

NOW MOVE TO THE SECOND CASE ON THE DOCKET.

THE NEXT CASE IS HOOKS VERSUS THE STATE OF FLORIDA.

>> PLEASE PROCEED.

>> MAY IT PLEASE THE COURT, MY NAME IS DANIEL JORDAN, ASSISTANT FOR THE CIRCUIT.

ON BEHALF OF MISTER SYLVESTER HOOKS, THE PETITIONER.

I WAS A 5 MINUTES FOR REBUTTAL.

THIS CASE IS, AND CONVICTIONS AND SENTENCES CERTIFIED AND QUESTIONED OF GREAT PUBLIC IMPORTANT.

THAT QUESTION IS IS THE INQUIRY INVALID IF THE COURT DOES NOT EXPRESSLY INQUIRE AS TO THE DEFENDANT'S AGE, EXPERIENCE AND UNDERSTANDING RULES OF CRIMINAL PROCEDURE.

BELIEVING THE QUESTION WAS TOO NARROWLY FOCUSED, PETITIONER REFORMULATED THE QUESTION ADDRESSING WHAT WAS A PARTICULARLY TROUBLING ASPECT OF THIS CASE THAT BROAD IMPLICATIONS IN THE SYSTEM TODAY WHERE BECAUSE OF JUDICIAL ECONOMY AND EVEN TECHNOLOGY, MOVING MORE TOWARDS USING FORMS AND VIDEOS INSTEAD OF HAVING AN ACTUAL DISCOURSE WITH THE CLIENT OR THE DEFENDANTS.

THE REFORMULATED QUESTION WAS DOES RATE REFORM WHICH THE FORCE DANGERS OF REPRESENTATION AND BENEFITS OF HAVING COUNSEL WITHOUT ANY INQUIRY BY THE TRIAL COURT AS TO AGE, EDUCATION ETC. DOES THAT --

>> AGENT EDUCATION HAS TO DO WITH IT?

>> THAT IS AN INDICATOR THAT THE COURT COULD DETERMINE WHETHER OR NOT A DEFENDANT HAS THE KNOWLEDGE, KNOWINGLY AND INTELLIGENTLY WAVING A RIGHT. THESE ARE QUESTIONS THAT NEED TO BE ASKED OF A DEFENDANT TO

FIND OUT THE CIRCUMSTANCES.

HOW OLD ARE YOU?

HOW FAR HAVE YOU GONE?

HAVE YOU HAD MENTAL HEALTH ISSUES?

>> IS IT FOR YOU?

ARE THOSE QUESTIONS BASELINE QUESTIONS?

>> YES.

>> SORT OF LIKE THE FLOOR.

IF I KNOW YOUR NAME IS JANE DOUGH I'M THE JUDGE AND I ASK YOU YOUR NAME AND YOU TELL ME YOUR NAME IS SAM SMITH, THEN I MAY KNOW THERE MAY BE A COMPETENCY QUESTION.

IS THE RED INQUIRY IN ADDITION TO HAVING A DISCUSSION ABOUT SELF REPRESENTATION AND WHAT IT MEANS?

DOES THE BERETTA INQUIRY ALSO INVOLVE DETERMINATION OF COMPETENCY IN TERMS OF WHETHER THE WAIVER IS INTELLIGENT AND KNOWING.

>> IT IS AN ISSUE OF COMPETENCY TO WAVE COUNSEL AND TWO PARTS, IT WAS COMPETENT AND INTELLIGENCE.

THE RULE ENCOMPASSES ALL OF IT. THE QUESTIONS BOTH GO TO COMPETENCY OF A DEFENDANT AND ALSO WHETHER OR NOT THE DEFENDANT IS KNOWINGLY AND INTELLIGENTLY WAVING THE RIGHT.

>> IT SEEMS WE ARE COMPLETING THESE TWO ISSUES, DEFENDANT ACCUSED OF A CRIME HAS A RIGHT, CONSTITUTIONAL RIGHT TO REPRESENT HIMSELF OR HERSELF. SO THE ISSUE IS NOT WHETHER THE PERSON HAS THE ABILITY TO CONDUCT CROSS-EXAMINATION OR THE ABILITY TO CONDUCT DIRECT EXAMINATION OR DO CLOSING ARGUMENT.

THOSE ARE NOT THE ISSUES.

THE ONLY ISSUE THEN IS WHETHER A PERSON IS INVOLUNTARILY WAVING OF THE RIGHT TO DRIVE.

PRETTY MUCH THE SAME WEIGHT  
THAT WOULD CONDUCT A QUALITY WE  
IN A PLEA CONFERENCE.

WHEN THE DEFENDANTS PLEASE  
GUILTY, WHETHER THE PERSON  
INTELLIGENTLY WAIVED HIS RIGHT  
TO A JURY TRIAL AND SO ON.

>> YES.

THAT IS A VERY ANALOGOUS  
SITUATION, IT IS NOT ENOUGH TO  
SIMPLY HAVE A PLEA FORM THAT  
THE JUDGE HAS TO HAVE AN ORAL  
DISCOURSE, PERSONAL ONE ON ONE  
WITH THE DEFENDANT BEFORE THE  
PERSON CAN WAVE A RIGHT TO GO  
TO TRIAL AND ENTER A PLEA.  
THE RULE ALSO REQUIRES THAT NOW  
BUT THAT IS WHAT THE COURT HAS  
HELD.

>> YOUR EXPERIENCE AS A PUBLIC  
DEFENDER, THERE WAS A CHANGE OF  
PLEA PURSUANT TO THE PLEA  
CONFERENCE OR NEGOTIATED PLEA  
OR STRAIGHT UP.

IS IT CUSTOMARY FOR THE TRIAL  
COURT TO INQUIRE ABOUT A  
PERSON'S INTELLIGENCE OR  
ABILITY TO UNDERSTAND AND DOES  
AGE PLAY A ROLE AS HAVING AN  
18-YEAR-OLD MAN OR WOMAN WHO  
MADE THESE 25, 30 YEARS OLD.  
THE JUDGE DETERMINING WHETHER  
TO ACCEPT A PLEA OR NOT, TO THE  
JURY TRIAL.

>> I DON'T THINK AGE  
NECESSARILY.

I WAS IN TRIALS FOR 10.  
I THINK IN THOSE SITUATIONS,  
MORE LIKE AN EXPERIENCE WHERE  
THE JUDGE WILL ASK QUESTIONS  
ABOUT DO YOU UNDERSTAND THIS.  
WE CAN TALK ABOUT IT.  
AND.

>> THERE IS A REQUIREMENT ABOUT  
ORTHO INQUIRY.

THAT IS AN ADJECTIVE THAT IS  
USED IN THE RULE AND MEANS A  
CERTAIN THING.

IT DOESN'T MEAN CURSORY.

>> I'M IN COMPLETE AGREEMENT

WITH THAT AND THAT IS THE CONCERN.

IT IS CONCERNED WITH BOEING. IF THE COURT START ASKING QUESTIONS ABOUT AGE AND EXPERIENCE AND EDUCATION, THE COURT IS BEING VIEWED --

>> YOU CAN'T CONSIDER AFTER THE RULE WAS CHANGED, YOU CAN'T CONSIDER AGE OR MENTAL CONDITION OR WHEN YOU HAD AN EIGHTH GRADE EDUCATION.

IF YOU MAKE AN UNEQUIVOCAL REQUEST TO REPRESENT YOURSELF, CAN'T USE THE TRIAL JUDGE BECAUSE YOU ONLY HAVE ANY GREAT EDUCATION, YOU CANNOT REPRESENT YOURSELF.

>> THE JUDGE CAN'T SAY YOU CAN'T REPRESENT YOURSELF BECAUSE YOU WON'T BE A GOOD ENOUGH LAWYER.

>> IN ORDER TO THE WITH IRWIN COREY TO DETERMINE WHETHER OR NOT, THE RULE SPECIFICALLY SAYS THE ACCUSED CAPACITY TO MAKE KNOWING AND INTELLIGENT WAIVER.

>> YOU HAVE TO ASK THOSE QUESTIONS.

