

Guilt Innocence Phase
August 22, 2017

1 (Court, counsel, jury, and defendant
2 present.)

3 THE COURT: Morning.

4 JURY PANEL: Morning.

5 THE COURT: Nice to see you you-all again.
6 Let's get this started.

7 Mr. Secrest, call your next witness.

8 MR. SECREST: Thank you, Your Honor. The
9 Defense would call a Dr. Leonard Hershkowitz. And
10 Dr. Hershkowitz has not been sworn.

11 **DR. LEONARD HERSHKOWITZ,**
12 having been first duly sworn, testified as follows:

13 **DIRECT EXAMINATION**

14 **BY MR. SECREST:**

15 Q. Would you please state your name for the record
16 Dr. Hershkowitz?

17 A. My name is Leonard Hershkowitz. Spelled
18 H-e-r-s-h-k-o-w-i-t-z.

19 Q. How are you employed?

20 A. I am a medical doctor.

21 Q. And what type of medical doctor are you?

22 A. My specialty is Neurology.

23 Q. Neurology?

24 A. Neurology.

25 Q. And for the record, Dr. Hershkowitz, what is

Guilt Innocence Phase
August 22, 2017

1 Neurology?

2 A. Neurology is the specialty of medicine that
3 deals with pain, problems that involve the brain, the
4 brain stem, the spinal cord, the nerve roots that exit
5 from the spinal cord. The rewiring of those nerve roots
6 form your nerves that go to your hands and your feet,
7 and also the muscles that are innervated. So any kind
8 of abnormality, or infection, circulation, cancer,
9 trauma, we deal with those issues as long as it's within
10 those anatomical boundaries.

11 Q. Let us know a little bit about your background,
12 please. Where did you go to college?

13 A. I graduated from Queens College in New York
14 with a degree in Chemistry.

15 Q. What year was that?

16 A. It was a long time ago. That was 1965.

17 Q. And from there did you go to medical school?

18 A. No. I was awarded a NIH Fellowship In
19 Biochemistry at the University of Illinois at the PHD
20 program.

21 Q. So how long did you continue in that regimen?

22 A. I stayed one year, and then decided that this
23 was not for me, and so I decided to go to medical
24 school. And I went to medical school in 1966 at Wayne
25 State University in Michigan.

Guilt Innocence Phase
August 22, 2017

1 Q. And after you graduated from medical school,
2 where did you do your internship and your residency?

3 A. I came to Houston the first time 1970, where I
4 served an internship at Methodist Hospital, and Baylor
5 College of medicine, and Ben Taub Hospital. That was a
6 one-year internship. Following that, I went back to the
7 East coast where I performed a Neurology residency. I
8 completed that in 1974.

9 Q. So have you continuously been engaged in the
10 practice of medicine, and more specifically, a
11 subspecialty of Neurology since that time?

12 A. That's correct.

13 Q. Have you ever taught at any medical school?

14 A. I still teach. When I came here, I was
15 recruited to the University of Texas Health and Science
16 Center. I taught there for about a year and a half, and
17 then went out to private practice. I still teach at the
18 Ben Taub Hospital. I'm a clinical professor at the Ben
19 Taub Hospital as part of the Baylor College of Medicine.

20 Q. Thank you.

21 Is Sandra Melgar a patient of yours?

22 A. Yes.

23 Q. How far back does that go?

24 A. You know, it goes very far back. But there was
25 a gap of time that I didn't see Sandy. So our records,

Guilt Innocence Phase
August 22, 2017

1 we keep them for 10 years. If we don't see that patient
2 in 10 years, we destroy them. But I can see that I saw
3 Sandy at least in the '90s, and I didn't see her again
4 until 2013. So I do not have the neurological records
5 of when I was treating Sandy for epilepsy back in the
6 1990s or early 2000s.

7 Q. And briefly, would you please tell the jury,
8 from a medical viewpoint, what is epilepsy?

9 A. So epilepsy is -- it's a diagnosis. And to
10 call something epilepsy, you have to have recurring
11 seizures. So the seizure, the episode that one has, if
12 they're recurrent, and they need medical treatment, we
13 then call that epilepsy. So if someone has a one-time
14 seizure -- the ones you're probably familiar is called
15 you fall down, you shake all over. You've probably seen
16 it. Maybe some of you have experienced it with your
17 family. That's a seizure. And to call somebody or
18 designate as having a epilepsy, they must be -- more
19 than one, and they must be recurrent, and they can be
20 treated.

21 Sandy has epilepsy based on that
22 characterization.

23 Q. And at any time during your treatment of Sandy,
24 have you -- and I don't know the exact terminology here
25 so bear with me. But have you performed any type of

Guilt Innocence Phase
August 22, 2017

1 objective testing to verify whether there's any
2 abnormality in the brain?

3 A. Well, we certainly did what we term
4 electroencephalograms. That's the test where wires are
5 placed on the patient's scalp, and sit in a recliner,
6 and record the electrical brain rhythms. That's been
7 done several times on Sandy. And when we do it, it
8 spikes the irritation. So there's really no question
9 about the diagnosis. We sometimes do that test to see
10 if we -- not only if they have the diagnosis, but more
11 importantly to help determine what is the best
12 medication for that person who we know has that
13 diagnosis.

14 Q. Is it possible to administer, or prescribe a
15 medication that controls the onset of a seizure?

16 A. That's the purpose when a person is diagnosed
17 with epilepsy, they do need the seizure medication.
18 That doesn't guarantee they'll stop having seizures.
19 But the best case scenario is they don't have anymore,
20 but that's a little unrealistic goal. So we try to at
21 least keep it controlled as best we can. We shoot for
22 stopping them, but that's unusual.

23 Q. What's a typical medication that Neurologist
24 would prescribe to try to control an onset of seizures
25 for patients that has epilepsy?

Guilt Innocence Phase
August 22, 2017

1 A. There are many out there. And in fact, when I
2 was treating Sandy since early on, we have even more
3 medicines that are not better in controlling the
4 seizures, but perhaps less side affects. But I stayed
5 with the medicines that Sandy has been that seem to do a
6 reasonable job. Sandy is on medicine called Tegretol,
7 and a second one called Phenobarbital. If I see someone
8 now with the onset of seizures similar to Sandy's, I
9 would probably start with one of the newer forms with
10 less interaction between medicines. But if people are
11 doing reasonably well, I will keep them on medicines
12 that they're familiar with, and that isn't causing any
13 side affects, and that I can control.

14 Q. Do you know what -- do you know what her dosage
15 is, as we sit here, of Phenobarbital or the Tegretol?

16 A. No.

17 MR. SECREST: May I approach the witness,
18 Your Honor?

19 THE COURT: You may.

20 Q. (BY MR. SECREST) Showing you what has
21 previously been introduced into evidence is State's
22 Exhibit 674. These are some medical records of
23 Dr. Nguyen. Have you ever seen these records before?

24 A. Yes. Your office has supplied me with many
25 records regarding Sandy that I have not seen as a

Guilt Innocence Phase
August 22, 2017

1 treating doctor. But I have similar records, if you
2 want to discuss them.

3 Q. Look at the entry --

4 MR. SECREST: If I might approach, again?

5 THE COURT: You may.

6 Q. (BY MR. SECREST) Look at the entry -- and I
7 tabbed it on April 9th, 2013. Do we see what the dosage
8 was that was at least prescribed to Sandy at that time?

9 A. This is Dr. Susie Nguyen. And at this time the
10 medications she was taking was Phenobarbital,
11 60-milligrams, one tablet at that time. And she was
12 taking the Tegretol, 200-milligram tablets, and Sandy
13 was taking one, three times a day. Both of those were
14 evening doses.

15 Q. Regarding this entry on 4/9/2013, "History of
16 Present Illness," do you see that?

17 A. I do.

18 Q. Let me --

19 MR. SECREST: Your Honor, may I have just
20 have a second to get my easel out?

21 THE COURT: You may.

22 Q. (BY MR. SECREST) Dr. Hershkowitz, look at that
23 entry again on April 9th?

24 A. Okay.

25 Q. 2013. And the "History of Present Illness,"

Guilt Innocence Phase
August 22, 2017

1 what does it say?

2 A. I'll just read it. "Here for refills. She
3 needs more medication. Patient is feeling well.
4 Patient has been having auras, and a Neurologist
5 increased Phenobarbital and Tegretol. She also
6 complained of chest pain in the center of the sternum
7 region."

8 That would be right here.

9 And that's been going on for three months.
10 Feels like pain. It does not radiate and the pain stays
11 right here, doesn't travel anywhere. It last for 5 to
12 10 minutes at a time. It occurs spontaneously. That is
13 to say there's no known trigger that she could think of
14 that causes the pain. And then better with Lorazepam.

15 Lorazepam is an anti-anxiety medication.
16 We use it for anxiety and for panic attacks.

17 Q. All right. so I want to get this list the way
18 it's in the records for 4/9/13, "History of Present
19 Illness, patient had been having auras." Is that what
20 it says?

21 A. That's correct, auras.

22 Q. And Neurologist did what?

23 A. Increased or adjusted the medications, the
24 anti-seizure and anti -- these are called
25 anti-convulsions. These are medicines used to prevent

Guilt Innocence Phase
August 22, 2017

1 seizures.

2 Q. And that was Phenobarbital?

3 A. And the other one was Tegretol. The key one
4 would be the Tegretol.

5 Q. And it showed that the Tegretol was at what
6 level milligrams?

7 A. She was taking 200-milligram tablets three
8 times a day.

9 Q. And how about the Phenobarbital?

10 A. She only took one of those at night.

11 Q. And that was 60?

12 A. 60 milligrams.

13 Q. Looking at the other tabbed portion of the
14 records that I have done for you under No. 2, should be
15 6/21/13. Are we on the right page?

16 A. We are.

17 Q. Under "History of Present Illness," what
18 entries were made on 6/21/13?

19 A. At this time I'll just quote it.

20 "Patient followup, SLE." That's systemic
21 Lupus, you're probably familiar with it. It's an
22 autoimmune disease and seizure disorder.

23 "Doing well, taking all meds. Last
24 seizure was at the end of December of 2012."

25 Q. Okay. Are you generally familiar with other

Guilt Innocence Phase
August 22, 2017

1 medical conditions that Sandy has based upon your review
2 of records and your treatment of her over the years?

3 A. Well, the one that I'm familiar with that I've
4 known for a long time is the Lupus, which is a serious
5 autoimmune disease. That's the one I'm familiar with.

6 Q. Let me stop you briefly before you leave Lupus.
7 Can you explain to the jury briefly what the Lupus is
8 and the attributes of Lupus?

