

1 about the outcome of the trial because to him he's lost
2 everything already, and whether he is acquitted and released
3 from custody, it doesn't matter to him. And the reason that he
4 believes he's lost everything is because he's gone through quite
5 a bit over the last year since he's been in custody.

6 He was arrested February of 2012, and when he was
7 arrested, he went on a transport bus to Banning. On that bus he
8 injured his toe, and he did not receive any care for that injury
9 for about 110 days even though it was bleeding and becoming
10 infected. And the infection got so bad that once he was seen,
11 the doctor determined that it needed to be amputated. So once
12 that happened, he was released from the hospital, he went back
13 to jail, and he started to try to learn to walk on his left
14 foot. He wasn't given a wheelchair. When he was learning to
15 walk on his left foot, he developed calluses which eventually
16 cracked open and started to bleed and he got another infection.
17 And again, unfortunately, nobody was looking after him the way
18 they should've after being a recent amputee for his right big
19 toe. The infection progressed and it got worse, and he was
20 taken to the hospital. And this time the doctor said, We don't
21 only have to amputate your foot, we have to amputate your leg as
22 well. And so they amputated his left leg up to his knee. And
23 he was released from the hospital and he was told to -- with
24 orders that he be looked at regularly to determine how he's
25 doing.

26 Over the course of this, he went from being a gentleman
27 that suffered from diabetes out in the regular world -- because
28 he had a great job, he had been a truck driver his whole life

1 from young, young adulthood -- to being this person in custody
2 who lost his big toe, who lost the greater portion of his left
3 leg, and now he is insulin dependent. He had never been insulin
4 dependent before he had been in custody. Based on all of that,
5 he naturally suffers from major depressive disorder.

6 In addition to that, his insulin dependence causes his
7 blood sugar to plummet quite a bit. And when he was in trial --
8 this case was sent to trial, and on February 22nd, 2013, when he
9 was at trial he started to fall asleep quite a bit, and his
10 defense counsel kept trying to help him, assist him, and wake
11 him up. The Court ordered that the jail doctors come to court
12 to talk about how they could regulate his insulin while he is in
13 court during trial to prevent him from entering into lethargic
14 states when his blood sugar drops -- or, I'm sorry, drops.

15 So unfortunately, none of that was successful because
16 Mr. Dominguez suffers from a number of different food allergies,
17 including he is allergic to peanuts and dairy. Well, the very
18 first snack that was brought to him in court that morning to
19 help assist him in keeping his insulin up was a snack that he
20 could not consume because of his allergies. It was a peanut
21 butter sandwich. So given what he's been through, he suffers
22 from major depressive disorder.

23 Dr. Kaisch will tell you that in its most profound and
24 serious severe state, a person who suffers from that disorder
25 will just lay in bed all day. And if they need to urinate or
defecate, they will just do so laying in bed. Because that is
27 the level that they lack, the ability to engage in
28 self-protective or self-beneficial behavior. He will testify

1 that Mr. Dominguez is really close to that. He is right up
2 close to that. And because of that, he believes that
3 Mr. Dominguez is incompetent because he will not be able to
4 rationally assist his attorney in presenting his own defense.
5 And I will ask the Court to find him incompetent for that
6 reason. Thank you.

7 THE COURT: Okay. Mr. Zektser, do you want to make
8 some opening statements?

9 MR. ZEKTSER: I will, thank you. I will be brief. I
10 didn't provide a copy for the Court. Maybe I will do that for
11 closing for the Court.

12 You know, the most profound stage of depression or
13 severe depression is suicide. It's suicide. Dr. Kaisch will
14 testify and any other doctor will testify to that. And there is
15 no evidence at all that Mr. Dominguez has attempted to commit
16 suicide.

17 What there is evidence of is that Mr. Dominguez is a
18 child molester and a child rapist. And now he is on trial for
19 it, and you better believe he is going to be depressed about it
20 because he is going to be spending, likely, the rest of his life
21 in prison, just as a number of other defendants are faced with.

22 So yes, he is depressed. He should be depressed.
23 Anybody in his position would be depressed. Does that mean that
24 he can't help his counsel? Well, he was interviewed by two or
25 three different doctors. He was able to help them answer every
26 one of their questions. When they posed him questions about his
27 history, his life, answered them for them. He talked about in
28 great detail what happened with his toe, on which day he

1 bloodied, how he got dizzy on the ride over from his bus. He
2 gives great detail to each doctor, assisting them in every which
3 way.

4 Then we come for trial. You're going to hear, I
5 believe, from Ms. Williams, who is trying everything to get out
6 of this trial, everything.

7 MS. NGUYEN: Objection. Objection, Your Honor. That's
8 inappropriate. It's speculation and it's just not true.

9 THE COURT: Well, to get out of the trial, that's
10 argumentative. I will sustain it on that ground.

11 MR. ZEKTSER: No problem.

12 You're going to hear a number of grounds that she
13 attempted to continue the trial. How Judge Levine dealt with
14 this issue already of him falling asleep and whatnot and got
15 reports from the actual doctors. How Judge Levine then sent
16 this out to trial.

17 Now on the day or one of the days that we were in front
18 of Judge Levine, a long day, a boring day -- and as this Court
19 knows, I don't need to put anyone on the stand to discuss Judge
20 Levine's courtroom, how it may get a little boring occasionally.
21 2:00 in the afternoon or 3:00 in the afternoon after
22 Mr. Dominguez had been woken up to be brought over here, as he
23 sits there with no Spanish interpreter for the entire day, he
24 closed his eyes and he went to sleep. How many times have we
25 seen defendants who do speak English, who are engaging in court
26 close their eyes?

27 I mean, the bottom line is this, Your Honor. They're
28 saying that -- you will learn the whole defense is that he's

1 just so sad that he can't help his counsel. Despite the fact
2 that he knows what the Court does, despite the fact that he
3 knows what the prosecution does, what defense does, the process.
4 Despite the fact that he assisted every one of these doctors,
5 Defense is saying that, you know what, my client, he's just so
6 depressed; my client who is sitting here and facing the rest of
7 his life in prison is so depressed he cannot assist with trial.
8 And that is a joke.

