Gabby Tennis v. State of Florida

SC06-730

LISA-MARIE LERNER LERNER VASELLA
MICHIGAN GABY GABBY
TENNISALMEIDA DELGADO FARETTA
FARETTA GODINEZ MORAN GLYNN
HARDWICK HUTCHES LINN V. FOSSUM.

>> PLEASE RISE.

>> LADIES AND GENTLEMEN, THE
FLORIDA SUPREME COURT.
PLEASE BE SEATED.

>> THE NEXT CASE ON OUR ORAL
ARGUMENT CALENDAR IS TENNIS V.
STATE.
WHEN THE PARTY'S READY,
MR. ANDERSON.

>> MAY IT PLEASE THE COURT, MY
NAME'S JEFFREY ANDERSON.
I REPRESENT THE APPELLANT,
MR. GABBY TENNIS.
I HAVE A LOT OF ISSUES IN THE
BRIEF AND, OF COURSE, LIMITED
TIME.
I'M GOING TO FOCUS ON THE FIRST
TWO ISSUES IN THE BRIEF --
>> WELL, CAN I ASK YOU, I MEAN,
YOU CAN DO THAT, TOO --
>> SURE.
>> -- BUT I'D LIKE TO UNDERSTAND
AT THE FIRST BLUSH, AND THIS IS
TO MS. LERNER, TOO, YOU'VE GOT A
DEFENDANT WHO WAS WILLING TO
PLEAD GUILTY TO LIFE.
>> CORRECT.
>> AND YOU'VE GOT A JUDGE WHO,
WITHOUT EXPLANATION OR SHE GOT
EXACERBATED, REJECTED THE PLEA
AND SAID, WELL, THIS
MEDICATION'S INTERFERING WITH
YOUR ABILITY ON THIS PLEA, SO
YOU'D BETTER GO TO TRIAL.
>> RIGHT.
>> NOW, YOU KNOW, IF YOU DON'T
THINK THAT'S A SIGNIFICANT

ISSUE --
>> I THINK I HAVE A LOT OF SIGNIFICANT -- I AGREE --
>> THAT ONE IS -- I'M NOT SURE ON YOUR FIRST TWO POINTS, I MEAN, YOUR BRIEF'S THERE, BUT I WANT YOU TO EXPLAIN YOUR POSITION ON WHAT IS THE REVERSIBLE ERROR.
YOU DON'T SEEM TO SAY THAT THE TRIAL JUDGE DIDN'T HAVE THE DISCRETION TO REJECT THE PLEA, BUT MY CONCERN IS WHY DID THE JUDGE REJECT THE PLEA?
AND THEN DOES IT FOLLOW THAT IF THE JUDGE DOESN'T FIND IT VOLUNTARY, THAT THE JUDGE SHOULD HAVE IN THIS CASE ORDERED THAT COMPETENCY HEARING WHICH WOULDN'T HAVE CHANGED THE PLEA SITUATION.

>>> CAN I ASK YOU, YOU CAN DO THAT, TOO, BUT I WOULD LIKE TO UNDERSTAND, AT AS THE FIRST BLUSH AND THIS IS TO MISS LERNER, YOU HAVE GOT A DEFENDANT WHO WAS WILLING TO PLEAD GUILTY TO LIFE.
>> CORRECT.
>> AND YOU HAVE A JUDGE, WHO WITHOUT EXPLANATION -- OR SHE GOT EXACERBATED, REJECTED THE PLEA AND SAID, WELL THIS -- THIS MEDICATION IS INTERFERING WITH YOUR ABILITY ON THIS PLEA, BETTER GO TO TRIAL.
>> -- YOU KNOW, IF YOU DON'T THINK THAT IS A SIGNIFICANT ISSUE --
>> I THINK IT HAS LOT OF THE SIGNIFICANT -- I AGREE.
>> BUT THAT ONE IS -- I'M NOT SURE -- BUT I WANT YOU TO EXPLAIN YOUR POSITION ON WHAT IS THE REVERSIBLE ERROR.
YOU SEEM TO -- SAY THAT THE TRIAL JUDGE DIDN'T HAVE THE DISCRETION TO REJECT THE PLEA.
BUT MY CONCERN IS WHY DOES THE JUDGE REJECT THE PLEA, AND THEN DOES IT FOLLOW THAT IF THE JUDGE DOESN'T FIND IT VOLUNTARY THE JUDGE SHOULD HAVE

IN THIS CASE ORDERED THAT A
COMPETENCY HEARING WOULDN'T
HAVE CHANGED THE PLEA
SITUATION, HE WOULD HAVE HAD AT
LEAST COMPETENCY HEARING BEFORE TRIAL.
>> THAT IS THE ISSUE I RAISED
IN THIS CASE, IS THAT THE
JUDGE HAD REASONABLE NOTICE
AND IN FACT WAS NOT TAKING
THE PLEA BECAUSE HE WAS --
MR. TENNIS WAS HAVING PROBLEMS
UNDERSTANDING, HAD PROBLEMS
USING HIS JUDGMENT,
COMMUNICATING WHEN THAT RED
FLAG -- OUR POSITION IS THAT
THERE SHOULD BE A COMPETENCY
HEARING.
IN ESSENCE, SHE IS
SAYING HE IS NOT COMPETENT TO
TAKE THE PLEA AND GO THROUGH
WITH THESE PROCEEDINGS.
>> DID YOU ASK FOR A COMPETENT
HEARING AT THAT POINT?
>> NO.
THIS WAS RAISED UNDER --
U.S. SUPREME COURT CASE UNDER
OUR LAW THAT THE TRIAL COURT
HAS A SUA SPONTE DUTY ON ITS
OWN TO HOLD THAT COMPETENCY
HEARING.
>> YOU DON'T RAISE AS AN ISSUE --
OR YOU RAISE THAT AS AN ISSUE,
BUT YOU DON'T RAISE AS AN
ISSUE THAT THE TRIAL COURT
ERRED IN REJECTING A PLEA.
>> WELL, THEY --
>> THAT IS THE FLIP SIDE.
>> RIGHT.
>> THAT IS IF THE JUDGE
BELIEVED THE DEFENDANT WAS
COMPETENT, MY QUESTION REALLY
IS, AS A VERY FINE DEFENSE
ATTORNEY WAS SAYING, YOU NEED --
THIS IS A PLEA TO TAKE.
HIS FATHER WAS THERE.
THE FATHER
SAID TAKE THE PLEA.
THE GUY KNEW HE WAS GUILTY.
HE GOES I
NEED TO SAVE MYSELF FROM THE
DEATH PENALTY.
THAT IS WHY I'M
TAKING THIS PLEA.
SO IS THERE

-- MUST AS AN OFFICER OF THE COURT CONSIDER THAT THAT ARGUMENT THAT THEY -- NOT ABUSED DISCRETION NOT ACCEPTING THE PLEA, IT IS NOT LEGALLY SOUND.
I WOULD LIKE TO ASK YOU ABOUT THAT FLIP SIDE, WHICH IS EITHER HE IS -- THE JUDGE IS CONCERNED ABOUT SOMETHING, THE JUDGE DOESN'T EXPRESS IT ON THE RECORD, BUT YOU ARE NOT CHALLENGING THE TRIAL COURT'S FAILURE TO ACCEPT THE PLEA.
>> WELL, IT IS ON THE BASIS, I GUESS, OF WHAT THE TRIAL COURT SAID, THAT SHE CAN'T GO THROUGH WITH THE PLEA BECAUSE HE IS NOT THERE STANDING, COMMUNICATING, AND RATIONALIZING.
IT IS HARD TO SAY THAT TRIAL COURT HAS TO FORCE A PLEA IF SHE IS HAVING DOUBTS ABOUT A DEFENDANT AT THAT TIME BEING ABLE TO TAKE THE PLEA SO THAT WHAT -- WHAT THE STATE SAYS ABOUT THAT, HER DOUBTS WEREN'T ABOUT HIS COMPETENCY, BUT MORE OF WAS HE PLAYING THE SYSTEM, YOU KNOW THAT, THAT THE THEME THROUGHOUT THE CASE, IS THAT THIS DEFENDANT WAS YOU KNOW, GAMING, TRYING TO GAME THE SYSTEM, WHETHER IT WAS ON THE NELSON ISSUE, THE FARETTA ISSUE OR THIS, THAT HE WAS -- TRYING TO PLAY IT SO THAT, YOU KNOW, PUT THE TRIAL JUDGE IN A POSITION OF COMMITING REVERSIBLE ERROR.
>> I THINK THE TRIAL COURT, THE WAY SHE HANDLED IT WAS HE IS HAVING THESE PROBLEMS, MAYBE A COMPETENCY HEARING WOULD HAVE RESULTED IN EXPERTS -- I CAN'T PREDICT HOW IT WOULD HAVE TURNED OUT, AND MAYBE THEY WOULD HAVE SAID HE IS TRYING TO MANIPULATE.
BUT THE POINT IS YOU HAVE TO GO THROUGH THAT

PROCESS.
>> WHAT IS THE REMEDY IN THIS SITUATION?
THE WAY I READ THE TRANSCRIPT THE JUDGE GOT INTO THIS DISCUSSION ABOUT WHETHER HE WAS TAKING HIS MEDICATION OR WASN'T TAKING HIS MEDICATION.
HE SAID I CAN'T BE OFF THE MEDICATION FOR A COUPLE OF DAYS, AND SHE --
>> AND HE SAID HE COULDN'T BE.
>> COULD HE BE, AND THEN THE JUDGE SAID WELL -- WE WILL GO ON TO TRIAL, IN ESSENCE.
BUT IF THAT WAS WRONG WHAT IS THE REMEDY?
>> WELL -- THE REMEDY ALL THE TIME IS THERE SHOULD HAVE BEEN A COMPETENCY HEARING AND NOW THAT WE HAVE GONE THROUGH THIS, I MEAN, WE ARE UNCERTAIN WHETHER WE HAD SOMEONE WHO WAS TRULY COMPETENT TO STAND TRIAL, AND AT THIS POINT IT IS A NEW TRIAL.
>> I GUESS THIS IS THE PROBLEM.
I MEAN JUST A --IT IS A PHILOSOPHICAL PROBLEM HERE, ON ONE HAND, AS I SAID, THE IDEA THAT A DEFENDANT WHO GENUINELY WANTS TO PLEAD TO LIFE, THE STATE WAS WILLING TO OFFER THIS DEFENDANT LIFE, AND I THINK FOR SOME GOOD REASONS, YOU'VE GOT A CODEFENDANT, WHO IS 16, THIS DEFENDANT IS 19, IT IS A MURDER THAT PROBABLY WAS MOTIVATED BY THE MOTHER, IN MY VIEW, IN TERMS OF LOOKING AT THIS WHOLE THING, AND -- IT IS THEREFORE PROBABLY A GOOD DEAL FOR THE STATE NOT TO HAVE TO GO AND SUBJECT EVERYONE TO THIS LONG TRIAL, ESPECIALLY AN ELDERLY VICTIM WHO IS 91, SURVIVING,
VICTIMS WHO WERE WILLING TO ALLOW THAT PLEA TO BE TAKEN.
SO I THINK THE INTEREST OF JUSTICE REALLY WOULD BE SERVED BY ALLOWING A PLEA OF GUILTY TO LIFE IMPRISONMENT

