

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.

OBSOLETELY 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 WITH IN 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  
COLIQUY 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 IMPLICITLY 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. ^EDENFELD, 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 COURT 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 INQUERY 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 McCRAE 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.