within, essentially, 24 hours,
11 we did use that method, where we could edit it sort of at the
12 same time so it wouldn't be, I did some edits and then I'd pass
13 it to one doctor and then she would do some edits and then
14 she'd pass it around; so that actually worked out pretty well,
10:31:55 15 and we did get it done within the day, and we did confer on our
16 opinions in the report on a couple of different occasions, and
17 we were all on the same page.

18 Q Okay. So this is something all three doctors
19 collaborated on?

10:32:13 20 A That's correct.

21 Q Okay. And, sorry, I actually had a few more
22 questions about the interview.

23 When you spoke to him about the crimes, did he seem
24 to understand that he had actually killed people?

10:32:26 25 A Yes. He said that he -- he didn't want to use the

10:32:30 1 word that they were dead. He kept avoiding that word, but he
2 admitted that they were buried and that their bodies had
3 decomposed and that their bodies were essentially gone. But he
4 wanted to really push forward the concept that their souls were
10:32:54 5 in him. He knew they were dead, their bodies were dead but
6 that they -- their souls -- at least in the past, he said he
7 felt like their souls had gone into him.

8 Q Okay. And did you talk to him about his impending
9 execution?

10:33:09 10 A Yes. Yes, we did.

11 Q And did he understand that was related to killing
12 these women?

13 A He did. Yes.

14 Q Did you get a chance to review Dr. Eisenstein's
10:33:28 15 second report? I think it was May 26 it was released.

16 A Yes, I did.

17 Q And did you see on there that he gave Mr. Owen an
18 MMPI?

19 A Yes.

10:33:40 20 Q What is the MMPI?

21 A It's a questionnaire, a psychological test, that
22 looks at different areas of personality and psychopathology or
23 mental illness.

24 Q And if you were to administer that test to somebody
10:33:59 25 and it came back with a result that they had a floating

10:34:02 1 profile, what does that mean?

2 A I don't normally hear people use that term, floating
3 profile. I understand, and I'm not sure if I understand what
4 that means, but I think it means there's a lot of elevations on
10:34:19 5 different scales.

6 Q And so if somebody was elevated in multiple or all
7 scales, what would that indicate to you about how they treated
8 the test?

9 A How they what?

10:34:33 10 Q Would that indicate to you malingering on the test?
11 That they were just answering, trying to endorse every factor?

12 A Having seen him shortly before it sounds like that
13 MMPI was administered, that would sound to me like he was
14 embellishing or exaggerating or, frankly, malingering symptoms
10:34:57 15 of mental illness because he showed no signs of mental illness
16 when we saw him.

17 Q And back to your report, did you make a finding that
18 he was incompetent to proceed?

19 A Yes, that he was competent to proceed, yes.

10:35:16 20 Q And did you make a finding as to his sanity?

21 A Yes. That he was, was legally sane, yes.

22 MR. BOBEK: Okay. One moment, Judge?

23 THE COURT: You may.

24 (Pause in the proceedings.)

25

10:35:47 1 BY MR. BOBEK:

2 Q So, Doctor, would you agree with me people have
3 beliefs or interests that they think people might be, they
4 would find embarrassing, if people found out about them?

10:36:03 5 A Yes. Sure, I agree with that.

6 Q And if someone has a genuine psychiatric delusion,
7 would they be embarrassed, if somebody found that out?

8 A In my experience, that would be very unusual, really.

9 Q And why is that?

10:36:20 10 A They tend to tell people their delusions, and they
11 genuinely believe those delusions a hundred percent.

12 And also the way the illness works, for instance, in
13 schizophrenia, you lose your insight, and it also can -- it
14 also erodes your social skills, where you're not thinking so
10:36:42 15 much about embarrassment but that you've got this delusion or
16 delusions dominating your thought process and you're, and it's
17 leaking out to other people around you; it comes out in your
18 writings and so on.

19 Q And if you have a genuine delusion, would you be able
10:37:00 20 to turn it on and off? You would be able to act on it
21 sometimes and then suppress the feelings other times?

22 A No, you would not.

23 Q And what about with psychiatric symptoms? Would you
24 be able to suppress them at times and then release them at
10:37:15 25 other times?

10:37:18 1 A Non-psychotic illnesses, I mean, depending on --
2 well, let's say if you were depressed. You might be able to
3 put on a -- try to put on, like, a happy face if you were
4 around people for a short period of time. So you might be able
10:37:29 5 to hide depression, if it wasn't too severe for a while, as an
6 example. So I think less severe illnesses that are not
7 psychotic illnesses, yes, you probably could suppress the
8 symptoms, depending on the condition.

9 Q But for schizophrenia?

10:37:46 10 A No, it's not really -- it's such a pervasive
11 disorganizing illness, that you would not be able to suppress
12 that.

13 MR. BOBEK: Thank you, Doctor.

14 THE COURT: Cross?

10:37:58 15 MR. CHAYKIN: May I inquire?

16 THE COURT: You may.

17 CROSS-EXAMINATION

18 BY MR. CHAYKIN:

19 Q Good morning.

10:38:14 20 A Good morning.

21 Q So you mentioned on direct examination that the three
22 of the doctors worked together to complete the report in this
23 case; right?

24 A Yes.

10:38:26 25 Q So who actually authored the original draft?

10:38:35 1 A I'm not sure if Dr. Lazarou or Dr. Werner put the
2 first draft together.

3 Q Okay. So you just --

4 A I know I also sent them some language to insert into
10:38:47 5 the report as well, which they incorporated; so I'm not sure
6 who took the lead. But then the versions went around a bit,
7 and then I later suggested on, later that evening, on the 23rd,
8 that we ought to go ahead and use Google Docs to save time and
9 make it more like an area we could all just focus on one
10:39:09 10 document at the same time.

11 Q Okay. When you're concurring about the evaluation in
12 this report, are you talking over the telephone?

13 A Yes. There was some of that, and then there was some
14 comments as well, say, by email or within the body of the
10:39:29 15 report because on Google Docs you can add in comments.

16 Q Okay. And if there was a disagreement in the report,
17 who had the final say?

18 A I wouldn't say anybody really had the final say. We
19 didn't really have any disagreements in putting the report
10:39:51 20 together.

21 Q Okay. So all three of you had the same opinions?

22 A Yes.

23 Q And the report indicates that the commission reviewed
24 investigative materials related to Mr. Owen's arrest; right?

10:40:06 25 A Yes.

10:40:07 1 Q What materials did that consist of?

2 A There was a statement of facts. There was court
3 testimony. There were the videotapes we were provided.

4 Q And --

10:40:23 5 A And let me see -- go ahead.

6 Q How long did you spend reviewing those documents?

7 A I would say, in total, probably seven or eight hours,
8 as an estimate.

9 Q And did you review each document yourself?

10:40:49 10 A Yes.

11 Q And when you reviewed those documents and the
12 records, did you do that all prior to your evaluation of
13 Mr. Owen?

14 A No, I didn't. I did some before and some after.

10:41:04 15 Q Okay. And then when you did the actual evaluation,
16 you mentioned that it was either 95 or a hundred minutes;
17 right?

18 A Yes.

19 Q Now, you'd agree that you didn't have a time limit
10:41:15 20 provided to you for the court for how long the evaluation can
21 take?

22 A That's correct.

23 Q And you'd agree that, if you spend more time with
24 someone, you're able to learn more about them and about their
10:41:27 25 deficits, right?

10:41:30 1 A I wouldn't really agree with that because, number
2 one, I didn't even detect any deficits in Mr. Owen nor any
3 signs of mental illness; so after --

4 Q So it's your view --

10:41:44 5 A -- nearly a hundred minutes, I didn't -- I would have
6 been able to pick up those kind of issues by then.

7 Q Okay. So it's your view that spending more time with
8 someone wouldn't allow you to learn more about them?

9 A Well, I can learn more about them, but the most
10:42:00 10 important facts were gathered between the record review and the
11 amount of interview time that we had with him.

12 Q Well, you'd agree that you don't know what you would
13 have learned, if you had spent more time with him, right?

14 A I don't know there's anything more that we really
10:42:19 15 needed to learn --

16 Q Okay. So in a hundred minutes --

17 A -- that would have been --

18 Q In a hundred minutes, you learned everything you
19 could possibly need to learn about Mr. Owen?

10:42:28 20 A To answer this question and with the amount of
21 materials that we were provided, yes.

22 Q In your work, how long do you typically do an
23 evaluation for?

24 A An initial evaluation of a patient would be for one
10:42:44 25 hour.

10:42:45 1 Q And have you --

2 A And that would be to go through their life history,
3 to review some records, to discuss with them a diagnosis and a
4 treatment plan and, not uncommonly, to prescribe medications;
10:42:59 5 so an hour is routine.

6 Q Okay. And that's a typical evaluation, but you've
7 also mentioned that you've done evaluations for death row
8 inmates before, right?

9 A Yes.

10:43:09 10 Q And how long are those evals, typically?

11 A I don't have an exact number to tell you or haven't
12 put together an average of how long they were.

13 Q Okay. So sometimes they take longer than a hundred
14 minutes, though, right?

10:43:29 15 A Perhaps. I don't know if one went longer than a
16 hundred minutes. It's certainly possible.

17 Q And did you interview Mr. Owen regarding his
18 childhood?

19 A I believe, to a limited degree, yes.

10:43:47 20 Q What did you learn about his childhood?

21 A I learned a lot about his childhood from the
22 materials that we were provided.

23 Q And what was that?

24 THE COURT: Hold on one second. Dr. Eisenstein, if
10:44:08 25 you could mute yourself, please, and thank you.

10:44:12 1 Go ahead.

2 BY MR. CHAYKIN:

3 Q Okay. So I know you reviewed them in the records,
4 but what was it that you learned?

10:44:20 5 A That he was raised in Indiana and that his parents
6 had a problem with alcohol and that there was very little
7 supervision or guidance in the home. That his mother died of
8 complications of cancer, and I believe the actual cause of
9 death was pneumonia, when he was about 10.

10:44:49 10 And then his father was apparently really upset and
11 having a hard time with her death, and then he ended up dying
12 of suicide several years later, when Mr. Owen was about 13.

13 Mr. Owen had begun using alcohol and marijuana at a
14 young age, 9, 10, and 11, in there. He didn't have relatives
10:45:11 15 that were willing or able to raise him to adulthood, so he
16 ended up going to a VFW group home in Michigan, and that was
17 around 1974 or '5 when he was 14. And then he ended up going
18 to a youthful offender house when he was 16 around 1978 or so.
19 And then he ended up getting his high school degree.

10:45:43 20 Q All right. Thank you. So that's what you learned
21 about his childhood and also some of his family history, right?

22 A Yes. I mean, there's other details. I mean, his
23 brother, for instance, talked about him having -- they actually
24 had a pretty -- a good childhood, and things were going well
10:46:07 25 until the parents passed away.

10:46:09 1 Q Okay. So you spoke to Mr. Owen's brother?

2 A No, no. I just saw his testimony.

3 Q Okay.

4 A And he said that Mr. Owen was a happy kid and didn't
10:46:21 5 have any childhood issues until they lost their mother and then
6 that their father started to drink heavily after that and then
7 eventually committed suicide, and the boys ended up in foster
8 care.

9 Q Okay. So Mr. Owen's brother did explain that there
10:46:37 10 was a change in Mr. Owen during his childhood?

11 A Yeah. I don't recall that part -- yes, I think I do
12 recall seeing that, yes.

13 Q And besides the records to review the testimony, you
14 also reviewed mental health reports dating back from 1986 until
10:46:57 15 the present, right?

16 A Yes.

17 Q And how long did you specifically spend reviewing
18 those documents?

19 A I don't have a specific time to give you.

10:47:11 20 Q Okay. How many pages of records were there from over
21 those 37 years?

22 A A lot.

23 Q Okay. And you were able to review each of those by
24 yourself?

10:47:24 25 A I did the best I could to get through them. Some of

10:47:26 1 them I had to go through fairly quickly.

2 Q Okay. So, then, you'd admit that you weren't able to
3 review them all in full detail based on the time restraint?

4 A That's true, yeah. I had to go through -- for
10:47:42 5 instance, I did not get a chance to review all of the DVDs
6 because they were just too long, and there was not enough time
7 to complete that; so I did a sampling of the DVDs.

8 Q Okay. And since you did a sample of the DVDs, you'd
9 agree that you don't have a full picture of those mental health
10:48:01 10 records, right?

11 A Well, I think I do. For instance, I know what he --
12 around about 2003, he was essentially classified as without
13 mental illness and was classified as an S1, meaning that he
14 didn't need psychiatric medication or counseling. And I
10:48:24 15 believe he stayed at that level since.

16 Q Okay. And my question is -- is that you'd agree
17 that, since you didn't review all of the DVDs, there's
18 information in those mental health records that you don't
19 necessarily know of?

10:48:37 20 A You mean from the DVDs?

21 Q Yes.

22 A Yeah, I suppose that's possible. I didn't see signs
23 of mental illness in Mr. Owen during the interviews.

24 Q Okay. And we'll talk about that shortly. So you
10:48:55 25 mentioned on direct examination that you've been appointed ten

10:48:58 1 times by the Governor to do this type of examination, right?

2 A That's an approximation. I don't have an exact count
3 to give you.

4 Q Well, it's nearly ten, right?

10:49:10 5 A It's probably in that ballpark, yes.

6 Q Okay. And how many of those evaluations did you find
7 the defendant incompetent?

8 A In none of them.

9 Q Okay. So in each time that you were appointed by the
10:49:22 10 Governor, you always found the defendant competent?

11 A That's correct, because every one of those, to my
12 recollection, had been thoroughly vetted multiple, multiple
13 times by numerous mental health professionals, and it wasn't
14 really sort of a new complaint coming up.

10:49:44 15 Q Now, if you opine that the Defendant is insane, do
16 you think that you'd be appointed by the Governor again to do
17 this type of committee?

18 A I don't know. I don't know the answer to that.

19 Q Right. You don't know because you've never found
10:49:59 20 anybody incompetent before, right?

21 A Well, my supposition would be that I would be because
22 I do my best to come to an objective opinion based on the
23 materials and my background, training, and experience. And I
24 have been treating seriously mentally ill people, severely
10:50:22 25 mentally ill, my whole career.

10:50:25 1 Q Right. So I understand you have an extensive
2 background, but you would agree you don't know if you would be
3 appointed since you've never come to that conclusion before?

4 A I don't know, right.

10:50:35 5 Q Have you ever done evaluations for Defense Counsel?

6 A I have, yes.

7 Q Okay. Is your work primarily with the State?

8 A No. It's about half and half. In the criminal realm
9 that I do, it's about half criminal defense and about half for
10:50:52 10 the prosecution.

11 Q Okay. Now, I want to talk about those mental health
12 records that you were able to review. It's your testimony that
13 within those records, that Mr. Owen was free of symptoms and
14 signs of serious mental illness, right?

10:51:13 15 A He had symptoms in the past of some depression, and
16 he's said, at times, that he's wondered if he's transgender or
17 that he would be happier as a woman than a man.

18 Q Okay. So you'd agree that --

19 A Whether he -- that's not necessarily a mental
10:51:38 20 illness, but it's a condition, yes.

21 Q Okay. So you'd agree that there is evidence within
22 the records of symptoms of mental illness; right?

23 A Well, he did complain of depression, and he did
24 receive an anti-depressant in the past to help him sleep as
10:51:57 25 well, but do I think he's got any sort of serious mental

10:52:01 1 illness? No. I've never seen that indication of that in the
2 records or --

3 Q Right.

4 A -- the history or --

10:52:07 5 Q I understand that's what you believe, but my question
6 is -- is that within the records, you'd agree that it's not
7 actually free of all symptoms of mental illness, right?

8 A Right.

9 Q Okay. In fact, it's noted specifically that the
10:52:25 10 conditions that are in those records are by self-report,
11 though, right?

12 A When you say conditions, what are you referring to?

13 Q My apologies. The symptoms. So when you're
14 reviewing those records, it's your belief that the symptoms in
10:52:43 15 the records are all made by self-report, right?

16 A That's correct, yes.

17 Q And you'd agree, though, that just because symptoms
18 are provided through self-reporting, that doesn't mean that
19 they're false, right?

10:53:03 20 A No. That's true.

21 Q Okay. And, in fact, when you're dealing with mental
22 health patients, you'd agree that oftentimes you are having to
23 rely on things that they're telling you, right?

24 A Yes.

10:53:26 25 Q Now, so you mentioned momentarily ago that there was

10:53:30 1 a belief that he was transgender.

2 So when you actually reviewed those DOC documents,
3 you'd agree that you reviewed a report indicating that he had
4 gender dysphoria, right?

10:53:45 5 A That, to me, is not a terribly convincing phenomenon
6 in him because I don't really see evidence of that prior to the
7 arrests and him being incarcerated. And that's generally
8 something, if it's a genuine person with gender dysphoria, you
9 would expect that to manifest itself early.

10:54:10 10 Q And so I understand that that's your belief about
11 your position on gender dysphoria, but my question is, is
12 within those records, you'd agree that, in 1996, there is
13 actually a report, indicating that he had gender dysphoria,
14 right?

10:54:25 15 A I saw that, yes.

16 Q So you'd agree that, back in 1996, the DOC actually
17 did document a potential gender identity disorder?

18 A Yes, I did see that in the records, yes.

19 Q And when you did your evaluation, Mr. Owen, did you
10:54:52 20 find him to have an antisocial personality disorder?

21 A I did, yes.

22 Q And what is that?

23 A It is a personality disorder in which a person is
24 callous, lacks remorse for their behaviors, commences behaviors
10:55:15 25 that end up getting them arrested repeatedly. They tend to be

10:55:20 1 highly irresponsible. They often are very aggressive with
2 people.

3 Q Okay. So that --

4 A They're impulsive. Go ahead.

10:55:29 5 Q So that's a description of what somebody with
6 antisocial personality disorder acts like, but how did you come
7 to the conclusion in this case that Mr. Owen had that disorder?

8 A Well, he meets about every criteria there is for
9 antisocial personality disorder, and it's all throughout his

10:55:49 10 history that you see. And, in fact, he's been described as
11 such, going back 40 or so years, having this.

12 Q Okay. And what criteria is required to make a
13 diagnosis of antisocial personality disorder?

14 A I don't have the DSM in front of me, but I think you
10:56:09 15 need three of the -- if I remember correctly, about three of
16 the eight criteria.

17 Q Now, you also interviewed other individuals while you
18 were at the prison, right?

19 A Yes, that's right.

10:56:32 20 Q Okay. So who worked at the prison and had been
21 monitoring Mr. Owen, right?

22 A Yes.

23 Q Okay. When you spoke to these individuals, did you
24 speak to them separately?

10:56:46 25 A Yes, we did.

10:56:46 1 Q Okay. For about how long each did you speak to these
2 individuals?

3 A I would estimate 10 or 15 minutes, somewhere around
4 there.

10:57:05 5 Q Okay. 10 to 15 minutes each for how many
6 individuals, four, five?

7 A It would have been five, yes.

8 Q Now I want to talk about the delusions that were
9 discussed on direct examination.

10:57:25 10 Now, I understand that your position on direct
11 examination was that these are not delusions, right?

12 A That's correct.

13 Q And you stated that a delusion is a false fixed
14 belief, not comporting with reality; right?

10:57:41 15 A Yes.

16 Q Okay. And so the belief that you discussed with
17 Mr. Owen that he was able to suck the soul out of an individual
18 with his genitals, you'd agree that that's false, right, that's
19 not possible?

10:58:01 20 A That's right. I would agree that that's false and
21 that that's malingering, yes.

22 Q Right. So we'll get to malingering in a little bit,
23 but right now -- so you'd agree, though, that that theory, that
24 belief, is not actually built in reality, right?

10:58:18 25 A That's right.

10:58:22 1 Q And during the examination, he was persistent in the
2 belief that he was a female trapped in a male body, right?

3 A That's what he said, yes.

4 Q And that he captured the souls of the two victims
10:58:37 5 when he was having intercourse with them, right?

6 A Well, he said that -- yes. Yeah, that's what he
7 said.

8 Q Right. Because what he told you is that his penis
9 was acting as a hose, right?

10:58:55 10 A Yes, to a hose, right.

11 Q And so that he could suck out the estrogen of the
12 individuals, right?

13 A Right.

14 Q And you mentioned, though, that when you talked to
10:59:07 15 him about this and how that had an affect in real life, that he
16 never actually said that these individuals were dead, right?

17 A Well, he did. Their earthly bodies were dead and
18 decomposed and were under the ground; so that's -- their bodies
19 were dead. He conceded that.

10:59:29 20 Q Right. So -- but you agree, though, that on direct
21 examination a moment ago, you mentioned that he didn't -- he
22 was actually trying not to say the word dead, right?

23 A It was clear he was avoiding the word dead, yes.

24 Q Right. So -- and he wasn't saying that they were
10:59:42 25 dead. You said on direct examination that he said that their

10:59:45 1 bodies were gone, right?

2 A Well, he said -- he said their bodies had decomposed
3 and that they were under the ground, buried. He did not want
4 to use the word dead.

10:59:58 5 Q Okay. So he described what happened to the body, but
6 you'd agree that he also believed that their souls were inside
7 of him, right?

8 A He said that. He said that -- that's what he said,
9 yes.

11:00:20 10 Q Isn't it true that the records of previous
11 psychiatric evaluations and testimony indicate Mr. Owen's
12 delusional belief about the victims not truly dying but
13 entering his body have been longstanding and consistent over
14 the past decades?

11:00:39 15 A No, not at all. No.

16 Q Okay. Well --

17 A They only seem to come out when he talks to expert
18 witnesses about his case, but they don't seem to come out with
19 any of the healthcare personnel or with any of the correctional
11:00:59 20 officers who are around him on a regular, not uncommon daily
21 basis.

22 Q Okay. So you would agree that --

23 A And I didn't see any referrals for delusional
24 thinking in the last 20 years to mental illness in the records.
11:01:12 25 And it's inconceivable to me that somebody could have

11:01:16 1 schizophrenia with these severe delusions and nobody for 20
2 years picked it up, except for expert witness on a rare
3 occasion during an interview with him.

4 Q Okay. So you're saying that these delusions have not
11:01:32 5 been longstanding and fixed, but you also agree that there was
6 the 1996 document regarding a report of gender dysmorphia,
7 right, dysphoria?

8 A Right. But that's not considered really a delusion
9 or a mental illness, per se. It's a mental disorder.

11:01:48 10 Q Well, you'd agree that that mental disorder is
11 actually -- it's part of the belief that he's explaining to you
12 in this evaluation, right?

13 A He said he's felt like a woman who was trapped in a
14 male body; so if that's true, what I do know that sounds to be
11:02:12 15 true is that he did some cross-dressing, which is a paraphilia
16 or a sexual perversion of sorts, and he did say that. And
17 there's -- I'm sorry. That's in the records; so I think that's
18 probably true that he did that.

19 Q Okay. So in the records it's noted that he did
11:02:31 20 cross-dressing, right?

21 A Right. And these types -- kind of things commonly
22 occur in people who are serial murders and commit sexual
23 homicides. Very commonly, they will have other paraphilias as
24 well as sexual sadism.

11:02:48 25 Q Okay. And so a gender dysphoria is the belief that I

11:02:48 1 am the other gender trapped in another gender's body, right?

2 You would agree that that --

3 A Yes.

4 Q -- coincides with the belief that was explained to
11:02:59 5 you as to why he was trying to obtain the essence of these
6 individuals?

7 A That's what he said, but people with gender dysphoria
8 are not -- it doesn't cause aggression. It doesn't cause
9 delusional thinking. It doesn't cause thinking problems or
11:03:20 10 cognitive decline. It's just this feeling that it's -- your
11 body is not in the right gender.

12 Q Okay. And so --

13 A And that's what it is. It's not a delusion.

14 Q Gender dysphoria doesn't cause the cognitive decline
11:03:35 15 but schizophrenia could, right?

16 A Yes.

17 Q And so could dementia, right?

18 A Yes.

19 Q So you'd agree that, and you mentioned it multiple
11:03:56 20 times that the time that somebody has a delusion for, can
21 factor into whether or not they actually have that delusion;
22 right?

23 A I'm sorry. Could you repeat that, please?

24 Q Yes. So isn't it true that the length of time a
11:04:12 25 delusion has been fixed in someone's mind is a factor in

11:04:17 1 whether or not the delusions are genuine?

2 A I don't know if I would agree with that because you
3 could have a new onset delusion and, say, you're 19 years old
4 and you have your first schizophrenia break and then you
11:04:35 5 develop a delusion within that week or the last two weeks. So
6 that's -- even though you only had it for a week or two, it's
7 truly a delusion.

8 Q But you mentioned on direct examination that
9 delusions are fixed, right, meaning that it's not going away
11:04:50 10 for somebody?

11 A Right. And we have medications, antipsychotic
12 medications that help people with schizophrenia, but they often
13 don't make the delusion go all the way out of their mental
14 state. I mean, it's hard to treat in a significant proportion
11:05:07 15 of cases. Other people get very well with antipsychotic
16 medication.

17 Q Okay. Well, now let's say a person is not taking his
18 antipsychotic medication and they have a fixed delusion. You
19 would believe that that person would have that delusion over
11:05:21 20 decades, right?

21 A Yes. It's generally a chronic illness, schizophrenia
22 is, yes. Very rarely -- I can't say that I've ever seen it go
23 away. It's been reported in the literature that it can go
24 away, but I don't see it clinically hardly ever. It's a
11:05:43 25 downward deteriorating illness, typically.

11:05:50 1 Q So are you aware that prior courts, including the
2 Florida Supreme Court, have found that Mr. Owen had delusions
3 and severe mental illness that were established and
4 considered --

11:06:01 5 MR. BOBEK: Objection. That's not in the record,
6 Judge. That is not what the cases say. In fact, they
7 doubted his delusions.

8 THE COURT: I know you asked similar questions
9 yesterday --

11:06:11 10 MR. BOBEK: Yes.

11 THE COURT: -- and had same concern. What's the
12 basis for that?

13 MR. CHAYKIN: Your Honor, may I have a moment to
14 confer?

11:06:18 15 THE COURT: Sure.

16 (Pause in the proceedings.)

17 BY MR. CHAYKIN:

18 Q Did you ever get a chance to review any of the
19 opinions of the prior courts' rulings?

11:06:51 20 THE COURT: Can you be more specific when you say
21 prior courts? Do you mean trial courts? Do you mean the
22 Supreme Court? Do you mean --

23 MR. CHAYKIN: Yes, Judge. My apologies.

24 BY MR. CHAYKIN:

11:07:03 25 Q Did you have the opportunity to review any of the

11:07:04 1 prior rulings from the Florida Supreme Court?

2 A Yes, but I can't tell you that I studied them deeply
3 and took notes and committed them to memory. I mean, there was
4 a lot to review.

11:07:19 5 Q And so you can't tell me what the Florida Supreme
6 Court's opinion or view of these delusions and mental health
7 issues are, right?

8 A Well, with all due respect to the court system, I
9 don't -- I can't ignore everything I've learned about him from
11:07:38 10 a clinical perspective and then just rely on a court document
11 as to whether he has a mental illness or not.

12 Q Are you aware of the two mitigating circumstances in
13 death penalty cases relating to mental health?

14 MR. BOBEK: Objection. I don't see how it's relevant
11:07:55 15 to sanity at the time of the execution, Judge.

16 THE COURT: Counsel?

17 MR. CHAYKIN: Judge, I believe it is relevant. We're
18 talking about mental health. We're talking about
19 mitigating circumstances. He's been appointed to do an
11:08:06 20 evaluation from the Governor.

21 THE COURT: Well, what is the relevance? I guess
22 here's my concern, right? There's a certain level of
23 burden that has to be met by defense counsel in a death
24 penalty trial to be allowed to present a particular
11:08:20 25 statutory mitigator to a jury. And then certainly,

11:08:24 1 depending on what the jury's verdict would have been, the
2 trial court would have the right to and consider that
3 mitigator in terms of the court's ultimate sentencing
4 order, but what relevance does it have today?

11:08:39 5 MR. CHAYKIN: Yes, Judge. It goes to his knowledge
6 of the topic, the knowledge of the evaluation he's doing
7 and what he's being involved in; so it goes to his overall
8 knowledge of the topic, yes, Judge.

9 THE COURT: All right. Well, I think it's a
11:08:54 10 well-founded objection, but I did -- there was an
11 objection yesterday to similar types of questioning to
12 Dr. Werner; so I'll give you some leeway and let you ask
13 it.

14 MR. CHAYKIN: Thank you, Judge.

11:09:05 15 BY MR. CHAYKIN:

16 Q What are the two statutory mitigating circumstances
17 in a death penalty case relating to mental health?

18 A One, and you can help me on this because one is maybe
19 extreme emotional disturbance, and then another one may be --
11:09:25 20 and you're probably going to have to help me with this -- about
21 influencing your ability to conform your behavior to the law
22 from --

23 Q Okay.

24 A Am I warm? Did I get close?

11:09:48 25 Q We'll move on. Thank you. So are you saying in your

11:09:53 1 testimony here today that based on your brief examination of
2 Mr. Owen, that he has been, and throughout these decades,
3 completely free of any symptoms and signs of serious mental
4 illness?

11:10:12 5 A That is my understanding and interpretation of the
6 records, in addition to seeing how high functioning he is
7 during our interview last week.

8 Q Okay. Now, when you have someone who has mental
9 health issues, you'd agree that they can sometimes can be
11:10:31 10 reluctant to communicate about their issues, right?

11 A It's very rare that I would see somebody who is, has
12 a psychotic disorder that would not share their delusional
13 thinking.

14 Q Well, you'd agree, though, that it's --

11:10:48 15 A It's possible, but it's very rare.

16 Q Well, you'd agree, though, that there's many
17 individuals who have mental health issues who completely lack
18 any insight in such?

19 A Right. And that's part of the reason that they often
11:11:01 20 will share, that they routinely will share their delusions,
21 yes, because it's a big deal to them, having these delusions,
22 and it's a big, big part of their life.

23 Q Now, if you have delusions but you pair it with other
24 diagnoses like schizophrenia, that could impact whether or not
11:11:23 25 somebody is going to be reserved in sharing that information,

11:11:25 1 right?

2 A I'm sorry. Could you repeat that?

3 Q Yes. So if somebody has delusions but also has
4 schizophrenia, that could impact whether or not they are
11:11:36 5 willing to share information.

6 A What I'm trying to tell you is that they routinely do
7 share the information. For instance, if you have somebody who
8 is hold up in their house and the window shades are closed and
9 they don't turn the lights on and a family member, somebody
11:11:57 10 they trust enough to let them come to the door, the family
11 member says, what's going on? They'll say, I can't -- I can't
12 really talk to you long. I've got to keep the door locked.
13 The mafia has got hitmen out to kill me. I mean, they're going
14 to share. It's not that they're going to try to hide it from
11:12:14 15 the family member.

16 Q Okay. Well --

17 A That's just an example. I could give you many, many
18 examples, but that's just an example.

19 Q Okay. Now, you'd agree, though, that that's not
11:12:20 20 every time, right? Or are you saying that every time somebody
21 has delusions, they're sharing with everybody?

