>>> ALL RISE.
>>> OUR NEXT CASE OF THE DAY
IS LARKIN V. STATE OF
FLORIDA.
YOU MAY PROCEED.
>> THANK YOU, YOUR HONOR.
NADA CAREY REPRESENTING
APPELLANT MR.†LARKIN IN THIS
CASE.
THIS IS A DEATH PENALTY CASE,
IN WHICH MR.†LARKIN
REPRESENTED HIMSELF DURING
BOTH THE GUILT AND PENALTY
PHASES OF THIS TRIAL.
TWO DAYS AFTER THE JURY FOUND
HIM GUILTY, THE TRIAL JUDGE
ORDERED A MENTAL HEALTH
EVALUATION REGARDING LARKIN'S
COMPETENCY TO PROCEED AND HIS
COMPETENCY TO WAIVE COUNSEL.
DR. MEADOWS SUBMITTED A
REPORT FINDING LARKIN
INCOMPETENT, AND THE JUDGE
HEARD TESTIMONY FROM
DR.†MEADOWS, AND DURING THAT
HEARING, MR.†LARKIN CONTINUED
TO REPRESENT HIMSELF.
>> AND I THINK, THAT'S KIND
OF AN OUTLINE OF WHAT
HAPPENED.
THERE'S A LITTLE MORE TO IT.
WHY DID THE TRIAL COURT ORDER
THE EVALUATION?
WHAT TRIGGERED THAT?
>> THE EVALUATION WAS
INSTIGATED BY STAND-BY
COUNSEL, BRIAN MORRISSEY.
MR.†MORRISSEY ORIGINALLY
REPRESENTED LARKIN†--
>>†DID HE FILL A MOTION OR
ANYTHING?
HE JUST MADE AN ORAL REQUEST?
>> YES, HE ASKED AS STAND-BY
COUNSEL, HE MADE IT CLEAR HE
WAS MAKING THE REQUEST AS AN
OFFICER OF THE COURT.
HIS ROLE AT STAND-BY COUNSEL
WAS LIMITED TO ANSWERING
LARKIN'S QUESTIONS.
HE TOLD THE JUDGE HE WAS

CONCERNED THAT MR.†LARKIN WAS
INCOMPETENT, BASED ON HIS
OBSERVATIONS OF LARKIN BOTH
BEFORE THE TRIAL AND DURING
THE TRIAL.
HE WAS CONCERNED HE MIGHT
HAVE SOME SORT OF DELUSIONAL
DISORDER.
>> WELL, HE -- HIS DEFENSE
MAY BE STRAINED PRESUMABLY.
HE HAD A DEFENSE THAT WAS
PROBLEMATIC.
>> WELL†--
>>†THAT'S PART OF -- THOSE
CONCERNS RELATED TO THE
NATURE OF HIS DEFENSE.
>> THE CONCERN WAS -- THE
CONCERN WAS NOT THE NATURE OF
THE DEFENSE, BUT WHETHER
MR.†LARKIN'S THINKING WAS
RATIONAL OR THE RESULT OF AN
IMPAIRED SENSE OF REALITY
ABOUT THE PROCEEDINGS, OR
ABOUT COUNSEL WHO HAD BEEN
APPOINTED TO HIM.
THERE ARE A NUMBER OF REASONS
THAT MR.†MORRISSEY PRESENTED
TO THE COURT THAT SUGGESTED
HE MIGHT BE INCOMPETENT.
THERE WAS A HEARING NOVEMBER
5TH, 2009, AT WHICH
MR.†LARKIN MADE SOME VERY
BIZARRE STATEMENTS, RELATED
TO THERE HAVING BEEN TWO
INDICTMENTS, RELATING TO
THERE HAVING BEEN A COVER-UP
BY A JUDGE, AND THEY WERE
WAITING FOR JUDGE FOSTER TO
RETIRE BEFORE THEY COULD
RETRY THE CASE.
HE BELIEVED THAT HIS
ATTORNEYS WERE HIDING
EVIDENCE OR INFORMATION THAT
WOULD RESULT IN HIS
ACQUITTAL.
THERE WERE A NUMBER OF THINGS
AT THAT HEARING, AND AT THAT
TIME THE JUDGE HIMSELF SAID I
THINK THERE'S A QUESTION
HERE, AND I WOULD SUGGEST --

HAS HE BEEN EXAMINED?
I THINK IT WOULD BE A GOOD IDEA TO HAVE HIM EXAMINED.
THAT WAS NOVEMBER 2009.
NOW THE RECORD DOESN'T SHOW WHETHER HE WAS EXAMINED AT ANY POINT AFTER THAT TIME.
WHAT ACTUALLY HAPPENED IS HE FIRED HIS PUBLIC DEFENDER MR.†MORRISSEY AND OBTAINED PRIVATE COUNSEL.
HE WAS REPRESENTED BY PRIVATE COUNSEL FOR THE NEXT 18 MONTHS, DURING WHICH TIME, AS FAR AS WE KNOW, NOTHING REALLY HAPPENED; AND THEN IN 2011, OCTOBER/NOVEMBER OF 2011, PRIVATE COUNSEL WITHDREW, WAS ALLOWED TO WITHDRAW, AND AFTER HE LEFT, MR.†LARKIN SAID HE WANTED TO REPRESENT HIMSELF, AND THAT'S WHEN THE JUDGE DID THE FIRST FARRETA INQUIRY AND CONCLUDED HE COULD REPRESENT HIMSELF.
>> WAS IT THE SAME JUDGE PRESIDING OVER THE CASE IN 2009?
>> YES, IT WAS JUDGE FOSTER.
>> AT THAT POINT IN 2009, NOT ONLY -- AND I WANT TO MAKE SURE ABOUT THIS -- JUDGE FOSTER NOT ONLY HAD CONCERNS ABOUT A MENTAL HEALTH -- ABOUT HIS STATE, THESE WERE VERY BIZARRE REASONS, BUT WHEN HE TOLD -- WHEN THE JUDGE TOLD MORRISSEY -- TOLD APPELLANT THAT MORRISSEY WASN'T GOING TO BE DISCHARGED, HE SAID I DON'T BELIEVE I'M CAPABLE OF REPRESENTING MYSELF?
>> THAT'S CORRECT.
>> SO DID THE JUDGE -- AT THAT POINT, DID ANYONE POINT OUT IN 2011 WHAT HAD OCCURRED IN 2009 TO THE JUDGE?
>> IT WAS NEVER BROUGHT OUT.
OF COURSE†--

>>†MORRISSEY WASN'T†--
>>†NO, SHAWN ARNOLD WAS HIS
ATTORNEY IN 2011.
SO WHAT HAPPENED IN 2009 WAS
NOT BROUGHT UP AT THAT TIME.
>> SO IT WAS MORE THE IDEA,
WHAT HE WAS REALLY -- WHAT
THE JUDGE WAS DOING AT THAT
POINT IS TELLING HIM, LISTEN,
WHAT YOU TELL EVERY
DEFENDANT, IT'S A FOOLISH
IDEA TO REPRESENT YOURSELF.
>> RIGHT, RIGHT.
>> WHAT WAS THERE AT THAT
POINT THAT WOULD HAVE GIVEN
THE TRIAL COURT SIGNAL THAT
HE WAS NOT COMPETENT TO WAIVE
COUNSEL?
WHAT WAS THERE THAT THE TRIAL
JUDGE WAS SUPPOSED TO FIND.
>> IN 2011?
>> YES.
>> WELL, AT THAT POINT, I
MEAN, I THINK THERE WAS
CERTAINLY EVIDENCE OF HIS
INCOMPETENCE BASED ON THE
PRIOR HEARING AT THAT TIME.
>> I GUESS THE PROBLEM IS NO
ONE POINTS THAT OUT, AND TO
-- AND MORRISSEY -- WHEN IS
MORRISSEY PUT BACK IN?
THAT'S WHY THE ARGUMENT IS
PREDICATED NOT ON 2009 OR
2011, BUT ON WHAT HAPPENED IN
JANUARY 2012.
TWO DAYS AFTER THE TRIAL IS
WHEN MORRISSEY -- HE HAD BEEN
APPOINTED STAND-BY COUNSEL, I
BELIEVE, IN NOVEMBER OR
DECEMBER OF 2011.
SO HE HAD THE MEMORY OF WHAT
HAPPENED BEFORE, AND HE ALSO
HAD WHAT HE OBSERVED DURING
THE TRIAL, AND THAT WAS THE
BASIS OF HIS URGING THE COURT
TO ORDER A MENTAL HEALTH
EVALUATION IN JANUARY.
THIS IS TWO DAYS AFTER THE
TRIAL.
THIS IS A TWO-DAY TRIAL AT