TO BE SERVED.
WE CAN'T MANDATE
THAT, THE STATE WOULD HAVE TO
OFFER THAT.
ISN'T THAT REALLY
WHAT THE JUSTICE OF THIS CASE
WOULD REQUIRE?
>> WELL, IT IS -- THAT IS WHAT
THEY WERE TRYING TO DO
PRETRIAL WITH THE PLEA HEARING.
AND I AGREE WITH THAT.
YOU KNOW, IT IS -- IT IS -- IT
DEPENDS ON HOW YOU LOOK AT
THE CASE.
>> A DEFENSE LAWYER AT
THE END KNOWS THE BEST DETAIL,
AND HE IS TELLING THEM THAT
AT THE BEGINNING.
THEN WHEN THE
JUDGE SORT OF SAYS, ALL RIGHT,
YOU DON'T UNDERSTAND WHAT IS
GOING ON, YOU KNOW, I'M NOT
ACCEPTING THE PLEA, AND BE
READY FOR TRIAL, THE DEFENSE
LAWYER DOESN'T SAY HOLD IT
JUDGE, WE'VE GOT
CEROSE-LIVINGSTON HERE, WE'VE
GOT OH, SHE IS
THERE -- YOU KNOW, THE
MEDICATION, JUST POSTPONE THIS,
AND ASK THE STATE WOULD YOU
HOLD -- YOU KNOW, WAIT FOR A DAY.
NONE OF THAT IS DONE.
>> RIGHT, THAT IS WHAT I THINK
IS PARTIALLY BEHIND THE
REQUIREMENT THAT THIS COURT,
U.S. SUPREME COURT IS REQUIRED
SUA SPONTE, A TRIAL JUDGE IS TO
DO COMPETENCY HEARINGS, BECAUSE
SOMETIMES THERE IS A DIVIDE
BETWEEN THE DEFENDANT AND HIS --
AND HIS ATTORNEY WHEN YOU ARE
DEALING WITH QUESTIONS OF
COMPETENCY.
SOMETIMES THE
ATTORNEYS NOT ALWAYS THERE
DOING THE RIGHT THING OUT OF --
SOMETIMES OUT OF FRUSTRATION,
AND THERE IS A WHOLE LOT OF
THE REASONS WHY -- SUA SPONTE.
>> IF THE JUDGE SAID I'M
REJECTING THIS PLEA, NOT
BECAUSE I DON'T FIND HIM
COMPETENT, BUT BECAUSE I DON'T

BELIEVE THIS IS -- EVEN THOUGH HE SIGNED FIVE PAGES OF THIS -- WHATEVER, THE PLEA FORM, PLEA AGREEMENT, SIGNED ALL THAT, EVERYBODY INITIALED IT, AFTER I HEAR ALL THESE ANSWERS OVER THE LAST HOUR I'M NOT CONVINCED HE TRULY WANTS TO ENTER THIS PLEA, IF A JUDGE SAID THAT, THAT WOULD THAT BE A DIFFERENT SITUATION THAN WE HAVE HERE.
>> IF THE JUDGE IS NOT CONCERNED --
>> THE JUDGE HAS AN OBLIGATION TO DETERMINE VOLUNTARINESS UNDER THE RULE AND FACTUAL BASIS.
>> RIGHT.
>> OBVIOUSLY WHEN VOLUNTARINESS IS COMPETENCY VOLUNTARINESS ENCOMPASSES MORE THAN COMPETENCY, IF THE JUDGE SAID I'M NOT CONVINCED THIS IS A VOLUNTARY PLEA FOR THESE REASONS WOULD YOU NOT BE ABLE TO SAY WELL, SHE SHOULD HAVE SUA SPONTE ORDERED A COMPETENCY HEARING.
>> RIGHT, POTENTIALLY, YES, I DON'T NECESSARILY DISAGREE.
>> ANYTHING ELSE IN THE RECORD -- THAT -- THAT IS -- APPARENT SITUATION -- PROSECUTION UNABLE TO WORK OUT AN AGREEMENT.
ORDINARILY WE WOULD SAY IN THAT SITUATION EXTENSIVE PREPARATION -- OF HIS -- THIS IS WHAT IS GOING TO HAPPEN, GOT ALL HIS DUCKS IN A ROW, AND TAKING YOUR MEDICATION, IF THAT IS WHAT HAS TO GO ON OR WHATEVER, HERE IS WHAT IS GOING TO HAPPEN.
WE NEED TO BE SURE THAT WE ARE ON THE SAME PAGE, NOW THAT WE HAVE AGREED.
THIS IS THE WAY WE'RE -- GOING TO PROCEED SO WHAT HAPPENED ON THE RECORD IS THAT THIS THING BLOWS UP.
THEY SEE IT BLOWS UP -- TRIAL

COURT I CAN'T ACCEPT THE PLEA NOW.
THERE IS ALL THESE PROBLEMS, APPARENTLY THE STATE, TOO, IS -- MAYBE WE HAD A DEAL, BUT YOU HAVE REALLY HAVE NOT GOTTEN YOUR DUCKS IN ORDER.
ALL RIGHT.
BUT WE ARE GOING TO PULL THE DEAL OUT, TOO.
AND SO REALLY YOU HAVE ALMOST AN IRRATIONAL SITUATION.
THERE IS NOTHING ON THE RECORD LATER TO EXPLAIN WHAT IS HAPPENING HERE AS OPPOSED TO THE ONE FORWARD -- GETTING THE THING STRAIGHTENED OUT, EITHER NOT TO HAVE A PLEA, OR WHATEVER, THAT WE DON'T GET ANY EXPLANATION THAT LATER HE IS UNDER CONTROL, STILL WANTS THE DEAL, OR WHATEVER.
>> WELL --
>> NEVER ANY EXPLANATION ON THE RECORD.
>> NOT REALLY.
WHAT WE SEE IS KIND OF AN IRRATIONALITY FROM MR. TENNIS, AT SOME POINT IN THE END, HE HAS TO PUT TO DEATH -- THAT WAS HIS ARGUMENT TO THE JURY, SO YOU DON'T SEE ANY --
>> SO THE ESSENCE OF YOUR POINT, I TAKE IT, IS THAT THE RECORD -- DEMONSTRATES PERHAPS AS A SUBSET -- BUT THAT CLEARLY THE COMPETENCY ISSUE -- ON THAT EXCHANGE IN COURT.
>> THE PLEA SITUATION SOLIDIFIED, RAISED THE RED FLAG. I THINK IT APPEARS THROUGHOUT THE TRANSCRIPT.
>> WHAT ABOUT HIS REQUEST TO REPRESENT HIMSELF, GET RID OF HIS ATTORNEY?
HE REQUESTED THAT, AND THEN WHEN THE JUDGE SAID NO, HE ASKED THEN TO REPRESENT HIMSELF, DOES THIS HAPPEN BEFORE OR AFTER THE PLEA SITUATION?
>> AFTER THE PLEA SITUATION.
>> SO IS ALL OF THIS A PART

OF YOUR DEMONSTRATION THAT
THERE WAS SOMETHING WRONG WITH
THIS DEFENDANT?
>> WELL, IT MAY HAVE BEEN BUT
IT MAY -- THE TWO ARGUMENTS
THAT HE SHOULD HAVE BEEN
ALLOWED TO REPRESENT HIMSELF,
WHICH I'M NOT REALLY MAKING,
AND THAT HE WAS INCOMPETENT,
WHICH I'M NOT REALLY MAKING,
I'M MAKING THE ARGUMENT THAT
THE JUDGE SHOULD MAKE INQUIRIES
INTO THESE THINGS WHEN THERE
IS A REASONABLE BASIS TO DO
SO, FOR SELF-REPRESENTATION.
ALL HE HAS TO DO IS, YOU KNOW, I
WANT TO REPRESENT MYSELF, HE
CLEARLY DID.
>> ARE YOU MAKING THE ARGUMENT
THAT THE COURT DID ASK -- THE
COURT -- INQUIRY THAT HE WOULD
HAVE -- WOULD INCLUDE A
DETERMINATION FOR COMPETENCY?
>> I'M NOT SAYING ANY PART OF
FARETTA NECESSARILY, BUT IF
YOU GET INTO ONE INQUIRY YOU
MIGHT BRANCH INTO A COMPETENCY
INQUIRY OR HEARING, IT COULD
HAVE PROVIDED FURTHER EVIDENCE.
WHAT I'M SAYING IS THERE
IS A PATTERN, JUDGE, NOT MAKING
INQUIRIES.
>> WHAT IS -- ABOUT THE --
TRIAL JUDGE -- MEDICATION --
[INAUDIBLE]
MAKING A DETERMINATION THEN
WENT TO TRIAL -- WHAT LENGTH
OF TIME?
>> THERE WAS A PRETTY GOOD POINT
OF TIME, I WOULD SAY, I THINK IT
WAS A YEAR.
BUT THAT IS STILL THE PROBLEM
IN THAT IF HE IS INCOMPETENT
DURING THAT PERIOD, THAT IS AN
IMPORTANT TIME PERIOD THAT HE
NEEDS TO BE COMPETENT TO HELP
HIS ATTORNEY WITH PREPARATION
FOR TRIAL.
AND HE NEEDS TO BE --
>> DOES THAT MATTER UNDER THE
LAW, WHAT LENGTH OF TIME THERE
IS BETWEEN COMPETENCY --
>> NO, I DON'T THINK THERE IS
A BRIGHT LINE.