9 A. So as I said, Lupus is an autoimmune disease.
10 Which it means that something goes haywire within a
11 patient. We don't know why it's triggered. But
12 something happens and certain cells get destroyed by
13 other cells that are supposed to be protecting. And
14 that's the theory. And that's helpful because it puts
15 you with a certain kind of treatment that tamps down the
16 autoimmune system.

17 Lupus, because it's a disease
18 predominantly of the vessels of the system, it can cause
19 people to have kidney problems, kidney failure, cause
20 strokes. People I see with it for the most parts, it
21 can cause pulmonary problems. But the bottom line is
22 it's affecting the small vessels. It can affect the
23 brain and cause strokes. And it's also well known that
24 it can promote seizure disorders.

25 Now, whether Sandy's seizures are related

Guilt Innocence Phase
August 22, 2017

1 to Lupus, I don't know. But Lupus can cause seizures.
2 So it's a very serious disease.

3 Q. What is Raynaud's Syndrome and Raynaud's
4 Phenomenon?

5 A. Raynauds is the phenomenon where you get
6 restriction, which is the narrowing of certain blood
7 vessels and they go into spasms. And most frequently
8 you see it in the hands. A person that suffers from
9 Raynaud's Syndrome, they'll get spasms on the small
10 little vessels in the hand. These are the people whose
11 hands turn white and cold. It gets very serious. And
12 as spasms prolong, they can actually get damage to
13 certain extremities.

14 Q. Are you aware of whether or not if Sandy has
15 suffered from chronic fatigue?

16 A. I don't recall whether she had chronic fatigue
17 when I was treating her. I don't recall that.

18 Q. Fair enough.

19 Well, you mentioned it before -- we have
20 it on the board there about auras. I want to be clear:
21 What is the difference between a seizure and a aura, if
22 there is any?

23 A. Okay. So an aura -- a-u-r-a -- is basically
24 the beginning of a seizure. It's not a separate event.
25 Clinically it might look like that. You look at a

Guilt Innocence Phase
August 22, 2017

1 person who has an aura, and then has symptoms of a
2 seizure. But an aura is the very beginning of a
3 seizure, and it's the focal of a seizure. And depending
4 upon which part of the brain which is now activated and
5 certain cells are firing, you can have different auras.
6 But make no mistake, it's the beginning of a seizure.

7 So frequently we talk about people who
8 have a temporal lobe seizure and aura, there is some
9 nasty smell. They'll smell something bad, garbage,
10 burnt rubber. And, of course, they think it's something
11 in the room, and no one else smells it. And then they
12 go on to have a full-blown seizure, motor convolutions,
13 things like that.

14 You can have auras. There are people who
15 present as confusion. They're not right. They can't
16 put their finger on it, and it's something they can't
17 even explain, they don't feel right. So the aura is the
18 beginning of a seizure, but it's a focal seizure, and it
19 all depends what part of the brain is irritated. You
20 could have it on the back part of the brain, or vision
21 is -- they begin with certain visual things that they
22 see. All kind of weird visual things. Visual
23 hallucination, but it's the beginning of a seizure. And
24 then if it stops, if that focal seizure doesn't go
25 beyond that and does not spread to other parts of the

Guilt Innocence Phase
August 22, 2017

1 brain, it will go away. If it continues to become
2 what's called generalized, you will then have the
3 seizure most people are familiar with. The aura is the
4 beginning of a seizure, it's not an event. It is a
5 focal seizure beginning somewhere, and then depending on
6 what part of the brain that is involved, you will have
7 very specific symptoms that the patient will tell you
8 about.

9 Q. If I had epilepsy, and I was experiencing an
10 aura, does that mean by definition that a seizure will
11 also follow thereafter?

12 A. No. And hopefully it won't. In fact it's not
13 uncommon. And I have them in my practice, but forget
14 about my practice. Frequently with medication, you can
15 get the person controlled enough that they will continue
16 to have their aura. They're aware of it, they know
17 there's something wrong, whether it's some of the things
18 that I have mentioned, but they won't go on to have that
19 other part that could harm them or another person.

20 So I have patients who continue to have
21 auras, but it never goes beyond that for years. And for
22 me, that's a big -- I think a better suggestion would be
23 that they didn't have the aura either. But they
24 generally don't hurt themselves or anybody else.

25 Q. Does Sandy have a documented history of

Guilt Innocence Phase
August 22, 2017

1 experiencing auras?

2 A. Yes, she does.

3 Q. If one has a seizure, do sometimes -- is that
4 accompanied by a loss of memory?

5 A. Yes, not uncommon.

6 Q. Tell us about that, please, sir.

7 A. Well, if you think about it, now if you're
8 having an aura -- if you just have that aura, nothing
9 beyond that, you will probably remember the aura, even
10 if it's confusing. Like for 15 minutes you feel
11 confused, you will remember that. But if you have a
12 generalized seizure, the one now where all parts of the
13 brain are firing simultaneously, that's the one where
14 you fall down, jerking, you have incontinence, might
15 bite your tongue, that type of thing, typically those
16 patients, they're amnesic. Their brains and
17 metabolically they are affected. All kinds of things
18 are happening metabolically. So it is typical that they
19 will have some amnesia for a certain period of time.
20 And generally, when a person has one of those seizures,
21 initially you get them right away. Sometimes in the
22 emergency room or the hospital floor, when they stop the
23 seizure, they might be combative, they might be
24 frightened, they don't know where they are, and it takes
25 them time until they settle down and realize, oh, I

Guilt Innocence Phase
August 22, 2017

1 guess I've had a seizure. They will have that kind of
2 memory problem from a seizure.

3 Q. Is it typical that when one has a seizure,
4 assuming that that's what they had, that afterwards they
5 may sleep for an extended period of time?

6 A. That is typical. In fact it's called
7 postictal. It's typical of a person having a seizure to
8 stop having it, it's difficult to arouse, they might be
9 combative when they start coming out. And then they
10 settle down, and they go to sleep for awhile. How long,
11 I don't know, that varies from person to person. But
12 it's typical for a person -- not an aura, but a major
13 motor seizure, the one I'm talking about. They will be
14 sleeping for a while.

15 Q. Okay. Let's assume for just a second the
16 person has a major motor seizure, will that affect their
17 muscles, will that affect the way that they feel as far
18 as their body is concerned?

19 A. Typically the answer is yes. And sometimes --
20 there are patients who have only seizures at night; we
21 call them nocturnal. They're in the bed, and they don't
22 fall down, and they don't hurt themselves. And the only
23 way these people know is when they get up in the
24 morning, they think they have had a seizure is because
25 they ache all over. Because when they have a major

Guilt Innocence Phase
August 22, 2017

1 motor seizure, everything goes into spasms, everything
2 does. So it is not unusual for a person to ache all
3 over. And that's how they surmise that they must have
4 had a seizure last night, they hurt all over.

5 Q. And is it possible that an event can trigger a
6 seizure? For example: A hit on the head? If I were
7 epileptic, and I got hit on the head, could that
8 possibly trigger a seizure?

9 A. Yeah. There's a whole literature about
10 concussions. And it's not unusual for -- I shouldn't
11 say it's not unusual -- it happens, then a person can
12 have a concussion. Not just a hit on the head and
13 nothing else. It has to be some affect of the brain,
14 must be some traumatic brain injury such as a
15 concussion. There is information that some people will
16 have a brief seizure right after. Some of them will --
17 these are people who have never had a seizure. I'm not
18 talking about epilepsy patients, I'm talking about
19 people who have never had a seizure. They are slightly
20 more at risk to develop seizure disorder after a
21 concussion. It's very slight compared to the
22 population, but it can happen. And also, it can happen
23 right after a concussion. So we're talking about a
24 population of people who have never had seizures,
25 talking about just concussions, mild form of traumatic

Guilt Innocence Phase
August 22, 2017

1 injury. It's not going to happen if you just bang your
2 head, and then you have a concussion, that's not going
3 to cause a seizure.

4 Q. All right. Now, we conjectured into the dialogue
5 of a notion of a concussion. What is a concussion?

6 A. So you're probably very familiar with that now
7 with all the stuff going on with the football players
8 and traumatic brain injury. So a concussion is --

9 MS. BARNETT: I'm going to object to that.
10 There's no evidence here that has been established that
11 she suffered from a concussion.

12 THE COURT: What's your legal objection?

13 MS. BARNETT: That it's not relevant.

14 THE COURT: Sustained.

15 MR. SECREST: It's quite relevant to this
16 case.

17 THE COURT: Could you approach the bench?
18 (Bench conference.)

19 MR. SECREST: There's evidence in this
20 record from her interrogation that she thought she got
21 hit on the head. That's where I'm going with this. I
22 want to talk about the phenomena associated with being
23 hit on the head and what that can produce. And of
24 course, what that can produce is a concussion. I don't
25 have to bring an eyeball witness in here to testify she

Guilt Innocence Phase
August 22, 2017

1 got hit on the head. They asked her repeatedly, what
2 does it feel like? And she said -- they said
3 specifically, do you think you got hit on the head? She
4 says, yes, I do. It's in the case. I want to talk
5 about the phenomena of a concussion after being hit on
6 the head. It's absolutely essential to our defense.

7 THE COURT: And to sum it up with some
8 sort of medical record?

9 MR. SECREST: Absolutely.

10 THE COURT: That's overruled.

11 Q. (BY MR. SECREST) Doctor, you can answer the
12 question.

13 A. What was the question?

14 Q. I'm going to ask you again: What is a
15 concussion?

16 A. So a concussion is a clinical finding that
17 occurs in some people after they've had -- been either
18 struck on the head, or they fall and strike their head
19 against. A fall -- but it takes a blow to the head one
20 way or another generally. And that's not enough.
21 That's called a closed-head injury. It has to be --
22 this force has to be transmitted to the brain and cause
23 some movement of the brain. And that's why one has a
24 concussion.

25 And you see with the prize fighter, they

Guilt Innocence Phase
August 22, 2017

1 get hit on the chin, they snap back, and they have a
2 concussion; out at the count of 10 and have a
3 concussion. You don't need to pass out to have a
4 concussion. By definition these days, we've agreed that
5 given the trauma and the concussion is allowable even if
6 you have a agreed alteration of time. In other words,
7 the football player that gets dinged, and he gets picked
8 up and goes back in the huddle, he's a little bit out of
9 it, but he's not passed out. Even that constitutes a
10 concussion.

