

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,

Appellant,

v.

TARIQ MANSON,

Respondent.

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Case No. 82038

**APPELLANT'S APPENDIX
Volume 2**

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I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on May 4, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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5 **DISTRICT COURT**
6 **CLARK COUNTY, NEVADA**

7
8 **THE STATE OF NEVADA,**
9 **Plaintiff,**

CASE#: C-18-335833-1
DEPT. VII

10 **vs.**

11 **TARIQ MANSON,**
12 **Defendant.**

13
14 **BEFORE THE HONORABLE LINDA MARIE BELL,**
15 **DISTRICT COURT JUDGE**

16 **FRIDAY, AUGUST 28, 2020**

17 ***RECORDER'S TRANSCRIPT OF PROCEEDINGS***
18 **CHALLENGE HEARING CONTINUED**

19
20 **APPEARANCES (Via BlueJeans):**

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24
25 **RECORDED BY: DE'AWNA TAKAS, COURT RECORDER**

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FOR THE DEFENDANT:

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1 Las Vegas, Nevada, Friday, August 28, 2020

2
3 [Case called at 8:48 a.m.]

4 THE COURT: State of Nevada versus Tariq Manson.
5 Morning everybody. Could I get everyone's appearance for the record,
6 please?

7 MR. O'BRIEN: Good morning. Glen O'Brien for the State.

8 THE COURT: Do we have defense counsel?

9 THE COURT RECORDER: He's I think --

10 THE COURT: Okay, there's Mr. Page, all right.

11 And do we have Mr. Manson?

12 UNIDENTIFIED SPEAKER: I apologize. I didn't --

13 MR. PAGE: Yes. Daniel Page here. He is or he was present.
14 I -- let's see. Yes, I still show that he is present, Your Honor.

15 THE COURT: Okay. And this is on for a challenge hearing.
16 So Mr. Page, who is your first witness?

17 MR. PAGE: Your Honor, I believe that I'm still in the process
18 of just finishing up my cross-examination of Dr. Soosman (phonetic).

19 THE COURT: Go ahead.

20 THE WITNESS: Sussman, sir.

21 MR. PAGE: Oh Sussman I --

22 THE COURT: And Doctor, I'll just remind you that you're still
23 under oath.

24 THE WITNESS: Yes.

25 THE COURT: Are you still in -- were you in Colorado last

1 time?

2 THE WITNESS: Yes I was but I'm back in Nevada.

3 THE COURT: Oh I'm sorry. I bet it was really nice there, it's
4 so hot here.

5 THE WITNESS: Yeah.

6 THE COURT: All right. Mr. Page, whenever you're ready.

7 MR. PAGE: Okay, thank you, Your Honor.

8 DR. DANIEL SUSSMAN

9 [having been called as a witness and being previously sworn, testified as
10 follows:]

11 CROSS-EXAMINATION CONTINUED

12 BY MR. PAGE:

13 Q Dr. Sussman, I would like to address a couple comments you
14 made about Dr. Sharon Jones-Forrester's evaluation diagnosis in effort
15 to avoid some confusion. First you expressed concern with her
16 diagnosis of unspecified neurocognitive disorder; isn't that correct?

17 A Yes, I -- I didn't make that diagnosis. We were very similar in
18 diagnosing mild intellectual disability for her versus borderline
19 intellectual disability for myself and (indiscernible) --

20 Q And your concerns --

21 A -- disorder.

22 Q Understood. And -- and your concerns with -- with her -- her
23 diagnosis was that you associated that diagnosis suggesting that Tariq
24 was also --

25 A (Indiscernible) --

1 Q -- basically suggesting that Tariq was dealing with cognitive
2 issues associated with geropsychology basically the psychology of
3 elderly people, correct?

4 A Well, the thing is, is I -- I don't have a huge issue where that
5 diagnosis would impact the conclusion we need to reach regarding
6 competency, however major neurocognitive disorders are usually
7 associated with major neurological issues like dementia, Huntington's,
8 strokes. I think it's -- it means to be accommodating with regard to
9 underlying etiologies so somebody has, you know, herpes,
10 encephalopathy, HIV, I think they could probably include those things
11 but I think that his cognitive issues come from his intellectual disability
12 probably but I don't think that's all that consequential to the competency
13 conclusions that we need to come to.

14 Q Understood. But your -- your concern with her diagnosis does
15 -- does play a factor and I guess do you have a DM -- a DSM in front of
16 you?

17 A Let me grab -- okay, I have DSM-5 right here, sir.

18 Q Now, if you could look up the and -- and read the diagnostic
19 for the criteria for unspecified neurocognitive disorder?

20 A Okay. Well this book is just pure diagnostic classification.
21 Doesn't have the categorizations, but what -- what -- what point would
22 you like to discuss about that?

23 Q Well the -- the -- the actual criteria of an unspecified --

24 A It could be -- it could be another medical condition, right.
25 Multiple etiologies unspecified -- yeah, it has a lot of room in it. It

1 doesn't have to just be (indiscernible) due to Huntington's, strokes,
2 dementia, you know, Huntington's, it doesn't have to be that. It allows
3 virtually any underlying general medical condition.

4 Q So then you agree that inherent in the diagnosis is the explicit
5 acknowledgment that his impairments do not meet the full criteria these
6 other disorders that you were mentioning previously, such as dementia
7 or -- or any of those other things?

8 A Yeah, I mean there's no reason to suspect those kind of
9 things, but Dr. Forrester alluded to pica, you know, I don't know what the
10 -- the history of that is whether he was diagnosed that by a pediatrician
11 was found to be eating paint chips at a young age I don't know. I don't
12 know if she was just trying to say that by general example, you know,
13 that's something to be delved into further, but from her report I didn't see
14 anything that was really -- I mean she has a very detailed, thorough
15 report, but I didn't see anything detailed in her report to substantiate
16 that.

17 Q But it goes along with not only the testing that she conducted
18 of the cognitive testing but also other factors that -- that -- that could
19 affect her -- his ability to be competent under -- in these circumstances;
20 isn't that correct?

21 A Well the thing is, is competency is a test that stands on its
22 own, you know, two feet based on the *Dusky* criteria and if you go far
23 afield and, you know, you're not -- you're -- you're disjoining competency
24 from cognitive problems, people could have many many spheres of
25 cognitive problems, but *Dusky* -- you know, is designed to just assess its

1 specific prongs and it's not as if you could just come up with cognitive
2 deficits and say that that constitutes incompetency. That's a
3 revolutionary way of looking at the competency issue.

4 Q But you're saying it's --

5 A You determine by the prongs of the *Dusky* standard.

6 Q You're saying that if the -- the cognitive diagnosis or concerns
7 or issues do not play a factor then in the *Dusky* standard?

8 A No, they very much could be the basis and the reason why
9 somebody might not, you know, be able to rise to meeting the *Dusky*
10 standard, but in and of them self absent of findings directly per the
11 *Dusky* standard, they -- they cannot stand on their own to constitute
12 incompetency. There's many spheres of cognitive deficits you could find
13 in people, but if they don't specifically manifest in the *Dusky* standard
14 you're assessing, those cognitive deficits do not stand on their own as
15 constituting incompetency. That's what -- that's what Dr. Forrester's
16 report is trying to do and that's a revolutionary new way of trying to
17 shoehorn in incompetency.

18 Q Well we'll talk a little bit about your statement of their
19 revolutionary form but so -- so it's your -- it's your testimony then that --
20 that Dr. Sharon Jones-Forrester is only finding incompetency based off
21 of this diagnosis or cognitive disabilities and not from observation and
22 understanding the questions that she personally saw?

23 A Well, we -- you know, I think she's going outside of the bounds
24 of the *Dusky* standard to -- to find cognitive deficits that she says could
25 stand alone to constitute incompetency irrespective of the fact that --

1 that per the *Dusky* standard, the three evaluators that -- myself, Dr.
2 Bossi and Dr. Damas very clearly thought he met in a very
3 straightforward manner.

4 Q Let's talk about then this revolutionary view of -- of what -- of
5 the *Dusky* standard and -- and -- and apparently you're suggesting that
6 there's a interest in raising the bar of *Dusky*. That's what you mean by
7 revolutionary?

8 A Yes. Yes, I -- I -- I see Dr. Jones-Forrester is clearly raising
9 that bar and making it more expansive --

10 Q But you would agree --

11 A -- outside of four corners -- out of the four corners of *Dusky*,
12 the three prongs.

13 Q Okay, but you would agree with within the *Dusky* standard that
14 it requires not only a factual understanding but a rational understanding
15 of the three --

16 A Yes. Yes.

17 Q You agree with that?

18 A Yes. And yeah, but -- but there's no indication we saw that he
19 didn't have a rational understanding of that.

20 Q (Indiscernible) --

21 THE WITNESS: I -- excuse me one second, I have to transfer
22 my -- my son's in distance learning and I have to transfer his computer
23 over and if you could just give me a minute --

24 THE COURT: Sure.

25 THE WITNESS: -- two here, okay? These are -- these are

1 tough times obviously. I'll be right with you, okay?

2 THE COURT: No problem.

3 [Colloquy between the witness and family]

4 THE WITNESS: All right, Mr. Page, I'm with you.

5 BY MR. PAGE:

6 Q Thank you. Then in order to then clarify this a little bit then
7 and when dealing with --

8 CHILD'S VOICE: (Indiscernible) --

9 Q -- the rational and factual understanding --

10 CHILD'S VOICE: (Indiscernible) --

11 THE WITNESS: (Indiscernible) --

12 Q -- of the nature and purpose of the court proceedings and also
13 his ability to assist counsel, when he was asked specifically in the
14 evaluation of how he should act in court and he responds (indiscernible)
15 be quiet, but then when I ask him another question --

16 A (Indiscernible) --

17 Q -- on that --

18 A I was getting -- I was getting some network -- I was getting
19 some network issues --

20 Q Okay.

21 A -- and you're -- you're coming along a little bit disjointed just
22 there.

23 Q Well then to clarify a little bit more on this then, when dealing
24 with his ability to assist counsel and to understand his role in the -- in the
25 proceedings and I ask him how he should act in court and after some

1 thought he says be quiet and then which is a factual understanding, but
2 then I ask him well is there an opportu- -- another time for you to be able
3 to speak and he can't answer that question, do you find that --

4 A Well the thing -- well the thing -- the thing is, is that pertains to
5 some understanding of court proceedings. That's a fair question. His
6 participation at hearings is definitely a --

7 Q His role.

8 A -- aspect of procedural of competency. The issue is though is
9 that he is a shy person. His family describes him as slow to warm up, a
10 shy person, school could be, you know -- I mean not school, court could
11 be very intimidating, especially for a young, reserve person like that and
12 he may presume that I don't know it has to be delved into further
13 whether or not, you know, you would want him to take the stand.
14 There's a lot of people that don't want their defendant to take the stand
15 and he may -- he may have an idea that there's no reason for him to talk
16 unless, you know, you specifically, you know, want to bring --

17 Q He --

18 A -- forth some testimony from him.

19 Q Yeah, so --

20 THE COURT: So -- Mr. Page, can I --

21 Q -- your understanding is that --

22 THE COURT: Mr. Page, can I ask a question --

23 MR. PAGE: Yes.

24 THE COURT: -- about that? So I mean Dr. --

25 MR. PAGE: Yes, please.

1 THE COURT: -- Dr. Sussman, so a criminal defendant makes
2 the decision about whether to testify or not. Do you feel that he has the
3 ability to make a reasoned decision about whether he should testify or
4 not testify in a trial?

5 THE WITNESS: You're asking that of Mr. Page or me?

6 THE COURT: Of you.

7 THE WITNESS: Oh, okay. Well, the thing is, is yes, that is
8 always the discretion of the defendant whether to testify or not.
9 However most defendants I would believe would defer that to their
10 attorney whether or not they should some -- some may be -- some may
11 be chomping at the bit to testify, but a lot would defer to their attorney on
12 that question.

13 THE COURT: All right, but that's not what I asked you. So he
14 has 100 percent the right to make the decision whether he testifies or
15 not so do you believe he has the ability to make a rational decision
16 about whether he should testify or not testify?

17 THE WITNESS: Well, I didn't delve into that to that extent --
18 well, let me just see something real quickly. We -- I just wanted to see --
19 refer back to something. I'm just reviewing some of my notes. He's
20 aware -- he's -- he's aware of the risks of going to trial, but I don't know if
21 he's aware of the risks of testifying. And that would be something that
22 the Defendant you would hope would, you know, ask about, inquire into
23 whether or not there are risks -- I just want to turn my son's school down,
24 okay? Can I have one minute?

25 THE COURT: Sure.

1 THE WITNESS: I just want to turn --

2 THE COURT: Yeah, go ahead.

3 [Colloquy between the witness and family]

4 THE WITNESS: So first of all you would hope that somebody
5 would be able -- can you hear me?

6 THE COURT: Yes.

7 [Colloquy between the witness and family]

8 THE WITNESS: I'll be right there, okay.

9 THE COURT: That's fine.

10 THE WITNESS: You can see I have --

11 [Colloquy between the witness and family]

12 THE WITNESS: All right. Pardon the interruption. So you
13 would hope first that somebody -- a defendant would be able to inquire
14 about whether or not it would be useful for them to testify or whether it
15 could be, you know, prejudicial to them and you would hope that they
16 would be inquiring to a degree about what they should testify about and
17 what parameters they should stay within to keep it relevant and
18 nonprejudicial to themselves. Now as to whether he could do all that, I
19 didn't delve into that to that extent, but I would venture a guess that if he
20 is very patiently counseled, I think it's a very good possibility he'd be
21 able to do that.

22 BY MR. PAGE:

23 Q Now you -- you -- you talk about the inability to answer
24 questions as potentially being his being shy. Now the time that I asked
25 this question aft- -- you know, after --

1 A I -- no, I -- Mr. Page, I also think that, you know, he's not going
2 to, you know, come forth as being a wiz who has a whole plethora of
3 understanding of -- of the, you know, adjudicatory process. I think what
4 -- what comes across is going to be concrete as well based on his
5 intellectual abilities and -- and I don't think that being shy is going to by
6 any means constitute, you know, the -- the lion share of -- of what's
7 going to come --

8 Q I understand --

9 A -- forth from him.

10 Q I understand that. Let's -- let's -- so when I am -- for example,
11 I'll paint this -- this picture for you. About 30 days after his evaluation
12 with -- with Stein and the three -- other two doctors, we had been talking
13 now for more than 30 minutes. He's very comfortable with me. I've had
14 several conversations with me. It's not (indiscernible). And I asked a
15 simple question which I believe does go to the -- the -- the basis of
16 whether he can rationally make a determination to testify at trial. I asked
17 the question, not discussing testifying at trial, when would be a good
18 opportunity -- how should you comport in trial? He says be quiet. Well
19 is there an -- is there a time where you -- you should talk to your
20 attorney? And he -- with no answer. And without having the ability to
21 understand -- and this was discussed previously that if anything is said
22 incorrectly or wrong that he should talk to his attorney and he should
23 assist his attorney in allowing him to know what the factual basis is
24 correct or right. Do you not believe that that goes to the *Dusky* factors
25 and having a rational understanding of -- of -- of that basis and even

1 going further to whether he even understands rationally whether he
2 should decide to testify or not?