9 THE COURT: Let me ask, I just want to get an idea of
10 how many witnesses? Who are you calling, Ms. Nguyen?

11 MS. NGUYEN: We're calling the clinical therapist from
12 the jail who originally diagnosed him. We're calling Dr. Kaisch
13 and Nicole Williams. And that's the totality of our witnesses.

14 THE COURT: Okay. And Mr. Zektser, who are you calling
15 as well?

16 MR. ZEKTSER: I may call Dr. Jimenez, if need be. Just
17 so the Court knows, he can't be here until after lunch.

18 THE COURT: Okay.

19 Okay. Go ahead.

20 MS. NGUYEN: Thank you, Your Honor. If I could be
21 excused to go get my first witness?

22 THE COURT: Yes.

23 (Pause.)

24 MS. NGUYEN: Your Honor, there are two people coming
25 in. They're not witnesses in the case. One is Ms. Sandy Ricks,
26 and she's with mental health. And I don't know who else is with
27 her.

28 THE COURT: Okay. Ms. Ricks, you're not testifying

1 today?

2 MS. RICKS: No, Your Honor.

3 THE COURT: Who is the young lady with you?

4 THE CLERK: Please raise your right hand --

5 MS. MAZE: My name is Christina Maze --

6 THE REPORTER: I'm sorry. I can't get two people
7 talking at the same time. Your name again?

8 MS. MAZE: Christina Maze. I'm a clinical therapist
9 out of Robert Presley Detention Center.

10 THE COURT: Oh, okay. I think she's the witness you
11 were going to call.

12 MS. NGUYEN: No, Your Honor. That's Ms. Manning.

13 THE COURT: Oh, you're just here to observe.

14 MS. MAZE: Yeah. Yeah.

15 THE COURT: Okay. You ladies are free to stay in here.

16 Go ahead. If we can start over with this witness.

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

20 THE WITNESS: Yes.

21 THE CLERK: Thank you. Please be seated.

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

24 THE WITNESS: Domenique Sherrell Manning,
25 D-o-m-e-n-i-q-u-e, S-h-e-r-r-e-l-l, M-a-n-n-i-n-g.

26 THE COURT: Okay. Ms. Manning? Dr. Manning? How
27 should I address you?

28 THE WITNESS: Ms. Manning, not doctor.

1 THE COURT: Okay. Ms. Manning, nice to meet you. Good
2 morning.

3 THE WITNESS: Good morning.

4 THE COURT: Just take your time. We couldn't have
5 orchestrated that better because we showed you, with my blunder,
6 I started talking out there while there was someone over here
7 talking. The young lady in front of you is our court reporter.
8 She can't type what two people say at the same time. So if you
9 would do me a favor and wait until the questions are all the way
10 done before you begin speaking.

11 THE WITNESS: All right.

12 THE COURT: All right. Thank you, Ms. Manning.

13 Go ahead.

14 DOMENIQUE SHERRELL MANNING,
15 called as a witness by the defendant, was sworn and testified as
16 follows:

17 DIRECT EXAMINATION

18 BY MS. NGUYEN:

19 Q. Good morning, Ms. Manning.

20 A. Good morning.

21 Q. How are you today?

22 A. Doing well.

23 Q. Good.

24 What is your occupation?

25 A. I'm a clinical therapist for Robert Presley Detention
26 Center.

27 Q. How many years or how long have you been with Robert
28 Presley Detention Center?

1 A. For --

2 MR. ZEKTSER: I will stip to her experience and her
3 qualifications.

4 THE COURT: Do you want to accept it?

5 MS. NGUYEN: Absolutely. That will save us time.

6 THE COURT: Okay. So what's the stipulation, she is an
7 expert in what?

8 MS. NGUYEN: In the -- well, she is an expert in all
9 things related to her position as a clinical therapist,
10 including diagnosing psychological disorders.

11 THE COURT: Okay.

12 MR. ZEKTSER: Is that true, ma'am?

13 THE WITNESS: Yes.

14 MR. ZEKTSER: All right. I will stip.

15 THE COURT: Okay. Go ahead.

16 MS. NGUYEN: Thank you, Your Honor.

17 Q. BY MS. NGUYEN: Ms. Manning, did you ever come to know
18 a person named Adan Dominguez?

19 A. Yes.

20 Q. Do you see him here today?

21 A. Yes.

22 Q. Where do you see him? Can you point him out and
23 identify something that he is wearing.

24 A. Sitting right next to you.

25 Q. And what's he wearing?

26 A. Wearing the orange jumpsuit.

27 MS. NGUYEN: If the Court could find that she's
28 identified Mr. Dominguez.

1 THE COURT: Yes.

2 MS. NGUYEN: Thank you, Your Honor.

3 Q. BY MS. NGUYEN: And why did you come in contact with
4 Mr. Dominguez?

5 A. Received a referral from the medical staff at Robert
6 Presley Detention Center.

7 Q. And what does that mean? What is a referral?

8 A. A referral is once he saw the medical doctor, the
9 medical doctor saw him fit to be referred to forensic mental
10 health so he could be evaluated for depression.

11 Q. And what do you mean when you say the medical doctor
12 saw fit? What criteria are you aware of that the medical doctor
13 would use to refer him over to you?

14 A. I believe it was his mood during his assessment with
15 the doctor.

16 MR. ZEKTSER: I'm going to object as to hearsay. Move
17 to strike. There's also foundation issues as to what this other
18 doctor's background is.

19 THE COURT: Overruled. I'm just going to take it for
20 how Mr. Dominguez ended up in front of this lady. So that's
21 what it will be accepted for.

