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Proceedings

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MARCH 13, 2017

NEW YORK STATE SUPREME COURT

COUNTY OF WESTCHESTER : PART TJR

NOELLE FELDMAN, Plaintiff,

-against-

WILLIAM KNACK, Defendant.

INDEX NUMBER: 69747/2014

CONTINUED: TRIAL

BEFORE: HON. TERRY JANE RUDERMAN,

Justice of the Supreme Court

APPEARANCES: Same as previously noted

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(Trial continued. Sworn jury is not present.)

THE COURT: Counsel, I believe you all have copies of the verdict sheet.

MR. HARRIGAN: Your Honor, I reviewed, this is in the interest of not being a jack in the box during Dr. Stone's testimony with objections. I want to put this on the record. I reviewed the report and disclosure of

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Proceedings

531

Dr. Stone in light of this Court's rulings particularly with respect to the in limine motion regarding Dr. Greenfeld. I think we all agree experts cannot give opinions as to the ultimate issue in the case, for example, did Dr. Knack rape Noelle Feldman? Did Noelle Feldman attack Dr. Knack? And the credibility of the witnesses, who is more believable: Dr. Stone's report is full of a lot of opinions about the facts and what went on in this case but not very many relevant opinions. I mean opinions that are put forward to assist the jury in an area for which they are not familiar as laymen.

Dr. Stone in his report clearly made a decision that Dr. Knack is upstanding ethical and all around great guy, from what he says. And that's fine, but not for the jury to hear that from him, that character bolstering. And Dr. Stone opined in his report that Noelle Feldman is manipulative liar who

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Proceedings

532

is acting with malice of forethought, making her false accusations. That's fine for him to conclude that for whatever reason, but that's not what he should be permitted to tell the jury in any way, shape or form.

It would be impermissible and improper opinion testimony if the jury was to hear such things from any expert witness, Greenfeld, Stone or anybody else. So any of that kind of testimony or anything bordering on that I will be objecting I think appropriately.

MR. BROPHY: It would be indeed for Mr. Hannigan to object were I to ask such questions. And I won't. I would be a fool having obtained a motion and order from the Court with respect to Dr. Greenfeld on the same issues. Dr. Stone is aware of this and Dr. Stone will refrain from offering opinions as to the ultimate issues in the case and as to the credibility of the witnesses.

I'll go one step further, Dr. Stone

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Dr. Stone - Direct

533

will refrain from testifying as to statements made by Ms. Feldman to him, allow I believe the rule maybe different as to physicians examining on behalf of defendant's statement by a plaintiff to an examiner might be considered an admission. We will not go there either. We will follow the same rules. I will ask him three questions about his examination of Miss Feldman and none of them are going to be about what she told him. There is plenty of other information from other sources to base his opinion. I disagree that there are no medical opinions stated in the record, there are numerous diagnosis that are discussed, and Dr. Stone will be explaining and expanding on those opinions.

THE COURT: From the record.

MR. BROPHY: So let's not waist any more time.

THE COURT: Sounds like conceptually is in agreement and this

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Dr. Stone - Direct

534

should go smoothly.

MR. BROPHY: Let us hope, Your Honor.

THE COURT: Bring the jury in.

(Jury enters courtroom and take their seats in the jury box.)

THE COURT: Good afternoon, everyone. Please be seated. Call your next witness.

MR. BROPHY: I call doctor Michael H Stone.

M I C H A E L H. S T O N E, MD. 225 Central Park West, New York New York, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BROPHY:

Q. Good afternoon Dr. Stone. First of all, are you a physician duly licensed to practice in the State of New York?

A. Yes.

Q. When were you so licensed?

A. 1958.

Q. And are you board certified in any

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Dr. Stone - Direct

535

medical specialty?

A. Psychiatry and neurology.

Q. When were you so board certified?

A. '71.

Q. Doctor, would you please tell us something about your education starting with under graduate education and through whatever advanced training you had to become a psychiatrist?

A. I went to Cornell majoring in Latin and Greek for my undergraduate. I went to Cornell Medical School. Took a residency in internal medicine and hematology, fellowship after the residency and then went from hematology fellowship in Memorial Sloan Kettering in New York City to Columbia for my psychiatric training which is called New York State Psychiatric Institute on 168 Street. After that I went to the Columbia Psychoanalytic Institute graduating in '71. Got my certificate in psychoanalysis. Then I worked also for the last eighteen years in a forensic psychiatric facility, Mid-Hudson near Middletown, New York, so I had forensic

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Dr. Stone - Direct

536

training as well as psychoanalysis and internal medicine.

Q. Before you continue about where you worked, what is forensic psychiatry as opposed to the kind of psychiatry we picture as the patient coming in and laying on the couch?

A. Forensic psychiatry deals with matters having to do with the law, civil cases, custody cases, also criminal cases, things of that nature where there is an implication of the law being involved.

Q. And Mid-Hudson Psychiatric is what type of institution?

A. It's a forensic psychiatric hospital.

Q. What type of patients are there?

A. In that particular facility there are people who have committed often times serious crimes but they also have mental illness which is the reason they were put in the forensic hospital as opposed to a different kind of facility, such as a prison.

Q. Thereafter or at the same time, did you have appointments to the staff of any other

1 Dr. Stone - Direct 537

2 hospitals in the New York area?

3 A. Yes.

4 Q. Tell me about that, please?

5 A. I was for a number of years running

6 a unit at the Columbia, New York State

7 Psychiatric Institute, on the long term

8 psychotherapy unit there. And then went to

9 White Plains, New York Hospital Westchester,

10 the Old Bloomingdales where I worked as a unit

11 chief on unit for borderline patients. 1980 to

12 '84 I was a clinical director at University of

13 Connecticut in Farmington, Connecticut. And

14 then went back to the New York area, first back

15 to White Plains, at the New York Hospital

16 Westchester and then back to teaching at the

17 psychoanalytic clinic all the time being in

18 part time private practice.

19 Q. Doctor, have you in the past and do

20 you now have any academic appointments?

21 A. Yes.

22 Q. Tell us about that?

23 A. As I mentioned I was clinical

24 director at Farmington, before that unit chief

25 and associate professor at Columbia. Now I'm a



1 Dr. Stone - Direct 538

2 professor of clinical psychiatry at Columbia

3 College Physicians and Surgeons.

4 Q. Have you published in the learned

5 literature?

6 A. Yes.

7 Q. Approximately how many articles

8 have you published in the medical literature?

9 A. Not quite 260.

10 Q. Does that include chapters and

11 books?

12 A. No. That's chapters and articles.

13 The books are separate. That's 11 books.

14 Q. Let me ask you a couple of

15 questions about your publications and

16 literature, articles and chapters. Have your

17 publications focused on any particular

18 psychiatric issues or concepts?

19 A. Yes.

20 Q. What are they?

21 A. I would say the larger part of what

22 I've published deals with borderline

23 personality but then also other personality

24 disorders including other articles about manic

25 depressive psychosis and schizophrenia. It

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Dr. Stone - Direct

539

covers a wider area.

Q. Of the 11 books that you've published, what has been the subject matter of those books?

A. The majority of them again deal with borderline personality disorder.

Q. What was the most recent book you published?

A. That was back in 2009. That was The Anatomy of Evil.

Q. And what was that book about?

A. That book was about the far end of what you might call the spectrum of negative personality. Because I dealt with people who were anti-social, sociopathic, psychopathic, sadistic and it was based on my having also been sent around the country interviewing people of that sort by Discovery Channel where I interviewed serial killers and mass murderers, murderers of other sorts and so on.

Q. We've heard now in your description of your training and publications the term borderline personality disorder a couple of times. Let me break it up, if I could. Could

1 Dr. Stone - Direct 540

2 you explain to the jury briefly, if you can, we

3 want to finish your direct in an hour, what is

4 a personality disorder as the term is used in

5 psychiatry?

6 A. A personality disorder is as used

7 in psychiatry has to do with persons who

8 exhibit a number of personality traits that are

9 troublesome either to the person who has the

10 trouble or troublesome to other people. For

11 example, if a person is orderly, that's nice,

12 but if the person is excessively orderly and

13 very, very stingy, and things of that sort that

14 gets to the point of being in trouble partly to

15 himself and certainly to other people with whom

16 he interacts. People who are overly dependent,

17 they can't manage by themselves, that's another

18 type of disorder. People who are anti-social,

19 they will have a number of qualities where they

20 are not responsible, they don't take

21 responsibility for what they do, they often do

22 things that are just on the other side of what

23 is acceptable legally or they may also become

24 aggressive and do violent things, they may

25 cheat and steal, that would be an anti-social

1 Dr. Stone - Direct 541  
2 person who is troublesome to the public more  
3 than perhaps to themselves. And there is about  
4 a dozen of them, really ten, so called  
5 disorders that are described in our official  
6 nomenclature the diagnostic and statistical  
7 manual we use to guide us in making these  
8 diagnosis. But they are based on discrete  
9 categories. Every human being as often times  
10 especially people with a lot of trouble, they  
11 have many different personality traits. One of  
12 my books I listed 500 negative traits and one  
13 hundred positive traits. We're much more alive  
14 to things that bother us. So we have a bigger  
15 vocabulary for negative traits. And the  
16 personality disorders only use up about 100,  
17 110 traits so that every person with a disorder  
18 also has traits that are not in that particular  
19 category. And that's particularly true of  
20 borderline.

21 MR. BROPHY: Thank you for that  
22 comprehensive answer.

23 Q. Let me ask you what is borderline  
24 personality disorder as psychiatrists use the  
25 term? Could you give us an explanation within

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Dr. Stone - Direct

542

the bigger universe of personality disorders.