3 A Well, Mr. Page, yeah, the answer is yeah you make a -- yes,
4 you make a fair point that that would seem to go to the -- the standards
5 of not only working with counsel but to understand procedurally where
6 counsel comes in, in fostering his defense. But what date was that that
7 you talked to him? I -- I'd like to hear specifically the date of that. What
8 date is -- you're referring to?

9 Q One second.

10 [Colloquy between the witness and family]

11 BY MR. PAGE:

12 Q So I'm talking about April 23rd of 2020.

13 A Okay, so that was after we went because he went from having
14 a 30 on his procedural competency on the pretest while he was at Stein
15 to improving to 78 percent. He went from -- let me see, he had 30 to --
16 let me see something. Yeah, so basically -- let me just reference that
17 one more time. See if there's something in my notes. Pretest 30
18 percent, post test 78 percent so well, but the date you interviewed him is
19 after myself, Dr. Damas and Dr. Bossi saw him so he would have
20 already had the benefit of that restoration.

21 Now, it's possible that he might have had a bad day, you
22 might have delved further into a line of questioning than we did, but he
23 was very straightforward with things and I think that at that point, you
24 know, he probably needed more explanation of why his testimony could
25 be important. He -- he might be under kind of concrete notions that

1 might be -- be common amongst defendants that, you know, their -- their
2 testimony is already -- is not necessary or couldn't -- you know, couldn't
3 be helpful or has already been -- anything that could come from it has
4 already been elicited by the attorney. You know, he probably needed
5 some -- some more explanation about --

6 THE COURT: Dr. Sussman?

7 A -- why you have to develop his testimony what the theory of
8 the case could be and so forth and so I would hope that an attorney
9 would work very much to orient him to those kind of issues rather than
10 just presenting to him, you know, you know, would you want to testify
11 does he -- I mean there's a lot more that would -- of explanation that
12 would go into it before he would be able to, you know --

13 Q Dr. Sussman --

14 A -- speak sensibly about --

15 Q Would -- would it -- would it surprise you if during this time that
16 even in Sharon Jones-Forrester report that -- that there was substantial
17 discussion of -- of the -- of such things and there -- and it was broken
18 down in the simplest form? Would that surprise you --

19 A Okay (indiscernible) --

20 Q -- these things?

21 A Well, the thing is, is in terms of how he explains -- obviously
22 what you want to talk to a defendant about, about their testimony is all
23 the things that went into the -- of -- of what happened and (indiscernible)
24 that goes into a lot of ascertaining intent, but I realize that these things
25 are strict liability claims when you're talking about sexual assault but

1 there's probably some mitigating factors that go clearly beyond the strict
2 liability to ascertain intent. Now when we asked him about that, you
3 know, he gave an answer that was straightforward enough, he gave
4 good spontaneous (indiscernible) know he was violating the law and,
5 you know, I'm not -- you know, I don't want to get (indiscernible) a
6 13-year-old and a 17 going on 18-year-old, but basically it seemed right
7 then and there to be, you know, fairly -- fairly adequate explanation with
8 not that much more that would come forward, you know, he, you know --
9 you know, it sounded like he -- he wasn't -- I don't want to get into the
10 specifics of his interactions with this girl that's getting -- getting further
11 along than I would want to right here, but basically -- yeah, but basically,
12 that's to be elicited in terms of, you know, criminal responsibility issues
13 actually, you know, mitigating factors, various other things that are -- are
14 beyond the scope my testimony, but that is the type of things still they --
15 that a counsel would want to develop to see what he could testify about.

16 And I think that he was straightforward enough in his
17 responses that I think that you could probably elicit, you know, an
18 understanding from him about -- first you could elicit what you want to
19 when you -- what you're trying to develop for the defense in terms of
20 what answers you need because these are -- these could be prongs and
21 components of the law. These could be the components that constitute
22 the -- the crime and basically, that's something that's very sophisticated
23 even for a defendant who's not intellectually disabled and that kind of
24 inquiry is where you elicit what you need to from the defendant to -- to
25 give the best, most zealous defense possible and that's not really

1 something that the defendant should be cognizant of, that's like issues
2 of -- of law, issues of the -- you know, the points that constitute crimes
3 and so forth so I wouldn't --

4 Q Understood --

5 A -- expect him to be able to know how he should put forth those
6 things in a way that's exoneratory and so forth and so that -- so when
7 you talk about him testifying, it really does get down to that issue I just
8 talked about and that -- I think that requires a lot of development
9 between counsel and defendant --

10 Q Understood and I --

11 A -- rather than just the general -- rather than just the general
12 question of, you know, should you testify, should you do this, it gets very
13 case specific with a lot of defendants being pretty timid before that you
14 got -- you got to -- you got to milk that from a defendant, you got to --
15 you got to elicit that based on knowledge of the law.

16 MR. PAGE: Understood. I appreciate -- no further questions,
17 Your Honor.

18 THE COURT: All right, thank you. Mr. O'Brien?

19 MR. O'BRIEN: Just brief, Your Honor.

20 REDIRECT EXAMINATION

21 BY MR. O'BRIEN:

22 Q Dr. Sussman, you had mentioned on cross that your diagnosis
23 of mild intellectual disability and the cognitive issues that might come
24 from that you said were not really consequential to the competency
25 issues. Can you clarify that a little bit, what is consequential to the

1 competency issues?

2 A I -- I -- I -- I think that could be profoundly, you know, relevant
3 to competency. Let's say you have somebody with Alzheimer's
4 dementia or has had a severe head injury or, you know, has had
5 strokes, I think it could be profoundly relevant to a competency issue,
6 but in his case, I think that his cognitive deficits rest in the realm of an
7 intellectual disability and, you know, absent any development of, you
8 know, with the evolution of DSM-5, there's a desire to know what this
9 underlying etiology is of a major neurocognitive disorder and, you know,
10 major neurocognitive disorders these are -- for example, these are
11 people who are like not even alert and oriented toward the -- the time or
12 the place, or name. They're -- they're -- they're -- they have major,
13 major holes in their cognition in many global spheres so perhaps the
14 term mild neurocognitive disorder should have been used in terms of --
15 instead of major.

16 You know, somebody who has dementia but still living at
17 home and gets by with some help of family has some mild memory
18 problems but they could tell you give or take, you know, 10 or 12 days
19 what the month and date is, they know where they are, that's the mild
20 neurocognitive. Major neurocognitive disorder are people that -- that are
21 just very, very impaired and Tariq doesn't seem to even rise to that
22 major level, more mild potentially if there is an underlying cause of that --

23 Q Dr. Sussman, did we lose you?

24 A No, can you hear me?

25 Q Ah, there you are.

1 A So basic and I know as Mr. Page discussed there is allowance
2 for unspecified or mixed etiology so we don't have to get to that, but I
3 didn't even -- you know, I think that the (indiscernible) account for
4 everything we were seeing with Tariq Manson in terms of some -- some
5 deficits on evaluation and I don't think we have to go and grab and
6 incorporate a neurocognitive disorder on top of that. Now that's not to
7 say that perhaps something happened, but all I saw was a vague
8 reference to pica and so basically I didn't see enough to even have that
9 be a substantiated diagnosis, plus the fact that Occam's razor says
10 when you have an explanation you don't have to go seeking other
11 explanations.

12 And so, you know, back to your question, Mr. O'Brien,
13 certainly a -- a major neurocognitive disorder or even a mild one for that
14 matter could -- could definitely be a basis for incompetency, but in his
15 case, as to whether or not we parse out and bring that in additively to an
16 intellectual deficit in the context of no really solid, you know, medical
17 history that I've seen in any records, including Dr. Jones-Forrester, for
18 that, I don't see why that's much of an issue here at all explanatory wise
19 for whether there's competency or not. I mean it could be an additive
20 factor, but to me -- to me it's unsubstantiated at this point.

21 MR. O'BRIEN: All right. Thank you, Doctor.

22 I have nothing further, Your Honor.

23 THE COURT: Thank you. Anything else, Mr. Page?

24 MR. PAGE: Nothing further, Your Honor.

25 THE COURT: All right. Thank you. Mr. Page, do you have

1 any additional witnesses?

2 Thank you, Dr. Sussman.

3 THE WITNESS: Do you need me anymore today at all, Your
4 Honor?

5 THE COURT: No, I mean -- well I -- Mr. O'Brien, we don't
6 have anything else, right? We're done with this case, I don't know what
7 else I have.

8 MR. O'BRIEN: Your Honor? I'm sorry, my phone cut out for a
9 second.

10 THE COURT: It's okay. Dr. Sussman was asking if we
11 needed him anymore today and I said well not for this case but I really
12 don't know what else is going on today so I didn't want to give him a firm
13 no.

14 MR. O'BRIEN: No. I think Dr. Sussman's done, Your Honor.

15 THE COURT: All right. Thank you.

16 THE WITNESS: All right. Thank you. I appreciate that, thank
17 you.

18 MR. PAGE: Your Honor, as to your question, I would like to
19 recall Dr. Sharon Jones-Forrester, but I'm not sure if Glen wanted to call
20 last doctor.

21 MR. O'BRIEN: Yes.

22 THE COURT: Oh I'm sorry, I got -- I got lost in my order. So
23 Mr. O'Brien, do you have any other witnesses that you want to call?

24 MR. O'BRIEN: Yes, Your Honor, the State calls Dr. Damas.

25 THE COURT: Good morning, Doctor, if you could please

1 stand and raise your right hand, the clerk is going to swear you in.

2 DR. SARAH DAMAS

3 [having been called as a witness and being first duly sworn, testified as
4 follows:]

5 THE COURT: Great. Thank you, Doctor, if you could go
6 ahead and have a seat and then state your name and spell it for the
7 record?

8 THE WITNESS: Sure, my name is Sarah Damas, S-a-r-a-h
9 D-a-m-a-s.

10 THE COURT: Thank you. Mr. O'Brien, go ahead.

11 MR. O'BRIEN: Thank you, Your Honor. The parties have
12 previously stipulated the qualifications of all the doctors, Your Honor.

13 THE COURT: Thank you.

14 DIRECT EXAMINATION OF DR. SARAH DAMAS

15 BY MR. O'BRIEN:

16 Q Dr. Damas, you were one of the evaluators on Mr. Manson's
17 competency evaluation?

18 A Yes.

19 Q Outside that evaluation, did you have contact with him while
20 he was at Stein Hospital?

21 A Yes I did.

22 Q And what capacity?

23 A I oversee the outpatient competency restoration program so I
24 frequently spoke with the psychiatric caseworker that worked with him
25 weekly. And I actually did -- I participated in his first competency

1 evaluation with Dr. Bradley as well.

2 Q And between the first competency evaluation -- when was that
3 done?

4 A September 2019?

5 Q He had been in the outpatient program for about six months at
6 that point; is that correct?

7 A That's correct.

8 Q And then he was re-admitted for additional time and then
9 finally the -- the second round of competency evaluations were done; is
10 that correct?

11 A Correct.

12 Q At the time the first competency evaluation that you and Dr.
13 Bradley were involved in, was he found competent or not competent
14 after those first evaluations?

15 A He was found not competent with probability of -- of gaining
16 competency in the future.

17 Q When you reevaluated him some time later, you found him
18 competent, correct?

19 A Correct.

20 Q Did you see -- besides the fact that he went from not
21 competent to competent, what sort of improvement did you see in him
22 over that time span?

23 A He -- he showed improvement in his motivation in the -- in the
24 process, you know, he would ask -- take notes, he -- we actually -- he
25 was only going to sessions weekly before the first competency

1 evaluation and so the second competency -- the second commitment he
2 started going twice a week. And in between sessions we saw better
3 retainment of information than previously.

4 Q When you say he had better retention of information, how do
5 you evaluate that?

6 A So each session typically begins with asking a review of the
7 last things that they discussed the previous session so the psychiatric
8 caseworker could say do you remember what we discussed last
9 session, tell me about what we discussed and then he -- he'd give an
10 answer and then she'd probably ask like -- if they discussed plea
11 bargains, she would ask just for a review of plea bargains, for example.

12 Q When he answers questions, are you just looking for him to
13 check a box and give you a particular piece of information or how do you
14 evaluate whether or not he's truly understanding what's been taught to
15 him?

16 A So the questions are asked in different ways. As we've said
17 before, we use the Slater Method and part of the Slater Method is the
18 instructors are instructed to ask questions in different ways. So
19 open-ended questions and then reviewing the information each time --

20 Q I mean there's a concern we don't want someone just
21 parroting back information from the class, correct?

22 A Correct.

23 Q And so how does the -- the -- well the class and the evaluation
24 sort of account for that?

25 A Additionally, they do some role-playing and ask some

1 hypothetical questions to see if he's just not just parroting the
2 information that he learned like the definitions of things but if he knows
3 how to then use that information by giving him a scenario of a plea
4 bargain scenario, whether or not this would be a good deal or this would
5 be a good deal, and then he answers accordingly.

6 Q At the time that you did your second evaluation where you
7 found him competent, did you have access to Dr. Jones-Forrester's
8 evaluation?

9 A No.

10 Q Have you subsequently had access to it and read it?

11 A Yes.

12 Q Did that change your mind as far as whether or not the
13 Defendant was competent at the time you evaluated him?

14 A No it did not.

15 Q There's some mention in her report about him having a
16 reading level at the second grade level. Does that equate to his ability
17 to think or comprehend things being also at the second grade level?

18 A No. Not necessarily --

19 Q Why is that?

20 A So the -- the testing has different categories so in this
21 category it says that his -- his reading level is equal to a second grader
22 that doesn't mean that everything he does is equal to a second grader,
23 like that's just looking at the scores and comparing them to the scores of
24 second graders. So that doesn't -- wouldn't carry over to him reading a
25 study guide, for example. You know, that's just test specific --

1 THE COURT: I'm sorry, I'm not sure I understand that. Can --

2 THE WITNESS: What was that?

3 THE COURT: I just don't know that I --

4 BY MR. O'BRIEN:

5 Q Can you elaborate on that a little bit, Doctor?

6 THE COURT: -- I'm just I want to -- I want to make sure that I
7 understand so --

8 THE WITNESS: Yes. So in those tests they -- they compare
9 scores to the -- the normative scores and in that test he scored similar to
10 second grader reading in that particular section.

