

WE NOW MOVE TO THE FOURTH AND FINAL CASE ON TODAY'S DOCKET.

>> SUSAN COLIN ON BEHALF OF MR. EDENFIELD.

ALSO SEATED AT COUNSEL TABLE IS MR. ROBBINS.

MR. EDENFIELD WAS ARRESTED FOR DRIVING UNDER THE INFLUENCE ON JANUARY OF 2009.

MR. EDENFIELD WAS BROUGHT BEFORE THE COURT IN WHAT WOULD HAVE BEEN HIS MANDATED BOND HEARING BECAUSE HE HAD NO BOND SET, PREVIOUSLY SET ON A DUI AND HAD TO APPEAR BEFORE THE COURT WITHIN THE 24 HOUR PERIOD MANDATED BY THE RULES.

HOWEVER, WHEN MR. EDENFIELD FIRST WALKED INTO THE COURTROOM WITH THE OTHER INMATES THAT HAD PREVIOUSLY BEEN ARRESTED, THE FIRST THING THAT HAPPENED WAS HE WAS HANDED A FORM AND THE RECORD THEY TALK ABOUT A BLUE FORM.

OBVIOUSLY IT'S WHITE NOW.

IT'S ABOUT SEVEN PAGE FORM.

AND IT INCLUDES A MULTITUDE OF RATES, PENALTIES, MANDATORY MINIMUM PENALTIES, BOILERPLATE LANGUAGE REGARDING THE CLIENT THE DEFENDANT HEARING, UNDERSTANDING, HAVING SUFFICIENT TIME, ALL THE THINGS THAT THE COURT HAS ADVISED THE DEFENDANT OF.

IT'S ENTITLED PLEA OF GUILTY OR NO CONTEST.

I BELIEVE IT'S PROBABLY ABOUT PAGE 14 IN THE PETITIONER'S APPENDIX.

THE FORM STARTS OUT PLEA OF GUILTY OR NO CONTEST.

THE VERY FIRST LINE IS I HEREBY ENTER MY PLEA OF AND THERE'S A BLOCK TO MARK GUILTY OR NO CONTEST.

SO MR. EDENFIELD IS PROVIDED THIS FORM.

HE FILES INTO THE COURTROOM WITH THE OTHER INMATES THAT HAVE BEEN RECENTLY ARRESTED.

HE THEN IS SHOWN A VIDEOTAPE WHICH IS ALSO INCLUDED IN THE RECORD.

IT'S ABOUT 13 TO 15 MINUTES OF A VIDEOTAPE OF RIGHTS.

IT TALKS ABOUT WHAT'S GOING TO HAPPEN IN THE FELONY CASES.

IT TALKS ABOUT WHAT'S GOING TO HAPPEN IN THE MISDEMEANOR CASES AND THERE'S NOT A LOT OF EXPLANATION AS TO WHICH THINGS NECESSARILY APPLY TO WHOM.

IT DOES START OUT WITH A DISCUSSION ABOUT THE DANGERS AND DISADVANTAGES OF PROCEEDING WITHOUT COUNSEL.

RIGHT AFTER IT TELLS THE DEFENDANTS THAT THEY HAVE THE RIGHT TO REMAIN SILENT.

THEN IT PROCEEDS TO TALK ABOUT THESE ARE THE YOU ALSO HAVE THE RIGHT TO AN ATTORNEY AND YOU HAVE THE RIGHT TO REPRESENT YOURSELF, BUT YOU NEED TO BE AWARE OF THESE SPECIFIC DANGERS AND DISADVANTAGES.

THE VIDEO THEN PROCEEDS TO ADDRESS THE FELONS, ADVISES THE COURT IS GOING TO ASSUME THAT YOU WANT TO BE REPRESENTED BY THE PUBLIC DEFENDER UNLESS YOU COME BEFORE THE COURT AND TELL THEM OTHERWISE AND YOU HAVE ALREADY FILLED OUT THE FORMS IN ORDER TO APPLY FOR THE PUBLIC DEFENDER AND IT ADDRESSES SOME OF THE ISSUES WITH FELONS AND WHEN YOUR NEXT COURT DATE IS GOING TO BE, THE COURT'S GOING TO SET A BOND AND IT GOES THROUGH WHAT WE NORMALLY WOULD SEE IN A FIRST APPEARANCE BOND HEARING FOR FELONY DEFENDANT.

>> WOULD IT BE DIFFERENT YOU KNOW, YOUR POINT IS THAT THERE IS AN ENCOURAGEMENT, ASSUMPTION YOU'RE GOING TO HAVE A LAWYER FOR THE FELONY BUT NOT FOR THE MISDEMEANOR.

SO IF THE PROCESS WAS THAT THERE WERE TWO SEPARATE VIDEOS, YOU KNOW, ONE AND IF IT'S COUNTY COURT, JUST HELP ME.

ARE THERE FELONIES IN COUNTY COURT?

>> WELL, WHAT IT IS, IT'S A BOND HEARING.

EVERYBODY IS ALL IN A BOND HEARING TOGETHER.

>> SO IF YOU'RE BEING CHARGED WITH A MISDEMEANOR, HERE'S YOUR VIDEO FELONY, HERE'S YOUR VIDEO I MEAN, IS YOUR ARGUMENT THAT THEY MINIMIZED OR DOWN PLAYED THE SIGNIFICANCE OF THE LAWYER?

I THOUGHT YOU WERE TALKING ABOUT REALLY MORE OF THE DANGERS OF REPRESENTING YOURSELF.

I THINK THERE'S TWO SEPARATE ISSUES, WHICH IS I'M WAIVING MY RIGHT TO HAVE A LAWYER BECAUSE I'M GOING TO PLEAD GUILTY.

>> YES, MA'AM.

>> VERSUS I WANT TO REPRESENT MYSELF, LIKE WE SEE OFTENTIMES IN DEATH CASES, WHERE EVERYONE IS PLEASE DON'T DO THIS, PLEASE DON'T DO THIS BECAUSE WE KNOW WHAT'S GOING TO HAPPEN.

SO IS THERE ANY THAT'S WHY I'M TRYING TO FOCUS IN ON THIS ISSUE THAT WE'RE VERY CLEAR ABOUT WHAT WE WOULD WANT TO HAVE HAPPEN IN THE COURTROOM.

>> I DO BELIEVE THAT'S PART OF IT.

BUT THE REASON THAT THAT IS SIGNIFICANT IS BECAUSE WHAT THE ISSUE RAISED HERE AND WHAT LED TO THE ISSUE I BELIEVE AND THE PROBLEM WITH THE OPINION OF THE 1ST DISTRICT COURT OF APPEAL IS NOT NECESSARILY THE ADVISEMENT PORTION OF THE RULE 3.111, WHICH REQUIRES CERTAIN THINGS PRIOR TO ACCEPTING WAIVER OF COUNSEL.

IT REQUIRES, ONE, THAT THE COURT MAKE A THOROUGH INQUIRY INTO A DEFENDANT'S COMPREHENSION OF THE RIGHT TO COUNSEL AND THEIR CAPACITY TO WAIVE.

THE SECOND PART OF THAT SAME SECTION IS AN ADVISEMENT REGARDING THE DANGERS AND DISADVANTAGES.

SO WHAT HAPPENS IS IT DOVETAILS.

FIRST YOU HAVE A VIDEO WHICH YOU HAVE A FORM WHICH SEEMS TO IMPLY YOU'RE GOING TO WAIVE ALL YOUR RIGHTS, BECAUSE THAT'S WHAT THE FORM TALKS ABOUT.

THEN YOU HAVE A VIDEOTAPE WHICH INDICATES FOR THE FELONS THIS IS WHAT'S GOING TO HAPPEN.

NEXT THING THEY SAY FOR THE MISDEMEANORS THIS IS YOUR PLEA STAGE.

HERE'S ALL THE PLEAS.

IF YOU DO PLEAD NOT GUILTY, THEN WE'LL TALK ABOUT COUNSEL, WE'LL TALK ABOUT BOND AND THINGS OF THAT NATURE.