22 MR. ZEKTSER: Thank you. Thank you.

23 THE COURT: Go ahead.

24 Q. BY MS. NGUYEN: So the referring -- the person who
25 administered the referral was a medical doctor?

26 A. Yes.

27 Q. And that's the process in Robert Presley Detention
28 Center?

1 A. One of them, yes.

2 Q. Okay. And he referred Mr. Dominguez over to you, you
3 said, for a psychological evaluation; is that correct?

4 A. Yes.

5 Q. Okay. And did you conduct any type of psychological
6 evaluation on Mr. Dominguez?

7 A. I did conduct a behavioral health assessment, yes.

8 Q. And what is a behavioral health assessment?

9 A. Um --

10 Q. If you need to look at your notes, you can do so, but
11 with the Court's permission.

12 A. All right.

13 Q. Would it refresh your memory to look at your notes?

14 A. Yes, it would.

15 THE COURT: Go ahead.

16 THE WITNESS: A behavioral health assessment is an
17 assessment that we conduct, and it looks at behaviors, mood,
18 also other precipitating factors that may be going on with an
19 inmate as far as the environment as well.

20 Q. BY MS. NGUYEN: And is this a standardized test,
21 meaning that you have a standard form that you use --

22 A. Yes.

23 Q. -- to conduct the test?

24 A. And did you use that form in this case?

25 A. Yes.

26 Q. What date did you evaluate Mr. Dominguez?

27 A. The 22nd of February.

28 Q. And how long did the evaluation take?

1 A. Approximately -- I'd say it was about two hours to
2 complete the assessment.

3 Q. And why does the jail do these assessments? What's the
4 purpose of them?

5 A. Well, the clinicians complete the assessment first and
6 then we refer it to the psychiatrist for further evaluation if
7 medications might be indicated.

8 Q. So is the overall purpose -- strike that. Maybe I can
9 say this a different way.

10 When staff at the jail notice that somebody has a
11 depressed mood, does that cause a safety concern for the staff?

12 A. Yes.

13 Q. And what is that safety concern?

14 A. Um, to see if the inmate is a danger to himself or a
15 danger to others.

16 Q. And when Mr. Dominguez was referred to you, was that
17 part of the referral, for you to determine whether he was a
18 danger to himself or to others?

19 A. Um, that wasn't indicated in the assessment. It was
20 simply just for depression.

21 Q. And when you examined Mr. Dominguez for two hours, you
22 said, did you determine whether or not he was suffering from any
23 mental illness?

24 A. Yes.

25 Q. Did you diagnose him as such?

26 A. Yes.

27 Q. What did you diagnose him with?

28 A. I diagnosed Mr. Dominguez with major depressive

1 disorder.

2 Q. And what is major depressive disorder?

3 THE WITNESS: Permission to review my notes?

4 THE COURT: Yes.

5 THE WITNESS: Major depressive disorder requires two or
6 more major depressive episodes along with depressed mood most of
7 the day, loss of interest or pleasure in all or most activities,
8 um, insomnia, trouble sleeping, fatigue or loss of energy,
9 diminished ability to think or concentrate, excessive guilt or
10 worry, worthlessness, hopelessness.

11 Q. BY MS. NGUYEN: Anything else?

12 A. That's it.

13 Q. Did you determine whether or not any of those criteria
14 existed with Mr. Dominguez?

15 A. Yes.

16 Q. If you could go over them, each one that you determined
17 existed with him starting however you determined them.

18 A. Um, Mr. Dominguez did report trouble sleeping.

19 Q. What did he say about his trouble sleeping?

20 A. That he found it difficult to sleep through the night.

21 Q. And what's the next factor that you determined to exist
22 with Mr. Dominguez?

23 A. Mr. Dominguez also had depressed mood.

24 Q. And how did you determine that he had depressed mood?

25 A. Well, through the assessment, you know, he did have
26 crying spells while the assessment was being conducted and also
27 from his report.

28 Q. And what do you mean when you say crying spells?

1 A. Crying spells where we would be in conversation and
2 Mr. Dominguez would place his hands over his face and start
3 crying. He would have to take a minute in order to continue the
4 assessment.

5 Q. Okay. And did he describe to you the reasons why he
6 was feeling this way?

7 A. Yes.

8 Q. What did he tell you about his moods?

9 A. Well, there were a lot of precipitating factors that
10 contributed to his mood, one of which was his current physical
11 condition.

12 Q. What did he tell you about that?

13 A. Well, he has lost his limb, so he is no longer able to
14 work if he were to be out of custody.

15 Q. What do you mean by that, that he is no longer able to
16 work? What --

17 A. He would no longer be able to partake in the
18 profession, I guess, of truck driving, which is what he reported
19 as his profession.

20 Q. Did he tell you how long he had been a truck driver?

21 A. No. I don't see it in the assessment.

22 Q. Did he tell you that he had --

23 THE COURT: Let me just see if we can give Mr. Zektser
24 perhaps a moment.

25 MR. ZEKTSER: Oh, no, I'm listening, Your Honor. I'm
26 fine.

27 THE COURT: Actually, it's a little distracting to me.

28 MR. ZEKTSER: I apologize.

1 THE COURT: Okay. Go ahead.

2 Q. BY MS. NGUYEN: Would it refresh your recollection
3 about the time that he had been a truck driver if you looked at
4 your notes related to time? I can --

5 A. Uh-huh.

6 Q. -- point that out to you if it would help you refresh
7 your memory. Ms. Manning?

8 A. Yes.

9 Q. You have to look up and then I could point it out to
10 you. Would that help refresh your memory?

11 A. Yes.

12 MS. NGUYEN: Your Honor, may I have permission to
13 approach?

14 THE COURT: Yes.

15 While you're doing that, do you gentlemen need to take
16 a break?

17 (Discussion held off the record.)

