

1 Mr. Dominguez twice.

2 Q. Let's just talk about when you saw him.

3 A. Okay.

4 Q. When you saw him, you diagnosed him with major
5 depressive disorder?

6 A. Correct.

7 Q. And when you gave him that diagnosis, that was at the
8 time that he also told you that he engaged in prayer, correct?

9 A. Yes.

10 Q. So the fact that he was engaging in prayer did not lead
11 you to not diagnose him with major depressive disorder, did it?

12 A. No.

13 MR. ZEKTSER: Objection. Leading.

14 THE COURT: Overruled.

15 THE WITNESS: No.

16 Q. BY MS. NGUYEN: And is it the case that activities that
17 a person once engaged in that lifted their spirits, once they
18 are suffering from major depressive disorder those same
19 activities will not have the same effects?

20 A. That is a possibility.

21 Q. And do you think that's a possibility that's possibly
22 happening with Mr. Dominguez?

23 A. Yes.

24 Q. With respect to you repeating questions to
25 Mr. Dominguez, he never told you that -- or sorry. Withdraw
26 that.

27 With respect to repeating questions to Mr. Dominguez,
28 did you get any indication that language was a barrier to his

1 understanding?

2 A. No.

3 Q. You didn't get -- he didn't say anything to the effect
4 that, Can you repeat that, I didn't understand that because I
5 primarily speak Spanish, did he?

6 A. No.

7 Q. When you repeated the questions, you attributed the
8 necessity of you repeating to his mental illness, correct?

9 A. Yes.

10 Q. With respect to the forms that you filled out with
11 Mr. Dominguez, you thought Mr. Dominguez understood what you
12 were telling him; is that right?

13 A. Yes.

14 Q. That's why you had him sign the forms, right?

15 A. Yes.

16 Q. When a person suffers from major depressive disorder,
17 does it rob them of their intellect, of their intellectual
18 functioning?

19 A. That is possible.

20 Q. With something -- with respect to filling out a form,
21 even though he suffers from major depressive disorder, and you
22 had testified that that affects his thought processing, he still
23 can understand basic things, right?

24 A. Yes.

25 Q. He can understand why you're there if you tell him; is
26 that right?

27 A. Yes.

28 Q. It's how he acts that's indicative of his major

1 depressive disorder, correct?

2 MR. ZEKTSER: Objection. Leading continually.

3 THE COURT: She is an expert. That's fine. Overruled.

4 THE WITNESS: Yes, it's indicia of his behavior.

5 Q. BY MS. NGUYEN: Let me put it a different way. When a
6 person suffers from major depressive disorder, it doesn't
7 completely rob them of their ability to think about basic
8 things?

9 A. No.

10 Q. It robs them of their ability to engage in
11 self-beneficial behavior, correct?

12 A. Yes.

13 Q. And that's why when you explained the forms to him, you
14 believed that he could understand them?

15 A. Yes.

16 Q. Now, with respect to thoughts of suicide and depression
17 and what Mr. Dominguez said, "Life is beautiful" --

18 A. Uh-huh.

19 THE COURT: I'm sorry. Is that a yes?

20 THE WITNESS: Yes.

21 THE COURT: Okay.

22 Q. BY MS. NGUYEN: Is it possible for a person to be very
23 depressed but also appreciate the beauty in life?

24 A. Yes.

25 Q. And have you ever in your clinical experience come
26 across somebody who is so deeply religious that they can
27 appreciate that life is beautiful or a gift from God but still
28 be depressed?

1 A. Yes.

2 Q. And with respect to deeply religious people, do those
3 people suffering from major depressive disorder generally engage
4 in suicidal behavior?

5 MR. ZEKTSER: Objection. Foundation.

6 THE COURT: If she has -- overruled. She can answer
7 that.

8 If you feel it's within your expertise.

9 THE WITNESS: Can you repeat the question?

10 Q. BY MS. NGUYEN: Sure. In your clinical experience,
11 you've learned about the behaviors that people suffering from
12 major depressive disorder engage in?

13 A. Correct.

14 Q. And some of those behaviors are suicide?

15 A. Yes.

16 Q. Now, with respect to people suffering from major
17 depressive disorder but who are also deeply religious, how does
18 that religious belief affect their propensity to engage in
19 suicidal behaviors, if you know?

20 A. In my experience, um, it hasn't really affected them.

21 Q. So I want to ask you a hypothetical question. If
22 Mr. Dominguez spoke to another examiner in this case and he
23 said, quote, "I just pray to God to take me when he wants,"
24 would you believe that that is a suicidal thought?

25 A. Further assessment would have to be made on that
26 statement.

27 Q. With respect to diagnosing major depressive disorder,
28 is one of the criteria thoughts of death or suicide?

1 A. Yes.

2 Q. So going back to the quote hypothetically, if
3 Mr. Dominguez had said, "I just pray to God he takes me when he
4 wants," would that be considered a thought focusing on death?

5 A. Yes.

6 Q. And a person doesn't have to be engaged in suicidal
7 behavior to be suffering from major depressive disorder, does
8 he?

9 A. No.

10 Q. Now, with respect to Mr. Dominguez's present
11 appearance, from where you're sitting can you see the stubble on
12 Mr. Dominguez's face on the side of his cheeks?

13 A. No.

14 Q. So from where you're sitting, to the best of your
15 ability you can see that he is clean-shaven, correct?

16 A. Yes, it would appear.

17 Q. But you're pretty far from him, right?

18 A. Yes.

19 Q. Would you like to get a closer look to determine if he
20 truly is clean-shaven?

21 THE COURT: Well --

22 MS. NGUYEN: Okay.

23 THE COURT: We'll take your word for it.

24 MS. NGUYEN: Thank you, Your Honor.

25 THE COURT: If there's stubble over there, I'll take
26 your word for it.

27 MS. NGUYEN: Thank you, Your Honor.

28 MR. ZEKTSER: I'd like to feel it.

1 Q. BY MS. NGUYEN: Now, Mr. Dominguez, to your knowledge,
2 has been in the detention care unit; is that correct?

3 A. Yes.

4 Q. And that's the hospital portion of the jail, right?

5 A. Yes.

6 Q. And why would a person typically be housed in the
7 detention care unit versus say the medical portion of RPDC?

8 MR. ZECTSER: Objection. Relevance. Beyond the scope.

9 THE COURT: Say the question one more time.

10 MS. NGUYEN: Sure. Why would a person be housed at the
11 hospital portion of the jail versus just the medical wing of the
12 jail?