BUT THE IMPLICATION IS FIRST OF ALL YOU HAVE THE RIGHT TO REMAIN SILENT BUT OF COURSE NOW THIS IS A PLEA STAGE AND YOU'RE GOING TO HAVE TO ANSWER AND TWO WE'VE ALREADY SET THE STAGE IF YOU WILL FOR THIS IS HOW THIS GOES.

THIS IS A MISDEMEANOR.

YOU ENTER THIS PLEA.

YOU WAIVE YOUR RIGHT TO COUNSEL, WE TAKE CARE OF THIS TODAY, YOU GO HOME.

SO WE'VE SET THE STAGE.

THE PROBLEM IS THAT THERE IS NO SUBSEQUENT INQUIRY THAT IS REQUIRED.

>> I UNDERSTAND WHAT YOU'RE SAYING, BUT THERE'S NO IMPEDIMENT TO SOMEBODY SAYING I'LL PLEAD INNOCENT AND I WANT A LAWYER.

>> THERE IS NOT

>> OR I WANT A LAWYER, RIGHT?

>> THERE IS NOT OTHER THAN THE FACT OUR CONSTITUTION HAS CERTAIN REQUIREMENTS AS IT HAS BEEN INTERPRETED BY THIS COURT AND ACTUALLY ALL THE OTHER DISTRICTS COURTS OF APPEAL OTHER THAN THIS LAST OPINION FROM THE 1ST DISTRICT.

THERE IS NO PRESUMPTION OF WAIVER BY THE ENTRY OF A PLEA OF GUILTY OR THAT THERE IS A PRESUMPTION OF WAIVER EVEN BY SAYING I WANT TO REPRESENT MYSELF.

>> HERE THERE IS AN EXPRESS WAIVER.

THIS IS NOT A QUESTION OF A PRESUMPTION.

THERE'S AN EXPRESS WAIVER AND I THINK YOU'VE ACKNOWLEDGED THAT THE ADVISEMENT OF WHAT WAS BEING GIVEN UP IN TERMS OF A LAWYER WAS PRETTY CLEAR.

>> YES, SIR.

>> THERE'S NOT A I DON'T THINK THERE'S A REAL SERIOUS QUESTION HERE ABOUT THE INFORMATION THAT WAS PROVIDED TO THE DEFENDANT.

THE QUESTION IT SEEMS TO ME THAT YOU WOULD FOCUS ON IS WHETHER IT'S CLEAR THAT HE UNDERSTOOD IT.

>> THAT'S WHAT I'M TALKING ABOUT, THAT THERE WAS NO DISCUSSION BETWEEN THE COURT AND MR. EDENFIELD FROM WHICH THE COURT COULD UNDERSTAND AND MAKE A FINDING ON THE RECORD AS REQUIRED BY LAW

>> BUT HE SAID HE READ IT AND UNDERSTOOD IT.

>> THE JUDGE ASKED HIM DID YOU READ THROUGH THE BLUE FORM?

YES, SIR.

DID YOU UNDERSTAND THE RIGHTS YOU'RE WAIVING?

YES, SIR.

THERE'S TWO PROBLEMS WITH THAT.

FIRST OF ALL, THERE'S ALL THIS THE MINIMUM, MAXIMUM PENALTIES, ALL THE OTHER THINGS ATTENDANT WITH THE ENTRY OF A PLEA, ALL THE OTHER THINGS ATTENDANT WITH YOUR DECISION ABOUT DO I NEED AN ATTORNEY TO HELP ME WITH THIS CASE OR CAN I PROCEED ON MY OWN.

THE COURT SAID DO YOU WANT ME TO APPOINT AN ATTORNEY OR DO YOU WANT TO TAKE CARE OF THIS YOURSELF, NOTWITHSTANDING THE FACT HE HAD AN ABSOLUTE RIGHT TO HIRE HIS OWN ATTORNEY AND THE RULES SPECIFICALLY PROVIDE THAT A DEFENDANT SHOULD BE ADVISED OF THE CHARGES AGAINST THEM AND THEY SHOULD BE ADVISED THAT THEY HAVE THE RIGHT TO MAKE CONTACT WITH FAMILY COUNSEL, FRIENDS THAT MEANS WILL BE PROVIDED FOR THEM TO DO SO AND THAT THE BOND RULE SPECIFICALLY STATES IF THEY CAN'T CONTACT AN ATTORNEY, THAT SOMEBODY AT THE JAIL HAS TO HELP THEM DO THAT. SO YOU HAVE THIS IS THE SITUATION THAT YOU FIND YOURSELF IN.

ALL THIS IS OVERRUN.

NONE OF THAT IS ADDRESSED.

AND YOU HAVE A YOUNG MAN WHO IN LESS THAN DEPENDING IF YOU READ THROUGH THE TRANSCRIPT VERY SLOWLY, HE HAS IN LESS THAN 45 SECONDS BEEN BROUGHT BEFORE THE COURT, ADVISED OF THE CHARGE AGAINST HIM, WAIVED HIS RIGHT TO COUNSEL AND ENTERED A PLEA OF GUILTY AND HE'S GOING TO WALK OUT OF THAT COURTROOM WITH A CRIMINAL CONVICTION THAT WILL STAY WITH HIM FOR THE REST OF HIS LIFE.

>> BUT, AGAIN, I'M TRYING TO UNDERSTAND WHAT WOULD INDICATE THAT HE DIDN'T UNDERSTAND THAT?

THAT'S EXACTLY WHAT HE WAS DOING.

>> BECAUSE THE POINT IS THE LAW REQUIRES THAT THE COURT AND THE RECORD SHOW THAT HE INTELLIGENTLY

>> WHAT SHOULD THE COURT HAVE ASKED?

>> SOMETHING, WITH ALL DUE RESPECT.

I KNOW THERE WAS A LOT OF QUESTION ABOUT

>> WHAT SPECIFICALLY?

>> DISCUSSION TO DETERMINE IF HE UNDERSTANDS.

>> IF IT'S AGE AND EDUCATION, LEGAL EXPERIENCE, WHAT ANSWERS DO THOSE QUESTIONS WILL JUSTIFY THE COURT SAYING NO, YOU CAN'T REPRESENT YOURSELF? YOU CAN'T WAIVE YOUR RIGHT TO AN ATTORNEY.

>> MAYBE IF HE ANSWERS WHEN ASKED ABOUT HIS COURT EXPERIENCE, HE WOULD SAY BASED ON THE COURT EXPERIENCE I UNDERSTAND SINCE I DON'T HAVE A LAWYER STANDING HERE WITH ME IT'S TOO LATE, SO I HAVE TO DO SOMETHING ELSE.

THAT MIGHT TELL THE COURT HE DOESN'T UNDERSTAND.

THE PROBLEM IS THERE'S NOT ENOUGH OF A BACK AND FORTH.

THERE'S NO INQUIRY FROM WHICH THE COURT CAN DETERMINE THAT HE CAN COMPREHEND ANYTHING OTHER THAN A SIMPLE STATEMENT, YES, SIR, NO, SIR.

>> HERE'S THE PROBLEM THAT I HAVE, BECAUSE, AGAIN, WE GOT TO APPLY A RULE THAT WORKS WITHIN A FELONY, MIGHT WORK IN A DEATH CASE.

IT REALLY SEEMS THAT YOUR ARGUMENT IS THAT THE PROCEDURE AS IT WAS SET UP IN DUVAL COUNTY AND MAYBE OTHER COUNTIES AROUND THE STATE IS ONE THAT

>> HERE'S THE PROBLEM THAT I

HAVE, AGAIN WE HAVE TO APPLY A

RULE THAT WORKS WITHIN A

FELONY OR MIGHT WORK IN A DEATH

CASE.

IT REALLY SEEMS THAT YOUR

ARGUMENT, AS THE PROCEDURE SET UP IN DUVAL COUNTY AND MAYBE OTHER COUNTIES AROUND THE STATE, IS AN IMPLICIT PRESSURE TO PLEAD GUILTY WITHOUT AN ATTORNEY AND GET ON WITH IT. KIND OF WHAT WE FACED WITH JUVENILES.