11 THE COURT: Okay.

12 THE WITNESS: But that doesn't mean that if he went to
13 testify you'd be putting a second grader on the stand. You know, he --

14 THE COURT: What does it mean?

15 THE WITNESS: It means that on that particular test his
16 scores were similar to the reading level of a second grader.

17 THE COURT: Okay. All right, go ahead, Mr. O'Brien.

18 BY MR. O'BRIEN:

19 Q So how do we --

20 MR. O'BRIEN: Thank you, Your Honor.

21 BY MR. O'BRIEN:

22 Q How do we evaluate the level which he is comprehending
23 things?

24 A Just by talking to him, asking him questions. If he -- if he's
25 answering something and we think that he doesn't understand fully, then

1 we might ask in a different way, in a more simple way to see if -- if that's
2 helps, and then if -- if it doesn't, we'll concentrate on that particular
3 subject until he actually understands it, or demonstrates that he has an
4 understanding.

5 Q And how do we prevent him from just having some sort of rote
6 memorization where he knows if they ask this question I have to give
7 this answer that's what they're looking for?

8 A We ask in different ways and so the -- the psychiatric
9 caseworkers like I said they use the Slater Method they're -- he had at
10 least two different psychiatric caseworkers that was his instructors
11 throughout the year that he was coming to outpatient. So he -- he had
12 different ways that they would ask the questions and then we asked the
13 questions differently from the first evaluation that I participated in to the
14 one that I participated with Dr. Bossi and Dr. Sussman. Dr. Sussman
15 has a higher vocabulary and he would ask questions that I think Tariq
16 found a little bit confusing and so he would ask for clarification. And
17 when we asked a different way he would explain.

18 Q So if the Defendant didn't understand what was being asked
19 he would ask clarifying questions?

20 A He would -- he would either say that he didn't understand or I
21 would ask him if he didn't -- if he understood and he would say no. Then
22 we would explain.

23 Q And then how -- how would you change the questioning to
24 make it a level where he could understand?

25 A Just use simpler language and -- and give examples. A lot of

1 example like hypothetical examples like if I'm asking about evidence and
2 what evidence could be used for or against a person, I might give an
3 example, like say I committed a crime or I'm accused of committing a
4 crime at a gas station but there's no camera evidence of me being there
5 or there's camera evidence that I was at the movie theater at the time
6 and so there's that -- that's explaining that evidence can be used to help
7 you but also against you. So just providing examples like that.

8 Q Dr. Sussman mentioned I think at least once on his
9 cross-examination that the Defendant would give spontaneous answers
10 sometimes during the evaluation. Did you notice that as well?

11 A I'm not really sure what he meant by spontaneous answers to
12 be honest.

13 Q I -- I guess what I'm getting at is just because you get what
14 maybe a -- I don't know if correct answer is the right way to phrase it but
15 even if he's answering questions that would demonstrate competency,
16 do you go ahead and still ask other questions just to delve into that to
17 make sure that he truly is understanding the material?

18 A Yes. Yes we do. Like I said, besides the use of hypotheticals,
19 these questions roll into future questions so when we ask about if he
20 understands the pleas, if he understands what no contest means, but
21 then we go into asking about plea bargains and if he doesn't correctly
22 explain why guilty and no contest would be for a plea bargain and not
23 guilty would be a trial, it shows that he may not have understood the first
24 time and so we would go back.

25 Q How often I -- I think you said this but I -- maybe I missed it.

1 How often at the end before the evaluation was he going to an
2 outpatient restoration?

3 A Twice a week.

4 Q When he first went to Stein he was only going once a week; is
5 that correct?

6 A Correct.

7 Q Would it be beneficial to him to have ongoing sort of
8 reeducation classes as the case progressed?

9 A Yes. Absolutely.

10 Q Why is that?

11 A Like so he -- when he was -- when he was going once a week,
12 like I said he was having difficulty retaining the information
13 (indiscernible) so that's why we bumped it up to two times a week. He --
14 he did improve. I think part of it also is from -- from what I learned in Dr.
15 Jones-Forrester's report is that he has untreated ADHD and that could
16 also play a part in some of this not retaining information or being
17 confused when he asked -- when he's being asked a complex question
18 on the spot like abstract questions.

19 Q And the treatment of his ADHD could assist with that?

20 A Yes, if -- if we would have known the ADHD diagnosis, I would
21 have recommended that he get evaluated for medication, because that
22 could definitely help.

23 Q At -- at the time you evaluated him for competency, you
24 evaluate him under the *Dusky* standard, correct?

25 A Correct.

1 Q Did you find whether he had the sufficient present ability to
2 consult with his lawyer with a reasonable degree of rational
3 understanding?

4 A Yes.

5 Q And did he have a rational and factual understanding the
6 proceedings against him?

7 A Yes.

8 Q Did he demonstrate that he understood the nature and the
9 purpose of the court proceedings?

10 A Yes.

11 Q Did he understand his own position as the accused as well as
12 the role of his attorney, the judge, the prosecutor and other parties in the
13 proceedings?

14 A Yes he did.

15 Q And did he understand the nature of the charges against him
16 and the possible verdicts and outcomes of the case?

17 A Yes. He -- from the beginning he could accurately state his
18 charges and the potential sentencing, saying that he could get up to life
19 in prison.

20 Q What parts were -- did you show improvement of from the first
21 time he was evaluated to the second time after he'd gone through the
22 full range of competency restoration?

23 A He shows a better understanding of plea bargaining and what
24 goes into plea bargaining and the risk of taking the case to trial. Before
25 he didn't really understand confidentiality between him and his attorney

1 and he was able to answer that correctly. I don't remember, sorry.

2 Q But ultimately you went from finding him not competent at one
3 point to finding him competent under *Dusky* at the conclusion of the
4 restoration; is that correct?

5 A Correct. And from what I remember --

6 Q That's all I have -- I'm sorry. Go ahead, Doctor.

7 A From what I remember --

8 Q Go ahead --

9 A From what I remember he -- the first evaluation he had -- he
10 struggled with giving rational answers to plea bargaining and -- and the
11 options and weighing his options and then he didn't really show that he
12 had difficulty with that in the second evaluation. He -- he gave rational
13 answers to that, you know, he -- he said 20 years didn't seem like
14 something that he would want, he said that probation would be fine but
15 he doesn't want to register as a sex offender his whole life so I could see
16 that he was weighing his options.

17 MR. O'BRIEN: Okay. Thank you, Doctor.

18 THE COURT: Are you done, Mr. O'Brien?

19 MR. O'BRIEN: That's all I have, Your Honor.

20 THE COURT: All right. Mr. Page?

21 CROSS-EXAMINATION

22 BY MR. PAGE:

23 Q Ms. -- Ms. Damas is that correctly stated?

24 THE COURT: Doctor.

25 Q Or Damis (phonetic)?

1 THE COURT: Mr. Page, it's --

2 A Uh-huh.

3 Q Doctor?

4 THE COURT: -- it's Doctor.

5 MR. PAGE: Doctor, I apologize.

6 BY MR. PAGE:

7 Q Doctor, do you disagree that Tariq has cognitive problems?

8 A No I don't disagree.

9 Q And prior to your first -- prior to the evaluation the -- the last
10 evaluation where you found him competent, you didn't do any cognitive
11 testing, correct?

12 A Correct.

13 Q Didn't do any neuropsych testing is -- correct?

14 A Correct.

15 Q And you didn't do any testing as to his -- we were talking
16 about reading ability at that time, correct?

17 A Correct.

18 Q But you -- you didn't have this information before as to things
19 that could cause him to not truly understand what was being discussed?

20 A Well we did have a psychological report by Dr. Lisa Forrester
21 who she -- she talks about learning disorders and borderline intellectual
22 functioning. So we (indiscernible) --

23 Q But you did --

24 A -- method.

25 Q You did recognize that -- that there was some intellectual --

1 A Yes.

2 Q -- concerns and that there was also some diagnosis of such of
3 prior doctors -- Stein doctors of that when he was found incompetent,
4 correct?

5 A (No audible response.)

6 Q But you were unaware that in addition to this intellectual
7 disabilities that there was actual other cognitive disabilities that -- that he
8 was dealing -- that he was dealing with that could affect his ability to
9 rationally understand what was going on?

10 A I was unaware of the ADHD diagnosis from his past.

11 Q So when you observed, read Dr. Sharon Jones-Forrester's
12 report and her opinion and the concerns of what Tariq was saying
13 approximately if I remember 30 to 60 days after your evaluation, you
14 didn't find his answers concerning to you?

15 A No not particularly. As Dr. Sussman spoke about, I -- I
16 thought that the questions that he was asked was rather complex and
17 abstract. I think the answers that he provided as far as his charges for
18 example, you know, he may not have provided you guys with the exact
19 verbatim definition of consent, but he -- he understood the basis, he
20 understood that the crime was considered a crime because of her age.
21 And with -- with abstract questions like that it takes for somebody with
22 an intellectual disability, they may not be able to answer the question the
23 first or even second time around. So and he wasn't educated
24 specifically on consent so what I do find is that he's has -- he has the
25 capacity to learn. As I think Dr. Sussman said, the increase in his pre

1 and post legal process test was a 30 percent to 80-something percent
2 so he -- he demonstrated that he could learn information --

3 Q And that increase of -- of learning that you say happened
4 specifically when he went to two times a week, correct?

5 A Not specifically. He just was it was better -- he was better at
6 retaining the information.

7 Q And you don't believe that that has anything to do with his
8 excellent rote memory other than comprehending? I wouldn't say
9 excellent but better rote memory that he -- than other concerns?

10 A I'm sorry, what was the question?

11 Q And you don't believe --

12 A (Indiscernible) --

13 Q -- the increase in his percentage actually happened not due to
14 better understanding rational understanding of the -- the issues but more
15 of his rote memory that he's relatively high on other than his other
16 cognitive issues that he has?

17 A No. Like I said, we would ask giving scenarios and
18 role-playing so it wasn't just the same question over and over again. It
19 wasn't the same answer over and over again. He was able to describe
20 things more in detail and --

21 Q Now but with the issue for example that was discussed the
22 last testimony of his role as a defendant in a -- in a case like this, that
23 was discussed through the Slater Method during this process, correct?

24 A Yes.

25 Q And -- and it was discussed with him during the Slater -- using

1 the Slater Method that how he should act in trial proceedings; is that
2 correct?

3 A Yes.

4 Q And was it -- and it was -- and it was discussed with him how
5 he could assist counsel during his prior -- during his -- the court
6 proceedings?

7 A I believe so, yes, at the --

8 Q Okay. So then when -- when we're discussing the importance
9 of his presence in -- in court and we ask the question of how should he
10 act in court and all he says is be quiet, do you believe that that's an
11 appropriate answer?

12 A I believe it's an appropriate first answer. Yes.

13 Q Okay. And then if I ask another open-ended question such as
14 well, are there -- are there times where you shouldn't be quiet and he
15 has no answer for that, do you believe that's appropriate -- that that's --
16 that that's a rational understanding of how he can assist counsel?

17 A I don't think that that sheds any light to whether or not he has
18 a rational understanding or not, I think he just didn't understand -- he
19 might not have just understood the question that you were asking. I
20 think -- like we implemented the Slater Method, I think there -- some
21 accommodations that can be implemented in how you and him -- you
22 and him work together, how he is in court such as --

23 Q So if I --

24 A -- (indiscernible) --

25 Q So if I ask -- okay, I -- and so if I ask additional questions --

1 MR. O'BRIEN: Judge, I'm sorry, I'm going to -- I'm object I -- I
2 think this is part of the problem with the video is we cut each other off
3 and I think Dr. Damas middle the answer and -- and I don't know Mr.
4 Page is intentionally cutting her off but it's happened a couple times
5 where she's trying to answer --

6 THE COURT: Okay.

7 MR. O'BRIEN: -- the question and -- and he's kind of move on
8 to his next question so I'd ask that she be allowed to finish her answers.

9 MR. PAGE: I -- I apologize, I'll -- I'll do better.

10 THE COURT: Thank you, Mr. Page.

11 BY MR. PAGE:

12 Q Did you have anything in addition that you wanted that you
13 want to say before?

14 A Yes.

15 Q Additional --

16 A Yes. So if he -- if you ask him a question that might be
17 confusing, he -- he wouldn't be able to give an answer so -- and that
18 happens sometimes especially with somebody with lower functioning or
19 mild borderline intellectual disability, but when that happens I usually
20 reword the -- the question in simpler terms. And if that doesn't work, I'll
21 give an example -- and if that doesn't work, I'll explain the answer and
22 then ask at a later time to see if he -- he knows the answer. I mean --

23 Q Okay.

24 A -- not being able to recite an answer doesn't necessarily mean
25 he doesn't understand, it just might mean at that moment he might have

1 word finding difficulties or he just might need a refresher. His
2 competency isn't if you answer the test questions accurately but if you're
3 capable of learning and understanding information.

4 Q You -- you testified earlier that you did read the report from Dr.
5 Sharon Jones-Forrester.

6 A Yes, correct.

7 Q And you recall in there that Sharon Jones-Forrester did
8 observe myself doing the -- the same things that you are suggesting that
9 I do and still had difficulty obtaining (indiscernible) that were critical to
10 his -- his ability to assist counsel?

11 A What was the question?

12 Q You remember --

13 THE COURT: I'm sorry, I didn't understand --

14 Q -- you remember reading that in the report?

15 A Yes.

16 THE COURT: -- understand it either, Mr. Page.

17 BY MR. PAGE:

18 Q I guess in the report of Dr. Sharon Jones-Forrester, you
19 remember her making mention that I did in fact ask multiple questions, I
20 did in fact try to simplify questions, I used all the different options that
21 you are suggesting from the Slater Method, but yet obtained information
22 to show that he was not able to assist me, counsel?

23 A Yes, I -- I remember her reading that. However I don't really
24 know what the questions were or how they were worded, but yes I -- I do
25 remember reading that it was simple, open-ended questions.

1 Q But you do -- scratch that question. You believe --

2 A I would like to say that -- oh sorry.

3 Q Go ahead.

4 A I would like to say that there's -- there's more
5 recommendations though than just using simple language and
6 open-ended questions that could be implemented --

7 Q And that is --

8 A -- (indiscernible) --

9 Q And I apologize for interrupting, I thought you were done. And
10 I guess (indiscernible) goes right along with that is that you did mention
11 previously repeating the questions, giving answers and then going back
12 later on to see if it -- if he understood after the answers were given?