18 THE COURT: Okay.

19 MS. NGUYEN: Thank you, Your Honor.

20 Q. BY MS. NGUYEN: Have you had a chance to review your
21 notes?

22 A. Yes, ma'am.

23 Q. And has your memory been refreshed as to how long
24 Mr. Dominguez has been a truck driver?

25 A. Yes.

26 Q. How long?

27 A. Well, after graduating high school, Mr. Dominguez went
28 into truck driving school.

1 Q. And are you aware of how old Mr. Dominguez is now?

2 A. I do not have his birth date.

3 Q. Okay. Would it refresh your recollection to look at
4 your form if I showed it to you?

5 A. Yes, ma'am.

6 MS. NGUYEN: Thank you. Permission to approach?

7 THE COURT: Yes.

8 Q. BY MS. NGUYEN: Is your memory refreshed as to his date
9 of birth?

10 A. Yes.

11 Q. What year was he born?

12 A. 1951.

13 Q. Okay. So he is -- add or subtract 18 years from that,
14 he's been a truck driver for a long time, correct?

15 A. Yes, ma'am.

16 Q. And that's the only career that he highlighted to you
17 as to what his profession was; is that correct?

18 A. Yes.

19 Q. And did he describe to you the effect of the amputation
20 on his ability to work in that profession?

21 A. Yes.

22 Q. What did he say?

23 A. Mr. Adan Dominguez reported that with being an amputee
24 he would not be able to hold a Class A license.

25 Q. And did -- did he explain why that is?

26 A. No.

27 Q. Did he say anything about his insulin dependent --
28 strike that.

1 Let's go back to the factors that you determined to be
2 present in Mr. Dominguez that caused you to diagnose him with
3 major depressive disorder.

4 You said his mood, he had social -- he had a depressed
5 mood; is that right?

6 A. Yes, ma'am.

7 Q. And what about you had said something about a loss of
8 interest?

9 A. Uh-huh.

10 Q. Can you describe that to us. How did you determine
11 that he had a loss of interest?

12 A. Well, Mr. Dominguez, he was -- he reported that he was
13 a member of the church and his community work was a big factor
14 in his life as far as with the activities that he participated
15 in. Mr. Dominguez did not report going to any of his church
16 services or any of those activities that are offered within
17 RPDC.

18 Q. So is it fair to say that he, outside of having this
19 major depressive disorder, would normally participate in church
20 services that were offered?

21 A. Yes.

22 MR. ZEKTSER: Objection. Speculation.

23 THE COURT: Overruled.

24 THE WITNESS: Yes.

25 Q. BY MS. NGUYEN: So that is one area in which you marked
26 that he had a loss of interest?

27 A. Yes.

28 Q. Did you determine that he had a loss of interest in any

1 other respects?

2 A. No. That was the main activity for loss of interest,
3 church activities.

4 Q. And you talked about feelings of worthlessness and
5 guilt as being a factor in major depressive disorder; is that
6 correct?

7 A. Yes.

8 Q. Did you determine whether or not those existed in
9 Mr. Dominguez?

10 A. Yes.

11 Q. What did you determine?

12 A. With the worthlessness and the guilt, it usually ties
13 in with hopelessness, and Mr. Dominguez made statements during
14 the assessment that would warrant him feeling helpless.

15 Q. And what were those statements?

16 A. Mr. Dominguez stated that, um, in quotes, "I have no
17 more fight left in me. I can't do it anymore."

18 Q. Say that again. He said, "I have no more fight left in
19 me"?

20 A. Yes.

21 Q. And he said, "I can't do it anymore"?

22 A. Yes.

23 Q. When he said, "I can't do it anymore," what were you
24 two speaking about?

25 A. Mr. Dominguez was expressing his feelings in regard to
26 his family and also with the physical health, his leg.

27 Q. And when he said, "I have no more fight left in me,"
28 what were you two speaking about at that time?

1 A. We were talking about both the physical health and
2 family, the loss of the family.

3 Q. Did he expand on what he meant when he said, "I have no
4 more fight left in me"?

5 A. In regards to the amputation, Mr. Dominguez was talking
6 about, you know, the surgeries and the medical doctor visits.
7 In regard to the family, um, the family turmoil.

8 Q. With respect to the surgeries, after the second
9 amputation -- I'm sorry, strike that.

10 After the first amputation of his right toe, right big
11 toe, and prior to the second amputation, did he describe to you
12 telling anybody at the jail what was happening with his left
13 foot?

14 A. Yes.

15 Q. With his left foot? Let me see if I can go back and
16 make it a little bit clearer.

17 After he injured his right foot very early on when he
18 first arrived, did he describe to you any attempts that he made
19 to alert jail staff to the infection?

20 A. Yes, he did report that to me.

21 Q. And what did he tell you he did?

22 MR. ZEKTSER: Objection. Relevance.

23 MS. NGUYEN: Your Honor, this goes directly to his
24 ability to engage in self-beneficial behavior. You will be able
25 to see the difference between when he was first arrested and
26 tried to get assistance for his injury versus later on.

27 THE COURT: Okay. Overruled. I will allow it. Go
28 ahead.

1 Go ahead. You can answer.

2 Q. BY MS. NGUYEN: What did he tell you about the efforts
3 that he made to get help for the infection on his right big toe?

4 A. He was asking to speak with a nurse.

5 Q. And did he say how he had tried to speak with a nurse,
6 what efforts he made?

7 A. I can't remember that detail.

8 Q. But he did try, to your knowledge?

9 A. Yeah.

10 Q. From what he told you?

11 A. Yes.

12 Q. And for how long did he tell you he tried?

13 A. He stated that he didn't receive treatment for
14 110 days.

15 Q. Now --

16 MR. ZEKTSER: I'm going to object as to nonresponsive
17 to the question.

18 THE COURT: How long did he try, that he didn't receive
19 treatment. It's close enough. Overruled.

20 Q. BY MS. NGUYEN: Now, with respect to his left foot, the
21 injury on his left foot, that happened after his right toe was
22 amputated, right?

23 A. I believe so. I don't have that specific detail in the
24 assessment.

25 Q. Okay. Well, let me ask you a different question.

26 Did he tell you that after his right toe had been
27 amputated they amputated his left foot and his left leg as well?

28 A. Yes.

1 Q. Okay. And that second amputation happened after the
2 right toe, right?

3 A. Correct.

4 Q. Now, with respect to that second amputation and the
5 infection leading up to that, did he describe to you anything he
6 did to try to get help for that infection?