WHICH MR.†LARKIN DID ALMOST
NOTHING.
VERY SHORT TRIAL, VERY
MINIMAL PARTICIPATION.
AND HE DID MAKE RAMBLING
STATEMENTS ABOUT CONSPIRACIES
AND SO ON IN HIS CLOSING
ARGUMENT, BUT THERE WERE
THINGS THAT HAPPENED DURING
THE TRIAL THAT ALSO EVIDENCED
HIS INCOMPETENCY, OR THE LACK
OF RATIONAL THINKING OR
RATIONAL UNDERSTANDING, AND
AT THAT POINT, THE JUDGE
GRANTED STAND-BY COUNSEL'S --
OR AGREED TO ORDER A MENTAL
HEALTH EVALUATION, AND THE
MENTAL HEALTH EVALUATION THAT
WAS DONE BY DR.†MEADOWS†--
>>†BUT THAT WAS DONE AFTER
THE TRIAL?
>> THAT WAS DONE AFTER THE
TRIAL, YOUR HONOR.
>> MAY I SHARE WITH YOU AND
ASK YOU FOR SOME HELP?
>> SURE.
>> THIS WEEK WE'VE HAD THREE
CASES, VERY SIMILAR ISSUES,
WHERE WE HAVE A DEFENDANT
THAT, FOR WHATEVER REASON,
DECIDES TO GO ON THEIR OWN,
AND WE APPARENTLY HAVE THE
APPROPRIATE NELSON INQUIRIES
WHERE NEEDED, THE APPROPRIATE
FARRETA INQUIRIES AND
HEARINGS WHERE NEEDED, AND
SOME OF THOSE MULTIPLE ONES.
NOW IN THIS CASE, WE HAVE A
LAWYER WHO'S THERE, STANDS BY
FOR THE ENTIRE TRIAL, ALBEIT,
TWO DAYS, BUT NEVER SAYS
ANYTHING, AND AFTER IT'S OVER
-- AND THIS IS STARTING TO BE
A PATTERN ON CASES -- HOW
DOES THE COURT SYSTEM -- WHAT
DOES THE COURT SYSTEM NEED TO
DO?
WE'VE GOT THE FARRETA IN
PLACE, THAT PROCESS, SO THAT
WE DON'T KEEP DOING THE

DO-OVER?
YOU UNDERSTAND WHAT I'M
ASKING?
>>†I DO, YOUR HONOR.
>> WE HAVE TO HAVE A COMFORT
LEVEL SO THAT'S DONE
PROPERLY.
SEEMS ALL THESE ARE COMING
IN, THERE'S NO WAY TO PROTECT
AGAINST THEM BECAUSE
INEVITABLY, AFTER THE TRIAL
IS OVER, HERE IT COMES AGAIN.
>> YOUR HONOR, I DON'T KNOW
WHAT THE OTHER CASES
INVOLVED.
>> I UNDERSTAND.
THIS CASE IS UNIQUE IN THAT
THE TRIAL JUDGE CONCLUDED
THERE WAS A REASONABLE DOUBT
AS TO MR.†LARKIN'S
COMPETENCY.
>> BUT IT'S ONLY AFTER THE
TRIAL IS OVER.
CERTAINLY, IF THIS HAPPENED
DURING THE TRIAL, THERE'S NO
STOPPAGE OF THE TRIAL,
THERE'S NOTHING GOING ON OR
-- WHAT I'M MISSING IS THAT
EVERYBODY WAITS UNTIL
EVERYTHING IS OVER TO RAISE
THIS ISSUE.
>> WELL, THE PROBLEM IS THAT
MR.†LARKIN WAS REPRESENTING
HIMSELF.
>> I AGREE.
>> I DON'T KNOW IF THERE'S A
WAY WE CAN -- A PERSON'S
COMPETENCY, WHEN THEY'RE
REPRESENTING THEMSELVES, IS
MUCH MORE HARD -- GOING TO BE
HARDER TO DISCERN.
AND I DON'T KNOW IF THERE'S A
SOLUTION TO THE QUESTION.
>> ONE OF THE SOLUTIONS WOULD
BE PROSPECTIVELY THAT BEFORE
-- BEFORE THE RIGHT TO
REPRESENT ONE'S SELF IS
ORDERED, I MEAN IS
EFFECTUATED, THAT THERE ARE
COMPETENCY EVALUATION?

>> THAT WOULD BE A SOLUTION.
>> IN THIS CASE -- IN EVERY CASE THAT COULD BE A RULE OR -- HOPEFULLY MAYBE IT STOPS SOME OF THIS SELF-REPRESENTATION, WHICH IS INEVITABLY AWFUL FOR THE TRIAL JUDGE AND, IN DEATH CASES, YOU KNOW, JUST A DISASTER FOR THE WHOLE SYSTEM.
>> RIGHT.
>> BUT IN THIS CASE, I AM CONCERNED WITH WHAT JUSTICE LEWIS BROUGHT UP, WHICH IS THAT THERE'S A STAND-BY COUNSEL IN THE COURTROOM, AND HE THEN SAYS TO THE -- HE DOESN'T SAY IT AT ANY POINT IN JURY SELECTION.
AFTER THE GUILTY VERDICT, WHICH WAS GOING TO BE A PRETTY FOREGONE CONCLUSION, I'M IMAGINING, THIS IS A PRETTY CLEAR-CUT GUILT PHASE ISSUE, THAT THE -- HE SAYS HE WAS EXHIBITING IRRATIONAL BEHAVIOR DURING TRIAL.
DOESN'T HE AT THAT POINT, EVEN THOUGH HE'S STAND-BY COUNSEL -- FIRST OF ALL, ARE YOU ABLE TO SHOW IN HIS RECORD ANY OBJECTIVE EVIDENCE OF IRRATIONAL BEHAVIOR, VERSUS, YOU KNOW, JUST WHAT A SELF-REPRESENTING DEFENDANT DOES?
AND SECOND OF ALL, DID ANYTHING THAT THE TRIAL JUDGE SAID HE OBSERVED THAT CONFIRMED THAT THERE WAS THIS DELUSIONAL, IRRATIONAL BEHAVIOR GOING ON?
IN OTHER WORDS, WAITING UNTIL AFTERWARDS DOESN'T HELP THE INTEGRITY OF THE PROCESS.
SO WHAT'S IN THE RECORD THAT CONFIRMS THAT HE WAS ACTING IRRATIONALLY DURING TRIAL?
>> YOUR HONOR, LIKE I SAID,