What's borderline personality?

A. Borderline personality disorder as I've said many times an unfortunate diagnosis but it's really a mish mosh of qualities that are not all pure personal traits like polite, rude, sweet, unpleasant. No, it's a combination of some personality traits in the ordinary sense of the word and symptoms like doing suicidal behaviors, having mood fluctuations that are very marked, being extremely angry, having mixed feelings of who am I, my identity. So that it's a syndrome, it's a mixture of symptoms and some personality traits. But, there is no such thing as a person who only has the items that go down in the book with borderline personality disorder. They all have traits that belong to other disorders and other ones that are just thrown in for them, so to speak. It's very complicated.

Q. We'll get back to specifics in a minute. Let me ask you a few more preliminary questions. In the course of your career, have you testified as an expert witness in court

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Dr. Stone - Direct

543

before?

A. Yes.

Q. What types of cases have you testified in over the years?

A. Custody cases, malpractice cases, murder cases, rape cases, a variety of different personality disorder cases.

Q. Are you compensated for the time you spend working on these cases, if you are retained by a lawyer?

A. Yes.

Q. Did there come a time when I contacted you and asked you to provide some expert consultation services in the case of Noelle Feldman against Dr. Knack?

A. Yes.

Q. And approximately when was that?

A. Approximately in October of 2015.

Q. Did you receive from me some written materials concerning this particular case?

A. Yes.

Q. Would you please -- if you need, with Your Honor's permission, if you need to

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Dr. Stone - Direct

544

refer to a document to refresh your  
recollection, what did you receive from me?

A. I received reports about Miss  
Feldman from other doctors and other  
psychologists and other people who had worked  
with her in the past. I think that was formed  
the bulk of what I received. There were also  
deposition material from herself, she was  
deposed, Dr. Knack when he was deposed. Dr.  
Shander when she was deposed. So there was  
deposition material I read as well.

Q. Doctor, do you have a list in your  
notes of what you received?

A. Yes.

MR. BROPHY: With the Court's  
permission, could you tell us  
specifically what you received in  
preparation for offering opinions in  
this case.

THE COURT: Like any other witness  
he should not read from something in  
evidence. Do you want to mark it for  
identification?

MR. BROPHY: Sure.

1 Dr. Stone - Direct 545

2 Q. Doctor, would you take your report

3 out?

4 MR. HARRIGAN: If we could have the

5 report marked and shown to the witness.

6 He has a notebook he's flipping through

7 now.

8 THE COURT: Let's get the report

9 marked.

10 (Marked Defendant's V for

11 identification.)

12 THE COURT: Doctor, please use the

13 one marked.

14 Q. What's the date of the report,

15 doctor?

16 A. 5th, February, 2016.

17 Q. And what did you receive in the way

18 of documents from my office specifically as you

19 can tell me?

20 A. When?

21 Q. Be as specific as possible what you

22 received?

23 A. Well, shortly I would say within a

24 matter of days I received some materials and

25 then subsequently some additional materials.



1 Dr. Stone - Direct 546

2 Q. I would like you to tell us what

3 you received, specifically?

4 A. Well, a summons and complaint from

5 Superior Court of Westchester County. Demands

6 from verified Bill of Particulars. Records of

7 Miss Feldman hospitalization at Silver Hill.

8 Two of them, May of 2012. Records of Barrett

9 House, Silver Hill after care June 2012. Bill

10 of Particulars in February 2015. E-mail letter

11 by Miss Feldman to Dr. Knack dated November,

12 2013. Transcript of phone calls she made to Dr.

13 Knack from the police station in the presence

14 of Detective Wilson. New Castle Police

15 Department narrative. E-mails between Dr. Knack

16 and Mrs. Feldman from Dr. Knack's computer.

17 Deposition of Mr. Knack October, November,

18 2015. Records from Bedford, the pharmacies,

19 different medications she received. Deposition

20 of Dr. Shander in December of 2015. Dr. Knack's

21 progress notes and transcripts of those notes.

22 List of medications. Notes of Jessica Nollto

23 (ph.), notes of Jerome Linsner, Ph.D..

24 treatment plan elaborated by Miss Renchner, a

25 social worker in 2015. Notes from Lenox Hill

1 Dr. Stone - Direct 547  
2 Hospital when she was there in 1991. Deposition  
3 of Noelle Feldman September 30, 2015,  
4 videotape. And notes from my interview with  
5 Mrs. Feldman in the presence of her attorney  
6 November 23, 2015. Newspaper clippings from  
7 articles concerning Mrs. Feldman's mother.  
8 Filing suit against her ex-husband for the  
9 shooting death of Mrs. Feldman's brother.

10 Q. In the course of your review of the  
11 materials, did you learn how old Dr. Knack and  
12 Miss Feldman were when this, in 2013 when the  
13 allege rape occurred?

14 A. She would have been 54 and he would  
15 have been 61.

16 Q. Do the ages have any consideration  
17 in the consideration of the medical issues in  
18 this case?

19 A. Yes.

20 Q. What significance?

21 A. Well, it struck me as unusual just  
22 from the research I've done on men who have  
23 raped a woman. I did for another case that I  
24 was involved in a few years ago been involved,  
25 an alleged rape, there was actually an

1 Dr. Stone - Direct 548  
2 attempted rape on the part of a man against a  
3 woman when she was with her two children coming  
4 out of a hotel. That man was 52 and when I  
5 searched my literature, I have a very large  
6 Excel file of rapists, serial killers and my  
7 experience that the forensic hospital and just  
8 over the years, hundreds and hundreds of  
9 rapists. I try to look at what is the oldest  
10 man who did a rape for the first time and I  
11 found the oldest one I could find was 52. So  
12 for Dr. Knack to have done so at 61 would at  
13 least mark him as an unusual person, if it were  
14 true.

15 Q. Did you come to understand from  
16 your review of the records and legal papers in  
17 this case what Miss Feldman is accusing Dr.  
18 Knack of?

19 A. Well, she's accusing him of rape.

20 Q. Is she accusing him of rape on a  
21 particular date time and place?

22 A. In his office in January of 2013.

23 Q. In the course of your research on  
24 this case, without going into great detail, did  
25 you learn some of the significant events in

1 Dr. Stone - Direct 549

2 Noelle Feldman's early life?

3 A. Yes.

4 MR. HARRIGAN: I think the witness

5 should be offered to the Court as an

6 expert in a particular area and either

7 granted or denied that privilege before

8 he's asked this type of testimony.

9 THE COURT: Sustained.

10 MR. BROPHY: I would tender Dr.

11 Stone as an expert in the field of

12 psychiatry.

13 MR. HARRIGAN: No objection. Thank

14 you.

15 Q. So in the course of your review of

16 this case did you obtain some information,

17 aside from anything Miss Feldman herself may

18 have told you, concerning her early life?

19 A. Yes.

20 Q. Could you summarize for us briefly

21 as possible the most salient and important

22 things about her early life that you learned?

23 A. Yes. She was born near Minneapolis

24 in Maple Grove to a father of a northwestern

25 extraction and a mother Latina extraction,

1 Dr. Stone - Direct 550

2 Central America. She was one of six. The man

3 was perhaps former marine and very brutal

4 person who was very harsh with the children and

5 also violated her sexually, apparently raped

6 her at times when she was tied to something,

7 although it seemed despite that he somewhat

8 favored her over her sisters. Be that as it

9 may, there was great deal of brutality visited

10 against her. The mother was a volatile woman

11 who could be very angry and make humiliating

12 remarks. According to the records I record

13 from other people and when she was in her early

14 teens there was an incident where the father

15 after they had divorced, she was nine, and he

16 remarried a woman who had a daughter by a

17 previous marriage. When his son came back from

18 I suppose Viet Nam, he fell in love with

19 basically his step sister. That bothered her

20 father considerably which he then shot him to

21 death. I was able to substantiate that by going

22 into the archives of the newspaper. She then

23 ran down to I think that was when she was in

24 foster, she ran down to an uncle in Nicaragua

25 and the story was I read in some reports that

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Dr. Stone - Direct

551

he had actually murdered his wife as though she had cheated on him. Of course, I have no idea whether she had cheated on him. The story is even the uncle was the murderer.

Q. Did you obtain some information about her relationships with men as she got older?

A. Yes.

Q. Tell us about that. Again please be concise.

A. She fell pregnant when she was about 17 and married a man that did not last very long. There was a son that has been raised actually by the father. I don't think she's had much to do with that son at all. She then had a rather extended relationship with a man I only know his name as Peter. When that broke up she had depression and suicidal ideations and had a brief hospitalization at Lenox Hill Hospital in New York City where the diagnosis of borderline personality disorder along with depression was made. And then in '93 she married Andrew Feldman and had two children, a boy and a girl.

Q. Did you obtain any history from the

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Dr. Stone - Direct

552

records that you reviewed concerning Noelle Feldman's use of alcohol?

A. Yes.

Q. Could you summarize that for us.

A. She had problems with alcohol going back to the time in the second most recent marriage when her son was born I think around 17 years ago, he maybe 18, I think she abused vodka rather heavily, episodically, so there were times she had a pretty serious problems with alcohol and other times she was able to abstain. She's been in Alcoholics Anonymous on and off. So over the years she has on and off problems with alcohol.

Q. Have you learned something about her -- withdrawn. Was she in psychotherapy for a period of time before she went to Dr. Knack?

A. Yes. The records that I'm most familiar with show she was in therapy let's say in 2006, with Dr. Lerman and for a certain number of years some people just before, afterwards for briefer periods, Dr. Linsner, some were psychologists, medical people like Dr. Lerman, Dr. Shander, but there were other

1 Dr. Stone - Direct 553  
2 people who were social workers and  
3 psychologists who also work with her and also  
4 Dr. Knack is a psychologist.

