

COURT OF APPEAL - STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION II

PEOPLE OF THE STATE OF CALIFORNIA,)	DCA No. E059394
Plaintiff/Respondent,)	Riverside County
vs.)	Case No. RIF1201430
ADAN S. DOMINGUEZ,)	Volume 1 of 2
Defendant/Appellant.)	Pages 1-201 (Pages 19-25 sealed)

REPORTERS' TRANSCRIPT ON APPEAL

BEFORE THE HONORABLE MICHELE D. LEVINE
February 21, 2013

BEFORE THE HONORABLE MAC R. FISHER
February 22, 2013

BEFORE THE HONORABLE MARK E. JOHNSON
February 26, 2013, March 19, 2013, April 15, 2013

APPEARANCES:

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Reported by:

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TERESA L. CASAL, CSR No. 7134
DENISE K. FRINGER, CSR No. 10283

Dominguez v. Spearman

SHELLEY L. MOUZAKIS, CSR EDCV 16-01172 DMG (JC)
Lodgment 1, Part 1 A-4

SUPERIOR COURT - STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

REPORTERS' TRANSCRIPT OF TRIAL PROCEEDINGS

BEFORE THE HONORABLE MICHELE D. LEVINE
February 21, 2013

BEFORE THE HONORABLE MAC R. FISHER
February 22, 2013

BEFORE THE HONORABLE MARK E. JOHNSON
February 26, 2013, March 19, 2013, April 15, 2013

APPEARANCES:

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Reported by: LAURA M. JOHNSON, CSR No. 8369
TERESA L. CASAL, CSR No. 7134
DENISE K. FRINGER, CSR No. 10283

1 RIVERSIDE, CALIFORNIA; FEBRUARY 21, 2013

2 BEFORE THE HONORABLE MICHELE D. LEVINE

3 THE COURT: On the Dominguez matter.

4 MR. ZEKTSER: Yes, your Honor. Elan Zektser for the
5 People. I've seen Nicole Williams walking around.

6 MS. ROGERS: She's next door. I can go --

7 THE COURT: I did see that she was next door. I just
8 wanted to bring to your attention that we don't have
9 information as of yet from the jail regarding the material that
10 I had requested for this morning, nor is Mr. Dominguez dressed
11 out, which was put in the minutes for this morning as well.

12 And I know, sir, that you're not feeling well. We'll
13 try to handle it as soon as we possibly can. I may send it
14 to the department I was planning on assigning it to to make
15 sure that the information can be gathered perhaps more quickly
16 if I send it there, and that issue can be resolved one way or
17 the other.

18 MR. ZEKTSER: I appreciate it. Mr. Dominguez looks
19 healthier than me today.

20 THE COURT: As soon as you can get Miss Williams back
21 here, I'll go ahead and take care of that in that respect.

22 (The Court heard other matters.)

23 THE COURT: I'll return to the matter of People versus
24 Dominguez. The Court has received a -- a faxed document
25 from -- from the jail regarding -- regarding Mr. Dominguez. If
26 I can have appearances for the record, please.

27 MS. WILLIAMS: Good morning, your Honor. Nicole
28 Williams on behalf of Mr. Dominguez who is present before the

1 Court in custody, being assisted by a court certified Spanish
2 interpreter.

3 MR. ZEKTSER: Elan Zektser for the People.

4 THE COURT: The Court has received a document from the
5 Regional Medical Center. It indicates that Mr. Dominguez is
6 receiving medications relative to his medical -- various
7 medical conditions. That's really as detailed as it gets. I
8 don't want to read the entirety of this letter on the record.
9 Suffice it to say that what is represented in this -- in this
10 letter from the Regional Medical Center is that they indicate
11 that although multiple medications are being taken, that none
12 of those medications would impact his ability to assist in the
13 trial proceedings and to go forward on this matter; that he has
14 -- any pending orthopedic follow-up and clinic appointments,
15 they are saying, can be arranged without interfering with the
16 trial itself, and they're happy to make sure that that gets
17 accomplished.

18 With that in mind, I'll certainly indicate that I'm
19 happy to have any additional information known by you,
20 Miss Williams, provided to the Court at this time.

21 MS. WILLIAMS: Your Honor, at this point in time, I
22 don't have additional information to provide to the Court. My
23 investigator is still attempting to get that information from
24 the jail. Unfortunately, the jail is not as receptive to
25 inquiry from defense counsel with respect to Mr. Dominguez's
26 medical status and the medication that he's taking and also any
27 steps that need to be taken while the trial occurs to ensure
28 that he receives the medication he needs for pain management or

1 whatnot and also for comfort.

2 The last information I had was what I shared with the
3 Court yesterday morning, which was that my investigator spoke
4 with a nurse at the jail who indicated something to the effect
5 of in order for Mr. Dominguez to attend court for long periods
6 of time, he would have to be cleared by jail staff, that he
7 would have to be seen by a doctor again. At that point in
8 time, the individual -- the nurse said she would get his
9 medical records and review them and, I believe, speak with
10 someone else. As of right now, I don't know if she's spoken
11 with whomever she believed she needed to speak with. I am in a
12 holding pattern trying to get that information.

13 I recognize what the Court has been provided from the
14 jail -- or from RCRMC regarding the medication that he's taking
15 and their opinion that it wouldn't impact his ability to
16 participate in trial. At this point, without me knowing
17 specifically what he's taking, I think my concerns are still
18 the same, especially based on Mr. Dominguez's report to me
19 regarding how he was feeling, and also his report to the Court
20 yesterday regarding how he was feeling and how the medication
21 was personally impacting him. I think it's commonly known that
22 medication has reported side effects. However, each person
23 responds to them differently.