THERE ARE A NUMBER OF THINGS,
AND THEY'RE IN MY BRIEF.
HIS CLOSING ARGUMENT, AT ONE
POINT WHEN MR.†LARKIN WAS
CROSS-EXAMINING THE CRIME
SCENE RECONSTRUCTIONIST, HE
SAID, SO RICHARD LARKIN WAS
KILLED SECOND, AND MYRA
LARKIN WAS KILLED FIRST, AND
THEN THE WITNESS SAYS, YES,
YES.
AND HE SAYS, WELL, DOESN'T
THE INDICTMENT HAVE COUNT 1
MYRA AND COUNT 2 RICHARD?
ISN'T THAT REASONABLE DOUBT?
I MEAN THAT INDICATES†--
>>†FRANKLY, THAT JUST
INDICATES TO ME WHY NO ONE
SHOULD REALLY BE ABLE TO
REPRESENT THEMSELVES.
>> BUT MR.†LARKIN†--
>>†THAT'S NOT A LEGAL
ARGUMENT, BUT WE, YOU KNOW,
WE GET PRO SE PETITIONS FROM
DEFENDANTS WHO HAVE BEEN
SENTENCED TO DEATH OR BEFORE
SENTENCED TO DEATH, AND EVERY
ONE OF THEIR ARGUMENTS IS
LEGALLY INSUFFICIENT, BUT
THAT'S THE WAY THIS -- THE
U.S. SUPREME COURT SET IT UP.
WHAT I'M ASKING YOU IS, WAS
THERE SOMETHING THAT SHOULD
HAVE PUT THE TRIAL JUDGE ON
NOTICE, BUT IF IT WAS GOING
TO PUT THE TRIAL JUDGE ON
NOTICE, WHY DIDN'T IT PUT THE
STAND-BY COUNSEL ON NOTICE TO
DO SOMETHING BEFORE THE
GUILTY VERDICT?
>> YOUR HONOR, IT'S VERY
DIFFICULT TO ANSWER THAT
QUESTION.
I DON'T THINK THE ANSWER TO
THAT QUESTION RESOLVES THIS
PARTICULAR CASE.
>> WHAT IT DOES, THOUGH, IS
RAISE WHAT JUSTICE LEWIS IS
SAYING IS THERE'S SOME
STRATEGY POSTURING GOING ON

TO LET THIS THING GO AND THEN
GET A NEW TRIAL.
THAT'S WHAT OUR CONCERN IS,
IS THAT WE, YOU KNOW, WE WANT
TO AVOID A REVERSAL.
SOMEBODY WAITING UNTIL AFTER
IT'S ALL OVER DOESN'T REALLY
HELP WITH THAT.
>> WELL, I -- I THINK THERE
ARE A COUPLE OF PROBLEMS.
FIRST OF ALL, NEITHER THE
JUDGE NOR THE ATTORNEYS,
EITHER FOR THE STATE OR THE
DEFENDANT, ARE MENTAL HEALTH
PROFESSIONALS.
I THINK IT'S DIFFICULT FOR
SOMEONE WHO'S NOT A MENTAL
HEALTH PROFESSIONAL, AND WHO
HASN'T EVEN CONDUCTED AN
EXAMINATION TO DETERMINE
WHETHER A PERSON IS
COMPETENT.
ALL THEY CAN DO IS LOOKING AT
THINGS THAT SEEM IRRATIONAL.
>> THE ISSUE IS NOT HIS
COMPETENCY TO STAND TRIAL.
THAT'S NOT AN ISSUE AT ALL.
>> THE ISSUE IS WHETHER HE
WAS DENIED COUNSEL DURING THE
COMPETENCY PROCEEDING WHEN HE
REPRESENTED HIMSELF?
AND ON THAT ISSUE, EVERY CASE
THAT'S ADDRESSED THAT ISSUE
HAS SAID, IF THERE'S A
REASONABLE DOUBT AS TO THE
DEFENDANT'S COMPETENCY TO
PROCEED, WHICH ALSO HIS
COMPETENCE TO WAIVE COUNSEL,
THEN HE MUST BE APPOINTED
COUNSEL UNTIL THE COMPETENCY
PROCEEDINGS HAVE BEEN
RESOLVED.
THERE'S NOT A COURT THAT'S
ADDRESSED THAT ISSUE, WHO HAS
NOT FOUND THERE'S A VIOLATION
OF RIGHT TO COUNSEL BECAUSE
IT'S COMMON SENSE.
OBVIOUSLY, IF THERE'S A
QUESTION WHETHER HE'S
COMPETENT TO WAIVE COUNSEL,

HE CAN'T REPRESENT HIMSELF AT
A PROCEEDING WHOSE PURPOSE IS
TO DETERMINE WHETHER HE'S
COMPETENT.
>> ISN'T THE REALITY HERE
THAT TRIGGERED BY THE
SUGGESTION OF THE STAND-BY
COUNSEL, THE COURT SAID,
OKAY, I'LL ORDER AN
EVALUATION.
I DON'T THINK THE COURT SAID,
YOU KNOW, I FIND THERE'S A
REASONABLE BASIS FOR IT.
I THINK HE JUST SAID I'M
GOING TO DO IT.
>> THAT'S CORRECT.
>> SINCE YOU HAVE RAISED THIS
ISSUE, I'M GOING TO ORDER THE
EVALUATION.
THE FIRST EVALUATION CAME
BACK FROM DR.†MEADOWS, THE
COURT SAID THESE CONCLUSIONS
ABOUT HIS ABILITY TO HANDLE
THINGS DURING TRIAL FLY IN
THE FACE OF WHAT I HAVE SEEN
HIM DO AS THE GUILT PHASE HAS
BEEN TRIED.
ISN'T THAT CORRECT?
>> THAT'S CORRECT, YOUR
HONOR, BUT ONCE THERE IS AN
EVALUATION, ONCE A MENTAL
HEALTH EXPERT HAS DETERMINED
THAT THE DEFENDANT IS
INCOMPETENT, THAT RAISES
REASONABLE GROUNDS TO BELIEVE
HE'S INCOMPETENT WHICH
TRIGGERS THE RULE.
>> I DON'T KNOW WHY THE JUDGE
CAN'T SAY I FIND THAT NOT TO
BE CREDIBLE.
>> WELL, THE LAW SAYS HE
CAN'T, THAT'S WHY.
UNDER THIS COURT'S DECISIONS,
AND THERE HAVE BEEN MANY OF
THEM, ONCE THERE'S A
REASONABLE DOUBT, THE JUDGE
MUST ORDER A FULL HEARING ON
COMPETENCY, AND MUST ORDER
NOT MORE THAN THREE OR AT
LEAST TWO EXPERTS TO

DETERMINE THE ISSUE.
AND THERE WAS NO FULL HEARING HERE, AND NOT ONLY THAT, THE DEFENDANT REPRESENTED HIMSELF THROUGHOUT PROCEEDINGS.
THERE WAS NO ONE THERE.
THE TWO OTHER EXPERTS THAT WERE APPOINTED WERE NOT BROUGHT INTO TESTIFY.
NO ONE TESTED THE EVIDENCE OF COMPETENCY.
MR.†MORRISSEY REPEATEDLY†--
>>†THIS IS A UNIQUE SITUATION.
>> IT IS.
>> WHERE THE TRIAL JUDGE HAS HAD THE OPPORTUNITY TO OBSERVE THE DEFENDANT REPRESENTING HIMSELF THROUGHOUT THE MURDER TRIAL ON THE GUILT PHASE.
AND IT SEEMS TO ME THAT THE TRIAL JUDGE IS IN A GOOD POSITION THERE TO MAKE A JUDGMENT THAT HE MADE HERE.
>> THE TRIAL JUDGE IS NOT A MENTAL HEALTH EXPERT, YOUR HONOR, AND UNDER THE LAW, THAT'S WHAT'S REQUIRED.
DON'T YOU SEE?
>> MORRISSEY MAKES THE MORAL MOTION, HE MAKES THE CLAIM BASED ON WHAT WAS OBSERVED DURING THE COURSE OF TRIAL.
YOU SAID HE POINTED OUT ALL THESE THINGS THAT INDICATE WHAT HAPPENED DURING THE COURSE OF TRIAL WAS THE PRODUCT OF AN INCOMPETENT DEFENDANT, INCOMPETENT IN THE MENTAL HEALTH SENSE, AND THERE WAS SOME DISTORTED SENSE OF REALITY.
BUT IF THE LAWYER IS NOT ABLE TO ARTICULATE MORE, AND AGAIN, THERE'S -- THE JUDGE IS SAYING I DIDN'T SEE IT.
IN OTHER WORDS, YOU'RE TELLING ME THAT BUT I DIDN'T SEE IT.