5 Q. Were there any recurrent themes,  
6 behaviors, in the notes of the other therapists  
7 that you reviewed that are relevant to the  
8 opinions that you formed in this case?

9 A. Yes. There were a number of  
10 diagnosis that were made again and again and I  
11 think some of them with considerable accuracy,  
12 one being post traumatic stress disorder which  
13 if one is -- it's a much overused diagnosis  
14 but, by golly, some people really do merit the  
15 diagnosis and I think that is quite true of  
16 Mrs. Feldman. There has to be a combination of  
17 such things as flashbacks of some original  
18 traumatic scenes, the nightmares and extreme  
19 reactions to let's say someone dropping a glass  
20 in back of you in a restaurant and you think  
21 it's a gunshot. It used to be called shell  
22 shock, a soldier was confronted at gun point by  
23 an enemy, shot and survived, that would set up  
24 a shell shock or traumatic reaction where he  
25 would relive that event. It's frozen in his



1 Dr. Stone - Direct 554

2 mind like a hot coal and throws off efforts to

3 cope with it and nightmares being very common.

4 And these flashbacks are in the middle of the

5 day and you see something that recreates the

6 scene of the trauma. People kept the diagnosis

7 depressive disorders of one sort, major

8 depressive disorders or recurrent depressive

9 disorders. Several but not all of the people

10 who worked with her made a diagnosis of

11 borderline personality disorder. I think there

12 is a reason probably some of the ones who

13 didn't write down the diagnosis probably felt

14 it was relevant because from a standpoint of

15 insurance, getting money back from insurance,

16 an insurance company will usually pay

17 comfortably for major depressive disorder but

18 not for personality disorder. A person may

19 think borderline personality disorder but she's

20 depressed I'll just put down depression for

21 insurance.

22 MR. HARRIGAN: Move to strike all

23 of that. Way outside. Pure advocacy.

24 THE COURT: Sustained.

25 Q. Doctor, did you review the Silver

1 Dr. Stone - Direct 555

2 Hill Hospital records?

3 A. Yes.

4 MR. BROPHY: Those are in evidence

5 as Defendant's Exhibit A.

6 Q. In the Silver Hill Hospital records

7 did you observe diagnosis?

8 A. She was diagnosed with depression

9 and borderline personality disorder.

10 Q. Is there something called an Axis

11 One diagnosis?

12 A. Depression and PTSD.

13 Q. What's Axis One?

14 A. That refers to symptoms like

15 depression, mania, schizophrenia, eating

16 disorder, drug abuse. Those are symptoms and

17 they are put in so called Axis One, the first

18 portion of the diagnostic manual.

19 Q. In the Silver Hill records, were

20 any official Axis 2 diagnosis noted to your

21 recollection?

22 A. Borderline personality disorder.

23 Q. In the summaries?

24 A. Yes.

25 Q. And could you summarize for us her

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Dr. Stone - Direct

556

treatment at Silver Hill Hospital?

A. She received besides some therapy, there are two occasions, there was also medications, anti-depression, anti-anxiety medication and there was also a mood stabilizing medication that is often given to people with bipolar disorder, people who have swings up and down, mania depression, mania depression, to try to make them not swing so widely from one pole to the other in their mood. They are given medication like Lithium, and she was not given those, she was given Trileptal and Depakote. And then discontinued as if they were not clear that she had a mood disorder that merited continued use of the mood stabilizing medication.

Q. Based upon your reviewed of the records, does Miss Feldman have a history of suicide ideas or thoughts?

A. Yes.

Q. And where does that appear?

A. That was noted in the Silver Hill records as well as a number of the therapist who saw her before and as well as after.

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Dr. Stone - Direct

557

Q. In the Silver Hill records were observations made as to Miss Feldman's appearance?

MR. HARRIGAN: Objection. Form. Continues leading.

THE COURT: Sustained.

Q. In the records that you reviewed, have you seen reference to Miss Feldman's appearance?

MR. HARRIGAN: Same objection.

THE COURT: Sustained.

Q. What, if anything, is the significance of the way the patient presents themselves physically, in terms of hygiene, dressing?

A. I didn't hear.

Q. What, if anything, is the significance of the way the patient presents in terms of dress and hygiene?

A. Well, there is a hole range of self presentation of a person if they are dressed conventionally, according to the current taste of the day versus if they dress very casually or sloppily or in the case of a woman whether

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Dr. Stone - Direct

558

she dresses in a demure way or whether she dresses in a way that shows a bit too much of herself, as it were. So there are different ways in which one can show certain qualities just by the way one dresses that would be noteworthy.

Q. Did you review Dr. Lerman's records?

A. Yes.

Q. What were some of the significant facts, things that you learned from Dr. Lerman's records relevant to the opinions you formed in this case?

A. Am I allowed to look at some of the records of Dr. Lerman? I remembered some things.

MR. BROPHY: With Your honor's permission may the doctor's records, Dr. Lerman's record, Dr. Lerman's records are in evidence as Exhibit T.

MR. BROPHY: May the doctor have the report in front of him to refresh his recollection.

Q. You have the Court's permission to

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Dr. Stone - Direct

559

refresh your recollection from your report concerning salient points in Dr. Lerman's records?

A. Dr. Lerman mentioned a number of things repeatedly. The fact that she had nightmares, there was a particular period of time where she had one after the other of nightmares. He diagnosed depression. PTSD. Borderline personality disorder. There was a period when she had panic attacks. That whole group of symptoms and personality troubles were mentioned in his notes. There was also a time toward the end when there was a paranoid quality to her presentation as well because she accused him of disloyalty to her when she was getting angry at him toward the end of the relationship.

Q. Now I would like to -- was her anger expressed in a writing from her to Dr. Lerman, that you saw in the records?

A. Yes.

MR. BROPHY: Your Honor, if we could have exhibit -- does the doctor have Exhibit T?

1 Dr. Stone - Direct 560

2 THE COURT: No.

3 (Handing to witness Exhibit T).

4 Q. Please show this page to Dr. Stone.

5 Doctor, the page that you are looking at, take

6 a moment to refresh your recollection. Is that

7 the communication you just referred to?

8 A. Yes.

9 Q. And in that communication, does she

10 use some -- withdrawn. Is there any reference

11 in that communication to any specific things

12 that Dr. Lerman supposedly did?

13 A. Well she mentions he talked in a

14 disparaging way about her son Bobby. And she

15 felt we were not on the same music page. She

16 was in group treatment. It was supposed to be a

17 place where it's safe to be yourself. All you

18 wanted to do was medicate people and put them

19 in the hospital. You could have felt my pain

20 and you were suppose to help us make peace with

21 broken pieces. Last Monday when I saw you, you

22 said you've always been there for me and you

23 know that is absolutely not true. Last August

24 when Bobby was suicidal I called you repeatedly

25 with no response. I had to sleep in his room I

1 Dr. Stone - Direct 561

2 was so frightened.

3 Q. Do these statements in this e-mail

4 to Dr. Lerman after he had terminated her, did

5 these have any significance to you in your

6 evaluation of this case?

7 A. Yes.

8 Q. Could you explain their

9 significance?

10 A. Well, as I mentioned nobody has

11 just borderline personality disorder. There is

12 other personality qualities that the person has

13 and I felt that some of the things that were

14 coming out toward the end of her experience

15 with him as I was just reading a paranoid

16 casting to them. Disloyalty. So I was making a

17 summary of all the different important

18 personality qualities that I could gather from

19 his records and from all the other records

20 putting together a more total picture.

21 Q. Before we get to that I would like

22 to ask you a few questions about Dr. Knack's

23 records. Did you review Dr. Knack's records?

24 A. Yes.

25 Q. In their entirety?



1 Dr. Stone - Direct 562

2 A. Yes.

3 Q. This is Exhibit S. Do you see this

4 page?

5 A. Yes.

6 Q. Was the information on this page of

7 any particular significance in your evaluation

8 and opinions that you formed in this case. If I

9 could refer you to your report if it would

10 refresh your recollection concerning statements

11 in this particular page and Dr. Knack's

12 records. Were there certain things recorded on

13 this particular page that are of particular

14 significance to your opinions in this

15 particular case, starting 12/27/12 down to

16 5/23/13.

17 A. You are choosing the dates between

18 --

19 Q. Early January, December 2012 into

20 January of 2013, did you make particular note

21 of some of the notations on this particular

22 page of Dr. Knack's records.

23 A. Well in January of 2012 --

24 Q. 2013. I would like you to assume

25 this says January 3, 2013 reports and he raped

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Dr. Stone - Direct

563

her?

A. It says soon after early January she complains her husband raped her when she was drunk.

THE COURT: Please do not read from the report.

Q. This is to refresh your recollection.

A. There is no documentation of any visit to Dr. Knack on January 10th. Next is January 17th.

THE COURT: Is there a question?

Q. The question is, is the information in Dr. Knack's records on this particular page of any particular interest to you in the context of your evaluation of this case, and if so, what?

A. Well, the problem is that Dr. Knack's handwriting, I read the transcript. His handwriting is very difficult. So I'm more familiar with the written transcript.

Q. You are allowed to refresh your recollection by looking at your report.

A. I noted that there was no

1 Dr. Stone - Direct 564

2 documentation of a visit --

3 THE COURT: Please. You can look

4 at the report to refresh your

5 recollection and then answer the

6 question if you can. If not, then move

7 on.

8 Q. In the interest of time I'll

9 withdraw the question and move on to something

10 else. Doctor, I'm withdrawing the question.