>> YOU DO HAVE TO ASK SOMETHING IN ORDER TO DETERMINE AND DO A THROWING COREY.

>> THAT WAS WHAT WAS MISSING HERE.

THERE WERE NO QUESTIONS ASKED. THERE WAS A FORM THAT SET FORTH THE DANGERS OF SELF REPRESENTATION.

>> LET ME FOCUS YOU ON THE QUESTION PRESENTED TO US AND ASK WHETHER YOU AGREE THE STATEMENT IN THE 2009 CASE THAT A TRIAL JUDGE MUST ASK ABOUT AGE, EXPERIENCE, IS INCONSISTENT WITH THE COURT.

>> THE 2009 CASE.

>> IT IS NOT INCONSISTENT.

>> ONE SAYS YOU MUST ASK ABOUT AGE.

>>

>> I'M A TRIAL JUDGE, SITTING THERE AND LOOKING AT CHARGING THE AFFIDAVIT.

LOOKING AT THE DEFENDANT, 67 YEARS OLD.

I KNOW WHAT THE GENERAL AGE IS. THE COLLOQUY THAT IS SUFFICIENT TO SHOW THE APPELLATE COURT AND TO SATISFY ME THIS PERSON IS COMPETENT TO MAKE THE WAIVER SELECTION THEY ARE ENTITLED TO MAKE OF THE U.S. CONSTITUTION. THAT COULD BE REVERSED BECAUSE I FORGOT TO ASK ON THE RECORD ABOUT THE AGE AND CAN CONFIRM WITH MY EYES.

WOULD THAT BE PROBLEMATIC?

>> IT COULD BE.

THE COURT HAS COVERED THAT IN SAYING IT IS THE ESSENCE OF THE COLLOQUY.

NOT THAT EVERY SINGLE SOLITARY QUESTION WAS ASKED.

>> INCONSISTENT WITH A STATEMENT IN THE 2009 CASE THAT YOU MUST ASK ABOUT AGE AND THE OTHER TWO THINGS.

>> WHAT THE COURT DID IS THE TRIAL COURT SHOWS ON THE RECORD THE AGE OF THE CLIENT OR THE TRIAL COURT PUT FORTH --

>> ABSOLUTELY NECESSARY IN EVERY CASE THE TRIAL JUDGE BECAUSE IT DOESN'T OF THE AGE OF THE DEFENDANT, THE PRECISE AGE OF THE DEFENDANT IN ORDER TO MAKE A DETERMINATION WHETHER IT IS VOLUNTARY.

>> THE REASON IS BASED -- SOMETIMES YOU ASK A CLIENT, CRIMINAL DEFENSE CLIENT TO SAY HOW OLD ARE YOU?

>> I HAVE NO IDEA WHAT YOUR AGE IS.

BASED ON EVERYTHING YOU SAID IN THE EXCHANGES, NO PROBLEM DETERMINING YOU WOULD BE COMPETENT TO MAKE ANY EXERCISE OF YOUR RIGHTS YOU WANTED TO MAKE.

WOULDN'T YOU AGREE?

>> WHAT IF I SAID I WAS 11?  
WHAT IF I TOLD YOU I WAS 11  
YEARS OLD OR TOLD YOU I WAS  
120?

YOUR ANSWER WOULD BE DIFFERENT.

>> WE SHOULD SAY WE HAVE TO ASK  
SPECIFIC QUESTIONS TO GET AT  
WHAT WE CAN TELL OTHERWISE?

>> YOU DON'T NEED A SCRIPT BUT  
THERE ARE CERTAIN AREAS.

>> IF YOU INSIST YOUR 11 WE  
WOULDN'T HAVE HAD THIS.

>> THE QUESTION ABOUT AGE IS A  
QUESTION TO DETERMINE WHETHER  
THE PERSON IS COMPETENT.

>> IT COVERS MORE THAN ONE  
THING.

IT TELLS THE COURT THESE ARE  
BASIC QUESTIONS WAS HOW OLD ARE  
YOU?

40.

YOU COMPLETED YOUR HIGH SCHOOL  
EDUCATION, NO, I STOPPED AT  
EIGHTH GRADE.

THAT JUDGE MAY HAVE TO TAKE A  
LITTLE MORE TIME TO EXPLAIN TO  
THIS INDIVIDUAL WHAT THE RIGHT  
TO COUNSEL MEANS.

>> IF IN THIS CASE BECAUSE WE  
DON'T KNOW, NO ONE ASKED HIM,  
THE TRIAL JUDGE GAVE HIM A AND  
FORM THE TRIAL COURT JUDGE  
DIDN'T ASK HIM HOW FAR DID YOU  
GO IN SCHOOL.

IF HE SAID I HAVE ANY GREAT  
EDUCATION THEN PERHAPS THE  
QUESTION AS THE FIRST DCA SAYS  
IT IS SUPERFLUOUS TO ASK DO YOU  
KNOW HOW TO READ, IT WOULDN'T  
HAVE BEEN SO POWERFUL WAS.

IT WOULD BE A THROWING COREY  
REQUIRED BY THE RULE.

>> ABSOLUTELY TRUE.

>> IN THIS PARTICULAR CASE WHAT  
IS THE RELEVANCE OF THE FACT  
DEFENSE COUNSEL SEEMED TO HAVE  
A SIGNIFICANT AMOUNT OF  
INTERACTION WITH THIS PERSON, I  
THINK IF HE WANTS TO REPRESENT

HIMSELF THAT IS FINE.

>> I DON'T KNOW THAT IT HAS ANY RELEVANCE BECAUSE IT IS NOT UP TO THE DEFENSE COUNSEL TO MAKE A DETERMINATION.

WHAT INTERACTION WOULD BE HAD.

>> WOULD BE IRRESPONSIBLE, THE COUNCIL SEEMED LIKE THERE WAS SOME INTERACTION OVER THE FORM, ISSUING THE FORM AND EVERYTHING.

THE COMPETENCY STANDARD SEEMS LIKE IT IS PRETTY LOW.

IF YOU LOOK AT THE ONE CASE IT TALKS ABOUT IF A PERSON HAS EXTREME MENTAL ILLNESS THAT IS THE OUTLIER.

IF AFTER ALL THE INTERACTION THE DEFENSE COUNSEL SAYS IF HE WANTS TO REPRESENT HIMSELF THAT IS FINE.

IT SEEMS THE COURT SHOULD BE ABLE TO HAVE SOME COMFORT GIVEN THE LOW BAR AND GIVEN WE ARE NOT TALKING ABOUT COMPETENCY TO DO A GREAT JOB REPRESENTING YOUR SELF.

IN THIS PARTICULAR CASE THE ISSUE OF WHAT THE GENERAL RULE, HOW DO YOU BALANCE THROWING COREY ON ONE HAND WITH NOT HAVING THIS LIST OF ABSOLUTELY MANDATORY THINGS, THAT IS A TOUGH ISSUE IN THE ABSTRACT BUT IN YOUR PARTICULAR CASE, HOW CAN YOU SAY THE COURT WASN'T CORRECT TO VIEW THIS AS A KNOWING AND INTELLIGENT DECISION?

>> WHAT YOU SAID, THERE WERE NO QUESTIONS.

IT IS NOT UP TO THE DEFENSE COUNSEL TO HAVE THE DISCOURSE OF THE TRIAL COURT SAY IN MY OPINION IS WAIVER IS KNOWING AND INTELLIGENT WHEN MY OPINION THIS DEFENDANT IS PREPARED TO REPRESENT HIMSELF.

THAT IS A DETERMINATION MADE BY THE TRIAL COURT.

>> DOESN'T COUNSEL HAVE A DUTY TO RAISE THE COURT THE COMPETENCY OR IN COMPETENCY, IF TRIAL COUNSEL HAS A REASON TO BELIEVE THE DEFENDANT IS INCOMPETENT TO THE ATTORNEY HAVE THE DUTY TO RAISE THAT WITH THE COURT?