>> WHEN THE JUDGE SAID IN AUGUST OF -- MAY BE I -- IN SEPTEMBER 2004, THAT OKAY, NOW BE READY FOR TRIAL, IT THEN WAS ANOTHER YEAR BEFORE THEY WENT TO TRIAL?
>> -- IT WASN'T UNTIL -- I'M PRETTY SURE THE PLEA WAS THE YEAR BEFORE.
MAYBE I WILL TAKE THAT BACK.
I'M NOT --
>> AT THE TIME THAT THE TRIAL STARTED, THEN, WAS IT THE JUDGE SAYING WELL, YOU KNOW, YOU WERE ON THIS MEDICATION, PRETTY HEAVY-DUTY MEDICATION AS FAR AS BEING -- THORAZINE, CERTAINLY HEAVY DUTY.
DID THE JUDGE THEN ASK AT TRIAL YOU STILL ON ALL THIS MEDICATION?
>> THE ONLY TIME IT CAME UP WAS SOMETIME DURING JURY SELECTION, APPARENTLY, MR. TENNIS, THE DEFENDANT, IN CAPITAL CASES WORE A STUN BELT.
THERE WAS A BAILIFF INFORMED THE JUDGE THAT THERE WAS A REQUEST FROM THE NURSE SAYING HE IS ON -- HE IS HAVING SEIZURES AND ON MEDICATIONS, AND THE STUN BELT SHOULDN'T BE USED.
AND SHE STARTED TO SAY WELL, LET'S GET THE MEDICAL RECORDS UP HERE, ALL THIS, CHECK THIS OUT.
BUT IT NEVER FOLLOWED THROUGH ON IT, ALL THEY DID WAS -- HE IS NOT TO WEAR THE STUN BELT, HE CAN BE --
>> BUT HE WAS ACTUALLY -- SEIZURES IN THIS -- THAT IS THE --
>> WE DON'T HAVE GOOD HARD EVIDENCE, BUT THAT IS THE REPRESENTATION FROM A NURSE, APPARENTLY.
>> BUT YOU DON'T ARGUE THAT AT THE BEGINNING OF THE TRIAL THERE WERE OTHER SIGNS AT THAT

TIME THAT A COMPETENCY --
HEARING EVENTUALLY WAS --
>> AFTER THE TRIAL WAS DONE.
>> AND WHAT GAVE RISE TO THAT?
>> I'M NOT EXACTLY SURE,
BECAUSE THE JUDGE DOESN'T
ARTICULATE THAT.
>> HE TOOK THE STAND AND GAVE
A NARRATIVE AGAINST THE LAWYER'S
ADVICE.
>> IT MAY HAVE BEEN THE PENALTY PHASE
DID THAT, ASKED BASICALLY THE
JURY PUT HIM TO DEATH.
>> BEFORE THE JUDGE HE SAID
PLEASE SHOW ME MERCY; IS THAT
CORRECT?
>> RIGHT, I THINK SO.
>> NOWHERE IN THIS RECORD DOES
THE LAWYER -- BRING FORTH --
[INAUDIBLE]
>> NO, NO, WE DON'T.
I WOULD LIKE TO START WITH
ISSUE NUMBER ONE, IF I MAY.
UNLESS THERE'S FURTHER
QUESTIONS.
>> I WOULD JUST LIKE TO FOLLOW
UP ON THIS, JUSTICE PARIENTE'S
QUESTION, THE BEGINNING OF THE
TRIAL: WAS THERE ANY OTHER
FACTS THAT CAUSED THE JUDGE TO
QUESTION THE COMPETENCY?
>> THERE WAS NOTHING AS -- AS
STARTLING AS THE PLEA COLLOQUY
WHERE HE WAS ABOUT TO PLEA,
THERE MAY HAVE BEEN LITTLE
THINGS LIKE I SAID I'M NOT
EXACTLY SURE WHAT TRIGGERED
THE JUDGE AT THE END OF THE
CASE TO ORDER A COMPETENCY
HEARING TO SEE IF HE WAS
COMPETENT TO PROCEED FORWARD.
THEY DIDN'T DO A RETROACTIVE
COMPETENCY HEARING.
I LIST IN
MY BRIEF WHAT WAS DONE.
>> I KNOW YOU WANT TO GO TO
THOSE TWO ISSUES, BUT JUST AS
PUBLIC POLICY THIS COURT, THE
STATE, FOR TRIAL JUDGES, IT
SEEMS TO ME SINCE WE WANT TO
ENCOURAGE KNOWING PLEAS WHAT
WOULD THE RULE OF LAW THAT YOU
WOULD SAY SHOULD -- IF WE
WERE TO REVERSE, THAT WOULD

COME OUT OF THIS CASE, AND SEE
IF I CAN -- WOULD IT BE THAT
WHEN A JUDGE IS INQUIRING AND
MAKING THE DETERMINATION OF
VOLUNTARINESS WE HAVE
SAID THEY'VE GOT TO DETERMINE IF
ON NECESSARY -- IF AT THAT POINT
SUBSTANTIAL QUESTIONING ABOUT
MEDICATION THEY EITHER HAVE TO
SAY I CANNOT ACCEPT THIS
PLEA, HAVE NOT DETERMINED IF
IT WAS VOLUNTARY, AND I HAVE CONCERNS
ABOUT COMPETENCY AT LEAST ONE
OR THE OTHER, WHAT WOULD -- YOU
KNOW, AGAIN ,IF YOU WERE GOING
-- 15th ASK IT TRIAL JUDGES
WHAT TO DO --
>> I WOULD SAY, JUDGE, UNDER
THOSE CIRCUMSTANCES I DON'T
THINK THEY COULD ACCEPT THE
PLEA IF THERE IS QUESTIONS
LIKE THAT, AND THEY SHOULD
ORDER A COMPETENCY HEARING.
>> YOU CAN'T ACCEPT THE PLEA,
THE STANDARD FOR GOING TO
TRIAL IS THE SAME AS THE
COMPETENCY IS THE SAME AS
ACCEPTING A PLEA.
IS THAT CORRECT?
>> YES.
>> I MEAN YOU BASICALLY --
>> RIGHT --
>> SO IF HE WAS COMPETENT TO
GO TO TRIAL --
>> HE SHOULD BE COMPETENT TO
TAKE THE PLEA.
>> OR VICE VERSA.
>> RIGHT.
>> ALL RIGHT.
NOW, I'M JUST TRYING TO
PROCESS THIS, TO SEE WHERE WE
WERE GOING WITH THIS.
>> HOW DOES THIS -- DELAY OF
YEARS -- BECAUSE, ONE THING IF
HE HAD GONE TO TRIAL
IMMEDIATELY, BUT COMPETENCY HE
COULD HAVE HAD PROBLEMS WITH
MEDICATION -- THE PLEA -- BUT
--
>> HERE IS THE PROBLEM WHY YOU
REALLY NEED AN INQUIRY AND
HEARING ON IT, BECAUSE WE
DON'T KNOW IF THE MEDICATION
CAUSED -- HOW MUCH OF A PROBLEM THAT

CAUSES, BUT YOU HAVE TO
HAVE THE RIGHT KIND, RIGHT
AMOUNT.
WHAT IS THE CAUSE IF HE
IS NOT ON THE MEDICATION, WHAT
KIND OF PROBLEMS POP UP THEN?
SO IT IS SOMETHING THAT NEEDED
TO BE ADDRESSED AS SOON AS
POSSIBLE.
LIKE I SAID, IT
IMPACTS EVERYTHING IN THE
CASE.
SO IT SHOULD HAVE BEEN DONE
RIGHT AWAY,
ESPECIALLY WITH THE POSITION
THAT THE TRIAL COURT WAS
TAKING.
>> YOU WERE SAYING IT WAS
DIFFICULT FOR -- TO DO THAT.
ISN'T THAT INCUMBENT UPON
COUNSEL -- [INAUDIBLE]
>> WELL, IT WAS CLEAR IF THE
JUDGE HAS A REASONABLE BASIS
TO BELIEVE, IF THERE IS A
REASONABLE BASIS IN FRONT OF
THE JUDGE TO BELIEVE HE IS NOT
COMPETENT, THEN THE JUDGE
SHOULD HAVE THE COMPETENCY
INQUIRY, HEARING.
THAT IS THE CLEAR BLACK-LETTER
LAW ON THIS.
>> ON THE BLACK-LETTER LAW ON
THIS FARETTA HEARING THING, IS
IT PER SE REVERSIBLE ERROR IF
AFTER THERE IS A CLEAR
STATEMENT OF DESIRE FOR DEFENDANT
REPRESENTATION THERE HAS TO BE
AN INQUIRY?
>> YES.
>> SO THAT --
>> IT IS NOT HARMLESS ERROR.
IT IS JUST ERROR.
>> SO YOU WOULD SAY THAT -- I
MEAN, AGAIN, YOU CAN GO BACK TO
YOUR FIRST TWO POINTS.
>> OKAY.
I RELY ON BRIEFS FOR ALL THESE
OTHER POINTS.
AS I SAID, I THINK
THERE'S SUBSTANTIAL ISSUES.
POINT NUMBER ONE, I WOULD LIKE
TO FOCUS IN ON THE HEARSAY
PORTION.
THERE ARE A COUPLE

OBJECTIONS, A PARTIAL SHOE
PRINT FOR THE VICTIM.
THE DETECTIVE EXPERT, IN MAKING
SHOE PRINT COMPARISONS, COMES
TO THE CONCLUSION THAT IT IS
CONSISTENT WITH A TOMMY
HILFIGER SHOE PRINT.
I SHOULD
PUT IN ANOTHER OFFICER ASKED
HIM TO MAKE THIS COMPARISON,
TO THE SPECIFIC TOMMY HILFIGER
BRAND.
AND IT IS THE DESIGN, NOT THE
SPECIFIC WEAR PATTERN, THAT HE
IS COMPARING.
AND ONCE HE PERFORMED HIS
EXPERT TASK MAKING A
COMPARISON, AND DECLARING IT
CONSISTENT, HE CALLED A TOMMY
HILFIGER REPRESENTATIVE, AND
THE RESULT OF THAT
CONVERSATION WAS THAT THIS
SHOE PRINT FOUND ON THE VICTIM
COULD ONLY BE MADE BY A TOMMY
HILFIGER SHOE.
AND THE DEFENSE COUNSEL HAD
OBJECTED TO THAT HEARSAY
COMING INTO EVIDENCE, SAYING,
YOU KNOW, BUT THE TRIAL COURT
ALLOWED IT UNDER THE THEORY
THAT ANYTHING -- IF THE STATE
WEIGHS A PREDICATE, THAT AN
EXPERT RELIES ON SOMETHING,
EVEN TELEPHONE CONVERSATIONS,
THAT IS ADMISSIBLE, THE
DEFENSE COUNSEL MADE THE
ARGUMENT, JUDGE, TELEPHONE
CONVERSATIONS SHOULDN'T BE
ADMISSIBLE, IT SHOULD BE DATA
OR FACTS RELIED ON THE EXPERT
BUT NOT PHONE CALLS WITH
OTHER EXPERTS.
-- OUR ARGUMENTS BASED ON THAT
REVERSIBLE ERROR OCCURRED IS
BASED ON LYNNE V FLOSOM
>> EVEN IF ERROR IS IT STILL ONLY
HARMLESS ERROR ANALYSIS.
>> YES.
>> IN THE WHOLE SCHEME OF THIS
MURDER -- WHAT IMPACT DOES
SHOE PRINT EVIDENCE HAVE?
>> BECAUSE THE STATE UTILIZED
THE SHOE PRINT EVIDENCE AS
EVIDENCE THAT THE DEFENDANT

