

>> THE COURT WILL NOW TAKE UP
THE THIRD CASE ON TODAY'S
DOCKET, WOODBURY V.
STATE OF FLORIDA.
COUNSEL?

>> MAY IT PLEASE THE COURT, MARA
HERBERT ON BEHALF OF MY CLIENT,
MR. WOODBURY.

I'D LIKE TO RESERVE FIVE MINUTES
FOR REBUTTAL AND FOCUS THIS
ARGUMENT MOSTLY ON POINT-- AND
IF TIME PERMITS, POINT TWO.
WITHIN THE CONTEXT OF
COMPETENCY, PROCEDURAL-- TO
MINIMIZE THE RISK THAT DEFENDANT
WILL NOT BE DENIED HIS
CONSTITUTIONAL RIGHTS TO A FAIR
TRIAL.

NOT ONLY TO SAFEGUARD DEFENSE
DUE PROCESS, BUT TO PROVIDE THIS
COURT WITH AN ADEQUATE RECORD
ON APPEAL WHICH IS OF SPECIAL
IMPORTANCE IN DEATH PENALTY
CASES WHERE THERE'S A STRONG
INTEREST IN INSURING THE
VIABILITY OF DEATH JUDGMENT.
ONE SUCH SAFEGUARD IS FOUND IN
3.111D WHICH SETS FORTH THE
REQUIREMENTS THE COURT MUST
FOLLOW--

[INAUDIBLE]
REPRESENTATION.

SUBSECTION 3 ADOPTS THE
COMPETENCY LIMITATION OF
REPRESENTATION HELD TO BE
CONSTITUTIONALLY PERMISSIBLE BY
THE U.S. SUPREME COURT IN
INDIANA V. EDWARDS.

SO, THEREFORE, FOR A TRIAL COURT
TO PROPERLY FOLLOW THIS RULE, IT
MUST DETERMINE WHETHER OR NOT
THIS LIMITATION APPLIES.

[AUDIO DIFFICULTY]
IF THE COURT DOES FIND THEY HAVE
TO DETERMINE WHETHER OR NOT HE
DOES NOT SUFFER THE SEVERE
MENTAL ILLNESS TO THE POINT
WHERE THE DEFENDANT NOT
COMPETENT TO CONDUCT TRIAL
PROCEEDINGS BY HIMSELF.

TO DESTROY THE UNIFORMITY AND APPLICATION OF THIS RULE, THE COURT HAS TO MAKE THIS DETERMINATION ON THE RECORD AS TO WHETHER LIMITATION APPLIES PRIOR TO GRANTING SELF-REPRESENTATION.

THE COURT CONSIDERS IN ALL CASES WHERE THERE'S A DEFENDANT WITH MENTAL ILLNESS, AND TO DO OTHER SIDE WOULD NOT ESTABLISH AN ADEQUATE RECORD FOR APPELLATE REVIEW.

AND THIS IS ALSO CONSISTENT WITH HOW THIS COURT HAS INTERPRETED THE RULE AND HOW LOWER COURTS HAVE SUBSEQUENTLY APPLIED IT, AND THAT WOULD CITE THE CASE OF HERNANDEZ, ALBERTO V. STATE WHERE THE COURT SAYS YOU MUST MAKE THAT DETERMINATION BEFORE GRANTING SELF-REPRESENTATION AND AN OPINION WRITTEN BY FORMER JUSTICE LAGOA WHEN SHE WAS IN THE THIRD DISTRICT WHERE IT SAYS THAT A PART OF THE THREAT INQUIRY IS TO DETERMINE WHETHER OR NOT THE DEFENDANT HAS A SEVERE MENTAL ILLNESS.

>> COUNSEL, I'M SORRY TO INTERRUPT YOU, IT'S HARD TO SEE WHAT MORE THE TRIAL COURT HERE COULD HAVE DONE THAN REPEATEDLY, TO THE POINT THAT THE DEFENDANT HERE WAS OBVIOUSLY, YOU KNOW, FELT LIKE IT ROSE TO THE LEVEL OF HARASSMENT, BASICALLY. AND I'M NOT FAULTING THE TRIAL COURT FOR TRYING TO BE SO CONSCIENTIOUS ABOUT IT, BUT, I MEAN, IF YOU JUST LOOK THROUGH THIS, YOU'RE STRUCK BY CONSISTENCY AND HOW THE FREQUENCY OF LOOKING INTO THESE ISSUES.

SO I DON'T UNDERSTAND WHAT YOU'RE FALLING THE TRIAL COURT FOR HERE.

>> WELL, I THINK THE COURT LOOKS AT IT WITHIN THE MENTAL CAPACITY

TO WAIVER RIGHT, BUT THE COURT DIDN'T LOOK AT IT WITH THE EFFECT THAT IT MIGHT HAVE HAD ON HIS ABILITY TO REPRESENT HIMSELF.

HE KNOWS THAT THIS DEFENDANT HAS MAJOR MENTAL ILLNESS, BIPOLAR DISORDER, PROBABLY ONE OF THE MOST SERIOUS YOU CAN HAVE, IT'S ALSO NEUROBIOLOGICAL IN NATURE WHICH CAN HAVE COGNITIVE DEFICITS THAT THE COURT ITSELF IS NOT TRAINED TO BE ABLE TO ASSESSMENT SO IN ORDER TO PROPERLY GRANT-- I THINK IN THIS CASE THE TRIAL COURT HAD TO, FIRST, DETERMINE WHETHER OR NOT IT WAS SEVERE MENTAL ILLNESS WHICH I THINK BASED OFF OF THIS RECORD IT WOULD QUALIFY AS SEVERE MENTAL ILLNESS AND THEN DETERMINE IF HE WAS ABLE TO SUFFICIENTLY REPRESENT HIMSELF GIVEN THE NATURE AND EXTENT OF HIS MENTAL ILLNESS.

>> HOW WOULD, HOW WOULD--

>> [INAUDIBLE]

>> HOW WOULD THE TRIAL JUDGE DO THAT?

REQUEST AN EVALUATION TO SEE IF HE IS COMPETENT TO DO THESE THINGS?

>> YES, I WOULD SAY THAT, JUSTICE LABARGA.

I THINK AN EVALUATION WOULD BE NECESSARY IN THIS CASE GIVEN THE NATURE OF HIS MENTAL ILLNESS. THE U.S. SUPREME COURT DID SAY IN INDIANA V. EDWARDS THAT THE STANDARD TO REPRESENT YOURSELF IS HIGHER THAN THAT OF COMPETENCY TO PROCEED TO TRIAL. AND IN THOSE CASES WE REQUIRE AN EXAMINATION BEFORE MAKING A DETERMINATION--

[INAUDIBLE]

>> HE WAS, YOUR CLIENT WAS COMPLAINING, NOT COMPLAINING, BUT RELATING TO THE COURT THAT HE'S BEEN APPARENTLY SUFFERING

WITH SOME TYPE OF MENTAL ILLNESS
FOR A LONG TIME.

AND HE WAS TAKING MEDICATION--
[INAUDIBLE]

I THINK WAS SOMETHING HE WAS
TAKING.

EDUCATE ME, WHAT IS THE EFFECT
OF THAT ON PEOPLE?

>> THERE WAS ACTUALLY
INFORMATION IN THE RECORD THAT
THE DEFENDANT DID SUFFER FROM
SOME SIDE EFFECTS WHICH WOULD
AFFECT HIS ATTENTION SPAN, WHICH
COULD LEAD TO NERVOUSNESS.

SO IT COULD HAVE EFFECTS ON HIM.
PSYCHOTROPIC MEDICINE CAN HAVE
EFFECTS ON COGNITION, AND I
DON'T THINK FROM JUST ASKING HIM
IF HE'S TAKING IT AND IF HE
FEELS OKAY, HE WOULDN'T KNOW IF
HE WASN'T FEELING OKAY.