THERE WAS EXCESSIVE PLEADING. THE BETTER WAY TO HANDLE THAT WITH JUVENILES, LISTEN, HAVE THEM CONSULT WITH AN ATTORNEY BEFOREHAND.

WE DEALT WITH THAT BY RULE.

>> YES, MA'AM.

>> BUT I KIND OF, FOLLOWING WHAT THE JUSTICE CANADY IS SAYING,

WHAT THE FORM SAID, WHAT IS YOUR AGE AND EDUCATION, HAVE YOU HAD EXPERIENCE THAT REALLY WILL CHANGE WHAT YOU ALREADY SAID WAS KIND OF THIS THING, IF YOU'RE A FELONY, ACCUSED OF A FELONY YOU'RE GET GETTING YOUR LAWYER.

IF YOU'RE ACCUSED OF A MISDEMEANOR YOU WILL BE PROBABLY PLEADING OUT TODAY AND YOU DON'T NEED A LAWYER.

ISN'T, THAT IS THE REAL PROBLEM WHICH IS SO DIFFERENT THAN THE FARETTA SITUATION WHERE SOMEBODY IS ABOUT TO START TRIAL AND THEY NOW GO, I WANT TO GET RID OF MY LAWYER.

THAT IS WHAT THESE OTHER CASES WERE, EVERYBODY IS LOOKING GOING, OH, MY GOODNESS, WE'RE ABOUT TO PICK A JURY.

THIS IS A CASE THAT HAS 20 WITNESSES.

AND THIS GUY ALL OF SUDDEN WANTS TO FIRE HIS LAWYER AND PROCEED ON HIS OWN.

SO THE INTERESTS ARE DIFFERENT. SO I JUST, BUT I DON'T KNOW HOW HERE, ASKING THOSE OTHER QUESTIONS IS, WOULD REALLY HAVE ACCOMPLISHED WHAT YOU WANT TO HAVE ACCOMPLISHED IF IT IS STILL THIS THING WHERE THEY'RE NOT GETTING OFFERED A LAWYER AND EVERY, ALL THE FELONS ARE?

>> TWO RESPONSES TO THAT.

THE FIRST RESPONSE, I GUESS
LOOKING WAY THINGS ARE HANDLED
WITHIN THIS COURT AND EVEN
WATCHING THESE ARGUMENTS TODAY,
HOW MANY TIMES DOES THE COURT
ASK A QUESTION?

AND THE ATTORNEY RESPONDS AND
THE COURT JUSTICE SAYS, NO,
THAT'S NOT WHAT MY QUESTION
WAS.

HAD IT BEEN A YES OR NO
QUESTION THEY MAY HAVE ANSWERED
YES OR NO, THEY UNDERSTAND OR
THEY UNDERSTAND WHAT YOU'RE
SAYING BUT UNTIL THEY DISCUSS
IT WITH YOU, TALK TO YOU, SPEAK
TO YOU, AND IN MORE THAN YES OR
NO RESPONSES YOU MAY HAVE NOT
REALIZED AS THE JUSTICE THEY
DIDN'T UNDERSTAND WHAT YOU WERE
ASKING, THEY DIDN'T UNDERSTAND
WHAT YOU WERE SAYING.

>> SO ARE YOU SAYING IF IT WAS
A TWO MINUTE INQUIRY IT WOULD
HAVE, THEY'RE GOING TO GET A
LITTLE BIT, TELL ME A LITTLE
BIT ABOUT YOUR JOB AND ALL THIS
BEFORE I'M GOING TO HAVE YOU
PLEAD OUT TODAY?

>> IT'S DIFFICULT BECAUSE IT IS
NOT IN THE RECORD AND THERE IS
NO WAY TO PUT IT IN THE RECORD
OF THIS ISSUE BUT IF YOU HEARD
THINGS PEOPLE SAY WHEN THEY
COME OUT OF THESE PROCEEDINGS
AND WHAT THEY THINK HAPPENED
AND THE, AND THEIR
UNDERSTANDING OR TOTAL LACK OF
UNDERSTANDING I THINK IT WOULD
HELP ANSWER THAT QUESTION.

>> I THINK I UNDERSTAND WHAT
YOU'RE SAYING BUT I DON'T KNOW
THAT HAVING A PRO-FORMA,
CHECKLIST IS GOING TO CHANGE
WHAT YOU ARE DESCRIBING AS
THAT, JUDGES MAYBE AREN'T
TALKING IN A WAY THAT LITIGANTS
ARE HEARING, OR THE PRESSURES.
THAT IS UNFORTUNATE BUT WITH
THE, BUT I DON'T, I'M JUST NOT
SEEING THAT MANDATING THOSE
FOUR QUESTIONS IS GOING TO
SOLVE YOUR PROBLEM.

>> I'M NOT SUGGESTING THAT.
MY CONCERN AND THE REASON WE'RE

BEFORE THE COURT TODAY BECAUSE THE FIRST DISTRICT COURT OF APPEAL SAID THE CURRENT VERSION OF 3.111 DOES NOT REQUIRE INQUIRY BECAUSE THE PRO-FORMA PART IS THE PART WHERE YOU SHOW SOMEBODY A VIDEO, YOU HAND THEM A FORM, YOU HAVE THEM SIGN THE FORM AND SAY WELL, YOU HAVE DONE ALL THIS, SO CLEARLY YOU MUST UNDERSTAND.

WHAT WE ARE SUGGESTING THAT THE DECISION, THE DECISION OF THE FIRST DISTRICT COURT OF APPEAL IN THIS CASE BY, WHERE THEY DID BY FOOTNOTE TOTALLY IGNORE THE FACT THAT AFTER BOWEN WAS DECIDED IT WAS IN THE, I CAN'T REMEMBER WHETHER CONCURRING OR DISSENTING OPINION, IN BOWEN IT WAS POINTED OUT WE NEED A COLLOQUY FOR COURTS TO USE TO HAVE COMMUNICATION WITH THESE DEFENDANTS.

>> YOU'RE SAYING IT IS NOT THE CONTENT OF THE ANSWERS THEY GET AS HOW MUCH DISCUSSION THEY HAVE?

>> IT COULD BE. IT DEPENDS. WITHOUT THE DISCUSSION YOU DON'T KNOW WHAT THE CONTENT OF THE ANSWERS IS.

>> MAYBE ON A TIME LIMIT, NEED TO HAVE 15-MINUTE CONVERSATION SO I CAN SOMEHOW EVALUATE IT?

>> IF THIS COURT DETERMINES THAT 30 SECONDS IS ENOUGH TO MAKE A DECISION ABOUT SOMEBODY KNOWS ENOUGH THAT THEY ARE WAIVING ALL THEIR RIGHTS AND UNDERSTANDING EVERYTHING, THEN I GUESS THAT'S WHAT THE LAW IS. JUST BASED ON ALL THE CASE LAW THAT HAS PRECEDED AND THE FACT THAT YOU ARE CONVICTED OF A CRIME, EVEN A MISDEMEANOR, IF IT IS A DRUG CHARGE, YOUR LICENSE IS SUSPENDED FOR TWO YEARS.

IF IT IS DOMESTIC BATTERY YOU MAY WORK FOR CHILDREN AND FAMILY SERVICES, YOU MAY NO LONGER WORK THERE ANYMORE. THERE ARE RAMIFICATIONS FOR

MISDEMEANOR CONVICTIONS AND
THERE ARE FAR MORE PEOPLE WHO
IT AFFECTS.

IT IS EASY TO SAY THEY'RE JUST
MISDEMEANOR OFFENSES BUT IT
AFFECTS JOBS AND IF YOU WANT TO
BE VOLUNTEER AT YOUR CHILD'S
SCHOOL 10 YEARS LATER.

WE WERE TALKING EARLIER ABOUT
PUTTING TIME LIMITS ON THINGS.

THERE ARE FAR-REACHING
IMPLICATIONS WHILE I REALIZE
MANY ARE COLLATERAL
COMPLICATIONS THERE ARE TYPES
OF THINGS A ATTORNEY CAN HELP
YOU ADDRESS WHETHER OR NOT IT
IS WORTH FIGHTING.

