>> THE CASE OF NOETZEL V. THE STATE.
COUNSEL FOR THE APPELLANT.
>> THANK YOU VERY MUCH, MR. CHIEF JUSTICE.
I'M BAYA HARRISON, COURT-APPOINTED COUNSEL FOR THE DEFENDANT.
I'VE ASKED TO RESERVE TEN MINUTES, IF YOU WOULD ALLOW ME, FOR REBUTTAL.
THIS IS THE DIRECT APPEAL OF A JUDGMENT OF FIRST-DEGREE MURDER AND A SENTENCE OF DEATH PLUS OTHER SANCTIONS.
THE FACTS IN THE CASE, YOUR HONOR, ARE REALLY NOT IN DISPUTE.
MR. NOETZEL WAS SERVING A LIFE SENTENCE FOR ROBBERY.
HE AND CO-DEFENDANT JESSE BAYLOR MURDERED ANOTHER INMATE BY STABBING AND CHOKING HIM TO DEATH.
THEY ATTACKED A PRISON GUARD WHO, FORTUNATELY, SURVIVED.
MR. NOETZEL WAIVED HIS RIGHT TO COUNSEL, WAIVED A JURY, PLED GUILTY AND WAS ULTIMATELY SENTENCED TO DEATH.
MR. NOETZEL EXPRESSED A DESIRE ON SEVERAL OCCASIONS TO BE EXECUTED, BUT HE DID NOT STIPULATE TO THE DISTANCE OR THE SUFFICIENCY OFF AGGRAVATED FACTORS.
YOUR HONOR, THE ISSUE APPEAL IS AS FOLLOWS: WHETHER THE TRIAL COURT ERRED IN FAILING TO CONDUCT AN ADEQUATE FARETTA INQUIRY AND ESPECIALLY TO RECONSIDER MR. NOETZEL'S COMPETENCY TO WAIVE COUNSEL AND REPRESENT HIMSELF AFTER IT WAS REVEALED PRIOR TO THE SPENCER HEARING THAT HE SUFFERED FROM PARANOID SCHIZOPHRENIA.
FLORIDA RULE OF CRIMINAL PROCEDURE 3.111, ON THE ONE HAND, PROTECTS A DEFENDANT'S CONSTITUTIONAL RIGHT TO SELF-REPRESENTATION EXCEPT WHEN THE DEFENDANT HAS A SEVERE

MENTAL ILLNESS THAT INTERFERES
WITH THE ABILITY TO CONDUCT
TRIAL PROCEEDINGS BY ONE'S SELF.
AND SCHIZOPHRENIA IS RECOGNIZED
IN THE CASE LAW AS A VERY SEVERE
MENTAL ILLNESS WITHIN THE
MEANING OF THAT RULE.
AS FAR AS THE CHRONOLOGY OF
THINGS IS CONCERNED, MR. NOETZEL
FILED A PRETRIAL MOTION TO
DISCHARGE HIS ATTORNEY AND TO
REPRESENT HIMSELF.
AND THE TRIAL COURT CONDUCTED
WHAT WE HAVE TO ADMIT WAS A,
BASED UPON WHAT THE COURT KNEW,
A FAIR FARETTA HEARING ON THE
MOTION DURING JANUARY 2020.
THE COURT EXPLAINED THE DANGERS
OF SELF-REPRESENTATION BUT MADE
ONLY A VERY LIMITED INQUIRY INTO
MR. NOETZEL'S MENTAL STATUS.
MR. NOETZEL ONLY ADMITTED THAT
HE SUFFERED FROM DEPRESSION AND
THAT HE WAS PRESCRIBED
MEDICATION.
HE NOTED THAT HE WAS REFUSING TO
TAKE THIS MEDICATION SO THAT HE
COULD REMAIN CLEAR-HEADED.