13 THE COURT: Do you know the procedure or the criteria
14 to put an inmate in the medical wing versus the hospital wing?

15 THE WITNESS: No, not with medical. I only
16 specifically just know psychiatry.

17 THE COURT: Okay. Ask another question. I don't think
18 she knows that.

19 MS. NGUYEN: Thank you.

20 Q. BY MS. NGUYEN: With respect to a patient who is housed
21 at the hospital, they have nurses to attend to them, correct?

22 A. Correct.

23 Q. And so with respect to him being well groomed today,
24 you don't know whether or not he groomed himself this morning,
25 do you?

26 A. No.

27 Q. You don't know whether or not a nurse groomed him for
28 court today, do you?

1 A. No.

2 Q. But you know that when you evaluated him, he was
3 disheveled, correct?

4 A. Yes.

5 Q. And that's when he was at the jail, correct?

6 A. Yes.

7 MS. NGUYEN: Nothing further, Your Honor.

8 THE COURT: Mr. Zektser, anything?

9 RECROSS-EXAMINATION

10 BY MR. ZEKTSER:

11 Q. Just a couple questions, ma'am.

12 When Mrs. Nguyen was asking you questions about the
13 statement, the death statement, do you recall that?

14 A. Yes.

15 Q. She phrased it basically, When God is ready -- I hope
16 God takes me whenever my time is, or something of the sort,
17 right?

18 A. Yes.

19 Q. I mean, as a therapist, wouldn't you want to know the
20 context that that statement was given?

21 A. Yes. That's why I said further assessment would need
22 to be done.

23 Q. Right. Because someone could easily have asked a
24 question right beforehand, right?

25 A. Yes.

26 Q. And you would want to know that kind of stuff?

27 A. Yes.

28 MR. ZEKTSER: All right. I have nothing further.

1 MS. NGUYEN: Nothing further, Your Honor.

2 THE COURT: Okay. Thank you very much, Ms. Manning. I
3 appreciate you coming in. You're excused.

4 MR. ZEKTSER: Your Honor, if I could use the restroom
5 real quick.

6 THE COURT: Yes. We will take a 15-minute break and we
7 will start up again then. Thank you. Court will be in recess.

8 (Recess.)

9 THE COURT: Okay. We're back on the record in People
10 versus Dominguez. Both counsel and Mr. Dominguez are here.

11 Okay. Your next witness.

12 MS. NGUYEN: Thank you, Your Honor. I'd like to call
13 Dr. Kenneth Kaisch to the stand.

14 THE DEPUTY: Sir, watch your step as you take the
15 stand.

16 THE CLERK: You do solemnly state the testimony you are
17 about to give shall be the truth, the whole truth, and nothing
18 but the truth, so help you God?

19 THE WITNESS: I do.

20 THE CLERK: Thank you. Please be seated.

21 State your full name for the record, spelling your full
22 name.

23 THE WITNESS: Kenneth, K-e/n-n-e-t-h. Burton,
24 B-u-r-t-o-n. Kaisch, K-a-i-s-c-h.

25 THE COURT: Okay. Good morning, Doctor.

26 THE WITNESS: Good morning.

27 THE COURT: Go ahead, Ms. Nguyen.

28 MS. NGUYEN: Thank you, Your Honor.

1 Your Honor, at this time the prosecution and defense
2 would like to enter into a stipulation related to Dr. Kaisch's
3 qualifications.

4 THE COURT: Okay.

5 MS. NGUYEN: We'd like to stipulate that Dr. Kaisch is
6 a psychologist and that he is qualified to testify to all
7 matters related to psychological diagnoses and their effects
8 upon a mentally ill patient.

9 THE COURT: Okay. Do you agree with that, Mr. Zektser?

10 MR. ZEKTSE: I will stipulate to that, yes.

11 THE COURT: Okay. Go ahead, Ms. Nguyen.

12 MS. NGUYEN: Thank you, Your Honor.

13 KENNETH BURTON KAISCH,
14 called as a witness by the defendant, was sworn and testified as
15 follows:

16 DIRECT EXAMINATION

17 BY MS. NGUYEN:

18 Q. Good morning, Dr. Kaisch.

19 A. Good morning.

20 Q. At some point in time did you ever receive notice from
21 the court with a request to evaluate an Adan Dominguez for
22 competency?

23 A. I did.

24 Q. And did you ever complete that evaluation?

25 A. I did.

26 Q. Did you meet with doctor -- with Mr. Dominguez?

27 A. I did.

28 Q. Do you see Mr. Dominguez in court today?

1 A. I do.

2 Q. Can you identify where he is sitting and an article of
3 clothing that he is wearing.

4 A. He is the gentleman sitting to your left wearing
5 orange.

6 MS. NGUYEN: And if the Court could?

7 THE COURT: Yes. Identifying Mr. Dominguez.

8 MS. NGUYEN: Thank you, Your Honor.

9 Q. BY MS. NGUYEN: What day did you see Mr. Dominguez?

10 THE WITNESS: May I refer to my notes, Your Honor?

11 THE COURT: Yes.

12 THE WITNESS: Thank you.

13 THE COURT: If that will refresh your memory. I'm sure
14 that's why you're asking.

15 THE WITNESS: I saw him for 60 minutes on March 7th of
16 this year.

17 Q. BY MS. NGUYEN: Very good.

18 And you saw him for the purpose of determining whether
19 he is competent to stand trial; is that correct?

20 A. Yes.

21 Q. Can you tell us how a competency evaluation differs
22 from any other psychological examination.

23 A. Certainly. The general public has, in my view, sort of
24 a strange notion of psychological evaluations. There's a sense
25 that, oh, if you're doing a psych eval, you are answering all of
26 the questions about that person. That is definitely not the
27 case.