22 A Well, I'm telling you that I hear people tell me
23 delusions about every week, and it's not like trying to bind
24 this hidden delusion that they're hiding from you. It just
11:12:44 25 comes out when they start talking.

11:12:45 1 Q Right. And those are the individuals --

2 A And you get in --

3 Q -- that you speak with, right?

4 A Well, they're people with schizophrenia or delusional
11:12:52 5 disorder, yes.

6 Q Right. But you'd agree that that's not a general
7 rule for everybody who has these delusions or schizophrenia?

8 A It's not an absolute rule, but it's the norm.

9 Q Okay. And, now, if somebody has schizophrenia, you'd
11:13:10 10 agree that a symptom might be paranoia, right?

11 A Yes.

12 Q Okay. If somebody is paranoid, you'd agree that they
13 might not be willing to divulge all of the information they
14 have?

11:13:25 15 A Yes, that's possible, but you'll get a sense that
16 they're very suspicious of you. They're very reluctant to talk
17 to you. They're showing a guarded body posture. Family
18 members will calmly contact you and tell you their concerns
19 because of what the patient has said or, about the paranoia.
11:13:49 20 So, again, it's not something that's hard to find. It's there.

21 Q Okay. But if somebody has paranoia, they may
22 withhold information, right?

23 A They may, yes.

24 Q So in the report, it notes that one of the reasons
11:14:14 25 that you don't believe Mr. Owen's beliefs is that he's not

11:14:20 1 pursued any gender identity treatment in prison, right?

2 A Well, that's -- I'm sorry. So you're asking -- could
3 you repeat that, please?

4 Q Yes. I'm referring to the report. So is it, you
11:14:41 5 stated that one of the reasons you believed in the report -- I
6 mean, disbelieve Mr. Owen and these delusional beliefs is that
7 he's not pursued further gender identity treatment, right?

8 A Right. Well, that's just one of the discrepancies.

9 Q Okay. Well --

11:14:56 10 A And they are numerous, but that's one.

11 Q Okay. Well, are you aware of the propensity for
12 transgender inmates to be subjected to ridicule or even
13 violence while in prison?

14 A Unfortunately, I'm sure that can happen, yes.

11:15:17 15 Q Right. And are you saying that on death row,
16 Mr. Owen is able to change his clothing to women's clothing,
17 receive hormone therapy, or even obtain a sex change operation?

18 A Am I saying that he could do that?

19 Q Right.

11:15:38 20 A I don't know that he could.

21 Q Okay. So are you aware that the prison has rules on
22 inmates altering their clothing?

23 A I don't know the specific rules on that. I think it
24 varies state by state. Again, I don't know exactly what the
11:15:58 25 rules would be there if you wanted to start changing your

11:16:02 1 attire in prison, I don't know.

2 What I do know is that none of the officers we spoke
3 to, who have known him for many, many years collectively, have
4 seen him show feminine traits or talk about wanting to
11:16:22 5 transition to a woman or say that he feels like he's a female
6 trapped in a man's body. He's never tried to wear any kind of
7 makeup or anything of that sort to suggest that he is not
8 comfortable being a man.

9 And, in fact, even recently on one of the medical
11:16:40 10 forms, he ticked off he was heterosexual.

11 Q Okay. Well, you agree that just because I check mark
12 a form doesn't mean that that's absolutely true, right?

13 A Yes, but he, also when you look at his crimes and his
14 rapes, they're of women, not men. And that would indicate as
11:17:00 15 well that he's oriented in a heterosexual way.

16 Q Right. But he explained to you that it wasn't --
17 when he had intercourse with these women, it wasn't for that
18 purpose. It was to obtain their essence, right?

19 A He said that, but it seems suspicious, too, that he
11:17:19 20 also had orgasms which he admitted to and that there was DNA
21 from semen found; so --

22 Q Well, you'd agree --

23 A -- it seems to me like a more possible explanation
24 is, is that he's getting sadistic gratification from these
11:17:33 25 violent sexual attacks.

11:17:34 1 Q Well, you'd agree that he mentioned orgasming is part
2 of the process in his belief, right?

3 A Yes, he did say that.

4 Q Now, ultimately, though, you determined that you
11:17:48 5 believe Mr. Owen was malingering, right?

6 A Yes.

7 Q But you didn't conduct any specific malingering tests
8 to make that determination, correct?

9 A I brought several, but there was no point in giving
11:18:01 10 it to him because it wouldn't matter what the malingering tests
11 showed. And they can be, they can be faked, particularly with
12 somebody who is savvy enough and bright enough to know what
13 the -- what's at stake, depending on how they answer them so
14 there was no point in giving it to him.

11:18:20 15 If it showed malingering, I already know it would,
16 that he's malingering. And if it didn't show malingering, I
17 would say that he was faking good on it. I'm sorry. Yeah,
18 that he was answering it in such a way to, that he was aware of
19 what -- of how to answer it properly.

11:18:42 20 Q Okay. So you had access to these tests. You brought
21 these tests, but you decided not to do these tests, right?

22 A Right. It simply wouldn't add anything more to our
23 clinical assessment.

24 Q We agree that these tests exist for a reason, right?

11:18:58 25 A They can be helpful as a supplement, but you never

11:19:01 1 would put the results of a test above your clinical findings.

2 Q Well, the results of a test, paired with your
3 clinical findings, could be more concrete evidence of
4 malingering, right?

11:19:13 5 A It's not -- it's not concrete, no.

6 Q Well, it could be more concrete. My apologies.

7 A They're not objective. It is filled out by the
8 person who may have ulterior motives in filling out the form in
9 a certain way to influence the outcome of their future.

11:19:32 10 Q Now, you'd agree you didn't know what knowledge
11 Mr. Owen had of these tests that you were potentially going to
12 perform, right?

13 A He's taken the MMPI and other psychological tests
14 multiple times over the years. And, in fact, he was referred
11:19:49 15 to, way back when -- I think it was in the pre-sentencing
16 evaluation that he was -- even as a teenager, he was -- what
17 was the word? He was therapeutically wise or counseling wise.
18 Like, he, in other words, he knew the right things to say, and
19 that was roughly 40 years ago.

11:20:15 20 Q Okay. But you would agree --

21 A So he's had 40 years to get better at that.

22 Q Now, you'd agree a person can be wise and still have
23 mental health issues, right?

24 A Yes.

11:20:24 25 Q So ultimately your opinion of malingering, what is

11:20:27 1 that based on? Just your observations?

2 A Everything in totality that we've been talking about
3 today: review of the materials, speaking with people who know
4 him pretty well, and the clinical evaluation of him.

11:20:45 5 Q So you'd agree that the MMPI does have validity
6 measures for malingering. You just didn't find it useful in
7 this case?

8 A Well, the MMPI raw data that I saw, the last one --
9 not the one, I guess, that was just given, but he did have a
11:21:12 10 high F scale, which, to me, was suggestive of exaggeration or
11 malingering.

12 Q Okay. Let's talk about the floating MMPI that you
13 discussed in direct examination.

14 You mentioned that you've never really heard that
11:21:25 15 being used as a term before, right?

16 A I haven't, no.

17 Q Okay. So you'd agree that you don't know what that
18 is, then, right?

19 A I don't. I'm not familiar with that term. I'm happy
11:21:43 20 to look at it, if you want to put it up to the screen, the raw
21 data. And I can tell you what I see.

22 Q That's all right. Thank you.

23 MR. CHAYKIN: A moment to confer, your Honor?

24 THE COURT: You may.

11:21:55 25 (Pause in the proceedings.)

11:22:16 1 BY MR. CHAYKIN:

2 Q So what about his belief is, do you believe is false?
3 Is not false and fixed? I'm sorry. Like, do you believe
4 anything in his belief is true?

11:22:33 5 A He may have some gender dysphoria. I think that's
6 possible. It doesn't seem to be a terrifically strong urge,
7 and, of course, it does occur on a spectrum. So I think he may
8 have some mild gender dysphoria. I'm not sure because he'd
9 have to tell, he'd have to be straightforward about it to
11:22:57 10 really, really know, and it --

11 Q Were you able to reason with him about his beliefs,
12 or was he staying firm on them?

13 A Another thing that didn't fit with delusions, now
14 when you ask that question, is every time we'd ask him to, a
11:23:21 15 question about the delusion that he's purporting to have, he
16 would be able to give another explanation for it or a reason
17 why, why it was really true in him.

18 Q Okay. Well, this was happening at the time that he
19 was explaining the delusion to you, right?

11:23:45 20 A Yes. I'll give you an example so you know what I
21 mean. He said that when he put his hose, his penis, in the
22 victims and was raping them, the hose was to suck out their
23 fluids and estrogen. And so I believe I asked him, I said,
24 well, if you're ejaculating in them and putting something in
11:24:14 25 them, how is the estrogen then going to go through your hose?

11:24:18 1 Because then your ejaculate is coming out. And he says -- and
2 he had an answer for that.

3 And he said, oh, well, what happens is the semen,
4 going through my penis, opens it up; so then that makes a nice
11:24:31 5 open tube for the estrogen to go back into me through the hose.

6 Q Okay. And so --

7 A And every time we asked him a question like that,
8 he'd come up with another answer that you don't see in people
9 with delusions. Typically, when you confront, and I say
11:24:50 10 confront, I don't mean in a harsh way, but you ask them --
11 someone with a delusion, well, tell me how you know that there
12 are robots in your attic.

13 And they'll tell you, well, I just know they're
14 there. Well, how can they be there? I don't know how they're
11:25:07 15 there, but I just know they're there.

16 You can't start reasoning with them and give them
17 logical reasons why that can't be or how that's difficult to
18 understand because it's a hundred percent belief they have that
19 they can't be reasoned out of that.

11:25:21 20 Q Okay.

21 A But they don't keep giving you more and more answers.

22 Q Okay. So this belief that the estrogen entered into
23 him through his penis, you'd agree that that's not based in
24 reality, right?

11:25:33 25 A I would, yes.

11:25:34 1 Q Okay. And delusions are beliefs that are not based
2 in reality, right?

3 A Well, it's not based in reality because I don't think
4 he generally believes that. I think he's making it up.

11:25:47 5 Q Right. And that's based on your opinion of
6 malingering, right?

7 A Yes.

8 Q Now, if you did not believe him to be malingering, if
9 you just took that information at face value, you'd agree that
11:25:58 10 that information could be a delusion, right?

11 A It might be a plausible delusion if he was having sex
12 with women in the community, there was no legal issues
13 involved, and he was having consensual sex with women and then
14 he wasn't inflicting excessive violence on them or other
11:26:36 15 sadistic acts or impaling them with a hammer handle, whatever
16 it is, which just shows that what's really driving that is
17 sexual sadism.

18 But he's just having sex with women in the community
19 and he's got this delusion that he's doing that so he can
11:26:50 20 become a woman because he's getting estrogen from them. That
21 could be a genuine sign of mental illness. It would be very
22 unusual and bizarre, but I suppose that could be possible.

23 Q So now --

24 A But when you add in the killing of the victim, too,
11:27:02 25 it's just -- it's too convenient to have that delusion come on

11:27:07 1 after you've been convicted of first-degree murder.

2 Q Now, so you're saying that it could be a delusion if
3 he was out in the community having consensual sex, right?

4 A It could be if it all really hung together and when
11:27:24 5 you saw him, he clearly had all of the typical signs of
6 schizophrenia, yes.

7 Q Right. But if he just pursued consensual sexual sex,
8 based on what he explained to you, that wouldn't obtain the
9 essence of these individuals, right?

11:27:43 10 A Well, that's what he would say, yes, because he has
11 to kill them to get the essence, right. That's what he would
12 say.

13 Q Did you review records where he was telling people
14 about his delusions since at least the '90s, potentially
11:27:57 15 earlier?

16 A Yes.

17 Q And you'd agree that you can have untreated
18 delusions, right? That's possible?

19 A You can, yes.

11:28:07 20 Q Did you review the over 100 hours of police interview
21 videos?

22 A No. I didn't have time. I used -- I looked at
23 samples of them.

24 Q Did you review the 20 hours of typed transcripts from
11:28:22 25 those videos?

11:28:23 1 A I did look at selections of those, yes.

2 Q Okay. Now, if somebody has schizophrenia, do they
3 always disclose their delusions immediately or do they
4 sometimes have to build your trust?

11:28:41 5 A Almost always you'll know they have delusions very
6 quickly, with rare exceptions.

7 Q Okay. But there are --

8 A And the exceptions would generally be somebody who is
9 very paranoid and has paranoid delusions and they're slow to
11:28:57 10 warm up. But, again, there's all the other signs of
11 schizophrenia; so you know that something very serious is going
12 on with them.

13 Q Okay. Well, if somebody has schizophrenia, you agree
14 that every, all individuals who have schizophrenia, they can
11:29:09 15 exhibit symptomatology, right?

16 A Well, they tend to exhibit the same cluster of
17 symptoms, the positive and negative symptoms. Like delusions
18 and hallucinations and thought disorder.

19 Q So --

11:29:25 20 A And they lack initiative and are flat, or changes in
21 their affect. So those are typical signs you see in most
22 people's schizophrenia.

23 Q Okay. Well, let me ask you this. Some individuals
24 who have schizophrenia, some of them have some more severe
11:29:40 25 symptoms than others, right?

11:29:42 1 A Yes.

2 Q And those who have schizophrenia, you've known them
3 to have smiled with you in the past, right, or seen them smile?

4 A Yes, that is true. And sometimes they have
11:29:59 5 inappropriate smiling, and it may happen very frequently. And
6 it's part of their disturbance and their emotional expression
7 from the disease. They'll show inappropriate smiling or other
8 displays of emotion that don't fit with what they're talking
9 about.

11:30:16 10 Q Okay. And an individual who has schizophrenia, they
11 can also have a sense of humor, right?

12 A Yes, they can.

13 Q In the early onset stage of dementia, if that were
14 beginning, could an individual dress themselves and groom
11:30:35 15 themselves?

16 A In the early stages, yes.

17 Q Individuals with dementia can have deficits with
18 short-term memory first, right?

19 A They can, yes.

11:30:52 20 Q So an individual with dementia, their long-term
21 memory may not be affected right away, correct?

22 A That's true.

23 Q Now, when he -- when you discussed the death penalty
24 with him, do you believe that he understood that the death
11:31:16 25 penalty was for the killing of these women? Or did he say that

11:31:21 1 the State has told him that, that he would be put to death?

2 A Both.

3 Q Okay. So he did indicate, though, that he believed
4 he would be put to death because the State said he had killed
11:31:40 5 these women?

6 A Yes. Well, he said -- yes, that's what he said.

7 That's why -- yes. That's why he's in the situation he's in.

8 Q And so when you're asking an individual about whether
9 they understand death, you'd agree that there could be a
11:32:03 10 difference between somebody rationally understanding that they
11 are being put to death and why versus repeating what somebody
12 else told them, right?

13 A Well, there could be a difference, but there was just
14 no indication that he wasn't able to think rationally any
11:32:27 15 thought and communicated in a rational way for over an hour and
16 a half. And then when I looked at his pro se writings just two
17 years ago, in 2021, one was 63 pages, there was zero indication
18 of any signs of dementia or brain damage or problems with
19 writing or putting his thoughts together. I mean, it came
11:32:51 20 across as very bright to be able to put something like that
21 together.

22 Q Okay.

23 A Which is really the opposite of what you would see in
24 somebody with schizophrenia or dementia.

11:33:03 25 Q Okay. Now, you're talking about a pro se filing from

11:33:05 1 2021 and we're in 2023; so you would agree that early-onstage
2 dementia could occur after he made those pro se writings?

3 A Theoretically, I didn't see any indication of
4 dementia in him last week. And from what we learned, he's --
11:33:25 5 he does a lot of writing in his cell. He communicates with
6 people. He had a physics book, an algebra book that he was
7 apparently studying those topics. I mean, that's not really
8 something you would typically see in somebody with dementia
9 because they would really not be able to do those sorts of
11:33:45 10 things well.

11 Q Right. And that's at the time that he made the pro
12 se filings, but now we're here for competency to determine if
13 he's competent to be put to death. And so in 2023, you'd agree
14 that those pro se filings don't indicate to you whether or not
11:34:02 15 he has dementia now.

16 A Well, they certainly don't suggest that he would have
17 dementia now because he's still a relatively young man. He's
18 62; so that's -- generally dementia comes on later in life. So
19 if he didn't have it when he was 60, let's say, I wouldn't
11:34:30 20 expect him to have it at 62, based on what I saw from
21 everything he was able to demonstrate last week.

22 Q Okay. So you wouldn't expect it, but it is possible;
23 right?

24 A Yes. Anything is possible. I think it's highly
11:34:45 25 unlikely he has dementia of any sort currently.

11:34:51 1 Q Now, we talked a little bit about the MMPI before, a
2 little bit earlier. Do you employ that test in your work?

3 A I rarely use it anymore. I've switched over -- if I
4 want to look at something like an MMPI sort of test, I use the
11:35:06 5 Personality Assessment Inventory.

6 Q When would be the last time that you used the MMPI?

7 A Probably, I would say, a year or so or more ago.

8 Q Now, someone can have a mental illness and not show
9 symptomatology in a hundred minutes, right? That's possible?

11:35:32 10 MR. BOBEK: Objection. Asked and answered, Judge.

11 We've been over this many times.

12 THE COURT: Sustained.

13 BY MR. CHAYKIN:

14 Q What did you use to try to judge his intelligence in
11:35:44 15 your evaluation?

16 A Well, I saw that he has an IQ test from Dr. Dee. His
17 IQ full scale was 104, which would fall at the 61st percentile;
18 so he was in the average range.

19 And then, looking at his writings and his interests
11:36:07 20 and his interview, he came across as an intelligent man I would
21 think in the high average range.

22 Q Okay. And --

23 A Generally, based on his writings and legal knowledge
24 that he was able to accrue because he did have some gaps or
11:36:26 25 weaknesses in his educational foundation early on.

11:36:30 1 And then I saw that Dr. Eisenstein gave him an IQ, I
2 guess it was very recently. And he scored a 92, which is at
3 30th percentile, which is still in the average range. And it's
4 not, I would expect that it would not be easy to do your best
11:36:49 5 on an IQ test knowing that you're scheduled to be executed
6 within a couple of weeks. I mean, that's a lot of stress to be
7 undergoing and to be trying to take an IQ test with that on
8 your mind. And he so much as said that it's sort of always on
9 his mind and he's always being reminded of it.

11:37:08 10 Q Okay. Well, you --

11 A But the fact that he's still in the average range
12 would really argue against any signs of dementia.

13 Q Okay. And so you're saying he's in the high average
14 range, right?

11:37:19 15 A Well, clinically, yes.

16 Q Okay. What does it mean to be clinically judged?
17 Like, what do you mean when you say clinically?

18 A Well, when we were talking to him and his
19 understanding of concepts and legal cases, and he even
11:37:36 20 discussed his, the evolution of his religious beliefs and that
21 he really used to like the Old Testament, for instance. And
22 then he tried to be Jewish for a while and talked about, I
23 guess, Judaic law or -- and so he talked, and then he's kind of
24 come to the opinion now that he doesn't have much faith in kind
11:37:58 25 of a higher being.

11:37:59 1 Q Okay. So now, but I'm talking about IQ; so let's
2 just talk about IQ now. You didn't employ any IQ tests in this
3 case, right?

4 A No.

11:38:08 5 Q Okay. And employing an IQ test could give you -- it
6 could supplement your observations, right?

7 A There just seemed to be no indication whatsoever to
8 do another IQ test in him. IQ is a relatively stable trait in
9 human beings throughout their life, in general. And there's no
11:38:35 10 reason to expect that his IQ would have changed in any
11 significant way, based on his presentation and looking at that
12 past testing, where he was in that 60-plus percent.

13 Q So when you get a new patient, do you always just
14 rely on the past doctors' records or do you do your own testing
11:38:55 15 and evaluation?

16 MR. BOBEK: Objection. Relevance, Judge.

17 THE COURT: Overruled. I'll allow him to answer it.

18 THE WITNESS: Well, the answer is, I might do some
19 limited testing, but there's only so much time you have
11:39:11 20 with patients.

21 BY MR. CHAYKIN:

22 Q Okay.

23 A And so I don't generally try to do IQ tests. I just
24 don't have time with clinical patients.

11:39:22 25 Q Okay. So basically an IQ test wasn't employed based

11:39:26 1 on time, right?

2 A No. I saw no clinical indication to do one. As I
3 said, IQ is a very stable trait, and he clearly was coming
4 across as a bright, articulate, well-spoken man, who had a
11:39:40 5 strong memory.

6 Q Now, during the evaluation, isn't it true that the
7 committee had photographs of the victims in this case?

8 A We had victims [sic] of Ms. Slattery, the crime scene
9 of her, her crime but not of his other victim --

11:40:03 10 Q Were those --

11 A -- a Ms. Worden.

12 Q Were those images shown to Mr. Owen?

13 A I don't recall if they were or not. I didn't show
14 them to him.

11:40:15 15 Q Did one of the other evaluators show these images to
16 him?

17 A I don't, they were there. I don't know if -- it's
18 possible that Dr. Lazarou may have showed him this because when
19 he was saying that he didn't kill them, she may have showed him
11:40:36 20 a picture and said, well, doesn't this look like this person is
21 dead? She may have done that. I don't recall specifically,
22 but I think that might have occurred.

23 Q Okay. So what you're saying is that Dr. Lazarou
24 confronted Mr. Owen with this picture?

11:40:52 25 A I think so because it was around the time that he was

11:40:55 1 saying that he had to kill them to get their souls. So he
2 would say, I had to kill them, but then he wouldn't say that
3 they died, but he had just said, I killed them to get their
4 soul. So then he would come back with the inconsistency, well,
11:41:14 5 I didn't -- they didn't really die.

6 So we were trying to understand that, and I think the
7 pictures, the crime scene photos were shown to him to say,
8 doesn't this person look deceased to you?

9 Q Okay. Let me ask you this: Is that something you've
11:41:30 10 ever done in your evaluations?

11 MR. BOBEK: Objection. Relevance.

12 THE COURT: Overruled.

13 THE WITNESS: I don't know that I have. I mean I
14 do -- I did ask him about the cuts to her throat, I think,
11:41:46 15 after that picture, around that time, because I wanted to
16 know when he did those.

17 BY MR. CHAYKIN:

18 Q Right. But you don't typically in an evaluation hold
19 up a picture of a victim and confront a defendant about that
11:41:58 20 picture, right?

21 A I generally don't, no. I can't say that I've ever
22 felt there was a need to do that in a particular evaluation. I
23 can't say I wouldn't ever do it, but I didn't, I don't
24 usually -- I can't recall doing that in my practice.

11:42:16 25 Q And that's not something that you chose to do in this

11:42:19 1 case. It would have been a different evaluator, right?

2 A I'm sorry. In this case? What was that?

3 Q Right. I'm saying, basically, you don't typically do
4 that. And, again, you chose not to do that in this case. It
11:42:31 5 was actually the choice of a different evaluator?

6 A Yes. And every, I suppose, psychiatrist who works in
7 forensics has different styles, different approaches.

8 MR. CHAYKIN: A moment to confer?

9 THE COURT: You may.

11:42:54 10 (Pause in the proceedings.)

11 BY MR. CHAYKIN:

12 Q Did you ever review records in his late teenage years
13 prior to the crimes, where he was starting this type of
14 behavior and tried to get the essence prior to these victims'
11:43:27 15 death?

16 A He told us about that, that he was at a gang rape at
17 the orphanage when he was a teenager. And while he was there,
18 he said he didn't rape the victim but that he went over and
19 inserted his fingers in her vagina.

11:43:44 20 Q And why did he say he did that?

21 A He said that he did that because he was trying to get
22 some estrogen to convert to be a woman.

23 Q Okay. And the cross-dressing that you mentioned and
24 the long hair that he grew, you'd agree that occurred prior to
11:44:03 25 his arrest, right?

11:44:08 1 A Yes.

2 Q Now, I want to go back to antisocial personality
3 disorder.

4 So other than having three or more of the criteria
11:44:20 5 that you described earlier, you'd agree that you'd have to have
6 that conduct order before the age of 15, right?

7 A Yes. Conduct disorder, that's right.

8 Q Okay. And you didn't have that information about
9 Mr. Owen, right?

11:44:43 10 A There was, you'd have to have signs of conduct
11 disorder.

12 Q Right. And then --

13 A And so --

14 Q -- you said that he didn't get in trouble at least
11:44:51 15 until the age of 16, right?

16 A I don't know that I had enough information to really
17 tease out exactly which conduct disorder symptoms he had --

18 Q Okay. If you --

19 A -- prior to 15 just because it's been so many years
11:45:12 20 ago. It's been almost 50 years ago, and those kind of records
21 just don't tend to exist, and it's, I have no doubt he has
22 antisocial personality. I, there's no doubt in my mind. So --

23 Q So if you didn't have those --

24 A -- which conduct -- go ahead.

11:45:24 25 Q If you didn't have those records before the age of

11:45:27 1 15, how could you establish that he had that conduct before the
2 age of 15?

3 A Well, the witnesses back then said that the kids had
4 no real, in essence, what I remember reading was that they
11:45:45 5 really didn't have any structure or rules and were sort of
6 allowed to kind of run free. And they were, he was using
7 alcohol and drugs at an early age, and so that's a sign of
8 conduct disorder. In and of itself, is that conduct disorder?
9 No. But when you take the big picture and then he, and he was
11:46:08 10 probably participating in the gang rape, to some extent. So
11 that's a sexual assault, when you put your finger in a girl's
12 vagina who's being held down by other boys who were raping her.

13 So he denied he raped her. I don't know if he did or
14 not, but he said he put his fingers in her vagina; so that
11:46:26 15 would be sexual assault. So that's a couple of signs of
16 conduct disorder right there.

17 Q Right. But was that conduct disorder --

18 A And he didn't tell --

19 Q -- recorded from before the age of 15?

11:46:34 20 A I'm sorry?

21 Q Was that conduct --

22 A Was that recorded?

23 Q Yeah. Was it recorded before the age of 15?

24 A It's hard to say exactly when the, for instance, gang
11:46:48 25 rape or rapes were.

11:46:50 1 Q Okay. And since you don't have that information --

2 A I don't have a year on that.

3 Q Since you don't have that information, how can you
4 confidently say he has antisocial personality disorder, if
11:47:00 5 that's one of the requirements?

6 A Well, virtually, without exception, serial sexual
7 killers have antisocial personality. It's just a key
8 ingredient to why they start getting involved in that sort of
9 behavior. But his arrest sheet is quite long and varied.

11:47:26 10 There's a lot of different types of crimes on there --

11 Q Right.

12 A -- sexual assaults and burglaries, and then there's
13 also allegations of exposing himself to others, which is a
14 crime, and voyeurism, looking in people's windows, which is a
11:47:44 15 crime, and violation of probation and going AWOL and using
16 aliases. And the number of antisocial behaviors is somewhat
17 staggering, really, when you look at all of the things he's
18 been involved.

19 Q Right. And all of that criminal record that you just
11:48:00 20 mentioned is actually after the age of 15, right?

21 A I believe pretty much all of it would be, yes, but he
22 was also sent to a youthful offender home at 16. So, again,
23 that's another indication that he was having conduct and
24 behavioral problems well before then or they wouldn't have sent
11:48:21 25 him to a juvenile offender program.

11:48:23 1 Q Okay. So that's just a, that's an assumption that
2 you're making based on where he was at age 16, right?

3 A Yes.

4 Q Also you'd agree that if the antisocial behavior is
11:48:33 5 exclusively during the course of schizophrenia or a bipolar
6 disorder, you can't diagnose with antisocial personality
7 disorder, right?

8 A Right.

9 Q And you're aware that schizophrenia and gender
11:48:48 10 dysmorphia can occur co-morbidly, right?

11 A It can, yes.

12 Q And the pro se filing that you mentioned earlier --
13 you'd agree that you don't actually know whether or not he
14 actually wrote that himself, right?

11:49:08 15 A It's handwritten, and I didn't do -- yes, I didn't do
16 a handwriting analysis. It's represented to be his writing. I
17 didn't see it rejected because someone alleged that it wasn't
18 his motion or appeal or what have you. But, no, I didn't
19 personally see him write it, and I don't know that anybody
11:49:34 20 opined on that matter.

21 Q Okay. Now, I want to talk about, just briefly again,
22 the individuals you spoke with at the prison other than
23 Mr. Owen.

24 Now, you said that you spoke with individuals who
11:49:48 25 knew him well, right?

11:49:52 1 A Yes.

2 Q Now, so you are aware that the individuals at the
3 prison had known him for about two weeks, right?

4 A It depends on which one.

11:50:02 5 Q Okay.

6 A I can go through and tell you, if you want.

7 Q Well, some of the individuals had only known him for
8 about two weeks, right?

9 A Right. But Sergeant Blue (ph) had known him for 15
11:50:15 10 years, and then Officer Manning had known him for five years.

11 Q And none of these individuals were mental health
12 professionals, right?

13 A Correct.

14 MR. CHAYKIN: Just a brief moment, Judge?

11:50:31 15 THE COURT: You may.

16 (Pause in the proceedings.)

17 MR. CHAYKIN: No further questions.

18 THE COURT: Any redirect?

19 MR. BOBEK: No, Judge.

11:50:36 20 THE COURT: All right. Dr. Myers, thank you, sir. I
21 appreciate you making yourself available today.

22 THE WITNESS: Yes, sir. Thank you. And I apologize
23 for my Zoom fumbling there temporarily.

24 THE COURT: No worries. Thank you, sir.

11:50:49 25 THE WITNESS: Thank you.

11:50:49 1 THE COURT: Next witness?

2 MR. BROWNE: I don't know what the Court has on the
3 schedule. We have Dr. Lazarou. We can start now.

4 THE COURT: Why don't we start and see if we can
11:51:05 5 maybe get her maybe before lunch, done before lunch.

6 MS. FUSARO: Can we take just a five-minute break,
7 then?

8 THE COURT: Well, do you all want to just break now?

9 MR. BROWNE: No, your Honor. I'd prefer to press on.
11:51:20 10 I'm going to try to be as quick as I can with Dr. Lazarou,
11 but --

12 THE COURT: Okay. So we'll take a short five-minute
13 break, and then we'll have Dr. Lazarou come in.

14 (Recess was taken.)

11:58:00 15 THE COURT: All right. So we're back on the record
16 in State versus Duane Owen, 23-CA-264. Let record reflect
17 Mr. Owen is present in the courtroom with counsel. The
18 state is present with counsel. The State has called its
19 next witness, Dr. Lazarou. If you'll raise your right
11:58:17 20 hand.

21 (Witness sworn.)

22 THE WITNESS: Yes.

23 THE COURT: Thank you. Please be seated.
24
25

11:58:23 1 EMILY E. LAZAROU,
2 called as a witness herein, having been first sworn, was
3 examined and testified as follows:

4 DIRECT EXAMINATION

11:58:25 5 BY MR. BROWNE:

6 Q Good afternoon.

7 A Good afternoon.

8 Q Can you please state your full name and spell the
9 last name for the Court.

11:58:30 10 A Sure. It's Emily E. Lazarou, MD. L-A-Z-A-R-O-U.