IT WAS AT THIS POINT, YOUR
HONOR, THAT DEFENSE COUNSEL--
BEFORE DEFENSE COUNSEL WAS
DISCHARGED, DEFENSE COUNSEL
ASKED THE COURT TO APPOINT AN
EXPERT TO DETERMINE FROM A
SCIENTIFIC AND MEDICAL
STANDPOINT WHETHER OR NOT
MR. NOETZEL WAS COMPETENT TO
WAIVE COUNSEL.
THE COURT, HOWEVER, DISAGREED,
DENIED THAT REQUEST, WENT AHEAD
AND COMPLETED THE FARETTA
PROCEEDING, ACCEPTED
MR. NOETZEL'S GUILTY PLEA ON ALL
COUNTS INCLUDING THE CONVICTION
FOR FIRST-DEGREE MURDER.
THEREAFTER, THE COURT INDICATED
OUT OF AN ABUNDANCE OF CAUTION
THE COURT APPOINTED A MEDICAL
DOCTOR, A PSYCHIATRIST TO
DETERMINE MR. NOETZEL'S
COMPETENCY TO PROCEED.
AND HERE WE NOTE AN IMPORTANT
DISTINCTION.
THE APPOINTMENT OF THE DOCTOR

WAS NOT TO DETERMINE ANYTHING
OTHER THAN THE COMPETENCY TO
PROCEED AS OPPOSED TO COMPETENCE
TO REPRESENT HIMSELF.
THE DOCTOR FILED THIS REPORT IN
FEBRUARY 2020, FOUND MR. NOETZEL
COMPETENT TO PROCEED AND-- OF
BIPOLAR DISORDER.
AND THIS IS A VERY IMPORTANT
FINDING FROM THE DOCTOR.
THERE WAS THEN, IT FOLLOWED IN
FEBRUARY OF 2020 A PENALTY PHASE
TRIAL.
THE ATTORNEY GENERAL HAS
INDICATED THAT HE DIDN'T THINK
IT WAS MUCH OF A TRIAL, BUT IT
ACTUALLY WAS.
DURING THIS PENALTY PHASE
PROCEEDING, THE STATE CALLED
FIVE WITNESSES AND INTRODUCED
SEVERAL DOCUMENTS INTO EVIDENCE.
MR. NOETZEL EVEN CROSS-EXAMINED
SOME OF THE WITNESSES, HE EVEN
OBJECTED TO ONE EXHIBIT, AND HE
INTRODUCED THE DOCTOR'S FINDINGS
INTO EVIDENCE AS MITIGATION.
SO THIS WAS, CLEARLY, A JURY
TRIAL.
AND ACCORDING TO RULE 3.111, A
DEFENDANT WHO REPRESENTS HIMSELF
MUST NOT HAVE THE KIND OF MENTAL
ISSUES THAT MR. NOETZEL HAD IN
ORDER TO DO THAT.
>> I'M SORRY.
ARE YOU ADVOCATING ADOPTION OF A
PER SE RULE?
>> NO, SIR.
NO, YOUR HONOR, I AM NOT.
I THINK THAT'S A VERY GOOD
POINT.
I DON'T THINK THAT THIS CASE
JUSTIFIES A DECISION THAT SIMPLY
BECAUSE MR. NOETZEL WAS
DIAGNOSED AS A PARANOID
SCHIZOPHRENIC, THAT THIS WAS THE
END OF THE STORY AND THE
SENTENCES WOULD HAVE TO BE
VACATED.
ON THE CONTRARY, AS WE INDICATE,
THERE WAS A LATER PSI ORDER, AND
IN THE PRESENTENCE INVESTIGATIVE
REPORT, THIS DIAGNOSIS OF
PARANOID SCHIZOPHRENIA CAME OUT.
AND IT IS THE WAY THAT THE TRIAL

COURT HANDLED THAT THAT IS OF CONCERN.
AND REMEMBER, MR. NOETZEL HAD ALREADY BEEN DETERMINED TO BE BIPOLAR.
THE COMBINED BIPOLAR DISORDER WITH SCHIZOPHRENIA, AND UNDER SO MUCH OF THE CASE LAW IN FLORIDA THIS WOULD ALMOST PER SE NOT ALLOW THIS GENTLEMAN TO REPRESENT HIMSELF.