THAT'S THE NATURE OF MENTAL
ILLNESS.

THAT'S ALSO SOMETHING THE COURT
HEARD HIM SAY, I DON'T BELIEVE I
HAVE IT, OR I THINK THAT BRANCH
OF SCIENCE IS-- THAT COULD ALSO
BE A SYMPTOM OF MENTAL ILLNESS
IF YOU UNDERSTAND IT WITHIN THE
CONTEXT OF BIPOLAR DISORDER.

AND THAT'S WHY--

[AUDIO DIFFICULTY]

>> SO WHAT YOU'RE SAYING--

>> BUT IF YOU LOOK AT HIS
ACTIONS WITHIN THE CONTEXT--

>> WHAT YOU'RE SAYING IS THEN
THAT ONCE THE COURT BECAME AWARE
OF HIS CONDITION, THAT IN ORDER
TO FOLLOW 3.111, HE SHOULD HAVE
ORDERED A MENTAL EVALUATION TO
SEE WHETHER THIS PERSON IS NOT
CAPABLE, BUT I GUESS MENTALLY, I
GUESS, CAPABLE TO REPRESENT
HIMSELF?

>> YES.

>> FROM THERE A SKILLS-- NOT
FROM A SKILLS STANDPOINT,
MENTALLY.

>> FROM HIS MENTAL STATE.
BECAUSE THAT'S WHY I INCLUDED

INFORMATION ABOUT THE DOCTOR'S REPORT REALLY JUST TO SHOW AS AN ILLUSTRATION OF WHAT A MENTAL HEALTH PROFESSIONAL MIGHT HAVE BEEN ABLE TO DETERMINE ABOUT HIS MENTAL STATE THAT A TRIAL COURT WASN'T ABLE TO SEE.

AND IF YOU HAVE AN ACTUAL DOCTOR SAYING HE BELIEVES HIM TO BE IN THE ACTIVE MANIC STATE OF BIPOLAR DISORDER DURING THE TIME HE'S SUPPOSED TO BE PREPARING FOR HIS PENALTY PHASE TRIAL. SO IN THAT CASE, IT JUST SHOWS YOU THE LIMITATIONS JUST BASING A COMPETENCY DETERMINATION ON THE OBSERVATIONS OF THE TRIAL COURT.

AND I THINK THAT'S INSTRUCTIVE TO SEE THE WAY WE HANDLE COMPETENCY TO PROCEED THE TRIAL WHICH IS A LESSER STANDARD, WE HAVE EVALUATIONS, AND I THINK IN THIS PARTICULAR CIRCUMSTANCE WHEN YOU HAVE A MENTAL ILLNESS THAT HAS BEEN A DECADES-LONG STRUGGLE, THAT HAS A HISTORY OF, YOU KNOW, HALLUCINATIONS, DELUSIONS, ABNORMAL THOUGHT PROCESS, THAT THE COURT HAS TO TAKE THAT STEP AND ORDER THAT EVALUATION IN ORDER TO MAKE A WISE DECISION AS TO WHETHER OR NOT HE'S ACTUALLY CAPABLE OF REPRESENTING HIMSELF.

>> COUNSEL, THE STANDARD OF REVIEW HERE THOUGH ABUSE OF DISCRETION, RIGHT?

>> YES.

>> SO IT'S NOT-- WE AREN'T HERE ASKING OURSELVES WHAT WOULD WE HAVE DONE, ETC.

IT'S COULD ANY REASONABLE TRIAL COURT BASED ON WHAT WAS IN THE RECORD ABOUT HOW THE DEFENDANT WAS CONDUCTING HIMSELF AND, YOU KNOW, OBVIOUSLY WITH A LOT OF SENSITIVITY BY THE TRIAL COURT TO THIS PERSON'S PERFORMANCE, THE QUESTION WHETHER GIVEN WHAT

WE'VE SEEN ON THE RECORD FROM THE BEHAVIOR WHETHER NO REASONABLE PERSON WOULD HAVE FAILED TO ORDER A COMPETENCY EVALUATION-- OR A MENTAL HEALTH EVALUATION AT THAT POINT, IS THAT RIGHT?

>> YES.

AND I ALSO THINK IT'S IMPORTANT TO LOOK AT ALL THE OTHER CASES THAT ARE INVOLVED IN THIS ISSUE. I MEAN, PRETTY MUCH EVERY CASE, I COULDN'T FIND ONE WHERE YOU HAVE A DEFENDANT WITH A SERIOUS MENTAL ILLNESS WHO HASN'T BEEN EVALUATED EITHER FOR COMPETENCY TO PROCEED TO TRIAL OR FOR COMPETENCY FOR SELF-REPRESENTATION.

THIS IS ONE OF THOSE OUTLIER CASES WHERE YOU HAVE A DEFENDANT WHO'S ALLOWED TO REPRESENT HIMSELF IN A CAPITAL CASE, AND AT NO POINT HAS ANYBODY EVER ASSESSED HIS COMPETENCY.

AND I WOULD ALSO SAY THAT, YOU KNOW, GIVEN THE CONTEXT, I THINK IT'S INSTRUCTIVE TO LOOK AT THE--

[INAUDIBLE]

WE DON'T ALLOW DECISIONS TO BE MADE SOLELY BASED OFF OF A DEFENDANT'S ASSESSMENT OF HIS OWN MENTAL ILLNESS AND THE COURT'S OBSERVATION.

IT'S THAT COUPLED WITH EVALUATIONS FROM HEALTH PROFESSIONALS.

AND THAT'S BECAUSE, YOU KNOW, SEVERE PSYCHIATRIC DEFECTS ARE NOT ALWAYS APPARENT TO LAYMEN. THE TRIAL COURT EVEN ADMITTED, HE SAID I HAVE A J.D. DEGREE, I DON'T HAVE AN M.D. AGREE, SO SOMEBODY ELSE SMARTER THAN ME IS GOING TO HAVE TO MAKE THAT DECISION.

AND HE'S MAKING A REFERENCE TO WHETHER OR NOT HE HAS A MENTAL HEALTH ISSUE.

I THINK IF YOU'RE GOING TO SAY THAT AS A TRIAL COURT, THEN YOU HAVE THE RESOURCES TO ORDER AN EVALUATION.

YOU HAVE SOMEBODY, I GUESS, SMARTER THAN HIM IN THAT FIELD, GIVE HIM ADVICE SO THAT HE CAN MAKE A WISE DECISION.

I THINK A SUFFICIENT INQUIRY IN THIS CASES--

[INAUDIBLE]

THE TRIAL COURT SHOULD HAVE EDUCATED ITSELF ON WHAT BIPOLAR DISORDER, AND THAT'S WHY I INCLUDED INFORMATION FROM THE FEDERAL--

[INAUDIBLE]

ESSENTIALLY LIMITS BRAIN FUNCTION.

THERE'S NOTHING IN THE RECORD TO SAY THAT THE JUDGE WAS FAMILIAR WITH BIPOLAR DISORDER AND KNEW WHAT THE SYMPTOMS WERE, SO I DON'T KNOW HOW THE TRIAL COURT CAN, BASED ON HIS OBSERVATIONS, THAT HE DOESN'T KNOW WHAT THE SYMPTOMS HE'S LOOKING FOR ARE. AND THAT'S WHY I THINK AN EVALUATION IS EXTREMELY IMPORTANT IN THIS CASE FOR THAT COURT TO BE ABLE TO TAKE A REALISTIC ACCOUNT OF HIS MENTAL CAPABILITIES.