28 When I do a psychological evaluation, I work with

1 whoever is referring the person to get a very clear sense of
2 what are the questions that -- that you want answered in this
3 case. In the case of Mr. Dominguez, I used the form which was
4 sent to me by the judge in this case.

5 Q. And so the form that's sent to you by the court, you
6 use that to guide your analysis; is that right?

7 A. Yes.

8 Q. All right. But you also administered other
9 psychological tests to Mr. Dominguez as well, correct?

10 A. I administered two other psychological tests, a mental
11 status exam and a structured interview for depressive disorders.

12 Q. Okay. We will get into that in a little bit.

13 During your evaluation of Mr. Dominguez, did you form
14 an opinion as to whether or not at the time of your interview he
15 was suffering from any psychological illness?

16 A. I did.

17 Q. And what was -- what is your opinion?

18 A. My sense is that Mr. Dominguez is almost the textbook
19 example for major depressive disorder. That means that he has
20 all of the symptoms except for one, and you don't need all of
21 the symptoms to make the diagnosis.

22 Q. So how many symptoms are there to diagnose a major
23 depressive disorder?

24 A. Good grief, I don't know.

25 Q. But he has all of them, you said, except for one; is
26 that right?

27 A. Except for one, yes.

28 Q. All right. So can you go through each one of those

1 factors that you determined to exist with Mr. Dominguez. Can
2 you tell us what they are?

3 A. What factors are you referring to?

4 Q. Well, let me go back for a second. How is major
5 depressive disorder defined?

6 A. It's defined in the DSM-IV-TR by a specific set of
7 symptoms.

8 Q. And can you -- can you tell us which of those symptoms
9 you determined to be exhibited or manifested in Mr. Dominguez.

10 A. Sure. He has a great deal of depression. You see
11 that, for example, in his lack of adventitious movement. For
12 example, when I interviewed him, he was leaning on the desk with
13 the phone up to his ear. One of the things I watch for is what
14 other kinds of movement is going on. And Mr. Dominguez held
15 that posture for approximately an hour of our interaction with
16 no even little adjustments. I, on the other hand, had to move
17 the phone from this ear to that ear and kind of squirm around
18 just to be comfortable because my muscles were tired.
19 Mr. Dominguez exhibited sort of an indifference to his own
20 physical comfort.

21 There are changes in sleep patterns, changes in eating
22 patterns.

23 MR. ZEKTSER: Objection. Narrative.

24 THE COURT: Okay. Go on to another question.

25 MS. NGUYEN: Thank you.

26 Q. BY MS. NGUYEN: I just want to stick with the first
27 factor of the depressed mood --

28 A. Uh-huh.

1 Q. -- and the lack of movement that you were talking
2 about.

3 A. Right.

4 Q. So let's say hypothetically somebody is engaging in
5 that interview with you for 60 minutes and talking on the phone.
6 A person who is not depressed, what type of behavior would you
7 see them engaging in?

8 A. The person who is not depressed is going to have a
9 brighter affect, a mood that is clearly not depressive. It
10 might be anything from anger to anxiety to happiness to sadness
11 to fear, but it's not going to be depression.

12 Q. Okay. But his mood was -- was it the same, a flat
13 affect the whole time?

14 A. The entire time.

15 Q. So when you were speaking about everything -- well,
16 when you talked to him, he never had a change in his mood; is
17 that correct?

18 A. No. And there was a little bit of change in his tone
19 of voice towards the end of the interview. At that point he
20 expressed gratitude to me for coming to see him and to talk
21 about his situation, and that was pretty much the -- the only
22 change that I saw.

23 Q. Okay. And when you say indifferent to his own physical
24 discomfort, is that also a hallmark of major depressive disorder
25 where a person suffering from that would feel discomfort but not
26 have a reaction to it?

27 A. You know, it's not in the diagnostic manual. But what
28 is in the manual is psychomotor retardation. In other words,

1 the usual speed at which somebody speaks, the speed at which
2 they move is noticeably slower than what you would expect.

3 Q. And did you feel that Mr. Dominguez exhibited a
4 psychomotor retardation?

5 A. Yes.

6 Q. And what were some of the other criteria you used to
7 diagnose Mr. Dominguez as having major depressive disorder?

8 A. One of the things is that I looked at his thought
9 process, how is he thinking. He strikes me as a man of average
10 intelligence, but I saw him as functioning below that level.
11 His thinking was very concrete.

12 For example, I typically ask proverbs. I asked him,
13 What does the proverb a rolling stone gathers no moss, what does
14 that mean? He said he didn't know. That's pretty simple. I
15 went to something that I think is even more simple: All that
16 glitters is not gold. No, excuse me. People who live in glass
17 houses shouldn't throw stones. And his response was, and I
18 quote --

19 Q. I apologize. So sorry for interrupting. But if you
20 could only look at your report to refresh your recollection.

21 A. Okay.

22 Q. So if you can testify off your memory primarily, then
23 if you need to refresh your recollection you can.

24 A. Okay.

25 Q. I apologize.

26 A. Sure.

27 Q. What did he tell you when you asked him, People in
28 glass houses shouldn't throw stones, what does that mean?

1 A. I will need to refresh my memory.

2 THE COURT: Go ahead, Doctor.

3 MR. ZECTSER: Can you give us a page when you do that
4 and location, Doctor.

5 THE WITNESS: Certainly. Page 4, middle of the second
6 paragraph.

7 MR. ZECTSER: Thank you.

8 THE WITNESS: Actually towards the end.

9 "If I live in a glass house and throw stones, it will
10 break and damage the house."

11 That is very concrete. He missed that, you know,
12 people who are in a public position should be careful about
13 casting aspersions on others, making comments about others, and
14 so on.

15 Q. BY MS. NGUYEN: Okay. So you stated that you believe
16 that his thought process is affected by your diagnosis of the
17 mental illness?

18 A. Yes.

19 Q. How did you test his thought process?

20 A. I engaged in several tests in the mental status exam.
21 One, I asked him to count backwards by serial sevens. In that
22 exercise you start at 100 and you subtract backwards by sevens
23 until the examiner asks you to stop.