BUT I-- TO KIND OF ANTICIPATE YOUR QUESTION, I DON'T THINK IT WAS COMPLICIT.
WHAT WE ARE CONTENDING IS THAT THE TRIAL COURT HAD A CONTINUING OBLIGATION TO CONDUCT A FARETTA INQUIRY INTO MR. NOETZEL'S MENTAL STATUS ONCE THE SCHIZOPHRENIA DIAGNOSIS CAME TO LIGHT BEFORE ALLOWING MR. NOETZEL TO CONTINUE TO REPRESENT HIMSELF.
IN OTHER WORDS, THE TRIAL COURT SHOULD HAVE TAKEN THIS DIAGNOSIS TO INCLUDE THE BIPOLAR FINDINGS, IMPANELED OR APPOINTED EXPERTS TO LOOK AT THE BIG PICTURE FROM THE SCIENTIFIC, A MEDICAL STANDPOINT AND ADVISE THE COURT ACCORDINGLY.
THIS DIDN'T HAPPEN.
THE TRIAL COURT INSTEAD GAVE THE DIAGNOSIS SLIGHT WEIGHT AND WENT AHEAD AND PROCEEDED TO SENTENCE MR. NOETZEL TO DEATH OF AND--
>> COUNSEL, COUNSEL, I'M SORRY TO INTERRUPT YOU.
SO HOW DO YOU-- HOW SHOULD WE VIEW THE FACT THOUGH, SO IN THE PSI THE DEFENDANT KIND OF SELF-DISCLOSES THIS PRIOR DIAGNOSIS.
THERE DOESN'T SEEM TO BE ANY REAL SORT OF DETAIL ADDED TO THAT.
HE WAS, THOUGH, IN THIS PROCEEDING AT THE DIRECTION OF THE COURT EVALUATED, AND, YOU KNOW, THERE WASN'T ANY INDICATION THERE THAT HE HAD ANY MENTAL ILLNESS THAT WOULD PREVENT HIM FROM, YOU KNOW, WAIVING COUNSEL AND THAT.

SO, YOU KNOW, SO, I MEAN, HOW DO
YOU SORT OF, HOW DO YOU PUT
THOSE TWO THINGS TOGETHER AS FAR
AS, YOU KNOW, HOW SHOULD WE LOOK
AT THAT?
>> YOUR HONOR, THE DOCTOR DID
NOT EXAMINE MR. NOETZEL TO
DETERMINE WHETHER HE HAD THE
ABILITY TO REPRESENT HIMSELF,
ONLY WHETHER HE WAS COMPETENT TO
PROCEED, AND THAT IS PRIMARILY
TO ASSIST HIS COUNSEL EVEN
THOUGH THE JUDGE HAD DISMISSED
HIS COUNSEL.
AND SO AS I WAS ASKED EARLIER,
I'M NOT SAYING THIS WAS A SLAM
DUNK.
IT WAS NOT A SLAM DUNK FOR THE
DEFENDANT.
IT WAS NOT A PER SE BASIS TO
VACATE THE JUDGMENT AND
SENTENCE.
BUT AT THAT POINT, THE TRIAL
JUDGE HAD AN OBLIGATION.
THERE'S A CONTINUING OBLIGATION
FOR TRIAL JUDGES TO CONSIDER
MATTERS RELATED TO FARETTA.
AND THE TRIAL COURT SHOULD HAVE
APPOINTED EXPERTS, GOTTEN
SCIENTIFIC EVALUATION OF THIS
SITUATION GIVING BOTH SIDES AN
OPPORTUNITY TO BE HEARD.
AND THEN IF THE DIAGNOSIS TURNED
OUT TO BE INVALID, PROCEED WITH
SENTENCING.
BUT IF IT TURNED OUT THAT THE
DIAGNOSIS WAS VALID, I MEAN, THE
JUDGE FOUND IT TO BE VALID.