13 A Uh-huh. Avoid leading questions, taking short breaks is
14 helpful, avoid frustrating questions about time or complex sequencing or
15 reasons for behavior is some of them that's listed under the Slater
16 Method. Provide praise and encouragement. Highlight important info --
17 information to improve (indiscernible) --

18 MR. PAGE: I have no further questions, Your Honor.

19 THE COURT: All right. Mr. O'Brien?

20 MR. O'BRIEN: Nothing further, Your Honor.

21 THE COURT: Thank you. Thank you, Doctor.

22 THE WITNESS: Thank you.

23 THE COURT: Mr. O'Brien, do you have any additional
24 witnesses?

25 MR. O'BRIEN: No, Your Honor, the State rest.

1 THE COURT: All right. Mr. Page?

2 MR. PAGE: Your Honor, I would like to recall Sharon
3 Jones-Forrester as rebuttal, Your Honor, please.

4 THE COURT: All right. And Doctor, you've been previously
5 sworn in this -- sworn in, in this case so I'll remind you that you are still
6 under oath.

7 And go ahead whenever you're ready, Mr. Page.

8 MR. PAGE: I appreciate it.

9 THE WITNESS: I apologize. Thank you. Yes, Your Honor.

10 DR. SHARON JONES-FORRESTER

11 [having been called as a rebuttal witness and being previously sworn,
12 testified as follows:]

13 DIRECT EXAMINATION OF SHARON JONES-FORRESTER
14 BY MR. PAGE:

15 Q Okay, I'm going to kind of go generally into some questions
16 that I have and then I'll go some -- specifically into some things that
17 were discussed today, okay?

18 A Certainly.

19 Q We talked previously about Tariq's memory results in your
20 evaluation. Can you refresh us on that?

21 A Certainly. During his neuropsychological testing, Tariq
22 demonstrated quite good rote memorization and benefited from
23 repetition and review, but he struggled with recalling more complex
24 information especially after a delayed time period. What that means
25 practically is simply just that he has a learning style in which his memory

1 is benefited from repetition and review.

2 Q And -- and does this -- how does this assist him more as to his
3 memory (indiscernible)?

4 A I -- if I understand --

5 Q Is it short term --

6 A Okay, if I -- well if I understand your question correctly, rote
7 memorization simply looks at ones ability to learn effectively from
8 repetition. And in that case it shows -- his neuropsychology testing
9 shows that he has quite good ability to benefit from repetition and
10 review, he has good short-term memory. My concern, however, is that
11 even a fairly short time after he was found competent he wasn't able to
12 later retain the information sufficiently to meet the *Dusky* standard.

13 Q And before I go more into that, when you did the observations
14 of discussing with Tariq, you've heard just recently the things that I could
15 do to ensure that he understands and that he feels comfortable. How do
16 you feel that I -- I did under those circumstances?

17 A I hope I made that clear in both my report and my previous
18 testimony, but I greatly appreciate Dr. Damas pointing out those
19 accommodations and made it clear in both my report and testimony that
20 I think you made very significant efforts to accommodate for those exact
21 -- exact recommended accommodations. So specifically you stated
22 information clearly, you used open-ended questions, you provided
23 support and reinforcement, you avoided any use of technical or
24 confusing jargon, you broke things down simply, you used all of those
25 accommodations that are suggested.

1 Q Now, with that in that context then, why is rote memory that
2 we were talking about before important to his competency (sic) rest --
3 restoration respect?

4 A I'd like to clarify that because I -- I think there's been some
5 misunderstanding about the term rote memorization. Other terms have
6 been used like parroting or regurgitation throughout the previous
7 testimony. Those are really in many ways problematic terms because
8 they have a very negative or loaded connotation. When I talk about rote
9 memorization, I'm referring specifically to his objective test performance
10 during neuropsychological testing in which he shows that he definitely
11 benefits from repetition and review.

12 So I appreciate the efforts made consistently at Stein to use
13 the Slater Method and I have no doubt that with those supports and with
14 his good rote memorization skills he was able to benefit. However, then
15 when we looked at his performance some very short time after, he's
16 clearly not continuing to retain. Some people who rely on rote
17 memorization can do so extremely efficiently over the long term.
18 Unfortunately Tariq cannot. Although he has good rote memorization
19 skills and good short-term memory, when he later has to recall
20 information, he's not able to do so particularly as it pertains to the
21 competency restoration training.

22 Q Thank you. Now, going back a little bit into this, in your
23 testimony the last time, I just want to talk about Dr. Sussman and
24 O'Brien talked about. They used the words quite a bit of nuance and
25 complexity that we're demanding more than what the -- the standard --

1 the *Dusky* standard requires. Are you? What are your thoughts --

2 A No. Well I -- I -- I appreciate your question. From my
3 perspective there's nothing in my report that goes beyond *Dusky*. The
4 title of my report is specifically neuropsychological evaluation and
5 competency evaluation. I considered his neurocognitive functioning and
6 talked about the ways in which that consideration of his cognitive
7 functioning is pertinent *Dusky*. I by no means have any intent to
8 revolutionize *Dusky* and agree with the Stein doctors that the bar is low.
9 However, *Dusky* relies both on factual and rational understanding. Even
10 in the rare cases in my report where Tariq had factual understanding, his
11 rational understanding from my perspective and in my professional
12 opinion is not sufficient to meet *Dusky*.

13 And just to clarify about the words nuance and complexity, I --
14 I think that's a fair point and we can all -- certainly myself can do better
15 in terms of using clear language. I'm clearly fond of the word nuance
16 and used it four times in my 17-page report. However, I think it probably
17 would have been more clear and less confusing if I simply stated that
18 although he had a factual understanding in this particular area, his
19 rational understanding was not sufficient.

20 So an example of that you raised previously was his
21 understanding about proceedings. He understands he should be quiet
22 in court, but he doesn't understand the exceptions to that. He
23 understands with regard to proceedings how to behave in terms of being
24 quiet, but he has very low insight into his intellectual and neurocognitive
25 difficulties such that not only can he not accurately identify

1 comprehension problems, he also can't convey any comprehension
2 problems to counsel during proceedings in any way that would be
3 sufficient to appropriately assist counsel in his defense.

4 Q You are in no way asking or requiring some sophisticated
5 understanding of the legal --

6 A No --

7 Q -- (indiscernible)?

8 A I'm -- I'm sorry to interrupt, Mr. Page. No. And -- and I was
9 actually surprised to hear that in -- particularly in Dr. Sussman's
10 testimony the revolutionary piece was just very puzzling to me that I
11 state very clearly in my report that I'm being guided by *Dusky*. I don't to
12 my -- at least to my understanding say anything in my report that would
13 suggest that I have any intent to go beyond it. I think that by no means
14 is there a sophisticated understanding necessary. I agree with the Stein
15 doctors that the *Dusky* standard bar is low, as it should be. However,
16 the *Dusky* standard does require both factual and rational understanding
17 and unfortunately even in those rare cases where Mr. Manson has
18 actual understanding, his rational understanding is not sufficient to meet
19 that bar.

20 Q Appreciate it. You also heard from Dr. Sussman about the
21 statement that you were finding incompetency solely based on cognitive
22 disabilities. Can you discuss that?

23 A That -- that too is somewhat puzzling to me that my report
24 includes both the neuropsychological evaluation and significantly later
25 observation of his interactions with you as counsel. Cognitive

1 functioning is of course pertinent to *Dusky* because it gets specifically to
2 factual and rational understanding. By no means do we need
3 neuropsychological testing in I would say most cases related to
4 competency. That's why this is done relatively rarely. However, with Mr.
5 Manson, we have a complex cognitive profile in which he has cognitive
6 deficits well above what we would expect just from the intellectual
7 disability alone and these things are really important to consider
8 because they directly impact his comprehension.

9 Q Appreciate that. Let's go a little bit into then your diagnosis
10 because I believe there was some confusion that -- that was brought
11 about in the Stein's testimony. Can you define the diagnosis that you
12 gave of unspecified neurocognitive disorder?

13 A Of course, I would be happy to and I'm not sure if Dr.
14 Sussman is still on the call so want to just fairly acknowledge I'm -- I'm
15 referencing back to his testimony earlier this morning. You had asked
16 him to define unspecified neurocognitive disorder and he talked about
17 other issues such as Huntington's and Alzheimer's that are actually not
18 at all included in that diagnostic criteria. So if I may quote directly from
19 the DSM-5 just so we all absolutely understand the diagnostic criteria, I
20 think that might be helpful for the Court in terms of avoiding confusion.
21 Is that okay?

22 THE COURT: That's fine.

23 MR. PAGE: Yes please.

24 THE WITNESS: Okay, thank you. So I'm just going to read
25 my notes because I want to capture the -- the diagnostic language

1 accurately. So to directly quote from the DSM, quote, this diagnosis is
2 applied to presentations in which symptoms characteristic of a
3 neurocognitive disorder that cause clinically significant distress or
4 impairment in social, occupational or other important areas of function
5 and predominate but do not -- specifically do not meet the full criteria for
6 any of the disorders in the neurocognitive disorder diagnostic class. The
7 unspecified neurocognitive disorder category is used in situations in
8 which the precise etiology cannot be determined with sufficient certainty
9 to make an etiological attribution, end quote.

10 So when Dr. Sussman talked about Huntington's and
11 Alzheimer's and dementia and geropsychiatry, I -- I think it conveys a
12 misunderstanding about the exact precise diagnostic criteria. I agree
13 that the distinction between minor and major is an area of concern in
14 which different professionals can and do disagree. I understand exactly
15 his concern with that. However, when we talk about these other
16 etiologies, it -- it conveys a misunderstanding of exactly what the
17 diagnostic criteria is here. It specifically states we use this when the
18 cognitive -- when the cognitive problems do not meet criteria for those
19 other issues.

20 BY MR. PAGE:

21 Q But there are still significant issues that -- that are present?

22 A Yes. It means -- very practically for the Court, it means there
23 are significant cognitive issues present that were acquired, so not just
24 that he was born with it in terms of the neurodevelopmental piece of
25 intellectual disability or ADHD. This is why pica's important because it

1 likely leads to additional brain damage over and above what we would
2 expect just from the intellectual disability. But absent the medical
3 records to quantify that and in the presence of neuropsychological
4 functioning or neurocognitive testing, the more conservative diagnosis is
5 unspecified neurocognitive disorder rather than a neurodevelopmental
6 disorder or another cognitive disorder.

7 Q Why is it important then to -- to understand that not only does
8 he have cognitive concerns but in excess but not only does he have -- I
9 apologize, let me retract that. That not only does he have intellectual
10 disabilities but he also has in excess -- cognitive problems along with
11 ADD that you've been talking about. Why is that important?

12 A Well, I -- I really appreciate Dr. Damas's perspective that the
13 ADHD adds another piece. It means that he would be more easily
14 distracted, probably fidgety, less likely to be focused, but when we look
15 at the baseline, I -- I significantly disagree with Dr. Sussman's
16 assessment that all of these cognitive issues could just simply be
17 explained by intellectual disability. In fact many folks with intellectual
18 disability do have quite good memories and quite good memory -- rote
19 memorization in particular. The -- with Mr. Manson in particular, what
20 we see are cognitive difficulties that are over and above what we would
21 expect simply from intellectual disability or from ADHD alone.

22 Q And it's --

23 A When we consider these, it leads to a higher degree of
24 comprehension difficulties.

25 Q And -- and this stuff, I guess the higher comprehension

1 difficulties were not -- Stein doctors were not aware of these?

2 A I -- I would assume based on the fact that the -- his last
3 evaluation at Stein and my report was done after that so after he was
4 found competent at Stein I had the opportunity to directly observe with
5 you. However, and that was the competency portion of my report, but
6 my original evaluation with Tariq was September 26th of 2019 and --
7 and from that point on he clearly has cognitive deficits that have
8 continued. Despite I think very reasonable efforts at Stein to
9 accommodate for his intellectual disabilities using the Slater Method,
10 they (indiscernible) him with a high level of support and frequent
11 repetition and I have no doubt those were helpful for him, but we're still
12 left with the unfortunate difficulty that he is not retaining the information
13 sufficiently to continue to have restored competence.

14 Q Then is there a possibility that Stein doctors without really
15 understanding the -- the cognitive disabilities that he has is recognizing
16 his answers appropriately as factually understanding but is missing the
17 rational understanding of him comprehending what's going on and to be
18 able to assist counsel?

19 A Well I -- I'd like to perhaps challenge that a little bit. I have
20 utmost respect for the Stein doctors. I think that they did a very good job
21 of understanding his intellectual difficulties and the cognitive issues
22 associated with that. They used the Slater Method, they accommodated
23 for this, as Dr. Damas was saying, using all of the necessary
24 information. The piece that I think is missing is an appreciation for the
25 fact that even when Mr. Page as counsel is providing all of these

1 accommodations, he's not retaining the information. He has very very
2 low factual understanding in all areas of *Dusky* and doesn't have rational
3 understanding. I think that the neuropsych piece might have been really
4 helpful, but the larger issue I think is that even after a short time -- even
5 a short time after he was found competent he unfortunately is not
6 retaining this information sufficiently to meet *Dusky*.

7 Q One quick question back on back -- would like him taking
8 ADHD medication help that?

9 A I -- I appreciate Dr. Damas' perspective on that. It would help
10 with regard to helping him to maintain focus, and I -- I agree with her that
11 had she known that information that referral for medication assessment
12 would have been appropriate. However, it would not have been
13 sufficient to ameliorate all of the other neurocognitive issues that he has.

14 Q And in your evaluation just to clarify that you -- you did review
15 educational records and Social -- Social Security records and discussed
16 with his parents other concerns and issues, correct?

17 A Yes, that's correct.

18 Q Anything else that you think that is important for the Judge to
19 consider in -- in determining the -- his ability to be -- not only his
20 competency now but whether he can be rehabilitated?

21 A Well, one of my -- yes, thank you, and I apologize, I have so
22 many things I would like to say that they were all coming at the same
23 time. I apologize, I'll try to be as succinct as possible.

24 First just in terms of the diagnosis, I'm -- I'm concerned that
25 the previous testimony of Dr. Sussman where he talked about

1 neuropsychiatry and Alzheimer's and dementia and assisted living and
2 these other issues conveys a significant misunderstanding of the
3 diagnosis that I've actually given Tariq and -- and I was just concerned
4 about that. I have utmost respect again, but those issues are very
5 clearly not diagnostically related per the DSM-5 diagnostic criteria.