24 Q. And how did he do on that test?

25 A. He was very, very slow in responding, and I believe he
26 made two mistakes out of his four possible -- or out of the four
27 responses that he gave. What that tells me is his ability to
28 hold something in mind and then perform manipulations around

1 that is impaired.

2 Q. And is that because you would have to hold the number
3 100 in mind and then have to keep subtracting sevens --

4 A. Right.

5 Q. -- from lower denominations?

6 A. No. You hold 100 in mind, you subtract seven, now
7 you've got 93 that you have to hold in mind and you have to
8 subtract seven from that.

9 Q. So he gave you four answers when he tried to do the
10 subtraction?

11 A. Yes.

12 Q. Serial seven subtraction?

13 A. Uh-huh.

14 Q. And out of the four you said that he missed two?

15 A. That's correct.

16 Q. And that indicates to you that his ability to hold
17 something in mind and work with that is impaired?

18 A. Right.

19 Q. How does major depressive disorder typically impair
20 one's ability to hold a thought in mind and work with that?

21 A. Let's go back to psychomotor retardation. Everything
22 slows. Your ability to process mentally slows down. And in
23 Mr. Dominguez's case, I believe it slowed significantly.

24 Q. And are you familiar with the rigors that trial usually
25 presents to a defendant?

26 A. To some degree, yes. I haven't been on trial myself
27 ever, but I'm happy to leave it at that.

28 Q. Well --

1 A. But yes, I'm aware that it's a very stressful event.

2 Q. And with respect to listening to the evidence at trial
3 and working with that and comparing it to his fund of knowledge
4 related to the evidence that has yet to be brought up and
5 reacting to evidence at trial, how do you think his psychomotor
6 retardation would affect that, would affect his ability to deal
7 with the evidence at trial?

8 A. He would have a very difficult time if not an
9 impossible time holding in mind the relevant evidence, the
10 testimony that is being presented, and comparing the two in
11 terms of what's factual, what's not, and so on.

12 Q. Now, and this is just related to his thought processes,
13 correct?

14 A. Right.

15 Q. That has nothing to do with him talking to his attorney
16 about what he thinks his attorney should know?

17 A. Right. We're just talking about his ability to think,
18 to process mentally.

19 Q. All right. Now, with respect to him looking at the
20 evidence and trying to call out the information that he believed
21 he needs to talk to his lawyer about, how would that be affected
22 by his psychomotor retardation?

23 A. That's going to impair that process as well.

24 Q. Now, we talked about the counting backwards, the serial
25 seven test. Did you administer any other test to him to
26 determine his thought process?

27 A. One of the things I did was ask him to spell his name
28 backwards. We start with a relatively complex test. If he

1 fails that, then let's go for something more simple.

2 Q. So -- okay.

3 A. He has known his last name for most of his life, and he
4 made errors in spelling it backwards.

5 Q. Do you recall at which point he made that error?

6 A. I don't remember.

7 Q. And when a person is incapable of spelling their name
8 backwards, what does that indicate to you about their thought
9 process?

10 A. It's impaired.

11 Q. Can you indicate -- can you call a level of impairment
12 from that, how impaired? Or is that --

13 A. It's very impaired. For example, there are a number of
14 levels of depression that are diagnosable. There's the
15 ordinary, Gee, I feel blue. I woke up on the wrong side of the
16 bed this morning. There is adjustment disorder with depressed
17 mood where there's some clear psychosocial stressor in your
18 environment -- your father just died -- and you react to that
19 with depression. There is then despondent disorder, which is
20 deeper. It's depression of several years standing, and it
21 usually has to do with family conflicts. And then finally there
22 is -- excuse me, not finally. There's major depressive
23 disorder, which is far more severe. And then the worst
24 depression that I have seen is in bipolar disorder.

25 Q. You said bipolar disorder?

26 A. Yes.

27 Q. Okay. How -- so would you say that that's sort of the
28 continuum? It starts off with the --

1 A. Yes.

2 Q. -- blue moon and that's sort of what you would call
3 situational, and then it just progresses and progresses over to
4 major depressive disorder?

5 A. Well, it's not that his depression progresses, but
6 there is a spectrum of depression and depressive disorders.

7 Q. Okay. And amongst that spectrum, where would you say
8 Mr. Dominguez lies?

9 A. Severe major depression.

10 Q. Did you use any tests to determine whether or not he
11 has severe major depression?

12 A. I used the structured interview for depressive
13 disorders, which guides the examiner through all of the symptoms
14 that are associated with depression.

15 Q. And this is a test that most examiners -- or not most
16 examiners. But this is a test that is well accepted in the
17 field of psychology?

18 A. You know, I'm not sure. It's a depressed -- or it's a
19 test that is directly related to the DSM-IV.

20 Q. So it goes to all of the criteria that the DSM-IV
21 delineates as to what the hallmarks of major depressive disorder
22 are?

23 A. Yes.

24 Q. And on the structured interview for depressive
25 disorders test, what did you determine?

26 A. Mr. Dominguez fulfilled all of -- had all of the
27 symptoms except for the one symptom, thoughts about death or
28 suicide.

1 Q. Now, with respect to the one symptom of thoughts about
2 death or suicide, you determined that he didn't have that at
3 that time, correct?

4 A. That's correct.

5 Q. I want to ask you a hypothetical question. If he had
6 stated to another examiner, another examiner looking for
7 competence, quote, "I just pray to God to take me when he
8 wants," would that be characterized as a thought of death on
9 that structured depression test?

10 A. I'm not sure. I would want to ask some other questions
11 around that.

12 Q. So with respect to everything else that you learned,
13 though, you thought that he met all the criteria for a diagnosis
14 of major depressive disorder?

15 A. Yes.

16 Q. Okay. And we talked about depressed moods, psychomotor
17 retardation, thought process. Are there any other hallmarks of
18 major depressive disorder that you observed in Mr. Dominguez?

19 A. I'm not sure at this time.

20 Q. Sure. Did you determine -- did you look at his speech
21 at all?

22 A. Yes.

23 Q. And what was --

24 A. His speech was slowed. Again, it's the psychomotor
25 retardation.

26 Would you like me to look at my report and see if I
27 could refresh my memory?

28 Q. If that would refresh your memory as to the other

1 things that you observed, yes, that would be great.