BUT IF IT WAS FOUND TO BE
SCIENTIFICALLY VALID, THEN I
THINK THIS WOULD BE A FAILURE TO
CONDUCT AN ADEQUATE FARETTA
PROCEEDING, AND THE JUDGMENT AND
SENTENCE WOULD HAVE TO BE, WOULD
HAVE TO BE SET ASIDE.
WITH THIS IN MIND, YOUR HONOR, I
WILL STOP NOW UNLESS THERE ARE
FURTHER QUESTIONS AND RESERVE MY
TIME FOR REBUTTAL.
>> ALL RIGHT.
COUNSEL FOR THE STATE.
>> MR. CHIEF JUSTICE AND MAY IT
PLEASE THE COURT, MY NAME IS
JASON RODRIGUEZ, ASSISTANT

ATTORNEY GENERAL FOR THE STATE
OF FLORIDA.
IN MY TIME BEFORE THE COURT,
I'LL EXPLAIN WHY THE TRIAL COURT
PERMITTED APPELLANT TO EXERCISE
HIS CONSTITUTIONAL RIGHT TO
REPRESENT HIMSELF.
I WANT TO JUMP RIGHT INTO ISSUE
ONE BECAUSE IT SEEMS LIKE FROM
WHAT APPELLANT HAS ARGUED, THE
MAIN ISSUE THAT'S GOING TO BE
REOCCURRING IN THIS CASE, THE
FAILURE TO MAKE A FINDING UNDER
RULE 3.111, THAT HIS MENTAL
STATUS WAS IMPAIRED TO THE POINT
THAT HE COULD NOT REPRESENT
HIMSELF AT TRIAL.
AND WE CAN CUT THIS, THIS PART
OF THE ARGUMENT WITHOUT A GREAT
DEAL OF LEGAL ANALYSIS BY
LOOKING AT THE TRIAL COURT'S
EXPLICIT FINDINGS ON THE RECORD.
I'LL DIRECT YOUR ATTENTION TO
PAGE 300, AND IT GOES THROUGH
PAGE 301.
THE TRIAL COURT HAS REVIEWED THE
REPORT, THE TRIAL COURT TURNS TO
APPELLANT AND SAYS I'M
CONSIDERING THIS REPORT ON TWO
THINGS, YOUR ABILITY TO
REPRESENT YOURSELF AND YOUR
COMPETENCY TO PROCEED.
APPELLANT NOETZEL SAYS HE HAS NO
AMENDMENT CONSIDERING THE
REPORTS FOR THOSE DUAL PURPOSES.
AND THEN THE TRIAL COURT MAKES
THIS EXPLICIT FINDING: THERE'S
NO INDICATION OF ANY SORT OF
MENTAL INFIRMITY OR DEFECT THAT
WOULD PREVENT YOU FROM DOING SO,
IN THE CONTEXT SPEAKING OF
PROCEEDING AND REPRESENTING
YOURSELF.
SO TO THE EXTENT THAT AN EDWARDS
FINDING IS REQUIRED UNDER RULE
3.911D3 UNDER THESE
CIRCUMSTANCES, THE TRIAL COURT
MADE THAT FINDING.
AND THERE WAS NO OBJECTION AND
EXPRESSED WAIVER BY APPELLANT
THE EVIDENCE HE UTILIZED TO MAKE
THAT FINDING.
SO THAT'S AN EASY WAY FOR US TO
REDIRECT THE SITUATION AWAY FROM

EVEN THE LAW THAT'S INVOLVED HERE AND WHETHER A FINDING WAS REQUIRED.
THE TRIAL COURT DID EXACTLY WHAT APPELLANT ARGUES HE SHOULD HAVE DONE IN MAKING THIS FINDING.
THERE WAS ALSO, APPELLANT ARGUED THAT THERE WAS A LIMITED INQUIRY INTO THE FARETTA AND THE MEDICATION THAT HE WAS TAKING.