11 What is the significance of the entries on that

12 particular page in respect to the opinions that

13 you formed in this case?

14 A. In January of 2013 I already

15 mentioned what she alleged happened with her

16 husband at a time when he was drunk. January

17 10th she alleged that Dr. Knack raped her in

18 his office --

19 MR. HARRIGAN: He's reading from

20 the report or whatever. We're not

21 having testimony.

22 THE COURT: Sustained. You can use

23 that to refresh your recollection and

24 then turn it over and answer the

25 questions. You also mentioned at that

1 Dr. Stone - Direct 565

2 time.

3 THE WITNESS: He also mentioned  
4 several days after she was dishevelled,  
5 she had some mystical thoughts as if  
6 God were watching her and she truly  
7 believed it. She then for a period of  
8 time missed quite a few sessions in  
9 March.

10 Q. When -- I'd like you to assume the  
11 records she was she was in Dr. Knack's office  
12 and then returned on the 3rd of January and  
13 then returned on the 17th of January. Just  
14 assume that's what the record says.

15 A. January 3rd she alleges she was  
16 raped by her husband. January 10th she alleges  
17 Dr. Knack raped her.

18 Q. Anything in the record about that?

19 A. No.

20 Q. But based on what she says is there  
21 any significance if she had been raped on  
22 January 10th is it consistent with having been  
23 raped on January 10th in psychiatric terms for  
24 her to return to Dr. Knack on January 17th?

25 MR. HARRIGAN: This is not expert

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Dr. Stone - Direct

566

testimony by any means. Objection.

THE COURT: Sustained.

Q. Let me ask you this, Doctor, are you familiar with something called rape trauma syndrome?

A. Yes.

Q. Is it consistent -- withdrawn. Is it consistent with the behavior of a woman that is raped to return to the person and place where the rape occurred soon thereafter?

A. No.

Q. Why not?

A. Because the nature of the trauma would be such that she would exert much effort to avoid the scene and the person.

Q. Would it be consistent with a woman who was raped in a therapist's office to continue to go to that therapist for nine months after that?

MR. HARRIGAN: Objection. Side bar please.

THE COURT: Yes.

(Approach off the record.)

THE COURT: Sustained.

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Dr. Stone - Direct

567

Q. I'd like to ask you questions about the diagnosis in this particular case. You already told us something about post traumatic stress disorder as it relates to this particular case?

A. Yes.

Q. Do you have an opinion with a reasonable degree of medical certainty as to whether based upon the records that you've reviewed Noelle Feldman suffered from some form of personality disorder?

A. Yes.

Q. What, if any, personality disorders does she have in your opinion?

A. Well, I made a summary actually of several different -- in other words, thinking about the different categories in the diagnostic manual.

Q. First of all, which categories in your opinion which categories of personality disorders does the plaintiff in this case have?

A. Which ones are relevant.

Q. Yes, which ones are relevant to her case?

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Dr. Stone - Direct

568

A. All of the ones in the so called traumatic cluster, the ones in the manual into three bunches. Middle one is traumatic, histrionic, borderline narcissistic and anti-social. She shows qualities of all four in addition to some paranoid disorders.

Q. What qualities does she show in reference to borderline personality disorder per se?

A. Well, I marked unstable and intense intrapersonal relations, identity disturbance.

MR. HARRIGAN: The witness is reading from a document he created.

THE COURT: Sustained.

Q. Speak from your recollection as much as possible please.

A. Impulsivity, ability up and down of mood. Impulsivity in two or more areas, drug abuse and sexual discretions. The inordinate anger, the tendency under stress to have paranoid reaction that may be transient, might not last all that long. The recurrent suicidal behaviors, ideas of suicide or in her past there have been times years ago including when

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Dr. Stone - Direct

569

she was after being raped by her father cut herself, self harm. Those kind of qualities that are also part of the borderline picture.

Q. What about histrionic features, what did she display based upon your review of the records?

A. Self dramatization, a desire to be admired, the use of impressionistic speech. In other words, not so many details, rather speech guided more by the emotions of the moment. Those are some, she endures all the histrionic items.

Q. Quickly, do you recall seeing an e-mail that Miss Feldman sent to Dr. Knack on the 14th of November, 2013?

A. Yes.

Q. In that e-mail, a particular word appears more than once, that word is magnificence. Does her use of that word have any significance to you in your evaluation of the case?

A. Yes, it's an odd way of referring to herself. Like try to assert, it's a grandiose idea that you would find in



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Dr. Stone - Direct

570

narcicisstic people particularly. Self sort of puffing up ones self. It's an unusual phrase I don't think I've ever quite heard anyone use that phrase before in that way.

Q. What is the basis of your evaluation that she has narcicisstic personality traits? What is the basis of that?

A. Well the grandiosity is one. The feeling of specialness or wanting to be admired for being special. Her pre-occupation with beauty, power, fame, in her case more pre-occupation with beauty and specialness. There is a tendency for narcissistic people to be rather ruthless and to have disregard for others but also to be haughty, feelings of superiority.

Q. What about anti-social traits, what anti-social traits were significant in your view of the records?

A. Well, there was irritability and aggressiveness and tendency to be irresponsible. That was mentioned by Dr. Lerman. And he also mentioned moments of deceitfulness. She didn't endorse all of them

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Dr. Stone - Direct

571

but enough to trigger the diagnosis, because you only need three out of the seven.

Q. Assuming -- are you familiar with the note in Dr. Knack's testimony concerning his version of what happened in September 23, 2013, nine months after the alleged rape that she alleged happened?

A. Yes.

Q. Assuming that Dr. Knack is telling the truth about what happened in September and assuming and bearing in mind the information that you obtained from his records and the other records that you have reviewed in this case, do you have an opinion with a reasonable degree of medical certainty as to the relationship between the diagnosis that you have endorsed in this case and her behavior as described by Dr. Knack in September of 2013?

MR. HARRIGAN: Objection for the reasons stated before the jury came in this morning.

THE COURT: Sustained.

Q. Based upon your diagnostic impressions of Miss Feldman, would the

1 Dr. Stone - Direct 572  
2 diagnosis that you, in your opinion with  
3 reasonable medical certainty, did the diagnosis  
4 that you have told us about explain why she  
5 would make -- why she would do what Dr. Knack  
6 says she did on September 23, 2013?

7 MR. HARRIGAN: Same objection.  
8 These are the ultimate issues in the  
9 case.

10 THE COURT: Sustained.

11 Q. Did you interview Miss Noelle  
12 Feldman?

13 A. Yes.

14 Q. Where?

15 A. In Mr. Hannigan's office.

16 Q. Was anyone present beside you and  
17 Miss Feldman?

18 A. Yes, Mr. Hannigan.

19 Q. And without telling us what Miss  
20 Feldman told you, were there any areas -- any  
21 questions that you asked her that she was not  
22 permitted to answer?

23 A. Yes.

24 Q. Why?

25 A. Mr. Hannigan objected.

1 Dr. Stone - Direct 573

2 Q. What did he object to, what did he

3 block you from asking about?

4 MR. HARRIGAN: Objection. Totally

5 irrelevant to what we are here for.

6 THE COURT: Sustained.

7 Q. I'd like you to assume that Miss

8 Feldman testified in Court concerning her

9 allegations as to how this alleged rape

10 affected her, quote, I'm not myself. I feel

11 like my soul was raped. I've been dismantled.

12 Closed quote.

13 Doctor, based upon your familiarity

14 with her diagnosis and records in this case, at

15 what point in her life did these feelings

16 become apparent?

17 A. Much earlier.

18 Q. Because of what?

19 A. Really the brutality of her father.

20 Q. You told us about certain

21 statements she made about Dr. Lerman and her

22 e-mail. Do you recall?

23 A. Yes.

24 Q. Do you recall from the review of

25 the records her interactions with Dr. Knack,

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Dr. Stone - Direct

574

aside from the alleged rapes. In general what were her interactions with Dr. Knack like, do you have the question?

A. Yes.

Q. Could you explain.

A. Well, they were variable. There were times she was very appreciative of his help including with her children. There were times what he said in his records that she behaves seductively, dressed in a seductive manner, rather inappropriate manner. There were times when he was concerned about her alcohol abuse which led to his recommendation that he did suggest ultimately to go to Silver Hill on two occasions in 2012. She was also very concerned and anxious with the impending death of her mother. So there were a number of shifts in her attitude and feeling during the course of the time that he worked with her.

Q. Are these shifts -- what relationship, if any, do these shifts in her attitude have to do with the borderline personality disorder and the PTSD you described?

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Dr. Stone - Direct

575

A. Well, there is a tendency of people who get the diagnosis of borderline personality disorder to shift between one extreme of attitude and the other extreme. We often use the word all or none thinking. In other words, people in psychoanalysis community speak about the shift, rapid shift between ideation and devaluation. In other words, I love you, you're the greatest thing since God and then I hate you, and I want to kill you. With very little in between. If events are good, Dr. Knack is being appreciative or helping her, she may feel he's terrific psychotherapist. If there is something else he does a later day that makes her feel he was not as helpful as he ought to be, he's a terrible villain. That rapid shift between wonderful and awful is very characteristic of borderline patients.

Q. I'd like you to assume there is some taped recorded conversations between Miss Feldman and Dr. Knack. Are you familiar with the contents of those conversations?

A. Yes.

Q. I'd like you to assume toward the

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Dr. Stone - Direct

576

end of the second conversation Miss Feldman repeatedly said to Dr. Knack you're a bad man. I hate you. With a reasonable of medical certainty, do those types of feelings as expressed by Miss Feldman have any relation to what you earlier told us was her abusive upbringing?

