No.

IN THE SUPREME COURT OF THE UNITED STATES

MICHAEL LAWRENCE WOODBURY, PETITIONER

v.

STATE OF FLORIDA, RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

PETITION FOR A WRIT OF CERTIORARI

CAREY HAUGHWOUT
Public Defender

MARA C. HERBERT
Assistant Public Defender
Counsel of Record

Office of the Public Defender
Fifteenth Judicial Circuit of Florida
421 Third Street
West Palm Beach, Florida 33401
(561)355-7600
mherbert@pd15.state.fl.us
appeals@pd15.state.fl.us

CAPITAL CASE

QUESTION PRESENTED

Whether the Florida Supreme Court, rather than applying a heightened standard for competency to represent oneself for defendants with severe mental illness, correctly held — contrary to *Indiana v. Edwards* and other state court decisions — that the trial court's inquiry and determination under the lower standard of competency to waive counsel was sufficient to grant self-representation to a defendant with severe mental illness under the Sixth and Fourteenth Amendments?

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PETITION FOR WRIT OF CERTIORARI

Petitioner Michael Lawrence Woodbury respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of Florida in this case.

OPINION BELOW

The decision of the Florida Supreme Court, reported as *Woodbury v. State*, 320 So.3d 631 (Fla. 2021), is reproduced as *Appendix* p.1-23. The order denying rehearing is not officially reported, but may be found at *Woodbury v. State*, SC19-8, 2021 WL 2550416 (Fla. June 22, 2021), and is reproduced as *Appendix* p.24.

JURISDICTION

The Florida Supreme Court filed an opinion in this case on April 15, 2021 (*Appendix* p.1-23.), and denied rehearing on June 22, 2021 (*Appendix* p.24.). The period for timely filing a petition for certiorari was extended pursuant to the March 19, 2020 Order of this Court. (Order List: 589 U.S.). Due to the Order, the petition is due on Monday, November 22, 2021. This Court has jurisdiction under 28 U.S.C. 1257(a). Woodbury asserted in state court and is arguing here that the State of Florida

violated his constitutional rights under the Sixth and Fourteenth Amendments.

CONSTITUTIONAL PROVISIONS INVOLVED

1. Amendment VI to the Constitution of the United States:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

2. Amendment XIV, Section 1, to the United States Constitution, in relevant part:

> [N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

3. Florida Rule of Criminal Procedure 3.111(d):

> Regardless of the defendant's legal skills or the complexity of the case, the court shall not deny a defendant's unequivocal request to represent himself or herself, if the court makes a determination of record that the defendant has made a knowing and intelligent waiver of the right to counsel, and does not suffer from severe mental illness to the point where the defendant is not competent to conduct trial proceedings by himself or herself.

STATEMENT OF THE CASE

Petitioner, Michael Lawrence Woodbury, is forty-five years old and suffers from bipolar 1 disorder (also known as manic-depressive disorder). He has a decades long history of psychiatric illness dating back to his teenage years. In the early 1990's, Woodbury was hospitalized for psychotic episodes in the state of Maine, where he is originally from.

In 2007, after pleading guilty to three counts of first degree murder, Woodbury was sentenced to life in prison without parole. In 2009, pursuant to an interstate compact order, Woodbury was transferred to the Florida Department of Corrections ("DOC"). DOC prison records reflect a well-documented history of psychiatric illness including several episodes where Woodbury experienced hallucinations, delusions and disorganized thought processes. (R 575-80, 591). By the time Woodbury was indicted on the current offense in 2018, the prison records amassed a total of over 8,000 pages. (R 572, T 1426).

On September 22, 2017, Woodbury tortured his cellmate, Antoneeze Haynes, while housed in a close custody cell secured behind a locked door. (T 1064, 1193). The torture lasted for nearly four hours. Numerous correctional officers negotiated with Woodbury from outside

the cell door. (T 1057, 1068, 1071, 1198). They described his manner and behavior as "not normal;" "very agitated;" "frantic;" "excited;" and "extremely upset." (T 1039, 1047, 1060, 1195-96). A correctional officer saw Woodbury dip his fingers in Haynes' blood and then lick them. (T 1041). He placed a picture of a phoenix on the cell window and explained that it was his spirit animal and that he had telekinetic powers. (T 1216, 1225-26). He demanded to be in charge and called "phoenix." (T 1061-62). Woodbury shouted out bizarre comments such as he was a "demon" and used to run the "ninth level of hell." (T 1218, 1224, 1242-43). He said his rules were "supernatural." He heard the voice of the "Holy Ghost" and his torture of Haynes was a "supernatural battle." (T 1225-26; State's exhibit 1 53:54-54:04).

Once the tactical unit arrived, Woodbury agreed to come out of the cell and was removed without incident. (T 1286, 1303). Haynes later died from the blood loss caused by the severe blunt force trauma he sustained. (T 1157).

On March 13, 2018, Woodbury was indicted for first degree murder. (R 18-19). Subsequently, the State filed a notice of intent to seek the

death penalty. (R 35-36). Six months later, Woodbury would be sentenced to death. (R 245-46).

Woodbury was never represented by counsel in this case. His request for self-representation was granted at his first court appearance and at all subsequent stages of the proceedings. (R 25, 56-57).