>> IF HE'S INCOMPETENT TO STAND TRIAL I THINK HE DOES HAVE A DUTY TO RAISE IT BUT HAS NO BEARING ON WHETHER THIS IS A KNOWING AND INTELLIGENT WAIVER. A LOT OF THIS IS SPECULATION. THEY CAME IN FOR JURY SELECTION.

OTHER JURIES WERE SELECTED. THERE WERE TWO CHOSEN WHILE THE CLIENT THAT THERE.

WE DON'T KNOW OF HIS LAWYER WAS CHOOSING ANOTHER JERRY, HE'S A PUBLIC DEFEND HER.

AT SOME POINT THE JUDGE SET I SEE ARE CONTEMPLATING TALKING TO THE LAWYER.

WE DON'T KNOW HE SPOKE WITH HIS LAWYER.

NOTHING ON THE RECORD INDICATES THAT.

LATER ON HE IS BROUGHT UP AND THE LAWYER BRINGS THEM UP AND SAYS HE SIGNED AND INITIALED THE FORM.

WE DON'T KNOW WHAT OCCURRED BETWEEN THEM.

>> THERE IS A TWO PART INQUIRY, PART ONE IS WHAT?

>> CONFIDENCE.

>> YOU HAVE TO ASK ABOUT COMPETENCE AND PART 2, KNOWING INTELLIGENTLY WAVING THE RIGHTS.

TWO SEPARATE INQUIRIES.

THEN WE HAVE A RULE THAT IMPLEMENTS THAT, CORRECT?

AND WHAT DID WE SAY ABOUT THE FIRST PART OF CAPACITY OR COMPETENCE?

>> WE HAVE TO GO THROUGH THIS FRAMEWORK OF QUESTIONS.

>> THAT'S NOT WHAT WE SAID.  
IT HAS TO BE A THROWING COREY  
OF THE CAPACITY TO WAIVE YOUR  
RIGHTS.

>> THIS COURT SAID USING A  
FRAMEWORK.

>> WHAT IN THIS COLLOQUY AND  
THAT IS WHAT I'M FOCUSING ON,  
PUT ASIDE AGE, EXPERIENCE AND  
UNDERSTANDING BECAUSE YOU HAVE  
A HARD TIME CONVINCING US AT  
LEAST ME THAT THOSE ARE  
REQUIRED BUT WHERE I AM STUCK  
ON IT IS WHETHER WHAT COULD BE  
THOROUGH ABOUT WHAT WAS ASKED  
HERE, TAKING THE FORM ON ITS  
FACE, EVEN IN A WRITTEN FORM IS  
FINE.

WHAT ABOUT THIS WENT TO  
CAPACITY, THOROUGH INQUIRY OF  
CAPACITY?

>> THERE WAS NO QUESTION.

>> THERE'S A LEASE WHAT I  
THINK.

>> READ THE FORM CAREFULLY.

>> DO YOU READ AND UNDERSTAND  
IT?

>> DID YOU READ IT REAL  
CAREFULLY?

>> THE FORM ITSELF ASKED DID  
YOU READ AND UNDERSTAND.

>> THE PERSON HAD TO SIGN.  
BEING A CRIMINAL DEFENSE LAWYER  
ALL THESE YEARS I HAD CASES  
WHERE MY CLIENT FIND PLEA FORMS  
AND WHEN YOU GO UP THERE THE  
JUDGE SAYS DID YOU READ IT,  
THEY SAID YES AND I SAY NO,  
JUDGE, I READ IT TO HIM BECAUSE  
HE CAN'T READ.

>> MY QUESTION IS OTHER THAN  
THE UNDERSTANDING THE WRITTEN  
FORM, IS THERE ANY THROWING  
COREY OF CAPACITY AT ALL?

>> THERE IS NONE.

>> FORGET IT, UNDERSTANDING OF  
CRIMINAL PROCEDURE, ANYTHING.  
HOW COULD IT COMPLY WITH THE  
RULE?

>> IT CANNOT.

>> IS THAT THE REAL ISSUE?

>> YES.

IN THIS CASE IT IS.

>> I'M GOING TO ASK -- I'M JUST LETTING YOU KNOW.

THE CAPACITY, CAPACITY HAS A CERTAIN DEFINITION AND IT MEANS SOMETHING AND CAPACITY MEANS AN INDIVIDUAL'S MENTAL OR PHYSICAL ABILITY.

THE ACCUSED APPREHENSION OF THAT OFFER AND THE ACCUSED CAPACITY TO MAKE KNOWING AND INTELLIGENT WAIVER, ACCUSED CAPACITY MEANS THAT PERSON'S MENTAL OR PHYSICAL ABILITY TO MAKE A KNOWING AND INTELLIGENT WAIVER AND THERE WERE NO QUESTIONS ASKED AT ALL REGARDING MENTAL OR PHYSICAL CAPACITY OR ABILITY OF THIS INDIVIDUAL.

>> THERE WERE NOT.

THE CONCERN IS IF WE HAVE A FORUM WHICH SETS FORTH, I AM SORRY, THE TRAINING AND EXPERIENCE, THE BENEFITS OF HAVING A LAWYER AND THE DISADVANTAGES OF NOT HAVING A LAWYER EVEN A 2-PAGE FORM, THE COURT CAN TAKE IT ONE STEP FURTHER AND LIST THOSE OTHER AREAS, LIST WHAT IS YOUR AGE, WHAT IS YOUR EXPERIENCE AND HAVE A PERSON SIGN A FORM AND WE CAN DO AWAY WITH ALL ORAL DISCOURSE AND THAT IS THE MOST IMPORTANT THING.

WE NEED TO HAVE A COURT SPEAK TO A DEFENDANT TO GET A FEELING FOR DO THEY HAVE CAPACITY?

>> NO ONE SAYS YOU HAVE TO READ VERBATIM THE MODEL COLLOQUY.

THAT IS NOT A REQUIREMENT.

THE REQUIREMENT IS A THOROUGH INQUIRY INTO THE INDIVIDUAL'S ABILITY, CAPACITY TO MAKE A KNOWING AND INTELLIGENT WAIVER AND AFTER THAT, YOU HAVE TO ADVISE HIM OF THE ADVANTAGES OR

DISADVANTAGES OF SELF REPRESENTATION, YOU HAVE TO DO THAT AS WELL.

>> IT IS THE FIRST PART THAT IS THE PROBLEM.

>> PERFORM MAY HAVE DONE THE SECOND.

WE DON'T HAVE DISCUSSION ABOUT THE FORM FOR THE COURT.

WE DON'T KNOW IT DID IT ACCURATELY OR APPROPRIATELY.

>> ON ITS FACE IF I DISAGREE WITH YOU AND BELIEVE THE FORM IS FINE AND PROCEDURES PERFECTLY FINE, THE FORM DID NOT HAVE THROWING COREY OF THE FIRST PART.

>> THE YES.

>> YOU ARE MAKING A PROCESS ARGUMENT, THERE IS NOTHING YOU DON'T .2 IN THE RECORD THAT WOULD MAKE US THINK THIS PERSON DIDN'T HAVE CAPACITY TO UNDERSTAND THE CHOICE HE WAS MAKING.

>> I CAN'T POINT TO SOMETHING LIKE THAT.

IF THERE WAS NEVER AN INQUIRY ABOUT IT I CAN'T POINT TO IT.

IF THERE HASN'T BEEN ANY VALUATION WE HAVE THIS ISSUE WITH COMPETENCY ISSUES WHERE THERE IS INDICATION AT SOME POINT THE JUDGE DOESN'T DO ANYTHING.

THERE IS NOTHING ON THIS RECORD THAT I CAN POINT TO.

MAY I RESERVE THE REST OF THE TIME?

>> MAY IT PLEASE THE COURT, VIRGINIA HARRIS ON BEHALF OF THE STATE.

MAY I ASK YOU, THE RULES TALK ABOUT A THOROUGH INQUIRY INTO BOTH THE ACCUSED COMPREHENSION OF THAT OFFER AND THE ACCUSED CAPACITY TO MAKE A KNOWING AND INTELLIGENT WAIVER.