A. Yes.

Q. Please explain.

A. It's very characteristic of women who have been not only incest victims but in a rather brutal way and a tender period young, between 5 and 13 when sometimes being tied and things of that sort. That degree of powerlessness and hurt and so on and violation will inspire feelings of supreme fear and also vengeance so the person and also because of the sexual nature of the violation, if there is an assemblance of pleasure, there is a tendency to feel attached to the violator as well as to have immense hatred for the violator. That plays itself out later and has a tendency to have those kind of swings and attitude from the important men in her life, where she was picked

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Dr. Stone - Direct

577

a certain kind of person and swing between ideation and hatred based on never fully resolved, never fully worked out, never really healed situation that took place between her and her father.

Q. I'd like you to assume another thing Miss Feldman testified to in terms of her feelings and problems since the alleged rape was I don't trust anybody. Based upon your review of this case, Doctor, were there other instances where she expressed lack of trust for other people?

A. She expressed that toward Dr. Lerman.

Q. And what is the relationship -- what, if any, relationship is there between this feeling of lack of trust and the traumas that you told us about in her earlier life?

A. When a person is violated, especially severely by a parent who is supposed to be your guardian and the person who loves you and raises and is sympathetic and kind to you, when there is a 180 degree flip in that relationship into terrible destructiveness



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Dr. Stone - Direct

578

there is a tendency of the capacity to trust others is wounded and compromised as has been in her.

Q. I would ask you to assume Miss Feldman says since this alleged rape occurred she's been isolating herself and hasn't gone out. Is there a medical term for that?

A. Yes.

Q. What?

A. Agoraphobia.

Q. Was that previously diagnosed prior to this rape?

A. Yes, by Dr. Lerman.

Q. In the context of all you learned about her life, what are the roots of this agoraphobia?

A. It's a Greek term meaning afraid of being outside. Because out there people can hurt you, you can't predict what is going to happen. Some people have been traumatize the way she has. One of the things they do is to wall themselves into a safe spot and stay there and afraid to go out among people.

Q. Doctor, in the course of your

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Dr. Stone - Direct

579

studies, have you learned to categorize  
borderline patients in terms of the severity of  
the condition?

A. Yes.

Q. In terms of what you learned about  
Noelle Feldman, do you have an opinion as to  
the severity of the condition?

A. She represents one of the more  
severe examples. There are two main roots to  
becoming borderline which the way is far more  
often occurring in women than men and  
adolescent girls than boys. There are some who  
have an inherent tendency for manic and  
depressive swings. People, fathers, mothers,  
aunts, cousins who have bipolar disorder, manic  
depression in the way they lived and been  
diagnosed and some of the children will  
inherent a genetic likelihood of developing the  
same kind of condition which in an adolescence  
will manifest itself in identity troubles and  
suicidal feelings, changeability of mood. The  
picture that we paint when we talk about  
borderline. But those who develop it because of  
abuse, in other words there are many borderline

1 Dr. Stone - Direct 580

2 patients who have been lucky enough from

3 families with no neglect, no humiliation, no

4 verbal abuse, no sexual abuse, no beatings,

5 just nice family, but this has made them

6 tumultuous and not regular. They have a better

7 outcome, once they have therapy and some

8 medication, many of them no longer have enough

9 of these qualities to be diagnosed as

10 borderline and many of them go on to become

11 really quite normal functioning people. I

12 recently completed -- okay. Long term follow

13 up. But the ones severely abused is so much

14 harder to make ones peace with being raped by a

15 father, beaten by a mother, or utterly

16 neglected by a mother. They tend to have a heck

17 of a hard time making their peace with what

18 happened to them and they go on in the years

19 becoming depressed, aggressive, hard to get

20 along with, more disposed to take their life in

21 suicide eventually. They have a rougher life.

22 Q. When patients with severe

23 borderline are in psychotherapy, the more

24 severe patients, how do they tend to do with

25 the psychotherapists?

1 Dr. Stone - Direct 581

2 A. They have a more difficult time. It  
3 takes tremendous skill on the part of the  
4 therapist to really roll with the punches, with  
5 the changes in mood and combination of  
6 accusations and sometimes switch from being  
7 accusatory to being seductive, if it's a female  
8 borderline patient and male therapist. So the  
9 patient will be ultimately seductive and angry  
10 and those are not easy situations to deal with.  
11 Sometimes they get angry and run out of the  
12 office and slam the door, you don't know if the  
13 person is coming back and will do something  
14 harmful to themselves and they may try to make  
15 seductive gestures toward the therapist. Harder  
16 to deal with a psychotherapy patient.

17 Q. Do you have an opinion with a  
18 reasonable degree of medical certainty as to  
19 the prognosis for Noelle Feldman ever  
20 recovering or being cured of her psychiatric  
21 disorders?

22 MR. HARRIGAN: Objection.

23 Relevance. Two, no disclosure of  
24 opinions about this in any report that  
25 I'm aware of.

1 Dr. Stone - Cross 582

2 THE COURT: Sustained.

3 MR. BROPHY: That's all I have on

4 direct.

5 THE COURT: We'll take a short

6 break.

7 (Brief recess taken.)

8 THE COURT: Go ahead please.

9 CROSS EXAMINATION

10 BY MR. HARRIGAN:

11 Q. Dr. Stone, we met before, correct,

12 in my office?

13 A. Yes.

14 Q. On one prior occasion?

15 A. That's right.

16 Q. How much money have you charged in

17 this case to do your work and to come and

18 testify?

19 A. I charge \$400 an hour. So all

20 together it's probably something in the

21 neighborhood of 10 to \$12,000.

22 Q. Does that include today?

23 A. No.

24 Q. Do you charge some amount to come

25 and testify that's different than \$400 an hour?

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Dr. Stone - Cross

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A. No.

Q. Some things from your direct testimony I want to ask you about. You mentioned in response to a question from Mr. Brophy about the dress and appearance of Noelle Feldman being noteworthy when she came to see Dr. Knack at the beginning of his treatment. Do you recall that?

A. Yes.

Q. Do you understand that when she came to see Dr. Knack in the beginning of her treatment, she was in the middle of alcohol binging and drinking so forth for an extended period of time?

A. Yes.

Q. And would it not be expected that she might be angry, she might be resistant and she may look some what dishevelled?

A. Not necessarily.

Q. During that period of time?

A. Not necessarily.

Q. Did you understand she did look dishevelled and she was angry at that period of time when she came to see him and she had been

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Dr. Stone - Cross

584

drinking, did you understand that from the notes, yes or no?

A. Yes, the answer is yes.

Q. Now when she terminated Dr. Lerman did you understand that one of the reasons she terminated with Dr. Lerman with respect to treatment was because she felt Dr. Lerman had violated certain confidentiality understandings regarding her son when Dr. Lerman spoke openly at a therapy session about her son being suicidal and he could have been dead but for her. Do you understand that to be the facts?

A. Yes.

Q. You mentioned this term in response to a question from Mr. Brophy regarding the term magnificence, do you recall that?

A. Yes.

Q. Do you understand that that term magnificence, as Noelle testified, was given to her and suggested to her by Dr. Shander when they were together, that that word comes from her psychiatrist therapist, not from her, do you understand that to be the case from the records in this case?

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Dr. Stone - Cross

585

A. No.

Q. You didn't read her testimony that she gave under oath the other day in this case, did you?

A. Which are you talking about?

Q. About my client, Noelle Feldman. Did you read her testimony where she came in here and told a jury under oath about her claims in this case, did you read it?

A. Yes.

Q. Did you read the cross examination of her?

A. Yes.

Q. Did you read the part about magnificence?

A. I don't recall.

Q. Read it again. Withdrawn.

You talked about her displaying narcissistic characteristics. Narcissistic people can get raped; isn't that correct, yes or no?

A. Sure.

Q. Mr. Brophy brought up the fact that Noelle Feldman said on the tape that she hated



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Dr. Stone - Cross

586

Dr. Knack and you commented on that as well.  
Could it be that she hated him because he raped her, is that one of the possibilities out there, yes or no?

A. I don't think one can answer that yes or no.

Q. You were asked questions about her saying in the tapes that she couldn't trust anybody. If Dr. Knack had indeed raped her, if that claim was true, do you think as a psychiatrist that that might contribute it further to her inability to trust people, if her therapist raped her?

A. If it happened.

Q. Right, if it happened. That's what I am saying. Would that contribute to her saying that she can't trust people?

A. It could, if it happened.

Q. Mr. Brophy asked you about Noelle Feldman isolating herself and suffering from the term I think you used was or he used was agoraphobia. If indeed she was raped by Dr. Knack, as a psychiatrist, would you think that might make her agoraphobia worse, that after

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Dr. Stone - Cross

587

being raped by her therapist he she might become more isolated. Is that a reasonable conclusion to say?

A. Difficult to say. I don't think one can answer that yes or no.

Q. Is it your understanding that when Noelle Feldman first related any information about inappropriate conduct by Dr. Knack to Detective Wilson, that she didn't at first tell him about the rape, but during a subsequent conversation she then did tell him about the rape, is that your understanding?

A. Yes.

Q. And would the same apply to Dr. Shander, her psychiatrist, that although she didn't first tell Dr. Shander about the rape, she told her a little bit at a time. She told her about the alleged sexual misconduct and then eventually about the rape; is that correct?

A. Yes.

Q. Do you agree this entering delusion methodology has been held in significant disfavor since the 1960's by the psychiatric

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Dr. Stone - Cross

588

community?