At the first appearance hearing, the court was apprised of Woodbury's bipolar diagnosis and that he was currently prescribed Tegretol, a psychotropic medication, which he took twice a day. Despite this knowledge, the court did not inquire into Woodbury's mental state and how it might affect his representational competency. Instead, the court recited a series of pre-prepared questions which elicited "yes or no" responses and were designed to ascertain only whether a knowing and intelligent waiver of counsel was made. The court granted Woodbury's request for self-representation without any inquiry or assessment under the higher standard for representational competence. (SR 651-61).

Two weeks later, Woodbury filed a demand for a speedy trial. (R 39-42). A calendar call hearing was held on April 16, 2018. (T 1-95). Woodbury reaffirmed his desire to represent himself. (R 51). Just as it occurred when Woodbury first came to court after his arrest, the trial

court recited a list of pre-prepared questions fashioned to determine, pursuant to *Faretta v. California*, 422 U.S. 806 (1975), whether Woodbury was apprised of his rights and the inherent risks of self-representation and that he knowingly and intelligently waived his right to appointed counsel. The questions primarily elicited "yes or no" responses and did not shed light on Woodbury's mental capacity to conduct trial proceedings on his own. (T 5-37). Moreover, Woodbury, made every effort to downplay his mental illness. He referred to his bipolar diagnosis as "alleged." He described bipolar disorder as "mood swings, just stuff like that." He acknowledged that his diagnoses dated back to when he was 18-years-old but he did not feel it was "proper." He was a "conscientious objector" to the doctors "take on it." He referred to the psychiatrists as "a bunch of quacks." (T 24-26).

The trial court granted the request for self-representation and determined that Woodbury was competent to waive counsel and that his waiver of counsel was knowingly, voluntarily, and intelligently made. However, the trial court did not conduct a searching inquiry into Woodbury's mental illness and the record is devoid of a determination

under the heightened standard for representational competence. (R 56-57; T 37).

Woodbury announced that he was ready for trial and referred to the guilt phase as "a clown." (T 38-40, 59). He thought lightning would strike before twelve jurors would give him the death penalty. (T 59). In light of his demand for speedy trial, the trial court set the case for jury trial on May 14, 2018. (R 51). The Office of the Public Defender for the Nineteenth Judicial Circuit was appointed as stand-by counsel, however, the court specifically instructed that they would not "be permitted to act as [an] attorney" for Woodbury unless he asked for counsel and the court ordered "that the status of the attorney change." (R 56-57).

A pre-trial status conference was held on May 4, 2018. (T 96-178). The trial court adopted the State's pre-prepared list of questions and agreed to conduct a *Faretta* inquiry at the start of all hearings to "bulletproof" the record from attack on appeal. (R 52, 75-84; T 176). The inquiry contained two questions regarding mental illness: "Have you ever been diagnosed and treated for a mental illness?" and "If yes, please explain in detail the diagnosis, location, and treatment?" (R 82). Prior to start of the guilt phase, the trial court had learned about Woodbury's two

prior hospitalizations in Maine; that Woodbury was presently taking psychotropic medication; and that he had experienced side effects from the medication including sleepiness, blurred vision, difficulty urinating and nervousness. (R 204, T 121-23, 1009-1013). However, Woodbury continued to downplay his mental illness, making comments such as "it's been a lifelong diagnosis, nothing serious." (T 1009).

The guilt phase trial started on May 21, 2018. (T 1292). Throughout trial, with his agreement, Woodbury wore his prison uniform and was chained. (T 153-54, 209). During jury selection, he explained to a potential juror his reason for self-representation: "The reason why I am representing myself, sir, is because it is so simple, a child could do this. I should not even be charged with this crap, that's why. That's all I got to say." (T 940).

After two and a half days of jury trial (T 998-1364), Woodbury indicated he wanted to plead guilty during his trial testimony, stating: "So in the eyes of the law, you know, what the prosecution has charged me with is true. And at this time, I'd like to plead guilty to first-degree premeditated murder, your Honor. What you got?" (T 1364). Woodbury subsequently plead guilty to first degree murder. (R 182; T 1393-96).

Prior to resetting the case for the penalty phase, the trial court granted the prosecutor's motion for a comprehensive mental health evaluation for purposes of mitigation. (R 187, 192; T 1424-27).

Dr. John Sesta completed the evaluation on June 19, 2018. (R 568). Woodbury was diagnosed with "Bipolar I Disorder, Current or most recent episode manic, moderate." (R 591). There was no evidence of malingering. (R 591). Dr. Sesta described Woodbury's mental illness as "severe, persistent and refractory to pharmacotherapy with poor prognosis." (R 590). The standardized psychological testing showed "an acute level of psychological distress." (R 589). While Woodbury's appearance, orientation and speech were normal, his thought process, attention, mood, affect and behavior presented as abnormal consistent with an active manic state of Bipolar disorder. (R 588-89). Dr. Sesta opined that Woodbury was having a subtherapeutic response to the psychotropic medication and cautioned the trial court to consider Woodbury's "decompensated" mental state and "the extent to which it approximates his condition during trial." (R 587, 589).

The penalty phase began on July 23, 2018. (R 235-36). While the trial court conducted a *Faretta* inquiry at the start of this phase, the court

took "judicial notice" of the prior discussions about mental illness rather than addressing it again with Woodbury. (T 1484). The prosecutor did not bring Dr. Sesta's concerns to the trial court's attention. [1]

During the penalty phase, Woodbury waived mental health mitigation. (T 1451-52, 1719). He did not call any witnesses. The only evidence presented were two incident reports which established that Woodbury told officers that Haynes touched him inappropriately. (T 1724; R 546, 548). He believed the only mitigation needed was that he killed Haynes in response to a sexual assault. (T 1451-52).