THE DEFINITION OF THE WORD THOROUGH MEANS CARRY THROUGH TO

COMPLETION EXHAUSTIVE, CAREFUL ABOUT DETAIL, PAINSTAKING, NOT SUPERFICIAL OR PARTIAL. HOW EXACTLY IS THIS COLLOQUY WITH THE TRIAL COURT JUDGE AND DEFENDANT IN THIS CASE ANYTHING OTHER THAN THOROUGH. IS IT NOT INNOCENCE CURSORY, SUPERFICIAL? HOW DOES IT ADDRESS THE CAPACITY?

>> I WANT TO GET INTO TWO DIFFERENT TIMES THE JUDGE SPOKE TO THE DEFENDANT ABOUT THIS, THIS PARTICULAR TIME WE HAVE BEEN TALKING ABOUT IT AND AGAIN BEFORE TRIAL WHEN THEY START TALKING ABOUT THE VOP BEING HELD WITH TRIAL AT THE SAME TIME.

I AM GOING TO TELL YOU THE WHOLE BIRDS-EYE VIEW AND ANSWER YOUR QUESTION.

I DON'T WANT YOU TO THINK I'M TRYING TO DODGE IT.

EVEN THOUGH WE DON'T HAVE ALL THE PROCEEDINGS, THE RECORD INDICATES THAT THE DEFENDANT HAD BEEN REPRESENTED BY THE PUBLIC DEFENDERS OFFICE FOR TEN MONTHS.

THE JUDGE WOULD HAVE ALSO KNOWN BECAUSE ONE OF THE CHARGES WAS THE VOP THAT THE DEFENDANT WAS ON PROBATION AND BEING SUPERVISED.

>> IN THE FAR READ A INQUIRY YOU HAVE TO HAVE A REVIEW AND THERE HAS TO BE SOMETHING WHERE YOU HAVE AN INQUIRY AND IT IS A THROWING COREY.

IT IS NOT A THROWING COREY. YOU CAN'T HAVE A THEORETICAL INQUIRY SIX MONTHS PRIOR AND THEN IF THE DEFENDANT RIGHT BEFORE TRIAL MAKES AN UNEQUIVOCAL REQUEST SAYING I WANT TO REPRESENT MYSELF YOU CAN'T USE THE FOR RED INQUIRY YOU DID 6 MONTHS PRIOR.

>> I'M NOT SAYING THAT.  
WHAT I'M TRYING TO GET BEFORE  
THE COURT IS WHAT THE JUDGE  
WOULD HAVE KNOWN.  
>> LET'S TALK ABOUT THE  
TRANSCRIPT IN FRONT OF THE  
COURT.  
HOW IS THAT A THOROUGH INQUIRY?  
HOW IS IT RIGOROUS, IN-DEPTH,  
EXHAUSTIVE, COMPREHENSIVE?  
THESE ARE ALL THE SYNONYMS.  
>> THE JUDGE FIRST, THE ACTIVE  
ASKING FOR INFORMATION DIDN'T  
JUST COME RIGHT THEN BUT ALSO  
FROM THE FORM.  
>> HOW DID THE FORM TALK ABOUT  
THE USE OF THE ACCUSED CAPACITY  
TO MAKE KNOWING AND INTELLIGENT  
WAIVER AND THE WORD CAPACITY  
MEANS AN INDIVIDUAL'S MENTAL OR  
PHYSICAL ABILITY.  
WHAT QUESTION, WHAT QUESTION,  
IN THE FORM OR ORALLY, WENT TO  
THE INDIVIDUAL'S CAPACITY,  
MENTAL OR PHYSICAL ABILITY?  
>> WHEN HE SAYS HE READ IT REAL  
CAREFULLY.  
>> DID THE TRIAL COURT JUDGE DO  
A SUPERFICIAL OR PAINSTAKING  
DETAILED ANALYSIS OF WHETHER HE  
COULD READ?  
>> WHEN HE DOES ASK HIM THAT HE  
SUMMARIZES THE RATES WHEN HE  
SAYS, I WILL READ IT.  
>> SORT OF LIKE A LITTLE BIT  
PREGNANT?  
>> FIRST HE INDICATES THAT HE  
WANTS TO KNOW IF HE READ IT  
REAL CAREFULLY AND KIND OF SAYS  
I HAVE TO KNOW IF I NEED TO GO  
OVER IT AGAIN AND THE DEFENDANT  
INDICATES YES, SIR.  
AND THEN HE SUMMARIZES IT AGAIN  
AND SAYS I WILL SAY AGAIN IT IS  
YOUR RIGHT TO REPRESENT YOUR  
SELF.  
>> DID HE ASK THEM DID YOU GET  
A CHANCE TO READ OVER THAT REAL  
CAREFULLY?  
WHETHER HE KNEW HE HAD THE

ABILITY TO READ?

>> IF YOU SAY YES, SIR, I READ IT REAL CAREFULLY IT IS IMPLICIT YOUR ABLE TO READ.

>> IF HE TOLD YOU HE ONLY HAD A SIXTH GRADE EDUCATION PERHAPS, THIS IS VERY DETAILED LANGUAGE. IDENTIFY AND PRESERVE, UNCOVER. IF YOU ONLY WANT TO 6 GRADE EDUCATION I'M NOT SURE YOU KNOW WHAT THOSE WORDS MEAN.

>> WHAT WE MENTIONED BEFORE, IT DEPENDS ON THE PERSON, MY DAD WAS A LAWYER AND WHEN I WAS IN SIXTH GRADE.

I HAD A GOOD IDEA WHAT THIS MEANT.

DOESN'T MATTER HOW FAR DEFENDANT WENT IN SCHOOL, IT ONLY MATTERS WHETHER HE CAN READ AND COMPREHEND.

>> YOU DON'T DO THAT IN TERMS OF AN UNEQUIVOCAL REQUEST TO REPRESENT YOURSELF BUT HE STILL HAS A TRIAL COURT JUDGE HAS TO DETERMINE WHETHER OR NOT THAT PERSON HAS MADE A KNOWING AND INTELLIGENT WAIVER BASED ON THAT PERSON'S ABILITY.

>> THAT IS -- THE GODINAS CASE SAYS COMPETENCIES OF MONEY TO BE DETERMINED.

>> THAT GOES TO, THAT WAS THE ARGUMENT BY THE FIRST DCA, A DETERMINATION OF COMPETENCY. YOU DON'T NEED TO GO THROUGH THE TROUBLE OF NOT INDICATED. IF THIS ISN'T, IN THE COMPETENCY, YOU ARE REQUIRED TO MAKE A DETERMINATION.

THERE NEEDS TO BE A PHYSICAL ORDER OF YES OR NO.

THAT'S NOT AT ISSUE.

THE RULE STATES THERE NEEDS TO BE A THROWING COREY OF CAPACITY WHICH IS A DIFFERENT INCOMPETENCY, IS A DETERMINATION THAT THE QUESTIONS THAT NEED TO GO TO IT, RELIEVE US OR IS

INCONSISTENT WITH THE RULE IS MY QUESTION.

>> I WILL GO INTO EXACTLY WHAT WAS SAID WHEN YOU SPOKE TO HIM. HE ASKS IF YOU CAN READ IT REAL QUARTERLY -- CAREFULLY AND INDICATES I WILL IF YOU DON'T UNDERSTAND SOMETHING.

THE DEFENDANT SAYS YES, HE FOLLOWS UP BY SUMMARIZING IT IN CASE HE BRINGS UP AN ABSOLUTE RIGHT TO REPRESENT YOUR SELF.

>> WE READ ALL THIS.

ALL OF THAT ORAL INQUIRY GOES TO THE ADVANTAGES OR DANGERS OF SELF REPRESENTATION ADDRESSED IN THE FORM BUT OUR RULE SAYS BEFORE DETERMINING WHETHER THE WAIVER IS KNOWING AND INTELLIGENT, THE WAIVER, YOU STILL NEED TO HAVE A THOROUGH INQUIRY OF THE ACCUSED CAPACITY TO MAKE A KNOWING AND INTELLIGENT WAIVER.

AFTER YOU MAKE THE DETERMINATION THE COURT SHALL ADVISE THE DEFENDANT OF THE DISADVANTAGES AND DANGERS OF SELF REPRESENTATION.