A. I don't know what you mean by that.

Q. Which part don't you understand?

A. The whole thing.

Q. Did you talk in your report about this entering the delusion, did you talk about that in your report?

A. Yes.

Q. So you know what that phrase means?

A. Yes.

Q. And is that method or that therapy or whatever you might call it, the use of that has been held in significant disfavor since the 1960's --

A. I disagree.

Q. Did you read the testimony of Dr. Greenfeld in this case?

A. Yes.

Q. Can you look at page seven of your report.

THE COURT: He doesn't have that in front of him.

(Handing to witness Exhibit V.)

Q. Do you recall listing the various

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Dr. Stone - Cross

589

diagnosis made by the various medical health care providers regarding Noelle Feldman in this case?

A. Yes.

Q. And you recall an entry from 1991 where she was in the hospital for a couple of days at Lenox hill?

A. Yes.

Q. And there was a diagnosis made after two days that she had borderline personality disorder?

A. Yes.

Q. Now Dr. Lerman's records, do you recall from reviewing those that there was no specific diagnosis of borderline personality disorder in his discharge summary?

A. He referred to borderline psychopathology a number of times.

Q. That was not my questions. Either you misheard it or you are an advocate here.

MR. BROPHY: Objection.

THE COURT: Can you read it back.

(Question read back ).

A. I would have to look at that again.

1 Dr. Stone - Cross 590

2 Q. If you look at his discharge note

3 of page seven, do you see borderline

4 personality disorder there?

5 A. I see borderline psychopathology.

6 Q. Do you see borderline personality

7 disorder, those words stated there?

8 A. Not in that format. No.

9 Q. Now the next four entries Ellyn

10 Shander, Jessica Noello, Silver Hill, Silver

11 Hill, do you see anywhere there listed by you a

12 diagnosis in those records of borderline

13 personality disorder, did you write that down?

14 A. No.

15 MR. BROPHY: At this point we're

16 cross examining regarding a document

17 that is not in evidence.

18 THE COURT: Sustained.

19 Q. Do you recall one way or the other

20 whether you when preparing your report wrote

21 down the fact that either Silver Hill or Dr.

22 Shander diagnosed the patient with borderline

23 personality disorder?

24 A. The people at Silver Hill did, yes.

25 Q. Did you write it in your report?

1 Dr. Stone - Cross 591

2 A. No.

3 Q. Do you recall, Dr. Stone, that you  
4 found that Noelle Feldman was not delusional  
5 with respect to her claims regarding Dr. Knack  
6 in raping her?

7 MR. BROPHY: I'm sorry. Can I have  
8 that read back.

9 (Read back.)

10 MR. BROPHY: I object. If he wants  
11 the report in evidence he can cross  
12 examine forever.

13 THE COURT: Sustained.

14 A. I don't really understand the  
15 question.

16 MR. HARRIGAN: I'll withdraw it.

17 Q. Was Noelle Feldman, in your  
18 opinion, delusional when she claimed that Dr.  
19 Knack raped her?

20 A. The question again.

21 (Read back.)

22 A. That's hard to answer. It's not a  
23 yes or no question.

24 Q. Do you recall writing in your  
25 report that she was not delusional?

1 Dr. Stone - Cross 592

2 THE COURT: Sustained.

3 MR. HARRIGAN: Nothing further.

4 REDIRECT EXAMINATION

5 BY MR. BROPHY:

6 Q. If Noelle Feldman was not

7 delusional when she made the complaints, do you

8 have an opinion as to what she was doing?

9 A. In my notes I have another view

10 point. I said if she weren't delusional, there

11 is also the possibility she was being exploited

12 and deceptive.

13 MR. BROPHY: That's all.

14 MR. HARRIGAN: No questions.

15 THE COURT: Thank you. You may

16 step down.

17 (Witness excused.)

18 MR. BROPHY: Defense rests.

19 THE COURT: Ladies and gentlemen,

20 we're up to summations and my charge to

21 you. I'm sure everyone is aware of the

22 impending snowstorm. In light of the

23 predictions and memos I'm receiving in

24 terms of scheduling court, I think the

25 safest way to proceed is we resume on

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Dr. Stone - Cross 593

Thursday morning at 9:30. And then we will hear summation and then the charge and it goes to you for deliberations. So that concludes today.

Again please do not discuss this with anyone or among yourselves or do any research regarding this case.

(The sworn jury exits the courtroom.)

THE COURT: Okay. We will resume Wednesday in my chambers for charge conference. The jury on Thursday.

(Case adjourned to March 15, 2017. 9:30.)



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Proceedings

594

MARCH 15, 2017.

NEW YORK STATE SUPREME COURT  
COUNTY OF WESTCHESTER : PART TJR  
NOELLE FELDMAN, Plaintiff,

-against-

WILLIAM KNACK, Defendant.

INDEX NUMBER: 69747/2014

CONTINUED: TRIAL

BEFORE: HON. TERRY JANE RUDERMAN,  
Justice of the Supreme Court

APPEARANCES: Same as previously noted.

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(The following takes place in  
chambers for charge conference among  
Court and counsel.)

THE COURT: Let's start with the  
verdict sheet. We are in agreement on  
that.

MR. HARRINGTON: I have one  
proposed revision.

THE COURT: Sure.

MR. HARRINGTON: On page one, item

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Proceedings

595

2, assuming there is a finding of liability, our only proposed revision is after the phrase pain and suffering, just as a point of clarification we suggested from the date of the rape to the date of your verdict.

THE COURT: Makes sense.

MR. BROPHY: Sure. If they've already answered question one with a yes, that's what they should do. That's fine.

MR. HARRINGTON: That was it for us on the verdict sheet.

MR. BROPHY: So by question one, I see Your Honor is going to charge on proximate cause.

THE COURT: You have the revised verdict sheet.

MR. BROPHY: I thought I had the revised one. Do I have the wrong one?

THE COURT: Here.

(Handing to counsel.)

THE COURT: We are dropping that. That was based on your suggestion.

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Proceedings

596

MR. BROPHY: Fine.

THE COURT: That's what the  
revision was about.

MR. BROPHY: Your Honor, I stated my  
exception to a charge on future pain  
and suffering so that will follow  
through to the verdict sheet clearly. I  
can state the basis of my exception  
when we put the charge on the record  
now.

THE COURT: We are on the record  
now.

MR. BROPHY: I did some considerable  
research because I was under the  
impression there was case law that said  
medical testimony was necessary to  
prove future pain and suffering and  
performance and much to my surprise I  
will candidly admit to the Court that I  
found that the cases going back a long  
time did not have any such requirement.  
Having said that, this is the kind of  
case where it seems that because of the  
nature and the injuries there should be

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Proceedings

597

a requirement for medical testimony to prove the psychiatric injuries going forward particularly in light of the fact that the proof in the case is that all of the plaintiff's complaints were pre-existing. So I'm going to express my exception to that charge and I will continue to object to the question about future pain and suffering.

THE COURT: You didn't find any authority even with this that you are considering an exception?

MR. BROPHY: Your Honor, it is my obligation as an officer of the court to disclose favorable and unfavorable authority and I am doing that.

MR. HARRINGTON: I have nothing to add, Your Honor.

THE COURT: With that, it will stay in and your objection is noted and it follows through to the charge.

MR. BROPHY: As to question four, Your Honor, I am going to object to punitive damages going to the jury. I

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Proceedings

598

understand in the punitive damages charge Your Honor is going to charge clear and convincing evidence. Our position is that clear and convincing needs to apply to question one. If question one is being answered based upon a preponderance, the prejudice to the defendant is not cured by charging a different standard for punitive damages. So if it's preponderance it should be no punitive. If punitive is in, it all should be clear and convincing.

THE COURT: Do you have any substantiation for that?

MR. BROPHY: Your Honor, again, I researched the cases and I looked at the cases that the plaintiff urged, neither of those cases dealt with the issue of punitive damages. The ancient case, which I have here, the Kurz (phonetic) case did not deal with punitive damages, only compensatory damages and therefore it's really not

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Proceedings

599

apposite and the Vergari case dealt with the issue of a civil forfeiture following a criminal trial in which the plaintiff -- the defendant had already been found guilty beyond a reasonable doubt of having committed the offense. So the only question that had to be answered in the Vergari case was tracing the assets back to the defendant. Totally different. So the plaintiff didn't offer any cases on point. I think our cases are closer on point because they set forth the policy -- the standard of clear and convincing. And the Court of Appeals case we cited, that was the reason we cited the Allesandria case because there was a clear and convincing statutory standard in the Court of Claims act that the claimant had to follow and the Court held the proof submitted being equivocal and open to opposing inference did not meet the burden of proof. In other words, to

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Proceedings

600

meet the burden of proof for clear and convincing, whether it's the statutory standard for proving innocence of an underlying charge or whether it's the common law standard for punitive damages of clear and convincing evidence, if the evidence allows -- is equivocal and allows for opposing inferences, it can't go to the jury. So the evidence that allows for opposing inference can certainly support a preponderance burden, it can't support a clear and convincing burden.

So by charging two different burdens the Court is inviting the jury to be confused and by charging preponderance first, the jury is severely prejudicing the defendant.

THE COURT: Mr. Brophy, I know you have the PJI sitting with you.

MR. BROPHY: I do.

THE COURT: And you know it's right there in the PJI. It contemplates it would be different, at least under

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Proceedings

601

the Second Department cases.

MR. HARRINGTON: Your Honor, very briefly, the only thing I would say the cases we did cite in our memo to the Court we believe are applicable and in a civil case where the action is based upon a criminal act, the standard is preponderance and that the jury can be charged with two different standards and it is in many different cases including cases involving mixed claims of fraud and other claims. We think the charge as proposed is correct under the circumstances.