24 In the abundance of caution, I would still express my
25 concern with trial going forward at this point with it now
26 being two weeks and one day post amputation, Mr. Dominguez
27 possibly still being on narcotic medication and indicating that
28 he is having difficulty, whether it's from the narcotic

1 medication he's taking or from other medication. I don't know.

2 THE COURT: Here's what I would propose to do, and I'm
3 not sure about the nonresponsiveness to the defense. I think
4 it's just nonresponsiveness period because of just sheer
5 over -- the volume is just overwhelming in terms of the
6 population that they now have at the jail with respect to
7 providing services medically and psychologically to inmates.

8 And I did speak to the jail personnel fairly high up
9 in the jail regarding those services being provided. They now
10 have 24/7 medical treatment available in the jail, but my guess
11 is it's the responsiveness in terms of that information that
12 gets -- gets lost. You saw what the Court needed to go through
13 to just get this information for me this morning, so I'm not
14 sure it's at all towards the defense or towards the People or
15 towards this Court. I just think they're overwhelmed with the
16 information they need to -- to do to provide medical services,
17 let alone provide the information that we need.

18 What I would suggest is -- only you, Mr. Zektser, can
19 tell me if you're well enough to do this this morning. I know
20 you're not feeling well. What I would like to do is to send
21 the matter for Judge Fisher for purposes of trial. I know that
22 the defendant is not dressed out at this point in time, and so
23 it would not begin today for trial. What I'd like him to do
24 and what I can order from here is a -- an order that someone
25 from the -- from the jail administrative staff, medical staff,
26 who has knowledge of Mr. Pimentel's -- I'm sorry --
27 Mr. Dominguez's medications that he's taking and his condition
28 be ordered to appear this afternoon at 1:30 in Judge Fisher's

1 | courtroom.

2 The only other thing that the Court can do is have him
3 make a determination without that information, but my feeling
4 is that I can make an order regarding that information to be
5 known and someone to respond to do so. I can do that for this
6 afternoon. I can do it for tomorrow morning.

7 MR. ZEKTSER: I think, your Honor, I would like it to
8 be tomorrow morning, if that's okay. I'm fine with doing it
9 this afternoon, but the reason why I believe tomorrow morning
10 would be best is it would give the jail personnel a chance to
11 get notice and get over there.

12 THE COURT: That's fine. That's fine. They usually
13 respond when I do an OSC and have that at least ordered by the
14 Court. And it will certainly give you an opportunity to feel
15 better for that hearing, and hopefully, Miss Williams will have
16 additional information as well.

17 Mr. Dominguez, obviously you're hearing what the Court
18 is saying, and what the concern is is that the medication that
19 you're taking and any follow-up care you need regarding the
20 amputation, that that not interfere with your ability to
21 understand the proceedings that are ongoing and to assist your
22 counsel during the course of the trial.

23 They were supposed to dress you in civilian clothes
24 today. They did not do so, and that's -- that's fine. It
25 actually works out okay today. I've received some information
26 from Regional Medical Center regarding their position as to the
27 information on the medications you're taking, and that that
28 would not, in their opinion, interfere with your ability to

1 have your trial go forward.

2 What I'm going to do is I'm going to assign this
3 matter to Judge Fisher in Department 52 for all purposes.
4 Initially, what the Court will be doing is I'm not making any
5 determination here with respect to the medications and the
6 readiness for the ability to go forward, I guess is what I
7 should say, by the defense. I will allow that to be argued and
8 information gathered by Judge Fisher tomorrow morning, and I
9 will order that Mr. Dominguez be brought to Department 52 for
10 trial and for that initial preliminary purpose tomorrow morning
11 at 8:30 in Department 52.

12 So it's assigned there for trial unless Judge Fisher
13 makes a determination that he believes that because of the
14 medication or reaction from that medication causes an inability
15 for Mr. Dominguez to be able to understand the proceedings and
16 to go forward, and in that case, he can send the matter back to
17 this department tomorrow. If he otherwise makes a
18 determination that that can be handled in short order, the
19 Court will otherwise have it remain there for purposes of
20 trial, and you'll follow his directions thereafter.

21 For purposes of that hearing -- initial hearing
22 regarding Mr. Dominguez's ability based upon the multiple
23 medications he's taking, the Court will make an order that I'll
24 send to the jail administration that someone from the medical
25 staff or in charge of the medical staff with knowledge of
26 Mr. Dominguez's medications and treatment must appear,
27 physically appear in Department 52 tomorrow morning at
28 9 o'clock to be prepared to address the issue of whether or not

1 those medications impact Mr. Dominguez's ability to understand
2 the proceedings or to -- to be able to assist his counsel with
3 the case, and I'll let Judge Fisher formulate any other
4 questions he might have regarding that information. That
5 information is not to be simply provided in written form, but
6 someone is to appear regarding that information, and then Judge
7 Fisher can take up any confidential aspects of that information
8 tomorrow morning as well.

9 MR. ZEKTSER: Your Honor, I appreciate the Court's
10 time and effort in this. I am curious though, are we getting a
11 second opinion as to this now or --

12 THE COURT: Well, what's happening is I've received
13 something from Regional Medical Center, not from the jail
14 itself, and they're obviously providing numerous medications to
15 him. I have no idea what those are. What I've received from
16 Regional Medical Center is a very generalized information from
17 Dr. Glen Mejia, M-e-j-i-a, from Detention Health Services. I
18 don't know whether or not he is the one who is providing
19 immediate care to Mr. Dominguez or not. If he is, he can be
20 the one to appear, or that can be indicated to the Court that
21 this is the individual who is providing those services directly
22 to Mr. Dominguez. So it's not for a second opinion, a
23 conflicting opinion, a third opinion. I just want a specific
24 opinion as to Mr. Dominguez.