ON PAGE 504 OF THE RECORD THROUGH REALLY PAGE 506, THE TRIAL COURT ASKED APPELLANT IF HE SUFFERED FROM ANY MENTAL ILLNESSES OR DIAGNOSES THAT WOULD IMPAIR HIS SELF-REPRESENTATION.
APPELLANT SAID ONLY DEPRESSION, AND THAT DOES NOT IMPAIR ME.
SO THE TRIAL COURT'S INQUIRY WAS AS COMPLETE AS IT COULD HAVE BEEN WITH THE DEFENDANT, WITH THE INFORMATION THAT THE DEFENDANT GAVE.
BUT THE TRIAL JUDGE APPOINTED THE DOCTOR.
THE DOCTOR LISTED THREE AILMENTS THAT APPELLANT SUFFERED, BIPOLAR DISORDER, ANTISOCIAL PERSONALITY DISORDER AND DEPRESSION.
OF NOTE, NOTHING IN THE REPORT INDICATED PARANOID SCHIZOPHRENIA.
THE ONLY EVIDENCE IN THE RECORD OF PARANOID SCHIZOPHRENIA AT ALL IS AN OFFHAND, ONE-SENTENCE COMMENT IN THE PSI THAT CONTRADICTS WHAT APPELLANT NOETZEL HAD TOLD THE TRIAL COURT EARLIER DURING COLLOQUY.
SO IN LIGHT OF THIS JUST FROM A FACTUAL STANDPOINT, THE FACTS DO NOT SUPPORT THE CONTENTIONS THAT APPELLANT HAS BREAKS.
THE TRIAL COURT DETERMINED HE WAS COMPETENT TO WAIVE COUNSEL AND ENTER A GUILTY PLEA, AND UNDER THE UNITED STATES SUPREME COURT, THAT WAS ALL THE TRIAL COURT NEEDED TO DO TO DETERMINE COMPETENCY.
INDEED, THAT CASE GOES A STEP FURTHER AND SAYS COMPETENCY IS NOT REQUIRED, COMPETENCY

DETERMINATIONS AREN'T REQUIRED
EXCEPT WHEN THERE'S REASON TO
DOUBT THE DEFENDANT IS
COMPETENT.
AND IN THIS CASE, BOTH THE TRIAL
COURT AND DEFENSE COUNSEL-- AND
SPEAKING OF THE TRIAL COURT
ASKING FOR AN ABUNDANCE OF
CAUTION EVALUATION SAID THEY
HAVE NO REASON TO BELIEVE THAT
THIS DEFENDANT WAS INCOMPETENT
TO PROCEED.
SO THE TRIAL COURT WENT ABOVE
AND BEYOND WHAT'S REQUIRED OF
HIM UNDER THE LAW IN APPOINTING
THIS EXPERT.
IT WAS NOT REQUIRED TO DO SO.
BUT WHAT APPELLANT HAS ARGUED ON
APPEAL, THAT THIS EXPERT WAS
ONLY TO EVALUATE HIS WILLINGNESS
TO STAND TRIAL, THIS ARGUMENT'S
FLATLY CONTRADICTED BY THE
UNITED STATES SUPREME COURT CASE
WHERE IT HELD THAT A CAPITAL
DEFENDANT WHO IS GOING TO A
PENALTY PHASE WAS COMPETENT TO
REPRESENT HIMSELF WHEN HE COULD
MAKE THAT DECISION IN THE PLEA
PHASE.
IF HE WAS COMPETENT TO STAND
TRIAL, HE WAS COMPETENT TO
REPRESENT HIMSELF.
THE INQUIRIES ARE IDENTICAL, AND
THE MAJORITY REJECTED WHAT
APPELLANT HAS ARGUED IN THIS
APPEAL AND JUSTICE BLACKMAN
RELIED ON IN HIS DISSENT.