AN ATTORNEY CAN SAY TO YOU --
>> WE UNDERSTAND THAT PEOPLE
REALLY OUGHT TO GET AN ATTORNEY
TO HELP THEM EVALUATE THESE
KIND OF SITUATIONS BUT IN THIS
PARTICULAR CASE, WHAT I'M
TRYING TO GET IS, WHAT MORE ARE
YOU CONTENDING THIS JUDGE
SHOULD HAVE DONE?

THEY HAVE THE FORM.

THEY DID THE VIDEO.

AS I READ THE COLIQUY THAT THE
JUDGE HAD WITH THE DEFENDANT,
THE JUDGE ACTUALLY SAID THAT
YOU KNOW, YOU'RE ENTERING THIS
PLEA AND YOU UNDERSTAND THAT
YOU'RE GIVING UP YOUR JURY
RIGHTS. HE WENT ON.

YOU'RE NOT GOING TO BE ABLE TO
CALL WITNESSES, THOSE KIND OF
THINGS.

THE JUDGE ACTUALLY SAYS THAT TO
THE DEFENDANT.

SO WHAT MORE ARE YOU
CONTENDING, PRECISELY, THAT THE
JUDGE SHOULD HAVE DONE?

>> WELL, FIRST OF ALL BEFORE WE
GOT TO THAT POINT HE ALREADY
ENTERED HIS PLEA WHICH MEANS
THE COUNSEL ISSUE WAS ALREADY
OVER, THERE ARE TWO PARTS TO THIS.
UNDER 3.111 THE RIGHT TO
COUNSEL WHICH THIS COURT
REPEATEDLY FOUND PER SE ERROR
IF YOU DO NOT ENGAGE INTO
SUFFICIENT INQUIRY TO THE RIGHT
OF COUNSEL.

WHEN WE LOOK WHAT WE HAVE THERE

THE ONLY QUESTIONS ARE, DO YOU HAVE A PRIOR ARREST?
DID YOU HEAR THE MANDATORY MINIMUMS I TOLD THEM?
DO YOU NEED ME TO REPEAT THEM?
DO WE KNOW IF HE KNOWS WHAT THAT MEANS OR IF HE UNDERSTANDS WHAT THE MANDATORY, WHAT MANDATORY MINIMUM MEANS.
HE MAY UNDERSTAND WHAT THE PENALTIES ARE THE COURT HAS SAID.
THEN HE SAYS, DID YOU LOOK THROUGH, DID YOU READ THROUGH THAT BLUE FORM?
DID YOU UNDERSTAND THE RIGHTS ON THAT BLUE FORM?
>> DID YOU WISH FOR ME TO APPOINT COUNSEL OR DO YOU WANT TO HANDLE THE CASE YOURSELF?
>> YES, MA'AM, HE DID.
THE PROBLEM THERE IS, HE DIDN'T FOLLOW UP WITH ANY OTHER QUESTIONS FROM WHICH HE COULD DETERMINE WHETHER OR NOT THIS YOUNG MAN WANTED TO HIRE HIS OWN ATTORNEY.
MAYBE HE WANTED TO HIRE HIS OWN ATTORNEY BUT THE COURT SAYS TO HIM, OKAY, YOU READ THROUGH ALL THE STUFF.
YOU'VE SEEN A VIDEOTAPE THAT HAS ALL KIND OF INFORMATION.
SOME APPLIES TO YOU.
SOME OF IT DOESN'T.
WE'LL ASSUME YOU CAN FIGURE OUT WHICH APPLIES TO YOU.
WE HAVE THE BLUE FORM WHICH GET US TO THE PRO-FORMA BLUE FORMS.
>> DOESN'T THAT GO BACK TO THE PROBLEM I BROUGHT OUT THAT THE MISDEMEANOR VIDEO MAY BE, MAY BE IMPLICITEDLY GETTING SOMEONE NOT TO THINK THEY NEED AN ATTORNEY AND IT IS CONFUSING? BUT I'M LOOKING AT RULE.
THE RULE SAYS YOU CAN'T WAIVE THE ASSISTANCE OF COUNSEL UNTIL THERE HAS BEEN THOROUGH INQUIRY TO THE COMPREHENSION AND CAPACITY TO MAKE A KNOWING INTELLIGENT WAIVER.
I THOUGHT ALL YOU WERE ASKING

FOR YOU WANT TO ADD IN AND ASK
ABOUT THE AGE, EDUCATION, AND
THE AND PRIOR EXPERIENCE THAT
WHAT YOU WANT IN THE RULE?

>> NO, MA'AM.

THERE IS THE MODEL INQUIRY.
WHICH WAS ESTABLISHED BY THE
CONFERENCE OF JUDGES AND WAS
ADOPTED, WELL, WHEN THE RULE
WAS AMENDED, TO CHANGE SOME OF
THE LANGUAGE AND CHANGE IT TO
THE CURRENT LANGUAGE AND COVERS
SOME OF THOSE THINGS.

I THINK MORE SIGNIFICANT IS THE
FACT THAT IN SOME CASES IT MAY
NOT MATTER.

YOU HAVE A YOUNG MAN IN FRONT
OF YOU.

IT MAY MAKE A DIFFERENCE IF
THEY'RE 18, 19, 20, DON'T HAVE
EXPERIENCE IN LIFE.

>> ARE YOU ASKING THE RULE BE
AMENDED?

>> NO, MA'AM. I'M ASKING THE
RULE BE COMPLIED WITH.

THE RULE IS FINE.

THE PROBLEM IS THERE IS NO
THOROUGH INQUIRY.

IT IS ONE THING TO ADVISE ALL
DAY BUT THE QUESTION IS AN
INQUIRY.

>> THE QUESTION IS, WHAT RULE
OF LAW DO YOU WANT US TO ADOPT?
WHAT WOULD WE SAY THAT MUST,
MUST BE, THE JUDGE MUST DO TO
COMPLY?

>> THE JUDGE MUST ENGAGE IN A
SUFFICIENT INQUIRY WITH EACH
DEFENDANT REGARDING WAIVING
RIGHT TO COUNSEL.

IN YOUNG --

>> THAT IS SEEN, AGAIN, THAT
DOESN'T, HE ASKED HIM, HE,
OBVIOUSLY HE HAS GOT
INFORMATION THERE THAT THIS
THAT THIS PERSON OF, YOU WOULD
EXPECT THE PERSON TO BE
LITERATE.

THAT DOESN'T SEEM TO BE
CONTESTED HERE.

THIS IS, I MEAN HE SAID HE READ
IT, OKAY?

SO, I THINK IT IS FAIR FOR THE
JUDGE TO CONCLUDE THIS IS A
LITERAL PERSON.

HE SAID HE READ IT.

I DON'T, I DON'T UNDERSTAND HOW WE'RE GOING TO COME UP WITH SOMETHING THAT NECESSARILY IS GOING TO SOLVE YOUR PROBLEMS UNLESS WE HAVE A FORMULAIC, DETAILED, RECITATION THAT THE COURT HAS TO GO THROUGH, A SERIES OF QUESTIONS WHICH WE MANDATE.

THAT IS AN OPTION.

>> YES, SIR, BUT I WOULD SUGGEST WE'RE NOT ASKING FOR THAT BUT WHAT WE'RE SAYING IS THE RULE OF LAW IF YOU WILL THEN INQUIRY MEANS A DISCUSSION WITH THE DEFENDANT.

IT DOESN'T MEAN I SHOW YOU A VIDEO, I GIVE YOU A BLUE PIECE OF PAPER AND I SAY OKAY, I'VE GIVEN YOU THIS, DO YOU UNDERSTAND IT NOW?

HOW DO YOU UNDERSTAND IF THEY UNDERSTAND IT?

>> WHOA, WHOA, WHOA.

>> YES, SIR.