25 MR. ZEKTSER: All right. I appreciate that. Thank
26 you, Judge.

27 THE COURT: You bet.

28 MS. WILLIAMS: And your Honor, the Court mentioned two

1 different times for us to be in Department 52. Should we be
2 there at 8:30 or 9:00 a.m.?

3 THE COURT: You should be there at 8:30. I'm ordering
4 the jail personnel to be there at 9:00.

5 MR. ZEKTSER: A couple things, Judge. If we could
6 have Mr. Dominguez dressed out for tomorrow. Tomorrow is also
7 last day.

8 MS. WILLIAMS: Your Honor, at this point, and I think
9 Mr. Dominguez would be agreeable to giving a time waiver to
10 Monday being the last day so that we can address these issues
11 regarding his medical status and 402's tomorrow, and we can
12 begin picking the jury on Monday.

13 MR. ZEKTSER: I'm fine with that.

14 THE COURT: Okay. Mr. Dominguez, right now, the Court
15 needs to have your trial start, which means jury selection must
16 begin on or before the close of business day tomorrow. What
17 your counsel is indicating is that you would be agreeable, sir,
18 to having the last day actually be March the 4th instead of
19 March the 1st -- I'm sorry -- to be February the 25th instead
20 of being February the 22nd. Is it acceptable with you, sir,
21 that this trial begin on or before the 25th of February?

22 THE DEFENDANT: Yes.

23 THE COURT: And Counsel join?

24 MS. WILLIAMS: I do, your Honor.

25 THE COURT: We'll show the last day then being the
26 25th. We'll have you transported, sir, to Department 52
27 tomorrow morning at 8:30, and that's for purposes of the
28 determinations that I've indicated on the record already, and

1 it's assigned there for purposes of trial as well.

2 MS. WILLIAMS: Thank you, your Honor.

3 THE COURT: Thank you. And thank you for your
4 assistance as well.

5 THE INTERPRETER: Thank you.

6 THE COURT: We'll note in the record that he needs the
7 assistance of the interpreter for tomorrow as well.

8 MR. ZEKTSER: Thank you, everyone.

9 (Proceedings concluded.)

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1 RIVERSIDE, CALIFORNIA, FEBRUARY 22, 2013

2 MAC R. FISHER, JUDGE PRESIDING

3 THE COURT: On the record in the matter of the People
4 versus Dominguez. Your appearances, please.

5 MS. WILLIAMS: Nicole Williams on behalf of
6 Mr. Dominguez who is present before the Court in custody in a
7 wheelchair being assisted by the court-certified Spanish
8 interpreter.

9 THE COURT: Go ahead, Mr. Zektser.

10 MR. ZEKTSER: Good morning, Your Honor. Elan Zektser
11 for the People.

12 THE COURT: All right. Thank you.

13 The Court has been sent this matter for trial. This is
14 the first time we've gone on the record.

15 The Court has had an in-chambers conference with
16 Ms. Williams and Mr. Zektser. And previously, there was also a
17 medical doctor that was present who had some information
18 relative to the medical condition of
19 Mr. Dominguez.

20 There has been a change of circumstance, as I
21 understand it, and if I'm incorrect, I would ask that the
22 lawyers correct the record as is appropriate.

23 Bottom line is, the matter, as I indicated, was sent to
24 me by Judge Levine for trial; last day for trial being next
25 Monday.

26 There had been previous 1050 requests, and I believe in
27 fact the granting of some 1050 requests to continue the trial.
28 Along the way, there was a purported report produced from a

1 perspective as to the present condition of Mr. Dominguez.

2 Mr. Dominguez apparently has had an amputation very
3 recently, and the issue was as to whether or not he was
4 medically capable of going forward. And that was part of the
5 request, if not the entirety of the request, to continue
6 pursuant to 1050.

7 Today the circumstance has changed, in that there is
8 now a 1368 declaration as to doubt that was mentioned to the
9 Court in chambers by Ms. Williams.

10 Am I correct so far in reciting the course of events,
11 Ms. Williams?

12 MS. WILLIAMS: Yes, Your Honor.

13 THE COURT: Mr. Zektser?

14 MR. ZEKTSER: That's accurate.

15 THE COURT: Okay, all right.

16 My determination is this. That it's simply not enough
17 for Defense counsel to express doubt, or declare doubt, pursuant
18 to PC 1368; and that the Court needs some additional
19 information.

20 And I'm guided by a number of cases that I would be
21 more than pleased to state here on the record. But I think it
22 in fact is the responsibility of the Court to make a
23 determination as to whether or not there is substantial evidence
24 that the defendant is incompetent. Comment by counsel, Defense
25 counsel in of itself is ordinarily not enough.

26 So this is what I think we should do. I think I should
27 go in camera outside the presence of Mr. Zektser and ask
28 Ms. Williams to give me that information necessary for the

1 Court, for myself, to make a determination whether or not there
2 is in fact substantial evidence.

3 First, Ms. Williams, what do you think about the
4 procedure that I suggest?

5 MS. WILLIAMS: I do believe that it is appropriate.

6 THE COURT: Inappropriate?

7 MS. WILLIAMS: That it is appropriate.

8 THE COURT: Okay.

9 MS. WILLIAMS: And actually, while we were on recess, I
10 mentioned to your courtroom assistant while Your Honor was still
11 speaking with Judge Levine that that would be my request, to
12 have an ex parte hearing pursuant to California Rule of Court
13 with respect to the 1368 issue that would then allow me to state
14 my reasons for declaring a doubt. So I do agree with Your
15 Honor.