11 So what are the symptoms of a concussion?
12 The most frequent symptoms after a concussion would be
13 headache, dizziness. And very important is some form of
14 amnesia. And we break that down. The person who has
15 the concussion generally we assume that they will not
16 recall the events that caused the concussion. If it's
17 the boxer who went down, he's not going to recall
18 getting hit. So that's -- so that is the posttraumatic
19 amnesia. But in addition to that, we have what you call
20 retrograde amnesia. So a person has a concussion and
21 can actually forget certain events that took place prior
22 to the event. In other words, a person can be going in
23 his car to work. He gets slammed. He has a concussion
24 for whatever reason. And he might just remember getting
25 up in morning, getting into his car, but that's it. He

Guilt Innocence Phase
August 22, 2017

1 doesn't remember the rest of it.

2 And then there's another part of amnesia
3 which is what we call antero-amnesia. That is the
4 person who has sustained a concussion has a poor memory,
5 or no memory, for a period of time after the event. And
6 it's not unusual, again, for people in car accidents
7 to -- the ambulance comes, they're talking to the
8 ambulance person, and they're talking to the police.
9 they're out there talking and making sense. And they
10 talk to the people in the emergency room. And then they
11 have no recollection of those conversations, have no
12 recollection of it at all. This is not unusual.

13 So we have -- for sure to call it a
14 concussion, one would expect some kind of amnesia for
15 the event. Whatever the event was. But in addition,
16 you can have either some loss of memory for events prior
17 to the event. Some loss of memory after the event, or
18 you can have all of them together. And that's the
19 hallmark, that's amnesia. The posttraumatic amnesia is
20 very important when we consider a concussion.

21 Q. Have you reviewed various records and material
22 relevant to the case you're testifying in front of the
23 jury today?

24 A. I have reviewed records that I still have
25 regarding Sandy. I saw her as a patient in 2013 and

Guilt Innocence Phase
August 22, 2017

1 2014. Your office has supplied other records, which I
2 brought with me if anybody is interested in as well.

3 Q. Let me go through those. Have you reviewed
4 medical records -- I think you just said you did of Dr.
5 Susie Nguyen. Those are the records that are in front
6 of you. Have you reviewed those, or have you not?

7 A. I have.

8 Q. And you looked at the medical records of
9 Dr. Enrique Granda pertaining to his treatment of Sandy
10 Melgar on December 27, 2012?

11 A. I have reviewed that. That is the only record
12 that I've reviewed of Dr. Granda.

13 Q. Thank you.

14 MR. SECREST: Your Honor, at this time I
15 would offer into evidence Defense Exhibit 38, which is a
16 certified -- or rather a business record affidavit,
17 attesting to the authenticity of the medical record of
18 Dr. Enrique Granda. It's been on file with the District
19 Clerk's Office 14 days prior to trial.

20 THE COURT: Mr. Secrest, I have 38 as
21 being admitted yesterday as a photo.

22 MR. SECREST: Well, that won't work.

23 THE COURT: So can you start with No. 40?

24 MR. SECREST: I can, and I will. Now,
25 we've renamed it 40, and I offer it into evidence.

Guilt Innocence Phase
August 22, 2017

1 MS. BARNETT: No objection.

2 THE COURT: All right. Defense Exhibit
3 No. 40 is admitted, and you may publish.

4 MR. SECREST: Thank you.

5 Q. (BY MR. SECREST) Dr. Hershkowitz, we use this
6 goofy word "published," in the courtroom, which I've
7 never liked. But means now the jury can learn what is
8 in this exhibit. So I'm going to ask you to read it out
9 loud because it has medical terms, and I'll mispronounce
10 it, and it's a one-page document.

11 A. And this is the document that I was referring
12 to of Dr. Granda.

13 Q. Thank you, Dr. Hershkowitz.

14 A. Do you want me to read the entire page?

15 Q. I do. It's a page that comprises the medical
16 record that is in evidence, and that you have reviewed.

17 A. Okay.

18 So the first part is about vital signs,
19 I'm not going to go through those. Those are blood
20 pressure, pulse, and temperature.

21 Then it has cc which stands for, chief
22 complaint, why are you here. It says, Patient is here
23 for medical examination evaluation for injuries
24 sustained at the residency.

25 Next to that is has a S. It has a whole

Guilt Innocence Phase
August 22, 2017

1 block of things. S really means subjective. This is
2 what Sandy is saying, so this is her perception, this is
3 her history.

4 According to patient's statement she is
5 here for the first medical evaluation after having been
6 assaulted at her residence early morning on Sunday,
7 December 23, 2012, after broken into her residency. She
8 does not remember what really happened because according
9 to her statement she fainted or had had a seizure.

10 In parenthesis, Patient has a past medical
11 history of epilepsy. End of parenthesis.

12 Several hours later, she was found tied up
13 arms and legs in a closet with close-head injuries.
14 Bruises to the arms and the right side of the face. At
15 that time she was told her husband was found dead in
16 another closet with several stabbing wounds. Patient
17 got very nervous and upset and was unable to continue
18 talking to me.

19 This is Dr. Granda.

20 So after reassurance and calmed her down,
21 I did continue with the physical examination.

22 The next block is O, which means
23 "Objective." This is the doctor's examination.

24 General: Normotensive --

25 Means her blood pressure is okay.

Guilt Innocence Phase
August 22, 2017

1 Head: Normocephalic to normal size.

2 There is a lump in the right temporal-parietal region.

3 So the right -- you guys know what the
4 right is. Temporal parietal -- so we're talking about
5 over here -- with a superficial hematoma.

6 Hematoma is a fancy name for blood -- blot
7 clot. So superficial means underneath the skin. We're
8 not talking about a blood clot in the brain or anything
9 like that.

10 And it also says, Superficial hematoma on
11 both posterior and lateral arms.

12 In other words, bruising. The arms, both
13 of them, this is what he is observing.

14 Also, the right periorbital region.

15 So the orbit the eyes house, the
16 periorbital means the top part around the eye. And he's
17 saying there's bruising around there, too.

18 Left dorso lumbar area with small
19 superficial hematoma as well."

20 He's talking about lumbar spine and the
21 back part of her spine, and also sees some bruising
22 there. He examines her eyes, and they're normal.

23 EOM's full. Conjunctivae.

24 Eyes are okay. He looked at the fundi at
25 the back of the eye, and it's normal. Her hearing is

Guilt Innocence Phase
August 22, 2017

1 okay. I'm going to go over some of this.

2 The nose looks normal. The neck is
3 supple. There's no masses, thyroid is not enlarged. No
4 bruits. That's when listen to them and concerned about
5 the carotid artery diseases. Didn't hear any of those
6 sounds.

7 Chest is clear, hearts okay, abdomen is
8 soft, no tenderness, no masses. GU: Normal, no lesions,
9 no discharge, no hernias noted.

10 No lesions noted except for post-traumatic
11 lesions that I've already read to you.

12 Neurological examination: Physiological,
13 which means it's normal. Extremities: Warm, well
14 perfused, no edema, which we talked about. Both hands
15 and fingernails with mottled lesions compatible with
16 Raynaud's Phenomenon.

17 So the mottling, it's where it's dark and
18 light. That's Raynaud in certain area that are not
19 getting that blood supply.

20 And then he said -- that's synonomous
21 because we already talked about the Raynauds is because
22 of the Lupus. So that's his examination.

23 Then A stands for: "Assessment: Multiple
24 bodily injuries with superficial hematomas, ecchymosis.

25 Again, that's the bruising. If you bang

Guilt Innocence Phase
August 22, 2017

1 your arm against something. You'll is see black and
2 blue later on. That's ecchymosis.

3 "Due to physical, non-self inflicted
4 lesions caused by assaultants {sic} --

5 That's his interpretation.

6 "Patient statement, Raynaud's Syndrome
7 discuss severe anxiety reaction with panic disorder and
8 sever posttraumatic stress syndrome."

9 So that's his assessment, that's his
10 diagnosis, that's what he's listing.

11 P stands for prognosis. In other words,
12 what is going to have happen, what am I going to do.

13 "Reassurance done. Will need psychiatric
14 evaluation in the near future. Start with Lorazepam 1
15 milligram three times a day. The rest of her
16 medications for convulsive disorder that patient has had
17 for my years, and her Systemic lupus Erythematosus also
18 for many years."

19 So he's putting her on --

20 THE COURT: Doctor, be sure and slow down
21 because every word is being taken down by the court
22 reporter. Just slow down a little bit.

23 THE WITNESS: Sure.

24 THE COURT: Please proceed.

25 A. Th Lorazepam is something he added one tablet

Guilt Innocence Phase
August 22, 2017

1 three times a day. He left everything else alone.

2 Q. (BY MR. SECREST) One thing, go back, if you
3 would, to your Section O. And I believe that when you
4 were explaining your answer that you didn't tell us what
5 was on the second line. Actually, it starts at the end
6 of the first line: Patient has -- you see that?

7 A. Oh, yes, sorry.

8 Q. That's okay.

9 A. What I skipped?

10 Q. Yes.

11 A. "Patient has been applying ice packs for a few
12 days. Also there are multiple areas of the skin with
13 ecchymosis and superficial hematomas."

14 Q. When we're talking about a quote/unquote
15 superficial hematoma, does that mean that is not always
16 a serious thing because it's merely superficial?

17 A. It doesn't really imply whether it's serious.
18 it's Just the description telling you where it is.
19 Telling you we have these bruises, and it's located
20 beneath the skin. That's what superficial means. It's
21 not making a comment whether it was something terrible
22 that happened to cause this, or somebody might have a
23 bleeding tendency like somebody on Aspirin might develop
24 these things without much of a contact. So it really
25 doesn't talk about severity.

Guilt Innocence Phase
August 22, 2017

1 Q. Okay. Did I also ask you to review some
2 offense reports that were generated by the Harris County
3 Sheriff's Department. And specifically with respect to
4 indications that during early on in the investigation of
5 the murder of her husband that Sandy was not able to
6 remember very much of what happened when questioned by
7 law enforcement officers, at least that's in those
8 reports that I provided you?

9 A. They are.

10 Q. Did I also provide you a transcription of Sandy
11 Melgar's interrogation where she was questioned by
12 detectives of the Harris County Sheriff's Department on
13 the evening of December 23rd and 24th?

14 A. Yes.

15 Q. Did you also receive from us a copy of the
16 Cy-Fair EMS records, the paramedic's report, if you
17 will, those folks that saw Sandy Melgar at her home on
18 December 23, 2012?

19 A. Yes, I reviewed that.

20 Q. Okay. So what I want to do now is I want to
21 provide you some information, and then I'm going to ask
22 you what we call -- and you've been asked these
23 questions I'm sure many times on the witness stand, a
24 hypothetical question. Okay?

25 A. I don't like hypothetical questions, but feel

Guilt Innocence Phase
August 22, 2017

1 free.

2 Q. Okay. That's what we've got to do.

3 Okay. Are you aware that there is
4 evidence in this case that in the afternoon of December
5 23, 2012, Sandy was found in the closet of the Melgars'
6 master bathroom with her hands and arms tied behind her
7 back and her feet tied?