>> EVEN IF THE DOCUMENT ITSELF GOES BEYOND AND EXPLAINS REALLY MORE AND EVEN IF THE PERSON RESPONDS, YES, I'VE READ THAT, I KNOW EXACTLY WHAT THAT SAYS, YOU'RE SAYING, THAT YOU HAVE TO DO SOMETHING FURTHER THAN THAT?

>> WITH DUE RESPECT ALL THE CASES SAY THAT.

>> BEING RESPECTFUL THAT'S WHAT YOU'RE SAYING?

>> YES, SIR.

>> YOU HAVE TO HAVE A VERBAL CONVERSATION EVEN THOUGH WHAT'S DONE THAN MAYBE WOULD GO ON MORE THAN IN A VERBAL CONVERSATION?

>> WE'RE TALKING ABOUT ADVISEMENT.

IT IS A TWO-PART PROCESS.

>> I UNDERSTAND.

>> THE ADVISEMENT MAY BE MORE BUT A PIECE OF PAPER CAN'T INQUIRE AND VIDEO CAN'T INQUIRE.

ONLY THE COURT CAN INQUIRE AND HAVE THAT DISCUSSION.

>> DID THE JUDGE HERE INQUIRE ABOUT THE MATERIAL THAT WAS GIVEN ON

THE VIDEO?

>> HE ASKED DID YOU UNDERSTAND THOSE RIGHTS? HE DIDN'T ASK, DO YOU UNDERSTAND YOU HAVE THE RIGHT TO HAVE AN ATTORNEY, TO HIRE AN ATTORNEY AS WELL?

YOU DON'T HAVE TO JUST TAKE THE PUBLIC DEFENDER --

>> YOU'RE COMING BACK TO SPECIFIC QUESTIONS YOU THINK MUST BE ASKED?

>> IT DEPENDS ON CIRCUMSTANCES. IT DEPENDS ON THE DEFENDANT IN FRONT OF YOU. I RECOGNIZE THAT. THAT IS WHERE THEY GET INTO THE NO MAGIC WORDS BUT THERE HAS TO BE SOME SORT OF DISCUSSION FROM WHERE THE COURT CAN SAY, OKAY, THIS PERSON DOES UNDERSTAND. THEY MAY THINK THEY UNDERSTAND THE ENGLISH AND HAVE ABSOLUTELY NO IDEA WHAT IT MEANS LEGALLY.

THE RULE USES THE WORD COMPREHENSION AND INTELLIGENT.

>> DOES THAT MEAN WE HAVE TO HAVE A LEGAL TUTORIAL HERE?

>> NO, SIR.

THERE HAS TO BE A DISCUSSION WITH THE DEFENDANT BEFORE YOU CAN SAY OKAY, THEY HAVE EXECUTED A WAIVER.

HE INDICATED --

>> YOU'RE NOW A MINUTE OVER. I WILL GIVE YOU AN ADDITIONAL MINUTE FOR REBUTTAL IF YOU WANT.

>> THANK YOU.

>> MAY IT PLEASE THE COURT.

JOSHUA HELLER ON BEHALF OF STATE OF FLORIDA.

THIS CASE ACTUALLY INVOLVES A FAILURE OF PROOF.

THIS CASE INVOLVES A MOTION TO WITHDRAW A PLEA WHERE A DEFENDANT DOES NOT ALLEGE THAT HIS PLEA WAS ACTUALLY INVOLUNTARY.

HE DOES NOT ALLEGE THAT HE ENTERED HIS PLEA WITHOUT AN UNDERSTANDING OF HIS RIGHTS INCLUDING HIS RIGHT TO COUNSEL BUT THAT THE TRIAL COURT'S INQUIRY, I.E., THE WORDS OF THE TRIAL COURT WERE INSUFFICIENT OF TO INFORM HIM OF HIS RIGHT

TO COUNSEL.
WHEN OFFERED OPPORTUNITY TO
DEMONSTRATE, WHEN OFFERED THE
OPPORTUNITY HE DID NOT
DEMONSTRATE THAT HE HAD
ACTUALLY DID NOT UNDERSTAND HIS
RIGHT TO COUNSEL OR HE
INVOLUNTARILY WAIVED HIS
RIGHT TO COUNSEL.
IN FACT ON PAGE 71 OF THE
APPENDIX HE SPECIFICALLY
DECLINED TO DO WHERE THE COURT
ASKED, ISN'T IT INCUMBENT UPON YOU
TO PRESENT EVIDENCE THAT THE
PLEA WAS INVOLUNTARILY
ENTERED WHICH WOULD BE A LACK OF
YOUR UNDERSTANDING OF RIGHT TO
COUNSEL?

THE ANSWER?

NO SIR.

THE DEFENDANT MAKE THIS
CLAIM DESPITE THE FACT THAT THE
ONLY RECORD EVIDENCE, AND I CAN
NOT COMMENT ON STATEMENTS THAT
WERE MADE THAT ARE NOT IN THE
RECORD SO I'M AT A LOSS WITH
THAT WITH REGARDS TO WHAT MY
FRIEND HAS INDICATED PEOPLE SAY
WHEN THEY COME OUT OF
PROCEEDINGS.

I CAN ONLY ADDRESS WHAT IS IN
THE RECORD, THE RECORD EVIDENCE
THE DEFENDANT WAS PROVIDED WITH
DETAILED INFORMATION REGARDING
HIS RIGHT TO COUNSEL AND HIS
RIGHT TO SELF-REPRESENTATION IN
13 TO 15 MINUTE VIDEO.

HE WAS PROVIDED A BLUE FORM
EXPLAINING EACH OF HIS RIGHTS
INCLUDING RIGHTS OF COUNSEL AT
POLICE STATION AND BEYOND AND
WAS INDIVIDUALLY INQUIRED BY
THE TRIAL JUDGE AS TO HIS
UNDERSTANDING OF HIS RIGHTS AND
SIGNED A WAIVER OF COUNSEL FORM
REGARDING HIS KNOWING AN
VOLUNTARY DECISION TO REPRESENT
HIMSELF.

>> CAN I ASK A QUESTION ON THE
BASIS WE'RE HERE.
WE'RE HERE ON --
>> CERTIORARI.
>> JURISDICTIONAL BASIS.
>> CORRECT.
>> WE'RE HERE ON CONFLICT BUT

THIS CASE CAME UP FROM THE
FIRST DISTRICT AS THE, FROM THE
COUNTY COURTS TO THE CIRCUIT
COURT THAT AFFIRMED AND THEN
THE FIRST DISTRICT IS REALLY,
THEY'RE REVIEWING IT UNDER
CERT. THEY'RE

LOOKING TO DEPART FROM THE LAW.

>> MISCARRIAGE OF JUSTICE.

>> I DON'T SEE HOW THIS CASE
WOULD BE A VERY GOOD VEHICLE,
ASSUMING THERE IS EVEN A POINT
HERE WHICH I APPRECIATE THE
BIGGER PICTURE WHETHER WE'RE
JUST HAVING MASS JUSTICE THAT
IS NOT REALLY JUSTICE BUT, TO
WHY WE SHOULD NOT DISCHARGE
JURISDICTION IN THIS CASE?

>> YOUR HONOR, THE STATE AGREES
WITH YOU COMPLETELY.

>> I WANT THAT, OKAY.

>> I WANT TO POINT OUT, I WANT
TO ADDRESS THE ISSUE BUT I
DON'T DISAGREE WITH YOU AT
ALL.

I THINK THAT'S EXACTLY CORRECT
AND --

>> JUST --

>> I DIDN'T ASK FOR YOU TO
CONSIDER THE CASE RESPECTFULLY.

>> NOT UNUSUAL FOR RESPONDENTS
TO AGREE WE SHOULD DISCHARGE.

>> I IMAGINE NOT.

>> FAIRLY COMMON.

>> SEEMS TO ME, AND THE REASON,
I DON'T, I UNDERSTAND THERE MAY
HAVE TO BE A ONE-SIZE-FITS-ALL
RULE BUT THE BOTTOM LINE IS THAT
JUDGES WHO ARE, THAT CASES FROM
THE SECOND DISTRICT INVOLVED,
FIRST OF ALL, AN OLD VERSION
OF THE RULE BUT ALSO INVOLVED
DEFENDANTS WHO ALREADY HAD AN
ATTORNEY.