16 THE COURT: And I will tell you, Mr. Zektser, I came to
17 that conclusion independent of ever hearing anything from
18 Ms. Williams. So you can see that I'm in agreement with
19 Ms. Williams.

20 Why don't we give you an opportunity here to express
21 your concerns.

22 MR. ZEKTSER: Sure, Your Honor.

23 I'm in agreement with the procedure that the Court is
24 saying so far. But I do want to make a couple things clear to
25 the Court prior to that.

26 Just so, when the Court is making its determination,
27 it's known, a number of different facts. We've had this case
28 for over a year now; there's never been a doubt declared

1 whatsoever. Not once, never.

2 Mr. Dominguez has had discussions with Judge Levine, a
3 very competent judge, who actually was asking questions back and
4 forth, back and forth. Numerous hearings. No doubt in her mind
5 ever expressed whatsoever as to the competency or his ability to
6 stand trial.

7 Mr. Dominguez then was seen by some kind of doctor at
8 RCRMC after he received his operation.

9 We received notice -- Judge Levine requested notice
10 from that doctor at Ms. Williams's request to see if he could be
11 able to assist in court, the trial.

12 Judge Levine got that doctor's note. Nothing in that
13 note from the doctor indicated, whatsoever, any incompetence,
14 any question, nothing about his competence.

15 We brought a doctor today -- that was brought here
16 today. Ms. Williams then questioned that doctor, along with
17 myself, in a back room, and asked all about the medication;
18 asked about anything and everything possible. Nothing that
19 doctor said indicated at all his incompetence to stand trial.
20 Whether he answered questions to him; whether he wasn't
21 responding to questions. Anything whatsoever.

22 And in fact, on my walk out, I had a conversation with
23 that doctor. And I said:

24 "Did you talk to him? Did you talk to him about how he
25 was feeling, and what was going on with him regarding his pain?"

26 He said, "Yeah, we had a conversation. He told me he
27 wasn't in pain; he felt a little dizzy at some point."

28 And it was a completely normal conversation.

1 I asked him if he was anxious, even. And the doctor
2 said no. He said, "No. A little bit anxious, but not that
3 bad."

4 He had a full conversation with him. However,
5 Ms. Williams insisted that we let that doctor go, and so the
6 doctor is gone.

7 That doctor had a full conversation with him yesterday.
8 Nothing. Nothing regarding his competency at issue. Nothing.
9 Zero.

10 Now, did he evaluate him under 1368? No. But he is a
11 doctor. Ms. Williams is not.

12 The other doctor that evaluated him from RCRMC is a
13 doctor, and Ms. Williams is not.

14 And nobody, no doctor, no one, until the eve of trial
15 that we're sent out today, has said there is a 1368 issue. And
16 it happened to be just at the exact moment after we talked to a
17 doctor that was going to come in and say, "No, he's okay to
18 proceed."

19 That has never been brought up once. We have continued
20 the case a number of times because of a possible expert. No
21 expert in this case.

22 Then we continued the case a number of times because of
23 the -- he's on some kind of medications, Ms. Williams is saying.
24 Judge Levine said, "Oh, that's not enough, I'm going to send it
25 out."

26 Then we come here, and we bring the other doctor. And
27 that doctor is going to tell you without a doubt that he's fine,
28 he can proceed.

1 And now for the first time, for the very first time in
2 over a year, there's a 1368 issue.

3 I have a right to proceed to trial, Your Honor. And
4 the reason why I make this right is because I have told four
5 young girls that we were proceeding, that have been asking to go
6 forward on this case since the start. And under Marsy's Law,
7 they have a right to proceed to trial.

8 I believe this is a delay tactic under 13 -- and this
9 is a last resort under 1368. And I strongly believe it, or else
10 I wouldn't have said it.

11 And so I'm asking the Court, when listening to the
12 conversation now during this ex parte meeting, that you keep
13 into consideration the other two doctors, Judge Levine's
14 discussions, Judge Hernandez's discussions with the defendant,
15 every judge, who nobody has said, "Oh, there seems to be some
16 kind of doubt here."

17 And on top of it, no mental issues that have ever been
18 presented from anybody, from family members, from anybody in
19 this case, that are being presented for the very first time
20 today.

21 And so I am asking this Court to take all things into
22 consideration. And the fact that we can bring the doctor back
23 here. And the fact that I have been in certain hearings, in
24 certain cases. One in particular recently with Judge Johnson
25 where something similar came up, and he sent it out immediately
26 and got it returned right away, and so we were able to proceed
27 to trial.

28 I'm not looking to continue this case any longer than

1 needs to be, because these girls want this to be over with. And
2 Mr. Dominguez deserves a fair trial, but they also deserve their
3 justice as well.

4 And so I'm asking the Court to move this along. And
5 I'll step aside.

6 THE COURT: No, no. Before you excuse yourself. Since
7 we talked about matters that are really not going to be the
8 subject matter, I would assume, of what Ms. Williams is going to
9 express to the Court, specifically as to the basis of her belief
10 that there is substantial evidence in support of her argument
11 under 1368.

12 But Mr. Zektser has made mention of a number of issues
13 outside my presence in front of other judges. And I'm going to
14 give you an opportunity, Ms. Williams, to respond, without
15 divulging any of the conversations that you've had with your
16 client, to Mr. Zektser's claims, if you wish. But that's
17 entirely up to you.