QUOTE: EVEN MORAN, THE DEFENDANT
WHO PLEADED GUILTY, WAS REQUIRED
TO DEFEND HIMSELF DURING THE
PENALTY PHASES, AND DEFENDANT--
[AUDIO DIFFICULTY]
MORAN ACTUALLY WENT TO A PENALTY
PHASE IN NEVADA WHICH IS EXACTLY
LIKE THIS CASE WHERE APPELLANT
NOETZEL APPEARS AT A PENALTY
PHASE BEFORE A SINGLE JUDGE
BECAUSE HE WAIVED A PENALTY
PHASE JURY; INTRODUCED EVIDENCE,
CROSS-EXAMINED WITNESSES.
THERE WAS NO INDICATION HE WAS
INCOMPETENT.
HE REPRESENTED HIMSELF FOR A PRO
SE INDIVIDUAL TO THE EXTENT OF

HIS ABILITY WELL.
THERE WAS NO INDICATION AT ANY POINT OF INCOMPETENCE.
MOVING VERY QUICKLY TO THE SECOND POINT THAT THE CHIEF INQUIRY FOR THIS COURT ON THE PARANOID SCHIZOPHRENIA DIAGNOSIS, DOES A PARANOID SCHIZOPHRENIA DIAGNOSIS PROVIDE REASONABLE GROUNDS TO RECONSIDER THE COMPETENCY FINDING THAT THE JUDGE HAD PREVIOUSLY MADE.
AND IN THIS CASE WHERE IT IS A SELF-REPORTED, NON-FIRM DIAGNOSIS THAT WAS NOT IN ANY OF THE DOCTOR'S REPORTS, NOT IN D.O.C.'S RECORDS, THAT WAS NOT REASONABLE GROUNDS TO RECONSIDER THE TRIAL COURT'S PRIOR COMPETENCY DETERMINATION.
THERE WAS NO PER SE REVERSAL OR FUNDAMENTAL ERROR IN THE FAILURE TO HOLD AN ADDITIONAL FARETTA HEARING IN THIS CASE.
YOUR HONORS, UNLESS THIS COURT HAS ANY FURTHER QUESTIONS, I'LL ASK THIS COURT TO AFFIRM THE JUDGMENTS BELOW AND YIELD THE REMAINDER OF MY TIME.
>> THANK YOU, COUNSEL.
REBUTTAL.
>> VERY BRIEFLY, YOUR HONOR, BECAUSE I THINK THAT I'VE MADE THE POINTS THAT I FELT NEEDED TO BE MADE, AS TO THE PARANOID SCHIZOPHRENIA DIAGNOSIS, THE JUDGE HIMSELF, THE TRIAL JUDGE HIMSELF FOUND THIS DIAGNOSIS TO BE CREDIBLE.
I AGREE THAT IT WAS PROVIDED BY MR. NOETZEL HIMSELF DURING A PSI.
YOU'VE GOT TO REMEMBER MR. NOETZEL WAS TRYING TO KILL HIMSELF.
MR. NOETZEL DIDN'T WANT ANY RELIEF.
YOU CAN'T EXPECT HIM TO HAVE ADVOCATED FOR HIS SURVIVAL UNDER THOSE CIRCUMSTANCES.
BUT THE LAW IS VERY CLEAR, WHEN YOU COMBINE BIPOLAR DISORDER WITH PARANOID SCHIZOPHRENIC PROBLEMS, THEN UNDER THE LAW,

THE CASE LAW AT THE VERY LEAST
THE TRIAL JUDGE NEEDED TO
REEVALUATE HIS EARLIER DECISION
AND ACT ACCORDINGLY.
YOUR HONOR, THAT'S ALL I HAVE IN
THIS REGARD ON REBUTTAL, AND I
THANK THE COURT VERY MUCH.
UNLESS YOU HAVE FURTHER
QUESTIONS, I WILL CONCLUDE.
>> ALL RIGHT.
WELL, WE THANK BOTH OF YOU FOR
YOUR ARGUMENTS IN THIS CASE
TODAY.
THAT IS THE FINAL CASE ON THE
COURT'S DOCKET.
SO THIS SESSION OF COURT.