Woodbury testified. (T 1729-49). While he asked the jurors not to "kill" him, he expressed that it really didn't matter. Specifically, he stated: "Killing me really wouldn't solve anything. But if that's what -- if anyone thinks differently, be my guest and vote for it, you know." (T 1731). He made a similar comment during opening statement, saying "it's pointless to kill me, but if that's what you fixin - -if that's - - if that will make you feel better, go on and do it." (T 1525).

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[1] The trial court did not review the evaluation report until a hearing on September 21, 2018 — well after the jury had returned the death verdict. (T 1879, 1882).

The jury unanimously recommended a sentence of death. (R 239-41; T 1798). In its verdict, the jury found no mitigating circumstances. (R 239-41; T 1802-04). After the jury reached its decision, there was a hearing at which Woodbury had the opportunity to present evidence in favor of a life sentence. (T 1815-1895). He presented none. The court then sentenced him to death. (R 245-46, 275-304; T 1892).

In total, throughout the proceedings, the trial court conducted seven full *Faretta* inquries (SR 651-61; T 5-37; 100-26; 182-98; 1002-15; 1471-85; 1818-31) and seven abridged inquiries. (T 503-04; 842-43; 1180-81; 1294-95; 1388-93; 1459-61; 1639-41). However, the trial court's findings were limited to whether Woodbury was competent to waive counsel, and whether his waiver of counsel was knowing, voluntary, and intelligent. The trial court never assessed Woodbury for representational competence.

REASONS FOR GRANTING THE PETITION

THE FLORIDA SUPREME COURT ERRED IN FINDING NO PROCEDURAL DUE PROCESS ERROR WHEN THE TRIAL COURT GRANTED SELF-REPRESENTATION TO A SEVERELY MENTALLY-ILL DEFENDANT WITHOUT FIRST INQUIRING AND MAKING A DETERMINATION AS TO REPRESENTATIONAL COMPETENCE UNDER THE HEIGHTENED STANDARD

This case involves a question left unresolved by *Indiana v.*

Edwards, 554 U.S. 164 (2008). There, the Court noted that the standard for competence to stand trial is inadequate for determination of whether a defendant is sufficiently competent to conduct trial proceedings such as to allow the exercise of the Sixth Amendment right of self-representation. It has been over a decade since *Edwards* and it remains unclear how states will apply the standard to ensure that the safeguard is uniformly applied to all similarly situated defendants. As discussed below, for fundamental fairness in operation, requiring trial courts to specifically enunciate their individualized, case-specific reasons for determining representational competence is a sufficient remedy.

In *Dusky v. United States*, the Court laid out the standard for determining competency to stand trial. 362 U.S. 402, 402 (1960). For a criminal defendant to be competent to stand trial a defendant must have (1) "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding," and (2) "a rational as well as factual understanding of the proceedings against him." *Id.*

In *Indiana v. Edwards*, the Court rejected the contention that so long as a defendant is competent to stand trial, the defendant is automatically competent to conduct trial proceedings and therefore must

be allowed to exercise his Sixth Amendment right to self-representation. 554 U.S. 164 (2008).

In *Edwards*, the defendant suffered from schizophrenia. As a result, the trial court concluded that "he's competent to stand trial but I'm not going to find he's competent to defend himself." *Id.* at 167-69. After being convicted, the defendant appealed arguing that once he was found competent to stand trial, he had a constitutional right to represent himself. The Indiana Supreme Court held that under *Faretta v. California* and *Godinez v. Moran*, the trial court was bound to let the defendant proceed pro se because he was competent to stand trial. *Id.*

In *Faretta v. California*, the Court held that the Sixth Amendment guarantees a criminal defendant the right to self-representation provided there is a knowing and intelligent waiver of counsel. 422 U.S. 806, 807, 835 (1975). In *Godinez v. Moran*, the Court held that the competency standard for waiving the right to counsel and pleading guilty is the same as the competency standard for standing trial with counsel. 509 U.S. 389, 391 (1993).

The Court in *Edwards* rejected the argument that *Faretta* and *Godinez* were controlling on the issue of competency to conduct trial

proceedings, noting that competency was not in issue in *Faretta* and, in *Godinez*, the defendant "sought only to change his pleas to guilty, he did not seek to conduct trial proceedings, and his ability to conduct a defense at trial was expressly not at issue." *Edwards*, 544 U.S. at 171-73.

The Court recognized that there are "gray-area defendants" who might well be able to assist counsel at trial, but who are unable to perform the tasks necessary to represent themselves without the aid of counsel. *Id.* at 172.

Furthermore, the Court acknowledged that the cases defining the minimum standard of competency to stand trial assume representation by counsel and cannot serve in a context in which the underlying assumption - representation by counsel - does not apply. The Court explained:

> These [stand-trial] standards assume representation by counsel and emphasize the importance of counsel. They thus suggest (though they do not hold) that an instance in which a defendant who would choose to forego counsel at trial presents a very different set of circumstances, which in our view, calls for a different standard.

Id. at 174-75.

Thus, the Court found that the *Dusky* standard for determining competence to stand trial is insufficient to determine whether such gray-

area defendants are competent to proceed pro se. *Id.* at 177. The Court observed that the variable nature of mental illness, both in degree and over time, "cautions against the use of a single mental competency standard" for determining whether a defendant represented by counsel "can proceed to trial" and whether a State "must" permit a defendant to represent himself. *Id.* at 175.