THE COURT: In terms of the Court of Claims, that is totally different than what is here. That's the wrongful conviction case where it's a statutory standard.

I am going to charge punitive damages. You have your exception.

In terms of the charge itself --

MR. HARRINGTON: I had a few items in terms of gender changes. Page 11,



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Proceedings

602

bottom of the page, I think it should read the evidence opposed to her claim.

THE COURT: Of course.

MR. HARRINGTON: On page 24, the first line, during the trial you heard the plaintiff and defendant read, I think we're talking about Dr. Shander's testimony. I guess our counter designation would leave it as written. I wanted to bring that up in case the Court believes your recollection was --

THE COURT: There was no other time you used it.

MR. HARRINGTON: Not during cross, not during anything. It's a minor point but I wanted to raise it for clarity. We did counter designate.

THE COURT: Right. The defendant read it.

MR. BROPHY: What page?

THE COURT: You heard the lawyer read portions, lawyer for defendant.

And I don't believe you used any EBT.

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Proceedings

603

MR. HARRINGTON: We did not.

THE COURT: You did.

MR. BROPHY: I did on cross of Miss  
Feldman as well as the doctor.

THE COURT: So I think it's the  
lawyer for the defendant. That makes  
sense.

MR. HARRINGTON: The next point,  
Your Honor, was page 28. Failure to  
produce witness. The only  
recommendation we had was the fourth  
line down.

THE COURT: There are a few words  
missing. I have that too. The plaintiff  
did not call --

MR. HARRINGTON: Yes, Your Honor.

THE COURT: I have that too.

MR. HARRINGTON: -- her treating  
psychiatrist as a witness. Words to  
that effect.

THE COURT: Right.

MR. HARRINGTON: Page 31, this is  
rape in the first degree charge. Midway  
down the page the first paragraph, in

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Proceedings

604

order for you to find the defendant, I think liable, I would put in there.

Page 35, just to mirror the verdict sheet, our proposal was the second line it should be justly and fairly compensate her. After the word, third line, pain and suffering, I would take out to date, and insert caused by defendant from the date of the alleged rape in January 2013 to the date of verdict. I only offer that because it mirrors the verdict sheet language we talked about. I thought it fixed the time frame.

THE COURT: It makes it clear. Page 36 is another her.

MR. HARRINGTON: Yes. Of the loss she has suffered. And if you find the plaintiff as a result of her injuries. Page 39, second to last line, the he should be a she.

THE COURT: Right.

MR. HARRINGTON: Page 41, the paragraph that begins with the burden.

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Proceedings

605

The second sentence, I'm not sure this means evidence that -- no, that makes sense now that I read it. I'm sorry.

I'm all set on the charge.

MR. BROPHY: Your Honor, page 32 is proximate cause charge. We've agreed that comes out.

THE COURT: Yes. I put an X through it. We agree that page goes out.

MR. BROPHY: On the table of contents, there is a reference under damages item seven to PJI 2151 A, itemized verdict, malpractice. I didn't see that in the body of the charge and I wonder if Your Honor actually intends to charge that.

THE COURT: No. That looks like it was left over from another. Actually in the table of contents we don't have punitive. Obviously I don't read the table of contents.

MR. BROPHY: If I might have a moment, candidly I haven't had the time

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Proceedings

606

to review this. I've been doing other things.

THE COURT: On page eight, where I say do not ask anyone else about the law, including the lawyer serving on the jury.

MR. BROPHY: I'll ask the Court's indulgence tomorrow, if I find anything between today and tomorrow. I'm talking about typos.

THE COURT: If it's a typo. We do this for your convenience, occasionally I will look up and maybe there is one word not exactly, but for the most part I will stay on script. It was my idea this would save time tomorrow so we will go right into your summation and motions.

MR. BROPHY: Before we get to motions, I would ask defendant's request to charge be marked as a Court Exhibit. I will take my exceptions after the charge is given. Is that acceptable?

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Proceedings

607

THE COURT: It's on the record now. Your exceptions.

MR. BROPHY: No. My requests will be on the record when my request to charge is marked as a Court Exhibit.

THE COURT: After I give the charge, yes.

MR. BROPHY: I will request my charges, the excepted ones.

(Marked Court Exhibit 1.)

MR. HARRINGTON: We can mark my requests to charge.

(Marked Court Exhibit 2.)

MR. HARRINGTON: Should we go over the exhibits?

THE COURT: The redactions.

MR. HARRINGTON: With respect to some of these exhibits they are voluminous medical records and only certain marked within them and discussed. Mr. Brophy and I agreed about foundation and authenticity but we reserved the right to object to any particular document as offered. There

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Proceedings

608

are certain documents we didn't object to and as far as we're concerned they are in the jury room. The balance of Silver Hill records which is almost 1200 pages, we submit is not going to go in the jury room. This is an issue that has been danced around. I think we are on the same page.

MR. BROPHY: We are on the same page. If the jury asks for the exhibits they get everything except the Silver Hill and Lenox Hill records. If they want some of those, they get those portions that were discussed during testimony. I marked down the pages in my notes the pages of the Lenox Hill record that I examined Doctor Greenfeld about and I think there were only three or four.

THE COURT: If the jury says we want all the exhibits, you are proposing you are not giving them the pages from Silver Hill and Lenox Hill that you used during the trial.

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Proceedings

609

MR. BROPHY: I'm sorry. I wasn't clear. I propose they be given those pages, only those pages. If they ask for the exhibits, it can be explained the Court has ruled only the pages of the records that were used during the trial those particular records will go into the jury room. So if they want to see those pages please send another note. Why should we have to spend time going through this stuff. It's only a few pages.

THE COURT: And you know what pages they are.

MR. HARRINGTON: I have them written down.

MR. BROPHY: If they ask why they are not getting all of them, the Court can explain, that's fine.

THE COURT: Anything for ID they don't get. Once they start deliberating, any time I get a note I call you both in and I assume you will be around all day.



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Proceedings

610

MR. HARRINGTON: I have one more issue, if this is a good time. With respect to the New Castle Police Department records which were subpoena, Your Honor may remember that there was no accompanying certification. Mr. Brophy alerted me to that. I was in contact with New Castle Police Department and I asked them to fax a copy of the certification. When it came up on the record, Mr. Brophy said words to the effect, well, let's see how it goes. I would ask the Court to acknowledge receipt of that certification and in some way attach it to the records which were subpoena which include the audio tapes. I'm guessing down the road Mr. Brophy might say the records were uncertified, and that's just not the case.

THE COURT: We have the certification, you gave it to me .

MR. HARRINGTON: It was sent to chambers and to Your Honor and e-mailed

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Proceedings

611

to Mr. Tartaglia but directed to Your Honor. The certification. I have a copy of it as well. I suspected it would be an issue, and time was of the essence, I asked the police to send that directly to the Court.

THE COURT: Al, do we have that?

MR. TARTAGLIA: I'll take a look.

THE COURT: Directly from the police department?

MR. HARRINGTON: Yes.

MR. BROPHY: Defense counsel will stipulate if called for as a witness a custodian of the records would have testified that the audio recording that was produced was true and accurate copy of the audio recording that was in their data base. I don't think it's an issue.

MR. HARRINGTON: Thank you.

MR. BROPHY: My appellate counsel may kick me for this, I don't think it should be an issue.

THE COURT: Anything else?

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Proceedings

612

MR. BROPHY: I reserved on the motion at the end of the plaintiff's case. So at this time I'm moving to strike the recording of the July 17, 2014 conversation from the record for the reason stated in my papers earlier, but also because after that recording was admitted into evidence I asked Detective Wilson how the recording was made and his testimony was that Miss Feldman used her own cell phone and that the device that was used was a digital recorder and the feed to the digital recorder was from a microphone device that was placed upon the ear of Miss Feldman and the microphone device worked by placing the receiver of the telephone against the microphone holding the telephone. So that the receiver of the telephone was supposed to pick up the incoming words from the receiver and the outgoing words from the lips of the person who was holding the telephone. I asked Detective Wilson

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Proceedings

613

if the plaintiff were to hold the telephone far enough away from her ear, that that could explain the portion of the recording where Dr. Knack's voice could not be heard. He said that would be an explanation. I said is there any other explanation. The other explanation would be if she moved the telephone to the other ear. That would also have the same effect. There were no other explanations in this record for the eight minute portion of that approximately 18 to 19 minute conversation in which Dr. Knack's were not audible and Miss Feldman's words were audible. I already expressed the defendant's position that this gap prejudiced the defendant because in effect the impact of Miss Feldman's statement is undiluted throughout the recording where only Dr. Knack's responses to her accusations can only be heard on half of the tape. It gets worse because if Miss Feldman's actions

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Proceedings

614

whether intentional or unintentional were the reason why eight minutes, why almost half of the tape, you can't hear Dr. Knack, Miss Feldman has tainted the recording on which she relies and it's her actions that have prejudiced the defendant and not some innocent -- some technical failure or an audible problem because of the distance, not an equipment problem, not people whispering or speaking low, something she did tainted this tape and that is prejudicial to the defendant and it is a prejudice that cannot be wiped from this record unless that entire recording is wiped from this record. So that is the basis on which I renew my application to strike the July 17, 2014 recording from the record.

THE COURT: Do you want to respond?

MR. HARRINGTON: With respect to the July 17, 2014 call, the foundation testimony was in the record, the

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Proceedings

615

authentication testimony was also in the record. Dr. Knack's own testimony about the inaudible portion of the call and what he said during it is also in the record. Noelle Feldman never testified about the content of that portion of the call, specifically what Dr. Knack said in response to her. So Dr. Knack had ample opportunity and did avail himself of it to fill in those blanks. And I submit to Your Honor the cases originally cited which concluded that this is a weight issue not an admissibility issue still controls here. Especially given the testimony that's in the record from the trial.