11 Q And, Doctor, what do you do for a living?

12 A I'm a general and forensic psychiatrist.

13 Q And can you tell the Court your training and how you
14 became a forensic psychiatrist?

11:58:49 15 A My undergrad degree is from Baylor in Waco, Texas.
16 And then I went on to get my Master's Degree at Texas A&M in
17 College Station.

18 After that, I did an internship and became a
19 dietician before I then went to medical school at University of
11:59:04 20 Texas Health Science Center in San Antonio.

21 From there, I then went to the University of
22 South Florida Department of Psychiatry and Behavioral Medicine,
23 where I did my residency there.

24 And the last year, I was the chief resident over all
11:59:19 25 the psychiatrists there in the program. And it was

11:59:23 1 approximately a year between that, and then when USF designed
2 the fellowship for forensic psychiatry, I was trained under
3 Dr. William Myers, and I was his first Fellow at the
4 University of South Florida Department of Psychiatry and
11:59:40 5 Behavioral Medicine, Forensic Psychiatry Program. And after
6 that, I started my practice.

7 Q And, Doctor, are you Board certified?

8 A Yes. I'm double-Board certified in adult, general
9 adult and forensic psychiatry.

11:59:52 10 MR. BROWNE: Your Honor, may I approach the witness?

11 THE COURT: You may.

12 MR. BROWNE: I'm handing the witness what will be
13 marked as State Exhibit 5.

14 BY MR. BROWNE:

12:00:01 15 Q Doctor, does that appear to be your CV?

16 A Yes, it does.

17 Q And is that a fair and accurate reflection of your
18 training and qualifications?

19 A Yes.

12:00:13 20 MR. BROWNE: I'm asking that this be introduced into
21 evidence. I did supply a copy to defense counsel.

22 THE COURT: Any objection?

23 MS. FUSARO: No objection.

24 THE COURT: All right. It will be received as the
12:00:22 25 State's next numbered exhibit.

12:00:24 1 (State's Exhibit 5 admitted into evidence)

2 BY MR. BROWNE:

3 Q Now, Doctor, you have already -- we've already heard
4 from two of the doctors on the commission report.

12:00:29 5 A All right.

6 Q So we have much of the background information. Can
7 you tell me, briefly again, what did you do to prepare for
8 this, your first commission report? And I understand -- was
9 this your first one?

12:00:41 10 A This is my first one.

11 Q And how did you approach, in preparation, your
12 meeting with Mr. Owen?

13 A So I was called on Wednesday, and I actually work in
14 Lowell Correctional Facility on Thursday; so I was there all
15 day. And then they FedEx'd me the information and 12 CDs and I
16 believe in a Zip drive on Friday. And then I studied that
17 Friday through Tuesday, when I interviewed him. And in that, I
18 read not everything because I didn't have time.

19 Q Can you give the Court an idea of what kinds of
12:01:23 20 materials --

21 A Sure.

22 Q -- that you reviewed?

23 A Sure. I got -- as I said, I got 12 CDs with, I
24 believe, 22 hours of interrogation video.

12:01:37 25 I received -- let me get that for you.

12:01:47 1 Q And, Doctor, I'm sorry. I didn't mean an exact
2 list --

3 A Oh, okay.

4 Q -- just in general for the Court. Was it a lot of
12:01:53 5 material?

6 A Yeah. I received case opinions in the two cases that
7 he was involved in, the appeals, pleadings by Mr. Owen. I
8 directed my attention first, I did watch the first
9 interrogation video to sort of get an idea of who this person
12:02:10 10 was, and then I went to what -- the data part because I wanted
11 to see how much material I had to read. And so the very first
12 thing I went to was the testimony, the different testimonies of
13 the different doctors. And there were a couple, well, there
14 was only one doctor that I recognized right off, and that was
12:02:27 15 Dr. Frederick Berlin. So I looked at his first, and then I
16 went through -- because he was referring to some people. So
17 then I read those.

18 Q So this would be all of the testimony from the 1999
19 Slattery retrial?

12:02:42 20 A Yes. Yes, all of that. Yeah, I looked at many of
21 the different experts at that point because then they're
22 referring to other people. So I wanted to see what those
23 people were saying; so I spent a lot of time reading those.

24 Q And so the Court knows, you're a practicing medical
12:03:01 25 doctor, correct?

12:03:02 1 A Yes. I have a regular medical practice, where I
2 treat what I call high-functioning patients with problems. So
3 I do medication management and psychotherapy, one-hour
4 traditional psychotherapy sessions with patients. And that's
12:03:15 5 the bulk of the time in my practice. And then I work at
6 Thursdays at Lowell Correctional Facility, where I'm the
7 reception psychiatrist; so when people come into that facility,
8 they go through me to be able to then be triaged to where they
9 need to go, whether or not they have mental illness or not, and
12:03:32 10 then we sort of triage that way. And then I do this. And I do
11 civil cases and I do criminal cases and --

12 Q But -- so would you say forensic work is what
13 proportion of your, say, practice here?

14 A That's hard to say. I feel like I got more than 24
12:03:49 15 hours in a day; so I would say that I try to make due at 50/50
16 because my patients -- I see them at all hours; so my hours are
17 not like traditional hours. I could see patients -- like last
18 night, I saw somebody at 7:00 P.M. So I see people all the
19 time. So I would say at this point it's about 50/50, but it is
12:04:08 20 a lot. I do this a lot.

21 Q Okay. And how much, Doctor -- how much experience do
22 you have either evaluating or treating schizophrenic patients?

23 A How much experience do I have?

24 Q How many experience? How many schizophrenics can you
12:04:22 25 estimate that you've seen and evaluated?

12:04:24 1 A Over a thousand for sure, and I've written an article
2 on psychiatric patients that I did an actual clinical case that
3 I did. That's -- it's not a common illness, but I see it
4 because I ran a "not guilty by reason of insanity" clinic,
12:04:38 5 where there were patients that had that. And, you know, as
6 part of this job, I see those patients as well.

7 Q And did you bring all that knowledge, training, and
8 experience with you, in addition to all of that background
9 material, when you went and interviewed Mr. Owen for this
12:04:51 10 Commission report?

11 A Of course. It's impossible not to. Yeah. Every
12 single person every single day you learn something new that can
13 help you in every case that you do.

14 MR. BROWNE: And so, again, we've got the background
12:05:01 15 on how the report was written. It's self-explanatory.

16 Your Honor, it's State Exhibit 3. May I approach
17 with a copy of State Exhibit 3?

18 THE COURT: You may.

19 MR. BROWNE: I know the Defense already has a copy.

12:05:20 20 BY MR. BROWNE:

21 Q Doctor, does that appear to be a Commission report
22 that you authored with two other doctors?

23 A Yes, it is.

24 Q And, Doctor, was this report -- you developed a
12:05:31 25 rapport with Mr. Owen; is that correct?

12:05:33 1 A Yes.

2 Q And did you have any difficulty communicating with
3 him?

4 A No.

12:05:38 5 Q And did he, did you draw any conclusions about
6 Mr. Owen, from your personal interaction?

7 A Well, that's a big question. Did I draw any personal
8 conclusions?

9 Q Well, conclusion about how he presented to you. Was
12:05:56 10 he oriented? Communicative?

11 A Yeah.

12 Q Did he --

13 A I mean, Mr. Owen was exactly how I expected him to
14 be, you know, because of what I had read in other testimony.
12:06:07 15 So I expected him to be like that and how we saw him.

16 I didn't expect him to act odd because he's not odd.
17 And I know, just based upon having read other things about him,
18 that that's not his presentation. It's very circumscribed with
19 this one little story that he talks about, but there was no
12:06:29 20 evidence of anything, and that's exactly what I expected,
21 having looked at -- by that point, when I saw him, I already
22 looked at all of the prison records by then because I got there
23 early, and I read all the prison green folders before.

24 So I saw the medical records. So I saw how he was
12:06:45 25 presenting in prison, too. So I had that data along with this

12:06:51 1 testimony, along with the videotapes that I saw. I mean, they
2 were all consistent for me.

3 Q And so his presentation wasn't at all what you would
4 expect from a person suffering from schizophrenia, was it?

12:07:04 5 A No.

6 Q And then do the prison records suggest any kind of
7 schizophrenia --

8 A No.

9 Q -- at all?

12:07:11 10 A No. It's not on the problem list on any of the green
11 jackets. No.

12 Q And so you confronted the Defendant, then, and I
13 guess you were taught -- not confronted, but you were talking
14 with the Defendant, trying to determine what his understanding
15 is for the limited purpose of this report?

16 A Correct. And I, you know, generally -- and I think I
17 spoke with your guys' office about that. Generally, my
18 interviews are an entire day at least. So this one is unlike
19 those.

12:07:41 20 And because the scope of the question is very small
21 and, you know, there are three people doing the interview, and
22 additionally -- and I forgot to mention -- I interviewed the
23 staff prior to seeing him. So I interviewed -- I spoke with
24 the warden, the assistant warden. And then I spoke with the
12:07:59 25 lieutenants and the sergeants and stuff with Dr. Myers and

12:08:02 1 Dr. Werner. So all of that data together. Then, you know,
2 then seeing him.

3 Q So and, then, does that report -- did you feel like
4 you had enough time to reach a conclusion in this case?

12:08:16 5 A Oh, yeah. Certainly. I mean, I'm a curious person;
6 so, of course, I always would like to have more data and
7 obviously was afforded that opportunity because I got another
8 week than I thought because I thought I was going to be
9 testifying last Friday. So I got more time. But, you know, it
12:08:33 10 definitely -- to answer that question, yeah, that was -- that
11 was a pretty easy question to answer.

12 Q And why did you come to that conclusion? That it was
13 an easy conclusion. That he wasn't schizophrenia. That he was
14 malingering. How did you arrive at those conclusions?

12:08:52 15 A Because he has no criteria, meets no criteria, a
16 shred of criteria for schizophrenia. I mean, there's nothing
17 about him that ever even looked like that. There's not an
18 insane bone in his body. I mean, it's just -- it jumps off of
19 him. It's very clear. It's crystal clear.

12:09:12 20 And, you know, being able to speak with him, I also
21 got some emails too, where I had additional data. And all of
22 that was consistent with someone that does not have
23 schizophrenia. And I didn't even think he had it even from
24 looking at the testimony of Dr. Berlin, Dr. Sultan. When I was
12:09:30 25 reading those, I was actually surprised that they had come to

12:09:34 1 that conclusion, but, you know, because of what I had already
2 seen on the video, there was no way that was the case.

3 Q So let's -- you're talking about the video. Are you
4 talking about the hours and hours of his taped interaction with
12:09:47 5 the police?

6 A Yes.

7 Q So can you tell the Court what significance you
8 placed on that interaction and why?

9 A Well, there was a couple of things about that because
12:10:01 10 I'm looking at -- I saw the video first, you know; so I'm
11 looking at that. I don't know anything about the case. I
12 looked at the video first. So I didn't know anything about it.
13 I had a feeling it was a death because he's on death row, but I
14 didn't know what the case was about. So I'm watching this
12:10:18 15 tape, and I'm like, okay, you know, just getting an impression.

16 And when you're in that video, I mean, when you're in
17 there watching it -- and I'm in there watching that -- just the
18 way he's speaking. He speaks so casually, so calm, so
19 confident in there. There was not one shred of paranoia.

12:10:38 20 There was not one shred of, I don't know what's going on.

21 There was not anything like that. He's speaking clearly, and
22 he's obviously running the show in that, in that interrogation.

23 And just the way he's talking to that, the officer.

24 He's talking to him like he's buddies with him, and he's sort
12:10:55 25 of leading him down the path. He's bringing him along with me.

12:10:58 1 It's almost like, it was obviously that it was a game. He's
2 giving them a little information. Oh, I don't know about that.
3 Then later, when the officer asks again, oh, yeah. I pulled
4 out her driver's license. That's how I knew her name. But at
12:11:09 5 first, he didn't know her name.

6 So he's going on and on. You can tell. He's saying,
7 I don't know at first, but, as he's going on, he's luring them
8 in.

9 And that was another thing that was consistent with
12:11:19 10 the testimony of Dr., I believe, it's Peterson. That was a --
11 I believe he was a defense witness --

12 Q In one of the first two trials, right?

13 A Yeah. He was a great witness, actually, because he
14 was sort of talking about, about this domination that this
12:11:40 15 Defendant was having even in the interview. Even in his own
16 interview with him, he felt that, you know, he was sort of
17 running the show.

18 He lies quite a bit. I'm not sure how good he is at
19 lying. With my experience and background, I sort of outweighed
12:11:56 20 his ability to manipulate to me. I think I saw through most of
21 what he was doing.

22 And he's talking about watching this, and he's
23 talking about this interaction, and you see that in the video
24 over and over again.

12:12:06 25 Q So did Mr. Owen seem to play games with these

12:12:10 1 officers at times?

2 A Oh, yeah.

3 Q Did he have a poem?

4 A Oh, I mean, he's -- like I'm telling you, he's saying
12:12:15 5 at first, I don't know. I don't know. And then he does know.
6 And then they're, like, well, how did you know that? I pulled
7 out her ID out of her purse. Oh. So that's how you knew her
8 name was Carol.

9 And so they're going on, and they're going down the
12:12:29 10 path. You know, he's taking them down the path, and he's
11 giving them a little information. And Dr. Peterson talked
12 about that, too. Talked about how, you know, he was sort of --
13 he was sort of -- when he was speaking with the -- he believes
14 himself to be an intellectual superior to the police. He
12:12:47 15 thrives on the attention he gets from his illegal activities.

16 He would play head games with people. This is what
17 Mr. Peterson, Dr. Peterson is saying, and he's saying that
18 based upon his viewing of this video. And that's clear in the
19 video. You can see that over and over again.

12:13:02 20 Q And did he not have a poem? Do you recall a poem?

21 A Yes, I do recall a poem. There was a couple of
22 poems, actually. And I received these this past week. So this
23 was another piece of data that, it was very -- it crystalized
24 something in me.

12:13:20 25 Q Can you tell the Court what that, one of the poems

12:13:23 1 was that --

2 A This is the one that got me the most: Roses are red.
3 You pigs are blue. When you start counting victims, there will
4 be quite a few.

12:13:32 5 He's saying this out of a rip. He's not reading
6 this.

7 Q No.

8 A He's saying it. It's part of the game here.

9 Q And, Doctor, do you place any significance on the
12:13:42 10 fact he, in all of the interaction with the police, apparently
11 he didn't raise gender dysphoria? I want to steal their
12 essence. Did he raise any of that?

13 A No. And that was the thing. You know, that was
14 another thing because I guess, and I want to take back -- not
12:14:00 15 take back but add to. When I first started reading this, the
16 very first thing I read was Dr. Eisenstein's letter about what
17 he was thinking. So I knew gender was going to be some kind of
18 an issue somewhere. So I'm expecting to see that in the video
19 because that's one thing I deal with in clinical patients.

12:14:20 20 I've dealt with them at the VA. I've dealt with them
21 in my own private practice. I have several transgender
22 patients. So this is something I'm very familiar and
23 interested in. So I was interested to see the video.

24 And I'm seeing this guy with shirt open, legs far out
12:14:35 25 like this, drinking his drink, no feminine mannerisms at all.

12:14:39 1 If this guy had any thoughts like that, that he wanted to be a
2 woman and all of this, he would be acting like a woman. You
3 don't have to be flamboyant to be a woman, but you have to have
4 certain decorum. And wearing your shirt out like that and
12:14:55 5 being like this and sitting like this, that's not feminine at
6 all. And if that's what your goal is, so much so that you're
7 willing to beat someone's head in and rape them to get their
8 essence, you're going to be acting feminine. And that was --
9 there was not a feminine shred in that whole thing, and I've
12:15:11 10 never seen it at all.

11 Q So that was important and part of your background
12 review of materials, right? Actually seeing his presentation
13 and seeing and hearing how he was interacting with the police
14 right after these murders?

12:15:27 15 A Definitely. I mean, that was just a key item. And
16 that's why it was so, I saw that with Eisenstein, and I
17 wondered where he got it from. And that's why I was so stunned
18 when I read Dr. Berlin's testimony. And I was like, wow,
19 really? It just -- if he had seen those videos, I don't know
12:15:44 20 how he could have come to that conclusion.

21 Q Well -- and, then, so did you confront or address his
22 alleged delusional belief system --

23 A Who?

24 Q -- during your Commission interview? And tell the
12:15:59 25 Court how that went.

12:16:02 1 A Honestly, I deferred to my peers. You know,
2 Dr. Myers and Dr. Werner, they've been doing it a long time.
3 Dr. Myers has an interest in sexual things, and he was asking
4 sexual questions, but I was not interested in those because I
12:16:19 5 had already looked at -- another thing I received was an intake
6 sheet at, for FSP, regarding -- and what they have on it for
7 PREA, the Prison Rape Elimination Act, they have a
8 questionnaire that the inmate does when they transfer from one
9 facility to another. So he was at Union, and then he came over
12:16:36 10 to FSP. And right in there, that very first question: How do
11 you identify yourself? Heterosexual. You know, like, what's
12 your orientation? Straight.

13 You know, like, so I'm wondering why is this even a
14 question? I understand why it's a question because Eisenstein
12:16:53 15 wrote it in his letter, but there was no question from me.

16 Q Well, wouldn't this be a tremendous coincidence if,
17 like, the Florida Supreme Court said -- and, again, you've had
18 the benefit of reading through Florida Supreme Court opinions
19 that he went through two trials and all that interaction with
12:17:09 20 the police, the interaction with the initial mental health
21 experts.

22 Doesn't this gender story or vacuuming story come out
23 about a decade after the crimes and after two trials?

24 A Yeah. And that was another thing. Like, you look at
12:17:25 25 Dr. Peterson's, who, again, was a defense witness, and you look

12:17:30 1 at his analysis and what he thought was the rationale behind
2 the crimes, and he had a completely different rationale. This
3 guy didn't intend to kill these people. He lost his mind at
4 the last second when he did that. There was no ideation of,
12:17:46 5 oh, I need to kill them in order to get their soul. That
6 wasn't even in there.

7 Q It looked, let's assume for a moment, Doctor, that we
8 believe this story, this delusion. That if Mr. Owen believed
9 that delusion, could schizophrenics turn it on and off like
12:18:07 10 that? Just be that selective and disciplined in who they
11 reveal this to?

12 A No. It's impossible because when someone has
13 delusional disorder of this quality that they're given an
14 entire diagnosis of schizophrenia, let's just say, like you
12:18:23 15 said, that it's true. I never believed it for a second, but
16 let's just say that it was. They live in that delusion. They
17 live in that world. So they don't know you're not in that
18 world. You are a part of that world. So they're speaking with
19 you as if you're there. You cannot turn it off because that's
12:18:41 20 where you live.

21 You're seeing the world through that lens. You can't
22 stop that. You can't turn it off and turn it on whenever, oh,
23 I got a case coming up. Oh, better be a, better be a woman.
24 You know, you can't do that. It just doesn't work that way. A
12:18:58 25 delusion, you live in it, especially if it's of the quality

12:19:03 1 they're saying it's a bizarre delusion that is making someone
2 kill people. You can't separate it. You can't stop it. You
3 can't turn it off and on. And it just is impossible.

4 They don't have, they don't understand. It's like us
12:19:18 5 saying we turn off our world. I mean, you can't turn it off.
6 You're living there. So that's why it's impossible to do that.

7 Q Okay. So let's go back a little bit to -- you
8 mentioned you're familiar with the DOC policies, and they're
9 actually accommodating for transgender inmates; is that
12:19:37 10 correct?

11 A Yes. And that was another thing that I did because I
12 wanted to know if they had an actual transgender program
13 because when I worked at Union, they didn't. So then I got the
14 psychologist down, Dr. E., who then talked with me about the
12:19:53 15 starting of the program, which was in 2017, when they started
16 that program. And once you -- and he had had in his chart
17 during the time of this case, oh, I want to be a woman. I want
18 to be a woman. I want to be a woman. So I would think he would
19 be on deck as one of the very first people they would have
12:20:09 20 seen. But, I mean, 2017 was way later.

21 But, anyway, they do a whole battery of tests when
22 this person claims this because there are some benefits to
23 being in that program, and so they do a whole battery of
24 psychological tests to even see if they qualify to be in the
12:20:26 25 program. And then -- because it's sort of a rigorous program.

12:20:30 1 And in that, they get medication management,
2 psychotherapy. They do, very -- I think it's at least every
3 two weeks group therapy. They get medication management,
4 hormone therapy. They get to wear panties and bras. They got
12:20:46 5 the whole program; so there's not, they're -- they try their
6 best, if somebody does actually have that, to, number one,
7 determine do they have that? And, number two, if they do have
8 that, we want to accommodate them. So I went through that all
9 with him to find that out.

12:21:02 10 Q So if this were a true pervasive belief that Mr. Owen
11 believes he's a woman, acts like a woman, wants his man part
12 taken off, he can do things in prison to express that belief
13 and pursue it, correct, Doctor?

14 A Definitely. And even when I worked at Union
12:21:19 15 Correctional, there was one patient that I had that had voiced
16 those concerns. This is before 2017. I was there in, you
17 know, between 2008 and 2011. And I started him on hormone
18 therapy. I didn't have a problem with that because I felt like
19 that might decrease his psychiatric symptoms that he was
12:21:37 20 expressing. So that was there.

21 If they thought genuinely, and that was an
22 interesting thing they put in those medical records, too: Per
23 patient report. That essentially means, I ain't seeing it, but
24 that's what he's telling me; so I'm putting it in there. Per
12:21:54 25 patient report, gender dysphoria. But they didn't see it, and

12:21:58 1 they specifically documented that in there. That he's
2 reporting this, but he doesn't look like that. He's not trying
3 to look like a girl. He's looking like a guy.

4 Q But I just want to clarify. So you did see that
12:22:10 5 brief period of time, apparently, in prison, where he
6 complained about this? Do you know if that coincided with his
7 Slattery retrial --

8 A Oh, it totally did.

9 Q -- in '94?

12:22:18 10 A I mean, that was an amazing thing that I saw in the
11 record, too, and it was something that really interested me.
12 And I didn't even, it hadn't occurred to me until I actually
13 opened up the green file. And when you do that, there are DOC
14 pictures on the left, and then there's a problem list under it.
12:22:33 15 And that was another thing that was impressive to me is that in
16 the '90s, when this happened, he did grow his hair out a little
17 bit, but right after that trial happened, back to Mr. Owen.

18 You know, like, it was, like, he was a man. During
19 the trial, he was sort of feminine. I guess as feminine as you
12:22:51 20 can be. Let your hair grow out and then after that, when it
21 didn't work, he went back to Mr. Owen.

22 Yes, that was in there. And it was, also was in the
23 record that, number one, his attorney asked him to get a
24 psychiatric evaluation; and, number two, when he was in there,
12:23:05 25 they're seeing him, and, you know, he's reportedly chomping at

12:23:11 1 the bit to get some treatment for this, but (indicating) that
2 went away, and he started refusing visits after a while.

3 I guess when the trial wasn't, didn't work out in his
4 favor, then, you know, didn't do that anymore. So he started
12:23:21 5 refusing treatment, and that changed his grade.

6 Q And what about, Doctor, and you're familiar with his
7 grade. He's an S1, right?

8 A Correct.

9 Q And can you tell the Court what that means?

12:23:31 10 A No psychiatric problem.

11 Q So he's not -- and certainly he's never been
12 medicated at all for schizophrenia, ever?

13 A No, never. Never been on an antipsychotic even
14 during the, quote, unquote, throws of this delusion. No, he
12:23:45 15 was never on an antipsychotic because, again, remember, his
16 presentation in the prison. To the people that know him is
17 given than his presentation in court or to these experts. It's
18 totally different. So they're seeing one thing, and he's
19 reporting to them another thing. They don't know what each is
12:24:06 20 doing.

21 Q And isn't that a consistency, one of hallmarks of
22 malingering? Or as an expert, that's one of the things that
23 you look for, consistency?

24 A Oh, yeah. I mean, yes. But you could tell that.

12:24:16 25 Yeah. I mean, when you -- these people -- they're not writing

12:24:18 1 malingering because they don't understand the whole case thing.
2 And you could clearly see that in the record, too, that the
3 case and them are two totally different things. He
4 purposefully kept that out.

12:24:30 5 So, you know, like, they're just talking about him,
6 you know, you know, want to be a woman but again reporting that
7 guy doesn't even look like a woman or even trying. But he's
8 reporting this. So we're documenting it.

9 To then what I'm reading from these experts and their
12:24:44 10 testimony, I'm, like, who the world is this dude? He's two
11 totally different guys. He has to be for them to say these
12 things.

13 Q And so when you also made the determination of
14 malingering, you also made a determination what your diagnosis
12:25:01 15 was, the three of you. And there was no disagreement that he
16 was antisocial personality?

17 A No, there was no disagreement among any one of us.

18 Q And can you tell the Court how you arrived at that
19 conclusion?

12:25:14 20 A Well, again, you know, we had a lot of data in this
21 case. We obviously all didn't get to look at everything
22 because it was so much in so short a period of time, but it's
23 very easy to identify certain disorders when you have the
24 disorder because you meet all of the criteria.

12:25:31 25 Q And as a practitioner -- I mean, if you're aware that

12:25:33 1 someone's background includes six or seven sexual assaults, two
2 murders, a number of other crimes, you know, it jumps out at
3 you, right? Antisocial personality disorder is a very real
4 possibility.

12:25:51 5 A You know, when you say it like that, I guess what is
6 the thing that -- the piece of data that I saw that most clued
7 me into that was the PSI. When I saw that and I'm seeing
8 ba-ba-ba-ba-ba-ba from when he's a young person,
9 da-da-da-da-da, through -- and some of the stuff that was going
12:26:06 10 on and then I watched the interrogation, it was clear to me
11 from that, and the fact that he jumped in and out of the Army.
12 Like, he conned them. Like it was, like, wow. He's doing big
13 things. He's not doing little things. So, yes, it's because
14 of the intensity of the symptom and the pervasive nature of the
12:26:25 15 symptom that, yeah, for this particular Defendant, it jumps out
16 at you.

17 Q And also the sexual nature of the crime -- I mean,
18 that is a pattern as well; so what does that tell you about
19 Mr. Owen, aside from his claimed delusional belief?

12:26:43 20 A I mean, that didn't, you know, the fact that he
21 murdered these people was -- is, you know, is enough meat. You
22 know, the fact that he then raped these people, that was just
23 one of the things that he did because he likes to dominate
24 women. And that was another thing that Dr. Peterson talked
12:27:01 25 about. And, you know, I agree with that.

12:27:05 1 But there's no specifier for that in antisocial
2 personality disorder. That's why that's an aside. I mean, he
3 had done so many things, you know, exhibitionism and all these
4 kind of things to shock women. That's what he does. I mean,
12:27:19 5 so that was just part of it. But, really, that specifier
6 doesn't really meet anything for antisocial. It was just,
7 like, for me, and as I've had this additional week, that
8 shifted me more toward psychopathy than it was antisocial. But
9 when I very first saw him with Dr. Myers and Dr. Werner, we all
12:27:39 10 were clear on that. This is clearly antisocial, and, you know,
11 maybe we, maybe we would think about some other things.

12 Q All right. And then you've already talked about how
13 you made your conclusion. Was there a fairly good consensus
14 that this wasn't a close case, right?

12:28:02 15 A Oh, yeah. I mean, there was not -- and you could
16 just tell. I mean, I've never had an interview when I worked
17 with two other psychiatrists before, although, you know, I was
18 trained by Dr. Myers. But, you know, like, just -- you could
19 just tell even by the questions that it was, like, okay. We're
12:28:17 20 in agreement here, and each one of us who has a different
21 specialty, sort of, a different interest, we're sort of
22 honing-in those interests. So, yeah, I mean, it was clear to
23 all of us.

24 Q And I think I skipped over this a little bit, but
12:28:30 25 you're familiar with the facts of the two murders, the

12:28:33 1 14-year-old girl and Ms. Worden --

2 A Yes.

3 Q -- and her. Did Owen take steps to conceal his
4 identity and preclude his apprehension for those crimes?

12:28:46 5 A Oh, yeah. I mean, obviously, he did that and that
6 was -- but, again, you know, that, all these things, for me, I
7 guess, went against the schizophrenia more than anything else.
8 That is standard operating procedure for somebody with
9 antisocial personality disorder.

12:29:01 10 Q And concocting an alibi, would you expect someone who
11 truly believed that he's going to suck these souls of women,
12 that they live on in him, he wouldn't be so concerned about
13 getting caught, right, Doctor?

14 A No. And you know what? When you think about it, he
12:29:16 15 probably -- I don't know that he would have necessarily left
16 the scene like that, you know. I mean, he sort of left the
17 scene. He sort of planned it out, you know. There were kids
18 involved in both of these, and, you know, he specifically makes
19 efforts for them either to be gone or to be, I'll put a chair
12:29:32 20 there so that way, you know, if they come out and make noise,
21 I'll know that they're there.

22 Or even telling Ms. Worden, you know, or thinking
23 about it. I'm going to tell her this and if she screamed. If
24 you scream, I'm going to kill the kids. You know, he planned
12:29:45 25 out every single little detail.

12:29:47 1 Somebody that's just trying to be a woman, they're
2 not going through this lady's purse. They're not casing the
3 joint, like, an hour before. They're not doing any of that.
4 Their one thing is to do that, and that's what they're doing.
12:29:59 5 I mean, he went through all of this stuff: stabbing that little
6 girl and pulling her into the room like that to rape her or
7 cleaning off Ms. Worden's body and all that. There's nothing
8 about cleanliness in this soul-capturing activity. You know,
9 it's just, like, none of it is consistent with that.

12:30:17 10 Q And there's another detail that -- I don't know, but
11 did this come out in the interview? Because he seemed to --
12 the story was that he could use his hose, maybe his penis, to
13 get their essence or their female, you know, estrogen.

14 But how does that fit with the Worden murder when he
12:30:39 15 used a blunt object like a hammer --

16 A Yeah.

17 Q -- on her vagina?

18 A Dr. Myers liked to focus on the hose. Maybe because
19 he's a guy, I don't know, but I wasn't focused on that. It
12:30:53 20 didn't just even go with me. I was done with the story. The
21 story was over for me. I wasn't interested in the story
22 because there's nothing about that story that occurred at the
23 time of those crimes. They occurred for him to get out of the
24 consequences of his actions. So I wasn't entertaining the
12:31:07 25 story.

12:31:09 1 Q And, but to be clear, you went into this -- this is
2 your first Commission report, to make your best judgment and
3 assessment. And if you had thought --

4 A Of course.

12:31:21 5 Q -- he was insane or incompetent to be executed, you
6 would not hesitate to tell this Court that conclusion?

7 A Oh, no way. Yeah. If I saw him and, you know, like,
8 I'm getting a totally different piece of data from the medical
9 records, I mean, that's, I went there early. I went there at
10 11. I wanted to get all that information. I wanted to be able
11 to see it and be able to digest it on my own. Having worked in
12 that facility, understanding the records, I wanted to be able
13 to do that. I knew it was far away from this; so, again,
14 people change. I mean, that's darn -- you know, a lot of years
15 later. So I'm not going in with saying, oh, yeah, this guy --
16 no.