6 Specifically to your question about other important
7 considerations, when we look at both Tariq's intellectual and
8 neurocognitive functioning, these are long-term deficits. They're deficits
9 that are well documented in his early Social Security records and
10 educational records, they're expected to be long term, and respectfully,
11 I'm -- as I stated previously, I think Stein did -- that Stein doctors did a
12 very appropriate and good job of accommodating for the intellectual
13 disability by using the Slater Method, but his neurocognitive deficits are
14 expected to be long term and they're so significant that they're not
15 amenable (phonetic) to restoration despite best efforts. The best
16 evidence we have for that is the direct observation with counsel in which
17 even with all of the necessary recommended accommodations he's
18 continuing to not be able to meet the standard.

19 MR. PAGE: Appreciate that. And -- no further questions,
20 Your Honor.

21 THE COURT: All right. Mr. O'Brien?

22 MR. O'BRIEN: Just brief, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. O'BRIEN:

25 Q Doctor, in fairness Dr. Sussman, he's not pulling these words

1 like nuance and complex out of the air, correct? They're from your
2 report?

3 A That -- that's correct and -- and that is why I said I really
4 appreciate the opportunity to address that because I -- I do think that it
5 kind of made it seem like I was looking for something more complex. I
6 think we can all run the risk of being over fond of certain words and so to
7 clarify, when I talked about that, I was talking specifically about even in
8 those rare instances in which he had a very rudimentary factual
9 understanding, such as when he's able to identify the role of the -- the
10 defense and prosecution for example, he doesn't have the full
11 understanding of that there are other people in the legal system.

12 For example, he can't understand the role of judge or jury, he
13 doesn't have an appreciation for his own role as the Defendant, so I -- I
14 think that's fair that when we talk about nuance and complexity that
15 could have been stated more clearly, but to clarify that I don't think we
16 need to have a very sophisticated understanding, we simply just have to
17 have rational and factual understanding sufficient for *Dusky*.

18 Q Well some of that is you want him to understand the why of
19 things, correct? Like for example I notice your report you talk about --
20 talk about the charges, he says he understands that it's not legal have
21 sex with someone under 14, but he doesn't know why that's the law, he
22 just knows that's the law and you want him to understand the why of
23 why something is wrong; is that correct?

24 A I -- I don't think we need to fully understand the why, but we
25 need to have a sufficient rational understanding to be able to assist

1 counsel in his defense and meet the criteria of *Dusky*. So I think all of
2 us fall short of understanding the ultimate whys at times. So when we
3 look at that bar, he doesn't have to have a sophisticated understanding
4 of why, but he does need to understand his charges.

5 Q And -- and he demonstrated he understood what he was
6 charged with, correct? Factually understood what he was charged with?

7 A Factually absolutely, Mr. O'Brien, but not rationally.

8 Q Well he understood that the law said that his accused
9 behavior was illegal even though he didn't understand why it was illegal,
10 correct?

11 A That's correct. Yes.

12 Q So that's sort of the rational you're getting at is you want him
13 to understand why society says you can't have sex with a 14-year-old or
14 someone under 14 and he just understands that he can't?

15 A I -- I think that in Tariq's particular case, the fact that he
16 doesn't understand even at a very basic and fundamental level details
17 related to that other than being told that it was illegal is problematic in
18 the sense that it is barely an understanding of the factual piece and
19 conveys a significant misunderstanding with regard to rational.

20 Q When things are rephrased for him, he demonstrates a better
21 understanding than if more complex words are used, correct?

22 A Absolutely, and I agree with Dr. Damas that that's critical and I
23 observed Mr. Page doing that consistently throughout his interactions
24 with Tariq.

25 MR. O'BRIEN: Court's indulgence.

1 BY MR. O'BRIEN:

2 Q He demonstrated that he understood the concept of evidence
3 being used against him, correct, as in I think there was one point your
4 report you talked about he didn't believe he could be convicted if there
5 wasn't videotape of evidence of him committing the crime?

6 A That's correct.

7 Q He understood there might be factors that weigh in favor
8 (indiscernible) for example the fact that he looked young, he wasn't that
9 much older than his victim, correct?

10 A Yes, and getting -- getting back to just your -- your previous
11 statement about the video evidence, I think that speaks to very
12 significant comprehension difficulties. So not only can he not weigh
13 evidence against him but he has a belief that absent video evidence
14 there isn't -- there isn't evidence against him and I think that's profoundly
15 problematic in terms of his understanding.

16 Q Well there's a difference between thinking there's not
17 evidence against you and -- and recognizing that there's certain
18 evidence that is more valuable than others. For example, it may be
19 difficult to convict someone based purely on witness testimony, whereas
20 physical evidence may make a case stronger, correct?

21 A I understand that, but I absolutely would argue that Tariq does
22 not understand that. He doesn't have any appreciation for that degree
23 of detail.

24 Q And you don't believe that ongoing abilities to restore him
25 would be of any significance to him?

1 A I'm not sure I totally understand your question. Can you --

2 Q Well, Dr. Damas and I -- I'm sure the other doctors testified
3 this too, but specifically Dr. Damas testified that there were points during
4 his restoration where he didn't understand concepts and then towards
5 the end he demonstrated he did and ultimately he was found competent
6 and then some time even though not a long time, some time passed
7 before you observed him and you said he had lost many of those gains
8 apparently. I talked to Dr. Damas about him having sort of ongoing
9 reeducation as the case progressed and she thought that would be
10 valuable. Do you not think that would be valuable to him?

11 A Thank you for clearing that I -- clarifying that, I appreciate it. I
12 agree with Dr. Damas that having the support of repetition is important
13 and I testified to that previously when I talked about rote memorization
14 that he does benefit from continued repetition and review, but his other
15 neurocognitive disorders and the fact that he has not retained
16 information even a very short time after being found competent suggest
17 that while he can benefit from this in the short term, he's not retaining
18 the information in the long term significantly enough to meet the
19 standard of *Dusky* even a short while after being found competent.

20 Q Is it fair to say you don't challenge the doctors from Stein's
21 (sic) testimony that to ensure that they weren't just getting rote answers
22 (indiscernible) they would ask questions different ways to sort of
23 challenge his understanding of the concepts they were asking about?

24 A Absolutely, and I think I've been really clear with that in my
25 testimony that I appreciate and respect that the Stein doctors were doing

1 everything they could to accommodate that. My mere concern is that
2 even with those accommodations, a short time later he is not retaining
3 the competency restoration information. Even after having had --

4 Q And when you say --

5 A -- that significant improvement.

6 Q I'm sorry, Doctor. When you say a short time later, how much
7 time are we talking about between their evaluation and your
8 observations?

9 A Sure, I -- so I evaluated his interaction with counsel on April
10 23rd of this year and just a brief indulgence, I need to look at the dates
11 here just want to be as accurate as possible. And so 3/23/20 so March
12 23rd of '20 I have the adjudicative competency evaluations by Dr.
13 Damas, 3/11 the evaluation by Dr. Bossi and 3/22 the evaluation by Dr.
14 Sussman. So all done within approximately a month before I observed
15 his interaction with his counsel so we're not talking about a really
16 extended period of time but some short month later he is not retaining
17 the information even after having made those gains at Stein.

18 MR. O'BRIEN: Nothing further, Your Honor.

19 THE COURT: All right. Mr. Page, anything else?

20 MR. PAGE: Your Honor, just one brief question if I may?

21 THE COURT: Absolutely.

22 MR. PAGE: Or couple brief questions.

23 REDIRECT EXAMINATION

24 BY MR. PAGE:

25 Q You mentioned previously that one of the concerns that you

1 have for Tariq is his lack of ability to appreciate his own cognitive
2 disabilities.

3 A That's correct

4 Q Why -- why do you -- why is that such an important concern
5 when dealing with the ability to assist counsel in the defense?

6 A It presents multiple concerns. To put it in the most practical
7 terms, it is not merely that he will have comprehension difficulties, it is
8 that he has low insight so he can't even accurately identify when he
9 doesn't understand something and to be able to identify that to counsel
10 and seek assistance. All of these things will significantly undermine his
11 ability to assist counsel in his defense during proceedings. So it's not
12 simply that he has comprehension difficulties, it's that he doesn't have
13 insight such that he can even recognize when those comprehension
14 difficulties occur for him.

15 Q Would you agree that that would be very difficult for him to
16 assist counsel during a trial under these proceedings?

17 A Absolutely, I think that speaks to the heart of his difficulty or at
18 least a very core portion of his difficulty in terms of his ability to assist
19 counsel in his defense.

20 MR. PAGE: Thank you. No further questions.

21 THE COURT: All right. Anything else, Mr. O'Brien?

22 MR. O'BRIEN: No, Your Honor, thank you.

23 THE COURT: All right. Thank you, Doctor. And Mr. Page --

24 THE WITNESS: Thank you, Your Honor.

25 THE COURT: Mr. Page, did you have any additional

1 witnesses?

2 MR. PAGE: No, Your Honor.

3 THE COURT: Mr. O'Brien, any surrebutal?

4 MR. O'BRIEN: No, Your Honor. Thank you.

5 THE COURT: All right. Argument?

6 MR. PAGE: Your Honor, I -- I believe this -- this comes down
7 to and I -- and I believe that there's -- some might call it semantics, but I
8 believe it's -- it's more than that and I do believe that there needs to be
9 an understanding that he -- *Dusky* requires both a factual and a rational
10 and -- and -- and I believe that the -- that the Stein doctors in -- in
11 analyzing this is -- is -- is putting their rational understanding more on
12 basis of the factual. They're not really -- there's -- there's this -- there's
13 this gap in between whether he really even understands what he is
14 saying and -- and how to apply that. And I believe that taking into
15 consideration not only his intellectual disabilities but there was a --
16 there's a lack of understanding the -- the importance of the -- the
17 severity of also his cognitive abilities in how he's able to fully
18 understand, comprehend and assist counsel. And I believe it goes down
19 -- the most important part goes to this -- this -- this factor that -- that he
20 completely lacks the appreciation of -- of his cognitive disabilities where
21 he's even able to recognize when or what he needs to do to assist
22 counsel or how he needs to assist counsel.

23 I think your point that -- that -- that was -- that you made and
24 the question, although I don't believe it was answered properly through
25 Dr. Sussman, is that would he be able to have a rational understanding

1 of whether he should or may be able to make the decision whether he
2 should testify at trial or not and he wouldn't be able to have that ability to
3 even know. Now could I say you should testify? He could -- and he
4 would. I should say you -- you shouldn't testify. He won't and he
5 wouldn't. But the -- the -- the difficulty is -- is him being able to
6 recognize that what they said here is wrong and even be able to say --
7 address that concern with me.

8 These are some -- these are some factors that I think are --
9 are basic and -- and very important with the concept of being able to
10 assist counsel. Does he have a -- do I believe it requires a sophisticated
11 understanding of everything? Absolutely not. But I have applied --
12 when we did the -- the -- the evaluation with Dr. Sharon Jones-Forrester,
13 we did have the -- the -- the evaluations that found incompetence by
14 Stein and their recommendation. We took that into extensive
15 consideration and understanding in trying to make sure that we were
16 following all the recommendations that they were suggesting that I do.

17 We even discussed ways that I could do better and how I
18 could do it before even the thing so it was something that we took very
19 under consideration and -- and we took it with the greatest importance.
20 Yet I believe in the questions that we were asking, they weren't
21 questions of sophisticated knowledge in things that we were asking, it
22 was -- they -- these -- these were basic questions and questions asked
23 in different ways and answers given and then immediately which is even
24 in the report of -- of Dr. Sharon Jones-Forrester that when we went to
25 review these things, none of them could be recalled. The only thing that

1 could be recalled was the last suggestion that I said and nothing of
2 importance of the important things that were going forward to actually
3 understanding assisting counsel.

4 I don't believe we're going -- we're asking to you to go over
5 what the *Dusky* standard is. I believe that he's not meeting the *Dusky*
6 standard. I believe that not only is he not meeting the *Dusky* standard
7 that continued efforts in rehabilitation of -- of this although might have
8 short term benefits, when it comes to actually proceeding to a trial under
9 these circumstances, really that he would not be able to meet that
10 standard to assist counsel properly.

11 We would -- I would submit, Your Honor.

12 THE COURT: All right. Thank you. Mr. O'Brien?

13 MR. O'BRIEN: Your Honor, I think the problem that Dr.
14 Sussman was getting at is that he described as revolutionary and I don't
15 think that's the wrong word. There's -- all over Dr. Jones-Forrester's
16 report is the word nuance, sophisticated, complex. I know she tried to
17 back off that a little bit, but I mean this is the report that she submitted
18 that we had the doctors review and that's the standard she is attempting
19 to use which is to greatly expand *Dusky*.

20 She also seems to be very concerned about sort of his
21 long-term understanding of things and -- and frankly I -- I don't think
22 that's the role of competency or the court as to what he's going to be
23 down the line, it's at the time the trial's being conducted can he
24 understand and assist. Now whether or not, you know, two months after
25 trial he still can that's -- that's not the standard.

1 THE COURT: Mr. O'Brien, can I ask you a question?

2 MR. O'BRIEN: I -- I think --

3 THE COURT: Would you agree though that he has to be able
4 to make a rational decision about --

5 MR. O'BRIEN: I'm sorry, I -- I can barely hear you.

6 THE COURT: Would you agree that he has to be able to
7 make a rational decision -- there's two things that a defendant -- criminal
8 defendant has the absolute right and authority to make decisions on.
9 First is to go to trial or take a negotiation and second is whether to testify
10 so I mean do you agree that he has to be able to rationally do both of
11 those things to be competent to go to trial?

12 MR. O'BRIEN: Of course, but I think the -- the problem is in
13 how they evaluate that. I -- I think Dr. Damas talked about this a little bit
14 that when they were doing the evaluations sometimes he would say I
15 don't understand what you're saying, other times he wouldn't and they
16 would really have to address him as far as how he understands. I think
17 he probably is not going to speak up every time and that is going to be
18 more work for Mr. Page or whoever ends up representing him to really
19 delve into how much he understands and I think ongoing restoration
20 efforts probably need to be conducted for him and it's just one of those
21 things where we have to adapt to him versus having him adapt to us.

22 He of course has to understand the pros and cons of testifying
23 and of going to trial and that is part of the *Dusky* standard, but I don't
24 think it rises to the --

25 THE COURT: So --

1 MR. O'BRIEN: -- the high, sophisticated, nuance level that Dr.
2 Jones-Forrester has --

3 THE COURT: So when --

4 MR. O'BRIEN: -- (indiscernible) in her report.

5 THE COURT: I'm sorry, Mr. O'Brien, but when I have Dr.
6 Sussman saying they didn't even evaluate that, how can I make a
7 decision about whether he's competent and able to do that?