>> RESPECTFULLY THEY DON'T CITE
THE APPROPRIATE U.S. SUPREME
COURT PRECEDENT.

THIS IS THE ONLY CASE TO CITE,
IOWA VERSUS TOVAR.

MY FRIEND TALKED ABOUT ALL THE
CASES YET THERE HAS BEEN NO
DISCUSSION OF WHAT THE UNITED
STATES SUPREME COURT HAS SAID
WITH REGARDS TO THIS.

RESPECTFULLY, WHICH WAS IN

2004.

RESPECTFULLY YOUR RULES
ACTUALLY ACT IN HARMONY WHAT
THEY SAID.

IN IOWA VERSUS TOVAR THE UNITED
STATES SUPREME COURT HELD THAT
A PLEA IS KNOWING AND VOLUNTARY
ENTERED BY AN UNCOUNSELED
DEFENDANT IF THERE ARE THREE
ELEMENTS PRESENT.

ONE THAT THE DEFENDANT IS
INFORMED OF THE CHARGE.

TWO, THAT THE DEFENDANT IS
INFORMED HE HAS A RIGHT TO
COUNSEL AT THE PLEA AND THREE,
HE IS INFORMED THAT OF THE
POSSIBLE PENALTIES ATTENUATE
TO HIS CONVICTION.

AS WE MOVE AWAY FROM THE TRIAL,
DANGERS AND DISADVANTAGES
ACCORDING TO THE UNITED STATES
SUPREME COURT ARE MORE EVIDENT.
HERE THAT IS WHAT THE DANGERS
ARE.

NOW, RESPECTFULLY, THE COURT IN
THIS CIRCUMSTANCE WENT FAR
BEYOND THAT.

I WOULD RESPECTFULLY SUGGEST, I
KNOW WE TALKED ABOUT THOROUGH
INQUIRY BUT I THINK THE
THOROUGH INQUIRY NEEDS TO BE
CONSIDERED IN HARMONY WHAT THE
UNITED STATES SUPREME COURT HAS
SAID IS THE SUBSTANCE THAT MUST
BE OBTAINED FROM THE DEFENDANT.
THE INFORMATION THAT MUST BE
OBTAINED.

IN THE INDIVIDUAL INQUIRY ALONE
WHERE THE TRIAL JUDGE IS
SPEAKING DIRECTLY TO THE
DEFENDANT, ALL THREE OF TOVAR'S
ELEMENTS ARE MET.

MR.^EDENFNELD, YOU WERE
CHARGED WITH DRIVING UNDER THE
INFLUENCE
IF YOU ARE REQUIRED TO RESPOND
YOU MUST BE TRUTHFUL.
DO YOU HAVE ANY PRIOR CONVICTIONS
FOR DUI ALSO?
YOU APPEAR TO HAVE THE SAME MINIMUM
MANDATORIES.
DO YOU WANT TO GO THROUGH THEM
WITH YOU? THIS IS POSSIBLE
SCENARIOS?
DO YOU WISH TO APPOINT COUNSEL

OR HANDLE THE CASE YOURSELF?
I WISH TO HANDLE THE CASE MYSELF.
THERE IS ELEMENT TWO OF TOVAR.
AWARE OF RIGHT TO COUNSEL AT
THE PLEA.

THAT IS WHAT THE INQUIRY IS
SUPPOSED TO BE ACCORDING TO THE
UNITED STATES SUPREME COURT
THAT IS WHAT THE ESSENTIAL
REQUIREMENTS OF LAW ARE.
FURTHERMORE, THIS COURT HAS
INDICATED AT LEAST THREE TIMES
BY MY COUNT INCLUDING EXTREMELY
RECENTLY IN McCRAY, IT IS NOT
THE WORDS OF THE TRIAL COURT
THAT MATTER.

THAT IS NOT THE CRITICAL
QUESTION.

AND THAT'S EXACTLY WHAT THE
ARGUMENT IS HERE.

THE QUESTION IS, WHAT IS THE
UNDERSTANDING OF THE DEFENDANT?
AND HERE WHERE THE DEFENDANT
WAS PROVIDED A 3170-L HEARING
TO DEMONSTRATE THAT HE LACKED
SOME TYPE OF UNDERSTANDING.

THAT HE HAD A KNOWING AND
VOLUNTARY PLEA FOR SOME REASON
INCLUDING LACK OF UNDERSTANDING
OF THE RIGHT TO COUNSEL OR ANY
NUMBER OF PANOPLY OF REASONS
THE DEFENDANT SAID NOTHING.
NO EVIDENCE WAS PRESENTED AT
ALL.

AND THIS CASE IS A FAILURE OF
PROOF.

THE, I ALSO WANT TO ADDRESS, IF
I MAY, THE REFERENCE TO
FUNDAMENTAL ERROR THAT I'VE
SEEN IN NUMEROUS OCCASIONS BY
MY FRIEND IN BRIEF AND WHAT I
WANT TO POINT OUT WITH REGARDS
TO THAT IS THE CASES THAT ARE
BEING RELIED ON I THINK
IMPROPERLY BY THE DCAs, JUSTICE
QUINCE, YOU ACTUALLY WROTE ONE
OF THEM, TC AND BP.

I APOLOGIZE NOT KNOWING WHICH ONE
BECAUSE I'M NOT REALLY GOOD
WITH INITIALS BUT IN THAT CASE
YOU EXPRESSLY DISCUSSED THAT IN
JUVENILE CIRCUMSTANCES IT'S
DIFFERENT.

JUVENILES ARE DIFFERENT.
WE HAVE EXTRA CONCERN WHEN IT

COMES TO THE RIGHT TO COUNSEL FOR A JUVENILE AND AS A RESULT OF THOSE CASES IN 2005, IN 2008, YOU AMENDED YOUR RULES SPECIFICALLY REFERENCING THOSE CASES SO AS TO NOT PROHIBIT A JUVENILE FROM WAIVING THE RIGHT TO COUNSEL BUT SIMPLY REQUIRING THAT THEY HAVE COUNSEL TO DISCUSS WITH THEM WHETHER OR NOT THEY SHOULD WAIVE.

THAT'S A SPECIFIC CONCERN THAT JUSTICE LEWIS, YOU DISCUSSED IT AT LENGTH IN THE RULE AMENDMENTS.

THAT RELATED TO JUVENILES.

BUT WHEN WE TAKE, WE CAN'T TAKE THAT AND MOVE IT OUTSIDE THE CONCEPT OF A JUVENILE.

IT BECOMES CONTRADICTORY.

FUNDAMENTAL ERROR IS ERROR THAT IS INHERENTLY HARMFUL.

HOWEVER THIS COURT AS I INDICATED HAS SAID IT'S NOT THE WORDS OF THE TRIAL COURT THAT MATTER.

THAT'S NOT THE INQUIRY.

IT IS THE UNDERSTANDING OF THE DEFENDANT.

SO THE UNDERSTAND OF THE DEFENDANT IS KEY.

IF THE UNDERSTANDING OF THE DEFENDANT IS WHAT WE'RE LOOKING AT, THEN THE WORDS OF THE TRIAL COURT, NOT MATTERING, HOW COULD THOSE BE INHERENTLY HARMFUL IF THE DEFENDANT ACTUALLY HAS AN UNDERSTANDING OF HIS RIGHTS?

FINALLY THE LAST POINT THAT I WANTED TO REITERATE IS WE ARE HERE I REALIZE ON CONFLICT RELATED TO CASES THAT ARE NOT CITING TOVAR, THAT ARE REFERENCING OLD LAW OF A PRE-BOWEN AMENDMENT TO THE RULE.

HOWEVER WE LOOK TO THE ESSENTIAL REQUIREMENTS OF LAW AND I THINK THAT THE COURT NEEDS TO LOOK AT, THIS IS NOT A CASE TO MAKE LAW BASED ON ITS POSTURE.