AND I THINK THE EDWARDS COURT MADE SOME REALLY IMPORTANT OBSERVATIONS ABOUT MENTAL ILLNESS, YOU KNOW, SAYING THAT IT'S NOT A UNITARY CONCEPT, IT INTERFERES WITH AN INDIVIDUAL'S FUNCTION AT DIFFERENT TIMES AND DIFFERENT WAYS.

EVEN IF HE MAY UNDERSTAND SOME--

[INAUDIBLE]

IT DOESN'T MEAN THAT HE UNDERSTANDS ALL OF THE DECISIONS THAT GO INTO SELF-REPRESENTATION.

>> HOW IMPAIRED WOULD A PERSON NEED TO BE IN ORDER TO NOT BE

ABLE TO-- IN ORDER FOR A TRIAL JUDGE TO SAY I'M NOT GOING TO ALLOW YOU TO EXERCISE YOUR CONSTITUTIONAL RIGHT TO REPRESENT YOURSELF?

>> I THINK IT'S INSTRUCTIVE WITH THESE FACTS IS THAT THERE WAS A CASE FROM THE FOURTH DISTRICT WHICH I CITE TO IN THE BRIEF WHICH HAS VERY SIMILAR FACTS TO THIS CASE.

YOU HAVE A DEFENDANT WHO HAS PAST HOSPITALIZATIONS, WHO HAS BIPOLAR DISORDER AND IS PRESENTLY TAKING MEDICATIONS, AND THAT COURT FELT THE NEED TO NOT ALLOW SELF-REPRESENTATION, AND THAT WAS AFFIRMED ON APPEAL. SO I THINK GIVEN THESE FACTS THE COURT WOULD HAVE BEEN WITHIN ITS RIGHT NOT TO BECAUSE OF THE SEVERE MENTAL ILLNESS AND HOW IT CAN AFFECT COGNITIVE FUNCTION. I DON'T THINK THAT IT TURNS ON WHETHER OR NOT THE PERSON EXHIBITS BIZARRE BEHAVIOR OR ERRATIC PLEADINGS, BUT IT REALLY TURNS ON WHAT IS THEIR THOUGHT PROCESS IN MAKING DECISIONS. AND IF YOU HAVE A DEFENDANT-- IN EDWARDS THE SUPREME COURT SAID SOME SYMPTOMS OF MENTAL ILLNESS CAN AFFECT ABILITY TO CARRY OUT TASKS, AND ONE OF THOSE WAS DISORGANIZED THINKING. AND SO YOU HAVE A DEFENDANT, MR. WOODBURY--

[INAUDIBLE]

ILLUSTRATIVE OF THAT IS MENTAL STATE EXAMINATION WHICH SHOWED THAT HE HAD ABNORMAL THOUGHT PROCESSES WHICH INCLUDED ABNORMALITIES IN STRUCTURE AND PRODUCTIVITY WHICH WOULD LEAD TO DISORGANIZED THINKING THAT COULD REALLY AFFECT HIS ABILITY TO MAKE DECISIONS HE NEEDED TO MAKE THROUGHOUT THIS TRIAL.

ALSO IF YOU LOOK AT THE SYMPTOMS OF BIPOLAR DISORDER AND ACTIONS

WITHIN THE CONTEXT OF HIS MENTAL ILLNESS, THERE COULD HAVE BEEN SEVERAL DECISIONS THAT HE MADE THAT WERE NOT HIS OWN FREE AND REASONED CHOICE AS AN INDIVIDUAL, BUT MORE CHOICES THAT HE MADE THAT WERE DIRECTLY RELATED TO HIS MENTAL ILLNESS. AND THAT'S WHY IT ALSO INCLUDED A RELATIVELY DETAILED SECTION IN THE BRIEF ON THE SYMPTOM OF BIPOLAR DISORDER.

INCLUDING--

[INAUDIBLE]

MAKING RECKLESS DECISIONS, TAKING UNUSUAL RISKING, HAVING THIS ABNORMAL AFFECT, WHICH YOU CAN SEE IN THIS-- YOU HAVE A DEFENDANT WHO ENGAGES IN ABSOLUTELY NO DISCOVERY, AND WHEN ASKED ABOUT THE GUILT PHASE DURING THE ARRAIGNMENT, HE SAYS I QUOTE: IT'S NOT EVEN THAT SERIOUS TO ME, IT'S LIKE A--

[INAUDIBLE]

SO THAT'S NOT A PROPER AFFECT. IT'S NOT SOMEONE WHO'S TAKING, WHO UNDERSTANDS THE SERIOUS NATURE OF THIS CASE.

AND YOU HAVE HIM BASICALLY TELLING A JUROR DURING JURY SELECTION HIS REASON FOR SELF-REPRESENTATION.

IT'S NOT-- THE COURT NEVER INQUIRED AS TO HIS ACTUAL REASON.

AND WHAT HE TELLS THE JUROR, IT'S TOO SIMPLE, A CHILD COULD DO THIS, I NEVER SHOULD HAVE BEEN CHARGED WITH THIS CRAP.

SO I DON'T THINK HE'S UNDERSTANDING THE COMPLEXITY OF HANDLING A DEATH PENALTY CASE. AND THAT COULD BE DIRECTLY RELATED TO SYMPTOMS FROM HIS DISORDER.

IT ALSO INCLUDES AN EXAGGERATED SENSE OF WELL-BEING, SELF-CONFIDENCE.

YOU HAVE A IT WAS WHO THINKS

LIGHTNING GOING TO STRIKE BEFORE HE'S GOING TO GET THE DEATH PENALTY.

HE MAY THINK THAT HE'S BETTER THAN ANY LAWYER THAT COULD EVER BE PROVIDED.

HE HAS TO BE IN CONTROL, AND IF THAT IS A DELUSION OF GRANDEUR ASSOCIATED WITH MENTAL ILLNESS, THEN THAT CALLS INTO QUESTION THE WHOLE VOLUNTARY NATURE OF HIS WAIVER OF COUNSEL.

AND I THINK THAT THE ONLY WAY TO INSURE THAT HE IS, IN FACT, MAKING THESE CHOICES OF HIS OWN FREE AND INFORMED WILL TO HAVE AN EVALUATION AND LOOK AT THE NATURE OF HIS MENTAL ILLNESS PRIOR TO GRANTING HIMSELF SELF-REPRESENTATION.

THAT WILL BE FOLLOWING THE--

[AUDIO DIFFICULTY]

THOROUGH INQUIRY INTO THE NATURE AND EXTENT, MAYBE A REVIEW OF HIS MEDICAL RECORDS, HIS LATEST PSYCHIATRIC EVALUATION OR HOOKING THROUGH THOSE RECORDS OF THE DOCTOR NOTES TO SEE IF THERE'S RECENT PSYCHOSIS, MOOD SWINGS OR ABNORMAL THOUGHT PROCESSES.

AND ONCE YOU HAVE THAT INFORMATION, THEN YOU CAN MAKE AN INFORMED DECISION.

AND IF YOU KNOW WHETHER OR NOT THESE DECISIONS HE'S MAKING ARE, IN FACT, HIS OWN.

OR FOR ONES--

[INAUDIBLE]

ROOTED IN MENTAL ILLNESS.

BUT YOU HAVE A DEFENDANT WHO GOES THROUGH SEVERAL DAYS OF THE GUILT PHASE TRIAL ONLY TO TAKE THE WITNESS STAND AND TELL THE JURY I'M GUILTY, I WANT TO, YOU KNOW, ENTER A PLEA AND THEN LOOK AT THE JUDGE AND SAY WHAT YOU GOT IN FRONT OF THE JURY.

I MEAN, THAT ALSO DOESN'T SHOW THAT HE UNDERSTANDS THE

PROCEEDINGS AND THAT HE UNDERSTANDS THE SIGNIFICANCE OF IT.