17 I went in with that because I am concerned about
18 stuff like that. People do change. But that was the thing.
19 It was so consistent over and over again over the years. It's
12:32:11 20 just consistent.

21 This guy is, you know, asking them for his labs.
22 He's, you know, interested in his health but not in psychiatry.
23 Not interested in that. Doesn't need that, you know. He's
24 darn got a physics book in his cell. This isn't a psychotic
12:32:28 25 guy that doesn't know what's going on. He knows exactly what's

12:32:31 1 going on.

2 Q And have you had an occasion to read some of his pro
3 se pleadings?

4 A That was fabulous is all I can say. I was impressed
12:32:40 5 by that. I couldn't believe it. I printed it out a little bit
6 because I wanted to sit down and read it.

7 I work in this field, but he had such a working
8 knowledge that was so impressive to me.

9 And that was another thing that Dr. Peterson had
12:32:56 10 said, you know, because he interviewed him when the Defendant
11 was 23 years old. And even Dr. Peterson said, wow. He has a
12 really good working knowledge of the law.

13 So at 23, and that's obvious in these records. And
14 then he also -- I think Dr. Peterson or one of the doctors --
12:33:13 15 it may have been -- that, actually, he was going to see another
16 inmate, and the other inmate wouldn't even see the person
17 unless he spoke to Mr. Owen first because Mr. Owen knows the
18 law. He wants to make sure this is a legit guy before he talks
19 to him. I thought, wow. This guy has got power, you know.

12:33:33 20 And it's clear over and over and over again; so, yeah.

21 But even then, he could present differently to me,
22 and I was waiting for that. But the officers, when I talked to
23 all of them, they were also the nicest guys, speaking so
24 pleasantly about him. He's a great inmate. Doesn't do
12:33:51 25 anything wrong. He asks appropriately for things. He's -- I

12:33:54 1 mean, not a bad thing to say about this guy.

2 So it wasn't like they were trying to bad-mouth him
3 or anything like that. They said, no. I've never seen any
4 issues with this guy. I've never seen him act like a girl
12:34:05 5 because I specifically asked about that.

6 Q And in your experience with the Department of
7 Corrections, have, do guards know who's crazy?

8 A Oh, yeah. I mean -- and that's the thing. I mean,
9 some do and some don't, but they'll tell you, you know, I think
12:34:19 10 he's playing, but, you know, I want you to see him because I
11 don't really know. They sort of know that. But on this one,
12 they were clear that, no, this guy is solid. I mean, he's
13 solid.

14 Q And did you have occasion to read Dr. Eisenstein's
12:34:34 15 reports in this case?

16 A Of course I did.

17 Q Did you see the section where he suggested he has
18 some kind of an insidious dementia process?

19 A Yes, I did read that.

12:34:47 20 Q Can you, Doctor, tell us if you have an opinion about
21 Dr. Eisenstein's insidious dementia --

22 A Dr. Eisenstein's insidious dementia? Or Mr. Owen's?

23 Q Oh, I'm sorry, Doctor.

24 A Because that could be a different answer.

12:35:03 25 Q The claim, the claim that Mr. Owen has at least some

12:35:06 1 kind of a beginning of a dementia process.

2 A Yeah, I did notice that. And, wow, that was stunning
3 to me, too. But, again, it's another thing. You know, he
4 hadn't been seen. I hadn't seen anything about him for years.
12:35:18 5 You know, the data is from, you know, this colloquy, and the
6 data is from his case. So that's years later; so maybe there
7 could be, but when I looked at his report, I didn't see
8 anything substantial that would even give me a glimmer that
9 this is a possibility because he said, it revealed a decline in
12:35:37 10 cognitive function from previous levels.

11 Now, that's the actual first criteria to even give a
12 neuro-cognitive disorder; so I'm certain that's why he wrote in
13 it in there. But I'm, like, wow. Where is it? Where are you
14 talking about? Number one, where did he start? What was his
12:35:53 15 IQ? Where did he start? And now that you've seen him on
16 May 16, 2023, where is he now? Like, why are you saying this
17 because there was nothing in the report that indicated anything
18 like that.

19 Q So in that, you're referencing his first report. So
12:36:05 20 he made that insidious --

21 A Yeah.

22 Q -- dementia process, but then he subsequently saw
23 Mr. Owen again?

24 A Yes.

12:36:11 25 Q Are you aware -- and administered an IQ test?

12:36:14 1 A Yeah, yeah, yeah.

2 Q And --

3 A And actually has improved from previous; so I'm,
4 like, okay.

12:36:19 5 Q Well, and so let's assume Mr. Owen is --
6 Dr. Eisenstein obtained a 92.

7 A Yeah.

8 Q That is certainly in the average range, Doctor?

9 A Yeah. Of course, it, yeah, it's in the average
12:36:31 10 range, but I know that at least during one of the cases, it was
11 down to 85 at some time. I don't remember when it was.

12 Q So, and have you heard various professionals assess
13 him as either average, high average --

14 A Yes. Including us.

12:36:46 15 Q -- and smart?

16 A Yes.

17 Q So he's a smart individual. And certainly a 92 isn't
18 going to prohibit Mr. Owen from understanding either the
19 nature, the impact of the death penalty, or the fact of his
12:37:00 20 impending execution?

21 A No. And he didn't. I asked those questions directly
22 in my questioning of him, and there was no, no impairment in
23 answering those questions. Now, he had an impairment in the
24 sense that he still wanted to infuse the story in there, but I
12:37:16 25 told him I'm not, I don't want to hear that. I'm asking you

12:37:18 1 this specific question. And then I went through the questions,
2 and he answered all of those questions appropriately.

3 Q So based upon your review, he has -- would you say he
4 has a factual in both, and a rational understanding of --

12:37:33 5 A Yes.

6 Q -- the death penalty? Why it was imposed upon him?

7 A Yes. We talked about that, you know, because, again,
8 he was pervasive, or perseverative. And I think we wrote that
9 in our report: That he was trying to infuse the story in every
12:37:50 10 aspect of it as if -- and it was, like, okay. That is a
11 separate thing that you're talking about, but I'm asking you
12 these specifics questions.

13 Q And he also understands, as a result of the
14 punishment and what he's done, that he is facing execution,
12:38:05 15 that he will die?

16 A Yes. And that was in his colloquy, and he's had all
17 these appeals. I mean, he knows. He understands. He's been
18 sitting there for a long time and trying to get out of the
19 consequences of his actions; hence, this entire thing.

12:38:19 20 MR. BROWNE: Your Honor, may I have one moment?

21 THE COURT: You may.

22 (Pause in the proceedings.)

23 MR. BROWNE: Thank you, Doctor. I have nothing
24 further.

12:38:49 25 THE COURT: All right. Cross?

CROSS-EXAMINATION

12:39:00 1
2 BY MS. FUSARO:

3 Q Good afternoon.

4 A Hi.

12:39:14 5 Q So we spoke a little bit about the report. Who
6 actually authored the report?

7 A All three of us did.

8 Q Who started the report?

9 A Dr. Werner started it.

12:39:23 10 Q And then did you all sit down and collaborate or how
11 did the process work?

12 A We put it on Google Docs. I think Dr. Myers actually
13 did that because I think that's how he normally does stuff. So
14 Dr. Werner was supposed to testify in court, I believe, the
15 next day.

16 I tried to get a division of responsibilities when we
17 were all together, but Myers was going off on a flight, and
18 Dr. Werner was going to stay there, and I was going home to
19 take care of my kids.

12:39:46 20 So Dr. Werner was the first person that actually put
21 out -- because Dr. Werner and Dr. Myers had done these before;
22 so they had, sort of, a -- I want to say a template, at least
23 had a layout of how they typically do it; so I wanted to see
24 that. And so Dr. Werner was the one that initiated that, and
12:40:05 25 then I got it next. So that was, I don't know, 11 P.M. or

12:40:10 1 something like that.

2 And so then I added some things. And by that point,
3 Dr. Myers got home to Rhode Island, and he captured the ball.
4 And I think that's when he put it on the Google Docs. And then
12:40:21 5 we were all sort of working on it in realtime. So Dr. Myers
6 then started putting some stuff in. Dr. Werner then put some
7 stuff in, I believe, in the morning time. Then I took over,
8 and I started putting more stuff in. And then I believe then
9 Dr. Myers took over. So we were all doing it at the same time.

12:40:38 10 Q If there's any disagreement as to what to put in the
11 report or what you found, who would have the final say on that
12 of the three of you?

13 A There was no final say. We would just delete it,
14 which did happen. It was, like, you can, yeah, we were doing
12:40:51 15 that, sort of, back and forth a little bit. And Dr. Myers
16 liked a certain font. And so we're doing, you know, we're all
17 doing it in realtime. There was no, like, I always defer to
18 them because they're older, and they're my mentors, and so I
19 defer to them. And so, you know, I would not really touch the
12:41:07 20 content. I might add some of what I would put in. And so I
21 did that. So it was sort of, like, that's how we were doing
22 it. But we were all in agreement from the very beginning.

23 I believe Dr. Werner was the one that originally put
24 in the diagnoses that we had all discussed when we were all
12:41:24 25 together. And then we were sort of, Dr. Myers and I were sort

12:41:26 1 of, you know, formatting it and adding stuff to it.

2 I mean, you can see Dr. Myers put the hose in there.
3 You know, I mean, there was, we all worked on it together. It
4 was a complete collaboration between the three of us, which I
12:41:41 5 like.

6 Q And also in the report, the Commission reviewed --
7 states that the Commission reviewed investigative materials
8 that were related to Mr. Owen's arrest of the homicides. What
9 specifically were those?

12:41:52 10 A We got, or I specifically requested the victims,
11 pictures of the victims. I requested those; so we received
12 those.

13 Q Why did you request those pictures?

14 A Because I wanted to see the brutality by which this
12:42:10 15 person beat these women or stabbed them to death. I wanted to
16 see that because, for me, that goes toward the diagnoses that
17 we ultimately gave. I wanted to see what he did to these
18 people. It's one thing to read it; it's another thing to see
19 it. I look at every victim in every case I do.

12:42:28 20 Q Did you show those pictures to him during the
21 evaluation?

22 A No. I showed them to Dr. Myers and Dr. Werner.

23 Q So you didn't confront Mr. Owen with any pictures
24 or --

12:42:38 25 A He knew what he did. He's seen them in real life.

12:42:40 1 He didn't need to see the pictures, I don't think. I'm not
2 there to hurt someone or give someone a thrill. I'm there to
3 get data.

4 Q So you're insinuating if you had showed the pictures,
12:42:50 5 that it would have given him a thrill?

6 A Probably.

7 Q What are you basing that on?

8 A Because it was a thrill for him to do it. He meant,
9 he ejaculated in these people. You don't do that because
12:43:04 10 you're disgusted. You do that because you're enjoying what
11 you're doing.

12 Q But doesn't that also follow with his delusions that
13 he had to ejaculate in order for his genitalia to become some
14 sort of hose for the essence to travel through?

12:43:19 15 A He has no delusion at all. That is a story he
16 created 100 percent.

17 Q So I understand that you're calling it a story,
18 but --

19 A It is.

12:43:29 20 Q -- if an individual believes this belief and has
21 believed this since, I know you said after the crimes, but
22 there are records that did state earlier. We'll get into that
23 after.

24 So if they've had this longstanding belief for almost
12:43:42 25 the entirety of their life, what makes it a story to them?

12:43:46 1 A It doesn't make it a story to him. He's the one who
2 made the story. But where in the story do you steal their
3 purse? Where in the story are you looking at them through the
4 window? Where in the story are you washing off all of your
12:43:57 5 stuff? Where in the story are you doing all that? Taking a
6 hundred dollar bill and put in the sock, where is that in all
7 the stories?

8 Q Now, those things, if they occurred or not, I don't
9 know, but even if they did occur, for sure those things would
12:44:11 10 be way back in, what, in the 1980s? What does that have to do
11 with his competency to be executed right now?

12 A If his competency is being questioned due to this
13 ideation that he has a delusion, it is relevant because then
14 the facts of the case then refute that; and so, therefore, the
12:44:33 15 entire basis of the insanity that he's reporting to get out of
16 the consequences of his actions are completely invalid.

17 Q So why would he be doing these things for all of
18 these years if he was just trying to avoid the consequences of
19 his actions?

12:44:47 20 A Why would he be doing what all of these years?

21 Q What you said with developing these stories and
22 things of that nature.

23 A He only developed one story. I mean, that's just
24 been the same story over and over again.

12:44:57 25 Q So you're agreeing that his belief is fixed. It's

12:44:59 1 been fixed all of these years?

2 A It's not fixed. It's the one thing that worked. And
3 he actually got Dr. Berlin to believe it, which gave it legs.
4 That's his only gain. That's his only chip; so he's going to
12:45:12 5 keep playing it because he got someone to believe it.

6 Q Isn't it true that multiple doctors have believed
7 that it was a delusion?

8 A Dr. Sultan, who said Dr. Berlin was a wonderful
9 famous man? That person? Yeah, she also did agree with that,
12:45:26 10 but I don't put too much into her opinion either.

11 Q And why is that?

12 A Because she got totally conned by this guy and was
13 fantasizing about her then collaboration with Dr. Berlin, who
14 she obviously thought was a wonderful and famous man.

12:45:43 15 Q But haven't you collaborated and worked under Dr.
16 Myers previously? Weren't you --

17 A He's my mentor.

18 Q So wouldn't you think highly of him, in your
19 collaborating on this case with him?

12:45:53 20 A I think the world of Dr. Myers. That has nothing to
21 do -- if Dr. Myers said something crazy like that, I would not
22 agree with him just because I think a lot of him. I would be,
23 like, wow, he's really slipped, you know, kind of thing. But
24 that's it.

12:46:09 25 Q All right. Now back to the materials that you

12:46:11 1 reviewed. How long did you spend reviewing those materials
2 related to the investigation and the arrest?

3 A Well, they were sort of infused into all of the
4 information because I did not get the police reports on these
12:46:25 5 things because, again, I had a very short period of time. As
6 far as I knew, I was testifying that week. I would typically
7 have months and months.

8 These people have been talking to him for years. You
9 know, I would have more time, typically. So the information
12:46:40 10 that I received, outside of these crime scene pictures, was
11 information that I gleaned from looking at all of those
12 testimonies and then looking at the videos, the interrogation
13 videos. So I don't know. I mean, I worked solidly on that
14 from right when I received those materials, all the way to when
12:47:00 15 I saw him. And, in fact, I bought a portable DVD player to put
16 in my car as I drove to Raiford so I could keep listening to
17 those interrogation videos. So I was doing it constantly, I
18 was working on that case.

19 Q But you would agree you didn't get a chance to review
12:47:17 20 all hundred and some odd hours of the interrogation and the
21 police interviews?

22 A No. You're right. They're somewhat repetitive after
23 a while. Yeah. But, no, I didn't watch all of them, but they
24 are all very similar, and they're him bouncing all of these
12:47:31 25 things back and forth and toggling between, like, telling them

12:47:35 1 some facts to sort of lure them in and then get something, try
2 to get to see his brother, Mitch. You know, he was playing
3 them.

4 And, you know, once you've seen 12 hours of it, you
12:47:45 5 know, you've basically seen 22 hours. But, yeah, I probably
6 saw 12 hours of it.

7 Q So the other 80 or so hours, is it possible that
8 there could have been something in there that related to either
9 schizophrenia or another mental illness or anything else that
10 would have been mitigating for him?

11 A No. Schizophrenia doesn't pop in after 20 hours, you
12 know? It's from second one.

13 When you have schizophrenia, you have schizophrenia.
14 It's like you being a woman. You are a woman when you wake up.
12:48:14 15 It doesn't change. It's the same with schizophrenia. You have
16 it. It's part of you. You can't pull it out. And whenever
17 you think someone is going to understand you, then you're going
18 to use some schizophrenia and be psychotic. That's not how it
19 works. It doesn't work like that.

12:48:30 20 This guy was completely in control of everything in
21 those interviews. There is no way that he popped out and was
22 schizophrenic at the end. He probably would have been more of
23 it earlier on, but there was one specific video that I recall
24 that the officer was sitting so close to him, like very close
12:48:49 25 to him, like inches between him. There's no way somebody who's

12:48:53 1 a psychotic would have allowed that. They would have backed
2 out, or they would have pulled away, or they would have done
3 something. That's too close. I mean, he was almost touching
4 him. Like, it was so close. No way would that have occurred.

12:49:04 5 There were so many things about that interview, that,
6 and he didn't even have to say a word. People with
7 schizophrenia look a certain way. They act a certain way.
8 They move a certain way.

9 Q So you are saying that --

12:49:15 10 A And he didn't do that.

11 Q -- everyone with schizophrenia, they all act one
12 certain way, with no deviations?

13 A No, I didn't say one certain way. They act a certain
14 way. They all have, every person is different. I mean, so you
12:49:28 15 can't say everybody acts the same, but they have symptoms for a
16 reason. They have affective flattening. They have a slowness,
17 a bluntness about them. They are very guarded usually. And if
18 they're psychotic, they're hearing something or listening to
19 something else while they're being spoken to. They have a
12:49:45 20 mannerism about them. Usually they're a little bit slower,
21 unless they're manic, and then they're a little bit faster, and
22 you can see that, too. But there is a definite look to them,
23 and he did not have that.

24 This guy is just sliding into his chair, drinking his
12:49:58 25 coffee, just like normal. Nobody with schizophrenia would have

12:50:04 1 done that. They just don't look like that.

2 Q But you can agree you have not seen every single
3 person with schizophrenia, and there is different
4 symptomatology between the different individuals?

12:50:13 5 A I said that they have different looks, but, no, I
6 have not seen every person in the world with schizophrenia.
7 No, I have not.

8 Q So there is a possibility that he could present with
9 different symptomatology than some of the other people you've
12:50:23 10 seen with schizophrenia?

11 A If he has schizophrenia, he could present with
12 certain behaviors that would be different from others, but he
13 has zero behaviors, zero.

14 Q And also on the materials, you said you were given
12:50:39 15 materials to review prior to this past week. So were you given
16 materials prior to the Governor even issuing the executive
17 order to appoint you?

18 A No. I don't know what you mean prior to, this week
19 is different from last week; so --

12:50:52 20 Q Correct.

21 A -- when I was in last week, I got a box, FedEx box,
22 but then I asked for additional stuff. Even while I was
23 driving, I was asking them for stuff.

24 Q So I think we need to determine what the dates are,
12:51:03 25 maybe to put it into a better perspective. What date did you

12:51:06 1 start receiving materials?

2 A I told you the day. I got a FedEx box on Friday
3 after I received the original call on Wednesday. I was in
4 Lowell Correctional on Thursday, and then I got the box, the
12:51:16 5 FedEx box, on Friday, last Friday.

6 Q And so in that situation, it looks like -- the 23rd
7 was a Tuesday?

8 A I don't have any idea. I don't have a calendar with
9 me.

12:51:29 10 Q Do you know what day it was when you did the
11 evaluation?

12 A It was Tuesday.

13 Q Okay.

14 A The next week.

12:51:33 15 Q Yeah. So you received materials that prior Friday,
16 the Friday before the evaluation?

17 A Correct. Yes.

18 Q So when did you receive word of your appointment?

19 A Wednesday.

12:51:45 20 Q Okay. So you received word of your appointment
21 Wednesday, May 17?

22 A Well, I don't want to say I received word. I was
23 asked if I would be available. How about that? That was the
24 question I got. I got a call. I came out of an evaluation
12:51:58 25 late in the evening. I received a voicemail. At first, I

12:52:02 1 thought it was really just a political voicemail, but then I
2 saw that my name was in it; so then I listened to it.

3 I, then they had -- I guess from the office -- maybe
4 asked if I was available. And then -- and I don't know when
12:52:15 5 the appointment happened. I can't -- I don't know what the
6 date of that was. I just know that, on Friday, I received the
7 information.

8 Q Okay. Would it surprise you if the appointment that
9 came out in the executive order didn't come out until Monday of
12:52:28 10 the following week? So basically two or three days after you
11 got the materials?

12 A It would surprise me. Well, I don't know if it would
13 surprise me. I don't know how things work in that kind of
14 level. I just know what I'm doing.

12:52:39 15 Q Okay. Because, again, this is your first time that
16 you've been part of the Commission; right?

17 A Yes.

18 Q And you said you went there early to review the DOC
19 records from 1986 to the present. About how many pages did
12:52:51 20 that encompass?

21 A It was multiple. Actually, it was way smaller than I
22 thought it was going to be because he had been there so long, I
23 thought I was going to have, ba-ba-ba-ba-ba, tons of files.
24 But it made sense that he didn't because he didn't see
12:53:04 25 psychiatry long. He only saw him for that one little period of

12:53:07 1 time where he needed to. So I couldn't tell you how many pages
2 it was. It was a stack of medical records probably about that
3 big. So I don't know. Like, a foot tall.

4 Q Like thousands of pages would you guestimate?

12:53:24 5 A Yeah, because they were, I want to say some were
6 front and back. It could have been a thousand pages. Like I
7 said, it was way smaller.

8 They also had classification records there, too, if I
9 wanted to review those. I never did. But that stack was
12:53:38 10 about, I would say, a little over, maybe one and a half times
11 as big as the medical records, the classification records.

12 Q And you reviewed all of the medical records yourself?

13 A Yeah. And then Dr. Werner did, and Dr. Myers sort of
14 briefly looked at them, but I think he was more, he looked at
12:53:59 15 some, but he was looking at other stuff. And Dr. Werner sat
16 there, I believe after we all left, and she went through them.

17 Q Were you given any sort of time limit from the
18 Governor to conduct this evaluation that day?

19 A No. You know, I had told them -- when I had gotten
12:54:14 20 that question, I told them that usually takes me all day. But,
21 no, there wasn't any, it could have gone into the evening time,
22 if we wanted it to, I think.

23 I was there, I was prepared to be there all night. I
24 was prepared to be there, but nobody gave me any time limit or
12:54:31 25 anything like that. We all agreed that, you know, okay, we --

12:54:34 1 you know, anymore questions? You know, we asked each other,
2 any more questions? No. And so that was it.

3 Q So you were surprised at how short it was compared to
4 your normal evaluations?

12:54:44 5 A I wasn't surprised because, again, I was just asked a
6 specific question. We were just asked a specific question.

7 You know, a lot of times when I'm doing these
8 evaluations in my typical practice, I'm asked a big question.
9 You know, like, well, what's the psychodynamics in here?

12:54:59 10 What's the psychiatric aspects of this case? Is this person
11 insane or not? And I have all of the police reports, and I'm
12 formulating a case.

13 The case is no longer. We're just answering a very
14 specific question. So because of that, you know, it's a
12:55:14 15 smaller interview, and it's a smaller data set than what I
16 normally would do.

17 Q And if you opine that a death row inmate was insane
18 to be executed, do you think you'd be re-appointed to this
19 Commission again in the future?

12:55:26 20 A If I were to say he was insane to be executed? I
21 still don't even like that terminology, but if I were to say
22 that would I be called again? I would think so. I don't think
23 that that has anything do with anything.

24 Q And you said before that you did work on other
12:55:44 25 criminal cases. And those -- have you ever found another

12:55:47 1 individual to be insane in any of those evaluations?

2 A Yes, I have.

3 Q And about how often have you seen that?

4 A Just generally?

12:56:01 5 Q Uh-huh.

6 A Wow, that's a bigger number. I couldn't tell you
7 that. How many times have I said that?

8 Q How about if we limit it to capital cases? How many
9 times have you ever found someone to be --

12:56:15 10 A Oh, insane in a death case?

11 Q -- insane in a death case?

12 A Where the death penalty was up for --

13 Q Where they were seeking death, sure.

14 A I would say that that has never happened because when
12:56:30 15 I'm involved in a case where there's a death and the
16 prosecution or the defense thinks even a glimmer that they have
17 any psychiatric issue, they don't even go for the death penalty
18 anymore. So it's mostly life in prison. So, but the ones that
19 I've done, where death is the only -- or where death is what
12:56:47 20 they're seeking, I would say I've never had that thought.

21 Q And have you ever been asked by the Defense to
22 evaluate an individual?

23 A Definitely. I'm doing two cases right now. Three,
24 actually.

12:56:58 25 Q What percentage of your work would you say is for the

12:57:00 1 Defense?

2 A As I've gotten older, it's gotten bigger; so I'd say
3 maybe 30 percent.

4 Q And have you ever testified in any of those cases for
12:57:12 5 the Defense?

6 A Every time I say someone is insane, they don't go to
7 trial; so I would say no.

8 Q And you're finding all of these capital defendants
9 insane that you're hired by the Defense for? Was there a
12:57:30 10 reason --

11 A Those are not capital cases.

12 Q Okay.

13 A Like I said, if anybody has even a shred of an
14 ideation these days, given how it's hard to get the death
12:57:39 15 penalty of a psychiatric problem, they don't even go for death
16 anymore. They only go for life. That's the max I feel like
17 they could get. That's just been my experience working in it.

18 Q You would agree you do testify for the State quite a
19 bit. You said about 70 percent of the time?

12:57:54 20 A Oh, yeah.

21 Q You've seen that the Defense does hire experts in the
22 cases that do go to trial, right?

23 A Yes, they do.

24 Q So there clearly are still cases available for that,
12:58:04 25 right?

12:58:05 1 A There are. If they are a legit case and they hire
2 me, it doesn't go to trial.

3 Q I know you mentioned that there were three
4 psychiatrists in the room at this point.

12:58:16 5 Have you done any evaluations where there's more than
6 one psychiatrist at the same time?

7 A No. This was the first time. That's why it was sort
8 of exciting for me. I enjoyed it.

9 Q Would you say that's not really the standard, then?

12:58:28 10 A It isn't. The only other time I've ever seen a
11 situation like that is in our boards, actually. When we do our
12 boards, our oral boards, there are multiple psychiatrists that
13 actually watch our interview. And then they all get to
14 question us about that case. So that's the only other time
12:58:45 15 I've ever had where there have been other psychiatrists in the
16 room when I'm evaluating someone.

17 Q And, again, going to normal practices, is it normal
18 or appropriate for an evaluator to raise their voice during an
19 examination?

12:58:58 20 A I've definitely done it. I mean, I think, my
21 philosophy on the interview is that you meet the person where
22 you find them. And so if they are like that, I probably might
23 be like that, too.

24 Q What do you mean like that? Just to explain for the
12:59:16 25 record.

12:59:17 1 A If they raise their voice at me or they start getting
2 a little bit to where I feel like maybe they're being a little
3 bit aggressive, depending upon the origin of that presentation,
4 I might mirror that.

12:59:32 5 Q Did you experience any of that in Mr. Owen's
6 evaluation?

7 A No. He's a pretty soft-spoken guy, I would say.

8 Q Almost feminine in terms of soft-spoken?

9 A No. He is not feminine. Just because somebody is
12:59:49 10 speaking low doesn't mean they're feminine. I would not say
11 that at all.

12 Q We're just trying to clarify for the record, since we
13 weren't at the evaluation.

14 A Okay.

12:59:58 15 Q We're just trying to clarify. Other than that --

16 A He's a normal guy that was speaking low.

17 Q And did you raise your voice at him at all during the
18 evaluation?

19 A I have no idea. I don't recall doing that. I didn't
13:00:09 20 talk with him very much. I don't feel like I asked him that
21 many questions.

22 Q What percentage of the evaluation do you think you
23 spent talking to him?

24 A I really don't know. I want to say that it was a
13:00:22 25 third, a third, a third. It was very close to that. We all

13:00:28 1 asked different questions, and so sometimes we would sort of,
2 like, ask a question off someone else, you know. I feel like
3 it was very equivalent.

4 But this is different for me because I'm in an
13:00:40 5 interview with two other people. So you take that time, and
6 you divide it by three, you know. So I would say it like that:
7 That I was less than what I normally do because normally I'm in
8 an interview just by myself.

9 Q In a normal interview for you, is it standard for the
13:00:55 10 expert to do most of the speaking during a clinical interview?

11 A It depends.

12 Q What does it depends on?

13 A It depends upon what the presentation of the person
14 is.

13:01:06 15 Q Can you give us specifics of how that would -- how
16 you determine that?

17 A Well, what question are you exactly asking?

18 Q How much of a clinical interview should be spent with
19 the evaluator asking the questions and the evaluatee responding
13:01:22 20 and giving information?

21 A Should, that's a good word. I can't say that there
22 is a standard that someone should do.

23 Again, whenever you're in an interview, it really
24 depends upon the presentation of the defendant. Many times a
13:01:39 25 defendant who is very forthcoming will do a complete monologue,

13:01:44 1 and a lot of times that happens. I love those interviews
2 because they're just talking. But there's a lot of times when
3 they're being evasive, and so then I find it necessary to move
4 them along.

13:02:00 5 Q So in this particular interview, how did that go?
6 The evaluator speaking most of the time or some of the time or
7 half? What percentage would you think the evaluator spoke?

8 A I have no idea because, again, it's three people, and
9 I was totally focused on what I was doing. I was focused on
13:02:18 10 different things about him, you know, like -- so I was focused
11 on the interview. I wasn't focused on timing all of us.

12 Q Would you say that Mr. Owen spoke the minority of the
13 time?

14 A I have no idea about that. I would not say that.
13:02:35 15 That's not my feeling, but I don't know.

16 Q And is it appropriate for an evaluator to be
17 combative and argumentative during an evaluation?

18 A It depends. Again, there's a lot of different
19 scenarios when you're doing an interview. I don't know about,
13:02:53 20 quote, unquote, combative.

21 Again, every interview is different, every person is
22 different, and every presentation is different. So, again, I
23 would have to have a specific thing that was being asked of me,
24 but that wouldn't be unheard of to be. But, again, I meet them
13:03:13 25 where I find them. And I don't feel like that happened in this

13:03:16 1 interview.

2 Q But if it has happened in previous interviews, that
3 would be appropriate?

4 A Sometimes. I mean, this is the thing: You're trying
13:03:26 5 to get information about this person when you're doing an
6 interview. And in cases where you're dealing with very
7 difficult people, which a lot of time these cases, specifically
8 with someone with psychopathy or something like that, you're
9 going to see someone, and you're going to hear them doing stuff
13:03:45 10 or saying stuff, and you might confront them as well. That's
11 part of the interview because, again, you're looking at a whole
12 domination thing, too.

13 And this guy is definitely known to do that. Now, he
14 didn't do that, I don't believe, with us. And maybe because
13:04:01 15 there was a man in the room. I don't have any idea what the
16 reason was. But I have certainly been in cases before, where,
17 you know, that sometimes happens.

18 You're dealing with inmates. You're dealing with
19 people that kill people. That's a different thing than a
13:04:14 20 normal psychiatric interview when you're doing it in a
21 treatment context. They're totally different.

22 Q So you're saying that you went into this with an
23 expectation that he was going to act a certain way?

24 A I didn't really know how he was going to act, again,
13:04:26 25 because I'm getting data -- I mean, the videos I'm watching are

13:04:30 1 from the '80s. I mean, you know, like, so I'm definitely
2 knowing that this guy has changed over the years and that I'm
3 reading through and you're reading the different testimonies of
4 the different experts who spoke with him, and you're reading --
13:04:42 5 I got Dr. Blackman's report so you're reading reports on
6 interviews, and so, you know, you're walking with them through
7 time.