2 THE COURT: Go ahead, Doctor.

3 THE WITNESS: Yes. He experienced significant weight
4 loss. I believe the criteria is 5 percent weight loss over a
5 period of months. Mr. Dominguez lost approximately 25 percent
6 of his premorbid body weight.

7 Q. BY MS. NGUYEN: And with respect to weight loss, why --
8 to your knowledge, why is that a hallmark of major depressive
9 disorder?

10 A. Ultimately I don't think we know. He -- at the level
11 of depression that Mr. Dominguez was at when I met with him, he
12 simply didn't care. His interests in the world around him --

13 MR. ZEKTSER: Objection. Nonresponsive as to the
14 question, whatsoever.

15 THE COURT: Okay. Sustained. Go ahead, ask another
16 question.

17 Q. BY MS. NGUYEN: Why would a person who has experienced
18 significant weight loss be more likely to suffer from major
19 depressive disorder?

20 A. I'm sorry, counselor, you have that backwards.

21 Q. Okay. Thank you. Yes.

22 A. It's a person with major depressive disorder would
23 often experience weight loss. Weight loss often leads to
24 elation in certain populations.

25 Q. Thank you for that.

26 And is that because a person who suffers from major
27 depressive disorder would lose interest in daily activities?

28 A. Yes.

1 Q. And they would lose interest in simple things such as
2 nourishing themselves?

3 A. Yes. The word for that actually is anhedonia, a loss
4 of interest in those things that gave pleasure or satisfaction
5 in the past.

6 Q. And is this --

7 A. Food is typically very reinforcing. We like to eat.
8 And when you've lost interest in that, why eat?

9 Q. So then you did review the medical records from the
10 jail when you evaluated Mr. Dominguez, correct?

11 A. I evaluated the records that were sent to me.

12 Q. And you learned that in the year that he had been
13 incarcerated he lost about 25 percent of his weight; is that
14 right?

15 A. He told me that he had lost 60 pounds. I asked him
16 what he weighed now and did the math.

17 Q. Okay. And so that again is a symptom of major
18 depressive disorder because he's lost interest in feeding
19 himself?

20 A. Right.

21 Q. Have you determined -- so did you then diagnose him
22 with suffering from anhedonia?

23 A. Anhedonia.

24 Q. And is that spelled a-n-h-e-d-o-n-i-a?

25 A. Yes.

26 Q. Just for the benefit of the court reporter.

27 How would the loss of interest, how would that symptom
28 affect his ability to consult with his attorney during trial?

1 A. It's going to have a major impact if he doesn't care.
2 As he put it to me, he's lost everything. He's lost his
3 freedom. He lost the respect of his peers. He lost his left --
4 I believe it's his left toe, his left foot. He has to take
5 insulin now and so he's lost his employment because he can't
6 keep a Class A commercial license and be employed. So he's
7 lost, in his view, everything.

8 Q. And so given the fact that in his view he's lost
9 everything, is that the basis for his lost of interest in things
10 moving forward?

11 A. I would assume so. I don't know that I asked him that
12 question directly.

13 Q. But you did diagnose that he has a loss of interest?

14 A. Yes.

15 Q. And so getting back to specifically how would that
16 affect his ability to listen to the evidence at trial?

17 A. He doesn't care. Why bother to listen.

18 Q. And what about how does that affect his ability to
19 consult with his attorney in a rational way during trial?

20 A. If he doesn't care and therefore he doesn't listen,
21 then he has no interest in consulting with his attorney. It
22 just seems to follow.

23 Q. And with respect to that, do you think that this is a
24 choice that he is making, a choice to be depressed versus a
25 choice to not be depressed?

26 A. No, it's not a choice. It's one of the things that I
27 was interested in and was evaluating during my time with him.
28 Mr. Dominguez is so severely depressed that choice has kind of

1 gone out of it. He is simply there, and that probably -- as you
2 can see, you know, he's been sitting here as I've been up on the
3 stand with --

4 MR. ZEKTSER: Objection, Your Honor. Nonresponsive.
5 Narrative.

6 THE WITNESS: -- hardly any movement.

7 THE COURT: Okay. Go on to another question. You can
8 follow up on that.

9 MS. NGUYEN: Sure.

10 Q. BY MS. NGUYEN: So let's keep on this issue of loss of
11 interest if we can for a little bit.

12 With respect to how he is presenting right now in
13 court, are you -- have you been able to observe him in the time
14 that you've been testifying?

15 A. Yes.

16 Q. And in the time that you have observed him while
17 testifying, have you noticed any manifested symptoms of this
18 loss of interest?

19 A. Yes.

20 Q. And what are those?

21 A. He's simply sitting there. Right now we're making eye
22 contact. I think it's for the first time since I've been on the
23 stand. I have seen him blink his eyes. I have not seen him
24 change his body posture. He's slumped off to his right. I
25 haven't seen him shift to the other side because it's
26 uncomfortable. He just is.

27 Q. And with respect to his lost of interest at trial, is
28 it fair to say that somebody who has no interest in the trial

1 cannot assist their attorney in their own defense because
2 they're not going to be engaged in the trial?

3 MR. ZEKTSER: Objection. Inappropriate opinion. It
4 goes to the ultimate fact.

5 MS. NGUYEN: That was what we asked --

6 THE COURT: Overruled. I will allow it.

7 Go ahead, Doctor.

8 THE WITNESS: I'm sorry. Could you restate or repeat
9 the question.

10 Q. BY MS. NGUYEN: Sure. Given his present state of
11 lacking any interest in everyday things, does that extend to his
12 lack of interest in trial?

13 A. Yes.

14 Q. And so when a person is at that level of a loss of
15 interest, would you expect them to be engaged in their trial?

16 A. I would not.

17 Q. Would you expect them to be able to listen attentive --
18 attentively to the testimony given by the witnesses?

19 A. No.

20 Q. Would you expect them to take the testimony and the
21 evidence and be able to talk to their lawyer about maybe
22 weaknesses in the evidence?