IS YOUR POSITION THE TRIAL COURT ONLY HAS TO ADVISE THE DEFENDANT OF THE DISADVANTAGES AND DANGERS OF SELF REPRESENTATION WITHOUT MAKING A DETERMINATION OF THE ACCUSED CAPACITY TO MAKE A KNOWING AND INTELLIGENT WAIVER?

>> WHEN THE DEFENDANT SAID THAT HE READ IT CAREFULLY AND WHEN THE JUDGE GOES OVER SUMMARIZING IT AND SAYS HAVE YOU HAD TIME AND DECIDED HE SAYS YES I HAVE.

>> HOW IS THAT EVEN REMOTELY EVEN WITHIN THE REALM OF THOROUGH?

THAT TO ME IS THE MOST COMPREHENSIVE, SUPERFICIAL, AND CURSORY QUESTION.

WHEN YOU READ THE CASE LAW ALL THE CASES TALK ABOUT THE FOR

RED INQUIRY BEING 15 PAGES  
LONG, 10 PAGES LONG.  
THESE ARE THOROUGH.  
IT WAS ACQUIRED BY THE RULE AND  
IT IS NOT A GLOSS.  
YOU DON'T GET TO GLOSS OVER IT  
AND HAVE A SUPERFICIAL  
INQUIRIES.

>> PRIOR TO TRIAL, WE HAVE A  
DISCUSSION ABOUT WHETHER THE  
DEFENDANT WOULD WANT THE  
DEFENSE ATTORNEY ON THE VOP AND  
THE DEFENDANT SAYS WE CAN KEEP  
HIM ON THE VOP WHICH HAS  
DISCUSSION ABOUT THESE ARE  
BEING HELD AT THE SAME TIME AND  
HE IS EXPLAINING YOU CAN'T HAVE  
HYBRID REPRESENTATION BUT HE  
DOESN'T SAY THAT.

>> IT IS DONE ON JANUARY 11,  
2013.

AT THAT POINT IN TIME, YOU ARE  
GOING TO REPRESENT YOURSELF.

>> HE TALKS TO HIM AGAIN.  
BEFORE TRIAL AND HE ASKS THEM  
AGAIN.

THE DEFENSE ATTORNEY SAYS WE  
NEED TO DISCUSS THIS VOP AND  
THE JUDGE HAS A DISCUSSION WITH  
HIM TO MAKE SURE HE UNDERSTANDS  
THEY ARE BEING HELD TOGETHER AT  
THE SAME TIME AND HE CAN'T HAVE  
HIM AND HIS LAWYER BOTH DOING  
THAT, THAT WOULD BE HYBRID  
REPRESENTATION EVEN IF HE  
DOESN'T USE THE TERM.

THE DEFENSE ATTORNEY WHO NEVER  
INDICATED PREVIOUSLY THAT SHE  
THOUGHT SHE MISUNDERSTOOD, HE'S  
A LITTLE CONFUSED ABOUT THIS  
AND THEY TAKE TIME AND EXPLAIN  
THIS TO HIM.

HE SAYS I CAN'T DO THIS  
SEPARATELY BUT THIS IS BASED ON  
THE SAME EVIDENCE IN THE SAME  
WITNESSES AND WOULD BE REALLY  
INEFFICIENT AND --

>> DID IT GO INTO THE  
DISCUSSION OR ANALYSIS OF  
CAPACITY TO MAKE A KNOWING AND

INTELLIGENT WAIVER?  
DID HE ASK ANY QUESTIONS  
PERTAINING TO MENTAL OR  
PHYSICAL ABILITY.

>> I DON'T THINK I'M NOT AWARE  
OF ANY CASE LAW THAT SAYS A  
JUDGE HAS TO ASK WHETHER OR NOT  
HE HAS A MENTAL ILLNESS.

>> WILL SPECIFICALLY SAYS YOU  
HAVE TO MAKE A THOROUGH INQUIRY  
ABOUT THE ACCUSED COMPREHENSION  
OF THAT AND THE ACCUSED  
CAPACITY TO MAKE KNOWING AND  
INTELLIGENT WAIVER.

THE WORD CAPACITY HAS A  
SPECIFIC MEANING AND IT MEANS  
MENTAL OR PHYSICAL ABILITY.

>> THE JUDGE IS MAKING THAT  
DETERMINATION BASED ON HIS TONE  
AND HIS DEMEANOR AND IT IS NOT  
A HIGH STANDARD.

EVEN THIS COURT WHEN IT SAYS  
WHAT QUESTIONS YOU HAVE TO ASK  
HAS NEVER INDICATED YOU HAVE TO  
ASK QUESTIONS ABOUT A  
DEFENDANT'S MENTAL ILLNESS.

>> NO ONE IS ASKING ABOUT  
MENTAL ILLNESS.

IT IS A QUESTION OF WHETHER OR  
NOT YOU HAVE THE CAPACITY TO  
MAKE A WAIVER.

YOU HAVE TO HAVE A BASELINE TO  
ASK QUESTIONS TO MAKE A  
THOROUGH INQUIRY AS TO WHETHER  
OR NOT THE PERSON IS MAKING A  
KNOWING AND INTELLIGENT WAIVER.

>> I DON'T WANT TO ASK YOU  
QUESTIONS BUT I NEED  
CLARIFICATION ON WHAT EXACTLY  
DO YOU THINK THE JUDGE WOULD  
HAVE ASKED --

>> CAN I ASK YOU SOMETHING?  
THERE'S POTENTIAL FOR THERE TO  
BE SOME TENSION BETWEEN A WITH  
THIS THROWING COREY LANGUAGE  
AND THE RIGHT THAT WAS  
ACCOMPLISHED AND FARETA ITSELF.  
IF YOU READ THAT TOO LITERALLY  
YOU CAN HAVE A LOT OF  
INFORMATION THAT YOUTH YOU USED

IT TO DENY SOMEONE'S RIGHT TO REPRESENT HIM OR HERSELF YOU WOULD THEN BE FLIPPING OVER INTO THE OTHER PROBLEM.

>> THAT IS EXACTLY WHAT HAPPENED WITH BOWEN.

WE HAD A RULE BEFORE THE SUGGEST IN 1973 THAT YOU CAN DENY THERE RIGHT BASED ON AGE, EDUCATION, MENTAL CAPACITY AND FARETA CAME OUT AND MUCH LATER BOWEN CAME OUT IN 1997 AND BOWEN SUGGESTED THAT IS INCORRECT.

>> HOW IS THAT INCONSISTENT IS WHAT I'M ASKING.

I ASKED BEFORE AND YOU NEVER ANSWERED IT.

>> I DON'T UNDERSTAND WHAT YOU ARE SAYING.

>> LET ME EXPLAIN IT BETTER.

I'M NOT DOING A GOOD JOB.

YOU SAID THERE MAY BE TENSION BETWEEN OUR RULE, 3.11 SECTION SUBSECTION D'S ARE NORMATIVE A THROWING COREY INTO CAPACITY TO THE ABILITY TO WAIVE THE RIGHT. THAT IS WHAT THE RULE SAYS.

AREETA SAYS SOMETHING THAT IS INCONSISTENT WITH THAT?

>> SOME OF THE CASE LAW FROM HERE INDICATES IT IS BASED ON YOUR GENERAL UNDERSTANDING OF THE RIGHTS.

>> WHAT IS THE TWO PART INQUIRY THAT GODAND A SAID?

>> WHAT SHE SAID ABOUT COMPETENCE AND KRISTEN DAVENPORT UNDERSTAND AND IN THE FOOTNOTE IT SAYS WE DON'T MEAN TO INDICATE COMPETENCY HAS TO BE DETERMINED IN EVERY CASE AND I BELIEVE IT SAYS --

>> HERE IS EXACTLY WHAT IT SAYS.

A COURT IS NOT, QUOTE, REQUIRE TO MAKE A COMPETENCY DETERMINATION IN EVERY CASE IN WHICH THE DEFENDANT WAIVED HIS RIGHT TO COUNSEL.