18 I think fairness dictates that you have an opportunity
19 to speak to those issues.

20 MS. WILLIAMS: Your Honor, the first thing that I'll
21 state is that, with respect to my declaration that Mr. Dominguez
22 is incompetent to stand trial, the Prosecution has no standing;
23 no opinions should be expressed on this issue. And it is not
24 their purview to determine whether or not Mr. Dominguez is
25 competent.

26 I think Mr. Zektser bringing up information about the
27 history of the case, and things that other judges may or may not
28 have determined regarding his competency, is inappropriate.

1 I think Mr. Zektser flat out questioning my ethics,
2 questioning my representations to the Court on the record is
3 inappropriate. And I take extreme offense to that.

4 I've been doing this far too long here in Riverside and
5 in another county for anyone to question whether or not I am
6 declaring a doubt as to my client's competence based on a desire
7 to have a delay tactic for trial, or if there's actually a
8 concern as to my client's competency.

9 The representation by Mr. Zektser regarding Judge
10 Levine's opinion of Mr. Dominguez's mental status or his
11 competency is incorrect. There were hearings held on this
12 issue. This matter had been trailed since Tuesday on Judge
13 Levine's request.

14 She has inquired of Mr. Dominguez regarding how he was
15 feeling at the moment.

16 She has stated things on the record regarding what she
17 has observed regarding Mr. Dominguez in court.

18 And I would say that she had some concerns as to his
19 status. Whether that is physical concerns for Mr. Dominguez, or
20 mental concerns, I have no idea.

21 And even in so assuming that I know what Judge Levine
22 was thinking, I don't think I should be doing that. And I
23 certainly don't think that Mr. Zektser should be doing that as
24 well.

25 I do request, and the Court has already indicated the
26 Court's intention, to provide an ex parte hearing so I can go
27 into greater detail.

28 THE COURT: Okay. We're going to do that. I just

1 wanted to give you both an opportunity to speak to the issues
2 outside my presence as to what went on prior to today, to
3 today's hearing.

4 All right. Mr. Zektser, I'm going to excuse you for a
5 moment.

6 MR. ZEKTSER: Thank you.

7 THE COURT: Thank you.

8 (Deputy DA Mr. Zektser exits the courtroom.)

9 (Pages 19 through 25 PC 1368 proceedings under
10 seal by order of the Court.)

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1 (Proceedings resume in open court as follows:)

2 THE COURT: Thank you, Mr. Zektser. Mr. Zektser has
3 now returned to the courtroom.

4 The Court has conducted an in camera or ex parte review
5 on the record with Ms. Williams, which would be sealed by the
6 order of the Court.

7 Let me indicate to the two of you that case law says to
8 us that substantial evidence is something more than the Defense
9 counsel's verbal opinion. With that premise understood, and
10 providing the Court with some guidance, let me also indicate
11 that I've had an opportunity to discuss what to do at this
12 present time, with my supervisor, Judge Levine. And I did so
13 before I took the bench.

14 I'm of the opinion, Mr. Zektser, even over your
15 objection, that pursuant to 1368, I'm going to have to suspend
16 the criminal proceedings, direct this matter to Judge Johnson, I
17 believe that's Department RMH, for determination of how to
18 proceed.

19 I understand your objection. It's noted. You as usual
20 did so in a spirited fashion. I recognize and accept that.
21 However, I think I've heard enough from Ms. Williams to indicate
22 that she's met that burden to demonstrate to me, independent of
23 her opinion, certain factors or facts which would be the basis
24 of my finding that there is substantial evidence.

25 MR. ZEKTSER: Would the Court consider sending it for a
26 turnaround within 24 hours?

27 THE COURT: I will also tell you, concurrent to trying
28 to speak with Judge Levine, I've done my best to speak with that

1 department, and I've received no feedback from that department,
2 either because they're engaged or whatever the reason may be.
3 So I can't promise you that.

4 I know that you articulated that you're aware of a
5 circumstance where, I believe it would be Judge Johnson sent the
6 matter out for an immediate review, and the parties received
7 some kind of feedback ASAP, and a decision was made as to
8 whether or not there was a 1368 issue continuing.

9 I'm not given that belief that that's going to happen
10 here today, simply because I tried to call two or three times
11 and got nothing back. So I did try, and I want you to know
12 that.

13 MR. ZEKTSER: I appreciate your attempts.

14 THE COURT: Okay. I did speak with Judge Levine, I
15 want you also to know that. And I say this to him because I do
16 believe you made an excellent point about the alleged victims
17 having their right to go forward.

18 And with that understanding, I think I have spoken to
19 the issue on the substantial evidence under 1368, and I find
20 that there is substantial evidence.

21 And I have no other choice based upon the totality of
22 the circumstances other than to suspend the criminal proceedings
23 and direct this matter to Department 31.

24 MR. ZEKTSER: Your Honor, I would ask that it be sent
25 back today.

26 THE COURT: I'll send it there. I don't know that he's
27 going to act upon it today.

28 MR. ZEKTSER: Then it would be Monday.

1 MS. WILLIAMS: I've spoken with the deputy public
2 defender that handles the mental health court regarding
3 scheduling. She's indicated that Tuesday -- this Tuesday would
4 be the best day to send it.

5 THE COURT: Yes. And I was also told that too,
6 Mr. Zektser.

7 MR. ZEKTSER: That's fine.

8 THE COURT: All right. Tuesday through Friday they're
9 in session in that regard. So we'll get it on the Tuesday
10 calendar.

11 MR. ZEKTSER: That's fine.

12 THE COURT: That's the best I can do. Thank you both
13 very much.

14 MR. ZEKTSER: Thank you.

15 MS. WILLIAMS: Thank you, Your Honor.

16 THE CLERK: 2/26, at 8:30, Department RMH?

17 THE COURT: Correct. All right. Have a good day.

18 MR. ZEKTSER: Thank you.

19 (Conclusion of proceedings.)