7 A. Um, Mr. Dominguez did report that he attempted to meet
8 with the nurse.

9 Q. That he attempted to get the nurse after his left foot
10 had become infected?

11 A. Yes.

12 Q. And how many -- did he explain to you how often he
13 tried to get the attention of the nurse?

14 A. No, not that I can recall.

15 Q. With respect to him trying to get the attention of the
16 nurse after his left foot had been infected, you didn't put any
17 of that information in your report, did you?

18 A. I do have written about his infection and the
19 amputation.

20 Q. I want to be really specific about what I'm asking you
21 here.

22 Mr. Dominguez was very specific when he described to
23 you the efforts that he made after his right toe had become
24 infected?

25 A. Uh-huh.

26 Q. Correct?

27 A. Yes.

28 Q. Now, after his left foot had become infected, did he

1 describe any efforts that he made to obtain the attention of the
2 detention health services staff?

3 A. I don't know the details about that.

4 Q. He didn't give you any details --

5 A. No, ma'am.

6 Q. -- about that, did he?

7 And if he did, they would have been in your report,
8 correct?

9 A. Yes.

10 Q. Because that's something important that you would note,
11 correct?

12 A. Yes.

13 Q. Now, with respect to the difficulty concentrating that
14 you spoke about as a factor related to major depressive
15 disorder, did you determine whether or not Mr. Dominguez suffers
16 from difficulty concentrating?

17 A. At the time of the assessment he did have difficulty
18 concentrating.

19 Q. And how did you determine that?

20 A. With the specific line of questioning. Usually we go
21 through a specific line of questioning, and I did have to repeat
22 myself a couple of times on some of the questions.

23 Q. And what were those questions that you had to repeat?

24 A. I cannot remember the specific questions, but I can
25 remember what subject matter they were on, which was the medical
26 history, as well as the family history.

27 Q. So -- and these were questions that only he knows the
28 answers to, is that correct? Well, he's the only person in the

1 room that would know the answers to these questions?

2 A. Correct.

3 Q. And so how many times did you have to repeat these
4 questions to him?

5 A. I did not have to repeat myself more than twice.

6 MR. ZEKTSER: May we just have a moment, Your Honor?

7 (Counsel confer off the record.)

8 Q. BY MS. NGUYEN: Ms. Manning, you might not notice that
9 you're doing this, but you tend to look at your notes quite a
10 bit, and it almost looks as though you might be reading your
11 notes a lot when I ask you the questions. What we really need
12 you to do is work off of your memory, if you can. And if you
13 really can't remember something, then we will ask the Court for
14 permission to allow you to look at your notes to refresh your
15 memory. Is that okay?

16 A. Okay.

17 THE COURT: Thank you, Ms. Nguyen.

18 MS. NGUYEN: Thank you, Your Honor.

19 Q. BY MS. NGUYEN: So you noted that he had difficulty
20 concentrating; is that correct?

21 A. Yes.

22 Q. And this is on questions that are relevant to him,
23 correct?

24 A. Correct.

25 Q. Okay. So you would have to repeat yourself when asking
26 these questions?

27 A. Yes.

28 Q. Did he explain why he was not responding in a timely

1 manner to you?

2 A. No.

3 Q. And you also talked about feelings of worthlessness.

4 What -- how do you define what that means in terms of diagnosing
5 major depressive disorder?

6 A. In regards specifically to Mr. Dominguez's case, what
7 he found self-worth in, from what he reported, is his community
8 work and working through his church, that which he was no longer
9 able to do at this time. So he felt that he was worthless.

10 Q. And --

11 A. Because that's where he got his self-worth.

12 Q. With his community work and his church?

13 A. Correct.

14 Q. And you described feelings of hopelessness as well as a
15 characteristic of major depressive disorder?

16 A. Yes.

17 Q. Can you define what that is, feelings of hopelessness?

18 A. Feelings of hopelessness, I would say there's no silver
19 lining, in a sense. There's no positive and there's no bright
20 side to anything that may be happening with him in his life.

21 Q. Did you ask him about the possibility of what if he is
22 acquitted at trial what would happen, what would he feel about
23 that?

24 A. I did not ask that question.

25 Q. Now, with respect to his feelings of hopelessness, how
26 did you diagnose that he was engaging in feelings of
27 hopelessness?

28 A. With Mr. Dominguez's mood, also with his answers in

1 regard to, again, his self-worth and what gave him hope.

2 Q. Did his inability to pick up his profession if he were
3 acquitted and released from custody, did that factor into your
4 determination of his hopelessness?

5 A. Yes.

6 Q. And how?

7 A. Well, with his report, he stated that, again, he has --
8 he no longer would be able to work.

9 Q. And you noted that he had significant weight loss as
10 well, correct?

11 A. I don't remember. May I look at my notes?

12 THE COURT: Yes, go ahead.

13 THE WITNESS: I'm not seeing in my notes that I stated
14 that, the weight loss.

15 Q. BY MS. NGUYEN: Okay. Now, going back -- okay. Let's
16 stick with hopelessness for a moment. That's a clinical term,
17 correct?

18 A. Yes.

19 Q. And how, if at all, does feelings of hopelessness or
20 extreme worthlessness affect a person's ability to think?

21 A. An individual could have the inability to, um, come up
22 with an appropriate life plan for themselves if they are indeed
23 hopeless.

24 Q. What do you mean when you say life plan?

25 A. Decision making, plans as far as living, actually even
26 just having, you know, the appropriate living skills.

27 Q. Can you describe that in greater detail what that would
28 look like for somebody in Mr. Dominguez's case who is facing

1 trial and residing in jail?

2 MR. ZEKTSER: Objection. Inappropriate expert
3 testimony.

4 THE COURT: Although, you stipulated she is an expert.

5 MR. ZEKTSER: Correct. I don't believe that this is an
6 appropriate line of questioning for any expert to say.

7 THE COURT: How the hopelessness would translate into
8 them dealing with their lawyer?

9 MR. ZEKTSER: That I -- that I don't object to. But
10 her stating how Mr. Dominguez is feeling and how it's
11 translating into his actions.

