

Matthew Wimberly 5

37

DIRECT EXAMINATION

BY MR. WHITE:

Q Good morning.

A Morning.

Q Would you please state your name for the record.

A Matthew Wimberly.

Q Move that microphone a little bit closer to you if you would.

(Witness complied with request.)

A Is that better?

Q That's better.

Matt, September 22, 2013, where were you living?

A I was living at the house on -- is it 3323 East Victor?

Q Uh-huh. And who were your roommates?

A Jonmark Herrscher and Justin Malter.

Q On September 21, 2013, were you working anyplace in the evening?

A Yes. I was working at John Barleycorns running sound for the band that night.

Q And what time did you leave John Barleycorns?

A It was around the time the bar closed, so about 2:00.

Q Do you remember what time you arrived back at your residence?

A Shortly thereafter. I would say within ten, 15 minutes of that.

1 Q And who was at the residence when you arrived?

2 A Jonmark, Justin, and Andrew.

3 Q Was anybody with you when you arrived back at the
4 residence?

5 A Yes. My girlfriend Lelle and her cousin Adrian.

6 Q And when you got back to the residence what did you
7 guys do?

8 A We just walked in and sat down in the front room,
9 Jonmark's bedroom, and just hung out there for a little
10 bit.

11 Q Okay. Was anyone smoking marijuana?

12 A Possibly.

13 Q All right. Did you smoke any marijuana?

14 A Possibly. I'm sure if it was being passed around I
15 probably did.

16 Q Okay. Did you ever see Andrew once you got back to the
17 house?

18 A Yes.

19 Q Would you describe your interaction with Andrew once
20 you got back to the house. Tell the jury what
21 happened.

22 A As soon as I got home and we walked inside I remember
23 almost immediately him asking me -- he goes, hey, do
24 you want to do acid with me and I agreed to it. He
25 handed me the hit, and I said, how much do you want for

1 need to go outside; correct?

2 A Yes.

3 Q And are Justin and Jonmark already asleep when you go

4 outside?

5 A I'm not sure.

6 Q Is it possible?

7 A Maybe. Probably.

8 Q Okay. And as far as Andrew, you don't have an

9 independent recollection of Andrew, necessarily,

10 following you outside, do you?

11 A I can't remember that for sure.

12 Q Is it possible that he stayed in the house when you

13 went outside?

14 A It's possible.

15 Q Is it possible at some point -- because, again, you

16 don't know how long you're outside, do you?

17 A No.

18 Q Is it possible at some point while you were outside he

19 laid down somewhere in the house?

20 A I couldn't say for sure.

21 Q Because you don't know --

22 A No.

23 Q -- in all fairness; right? Because you're outside,

24 correct?

25 A Right.

1 Q Okay. And then -- and also, you know, obviously you
2 spent this time with Andrew back in the bedroom. Was
3 it your understanding that Andrew was going to be
4 staying the rest of the evening at the house?

5 A Yeah. There was no way at that point that either one
6 of us would probably go to sleep.

7 Q Fair enough. Maybe not go to sleep, but you were
8 staying at that house.

9 A Yes.

10 Q There was no talk of him leaving to go somewhere else
11 or someone coming to pick him up or anything like that?

12 A No.

13 Q Now, you were asked or you relayed to the jury some of
14 the effects of the injuries you sustained. And to be
15 candid, you're talking about the injuries sustained by
16 Jonmark hitting you over the back and head with this
17 bat and baton and whatever else he hit you with;
18 correct?

19 A Yes.

20 Q You heard him testify; you're aware of his prior
21 statements. You now know why he was hitting you with
22 those items; correct?

23 A Yes.

24 Q It was because you were in the process of stabbing and
25 otherwise attacking Andrew in the kitchen of the house

1 that night; correct?

2 A That's my understanding of it.

3 Q And you can understand why Jonmark would be doing that;

4 can't you?

5 A Yes.

6 Q You made a point of talking about some of the physical

7 difficulties you dealt with after this, but you're

8 aware, you know, as you had a broken skull or a

9 fractured skull you understand Andrew had a knife blade

10 four inches deep into his brain; correct?

11 A Yes.

12 Q And that he's continued to have memory loss, difficulty

13 holding down a job, all the things that he testified to

14 here in court this week?

15 A Yes.

16 Q And that those injuries were at your hands; correct?

17 A Yes.

18 Q You were asked if you had an intent to kill or harm or

19 do anything to Andrew that night. And your testimony

20 was that prior to taking that drug you don't recall

21 having that intent; correct?

22 A Prior to the effects of this drug kicking in I had no

23 intention at all.

24 Q Okay. But while all these events have happened, and

25 you -- you know, you know what happened now, you don't

1 have an independent recollection of those things;
2 correct?

3 A No.

4 Q So you can't say what your actions were, what your
5 thought processes were to this jury; correct?

6 A No.

7 Q And you made the point of saying that you're now here
8 today taking responsibility for what you've done, but
9 you also made a point that everyone needed to take
10 responsibility; correct?