8 So, no, I didn't have any expectation how he was
9 going to be when I saw him, but I was ready for any
13:04:58 10 presentation.

11 Q And during the clinical interview, did you interview
12 Mr. Owen regarding his childhood and background?

13 A I don't believe I asked any questions about that.

14 Q Did it come out in the evaluation at all? Do you
13:05:12 15 recall?

16 A I don't know. Maybe Dr. Werner asked about that.
17 But I don't remember that. And, for me, it would be completely
18 irrelevant; so I would not have asked questions about that in
19 this particular interview.

13:05:28 20 Q So nothing about the family history or anything came
21 out that you can recall?

22 A Not that I recall, but, again, I was laser focused on
23 a certain question set; so I was focused on that. I had
24 already had multiple different recitations of his history over
13:05:44 25 time that were very much more close to when, you know, he

13:05:49 1 originally was seen.

2 And those reports were pretty consistent. You know,
3 I read, you know, Defense experts. I read Dr. Sultan's. You
4 know, I read from people that were obviously sympathetic toward
13:06:04 5 him and did talk about his childhood. I read that over and
6 over again. And they were pretty consistent reports.
7 Sometimes they had more or less details, but they were
8 consistent.

9 I requested to get the record from, you know,
13:06:16 10 whenever they were speaking about, like, the juvenile
11 situation. I requested that, but it wasn't available. So,
12 again, you know, like, I would -- I would have more so got that
13 in collateral information. I would not have gotten that in
14 this particular interview because it has zero to do with the
13:06:36 15 question.

16 Q And during the evaluation, did you administer any
17 tests to determine whether Mr. Owen was malingering?

18 A No.

19 Q Why not?

13:06:44 20 A Because it was obvious, number one; number two,
21 there's no test to detect malingering with a very specific
22 question.

23 You know, these tests are done to look at a whole
24 characterization of someone in terms of, like, a multiple
13:07:01 25 different kind of symptoms or something like that. Or it's

13:07:04 1 looking at cognitive impairment. Or it's testing a specific
2 question that you have that they're malingering a certain
3 thing. But this is so circumscribed, this story, that there's
4 not a specific test for that. So you can't really test for
13:07:19 5 malingering in this case accurately.

6 Q So when you found that he was malingering in the
7 report, what exactly were you basing that on, then?

8 A Inconsistencies in what he's reporting and what is in
9 the collateral data.

13:07:32 10 Q Could some of those inconsistencies with his current
11 reports be due to insidious onset of dementia?

12 A No.

13 Q And why is that?

14 A He does not have dementia. No way does he have
13:07:45 15 dementia.

16 Q Did you do any testing to figure that out? Have you
17 seen brain scans?

18 A I don't need to do a brain scan or any kind of test.
19 When you're speaking with someone -- and, again, I got
13:07:56 20 collateral information from people that see him day in and day
21 out. There is no indication of cognitive dysfunction outside
22 of this letter from Dr. Eisenstein.

23 Q Do you ever perform malingering tests on individuals
24 that you see when you're doing an evaluation in other cases?

13:08:14 25 A Yes.

13:08:14 1 Q But you didn't think it would be something that would
2 be pertinent to do here?

3 A It was unnecessary.

4 Q And if you, you said that the malingering test can
13:08:22 5 determine in certain areas and maybe not for this specific
6 question, but if someone is likely to malingering in one aspect of
7 their life, are they likely to malingering in other aspects?

8 A Not this Defendant.

9 Q And how do you know that?

13:08:33 10 A Because he's a good liar.

11 Q But how do you know he's lying? How have you
12 determined that?

13 A Because his presentation was different from the
14 beginning through to when he had this retrial in his medical
13:08:46 15 records and then the Dr. Eisenstein. All different things.
16 It's just -- no. I mean, he's not -- he's not being honest
17 about this, and he's not demented either. There's nothing that
18 indicates dementia in this guy. Not one thing.

19 You can see, again, even in his own speech, you can
13:09:09 20 tell when someone has dementia. You can tell when they're
21 answering questions, the word usage and things like that. If
22 they have a budding dementia.

23 I just did a -- I just testified in a case three
24 weeks ago about someone with dementia. It's definitely
13:09:25 25 obvious, especially in this case.

13:09:27 1 Q Would it be obvious in the beginning of the onset?

2 A Oh, yeah. There's certain subtle things that you can
3 tell. And one of the things you might be able to tell is when,
4 let's say I'm talking to the officers or I'm speaking with the
13:09:36 5 warden or assistant warden. I'm speaking with all these
6 different people about this person. And there's not even a
7 glimmer or a shred of dementia. And they would talk about it.

8 This guy is getting emails in realtime. This guy is
9 planning his last meal. This guy is darn determining where his
13:09:54 10 things are going. He's talking to multiple people.

11 Q Speaking of that, if I can interrupt --

12 A Yeah.

13 Q -- so in your report you made some findings about
14 that he was making arrangements for things like that.

13:10:04 15 A Yeah.

16 Q Is it possible that since he is polite and
17 cooperative, that you found he could have just been answering
18 their questions because they come to see him every day and ask
19 him the same questions?

13:10:14 20 A Who?

21 Q The DOC personnel. I apologize.

22 A What is the question?

23 Q So in your report it says something about that he has
24 future orientation because of the fact that he was supposedly
13:10:26 25 making plans for his remains and things like that.

13:10:28 1 Since it was also noted in there that he was
2 cooperative and things of that nature, could he have just been
3 cooperating in answering their questions and not actually have
4 an understanding?

13:10:40 5 A No.

6 Q And why do you think that?

7 A When you read the emails --

8 Q What emails are you talking about because --

9 A -- that -- I'm talking about -- I received -- as I
13:10:50 10 was driving up there, listening to his interrogation and also
11 pondering how I was going to handle this interview, I thought,
12 hey, I'm going to ask him for his letters. I'm going to ask
13 for some writing. What's he doing? How's he interacting with
14 people? I want to see it. And --

13:11:07 15 Q Do you have a copy of those letters? Because they
16 were not provided to us. That's why I was curious, when you
17 said emails, what you meant by that. Are these letters written
18 by Owen or --

19 A No.

13:11:15 20 Q -- who are these letters written by?

21 A These are the responses -- he's talking to these
22 people back and forth. And this actually, what I received when
23 I got up there to the DOC, they had given me the JPays, the
24 emails that he received that day that they were going to bring
13:11:33 25 to him. They gave me those that people are writing to him.

13:11:37 1 I didn't get the stuff from him to them because he
2 doesn't have access to his tablet right now while he's on death
3 watch; so I didn't get those. And he's been writing the
4 letters. So I haven't received those. I got the letters being
13:11:50 5 written to him.

6 Q So who are these letters written from?

7 A I know. It's amazing.

8 Q We've never been provided these letters; so I don't
9 know what they are. So --

13:11:58 10 A Oh, they're just emails. So they're emails that he
11 has been receiving. He talks to this person -- and I looked up
12 people so I would understand who these people were, try to
13 understand it.

14 There's this one person, Kenneth Karney. I don't
13:12:13 15 know if that's how you pronounce his name. But he's a
16 murderabilia collector; so he has a relationship with this man.
17 And they're going back and forth, and he's acting like he's a
18 friend of Mr. Owen's.

19 Q But you didn't review anything that was from Mr. Owen
13:12:27 20 to these people, right?

21 A No. But when you're receiving letters, they're
22 similar. They're going back and forth. I mean, these letters
23 are going back and forth, and they're talking about things in
24 realtime. So if he was demented and, like, wasn't making any
13:12:43 25 sense and stuff, number one, he wouldn't have this many

13:12:46 1 friends. I mean, he's got -- in just this one day, he had
2 emails from -- oh, I thought I had it written down in my -- he
3 had emails from multiple different people.

4 Q Could people just be sending him emails now, due to
13:13:04 5 the fact that his name is in the news and he has an execution
6 date?

7 A No, because you can tell that they have a
8 relationship. They know him. So he has Kenneth, Melanie,
9 Janet, Douglas. This is all in one day. Michael, Theodore,
13:13:25 10 Gabriella. She's from Germany or something. Yeah, Germany.
11 So he has multiple people he's communicating with every day.
12 Somebody with dementia is not doing that.

13 Q So you're saying people with dementia can't respond
14 to letters or receive letters?

13:13:43 15 A They can. But are they going to have running
16 relationships with, like, multiple people on death row? I
17 mean, no. They're not going to. They're not going to have
18 running relationships with people. They might receive a letter
19 every once in a while, but I -- I don't even know that someone
13:13:57 20 with dementia could work that tablet to be able to write these
21 emails back and forth or even write.

22 He's got full letters he's writing to people. He's
23 writing all day long. He understands the schedule on TV. He
24 knows at 6 P.M. this one program, this one channel Bounce comes
13:14:16 25 on. He knows the movie listings.

13:14:18 1 Q Does that have anything to do with the question that
2 you were asked, though, whether he understood the nature of his
3 penalty and how it relates to the crime?

4 A You're asking me about dementia, and I'm telling you
13:14:28 5 why he doesn't have it.

6 Q Correct. But then we went into a tangent; so I'm
7 just asking that question now.

8 A Was this a relevant piece of data?

9 Q Correct.

13:14:36 10 A Yes, of course, it is.

11 Q Okay. And then in terms of testing, so you didn't
12 perform any testing, right?

13 A No.

14 Q Okay. And is there any reason for not administering
13:14:48 15 anything else? Like, the MMPI or the PAI or anything like
16 that?

17 A Why would I do that?

18 Q Do you ever administer that testing?

19 A I do not do the MMPI or the PAI. That's what
13:15:01 20 psychologists do. I tend to interpret those. I was trained to
21 interpret those. But he's already had them multiple times,
22 number one. And, number two, they would have zero relevant
23 data to this question.

24 Q So you don't think that it would help at all to
13:15:16 25 determine if he had any mental illness or the validity measures

13:15:20 1 wouldn't help determine anything in terms of malingering?

2 A No. Those are completely different tests. They're
3 not -- they're testing whether or not you're malingering within
4 the test. But you can't extrapolate that data and say, oh,
13:15:32 5 they're not lying about this in this test, and then extrapolate
6 it to the story. I mean, they have zero connection between the
7 two.

8 Q But it would show that they've giving full forth and
9 full effort on that test, right?

13:15:51 10 A I don't know. This guy is --

11 Q I'll move on since you said you don't really do a
12 whole lot with giving those sorts of tests. So --

13 A Yeah.

14 Q -- we'll just move on from that.

13:16:02 15 A Yeah. I would say, yeah, I don't.

16 Q And so if Mr. Owen is not malingering, if he actually
17 believes that he did not kill the victims because he took their
18 physical and mental essence into his body through his penis in
19 order to become a woman, that would be a delusional belief;
13:16:14 20 right?

21 A Can you ask the question again?

22 Q So let's say, I know you think he's malingering, but
23 if he's not malingering --

24 A I know he's malingering.

13:16:23 25 Q If he's not malingering and actually believes that he

13:16:26 1 did not kill the victims because he took their physical and
2 mental essence and put that into his body through the penis in
3 order for him to become a woman, wouldn't that be a delusional
4 belief?

13:16:45 5 A This is not a delusional belief. I'm not even
6 answering that question. I mean -- no, that's not a delusional
7 belief. There has been no delusion that has anything to do
8 with this. I don't believe that. I don't believe it at all.

9 Q So every person that has a delusion has the same
13:17:00 10 delusion?

11 A No. But there are definitely certain qualities that
12 makes something a delusion, not a specific story and the story
13 has only these limitations. It's within a box, the story.

14 When somebody has a true delusion, like, a bizarre
13:17:17 15 delusion of this degree, it would spill out into other things.
16 It wouldn't be circumscribed to just this one thing.

17 Q Would you agree --

18 A It spills out into their life.

19 Q -- these delusions that -- he believes these beliefs;
13:17:30 20 so if he believes these beliefs, wouldn't you agree that they
21 do seem to spill out into his life in terms of the fact that
22 he's trying to do more feminine things? He was dressing in
23 women's clothing and things of that nature since his early
24 years?

13:17:44 25 A He wasn't dressing in women's clothing. You don't

13:17:47 1 know that. And if he really believed that he didn't kill those
2 women, he wouldn't go through all these appeals, just like he
3 told me in the interview on Tuesday.

4 Q So you didn't review the records that showed that he
13:17:59 5 was cross-dressing back, I believe, in his late teens, it was.
6 It was well before the crimes, though. You didn't review the
7 records?

8 A I reviewed people saying that, but I don't know where
9 they received that information.

13:18:13 10 Q And also if he was growing his hair out long and
11 acting like a female and doing things -- if he was a female
12 sexually, would that change your opinion at all that this
13 started --

14 A When was that are you talking about? When he was --

13:18:23 15 Q Prior to the crimes.

16 A -- making this ruse?

17 Q No. Prior to the crimes. I think it's a little
18 unfair to call this a ruse.

19 A Do you think it wasn't fair, you said, to call it
13:18:34 20 that?

21 Q I think we should stick to the actual facts here.

22 A Yeah, that's why I call it a ruse. As far as the
23 teen years, we don't have actual objective data to say any of
24 these things. This data is coming from him, as far as I know.

13:18:50 25 I don't have --

13:18:50 1 Q So you're saying that self --

2 A -- any objective piece of data that says that he was
3 doing those things.

4 Q So you are saying that self-reports are always
13:18:57 5 invalid?

6 A They're invalid when a person is a pathologic liar,
7 like Mr. Owen, yeah.

8 Q So you're saying that those other people who also
9 said it, are they also pathological liars because they said
13:19:08 10 that?

11 A No. They were conned by this man.

12 Q So if they witnessed those things, would you agree
13 that, in terms of the cross-dressing, in terms of the long
14 hair, in terms of acting like a female, they witnessed those
13:19:21 15 things prior to the time of the crimes, would you agree that
16 this is not, as you call it, a ruse?

17 A Who witnessed that?

18 Q The, in the records that -- even you say you saw some
19 of the records that showed that, but you claimed that it was
13:19:33 20 someone else saying it and there was no objective data. Those
21 records.

22 A I never said that. Ever have I seen a piece of data
23 that shows that. No, I've never seen a piece of data that
24 shows that. I never reported that to you.

13:19:45 25 Q You just said something about the cross-dressing.

13:19:48 1 That you had seen that but you didn't believe it.

2 A No, I did not say anything about cross-dressing, that
3 I read it that he was cross-dressing. No, I never said that.

4 Q Okay. The record will reflect as it reflects, then.

13:20:00 5 So I know we spoke about individuals having certain, a delusion
6 of sorts, have you ever encountered individuals with this exact
7 delusion?

8 A This is a story. No, I've never heard a person with
9 a genuine delusional disorder ever come up with a story like

13:20:17 10 this. No.

11 Q So earlier in your testimony, you said that you
12 expected him to be a certain way based on what you had read and
13 what you called the story. But if you've never heard this
14 delusion before, you don't know how he should have acted. And
15 you don't know how he should have acted at the time of the
16 crime either, right?

17 A No. Wrong. I do this every day. I know how people
18 with delusional disorder look. And I have worked in the
19 defense on cases where someone has a true delusional disorder.

13:20:44 20 As I said before, they live in the delusion. It doesn't turn
21 off and on whenever it is convenient for them or when something
22 is up for an appeal or they get a retrial. That's not when it
23 comes up. They live it. Those people experience that.

24 And without medication, it doesn't go away. And, in

13:21:00 25 fact, it gets worse; so if he, in fact, he had this delusion

13:21:04 1 that he needed to do this in order to become a woman and he has
2 not yet become a woman, any nurse or female officer would have
3 been at potential risk and he would have done it again. Given
4 how this person is, he would have done it again. He's never
13:21:18 5 done it because it's not true.

6 Q Now, would you say -- you said you worked at Lowell
7 and UCI. And I think on your CV, I saw maybe another
8 institution as a well?

9 A Yes.

13:21:28 10 Q Would he have been given an opportunity on death row
11 to have access to do something like that to women?

12 A Yes, he would be given an opportunity.

13 Q I mean, generally, at least the times we've seen him,
14 he's usually cuffed and things of that nature. I mean, do you
13:21:42 15 really think he would have been able to actually successfully
16 do something like that without someone intervening?

17 A Someone possibly would have intervened, but this guy
18 is so slick that I could see him being able to get away with
19 it.

13:21:58 20 This guy, from what these people are saying,
21 Dr. Eisenstein, he's crawling out of his body trying to be a
22 woman. If this was, in fact, his delusion, that he had to do
23 that in order to be a woman and he was dying to do it, he would
24 do it. He's already done it plenty of times. Nothing would
13:22:13 25 have stopped him from doing it again.

13:22:16 1 Q So I know you're saying that this is a story, but say
2 in another individual, if another individual has that
3 delusional belief, would that establish that they have some
4 sort of severe mental disorder?

13:22:29 5 A What other individual? No one has ever reported a
6 story like this.

7 Q So if someone has a delusional belief -- let's just
8 say any delusional belief.

9 A Yes.

13:22:38 10 Q A long-held fixed delusional belief.

11 A Yes.

12 Q Would that establish a severe mental disorder?

13 A Well, it depends. Because if they truly have that,
14 they would be identified by the staff as someone that has that,
15 and they would be on treatment for that. And then they would
16 be treated for it, and it would be much better.

17 And sometimes, in some cases, it can be cured, in the
18 sense that if they remain on the medication, they no longer
19 fixate on that, and they function normally. That's another
13:23:07 20 thing that goes directly against this story.

21 Q If someone is not medicated, then his beliefs
22 wouldn't go away, right?

23 A They wouldn't. They would only intensify as he got
24 older. It would get more systematized, and he would become
13:23:22 25 more aggressive. Because if that was prompting him to go into

13:23:26 1 women's houses and bash them over the head with a hammer, it
2 would be so intense. That was, he was 23 years old. He's in
3 his -- he's 60 now. I mean, that would be, all these years
4 with no medication? No way. No way possible. He wouldn't be
13:23:44 5 able to survive that.

6 Q But we discussed before that people with different
7 mental illnesses can present differently. It presents
8 differently in different individuals, right?

9 A No. No, not this. If you have a delusional disorder
13:23:57 10 of that nature, you must be treated. If you're not, there's no
11 way he could sit like that. There's no way he could sit like
12 that. There's no way if he had this delusion. He'd be all
13 over you guys. There's no way it would happen.

14 Q All right. So I know you're calling it a story;
13:24:10 15 however, let's just talk about what happened during the
16 evaluation.

17 A Yes.

18 Q So the beliefs that Mr. Owen exhibits -- they're kind
19 of a combination of multiple different beliefs, right?

13:24:22 20 Like, for instance, the first is that he believes the
21 victims did not die in the normal sense that most people
22 believes, right?

23 A He reported that their souls live on, or spirits. He
24 vacillated between the two words.

13:24:37 25 Q Okay. And he believes that their souls or spirits or

13:24:41 1 estrogen or essence, that entered his body through his penis
2 like --

3 MR. BROWNE: Your Honor, objection. Facts not in
4 evidence. And she's saying he believes it. We don't know
13:24:50 5 that. That's an allegation, but that's a fact clearly not
6 established and this doctor does not accept.

7 THE COURT: Sustained. You can rephrase it.

8 MS. FUSARO: Okay.

9 BY MS. FUSARO:

13:25:02 10 Q During the evaluation, did he state that he believes
11 that these victims' souls, estrogen, and essence, and things of
12 that nature entered his body through his penis like a hose?

13 A He said that about their souls or spirits.

14 Q Okay. And we already touched on that he still
13:25:18 15 believes that -- or he has stated that he believes that they
16 still live on inside his body, to this day, right?

17 A That's what he reports but --

18 Q Okay. And that's all I'm asking.

19 A -- he also said he's agnostic. So I don't know how
13:25:30 20 he has any ideation about souls and spirits when he doesn't
21 believe in God.

22 Q Now, when you said you looked at the previous
23 testimonies, I think you said Dr. Berlin, Dr. Sultan. I think
24 you mentioned a couple other doctors that you reviewed. During
13:25:42 25 those and during that testimony, those records also indicate

13:25:47 1 that, whether you believe them or not, that he has stated these
2 beliefs to doctors throughout all of these years, correct?

3 A Not Dr. Peterson, he didn't. He didn't speak to him.
4 Dr. Waddell, not to him. No, he didn't say that to them. This
13:26:01 5 was mostly Sultan and Berlin.

6 Q Now, you also mentioned that Dr. Peterson, you
7 thought he was a great witness. Why was that?

8 A Because he was hired by the Defense and I thought he
9 tried to be objective as possible. You could tell by the way
13:26:19 10 he was answering the questions that he didn't want to lie.

11 Q Did it almost seem like, after reading his testimony,
12 that he almost was testifying more for the State than for the
13 Defense?

14 A That's how I felt, yeah.

13:26:33 15 Q And so would you -- would it surprise you that post
16 conviction attorneys, way back when, claimed that his prior
17 counsel was ineffective in relation to Dr. Peterson's
18 testimony? Would that surprise you?

19 A That would surprise me because Dr. Peterson is
13:26:47 20 actually the one that came up with this shark theory that he
21 lost his mind and he didn't mean to kill them, but he lost his
22 mind, and he was, you know, like, he was just hitting them out
23 of a frenzy, like, a feeding frenzy or something. So he
24 actually made, I feel like, a more rational excuse for this
13:27:06 25 behavior than the delusion story.

13:27:09 1 Q And have you reviewed any of the prior Florida
2 Supreme Court opinions or any of the other opinions from the
3 federal courts in this case?

4 A I didn't have time to do that, no.

13:27:20 5 Q And just going to the fact that -- I know you've said
6 that you do evaluate people that are in death penalty cases.
7 Are you aware of the mental health statutory mitigators as they
8 relate to capital cases?

9 A Not specifically, no. I mean, I feel like you guys
13:27:37 10 have unlimited mitigation potential.

11 Q The ones that are under the statute.

12 A I have not focused on that, no. I mean --

13 THE COURT: I would just add everything is under the
14 statute now.

13:27:51 15 MS. FUSARO: 921.141, your Honor.

16 THE COURT: But everything. All mitigation is
17 statutory mitigation now because --

18 MS. FUSARO: Right. But there's the catchall, yeah.

19 THE COURT: The catchall is now statutory.

13:28:01 20 MS. FUSARO: Yes, that's true.

21 THE COURT: So I just -- if you'd more accurately
22 phrase that, maybe.

23 MS. FUSARO: I said the ones that were related to
24 mental health; so --

13:28:14 25 THE COURT: Okay. All right.

13:28:14 1 MS. FUSARO: -- yeah. Sorry.

2 BY MS. FUSARO:

3 Q Do you recall those, though?

4 A I don't. I don't focus on that, no.

13:28:18 5 Q Okay. Let's see. Is it possible for a person to
6 understand that the State is telling them that they're going to
7 execute them for murdering a person but that the person does
8 not rationally understand that themselves?

9 A Can you ask that again?

13:28:35 10 Q Is it possible for a person to understand the fact
11 that the State is saying that they're going to execute them for
12 murdering an individual; however, the person themselves doesn't
13 understand rationally that that's going to happen to them.

14 A You say is that a possibility?

13:28:52 15 Q Is it a possibility?

16 A I would say no.

17 Q And why is that?

18 A Because if you know that someone is saying that
19 they're going to kill you and why and you say you understand
13:29:03 20 that and they can articulate that, then you understand that
21 yourself.

22 Q So if someone tells you something but you don't
23 believe them, would that mean that you don't have a rational
24 understanding of what you've been told?

13:29:17 25 A If I did not believe them?

13:29:20 1 Q Correct. Like, if I told you the sky is green, like,
2 you wouldn't believe me, right? That wouldn't be a rational
3 understanding, if I was saying that the sky is green. You know
4 that, but would another person maybe not know something of a
13:29:32 5 rational understanding. That's probably a bad example but --

6 A I was about to say, we're talking about death here,
7 and skies are two different things.

8 Q I've not had lunch yet. I apologize.

9 A I still don't, the nature of this, how long he'd been
13:29:43 10 on death row and the nature of this, communications he has with
11 other people, the amount of people appeals --

12 Q Well, I'm talking in general. Not even specifically
13 talking about not just him. So, say, you were to evaluate and
14 they say, hey, the State's telling me X, but they believe Y.

13:29:57 15 Would that show they don't have a rational
16 understanding of X?

17 A I would have to ascertain whether or not I believed
18 that they didn't believe it.

19 Q Correct. So if the person did truly believe that,
13:30:08 20 then would you think they lacked a rational understanding?

21 A I'd have to assess that. I'm going to say still no
22 to that. I still --

23 Q So you are saying that it's never possible?

24 A I would have to ascertain the nature of the, quote,
13:30:23 25 unquote, disbelief because you can have a disbelief --

13:30:25 1 Q Understandable. But it is possible.

2 A -- I can't believe this is about to happen to me, but
3 you still know it's happening to you, you know. I mean -- and
4 you know why. So, I mean, for me, I would say that would be an
13:30:35 5 extreme rarity, and I have never seen it, and I can't
6 anticipate.

7 Q It's still possible?

8 A No, not possible, until I see it.

9 Q So if it's a rarity, that would mean that it's
13:30:44 10 possible, right?

11 A I'll have to see it to believe it.

12 Q Okay. I mean, I understand maybe you have not seen
13 that, but it is a possibility, correct?

14 A I'm going to say no.

13:30:57 15 Q Okay. And during the evaluation, was it discussed
16 that one of the reasons that you disbelieve Mr. Owen had some
17 of these beliefs is because he has not pursued gender identity
18 treatment in prison?

19 A That's one of the factual pieces of data that
13:31:10 20 supports my opinion, yes.

21 Q Now, I know you work at Lowell currently.

22 A Correct.

23 Q So that's a women's prison, correct?

24 A Yes.

13:31:17 25 Q And you worked at UCI in the past?

13:31:19 1 A Yes.

2 Q Would you say that Lowell is a little bit more
3 relaxed than UCI in terms of some of their standards?

4 A No, I would not say that.

13:31:29 5 Q Okay. So would it definitely be more relaxed in
6 terms of Lowell versus death row at UCI?

7 A What do you mean by relaxed?

8 Q Well, in most cases, the people at Lowell -- it's a
9 general population situation in a lot of the prison facility,
13:31:44 10 is it not?

11 A Right. But they have inpatient, too. I mean, they
12 have inpatient and outpatient there at Lowell. They have close
13 management. They have everything that UCI has.

14 Q So in terms of death row at UCI --

13:31:56 15 A Well, I don't believe they have that.

16 Q I'm sorry, what?

17 A Wait. Do they have that? I don't know. I've not
18 been -- I don't know where death row is for women.

19 Q Okay. But for a death row for UCI, you would agree,
13:32:09 20 is at UCI, right?

21 A Yes.

22 Q Or excuse me, for death row for males would be UCI?

23 A And FSP, I believe. Oh, wait, no. They moved it all
24 to UCI.

13:32:18 25 Q Correct, yeah. Other than death watch, of course.

13:32:20 1 So in terms of that -- now I know you had mentioned that there
2 were some things that he would have maybe had available to him
3 since 2017.

4 What were those, just to briefly summarize what might
13:32:32 5 be available?

6 A As of 2017, when you say what was available, what
7 exactly are you asking?

8 Q I think you may have mentioned women's panties and
9 underwear --

13:32:48 10 A Yeah.

11 Q -- things of that nature?

12 A They're allowed panties and bras.

13 Q I just want to make sure I didn't miss anything.

14 A I'm surprised at that, but, yes, they're allowed
15 that.

16 Q Okay. So would inmates on death row at UCI be able
17 to request women's panties and underwear and things of that
18 nature?

19 A Yes. And they're a part of this program. They are
13:33:03 20 allowed all of those accommodations.

21 Q Do you know for sure that death row is as well?

22 A I know for a fact because I specifically asked. This
23 was in the context of a death row inmate. So when I spoke with
24 the mental health director, I spoke with him about that. And
13:33:17 25 he's the mental health director over FSP and Union. And he

13:33:19 1 said that the accommodations are they are pat-searched by a
2 woman. They get to shower alone. They get the panties. They
3 get medication management, psychotherapy, with a focus on these
4 issues.

13:33:31 5 Q And also on death row, would he be able to alter his
6 clothing in any way to make it appear more feminine?

7 A I don't think so. I mean, women inmates look the
8 same as male inmates, as far as their clothes. They don't
9 have, like, fitted uniforms or anything.

13:33:50 10 Q So he wouldn't be able to do anything to make that
11 more feminine. It's against policy, I guess, to put it that
12 way?

13 A That shirt, that uniform, is unisex. I mean, women
14 and men wear that. So, I mean --

13:34:04 15 Q And what about in terms of hairstyle? Is there some
16 sort of standard for what a men's haircut can be?

17 A He can grow his hair out, if he wanted to. He
18 actually did at one point. In the '90s, when he was doing
19 this, he did grow it out.

13:34:17 20 Q Now, wasn't that when he was in outside court,
21 though? When he went out to Palm Beach County Jail?

22 A I don't have no idea. But I saw this as a DOC
23 picture. So I don't know where he was located at at the time.

24 Q Wouldn't that picture be taken when he came back to
13:34:29 25 FSP from outside court? So they may not have time to cut his

13:34:35 1 hair yet, is that a possibility?

2 A I don't know, but they are allowed to grow their hair
3 out in this program, in this transgender program they're
4 allowed to do that. That's not --

13:34:39 5 Q Even on death row?

6 A Yeah.

7 Q And if he wasn't seeking mental services or if he was
8 refusing mental service visits, would anyone have proactively
9 come to tell him after 2017 that anything that was available to
10 him?

11 A This guy found Dr. Berlin in the United States and
12 sought him out, befriended him and brought him down for his
13 defense. I think he can find out about medical services that
14 are offered within the prison.

13:35:05 15 Q Again, that was back in the '80s versus 2017, but no
16 one would have proactively said anything to him, right?

17 A I don't know that they wouldn't have said anything to
18 him.

19 Q Okay. But it wasn't something -- there's no program
13:35:19 20 where they go around telling everyone other than the initial
21 orientation and things of that nature?

22 A I don't know that a bulletin went out to every unit,
23 saying, hey, listen, guys, if you want to look like a girl,
24 sign up. I don't know that that happened.

13:35:32 25 Q Correct. And do you think -- since you do work in

13:35:33 1 the prison arena as well, do you think that if people have
2 sought this treatment, do you think that ever makes them more
3 subject to ridicule or brutality or anything like that?

4 A I really don't know. I have not spoken with any
13:35:49 5 transgendered inmate in the male prison. So I don't know that.

6 Q And for -- normally for male inmates, I understand
7 that it may be different in terms of this program, but there
8 are standards in terms of the length of their hair at UCI,
9 right?

13:36:07 10 A I'm not exactly sure what the, you know, what the
11 boundaries of that are. I don't know.

12 Q Okay. But there are grooming boundaries and things
13 that they have to do, or else they'll get in trouble, right?

14 A I don't know.

13:36:21 15 Q Oh, okay. What about in terms of keeping their cell
16 in a certain fashion? Will they, do you know if they get in
17 trouble for not keeping their cell tidy?