8 MR. O'BRIEN: I think Dr. Sussman didn't able -- wasn't able
9 testify that, I -- I'm not sure that Dr. Bossi, Dr. Damas testified the same
10 way. I think they did evaluate -- I -- I -- I don't know -- be honest, I don't
11 remember the specifics Dr. Bossi testify regarding that issue because
12 I'm not sure it came up as far as how much they -- they delved into the
13 specific issue of testifying. That's -- it's -- it's something he needs to be
14 able to understand, it's not something that I'm not sure comes up in
15 every competency evaluation.

16 So maybe that's something that needs some further
17 evaluation. I don't know. But they did delve into his understanding of
18 the charges of the proceedings and how he could assist counsel and I
19 think those go hand-in-hand with his right to testify or his ability to testify
20 and I don't think -- I think testimony for the Stein doctors was very clear
21 that we're not just looking for check a box, say this answer, okay you're
22 competent.

23 THE COURT: No --

24 MR. O'BRIEN: They specifically -- especially with the Slater
25 Method, they asked questions in different ways, they come back to

1 information later to make sure it's not something that you've just kind of
2 that rote memorization have repeated back to them --

3 THE COURT: Right.

4 MR. O'BRIEN: -- looking for specific answers so Dr. Sussman
5 I think said well I didn't specifically ask about that, but I -- I think he did
6 ask about sort of the global how -- how do you assist counsel, how do
7 you work with your counsel, how you -- how you understand what's
8 going on. That's what they really evaluated --

9 THE COURT: I -- I -- and I certainly --

10 MR. O'BRIEN: -- in the competency standard so --

11 THE COURT: Right, I mean I don't mean to suggest that I -- I
12 think that -- I agree that the doctors did that. I just think there's
13 something fundamentally different between being able to have a
14 reasonable understanding of say the different players or what it means
15 to plead guilty, what it means to plead not guilty and having the ability to
16 make an analysis of is it a good idea for me to plead guilty or not guilty
17 and is it a good idea for me to testify or not testify. And I think the -- that
18 second thing is critical to somebody being competent because they have
19 to be able to make those decisions and not just do what their lawyer tells
20 them to do but they need to be able to understand the options their
21 lawyer provides them and make their own decision. That's -- that's
22 where my concern is because I just don't feel like I have gotten that
23 particular piece of information from the -- the doctors from Stein.

24 MR. O'BRIEN: Well and I think Dr. Damas testified to that
25 regard somewhat in that they asked the question from different ways to

1 find out if he understands the pros and cons of for example pleading
2 guilty and what the drawbacks would be if he pled guilty and he
3 expressed concerns he had about the plea about the sentence he might
4 get about the registration requirements. So while they may or may not
5 have and I -- I don't think it's clear, may or may not have asked him
6 specific questions about testifying, they did ask questions that went to
7 the heart of his ability to assist counsel to his ability to understand what
8 was going on the proceedings.

9 I don't think -- while I would agree that he has to rationally
10 understand whether testifying is -- whether he should or should not
11 testify, I -- I think it's not -- it's sort of a fine line because it's not one of
12 the prongs of *Dusky* is that ask this question and so I don't think there's
13 any particular question they ask that absolutely has to be in a *Dusky*
14 evaluation or not until (indiscernible) brought it up on examination during
15 the hearing I'm not sure had necessarily occurred anyone, but they did
16 evaluate absolutely his ability to assist counsel which I think goes
17 hand-in-hand with that ability to decide whether or not you're going to
18 testify and what those pros and cons are and I think all three doctors
19 testified that they did evaluate that and thoroughly evaluated his ability
20 to assist counsel.

21 THE COURT: Right, but I -- I think when you look at the case
22 law that rational understanding that that's what they're getting at is can
23 the person charged with the crime make decisions about their case, not
24 just understand what's going on but be able to make reasoned decisions
25 and I mean I don't -- I -- I -- I don't know that it has to be particularly

1 sophisticated but I think there does have to be that -- that ability to
2 understand everything well enough to make those kinds of decisions.

3 MR. O'BRIEN: Sure, I would agree with that, Your Honor, and
4 I think they get to that by the way that they evaluate or ask him about
5 how he would handle things if things were offered him if -- how he would
6 interact with his attorney, how -- what he would do if he was offered a
7 plea bargain by the State. I mean those -- those go to that
8 understanding of the proceedings and his role in the proceedings which I
9 think is related to his ability to understand whether or not he should
10 testify so while they may not -- may or may not have asked specifically
11 about testifying, they did ask about other things related to that that
12 demonstrated the doctors, you know, to -- to -- as they saw it that he did
13 have that rational factual understandings proceedings.

14 I think those two things, the rational understanding of the
15 factual proceedings against him as well as ability to assist counsel kind
16 of go hand-in-hand as far as the ability to decide whether or not to
17 testify. I mean that's sort of one general area of ability to assist counsel
18 and understand proceeding issue, but I think they did evaluate that, I
19 think that just (indiscernible) was clear about -- I understand the Court
20 isn't particularly getting -- you know, didn't feel they got that information.
21 My position is they -- they --

22 THE COURT: Well I --

23 MR. O'BRIEN: -- they might not have asked about the
24 testimony specifically, but they asked about the global areas where they
25 -- he could assist counsel where he could understand --

1 THE COURT: Right.

2 MR. O'BRIEN: -- proceedings against him.

3 THE COURT: No, I just I feel like I only got that information
4 from Dr. Jones-Forrester and not from the Stein doctors so I -- I don't
5 think I didn't get it, I just didn't get it from everybody. All right. Anything
6 else, Mr. O'Brien? I'm sorry, I didn't mean to get in a big debate with
7 you.

8 MR. O'BRIEN: No, I mean I -- I -- I think the Court
9 understands my concerns it -- it's -- I think it's --

10 THE COURT: Sure.

11 MR. O'BRIEN: -- the concerns Dr. Sussman and Dr. Bossi
12 and Dr. Damas said which is that if you were to adopt the standard that
13 Dr. Forrester has sort of proposed here, I -- I know that she testifies and
14 she thinks that her standard is very low, but I -- I just don't think it is
15 based on just her clear wording in her report of, you know, she's looking
16 for complex, sophisticated, nuance understanding of things, she wants
17 not just to understand why -- or doesn't want him just understand that
18 he's charged with a crime but why that that crime is a crime. I mean I
19 think that goes to a level sophistication we don't require under *Dusky*.

20 He can be restored. Clearly I think the doctors saw
21 improvement. He was rated very low on the first valuation. He came up
22 much higher when he got more education from the outpatient restoration
23 process.

24 He has some perhaps untreated diagnosis for ADHD or some
25 other issues that could be treated, but ultimately that's sort of his

1 long-term health issue. As far as his competency standard, feel like the
2 doctors testified that he met that standard and so it's our position he is
3 competent to stand trial.

4 THE COURT: All right. Thank you, Mr. O'Brien.

5 Mr. Page, did you have anything else?

6 MR. PAGE: The only thing is, is that it's very difficult I believe
7 for -- for them to -- to make an assessment of these things, especially
8 when there is no observation -- they're making this -- they're making
9 their assessments off questions that they've asked, but there's no
10 observation themselves of -- of how this was working with me.

11 I don't -- I -- I don't believe that he can -- and it goes right to
12 the point that I believe that you were making, Your Honor, is that
13 whether he could state certain things but can he process that to make a
14 decision and -- and that's where it's absolutely lacking and that's where
15 he's incompetent that -- that -- that ability to -- to put these -- these
16 factual statements of things that he can learn but to actually apply them
17 and -- and rationalize in any way possible to whether he should testify or
18 not or whether he should take a negotiation or not. It is simply -- his
19 statement simply will be and always will be I can tell him to do
20 something and that's what he'll do. Not because he has any
21 understanding of why and it's not the why of that -- that -- that's being
22 discussed, it's just he can't -- it's not -- there's no ability to process it.
23 And that's why I feel that -- that all of those things combined is making
24 him incompetent and -- and lacks ability to be restored.

25 THE COURT: All right. Anything else, Mr. O'Brien?

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MR. O'BRIEN: No, Your Honor.

THE COURT: All right, thank you folks. I will issue a written decision. I'm going to set a status check in two weeks.

MR. PAGE: I appreciate it, Your Honor.

THE COURT: Thank you.

MR. PAGE: Thank you.

THE CLERK: September 11th at 11:30.

MR. O'BRIEN: Thank you, Your Honor.

THE COURT: Thank you.

[Hearing concluded at 10:38 a.m.]

ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual proceedings in the above-entitled case to the best of my ability.



Tracy A. Gegenheimer, CER-282, CET-282
Court Recorder/Transcriber

C-18-335833-1

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

September 11, 2020

C-18-335833-1 State of Nevada
 vs
 Tariq Manson

September 11, 2020 11:30 AM STATUS CHECK: DECISION

HEARD BY: Bell, Linda Marie **COURTROOM:** RJC Lower Level Arraignment

COURT CLERK: Estala, Kimberly

RECORDER: Maldonado, Nancy

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

Also present: Glen O'Brien, Deputy District Attorney, Daniel Page, Deputy Special Public Defender, and Denise Baker of the Specialty Courts. Defendant present.

Based on the hearing COURT FINDS the Defendant is incompetent to stand trial; that there is no substantial probability that the Defendant will attain competency to stand trial in the foreseeable. COURT ORDERED, matter SET for Status Check for State to review the order.

BOND/EMP

09/18/20 11:30 AM STATUS CHECK



1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 STATE OF NEVADA,
9 Plaintiff,

10 vs.

11 TARIQ MANSON,
12
13 Defendant.

} CASE#: C-18-335833-1
} DEPT. VII
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14 BEFORE THE HONORABLE LINDA MARIE BELL, DISTRICT COURT JUDGE
15 FRIDAY, SEPTEMBER 11, 2020

16 **RECORDER'S TRANSCRIPT OF HEARING:**
17 **STATUS CHECK: DECISION**

18
19 ALL APPEARANCES VIA BLUEJEANS:

20 For the State:

GLEN P. O'BRIEN, ESQ.
Chief Deputy District Attorney

21 For the Defendant:

DANIEL R. PAGE, ESQ.
Deputy Special Public Defender

22 Also Present:

DENISE BAKER
Specialty Courts Representative

23
24
25 RECORDED BY: RENEE VINCENT, COURT RECORDER

1 Las Vegas, Nevada, Friday, September 11, 2020

2
3 [Case called at 12:02 p.m.]

4 THE COURT: Mr. Page, what do you have?

5 MR. PAGE: Your Honor, I have the Tariq Manson matter.

6 THE COURT: What -- what page is that?

7 MR. PAGE: Out of custody, Tariq matter. I think it's just a
8 ruling on an evidentiary hearing.

9 THE COURT: I know. I just don't have the -- I don't have --

10 THE CLERK: Page 5.

11 THE COURT: What page?

12 THE CLERK: 5.

13 THE COURT: I threw away my alpha cause I thought I didn't
14 need it but I guess I did. State of Nevada versus Tariq Manson, case
15 number C335833. This is on for a status check on a decision. I don't
16 quite have the written order done; but based on the hearing that we had,
17 I'm finding Mr. Manson incompetent without the probability of restoration
18 and I will get that order out to everybody shortly.

19 MR. PAGE: Thank you, Your Honor.

20 THE COURT: Thank you.

21 MR. O'BRIEN: Your Honor, can we set that out a week for me
22 to look at our options?

23 THE COURT: Yes. Absolutely. I mean it may be a few days
24 before I get you the order. So how about -- can I go two weeks?

25 MR. O'BRIEN: My only concern is I'm not sure -- if the Court's

1 making a ruling today then it implicates deadlines for me.

2 THE COURT: All right. We'll do a week.

3 MR. O'BRIEN: So if the Court's --

4 THE COURT: That's fine, Mr. O'Brien.

5 MR. O'BRIEN: Okay.

6 THE CLERK: September 18th at 11:30.

7 [Hearing concluded at 12:03 p.m.]

8 * * * * *

9 ATTEST: I do hereby certify that I have truly and correctly transcribed the
10 audio/video recording in the above-entitled case to the best of my ability.

11 
12 MARIA L. GARIBAY
13 Court Recorder/Transcriber
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C-18-335833-1 State of Nevada
 vs
 Tariq Manson

September 18, 2020 11:30 AM STATUS CHECK: DECISION

HEARD BY: Bell, Linda Marie COURTROOM: RJC Lower Level Arraignment

COURT CLERK: Estala, Kimberly

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

Also present: Glen O'Brien, Deputy District Attorney, Daniel Page, Deputy Special Public Defender, and Denise Baker of the Specialty Courts. Defendant present.

Court noted it has not filed the order yet. State confirmed they will not file a .461 motion however they will be appealing the order and would like for the next court date to be set with Defendant Adams appeal. COURT ORDERED, matter CONTINUED.

BOND/EMP

CONTINUED TO: 09/25/20 11:30 AM



1 RTRAN

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DISTRICT COURT
CLARK COUNTY, NEVADA

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STATE OF NEVADA,
Plaintiff,

9

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vs.

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TARIQ MANSON,

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Defendant.

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BEFORE THE HONORABLE LINDA MARIE BELL, DISTRICT COURT JUDGE
FRIDAY, SEPTEMBER 18, 2020

15

16

**RECORDER'S TRANSCRIPT OF HEARING:
STATUS CHECK: DECISION**

17

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19

ALL APPEARANCES VIA BLUEJEANS:

20

For the State:

GLEN P. O'BRIEN, ESQ.
Chief Deputy District Attorney

21

22

For the Defendant:

DANIEL R. PAGE, ESQ.
Deputy Special Public Defender

23

24

Also Present:

DENISE BAKER
Specialty Courts Representative

25

RECORDED BY: RENEE VINCENT, COURT RECORDER

1 Las Vegas, Nevada, Friday, September 18, 2020

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3 [Case called at 11:26 a.m.]

4 THE COURT: State of Nevada versus Tariq Manson.

5 Mr. O'Brien, I'm sorry, I just haven't -- it's been a little bit crazy since we
6 are getting ready for jury trial next week, so I haven't had a chance to
7 review the order, although, I do believe that the time frames are not
8 triggered until we've signed an actual order, so I'm going to pass this one
9 more week.

10 MR. O'BRIEN: Judge, I think he's on the line with Mr. Page. I
11 did speak to Chris Lalli. We're not going to do a 461 motion on that.
12 That was sort of my concern.