DID THE ATTACK.
YOU KNOW IT IS THE ONLY PIECE
OF PHYSICAL EVIDENCE THE STATE
HAS TO ARGUE WHAT HAPPENED
INSIDE THE VICTIM'S RESIDENCE.
AND THEY USED THE FACT THAT SOPHIA --
>> THE TESTIMONY OF THE
CO-DEFENDANT.
>> RIGHT.
>> THAT SAYS THAT HE STRUCK
THIS PERSON --
>> RIGHT BUT IT BOLSTERS HER
TESTIMONY, HER TESTIMONY IS
KIND OF IN QUESTION,
ESPECIALLY BY THE DEFENSE,
BECAUSE HER TESTIMONY IS ABOUT --
AND IT ENTAILS THAT HER
MOTHER -- BOLTOS WASN'T
INVOLVED IN THIS IS THE CONCERTED
EFFORTS TO
SHOW SHE IS NOT CREDIBLE IN
SAYING THAT'S CORRECT BECAUSE
FOR INSTANCE, LIZ BOLTOS MADE
NUMEROUS PHONE CALLS TO THE
VICTIM JUST BEFORE HIS DEATH,
THE YOU KNOW, WITHIN AN HOUR,
EIGHT PHONE CALLS, SHE
INITIALLY DENIED THAT WHEN SHE
TOOK THE STAND, BUT WHEN
CONFRONTED WITH PHONE RECORDS,
SHE GAVE IN AND ADMITTED SHE
MADE ALL THESE CALLS.
ON DIRECT EXAMS, SHE SAID THAT
SHE HADN'T EVEN SEEN THE
VICTIM FOR SEVERAL DAYS.
BUT AFTER THE PHONE RECORDS
WERE INTRODUCED AND SHOWN TO
HER, SHE ADMITTED THE VERY
AFTERNOON OF HIS DEATH SHE HAD
GONE OVER THERE.
>> BUT WHY SHOULD THAT BE
RELEVANT?
>> RELEVANT TOWARD CREDIBILITY
OF SOPHIE ADAMS CLAIMING HER
MOTHER IS NOT VOLUNTARILY AT
ALL -- THERE IS OBVIOUSLY SOME
INVOLVEMENT, THERE IS BLOOD
FOUND IN HER CAR.
>> TALKING ABOUT WHAT AN
EXPERT IS RELYING ON, THAT IS
WHERE WE ARE HAVING A
DIFFICULT TIME DRAWING THE
NEXUS, I BELIEVE IS WHERE YOU
ARE GOING, WHAT YOU ARE TALKING

ABOUT WHAT THE POINT IS.
>> OKAY.
THE FOOTPRINT IS A
PIECE OF PHYSICAL EVIDENCE
THAT HELPS THE STATE.
IT IS KIND OF LIKE -- AND THE
EXPERT'S TESTIMONY, THE HEARSAY
THAT IS COMING IN, YOU CAN
THINK OF THIS LIKE -- DNA,
YOU HAVE A LAB PERSON MAKE A
DNA MATCH, AND WHAT IS GOING
-- THE LAB PERSON DOESN'T THEN
TESTIFY I MADE A CALL TO A
STATISTICIAN, SAID
FREQUENCY OF A MATCH IS ONE IN
A MILLION, AND THAT WOULD BE
CLEARLY IMPROPER HEARSAY, BUT
IN ESSENCE THAT IS WHAT IS
HAPPENING HERE, BECAUSE THE
TOMMY HILFIGER EXPERT BY
SAYING IN A CELL PHONE
CONVERSATION THIS COULD ONLY
BE A TOMMY HILFIGER SHOE PRINT
AND NO OTHER BRAND COULD MAKE
IT, IT GIVES PROBATIVE VALUE
TO THE SHOE PRINT, UNLIKELY
THAT MY SHOE PRINT OR SOME
OTHER SHOE PRINT COULD HAVE
MADE THIS.
IT HONES IN ON THE FACT THAT
YEAH -- TENNIS WORE TOMMY
HILFIGER SHOES, THE DEFENSE
ISN'T ABLE TO CROSS-EXAMINE
THIS UNKNOWN TOMMY HILFIGER
EXPERT, THEY ARE NOT ABLE TO
SHOW WHETHER OR NOT HE IS
QUALIFIED.
>> HIS POSITIONS, TOMMY
HILFIGER SHOE --
>> AGAIN, THAT IS SOLELY SOPHIE
ADAMS' TESTIMONY.
WE DON'T HAVE
HAVE ANY -- HE CLAIMS HE
DIDN'T WEAR THAT TYPE OF SHOE,
BUT SHE TESTIFIED THAT HE DID,
THEY DIDN'T RECOVER IT, ANY
TOMMY HILFIGER SHOE FROM HIM.
>> I'M HAVING -- JUST HELP ME
FROM ONE THING, FOR A MINUTE.
WE UNDERSTAND WHAT LYNNE SAYS,
AN EXPERT CAN'T BE A CONDUIT FOR
INADMISSIBLE EVIDENCE,
YET THEY CAN RELY ON FACTS
THAT ARE NOT NECESSARILY IN

EVIDENCE, WHAT -- YOU ARE NOT CHALLENGING HIS EXPERTISE, AN EXERT IN SHOE PRINT IDENTIFICATION.
>> COMPARISONS.
>> COMPARISONS.
>> WHAT IS IMPERMISSIBLE EVIDENCE CAME IN THROUGH HIM AS CONDUIT --
>> HE KNEW, HE TESTIFIED THIS IS CONSISTENT WITH THE TOMMY HILFIGER SHOE, THIS PRINT.
>> RIGHT.
>> BUT HE COULDN'T SAY BY HIMSELF THAT IT IS NOT CONSISTENT WITH A MILLION OTHER TYPE BRANDS OF SHOES, OTHER TYPES BUT FOR --
>> SO THEY UTILIZED THE TOMMY HILFIGER, SOME PERSON, REPRESENTATIVE SAID DURING A CONVERSATION "WE ARE THE ONLY ONES TO MAKE THE SPECIFIC DESIGN."
SO FROM THAT THE ARGUMENT IS BEING MADE THAT IT IS ONLY A TOMMY HILFIGER SHOE, NO OTHER.
>> I THOUGHT SOMETHING ABOUT TELEPHONE CALLS, MAYBE I --
>> THAT IS HOW HE CONTACTED THE GUY.
>> OKAY, ALL RIGHT.
>> INSTEAD OF PRODUCING HIM AS A WITNESS THEY ARE INTRODUCING THE TELEPHONE CONVERSATION.
THAT THE -- DETECTIVE HILL AND THE TOMMY HILFIGER REPRESENTATIVE HAD.
>> YOU ARE WELL INTO REBUTTAL TIME.
IF YOU WANT TO SAVE ANY TIME --
>> I WILL SAVE THE REST OF MY TIME FOR REBUTTAL.
THANK YOU.
>> MISS LERNER.
>> MAY IT PLEASE THE COURT, FOR THE ATTORNEY GENERAL'S OFFICE, AND GOING TO THE COURT'S FIRST ISSUE ABOUT THE COMPETENCY, I WANTED TO POINT OUT A NUMBER OF ITEMS.
>> CAN I ASK YOU THIS QUESTION AS YOU GO INTO THAT, FROM THE

STATE'S POINT OF VIEW, WHY DID
THE JUDGE REJECT THE PLEA?
>> THE JUDGE REJECTED THE PLEA
TWOFOLD.
THROUGHOUT THE PLEA
COLLOQUY, MR. TENNIS WAS GOING
BACK AND FORTH ABOUT WHETHER
OR NOT HE WANTED TO PLEAD.
HE KEPT ASKING QUESTIONS,
SAYING POTENTIALLY HE WAS ONLY
DOING THIS TO AVOID THE DEATH
PENALTY --
>> HOW DO WE KNOW THAT?
>> HE SAYS IT.
>> HOW DO WE KNOW WHY THE
JUDGE REJECTED THE PLEA?
OH, AT THE END, AFTER SHE GOES
THROUGH MOST OF THE COLLOQUY,
SHE ASKS THE DEFENDANT IF HE
IS ON ANY MEDICATION OR ANY
OTHER SUBSTANCE THAT MAY
AFFECT HIS JUDGMENT, AND I
BELIEVE THAT IS THE WORD SHE
USED, HIS JUDGMENT.
AND HE SAID MAYBE
A LITTLE BIT, SHE SAID, ARE YOU
ON MEDICATION?
HE GIVES A LIST.
SHE SAID IS IT
AFFECTING YOU AT ALL?
AND HE GIVE US SORT OF A -- A
NONANSWER, SAYING IT IS MAKING
HIM CALM, HE IS NOT NERVOUS.
SHE ASKS AGAIN WHETHER OR NOT IT
IS AFFECTING HIM, AND HE SAYS A
LITTLE BIT.
>> THEN SHE SAYS AT THAT POINT,
IF YOU FEEL THE MEDICATION IS
INTERFERING, AFTER
HE UNDERSTOOD, SIGNED
EVERYTHING, INITIALED.
>> A WHOLE EXTENSIVE COLLOQUY
UP TO THAT POINT, AND HE IS
ASKING, QUESTIONS OF HER, SHE
SAYS, WELL, IF THE MEDICATION IS
INTERFERING WITH YOUR ABILITY
TO MAKE THIS DECISION WE WILL
GO TO TRIAL, BECAUSE I CAN'T
ACCEPT A PLEA FROM YOU UNLESS
I KNOW YOU ARE ABLE TO
UNDERSTAND IT.
NOW THAT IS WHERE I HAVE --
WITHOUT THE JUDGE SAYING, WELL,
WHAT WAS -- WHAT WAS SHE SAYING,

WE'RE SPECULATING THAT IT WAS ANYTHING OTHER THAN HER REASONABLE -- BASED ON MEDICATION IN THIS CASE IT WAS INTERFERING WITH HIS -- HIS COMPETENCY.
>> I DISAGREE.
>> I KNOW YOU DO, BUT I'M SAYING THAT THE RECORD DOESN'T -- THAT IS ALL THE JUDGE SAYS, AND THEN THE PLEA THAT IS GONE, THE PLEA TO LIFE, BUT -- FOR HER TO TAKE A PLEA, AS THE COURT POINTED OUT BEFORE, SHE HAS TO FIND THAT IT IS A KNOWING AND INTELLIGENT WAIVER. THIS GOES TO THE KNOWING ELEMENT, THE VOLUNTARINESS IN THE COMPETENCY, COMPETENCY BEGAN ON 191 SUPPLEMENTAL RECORD, VOLUME TWO, AND IT STARTS OUT WITH THE DEFENSE ATTORNEY SAYING --
>> I THINK -- I MEAN PLEA HEARING.
>> YES, THE DEFENSE ATTORNEY COMING IN SAYING I WORKED OUT A GREAT DEAL BUT MY CLIENT REFUSES TO TAKE IT.
AND THEY GO THROUGH THIS DISCUSSION, ABOUT HOW INVESTIGATOR TRIED TO TALK HIM INTO TAKING IT, TURNS OUT THE DEFENDANT'S FATHER AND THE DEFENDANT WERE REFUSING TO TAKE THE PLEA BECAUSE THE DEFENDANT KEPT SAYING HE WAS NOT GUILTY, THIS IS IN THE RECORD, AT THE PLEA COLLOQUY.
AND THE JUDGE DISCUSSES THE FELONY MURDER RULES WITH HIM, THE DEFENDANT TAKES A BREAK, GOES BACK INTO THE JURY ROOM, WITH THE PSYCHOLOGIST, AND THE INVESTIGATOR AND THE ATTORNEY, THEY TALK, HE GOES THROUGH THE PLEA FORM, WHICH HE FILLS OUT, WHEN THEY COME BACK OUT INTO THE COURTROOM, THE JUDGE ACTUALLY PUTS THE DOCTOR ON THE RECORD, DR. LIVINGSTON SPECIFICALLY ASKED HER AFTER DISCUSSING THIS WITH THE DEPARTMENT TODAY, THIS MORNING

10 MINUTES AGO DO YOU HAVE ANY QUESTIONS ABOUT HIS COMPETENCY, THE END DOCTOR SPECIFICALLY SAID THE ULCER LAWYER THE STAFF WERE TRAINED IN RECOGNIZING SORES.