IT IS A CASE WHERE WE HAVE TO LOOK WHAT THE ESSENTIAL REQUIREMENTS OF LAW ARE, WHAT THE UNITED STATES SUPREME COURT

SAID IN TOVAR IS REQUIRED AND
WHAT THE, AND HOW THAT APPLIES
WITH REGARDS TO THE THOROUGH
INQUIRY.

>> YOU THINK THE RULE
DEFINITELY REQUIRES A THOROUGH
INQUIRY.

IS IT, THE ARGUMENT IS THAT,
YOU KNOW, YOU PUT VIDEOTAPES
ON.

THEY'RE IN A ROOM.

THEY, MAYBE HE WAS IN JAIL
OVERNIGHT. SIGNS A FORM.

THE THOROUGH INQUIRY THAT WAS
CONTEMPLATED, AS I GUESS IS IN
THE INQUIRY OF THE MODEL
INQUIRY OF THE CONFERENCE OF
CIRCUIT JUDGES IS THAT THE
INQUIRY IS BETWEEN THE JUDGE
AND THE, AND THE DEFENDANT.
HERE THE ONLY, IS THE ONLY
INQUIRY IS AFTER HE SIGNED
THOSE THINGS, HE SAYS, OKAY,
YOU WERE CHARGED WITH DRIVING
UNDER THE INFLUENCE.

SAME QUESTION TO YOU AS THE
OTHERS.

YOU'RE NOT REQUIRED, IF YOU DO,
AND STARTS ASKING QUESTIONS.

IS THAT AFTER HE PLED GUILTY?
OR IS THAT THE INQUIRY ABOUT
WAIVING COUNSEL?

>> HE ACTUALLY PLED NO CONTEST,
YOUR HONOR, BUT IT WAS AFTER
THAT.

>> WHERE IS, WHERE IS THE
INQUIRY AS TO WAIVING COUNSEL?
>> YOUR HONOR, THE DEFENDANT
WAS PROVIDED, WAS DISCUSSED AT
LENGTH WITH REGARDS TO THE
VIDEO.

>> NO, NO.

>> UNDERSTAND --

>> I SAID, HE HAD VIDEO.
WHERE WAS THE THOROUGH INQUIRY
WITH MR.^HE HAD DEN FIELD?

>> MR.^HE HAD DEN FELLED WAS
ASKED DO YOU WISH TO APPOINT
COUNSEL.

>> I'LL DO IT MYSELF, THAT'S
CORRECT.

>> THAT IS THE END OF THE
THOROUGH INQUIRY?

>> YOUR HONOR, THAT IS WHAT THE
SUBSTANTIVE LAW WHAT INQUIRY

REQUIRES.

>> IN THE CASE OF A FARETTA,
SOMEBODY HAD A LAWYER, AND WE
KNOW THERE IS NO MAGIC WORDS.
WE WOULD APPROVE, YOU HAVE
COUNSEL, I TOLD YOU THERE IS
RISKS.

YOU WILL DO IT, GOING TO DO IT
YOURSELF.

>> YOUR HONOR --

>> NOW THAT I LOOK AT EXACTLY
WHAT WAS ASKED EDENFELD HOW
COULD THAT BE INQUIRY?

>> MR.^TOVAR, I SEE MR.^TOVAR
YOU WAIVED APPLICATION FOR A
COURT-APPOINTED ATTORNEY.

>> ARE WE TALKING ABOUT THE
SUPREME COURT CASE?

>> YES, YOUR HONOR.

>> I'M TALKING ABOUT OUR RULE
REQUIRES A THOROUGH INQUIRY.

>> OUR RULE EFFECTUATES THE
CONSTITUTIONAL RIGHT.

>> WE MAY BE WANTING MORE
RIGHTS THAN THE CONSTITUTION.
YOU THINK A THOROUGH INQUIRY IS
SAYING DO YOU WISH FOR ME TO
APPOINT COUNSEL?

DO YOU WISH TO HANDLE IT
MYSELF.

I WILL DO IT MYSELF?

>> NO, YOUR HONOR, I'M
SUGGESTING TO YOU THOROUGH
INQUIRY THE DEFENDANT IS
PROVIDED EXTRAORDINARY AMOUNTS
OF INFORMATION REGARDING HIS
RIGHT.

HE IS INCLUDING THE VIDEO.

INCLUDING --

>> DO WE KNOW, --
>> WASN'T HE ASKED IF HE READ
IT AND UNDERSTOOD IT?

>> YES, HE DID, YOUR HONOR.

>> THAT START PAST INQUIRY.

>> THAT'S CORRECT, YES, YOUR HONOR.

AND HE WAS, SO THAT INFORMATION
IS IMPUTED AND AGAIN THE
DEFENDANT NEVER INDICATED THAT
HE DID NOT ACTUALLY UNDERSTAND
THAT RIGHT AT ANY POINT IN THIS
CASE.

>> WE HAD A CASE THIS WEEK
WHERE PEOPLE ARE ASKED IN A
VOIR DIRE HAVE YOU BEFORE ON
BEEN ACCUSED OF A CRIME AND

THEY DON'T ANSWER.
THERE IS UNFORTUNATE DYNAMICS
IN A COURTROOM.
WE SEE IT ALL THE TIME ABOUT
WHAT JUDGES ARE TAUGHT HOW DO
YOU ENGAGE IN CAREFUL LISTENING
SO, BECAUSE PEOPLE ARE
INTIMIDATED IN A COURTROOM
SETTING.
I'M JUST A LITTLE HESITANT TO
SAY, AND THIS IS WHY I, MAYBE
THE ANSWER IS JUST
DISCHARGING THIS CASE IF IT IS
A FAILURE OF PROOF BUT THAT
THIS WOULD BE EQUIVALENT TO A
THOROUGH INQUIRY UNDER THE RULE.
NOW IT MAY BE THAT IT'S NOT A,
DOESN'T MEET THE OTHER
REQUIREMENTS OF, BECAUSE YOU
SAID, IT WAS A WITHDRAWAL OF
PLEA UNDER L, WHICH WERE ABOUT
TO MAYBE DELETE BUT --
>> IT WOULD BE 3850 IN THAT
CIRCUMSTANCE.
>> IT WOULD BE 3850 AFTER THE
FACT.
BUT WOULDN'T IT BE BETTER TO,
YOU KNOW, MAKE SURE THAT AT
LEAST THERE IS A, ON THE ISSUE
OF SELF-REPRESENTATION THAT,
THERE'S MORE BUT CERTAINLY
WOULDN'T CONDONE IT IN A DEATH
CASE I GUESS IS WHAT I'M
THINKING? WE WOULDN'T SAY,
WELL YOU WATCHED A VIDEO OUT THERE
AND YOU UNDERSTAND EVERYTHING?
I MEAN, AGAIN IF CIRCUMSTANCES
MATTER.
MAYBE IT DOES.
A MISDEMEANOR, A MISDEMEANOR
INQUIRY BE DIFFERENT THAN A
FELONY INQUIRY?
DIFFERENT FROM A DEATH CASE?
>> I THINK I CAN ANSWER YOUR
QUESTION BY ADDRESSING I THINK
WHAT IS THE UNDERLYING PREMISE
WHICH IS THAT YOU INDICATED
THOROUGH INQUIRY SEEMS TO IMPLY
THE MODEL INQUIRY WHICH YOU
ALSO INDICATED IN PRIOR CASE
LAW IS NOT ACTUALLY PART OF THE
RULE.
IF YOU LOOK AT THE MODEL
INQUIRY, THE MODEL INQUIRY IS
NOT JUST ABOUT ASKING

QUESTIONS.

THE MODEL INQUIRY IS ABOUT PROVIDING INFORMATION.

IN THIS PARTICULAR CIRCUMSTANCE THE INFORMATION IS PROVIDED AT LENGTH TO THE DEFENDANT.

THE THOROUGH INQUIRY, WE'LL TALK ABOUT THE ADVISEMENT VERSUS INQUIRY IS A BIT OF A FALSE DICHOTOMY.