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1 RIVERSIDE, CALIFORNIA; FEBRUARY 26, 2013

2 BEFORE THE HONORABLE MARK E. JOHNSON

3 THE COURT: Okay. Adan Dominguez.

4 MS. NGUYEN: Thank you very much. Monica Nguyen for
5 Mr. Dominguez. He is present. And he has been assisted by a
6 court-certified Spanish interpreter in the past. We had an
7 interpreter earlier, but I don't see her present at the moment.

8 THE CLERK: She had to go to Department 64 for a
9 witness assignment.

10 (Discussion held off the record.)

11 THE COURT: Tell you what, let me pass this for a
12 second.

13 (Other matters heard.)

14 THE COURT: Dominguez, Adan Dominguez.

15 MS. NGUYEN: Thank you, Your Honor. Monica Nguyen for
16 Mr. Dominguez. He is present in custody to my right. He is
17 being assisted by the court-certified Spanish interpreter.

18 MR. ZEKTSER: Elan Zektser for the People.

19 THE COURT: And perhaps our interpreter could identify
20 herself for the record.

21 THE INTERPRETER: Maria Labossiere.

22 THE COURT: Okay. I've known you for a while. You've
23 got a certificate on file.

24 THE INTERPRETER: Thank you.

25 THE COURT: Okay. Return of doctors' reports. Let me
26 just see.

27 Okay. Both of you, you want me to appoint Dr. Kaisch,
28 first off, pursuant to Penal Code Section 1368 and 1370.

1 MS. NGUYEN: Yes, Your Honor.

2 MR. ZEKTSER: That's Ms. Nguyen's recommendation and
3 request. I'm okay with it.

4 THE COURT: Okay.

5 MR. ZEKTSER: But I'm asking for a second doctor.

6 THE COURT: I will give you a second one if you two
7 want.

8 MR. ZEKTSER: Sure. That would be David J. Jimenez.

9 THE COURT: Who is he? Is he a doctor?

10 MS. NGUYEN: He is a new doctor on the list. And I
11 have no familiarity, otherwise I probably would have been fine
12 with that right from the beginning.

13 THE COURT: Okay. We will appoint two doctors. We'll
14 appoint Dr. Kaisch and this Dr. Jimenez to evaluate
15 Mr. Dominguez pursuant to Penal Code Section 1368 and 1370. And
16 that's -- the reports will be returnable March 27, 2013, at 8:30
17 in the morning. Make sure the doctors know that.

18 MR. ZEKTSER: Your Honor, actually, did you say
19 March 27th?

20 THE COURT: I did.

21 MR. ZEKTSER: I'm sorry. I thought it read March 17th,
22 which would be a Sunday anyway. I'm going to ask that it be
23 returned on the 18th.

24 I'm asking, Your Honor, that this case -- I do believe
25 I have a statutory priority due to the charges in this case.
26 I'm asking that the Court put something in the minutes and
27 request the doctors make this case a priority in their hearings.
28 We were sent out to trial. I had told the multiple victims that

1 we were proceeding to trial, and on the eve of trial, the same
2 day they declared a doubt. So I'm asking that this Court help
3 the People pursue this matter as quickly as possible and as
4 quickly as the doctors can do it.

5 THE COURT: Well, it's still --

6 MR. ZEKTSER: Your Honor, if they're not done by that
7 date, if they're not done by the 18th, we'll come back the 27th.
8 I don't see the harm in doing that.

9 MS. NGUYEN: I'm more than happy to accommodate the
10 prosecution. I completely understand the problem that he is
11 having. The only issue that I see arising is that we need to
12 get the medical records first and forward them over to the
13 examiners. Because the medical history in this case is actually
14 really pertinent to the analysis.

15 THE COURT: Okay. I was about ready to do it and then
16 you just said if you get medical records. That always takes
17 awhile.

18 MR. ZEKTSER: Actually --

19 THE COURT: So tell me how this can be done by the 18th
20 with the medical records. If you tell me that, I will do it.

21 MR. ZEKTSER: Sure. I will give you an example.

22 We were in trial, and Judge Levine said she wanted a
23 direct letter from the doctor, for them to write it up by the
24 next morning by 9:00 a.m., and what do you know, we had a letter
25 from the doctor. So I'm sure if this Court uses its prestigious
26 powers to get things rolling, I think that we can make it .
27 happen.

28 THE COURT: Well, correct. I'm not sure I agree with

1 everything you just said, but somebody has to get medical
2 records to these doctors.

3 MR. ZEKTSER: It's the jail. The jail is in charge of
4 the medical records.

5 THE COURT: Wait. Are we talking about jail medical
6 records?

7 MS. NGUYEN: That's correct.

8 MR. ZEKTSER: They have them just sitting down there.

9 THE COURT: Okay. How old are the victims in this
10 case?

11 MR. ZEKTSER: They're all youths, and there's more
12 than -- there's four of them.

13 THE COURT: Okay. Well, okay. I will order the
14 reports returnable by March 18th and also order that the jail
15 records, mental health records, be released to both of these
16 doctors by March 6th. We will put that in the minutes.

17 I will tell you, I'm not going to look at this case
18 until, you know, probably the morning of March 18th or the 17th.
19 So there is a court order in there for the release of those
20 records. So if anybody wants to push the jail a little bit, it
21 is in the court's minutes.