>> HERE, IS THE, THE LIMIT THOUGH, AT THE END OF ALL OF THIS, IN AUGUST 2004, THE JUDGE ENDS UP SAYING, ARE ANY OF THE MEDICINES INTERFERING WITH YOUR ABILITY TO MAKE THE DECISION AS TO WHETHER YOU WANT TO GO TO TRIAL OR ENTER THIS PLEA?
THE DEFENDANT SAYS, A LITTLE BIT.
THE COURT.
WELL IF YOU FEEL THE MEDICATION IS INTERFERING WITH YOUR ABILITY TO MAKE THIS DECISION, THEN WE WILL GO TO TRIAL, BECAUSE I CAN'T ACCEPT A PLEA FROM YOU UNLESS I KNOW THAT YOU ARE ABLE TO UNDERSTAND AND THAT YOUR REASONING IS NOT -- AND THEN, THE DEFENDANT SAYS, THERE IS NO WAY I CAN STAY OFF OF THE MEDICATION FOR A COUPLE DAYS.
QUESTION MARK.
THE JUDGE STEPS IN AND SAYS, MR.^SHINBERG INDICATES THAT THE PLEA WILL BE WITHDRAWN.
THAT IS NOT ANYWHERE IN THE TRANSCRIPT I SEE.
BUT THE QUESTION THAT COMES TO MY MIND IS, IS THE, COMPETENCE OF THIS DEFENDANT TO GO TO TRIAL, THE SAME AS THE COMPETENCE TO MAKE THE DECISION TO TAKE TO, TO PLEA?
ARE THERE, DO THEY EQUATE?
>> THEY'RE SIMILAR.
THE COMPETENCE TO GO TO TRIAL IS WHETHER OR NOT THE DEFENDANT HAS A PRESENT ABILITY TO ASSIST HIS ATTORNEY IN A RATIONAL MANNER.
>> SEEMS TO ME IF THEY ARE IN FACT, SIMILAR, THEN WE HAVE SOMETHING THAT DOESN'T LOGICALLY FOLLOW, THAT THE JUDGE SAYS, I DON'T HAVE THE ABILITY TO TAKE, YOU DON'T HAVE

THE ABILITY TO MAKE THE PLEA.
SO, WE'RE GOING TO GO TO TRIAL.
EITHER THE, EITHER THIS
DEFENDANT HAS THE COMPETENCE TO
MAKE THE PLEA, OR THE DEFENDANT
DOESN'T HAVE THE COMPETENCE IN
THE COURT'S JUDGMENT TO GO TO
TRIAL.
I DON'T SEE HOW THEY BOTH CAN
BE, THAT IT CAN HAPPEN THE WAY
THAT SHE SEEMED TO INDICATE IT
WAS HAPPENING, THE TRIAL JUDGE -
>> YOU'RE MAKING THE ASSUMPTION
SHE WASN'T TAKING THE PLEA
BECAUSE SHE DIDN'T THINK HE WAS
COMPETENT TO ENTER A PLEA.
>> I'M JUST READING
SPECIFICALLY WHAT SHE SAID.
>> I UNDERSTAND, BUT WHEN SHE
SAYS REASONING, I READ THAT AS
SAYING HIS PRESENT JUDGMENT
ABOUT MAKING A DECISION, AS
OPPOSED TO HIS OVERALL
COMPETENCY TO STAND TRIAL OR
ENTER A PLEA.
WHETHER OR NOT HE -- HE JUST
MADE THE DECISION THAT MORNING.
HE CAME IN SAYING HE WAS NOT
GOING TO PLEAD GUILTY.
THEN THEY WORKED ON HIM.
>> GO AHEAD, SORRY.
>> WHY IS THAT SO UNUSUAL?
I MEAN A LOT OF DEFENDANTS COME
IN.
THEY START SAYING YOU KNOW, NO,
I'M NOT GUILTY, I'M NOT GOING
TO DO THIS.
THEN AT SOME POINT THEY THINK A
PLEA IS IN THEIR OWN BEST
INTEREST.
MR.^TENNIS SAYS AT SOME POINT
HE BELIEVES THAT IT IS IN HIS
OWN BEST INTEREST, BECAUSE
OTHERWISE HE IS SUBJECT TO THE
DEATH PENALTY.
AND HE DOESN'T WANT TO DIE.
AND HE IS GOING TO TAKE THIS
PLEA FOR A LIFE SENTENCE SO HE
ISN'T EXPOSED TO THE DEATH
PENALTY.
THAT SEEMS PRETTY RATIONAL TO
ME.
IF IT ISN'T, HOW IS HE RATIONAL
ENOUGH TO, YOU KNOW, TO GO TO

TRIAL?
I'M HAVING A HARD TIME
UNDERSTANDING WHY THIS TRIAL
JUDGE PUT THIS MAN IN JEOPARDY
OF A DEATH SENTENCE WHEN HE WAS
THERE BEFORE THE COURT, WILLING
TO PLEA TO A LIFE SENTENCE.
AND HE SAYS I WANT IT BECAUSE I
DON'T WANT TO BE SUBJECT TO THE
DEATH PENALTY.
>> BECAUSE, YOUR HONOR, I
THINK, AND THIS IS JUST ME
READING BETWEEN THE LINES.
I THINK ONE, SHE HAD A REAL
QUESTION ABOUT WHETHER HE
WANTED TO ENTER THIS PLEA.
AND TWO, HE WAS INJECTING ERROR
INTO THE PLEA ITSELF.
IF SHE HAD TAKEN A PLEA WHEN HE
SAID --
>> WHO IS INJECTING ERROR BY
WHAT?
>> BY SAYING HE WAS ON
MEDICATION AND IT WAS AFFECTING
HIS REASONING.
>> DIDN'T SHE ASK HIM ABOUT THE
MEDICATION.
>> SHE DID.
AND IT WAS AFTER HE SAID IT WAS
AFFECTING HIS REASONING A
LITTLE BIT, SHE SAID, I CAN'T
TAKE THE PLEA.
IF SHE HAD TAKEN THE PLEA, HE
COULD HAVE COME BACK AND
CHALLENGED IT, A FEW PAGES
EARLIER HE IS SITTING THERE
TALKING ABOUT PLEADING GUILTY,
I BELIEVE.
AND THE STATE ATTORNEY IS
ASKING HIM IF HE'S GOING TO, ON
PAGE 206, --
>> ISN'T THAT ALWAYS GOING TO
BE THE CASE THOUGH?
THAT IS, THAT NOBODY DENIES IN
THIS CASE THAT HE WAS ON ALL
THESE MEDICATIONS.
THAT SEEMS TO BE, YOU DON'T
DENY THAT, DO YOU?
>> NO.
>> AND SO THE ONLY THING IT
SEEMS TO ME THAT WE'RE LACKING,
AS FAR AS THE TRIAL COURT'S
STATEMENT, IS SOMETHING THAT
SHE MAY HAVE SAID, WELL, IT

SOUNDS LIKE HE'S NOT COMPETENT
TO TAKE A PLEA TO ME AND I'M
NOT GOING TO TAKE IT.
YOU WOULD AGREE, IF SHE HAD
SAID THAT, THAT CLEARLY THERE
WOULD HAVE HAD TO BE A
COMPETENCY HEARING BEFORE
PROCEEDING TO TRIAL, WOULD YOU
NOT?
>> YES.
BUT THIS, AS I SAID --
>> WHY ISN'T WHAT SHE DID SAY,
AND THE GIST OF THE
PROCEEDINGS TANTAMOUNT TO HER
SAYING, I JUST CAN'T FIND HIM
COMPETENT TO TAKE THIS PLEA?
BECAUSE WHAT WE END UP
WITH, AND I THINK YOU'RE
HEARING THE CONCERNS FROM THE
PANEL, IS SORT OF JUST, A
TOTALLY IRRATIONAL OUTCOME,
INCLUDING THE APPARENT
FRUSTRATION OF THE PROSECUTOR
IN SAYING, WELL, I'M, YOU KNOW,
IF THIS IS WAY IT'S GOING TO
GO, I'M JUST GOING TO WITHDRAW,
YOU KNOW, THE OFFER OF THE PLEA.
JUST LIKE THAT, IT GOES FROM
THE LIFE TO DEATH, BASED ON THE
FRUSTRATION OF HOW THAT'S
GOING.
AND SO WHY SHOULDN'T THERE
HAVE BEEN A REQUIREMENT ON THE
TRIAL COURT JUDGE, AFTER THIS,
TO SAY, WE'RE GOING TO HAVE TO
HAVE A COMPETENCY HEARING
BEFORE WE GO TO TRIAL?
>> OKAY.
SAY THEY HAD A COMPETENCY
HEARING, THEY COME BACK, AND IN
THE MIDDLE OF THE NEXT -- JUST
HYPOTHETICALLY, HE SAYS I'M ON
MEDICATION AGAIN.
IT'S EFFECTING MY REASONING.
HE IS COMPETENT, WHAT JUDGE IS
GOING TO TAKE THAT PLEA?
SHE ALREADY HAD ON THE
RECORD --
>> LET ME -- AT THAT POINT SHE
SAYS, YOU'RE ON MEDICATION.
I'VE NOW HAD A REPORT AS TO
WHAT THOSE MEDICATIONS ARE.
AND IT WAS RECOMMENDED EITHER
YOU GO OFF THE MEDICATION AND