8 A. I understand that she was found tied up. I'm
9 not quite clear how they were tied up.

10 Q. Okay. That's fair enough.

11 A. When you say the hands were bound behind her, I
12 don't recall seeing anything that would tell me what the
13 location was.

14 Q. Fair enough.

15 There's also evidence that she was found
16 inside the closet, and that a chair that normally was
17 kept inside the closet was found wedged under the
18 outside doorknob of the closet door preventing it from
19 opening?

20 A. That's my understanding.

21 Q. Okay. And one thing I want to make sure is
22 that the facts that I'm going to give you, many of these
23 facts you have reviewed based upon the offense report
24 and that kind of thing. But I'm also going to provide
25 you some facts based upon testimony that has taken place

Guilt Innocence Phase
August 22, 2017

1 over the last couple of weeks that won't be in the
2 documentation that you received months ago. Okay?

3 A. So you're going to provide further information?

4 Q. I will, I will.

5 There's evidence that when she was found,
6 she had urinated and defecated on herself?

7 A. I read something to that affect. And I wasn't
8 quite clear about the defecation, but I know it
9 mentioned urination.

10 Q. Okay. And within a few minutes she was seen by
11 the EMS technician who arrived at the scene. And she
12 reported to the State that she had not been harmed in
13 any way or not been injured. And again for that -- and
14 obviously the prosecutor can do this on cross if she
15 wants to -- I'm not going to have you read line-by-line
16 what the paramedics reported. But the jury knows what
17 it is because this document has already been offered and
18 introduced into evidence.

19 So she reported to the State that she had
20 had not been harmed in anyway and not been injured, but
21 was described as not being able to communicate very well
22 with the EMS due to hysteria that they observed.

23 Sandy told the detective --

24 MS. BARNETT: Is there a question in this?

25 MR. SECREST: I'm laying the predicate to

Guilt Innocence Phase
August 22, 2017

1 ask a hypothetical question.

2 THE COURT: Are you reading from a report
3 in evidence?

4 MR. SECREST: I am, Your Honor.

5 THE COURT: All right. Please ask the
6 question.

7 MR. SECREST: Sure.

8 Q. (BY MR. SECREST) Sandy told the technicians
9 multiple times that she has a headache, and she believes
10 she must have had a seizure because when she woke up her
11 head was hurting and she had joint pain.

12 MR. SECREST: And for the record, I'm
13 referencing Cy-Fair medical records that have already
14 been offered and admitted into evidence.

15 Q. (BY MR. SECREST) She told the paramedics --

16 MS. BARNETT: I object, I object that he's
17 just reading from a document. I object to that.
18 There's no questions. This is supposed to be a direct
19 examination.

20 MS. BARNETT: I'll sustain it as to
21 leading. Ask an open-ended question.

22 MR. SECREST: Your Honor, may we approach
23 at this time?

24 THE COURT: Yes.

25 (Bench conference.)

Guilt Innocence Phase
August 22, 2017

1 MR. SECREST: Case law is clear that in
2 laying a hypothetical question, I can add a dozen facts,
3 or I don't have to lay out all the facts. And she can
4 come on in cross, and she can put on different facts.
5 But I can lay out the facts -- what the evidence is.
6 And I need to do that. I can't ask him a direct
7 question because a lot of this he is not aware of. It
8 was admitted into evidence outside his presence.

9 THE COURT: Has he reviewed the EMS
10 record?

11 MR. SECREST: Oh, he's reviewed the EMS
12 record. But for example the paramedic testified that
13 when she did the examination she felt a bump. That's
14 not in the record. So I'm going to have to bring
15 additional information to him. All I'm doing is
16 tracking -- and Colleen can take notes, and if she
17 thinks that I have misrepresented anything, she can
18 clean it up on cross, or ask additional questions, or
19 additional information. But case law is clear, I'm
20 permitted to do this. I have a case right on point if
21 you want to look at it?

22 THE COURT: Your question, if there is
23 one, I haven't heard it yet.

24 MR. SECREST: Well, I'm going to lay out a
25 dozen or more facts. It's going to go on for 5 or 10

Guilt Innocence Phase
August 22, 2017

1 minutes where I give him information, and that's going
2 to be the basis for which that he can opine and offer an
3 opinion. But I'm not going to ask one fact, and have an
4 opinion, one fact, you know -- I can't -- I'm not going
5 to ask him to offer an opinion until he has been able to
6 consider all of the facts. The mass majority of these
7 facts are already in evidence in the sense that they
8 come from the testimony of the witnesses. There's
9 nothing redundant here. But I have lay it out this way.
10 And I can't do it in a -- I have to lead in the sense
11 that I have to lay out what the evidence is because he
12 doesn't know what the evidence is. He wasn't in court,
13 for example, when the paramedic testified that she
14 examined her head. It's no where to be found.

15 THE COURT: If you are directing him to
16 something in the document, if you have to repeat the
17 question because it is long, I would ask that you
18 abbreviate your facts that you are giving him to
19 consider a hypothetical that you have to repeat.
20 Otherwise it'll be a 30-minute question.

21 MR. SECREST: Well, I know what she's
22 going to do is if I don't lay out all of the testimony
23 regarding her head hurt, and she complained about
24 headaches and all that, then I'm going to be accused of,
25 well, you didn't lay out all the facts. This will take

Guilt Innocence Phase
August 22, 2017

1 a few minutes, but it'll be a comprehensive overview of
2 what the evidence show with respect to this specific
3 area. I promise the Court I'm not going into anything
4 that is not germane to seizure/concussion. That's all
5 I'm doing.

6 MS. BARNETT: He's already had that. You
7 had him read information that was reviewed directly from
8 the record.

9 MR. SECREST: This jury needs to know when
10 he ultimately gives his opinion, they need to know
11 exactly what information has he relied upon to reach
12 that conclusion.

13 THE COURT: I understand that. What I
14 would suggest is that you direct him to the portion of
15 the record when you're reading it, so we don't have this
16 repeated, this long set of facts. Direct him to
17 something so he can read along with you. I think it
18 would help make this more efficient.

19 MR. SECREST: The problem is that the
20 witness' testimony, I don't have access to their
21 testimony. A lot of what this is is what the paramedic
22 testified to, what Dousay testified to, I don't have
23 access to that.

24 MS. BARNETT: It's supposed to be
25 hypothetical.

Guilt Innocence Phase
August 22, 2017

1 MR. SECREST: It will be hypothetical once
2 I get the facts out.

3 THE COURT: All right.

4 MR. SECREST: I don't know any way else of
5 doing it, Judge.

6 THE COURT: I'm just saying, it's coming
7 across long and kind of confusing.

8 MR. SECREST: Well, because there's a lot
9 of information, but I'll shorten it up.

10 MS. BARNETT: Let the record reflect that
11 he can read them himself.

12 MR. SECREST: I want the jury to know
13 exactly what it is.

14 THE COURT: Please proceed.

15 Q. (BY MR. SECREST) Specifically, Sandy reported
16 to the paramedics that she had pains to the left side of
17 the head. And the technician noted, no visible bruising
18 hematomas or lacerations to her head at the time of
19 their assessment.

20 MR. SECREST: And again for record, that
21 comes straight out of the Cy-Fair report that you have
22 read before the doctor and submitted into evidence.

23 Q. (BY MR. SECREST) What is not in the report, but
24 what the paramedics clearly testified to was that
25 Sandy's head was examined by her -- her, the paramedic.

Guilt Innocence Phase
August 22, 2017

1 And she did not feel a bump. That was testimony in the
2 court, but it wasn't in anything you have read.

3 She is described in the paramedic report
4 as she remained in a state of shock and had periods of
5 crying.

6 Also in paramedic record that you
7 reviewed, Sandy told the techs that asked her, what was
8 her memory of what had happened? She had a memory of
9 going to dinner with her husband celebrating her 32nd
10 wedding anniversary, and then to CVS. She stated that
11 at about 10:30 last night, she and her husband got in
12 the bathtub. She stated they were in the tub for about
13 2 hours. She remembered getting out of the bathtub to
14 get dressed. And the next thing she remembered is
15 waking up at an unknown time in the closet in the
16 bathroom. She stated she was tied up at her ankles and
17 wrist and unable to free herself. And this is a quote
18 for the record, "She screamed for help, and no one was
19 able to hear her. She stated, I must have fell back to
20 sleep after the seizure. I was asleep for a few hours.
21 She then woke up to the dogs barking, and then heard the
22 voices of her cousin, and started screaming again, and
23 she was found in the closet.

24 The paramedics noted in their report, and
25 this is a quote: "Patient had no sense of time and last

Guilt Innocence Phase
August 22, 2017

1 recalled a time of 1:00 a.m. this morning. Patient did
2 not realize it was the evening time, and approximately
3 15 hours had passed, and she was unaware of events."
4 According to the paramedic report, Sandy stated multiple
5 times -- this is a quote -- "that she thinks she had a
6 seizure at some point."

7 The evidence also shows that after Sandy
8 was questioned for several hours at the police
9 station -- which shows that after she was questioned for
10 several hours at the police station that begin around
11 9:30 p.m. on December 23rd and it continued into the
12 morning of the 24th. And she told the detectives that
13 she thought she had a seizure because her muscles hurt,
14 and my head, it was hurting real bad. And usually
15 lately I've been having trouble controlling my seizures.
16 She complained about her legs. They were cramping; her
17 wrist hurt. And she had a pain in my head right here,
18 like I got hit on the head. I don't know if I fell or
19 was pushed, or what. Like, you know, one side -- this
20 side. She pointed tot he left side of her head, and was
21 observed holding the left side of her head at times
22 during the interrogation.

23 She told the detectives that her legs were
24 cramping. And at one point she says, I think I'm pretty
25 sure I was hit on the head. She told them that the

Guilt Innocence Phase
August 22, 2017

1 first time she woke up you in the closet that she jurt
2 all over, and my head hurts. Later she told them that
3 she got out of the jacuzzi. They're asking her to
4 recall what happened. She told them she got out of the
5 jacuzzi and went to her closet in the same bathroom to
6 get dressed. She got a nighty and a robe, and put on a
7 pair of lavender panties. She sat down on a chair that
8 she kept in the closet. She put on some socks. And in
9 the process of putting lotion on her legs, and the next
10 thing she recalled is that she woke up on the floor of
11 the closet, and her muscles hurt and her whole body.
12 She thinks she even got hit in the head, or her head hit
13 something. She was asked how often she had seizures,
14 and told them at least once a month she had auras. She
15 told them, I have auras that tell me I'm going to have
16 one, and it's like memory forgetful more than usual.
17 She told them that she felt like she had a fever. She
18 told them that it felt like somebody hit her. She also
19 said she felt like she got hit on the head, or her head
20 hit something.