In addition, the Court concluded that the right of self-representation would not "affirm the dignity" or "autonomy" of a defendant lacking "the mental capacity to conduct his defense without the assistance of counsel. *Id.* at 176 (quoting *McKaskle v. Wiggins*, 465 U.S. 168, 176-177 (1984)).

Allowing a gray-area person to represent himself at trial could undermine the appearance of fairness that is critical to criminal proceedings. *Id.* at 177. For those reasons, the Court held that "the Constitution permits states to insist upon representation by counsel for those competent enough to stand trial under *Dusky* but who still suffer from severe mental illness to the point where they are not competent to conduct trial proceedings by themselves." *Id.* at 178.

Hence, after *Edwards*, a jurisdiction can choose to adopt a

heightened standard of competency for pro se representation, and if a defendant suffers from "severe mental illness" and cannot satisfy this higher competency standard, a court can require that he be represented by an attorney without infringing upon the Sixth Amendment right to self-representation. *See id.*

Since *Edwards*, the majority of states - through statute or court precedent - have proceeded in either mandating or permitting trial courts to apply heightened competency standards when considering motions to proceed pro se. But states vary in their treatment of the trial court's authority with respect to an *Edwards*-type disability. In some states, the trial court has discretion to apply *Edwards*-type authority but need not do so. *See e.g.*, *State v. Lane*, 362 N.C. 667, 669 S.E.2d 321 (2008); *Duckett v. State*, 331 Ga.App. 24, 769 S.E.2d 743 (2015); *Commonwealth v. Blakeney*, 108 A.3d 739 (Pa. 2014) ("court may in its sound discretion"). Thus, where a defendant allowed to proceed pro se later challenges his conviction on the ground that he should have been denied self-representation under the *Edwards* standard; if the trial court had discretion not to apply the *Edwards* standard, such a challenge will be rejected. *See e.g.*, *United States v. Bernard*, 708 F.3d 583 (4th Cir. 2013);

State v. Newsom, 767 S.E.2d 913 (N.C. App. 2015); *In re Rhome*, 172 Wash2d 654, 260 P.3d 874 (2011).

On the other hand, other states have interpreted this Court's reasoning in *Edwards* as compelling additional constitutional protection for gray-area defendants, and subsequently require that trial judges evaluate a gray-area defendant's competence under a heightened standard. These states are Iowa, Connecticut, the District of Columbia, Missouri, North Dakota, Rhode Island and Wisconsin. *See State v. Jason*, 779 N.W.2d 66 (Iowa App. 2009); *Connecticut v. Connor*, 973 A.2d 627, 633 (Conn. 2009) ("[I]n accordance with [*Edwards*], a mentally ill or mentally incapacitated defendant who is found competent to stand trial is not necessarily competent to represent himself at trial, and, therefore, the trial judge must determine whether such a defendant is, in fact, competent to represent himself during the trial proceedings."); *Williams v. United States*, 137 A.3d 154,160 (D.C. 2016) ("In determining a defendant's competency for self-representation, the trial court must go beyond the standard in *Dusky*."); *Missouri v. Baumruk*, 280 S.W.3d 600, 610 (Mo. 2009) (en banc) ("As established in *Edwards*, the standard for establishing competency to stand trial is a lower standard than that

required to represent oneself."); *North Dakota v. Dahl*, 776 N.W.2d 37, 45 (N.D. 2009) ("*Edwards* indicates the district court has a continuing responsibility during trial to determine whether a self-represented defendant is competent to present his or her own defense," even if the defendant is competent to stand trial); *Rhode Island v. Cruz*, 109 A.3d 381, 391 n.5 (R.I. 2015) ("[A] defendant is subjected to a heightened standard of competency when he or she attempts to waive counsel and appear pro se.") (internal quotations omitted); *Wisconsin v. Imani*, 786 N.W.2d 40, 53 (Wis. 2010) ("Determining whether a defendant is competent to proceed pro se is a higher standard than determining whether a defendant is competent to stand trial.").

Florida has ostensibly adopted a heightened pro se competency standard which mirrored the language contained in *Edwards* and mandated the application of this heightened standard prior to granting self-representation. *See In re Amendments to Fla. Rule of Crim. Pro. 3.111*, 17 So. 3d 272, 275 (Fla. 2009) (amending Florida Rule of Criminal Procedure to provide that the court must also make a determination that the defendant "does not suffer from severe mental illness to the point where the defendant is not competent to conduct trial proceedings by

himself" in order to grant a defendant's request for self-representation). Thus, the trial court bears a responsibility to make a determination as to possible incapacity where mental illness is apparent and to reject pro se representation where that incapacity is present. *See e.g., Hernandez-Alberto v. State*, 126 So. 3d 193 (Fla. 2013) (discussing the amendment of Fla.R.Crim.P. 311(d)(3) in light of *Edwards*, now requiring that a court granting pro se representation make a determination that the defendant "does not suffer from severe mental illness to the point where the defendant is not competent to conduct trial proceedings by himself").

In the present case, however, there was no assessment of Woodbury's competency to represent himself under the heightened standard of *Edwards* and Iowa, Connecticut, the District of Columbia, Missouri, North Dakota, Rhode Island and Wisconsin. The claim here is not one of a mere failure to abide by state law, but that the Florida courts committed constitutional error in never making an assessment of Woodbury's competence to conduct his own defense.