THEY MAY HAVE SAID, THAT HE
SHOULD GO OFF THE MEDICATION
FOR A WEEK, WHICH IS WHAT HE
DID IN THE PENALTY PHASE.
IT WOULD, AND THEN, IT WOULD
HAVE BEEN, BUT YOU, I'VE GONE
THROUGH, YOU CHECKED EVERYTHING
OFF.
YOU UNDERSTAND IT.
MY, SENSE IS, THAT THIS PLEA
VOLUNTARY.
YOUR LAWYER TOLD YOU I THINK
IT'S IN YOUR BEST INTEREST.
I'M ACCEPTING THE PLEA.
NOW WHAT WOULD THE WORST HAPPEN
THERE WITHIN 30 DAYS, SINCE
THIS IS A YEAR LATER, HE WOULD
HAVE MOVED TO WITHDRAW THE
PLEA.
BUT I THINK WE'RE EXPERIENCING
THE FRUSTRATION THAT, YOU KNOW,
WE'VE GOT HUNDREDS OF PEOPLE ON
DEATH ROW AND THE STATE MAKES
DECISION AS TO WHO IS GOING TO
PURSUE THE DEATH PENALTY
AGAINST.
IN THIS CASE FOR WHATEVER
REASON, AT SOME POINT IN TIME
THE CASE THOUGHT THAT THIS CASE
WOULD BE, THEY COULD ACCEPT
LIFE WITHOUT THE POSSIBILITY OF
PAROLE FOR A 19-YEAR-OLD WHO,
ACCORDING TO THE UNREBUTTED
TESTIMONY, WAS FUNCTIONING MORE
LIKE, SOMEBODY THAT WAS A
MINOR, AND, HAD BORDERLINE
RETARDATION.
SO WE KIND OF ALSO PUT THAT
OVERLAY.
I'M SURE THAT ALL WENT INTO
THAT, THE STATE'S INITIAL
DECISION.
SO I DON'T WANT UNDERSTAND WHEN
WE LOOK AT RELATIVE HARM TO THE
SYSTEM, TO BE A LITTLE MORE
PATIENT AND MAKE SURE THE PLEA
IS KNOWING AND VOLUNTARY,
VERSUS GOING, OKAY, WE'RE GOING
TO TRIAL AND NOW WE'VE GOT A
TRIAL THAT WENT ON.
NOW WE HAVE AN APPEAL.
NOW WE'LL HAVE, YOU KNOW, 20
YEARS OF POSTCONVICTION, YOU
KNOW, PROCEEDINGS OR 15 YEARS,

WITH AN ELDERLY VICTIM, WHO, I
DON'T KNOW IF THE WIFE IS
STILL, YOU KNOW ALIVE, BUT
THERE, THAT'S WHAT WE'RE SEEING
OVERALL.
AND SO YOU'RE SAYING, WELL THE
JUDGE MADE THAT DECISION
BECAUSE THE JUDGE THOUGHT HE
WAS GAMING THE SYSTEM.
AND IF THE JUDGE SAID THAT, WE
MIGHT BE IN A DIFFERENT
SITUATION.
BUT I DON'T KNOW HOW WE ASSUME
IT, ESPECIALLY WITH THE PART
THAT JUSTICE WELLS READ YOU,
ABOUT WHAT SHE SAID THAT SAID,
OKAY, YOU DON'T UNDERSTAND?
YOU'RE GOING TO TRIAL.
>> MAY I --
>> TO ANSWER EVERYTHING.
>> THE FIRST IS, I WANT TO
POINT OUT, BECAUSE IT'S
BEGINNING TO SOUND ON THE
RECORD THAT SOMETHING ELSE
HAPPENED THAN WHAT REALLY DID
HAPPEN IN THIS CASE.
HE DID THIS PLEA COLIQUY IN
AUGUST OF 2004.
BETWEEN AUGUST 2004, AND THE
TRIAL STARTING IN AUGUST 2005,
HE HAD OVER SIX HEARINGS,
EVIDENTIARY TYPE HEARINGS WHERE
HE HAD COMMUNICATION WITH A
JUDGE DIRECTLY.
HIS ATTORNEY, AND THE STATE WAS
PRESENT TOO.
IN EACH, ALMOST EACH OF THOSE
HEARING, AFTER THIS PLEA
COLIQUY, HE WAS COMPLAINING
BECAUSE HIS ATTORNEY HAD TRIED
TO MAKE HIM PLEAD GUILTY, FOR
AN ENTIRE YEAR.
AND THEN THROUGH THE ENTIRE
TRIAL --
>> IS THAT IN YOUR BRIEF?
>> YES, I BELIEVE IT IS --
>> I GUESS I DIDN'T SEE IT.
I THOUGHT YOU WERE SAYING
STAYING WITH THE PLEA COLIQUY.
THAT IS WHOLE DIFFERENT ISSUE
WHAT HAPPENED IN THE YEAR --
>> YES, I WANTED TO BRING THIS
TO THE COURT'S ATTENTION.
HE SPENT THE ENTIRE NEXT YEAR

LITIGATING WITH THE COURT, THE FACT THAT HIS ATTORNEY HAD TRIED TO STRONG ARM HIM INTO PLEADING GUILTY --
>> THAT CULMINATED SOMETIME, AT LEAST IN JUNE, DID IT NOT?
JUNE 2005, IN A HEARING WHERE I BELIEVE THAT HE SAID, I REFUSE TO GO TO TRIAL WITH HIM.
I WOULD LIKE TO GO PRO SE, INSTEAD OF TWO PROSECUTORS AGAINST ME.
I'LL DO IT MYSELF.
EVEN THOUGH I DON'T KNOW WHAT I'M DOING I WILL HAVE A BETTER FIGHTING CHANCE.
THERE WAS NO FARETTA HEARING AT THAT POINT, WAS THERE?
>> THAT'S TRUE.
>> THIS SEEMS TO BE CONSISTENT THE JUDGE WON'T ALLOW A HEARING BEFORE THIS THING GOES TO TRIAL ON ANY OF THESE ISSUES THAT DEAL WITH, WHETHER THIS GENTLEMAN HAS THE JUDGMENT, HAS THE CAPACITY, TO, NOT ONLY ENGAGE IN THESE THINGS, MAKE A DECISION ON A PLEA, MAKE A DECISION, AN APPROPRIATE AND ACCEPTABLE LEGAL DECISION, TO FORGO COUNSEL AND REPRESENT HIMSELF, AND THEN IT COMES ON DOWN WHAT JUSTICE PARIENTE IS TALKING ABOUT, SAYING WE'RE GOING TO GO TO TRIAL.
>> MOVING BACK TO MY SECOND POINT AND I WILL GET BACK TO JUSTICE LEWIS, YOUR QUESTION, MY SECOND POINT ON THE PLEA COLIQUY, WAS AGAIN, THE JUDGE WAS MAKING A FINDING THAT IT WAS NOT A VOLUNTARY OR KNOWING WAIVER AT THAT POINT.
AT THAT POINT IN TIME, IN AUGUST 2004, THERE WERE NO REASONABLE GROUNDS TO SUGGEST HE WAS INCOMPETENT.
YOU HAD A DOCTOR WHO MADE A STATEMENT SAYING HE WAS COMPETENT.
>> HOW LONG HAD THIS DOCTOR SEEN HIM?
YOU SAID THEY WENT BACK TO THE

JURY ROOM, AND A DOCTOR COMES
OUT AND SAYS HE IS COMPETENT?
>> YES, THE DOCTOR HAD DONE A
FULL WORK-UP ON HIM BECAUSE THE
DEFENSE COUNSEL WAS USING THIS
DOCTOR AS A BASIS OF HIS
SUPPRESSION MOTION.
SO SHE HAD ALREADY DONE FULL
TESTING, IQ, PERSONALITY,
EVERYTHING.
SHE HAD DONE A FULL WORKUP ON
HIM.
>> AND DID SHE EXPLAIN TO THE
JUDGE THESE MEDICATIONS HE WAS
ON WOULD SEEM TO BE THE REASON
THE JUDGE WAS CONCERNED WAS
BECAUSE OF THE MEDICATION.
SO DID THIS DOCTOR EXPLAIN TO
THE JUDGE WHAT THESE
MEDICATIONS WERE AND HOW THEY
WOULD AFFECT THE DEFENDANT?
NO, SHE DID NOT.
SHE WAS NOT ASKED.
AGAIN MEDICATION IS DIFFERENT
THAN COMPETENCY.
WE HAVE MANY DEFENDANTS,
UNFORTUNATELY WHO COME INTO THE
COURT SYSTEM WHO ARE ON
PSYCHOTROPIC DRUGS WHO ARE
COMPETENT EVEN THOUGH THEY ARE
ON MEDICATION.
SO THIS WAS THE SITUATION THIS
JUDGE WAS DEALING WITH.
SHE WAS CONCERNED ABOUT THE
KNOWINGNESS AND VOLUNTARINESS
OF THIS PLEA.
GOING TO THE FERETTA AND NELSON
ISSUES, AND I'M COMBINING THEM
BECAUSE THE HEARINGS SORT OF
OVERLAP.
HE FILED HIS FIRST NELSON
MOTION IN APRIL.
AND SHE DID DO A HEARING.
THE HEARING WAS --
>> NOT ASKING ABOUT THE NELSON
HEARING.
I DON'T THINK THERE'S A PROBLEM
WITH THAT.
>> OKAY.
BUT I WANTED TO POINT OUT, IN
THE FIRST NELSON HEARING, WHICH
WAS APRIL 15th, 2005, HE MADE A
COMMENT ABOUT HE, CAN'T READ OR
HE CAN'T READ WELL, BUT HE

WOULD DO THE BEST HE COULD IF HIS ATTORNEY IS NOT GOING TO WORK FOR HIM.
SO THE JUDGE HAD THAT IN THE BACK OF HER MIND.
SHE HAD HIS BEHAVIOR IN THE COURTROOM, AND SHE HAD THE FACT THAT HE'S ON MEDICATION.
THEN IN JUNE HE MAKES, I BELIEVE IT TRULY IS EQUIVOCAL STATEMENT SAYING -
>> WHAT IS EQUIVOCAL?
>> I'LL DO IT MYSELF.
>> IS THAT EQUIVOCAL?
>> WE HAVE DIFFERENT UNDERSTANDING OF THE WORD.
I WILL DO IT MYSELF, THERE IS NOTHING EQUIVOCAL ABOUT THAT.
>> EVEN THOUGH HE DOESN'T KNOW WHAT I'M DOING?
>> RIGHT.
>> WELL, I BELIEVE IT WAS EQUIVOCAL, ESPECIALLY GIVEN THE FACT THAT, THAT HE WAS CONTINUALLY ASKING FOR A NEW ATTORNEY.
>> WHY DIDN'T, JUST TO STICK WITH THE WHOLE IDEA THAT HE SAID, I WANT TO REPRESENT MYSELF, MY ATTORNEY IS BASICALLY, ANOTHER PROSECUTOR.
EVEN THOUGH I DON'T KNOW WHAT I'M DOING, I CAN DO BETTER THAN WHAT HE'S DOING.
AND SO I WANT TO REPRESENT MYSELF.
AND SO WHY SHOULDN'T THE JUDGE HAVE HAD AT THAT POINT, A FARETTA INQUIRY TO EXPLAIN TO HIM ALL THE RAMIFICATIONS WHAT SELF-REPRESENTATION WOULD BE, ET CETERA?
WHAT'S ANOTHER, YOU KNOW, FEW MINUTES SO WE CAN, SO THIS DEFENDANT AT LEAST, HE WOULD ATTEMPT TO EXPLAIN TO HIM, WHAT THE RAMIFICATIONS OF THAT WOULD BE?
INSTEAD OF JUST GOING AS IF THE DEFENDANT NEVER SAID ANYTHING, MAKING HIM CONTINUE ON WITH AN ATTORNEY THAT HE IS COMPLAINED ABOUT FOR MONTHS?
>> WELL IT CERTAINLY WOULD HAVE