12 THE COURT: Okay. I will sustain the objection. If
13 you can rephrase it along the lines of what I had asked.

14 MS. NGUYEN: Yes, sir.

15 THE COURT: That's a fair question.

16 MS. NGUYEN: I'm going to ask a different question.

17 Q. BY MS. NGUYEN: With respect to the feelings of
18 hopelessness, how, in your professional opinion, would they
19 affect his ability to interact with his attorney?

20 A. (No audible response.)

21 Q. Let me -- let me withdraw that just for a second.

22 Are you aware of how a defendant must interact with his
23 attorney in a trial setting?

24 A. No, I'm not aware.

25 Q. If I could ask a more general question. Generally with
26 respect to extreme hopelessness that you have diagnosed
27 Mr. Dominguez with, how does that affect a patient's thought
28 processing?

1 A. It could affect the defendant's thought process due to
2 him not having the capacity to take care of himself.

3 Q. And when you say that, what do you mean? In your
4 professional history, what have you seen in patients who suffer
5 from major depressive disorder? How have you seen this
6 exhibited in their capacity to take care of themselves?

7 A. Unable to eat, unable to get out of bed, unable to
8 interact with others, and due to them unable -- well, not being
9 able to do all of these things, sometimes they can't even take
10 their medications. So -- which would help in that sense.

11 Q. And when you say unable to interact with others, what
12 do you mean?

13 A. Um, communicate, talk, answer, you know, even the most
14 basic questions.

15 Q. And when you spoke with Mr. Dominguez, you got a sense
16 that he was making his -- well, did you get a sense that he was
17 making his best effort to cooperate with you?

18 A. Yes.

19 Q. Did you get the sense that he was attempting to
20 exaggerate any of his symptoms to you?

21 A. No.

22 Q. Did you get the sense that he was malingering any
23 mental illness to you?

24 A. Well, I don't have the assessments, and I'm not
25 certified to even diagnose malingering.

26 Q. Did you get a sense of it, though, any sense of it?

27 MR. ZEKTSER: Objection. Inappropriate.

28 THE COURT: Sustained.

1 Q. BY MS. NGUYEN: And at the end of your report that you
2 submitted -- or you submitted a report to two supervisors I
3 think, correct?

4 A. Yes.

5 Q. And in that you -- did you state that somebody should
6 follow up to check on Mr. Dominguez?

7 A. Yes.

8 Q. To your knowledge, did that ever happen?

9 A. Yes.

10 Q. And was he present for that follow-up evaluation?

11 A. Was Mr. Dominguez present? I'm not sure.

12 Q. Would it refresh your recollection if you reviewed the
13 note by the person who attempted to follow up with him?

14 A. Yes.

15 THE COURT: Go ahead.

16 Q. BY MS. NGUYEN: Go ahead.

17 A. Well, I don't have that note.

18 Q. Okay. May I direct your attention to the middle of the
19 page.

20 When the person followed up on -- with Mr. Dominguez
21 after your evaluation, was Mr. Dominguez present for that
22 follow-up?

23 A. No, he was not.

24 Q. Did the person who did the follow-up appointment
25 indicate where he was?

26 A. Yes.

27 Q. Where was that?

28 A. In court.

1 Q. And so to your knowledge, has anybody followed up with
2 Mr. Dominguez after your assessment of him?

3 A. Yes.

4 Q. And was he in the same or similar state at that time?

5 MR. ZEKTSER: Objection. Foundation.

6 THE COURT: The other person?

7 MS. NGUYEN: Yeah. That's fine. I can withdraw it.

8 THE COURT: Sustained.

9 MS. NGUYEN: Nothing further, Your Honor.

10 THE COURT: Mr. Zektser.

11 MR. ZEKTSER: Thank you.

12 CROSS-EXAMINATION

13 BY MR. ZEKTSER:

14 Q. Good morning, ma'am.

15 A. Good morning.

16 Q. If you ever need to take a look at your notes, just
17 tell us. All right?

18 A. (Nods head.)

19 Q. I guess what you were telling us before is basically
20 that Mr. Dominguez has severe depression; is that right?

21 A. Yes.

22 Q. Okay. And you kinda talked to Mr. Dominguez about life
23 itself, correct?

24 A. Correct.

25 Q. All right. And this individual who is so severally
26 depressed, he must have said something like: Life sucks.
27 Right?

28 A. (No audible response.)

1 Q. Did he say that to you?

2 MS. NGUYEN: Objection. Foundation.

3 MR. ZEKTSER: I'm asking if she --

4 THE COURT: Well, I think he is trying to lay the
5 foundation.

6 You're asking whether he said "Life sucks" or --

7 MR. ZEKTSER: Yeah.

8 Q. BY MR. ZEKTSER: Did he say, "life sucks"?

9 A. He didn't say "life sucks," but --

10 Q. All right. Did -- go on.

11 A. Well, he did say --

12 Well, permission to look at my notes?

13 THE COURT: Yes, go ahead.

14 Q. BY MR. ZEKTSER: Let me ask you one question before you
15 do that.

16 This person that you categorized as severely depressed,
17 he told you that life was beautiful, right?

18 A. Yes.

19 Q. I mean, that was the severely depressed individual who
20 spoke to you, right?

21 A. Yes.

22 Q. And he actually said to you, "Living is one of the most
23 precious gifts," right?

24 A. Yes.

25 Q. Okay. And you even indicated that one of the main
26 things that he loves to do or that he found meaning in his life
27 was through church and through prayer. Is that fair?

28 A. Yes.

1 Q. Okay. And when you asked him, this person that we are
2 curious about to see if he is just hopeless, did he say he just
3 completely gave up church and prayer?