23 A. No.

24 Q. Or would you expect that person to continuously
25 communicate with their attorney about how to present a better
26 defense?

27 A. Counselor, he's been sitting there the entire time. I
28 haven't seen him move to you to talk about anything. No.

1 Q. And therefore, do you believe that he can rationally
2 assist in the presentation of his defense given his current loss
3 of interest and depressed mood?

4 A. I do not believe that he can rationally assist given
5 his present mental state.

6 Q. Now, with respect to self-protective behavior, do you
7 think that given his level of depression that Mr. Dominguez can
8 engage in self-protective behavior?

9 A. No.

10 Q. And why is that?

11 A. Because he has no interest in self-protection or in
12 anything.

13 Q. And with respect to the physical problems that he's
14 had, did he explain to you that after his right toe had been
15 amputated that he attempted to -- I'm sorry. Withdraw that
16 question.

17 Did he describe to you all the things that happened
18 over the course of the last year to him physically?

19 A. I -- certainly not, but he described the major pieces
20 of it as far as I know.

21 Q. And did he describe to you that very soon after he had
22 been arrested he injured his toe --

23 A. Yes.

24 Q. -- on transportation?

25 A. Yes.

26 Q. And did he describe to you that he had made quite a few
27 attempts to get the attention of the detention health services
28 staff --

1 A. Yes.

2 Q. -- to look at his toe?

3 A. Yes.

4 Q. And did he tell you what those attempts were?

5 A. Um, he said that he sent kites, which I assume is some
6 sort of written message, to the staff and no one responded.

7 Q. And he had even at that time been keeping a log, is
8 that correct, of all the things that he was doing to get their
9 attention?

10 A. Yes.

11 Q. But unfortunately they never came in time to deal with
12 the infection, correct?

13 A. That's correct.

14 Q. And so his right toe had to be amputated; is that
15 right?

16 A. Yes.

17 Q. Now, after that right toe had been amputated, did he
18 explain to you that he attempted to learn how to walk again?

19 A. Yes.

20 Q. And how did he do that?

21 A. He stated that he turned the foot on its side walking
22 basically with the outside part in order to protect the toe from
23 further injury.

24 Q. That's on his right -- his right foot?

25 A. I believe so, yes.

26 Q. Okay. And would it refresh your recollection if you
27 looked at your report?

28 A. Sure. I -- I thought it was his left toe that was

1 amputated. Sorry.

2 THE COURT: Go ahead, Doctor, you can take a look.

3 THE DEFENDANT: This one here.

4 THE WITNESS: No, I don't think -- yeah, there was a
5 buildup of --

6 MR. ZEKTSER: For the -- excuse me. For the record,
7 the defendant is trying to assist the doctor by saying, This one
8 over here.

9 THE COURT: I did hear this one over here.

10 MS. NGUYEN: I did as well, Your Honor.

11 THE COURT: Okay. I didn't know what it was in
12 reference to, frankly.

13 THE WITNESS: I'm sorry. I missed that completely.

14 THE COURT: Oh, Mr. Dominguez said, this one over here,
15 and I wasn't sure what he was referring to. Then Mr. Zektser
16 said he was starting to assist you.

17 THE WITNESS: Oh, I see. I missed that.

18 Q. BY MS. NGUYEN: So with respect to what we were talking
19 about, him learning to walk again --

20 A. Uh-huh.

21 Q. -- is it true that he -- let me withdraw.

22 Can I refer you to your report, page 3 of your report,
23 the fourth paragraph where you talk about which foot he uses --

24 A. Uh-huh.

25 Q. -- to walk on.

26 A. Yes.

27 Q. And when you're done reading that, if you can look up.

28 A. I got it.

1 Q. Perfect.

2 Which foot did he start trying to walk on to learn how
3 to walk again?

4 A. It was my understanding that he was leaning on the
5 outside of the left foot.

6 Q. Very good.

7 And what happened when he was trying to walk while
8 leaning on the outside of his left foot?

9 A. Built up calluses there, the calluses split, and they
10 were beginning to bleed and got infected again.

11 Q. And with respect to that injury, how did Mr. -- or did
12 Mr. Dominguez tell you anything about trying to get assistance
13 with that injury?

14 A. I believe so, but I don't remember the specifics.

15 Q. Whatever he told you, is it fair to say that he spent a
16 lot less -- a lot less energy trying to get help for that second
17 injury than he did with the very initial toe injury?

18 A. Yes.

19 Q. And that was to his detriment, correct?

20 A. Yes.

21 Q. Or maybe not if you don't know --

22 MR. ZEKTSER: I'm going to object to relevance.

23 MS. NGUYEN: I can withdraw that.

24 THE COURT: Okay. It's withdrawn.

25 MR. ZEKTSER: But I will note the doctor said "Yes."

26 THE COURT: Okay.

27 Q. BY MS. NGUYEN: And with respect to the injury, the
28 second injury, the injury on his left foot, did he tell you what

1 eventually happened with that?

2 A. It was an amputation.

3 Q. And how far did the amputation go that time?

4 A. I don't know. I did not ask to see the stump.

5 Q. But it wasn't just the foot that was removed; is that
6 correct?

7 A. I'm not sure.

8 Q. Okay. Did he indicate to you that his leg -- a portion
9 of his leg had been amputated?

10 A. I'm not sure.

11 Q. Okay. Now, with respect to a person suffering from
12 major depressive disorder and their inability to engage in
13 self-protective behavior, is it fair to say that that would be a
14 symptom of their major depressive disorder, the lack of
15 attempting to get help for the second injury versus the
16 attempting to get help for the first injury?

17 A. Yes, that would be a symptom.

18 Q. And can you describe how or why that is?

19 A. If Mr. Dominguez doesn't care, if that normal
20 self-protective instinct is being overridden or suppressed by
21 the depression, then, you know, he's just not going to spend as
22 much time, as much energy.

23 Q. And that's his own life, correct?

24 A. That's correct.

25 Q. And he already -- it's reasonable to believe that given
26 that he already went through that with his right toe, he knows
27 that this could potentially lead to amputation as well, correct?

28 MR. ZEKTSER: Objection. Inappropriate opinion as

1 well.