THAT'S THE SAME JUDGE THAT
TWO YEARS AGO, HE SAW IT.
SO LET'S SAY HE APPOINTED
COUNSEL, ARE YOU SAYING HE
WOULD HAVE HAD, AT THAT
POINT, ALSO HAVE ORDERED AN
ADDITIONAL EXPERT TO EVALUATE
THE DEFENDANT?
WHAT OTHER THINGS WOULD HAVE
HAPPENED?
>>†WELL, IF HE HAD APPOINTED
COUNSEL, AN APPOINTED COUNSEL
HAD MOVED AN APPOINTMENT OF
EXPERT, AND THE JUDGE GRANTED
THAT MOTION AS THE JUDGE DID
IN THIS CASE, AND RECEIVED A
MENTAL HEALTH EVALUATION
FINDING THE DEFENDANT
INCOMPETENT, THEN THERE'S A
PRESUMPTION OF INCOMPETENCY
AT THAT POINT.
AND, YES, THE JUDGE WOULD
HAVE TO, AT THE VERY LEAST,
APPOINT ANOTHER EXPERT OR TWO
EXPERTS.
IN THIS CASE, THE JUDGE
APPOINTED A SECOND EXPERT.
WHEN HE RECEIVED THAT REPORT,
THE JUDGE STILL COULD NOT
MAKE A CONCLUSION AND ORDERED
A THIRD EXPERT BECAUSE IT NOT
ONLY HAD CONFLICTING OPINIONS
ON INCOMPETENCY, AND AT THAT
POINT, YES, HE ABSOLUTELY WAS
REQUIRED TO HOLD A FULL AND
COMPLETE COMPETENCY HEARING
AT WHICH MR.†LARKIN WAS
REPRESENTED BY COUNSEL.
>> SEEMS TO ME THAT, YOU
KNOW, THIS THING -- THE LAW
IS DEVELOPING IN THIS AREA
WITH REGARD TO FARRETA
HEARINGS AND WHAT HAS TO BE
DONE THEN.
IT SEEMS THE ONLY WAY TO
PROTECT EVERYONE ON THE
PROCESS, THE INTEGRITY OF THE
PROCESS WOULD BE TO CONDUCT
BEFORE TRIAL STARTS IN EVERY
CASE THAT AN INDIVIDUAL WANTS

TO REPRESENT THEMSELVES, IS
THAT YOU DO NOT ONLY HAVE
FARRETA HEARING AGAIN ON THE
TRIAL, BUT HAVE A COMPETENCY
DETERMINATION.
>> I THINK THAT WOULD GO A
LONG WAY TO ALLEVIATING SOME
OF THESE PROBLEMS, BUT AT THE
SAME TIME, OF COURSE, THE
TRIAL JUDGE AND THE ATTORNEYS
ALWAYS HAVE TO, YOU KNOW,
REVISIT THE ISSUE.
IF NEW EVIDENCE COMES UP, AND
SOMETIMES IT DOES, AND I
IMAGINE WHAT HAPPENED HERE IS
MR.†MORRISSEY -- HE DID NOT
-- REPRESENTED MR.†LARKIN FOR
SEVERAL YEARS, SO HE DIDN'T
KNOW IF HE WAS STILL, YOU
KNOW, EXPERIENCING THE SAME
SORT OF THOUGHT ISSUES THAT
HE SAW TWO YEARS AGO, AND
PROBABLY JUST OCCURRED TO
HIM, AS THE TRIAL PROCEEDED,
THAT THERE WAS A HUGE PROBLEM
THERE.
>> MY CONCERN WITH THAT IS
THE PEOPLE HAVE A
CONSTITUTIONAL RIGHT TO
REPRESENT THEMSELVES.
AND WHAT YOU'RE SUGGESTING IS
THAT WHEN SOMEONE WANTS TO
EXERCISE THE CONSTITUTIONAL
RIGHT, THERE HAS TO BE A
COMPETENCY HEARING.
THERE'S SOMETHING†-- I CAN'T
PUT MY FINGER ON THAT, BUT
THERE'S SOMETHING WRONG WITH
THAT.
>> THE PROBLEM IS, IN ORDER
TO REPRESENT HIMSELF, THE
DEFENDANT MUST WAIVE -- BE
COMPETENT TO WAIVE HIS RIGHT
TO AN ATTORNEY, SO THERE'S
COMPETENCY IN THERE, AND IF
THERE'S A QUESTION.
>> BUT THE MERE FACT THAT YOU
WANT TO REPRESENT YOURSELF
DOESN'T RENDER YOURSELF
COMPETENT.

I TRIED MANY CASES WITH PRO SE DEFENDANTS WHERE THEY'VE BEEN ACQUITTED.
THEY'VE DONE A FAR BETTER JOB THAN SOME LAWYERS THAT APPEAR IN FRONT OF ME.
I DON'T SEE THAT.
>> I'M NOT TALKING ABOUT CAPABILITY, I'M TALKING ABOUT MENTAL COMPETENCY.
IN ORDER FOR A JUDGE TO FIND A DEFENDANT MAY PROCEED PRO SE -- IN ORDER FOR THE DEFENDANT TO WAIVE HIS RIGHT TO COUNSEL, THE JUDGE HAS TO FIND NOT ONLY THAT IT'S A VOLUNTARY AND KNOWING LABOR, BUT THAT HE'S COMPETENT, MENTALLY COMPETENT TO WAIVE IT.
SO THE COMPETENCY ISSUE COMES UP WITH THE WAIVER AS WELL.
IF THERE'S A QUESTION -- IF YOU HAVE A DEFENDANT WHOSE MENTAL COMPETENCY TO WAIVE IS QUESTIONED, THEN HE CAN'T REPRESENT HIMSELF AT THE HEARING WHICH YOU ARE GOING TO DETERMINE†--
>>†I UNDERSTAND THE SITUATION AND I UNDERSTAND YOUR ARGUMENT.
WHEN THE COMPETENCY IS QUESTIONED.
BUT I DON'T -- I HAVE A PROBLEM WITH A BLANKET COMPETENCY HEARING FOR ANYONE WHO REQUESTS TO REPRESENT HIMSELF OR HERSELF.
WHAT DO YOU SEEM TO BE SUGGESTING?
>>†I'M NOT SUGGESTING IT.
I THINK JUSTICE PARIENTE SUGGESTED IT, AND I AGREE THAT THAT WOULD BE A WAY TO ALLEVIATE THESE PROBLEMS.
I THINK THIS IS A VERY UNIQUE SITUATION THAT RARELY OCCURRED.
LIKE I SAID, I DON'T KNOW