21 The evidence also shows that after she was
22 returned to her a residence, that two dear friends, Tom
23 and Tammy Armstrong, came to the house. She was
24 described as being pale, crying, appeared like she was
25 getting ready to have a seizure. They took her home.

Guilt Innocence Phase
August 22, 2017

1 And Tammy Armstrong has testified that after Sandy got
2 out of the shower and while drying her head, felt a lump
3 on the right side of her head.

4 There's been testimony outside of your
5 presence that when her daughter, Elizabeth, came from
6 England to the United States on, December, I believe it
7 was the 25th, she arrived in the United States. And in
8 the car from the ride home from the airport, she felt
9 her mother's head, and felt a lump. She also took a
10 photograph of the bruising to Sandy's face.

11 And the evidence has shown -- and I'm not
12 going to repeat this since we've gone through it. But
13 obviously on the 27th she went to see Dr. Enrique
14 Granda. And he made the observations that he made that
15 are presently in evidence, I believe, in Defense Exhibit
16 40.

17 Now, let me ask you this question: Based
18 on the materials you have read regarding the facts of
19 this case, and what I have outlined for you, based upon
20 the evidence that's been admitted in this case, do you
21 have an opinion whether those facts are consistent with
22 Sandy having been struck in the head and sustaining a
23 concussion at some point after she got out of the hot
24 tub on December 23, 2012, to get dressed?

25 A. Yeah. The information provided would be

Guilt Innocence Phase
August 22, 2017

1 compatible with a concussion. Do I know if Sandy had a
2 concussion? No, I don't know if she had a concussion.
3 But the way the it's presented, would certainly have
4 some swelling in the head. It wouldn't surprise me that
5 the paramedics wouldn't be able to because there's no
6 abrasions, no hematomas that she clearly had later on.

7 So is this scenario compatible with a
8 concussion? Yes. I mean, on the other hand one could
9 say, well, how do you know she didn't fall in the
10 closet, and hit her head? There was nobody there to see
11 her hit her head. And all of those things are
12 possibilities. And as a physician, we have to think
13 broadly. And so what you presented is certainly
14 compatible to concussions. But it's also possible that
15 she's in the closet, falls down, hits her head from a
16 seizure. Maybe the seizure caused her to fall down, and
17 she has a bruise from that. And maybe a concussion
18 super imposed from a seizure and people fall down and
19 hurt themselves, and they get a concussion, again,
20 because they struck their head. All of that is
21 plausible. I don't know the answer, but all of that is
22 medically plausible.

23 Q. That's fine.

24 Obviously, you weren't there, and you
25 don't have any personal knowledge. What I'm asking you

Guilt Innocence Phase
August 22, 2017

1 is based upon the testimony that you've heard, based
2 upon the medical records relative to the examination of
3 her head, can we rule out that she was hit in the head?

4 A. I don't think we'll ever know.

5 We know she had trauma. I think one can
6 accept Sandy has trauma. What induced it, I don't know.
7 I've given you certain scenarios. In fact, the headache
8 on one side and the swelling on the other side is
9 certainly what we call it contrecoup injury. The
10 striking --

11 Q. Let me stop you there. You're going to have to
12 spell that for Gail. What is a contre --

13 A. Yeah.

14 Q. -- injury?

15 A. So it's spelled c-o-n-t-r-e, coup is c-o-u-p.
16 And that is very frequently observed in concussions not
17 in seizures, but concussions. Unless the person falls
18 and seizures and has a concussion. And what can happen
19 is the area of the skull that is struck, either someone
20 hits them with a hammer, or they fall down on the floor,
21 and the brain moves so you have this swelling on that
22 side, but you have a headache on the opposite side.
23 That's called a contrecoup.

24 Again, I don't know, I'm going by we have;
25 swelling and a headache on this side, there's something

Guilt Innocence Phase
August 22, 2017

1 strange about that.

2 Q. You talked about --

3 THE COURT: Please turn off all cell
4 phones, please.

5 Q. (BY MR. SECREST) You spoke a few moments ago,
6 when we were talking about seizures, about the
7 possibility of different memory loss. Does that apply
8 as well to someone who has received a blow to the head
9 and sustained a concussion?

10 A. Yeah. I think -- I think the prolonged memory
11 problem is more in keeping with the concussion. You do
12 have -- you have a memory problem after the seizure, you
13 don't know what has happened to you. But generally when
14 I'm talking about many hours after that, maybe an hour
15 or two and people have to keep trying to tell the
16 person, you had a seizure. Oh, I had a seizure? And
17 the next minute, what happened? That type of amnesia.
18 But it's more than likely in a concussion to have a more
19 prolonged anterograde amnesia. And these are the ones
20 that can go on for 24 hours or so.

21 So in this case, whatever argument you
22 want to make, it's not much of that a retrograde
23 amnesia. I mean, Sandy remembers actually going in the
24 closet. So what transpired, and I certainly don't know,
25 didn't seem be too long after the incident in the

Guilt Innocence Phase
August 22, 2017

1 closet. There's no prolonged -- prolonged event, you
2 know, we went out to dinner, and I don't remember after
3 that. Or and after we got in the bathtub, and I don't
4 remember. That would be significant retrograde amnesia.
5 I don't see evidence of that. But one could say that
6 what we're witnessing is say a good period of time for
7 anterograde amnesia. And all I'm saying is that is more
8 compatible with a concussion rather than your run-of-the
9 mill --

10 Q. Let me ask you this: If I had sustained a
11 concussion or a seizure -- let me withdraw that, let me
12 start over. Let's assume just for a second that I have
13 a history of epilepsy.

14 A. Okay.

15 Q. So I'm familiar with the way I feel when I have
16 a seizure. Okay?

17 A. Okay.

18 Q. But let's say I now experience a concussion,
19 but I didn't see the blow coming. But I awake later,
20 and I feel like I have had a seizure. Does that make
21 sense?

22 A. Sure. There's a big overlap in the symptoms;
23 the muscular pain, the headaches, the confusion, the
24 sleepiness, there's is an overlap. Because what is
25 happening with both of these entities is the destruction

Guilt Innocence Phase
August 22, 2017

1 of the brain. One is temporal trauma. And it can
2 change the shape of the brain, and then you get some
3 metabolic things that I won't bore you with.

4 Q. Sure.

5 A. And everything starts firing at once, and you
6 get metabolic things in a certain metabolic pathway. So
7 they share that that commonalty.

8 Q. Let me ask you this: If I experienced a
9 seizure or perhaps I was hit on the head, and I was
10 unconscious for a period of time. And then after I
11 awoke, and let's say it was like what we have in this
12 case; 12, 14 hours later when I'm ultimately found in
13 closet. If several hours after that if I'm subjected to
14 an interrogation, questioning, is it likely that my
15 memory is going to be totally intact when those
16 questions are asked of me?

17 A. No, I think -- I think it would depend on the
18 individual. I mean, when something happened -- I don't
19 know how long Sandy was out, I don't think. When you
20 you have a seizure, you wake up, you don't have a watch
21 on to see what when it happened, you go to sleep. You
22 wake up in the middle of night, depending on how long
23 you sleep. It could be 1:00 o'clock or it could
24 5:00 o'clock. You don't have a sense of time.

25 You could presume that something took

Guilt Innocence Phase
August 22, 2017

1 place because of the injury causing a concussion and/or
2 a seizure. What I expect her memory to be -- whatever
3 memory she has, able to perform an interrogation, maybe.

4 Would I be surprised if she remembered
5 things that occurred while she was in the closet? No,
6 that wouldn't surprise me at all. But she might be able
7 to give good information that is being asked at the time
8 of the interrogation. But that has nothing to do with
9 what happened to you. I don't know if that's clear.

10 Q. Okay. When was the last time that you've seen
11 Sandy?

12 A. 2014.

13 Q. Okay. And was that -- what -- why did you see
14 her at that time?

15 A. Seizure control medication.

16 MR. SECREST: Pass the witness.

17 THE COURT: Cross-examination.

18 MS. BARNETT: Thank you, Your Honor.

19 **CROSS-EXAMINATION**

20 **BY MS. BARNETT:**

21 Q. And so what's your diagnosis, what happened to
22 her?

23 A. You know, I think you've been trying to decide
24 that for about two weeks now what happened to her. I,
25 as a doctor, I'm here to clarify, educate, and explain

Guilt Innocence Phase
August 22, 2017

1 what the possibilities are based on the information,
2 based on the patient we know has a seizure disorder.
3 And based on a patient who may very well have had a
4 concussion. And I'm not here to say she had a
5 concussion. I'm here to say this is what a concussion
6 can do. I don't have a diagnosis. I'm not making a
7 diagnosis. I'm here to impart information. These
8 people have to decide what they think.

9 Q. Well, I know that that's true, sir.

10 So you are not here to say she had a
11 concussion?

12 A. That's correct.

13 Q. You're not here to say she had a seizure?

14 A. That's correct.

15 Q. And you're not here to say that she had
16 retrograde amnesia?

17 A. No, I'm not here to say any of those things
18 because I haven't examined her after. So if I haven't
19 examined her, I'm not here to theorize. I don't deal
20 with that. I'm just here to explain what the
21 possibilities are.

22 Q. And you're not here to say she had anterograde
23 amnesia; is that right?

24 A. I'm here to say that the way she behaved is
25 compatible with anterograde amnesia.

Guilt Innocence Phase
August 22, 2017

1 But your question is fair, was it
2 anterograde amnesia, I don't know.

3 Q. Exactly.

4 And she's been having a seizure disorder
5 for how long?

6 A. She -- when she was 19 years old she started
7 having seizures.

8 Q. And I assume since you saw her a -- and when
9 did you first start seeing her, do you recall?

10 A. Probably back in the 90's.

11 Q. All right. And you saw her for how long?

12 A. You know, I don't know when I stopped seeing
13 because she moved and was under the care of other
14 doctors. But what I can say is when I saw her in 2013,
15 it would have to at least 10 years since the last time.
16 And the only reason I have that information is because
17 we destroy records on people that haven't been seen in
18 10 year.

19 Q. So the point of seeing a Neurologist is to get
20 medication for the seizure disorder; is that right?

21 A. The point of seeing a Neurologist is not just
22 to get medication. You can get medication from a family
23 practitioner. That happens a lot. The point of seeing
24 a Neurologist is to see how you're doing, follow up if
25 you're having problems or complications, or you're

Guilt Innocence Phase
August 22, 2017

1 having what we call breakthrough seizures. That person
2 should go to a Neurologist. They always don't, but
3 that's not the purpose, not to get pills.