>> WELL, COUNSEL, ISN'T THERE-- DOESN'T THE RECORD SUGGEST THAT HE, YOU KNOW, HE'S ALREADY SUBJECT TO THREE LIFE SENTENCES AT THE TIME, AND DOESN'T THE RECORD SUGGEST THAT HE ESSENTIALLY MADE A STRATEGIC DECISION TO TRY TO PERSUADE THE JURY THAT BECAUSE OF THE ALLEGED SEXUAL ASSAULT OR WHATEVER YOU WOULD CALL IT, THAT HE HAS BEEN SUBJECTED TO BEFORE THE KILLING, THAT THAT ESSENTIALLY WOULD BE SUFFICIENT EXCUSE TO JUSTIFY NOT IMPOSING THE DEATH PENALTY IN THIS CASES?

I MEAN, GIVEN THE FACTS OF THE CASE IT DOESN'T SEEM LIKE IT'S IRRATIONAL TO FOCUS MORE ON THE PENALTY PHASE THAN ON THE GUILT PHASE, YOU KNOW, IN LIGHT OF THE OBVIOUS, YOU KNOW, RECORD HERE.

>> WELL, I THINK IF YOU LOOK AT WHAT HE SAID TO THE COURT BEFORE THE START OF THE GUILT PHASE-- SET UP AN APPELLATE RECORD. AND THEN HE MAKES A DECISION TO ALL OF A SUDDEN I'M GOING TO PLEAD GUILTY.

I MEAN, I DON'T KNOW IF HE'S MAKING THAT CHOICE BECAUSE MENTAL ILLNESS FLUCTUATES. HE COULD HAVE PERIODS OF LUCIDITY, AND HE COULD HAVE OTHER PERIODS WHERE HIS ILLNESS AFFECTS HIM MORE.

IF YOU TAKE A CASE LIKE COVINGTON V. STATE, YOU HAVE A CLIENT WHO'S DOING A DEATH PENALTY CASE, RIGHT BEFORE OPENING STATEMENTS HE DECIDES TO PLEAD GUILTY.

THE TRIAL COURT IN THAT CASE DECIDED TO APPOINT TWO COMPETENCY EXPERTS, HAVE THOSE EVALUATIONS DONE BEFORE ENTERING THE PLEA.

AND THAT'S, I DON'T THINK, AS EGREGIOUS AS THE FACTS IN THIS CASE BECAUSE HE ACTUALLY TOLD THE JURY IN FRONT OF THEM THAT HE'S GUILTY, IT'S BEYOND VENGEANCE, IT'S BEYOND SELF-DEFENSE.

I MEAN, IF HE WANTED TO TRY AND GET THEM NOT TO GIVE HIM THE DEATH PENALTY, THAT DOESN'T SEEM VERY RATIONAL FOR HIM TO I SAY. AND THEN TO BE SO FLIPPANT IN HIS BEHAVIOR BY SAYING WHAT YOU GOT, JUDGE.

SO I WOULD DISAGREE WITH THE STATEMENT THAT'S A RATIONAL CHOICE.

THINK IT ACTUALLY CALLS INTO QUESTION THAT DECISION AND WHETHER OR NOT HIS MENTAL ILLNESS IS AFFECTING HIM.

IF YOU LOOK AT THE TIME FRAME IN ALL OF THIS, IT'S ALL A COUPLE OF MONTHS.

PROBABLY A MONTH LATER I YOU HAVE THE DOCTOR SAYING HE MIGHT BE IN THE MANIC STATE OF BIPOLAR DISORDER.

I THINK THAT-- I DON'T KNOW WHAT MORE YOU WOULD NEED FROM A MENTAL HEALTH PROFESSIONAL TO CALL INTO QUESTION HIS COMPETENCY.

YOU HAVE A DOCTOR WHO WAS JUST TASKED WITH DOING A COMPREHENSIVE EVALUATION AND AT THE SAME TIME --

[AUDIO DIFFICULTY]

THE WHOLE PURPOSE OF, LIKE, A THAT RELATE A THAT INQUIRY IS TO MAKE SURE THE DEFENDANT'S MAKING A DECISION WITH HIS EYES OPEN.

AND, I MEAN, I DON'T KNOW HOW YOU CAN DO THAT IF YOUR VISION IS CLOUDED BY MENTAL ILLNESS. FINISH I THINK THE COURTS NEED TO INSURE THAT THEY ARE MAKING THIS CHOICE, AND THAT'S, YOU KNOW, INSURING THE RELIABILITY AND THE FAIRNESS OF THE

PROCEEDINGS.

AND IF YOU LOOK AT THIS CASE, IT'S, TO ME, IT'S LIKE I DON'T KNOW HOW A DEFENDANT CAN GO FROM START TO FINISH OF A TRIAL FROM BEING INDICTED TO BEING SENTENCED AND AT NO POINT ANYONE QUESTIONS HIS COMPETENCY WHEN HE SUFFERS FROM SUCH A SEVERE MENTAL ILLNESS.

AND I THINK THAT THAT ALSO APPLIES TO POINT TWO BECAUSE YOU HAVE, I THINK-- I UNDERSTAND THAT MENTAL ILLNESS AND MEDICATION OF ITSELF DOESN'T EQUAL ACTUAL INCOMPETENCY, BUT IT DOES PROVIDE A SUGGESTION. BECAUSE WE KNOW, WE HAVE A BETTER UNDERSTANDING OF MENTAL ILLNESS THESE DAYS, SO WE UNDERSTAND THAT MEDICATION DOES HAVE, YOU KNOW, EFFECTS ON COGNITION.

YOU COULD LOOK AT THE STATE DURING JURY SELECTION, THEY CALLED A POTENTIAL JURY BECAUSE HE WAS ON MEDICATION.

TO THERE ARE CONCERNS THERE. YOU ALSO HAVE A LONG HISTORY, DECADES-LONG HISTORY OF A MENTAL ILLNESS.

IF YOU LOOK AT THE DEFENDANT, FOR EXAMPLE N EDWARDS WHO WAS DENIED SELF-REPRESENTATION, HE HAD SCHIZOPHRENIA WHICH JUST LIKE BIPOLAR DISORDER A NEUROBIOLOGICAL, MAJOR MENTAL ILLNESS, HEED HAD PREVIOUS HOSPITALIZATIONS, HE HAD BEEN VALUE A WAITED BY SEVERAL MENTAL HEALTH PROFESSIONAL THROUGHOUT A PERIOD OF FIVE YEARS, AND THAT WAS FOUND TO BE SEVERE MENTAL ILLNESS.

AND YOU HAVE MR. WOODBURY WHO'S HAD BIPOLAR DISORDER SINCE THE AGE OF 18.

AT THE TIME OF TRIAL, HE'S 42 YEARS OLD.

HE'S HAD AS EXTENSIVE, MORE OF

AN EXTENSIVE HISTORY OF SEVERE MENTAL ILLNESS THAN THAT OF THE DEFENDANT IN EDWARDS.

BUT IN ALL OF THESE CASES, EVEN CASES WHERE THERE'S JUST THE SUGGESTION OF A MENTAL ILLNESS LIKE BARNES, THE COURT STILL HAD AN EVALUATION DONE.

SO I THINK FOR THERE TO HAVE BEEN A THOROUGH INQUIRY INTO HIS MENTAL CAPACITY FOR BOTH THE ABILITY TO WAIVE THE RIGHT AND ALSO FOR HIS ABILITY TO REPRESENT HIMSELF, THE COURT SHOULD HAVE HAD AN EVALUATION DONE AND TRULY ASSESSED THE NATURE AND EXTENT OF HIS MENTAL ILLNESS.