WHAT THE OTHER CASES INVOLVE,
BUT FOR A DEFENDANT TO
REPRESENT HIMSELF AT HIS OWN
COMPETENCY HEARING IS NOT A
COMMON EVENT.
I MEAN I DID -- MY BRIEF, OF
COURSE, INCLUDES ALL THE
CASES, BUT I THINK THERE WERE
MAYBE 20 CASES, 25 CASES
AMONG ALL THE FEDERAL COURTS
IN THE STATE COURTS OVER THE
LAST 40 YEARS.
SO IT'S PRETTY RARE THAT IT
HAPPENS.
IN MOST CASES A JUDGE
RECOGNIZED IF THERE'S A
QUESTION OF COMPETENCY, THEN
THE DEFENDANT NEEDS TO HAVE
COUNSEL.
THAT THE QUESTION OF
COMPETENCY ALSO BLEEDS INTO
WHETHER HE CAN WAIVE COUNSEL
OR NOT?
>> IF I CAN UNDERSTAND THE
PROCEDURE YOU ARE ADVOCATING,
LET'S ASSUME THAT I COME IN
THE COURT, I'M A DEFENDANT, I
TELL THE JUDGE I WANT TO
REPRESENT MYSELF, I DON'T
WANT A LAWYER.
AT THAT JUNCTURE, THE JUDGE
WOULD, OKAY, BEFORE I
CONSIDER THAT, LET ME SEE IF
YOU ARE COMPETENT AND ORDER A
MENTAL EVALUATION, COMPETENCY
EVALUATIONS.
ONCE THE EVALUATIONS COME
BACK, THEN HE WOULD APPOINT
COUNSEL TO CONDUCT A
COMPETENCY HEARING.
AND IF THE JUDGE FINDS HIM TO
BE COMPETENT, THEN COUNSEL'S
OFF, AND HE GETS TO REPRESENT
HIMSELF.
IF HE FINDS HIM TO BE
INCOMPETENT, THEN COUNSEL
STAYS, BECAUSE -- SEE WHAT
I'M SAYING?
>>†YEAH.
GENERALLY AT THE POINT IN

WHICH A DEFENDANT DECIDES TO REPRESENT HIMSELF, HE'S HAD COUNSEL, YOU KNOW, PRIOR TO THAT PERIOD.
AND YOU WOULD ASSUME THAT IF THERE WERE EVIDENCE OF INCOMPETENCY, THE DEFENSE COUNSEL WOULD RAISE IT.
IN THIS CASE, WE HAD ONE COUNSEL WHO DID AND A LAWYER WHO RECOGNIZED IT, AND HAD SOMEONE ELSE WHO WITHDREW.
I DON'T KNOW WHAT HIS OPINIONS OF MR.†LARKIN'S COMPETENCY WERE, AND THEN HE WAS ALLOWED TO REPRESENT HIMSELF.
>> WHAT WOULD HAVE HAPPENED IN THIS CASE IF THE TRIAL JUDGE HAD -- YOU HAVE STAND-BY COUNSEL SAYING WE NEED TO HAVE A COMPETENCY HEARING, IF THE TRIAL JUDGE DENIED THAT REQUEST?
WHAT IS ON THIS RECORD THAT WOULD HAVE SHOWN THAT THE TRIAL JUDGE ERRORED IF HE DENIED THAT REQUEST?
>> I MEAN, THAT WOULD BE A VERY DIFFERENT ISSUE THAN THE ONE WE HAVE HERE.
>> IT SEEMS TO ME THAT YOU WOULD HAVE THE SAME KIND OF EVIDENCE THAT WOULD HAVE REQUIRED THE TRIAL JUDGE TO HAVE A COMPETENCY HEARING WOULD BE THE SAME KIND OF EVIDENCE THAT YOU WOULD HAVE TO SHOW THAT THE TRIAL JUDGE DENIED IT?
>> NO, YOUR HONOR.
>> IMPROPERLY DENIED IT.
IF HE DENIED IT, AT THAT JUNCTURE, COUNSEL WOULD HAVE SAID, LOOK, WE NEED TO HAVE A COMPETENCY EVALUATION BECAUSE THIS GUY DID WHATEVER HE BELIEVES HE DID THAT DEMONSTRATES HE WASN'T COMPETENT.

IF THE TRIAL JUDGE HAD SAID,
NO, I DIDN'T SEE THAT, I
DON'T BELIEVE THAT, I'M NOT
GOING TO DO THAT, I'M SURE WE
WOULD BE HERE ON A TRIAL
JUDGE FAILED TO HOLD A
COMPETENCY HEARING, BUT WHAT
EVIDENCE WOULD HAVE
DEMONSTRATED HE ERRORED?
>>†THE QUESTION ALWAYS IS
WHETHER THERE'S A REASONABLE
DOUBT AS TO THE DEFENDANT'S
COMPETENCY.
>> AND THAT HAS TO BE BASED
ON SOME EVIDENCE?
>> THAT HAS TO BE BASED ON
CONDUCT, STATEMENTS HE MADE,
OR A MENTAL HEALTH
EVALUATION, AND AT THIS POINT
THERE WAS NO MENTAL HEALTH
EVALUATION.
SO, OF COURSE, THE EVIDENCE
LOOKED DIFFERENT.
BUT ONCE THE MENTAL HEALTH
EVALUATION WAS DONE AND
DR.†MEADOWS HAD DETERMINED HE
WAS INCOMPETENT, THAT'S WHEN
IT'S VERY CLEAR THERE WAS
REASONABLE DOUBT, REASONABLE
GROUNDS THAT HE WAS
INCOMPETENT, WHICH TRIGGERS
THE REQUIREMENT OF THE
HEARING.
SO THAT IS THE POINT.
>> BEGS THE QUESTION IN MY
MIND IF THE TRIAL JUDGE HAD
SAID NO TO HAVING A
COMPETENCY HEARING, WHAT
WOULD HAVE DEMONSTRATED TO US
ON AN ISSUE THAT HE
IMPROPERLY DENIED A
COMPETENCY HEARING?
WHAT IN THIS RECORD WOULD
HAVE DEMONSTRATED THAT?
>> YOU KNOW, THAT'S NOT -- I
DON'T -- I DON'T --
>> HAVE YOU NO EVIDENCE THAT
WOULD DEMONSTRATE THAT?
>> I DON'T KNOW IF THERE IS.
I DON'T KNOW WHAT SORT OF

HEARING THERE WOULD HAVE
BEEN.
>> I'M NOT SAYING†--
>>†WERE THERE REASONABLE
GROUNDS AT THAT POINT, IS
THAT YOUR QUESTION?
>> DID THE LAWYER DEMONSTRATE
TO THE COURT THAT THERE WERE
REASONABLE GROUNDS TO HAVE A
COMPETENCY HEARING?
>> WELL, IF I WAS HIS LAWYER
I WOULD ARGUE THAT THERE
WERE, OF COURSE, BASED ON THE
ITEMS THAT I'VE LISTED.
HIS CROSS-EXAMINATION, HIS
BELIEF WAS THAT TWO WITNESSES
WERE GOING TO EXONERATE HIM,
WHEN CLEARLY THEY WERE NOT
GOING TO EXONERATE HIM AT
ALL.
HIS CLOSING ARGUMENT, WHEN HE
WENT INTO A RAMBLING
STATEMENT ABOUT THE
CONSPIRACY AND WITHHOLDING
EVIDENCE, THE ITEMS THAT
HAPPEN IN 2009, ALL OF THOSE
THINGS, I THINK, COULD HAVE
RAISED A REASONABLE DOUBT.
I DID NOT RAISE THIS ISSUE IN
THE APPEAL, THOUGH, BECAUSE I
THINK IT'S VERY, VERY CLEAR
THAT ONCE DR.†MEADOWS ISSUED
HIS REPORT, THERE WAS A
REASONABLE DOUBT.
>> THAT WAS NOT THE ISSUE IN
THIS CASE, BUT†--
>>†RIGHT.
>> THAT WAS MY QUESTION
BECAUSE I DON'T SEE ALL THE
EVIDENCE THAT WOULD HAVE EVEN
REQUIRED THE TRIAL JUDGE TO
HAVE THIS HEARING.
THAT'S MY ISSUE HERE, TO HAVE
APPOINTED EXPERTS.
>> WELL, AND EVEN 2009, HIS
STATEMENTS THERE, THAT THE
JUDGE COVERED THIS THING UP
AND THEY WERE WAITING FOR
JUDGE FOSTER TO RETIRE.
HE ALSO SAID HIS VIDEOTAPED