MADE MY JOB EASIER IF SHE HAD DONE THE FULL INQUIRY AT THAT POINT.
HOWEVER WHAT SHE WAS FACING SHE WAS DOING A NELSON HEARING AND SHE WENT AHEAD AND SHE MADE THE FINDINGS ON THE NELSON HEARING.
SHE HAD SWORN HIM, ASKED HIM WHAT HIS COMPLAINT WAS.
HIS COMPLAINT WAS, MY ATTORNEY TRIED TO MAKE ME PLEAD GUILTY.
>> THE DETERMINATION OF A FARETTA HEARING AND NELSON HEARING ARE NOT SAME THING.
NELSON HEARING IS TO DETERMINE WHETHER THE COUNSEL CAN BE DISCHARGED AND SOMEONE ELSE APPOINTED, IS IT NOT?
>> I UNDERSTAND.
>> SO THEY'RE NOT ONE AND THE SAME.
>> BUT HE MADE THE STATEMENT IN THE MIDST --
>> WHAT DIFFERENCE DOES THAT MAKE?
>> WELL, SHE FINISHED NELSON HEARING END DID NOT BRING ANYTHING UP.
AND AGAIN, THIS, I CONTEND, RESPECTFULLY I DISAGREE WITH YOU, IT WAS AN EQUIVOCAL STATEMENT SAYING --
>> EVEN WITH THE NELSON HEARING, WHAT DID THE ATTORNEY SAY ABOUT HIS REPRESENTATION OF THIS DEFENDANT AT THAT HEARING?
>> SHE DID NOT INQUIRE OF THE ATTORNEY.
>> SO THE ATTORNEY NEVER EVEN SAID ANYTHING?
SHE NEVER EVEN ASKED THE ATTORNEY IF THEY DID THIS OR DIDN'T DO THAT OR ANY OF THOSE KINDS OF THINGS THAT YOU NORMALLY EVEN HAVE AT A NELSON HEARING, CORRECT?
>> WELL IT DEPENDS ON WHAT THE DEFENDANT IS COMPLAINING ABOUT.
WHAT HAPPENED IS HE FILED TWO NELSON MOTIONS; ONE IN APRIL, ONE IN JUNE.
HE ADMITTED ON THE RECORD FOR BOTH OF THOSE THEY WERE FORM MOTIONS WHERE THE PD'S OFFICE, NOT

EVEN FOR HIS ATTORNEY, THAT HE GOT IN THE JAIL AND HE SIGNED.
SO SHE ASKED HIM SPECIFICALLY, IS THIS YOUR MOTION, ARE THESE YOUR COMPLAINTS?
HE SAID, NO, THOSE AREN'T MY COMPLAINTS.
MY COMPLAINTS ARE, ONE, MY ATTORNEY TRIED TO MAKE ME PLEAD GUILTY AND TWO LIZA BOLTOS WAS NOT CHARGED AND SHE SHOULD BE.
SO THE JUDGE DEALT WITH HIS COMPLAINT.
>> JUDGE, HE CAN ACCEPT WHAT HE SAYS IN THE THIS ONE HEARING AND THIS OTHER HEARING BUT HE DOESN'T ACCEPT IT, THE WHOLE THING IS JUST, SO, IT SEEMS TO ME, REALLY JUST SO CONFUSING BECAUSE THE TRIAL JUDGE NEVER TAKES THE STEPS THAT SEEMED TO ME TO BE PROPER WHEN YOU DO A NELSON HEARING, WHEN A DEFENDANT SAYS, THAT HE WANTS TO REPRESENT HIMSELF, A FARETTA HEARING, THIS MAKES THIS A MESSY CASE.
>> I AGREE IT IS.
AND YOU'RE RIGHT, THE JUDGE DID NOT DO A STANDARD INQUIRY, NOR DID SHE MAKE A NICE FINDING AT THE END.
HOWEVER, SHE DID MAKE FINDINGS ON THE NELSON ISSUE, JUST TO FINISH THAT UP SAYING THAT THE ATTORNEY HAD DONE A GREAT DEAL OF INVESTIGATION BECAUSE HE HAD DONE IT IN OPEN COURT.
THEY HAD DONE A SUPPRESSION HEARING WHICH LASTED MONTHS.
PUT ON DEFENSE WITNESSES AT HEARING.
SHE KNEW SHE HAD TALKED TO THE CLIENT ABOUT THE FACTS OF THE CASE AND THE LEGAL STRATEGIES OF THE CHARGES INVOLVED BECAUSE SHE HAD SEEN HIM DO IT IN OPEN COURT OR SHE HAD SENT HIM TO THE JURY ROOM.
SHE MADE THOSE FINDINGS ON THE NELSON HEARING, BECAUSE MOST OF THE STANDARD COMPLAINTS ABOUT ATTORNEYS, NOT WORKING NOT TALKING SO ON.

IT HAPPENED IN OPEN COURT.
>> BRINGS THE WHOLE CIRCLE BACK TO WHY THERE WAS NO FARETTA HEARING.
ASSUMING THE TRIAL JUDGE WAS CORRECT IN NOT ALLOWING THE DEFENDANT TO GET RID OF HIS ATTORNEY, NOW THE DEFENDANT SAYS, OKAY, LET ME DO IT MYSELF.
>> AND, HE EVENTUALLY FILES A FORM, ONE FORM FARETTA MOTION. THERE IS ONLY ONE, FIND, JULY 6th.
PUT IN THE COURT FILE.
THERE'S NO INDICATION THAT THE JUDGE EVEN KNEW ABOUT THAT FORMAL FARETTA MOTION.
IT'S NEVER MENTIONED ON THE RECORD.
THERE IS NO INDICATION THAT --
>> ARE YOU TELLING ME HIS SAYING IT AT THE END OF THE NELSON HEARING WAS NOT SUFFICIENT?
>> I'M NOT SAYING -- I'M SAYING THAT WAS AN EQUIVOCAL STATEMENT --
>> LET'S ASSUME, WE DON'T BELIEVE IT WAS EQUIVOCAL.
THEN, SHOULDN'T THE TRIAL JUDGE HAVE ASKED AT HEARING AND HIS REQUEST AT THAT TIME WAS SUFFICIENT, WAS IT NOT FOR THE TRIAL JUDGE TO HAVE A HEARING?
>> BUT THIS WAS IN THE MIDST OF, A DEFENDANT IT WHO FOR ALMOST A FULL YEAR HAD BEEN COMPLAINING, SAME COMPLAINTS, ENDLESS LOOPS OF DISCUSSION ON THE RECORD IN AUGUST, IN APRIL, TWO TIMES IN APRIL AND JUNE, AND, MULTIPLE HEARINGS DURING THE SUPPRESSION MOTION, ALL SAYING THE SAME THING.
AND THIS ONE STATEMENT, THROWN INTO THE RECORD, IN THE MIDST OF COMPLAINING ABOUT HIS ATTORNEY FOR A WHOLE YEAR --
>> I GUESS, THE REAL PROBLEM HERE IS THAT A FARETTA INQUIRY IS SO DIFFERENT FROM ALL THIS OTHER THINGS THAT YOU ARE TALKING ABOUT GOING ON.

MULTIPLE REQUESTS TO DISCHARGE COUNSEL.
THE INQUIRY AT A FARETTA HEARING IS COMPLETELY DIFFERENT.
YOU WANT TO REPRESENT YOURSELF.
HERE ARE THE DOWNSIDES TO REPRESENTATION.
DO YOU UNDERSTAND WHAT IS GOING TO HAPPEN?
THERE WILL BE NO LAWYER THERE TO ASSIST YOU.
THOSE KINDS OF THINGS, WHICH ARE COMPLETELY DIFFERENT THAN WHAT IS GOING ON WHEN YOU'RE ASKING TO DISCHARGE HIM.
>> I UNDERSTAND.
BUT I DON'T BELIEVE THAT THE STATEMENT THAT TENNIS MADE IN JUNE WAS A, WAS A FARETTA REQUEST.
HIS FARETTA REQUEST, ALTHOUGH HE DID MAKE ONE, CAME LATER.
BUT IT'S ALSO MY POSITION HE ABANDONED HIS FARETTA REQUEST.
I SAY THAT FOR A NUMBER OF REASONS.
AND THERE ARE CASES SAYING THAT, A DEFENDANT CAN MAKE A FARETTA REQUEST AND THEN ABANDON IT.
HE THEN COOPERATED WITH HIS ATTORNEY DURING VOIR DIRE IN THE ENTIRE GUILT PHASE.
HE GOING WITH HIS ATTORNEY.
HE COOPERATED IN THE JURY SELECTION.
ALSO AT ONE POINT --
>> -- AT THAT POINT.
IF THE TRIAL JUDGE DENIED HIS REQUEST, HE'S GOT A LAWYER, WOULDN'T IT BE CRAZY FOR HIM NOT TO COOPERATE?
>> WELL, CRAZIER THINGS HAVE HAPPENED, BUT IN THIS CASE, TENNIS WAS NOT A SHY DEFENDANT.
IN THE MIDDLE OF THE SUPPRESSION HEARING, BACK IN MARCH AND APRIL OF 2004, WHEN THE JUDGE DIDN'T RULE ON HIS MOTION OR PAY ATTENTION TO HIM HE ROUTINELY INTERRUPTED HER, SAID, HEY, JUDGE, I HAVE A QUESTION.

OR HEY, JUDGE, WHAT ABOUT MY MOTION?
YOU DIDN'T ANSWER ME.
AND NONE OF THAT HAPPENED.
AND AS THE COURT CAN TELL FROM THE TRIAL RECORD, BOTH GUILT AND FELONY PHASE TRIAL, HE IS NOT SHY ABOUT SPEAKING TO THE AUDIENCE, SPEAKING TO THE COURT, SPEAKING IN FRONT OF THE JURY.
SO IF HE WERE PURSUING THE FARETTA MOTION, HE WOULD HAVE SAID SOMETHING.
>> HOW MANY TIMES DOES THE LAW SAY YOU HAVE TO MAKE THE REQUEST, I WANT TO REPRESENT MYSELF AND A TRIAL JUDGE DOESN'T ALLOW YOU?
IS IT TEN TIMES YOU HAVE TO MAKE IT BEFORE THEY'RE REQUIRED TO.
>> ONE, YOUR HONOR.
ONE.
HOWEVER THE LAW ALSO SAYS THAT A FARETTA ISSUE CAN BE ABANDONED BY SUBSEQUENT CONDUCT.
>> I WOULD LIKE TO JUST, IN YOUR REMAINING TIME ASK YOU A COUPLE QUESTIONS ABOUT THE ACTUAL, SOME OF THE PENALTY PHASE ISSUES.
HE WAS 19 AT THE TIME, CORRECT?
HIS CODEFENDANT WAS 16.
ALTHOUGH HE WAS MAKING THESE STATEMENTS ABOUT THE CODEFENDANT'S MOTHER, THERE IS SOME EVIDENCE TO SUGGEST THAT MAYBE SHE WAS ALSO INVOLVED BECAUSE SHE IS THE ONE THAT KNEW THE VICTIM WHO WAS 91.
HAD BY HER OWN TESTIMONY HAD BORROWED MONEY FROM HIM IN SMALL SUMS.
THIS IS THE SITUATION WHERE THIS CASE, THE DEFENDANT STARTS DATING A 16-YEAR-OLD.
THEN BECAUSE IT'S QUOTE, THE GYPSY CULTURE, HE IS TOLD HE HAS TO COME UP WITH 4 OR $5,000 TO BE WITH ADAM.
PUTTING IN PERSPECTIVE WHAT THIS CASE IS ABOUT, NO QUESTION THE