COMPETENCY DETERMINATION IS ONLY NECESSARY WHEN A COURT HAS REASON TO DOUBT THE DEFENDANT'S COMPETENCE.

THERE IS A DIFFERENCE BETWEEN IS THERE NOT A DETERMINATION OF COMPETENCY WHICH IS REQUIRED IN THE COMPETENCY SETTING VERSUS AN INQUIRY INTO COMPETENCY.

ONE IS YOU HAVE TO ASK QUESTIONS AND WHEN YOU ONLY HAVE DOUBT MUST YOU MAKE THE DETERMINATION.

>> MY POSITION WOULD BE WHAT EXACTLY COULD A DEFENDANT SAY THAT WOULD MAKE A JUDGE SAY YOU DON'T HAVE THE CAPACITY?

IF YOU JUST SAID FOR EXAMPLE --

>> THE QUESTION IS DO YOU HAVE THE CAPACITY TO MAKE A KNOWING AND INTELLIGENT WAIVER?

FRANKLY, MAYBE MOST OF THE TIMES, A TRIAL COURT JUDGE WOULD FIND THE PERSON HAS CAPACITY BECAUSE FARETA MADE IT CLEAR YOU CAN'T, WHETHER OR NOT THEY ARE A GOOD ATTORNEY FOR THEMSELVES IS NOT THE QUESTION. IF YOU HAVE AN EIGHTH GRADE EDUCATION YOU HAVE THE RIGHT TO REPRESENT YOURSELF.

THE QUESTION IS WHETHER THE TRIAL COURT JUDGE STILL HAS TO MAKE A THOROUGH INQUIRY AS TO THE PERSON'S CAPACITY AND ABILITY TO MAKE A DETERMINATION AND MOST OF THE TIME THE TRIAL COURT JUDGE IS GOING TO FIND THEY HAVE THE CAPACITY BECAUSE THE ISSUE IS DO THEY HAVE THE CAPACITY TO MAKE A WAIVER AND THEREFORE YOU ASK THE QUESTION WHETHER OR NOT THE BASELINE QUESTIONS, DO THEY HAVE A GENERAL UNDERSTANDING.

DO YOU WANT TO DO THIS AND YOU SAY YES BUT I ASK ANOTHER QUESTION THAT IS A BASELINE QUESTION PERTAINING TO AGE AND THE TRIAL COURT JUDGE KNOWS THE

ANSWER SHOULD BE X AND IF THE ANSWER IS WHY, MAYBE THERE NEEDS TO BE FURTHER EXAMINATION OF INQUIRY INTO CAPACITY.

>> MY POSITION IS IT IS A LOW STANDARD AND A JUDGE CAN MAKE THAT DETERMINATION BY SERVING THE DEFENDANT.

>> ASKING HIM QUESTIONS BUT NOT SPECIFIC QUESTIONS.

>> THE INQUIRY HAS TO BE TARGETED TO CAPACITY.

YOU HAVE BEEN HERE BEFORE, YOU MENTIONED YOU WERE A DEFENSE COUNSEL AND I'M SURE YOU TOOK PLEA COLLOQUY'S ALL-TIME.

IN A PLEA COLLOQUY ISN'T A REQUIRED TO FIND CAPACITY AND WHAT QUESTIONS ARE ASKED TO DETERMINE CAPACITY?

>> IT IS DIFFERENT.

AND THE DEFENDANT IS PLAYING OUT AND THE CASE IS DONE.

THE JUDGE HAS MORE INFORMATION ABOUT THAT.

>> NO DOUBT ABOUT THAT.

THAT GOES TO THE RIGHT, NOT THE INQUIRY OF CAPACITY.

THE SAME THING IN A PLEA COLLOQUY, MAKE SURE THIS IS A COMPETENT DEFENDANT IN FRONT OF YOU.

WHAT ARE THE QUESTIONS THAT ARE OFTEN ASKED?

CAN YOU ANSWER MY QUESTIONS?

>> IN THE PLEA COLLOQUY?

IF HE EVER SUFFERED FROM A MENTAL ILLNESS, HE CAN READ AND WRITE.

>> ALCOHOL, DRUGS OR NARCOTICS.

>> I'M NOT SAYING DEFENDANT'S CAN GET ANYTHING IN JAIL BECAUSE DEFENDANT IS INCARCERATED.

>> COULD HAVE GONE TO THE INFIRMARY ARE GIVEN SOME MEDICATION, CORRECT?

>> EVEN IF THEY DO HAVE MEDICATION IT WOULD NOT MEAN HE DIDN'T HAVE CAPACITY.

>> PERHAPS.  
IF THEY GAVE HIM VALIUM OR  
SOMETHING PERHAPS IF I AM THE  
TRIAL COURT JUDGE I WOULD SAY I  
WILL HAVE THIS INQUIRY AND  
RESCHEDULE THIS INQUIRY BECAUSE  
I DON'T BELIEVE YOU HAVE THE  
KRISTEN DAVENPORT ANSWER THESE  
QUESTIONS.

>> WHERE I AM DIFFERING FROM  
YOU IS I THINK THE JUDGE BASED  
ON WATCHING THE DEFENDANT, THIS  
IS LIKE DOCKET FOUNDING, NOT  
LIKE THIS IS THE FIRST TIME THE  
JUDGE EVER MET THE DEFENDANT  
THAT A JUDGE CAN DETERMINE  
CAPACITY BASED ON HIS TONE AND  
DEMEANOR AND ABILITY TO ANSWER  
ANY QUESTIONS HE IS ASKING AND  
IT DOESN'T HAVE TO BE A  
SPECIFIC QUESTION ABOUT HAVE  
YOU EVER BEEN TREATED FOR  
MENTAL HEALTH DISORDER?  
THAT REALLY DOESN'T TELL YOU.  
I CAN TELL YOU I QUITE A BIT OF  
EXPERIENCE WITH MENTALLY ILL.  
I WAS ACTUALLY A PUBLIC  
DEFENDER FOR 71/2 YEARS.  
I NEVER HAD A CLIENT, EVEN AN  
INCOMPETENT ONE WHO COULD NOT  
TELL ME HOW OLD HE WAS.  
I AM SURE THAT HAS HAPPENED  
BEFORE.

YOU GET THE INFORMATION ABOUT  
WHETHER SOMEONE IS OFF BY HOW  
ARE THEY LOOKING AT YOU?  
ARE THEY RESPONSIVE TO YOU IN  
GENERAL?  
AND YOU CAN GET THAT FROM ANY  
KIND OF DIALOGUE.

>> LET ME ASK YOU A QUESTION.  
IF YOU HAD A DEFENDANT WHO WAS  
PRESENT AND YOU LATER FOUND OUT  
THE DEFENDANT WAS ON SOME KIND  
OF DRUG, WHETHER IT WAS APPS OR  
ECSTASY, DO YOU BELIEVE JUST BY  
OBSERVING THEM THAT THEY WOULD  
HAVE THE CAPACITY OR THE  
ABILITY TO MAKE A KNOWING AND  
INTELLIGENT WAIVER.