INTERVIEW WAS A COMPILATION
OF TAPED CONVERSATIONS WITH
HIS FAMILY MEMBERS.
HE CLAIMED THAT HIS LAWYER'S
CONVERSATIONS WITH HIM WERE
BEING TAPE RECORDED, AND THAT
HIS LAWYER WAS PROBING HIM TO
GET HIM TO SAY CERTAIN WORDS
THAT COULD THEN PUT INTO
THESE CREATED INTERVIEWS,
FIVE INTERVIEWS THAT,
ACCORDING TO MR.†LARKIN,
NEVER TOOK PLACE BECAUSE THEY
WERE CREATED.
I THINK ALL OF THAT DOES
SUPPLY CONSIDERABLE EVIDENCE
OF HIS INCOMPETENCY.
THAT OCCURRED TWO YEARS
EARLIER AND DURING TRIAL
THERE IS NOTHING TO INDICATE
THAT THOSE FIXATIONS HAD
DISSIPATED IN ANY WAY.
HIS CONDUCT OF THE TRIAL, AT
THE JURY SELECTION, HE SAID
I'M GOING TO LET THE STATE
PICK THE JURY.
HE BELIEVED THAT HE WOULD BE
ACQUITTED IN A VERY FAST AND
SPEEDY TRIAL WHICH HE HAD
BEEN DEMANDING ALL ALONG.
>> YOU'RE IN YOUR REBUTTAL.
YOU ARE ALMOST OUT OF TIME.
>> OKAY.
LET ME JUST TAKE TWO MINUTES
BECAUSE I REALLY THINK WE
NEED TO TALK ABOUT THE
REMEDY.
ONE VERY IMPORTANT POINT I
WANT TO MAKE, EVEN THOUGH
THIS DEFECTIVE HEARING, AT
WHICH THERE WAS NO COUNSEL
APPOINTED, OCCURRED TWO DAYS
AFTER THE TRIAL, I THINK IT'S
QUITE CLEAR THAT THE QUESTION
OF HIS COMPETENCY SUBSUMES
THE TRIAL IN HIS WAIVER OF
COUNSEL DURING TRIAL AS WELL
AS THE PENALTY PHASE, AND
THAT'S WHY WE'RE ASKING THE
COURT TO REVERSE FOR A NEW

TRIAL.
THERE ARE SEVERAL REMEDIES
THAT DIFFERENT COURTS HAVE
OFFERED.
THERE ARE A COUPLE OF FEDERAL
COURTS THAT SAID THAT THE
REMEDY FOR THIS TYPE OF
VIOLATION IS PER SE
REVERSAL.
THE ONLY OTHER POSSIBLE
REMEDY WOULD BE A
RETROSPECTIVE COMPETENCY
HEARING, WHICH I ARGUED WOULD
NOT BE ADEQUATE TO PROTECT
HIS RIGHTS HERE BECAUSE THE
MAIN REASON IS THAT THIRD
EXPERT DID NOT INCLUDE ALL
THE FACTORS THAT ARE REQUIRED
UNDER THE RULE AND WHICH WAS
IN THE COURT'S ORDER.
THE THIRD EXPERT DIDN'T
ADDRESS ANY OF THE FACTORS
RELATED TO HIS COMPETENCY.
THAT REPORTED INEFFECTIVE.
AND NOW WE'RE BACK TO TWO
CONFLICTING REPORTS, SO UNDER
THE CIRCUMSTANCES OF
RETROSPECTIVE HEARING WOULD
NOT BE ADEQUATE TO PROTECT
HIS SIXTH AMENDMENT RIGHTS.
THANK YOU, YOUR HONOR.
>> THANK YOU.
>> MAY IT PLEASE THE COURT,
TAMARA MILOSEVIC ON BEHALF OF
THE STATE.
BASED ON THE FACTS OF THIS
CASE, THERE IS NO SIXTH
AMENDMENT VIOLATION.
>> IT'S HARD -- THIS IS TOUGH
WITH THAT MIC.
IT'S NOT REALLY A
DIRECTIONAL.
YOU GOT TO SPEAK INTO IT.
AGAIN, WHAT YOU†--
>>†BASED ON FACTS OF THIS
CASE, THERE IS ABSOLUTELY NO
SIXTH AMENDMENT VIOLATION.
THE DEFENDANT HERE†--
>>†DID YOU SAY SYSTEMATIC?
>> SIXTH AMENDMENT VIOLATION.

DO YOU HEAR ME NOW?
>> I CAN HEAR YOU NOW.
>> THE DEFENDANT KNOWINGLY AND VOLUNTARILY WAIVED HIS RIGHT TO COUNSEL WAY BEFORE THE CONTEST WAS RAISED.
>> LET ME ASK YOU THIS, IF THE RECORD SHOWED THERE WAS A REASONABLE DOUBT ABOUT THE DEFENDANT'S COMPETENCY, IF IT SHOWED THAT, DO YOU AGREE WITH MS. CAREY THAT, IN ORDER TO CONDUCT THE COMPETENCY HEARING, THAT COUNSEL WOULD NEED TO BE APPOINTED?
IN OTHER WORDS, IF THERE IS
--
>> IF -- AS YOU SAID, IF THERE WAS A REASONABLE DOUBT, IT WOULD BE BETTER THAT HE WOULD HAVE†--
>>†NO, NOT BETTER.
HERE THE ONLY ISSUE IS THAT YOU SAY THE RECORD DOESN'T RAISE A REASONABLE DOUBT AS TO THIS DEFENDANT'S COMPETENCY AT ANY POINT?
>> THIS IS THE THING.
LET ME JUST MAKE FEW POINTS CHRONOLOGICALLY SO THIS COURT HAS, IN EFFECT, WHAT HAD HAPPENED IN THIS CASE.
DEFENDANT -- FIRST, I THINK SOME OF THE FACTS WERE IGNORED.
FIRST OF ALL, RELATED TO NOVEMBER '09 PRETRIAL HEARING WHERE, ACCORDING TO DEFENDANT, HE MADE RAMBLING STATEMENTS.
THIS HEARING WAS HELD BECAUSE DEFENDANT HAD COMPLAINTS ABOUT HIS COUNSEL.
HE COMPLAINED ABOUT VIOLATION OF HIS SPEEDY RIGHTS BECAUSE COUNSEL FILED MOTION TO CONTINUE, AND -- I'M SORRY.
HE MAY HAVE NOT -- MAYBE DID NOT ARTICULATE WELL SOME OF HIS COMPLAINTS.