AND I'D LIKE TO RESERVE THE REST OF MY TIME FOR REBUTTAL.

IF THAT'S OKAY.

>> THANK YOU, COUNSEL.

>> GOOD MORNING, YOUR HONORS.

MAY IT PLEASE THE COURT, RHONDA GIGER ON BEHALF OF THE STATE OF FLORIDA.

I'D LIKE TO TALK ABOUT THIS, BUT I'M GOING TO FLIP THE ISSUE JUST SLIGHTLY BECAUSE I THINK THEY'RE BUILDING BLOCKS.

I THINK THE FIRST STEP THE COURT HAS TO CONSIDER IS WHETHER OR NOT THE DEFENDANT WAS COMPETENT AND WHETHER OR NOT THE JUDGE TOOK THE APPROPRIATE STEPS TO DETERMINE WHETHER OR NOT HE WAS COMPETENT.

BEARING IN MIND, OF COURSE, THAT MENTAL ILLNESS DOES NOT EQUAL INCOMPETENCY, AND THERE'S CASE AFTER CASE AFTER CASE THAT SUPPORTS THIS.

YOU HAVE TO LOOK AT WHAT THE JUDGE DID, AND THE JUDGE DID EVERYTHING THAT HE SHOULD HAVE DONE.

HE TALKED TO THE DEFENDANT, HE HAD AN ONGOING DIALOGUE WITH HIM FROM START TO FINISH FROM THE VERY FIRST DAY THAT HE WAS

BEFORE THE JUDGE UNTIL THE VERY
LAST DAY.

AND IN ORDER FOR A JUDGE TO HAVE
CONCERNS ABOUT COMPETENCY, HE
HAS TO BE WORRIED, NUMBER ONE,
HE DOESN'T UNDERSTAND THE
CHARGES AGAINST HIM AND, NUMBER
TWO, THAT HE CAN'T ASSIST
MEANINGFULLY IN HIS OWN DEFENSE.
SO ADMITTEDLY, THE DEFENDANT HAD
BIPOLAR.

THERE'S NO REASON TO DISPUTE
THAT.

BUT THAT'S NOT THE STANDARD.
AND COUNSEL KEEP SAYING THINGS
ALONG THE LINES OF HE HAD A
MENTAL HEALTH ISSUE, HE COULD
HAVE HAD DEFECTS, IT COULD HAVE
HAD AN EFFECT ON HIS COGNITION.
BUT ALL THE JUDGE HAD BEFORE HIM
WAS MR. WOODBURY BEING VERY
LUCID, VERY ARTICULATE, VERY
METHODICAL.

IF YOU LOOK AT HIS PERFORMANCE
FROM START TO FINISH AND DON'T
JUST PICK OUT BITS AND PIECES,
HE FILED PLEADINGS WITH THE
COURT, HE SERVE THOSE PLEADINGS
APPROPRIATELY, HE MADE
OBJECTIONS, HE HAD A STRATEGY,
AS THE COURT HAS POINTED OUT.
HE VERY MUCH FOCUSED ON THE
GUILT PHASE OF HIS TRIAL.

AND I KNOW THAT WE'RE-- I MEAN,
ON THE PENALTY PHASE OF THE
TRIAL.

AND I KNOW AT THIS POINT WE'RE
LOOKING IN HINDSIGHT, BUT TO A
CERTAIN EXTENT WE HAVE TO DO
THAT BECAUSE THE JUDGE HAS TO
HAVE BEEN PRESENTED WITH SOME
BONA FIDE DOUBT, SOME
REASONABLE, COMPETENT EVIDENCE
OF HIS INCOMPETENCY BEFORE HE
COULD GO THERE.

AND THERE SIMPLY WASN'T ANY OF
THAT.

SO ONCE THAT IS DETERMINED, THEN
WHETHER OR NOT HE WAS CAPABLE OF
WAIVING HIS RIGHT TO AN

ATTORNEY, WHICH IS A SLIGHTLY HIGHER STANDARD.

AND, AGAIN, IT'S NOT JUST WHETHER OR NOT MR. WOODBURY HAD A SEVERE MENTAL ILLNESS, WHICH IS WHERE COUNSEL KEEP STOPPING. IT'S WHETHER OR NOT THAT SEVERE MENTAL ILLNESS IMPACTED HIS ABILITY TO CONDUCT THE TRIAL BY HIMSELF.

SO HAVING A SEVERE-- PEOPLE WITH SCHIZOPHRENIA CONDUCT TRIAL.

PEOPLE WITH BIPOLAR CONDUCT TRIAL AS LONG AS THAT MENTAL ILLNESS DOESN'T IMPACT THEIR ABILITY TO CONDUCT THE TRIAL PROCEEDINGS BY THEMSELVES.

SO, AGAIN, WE HAVE TO LOOK AT WHAT THE JUDGE HAD IN FRONT OF HIM.

TWELVE SEPARATE, MINIMUM--
[INAUDIBLE]

TO THAT MEANS THAT MR. WOODBURY WAS IN FRONT OF THE JUDGE ON A MINIMUM OF 12 SEPARATE DAYS. THOSE WERE THE DAYS OF TRIAL. SO 12 SEPARATE DAYS OF COURT PROCEEDINGS THIS JUDGE GOT TO OBSERVE THIS DEFENDANT.

AND AT NO POINT DURING THAT DID MR. WOODBURY EVER WAVER OR SHOW ANY SIGN THAT HE WAS INCAPABLE OF CONDUCTING THE TRIAL ON HIS OWN.

THE COURTS LEAN TOWARD COMPETENCY, THEY LEAN TOWARD OR HONORING THAT SIXTH AMENDMENT RIGHT TO REPRESENT YOURSELF.

AND, IN FACT, THE TRIAL COURT WAS VERY THOUGHTFUL ABOUT THAT. HE REPEATEDLY SAID THIS IS A FUNDAMENTAL RIGHT, AND I WANT TO BE VERY CAREFUL BEFORE I TAKE THIS RIGHT AWAY.

[AUDIO DIFFICULTY]

THE CASE LAW DOES, IN FACT, SAY THAT COMPETENCY CAN EVOLVE ESPECIALLY OVER THE COURSE OF A TRIAL.

SO COMPETENCY TO WAIVE COUNSEL AND PLEAD GUILTY IS GOING TO BE DIFFERENT THAN THE COMPETENCY TO WAIVE COUNSEL AND PROCEED TO TRIAL.

SO I THINK IT WAS CAUTIOUS OF THE JUDGE THE CONTINUE TO ENGAGE IN THOSE KNOWING HE HAD BIPOLAR. IT MADE SENSE THAT EACH DAY OF THE TRIAL CONTINUE, THE JUDGE WANTED TO MAKE SURE HE REMAINED COGENT IN FRONT OF HIM.

SO I DON'T THINK THAT BECAUSE HE-- INQUIRIES IT MEANS THAT HE WAS WORRIED THAT MR. WOODBURY WAS DECOMPENSATING.

I THINK WHAT IT MEANS IS THAT HE RECOGNIZED THAT A TRIAL IS AN ONGOING EVENT, AND MR. WOODBURY, HE NEEDS TO INSURE MR. WOODBURY'S COMPETENCE AND CAPABILITY ON EACH AND EVERY DAY OF THAT TRIAL.

>> [INAUDIBLE]

>> SORRY.

>> WELL, WERE YOU GOING TO SAY SOMETHING ELSE, JUSTICE CUIEL?

>> I WAS JUST GOING TO SAY FAIR ENOUGH.

I GUESS MY ANSWER IS, YES, A JUDGE IN A REASONABLE CASE LIKE THIS COULD HAVE DECOUPLED THE TWO THINGS.