13 THE COURT: Okay.

14 MR. O'BRIEN: Our intent is to appeal that and at a certain
15 point I'd like to track it with the Vinnie Adams case.

16 THE COURT: Yes.

17 MR. O'BRIEN: Which I think it's similarly situated.

18 THE COURT: Right.

19 MR. O'BRIEN: So if you want to pass it a week that's fine, but
20 I think Vinnie Adams is set in October or somewhere, so I'd like to set the
21 status check on the same date.

22 THE COURT: Okay. So I'll have it on next time, and make
23 sure that the order gets filed. And then on that date we'll put it on the
24 same date as Vinnie Adams. Okay?

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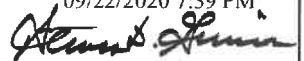
THE CLERK: September 25th at 11:30.

[Hearing concluded at 11:27 a.m.]

* * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video recording in the above-entitled case to the best of my ability.


MARIA L. GARIBAY
Court Recorder/Transcriber


CLERK OF THE COURT

FIO
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
CHRISTOPHER J. LALLI
Assistant District Attorney
Nevada Bar #005398
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

TARIQ MANSON,
#8235713

Defendant.

CASE NO: C-18-335833-1

DEPT NO: VII

**FINDINGS OF INCOMPETENCY
AND ORDER FOR CIVIL COMMITMENT OR RELEASE**

THIS MATTER having come on for hearing before the above-entitled Court on December 28, 2018 and September 27, 2019, and it appearing to the Court that, pursuant to NRS 178.425(1), the Sheriff was ordered to convey the defendant forthwith, together with a copy of the complaint and the physicians' certificate, if any, into the custody of the Administrator of the Division of Public and Behavioral Health of the Department of Health and Human Services or his or her designee for detention and treatment at a secure facility operated by that division; and it appearing that the Administrator or his or her designee has reported to the Court in writing his specific findings and opinion that the Defendant is not of sufficient mentality to be placed upon trial or to receive pronouncement of judgment and that there is no substantial probability that he will attain competency in the foreseeable future and the Court having reviewed and considered the said report finds: 1) that the said Defendant is still incompetent to stand trial; 2) that there is no substantial probability that the Defendant

1 will attain competency to stand trial in the foreseeable future; and, 3) that the Defendant is at
2 this time a danger to himself or to society, now therefor, pursuant to NRS 178.460(4)(d),

3 IT IS ORDERED that the Defendant shall remain in the custody of the Administrator
4 of the Division of Public and Behavioral Health of the Department of Health and Human
5 Services or his or her designee for a period of not more than ten (10) days, or until such time
6 as a petition is filed within that ten (10) day period to commit the Defendant pursuant to NRS
7 433A.200; and

8 IT IS ORDERED that if, within ten (10) days, a petition is not filed to commit the
9 Defendant pursuant to NRS 433A.200, the Defendant shall be released from custody, and

10 IT IS FURTHER ORDERED, pursuant to NRS 178.425(5), that the criminal
11 proceedings against the Defendant in the above-entitled matter which have been previously
12 suspended by the Court, are hereby dismissed without prejudice.

13 Dated this 22nd day of September, 2020

14 

15 _____
16 DISTRICT COURT JUDGE

17 STEVEN B. WOLFSON
18 District Attorney
Nevada Bar #001565

4CA 865 EEBC 031A
Linda Marie Bell
District Court Judge

19
20 BY /s/CHRISTOPHER J. LALLI

21 _____
CHRISTOPHER J. LALLI
22 Assistant District Attorney
Nevada Bar #005398

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2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

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6 State of Nevada

CASE NO: C-18-335833-1

7 vs

DEPT. NO. Department 23

8 Tariq Manson
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 Electronic service was attempted through the Eighth Judicial District Court's
12 electronic filing system, but there were no registered users on the case. The filer has been
13 notified to serve all parties by traditional means.
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C-18-335833-1

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

September 25, 2020

C-18-335833-1 State of Nevada
 vs
 Tariq Manson

September 25, 2020 11:30 AM STATUS CHECK: DECISION

HEARD BY: Bell, Linda Marie **COURTROOM:** RJC Lower Level Arraignment

COURT CLERK: Estala, Kimberly

RECORDER: Maldonado, Nancy

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

Also present: Glen O'Brien, Deputy District Attorney, Claudia Romney, Deputy Public Defender, and Denise Baker of the Specialty Courts. Defendant present.

COURT ORDERED, matter CONTINUED.

BOND/EMP

CONTINUED TO: 10/09/20 11:30 AM



1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

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8 STATE OF NEVADA,
9 Plaintiff,

CASE#: C-18-335833-1

DEPT. VII

10 vs.

11 TARIQ MANSON,

12 Defendant.
13

14 BEFORE THE HONORABLE JAMES BIXLER,
15 SENIOR DISTRICT COURT JUDGE
16 FRIDAY, SEPTEMBER 25, 2020

17 **RECORDER'S TRANSCRIPT OF HEARING:**
18 **STATUS CHECK: DECISION**

19 ALL APPEARANCES VIA BLUEJEANS:

20 For the State:

GLEN P. O'BRIEN, ESQ.
Chief Deputy District Attorney

21 For the Defendant:

DANIEL R. PAGE, ESQ.
Deputy Special Public Defender

22 Also Present:

DENISE BAKER
Specialty Courts Representative

23
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25 RECORDED BY: RENEE VINCENT, COURT RECORDER

1 Las Vegas, Nevada, Friday, September 25, 2020

2
3 [Case called at 12:04 p.m.]

4 THE COURT: State versus Tariq Manson. This is case
5 number C335833-1. The Defendant --

6 MR. PAGE: Good morning, Your Honor, Daniel Page, Special
7 Public Defender's Office with Tariq Manson.

8 THE COURT: Okay. The Court has already found that the
9 Defendant does not meet the criteria to be considered competent to
10 proceed with adjudication, and it's further and likely to become competent
11 in the foreseeable future after a challenge hearing that was held. This
12 order was issued on September 22nd. The State requested the matter be
13 continued from last week to review a possible 461 motion. No motion at
14 this time has been filed, so.

15 MR. O'BRIEN: So, Your Honor, if I may? We were trailing
16 this for Judge Bell to issue the written order. We did do the findings of
17 incompetency after her oral pronouncement and I think I made a record
18 last time, maybe I didn't, that we were not pursuing a 461; although, we
19 intent to appeal the Court's decision, but we need that written order which
20 I presume is still forthcoming.

21 THE COURT: Well, why do I have a notation here that it says
22 Dr. Bossi and Damas and Sussman have found the Defendant to meet
23 the criteria to be considered competent?

24 MR. O'BRIEN: That's because the doctors at Stein said he
25 was competent. The defense had an expert said he was not competent.

1 We had a full hearing on this and argument --

2 THE COURT: And they did --

3 MR. O'BRIEN: -- and ultimately the Court sided with the
4 defense and found him incompetent --

5 THE COURT: I got it.

6 MR. O'BRIEN: -- without the probability of restoration.

7 THE COURT: Got you. All right.

8 MR. O'BRIEN: So Judge Bell was going to issue a written
9 order kind or outlining her reasons for that for appellate purposes and
10 then we're just waiting for a written order. I realize she's out of the office
11 currently and so I'm not sure when that order will be forthcoming.

12 THE COURT: So let's do this. Let's do two weeks. We'll just
13 status check it for the order from the Judge. Did she hear it?

14 THE CLERK: She heard the challenge hearing. Yes, Your
15 Honor.

16 THE COURT: Okay. And then so for her to prepare and
17 order with her findings. Okay.

18 THE CLERK: October 9th at 11:30.

19 THE COURT: Okay. Everybody on the same page?

20 MR. O'BRIEN: Your Honor, I didn't find Mr. Page. I'm not
21 sure, I mean it's up to the Court, Mr. Page, I'm not sure Defendant needs
22 to be coming back for that.

23 MR. PAGE: Yeah, I would appreciate it. I would appreciate it
24 if we could not have to come back for those hearings since it's just for the
25 determination of the actual findings of facts being submitted.

1 THE COURT: Findings and facts from Judge Bell, right?

2 MR. O'BRIEN: I would just ask that -- I would just ask that he
3 stays in contact with his attorney cause we are -- you know, there's going
4 to be a pending appeal on this.

5 MR. PAGE: No, we understand that.

6 THE COURT: Okay. Two weeks.

7 THE CLERK: October 9th.

8 MR. PAGE: Thank you.

9 [Hearing concluded at 12:07 p.m.]

10 * * * * *

11 ATTEST: I do hereby certify that I have truly and correctly transcribed the
12 audio/video recording in the above-entitled case to the best of my ability.

13 
14 MARIA L. GARIBAY
15 Court Recorder/Transcriber
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1 **DAO**

2 **EIGHTH JUDICIAL DISTRICT COURT**
3 **CLARK COUNTY, NEVADA**

4
5 THE STATE OF NEVADA,

6 Plaintiff,

7 vs.

8 TARIQ MANSON,

9 Defendant.

Case No. C-18-335833-1

Dept. No. 23

10
11 **AMENDED DECISION AND ORDER**

12 Tariq Manson was referred to competency proceedings in October of 2019. Mr. Manson was
13 found to be competent after treatment at Stein Forensic Facility, but the finding was challenged by
14 defense counsel. The matter came before the Court for a challenge hearing on July 24 and was
15 continued to August 28, 2020. After review of the medical evaluations, expert testimony, and oral
16 arguments, the Court finds that Mr. Manson is incompetent without the possibility of restoration.
17 This decision will amend the Findings of Incompetency and Order for Civil Commitment or Release
18 filed in this case on September 22, 2020.

19 Pursuant to NRS 178.460(4)(d), Mr. Manson shall remain in the custody of the Administrator
20 of the Division of Public and Behavioral Health of the Department of Health and Human Services or
21 his or her designee for a period of not more than ten days, or until such time as a petition is filed
22 within that ten day period to commit Mr. Manson pursuant to NRS 433A.200. If, within ten days, a
23 petition is not filed to commit Mr. Manson pursuant to NRS 433A.200, then Mr. Manson shall be
24 released from custody. Pursuant to NRS 178.425(5), the criminal proceedings against Mr. Manson
25 in the above-entitled matter which have been previously suspended by the Court, are hereby
26 dismissed without prejudice.

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

1 **I. Factual and Procedural Background**

2 Tariq Manson is charged with Sexual Assault with a Minor under Fourteen Years of Age and
3 three counts of Lewdness with a Child Under the Age of Fourteen for alleged incidents occurring in
4 February and March of 2018. Defense counsel requested that Mr. Manson undergo a competency
5 evaluation in October 2018. Drs. Colosimo and Collins conducted competency evaluations of Mr.
6 Manson in November and December 2018 and opined that he was not competent to stand trial.
7 Based on the doctors' opinions, Mr. Manson was referred to Stein Forensic Facility for outpatient
8 treatment and possible restoration of competency.

9 Following additional competency evaluations, Drs. Khan, Bradley and Bennet concluded that
10 Mr. Manson was not competent to proceed with adjudication but may be able to gain competence in
11 the future with continued treatment. Mr. Manson was recommitted to outpatient restoration
12 treatment in September 2019. His psychiatric providers employed the Slater method, role play, and
13 hypothetical situations to explain the adjudicative process. Dr. Jones-Forrester completed
14 neuropsychological and competency evaluations of Mr. Manson in September 2019 which revealed
15 that he suffers from multiple neurocognitive deficits that render him incompetent to stand trial. Drs.
16 Bossi, Damas, and Sussman all diagnosed Mr. Manson with borderline intellectual functioning but
17 declared him competent to proceed with adjudication in March 2020. The doctors' determination
18 was challenged by defense counsel. Prior to the challenge hearing, Dr. Jones-Forrester conducted a
19 second evaluation of Mr. Manson on April 23, 2020. At the second evaluation, Dr. Jones-Forrester
20 observed Mr. Manson's interaction with defense counsel. The challenge hearing was held on July
21 24 and continued to August 28, 2020. The Court heard testimony from Drs. Jones-Forrester, Bossi,
22 Damas, and Sussman as well as argument from counsel.

23 The Court finds that that Mr. Manson is incompetent without the possibility of restoration.

24 **II. Discussion**

25 **A. Legal Standard**

26 The US Supreme Court has held that a defendant is competent to stand trial when the
27 defendant "has sufficient present ability to consult with his lawyer with a reasonable degree of
28 rational understanding" and the defendant "has a rational as well as factual understanding of the

1 proceedings against him.” Dusky v. U.S., 362 U.S. 402, 402 (1960). Moreover, “a person whose
2 mental condition is such that he lacks the capacity to understand the nature and object of the
3 proceedings against him, to consult with counsel, and to assist in preparing his defense may not be
4 subjected to trial.” Drope v. Missouri, 420 U.S. 162, 171 (1975). Under Nevada Revised Statute
5 178.400, an incompetent defendant “may not be tried or adjudged to punishment for a public
6 offense.” NRS 178.400(1). A defendant is incompetent when they do not have the ability to

7 (a) Understand the nature of the criminal charges against the person;

8 (b) Understand the nature and purpose of the court proceedings; or

9 (c) Aid and assist the person’s counsel in the defense at any time during the
10 proceedings with a reasonable degree of rational understanding.

11 NRS 178.400(2).

12 The Nevada Supreme Court has held that Nevada’s standard for competency complies with
13 the Dusky standard. Calvin v. State, 147 P.3d 1097, 1098 (Nev. 2006).

14 **B. Mr. Manson does not understand the nature of the criminal charges against him, the**
15 **purpose of the court proceedings, nor is Mr. Manson able to assist counsel during the**
16 **proceedings with a reasonable degree of rational understanding.**

17 Dr. Jones-Forrester’s findings raise doubt about Mr. Manson’s ability to understand the
18 nature of the charges against him as well as his role in and the purpose of the proceedings. Mr.
19 Manson has a documented learning disability that required special education classes and an
20 Individualized Education Program until he ultimately withdrew from school in the eleventh grade.
21 Dr. Jones-Forrester testified that Mr. Manson’s full-scale IQ is 70 while all of the Stein doctors’
22 reports state that her evaluation revealed a score of 67. An IQ score of 67 would place him in the
23 bottom first percentile and a score of 70 would place him in the bottom second percentile. Mr.
24 Manson’s academic skills were generally at the third grade level. These low academic skills render
25 Mr. Manson functionally illiterate and impair his ability to comprehend information. Dr. Jones-
26 Forrester also found significant difficulties in Mr. Manson’s attention, mental tracking, processing
27 speed, and executive functioning skills. Difficulties in these and other neurocognitive areas make
28 Mr. Manson vulnerable to distraction and misunderstanding information during crucial legal

1 proceedings. Intellectual disability does not necessarily render someone incompetent, but Dr. Jones-
2 Forrester's evaluation demonstrated that Mr. Manson does not understand the nature of the charges
3 against him nor his role or the purpose of the proceedings.