18 A I don't know what you mean by keeping and getting in
19 trouble.

13:36:31 20 Q Like, getting a DR or something like that.

21 A I've never seen an inmate get a DR for having their
22 cell not clean.

23 Q Okay.

24 A And I've seen a lot of cells.

13:36:40 25 Q Have you seen Mr. Owen's cell over in death watch?

13:36:43 1 Because I know you were speaking about that earlier.

2 A I wished I could have. I didn't get to see that.
3 Every officer told me it was very tidy.

4 Q And you mentioned him having books. Did you see any
13:36:52 5 of these books in his cell?

6 A No. They told me which books he got brought in.

7 Q Okay. And in terms of those books, so you also
8 haven't seen him read them or know if he understands them?

9 A No. But why would he have a physics book come in? I
13:37:06 10 mean, that wouldn't be on the top choice of items for just a
11 random choice of a physics book.

12 Q All right. So let's see here. I know we did talk
13 briefly, I guess we'll go back to that, how you said you
14 prescribed hormone therapy to an individual that was having
13:37:29 15 gender -- was it gender dysphoria?

16 A Yes. And he was acting out in a sexual manner. So I
17 was feeling like he was in danger due to that, and I felt like
18 I needed to treat him for that because I thought it could help
19 him so he would not have these issues. So I felt that he was
13:37:46 20 in danger not only to himself hurting himself but other inmates
21 hurting him.

22 Q Do you think he was in danger from the other inmates
23 trying to hurt him because of the fact that he had the gender
24 dysphoria?

13:37:59 25 A No. It was because he was hypersexual. And so I

13:38:01 1 feel like, you know, everybody has different sexual preferences
2 but in prison, I think they're a little bit more aggressive.
3 And I don't believe, based upon part of his thought process and
4 his immaturity, that he would have understood that he was
13:38:18 5 opening himself up for a lot of violence.

6 Q So are you saying that maybe he lacked the capacity
7 to make a well-informed decision?

8 A I believe that due to his immaturity that he didn't
9 understand the degree that he could be used sexually.

13:38:35 10 Q And I know you mentioned that you were trying to aid
11 some of the other, I think you said psychiatric symptoms. Does
12 that mean that his other medical and mental health issues were
13 not well-controlled yet?

14 A They were well-controlled in the sense that I felt
13:38:52 15 that I had got him to a certain point where he was not manic.
16 He was euthymic, but he was still hypersexual due to the fact
17 that he wanted to be involved with men sexually.

18 And so in my opinion and how I treated him was I
19 wanted him to have estrogen to decrease that hypersexuality
13:39:25 20 that's typically driven by testosterone.

21 Q Are you aware of the generally accepted criteria for
22 initiating hormonal therapy?

23 A In what case?

24 Q In the healthcare journals and in other articles?
13:39:45 25 Are you aware of that?

13:39:46 1 A But what I'm saying is what diagnosis are we talking
2 about?

3 Q In terms of just initiating hormonal and surgical
4 treatment for individuals with gender dysphoria.

13:39:58 5 A Okay. This guy did not have gender dysphoria.

6 Q Oh, I apologize. I thought a couple questions back
7 you said he had gender dysphoria?

8 A No. He was hypersexual and, I mean, there could have
9 been some questions there, but he wasn't dysphoric over it. He
13:40:11 10 was just hypersexual, in general.

11 Q Okay. I apologize. At the beginning, it seemed like
12 you had answered yes to the fact that this individual did also
13 have gender dysphoria. So -- okay.

14 Oh, okay. When you were doing your direct
13:40:28 15 examination, you said you would think about some things other
16 than antisocial personality disorder. I assume, when you're
17 drafting the report and making diagnoses. What other diagnoses
18 were they?

19 A I think about every diagnosis. You know, in
13:40:43 20 psychiatry, when we're doing a differential diagnosis, we're
21 looking at five major categories. We're looking at cognitive
22 issues, mood disorders, anxiety disorders, psychotic disorders,
23 substance use disorders. So we're looking at those.

24 Additionally, I have an interest in personality
13:41:01 25 disorders. So I look at that. And then anything else that

13:41:06 1 pops out at you. In this particular case, I was sort of
2 looking at possible paraphilias because I had read that one,
3 somebody said something about him stealing a bathing suit out
4 of a house one time or something or -- I definitely knew that
13:41:22 5 he had been arrested or charged with exhibitionism. So those
6 are paraphilias. So I was looking at those as possibilities as
7 well. So when I was thinking about that, thinking about him, I
8 was thinking about all of those possibilities.

9 Q Okay. And then in terms of schizophrenia, do
13:41:43 10 schizophrenics always exhibit paranoia at all times?

11 A At all times?

12 Q At all times, yeah.

13 A And then you have to look at whether or not they're
14 being treated or not. So that's a whole other thing.

13:41:54 15 I wouldn't say at all times do people with
16 schizophrenia have paranoia.

17 Q Okay. And the DOC personnel that you spoke with,
18 none of them had any mental health training or any mental
19 health degrees, right?

13:42:11 20 A I don't know if they have any mental health degrees,
21 but I do know as part of their officer training, they do have
22 looking at mental health patients. They do as a part of it
23 because they have different protocols, you know, such as, you
24 know, use of force or use of, you know, pepper spray and things
13:42:31 25 like that. And what sort of criteria are you looking at? What

13:42:35 1 would be a behavior that would lead somebody to do that? How
2 to talk someone down.

3 Q But they can't make diagnosis -- they can't diagnose
4 for mental illness or anything like that?

13:42:45 5 A Well, they're not going to make a diagnosis, but they
6 certainly -- I mean, I believe that every human being can sort
7 of look at someone and see if they're off or not.

8 So, but I do believe officers probably have more
9 training than the average person just because that is a safety
13:42:59 10 issue for them. So they have to address that, as I talked
11 about, in their training. They have that in their training.

12 Q Okay. But some of those individuals that you
13 interviewed prior to the evaluation, they had only known
14 Mr. Owen for approximately two weeks; is that correct?

13:43:16 15 A You said some of them?

16 Q Yeah, some of them.

17 A Yeah, because they've known him, like, when he's been
18 in FSP.

19 Q Yes.

13:43:23 20 A So, yeah, they're the most immediate people to him
21 right now, which, again, in this particular thing, we're
22 looking at that particular question. So that's why they were
23 relevant.

24 Q And I know we talked about IQ level, but would you
13:43:37 25 agree if their records show about 20 years ago that the IQ was

13:43:41 1 higher than recently, could that show the possibility of
2 dementia in a person?

3 A If their IQ was higher 20 years ago?

4 Q Uh-huh.

13:43:50 5 A In this inmate or anyone?

6 Q In anyone, just in general.

7 A If their IQ is less 20 years later, I don't know that
8 that would make me say that they have dementia. Is that the
9 question?

13:44:06 10 Q Or could it show dementia? I think was the question.

11 A Dementia has not very much to do with IQ. And, in
12 fact, people with higher IQs tend to show dementia way later
13 than people with lower IQs. So that's where I would see --

14 Q Okay. I was just trying to clarify there.

13:44:25 15 A That's where I would see a relevance of the IQ
16 number, but in dementia when you're making that diagnosis,
17 that's not typically any criteria for looking at that.

18 Q Okay. I just wanted to clarify because I think in
19 the direct testimony, I believe there was some testimony that
13:44:38 20 he may have -- his IQ may have gotten higher. So I just wasn't
21 sure if there was any reason why that came up. So I was
22 clarifying for that purpose.

23 A Did you want me to answer that, why I said that?

24 Q No. I was just explaining to you exactly why because
13:44:52 25 there was other testimony that came out afterwards that fixed

13:44:56 1 that, but I didn't know if there's a relevance. So I wanted to
2 ask that.

3 Is the length of time a delusion has been fixed in
4 someone's mind a factor in determining whether -- isn't it true
13:45:17 5 that the length of time that a delusion has been fixed in
6 someone's mind is a factor in determining whether the delusions
7 are actually genuine delusions?

8 A Is that a factor?

9 Q Yes.

13:45:30 10 A No.

11 Q In someone that experiences delusions?

12 A No.

13 Q So what is a fixed delusion, then?

14 A A fixed false belief means that it remains stable.

13:45:43 15 But this is the factor that you sort of didn't ask about -- was
16 the longevity of time would make an increased intensity of the
17 delusion. So it would not remain static for 30 years. It
18 would increase in intensity over time if it went untreated. So
19 there's a factor there. There's intensity and duration and
13:46:09 20 whether or not they have had treatment or not.

21 Q So duration is one of the factors, though?

22 A Not necessarily because I've treated people with
23 delusions, and I've also seen forensic cases of delusional
24 disorder. And the delusion has not occurred. I have a case
13:46:25 25 I'm doing right now that I'm hired by the prosecution in a

13:46:28 1 stalking case, and his delusion has been going on about this
2 one particular thing for probably six months, and he meets the
3 criteria for insanity.

4 So it has zero to do with that necessarily. It
13:46:45 5 doesn't do anything. I mean, it's a fixed false belief, but
6 it's the intensity of that and whether or not it's responding
7 to treatment.

8 Q Okay. Because before I thought you said intensity
9 and duration. Was that not --

13:46:55 10 A It could be --

11 Q Okay.

12 A -- but it's not necessary.

13 Q Okay. But it could be?

14 A Like I'm saying, like, it could be a short period of
13:46:59 15 time. It's the intensity of it as well. So there's a bunch of
16 different things. But -- and I do believe, like, in the
17 criteria, it does talk about, like, if it's six months or more
18 or something to be able to meet the criteria.

19 Q Okay. Let's see here. So in terms of the report,
13:47:13 20 you said that he had antisocial personality disorder.

21 In terms of the criteria, wouldn't you agree that if
22 he hadn't been having evidence of conduct disorder prior to the
23 age of 15, that you wouldn't be able to diagnose him with
24 antisocial personality disorder?

13:47:32 25 A He was gang-raping a girl in an orphanage. So I

13:47:35 1 mean --

2 Q Was that before the age --

3 A -- I don't know the exact age of that.

4 Q So if it, so just -- let's say if that was not before
13:47:39 5 the age of 15, would there be evidence of antisocial -- or,
6 excuse me -- evidence of conduct disorder prior to the age of
7 15?

8 A He has evidence of conduct disorder.

9 Q And what's that?

13:47:51 10 A He gang-raped somebody when he was a teenager. Now,
11 just because we don't have the exact age of that, it doesn't
12 matter. He was a teenager doing activities like that.

13 Q Doesn't the DSM say if it occurred prior to the age
14 of 15, that's part of the DSM, right?

13:48:07 15 A If they have evidence of it.

16 Q Correct.

17 A Right. Well, that's enough right there for me.

18 Q And so your evidence that you're stating to me is
19 potentially, well, it is after the age of 15 --

13:48:17 20 A Is it?

21 Q -- so do you have any other evidence of that?

22 A I don't know that he gang-raped a girl after age 15
23 or before age 15. I don't know how we have objective evidence
24 to say that or not. I would have to have that.

13:48:31 25 Q But you would agree that the DSM does say that if

13:48:33 1 there is no evidence of conduct disorder prior to the age of
2 15, you can't diagnose antisocial personality evidence in any
3 case?

4 A Evidence. Evidence of? You don't have to meet the
13:48:43 5 criteria of conduct disorder. You have to have evidence of.
6 And he had enough behaviors back then that I would say he had
7 evidence enough because you don't just pop up one day and
8 gang-rape a little girl. So I would say that he probably was
9 doing behaviors before that --

13:48:57 10 Q But you can't point to any --

11 A -- may or may not have gotten caught.

12 Q -- for us? You can't point to any specific behavior
13 that you know of that you've seen in the records, right?

14 A I don't have records back then --

13:49:05 15 Q Okay.

16 A -- from back then.

17 Q So other than that, another piece of the criteria in
18 the DSM is that the antisocial behavior, if it's exclusively
19 during the course of schizophrenia or bipolar disorder, then
13:49:17 20 you also wouldn't be able to diagnose him with antisocial
21 personality disorder; is that correct?

22 A That is part of the criteria, and that's exactly why
23 he meets the criteria because there's no psychosis.

24 Q But a person that does meet the criteria and does --
13:49:31 25 or excuse me -- does have schizophrenia or bipolar disorder and

13:49:34 1 the antisocial behavior is, within the course of that, would
2 not qualify for that diagnosis of antisocial personality
3 disorder, correct?

4 A People with co-morbid schizophrenia or bipolar
13:49:45 5 disorder could have antisocial personality disorder. What
6 they're saying is the antisocial behaviors are the product of
7 the psychosis. That's what they're saying.

8 I have definitely had patients that have
9 schizophrenia and antisocial personality disorder.

13:49:59 10 So it's not excluded those two things. What it's
11 saying is it's the product of the delusion that's making the
12 behavior.

13 Q Correct. So if the behavior is a product of the
14 delusion, that's related to those other illnesses, we wouldn't
15 be able to diagnose for antisocial personality disorder?

16 A You wouldn't because you would know that those
17 behaviors were, they were the product of a delusion. And
18 once --

19 Q Correct.

13:50:24 20 A -- you treated it and they would stop, then you would
21 know.

22 Q Other than that -- we'll go back to the evaluation
23 itself.

24 Are you aware that counsel for Mr. Owen requested
13:50:33 25 that your evaluation be videotaped?

13:50:37 1 A I have no idea what they requested.

2 Q Okay. So that wasn't an objection on your part to
3 that.

4 A It doesn't surprise me. I've been videotaped many
13:50:45 5 times doing interviews.

6 Q And so there's no reason why you wouldn't have wanted
7 to be videotaped because you have been videotaped previously?

8 A Well, I don't like them to be videotaped, but if they
9 are, I don't have any issues with it because it occurs with
13:50:59 10 such frequency that I'm used to it.

11 Q And do you recall the Commission requesting that
12 counsel for Mr. Owen leave the interview room prior to Mr. Owen
13 being brought in?

14 A What did you ask me?

13:51:09 15 Q Do you recall the Commission asking counsel for
16 Mr. Owen to leave the interview room prior to Mr. Owen being
17 brought into the interview room?

18 A Doesn't the Commission include me?

19 Q It does.

13:51:20 20 A I didn't ask for that to happen. So I would say the
21 answer to that is no because I never asked for that.

22 Q Did you witness the other two members of the
23 Commission ask for that?

24 A No, because Dr. Myers was sitting right next to me,
13:51:30 25 unless he did it at another time, but I don't -- I can't

13:51:35 1 imagine I did not see it, and I did not do it; so if I'm part
2 of it, that inclusive word, then I would say, no, they did not
3 do it because I didn't do it.

4 Q Okay. So to your knowledge, at least, that did not
13:51:47 5 happen. Okay.

6 A It did not happen.

7 Q So there was no attempt to hide any conversations or
8 anything from his counsel?

9 A What conversations?

13:51:57 10 Q If someone had asked him to leave the room, there was
11 no attempt to hide that, anything that was occurring between
12 the three of you? If someone had asked them to leave the room,
13 it wasn't because you were trying to hide anything?

14 A Oh, okay. So when we were just talking. It had
13:52:13 15 nothing to do with Mr. Owen. There was a point, I believe,
16 when Dr. Myers may have asked him to leave the room because we
17 needed to speak about the interview and the case prior to the
18 person coming in. I believe that did happen.

19 Q Okay. Is there a reason why you wouldn't want that,
13:52:25 20 wouldn't have wanted that transparency in order to discuss that
21 in front of him?

22 A We would not want to discuss that in front of him.
23 We would not want to discuss how we're going to go about
24 talking about stuff, who's going to be talking about what. No,
13:52:38 25 you wouldn't want to talk in front of the Defense attorney

13:52:42 1 about that. Why would you? That would be dumb, to me.

2 Q I mean, is there -- is there any reason? Is there
3 any information that you didn't want him to have?

4 MR. BROWNE: Objection.

13:52:50 5 THE COURT: Sustained.

6 MR. BROWNE: Asked and answered.

7 BY MS. FUSARO:

8 Q Okay. And then about how long did you spend
9 interviewing the personnel from DOC?

13:53:04 10 A I don't know. That was one thing that I did not do.
11 I did not write down a time, and I was, I just didn't do that.
12 And we actually asked later if somebody recalled the time
13 because I didn't recall the time.

14 Q Do you have a ballpark about how long you spoke with
13:53:19 15 each one of them?

16 A It wasn't long. I mean, we only asked, like, sort of
17 a set amount of questions, you know. And so each officer, I
18 would say maybe ten minutes to speak with them because the
19 officers were very compliant with the interview, but they were
13:53:34 20 not verbose because the answers all were the same: No, no, no,
21 you know, like, no, he wasn't acting weird. No, he wasn't
22 doing any gender behaviors. No, he wasn't acting psychotic in,
23 you know, like, how, what he normally did.

24 How, what was the nature of their relationship was

13:53:52 25 sort of what we were talking about. So they were not lengthy

13:53:56 1 conversations, but they all basically answered the questions
2 the same.

3 Q And I know in your direct examination, you said that
4 you didn't want to hear about his delusions. Wouldn't his
13:54:05 5 delusions, better related to his execution, be part of
6 determining whether he's competent to be executed?

7 A I was tired of listening to the story. I heard it.
8 I allowed him to have the story. I allowed Dr. Myers --
9 Dr. Myers talked to him most about the story, but I was over
13:54:27 10 listening to the same story.

11 Q So you were unable to steer him away from that?

12 A No, I did. I said, I don't want to hear that story
13 anymore. I mean, I said something along that line. I can't
14 remember the exact wording I said, but I went, answer my
13:54:42 15 question. And that's what I was asking. So it was -- he was
16 able to do that.

17 Q And does whether Mr. Owen exhibits a specific type of
18 mental illness matter as long as he doesn't have a rational
19 understanding of the connection between his crime and the
13:54:57 20 punishment that he's to receive?

21 A You've got to ask that question again.

22 Q So does whether Mr. Owen exhibits a specific type of
23 mental illness, does that matter as long as he doesn't have a
24 rational understanding of the connection between his crime and
13:55:13 25 the punishment that he is to receive?

13:55:17 1 A If the origin behind the thought process that leads
2 him not to understand the condition is questionable, the whole
3 thought process is questionable. So, I mean --

4 Q But you would agree --

13:55:33 5 A -- the diagnosis, it doesn't matter what the
6 diagnosis is, really. It matters about the thought process.

7 Q So it would not matter if he was suffering from
8 schizophrenia or antisocial personality disorder or gender
9 dysphoria. None of that matters. It's about the thought
10 process, right?

11 A Well, but you have to have a disorder that affects
12 your process in a way that you would then not understand what's
13 going on. You have to have a disorder, a true disorder.

14 Q But the whole piece is whether he has a rational
15 understanding, correct?

16 A You have to have a true disorder that affects your
17 thought process to where you are not understanding that, and he
18 does not have that.

19 Q And does a mentally ill person exhibit symptoms all
13:56:12 20 the time, 24 hours a day?

21 A An untreated one, yes.

22 Q Every single one of them experiences that all day
23 long?

24 A If this person had a severe mental illness that has
13:56:25 25 been persisting for 40 years, untreated, it would be going on

13:56:30 1 24 hours a day because, if what he's saying is true, that he
2 wants to be a woman, if that is, in fact, a delusion, that is
3 24 hours a day, isn't it?

4 Q That is, but we wouldn't necessarily see that on the
13:56:44 5 outside, would you?

6 A Yes, you would. You would see it in his hair. You
7 would see it in his mannerism. You would see it in how he's
8 speaking. You would see it in everything. You can't turn off
9 being a female. You can't.

13:56:56 10 Q We discussed he may not be able to grow out his hair
11 potentially, if he's not part of that program, right?

12 A If I was bald, you would know I was a woman.

13 MS. FUSARO: May I have a moment, your Honor?

14 THE COURT: You may.

13:57:08 15 (Pause in the proceedings.)

16 BY MS. FUSARO:

17 Q Now, you don't have to actually be feminine, though,
18 in order to be female, right?

19 A No, you don't.

13:57:44 20 Q And I know, and I think it was in your direct. You
21 mentioned that he had an impressive knowledge on pro se
22 filings. Do you know for sure that he wrote those pleadings?

23 A I was waiting for that question. The thing is, when
24 you look at his colloquy, he is speaking with the judge back
13:58:02 25 and forth. He's not reading from a script. He's speaking.

13:58:05 1 He's citing case law. He's doing this. He's doing that. He's
2 talking in realtime. He's actually questioning his own
3 attorney's competency. That's what he's doing. You can't
4 write that down, and you can't make that up. And you can't
13:58:17 5 just recite something from memory.

6 Q Are you talking about from 1997?

7 A I'm talking, which one do I have printed out? Let me
8 see which one it is. It was so impressive. But you can tell
9 that he's not reading it from someone. I'm sorry. This desk
13:58:35 10 is small.

11 Q Do you know if it was recent? And that might speed
12 it up.

13 A No, it's not recent.

14 Q Okay.

13:59:05 15 A This was back when he was making all these appeals --

16 Q Okay.

17 A -- talking about how serious the situation is. His
18 life's on the line, that kind of thing.

19 Q So as long as we, I just wanted to know if it was
13:59:16 20 recent or not. If you don't know the date, that's fine. If
21 it's not recent, that's fine.

22 A No, I don't know the date. It was during his appeal
23 time.

24 Q All right. And you said he ran the show in past
13:59:25 25 interviews?

13:59:26 1 A Oh, yeah.

2 Q Did he run the show during this interview?

3 A No.

4 Q And since you didn't see Mr. Owen's email responses

13:59:37 5 back, you don't know if they were legible or made sense. You

6 would have to speculate on that, right?

7 A Well, I've seen his writing, and he wrote some of the

8 appeals out. So --

9 Q Have you seen anything recent, though?

13:59:47 10 A -- I did say that. No, I didn't get to see that.

11 Q Okay.

12 A I do know he writes a lot, though, from what the

13 officers tell me. The colloquy was on November 5, 1997.

14 Q Thank you. And do you believe that someone's

14:00:03 15 background is irrelevant when you're reviewing competency?

16 A Can you ask that question again?

17 Q Do you believe that someone's background is

18 irrelevant when you're determining competency?

19 A What do you mean by background?

14:00:13 20 Q Like, in terms of their childhood or family history

21 or things leading up to the time --

22 MR. BROWNE: Objection, your Honor. This has been

23 asked and answered. This was rather early on in

24 cross-examination, I believe.

14:00:27 25 MS. FUSARO: She went a little into it, but that's

14:00:30 1 fine.

2 THE COURT: She can answer the question.

3 THE WITNESS: Do I think that it's irrelevant? I
4 believe I did say it was irrelevant to me in this
14:00:40 5 particular case because it had really nothing to do with
6 the questions that they were answering.

7 BY MS. FUSARO:

8 Q Could it be relevant if it wasn't for this limited
9 question?

14:00:54 10 A What would be the question?

11 Q In other competency determinations, would background
12 be relevant to you?

13 A It depends on what it was.

14 Q Other than that, has anyone ever made any complaints
14:01:09 15 against your license?

16 A I don't believe so.

17 Q Would you know if someone made a complaint against
18 your license?

19 A I believe the Board would, the State would contact
14:01:19 20 me.

21 Q Even if it was unfounded?

22 A I don't know. I don't know -- I believe that they
23 would. I mean, maybe they wouldn't, if it was unfounded. I
24 have no idea.

14:01:35 25 Q You don't get a chance to respond to it, to tell if

14:01:37 1 it's founded or not?

2 A I don't know because I have not received any
3 communication like that, that someone was questioning my
4 license. I don't know. You say if somebody made a complaint
14:01:50 5 against me?

6 Q Correct. If I show you something, would it maybe jog
7 your memory to see if it's something you have received?

8 A Okay. Yes.

9 MS. FUSARO: Your Honor, may I approach?

14:02:02 10 THE COURT: You may.

11 (Pause in the proceedings.)

12 MR. BROWNE: A defendant made a complaint against
13 her?

14 THE WITNESS: A defendant? Wow.

14:02:27 15 BY MS. FUSARO:

16 Q See if you received that or not.

17 A Thank you.

18 MR. BROWNE: Your Honor, objection. I think, on
19 relevancy, it appears that Mr. Covington, who is, I
14:02:37 20 believe, on death row made a complaint against the doctor.
21 I don't know that that's relevant to these proceedings.

22 THE COURT: Is the complaint -- was it determined to
23 be unfounded?

24 MS. FUSARO: I believe it was determined to be
14:02:46 25 unfounded, but when I asked if she --

14:02:47 1 THE COURT: So what are we doing?

2 MS. FUSARO: -- if anyone has ever made a complaint
3 against her license --

4 THE COURT: Sustained. None of that's relevant.

14:02:53 5 THE WITNESS: I never received it. This is the first
6 I've ever seen of it. I do know who Edward Covington is.
7 And it looks like it was submitted by you guys. So that's
8 probably why.

9 BY MS. FUSARO:

14:03:01 10 Q Thank you. Earlier today, Dr. Myers said it could be
11 possible that what Mr. Owen was experiencing was a delusion.
12 Are you saying --

13 MR. BROWNE: Objection, your Honor. Facts not in
14 evidence. He most certainly did not accept the veracity
15 of the delusion.

16 MS. FUSARO: He said it was a possibility.

17 MR. BROWNE: He rejected that possibility, from my
18 recollection.

19 THE COURT: Yeah. As phrased, I'm not going to allow
14:03:52 20 the question. Sustained.

21 BY MS. FUSARO:

22 Q If someone has a fixed delusion that goes untreated,
23 you would expect a person to continue to have that belief
24 ongoing, even for decades?

14:04:10 25 A Can you ask that question again?

14:04:11 1 Q If someone has a fixed delusion that goes untreated,
2 you would expect a person to continue to have that belief
3 ongoing, for decades?

4 A Yeah, I expect it, like I said, to get worse over
14:04:20 5 time.

6 Q And do people with mental health issues often
7 question their attorney's work or claim that they're
8 ineffective? If you have any experience with that.

9 A I have lots of experience. Yes, they do all of the
14:04:33 10 time. I mean, that's common.

11 MS. FUSARO: One moment, your Honor.

12 (Pause in the proceedings.)

13 MS. FUSARO: No further questions. I pass the
14 witness.

14:04:50 15 THE COURT: Any redirect?

16 MR. BROWNE: Very briefly, your Honor. I understand
17 we're past lunch, the lunch hour, and that's important to
18 some of us.

19 REDIRECT EXAMINATION

14:04:58 20 BY MR. BROWNE:

21 Q Doctor, you mentioned that you received some
22 materials, and somebody from the Governor's office contacted
23 you to see if you were even available, correct?

24 A That was the original question: Was I available to
14:05:12 25 do something short notice.

14:05:13 1 Q And did you subsequently receive an email, appointing
2 you or letting you know that you would be appointed by the
3 Governor?

4 A I believe I got an email, but I can't recall that.

14:05:25 5 MR. BROWNE: I'm showing the Defense what will be the
6 next State's exhibit. I'm not sure.

7 I only have one copy. I apologize, your Honor. This
8 came up.

9 MS. FUSARO: Okay. So this isn't -- I see what
14:05:41 10 you're saying. Okay.

11 MR. BROWNE: Okay?

12 MS. FUSARO: Yeah, I was talking about the executive
13 order.

14 MR. BROWNE: May I approach and have this marked,
14:05:44 15 your Honor?

16 THE COURT: You may.

17 MR. BROWNE: So it will be State's now 6?

18 THE CLERK: 6.

19 MR. BROWNE: I guessed right. May I approach the
14:05:56 20 witness?

21 THE COURT: You may.

22 BY MR. BROWNE:

23 Q I'm handing you, Doctor, what has been marked as
24 State's Exhibit 6. Does that appear to be the email --

14:06:09 25 A Yes.

14:06:09 1 Q -- from the Governor's office?

2 A Yes.

3 Q And that was the email that initiated your work on
4 this case; is that correct, Doctor?

14:06:18 5 A Yes.

6 Q And you did not receive any material prior to the
7 Governor's office telling you that you were going to be
8 appointed; is that correct?

9 A Correct. I got a FedEx box on Friday, which was
14:06:30 10 after. This was Thursday.

11 MR. BROWNE: May I approach, your Honor?

12 THE COURT: You may.

13 BY MR. BROWNE:

14 Q And, Doctor, just briefly, if Mr. Owen truly believed
14:06:43 15 this delusional system, he would have told the mental health
16 professionals at the time of his initial trial, right?

17 A Definitely.

18 Q And he didn't have any problem revealing this to you,
19 did he?

14:06:59 20 A Revealing what? This --

21 Q His story.

22 A No. He pushed it forward.

23 Q Okay. So he pushed it forward. But at the time of
24 trial, did you see a report from a psychiatrist,
14:07:09 25 Lionel Blackman?

14:07:12 1 A Yes, I did.

2 Q Do you recall that?

3 A Yes, I did get it.

4 Q And was that a significant data point for you? That
14:07:19 5 that doctor, who is a psychiatrist, asked him why he committed
6 the murders?

7 A Yes. That was November 1984. And, yes, I did
8 receive that. And he asked specifically why.

9 Q And Mr. Owen said, for a thrill, didn't he?

14:07:36 10 A Yeah. He said, maybe I just want to get away with
11 things. Like, after breaking and entering, I feel like I've
12 accomplished something if I elude the police. I like danger,
13 overcoming adversity. That's why I joined the Army. I wanted
14 to go to war. You only come around once. You might as well
14:07:54 15 experience everything.

16 Q So this is right after he, allegedly, according to
17 this story, was sucking the essence out of these women. So
18 that was fresh in his mind because, allegedly, that was the
19 cause or the inspiration for these murders.

14:08:10 20 A Right. That's what he's stating now, but not at that
21 time, he wasn't.

22 Q No. So that's another data point inconsistency that
23 lead you to believe that this story was a fable, wasn't it,
24 Doctor?

14:08:24 25 A Yes.

14:08:25 1 MR. BROWNE: Your Honor, that's marked as State
2 Exhibit -- may I retrieve it?

3 THE COURT: You may.

4 MR. BROWNE: That's just a --

14:08:31 5 THE WITNESS: Oh, wait. This is mine.

6 MR. BROWNE: Oh, that's your copy. There's --

7 THE WITNESS: Don't take it from me.

8 MR. BROWNE: Is that State's 3? No, no. This is the
9 Dr. Blackman report, dated November 14. I'm sorry. My
14:08:46 10 recordkeeping is not very good.

11 I'm not offering it into evidence, your Honor. I'll
12 pass the witness. Thank you very much, Doctor.

13 THE WITNESS: Thank you.

14 THE COURT: Is the doctor excused?

14:09:01 15 MS. FUSARO: The doctor is excused.

16 THE COURT: All right. Thank you, ma'am. You're free
17 to go about your day or you're also welcome to hang
18 around.

19 THE WITNESS: Oh, thank you.

14:09:17 20 THE COURT: Can you eat in 45 minutes?

21 MR. BROWNE: Yes, your Honor.

22 THE COURT: All right. We'll be in lunch recess for
23 45 minutes.

24 (Recess was taken.)

14:57:13 25 THE COURT: All right. So we're back on the record

14:57:13 1 in State of Florida versus Duane Owen, 23-CA-264.
2 Mr. Owen is present in the courtroom with counsel. The
3 State is present with counsel. Next witness?