NOT HAVE CONCLUDED THAT A COMPETENCY VALVE WAS REQUIRED. I JUST WANT TO MAKE SURE THAT IS YOUR POSITION.

>> THAT IS EXACTLY OUR POSITION. POINTING OUT THAT ABUSE OF DISCRETION IS THE STANDARD, SO THERE'S NO REASONABLE PERSON COULD HAVE TAKEN THE VIEW ADOPTED BY THE TRIAL COURT. AND, FRANKLY, THE ONLY EVIDENCE THE TRIAL COURT HAD THAT MR. WOODBURY EVEN HAD A MENTAL ILLNESS WAS THAT MR. WOODBURY DISCLOSES IT TO THE TRIAL COURT. YOU COULD BACK THIS UP AND SAY HE DECIDED NOT TO BE HONEST,

WOULD WE EVEN BE STANDING HERE TALKING ABOUT HIS MENTAL ILLNESS THAT WOULD HAVE BASICALLY MANIFESTED ITSELF ONCE HE HAD HIS INTERVIEW WITH THE DOCTOR? THE WAY MR. WOODBURY CONDUCTED HIMSELF AT TRIAL, FRANKLY, WAS BETTER THAN A LOT OF DEFENSE ATTORNEYS THAT AYE SEEN. HE BEHAVED FAR MORE RATIONALLY THAN MANY, MANY TRIAL TRANSCRIPTS THAT I'VE READ.

>> COUNSEL, IS IT FAIR TO SAY BASED ON THE RECORD THAT THE TRIAL COURT WASN'T CONDUCTING REPEATED INQUIRIES BECAUSE HE WAS SEEING THINGS THAT WERE MAKING HIM CONCERNED WHICH, OBVIOUSLY, THAT WOULD BE A DIFFERENT SITUATION IF YOU SAW 12 RED FLAGS AND YOU KEPT DOING THE SAME THING.

I MEAN, IN THIS CASE HE WAS REPEATEDLY DOING THE SAME THING IN RECOGNITION OF THE GRAVITY OF A DEATH PENALTY CASE AND, YOU KNOW, THE SIGNIFICANCE OF THE INTERESTS AT STAKE.

I MEAN, IS THAT FAIR?

>> I THINK THAT THAT'S FAIR TO SAY.

THE JUDGE DEFINITELY UNDERSTOOD THAT WHILE DEATH IS DIFFERENT, I THINK WE CAN ALL ACKNOWLEDGE THAT, THAT DOESN'T GIVE HIM THE ABILITY SIMPLY BECAUSE IT'S A DEATH CASE TO INFRINGE UPON SOMEBODY'S SIXTH AMENDMENT RIGHT TO SELF-REPRESENTATION.

AND LOOKING BACK AND REMEMBERING, OF COURSE, THAT WE DO HAVE TO GIVE OVERWHELMING DEFERENCE TO THAT TRIAL COURT, WHEN YOU LOOK AT HOW THE JUDGE CONDUCTED FARETTA AND THE FACT THAT HE MADE THAT FINDING EVERY TIME AFTERWARD AND MADE A VERY CLEAR RECORD, AT NO POINT DID HE SAY, WELL, MR. WOODBURY, I STARTED TO HAVE SOME CONCERNS

YESTERDAY, BUT TODAY
EVERYTHING'S OKAY.

I WOULD LIKE TO TALK BRIEFLY
ABOUT WHAT THE JUDGE WOULD HAVE
HAD TO HAVE WITH RESPECT TO
QUESTIONING MR. WOODBURY'S
COMPETENCE TO STAND TRIAL.

AND ACCORDING TO THE RULE AND
CASE LAW, HE WOULD HAVE TO HAVE
REASONABLE GROUND.

AND BIPOLAR AND MEDICATION ISN'T
A REASONABLE GROUND IN AND OF
ITSELF.

THERE HAS TO BE SOME BEHAVIOR
THAT WOULD LEAD HIM TO BELIEVE
THAT MR. WOODBURY DIDN'T
UNDERSTAND THE CHARGES AND WAS
INCAPABLE OF CONDUCTING HIS
DEFENSE.

AND COMPETENCY, THAT'S A REALLY
MODEST AIM, WHEN YOU THINK ABOUT
IT.

THERE'S NOTHING THAT
MR. WOODBURY DID FROM START TO
FINISH.

AND LOOKING AT THE TRANSCRIPTS,
LOOKING AT THE THINGS
MR. WOODBURY DID, HE VERY
DEFINITELY UNDERSTOOD THE
CHARGES.

AND WHILE COUNSEL MIGHT THINK
IT'S STRANGE THAT HE THOUGHT THE
GUILT PHASE WAS A LAYUP, HIS
REPRESENTATION WOULD MOST
DEFINITELY PASS THE STRICKLAND
STANDARD.

HE FOCUSED ON THE PENALTY PHASE.
HE REPEATEDLY ASKED THE JUDGE
FOR MERCY, HE ASKED THE JURY FOR
MERCY.

HE KNEW THAT HE HAD KILLED HIS
CELL MATE.

HE KNEW HE KILLED MR. HAYNES,
AND HE KNEW THE EVIDENCE WAS
OVERWHELMING, BUT HE WANTED TO
TRY TO SAVE HIS LIFE.

AND THAT IS AN ACCEPTED STANDARD
WHEN YOU GO FORWARD ON A DEATH
PENALTY CASE.

THERE IS NOTHING IN THE RECORD

THAT GAVE THE JUDGE A BONA FIDE DOUBT AS TO COMPETENCE.

I THINK GRANTING HIM THE OVERWHELMING DEFERENCE THAT HE DESERVES WITH RESPECT TO THAT AND WITH RESPECT TO THE RECORD THAT HE MADE 12 SEPARATE TIMES FINDING MR. WOODBURY COMPETENT, THERE IS NO OTHER DECISION WE COULD COME TO OTHER THAN MR. WOODBURY WAS COMPETENT. WHICH THEN LEADS US TO WHETHER HE WAS--

[INAUDIBLE]

BUT THE ELEVATION IN THAT STANDARD COMES NOT WITH A SERIOUS MENTAL ILLNESS, IT COMES WITH WHETHER OR NOT THE IT WAS WAS CAPABLE OF CONDUCTING THE TRIAL.

AND, AGAIN, HAVING THE BENEFIT OF HINDSIGHT, HE WAS CAPABLE. HE DID A PRETTY GOOD JOB. HE DIDN'T PREVAIL, BUT THAT'S NOT REALLY, AGAIN, THE STANDARD THAT THE COURT HAS TO LOOK AT. IT'S BASICALLY CAN HE BEHAVE IN COURT, AND HE DID.

I MEAN, THERE ARE TIMES THAT HE ASKED QUESTIONS MORE ARTICULATELY THAN LAWYERS DO. HE WENT INTO THIS WITH A VERY, VERY CLEAR PLAN.

HE HAD A DEFENSE SET UP WHERE HE WAS GOING TO TRY TO MINIMIZE HIS BEHAVIOR.

IF YOU LOOK AT HOW UPSET MR. WOODBURY WAS THAT HIS CONFESSION HAD BEEN RECORDED, YOU CAN SEE THAT PART OF HIS PLAN WHEN HE WENT IN AND WANTED TO GO TO TRIAL RIGHT AWAY, HE DEMANDED HIS SPEEDY TRIAL RIGHTS, HE DIDN'T WANT THAT VIOLATED EITHER.

HIS PLAN WAS TO ADMIT THAT IT OCCURRED AND THEN EXPLAIN TO -- AND THERE IS A POINT IN HIS TESTIMONY THAT HE MAKES A COMMENT HE DOESN'T WANT ANY

HELP.

IT GOES TOWARD THE ABILITY TO
CONDUCT A TRIAL.