>> IF HE WAS ON HEROIN RIGHT THEN.  
>> YOU DON'T KNOW THAT BECAUSE YOU DON'T ASK.  
YOU ARE THE TRIAL COURT JUDGE AND YOU MAKE THE SAME INQUIRY WHICH IS NONE.  
YOU DON'T ASK THE QUESTION WHETHER YOU --  
>> WOULDN'T BE ON AN ILLEGAL DRUG.  
>> WHEN WE WRITE SOMETHING WE DON'T WRITE SOMETHING FOR THIS DEFENDANT.  
>> I BELIEVE THAT IS IN TENSION BECAUSE THE UNITED STATES SUPREME COURT, FOR EXAMPLE IN IOWA VERSUS TOVAR SAYS IT IS A CASE SPECIFIC INQUIRY.  
I DO UNDERSTAND YOUR DILEMMA. IN SOME RESPECT, IT WOULD BE EASIER FOR US IF YOU JUST SAID YOU HAVE TO ASK THESE QUESTIONS AND EVERYTHING.  
OUR CONCERN IS WHEN YOU MANDATE CERTAIN QUESTIONS THAT HAVE TO BE ASKED, THAT MAKES JUDGES THINK THEY CAN DENY REPRESENTATION BASED ON CERTAIN ANSWERS WHICH IS WHAT HAPPENED IN BOWEN.  
YOU WILL NOTICE BARRETTA HAS BEEN OUT SINCE 1975 AND THE UNITED STATES SUPREME COURT HAS REPEATEDLY REJECTED ANY STANDARDIZATION OF THIS.  
EVEN IN EDWARDS, COULDN'T WE HAVE A REQUIREMENT WHERE IF A DEFENDANT WON'T SPEAK COHERENTLY TO THE JUDGE OR THE JURY, HE HAS TO HAVE A LAWYER AND THE COURT SAYS WE ARE NOT SURE HOW THIS IS GOING TO WORK AND IT IS BECAUSE IT IS A CASE SPECIFIC INQUIRY AND THE COURT IS CONCERNED ABOUT JUDGES DOING WHAT THEY DID IN BOWEN THINKING WE MUST ASK THESE QUESTIONS WHICH MUST MEAN WE CAN DENY REPRESENTATION.

>> DO YOU BELIEVE IT IS  
IMPORTANT FOR TRIAL COURT JUDGE  
TO MAKE A COLLOQUY IN WRITING?

>> NOT JUST IN WRITING.  
YOU WOULD DEFINITELY HAVE TO  
INQUIRE ABOUT LIKE THIS JUDGE  
DID WHERE HE SAID DID YOU READ  
THIS CAREFULLY AND HE INDICATES  
HE COULD GO OVER IT AGAIN.  
HE DOESN'T SAY EXACTLY.

>> DO YOU BELIEVE BASED ON THIS  
RECORD THAT THIS COURT COULD  
DETERMINE THIS DEFENDANT IN  
FACT WAS ABLE TO MAKE A KNOWING  
AND INTELLIGENT WAIVER?

>> WE REACHED A CONSTITUTIONAL  
MINIMUM.  
IT IS NOT --

>> HOW DO YOU KNOW, HOW DO YOU  
KNOW IN TERMS OF CAPACITY THAT  
THIS PERSON UNDERSTOOD BECAUSE  
THEY WEREN'T ON ANY KIND OF  
MEDICATION OR ANYTHING LIKE  
THAT?

OR THEY HAD THE CAPACITY?

>> IT WOULD BE RELIANT ON THE  
FACT THAT THE JUDGE WAS  
OBSERVING HIS Demeanor, THE  
JUDGE WAS ASKING HIM QUESTIONS  
AND HE WAS RESPONSIVE.  
HE WAS CONFORMING HIS BEHAVIOR  
IN THE COURTROOM.

AND HIS LAWYER, THE RECORD --

>> YOU COULD BE CONFORMING YOUR  
BEHAVIOR BECAUSE YOU ARE ON  
MEDICATION.

>> THAT DOESN'T MEAN YOU DON'T  
KNOW WHAT YOU ARE DOING.  
SOME DEFENDANTS.

>> WHY DO YOU ASK THAT QUESTION  
IN A PLEA COLLOQUY?

YOU WANT TO MAKE SURE THAT THE  
PLEA THAT IS TAKEN IF THE  
PERSON IS UNDER ANY MEDICATION  
IS A KNOWING AND INTELLIGENT  
WAIVER AND THERE CAN'T BE AN  
ARGUMENT AFTERWARDS.

>> THE UNITED STATES SUPREME  
COURT, I THINK IT WAS THEIR  
CONCURRING OPINION, THE FIRST

DISTRICT TALKS ABOUT THIS AS WELL, THE DIFFERENCES BETWEEN A PLEA AND THE CASE -- THAT IS NOT THE END OF IT.

A JUDGE HAS A LEGAL OBSERVATION -- OBLIGATION TO ORDER A COMPETENCY EVALUATION IF THERE WERE REASONABLE GROUNDS TO MAKE SURE THE DEFENDANT IS INCOMPETENT.

IF THE DEFENDANT IS NOT OVER WITH AFTER THIS THE DEFENDANT GOES AND IS CONDUCTING HIS DEFENSE IN COURT, IF THERE IS ANY REASONABLE GROUNDS THAT HE IS INCOMPETENT, THE JUDGE IS REQUIRED TO ACT ON THIS SO THERE IS AN ADDITIONAL PROTECTION FOR TRIAL THAT THERE ISN'T FOR A PLEA.

IN FACT, THIS HAS OCCURRED AT A MUCH LATER STAGE, WE KNOW A LOT MORE ABOUT THIS DEFENDANT.

THE PROGRESS DOCKET INDICATES THERE ARE NUMEROUS STATUS CONFERENCES, PRETRIAL, A PARENT EVEN A PLEA HEARING SET THAT DIDN'T WORK OUT.

AND THIS GUY WAS SUPERVISED BY A PROBATION OFFICER, NOTHING IN THE AFFIDAVIT THAT INDICATES ANY PROBLEMS WITH COMPETENCE. THE JUDGES RELY ON LAWYERS TO GIVE THEM THIS.

THIS LAWYER NEVER INDICATED THERE WAS ANY PROBLEM AND THERE'S AN EXCERPT FROM JURY SELECTION.

>> THEY DIDN'T JUST NOT INDICATE THERE WAS A PROBLEM. THEY AFFIRMATIVELY --

>> THERE IS CASE LAW THAT SAYS A DEFENSE LAWYER CANNOT STIPULATE TO SOMEONE'S COMPETENCY.

>> NOT THAT HE IS RELYING ON STIPULATION BUT MOST OF THE TIME UNLESS THE DEFENDANT IS ACTING BIZARRE THE JUDGE WILL BE RELYING ON A DEFENSE

ATTORNEY.

>> IT IS FOR THE COURT TO MAKE A DETERMINATION AND THAT IS FOR THE COURT NOT -- THEY -- THE COURT IS THE ONE THAT MAKES A THOROUGH INQUIRY.

>> BUT OF WHAT?

THE JUDGE HAD A SPECIFIC DIALOGUE WITH THIS DEFENDANT AT THAT TIME AND RIGHT BEFORE TRIAL THAT WOULD HAVE SHOWED THAT THE DEFENDANT HAD THE CAPACITY.

>> YOU HAVE GONE OVER.

>> I'M SORRY.

>> WE CROSSED THAT.

>> THANK YOU.

>> THANK YOU.

>> CAN I ASK YOU A QUESTION?

COULD YOU ARTICULATE A MANAGEABLE STANDARD THAT WOULD GOVERN WHETHER THE INQUIRY HAS BEEN THOROUGH?

THAT A TRIAL COURT COULD BE CONFIDENT THAT IT WOULD MEET THAT STANDARD AND APPELLATE COURTS COULD CONSISTENTLY APPLY?

>> THE COLLOQUY DOESN'T HAVE TO BE WORD FOR WORD BUT IT MEANS TO COVER THE TOPICS MENTIONED IN THE MODEL COLLOQUY.

>> YOU THINK IF A JUDGE DOESN'T GO THROUGH THE MODEL COLLOQUY THAT MORE OR LESS THAT SHOULD BE REVERSIBLE ERROR?

>> MORE OR LESS YES.

I THINK THERE COULD BE --

>> YOU THINK THAT'S WHAT THE LAW SHOULD BE OR THAT IS WHAT THE LAW IS TODAY?

>> THAT IS WHAT THE LAW SHOULD BE.

RIGHT NOW YOU HAVE THIS COURT SAYING THE MODEL COLLOQUY IS A FRAMEWORK.

I DON'T THINK THE COURT HAS GONE SO FAR AS TO SAY THE MODEL COLLOQUY WHETHER IT IS WORD FOR WORD IS A REQUIREMENT.