22 MR. ZEKTSER: I have no problem pushing.

23 THE COURT: Okay. We will see you back here
24 March 18th.

25 MR. ZEKTSER: Appreciate that, Your Honor.

26 THE COURT: Okay.

27 MS. NGUYEN: Thank you, Your Honor.

28 (Proceedings concluded.)

1 RIVERSIDE, CALIFORNIA; MARCH 19, 2013

2 THE COURT: How about Adan Dominguez.

3 MS. NGUYEN: Thank you, Your Honor. Monica Nguyen for
4 Mr. Dominguez. He is present in custody. Unfortunately we
5 don't have our Spanish interpreter.

6 THE COURT: Okay. We will pass that for a moment.

7 (Other matters heard.)

8 THE COURT: Okay. Let's call the case of People versus
9 Adan Dominguez.

10 MS. NGUYEN: Thank you very much, Your Honor. Monica
11 Nguyen for Mr. Dominguez. He is present in custody here to my
12 right. He is being assisted by a court-certified Spanish
13 interpreter.

14 MR. ZEKTSER: Elan Zektser for the People. Good
15 morning. Thank you.

16 THE COURT: Okay. So you want me to continue this to
17 April 5th, 8:30. Defense is awaiting records from Patton.

18 MS. NGUYEN: Your Honor, the Court may be reviewing the
19 Giauque 1050. It was probably on the top of the file.

20 THE COURT: I apologize.

21 So we're going to set a 1368 trial for March 26th.

22 MS. NGUYEN: Yes, Your Honor. That's the request of
23 the prosecution, and I'm happy to abide by that request.

24 THE COURT: Now, my daughter is off next week so I was
25 going to try to take off next week if I can. Is this the actual
26 trial itself?

27 MS. NGUYEN: Yes, sir.

28 THE COURT: If you want me to do it, I will be happy to

1 do it, or we can send it out on the 26th. You're not going to
2 hurt my feelings either way.

3 MR. ZEKTSER: If you're not going to be here next week,
4 Judge, we will just put it for the first day that you're back.

5 MS. NGUYEN: Fine with me. Just so the Court is aware,
6 I'm off April 4th. So I'm available the 2nd and the 3rd, and I
7 don't know if the 1st is a court holiday.

8 THE COURT: What's the time estimate on this?

9 MS. NGUYEN: The defense has three to four witnesses
10 and possibly a rebuttal witness.

11 THE COURT: This is a jury trial or court trial?

12 MS. NGUYEN: Court trial.

13 MR. ZEKTSER: Court.

14 THE COURT: Okay. Perhaps we can just set it for
15 April 8th at 9:00 in the morning.

16 MS. NGUYEN: I'm out that week as well.

17 THE COURT: How about April 15th, 9:00 in the morning.
18 Does that work with everyone?

19 MS. NGUYEN: That's perfect.

20 THE COURT: Mr. Zektser, how does that sound?

21 MR. ZEKTSER: If that's the soonest we can do it. And
22 I'm getting the yes from your clerk.

23 MS. NGUYEN: Your Honor, just to make the Court aware,
24 I don't have a whole lot going on that week, and there is
25 another trial that's going with Mr. Murray. So it would be nice
26 if we can get them both done that week as well.

27 THE COURT: Okay. April 15th, 9:00 in the morning.

28 MR. ZEKTSER: Your Honor, there are a couple of other

1 matters that I wanted to address. I spoke to Ms. Nguyen
2 informally about who she would be calling --

3 THE COURT: Yes.

4 MR. ZEKTSER: -- for her trial, and one of the
5 individuals was Nicole Williams, who is a public defender who is
6 handling the actual trial. When we were sent out to trial,
7 Judge Fisher denied the 1368 request at first, then there was an
8 ex parte hearing between Ms. Williams and the Court regarding
9 her feelings and her personal beliefs about why Mr. Dominguez
10 qualified under 1368. That record was then sealed.

11 THE COURT: Okay.

12 MR. ZEKTSER: I would like and I will be asking the
13 Court to unseal that record and to allow me to have access to it
14 after the Court has taken a look at it itself and seeing if
15 there's anything relevant. I do believe that Ms. Williams is
16 going to testify. I have no idea what she is going to testify
17 to. I need to have some kind of offer of proof. And once I get
18 that offer of proof, I think that that information should be
19 impeachable by her, in essence, testimony to the Court in that
20 1368 hearing.

21 THE COURT: I don't know. Tell you what, give me some
22 authority. I will want some authority from both sides on that.
23 Because I have done those hearings, and very often you get a big
24 mix of just observations, which I'm guessing it would be fine
25 for her to testify to, but you also end up with a lot of
26 attorney-client issues. I mean, give me some authority on that.

27 MR. ZEKTSER: Sure. And that authority would be 1054,
28 Your Honor. I can cite it right now for you.

1 THE COURT: Well --

2 MR. ZEKTSER: Because I have no idea what this witness
3 is going to be testifying to, and I have the right within
4 30 days of trial to know what this witness is going to say.

5 THE COURT: I'm looking for something a little more
6 than just a statutory section on impeachment. I mean, you're
7 talking about getting into a hearing where an attorney may have
8 revealed work product and their personal impressions as a
9 lawyer. I mean, before I release things like that, I want to
10 make sure I'm on solid ground. So 1054 does not give me a lot.

11 MR. ZEKTSER: Well, 1054, Your Honor, says that I'm
12 entitled to discovery, and that's what I was referring to.

13 THE COURT: Right.

14 MR. ZEKTSER: But on second thought also, Your Honor,
15 they are waiving certain privileges by going forward on this.

16 THE COURT: I want something in writing on this. If
17 you're asking me to get into that type of hearing, I'd like to
18 see something in writing. Do that and then I will take a look
19 at it. We don't need to set a date now, just ask Madam Clerk
20 and I'm sure she will be nice enough to put it on calendar if
21 you want.