I DON'T WANT MENTAL HEALTH
EVIDENCE, THIS IS OKEECHOBEE AND
DEMOGRAPHICS ARE WHAT THEY ARE.
IT IS A DISCRETE SECTION OF THE
COUNTY IN THE POPULATION AND HE
WANTS EVIDENCE THE PERSON HE
KILLED WAS NOT ONLY A CHILD
MOLESTER BUT POTENTIAL RAPIST
AND HE WILL APPEAL TO HIS PEOPLE
AND HE SAYS WHAT WOULD ANY
NORMAL PERSON IN AMERICA DO, AND
BLOW THE GUY'S HEAD OFF IF
SOMEBODY TRIED TO RATE YOU.

IT IS CLEAR THAT OKEECHOBEE
DIDN'T WANT THIS OKEECHOBEE
JURY, BUT IT WAS REASONABLE FOR
HIM TO KILL A CHILD MOLESTER.
LOOKING AT THAT AND HIS TRIAL
STRATEGY, NOT REALLY A QUESTION,
WITH THE BENEFIT OF HINDSIGHT,
YOU CAN WATCH HOW WE BEHAVE, TO
GET CLOSE TO MEETING THE
STANDARD.

WHEN MEDICATED.

EVEN IF IT IS THAT ROSE TO THE
NECESSARY LEVEL WHICH IS THE
DEFENDANT IS INCAPABLE OF TAKING
CROWD PROCEEDINGS ON HIS OWN.

I WOULD LIKE TO LOOK AT THE
MEDICATION COMPONENT.

THE CASE LAW IS CLEAR A PERSON
WHOSE MEDICATED, THAT MAKES THEM
COMPETENT.

THIS IN THE TRIAL COURT, IT DOES
HAVE SOME SIDE EFFECTS.

I'M NOT EXPERIENCING THOSE AND
IN FACT I AM DOING PRETTY GOOD.
HE HANDLED THE BOTTLE, THE JUDGE
PUT THE SIDE EFFECTS ON THE
RECORD.

READING THE RECORD START TO
FINISH, THAT IS AN EXTREMELY
DIFFERENT IDEA THAN MOST PEOPLE
CONSIDER.

THE FACT THAT DOCTOR SISTER SAID
HE WAS MANIC AT THE TIME OF
TRIAL, THE STATE BELIEVES THIS

VERY SUSPECT, THERE IS NO WAY TO REVIEW THE TRANSCRIPTS BECAUSE THEY WERE NOT PREPARED YET.

ALL WE HAVE TO JUDGE WHAT HE BASED HIS OPINION ON IS WHAT OKEECHOBEE TOLD HIM.

THIS IS OKEECHOBEE WHO WAIVED STATUTORY HEALTH SO HE WOULDN'T HAVE TO SUBMIT TO AN EXAM.

THE JUDGE IN HIS WISDOM TOLD MIA CHAY BROWN TEAM TELL THE DOCTOR EVERYTHING HE CAN, HE WAS BROUGHT ON BOARD FOR MEDICATION AND MEDICATION ALONE, WE PUT MATTHEW CONIGLIARO IN THE POSITION, NOT SAYING IT IS A BAD IDEA BUT POSTCONVICTION, WOULD PRESENT SELF-SERVING EVIDENCE HE WANTED WITH NO ABILITY FOR THE STATE TO VERIFY THAT SO I THINK WHILE WE LOOK AT HIS REPORT THE COURT CAN GIVE IT SOME SKEPTICISM BASED ON WHERE THAT CAME FROM ESPECIALLY IF YOU HOLD THE RECORD AND SEE THAT OKEECHOBEE WAS A VERY PHILANTHROPIC PERSON AT THIS TRIAL.

A COUPLE POINTS I WOULD LIKE TO ADDRESS, HE DID ENGAGE IN THE DISCOVERY PROCESS AND IF YOU REMEMBER HE WAS UPSET THE CONFESSION HAD BEEN RECORDED. HE KNEW HE WAS GUILTY.

HE SAID I KNOW, I WAS THERE BUT HE DID ASK CERTAIN PORTIONS TO BE EDITED OUT WHERE HE ADMITTED TO KILLING THE THREE PEOPLE IN NEW HAMPSHIRE SO MICHAEL LAWRENCE WOODBURY DID ENGAGE IN THE DISCOVERY PROCESS.

GOING BACK TO DOCTOR BILL FURST'S REPORT -- IN DOCTOR SESSTA'S REPORT HE MENTIONS MISTER MICHAEL LAWRENCE WOODBURY WAS MEDICATED HE DIDN'T BOTHER WITH A BLOOD TEST OR CHECK THE OTHER LEVEL, HE MAKES THAT ASSERTION THAT HE WAS MEDICATED BUT IF YOU GO THROUGH MICHAEL

LAWRENCE WOODBURY'S MEDICAL RECORDS, THIS ISN'T THE SAME DOSAGE AS 200 MILLIGRAMS A DAY AND MICHAEL LAWRENCE WOODBURY WAS RECEIVING THAT IN 2011. RECEIVING THE SAME DOSAGE SEEMS MORE LIKE IT IS AN APPROPRIATE DOSAGE.

LOOKING AT MICHAEL LAWRENCE WOODBURY'S BEHAVIOR IN COURT IT SEEMS LIKE APPROPRIATE DOSAGE. SINCE MICHAEL LAWRENCE WOODBURY -- IT LOOKS LIKE AN APPROPRIATE DOSAGE.

TO HAVE DOCTOR SESSTA AFTER THE FACT THROW ALL OF MICHAEL LAWRENCE WOODBURY'S BEHAVIOR IN QUESTION IT SEEMS DISINGENUOUS. ONCE WE DECLARED THAT HE IS CAPABLE OF WAIVING HIS RIGHT TO COUNSEL, THE NEXT STEP IS DOES HE PLEAD GUILTY?

THE STANDARD OF CONFIDENCE, HE WAS COMPETENT TO DO THAT. NOW REASONABLE PERSON, THAT IS A REALLY TOUGH STANDARD FOR MICHAEL LAWRENCE WOODBURY TO OVERCOME.

WE HAVE TO GIVE OVERWHELMING DEFERENCE TO THE TRIAL COURT, ENGAGED IN THOUGHTFUL DISCUSSION WITH MICHAEL LAWRENCE WOODBURY 12 SEPARATE TIMES WITH HIS WAIVER OF COUNSEL.

NOT ONLY THAT HE ENGAGED IN THIS DISCUSSION, HOW ARE YOU FEELING. IT IS IMPORTANT FOR THE COURT TO KNOW STANDBY COUNSEL WAS PRESENT THE ENTIRE TIME.

HE TOLD HIS SIDE OF THE STORY, PLED GUILTY ABRUPTLY TO BE CROSS-EXAMINED AND ENTERED INTO A PLEA -- MICHAEL LAWRENCE WOODBURY THROUGH THE COURSE OF THE TRIAL TALK TO HIS DEFENSE ATTORNEY, 20 SEPARATE TIMES. HE MET WITH STANDBY COUNSEL DURING THE TRIAL 20 SEPARATE TIMES.

THE MENTAL HEALTH EVALUATION,

PUTTING MICHAEL LAWRENCE
WOODBURY IN JAIL.

THIS WAS A ROBUST RELATIONSHIP
BETWEEN THESE PEOPLE AND MOVING
BACK TO COMPETENCY THERE IS A
STANDARD, CASE LAW THAT SUGGESTS
STANDBY COUNSEL COULD COME
FORWARD AND SAY SOMETHING BUT
CONSIDERING STANDBY COUNSEL WAS
UPSET THAT THE COURT WAIVED HIS
PRIVILEGE AND ASKED FOR MICHAEL
LAWRENCE WOODBURY'S STATEMENTS
THE COURT CAN CONCLUDE THEY HAD
A GOOD CLIENT ATTORNEY ATTORNEY
CLIENT RELATIONSHIP, WOULD BE
PRIVILEGED.