The trial court permitted self-representation at all phases of Woodbury's capital case from his first appearance in court through his capital sentencing. Woodbury was never represented by counsel. Despite

evidence of Woodbury's severe mental illness, the trial court never assessed Woodbury's competence under the heightened standard.

On appeal to the Florida Supreme Court, Woodbury raised the issue of whether procedural due process required trial courts in the state of Florida, a state which mandates the higher standard, to conduct a searching inquiry into a criminal defendant's mental illness and determine representational competence prior to granting self-representation.

By affirming Woodbury's conviction and death sentence, the Florida Supreme Court rejected this argument, though it does not directly address it in the opinion.

In its opinion, the Florida Supreme Court acknowledged that the state of Florida has adopted the heightened competency standard for self-representation as permitted by this Court in *Edwards* by stating:

> ... [W]hile technical skill is not part of the *Faretta* calculus, "the government's interest in ensuring the integrity and efficiency of the trial at times outweighs the defendant's interest in acting as his own lawyer." *Indiana v. Edwards*, 554 U.S. 164, 177, 128 S.Ct. 2379, 171 L.Ed.2d 345 (2008) (quoting *Martinez v. Court of Appeal*, 528 U.S. 152, 162, 120 S.Ct. 684, 145 L.Ed.2d 597 (2000)). Thus, after conducting a Faretta inquiry, a trial court may preclude a defendant from exercising his right to proceed pro se if the court finds that the

> defendant is "unable to carry out the basic tasks needed to present his own defense without the help of counsel." *Id.* at 175-76, 128 S.Ct. 2379.
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> ...
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> Thus, a Florida trial court may deny a defendant's request to proceed pro se if: (1) the defendant's waiver of his right to counsel was not made knowingly and intelligently; or (2) the defendant suffers from severe mental illness to the point of being incompetent to conduct trial proceedings without assistance. The competency standard to waive one's right to counsel is the same as the competency standard to stand trial, whereas the competency standard to conduct trial proceedings without assistance is somewhat higher. *See Wall v. State*, 238 So. 3d 127, 140 (Fla. 2018) ("[D]efendants may be competent to waive counsel yet incompetent to represent themselves.").

Woodbury v. State, 320 So.3d 631, 646 (Fla. 2021); *Appendix* p.15.

In addressing Woodbury's argument that evidence of his mental illness required the trial court to assess his representational competence prior to granting self-representation, the Florida Supreme Court sidestepped the issue and treated it as though Woodbury was arguing actual incompetence. This was contrary to Woodbury's argument that, while there was evidence which strongly suggested incompetence, the lack of inquiry into his mental state precluded him from showing actual incompetence. The Florida Supreme Court mischaracterized Woodbury's

argument[2] in its opinion, stating: "Woodbury argues that even if he was competent to stand trial, the trial court knew he had a severe mental illness that rendered him incompetent to represent himself, and that the trial court therefore erred in granting his request to proceed pro se." *Id.* at 645; *Appendix* p.14.

The Court went on to point out Woodbury's performance abilities at trial and conclude "Woodbury's behavior in court defeats any claim that he was not competent to conduct the proceedings on his own. And Woodbury cites no authority—and we are aware of none—where a bipolar disorder diagnosis, without more, established that a defendant suffered from severe mental illness to the point of being incompetent to conduct trial proceedings without assistance." *Id.* at 647. *Appendix* p.16.

In similar fashion, the Florida Supreme Court dispensed of the concerns raised in Dr. Sesta's report about Woodbury's "decompensated mental state" due to experiencing an active manic state of bipolar

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[2] The relevant parts of Woodbury's Initial Brief and Reply Brief have been reproduced as *Appendix* p.25-66. On the facts contained in the briefs, Woodbury fairly presented his federal issue to the state court, so that there should be no bar to federal review. *See Minnesota v. Nat'l Tea Co.*, 309 U.S. 551, 557 (1940) ("[I]t is ... important that ambiguous or obscure adjudications by state courts do not stand as barriers to a determination by this Court of the validity under the federal constitution of state action.")

disorder, by opining that "Woodbury points to no case where inattentiveness or overenthusiasm rendered a defendant incompetent to represent himself at trial." *Id.* at 648; *Appendix* p.16. Again, Woodbury was not arguing that these concerns made him incompetent to represent himself but that further inquiry into his mental state was necessary due to the strong implications that they could. After all, Dr. Sesta was not tasked with assessing representational competence but expressed his concerns to get the court to inquire into it.

Ultimately, the Florida Supreme Court held that the trial court did not err in granting Woodbury self-representation as "nothing in the record" showed that "the court was required to find that Woodbury suffered from severe mental illness to the point of incompetency." *Id.* at 648-49; *Appendix* p.17.

The analysis utilized by the Florida Supreme Court creates two areas of concern which puts the right of self-representation at odds with the due process requirement of a fair trial. First, it implies that a state by adopting the heightened standard provides only denial authority which does not apply when a trial court grants self-representation and, second, imposes no duty on the trial court to assess representational

competence prior to granting self-representation. The following analysis shows that the heightened standard affords greater protection of the fundamental constitutional right to a fair trial, and that an inquiry is required to ensure the uniform application of this procedural safeguard and to provide meaningful appellate review.