4 Q. But the primary care physician doesn't specify
5 in Neurology?

6 A. That's true, you're absolutely correct.

7 Q. So when the patient has issues with a seizure
8 disorder, they should go -- or should go to a
9 Neurologist; am I right about that?

10 A. No, you're absolutely right.

11 If a patient feels that something is going
12 on that is different, they should absolutely see a
13 Neurologist. If they're cooking along the way as they
14 have for years and accepted it, they probably won't go
15 to a Neurologist.

16 MS. BARNETT: Your Honor, may I approach
17 the witness?

18 THE COURT: You may.

19 Q. (BY MS. BARNETT) I'm going to show you, sir,
20 what's been marked as State's Exhibit 738, ,and ask you
21 to take a look at these records, and tell me whether you
22 can identify them?

23 A. So what you handed me are all of my records on
24 Sandy Melgar.

25 MS. BARNETT: Your Honor, we would offer

Guilt Innocence Phase
August 22, 2017

1 into evidence --

2 THE COURT: What's the number?

3 MS. BARNETT: 738.

4 Let the record reflect I'm tendering to
5 opposing counsel.

6 MR. SECREST: No objection, Your Honor.

7 THE COURT: State's Exhibit 738 is
8 admitted.

9 Q. (BY MS. BARNETT) All right. And so this
10 records your meetings with Ms. Melgar, I guess, or
11 meetings with Ms. Melgar; is that right?

12 A. These are the most recent ones. It's been a
13 long time time to fill out the whole new history. This
14 was October 21, 2013. I had nothing in my file from the
15 old records prior to that. So this is in fact when she
16 was seen -- yeah, she was seen at that time. And looks
17 like Susie Nguyen was her referring physician.

18 Q. That Susie Nguyen was what now?

19 A. Her referring physician. That's the one we've
20 listed, Susie Winn.

21 Q. Can you turn a couple of pages where you write
22 a letter to a doctor by the name of Barbara Pierce. Do
23 you recall that?

24 A. I do.

25 Q. And you write in there, "Thank you for

Guilt Innocence Phase
August 22, 2017

1 referring Sandy for neurological evaluation."

2 A. That's correct.

3 Q. So it wasn't Dr. Wynn, was it?

4 A. Dr. Winn is her doctor. Dr. Pierce is
5 apparently her doctor, too. Dr. Pierce at a later date
6 sent me all the laboratory test that I requested.

7 Q. Right. So the date of October 21, of 2013, is
8 when you write a letter to Dr. Pierce saying, "Thank you
9 for referring Sandy for a neurological evaluation;" is
10 that right?

11 A. That's correct.

12 Q. And you also write in here that you have taken
13 care of Sandy for seizure disorder for many years; is
14 that right?

15 A. That is correct.

16 Q. And you say that you haven't seen her more than
17 10 years, right?

18 A. Correct.

19 Q. And you write down that she has had in her past
20 20 to 30 seizures in her lifetime; is that right?

21 A. Right.

22 Q. So are you say from the age of 19 until the age
23 of 53, is that what you're saying?

24 A. That's would seem to be -- that's approximately
25 20 to 30 in a lifetime.

Guilt Innocence Phase
August 22, 2017

1 Q. So that would be about one a year, would you
2 say?

3 A. Maybe one year it could be one, one year it
4 could none, and then in a few years suddenly there's a
5 flurry. It doesn't average out to one. But I think the
6 number 20 to 30 over a period of 30 years is reasonable.
7 It doesn't have to be one per year.

8 Q. No, I don't have that idea. I'm just trying to
9 establish for the jury what we're talking about.

10 A. Okay.

11 Q. You said she has had perhaps --

12 A. Right.

13 Q. -- 20 to 30 seizures in a lifetime from the age
14 of 19 until her middle 50s?

15 A. That's correct.

16 Q. And her -- her last seizure was in December of
17 2012; is that right?

18 A. That's what I was told.

19 Q. Okay. And that's self-reported, I guess, from
20 her?

21 A. Yeah, that's correct.

22 Q. And she says the seizure prior to that was one
23 year before, she tells you that.

24 A. Okay.

25 Q. No, that's what you wrote here, isn't it?

Guilt Innocence Phase
August 22, 2017

1 A. That's correct.

2 Q. That the seizure prior to that was 1 year
3 before?

4 A. Correct.

5 Q. So that would mean that the prior seizure from
6 December of 2012, would have been December of 2011; is
7 that right?

8 A. You can say December, if you want. But I would
9 just say, according to Sandy the last one she had
10 prior -- she's sure about the one in December 2012.
11 She's telling you she thinks she had one the year
12 before. It could be any time within that year. It's a
13 year ago. One in December, and some time about a year
14 ago, she had another one.

15 Q. Well, what we're talking about is what she told
16 you, not what you think. What she told you was the
17 seizure prior to that was one year before. That's what
18 you wrote in your letter, is that not, sir?

19 A. That is incorrect, I did not write December of
20 last year which is what you said, and that's why I took
21 issue with it. I did say a year ago, and you said that
22 would mean be December before, and I said not
23 necessarily.

24 Q. Well, of course. I'm just trying to get an
25 overall picture here. You're the one that wrote this,

Guilt Innocence Phase
August 22, 2017

1 you're the one that said she said this is one year
2 before. That's all I'm saying.

3 A. That's all I'm saying.

4 MS. BARNETT: All right. May I approach
5 the chart?

6 THE COURT: You may.

7 Q. (BY MS. BARNETT) So you said that she was very
8 particular with you about the seizure that she said that
9 she had in December of 2012?

10 A. I'm sorry. She was particular?

11 Q. Yeah, that she told you very specifically that
12 she had a seizure in December of 2012; is that right?

13 A. I believe that she told me she had a seizure in
14 December of 2012. If you want to insert specific,
15 that's fine, that's not what she said. But she said
16 December of 2012. I'm good with that.

17 Q. Would it surprise you that she said -- that she
18 told you that -- when did she tell you that she had a
19 seizure in December of 2012? When did she tell you
20 that?

21 A. It would have been on this date, October 21,
22 2013.

23 Q. October. Would it surprise you to learn that
24 in April of 2013, she reported to her primary care
25 physician that she had not have any seizures?

Guilt Innocence Phase
August 22, 2017

1 A. Would it surprise me? I don't know if it would
2 surprise me. I don't I have that information.

3 Q. Well, in fact you do. You reviewed the records
4 of Dr. Nguyen, did you not?

5 A. I did.

6 Q. And did you look at the entry from Dr. Noin's
7 records? In fact, I think we talked about it just today
8 on direct examination?

9 A. If you could point out that date, I would be
10 glad to take a look at it.

11 Q. Well, the date is April, 2013. If it would
12 make it easier, I can come show you my copy?

13 A. No, I've got it here.

14 Q. Take look at it, sir.

15 A. Okay. I'm looking right at -- which part would
16 you like to direct me to?

17 MS. BARNETT: May I approach the witness?

18 THE COURT: You may.

19 Q. (BY MS. BARNETT) April 9, 2013, can you read
20 out loud this highlighted part there?

21 A. It says under, "Seizure," it says, "Has not had
22 any seizure episodes and auras."

23 Q. Thank you, sir.

24 So in April of 2013, before she's sees you
25 two months later, she has told her primary care

Guilt Innocence Phase
August 22, 2017

1 physician that she hasn't had any seizures?

2 A. That's what it says here.

3 Q. Did you know that she told the police in
4 December of 2012, that she gets seizures at least once a
5 month?

6 MR. SECREST: That misstates the evidence.
7 I object. She was speaking about auras.

8 THE COURT: Rephrase your question.

9 MS. BARNETT: All right.

10 Q. (BY MS. BARNETT) Well, if the officers asked
11 her, how often do you have seizures like that, and she
12 responds, I've been getting them more lately. I'm not
13 able to drive. And the officer asked, how frequent.
14 And she says, at a least once a month.

15 So that's the opposite of what she told
16 you about when the last time she had a seizure, correct?

17 A. Let me say it this way: She has told other
18 people, she told me, she hasn't had one for a year
19 before this.

20 Q. Right.

21 A. But I think she's referring to that part --

22 MS. BARNETT: I'm going to object to the
23 witness speculating about what she meant about anything.

24 THE COURT: Sustained.

25 MR. SECREST: I would ask that the witness

Guilt Innocence Phase
August 22, 2017

1 be permitted to complete his answer and not be cut off.

2 THE COURT: That's sustained.

3 MR. SECREST: Thank you.

4 Q. (BY MS. BARNETT) When she's told you that she
5 hasn't had a seizure the year before, that's different
6 then what she tells the officers that she has a seizure
7 once a month?

8 MR. SECREST: That's asked and answered.

9 THE COURT: Overruled.

10 Q. (BY MS. BARNETT) You can answer that.

11 A. My interpretation is --

12 Q. I'm not asking for your interpretation?

13 A. Well, let me finish my answer then, and you can
14 say whatever you want.

15 Q. Well, I'm --

16 A. If don't want me to answer the question, I
17 won't.

18 Q. No, I want you to answer my question: Is it
19 different that she tells you that she hasn't had a
20 seizure in a year, and she tells the police officers
21 she's had them once a month? Is that different?

22 A. It's different because she's telling me about
23 major seizures. The one where you fall --

24 MS. BARNETT: I object to his speculation
25 about what the defendant is telling him.

Guilt Innocence Phase
August 22, 2017

1 MR. SECREST: And I object to her cutting
2 the witness off, Judge.

3 THE COURT: I believe that was a yes or no
4 question?

5 MS. BARNETT: It was.

6 A. I have nothing further.

7 THE COURT: That's a yes or no answer,
8 Doctor.

9 A. The information I've --

10 Q. (BY MS. BARNETT) It's a yes or no?

11 A. The information I obtained from Sandy was
12 different from than the police officers obtained from
13 Sandy; that's correct.

14 Q. And what the record reflects that she said in
15 the transcript. Because apparently you got a copy of
16 the transcript, did you not?

17 A. I did.

18 Q. Well, do you have it in front of you?

19 A. Yes, I have it.

20 Q. Then you must have read it?

21 A. I did.

22 Q. Okay. Tell me where it's different?

23 A. Where would you like to point me to?

24 MS. BARNETT: If I may have a moment?

25 MR. SECREST: Your Honor, if we're going

Guilt Innocence Phase
August 22, 2017

1 --

2 THE COURT: Can you approach? Come on up.
3 (Bench conference.)

4 MR. SECREST: If she's going to ask the
5 witness -- and she's done this to me before -- I don't
6 want to go to the transcript. Let's queue up the tape
7 because the transcript as she's already conceded is not
8 accurate. So let's cue up that specific place of the
9 transcript on the audio/videotape. And then let him
10 testify off of that transcript because the transcript is
11 not accurate. The transcript on two or three occasions
12 leaves off the word "aura," and that was played for the
13 jury.