THE COURT: For the reasons that it was permitted to go in, it will stay in. Your motion is denied.

MR. BROPHY: Your Honor, at this point I would place my exception on the record and I would like to proceed to my 4401 motions. I have a copy of the Sczzerbiak v. Pilot. 90 NY2d 553, 1997.

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Proceedings

616

This I believe is the controlling case right now on the standard for the Court granting a 4401 motion. I'm going to make my motion based on the plaintiff's evidence first, which was the motion I reserved, but I also make my motion as the end of all the proof. I would like to read into the record the Court of Appeals standard states that a trial Court's granting of a CPLR 4401 motion for judgment as a matter of law. It's appropriate where the trial Court finds upon the evidence presented there is no rational process by which the facts trier could be based the finding in favor of the non-moving party. In considering the motion for judgment as a matter of law the trial Court must afford the party opposing the motion every inference which may be properly drawn from the facts presented. It must be considered in light most favorable to the non-movant.

I would also add that this

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Proceedings

617

particular case was a case involving an authorized emergency vehicle and the standard of proof for the plaintiff, the burden of proof for the plaintiff, was proving reckless disregard which I believe needs to be proven by clear and convincing evidence, I could be wrong about that, but it's a reckless disregard involving an emergency vehicle. Regardless of the standard of proof, the Court's statement applies to almost any type of case. Although the process, the rational process, obviously would include the burden of proof was one type of rational process to find a preponderance and another rational process but if the standard is clear and convincing that might not apply.

So my motion as to dismiss at the end of the plaintiff's case is that based on all inferences most favorable to the plaintiff, based on the proof that was presented, bearing in mind



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Proceedings

618

that as counsel just told us that there was no testimony from the plaintiff as to what Dr. Knack said in the missing parts of the tape that it is our position that the tape having been admitted by Your Honor still invites the jury to speculate as to what the parties meant and it is clear on the tape that there was no accusation of rape on the tape, the word rape wasn't used and the accusations that appeared in the November 14, 2013 e-mail Plaintiff's Exhibit 1, they are not in there either. The closest that the plaintiff comes on that tape to charging Dr. Knack with any type of sexual misconduct is when she said a psychologist having sex in his office, do you think that is right, or something to his affect and Dr. Knack's answer to that question was inaudible. Dr. Knack later in his case did give his answer to that particular question, but it is the defendant's position that

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Proceedings

619

the impact of an audiotape is such that I can't cross examine on a void on the tape and a statement on the tape carries far greater weight than a statement which is made from the witness stand. Bearing that in mind, Your Honor, the nature of the statements that were made and things that were said and not said on this tape are such that the jury would have to speculate to reach the conclusion that when Dr. Knack said he was sorry, his judgment was affected, that he did something wrong, that he was talking about raping the plaintiff, that is not -- that can only be based on speculation, it's not a permissible inference that can be drawn from what is in that recording.

Moreover, the only explanation that plaintiff had for the inconsistency between her e-mail, November 14, 2013, in fact there was no offer for that inconsistency, she only offered an

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Proceedings

620

explanation for the inconsistency of her admission to Detective Wilson after she listed the things similar to what was on the e-mail, and Detective Wilson said did anything else happen. She says no. That admission is not cured by someone saying that they were too embarrassed to tell the truth. That admission is so dispositive of all of the plaintiff's claims and in light of that admission and the admission -- the implied admission by making inconsistent claims for a long period of time previously is not enough for the jury to, by any rational process, to return a verdict in favor of the plaintiff based upon the plaintiff's evidence. So that's my application at the end of the plaintiff's case.

THE COURT: Would you like to address that?

MR. HARRINGTON: Yes, Your Honor. What Dr. Knack said during the inaudible portion of the July 17th call

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Proceedings

621

is not what this trial is obviously about. This is a trial about whether Dr. Knack raped Noelle Feldman. In this record there is ample testimony from which a jury could draw the conclusion that in fact he did, Noelle's testimony about what happened. In terms of inviting the jury to speculate by admission of the July 17th call, we've discussed this before. Again the jury is not invited to speculate because Dr. Knack himself has provided sworn testimony, admissible evidence, as to what he said during the call. And certainly if at no other time, at trial he knew what he was on trial for and could have addressed that through his testimony and he has. And in civil rape cases as far as Noelle Feldman's alleged fatal admission to Detective Wilson, civil rape cases are out there and where expert testimony has been permitted to explain a delay in reporting, whether it be law

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Proceedings

622

enforcement or anyone else for that matter and that's exactly what happened in this case. We've had an expert, Dr. Greenfeld came in and testified about delayed reporting of allegations. I think there is ample evidence from which a jury can find Dr. Knack liable.

THE COURT: I'll reserve on the motion.

MR. BROPHY: Shall I proceed my motion based upon all of the evidence at the conclusion of the case?

THE COURT: Right.

MR. BROPHY: To compound the deficiencies in the plaintiff's case in chief, which I've already gone over with Your Honor, now we also have the testimony and records of Dr. Knack and his version of the events and first of all his records have no reference to any of her even being there on the date the rape allegedly occurred. His testimony is his records are indeed the records that were made and kept in the

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Proceedings

623

usual course, and that upon learning that miss Feldman had contacted the police but before learning that the allegation was of rape, he turned those original records over to the custody of his attorney then and who turned them over to me. I cannot vouch for when Mr. Squirrel got the records. But since I got those records nobody has touched those records and Dr. Knack's testimony as to the chain of custody of those records and when he surrendered custody is unimpeached. His testimony as to the authenticity of the records has been called into question by Mr. Hannigan but a suggestion that because a record doesn't have any erasures or strike outs in it, that that somehow is a fact from which a jury can reasonably draw the inference that it's a fake, has no substance. So the only attempt to impeach Dr. Knack's version of what happened in September of 2013, nine months after the alleged rape is

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Proceedings

624

playing around with a phrase from his examination before trial about perhaps five minutes.

Your Honor, the whole record of this case demonstrates, as does ordinary experience that people's perceptions of time even when not in a frightening or a crisis situation are very nebulous. Even in the record of this case, in the police report it says Detective Wilson, a trained officer, states the second tape recording is a few minutes long and for a couple of minutes at the beginning of the tape you can't hear Dr. Knack and then after a couple of minutes you can hear it. Totally imprecise. You would expect a trained police officer especially coming to Court and knowing that this was now an issue would have timed it. But he didn't. Even his testimony as to the gap in time in the tape being a few minutes long, again emphasized the fact that this type of cross examination has

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Proceedings

625

no credible or useful purpose and no rational juror would be swayed by it. That's all they've got to impeach his testimony except of course the plaintiff saying it never happened, I kept going there for a long time. We have Dr. Shander's examination before trial the testimony that it was before November that she met with Miss Feldman to pen this -- to help compose this e-mail which explained why -- says I threw up the last time I went there. The intention of the e-mail was she was going to explain why she wasn't going back. She didn't keep going until November. There is no proof of that other than her say so. This whole case is based on one thing, it is the testimony of Noelle Feldman that has been impeached on every single point. There is no substantive evidence and we also have Dr. Lerman's testimony and his records which establish a prior pattern of false accusation against the



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Proceedings

626

therapist. She said he was staring at her breasts. That is astounding in the context of the subsequent accusation against Dr. Knack and there is also the matter not only did she delay in making the accusation as plaintiff's counsel points out and as Dr. Greenfeld may have testified. I will defer to the record, let's assume that is Dr. Greenfeld's testimony, it certainly doesn't explain a prior inconsistent allegation. It certainly doesn't explain her continuing to go to Dr. Knack for nine months, 25 visits, in the record, uncontroverted those visits took place. She even did something that no mother would ever do, no rational person could believe that a mother could do, she asked Dr. Knack to see her fifteen year old daughter in June of 2013, six months after this alleged rape. That is incredible and inconceivable. By no rational process could a jury on any standard find that

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Proceedings

627

this plaintiff's story is true and credible. Therefore I will move to dismiss the case on that basis as a matter of law.

MR. HARRINGTON: There is a lot there. I will try to counter it as best I can. This notion that someone going to their rapist after they get raped, I feel like I'm caught in a time warp from the 30's or 40's, where the defense is we will trash a person as best we can. That's absurd. There is testimony as to why she didn't report it and why she took her children there and she regreted it. And none of that goes to whether she was actually raped. As far as the doctor's notes go, you're right, we don't have a handwriting expert. As far as back as November 2013 Dr. Knack knew Noelle Feldman was accusing him of sexual impropriety at the very least and we don't know where those notes were and we don't know a lot of things about Dr. Knack's notes.

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Proceedings

628

But to take as somehow a warning dismissal because Dr. Knack turned his notes over to his defense counsel, that makes no sense. We also know in June 2014 Noelle Feldman spoke with Dr. Knack about sexual impropriety. Dr. Knack offered a convenient defense. Hey, I thought we were talking about what you did to me. Let the jury decide that. That's what this case is about.

As far as Dr. Lerman goes, this is not a trial about whether or not Dr. Lerman or Noelle Feldman is right about someone staring at her anatomy. It's not what this case is about. For all those reasons, as with the prior motion, there is sufficient evidence to warrant a finding of liability and I urge the case to deny the motion.

THE COURT: I'll reserve on the motion.

MR. HARRINGTON: Thank you, Your Honor.

THE COURT: We will resume

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Proceedings

629

tomorrow. It goes to the jury.

(Case adjourned to March 16, 2017.)