The guarantee to a state criminal defendant of a fair trial extends through the United States Constitution through the Sixth and the Fourteenth Amendments. *Irvin v. Dowd*, 366 U.S. 717 (1960); *In re Murchison*, 349 U.S. 133, 136 (1955) ("A fair trial in a fair tribunal is a basic requirement of due process").

American criminal law has long recognized that competence to participate in the adjudication of one's case is essential to a fair trial and due process. *See Drope v. Missouri*, 420 U.S. 162 (1975) (Due Process Clause guarantees defendants right not to be tried while incompetent to stand trial).

Ensuring that a defendant receives a fair trial also implicates interests beyond that of the defendant. The Court observed that the public "has a definite and concrete interest in seeing that justice is swiftly and fairly administered." *Gannett Co. v. DePasquale*, 443 U.S. 368, 383

(1979).

The Court's justification in *Edwards* for allowing the imposition of a higher standard of competency for self-representation is based on the exact same fairness and due process-related concerns, specifically, that a defendant's inability to adequately represent himself has the specific effect of undermining the right to a fair trial. Thus, ensuring that the mentally incompetent do not represent themselves at trial preserves "the most basic of the Constitution's criminal law objectives, providing a fair trial." *Edwards*, 554 U.S. at 176-77.

In *Edwards*, a key component of the Court's reasoning was that "mental illness itself is not a unitary concept," as it "interferes with an individual's functioning at different times in different ways." Id. at 175. The Court noted that the very nature of mental illness means that "an individual may well be able to satisfy *Dusky*'s mental competence standard, for he will be able to work with counsel at trial, yet at the same time he may be unable to carry out the basic tasks needed to present his own defense without the help of counsel." *Id.* at 175-76. The Court cautioned against the use of a single standard for deciding both (1) whether a defendant who is represented by counsel can proceed to trial

and (2) whether a defendant who goes to trial must be permitted to represent himself." *Id.* at 175. The Court concluded that *Dusky*'s competency standard alone may inadequately protect the gray-area defendant's right to fair trial and, thus, acknowledged that the very case establishing the standard for competence to stand trial should not apply to the decision to proceed pro se. *Id.* at 174-75

All of the justifications for the holding in *Edwards* demonstrate that allowing a gray-area defendant to represent himself would compromise the right to a fair trial. Thus, while *Edwards* dealt only with the denial of the right to self-representation, it makes clear that ensuring a defendant's competence to proceed pro se is critical to protecting the fundamental constitutional right to a fair trial.

Within the context of competency, procedural protections are implemented to minimize the risk that a defendant will not be provided his constitutional right to a fair trial. It is essential for a trial court to observe these procedural requirements not only to safeguard a defendant's due process right to a fair trial, but to provide an adequate record on appeal, which is of special importance in death penalty cases where there is a strong interest in ensuring the reliability of death

judgments.

This Court's attention is needed to sort out and resolve the question of whether constitutional due process requires the trial court to inquire into representational competence prior to granting self-representation to defendants with severe mental illness. At present, there is no case law which mandates the specific procedures necessary to satisfy constitutional due process. This Court should grant certiorari to correct the state of the law in Florida and in the minority of states that mandate the use of a higher standard for consideration of a defendant's competence to proceed pro se to the *Dusky* standard for competence to stand trial.

The Florida Supreme Court's implication that the heightened standard only provides discretionary denial-authority to the trial court, and does not impose a duty upon the trial court to assess competency prior to granting self-representation, is contrary to its own precedent and this Court's rationale in *Edwards*.

By adopting and mandating the use of the heightened standard, as permitted in *Edwards*, the state of Florida affords greater protection to the due process right to a fair trial – a fundamental interest of criminal

defendants. Such entitlement is applicable to all defendants and not limited to those defendants in which self-representation is denied. The safeguards that must surround the process of deciding whether to forgo counsel, now impose on the court a duty to ensure not just a knowing and intelligent waiver but competency for self-representation

The Court long ago imposed an obligation on the trial court to conduct a competency evaluation of a defendant where the evidence raises a "bona fide doubt" as to a defendant's competence to stand trial. *See Pate v. Robinson*, 383 U.S. 375, 385 (1966).

In similar respect, the trial court should be required to conduct a pro se competency evaluation prior to granting self-representation in states where application of the heightened standard is mandated.

It is essential to the fairness of the application of this procedural safeguard, that when a trial court is presented with a mentally ill defendant who elects to represent himself, that the trial court must conduct an on-the-record inquiry and determination as to whether the defendant is, in fact, competent to conduct the trial proceedings without the assistance of counsel prior to granting self-representation. Such a requirement ensures that mentally ill defendants have equal access to

this procedural safeguard and have an adequate record on appeal.

The present case illustrates the concerns when an inquiry is not conducted. First, without an inquiry the appellate court, like the trial court, is left with an incomplete understanding of the defendant's mental illness and its impact on the defendant's ability to self-represent. This lack of record precludes meaningful appellate review and leads to appellate speculation.

For example, the Florida Supreme Court dismissed Woodbury "nonchalant" attitude toward the case by noting that Woodbury was already serving three life sentences. *Woodbury*, 320 So.3d at 648.; *Appendix* p.16. This analysis is wrong for two reasons. Woodbury could have avoided a death sentence if he was convicted of second degree murder and therefore had a reason to take the guilt phase seriously. And, more importantly, his nonchalant behavior could reflect an emotional indifference to his fate stemming from active mental illness. *See* A. Louis McGarry, *Competency for Trial and Due Process via the State Hospital*, 122 Am. J. Psychiatry 623, 628 (1965) (noting the importance of taking into account the defendant's affect and "degree of volition" in evaluating competence). However, the only way to actually know the reasoning

behind Woodbury's lackadaisical attitude was for the trial court to have inquired.