4 MR. BROWNE: The State has nothing further, your
14:57:13 5 Honor. Thank you.

6 THE COURT: All right. Defense?

7 MS. FUSARO: We would just call Dr. Eisenstein again
8 in rebuttal.

9 THE COURT: All right. Dr. Eisenstein, can you hear
14:57:42 10 us okay? You've been unmuted all morning. Don't mute us
11 now.

12 THE WITNESS: All right. Can you hear me?

13 THE COURT: Yes, sir, very much. Good afternoon
14 again.

14:57:46 15 THE WITNESS: Good afternoon, your Honor.

16 THE COURT: If you'll raise your right hand for me.

17 (Witness sworn.)

18 THE WITNESS: Yes, sir, I do.

19 THE COURT: Thank you, sir. Go ahead, Counsel.
20
21
22
23
24
25

14:57:55 1 HYMAN EISENSTEIN,
2 called as a witness herein, having been first sworn, was
3 examined and testified as follows:

4 REBUTTAL DIRECT EXAMINATION

14:57:57 5 BY MS. FUSARO:

6 Q Dr. Eisenstein, can you again just state your name
7 for the record.

8 A Dr. Hyman Eisenstein.

9 Q All right. Just briefly, a few questions for you
14:58:07 10 today. How much of the over 13 hours you saw Mr. Owen was
11 spent on interviewing him?

12 A It was -- testing was about six, seven hours, and the
13 interviewing was six, about six and a quarter hours.

14 Q Okay. And in your testimony yesterday, did you ever
14:58:28 15 claim that Mr. Owen knocked the tests out of the park on the
16 first day of the testing?

17 A No, I never said that.

18 Q How would you describe the testing of Mr. Owen on the
19 first day of testing?

14:58:41 20 A So what I said was there was strengths and
21 weaknesses. There were some measures that he did within the
22 normal limits, and there were other measures that he was
23 profoundly impaired. So I said it was really a mixed bag, and
24 so that certainly lead me to the belief that there may be some
14:59:08 25 more issues to explore.

14:59:11 1 Q And are psychiatrists generally trained in
2 administering and understanding psychological testing?

3 A No. Psychiatrists do not receive the training or
4 test measurements, test administration, test interpretation.
14:59:26 5 That's really, that's not their area of domain and expertise.

6 Q Is that why it seemed to be that some of the other
7 experts were saying that they didn't use some of that testing?
8 It was not common in their field?

9 A Well, that should really be, that's the real
14:59:45 10 response. They're not trained to administer and interpret the
11 psychological and neuropsychological tests.

12 Q In your opinion, would a psychiatrist's observations
13 be just as good as conducting the Wechsler Adult Intelligence
14 Scale for IQ testing?

15:00:04 15 A No. I mean, I think that, as a clinician -- and
16 certainly, when you have some sense in terms of clinical
17 examination and interview, that one could somewhat ascertain
18 more or less someone's IQ. But, of course, it's very general.
19 It's not very specific.

15:00:25 20 Certainly standardized objective measures, including
21 what I mentioned yesterday, the Wechsler Adult Intelligence
22 Scale, which is a gold standard, certainly, it should be used
23 to augment and to be more specific certainly in terms of the
24 exact IQ, certainly within the range of plus or minus five
15:00:48 25 points. But psychiatrists and neurologists and general

15:00:53 1 practitioners generally, they'll augment their analysis with
2 specific test instruments which are normed specifically for
3 that purpose.

4 Q And did you receive any records regarding Dr. Dee
15:01:11 5 testing Mr. Owen's IQ around 2006?

6 A Well, the records that I received, basically, was his
7 testimony. I never received any raw data, but whatever was
8 mentioned in terms of his direct testimony.

9 Q When you just recently tested Mr. Owen's IQ, how did
15:01:35 10 that IQ score compare to Dr. Dee's?

11 A So Dr. Dee's was somewhere in the mid hundreds. My
12 IQ was 92; so I think there was -- there was a significant drop
13 between Dr. Dee's IQ and my IQ, almost, I think, between 10 to
14 15 points, which really is indicative of decline.

15:02:06 15 I mean, IQ, in general, is a, there's what's called
16 crystallized intelligence, meaning that this is
17 well-established. It's something that really doesn't change
18 over time, and it's not so sensitive, necessarily, to more of
19 what's called fluid intelligence, something that is more
15:02:26 20 ongoing at the present time.

21 So that's the reason why, you know, it's an indicator
22 of overall intelligence, but the fact that there was a drop is
23 indicative that there's something going on with Mr. Owen.

24 Q Would that be something going on in terms of brain
15:02:44 25 functioning?

15:02:46 1 A Right. So there was the reason why, even on my first
2 report, well, it was not only the drop in IQ but also because
3 on other measures he was so profoundly impaired that I thought
4 that there may be an insidious dementia process.

15:03:07 5 And what actually, what I accomplished on the second
6 day of trial further corroborated that. And even what I've
7 been hearing in terms of other people testifying, I even have a
8 further understanding of exactly where he pre-morbidly was and
9 where he's presently now.

15:03:28 10 Q And in speaking of that baseline, you heard other
11 people testify about per se briefs and other legal work from
12 years ago, like, from 1997, for instance.

13 Does that create a baseline for you for your new
14 testing?

15:03:47 15 A Yeah. That was one of the pieces of information that
16 helped create a baseline. Certainly, an individual that could
17 understand legal legalese and write briefs, assuming that he
18 wrote the briefs, certainly with cogent arguments, certainly,
19 you know, that gives you a sense of the baseline of the
15:04:09 20 individual's functioning.

21 Q Have you found that that functioning has declined
22 since what you've seen back then?

23 A Yeah. My impression is the reason why he stopped
24 writing briefs is because he simply can't do it, not that he
15:04:26 25 lost interest. There was no reason to think that he would lose

15:04:29 1 interest, but it takes a high level of intellectual ability, a
2 high level of mental ability in order to produce that type of
3 documentation. At the present time, he simply is not capable
4 of doing that.

15:04:41 5 Q Would an interview alone be sufficient or accurate
6 enough to make a diagnosis of dementia?

7 A It shouldn't. You know, again, there's different
8 types of dementia. There's gross dementia, and then there's
9 more subtle dementia. Dementia is a process. It's a slow
15:05:02 10 process, at least the way I see it, and that's the reason why I
11 referred to it as an insidious process, insidious dementia.
12 It's a process that is, over time, it's a decline, but it's a
13 slow decline.

14 But, you know, from where Mr. Owen was to where he is
15:05:21 15 now, it's a significant decline.

16 Now, even though he may look, quote, unquote, you
17 know, normal or high normal or there's no indication whatsoever
18 in terms of other clinicians saying there's a dementia, I think
19 they're simply -- they're not looking at where he was and where
15:05:39 20 he is and trying to, you know, look also at certain
21 neuropsychological data. And, of course, you know, there was
22 no, certainly, there's no further testing in terms of the
23 organic brain damage in terms of any type of neuro-diagnostic
24 testing.

15:05:55 25 But clearly from where he was, yes, he probably was

15:05:59 1 in the bright high average range. But where he is now, it's a
2 significant drop. Again, relative to maybe other people, he
3 could still look like he's, you know, he's pretty good. And I
4 think that's all that they really noted on their clinical
15:06:21 5 observations. But if you look deeper into it, you realize that
6 there's more that's going on really in terms of his mental
7 cognitive functioning.

8 Q Since the individuals on the Commission only did a
9 clinical interview, could that be a possibility as to why they
15:06:35 10 didn't see symptoms of dementia?

11 A Right. A hundred percent. In other words, you're
12 looking at, again, gross. Gross, yeah. In terms of, you know,
13 his ability to converse, to interact, he's okay. No question
14 about that. No one is saying that he's not.

15:06:51 15 But if you fine-tune it, you'll readily see that
16 there's areas of impairment. And, again, the fact that it's an
17 insidious dementia, there are areas still intact. And that's
18 why I said strengths and weaknesses, when you look at the
19 overall picture.

15:07:06 20 And I think it certainly that it behooves clinicians
21 to do the most accurate assessment and to take -- to avail
22 themselves of what is available. I mean, that's common
23 practice in forensic evaluation.

24 You know, and certainly at the lower end of the IQ,
15:07:24 25 no one would say that somebody is intellectually disabled

15:07:28 1 without doing an IQ test. I think that the same thing at any
2 other point. You simply need to use what is available in order
3 to make, really, an accurate assessment, rather than just a
4 clinical interview and say, oh, he's just fine.

15:07:41 5 Q And in terms of dementia, would an individual who is
6 suffering from dementia experience issues with their short-term
7 memory first?

8 A Correct. So that's the reason why on the second day
9 of testing, I did the Wechsler Memory Scale, and there's where
15:07:58 10 his scores came out, 69, 68; so you're talking about -- 92 is a
11 baseline in terms of IQ. That's already almost a standard
12 deviation drop from what it was previous, and now we're talking
13 about another standard deviation drop from even that point. So
14 that's, you know, that's the comparison.

15:08:17 15 And in terms of, yeah, short term, there's
16 definitely, there's loss. And, again, that's, you know, the
17 immediate memory in terms of trying to do the things that he
18 was doing -- he can't do it. He can't write, he can't write
19 pro se briefs. He can't write, he can't study in terms of
15:08:41 20 physics, you know, understanding, you know, a deep level of
21 physics or the black hole or any of those. He's just not
22 capable of doing that.

23 MR. BROWNE: Objection. Speculation.

24 THE COURT: I understand. Overruled.

25

15:08:54 1 BY MS. FUSARO:

2 Q And also in terms of long-term memory, will dementia
3 eventually cause deficits in long-term memory as well?

4 A Right. Over time, it's only going to get worse.

15:09:06 5 Q And in terms of, I guess, a stereotype of dementia,
6 do all individuals experience confusion at all times if they
7 have dementia?

8 A No. No. I mean, again, the symptoms vary, and it's
9 not like -- you know, you have all. It's, like, a very slow
15:09:30 10 process. And, no, it's at different points and different
11 times, different symptoms will emerge.

12 Q So at this point in the process for Mr. Owen, is he
13 at a point where he is starting to suffer deficits but people
14 around him might not notice all of the time?

15:09:50 15 A Correct.

16 Q And then to discuss a few things about schizophrenia
17 that were asked to others, do all schizophrenics need help
18 bathing?

19 A No.

15:10:02 20 Q Do all schizophrenics need help getting dressed?

21 A No.

22 Q Do all schizophrenics need help with grooming?

23 A No.

24 Q And if a guard was claiming that Mr. Owen was talking
15:10:18 25 to them about masculine things or things that might be

15:10:21 1 considered masculine, like hunting and fishing, could that be
2 an example of Mr. Owen coping and masking?

3 A Correct.

4 Q And how often do you see individuals faking on a
15:10:32 5 malingering test?

6 A I mean, it's common, especially if there is a
7 secondary gain. In other words, if there's a motive to fake.
8 And so what's common in forensics is that someone would want
9 to, quote, unquote, they would want to look like they are
15:10:57 10 psychiatrically ill. They would have symptoms, and therefore
11 they think that, by making their case worse than it is, that
12 would be, that would be in their benefit, you know.

13 Over here, I mean, again, is the quite opposite. The
14 malingering measures are a -- it's true. It's a separate,
15:11:23 15 independent source, but, again, it's commonly used in forensic
16 practice, to use malingering measures.

17 And, you know, the notion that someone is faking good
18 in order to try to present themselves in a positive way, all
19 that means is that they are trying their best, and they're
15:11:43 20 trying to really show that this is really -- they're giving
21 their best response and honest response.

22 And, again, you look across -- and it's not just the
23 malingering measures, but it's common. It's almost common
24 practice today that you do not do testing without malingering
15:12:02 25 measures, in order to ascertain the veracity and rather than

15:12:07 1 just coming up with, you know, a -- I guess, a theory about,
2 like, what is going on. Again, you need objective, independent
3 information and sources.

4 But the fact that, you know, Mr. Owen tried his best,
15:12:23 5 showed his best, and, again, it is my understanding that he
6 tried to hide whatever issues in terms of certainly his
7 delusions and his thought process and not sharing that with
8 everyone, with anyone, in order to maintain his masculine
9 approach. And, you know, again, we're talking about, you know,
10 15:12:43 10 decades. And that's, you know, some recent phenomenon in terms
11 of more acceptance of this position.

12 Q And did you see any evidence that Mr. Owen was faking
13 on any of the testing?

14 A No. Again --

15 15:12:58 15 MR. BROWNE: Objection, your Honor. Asked and
16 answered.

17 THE COURT: Overruled. I'll give them some leeway.

18 THE WITNESS: You know, again, not just the -- not
19 only just the malingering measures, but as I mentioned,
20 15:13:13 20 there are strengths and weaknesses.

21 When one looks at a neuropsychological profile, one
22 is looking at the overall results and where things, they
23 are, they're normal, where things are perhaps even a
24 little better than normal and where things are mildly,
25 15:13:30 25 moderately, and severely impaired.

15:13:32 1 So you have to look at the whole, you know, all the
2 test scores. And, again, you know, that's where, you know,
3 training comes in, in terms of looking at profiles and
4 understanding what exactly, you know, do the numbers mean and
15:13:44 5 what is, in terms of different tasks and how it all relates to
6 brain functioning.

7 BY MS. FUSARO:

8 Q Now, you sat through all of the rest of the expert
9 testimony; is that correct?

15:13:57 10 A That's correct.

11 Q Okay. Has anything changed your opinion on whether
12 Mr. Owen is competent to be executed?

13 A No. He, really, nothing changes my opinion. I think
14 that his, it's a fixed delusion. This is what he's believed.
15:14:20 15 I certainly, I certainly give weight to other experts in the
16 field. There were certainly renowned experts.

17 And I heard some very disparaging remarks about
18 treating other colleagues, and I think that one, you know, one
19 certainly needs to respect there could be different opinions,
15:14:44 20 but still one needs to respect other people's opinions and
21 other people's clinicians skill. But he remains with a fixed
22 delusion.

23 I also, he meets the criteria for schizophrenia. And
24 it's true that he, you know, his thought, his thought
15:15:04 25 disturbance is something that is certainly well-controlled in

15:15:08 1 terms of not showing overt symptoms but, still, the negative
2 symptomatology is something that I saw over the 13-plus hours.
3 I didn't see that there was much change in terms of his affect,
4 none of this reported smiling, this laughing.

15:15:28 5 You know, I treated him with utmost respect. He was
6 certainly cooperative, and rapport was established; but, still,
7 because of the fact that -- excuse me. Because he has this
8 fixed delusion and he has the criteria of schizophrenia and he
9 has also this insidious dementia, all of these play into the
15:15:52 10 fact that he really does not get the linkage between why this
11 execution is set and why he's the one who is being executed.

12 He has his very, sort of, chronic belief system that
13 has really not changed. And it's certainly bizarre. It's
14 certainly psychotic. And I think that, you know, certainly
15:16:23 15 that goes to the issue of him not being really competent and
16 understanding the linkage.

17 MS. FUSARO: May I have a moment, your Honor?

18 THE COURT: You may.

19 (Pause in the proceedings.)

15:16:48 20 MS. FUSARO: Just briefly.

21 BY MS. FUSARO:

22 Q If a mental health expert doesn't have records that
23 show that an individual had evidence of conduct disorder before
24 the age of 15, could they diagnose someone with antisocial
15:17:02 25 personality disorder?

15:17:05 1 A No. You know, you can't pick and choose. You know,
2 the diagnostic criteria are very clear. One can't say, well,
3 since it was after 16, it was before 16. There is no evidence.

4 The first time that he was arrested, he was 18. And
15:17:25 5 you know, all the, whatever evidence there was, there was post
6 15, post 16. And making such linkage, when a person -- when
7 the clinician was talking about everything based on data and
8 facts and suddenly you start to extrapolate, that's really
9 totally unacceptable.

15:17:48 10 Q And in terms of the delusions, is it possible -- or,
11 excuse me. Is it common for some people not to share their
12 delusions with everyone?

13 A No, that's absolutely true. And, again, there's good
14 reason in this case.

15:18:03 15 You know, again, Mr. Owen has been, for a better part
16 of four decades, incarcerated in a very structured environment.
17 I visit Union many, many times. I know, I know what the
18 environment is. It's a very structured environment, very
19 rule-bound. And you sort of -- if you don't make trouble, you
15:18:28 20 know, then trouble won't happen to you. And that's basically
21 what he's done.

22 He's remained basically DR-free, compliant. He says
23 what he has to say, and he certainly does not want to draw
24 attention whatsoever to his inner-thinking processes.

15:18:51 25 MS. FUSARO: No further questions, your Honor.

15:18:52 1 THE COURT: All right. Cross?

2 MR. BROWNE: Briefly, your Honor.

3 REBUTTAL CROSS-EXAMINATION

4 BY MR. BROWNE:

15:19:01 5 Q Doctor, schizophrenia is a very serious medical
6 condition, correct?

7 A Correct.

8 Q And that condition frequently or most often requires
9 the intervention of medication, correct?

15:19:18 10 A Sometimes. Most of the time, correct.

11 Q Most of the time. And so that would mean that a
12 medical doctor, a psychiatrist, can prescribe that medication,
13 correct?

14 A Correct.

15:19:30 15 Q And you cannot prescribe any medication for
16 schizophrenia, can you?

17 A Correct.

18 Q And, Doctor, Mr. Owen's IQ, as you tested it, was the
19 2; is that correct?

15:19:45 20 A Correct.

21 Q And that was recently. That was a week ago?

22 A That was two weeks ago.

23 Q Okay. And that's in the low average or average
24 range?

15:20:00 25 A Well, it's the lower end of the average range.

15:20:04 1 Q Okay. So it's in the lower end of average. And
2 that's certainly, that IQ certainly would make Mr. Owen
3 intelligent enough to understand that he is facing execution
4 and comprehend the reason why, correct?

15:20:18 5 A Well, the IQ --

6 Q Yes or no, Doctor?

7 A Well, it's not a yes or no because I need to explain
8 it.

9 Q Well, I'll take yes, right? Yes or no?

15:20:33 10 A No, no, no. It's not -- it's not cut and dry.
11 There's other factors about that is the answer. Okay?

12 Q Okay. Okay. Gotcha. So how many hours do you think
13 you've put into this case, total?

14 A Well, I don't know I haven't tabulated it. I mean, I
15:20:56 15 mentioned that I saw him for a total of 13 and a quarter hours.
16 And I spent all day yesterday in court. I spent today all day
17 on Zoom; so it adds up.

18 Q It does add up. And what is the rate of your
19 compensation?

15:21:13 20 A \$350 an hour.

21 Q So would you guesstimate you're in for well over 40
22 hours at this point?

23 A Yeah, whatever it address up. I have not tabulated
24 yet.

15:21:31 25 MR. BROWNE: No further questions, your Honor.

15:21:33 1 THE COURT: Any redirect?

2 MS. FUSARO: No, redirect, your Honor.

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

4 THE WITNESS: Thank you.

15:21:41 5 THE COURT: Next witness?

6 MS. FUSARO: Your Honor, we'd like to call

7 Eric Pinkard.

8 THE COURT: All right. Come on up, sir. How are

9 you?

15:22:44 10 THE WITNESS: I'm all right, your Honor. How about

11 yourself?

12 THE COURT: Good. If you'll raise your right hand

13 for me.

14 (Witness sworn.)

15:22:50 15 THE WITNESS: I do.

16 THE COURT: Thank you. Please be seated.

17 ERIC PINKARD,

18 called as a witness herein, having been first sworn, was

19 examined and testified as follows:

15:22:52 20 DIRECT EXAMINATION

21 BY MS. FUSARO:

22 Q Good afternoon. Can you please state and spell your

23 name for the record.

24 A My name is Eric Pinkard, P-I-N-K-A-R-D.

15:23:04 25 Q What is your occupation?

15:23:05 1 A I am a lawyer, and I'm currently the capital
2 collateral regional counsel for the middle district of Florida.

3 Q How long have you been practicing law?

4 A I've been practicing since May of 1987.

15:23:18 5 Q During the course of your employment at CCRC middle,
6 were you ever Duane Owen's attorney?

7 A I was.

8 Q Approximately how many years did you represent him?

9 A Well, I started working at the office in 1999. And I
15:23:34 10 believe at that time Mr. Jack Crooks was representing Mr. Owen
11 on his post conviction matters. But then when Mr. Crooks left
12 the office, then I ended up getting assigned Mr. Owen's case as
13 a first chair attorney within that office.

14 And then shortly after that, Mr. Jim Driscoll came to
15:23:54 15 become employed at the office, and I gave him the primary
16 responsibility for Mr. Owen's case, but I supervised it. But I
17 did meet with Mr. Owen on many different occasions during that
18 time frame; it's just that my representation -- it was
19 intermittent as far as my personal involvement with drafting
15:24:13 20 pleadings and those kind of things.

21 I've known him for over 20 years and met with him at
22 the prison on many different occasions.

23 Q So you regularly talked to and visited Mr. Owen
24 throughout the course of those 20 years?

15:24:26 25 A Right. Well, actually, for about the last ten, I

15:24:28 1 haven't been out there because Mr. Driscoll had the case and I
2 was -- he had his own team; so he kind of took the case over,
3 and I wasn't supervising him on the case anymore. But I came a
4 chief assistant; so I've talked to him about the case, but the
15:24:44 5 way we had the team concept, the whole team would go up and
6 visit the clients, but, so Mr. Driscoll would go up with his
7 team -- that would include David Hendry at that time -- to talk
8 to Mr. Owen. So I have for the past -- I don't think I've seen
9 Mr. Owen for at least ten years until this warrant came down.
15:25:02 10 And I went to visit him at the prison.

11 Q And when did you first visit him after the warrant
12 was signed?

13 A The following day.

14 Q What were your observations about that recent
15:25:14 15 interaction with Mr. Owen?

16 A Well, my initial reaction, he just wasn't the same
17 Duane Owen that I had known before, as far as his cognitive
18 ability. You know, we were trying to go over working up some
19 potential legal claims for a successor 3.851, and he just
15:25:36 20 didn't -- he didn't want to focus on that at all. He was more
21 focused on the fact that, you know, his execution was pending
22 and he wasn't going to be able to complete his transition from
23 a man into the woman, and he was upset about that.

24 MR. BROWNE: Objection, your Honor. I know this is
15:25:55 25 rather, this is hearsay and rather self-serving at this

15:25:59 1 point. I know you've given them leeway, but it's not an
2 admission.

3 THE COURT: I understand. Overruled.

4 THE WITNESS: So he was upset about the fact
15:26:11 5 that what had happened with the two victims in the case --
6 how he had gotten them to enter into his body during the
7 intercourse with them and had brought them close to
8 expiration and that their estrogen had entered into his
9 body and their essence had entered his body -- had not
10 worked and he was never going to be able to accomplish his
11 goal of transitioning himself from a man into a woman
12 before his execution.

13 And he was very upset with that fact. So I really
14 couldn't get him off of that thought process to talk about
15:26:51 15 any legal matters that we might be pursuing in the
16 successor motion. So based upon that and based upon the
17 delusional thought pattern, I thought that, I was
18 concerned that, it was obvious he wasn't going to be able
19 to assist us in coming up with any claims on the post
15:27:12 20 conviction matter because he didn't even really want to
21 address that. He just wanted to address his own
22 transition and would there be anyway that I could
23 facilitate that through any kind of an action or anything
24 like that. And I explained to him, I can't do that. The
15:27:27 25 statute doesn't allow me to try to get people certain

15:27:30 1 medical treatment. I can only work on their case in a
2 legal sense.

3 And so at the conclusion of that conversation I
4 thought, you know, I better try to get him evaluated by a
15:27:45 5 mental health expert to see whether he's competent to go
6 forward in the successor motion and whether he met the
7 criteria for insanity as far as being executed.

8 BY MS. FUSARO:

9 Q And just to clarify for your Honor, are you referring
15:28:01 10 to the fact that, by statute, CCRC is not allowed to file 1983
11 claims and things of that nature?

12 A That is correct.

13 Q And did you visit Mr. Owen again after that first
14 visit the day after the warrant?

15:28:15 15 A Yeah. I think I went down on a Friday, and then I
16 went back again on the following Monday. And I think we
17 contacted Dr. Eisenstein in the interim. So I wanted to meet
18 with him again to prepare him for the fact that Dr. Eisenstein
19 would be by to conduct an evaluation of him.

15:28:34 20 And I met with exactly the same attitude that he had
21 and state of mind, that he was really fixated on a fear he had
22 that he was going to leave this earth in the wrong body and
23 wanted to transition to become a woman.

24 And, once again, he was also concerned that the two
15:28:57 25 women that he had taken into his body would die during the

15:29:01 1 execution in addition to him and that he didn't understand why
2 the State was trying to execute him anyway because they knew
3 that he hadn't killed anybody, that he had actually taken them
4 before they died into his body and they were still with him to
15:29:18 5 this day.

6 Q And after that, did Dr. Eisenstein go up to evaluate
7 Mr. Owen?

8 A He did.

9 Q Did you review Dr. Eisenstein's May 16 report?

15:29:31 10 MR. BROWNE: Objection, your Honor, relevance. We
11 have Dr. Eisenstein's testimony and his reports.

12 THE COURT: Overruled.

13 BY MS. FUSARO:

14 Q Did you review Dr. Eisenstein's May 16, 2023, report?

15:29:44 15 A I did.

16 Q Did Dr. Eisenstein opine that Mr. Owen is insane to
17 be executed?

18 MR. BROWNE: Objection, your Honor. He's commenting
19 on an expert. He's not qualified to do that.

15:29:57 20 MS. FUSARO: It's just creating a foundation.

21 THE COURT: Overruled. I'm not concerned with it.

22 BY MS. FUSARO:

23 Q Based on -- or, excuse me. You didn't answer that.

24 A What was it again?

15:30:04 25 Q Did Dr. Eisenstein opine that Mr. Owen was insane to

15:30:07 1 be executed?

2 A Yes, he did.

3 Q Based on your recent interactions with Mr. Owen and
4 Dr. Eisenstein's report, at that point, did you send a letter
15:30:14 5 to the Governor to invoke Section 922.07 of the Florida
6 Statutes?

7 A I did.

8 Q After Section 922.07 was invoked, did the Governor
9 appoint a commission of three psychiatrists to evaluate
15:30:29 10 Mr. Owen?

11 A He did.

12 Q And what date was that evaluation?

13 A That was on the 23rd of May.

14 Q Did you witness that evaluation?

15:30:36 15 A I did.

16 Q Was that evaluation recorded?

17 A It was not, but -- although, I asked the Governor's
18 counsel for it to be recorded, but she objected to it and would
19 not provide any recording of the evaluation.

15:30:52 20 Q How long was that evaluation?

21 A It was around an hour and 45 minutes for Mr. Owen's
22 part. There were some other prison guards that were talked to,
23 but as far as them meeting with Mr. Owen, it started, I think,
24 at 3:05 in the afternoon and concluded at 4:45 in the
15:31:11 25 afternoon.

15:31:12 1 Q Were you present when they interviewed the DOC
2 personnel?

3 A I was.

4 Q And where was the evaluation held?

15:31:21 5 A There's an administrative office within the Florida
6 State Prison that we were all brought to in one location, and
7 there was a table there. And Mr. Owen was at the head of the
8 table, and then the three doctors were all surrounding the
9 table, facing back to him. And I was behind Mr. Owen.

15:31:42 10 Q When you arrived, was Mr. Owen already in the room?

11 A He was not. They did the guards before they got
12 around to Mr. Owen. I think the people that was transporting
13 him wanted to get the guards out of the way first so they could
14 be involved in bringing Mr. Owen in.

15:32:00 15 Q At any point were you asked to leave the room?

16 A I was asked to leave the room between the time the
17 last guard testified and when Mr. Owen was brought in to be
18 questioned. And Mr. Owen was brought in, but I believe it was
19 Dr. Werner because she turned to me -- they were in the middle
15:32:22 20 of discussing some records on the case and they had the files
21 out in front of them, and she said, could you please wait
22 outside? And so I got up and I waited outside.

23 Q So they didn't tell you -- did they tell you why they
24 wanted you to wait outside?

15:32:36 25 A They did not.

15:32:39 1 Q How long was it before you were told you could
2 re-center the room?

3 A I'm thinking right around 15 minutes or so before
4 they actually got Mr. Owen back to bring him in the room.

15:32:51 5 Q Did they let you re-enter as Mr. Owen was entering?

6 A They did.

7 Q Did the evaluation begin soon thereafter?

8 A It did.

9 Q Can you describe what took place in the evaluation?

15:33:05 10 A Well, they started out with some general questions to
11 him. I think the first question they asked was from Dr. Myers
12 and he asked, do you have any questions for us? And Mr. Owen
13 said, no, I don't have any questions for you. And then they
14 started asking him what his daily activities were there on the
15:33:31 15 death watch since the warrant was signed.

16 And he said that they brought him over and he's in a
17 cell by himself and there's a television outside that he can --
18 has a remote control to but he can't get to. And then they
19 asked him whether he was on any medications or not. And I
15:33:53 20 think he said he was on some thyroid medication. And they
21 wanted to know whether he was taking his medication or not, and
22 he said that, for a time, he had discontinued it, but he went
23 ahead and started it up again.

24 So then they were asking him what he did during the
15:34:13 25 daytime, and he said that, primarily, he's been writing letters

15:34:18 1 to people that he knows and gets up in the morning and eats his
2 breakfast and then writes some letters and right around
3 5 o'clock, turn on the TV and watch some TV and then try to go
4 to sleep, although he wasn't sleeping very well.

15:34:38 5 And, you know, then they asked him about whether he
6 was thinking about his pending execution. And he said it's
7 hard not to think about it because they come by and ask you
8 questions during the day about what to do with your body and
9 who you want to have witness the execution and what kind of
15:35:02 10 last meal you want. So it's constantly on his mind.

11 And then he remarked -- because they were asking him
12 about what his thoughts were on the execution, and he said that
13 he didn't understand why they were executing him because he
14 hadn't killed anybody and that the State was well aware of that
15:35:26 15 because at the Slattery retrial, the testimony had been put
16 forth that he didn't kill the victim but, in fact, had taken
17 them into his body through his penis, which acted as a hose to
18 take their estrogen in, and that -- the idea that he was
19 seeking to transition himself through that from a man into a
15:35:53 20 woman. And he indicated frustration again that he would be
21 potentially executed in the wrong body.

22 Q Did anyone on the Commission administer any testing
23 to Mr. Owen?

24 A I did not see any testing.

15:36:10 25 Q Was the evaluation solely the Commission just asking

15:36:13 1 questions of Mr. Owen?

2 A Yes, it was.

3 Q Have you witnessed other evaluations?

4 A I have.

15:36:21 5 Q Approximately, how many other evaluations have you
6 witnessed during your career?

7 A I'm sure I witnessed dozens of them, but not all of
8 them for execution. But, you know, evaluations for mental
9 status or to diagnose somebody about their mental condition on
10 many different occasions. I've been doing this line of work
11 for 23 years, and there's a lot of evaluating going on that
12 I've seen.