4 A. No.

5 Q. Okay. He actually said he still continuously prays,
6 correct?

7 A. Yes.

8 Q. I mean, on a daily basis, correct?

9 A. Yes.

10 Q. Okay. And he also said that he continually reads the
11 Bible, right?

12 A. Yes.

13 Q. All right. Now, you gave him a two-hours-long
14 examination. You talked to him for two hours about?

15 A. Yes.

16 Q. All right. And was that through a translator, or do
17 you speak Spanish?

18 A. It wasn't through a translator, no.

19 Q. It was in English?

20 A. Yes.

21 Q. Okay. So you spoke English to him. Do you know --
22 well, as he sits here today, you see him with a translator,
23 right?

24 A. Yes.

25 Q. Okay. Do you know if he feels more comfortable
26 speaking Spanish than English?

27 A. When I did the assessment, I did ask Mr. Dominguez if
28 he was more comfortable speaking Spanish than English, and he

1 said he was okay speaking English.

2 Q. Okay. My question to you is, do you know not whether
3 he's okay with speaking English, but which one he is better at?

4 MS. NGUYEN: Objection. Relevance.

5 MR. ZEKTSER: I'm asking if she knows. Defense counsel
6 made a big deal about having to repeat a couple of questions.

7 THE COURT: Overruled.

8 Q. BY MR. ZEKTSER: You may answer that.

9 A. Can you repeat the question, please.

10 Q. Sure. Do you know which one he is more comfortable
11 with, speaking Spanish or speaking English?

12 A. No.

13 Q. All right. I mean, as he is sitting here today, he
14 doesn't have an English interpreter, right?

15 A. Correct.

16 Q. Okay. He's got a Spanish interpreter, correct?

17 A. Yes.

18 Q. All right. And even though you were speaking English
19 to him, you've told us that he only -- you only had to repeat
20 yourself a couple of times?

21 A. Yes.

22 Q. All right. Now, this two-hour discussion in English,
23 it started off by, and correct me if I'm wrong, going over some
24 forms; is that right?

25 A. Yes.

26 Q. All right. Because you need him to understand those
27 forms and sign the forms to move on; is that correct?

28 A. Yes.

1 Q. All right. Did you do that with him?

2 A. Yes.

3 Q. All right. I'm going to show you what's going to be
4 premarked as People's 1.

5 Or should it be A?

6 THE CLERK: 1.

7 MR. ZEKTSER: 1. All right. Showing it to defense
8 counsel.

9 May I approach, Your Honor?

10 THE COURT: Yes.

11 Q. BY MR. ZEKTSER: Ma'am, I'm showing you what's
12 premarked as People's 1. What are we looking at there?

13 A. This would be our authorization for release of mental
14 health records.

15 Q. Okay. And about how long is it, about three-quarters
16 of a page?

17 A. Yes.

18 Q. Okay. Did you go over that with Mr. Dominguez?

19 A. Yes.

20 Q. Okay. And it's important that he understands what
21 you're saying; is that right?

22 A. Yes.

23 Q. Because you wouldn't want to go on with someone if you
24 didn't get that he understood it, correct?

25 A. Correct.

26 Q. So you explained it to him, correct?

27 A. Yes. Correct.

28 Q. And he understood you, right?

1 A. Yes.

2 Q. He sat there, he listened to you, you went over the
3 form, and he understood it. Is that fair to say?

4 A. Yes.

5 Q. And in fact, he signed it, right?

6 A. He gave verbal consent.

7 Q. Okay. He gave verbal consent?

8 A. Yes.

9 Q. Okay. You asked him for that?

10 A. Correct.

11 Q. And he gave it to you?

12 A. Yes.

13 MR. ZEKTSER: Okay. May I approach?

14 THE COURT: Yes.

15 MR. ZEKTSER: Thank you.

16 Q. BY MR. ZEKTSER: Was there other forms that you had to
17 go over with Mr. Dominguez?

18 A. Yes.

19 Q. All right. What are the other forms that you had to
20 sit down and explain to him?

21 A. Um, I believe there's a receipt of information,
22 authorization forms, as well as a consent to treat.

23 Q. Okay. Two separate other forms; is that right?

24 A. Yes.

25 Q. I'm not going to go into each one of them, but did you
26 have to explain what they meant to him?

27 A. Yes.

28 Q. Okay. And you did this in English, right?

1 A. Yes.

2 Q. But despite the fact that it was English and despite
3 the fact that he was going into the form would you say in
4 detail?

5 A. Yes.

6 Q. He understood it, right?

7 A. Yes.

8 Q. And he agreed to move on. Is that -- is that fair to
9 say?

10 A. Yes.

11 Q. I mean, he wasn't so hopeless at that point where he
12 just didn't agree, right?

13 A. Correct.

14 Q. He wasn't so hopeless that he didn't understand what
15 you were saying, correct?

16 A. Correct.

17 Q. All right. Now, one of the things about being hopeless
18 sometimes to the extreme, or, excuse me, depression, is suicide.
19 Is that fair to say?

20 A. That's one of.

21 Q. Right. I mean, you don't need to exhibit suicide or
22 attempted suicide to be depressed. Is that fair to say?

23 A. Yes.

24 Q. Okay. But that is one thing or one extreme that
25 therapists look at to see if someone is severely depressed?

26 A. Yes.

27 Q. Okay. Did you find any records that Mr. Dominguez was
28 suicidal?

1 A. No.

2 Q. Did he tell you, Hey, I'm going to kill myself?

3 A. No.

4 Q. Okay. Another thing, sometimes while people are so
5 depressed, they -- they don't even get out of bed, right?

6 A. Correct.

7 Q. I mean, they defecate in their own pants, right?

8 A. Yes.

9 Q. Okay. Mr. Dominguez defecate in his pants when he was
10 talking to you?

11 A. No --

12 Q. All right.

13 A. -- not during the assessment.

14 Q. All right. Actually, if you take a look at him in
15 court today, it appears like he combed his hair; isn't that
16 true?