2 THE COURT: Overruled. I will allow it.

3 Go ahead.

4 Q. BY MS. NGUYEN: It's reasonable for somebody who just
5 had an experience wherein the infection got out of control and
6 they had to have an amputation, for them to understand that
7 that's a possibility if they don't get help for another
8 infection, correct?

9 A. Absolutely.

10 Q. And so given the fact that there's such a big contrast
11 between how he reacted to the first infection and how he reacted
12 to the second infection --

13 MR. ZEKTSER: Objection. Misstates the evidence.

14 THE COURT: In "contrast"?

15 MR. ZEKTSER: Yes.

16 THE COURT: Okay.

17 MS. NGUYEN: I can go back.

18 THE COURT: Go ahead. Yes. Sustained.

19 MS. NGUYEN: I will go back and lay a little bit more
20 foundation related to this.

21 Q. BY MS. NGUYEN: When he sustained the first injury on
22 his toe, did he give you details about how he tried to get help
23 for that injury?

24 A. Yes.

25 Q. And did he explain to you that he wrote numerous kites
26 to get help?

27 A. Yes.

28 Q. Repeatedly?

1 A. Yes.

2 Q. And he even was so concerned about this that he kept a
3 log of all the times that he asked for help?

4 A. Right.

5 Q. That's not the behavior of somebody with major
6 depressive disorder, is it?

7 A. I don't know that I have enough evidence there to be
8 able to say. But certainly if he was depressed at this point,
9 it was far less severe than when I examined him.

10 Q. Because he is engaging in some form of self-protective
11 behavior; is that right?

12 A. Right.

13 Q. Now, when we look at the second injury, he didn't tell
14 you about all the things he did to try to get help after the
15 second injury, did he?

16 A. No.

17 Q. In fact, that injury progressed to far worse than the
18 first, correct?

19 A. Yes.

20 Q. Because it resulted in a much larger amputation?

21 A. Right.

22 Q. Correct?

23 A. Right.

24 Q. Now, would you agree that the difference between his
25 behavior after the first injury with respect to getting help was
26 in marked contrast to his behavior after the second injury with
27 respect to getting help?

28 MR. ZEKTSER: I will object again as to foundation. I

1 don't think this witness can testify as to what he did during
2 the second time. He hasn't stated he's done anything to know
3 what he did.

4 THE COURT: I'm not sure what he did after the second
5 injury that led to the amputation. So I will sustain it right
6 now. I mean, I realize he is relying on entirely what
7 Mr. Dominguez is telling him. So sustained.

8 Q. BY MS. NGUYEN: He didn't tell you that he went through
9 the same process to try to get help as he did on the second
10 injury as he did with the first injury, did he?

11 A. No.

12 Q. And would you agree, then, that his reaction to the
13 second injury was different than his reaction to the first
14 injury?

15 A. Yes.

16 Q. And how was it different?

17 A. He showed a lack of concern, a lack of self-protection.

18 Q. And is this self-protection or protective behavior, at
19 its core, is the integrity of his -- of his body?

20 A. Correct.

21 Q. And so a person who is not suffering from major
22 depressive disorder, if they see an infection growing, would
23 that person engage in self-protective behavior related to that
24 injury?

25 A. One would presume so, yes.

26 Q. And what would that behavior be?

27 A. If they were incarcerated, to tell the staff and to
28 keep on that until the staff evaluated it medically.

1 Q. And to your knowledge, he didn't tell you that he did
2 that with the second injury, did he?

3 A. He didn't keep on the staff, to my knowledge. It was
4 eventually brought to the staff's attention.

5 Q. Now, with respect to the self-protective behavior or
6 the lack thereof, how do you think that would affect his ability
7 to consult with his attorney during trial?

8 A. I think it would have a pretty significant impact if he
9 doesn't care. He's not going to be talking to his attorney.
10 He's not going to be saying, Wait a minute, that's wrong, or
11 that's taken out of context. He will probably just sit there.

12 Q. And would you then say that that lack of ability to
13 protect himself or engage in that behavior, that self-beneficial
14 behavior, would that compromise his defense at trial?

15 A. Absolutely.

16 Q. Do you believe that Mr. Dominguez has the ability to
17 consider the consequences of his not acting in his own defense?

18 A. I'm sorry. I'm having difficulty answering because I
19 see that as kind of irrelevant. If he doesn't care, you know,
20 that pretty much negates everything. He's not going to do
21 anything.

22 Q. Well, if a person is not engaging in self-protective or
23 self-beneficial behavior, in your experience do they typically
24 go through a thought process of what's going to happen if I
25 don't start to help myself here?

26 A. No.

27 Q. Because is it fair to say it never rises to that level
28 of thought process?

1 A. Right.

2 Q. They simply --

3 A. Again, psychomotor retardation, the thoughts aren't
4 coming up. Most everybody in this courtroom is an actively
5 thinking human being. Thoughts just come up spontaneously.
6 When you've got this level of depression, not a lot of thinking
7 is going on. You're just "hmmmm, hmmmm," just existing.

8 Q. And in your interview with Mr. Dominguez, did you
9 determine whether or not he has an emotional investment in the
10 outcome of the trial?

11 A. I do not believe he has an emotional investment in the
12 outcome of the trial.

13 Q. And why is that?

14 A. His depression keeps him from being able to have that
15 kind of emotional involvement.

16 Q. Did you ask him any questions related to what would he
17 do if he were acquitted at trial?

18 A. I didn't.

19 Q. Did you ask him if he had a life plan if in the event
20 he ever did -- ever was released from custody?

21 A. No.

22 Q. Did he explain anything to you about his profession?

23 A. Yes.

24 Q. What did he tell you he did for a living?

25 A. He teaches truck drivers how to drive trucks, something
26 that he was very proud of. One of the things that he stated was
27 that the drivers that he worked with had a very high rate of
28 passing. It was very clear that this man's work was very, very

1 significant to him. And one of his complaints about being in
2 jail was that he is nonproductive and he didn't really care for
3 that.