IN THE END OF THE
PROCEEDINGS, THE TRIAL JUDGE,
IN ABUNDANCE OF CAUTION
WANTED HIM TO UNDERGO
CONFIDENTIAL EVALUATION.
THERE WAS NO REASONABLE DOUBT
AT THAT POINT THAT HE MIGHT
HAVE BEEN INCOMPETENT.
IT WAS JUST AS A
PRECAUTIONARY MEASURE.
AFTER THAT, THE STATE
SUPPLEMENTED THE RECORD WITH
A TRANSPORTATION ORDER THAT
THE TRIAL JUDGE SIGNED BASED
ON A VERBAL MOTION BY PUBLIC
DEFENDER REPRESENTING THE
DEFENDANT AT THAT TIME THAT
HE BE TRANSPORTED FOR THE
PURPOSES OF MENTAL HEALTH
EVALUATION, WHICH EVALUATION
WOULD BE CONFIDENTIAL.
SO THE RECORD IS --
DISCLOSING THE FACT HE WAS
EVALUATED, AND THIS†--
>>†BUT I KNOW YOU SAID THE
RECORD DEMONSTRATES THAT
THERE WAS A TRANSPORT ORDER.
>> YES.
>> AND THE RECORD CLEARLY
DEMONSTRATES THAT HE ACTUALLY
HAD THE EVALUATION?
>> THERE WAS NO -- THIS WAS
CONFIDENTIAL EVALUATION AND
ONLY DEFENSE COUNSEL WOULD
HAVE THIS EVALUATION.
WHAT HAS HAPPENED AT THE
CONFIDENTIAL EVALUATION,
DEFENSE COUNSEL ASKED THE
TRIAL JUDGE TO SIGN THE ORDER
TO HAVE HIM TRANSPORTED FOR
EVALUATION.
TRIAL JUDGE DOES THAT AND
IT'S CONFIDENTIAL.
THIS EVALUATION WOULDN'T BE
PRESENTED TO THE JUDGE.
WHAT'S HAPPENED HERE, THE
TRIAL JUDGE GAVE TOOLS TO THE
COUNSEL TO HAVE HIM EVALUATED
AFTER THIS ORDER WAS SIGNED,
THERE WAS NOTHING IN FRONT OF

THE JUDGE, NO MOTION, NO
ISSUES, NO†--
>>†WAS HE, IN FACT,
EVALUATED?
>> WELL, WE ONLY HAVE THIS
TRANSPORTATION ORDER THAT HE
WAS -- THAT HE -- THAT HE
NEEDS TO GO AND BE EVALUATED.
>> I'M A LITTLE CONCERNED
HERE.
THIS IS DIRECT APPEAL.
WE'VE GOT MS. CAREY
REPRESENTING THE DEFENDANT,
AND IF THERE IS A MENTAL
HEALTH EVALUATION, AND IT'S
BEING REPRESENTED THAT
THERE'S NO INDICATION WHEN
IT'S DONE, THAT WOULD BE
UNFORTUNATE.
SO YOUR SUGGESTION -- OR AT
ANY POINT THAT -- SOMEBODY
DIDN'T MOVE TO HAVE THE
RECORD SUPPLEMENTED WITH THIS
MENTAL HEALTH EVALUATION.
YOU'RE SUGGESTING IT WAS
DONE.
SHE'S SAYING THERE IS NO
INDICATION IT WAS DONE.
>> WE'RE NOT TALKING ABOUT
INDICATION.
WE'RE TALKING THE DEFENDANT
DIDN'T EVEN MENTION THAT THIS
ORDER WAS SIGNED.
SO THERE IS NO REPORT IN THE
RECORD†--
>>†I HOPE THERE'S NO GAME
PLAN HERE.
THAT WOULD BE UNFORTUNATE.
WE'RE TRYING TO COME TO THE
RIGHT RESULT.
>> WHAT WE KNOW IS THIS ORDER
WAS SIGNED FOR HIM TO BE
EVALUATED RIGHT AFTER THIS
PRETRIAL HEARING.
AFTER THAT, THIS IS THE
THING, THE TRIAL JUDGE NEVER
RECEIVED ANY MOTION RAISING
CONCERN ABOUT DEFENDANT'S
COMPETENCY.
THE TRIAL JUDGE DIDN'T

OBSERVE ANY IRRATIONAL OR
BIZARRE BEHAVIOR.
>> NOW WE'RE TALKING TWO
YEARS AFTER†--
>>†THROUGH THE PRETRIAL
PROCEEDINGS AND THROUGH THE
GUILT PHASE, BECAUSE THE
TRIAL JUDGE.
>> THERE'S A TWO-YEAR GAP.
>> YES.
>> AND THERE'S A LONG PERIOD,
APPARENTLY, OF SOME SILENCE
WHEN THERE'S A RETAINED
COUNSEL WHO MAY HAVE DONE
NOTHING, SO WE HAVE IN THIS
RECORD, WE DON'T REALLY KNOW
WHAT HAPPENED BETWEEN 2009
AND ALMOST 2012, RIGHT?
>> DURING THIS TIME, IN
JANUARY OF 2010, HE RETAINED
PRIVATE LAWYER WHO
REPRESENTED HIM UNTIL
SEPTEMBER OF 2011.
>> WHAT I'M SAYING THERE IS
NOTHING IN THE RECORD WHETHER
THIS RETAINED COUNSEL WAS
CONCERNED ABOUT COMPETENCE?
>> NO, THERE WAS NOTHING IN
THE RECORD.
NOT A SINGLE THING THAT THIS
COUNSEL WAS CONCERNED ABOUT
DEFENDANT'S COMPETENCY.
>> AND NOBODY BUT -- WHAT
YOU'RE SAYING IS WHEN IT
COMES TO 2012, WE HAVE THE
TRIAL AND NOBODY POINTS OUT
DURING THE TRIAL THAT THERE'S
AN ISSUE OF HIS COMPETENCY?
>> ABSOLUTELY.
THE TRIAL JUDGE, AND THAT IS
THE RECORD.
THE TRIAL JUDGE HAD THE
OPPORTUNITY TO OBSERVE
DEFENDANT FOR MORE THAN TWO
YEARS, AND DEFENDANT, IN THIS
CASE, WAS ARGUING PRETRIAL
MOTIONS.
HE WAS -- HE WENT THROUGH THE
JURY SELECTION.
HE WAS -- HE WENT THROUGH THE

GUILT PHASE CROSS-EXAMINING
STATE WITNESSES, RAISING
OBJECTIONS, MOST OF WHICH
WERE SUSTAINED, ON VARIOUS
GROUNDS -- HEARSAY,
SPECULATIVE.
HE CALLED HIS OWN WITNESSES,
AND HE GAVE OPENING
STATEMENT.
HE GAVE CLOSING STATEMENT,
WHICH WERE RATIONAL,
COHERENT, IN ACCORDANCE WITH
HIS THEORY OF DEFENSE?
>> WHAT WAS HIS THEORY OF THE
DEFENSE?
>> THAT HIS PARENTS WERE
MURDERED AFTER HE LEFT FOR
MEXICO.
BASICALLY THAT THE STATE HAS
THE WRONG PERSON AT THE WRONG
TIME.
SO WHEN HE CALLED WITNESSES,
HE CALLED TWO WITNESSES WHO
STATED THAT THEY SAW
DEFENDANT'S PARENTS ON APRIL
14.
THAT WAS AFTER HE LEFT FOR
MEXICO.
THAT WOULD SUPPORT HIS THEORY
OF DEFENSE, AND HE CALLED TWO
MORE WITNESSES.
LIKE, ONE WAS FAMILY FRIEND,
FAMILY MEMBER, WHO STATED
THAT HIS FATHER HAD ALLSTATE
ENEMY, AND THE WITNESSES
TESTIFIED TO THE FACT; AND
THEN WE HAVE DR.†MEADOWS'
REPORT WHO ASSERTS, BASED ON
THE DEFENDANT IS DELUSIONAL,
BECAUSE HE TOLD HIM THAT TWO
WITNESSES TESTIFIED IF THEY
SAW HIS FATHER AFTER HE WAS
MURDERED, AND HE EXPRESSED
HIS CONCERN THAT ALLSTATE WAS
TARGETING HIS FATHER.
AND THE TRIAL JUDGE, WHEN HE
RECEIVED THIS REPORT, HE
ABSOLUTELY REJECTED IT.
HE CALLED IT FLIMSY ADVICE.
>> AT THIS POINT, THEY'RE