13 Q How did Mr. Owen's evaluation differ from those other
14 evaluations?

15:36:50 15 MR. BROWNE: Objection, your Honor. Relevance.

16 THE COURT: Overruled.

17 THE WITNESS: Well, once -- the way this evaluation
18 took place was that once Mr. Owen articulated the delusion
19 that he had not killed the two victims but instead had
20 taken them into his body, the whole rest of it was them
21 trying to cross-examine him and to try to break him down
22 to admit that he knew --

23 MR. BROWNE: Objection to that characterization of
24 the examination, cross-examination.

15:37:28 25 THE COURT: The objection is overruled.

15:37:32 1 THE WITNESS: To try to get him to admit that he knew
2 he had really killed the victims, that he knew that he had
3 killed the victims. And I recall that there was some
4 crime scene photos that were sitting in front of
15:37:46 5 Dr. Lazarou, and she seemed to be the most aggressive of
6 the three of trying to question him to try to get him to
7 admit that he knew he killed them.

8 And she said, with the crime scene photos, you hit
9 them. You beat them to death with a hammer. And you know
15:38:05 10 you killed them. And then she just kept trying to get him
11 to admit that he knew that they had actually died and that
12 he didn't really believe that they entered his body.

13 And Dr. Werner asked a similar line of questioning,
14 saying that, you don't really believe that the State
15:38:23 15 believes that you didn't really kill them. Nobody
16 believes your delusion, Mr. Owens. We all know you really
17 killed them. And they just kept hammering on that point,
18 without -- Dr. Myers of the three didn't participate in
19 that, but the other two were, like, playing off of them
15:38:43 20 and just kept peppering him with questions to try to break
21 down the, break him down to admit that he doesn't really
22 harbor those delusions that he had delineated to them.

23 BY MS. FUSARO:

24 Q Throughout the whole examination, did Mr. Owen
15:38:58 25 maintain that he did not kill anyone?

15:39:00 1 A Absolutely.

2 Q In other evaluations you've witnessed, were any of
3 the other mental health experts argumentative to the defendant?

4 A I have never seen an evaluation --

15:39:12 5 MR. BROWNE: Objection, your Honor. He's witnessed
6 many kinds of evaluations for mitigation, and I know what
7 kind of work he does. We're talking about --

8 THE COURT: No. He testified a minute ago he's never
9 witnessed one of these with the Commission.

15:39:27 10 THE WITNESS: That's correct.

11 THE COURT: I mean -- so, I mean, certainly, you can
12 cross him about that. And that's clear to me, that this
13 is a different -- he's not witnessed one of these
14 evaluations before for the Commission.

15:39:38 15 THE WITNESS: That's correct.

16 THE COURT: So objection is overruled.

17 THE WITNESS: What was the question again? I'm
18 sorry.

19 BY MS. FUSARO:

15:39:44 20 Q In the other evaluations you've witnessed, were any
21 of the other mental health experts argumentative with the
22 defendant?

23 A I've never seen anything like the evaluation that I
24 witnessed in terms of being that aggressive to confront the
15:39:57 25 person to try to get him to change his mind about something.

15:40:00 1 Q In the other evaluations that you've witnessed, were
2 any of the other mental health experts combative?

3 A No.

4 Q In the other evaluations, did any of those mental
15:40:11 5 health experts ever raise their voice or yell at the defendant?

6 A No.

7 Q Did that happen in Mr. Owen's evaluation?

8 A Yeah, it did. It happened for a very long period of
9 time. They just kept coming back to it again and again and
10 again and trying to wear him down to get him to just give up
11 and say, yeah, I killed the women, and I don't believe they are
12 in my body to this day.

13 Q Were any of the psychiatrists actually raising their
14 voice or yelling at him?

15:40:39 15 A In particular Lazarou, Dr. Lazarou was. Dr. Werner
16 not to the same extent but, and then Dr. Myers never raised his
17 voice through the whole thing.

18 Q Did the evaluation become more of an interrogation
19 than a clinical interview?

15:40:55 20 A That's the way I viewed it.

21 Q Other than the raising their voice and yelling, were
22 the psychiatrists taking a hostile tone with Mr. Owen?

23 A Well, yeah. Dr. Lazarou kept trying to bring up the
24 fact that he had never requested any treatment for his gender
15:41:18 25 disorder to either get hormone treatment or get surgery. And

15:41:22 1 she kept saying, if you really believe this, why didn't you get
2 surgery or get treatment in the prison? And, you know, raising
3 her voice kind of like that, a little louder than what I just
4 did it, but to get the idea. And he responded that he was
15:41:35 5 afraid to do that because of what might happen to him in the
6 prison from the guards and the other inmates if he tried to
7 make the transition in prison.

8 And I thought that line of questioning was peculiar
9 because I don't think he's eligible to get such therapy whether
15:41:53 10 he was in or out of prison, given his psychiatric profile.

11 Q Once the evaluators were acting in that manner, did
12 Mr. Owen appear to shut down in any way?

13 A His whole affect, you know, he was -- I don't want to
14 say he was groggy, but he almost acted like he was a little
15:42:16 15 sleepy, and he wasn't energized at all, which is another reason
16 he was quite different than he was in the past when I used to
17 see him over ten years ago. But he answered the questions the
18 best he could, but, you know, there wasn't a lot of energy
19 behind it. He was kind of downtrodden, would be the way I
15:42:36 20 described him.

21 Q Who did most of the speaking during the evaluation?

22 A That would be Dr., definitely Dr. Lazarou.

23 Q And if you had to estimate, about what percentage of
24 the time was Mr. Owen speaking?

15:42:53 25 A Well, every time he got a sentence out, she would

15:42:57 1 pick up on it and start asking him more questions about it to
2 try and change it. So they never just accepted what he said
3 and moved on to something else. They just kept harping on
4 those same points.

15:43:09 5 Q So about approximately how long do you think that
6 might have been?

7 A Oh, well, probably no more than 25 percent of the
8 time.

9 Q Did you witness any other behavior that occurred
10 during the evaluation that could be deemed as unprofessional?

11 A I think I've covered everything I thought was
12 unprofessional.

13 MR. BROWNE: Objection. He's a lawyer.

14 Unprofessional in what context? For a mental health
15 professional? Three trained psychiatrists?

16 Unprofessional.

17 THE COURT: Sustained. But I think he answered it
18 before the objection, saying he covered everything.

19 BY MS. FUSARO:

15:43:50 20 Q Now, I know you have detailed how he stated his
21 delusions. Were those the same delusions that Mr. Owen had
22 explained to you previously?

23 A Yes, they were.

24 Q Did those specifics of the delusion deviate at all
15:44:01 25 from that?

15:44:02 1 A It did not deviate except that he was upset now
2 because his execution was pending and he would be executed not
3 as a woman, like he should be, but a man. But other than that,
4 same delusion about getting the women to come into his body
15:44:18 5 through his penis, and so those kind of things it was very
6 consistent.

7 Q Have you reviewed the Commission's May 24, 2023,
8 report?

9 A I did.

15:44:29 10 Q The report mentions that Mr. Owen never thought he
11 killed his victims but acknowledged their bodies have been
12 buried or cremated as they expired. Is this a correct
13 depiction of what Mr. Owen said in the evaluation?

14 A That's not correct. What that was was Dr. Lazarou
15:44:44 15 said, you know you killed them, and you know they're rotting in
16 their graves right now, Mr. Owen. That's the only reference to
17 any graves about -- and I don't think Mr. Owens talked about
18 whether he thought they were in a grave or not. He was very
19 clear that before they expired, they entered into his body.

15:45:07 20 Q During the evaluation, did Mr. Owen ever say that he
21 didn't know where the victims are today?

22 A He did not. He maintains that they live with him in
23 his body.

24 Q When he was talking about the death penalty, did he
15:45:22 25 only say that the State told him why he was to receive it?

15:45:30 1 A No. No, he did not say that.

2 Q Did the evaluators claim that Mr. Owen had requested
3 sexual reassignment in prison?

4 A Dr. Lazarou alluded to that, that he had asked for
15:45:47 5 it. And she was, it looked like she was referring to some
6 record that she had about it, but I had not seen that before.

7 Q They didn't show you the record at all?

8 A They didn't show me the record, no.

9 Q During the course of the evaluation, did Mr. Owen
15:46:04 10 ever say that he had to kill the victims?

11 A No. It was just the opposite. He didn't want to
12 kill the victims. He wanted to bring the victims into his body
13 to live on.

14 Q During the evaluation, did Mr. Owen state, I don't
15:46:19 15 know why they were trying to kill me?

16 A Yeah. He said he doesn't know why the State is
17 trying to kill him because at the Slattery trial all this came
18 out. The State should know that he didn't kill anybody.

19 Q Did Mr. Owen state during the evaluation that,
15:46:36 20 although the women inside of him don't talk to him, they're
21 friends?

22 A I think he did say that the women inside of his body
23 are his friends.

24 Q During the evaluation, did Mr. Owen tell the
15:46:52 25 Commission that he didn't want to reveal he was a woman while

15:46:56 1 he was in prison because he was afraid of the subject, of being
2 subjected to brutality?

3 A Yes, he did say that.

4 Q Did you note anything else in the Commission's report
15:47:06 5 that conflicts with what you witnessed during the evaluation?

6 A I can't think of anything offhand. I saw in their
7 report that it wasn't a fact of what happened during the
8 evaluation.

9 Q We've covered it all?

10 15:47:27 A We've covered it all.

11 MS. FUSARO: May I have one moment, your Honor?

12 THE COURT: You may.

13 MS. FUSARO: No further questions, your Honor.

14 THE COURT: Cross?

15 15:47:47 CROSS-EXAMINATION

16 BY MR. BROWNE:

17 Q Mr. Pinkard.

18 A Afternoon, Mr. Browne.

19 Q How are you, sir?

20 15:47:51 A I'm good. How about yourself?

21 Q Oh, not too bad. So when you went to see Mr. Owen,
22 he had just received word that he was, the Governor had signed
23 a warrant for his execution. So it was the next day --

24 A The next day.

25 15:48:04 Q -- is that your testimony?

15:48:05 1 A Yes.

2 Q And you didn't have to drag this delusional theory
3 out of him, did you?

4 A He's reluctant to talk about the delusional theory
15:48:14 5 most of the times, but he brought this out because he was upset
6 about the fact that he would be executed in the wrong body; so
7 I think that's what drew it out of him.

8 Q Right. So -- but he wasn't reluctant. You didn't
9 have to drag it out of him?

15:48:28 10 A Not in that context, no.

11 Q No. And you weren't here for the testimony of all
12 the guards who had contact with him, some for a number of
13 years, and who have never heard any delusional theory from
14 Mr. Owen? Were you here for any of that testimony?

15:48:44 15 A I was not, but I was -- during their evaluations, I
16 was there when the doctors were questioning them.

17 Q It's -- so Mr. Pinkard, when you and CCRC were on the
18 case, this is a post conviction capital case; otherwise, you're
19 not assigned, correct?

15:49:01 20 A Correct.

21 Q And he had been convicted on the Worden murder at the
22 time, correct?

23 A You mean --

24 Q And also the Slattery murder as well, but he was
15:49:13 25 facing a retrial?

15:49:14 1 A Yeah. The first case that came into our office was
2 the Worden case, and the Slattery trial, retrial, and had not
3 yet taken place.

4 Q All right.

15:49:22 5 A So we had two different cases going on.

6 Q Right. At the same time. So it's somewhat unusual
7 in that you have a pending retrial with an active post
8 conviction case, correct?

9 A I can't think of it in any other circumstance.

15:49:34 10 Q Yeah. So that's unusual. So at that time, he's
11 preparing for a retrial on the 14-year-old girl that he
12 murdered, right?

13 A I don't know how much preparation he's doing, but the
14 attorneys were getting ready for the retrial; so --

15:49:48 15 Q Certainly. And that's when this whole story, the
16 delusional theory, came out. So you were already on the case.
17 He's had two trials with an unsuccessful result. So now we
18 have this new theory, the whole, I'm channeling their essence,
19 right, that's when that theory appears?

15:50:08 20 A Well, I don't know because the Slattery retrial was
21 occurring, and he had a whole different group of attorneys. So
22 I wasn't involved myself at that time.

23 Q Right.

24 A I was working on the Worden case, trying to get him a
15:50:21 25 hearing on that one.

15:50:22 1 Q Sure.

2 A So I really don't know when it manifested or how
3 Dr. Berlin got involved or at exactly what point it became part
4 of the case.

15:50:32 5 Q So he had a set of mental -- experts for the Worden
6 and Slattery, those initial trials, right? You're familiar
7 with that? I mean, in general, he was examined by mental
8 health professionals at the time?

9 A I think that's true.

15:50:48 10 Q And so are you aware that he didn't reveal this whole
11 gender dysmoprhia channeling their essence to those first set
12 of experts? Are you aware of that or not?

13 A I don't know what he revealed before I got involved
14 in post conviction.

15:51:05 15 Q And, again, when you got involved, he was facing a
16 retrial in the Slattery case. And that's when Dr. Faye Sultan
17 and Dr. Berlin became involved, correct?

18 A Yes.

19 Q And have you seen a report from some of the initial
15:51:19 20 doctors, like, Dr. Blackman? Do you recall seeing a
21 psychiatrist from 1984?

22 A You know, you're testing my memory too much there. I
23 can't recall if I saw a report from them.

24 Q All right. Before you want to tell this Court that
15:51:37 25 he's been consistent, he's been consistent since you've seen

15:51:40 1 him in, what, 1999?

2 When was the first time that you made contact as a
3 post conviction counsel?

4 A I'm thinking it was more like 2001 before I actually
15:51:54 5 met him. But I can only say he's consistent to me.

6 Q All right. All right. Since that time. But, again,
7 you don't have access, or if you did, you don't recall those
8 first experts who examined him, where the story never made an
9 appearance, this, I killed them for this reason. You weren't --
10 like Dr. Blackman's report, when he's asked why he killed them,
11 he said, for the thrill of it.

12 A Well, I haven't looked at that in a while, and I
13 don't know whether your representation is correct, but I can
14 only say what I did when I met with him and what I saw.

15:52:33 15 Q Mr. Pinkard, I assure you I didn't make that up.
16 There is a report marked for identification, but I won't show
17 it to you, from Dr. -- from a Dr. Blackman.

18 MR. BROWNE: Your Honor, may I have one moment?

19 THE COURT: You may.

15:52:44 20 (Pause in the proceedings.)

21 MR. BROWNE: Nothing further, your Honor. Thank you.

22 THE COURT: Any redirect?

23 MS. FUSARO: Very, very briefly.

24

25

15:52:52 1 REDIRECT EXAMINATION

2 BY MS. FUSARO:

3 Q Do you recall that one of the claims in Mr. Owen's
4 post conviction motion in the Worden case was an ineffective
15:53:02 5 assistance of counsel claim regarding the mental health experts
6 at his trial?

7 A That is correct, there was.

8 MS. FUSARO: No further questions, your Honor.

9 THE COURT: All right. Thank you, sir. You may step
15:53:13 10 down. And you're welcome to remain in the courtroom at
11 this time, if you'd like.

12 THE WITNESS: Thank you, your Honor.

13 THE COURT: Your next witness?

14 MS. FUSARO: We are all out of witnesses.

15:53:22 15 THE COURT: Okay.

16 (Pause in the proceedings.)

17 MS. FUSARO: Oh, actually, your Honor. I do have one
18 thing, though.

19 We were able to get the unsworn statement of
15:53:35 20 Dr. Berlin. He was unable to find a notary, apparently,
21 with his schedule today. I don't know if you want us to
22 submit this as a supplement appendix or if you want to
23 mark it as an exhibit. It's very similar to the format of
24 Dr. Sultan's.

15:53:49 25 THE COURT: Any objection to it being received as an

15:53:52 1 exhibit? Have you all seen it?

2 MR. BROWNE: No, your Honor.

3 MS. TERENZIO: No.

4 THE COURT: Why don't you take a minute to look at
15:53:57 5 it.

6 (Pause in the proceedings.)

7 MS. TERENZIO: Your Honor, it pretty much tracks his
8 testimony at trial. I don't know what the relevance is.
9 It's the same thing with Dr. Sultan. He hasn't seen him
15:55:22 10 since 1999.

11 THE COURT: I understand, and I'm confident in my
12 ability to discern, ultimately, what is relevant to the
13 Court in weighing the evidence; so if that's the only
14 objection, I'm going to go ahead and allow it to be
15:55:40 15 introduced as a Defense exhibit.

16 MS. TERENZIO: The only other point I'd like to make
17 is neither Dr. Sultan or Dr. Berlin, they had the time to
18 write these, but neither one of them could get them sworn.
19 So that's the only other point to make.

15:55:57 20 THE COURT: I understand. I'm going to treat them as
21 though they were, but that's -- because you're both
22 telling me, like you told me with Dr. Sultan, that you're
23 both familiar with what the sum and substance of her
24 testimony would have been had she appeared by Zoom or in
15:56:16 25 person, and that the affidavit was consistent with your

15:56:19 1 understanding of that. And you both agreed that
2 Dr. Sultan hasn't seen Mr. Owen in any capacity since
3 whatever that date was?

4 MS. TERENZIO: Around 1999.

15:56:31 5 THE COURT: 1999, I think it was.

6 MS. TERENZIO: Yeah.

7 THE COURT: And so the same -- what I'm hearing you
8 say is the same is true of Dr. Berlin: You're both aware
9 of what the, that that is consistent with what you believe
10 he would have testified to, if he had been able to appear
11 before the Court either by Zoom video or in person and
12 that he, as well, hasn't seen or had any contact with
13 Mr. Owen since 1999 as well?

14 MS. FUSARO: Correct. Yes.

15:56:50 15 THE COURT: Okay. So with that understanding and
16 agreement of the parties, I'm willing to overrule any
17 objection, receive that affidavit in. And I'm going to
18 treat it as though it was sworn because I don't see any
19 prejudice to either side in that regard, based upon the
20 mutual understanding.

21 MS. TERENZIO: Okay. Thank you.

22 THE COURT: So I'll receive it in as your next
23 numbered exhibit.

24 MS. FUSARO: Thank you, your Honor. May I approach?

15:57:13 25 THE COURT: You may.

15:57:19 1 (Defense Exhibit 5 admitted into evidence)

2 THE COURT: Anything else, Counsel?

3 MS. FUSARO: Not from the Defense.

4 THE COURT: All right. So, then, that concludes the

15:57:28 5 3.812 hearing, correct?

6 MS. TERENCE: Yes, Judge.

7 MS. FUSARO: Yes.

8 THE COURT: All right. So unless there is any other

9 business from counsel, my expectation will be to get you a

15:57:40 10 ruling, a written order with the Court's ruling

11 imminently. If it's not before Monday, it will be first

12 thing Monday morning for sure.

13 MS. TERENCE: The only other thing, your Honor, is

14 the transcripts?

15:57:57 15 THE COURT: I've spoken to Madam Court Reporter

16 already. My expectation is you'll probably have it by end

17 of business Monday or first thing Tuesday. So either end

18 of business Monday by 5 o'clock this hearing will be fully

19 transcribed and part of the record or, latest, Tuesday,

15:58:13 20 first thing Tuesday morning.

21 MS. TERENCE: Okay. All right. Thank you, Judge.

22 THE COURT: All right. Thank you very much.

23 MS. FUSARO: Thank you, your Honor.

24 THE COURT: Y'all take care. Have safe travels back.

15:58:21 25 MS. FUSARO: Thank you.

15:58:21 1

MS. LAURIENZO: Thank you.

2

MR. BROWNE: Thank you, your Honor.

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(Court adjourned at 3:58 P.M.)

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12:03:21 5

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CERTIFICATE

STATE OF FLORIDA)

COUNTY OF ALACHUA)

I do hereby certify that I was authorized to and did stenographically report the foregoing proceedings pages number 1 through and including 472 and that the transcript is a true and correct record of my stenographic notes.

Dated this 5th Day of June, 2023.

Paula A Blosser

Paula A. Blosser, RPR, FPR-C
Judicial Court Reporter

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No. _____

IN THE
Supreme Court of the United States

DUANE E. OWEN,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Florida

APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI

**THIS IS A CAPITAL CASE
WITH AN EXECUTION SCHEDULED FOR
THURSDAY, JUNE 15, 2023, AT 6:00 PM**

Appendix E

Dr. Eisenstein's May 16, 2023 Report

Neuropsychological Associates LLC Florida Licensed Clinical Psychologists

Hyman H. Eisenstein, Ph.D., A.B.N.

Board Certified Diplomate in Neuropsychology

Esther L. Selevan, Ph.D.

Phone: 305 532 1945

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May 16, 2023

Re: Duane Eugene Owen
Case No.: 501984 CF 004000 A

I was asked to evaluate Mr. Owen psychologically and neuropsychologically to assist in his defense. I saw Mr. Owen on May 15, 2023 at the Florida State Prison for a total of six hours. He was very cooperative throughout and willingly participated in the evaluation. His level of motivation was good and he put forth genuine effort. Rapport was established with the examiner.

Mr. Duane Owen's profile was valid with no faking, exaggerating, or malingering.

Duane Owen was born to an alcoholic mother and father and was raised in a highly dysfunctional family. Duane experienced physical and emotional abuse by his father. He was a witness to physical and sexual violence perpetrated on his mother by his father.

Duane Owen's mother died when he was 11 years old, and his father committed suicide when he was 13 years old. He and his brother were basically on their own once their mother died, with no assistance from family or friends.

Duane Owen experienced sexual abuse by multiple perpetrators including his brother Mitch and 'friends' in the neighborhood. The abuse continued throughout his adolescence by employees of the Veterans of Foreign Wars Home and other students at the home.

Duane Owen was physically abused at the VFW Home by staff members.

Duane Owen has a history of multiple head injuries with little if any medical intervention.

Duane attempted suicide at age 17.

Neuropsychological evaluation revealed a decline in cognitive functioning from prior levels. Mr. Owen reported having memory problems over the years, which has deteriorated more recently. Although this examiner did not have sufficient time to fully explore his memory problems, there appears to be the onset of an insidious dementia process. Additionally, if there were no time constraints, he would have been given MRI and PET scans to further elucidate his brain impairments. It is my recommendation that a neurodiagnostic battery including MRI and PET scans be conducted in order to render a more definitive opinion as to the extent of Mr. Owen's brain damage.

Clinical examination and review of background material is consistent with a diagnosis of Schizophrenia F20.9. Mr. Owen's most prominent symptom has been and continues to be Delusions. Delusions are defined by the DSM-5-TR as "fixed beliefs that are not amenable to change in light of conflicting evidence." Mr. Owen expressed somatic delusions, delusions that "focus on preoccupations regarding health and organ function." His delusions were bizarre, "they are clearly implausible and not understandable to same-culture peers and do not derive from ordinary life experiences."

Mr. Owen's delusions are chronic and fixed. They have been consistent and unchanging over many years, as seen when reviewing background information from multiple mental health experts. As stated in the DSM "Conviction with which the belief is held despite clear or reasonable contradictory evidence regarding its veracity."

Mr. Owen demonstrated negative symptoms of schizophrenia including diminished emotional expression, which as stated in the DSM "includes reductions in the expression of emotions in the face, eye contact, intonation of speech, and movements of the hand, head, and face that normally give an emotional emphasis to speech." He also has a long history of asociality, which "refers to the apparent lack of interest in social interactions."

Mr. Owen did not acknowledge having a mental illness and does not believe that he does. He is not malingering or feigning mental illness. He very reluctantly, only after many hours together finally disclosed some of his belief system. "I can't tell you how I got to that thought process, it was crazy, but it's absolutely true." He understands that his thoughts are odd or unusual, but he believes in the veracity of these thoughts.

Mr. Owen feels that "I am dispatched into a body that is not mine." He feels that he is a woman in the body of a man. He was trying to fully become the woman he really was. He reported dressing as a woman prior to his incarceration. His desire to be a woman is longstanding.

Mr. Duane Owen, when asked about motivation for his unlawful behavior reported "if I had sex with them, I would turn into a woman." "I don't think I killed the women. It was a vessel; I could absorb the body. I had to have intercourse with them the moment they expired. At the moment the penis would ejaculate it would resemble a hose and vacuum her soul and estrogen into my body and I could become a woman."

Mr. Owen believes that his process of sexual transformation has worked but not completely, only to a degree. He stated that he now has no hair on his body, like a woman. He stated that he has breasts, but they need to come out and he tried suctioning them to come out. He was waiting for his 'other parts', his penis, and testicles, to fall off, but to his great disappointment, this has not yet happened.

Mr. Owen believes that the two victims are a part of him and have been living within him all these years. He stated, "I didn't kill them, it's not a criminal offense." He now believes that if he is executed "it will be a triple execution" of him and the two victims. He further stated, "how can they execute me to release them?"

Mr. Owen is totally focused on his bizarre delusional thinking. Attempts to avert his attention from these delusions have been unsuccessful, which is why this is referred to as a fixed psychotic delusion.

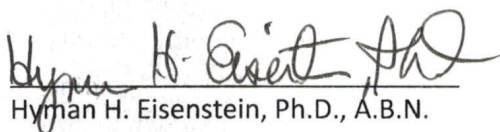
Competency

Mr. Owen meets the criteria for a diagnosis of Schizophrenia. He has an ongoing psychotic delusional belief system that has never changed but has only been enhanced and became more embedded over time. He has continually focused on his fixed delusion and irrational thinking. He is unable to provide legal counsel with any significant assistance at the present time.

Insanity

Mr. Owen's gross delusions stemming from his schizophrenia are so far removed from reality that they foreclose any possibility of a rational understanding of the reason for his execution.

It is my clinical judgment that Mr. Duane Owen meets the criteria for insanity.


Hyman H. Eisenstein, Ph.D., A.B.N.

No. _____

IN THE
Supreme Court of the United States

DUANE E. OWEN,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Florida

APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI

**THIS IS A CAPITAL CASE
WITH AN EXECUTION SCHEDULED FOR
THURSDAY, JUNE 15, 2023, AT 6:00 PM**

Appendix F

Dr. Eisenstein's Supplemental Report, dated May 31, 2023

Neuropsychological Associates LLC Florida Licensed Clinical Psychologists

Hyman H. Eisenstein, Ph.D., A.B.N.
Board Certified Diplomate in Neuropsychology
Esther L. Selevan, Ph.D.

Phone: 305 532 1945
Fax: 305 532 6263
Email: mbphds1@gmail.com

May 31, 2023

Re: Duane Eugene Owen
Case No.: 501984 CF 004000 A

I saw Mr. Duane Owen on Tuesday, May 30, 2023 at the Florida State Prison for a total of 7.25 hours. He willingly participated in the evaluation and was cooperative throughout the day. He was very motivated and put forth substantial effort. He was seen previously on May 15, 2023 for six hours, bringing our total time together to 13.25 hours.

Rapport was established and results from neuropsychological testing were valid with no signs of exaggerating, malingering, or feigning of symptoms.

Mr. Owen was very emotionally blunted, showed signs of avolition or diminished emotional expression, with no modulation of expression throughout the time together. This is congruent with the negative symptoms of schizophrenia.

Results on the Wechsler Adult Intelligence Scale – 4th Edition revealed a Full Scale I.Q. score of 92, Average range, and at the 30th percentile among his peers. In contrast, on the Wechsler Memory Scale – 4th Edition, Mr. Owen obtained an Immediate Memory score of 67 and a Delayed Memory score of 69, both in the Extremely Low range of memory functioning and at the 1st and 2nd percentile among his same age peers. This points to major problems in new learning and memory functioning. Memory scores in this range are consistent with the onset of a dementia process.

The Tactual Performance Test, a sensitive measure of brain damage, revealed scores in the severely impaired range and pathognomonic for brain damage. The Delis Kaplan Executive Function Trail Making Test revealed significant cognitive slowing and errors uncharacteristic of a person with average intelligence. These results are evidence of frontal lobe dysfunction and further corroboration of an insidious dementia process.

The Minnesota Multiphasic Personality Inventory – 2 was administered to Mr. Owen. Results were valid and demonstrated significant elevation throughout most of the profile. Responses were consistent with a schizophrenic process or thought disorder, with major distortions of reality. His mood disorder is secondary to his psychotic mentation and delusional system. People with similar responses distrust people in general, keep them at a distance, avoid close interpersonal relations, and are afraid of emotional involvement, all consistent with negative symptomatology of schizophrenia.

To further elucidate Mr. Owen's psychotic fixed delusion, the onset and process of what evolved over time were explored. Mr. Owen described his desire to be a female beginning at a very young age, however, his fear of being beat up and made of fun of caused him to hide his thoughts. He described

lots of confusion and an inability to get accurate and reliable information. He had no access to an adult advisor and no idea of whether there was treatment and how to get it. He has maintained a low profile over the years in prison as well, knowing that he would be looked at as weak and aberrant if he revealed his sexual orientation.

Mr. Duane Owen continues to say that there is nothing wrong with him. At the same time he holds steadfast in his belief that he did not kill the victims and his system of becoming female through the transfer of their souls and estrogen is a legitimate form of transformation.

SUMMARY & CONCLUSIONS

Mr. Owen has been cooperative, up front, and genuine during the evaluation process. There were no signs of exaggeration, feigning of symptoms, or malingering.

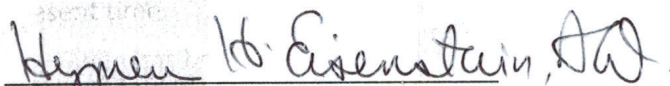
Mr. Owen is experiencing the onset of a dementia process. This is evidenced by his significantly reduced learning and memory functioning as compared to his premorbid level and fund of information.

Mr. Owen is displaying signs of brain damage in executive frontal lobe tasks.

Mr. Owen meets the criteria for a diagnosis of Schizophrenia. He is unable to provide counsel with any significant assistance relating to his criminal activity. This renders him incompetent to proceed at the present time.

Mr. Owen meets the criteria for insanity. His fixed delusions are far removed from reality and have been consistent over time. Mr. Owen lacks the mental capacity to understand the fact of his pending execution and the reason for it.

Mr. Duane Owen does not have a rational understanding of the reason for his death sentence and scheduled execution.



Hyman H. Eisenstein, Ph.D., A.B.N.

Reviewed the Following:

Penalty Phase Testimony Fred Berlin, MD, PhD

Hillary Sheehan, Private Investigator – social investigations – background history
Interviewed many known to Duane Owen – friends and family, teacher, neighbor

Testimony of Faye Sultan, PhD

Evidentiary Hearing – Dr. Henry Dee

Veterans Foreign Wars National Home - Medical Records and school records
Was in St Lawrence Psychiatric Unit in Lansing, MI from 12/14/77 – 12/22/77

Sentenced to Juvenile Jail 6/9/78 Ingham County Jail

Elizabeth Manker Mortenson – PreSentence Investigation

Hospitalized at age 16 suicide attempt.
While in jail received psychiatric treatment

Barry Crown, PhD

Thomas R. Waddell, PhD
Sanity evaluation

McKinley Cheshire, MD
Court Exam – Sanity

David Fisher – Report & Psychological Report

Affidavit of Ruth Richards

Affidavit of Kenneth Richards

Affidavit of William Greg Maynard

Affidavit of Donna S. Johnson

Lionel H. Blackman, MD

DOC records