11 A Yes, sir.

12 Q Fair to say that you don't think it's fair that you're
13 charged with a crime and Andrew Langston isn't?

14 A All I'm really saying is, you know, there's -- in this
15 case it really does take two to tango. I mean, I
16 believe -- I can't contest or dispute any of this and I
17 believe I should be held, you know, accountable for my
18 actions. But without this drug, without him selling me
19 this drug, giving me this drug, none of this would have
20 happened. So he did play his part --

21 Q Sure.

22 A -- is all I'm saying.

23 Q And it was your choice to join that dance; correct?

24 A Yes. It was my -- it was a mistake, but, yes, it was
25 my choice.

*But I didn't ever receive full disclosure
about any of it, and if I
had, I would have chosen
differently.*

1 THE COURT: All right. Thank you, Mr.
2 Shannon.

3 Good morning, Your Honor.

4 MR. WHITE: One more, Judge.

5 THE COURT: One more. And your name, sir?

6 MR. NATHAN SORIA: Nathan Soria. I've known
7 Matt for 29 years. Matt Wimberly is my best friend and
8 I've never, ever known him to be a violent person.
9 Only a kind, caring, good friend, a loving father and a
10 very competent musician.

11 I too am sorry that this man was involved, and for
12 Andrew and for all of this. It's a horrible accident.
13 And I too hope that he doesn't spend a great part of
14 his life in prison. Thank you.

15 THE COURT: Thank you, Mr. Soria.

16 Further evidence that you want to present in
17 mitigation, then, Mr. White, other than Mr. Wimberly?

18 MR. WHITE: No, sir.

19 THE COURT: Okay. Mr. Wimberly, now would be
20 your time to let me know what you think I need to hear,
21 present in evidence that you want to present in
22 mitigation of punishment before I impose sentence.

23 THE DEFENDANT: Thank you, Your Honor.

24 I've waiting a very, very long time for this day
25 to be able to publicly apologize. The ripples of this

I had wanted to apologize the minute I realized what had happened. The plan was to do it at trial and I waited 16 mths. to do so... 5 min. before I would take the stand & finally get my chance they told me that I could not, and if I did they pull every thing from my past [pg.66] that they possibly could. I was made to wait until sentencing

1 event are so vast and far reaching it's almost hard --
2 impossible to comprehend sometimes. So many people
3 have been affected by this one event. Andrew Langston
4 and his family, Jonmark Herrscher and his family,
5 Justin Malter and his family and my family, and I'm
6 sure it goes beyond that. This is a tragedy any way
7 you look at it from any side. I'm a father myself and
8 I can understand how the Langston's must feel about me
9 and I don't blame them at all. I would feel the same
10 way. I hope -- I know these are just words but I hope
11 by hearing them everyone involved may find some sort of
12 peace and some sort of comfort in them. From the very
13 bottom of my heart I am truly sorry for everything.
14 For any pain that anybody has experienced, for
15 everything or any effect that has happened. I don't
16 expect to be forgiven, but I do hope you can find it in
17 your heart to forgive me for my actions for I do take
18 responsibility for them.

19 And without this drug none of this would have
20 happened. I know this. I know who I am. I know who
21 I'm not. I was not in my right state of mind. And if
22 I had been -- if I had been in my right state of mind
23 and had done these things, I would expect, and I would
24 also agree, with the book just being thrown at me. I'm
25 here to tell you this is not me. This is not an

1 example of who I am or who I've been or who I will be.

2 I've been in here for 19 months and I've thought
3 about this every day and everyone of you have been in
4 my prayers. I'm trying to forgive myself for this. My
5 recollection of this night is not -- it's almost
6 nonexistent. I feel that both Andrew and I are both
7 very lucky to be alive and I thank God that we both
8 are. If I could take all of this back I would a
9 million times over. But we all know that I can't.
10 What's done is done. But I am truly sorry for it and I
11 hope you all may find some peace and comfort in that if
12 that's even possible. And I hope that there can be
13 some kind of closure and finality in this and that
14 everyone can at least attempt to go on with their lives
15 and not have this affect them and not be defined by it.

16 I wish and hope the best for Andrew Langston. I
17 don't feel he is a bad person. I never did. And all I
18 can do here is stand here and say that I'm sorry. I
19 have nothing but regret and remorse for this. And I
20 hope -- I just hope everyone can take some sort of
21 comfort from that.

22 You know, I can relate to Andrew telling his
23 grandmother that he felt he died that night because I
24 feel I died that night. I don't feel I was a bad
25 person before, and it may sound cliché, but the man

1 standing before you today is a changed man. I've tried
2 to make the best of a bad situation and I've tried to
3 do all I can to grow and heal, which I am still healing
4 as well.

5 I throw myself at the mercy of this court, Your
6 Honor. I hope -- I hope you all can forgive me.

7 I would also like to thank Ms. Purk, Andrew's
8 mother, for reaching out to my mother. I've come to
9 understand that you've both been supportive of each
10 other through this and I think that's very kind and
11 very compassionate. I just wanted to thank you for
12 that. And I hope that you've both helped each other,
13 that it's helped both of you equally.

14 Thank you for your time.

15 THE COURT: Thank you, Mr. Wimberly.

16 Well, the Court will find that the primary offense
17 is Count 1, which calls for a prison term of 184, 195
18 or 203 months and a postrelease supervision duration of
19 36 months.

20 Let me start with the motion for departure. Mr.
21 Wimberly, I have not doubt that the remarks that you
22 provided were sincere and I have no doubt it is very
23 difficult to make those remarks. I also have no doubt
24 that it's as difficult for the family of Mr. Langston
25 to be here and address the Court as it is for your