4 Q. And did he say whether or not he can return to that
5 profession if he is ever released from custody?

6 A. He did say, and he cannot.

7 Q. And what is the basis for that taking place?

8 A. He is currently insulin dependent and he cannot get a
9 Class A commercial driver's license.

10 Q. Do you believe that his ability to retain and apply new
11 information as it's coming to him during trial is compromised by
12 his major depressive disorder?

13 A. Yes.

14 Q. And how is that?

15 A. He doesn't care.

16 Q. What is his capacity to pay attention to the evidence
17 presented at trial?

18 A. It's minimal.

19 Q. What do you think his capacity is to remember the
20 evidence coming in at trial?

21 A. Again, it's minimal. One of the symptoms of depression
22 is memory impairments.

23 Q. While you were speaking with Mr. Dominguez, did you --
24 oh, I'm sorry. Withdraw that. If I can just talk about one
25 other thing here.

26 Did he explain to you whether or not he is sleeping at
27 night in jail?

28 A. He did talk about that.

1 Q. And what did he say about sleep?

2 A. He stated that he has a difficult time sleeping in
3 jail; that he typically, his understanding is, gets four to
4 five hours a night; that the jail is kept so cold that he has
5 trouble getting to sleep.

6 Q. And did he state whether or not his inability to get
7 sleep at night affects him during the day?

8 A. Yes. He's fatigued. Again, insomnia is a symptom of
9 depression. Fatigue during the day is also a symptom of
10 depression.

11 Q. And did he say to you how his fatigue manifests itself
12 during the day?

13 A. Um, he said that he will fall asleep with no apparent
14 warning.

15 Q. And did he say -- were you -- I'm sorry. Strike that.
16 Were you aware that Mr. Dominguez had fallen asleep in
17 the first day of his trial previously?

18 A. I was aware of that.

19 Q. And so his statements to you, were they consistent with
20 what you knew about his presentation during trial?

21 A. Yes.

22 Q. Did you determine whether or not Mr. Dominguez could
23 possibly be malingering his mental illness to you?

24 A. I did look at that question, yes.

25 Q. And what did you decide?

26 A. I decided that he is not malingering.

27 Q. And why is that?

28 A. The giveaway for me was the lack of adventitious

1 movement. Unless Mr. Dominguez has had some amazing acting
2 classes and great self-discipline in terms of withstanding his
3 own physical pain, then he is not acting. People cannot
4 maintain the same posture for an hour with no significant
5 movement under normal circumstances.

6 Q. And do you see any danger in allowing Mr. Dominguez to
7 continue with trial in his current condition?

8 MR. ZEKTSER: Objection. Relevance. Improper opinion.

9 THE COURT: Sustained.

10 Q. BY MS. NGUYEN: In your opinion, what does
11 Mr. Dominguez need to treat his condition?

12 A. One of the questions that the Riverside County form
13 asks is, Are antipsychotic medications likely to be effective?
14 In this case, no, they're not. The medications that are used
15 for depression, things like Paxil, Zoloft, Prozac, and so on,
16 and then the more recent generation of antidepressants, they're
17 not likely to help very much either.

18 MR. ZEKTSER: I will object as irrelevant, what he
19 needs.

20 THE COURT: Sustained.

21 Q. BY MS. NGUYEN: With respect to Mr. Dominguez's
22 physical health, did he tell you whether or not he suffers from
23 any physical illness?

24 A. He suffers from diabetes.

25 Q. And did he tell you how severe his diabetes is?

26 A. It's severe enough that he's insulin dependent and has
27 had two amputations of his lower extremities.

28 Q. And did he describe to you any period of time where he

1 gets dizzy or loses consciousness?

2 A. Yes.

3 Q. What did he tell you about that?

4 A. He said that after he was transported I believe it was
5 to Banning from the booking facility here, that he was in,
6 quote, bad shape. He was dizzy and confused. Apparently when
7 his -- he finally did come to the attention of the medical
8 authorities, his blood sugar was over 300. Anything above 125
9 is considered diabetic and a problem that would be addressed
10 with medication of some sort.

11 Q. And so given that he has this diabetes and he is
12 insulin dependent, how -- to your knowledge, how will that
13 affect him physically during his trial?

14 A. Well, one of the difficulties with diabetes that
15 happens, oftentimes patients will go through periods of
16 hypoglycemia when their blood sugar drops and it can lead to
17 death. They can lose consciousness and die. Probably that
18 won't happen in the courtroom.

19 MR. ZEKTSER: I will object as to foundation. Move to
20 strike.

21 THE COURT: How would that lead -- tell me how that is
22 relevant to the competence issue.

23 MS. NGUYEN: I think that the fact that he goes into
24 these lulls and these dips of his blood sugar, it affects his
25 ability to be mentally present and acute and aware because he is
26 lethargic. He goes through dizziness, loss of -- potential loss
27 of consciousness. Right now we don't know what his blood sugar
28 is because he is here, he is not at the hospital where he is

1 supposed to be getting his blood sugar checked regularly. He is
2 not being given midmorning snacks as he is supposed to. For all
3 we know, this could be very bad for his health him just being
4 here right now. So the issue is being in a long trial with
5 multiple witnesses and over three or four or five days, how is
6 his physical illness going to be affected?

7 MR. ZECTSER: And my objection is foundation for the
8 following reason. We're referring to him as a doctor. He is a
9 doctor in psychology, not a doctor in medicine. I don't believe
10 he has a foundation to discuss and testify.

11 THE COURT: Let me ask the doctor. I know you get a
12 background in human anatomy and physiology, I believe, as a
13 psychologist?

14 THE WITNESS: Yes.

15 THE COURT: Is this an area you feel comfortable with
16 answering?

17 THE WITNESS: I have Type II Diabetes. Yes, I do feel
18 comfortable talking about diabetes.

19 THE COURT: Okay. I will allow the question.

20 MR. ZECTSER: I will withdraw my objection. Thank you.

21 THE COURT: Okay.

22 Q. BY MS. NGUYEN: So given what you know about diabetes
23 personally being a victim of diabetes --

24 A. Not a victim.

25 Q. -- or having diabetes, you're aware of what the effects
26 of an imbalance in his blood sugar level can be; that is right?

27 A. Yes.

28 Q. Okay. And he also described this to you, correct?