SAYING THIS IS THE ISSUE,
THAT'S THE CRITICAL TIME IF
THERE WAS REASONABLE
DOUBT†ABOUT HIS COMPETENCY.
I WANT TO MAKE SURE, THE
PROCEDURE SHOULD HAVE BEEN
WHAT MS. CAREY WAS
SUGGESTING.
YOU'RE SAYING THE RECORD DOES
NOT SUPPORT THEIR ARGUMENT?
>> YES.
>> THE FACTUAL ARGUMENTS.
>> YES, ABSOLUTELY.
UNDER THE FACTS OF THIS CASE,
WHERE WE HAVE THIS STAND-BY
COUNSEL WAITING UNTIL ALMOST
BEGINNING OF THE PENALTY
PHASE, COMING FORWARD, RAISES
CONCERN, WITHOUT RAISING ANY
GROUND WHATEVER, WHY HE
THOUGHT DEFENDANT MIGHT HAVE
BEEN DELUSIONAL.
AND THE TRIAL JUDGE ASKED HIM
ABOUT, LIKE, WHY DID YOU COME
-- LIKE AT THIS POINT IN
TIME, WHERE THIS CAME FROM?
>> HE DIDN'T SAY I DON'T KNOW
WHY, BUT THE POINT IS THAT HE
RAISED THIS CONCERN WITHOUT
ANY GROUNDS FOR HIS ASSERTION.
>> I GUESS THE ONLY THING
THE THING THAT CONCERNS ME IS
THAT 2009 WHAT HE SAID AT THE
TIME HE WANTED TO DISCHARGE
HIS LAWYER WERE RAISED
CONCERNS FOR THE TRIAL JUDGE
ABOUT HIS MENTAL HEALTH.
BUT WHAT YOU'RE SAYING IS WE
LOOK AT THE WHOLE RECORD.
WE DON'T HAVE THAT SAME KIND
OF SOMEWHAT IRRATIONAL
BEHAVIOR DURING TWO YEARS

>> ABSOLUTELY.
THE WHOLE RECORD.
AND THAT PAINTS A PICTURE WHAT
HAS HAPPENED HERE.
AND IT ABSOLUTELY PAINTS THE
PICTURE ABOUT THE DEFENDANT'S
COMPETENCY.

AND THAT'S WHY THE TRIAL JUDGE HAD CONCERN UPON RECEIVING THIS FIRST REPORT AND UPON HEARING COUNSEL'S CONCERNS AND URGING THE COURT TO HAVE HIM EVALUATED.
THE TRIAL JUDGE SIMPLY DID NOT BUY THAT.
>> WHAT DID HE RAISE IN PENALTY PHASE AS TO MITIGATION?
>> DURING THE PENALTY PHASE, HE DID NOT PRESENT ANY MITIGATION.
HE DID NOT CALL ANY WITNESSES.
HOWEVER, THE TRIAL JUDGE CALLED DR.†MEADOWS, THE EXPERT WHO PERFORMED THIS FIRST EVALUATION, AND HE REQUESTED STANDBY COUNSEL TO QUESTION HIM.
>> SO HE HE WAS SORT OF DOING A MOHAMMED PROCEDURE EVEN THOUGH THE DEFENDANT DIDN'T WAIVE MITIGATION OR DID HE WAIVE MITIGATION?
>> HE DIDN'T WANT TO PRESENT ANY EVIDENCE.
HE PRESENTED I BELIEVE LATER ON IN THE HEARING HE PRESENTED SOME LETTERS FROM
>> BUT A POINT IS NOT BEING RAISED AT THAT PROCEDURE THAT THE TRIAL COURT EMPLOYED WAS A VIOLATION OF MOHAMMED OR ANY OF OUR OTHER CASES.
>> NO.
NO.
SO
>> SO, AGAIN, SO WE DON'T HAVE IN THIS RECORD THAT THIS DEFENDANT HAD A SERIOUS MENTAL ILLNESS.
>> ABSOLUTELY.
>> ABSOLUTELY WE DON'T.
>> ABSOLUTELY NOT.
EVEN DR.†MEADOWS IN HIS REPORT, HE HE FOUND THAT DEFENDANT DID NOT HAVE ANY PSYCHOTIC DISTURBANCE

WHATSOEVER AND HE GAVE HIM TWO TESTS, MMPI, THAT SHOWED NO DISTURBANCES, AND THE OTHER TEST WAS GIVEN TO DEFENDANT TO SHOW MALINGERING AND HE DIDN'T SHOW ANY MALINGERING.
HE DID STATE HE MIGHT HAVE BEEN DEFENSIVE IN HIS ANSWERS, BUT THE POINT IS
>> WELL, DEFENSE THAT WAS AFTER
>> IN A WAY THAT HE THOUGHT THE DEFENDANT DID NOT WANT TO SAY THAT HE HAD ANY ISSUES WHATSOEVER.
BUT THEN HE DIDN'T HAVE
>> EITHER THAT WAS DELUSIONAL OR IT WAS CORRECT.
>> ABSOLUTELY.
SO AND THEN AND HE ALSO PUT IN HIS REPORT THAT THERE WAS NO HISTORY WHATSOEVER OF ANY PSYCHIATRIC ISSUES, NO MENTAL HEALTH ISSUES AT ALL, NO HISTORY, NEVER.
SO
>> WELL, I MEAN, AGAIN, THE VERY FACT OF THE CRIME, THOUGH WHAT WAS THE REASON WHAT WAS THE STATE'S REASON AS TO THE MOTIVE FOR HIM KILLING HIS BOTH OF HIS PARENTS AT THE AGE OF 38 WITH A BASEBALL BAT?
>> 35.
>> 35.
>> ACCORDING TO TESTIMONIES OF HIS BROTHER AND SISTER, THE PROBLEM WITHIN FAMILY WAS THIS FAMILY BUSINESS, THAT DEFENDANT WAS MANAGING IN COSTA†RICA.
IT WAS BUSINESS HE WAS LIKE TOURIST GUIDE.
HE WAS ORGANIZING TOURS FOR PEOPLE WHO CAME ON VACATION TO COSTA†RICA.
AND ACCORDING TO THEM, SINCE THIS BUSINESS WAS ESTABLISHED IT CAUSED LOTS OF PROBLEMS BETWEEN THE SIBLINGS, BROTHERS

AND SISTERS AND PARENTS, IN TERMS OF THEY DIDN'T SPECIFY PROBABLY IT WAS RELATED TO THEIR RELATIONSHIP AND THE MONEY THEY WERE RECEIVING AND HOW THE BUSINESS SHOULD BE RUN.
WELL, BECAUSE THAT WAS ONGOING SITUATION FOR YEARS, EVERYBODY EXCEPT THE DEFENDANT WERE FOR THE IDEA THAT THIS BUSINESS SHOULD BE SOLD.
AND HIS PARENTS, INCLUDING HIS BROTHER, HIS SISTER AND HIS MOTHER AND FATHER, AND HIS FATHER ATTEMPTED WAS ATTEMPTING TO SELL THE BUSINESS.
AND DEFENDANT DIDN'T LIKE THAT.
BECAUSE HE WAS SUPPORTING HIMSELF FROM THAT BUSINESS AND IN THAT CASE HE WOULD HAVE TO FIND ANOTHER JOB AND MOST PROBABLY MOVE TO UNITED STATES.
THAT WAS THE PROBLEM BASED ON THE RECORD AND THE TESTIMONIES THAT WE HAVE.
>> THANK YOU.
>> DO YOU HAVE ANY MORE QUESTIONS FOR ME?
>> THANK YOU BOTH FOR YOUR ARGUMENTS.
>> I WOULD ASK THIS COURT TO AFFIRM THE JUDGMENT AND SENTENCE.
THANK YOU VERY MUCH.
>> THANK YOU.