14 MS. BARNETT: Number one, he's the one who
15 gave the transcript to him. And Number two, he used the
16 transcript on his question of a witness. So I'm just
17 doing the same thing.

18 MR. SECREST: It's true and not true.

19 True, I gave him the transcript, which I
20 got from them.

21 Number two, when I went through the
22 hypothetical fact, I was quoting what the testimony -- I
23 will bet you a \$1,000 if you play the transcript, the
24 actual recording is different from the transcript. You
25 play the audio/videotape with respect to this area,

Guilt Innocence Phase
August 22, 2017

1 you're going to see that she says on two occasions,
2 "auras, auras."

3 MS. BARNETT: I'm not asking about auras.

4 MR. SECREST: Well, it has to be put in
5 the proper contest.

6 THE COURT: She can ask her question on
7 whether or not he derived an opinion on a certain set of
8 facts, then we can go from there.

9 MS. BARNETT: I'm asking him to review the
10 transcript.

11 MR. SECREST: But on redirect, I'm going
12 to play the tape.

13 MS. BARNETT: Judge, it's going to take me
14 a second to find it. Can I approach the witness?

15 THE COURT: All right.

16 Q. (BY MS. BARNETT) Let me show you, sir, a page
17 that I'm talking about from the transcript?

18 A. Sure.

19 Q. But unfortunately, I have --

20 A. Those are your marks, not mine. You can use
21 mine.

22 Q. No, those are your marks, not mine, sir. Just
23 take a look.

24 Does that refresh your recollection?

25 A. It's not going to refresh it. If I could read

Guilt Innocence Phase
August 22, 2017

1 through it first.

2 I'm good with that. What would you like
3 to know?.

4 Q. So it's true then --

5 MR. SECREST: Excuse me. What page are
6 you directing him to?

7 MS. BARNETT: Well, I can stand right
8 here. How about that?

9 Q. (BY MS. BARNETT) So the police officer asked
10 her, "How Often do have seizures like that?" She says,
11 "I've been getting them lately. I'm not able to drive
12 anymore. Well, how frequent? At least once a month."
13 She writes that, right?

14 A. So far I'm with you.

15 Q. Well, that's the point I'm trying to make.

16 And when they asked her --

17 MR. SECREST: She said it was auras.

18 Q. (BY MS. BARNETT) -- let me ask you this: I'm
19 not asking about auras, but I'll do that.

20 "The auras, I get them all the time." She
21 says that, doesn't she?

22 A. She does.

23 Q. All the time?

24 A. Can you read that again. It says inaudible and
25 then somebody wrote in "aura,"

Guilt Innocence Phase
August 22, 2017

1 Q. Yeah, I wrote that in because it does say
2 "inaudible," and I wrote in "aura."

3 MR. SECREST: So read the whole sentence
4 like that.

5 Q. (BY MS. BARNETT) "How often do you have
6 seizures like that?"

7 I've been getting them more lately. I'm
8 not able to drive anymore.

9 Well, how frequent?

10 At least once a month, maybe. The auras,
11 I get them all the time.

12 Do you take medication? Okay. And when
13 was the last time you had one of those before today?

14 About a month ago at home?"

15 MR. SECREST: Can you read where she says
16 auras again?

17 MS. BARNETT: Well, that's just the part
18 I'm interested in counsel.

19 MR. SECREST: Thank you, Counsel.

20 Q. (BY MS. BARNETT) So that's not what she
21 disclosed to you, is it?

22 A. What she disclosed to me was she hadn't had a
23 seizure for a year --

24 Q. Right.

25 A. -- that's correct.

Guilt Innocence Phase
August 22, 2017

1 Q. And that's opposite of what she told police
2 officers, isn't it?

3 A. I don't know if it's opposite. She told them
4 she was having them once a month and auras frequently.
5 I don't think it's opposite. But she telling the police
6 officers she's having them more often than what she told
7 me.

8 Q. Right, which is two different things?

9 A. Two different times, that's correct.

10 Q. She's -- since the age of 19 and having
11 seizures, can we assume that she is being told by
12 various doctors what that means, what is happening to
13 her? That is explained to her, right?

14 A. I can only say what I would explain to a
15 patient. What other doctors are telling her, I haven't
16 the slightest idea.

17 Q. That's fair.

18 So does she come to you knowing what
19 happened when she has a seizure, when she has an aura?

20 A. When she came to me at the request of her
21 doctor. The one I wrote is Dr. Pierce who wanted me to
22 see her for trying to help her and improve her seizure
23 control. That's my understand.

24 Q. Okay. I guess what I'm trying to understand
25 is: Does she know what the symptoms are when she gets a

Guilt Innocence Phase
August 22, 2017

1 seizure?

2 A. I think she knows -- yeah, well the auras, I
3 think she has described for people that she gets very
4 confused. That's my understanding of her auras is a
5 feeling of a confused state.

6 Q. And I'm sure she is able to articulate the
7 things that happen to her when she has a seizure,
8 correct?

9 A. I don't know.

10 Q. Well, has she been able to do that with you?

11 A. She just told me she had a seizure in December.
12 And I know what auras are like. And my assumption is
13 the seizure she had in December not an aura. And we
14 looked at her medications and her levels, and we made
15 adjustments.

16 Q. And that's the reason she goes in part to have
17 medication that is adjusted for her episodes?

18 A. That is the reason she was sent to me this
19 time. Why she hasn't come before, you'll have to ask
20 Sandy.

21 Q. And did she come after?

22 A. She came one more time in 2014. That was the
23 last time.

24 Q. And is that a part of these records?

25 A. I'm sorry?

Guilt Innocence Phase
August 22, 2017

1 Q. Is that a part of these records when she came
2 in 2014?

3 A. Yeah, I have those in mine. You should have
4 them. I would be glad to share mine.

5 Q. Yes, may I see them?

6 A. Sure.

7 Q. Is there a reason why when I asked for these
8 railroad tos six weeks ago or more, I wasn't given a
9 part of that?

10 A. You're not implying that I'm holding them back?

11 Q. I'm just saying I asked for all railroad tos.

12 A. We gave whatever -- my secretary gave the
13 railroad tos -- wait a minute, it's not here. Hang on
14 for a minute. Here it is. It's your thing you just
15 gave me.

16 Q. Well, good, then she did give me everything.

17 A. Right. And you're not implying that we're
18 holding railroad tos back for any reason, are you?

19 Q. No, of course not.

20 A. Good. We're on the same page.

21 Q. So she came to you 2013 first, right?

22 A. Correct.

23 Q. And that was to switch her medication or update
24 her medication?

25 A. That's correct.

Guilt Innocence Phase
August 22, 2017

1 Q. Then she came to you in 2014?

2 A. Correct.

3 Q. What was that visit for?

4 A. I'll take a look.

5 Q. Oh, I see. So for 2014, you're talking about
6 you wrote a letter to a doctor, that's what you're
7 talking about?

8 A. Right.

9 Q. Everything else before the letter to the doctor
10 in 2014, is 2013, right?

11 A. That's correct.

12 Q. So the only thing that's dated 2014, is your
13 letter to a doctor about Sandy?

14 A. Right.

15 Q. Doesn't show any visit in 2014, does it?

16 A. Let's take a look.

17 Q. Yes, please.

18 A. So if she actually came in for a visit, she
19 would have been billed. I'm going to look in billing or
20 whether it's an updated letter with my recommendation.

21 No, that was an update, there was no bill
22 for that.

23 Q. So let's be clear: She wasn't a patient in
24 2014?

25 A. She's still a patient. She wasn't seen, but

Guilt Innocence Phase
August 22, 2017

1 she's still considered a patient in 2014.

2 Q. And I apologize, I misstated what I wanted to
3 ask. I think you testified you saw her in 2014; is that
4 right?

5 A. I thought I had.

6 Q. And is that correct?

7 A. No, I did not see. There was a letter updating
8 her doctor.

9 Q. So you were mistaken?

10 A. Absolutely.

11 Q. Based on the injuries that you told us that she
12 had, that she had bruises on her arms and bruises on her
13 eye, that's consistent with possibly getting in a fight,
14 right?

15 A. Sure. It's consistent with any type of trauma.

16 Q. All right. And you don't know how she got
17 those bruises, do you?

18 A. I have no idea.

19 Q. And certainly do you recall that some of those
20 were wraparound bruises?

21 A. Wraparound meaning, like, the front of her
22 body, the back of her body?

23 Q. On her --

24 MS. BARNETT: May I approach the witness?

25 THE COURT: You may.

Guilt Innocence Phase
August 22, 2017

1 Q. (BY MS. BARNETT) Showing you 528. Can you take
2 a look at some of these bruises? Would you consider
3 these bruises?

4 A. Yeah, I would consider them bruises.

5 Q. And do you know where those bruises were?

6 A. I can't tell from here. I mean, it looks like
7 on the arm, can't tell from photo; topside, bottom side.

8 Q. And would you consider 526 bruises versus 528
9 being at a different time?

10 A. Yeah, this bruise --

11 Q. And you're talking about 526?

12 A. Oh, 526 would be older than some of the
13 bruises. What's number?

14 Q. 528.

15 Meaning that these didn't happen at the
16 same time; is that right?{FLUSH}

17 A. No.

18 Q. Meaning, no, I'm not right, or --

19 A. No, no. Some are pinkish, looking newer than
20 the other ones that already show the breakdown of blood
21 products.

22 Q. All right. So when we're talking about these
23 bruises here on 526, those are going to be older than
24 528?

25 MS. BARNETT: May I walk these in front of

Guilt Innocence Phase
August 22, 2017

1 the jury?

2 THE COURT: You may.

3 Q. (BY MS. BARNETT) That's what you're saying?

4 A. That's what I'm saying. The ones on 526 shows
5 a breakdown of fragment of blood underneath the skin.
6 Other one is a very superficial abrasion.

7 Q. Okay. But there were multiple bruises that are
8 the superficial ones that you're calling, right?

9 A. That's what I read. I didn't see them?

10 Q. Well, let's take a look.

11 Another one on 530?

12 A. That's correct.

13 Q. Another one on 531?

14 A. Three or four.

15 Q. On 531. Four bruises are shown on 531; is that
16 right, sir?

17 A. That's correct.

18 Q. And would you expect that these bruises would
19 come about from her falling down?

20 A. They can come about many ways. I don't know
21 how they would come about. Falling down on your side,
22 someone grabbing you, any kind of trauma. I'm not a
23 reconstructionist of trauma. I'm just saying those are
24 bruises.