4 At the challenge hearing, all three Stein doctors acknowledged that Mr. Manson suffered
5 from intellectual disabilities. The Stein doctors did not perform testing on the extent of Mr.
6 Manson's intellectual disability; however, the Stein doctors disputed the degree to which Mr.
7 Manson was affected by his intellectual deficits. The doctors testified regarding the improvement of
8 Mr. Manson's ability to understand court proceedings while at Stein but acknowledged that Mr.
9 Manson's understandings of court proceedings may diminish over time. Drs. Damas and Bossi
10 recommended that defense counsel explain terms simply while Dr. Sussman noted that Mr. Manson
11 could benefit from "further brief procedural competency training." None of the Stein doctors
12 observed Mr. Manson interact with his attorney.

13 Dr. Jones-Forrester spent ninety minutes observing Mr. Manson interact with defense
14 counsel in April 2020. At that evaluation, Dr. Jones- Forrester observed Mr. Manson's diminished
15 understanding of his charges and court proceedings. Mr. Manson was unable to articulate the
16 concept of consent, particularly how age affects a person's ability to consent to sexual contact. At
17 one point, Mr. Manson insisted that charges against him could not be proven unless the State
18 presented video or photo evidence of the alleged crime. Despite defense counsel's consistent use of
19 simple language and repetitive questioning throughout the interaction, Mr. Manson struggled to
20 identify how facts of the case could be used for or against him or what the risks were of going to
21 trial as opposed to accepting a plea bargain. The April 2020 evaluation demonstrated that Mr.
22 Manson cannot assist his counsel during the proceedings with a reasonable degree of rational
23 understanding.

24 **C. Mr. Manson's intellectual and neurocognitive deficits render Mr. Manson incompetent**
25 **without the possibility of restoration.**

26 At the challenge hearing, Dr. Jones-Forrester testified that Mr. Manson's low IQ and
27 neurocognitive deficits would be lifelong disabilities. Mr. Manson's educational shortcomings may
28 be improved upon with literacy, numeracy, and writing training, but Mr. Manson's intellectual and

1 neurocognitive deficits would significantly limit the range of any improvement. Based on Mr.
2 Manson's lifelong intellectual and neurocognitive deficits, the Court finds that Mr. Manson is
3 incompetent without the possibility of restoration.

4 **III. Conclusion**

5 Mr. Manson's intellectual and neurocognitive deficits impair his ability to understand the
6 nature of the charges and the object of the court proceedings against him. Mr. Manson's deficits
7 also prevent Mr. Manson from aiding and assisting counsel in his defense with a reasonable degree
8 of rational understanding. Mr. Manson's intellectual and neurocognitive deficits are lifelong
9 disabilities, and the disabilities would significantly limit the range of possible improvement.
10 Therefore, the Court finds that Mr. Manson is incompetent without the possibility of restoration.

11 Pursuant to NRS 178.460(4)(d), Mr. Manson shall remain in the custody of the Administrator
12 of the Division of Public and Behavioral Health of the Department of Health and Human Services or
13 his or her designee for a period of not more than ten days, or until such time as a petition is filed
14 within that ten day period to commit Mr. Manson pursuant to NRS 433A.200.

15 If, within ten days, a petition is not filed to commit Mr. Manson pursuant to NRS 433A.200,
16 then Mr. Manson shall be released from custody.

17 Finally, pursuant to NRS 178.425(5), the criminal proceedings against Mr. Manson in the
18 above-entitled matter which have been previously suspended by the Court, are hereby dismissed
19 without prejudice.

Dated this 6th day of October, 2020



B8B DCA F3A0 6AE8
Linda Marie Bell
District Court Judge

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

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5
6 State of Nevada

CASE NO: C-18-335833-1

7 vs

DEPT. NO. Department 23

8 Tariq Manson

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10 **AUTOMATED CERTIFICATE OF SERVICE**

11 Electronic service was attempted through the Eighth Judicial District Court's
12 electronic filing system, but there were no registered users on the case. The filer has been
13 notified to serve all parties by traditional means.
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C-18-335833-1

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 09, 2020

C-18-335833-1 State of Nevada
 vs
 Tariq Manson

October 09, 2020 11:30 AM STATUS CHECK: DECISION

HEARD BY: Bell, Linda Marie **COURTROOM:** RJC Lower Level Arraignment

COURT CLERK: Estala, Kimberly

RECORDER:

REPORTER:

PARTIES PRESENT:

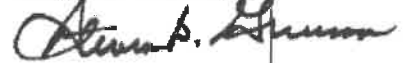
JOURNAL ENTRIES

Also present: Glen O'Brien, Deputy District Attorney, Claudia Romney, Deputy Public Defender, and Denise Baker of the Specialty Courts. Defendant not present.

COURT ORDERED, matter SET for status check.

BOND/EMP

10/23/20 11:30 AM STATUS CHECK: TREATMENT / DISCHARGE PLAN



1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

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8 STATE OF NEVADA,
9 Plaintiff,

CASE#: C-18-335833-1
DEPT. VII

10 vs.

11 TARIQ MANSON,
12
13 Defendant.

14 BEFORE THE HONORABLE LINDA MARIE BELL, DISTRICT COURT JUDGE
15 FRIDAY, OCTOBER 9, 2020

16 **RECORDER'S TRANSCRIPT OF HEARING:**
17 **STATUS CHECK: DECISION**

18
19 ALL APPEARANCES VIA BLUEJEANS:

20 For the State: GLEN P. O'BRIEN, ESQ.
Chief Deputy District Attorney
21
22 For the Defendant: CLAUDIA ROMNEY, ESQ.
Deputy Special Public Defender
23
24 Also Present: DENISE BAKER
Specialty Courts Representative

25 RECORDED BY: RENEE VINCENT, COURT RECORDER

1 Las Vegas, Nevada, Friday, October 9, 2020

2

3 [Case called at 11:49 a.m.]

4 THE COURT: State versus Tariq Manson, case number
5 C335833. This was on for status check for an order. I signed and filed
6 an amended order on this. Do we have a status check on him already?

7 THE CLERK: No.

8 THE COURT: We'll just set a status check in 60 days then.

9 THE CLERK: December 11th.

10 MR. O'BRIEN: Can I --

11 THE COURT: Oh.

12 MR. O'BRIEN: Two things.

13 THE COURT: Yep.

14 MR. O'BRIEN: If I could, Your Honor.

15 THE COURT: Yep.

16 MR. O'BRIEN: I don't know if Mr. Page is here. We had
17 agreed to waive the Defendant's presence, though. One error with the
18 order that I noticed, which we made the same error when we did the
19 initial order, is that it talks about being in the custody of Stein and then
20 having 10 days. They emailed us saying we're kind of confused by that
21 cause he was outpatient. And so I don't know if that needs to be
22 amended.

23 THE COURT: Okay.

24 MR. O'BRIEN: And the other thing is can we put this on the
25 same date as Laquan Rhoades [phonetic]? I'm not sure what date that

1 is, Kim, but --

2 THE COURT: Absolutely. Yeah, we'll figure it out.

3 MR. O'BRIEN: -- and just kind of track them together.

4 THE COURT: Yep.

5 THE CLERK: [Indiscernible]. I don't know what date that is,
6 but I'll figure it out.

7 THE COURT: Okay, we'll figure it out and we'll get it on the
8 same day and I'll note -- well, I'll note for the record that he was doing
9 outpatient at Stein. I'm going to think about whether we need an
10 amended order or whether it's not that -- I mean it's not really a
11 [indiscernible].

12 MR. O'BRIEN: I mean ultimately he's not there and they're
13 not going to civilly commit him.

14 THE COURT: Okay.

15 MR. O'BRIEN: So I'm not sure that they reached out and
16 asked about it, so.

17 THE COURT: Okay. Well, we'll fix it. Thank you,
18 Mr. O'Brien.

19 MR. O'BRIEN: Thank you, Your Honor.

20 [Hearing concluded at 11:50 a.m.]

21 * * * * *

22 ATTEST: I do hereby certify that I have truly and correctly transcribed the
23 audio/video recording in the above-entitled case to the best of my ability.

24 
25 MARIA L. GARIBAY
Court Recorder/Transcriber

Felony/Gross Misdemeanor**COURT MINUTES****October 23, 2020**

C-18-335833-1 State of Nevada
 vs
 Tariq Manson

October 23, 2020 11:30 AM Status Check: Treatment / Discharge Plan

HEARD BY: Bell, Linda Marie **COURTROOM:** RJC Lower Level Arraignment

COURT CLERK: Estala, Kimberly

RECORDER: Maldonado, Nancy

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

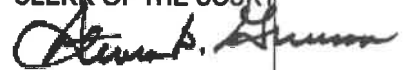
Also present: Glen O'Brien, Deputy District Attorney, Claudia Romney, Deputy Public Defender, and Denise Baker of the Specialty Courts. Defendant not present.

Upon Court's inquiry, Mr. O'Brien advised Defendant has stayed out of trouble and requested matter be SET for status check. COURT SO ORDERED.

NIC

01/08/21 11:30 AM STATUS CHECK: TREATMENT/ DISCHARGE PLAN

CLERK'S NOTE: Subsequent to the hearing COURT ORDERED, bond EXONERATED and Defendant RELEASED from electronic monitoring.//ke 11/02/20



1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

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8 STATE OF NEVADA,
9 Plaintiff,

CASE#: C-18-335833-1

DEPT. VII

10 vs.

11 TARIQ MANSON,

12 Defendant.
13

14 BEFORE THE HONORABLE LINDA MARIE BELL, DISTRICT COURT JUDGE
15 FRIDAY, OCTOBER 23, 2020

16 **RECORDER'S TRANSCRIPT OF HEARING:**
17 **STATUS CHECK: TREATMENT / DISCHARGE PLAN**

18 ALL APPEARANCES VIA BLUEJEANS:

19 For the State:

GLEN P. O'BRIEN, ESQ.
Chief Deputy District Attorney

20 For the Defendant:

21 CLAUDIA ROMNEY, ESQ.
Deputy Special Public Defender

22 Also Present:

23 DENISE BAKER
Specialty Courts Representative

24
25 RECORDED BY: NANCY MALDONADO, COURT RECORDER

1 Las Vegas, Nevada, Friday, October 23, 2020

2
3 [Case called at 12:30 p.m.]

4 THE COURT: How's it going, Mr. O'Brien?

5 MR. O'BRIEN: Your Honor, he has stayed out of trouble. He
6 apparently has not gotten any treatments at [indiscernible], but I believe
7 the appeal is still pending. I'm not sure if this is -- one of them filed the
8 appeal and one of them here is still working on it.

9 THE COURT: Okay.

10 MR. O'BRIEN: So if we could just keep -- when we get to
11 Adams, keep them together, maybe set out another 60 days.


12 THE COURT: Okay. We'll do a 60 days status check.

13 THE CLERK: January 8th at 11:30.

14 [Hearing concluded at 12:31 a.m.]

15 * * * * *

16 ATTEST: I do hereby certify that I have truly and correctly transcribed the
17 audio/video recording in the above-entitled case to the best of my ability.

18 
19 MARIA L. GARIBAY
20 Court Recorder/Transcriber
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25



NOASC
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
ALEXANDER CHEN
Chief Deputy District Attorney
Nevada Bar #010539
200 Lewis Street
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,
Plaintiff,

v.
TARIQ MANSON,
#8235713,

Defendant(s).

Case No. C-18-335833-1
Dept. No. XXIII

NOTICE OF APPEAL

TO: TARIQ MANSON, Defendant; and

TO: CLAUDIA ROMNEY, Deputy Public Defender and
DANIEL R. PAGE, Chief Deputy Special Public Defender, and

TO: LINDA MARIE BELL, District Judge, Eighth Judicial District Court,
Dept. No. VII

NOTICE IS HEREBY GIVEN THAT THE STATE OF NEVADA, Plaintiff in the
above entitled matter, appeals to the Supreme Court of Nevada from the Amended Decision
and Order filed on October 6, 2020, dismissing case.

Dated this 28th day of October, 2020.

STEVEN B. WOLFSON,
Clark County District Attorney

BY /s/ Alexander Chen
ALEXANDER CHEN
Chief Deputy District Attorney
Nevada Bar #010539
Office of the Clark County District Attorney

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CERTIFICATE OF ELECTRONIC TRANSMISSION

I hereby certify that service of the above and foregoing NOTICE OF APPEAL was made October 28, 2020 by electronic transmission to:

CLAUDIA ROMNEY
Email: GARCIACL@ClarkCountyNV.gov

DANIEL R. PAGE
Email: daniel.page@clarkcountynv.gov

JUDGE LINDA MARIE BELL
Email: perrys@clarkcountycourt.us

BY /s/ E. Davis
Employee, District Attorney's Office

AC//ed

Felony/Gross Misdemeanor

COURT MINUTES

January 08, 2021

C-18-335833-1 State of Nevada
 vs
 Tariq Manson

January 08, 2021 10:30 AM Status Check: Treatment / Discharge Plan

HEARD BY: Craig, Christy COURTROOM: RJC Lower Level Arraignment

COURT CLERK: Estala, Kimberly; Jackson, Carolyn

RECORDER: Berndt, Kaihla

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

Also present: Glen O'Brien, Deputy District Attorney, Claudia Romney, Deputy Public Defender, and Denise Baker of the Specialty Courts. Defendant not present.

State noted this case is currently on appeal and the appellate division is still working on the brief therefore has requested 90 days. COURT SO ORDERED.

NIC

04/09/21 10:30 AM STATUS CHECK: TREATMENT/DISCHARGE

CLERK'S NOTE: Minutes completed after a review of JAVS.//ke 02/12/21

C-18-335833-1

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 09, 2021

C-18-335833-1 State of Nevada
 vs
 Tariq Manson

April 09, 2021 10:30 AM Status Check: Treatment / Discharge Plan

HEARD BY: Craig, Christy **COURTROOM:** RJC Lower Level Arraignment

COURT CLERK: Jacobson, Alice; Snow, Grecia

RECORDER: Berndt, Kaihla

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

Also present: Glen O'Brien, Deputy District Attorney, Arleen Heshmati, Deputy Public Defender, and Denise Baker of the Specialty Courts. Defendant not present.

State noted the case was being appealed by the State. COURT ORDERED, matter CONTINUED 8/6/21 10:30AM.