17 A. Yes.

18 Q. It appears that he has a clean shave making a goatee;
19 isn't that true?

20 A. Yes.

21 Q. It appears that he takes some pride in how he looks.
22 Isn't that fair to say?

23 A. Yes.

24 Q. All right. Not laying over there defecating himself?

25 A. No.

26 Q. All right. And he -- he looked similar to this when he
27 spoke to you. Is that fair to say?

28 A. Um, he appeared more disheveled during the assessment.

1 Q. All right. And did you include that in your notes?

2 A. Permission to look at my notes?

3 THE COURT: Yes, go ahead.

4 MR. ZEKTSER: Your Honor, I will withdraw that
5 question.

6 THE COURT: All right. Go ahead.

7 Q. BY MR. ZEKTSER: That's fine.

8 To the best of your recollection, he appeared a little
9 bit more disheveled?

10 A. Yes.

11 Q. All right. Now, one thing you said that was depressing
12 to him was that he made -- or he was going to lose his Class A
13 license to drive, right?

14 A. Yes.

15 Q. All right. You would agree with me or, if you know, do
16 you know if you lose your Class A license if convicted of child
17 rape?

18 MS. NGUYEN: Objection. Relevance. And I will move to
19 exclude any evidence related to the charges. They're simply not
20 relevant to the hearing at all.

21 MR. ZEKTSER: Your Honor, they go directly to the
22 hearing. They're saying he is depressed.

23 THE COURT: I will sustain the objection because it's
24 outside of her knowledge. But I think in the case given the
25 charges, major depressive disorder, I think that's a fair
26 question. Go ahead.

27 MR. ZEKTSER: I will ask another question then.

28 Q. BY MR. ZEKTSER: He said that one of the reasons -- or

1 he said that he wanted to get out and be a participant in his
2 church again; is that right?

3 A. Yes.

4 Q. Okay. Well, are you aware of the fact that he actually
5 quit his church before he was arrested?

6 A. No.

7 Q. Okay. Are you aware of the fact that he resigned his
8 position from the church prior to him being arrested?

9 A. No.

10 Q. One of the things that's important as a therapist is --
11 well, a lot of the information you're gathering is from his
12 mouth himself, right?

13 A. Correct.

14 Q. Okay. And so in some ways you have to take some of the
15 things he is saying as true; is that right?

16 A. Correct.

17 Q. He told you that he was depressed because of his family
18 turmoil, right?

19 A. Yes.

20 Q. He told you he was depressed because basically he was
21 kinda set up for this child molest, right?

22 MS. NGUYEN: Objection. Misstates the witness
23 testimony.

24 MR. ZEKTSER: I'm asking if he told her that.

25 THE COURT: Okay. Overruled. Go ahead.

26 THE WITNESS: No, he did not tell me he was set up.

27 Q. BY MR. ZEKTSER: What did he say about that?

28 A. Permission to review?

1 THE COURT: Yes.

2 THE WITNESS: Mr. Dominguez stated that his younger
3 sister -- youngest sister's husband called the police on him
4 with the allegation that he molested their daughter.

5 Q. BY MR. ZEKTSER: Okay. Did he say that they were just
6 allegations?

7 A. Yes.

8 Q. Okay. Are you aware of the fact that he admitted to
9 molesting three separate children?

10 A. No.

11 Q. Okay. He didn't tell you that, did he?

12 MS. NGUYEN: Objection. Relevance.

13 MR. ZEKTSER: It goes to the truthfulness.

14 MS. NGUYEN: Objection. Relevance at this point.

15 THE COURT: Overruled. I think it goes to the
16 psychological diagnosis. So go ahead.

17 Q. BY MR. ZEKTSER: Are you aware of that fact?

18 A. No.

19 Q. Okay. Are you aware -- I mean, did you ever take into
20 consideration that he may be depressed partially because he
21 knows that he's going to be found guilty in trial?

22 A. Yes.

23 Q. I mean, someone who is on trial for let's say a life
24 crime and they know they've confessed with the whole thing, all
25 right, going through this process is going to be pretty
26 depressing, wouldn't you agree?

27 A. Depending on the individual.

28 Q. Well, wouldn't you be depressed if you had to spend the

1 rest of your life in prison?

2 THE COURT: Sustained. She doesn't need to answer that
3 question.

4 MR. ZEKTSER: Okay.

5 THE COURT: I think you made your point, Mr. Zektser.

6 MR. ZEKTSER: All right. All right. I'm almost done,
7 ma'am.

8 Q. BY MR. ZEKTSER: Overall, though, during this two hours
9 of basically questioning him -- right?

10 A. Yes.

11 Q. -- he was able to provide answers for you; is that
12 right?

13 A. Yes.

14 Q. Detailed answers, correct?

15 A. Yes.

16 Q. Okay. I mean, he was able to go into his family -- or
17 his childhood, correct?

18 A. Yes.

19 Q. He answered those questions fine, right?

20 A. Yes.

21 Q. He was able to go into his medical diagnosis, right?

22 A. Yes.

23 Q. The process of when he came into jail; is that right?

24 A. Yes.

25 Q. He was actually able to even tell you the date of when
26 he was arrested; isn't that true?

27 A. I can't recall.

28 Q. All right. Okay. That's fine.

1 But during these two hours, you needed his assistance
2 to fill out or to complete your evaluation, right?

3 A. Yes.

4 Q. And he gave it to you, right?

5 A. Yes.

6 MR. ZEKTSER: All right. I have no further questions.

7 THE COURT: Ms. Nguyen.

8 MS. NGUYEN: Thank you, Your Honor.

9 REDIRECT EXAMINATION

10 BY MS. NGUYEN:

11 Q. Counsel talked to you about prayer by Mr. Dominguez.
12 Do you recall that?

13 A. Yes.

14 Q. In your examination of Mr. Dominguez, did you learn
15 that he is a religious man?

16 A. Yes.

17 Q. And did he explain to you the importance of prayer in
18 his life?

19 A. Yes.

20 Q. Did he tell you that he had attempted to use prayer to
21 help him feel better when he was in jail?

22 A. Yes.

23 Q. And what effect, to your knowledge, did that have on
24 his mood?

25 A. It did increase his mood.

26 Q. And did it make it so that Mr. Dominguez was no longer
27 suffering from major depressive disorder?

28 A. I -- I'm not sure because I don't -- I only saw