DEFENDANT WAS THERE AND
PROBABLY THE PERPETRATOR OF
THIS.
EVEN MISS ADAMS' TESTIMONY
HOW IT WAS HIS IDEA TO GO TO
THE VICTIMS DOESN'T MAKE SENSE
TO ME.
THEY HAVE GOT THIS ISSUE THEY
HAVE RAISED ON TWO THINGS, ON
PROPORTIONALITY.
I LIKE YOU TO ADDRESS TWO OF
IT.
THE JUDGE REJECTED AGE MITIGATOR.
WASN'T CONVINCED TENNIS WAS
ABLE NOT ABLE TO TAKE
RESPONSIBILITY AND APPRECIATE
THE CONSEQUENCES OF HIS
ACTIONS.
I DIDN'T THINK THAT WAS A
BASIS FOR REJECTING THE AGE
MITIGATOR.
HE WAS 19 AND THE
UNCONTROVERTED TESTIMONY FROM
THE EXPERTS HE WAS FUNCTIONING
AT A MUCH LOWER MENTAL AGE,
NUMBER ONE.
AND TWO, WHEN THE JUDGE
DIRECTED A VERDICT, ON THE
AGGRAVATED ABUSE, CHARGE, SHE
FOUND THERE WAS NO EVIDENCE OF
INFIRMITY.
THEREFORE I'M ALSO CONCERNED
ABOUT THE AGGRAVATOR OF, THAT
WAS FOUND.
BUT, EVEN GIVEN THAT
AGGRAVATOR, WHAT I WANT TO
UNDERSTAND IS, WITH SOMEBODY
WHO IS 19, FUNCTIONING MUCH
YOUNGER, BORDERLINE
RETARDATION, HE ASKED FOR THE
DEATH PENALTY AFTER, AND THEN
HE ASKED FOR MERCY.
AND, THERE'S OBVIOUSLY SOME
OTHER PEOPLE THAT ARE INVOLVED
IN THIS MURDER, WHY IS THIS A
PROPORTIONAL SENTENCE FOR THE,
FOR DEATH.
>> IT'S PROPORTIONAL, BECAUSE
EVEN IF THE TWO WOMEN WERE
INVOLVED, LET'S JUST ASSUME FOR
THE SAKE OF ARGUMENT, THEY
WERE, THAT WAS STATE'S POSITION
ALL ALONG.
>> THEY WERE INVOLVED?

>> THEY WERE INVOLVED.
THE STATE ALWAYS BELIEVED THAT THE MOTHER, SUGGESTED THIS, IF NOTHING ELSE.
AND SOPHIA ADAMS WAS CLEARLY THERE.
THAT MAKES THEM ALL CO-CONSPIRATORS AND ALL PRINCIPALS.
HE MADE A CHOICE EVEN IF IT WAS BASED ON SOME ONE ELSE'S SUGGESTION.
HE MADE A CHOICE TO GO THERE AND DO THESE ACTIONS. IT WAS UNCONTROVERTED HE WAS THE ONE WHO DID THE BEATING.
THE BEATING HAPPENED, I WON'T GO INTO THE DETAILS, BUT IT HAPPENED OVER A PERIOD OF 15, 20, 25 MINUTES.
>> NO QUESTION IT WAS HAC.
YOU'RE SAYING HAC ALONE IN THIS CASE JUSTIFIES IT BEING PROPORTIONATE?
>> THERE IS ALSO THE ROBBERY BURGLARY PECUNIARY GAIN AGGRAVATOR AS WELL.
SO YOU HAVE TWO.
>> LET'S TALK ABOUT THE MITIGATION.
>> MITIGATION WAS FALL.
JUDGE FOUND ONLY FOUR SMALL STATUTORY MITIGATORS.
>> THIS IS AGAIN, LIKE THIS WHOLE PICTURE OF WHAT MENTAL STATE THIS DEFENDANT HAD.
BEING ON HEAVY-DUTY MEDICATION.
HAVING A BORDERLINE IQ, AND, CERTAINLY AT THE TIME OF THE CRIME SOUNDS LIKE HE KNEW WHAT HE WAS DOING BUT IT BECAME ALMOST A CRIME OF RAGE BECAUSE THAT WASN'T GOING TO HELP HIM GET THE MONEY, WHAT HE DID.
SO THERE IS NO CCP WE DON'T THINK THERE IS ANY ADVANCED PLANNING.
THIS UNSUSPECTING ELDERLY GENTLEMAN WOULD LET HIM IN AND GET THE MONEY.
THEN WHEN HE SAID NO, HE BECAME ENRAGED.
>> THAT'S CORRECT.
I JUST, I KNOW MY TIME'S UP BUT

I JUST WANT TO ANSWER YOUR QUESTION.
IN TERMS OF THE AGE MITIGATOR, THE JUDGE SPECIFICALLY, EVEN THOUGH SHE MADE THAT STATEMENT, IN THE NEXT PAGE, IN DISCUSSING ANOTHER SECTION, I BELIEVE IT WAS WITH THE MENTAL HEALTH, SHE SPECIFICALLY MADE FINDINGS THAT EVEN THOUGH THE DOCTORS ARE SAYING HE WAS OPERATING ON A 12-YEAR-OLD LEVEL OR SOMETHING LIKE THAT, SHE MADE A FINDING THAT SHE DID NOT BELIEVE THAT, BASED ON HIS CONDUCT IN THE CASE, QUESTIONING THAT HE DID, THE WAY HE PRESENTED LEGAL ARGUMENTS TO HER, AND TO THE PROSECUTOR.
SHE SPECIFICALLY MADE FACTUAL FINDINGS THAT WASN'T THE CASE.
AND THERE WAS COMPETENT SUBSTANTIAL EVIDENCE TO SUPPORT HER FINDINGS.
AND SO I THINK THAT YOU CANNOT FIND ABUSE OF DISCRETION IN HER NOT FINDING THE AGE MITIGATOR.
I JUST ALSO WANTED TO FIND OUT TO THE COURT, I DON'T BELIEVE IT'S IN EITHER OF THE BRIEFS, SHE DID A BELATED FILED FINDING ON HIS ABILITY TO WAVE COUNSEL ON RECORD, PAGE 1201.
BUT IT'S AFTER THE GUILT PHASE.
SHE JUST RANDOMLY PUT ON THE RECORD THAT SHE MADE A FINDING.
THANK YOU, I WOULD ASK THE COURT TO AFFIRM.
>> THANK YOU, MISS LERNER.
WE'LL GIVE YOU ONE MINUTE TO STOMACH UP YOUR CASE.
YOU'VE GONE WELL BEYOND YOUR --
>> AS FAR AS THE, AND I BRING THIS UP BECAUSE THE NELSON INQUIRY, I THINK IT'S AN EXAMPLE OF WHERE THE JUDGE AGAIN DIDN'T DO THE INQUIRY SHE'S REQUIRED TO.
BECAUSE SHE STARTED OUT TO BY SAYING, YOU KNOW, WHAT ARE YOUR COMPLAINTS, WHAT ARE YOUR ALLEGATIONS?

AND THEN, MR.^TENNIS STARTED TO COME PLAIN ABOUT THINGS THAT WERE GOING ON OUTSIDE THE COURTROOM.
AND THEN, PROBABLY ABOUT INVESTIGATION AND THINGS LIKE THAT, BUT THE JUDGE JUST CUT HIM OFF AT THAT POINT, WE CAN'T, I CAN'T LISTEN TO YOUR COMPLAINT ABOUT YOUR ATTORNEY AND HIS PERFORMANCE OUTSIDE THE COURTROOM AND WHAT HE IS OR IS NOT DOING.
I CAN ONLY LOOK AT THE THINGS THAT GO ON IN FRONT OF ME.
AND, SO THERE WAS A LIMITATION ON THAT.
AND I DON'T THINK THE NELSON CASE LAW SAYS THERE IS SUCH A LIMITATION.
BUT I THINK IT'S PART OF A PATTERN HERE WHERE THE JUDGE IS NOT CONDUCTING INQUIRIES LIKE SHE SHOULD AND GOING IN DEPTH WITH THE INQUIRIES.
>> YOU WOULD AGREE, I GUESS THE DEATH PENALTY COURSES WHEN THEY TALK ABOUT DEALING WITH A DIFFICULT DEFENDANT, THIS DEFENDANT WOULD BE CHARACTERIZED, FOR ALL THE REASONS, --
>> RIGHT.
>> AS A LAWYER AND A JUDGE AND A PROSECUTOR, YOUR WORST NIGHTMARE TYPE OF DEFENDANT.
>> EXACTLY.
I TOTALLY AGREE WITH THAT.
I THINK A LOT OF IT, MAY BE DUE TO A QUESTION OF HIS COMPETENCY.
AND THAT'S WHY I THINK THAT IS AN IMPORTANT ISSUE.
AS FAR AS HIM ABANDONING ANY OF HIS REQUESTS, I DON'T THINK HE REALLY DID.
I MEAN IT WAS, HIS REQUESTS WERE DENIED, WERE TOTALLY IGNORED.
AND IN FACT, AT SOME OF THESE HEARING HE WAS TOLD NOT TO SPEAK ABOUT THIS ANYMORE.
THE JUDGE OUT OF AND OUT SAID, I HAVE HEARD ENOUGH FROM YOU.

I DON'T WANT, I'VE RULED.
AND THAT'S IT.
I WOULD POINT OUT THE
STANDARD FOR COMPETENCY TO TAKE
A PLEA AND TO STAND TRIAL, IS
THE SAME.
U.S. SUPREME COURT HAS SAID
THAT IN GODINEZ VERSUS MORAN.
IT'S CITED IN THE BRIEFS.
I THINK THE TEST IS KIND OF, WE
DON'T HAVE TO SHOW THAT HE IS
NOT COMPETENT.
WE DON'T HAVE TO PRODUCE THAT
AMOUNT OF EVIDENCE FOR THERE TO
BE REQUIREMENT OF SUA
SPONTE HEARING.
IT'S LIKE A RED FLAG TEST.
IF THERE IS REASONABLE BASIS TO
SUSPECT IT, YOU HOLD THE
COMPETENCY HEARING.
FINALLY I WON'T GET INTO IT BUT
IN RESPONSE TO JUDGE PARIENTE'S
EARLIER QUESTION ABOUT RAISING
ISSUE OF THE PLEA NOT GOING
THROUGH, IT IS RAISED IN POINT
16 OF THE BRIEF.
I'VE RUN OUT OF TIME.
THANK YOU SO MUCH.
>> THANK YOU VERY MUCH.