Another concern is that the Florida Supreme Court is requiring the defendant to show actual incompetence to get relief on appeal, when the very lack of record precludes him from doing so.

Moreover, the Florida Supreme Court rejects that an inquiry is required provided that the trial court adequately discharged its responsibility to determine that the waiver of counsel was voluntary and knowing and the defendant performed well at trial. However, a representational competency determination is distinct from a competency to stand trial or to waive counsel, and performance is only one aspect of competency.

To hold that the standard *Faretta* inquiry, coupled with the observations of the defendant's behavior in court, is sufficient to make a pro se competency determination is inconsistent with the guidance on mental illness articulated by the Court in *Edwards*.

Furthermore, it is inconsistent with the procedure used in Iowa. While the highest court in Iowa has yet to rule on the issue, the Iowa Court of Appeals has consistently held that when *Edwards* described the

Constitution as permitting judges to ensure that defendants do not "suffer from severe mental illness to the point where they are not competent to conduct trial proceedings," its premise was that such competency is necessary for "fairness," and remanded cases for determinations under the heightened standard even though the trial court diligently verified that defendant was competent to stand trial. The Iowa Court of Appeals held that a constitutional violation occurs "when a defendant who is not competent to present his own defense without the help of counsel is allowed to do so." *See, State v. Jason*, 779 N.W.2d 66 (Iowa App. 2009); *see also, State v. McCullah*, 797 N.W.2d 131(Iowa App. 2010) (remand appropriate when trial court failed to expressly consider whether defendant suffered from severe mental illness, which rendered him not mentally competent to represent himself).

The present case provides the Court with the opportunity to clarify for state courts how to resolve the conflict between the right of self-representation and the due process right of a fair trial.

While the Court in *Edwards* declined to adopt a particular representational competence standard, it suggests that certain abilities may be relevant to this inquiry. The Court indicated the relevance of a

defendant's expressive abilities and functional abilities to perform discrete trial tasks- in line with the Florida Supreme Court's reasoning. But the Court also stressed the importance of the relationship between a defendant's severe mental illness and his cognitive powers of understanding, reasoning, and appreciation. The Court identified "disorganized thinking, deficits in sustaining attention and concentration, impaired expressive abilities, [and] anxiety," as features of mental illness impairing a "defendant's ability to play the significantly expanded role required for self-representation." *Edwards*, 554 U.S. at 176.

Here, the trial court did not evaluate Woodbury's cognitive functioning and determine whether any cognitive impairments impeded his ability to make the decisions required for self-representation; for example, the prerequisite cognitive capacity to construct, mount, and modify an effective defense. Likewise, the Florida Supreme Court considered only performance and communication abilities. As it stands, instead of determining significant deficits, if performance and demeanor appear average, the person will be competent to proceed pro se even though they may have significant deficits in cognitive functioning.

The Florida Supreme Court's failure to consider cognitive deficits parted ways with the clear direction of the Court in *Edwards* as to the impact of cognitive impairments. *Id.* at 178-79. For example, the Florida Supreme Court opined that "Woodbury points to no case where inattentiveness or overenthusiasm rendered a defendant incompetent to represent himself at trial." *Woodbury*, 320 So.3d at 648.; *Appendix* p.16. But the Court in *Edwards* specifically mentioned "deficits in sustaining attention and concentration" as a feature of mental illness impairing a "defendant's ability to play the significantly expanded role required for self-representation." *Edwards*, 554 U.S. at 176.

Further, the trial court's *Faretta* inquiries consisting of a series of yes-or-no answers are insufficient to assess cognitive deficits. A defendant's ability to give the obviously required answer to a yes-or-no question does not necessarily establish that the defendant actually understands what it meant to represent himself. And is capable of rationally assessing and pursuing his own interests. *See* Johnston, *Representational Competence: Defining the Limits of the Rights to Self-Representation at Trial*, 86 Notre Dame L.Rev. 523 (2010) (stressing competency to deal with choice on single issue, with court outlining

options and competing considerations, is considerably different from "more challenging decisional context" of self-representation at trial, where defendant must "identify the relevant decision point, gather information to understand the situation, brainstorm alternative responses, evaluate these alternatives, and select an alternative").

In addition, a defendant may mask his cognitive deficits during a series of yes-or-no questions. It is well-documented that persons with mental deficiencies try to conceal their disability and often act as though they understand when they do not. *See* Richard J. Bonnie, *The Competence of Criminal Defendants with Mental Retardation to Participate in Their Own Defense*, 81 Journal of Crim. Law and Criminology 422, 423 (1990).

Moreover, performance can be misleading, after all, even the most delusional defendant may express beliefs about his case that are reasonable and not influenced by mental illness. For example, simply asking a defendant his reason for self-representation may yield the answer "I can do it better than a lawyer." This seems reasonable but further probing might reveal the delusion such as asking "why do you think you can do it better than a lawyer?" and the defendant responds

"because the voices in my head will guide me," an answer which would call his pro se competency into question.

The above example shows why it is essential, in assessing pro se competency, that a court evaluate a defendant's cognitive functioning and determine whether any cognitive impairments impede the defendant's ability to make the decisions required for self-representation; for example, does the defendant have the prerequisite cognitive capacity to construct, mount, and modify an effective defense.