>> IF WE WERE NOT INCLINED TO ADOPT THAT.  
CAN YOU THINK OF ANOTHER MANAGEABLE STANDARD?  
>> THE WHEN YOU HAVE IS MANAGEABLE.  
THE STANDARD IS USE THE MODEL COLLOQUY AS A FRAMEWORK AND CONDUCT A THOROUGH INQUIRY.  
THE FIRST DISTRICT COURT GOT IT WRONG.  
THEY GOT IT WRONG, THEY DID NOT DO A THOROUGH INQUIRY THAT IS REQUIRED.  
THESE ARE CERTAIN THINGS YOU SHOULD TALK ABOUT.  
THE IDEA IS TO GET DISCUSSION, THIS PERSON WHO RESPONDED IT IS DEPENDING ON THIS PERSON.  
>> THIS IS ABLE OF PROCEDURE WE ARE LOOKING AT.  
THE CONSTITUTIONAL STANDARD COMES DOWN FROM THE US SUPREME COURT.  
WHEN WE APPLAUD THIS WE MUST ALWAYS BE MINDFUL OF THE CONSTRAINTS AND LIMITATIONS AND CONTOURS OF WHAT HAS COME DOWN FROM THE US SUPREME COURT.  
IS THAT CORRECT?  
>> YES.  
YES.  
WHICH IS WHY I WOULD SAY THE MODEL COLLOQUY IS THE WAY TO GO.  
THIS IS WHAT THE COURT ASKED FOR AFTER BOWEN, THIS WAS PUT TOGETHER ON THE MODEL COLLOQUY, IT IS QUITE THOROUGH.  
IF IT WAS FOLLOWED IS THE COURT RECOMMENDED TIME AND TIME AGAIN.  
>> WHAT EXACTLY -- THERE'S A LOT OF QUESTIONS ILLICIT INFORMATION THAT DOESN'T REALLY MATTER.  
HOW DO YOU DEFINE HAVING THE CAPACITY TO MAKE THESE DECISIONS?  
>> IS VERY MENTAL OR PHYSICAL

LIMITATION THAT PREVENTS YOU  
FROM BEING ABLE TO UNDERSTAND?  
THE SECOND PART --

>> WHAT DOES THAT MEAN?

WHAT IS THE COURT TRYING TO  
FIGURE OUT?

IT CAN'T BE AN EDUCATIONAL  
LEVEL OR YOUR OVERALL  
INTELLIGENCE.

IT SEEMS IT IS LIKE ARE YOU  
RATIONAL?

YOU KNOW WHAT I AM SAYING?

I AM HAVING A HARD TIME  
UNDERSTANDING WHAT DECISION THE  
COURT IS SUPPOSED TO BE MAKING.

>> MY TIME IS UP.

MAY I ANSWER?

WHAT THE COURT IS LOOKING AT IN  
THAT INSTANCE IS AS YOU SAID  
THE PERSON HAVING A MENTAL  
EPISODE SUCH THEY DON'T HAVE  
THE CAPACITY TO MAKE THE  
DECISION.

IS THIS A SCHIZOPHRENIC PERSON  
WHO IS NOT ON THEIR MEDICATION?

IS THIS SOMEONE WHO HAS HAD A  
FALL AND HIT THEIR HEAD AT THE  
JAIL AND IS UNABLE TO FIRMLY  
UNDERSTAND WHAT IS GOING ON?

IT DOESN'T MEAN THAT PERSON  
FIVE DAYS FROM NOW MIGHT NOT BE  
IN DIFFERENT CAPACITY BUT WHEN  
THE WAIVER IS BEING MADE, DOES  
THAT PERSON MENTALLY HAVE THE  
ABILITY TO MAKE THAT DECISION?

>> WOULD THE QUESTION ARE YOU ON  
MEDICATIONS RIGHT NOW, WOULD  
THAT SUFFICE?

>> NOT ALONE, BUT I THINK THAT'S  
A GOOD START.

I THINK THAT'S NECESSARY.

>> IF THE DEFENDANT SAYS I'M  
NOT?

>> I THINK THE COURT--

>> ELSE CAN THE COURT GO FROM  
THERE?

>> HAVE YOU EVER BEEN DIAGNOSED  
WITH A MENTAL ILLNESS.

YES, I HAVE.

ARE YOU ON MEDICATION RIGHT NOW?

YES, I AM.

WHAT IS THAT MEDICATION?

THAT'S THE POINT OF INQUIRY, SO SO THAT THE COURT CAN DETERMINE WHERE THIS PERSON IS MENTALLY.

>> I CAN UNDERSTAND WHERE THE ANSWER'S YES AS TO HAVING MENTAL ILLNESS AND, YES, I'M ON MEDICATION.

WHAT HAPPENS WHEN THE DEFENDANT SAYS, NO, I DON'T HAVE ANY MENTAL HEALTH ISSUES.

NO, I'M ON NO MEDICATION?

IS THAT THE END OF THE INQUIRY?

>> IF THE COURT IS SATISFIED, IF THE CLIENT HAS SAID REPEATEDLY I DON'T HAVE A MENTAL HEALTH ISSUE, I'M FINE, THE COURT DOES NOT SEE ANY INDICATION OF ANY MENTAL HEALTH PROBLEMS AND HAS MOVED ON TO THE ISSUES OF MEANT AND INTELLIGENT AND THE COURT MAKES THAT FINDING, THEN I THINK THE COURT DOES NOT MAKE ITS--

>> BUT SOMETIMES THE ANSWER TO ARE YOU ON MEDICATION, YES, COULD BE THE GOOD ANSWER.

>> IT COULD BE.

>> YES, I'M ON MEDICATION, AND THAT'S WHY I'M NOT HAVING A PANIC ATTACK RIGHT NOW.

>> HENCE, THE NECESSARY FOLLOW-UP.

THAT'S THE POINT OF THE INQUIRY. THE COURT HAS TO DETERMINE WHERE THAT CLIENT'S STANDING AT THAT MOMENT IN TIME TO MAKE THAT DECISION.

>> SO DOES, I MEAN, IT ALMOST SOUNDS LIKE WHAT YOU'RE SAYING, IT SOUNDS LIKE WHAT YOU'RE TALKING ABOUT DOES NOT SIT EASILY WITH A PER SE REVERSIBLE ERROR STANDARD.

BECAUSE, YOU KNOW, IF YOU'RE-- IT SEEMS LIKE IF YOU'RE GOING TO HAVE ALL THESE BOXES THAT YOU HAVE TO CHECK AND THE FAILURE TO CHECK A BOX, WHICH THERE'S NO WAY FROM THESE QUESTIONS AND

ANSWERS THAT A COURT COULD POSSIBLY KNOW ALL THE DIFFERENT PATHS THAT THE QUESTIONING COULD GO DOWN AND WHERE, YOU KNOW, A FUTURE REVIEW IN COURT WOULD SAY YOU DIDN'T ASK THE PERFECT QUESTION.

I MEAN, IT SEEMS LIKE THIS WOULD THEN DEMAND MORE OF A HARMLESS ERROR CASE BY CASE KIND OF THING IN WHICH CASE SOMEONE LIKE YOUR CLIENT WHERE, I MEAN, IT SEEMS PRETTY CLEAR THAT YOU HAVE, YOU KNOW, A VERY PLAUSIBLE KIND OF PROCESS ARGUMENT BUT NOT MUCH THAT YOU CAN POINT TO THE SHOW THAT THIS PERSON WAS ACTUALLY PRESENTED BY ANYTHING.

WHAT DO WE DO WITH THAT?

>> WELL, HE REPRESENTED HIMSELF AND LOST, AND HE GOT TEN YEARS IN PRISON.

>> WELL, I MEAN, THAT'S--

>> I THINK THAT EASE PREJUDICIAL.

[LAUGHTER]

>> WE WOULD AGREE.

>> SO MY TIME IS UP.

DO YOU WANT ME TO CONTINUE OR-- I'M SORRY.

>> NO, I MEAN, I'M FINISHED.

>> THAT'S FINISHED?

OKAY.

THANK YOU.

WE ASK THAT YOU QUASH THE DECISION OF THE FIRST DISTRICT COURT.

THANK YOU, JUSTICE.

>> WE THANK YOU BOTH FOR YOUR ARGUMENTS.

THE COURT WILL NOW STAND IN RECESS FOR ABOUT TEN MINUTES.

>> ALL RISE.