

“I Don’t Remember Doing That,” When the Discovery Terrifies the Client: Mental Health and its Impact on a Case

As criminal defense attorneys, much of our time is spent reading over police reports, analyzing probable cause affidavits, reviewing body camera footage, and all the other evidence that makes up a criminal case. Sometimes, however, once you start getting to know your client, other things come to light that are not part of the typical discovery evaluation.

For example, a client of mine came to us with quite a few pending cases, including assault causing bodily injury and aggravated assault. They were all in the realm of family violence. Initially, we were looking at the allegations and the abusive situation she was in – including what steps we could take to help protect her moving forward. However, once we met with her and reviewed the discovery, there were certain things that made us start asking questions about whether there might also be an underlying mental health issue playing a part in her case. It wasn't one particular thing in a police report that told us that. It was looking at the client as a whole with an open mind to other potential influences.

When Something About the Case Doesn't Add Up

When we met with this client, we realized there was something bigger going on that she was being affected by. That changed the way we evaluated her case. Instead of asking, "How do we get this case fixed?" the question became, "How can we help you? You as a person, you as a human, you as a friend, an individual?"

As lawyers, we aren't mental health professionals. We shouldn't be diagnosing our clients. But that doesn't mean we can't recognize when there are questions that need to be asked or help a client get in touch with the right professional for an evaluation. In this client's case, she actually already had an established mental health provider. She just hadn't told us about it. Unfortunately, this is all too common when it comes to mental health issues in our society. She simply didn't think that information would be useful in her criminal case – which couldn't be further from the truth. We only learned about it because we asked the right questions.

Once we understood the complete picture, it gave us a different avenue by which we could resolve her cases. This is a prime example of why lawyers shouldn't assume that a client will automatically tell us everything that could be important or relevant to their case. A client may not make the same connection that we do. Something that seems unrelated to a criminal charge from the client's perspective may completely change the way we evaluate the case.

“I Don't Remember Any of It”

ON a different case of mine, I had a client who's behavior on the day of the incident was completely out of character from his normal day-to-day demeanor. It was erratic, irrational, And after showing him the videos of his behavior, he didn't remember any of it. There wasn't an explanation like drugs or alcohol that played a factor in his laps in memory or behavior – he simply did not remember what had happened. Once we reviewed the discovery with him and he was able to see what had actually happened, he began to realize the seriousness of what had occurred, and he was terrified.

Here was a client looking at behavior that was completely out of character for him and realizing that he couldn't remember doing any of it. This gap in memory is where our analysis changed. Instead of assuming that the behavior shown tells us everything we need to know about the person, we had to understand why this happened to him at all. We talked with him about the fact that this appeared to be completely out of character and suggested getting a professional evaluation. Through that process, we learned that he had an underlying schizophrenia diagnosis that he was completely unaware of. With certain mental health diagnoses, including schizophrenia and bipolar disorder, a person experiencing a psychotic episode may not understand or acknowledge that something is happening to them. That can make a case particularly difficult because the person sitting across from you may genuinely not know that there is an underlying issue effecting their actions.

When Mental Health Changes the Direction of a Case

Once an underlying mental health issue is identified by the appropriate professionals, it can change the approach we take in resolving a client's case. At a minimum, documented mental health issues can become important mitigating information when we are talking with prosecutors and courts about how a case should be resolved. In Travis County, there are also specific mental

health diversion programs available to client's. For example, there is one program for qualifying felony cases and another program for misdemeanors. When we can establish that mental health was an underlying factor in what happened, we can explore whether the client qualifies for mental health diversion.

What I like about mental health diversion is that the focus is different from a traditional diversion program. In a typical pretrial diversion program, the client may have a list of conditions to complete. This can include taking a class, paying a fee, completing community service, and staying out of trouble. Basically checking all of the boxes. In contrast, mental health diversion is focused on treatment. One of the primary conditions of the mental health program is establishing a mental health provider and then following that provider's recommendations. Depending on the person, that could involve medication, therapy, or other forms of ongoing treatment. For clients who successfully complete the program and its requirements, the criminal case can ultimately be dismissed, and they may become eligible to seek an expunction.

This is obviously a tremendous outcome for someone who entered the process facing a criminal charge. However, in addition to the legal outcomes of the case, hopefully we have helped that person identify and address something that was affecting their life before they ever reached out to our office. Mental health can be a difficult subject to bring up with a potential new client. Nobody wants to feel like their lawyer is telling them that something is "wrong" with them. That is why our approach to these conversations matter.

Sometimes it is simply saying: I'm not telling you there is something wrong with you. I'm asking whether there is something happening here that we can help you with. For a criminal defense attorney, asking that question can change the direction of the case.