The present case illustrates that the routine *Faretta* inquiry is inadequate to assess a defendant's mental state and leaves the defendant and the trial judge entirely unaware of the facts essential to an informed decision on representational competence.

While the trial court did not notice anything of concern during the numerous inquiries, upon evaluation by a mental health professional, psychological testing revealed Woodbury had a "decompensated mental state" and "an acute level of psychological distress." (R 589). A mental state evaluation showed abnormal attention and affect, "overabundant thought productivity," and "circumstantial, tangential, and digressive structure of thought;" all "consistent with active manic state and

diagnosis of Bipolar disorder." (R 588).

The Florida Supreme Court, however, looked past this substantial evidence and determined instead the positive indications of competence from behavior in the courtroom was sufficient to refute any competency concerns. However, that a defendant has sufficient communication skills, can engage in constructive social intercourse, and control his emotions in an adversarial arena is not controlling. There needs to be an assessment as to whether he has the cognitive abilities needed to argue his case adequately. After all, not all mental illness manifests itself in outrageous courtroom behavior or disruptive behavior.

Pointing to certain instances of behavior would also assume that competence remains consistent, which is contrary to our understanding of mental illness. Just because a defendant is potentially competent at one point, that does not mean the defendant will remain competent throughout all legal proceedings. Therefore, Woodbury could have been competent as he conducted the guilt phase, and then "decompensated" during the penalty phase.

Trial courts are charged with the "independent duty to ensure that criminal defendants receive a trial that is fair and does not contravene

the Sixth Amendment." *Wheat v. United States*, 486 U.S. 153, 161 (1988). The obligation of ensuring a defendant's constitutional protections is a never-ending one, unequivocally and squarely placed upon the trial judge. It is "the solemn duty [of trial judges] ... to make a thorough inquiry and to take all steps necessary to insure the fullest protection of this constitutional right at every stage of the proceedings." *Von Moltke v. Gillies*, 332 U.S. 708, 722 (1948) (plurality op.) (citations omitted). "This duty cannot be discharged as though it were a mere procedural formality." *Id.* at 723-24 (footnotes, internal quotations omitted).

By not requiring an inquiry, the state of Florida does not provide a procedure which meaningfully addresses the heightened standard. Without further inquiry, courts are deprived of the best, and possibly only, opportunity to discern whether a defendant is competent to proceed pro se and comports with due process of law. Such an inquiry cannot be dispensed of as a "mere formality."

Furthermore, the public is entitled to see a judicial system that is adversarial, yet reliable. Granting self-representation to a defendant that is incompetent to represent himself taints the reliability of the outcome. When a defendant's competency is in question, such that he cannot

reliably be said to possess the ability to play these roles within the proceeding against him, our adversarial system fails.

In the present case, it hardly appears reliable for a defendant with bipolar disorder, a major mental illness, who is exhibiting symptoms of an active manic state to be allowed to represent himself on a case for which the State is seeking the death penalty without any determination that he was competent to represent himself in light of his severe mental illness.

Self-representation at trial requires that the defendant's mind be clear, sharp and without impairment. Here, however, there is sufficient evidence to question whether Woodbury may have been dispossessed of the higher level of capacity necessary to conduct his own defense, which should have been the subject of an additional informed inquiry by the trial court. Had the trial court considered these concerns in its assessment of Woodbury's competence to proceed pro se, it may very well have denied Woodbury's motion. However, without an inquiry the trial court was left with an incomplete understanding of his mental illness and current mental state. The court's failure to make such inquiry thus deprived Woodbury of his constitutional right to a fair trial.

This issue is of critical importance to the integrity and fairness of our criminal justice system, and is an issue that arises frequently given the rate with which criminal defendants, especially those with serious mental illness, seek to proceed to trial pro se. *See, e.g., Massey v. Moore*, 348 U.S. 105, 108 (1954) ("No trial can be fair that leaves the defense to a man who is insane, unaided by counsel, and who by reason of his mental condition stands helpless and alone before the court."); *Edwards*, 554 U.S. at 176-77 ("[I]nsofar as a defendant's lack of capacity threatens an improper conviction or sentence, self-representation in that exceptional context undercuts the most basic of the Constitution's criminal law objectives, providing a fair trial."); *see also Connor*, 973 A.2d at 655 ("[W]hen a mentally ill or incapacitated defendant is permitted to represent himself at trial despite his lack of competence to do so, the reliability of the adversarial process, and thus the fairness of the trial itself, inevitably is cast in doubt.").

To limit the heightened standard to solely providing denial authority, will frustrate and, in many instances, defeat the constitutional objectives of the Court by increasing the risk that "gray-area" mentally competent defendants who lack the mental capacity to conduct trial

proceeding are permitted to represent themselves at trial. Thus, procedural due process requires trial courts to substantially investigate and determine representational competence prior to granting self-representation to a defendant with a severe mental illness.

This Court should grant certiorari so that it can address whether *Edwards*' heightened competency standard for self-representation at trial governs all motions in which a "gray-area" mentally competent defendant seeks to proceed to trial pro se regardless of whether the motion is ultimately denied or granted. And if it does, this Court should take the opportunity to clarify the law as to the obligations of the trial court in inquiring into a defendant's significant mental limitations.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

CAREY HAUGHWOUT
Public Defender

MARA C. HERBERT
Assistant Public Defender
Counsel of Record

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