THEY WAIVED THAT PRIVILEGE WITH
MENTAL HEALTH ENGAGEMENT.

THERE JUST ISN'T ANY EVIDENCE,
NONE IN THE RECORD, NONE IN
MICHAEL LAWRENCE WOODBURY'S
STATEMENTS, THE COURT DIDN'T
HAVE ANY CONCERNS, THE
PROSECUTOR DIDN'T HAVE ANY
CONCERNS, STANDBY COUNSEL DIDN'T
HAVE ANY CONCERNS AND MICHAEL
LAWRENCE WOODBURY DIDN'T HAVE
ANY CONCERNS AND GIVING THIS
OVERWHELMING DEFERENCE TO THE
TRIAL JUDGE, THE STATE IS
HARD-PRESSED TO SEE WHAT ELSE HE
COULD HAVE DONE TO MAKE SURE
MICHAEL LAWRENCE WOODBURY'S
RIGHTS WERE NOT VIOLATED, AND
BEING THE CAPTAIN OF HIS
OWNERSHIP.

IF YOU HAVE ANY QUESTIONS ON ANY
OTHER ISSUES?

NOW?

THE STATE WOULD ASK THE COURT IS
TERM -- AFFIRM THE JUDGMENT.

>> THANK YOU.

WE NOW TURN TO REBUTTAL
ARGUMENT.

>> I WANT TO POINT OUT THE RULE
DOES REQUIRE THE COURT TO MAKE A
DETERMINATION, WHETHER THEIR
SEVERE MENTAL ILLNESS, IT THE
COURT TRULY LOOKED INTO THE
NATURE AND EXTENT OF HIS MENTAL

ILLNESS BECAUSE HE DID NOT OBSERVE ANYTHING THAT CAUSED HIM CONCERN.

ALSO I DON'T THINK WE CAN CONSIDER STANDBY COUNSEL AND CERTAIN STANCES OF THIS CASE GIVEN THEY WERE ORDERED SPECIFICALLY BY THE TRIAL COURT NOT TO DO ANYTHING AND ALL THE DECISIONS WERE LEFT TO THE DEFENDANT.

AS TO HIS COMPETENCY I DON'T THINK STANDBY COUNSEL FELT THEY HAD THE ABILITY TO RAISE THOSE CONCERNS.

STANDBY COUNSEL DOESN'T HOLD THE SAME METHOD OR DUTIES AS DEFENSE COUNSEL AND THERE IS NO SUCH THING AS INEFFECTIVE STANDBY COUNSEL WHICH I WOULD SURELY RAISE A CASE LIKE THIS WHERE YOU HAVE AN EVALUATION THAT HAS INSTRUCTIONS FOR TRIAL COURT TO CONSIDER DECOMPENSATED MENTAL STATE WHEN YOU BRING THAT TO THE COURT'S ATTENTION.

ALSO COUNSEL HAD MENTIONED HE ENGAGED IN THE DISCOVERY PROCESS.

SOME OF THE DISCOVERY WAS ON A ZIP DRIVE IN VIDEO FORMAT, HE HADN'T LOOKED AT THAT.

HE WAS TASKED WITH DECIDING WHETHER HE WANTED TO HAVE ANY REDACTIONS TO THE VIDEO AND INSTEAD OF DOING THAT HE WROTE A LETTER TO THE PROSECUTOR SAYING IT IS NOT HIS JOB TO PLACE THE EVIDENCE AND THEN HE WROTE ANOTHER LETTER TELLING THE PROSECUTOR IT WAS GAME -- STEP HIS GAME UP AND FELT THE NEED TO SAY I AM UNDER THE COMPULSION TO TELL YOU A NICE THING, THIS DOESN'T REFLECT AN INDIVIDUAL TAKING THE PROCESS SERIOUSLY AND RATIONALLY COMING UP WITH A DEFENSE.

>> SORRY TO INTERRUPT YOU.
I WONDER WHAT YOU SAID ABOUT

COUNSELING.

YOU ARE NOT SUGGESTING THERE IS ANYTHING THAT WOULD HAVE PROHIBITED OR PREVENTED STANDBY COUNSEL HAD ANY REASON TO BELIEVE BASED ON THEIR INTERACTIONS WITH THE DEFENDANT TO ALERT THE COURT TO THE POSSIBILITY THAT THEY WERE NOT MENTALLY COMPETENT TO BE DOING WHAT THEY WERE DOING.

WHERE YOU SUGGESTING THEY COULDN'T HAVE DONE THAT IF THEY HAD REASON TO BELIEVE THAT?

>> I WOULD HOPE THEY HAD THE ABILITY TO DO SO BUT THE ORDER ISSUED BY THE TRIAL COURT SPECIFICALLY TELLS THEM THEY ARE NOT ALLOWED TO DO ANYTHING.

IN THIS CASE GIVEN THE CIRCUMSTANCES OF THE WAY THE TRIAL COURT ISSUED ITS ORDER IT COULD POTENTIALLY BE THE REASON STANDBY COUNSEL DIDN'T SAY ANYTHING.

NORMALLY I DON'T THINK THEY WOULD APPEAL TO HAVE THE ABILITY TO DO SO.

I THINK IT IS HARD TO REQUIRE A DEFENDANT TO PROVE ACTUAL INCOMPETENCY WHEN WE HAVE THESE PROCEDURES IN THE COURT IS SUPPOSED TO FOLLOW THEM AND HAVE AN ADEQUATE RECORD TO MAKE THESE DETERMINATIONS.

BECAUSE THERE WAS NO EVALUATION I CAN'T TELL YOU WHAT IT WAS AT THE TIME OF TRIAL.

WE ARE JUST ASSUMING BASED ON OBSERVATION ALONE THAT THERE WAS NOTHING WRONG WITH HIS COGNITIVE FUNCTION.

I THINK HAD THE COURT FOLLOWED PROCEDURE AND ISSUED AN EVALUATION, DETERMINING WHETHER SEVERE MENTAL ILLNESS, EVEN HIS ABILITY TO PROCEED TO TRIAL THAT THERE WOULD BE A DIFFERENT OUTCOME BUT IT IS UNCERTAIN WHEN PROCEDURAL RULES WEREN'T

FOLLOWED, LEAVING HIS MENTAL STATE UNCERTAIN THAT IS THE ANALYSIS, THAT IS THE FULL FUNDAMENTAL ERROR.

THE TIMES MAY BE DIFFICULT, TRIAL COURT HAS TO FOLLOW THESE RULES OF PROCEDURE BECAUSE YOU HAVE TO INSURE THE FUNDAMENTAL FAIRNESS OF THE SYSTEM, DEAL WITH THE FACT THAT COURTS ARE SUPPOSED TO BE FAIR AND EQUITABLE AND SHOULDN'T SUGGEST THAT CAN BE DONE IN A CASE WHERE THERE IS UNCERTAINTY AS TO HIS MENTAL STATE SO THEREFORE I WOULD SAY ALLOWING THIS DEFENDANT WITH SEVERE MENTAL ILLNESS TO REPRESENT HIMSELF WITH INQUIRY INTO HIS MENTAL CAPACITY, HIGHLIGHTED THE, DENIED HIM DUE PROCESS FOR A NEW TRIAL.

UNLESS THERE'S A QUESTION THE COURT HAS.

>> THANK YOU, COUNSEL.

THANK YOU FOR YOUR ARGUMENTS AND THE COURT WILL TAKE UP THE FINAL CASE.