22 MR. ZEKTSER: That's perfect.

23 THE COURT: And this doesn't require a 10-day notice
24 period either.

25 Okay. So we will see you folks back here for trial on
26 April 15th at 9:00 in the morning and then possibly earlier.

27 MR. ZEKTSER: Okay.

28 MS. NGUYEN: And, Your Honor, I have one other

1 housekeeping matter as well.

2 THE COURT: Wait, hold on.

3 Is there something else on that issue? I saw you
4 consult with Mr. Recalde.

5 MR. ZEKTSER: I was. But first, it reminds me that I
6 know that there are some mental health records that have been
7 provided to certain people, and I think that Ms. Nguyen is going
8 to be calling the mental health experts. So I'm going to be
9 asking for that discovery as well.

10 THE COURT: Tell you what --

11 MS. NGUYEN: That's correct, Your Honor. That's fine
12 with me.

13 THE COURT: -- here's what I'm thinking of doing: I'm
14 thinking of setting a hearing about 10 days out just so we can
15 work on all of these discovery issues. April 5th.

16 MR. ZEKTSER: That's great.

17 MS. NGUYEN: That's perfect.

18 THE COURT: We will set April 5th at 9:00 for trial
19 readiness conference. And if you want to put any discovery
20 issues on that date, we will do that. But I mean, if the
21 doctors relied on them and she's calling them, that's I think a
22 no-brainer.

23 MR. ZEKTSER: I appreciate your time and your guidance
24 on that. Thank you, Judge.

25 MS. NGUYEN: I'd like to waive Mr. Dominguez's presence
26 for the 5th and for the 15th as well. He is willing to waive
27 his presence for the trial. He is dealing with a lot of health
28 issues right now.

1 THE COURT: Okay.

2 MS. NGUYEN: Taking medication too.

3 THE COURT: Okay. That will work.

4 MR. ZEKTSER: Well, actually, Your Honor, I'm not sure
5 it will. I'm going to ask that this Court allow him to waive
6 his presence on the 5th, but I may be calling him to the stand
7 during his trial. So I think we can take up his presence for
8 the 15th on the 5th.

9 THE COURT: Okay. I agree. They can call him as a
10 witness. Okay. We will take that up then. He's just waived to
11 the 5th. We will take up the 15th waiver on the 5th.

12 MS. NGUYEN: Thank you, Your Honor.

13 THE COURT: Okay.

14 MR. ZEKTSER: Thank you, Judge.

15 (Proceedings concluded.)

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1 RIVERSIDE, CALIFORNIA; APRIL 15, 2013

2 THE COURT: Next I have the Dominguez case.

3 MS. NGUYEN: Thank you, Your Honor. Monica Nguyen for
4 Mr. Dominguez. He is present in custody seated to my left. He
5 is being assisted by a court-certified Spanish interpreter.

6 THE COURT: Okay. Perhaps our interpreter can identify
7 himself for the record.

8 THE INTERPRETER: Joseph Agostini, Your Honor. My oath
9 is on file.

10 THE COURT: Okay.

11 Okay. It's been sent here today for a trial under 1368
12 and 1369. Has there already been a jury waiver?

13 MS. NGUYEN: There hasn't, but we're happy to enter
14 into that as well.

15 MR. ZEKTSER: Yeah, me too.

16 THE COURT: Okay. It's a civil matter. On behalf of
17 your client, do you waive the right to a jury trial?

18 MS. NGUYEN: Yes, sir.

19 THE COURT: Okay. So what I've read is I have read two
20 reports. I have the report of Dr. David Jimenez, and I've got
21 the report of Dr. Kaisch. I've read both of those. In fact, I
22 had read them before when I was coming out for some earlier
23 hearings.

24 Okay. You've got the burden. Either side want to make
25 an opening statement?

26 MS. NGUYEN: I can make an opening statement, Your
27 Honor. I can make it very briefly, if the Court wishes.

28 THE COURT: At your pleasure. Whatever you like.

1 MS. NGUYEN: Thank you, Your Honor.

2 I just want to make sure that the Court is aware --

3 MR. ZEKTSER: Actually, I'm sorry, I would like to make
4 a motion to exclude all witnesses before we go any further.

5 THE COURT: Yes, I agree.

6 MS. NGUYEN: Perfect.

7 THE COURT: That's granted.

8 MS. NGUYEN: Okay. Thank you, Your Honor. Thank you,
9 Mr. Zektser. I was just going to do the same thing, just to let
10 the Court know.

11 THE COURT: Okay.

12 MS. NGUYEN: So good morning, Your Honor.

13 As the Court is aware and has already stated, we're
14 here for a 1368 trial, and the main issue is whether or not
15 Mr. Dominguez is competent not based on what our usual thought
16 is of he is so delusional that he can't understand what is going
17 on, this is based on whether or not he can rationally assist in
18 his own defense. And throughout the trial you're going to learn
19 that Mr. Dominguez suffers from major depressive disorder, and
20 what it has done to him is that -- and it's so severe that it
21 has incapacitated his ability to engage in self-protective and
22 self-beneficial behavior. Essentially, some of the hallmarks of
23 major depressive disorder include a complete loss of interest in
24 things that would otherwise be interesting to you.

25 Normally your jury trial in a criminal case where
26 you're looking at quite a bit of time would be of interest to
27 you. But Dr. Kaisch will testify that -- that Mr. Dominguez,
28 his depressive disorder is so severe that he doesn't really care