25 Q. Well, of course. And the way that these

Guilt Innocence Phase
August 22, 2017

1 bruises are, and the wraparound bruises, the ones that I
2 showed you earlier. Are they more consistent with being
3 in a fight, or are they more consistent with falling
4 down?

5 A. I don't know.

6 Q. Well, of course. And she would have to roll
7 around in order to get all these bruises, wouldn't she?

8 A. No. She --

9 Q. Just answer my question.

10 THE COURT: Objection, Judge.

11 THE COURT: Hey, everyone, one at a time.

12 Mr. Secrest, what's your objection?

13 MR. SECREST: Speculation. Said he didn't
14 know.

15 THE COURT: All right. Rephrase your
16 question.

17 Q. (BY MS. BARNETT) Well, it's a matter of
18 gravity. I mean if you fall down, in order to get
19 bruises around different parts of your arm, you either
20 have to hit something that had those different places,
21 or you have to fall down multiple times, right?

22 A. You know, you don't have to be a physician to
23 answer your question. The jury can ask -- this is not a
24 medical question.

25 Q. You're a witness, sir, and I'm asking you the

Guilt Innocence Phase
August 22, 2017

1 question, and I ask that you answer it?

2 A. But I'm a medical expert, not the way people
3 fall down. Can a person fall down, and fall and hit
4 something on the way down and get those bruises, yes.
5 But I'm not making any speculation about how this person
6 got their bruises. It's really not a medical question,
7 it's not a neurological question. And so why is my
8 speculation any better than any of these 12 people?

9 Q. It's probably not?

10 A. Well, then don't ask the question. It's as
11 simple as that.

12 Q. Well, I'll ask questions, and you can answer
13 them hopefully.

14 Did you know that she gave two different
15 stories about which side of the head that she was hit
16 on, did you know that?

17 A. I did not know that.

18 Q. Okay. well, what is your understanding about
19 what she said about her being hit on the head?

20 A. I recall her thinking she may have been struck
21 on the head. I remember that statement that she might
22 have been struck on the head. That was her speculation.
23 I remember that she had headaches on one side, and I
24 remember that other people that examined her found some
25 swelling of her scalp on the other side. That's all I

Guilt Innocence Phase
August 22, 2017

1 remember.

2 Q. You're not aware that she said she was hit on
3 the right side, and also she was hit on the left side?
4 You're not aware of that?

5 A. I just told you, I'm not aware of it.

6 Q. Okay. And it's certainly possible that
7 everything that she told you about what happened that
8 night, if she told you what happened that night, could
9 be a complete fabrication?

10 A. So let me answer this question, and I will.
11 She hasn't told me anything about what happened. If you
12 look at my records, what happened -- the tragedy that
13 happened was not mentioned to me whatsoever. So I don't
14 know what you're talking about when you say she told me
15 in fabrication.

16 Q. Okay. Well, let me ask you another question:
17 And in all of the things you reviewed, and apparently
18 it's a lot, you listened to, saw, or read statements
19 that she's made about what happened to her that night,
20 correct?

21 A. I have.

22 Q. And certainly, it's not unconceivable that she
23 could not be not telling truth, right?

24 A. Again, I'm not going to answer that question
25 because that's not a medical question.

Guilt Innocence Phase
August 22, 2017

1 MS. BARNETT: Your Honor, I would ask that
2 you direct the witness to answer the question.

3 THE COURT: Sir, answer the question
4 that's she's asked you.

5 A. I don't know.

6 Q. Well --

7 A. I don't have an answer. I don't know.

8 THE WITNESS: I just reviewed some
9 records, Your Honor. And to put myself in the position
10 of having an opinion on the truthfulness when people
11 have been sitting here for this time and listening to
12 everything, to put me in a position to say what's your
13 opinion. I don't think it's right? I don't think it's
14 right for the Court, for the jury, or for Sandra Melgar.
15 And therefore, I don't think I can answer that question:
16 Is it possible she is fabricating.

17 Q. (BY MS. BARNETT) I didn't ask you what your
18 opinion was, sir. I asked you: Is it possible that she
19 is not telling the truth? Is that --

20 A. Well, if you ask me the possibility, that is my
21 opinion, counselor.

22 THE COURT: Sir, when the other lawyer
23 stands, please stop talking.

24 THE WITNESS: Okay.

25 MR. SECREST: I object --

Guilt Innocence Phase
August 22, 2017

1 THE COURT: I sustain that.

2 Ask the next question.

3 Q. (BY MS. BARNETT) It's possible that she can
4 recite her symptoms; isn't that possible?

5 A. Is it possible? Of course, it's possible.

6 Q. It's possible that she could tell people the
7 things that happen to her when she has a seizure?

8 A. Say that again. I sorry, I missed it.

9 Q. Is it possible that she can tell people and
10 recite things that happen to her when she has a seizure?

11 A. It depends upon the seizure. If it's an aura,
12 yeah. If it's a major-motor seizure where she passes
13 out, no.

14 Q. Well, it's possible that she can explain,
15 again, the symptoms of her seizure disorder, can't she?

16 A. She can and has explained the symptoms of her
17 auras. She quite clearly stated she gets confused, she
18 loses track of time. I think I've said that before.
19 People are going to describe their aura as not what
20 happened to them when they're jerking awake.

21 Q. But certainly since she has had seizure
22 disorders since she was 19, she certainly know the
23 things that could potentially happen to her when she has
24 a seizure, right?

25 A. I think that's a fair question that when she's

Guilt Innocence Phase
August 22, 2017

1 had a seizure, 19 years of having seizures, 20, 30
2 seizures, which I assume are major seizures falling
3 down. She probably has a good understanding based on
4 her experience that she has had a seizure. I agree with
5 you.

6 Q. So the answer to my question then was, yes?

7 A. So I agreed with you, yes.

8 Q. So she also knows during seizures that she
9 could become dizzy and fall down?

10 A. Just tell me which part of the seizure are you
11 talking about? The major one or the aura?

12 Q. Any of them.

13 A. During the aura, she could be aware she gets
14 dizzy, yes.

15 Q. All right. And she could also recite the fact
16 that she might go to sleep, and feel pain in her joints?

17 A. No, that's after the seizure. That's based on
18 the experience of having a major-motor seizure as you
19 mentioned 20, 30 times. She knows what it feels like.
20 In this situation, that's what it felt like, her
21 interpretation of what it felt like.

22 Q. Or at least what she told somebody it felt
23 like?

24 A. That's right. That's what she told somebody it
25 felt like.

Guilt Innocence Phase
August 22, 2017

1 THE COURT: Ladies and gentlemen, this is
2 a good time to take our morning break. We'll be in
3 recess for 30 minutes.

4 Retire the jury.

5 (Break taken.)

6 THE BAILIFF: All rise for the jury.

7 THE COURT: Ms. Barnett, you may proceed.

8 MS. BARNETT: Pass the witness.

9 THE COURT: Mr. Secrest.

10 MR. SECREST: Just a few questions, Your
11 Honor.

12 **REDIRECT EXAMINATION**

13 **BY MR. SECREST:**

14 Q. Dr. Hershkowitz, you said a moment before the
15 break something about checking the patient's levels.
16 What are we talking about there?

17 A. Well, when somebody has had a seizure or
18 epilepsy, and the first thing you're going to do is see
19 if they have enough medication in them. There are
20 certain guidelines, certain levels, and check the
21 levels. If their level -- for example if Tegretol is
22 too low, you might want to check.

23 Q. If the levels are too low, does that indicate
24 the presence of some neurological issue or something?

25 A. No. It just means that might be the

Guilt Innocence Phase
August 22, 2017

1 explanation of why that person was doing well is now
2 having seizures. Nothing more than that.

3 Q. Okay. Thanks.

4 Is it your experience that patients with
5 lifelong problems don't always go to the doctor everytime
6 they feel lousy?

7 A. Yeah.

8 Q. And finally, I want to briefly play a portion
9 of the tape that corresponds to prosecutor's questioning
10 of you concerning the transcript that you've been
11 provided. And this is the discussion where they're
12 asking her about seizures, and she's talking about that,
13 and also trying to explain auras. So let's hear it, and
14 I'll ask you a couple quick questions.

15 (Playing video.)

16 Q. (BY MR. SECREST) Is it clear to you that she's
17 trying to explain to the jury not only about seizures,
18 but about auras?

19 MS. BARNETT: And I would object to asking
20 the witness to speculate as to what the defendant is
21 trying to do or say.

22 THE COURT: Sustained.

23 Q. (BY MR. SECREST) When we play that exhibit, I'm
24 not asking you to read her mind, but is it clear, once
25 we lay this snippet, that when they asked her about

Guilt Innocence Phase
August 22, 2017

1 seizures, she's taking about auras, as well?

2 MS. BARNETT: Objection.

3 THE COURT: Sustained.

4 Q. (BY MR. SECREST) Let me ask you this, that
5 question: "Okay. When was the last time you had one of
6 those?" Is she talking about auras, or is she talking
7 about seizures?

8 MS. BARNETT: Objection. Speculation.

9 THE COURT: Sustained.

10 MR. SECREST: I have no further questions.

11 THE COURT: All right. Any re-cross?

12 MS. BARNETT: Yes.

13 **RE-CROSS-EXAMINATION**

14 **BY MS. BARNETT:**

15 Q. Who was her Neurologist before you?

16 A. It may have been a partner of mine, Martin
17 Stein.

18 Q. It may have been, you don't know?

19 A. Well, I don't have the old records. We were
20 partners, and there was one old record that mentioned
21 his name many years ago. So his name is mentioned as a
22 Neurologist.

23 Q. I'm not talking about 1990. You said you saw
24 her in 2013. Who was her Neurologist immediately before
25 you?

Guilt Innocence Phase
August 22, 2017

1 A. I thought you were talking about early on. I
2 have no idea who her Neurologist was, if there was one,
3 before me in 2013.

4 Q. You would expect that she would have a
5 Neurologist, wouldn't you?

6 A. Maybe.

7 Q. So when she came to you in 2013, you don't know
8 who her Neurologist was before that?

9 A. I don't know who before. I don't have that
10 information.

11 MS. BARNETT: Pass the witness.

12 MR. SECREST: No further questions.

13 THE COURT: May this witness be excused?

14 MS. BARNETT: Yes.

15 MR. SECREST: Yes, Your Honor.

16 THE COURT: Call your next witness.

17 MS. SECREST: We call Dr. Benia Ogbonnaya

18 **BENIA OGBONAYA,**

19 having been first duly sworn, testified as follows:

20 **DIRECT EXAMINATION**

21 MS. BARNETT: May I approach, Your Honor?

22 (Bench conference.)

23 MS. BARNETT: Is this witness is being
24 used as an expert?

25 MR. SECREST: You didn't get any notice