THE INFORMATION PROVIDED, THE QUESTIONS IN THAT MODEL INQUIRY DO NOT SERVE SOLELY FOR THE PURPOSE OF ASKING QUESTIONS.

THEY PROVIDE INFORMATION AND HERE THE INFORMATION IS PROVIDED AT LENGTH IN THE VIDEO PRESENTATION.

IT IS PROVIDED TO THE DEFENDANT INDIVIDUALLY.

THE DEFENDANT INDICATED THAT HE DID NOT WANT COUNSEL APPOINTED AND HE READ THE RIGHTS INVOLVED IN THAT PARTICULAR INFORMATION.

HE ALONG WITH OTHERS HE INDICATED HE UNDERSTOOD THE RIGHTS, SAW THE VIDEO AND UNDERSTOOD THE RIGHTS SET FORTH IN THE VIDEO.

SO TO, I THINK THAT THE UNDERLYING PREMISE OF THE QUESTION, THAT THE THOROUGH INQUIRY SEEMS TO IMPLY THE MODEL INQUIRY IS BELIED BY THIS COURT'S DECISION, FOR EXAMPLE, IN MCCRAY AND, DOES THAT ANSWER YOUR QUESTION, JUSTICE PARIENTE?

ACCORDINGLY, FOR THE REASONS SET FORTH HERE IN LIGHT OF THE FAILURE OF PROOF OF DEFENDANT AT EVERY STAGE OF THIS PROCEEDING AND THE PETITION, AND BECAUSE THE PETITIONER IS UTTERLY FAILED TO DEMONSTRATE THAT HIS WAIVER OF COUNSEL AND PLEA WAS UNKNOWING OR INVOLUNTARY A CIRCUIT COURT DID NOT DEPART FROM THE ESSENTIAL REQUIREMENTS OF THE LAW AS SET FORTH IN TOVAR RESULTING IN MISCARRIAGE OF JUSTICE BY AFFIRMING THE COUNTY COURT'S DECISION DECISION TO WITHDRAW HIS PLEA.

THE DECISION OF THE FIRST DISTRICT IS PROPERLY AFFIRMED.

>> MAY IT PLEASE THE COURT.

TOVAR IS NOT BINDING ON THIS COURT.

THIS COURT MADE CLEAR IN THE PAST AS RECENTLY A COUPLE YEARS AGO IN KELLY, THAT IS THE FLOOR.

THE STATE CONSTITUTION DICTATES THE INTERPRETATION OF 3.111.

THIS COURT HAS STATED THAT IS THE GENESIS OF THIS RULE, NOT THE FEDERAL CONSTITUTION.

AND THE LAST THING THAT THE COURT SAID IN TOVAR OTHER COURTS CAN AND HAVE PROVIDED ADDITIONAL REQUIREMENTS OR DIFFERENT RULES AND CITE OUR RULES.

SO THIS IS NOT A CASE THAT IS RULED BY THE FEDERAL STANDARDS OR THE STATE STANDARDS.

>> YOUR POSITION BASICALLY WOULD BE THAT THOROUGH INQUIRY AT THE TIME THE JUDGE SAID, DO YOU WANT ME TO APPOINT A LAWYER FOR OR DO YOU WANT TO DO THIS YOURSELF, AND EVEN THOUGH HE SAID YES, THE JUDGE SHOULD HAVE THEN FOLLOWED UP WITH, YOU KNOW, THAT THE DANGERS OF

REPRESENTING YOURSELF AGAIN?

>> NO, MA'AM. BUT THE COURT COULD CERTAINLY SAY DID YOU SEE ON VIDEOTAPE AMONG ALL THE OTHER INFORMATION MAYBE NOT INCLUDING THAT THE DANGERS AND DISADVANTAGES OF REPRESENTING YOURSELF?

DO YOU UNDERSTAND ALTHOUGH I ASKED YOU IF YOU'RE WAIVING YOUR RIGHT TO BE APPOINTED YOU STILL HAVE THE RIGHT TO HIRE AN ATTORNEY?

SOME SORT OF DISCUSSION FROM WHICH A COURT CAN DETERMINE, IF YOU LOOK AT PLEA COLIQUYS WHICH YOU HAVE TO SHOW PREJUDICE, THERE IS LOT MORE YOU HAVE TO SHOW, THERE'S ALL THESE REQUIREMENTS FOR THE WAIVER OF COUNSEL WHICH IS FAR MORE SIGNIFICANT.

>> LET'S LOOK AT THE MOTION TO

WITHDRAW PLEA.

>> YES, SIR.

>> WHAT HAPPENED IN THAT PROCEEDING?

IS IT YOUR POSITION THAT IS REALLY DOESN'T MATTER WHETHER THE DEFENDANT UNDERSTOOD EVERYTHING PERFECTLY WELL? THAT IF HE UNDERSTOOD WHAT RIGHTS HE WAS GIVING UP, AND THAT IS JUST A CHOICE HE MADE THAT DAY WITH FULL KNOWLEDGE, WITH HIS EYES WIDE OPEN, THAT WHAT HE WAS WAS GETTING INTO, THAT THAT'S, THAT'S REALLY IRRELEVANT?

THAT WHAT WE HAVE TO LOOK AT ONLY IS WHAT WAS ON THE RECORD AND IF IT IS, IF WE CAN'T SEE ON THE RECORD SOMETHING THAT MEETS WHATEVER STANDARD YOU WOULD HAVE US ARTICULATE, THEN, THEN HE GETS OUT OF THE PLEA?

>> I THINK THERE IS TWO ANSWERS.

FIRST OF ALL IF HE WOULD COME FORWARD TO TESTIFY I KNOW YOU TOLD ME THIS, THAT OTHER BUT I DIDN'T UNDERSTAND.

WE SHOWED YOU A VIDEO.
WE GAVE A BLUE FORM.

THAT REBUTTS WHAT YOU'RE SAYING
END OF STORY.

THERE IS EFFECTIVELY NO REVIEW
THEN IT IS CREDIBILITY CONCERN
WHICH MAY BE WHY COUNSEL ISSUED
--- DETERMINED TO BE
FUNDAMENTAL.

>> SO YOUR ANSWER IS, THAT, IT DEPENDS ENTIRELY ON WHAT'S ON THE RECORD?

>> YES, SIR, BECAUSE --

>> YOU'VE GOT, YOU BASICALLY,
YOU, WHEN YOU GO TO THE HEARING
ON THE WITHDRAWAL OF THE PLEA,
YOU JUST, IT IS JUST THERE TO
TALK ABOUT WHAT IS ALREADY ON
THE RECORD?

IT IS NOT ACTUALLY TO FOCUS ON
THE UNDERSTANDING OF THE
DEFENDANT?

>> ON THIS ISSUE ALONE.

HAD THERE BEEN DISCUSSION WITH
THE COURT AND DEFENDANT COMES
BACK AND SAYS I KNOW IT LOOKS

LIKE I UNDERSTOOD BUT I DIDN'T
REALLY.

WE HAD THIS DISCUSSION BECAUSE
THAT A DIFFERENT STANDARD.
IF YOU HAVE THE DISCUSSION THEN
IT IS THE COURT'S DISCRETION.
THAT IS DIFFERENT WHEN THE
RECORD, THAT IS WHAT IS
CONSISTENTLY FOUND IN THE
DECISIONS OF THE DISTRICT
COURTS IN THIS COURT IS WHAT IS
ON THE RECORD.

THE COURT MUST STATE AND
ESTABLISH ON THE RECORD HOW AND
WHY IT IS FINDING THAT THE
DEFENDANT IS KNOWINGLY AND
INTELLIGENTLY WITH FULL
COMPREHENSION WHICH IS THE
LANGUAGE USED IN THE RULE,
WAIVING THEIR RIGHT TO COUNSEL.

>> ALL RIGHT.

YOU'VE GONE WELL OVER YOUR TIME.
THANK YOU BOTH FOR YOUR
ARGUMENTS.

>> YES, SIR.

>> AND THAT'S THE LAST CASE
TODAY AND THIS WEEK.
SO THE COURT NOW STANDS
ADJOURNED.

>> ALL RISE.