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COURT OF APPEALS
STATE OF NEW YORK

PEOPLE,

Respondent,

-against-

NO. 48

LAQUAWN LEWIS,

Appellant.

20 Eagle Street
Albany, New York
April 9, 2025

Before:

CHIEF JUDGE ROWAN D. WILSON
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE MADELINE SINGAS
ASSOCIATE JUDGE ANTHONY CANNATARO
ASSOCIATE JUDGE SHIRLEY TROUTMAN
ASSOCIATE JUDGE CAITLIN J. HALLIGAN

Appearances:

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Chrishanda Sassman-Reynolds
Official court Transcriber



1 CHIEF JUDGE WILSON: Next case on the calendar is
2 People v. Lewis.

3 MR. FITZMAURICE: Good afternoon, Your Honors,
4 David Fitzmaurice from Appellate Advocates for Mr. Lewis.
5 I'd like to reserve three minutes for rebuttal?

6 CHIEF JUDGE WILSON: Yes.

7 MR. FITZMAURICE: Your Honors, it's not every day
8 that we see an attorney-client relationship imposed against
9 the will of both the attorney and the client. And I would
10 submit that the respective requests below warranted an
11 inquiry by the trial court.

12 Of course, the client's request in this
13 situation, Mr. Lewis' request, were in the form of pro se
14 applications - - - approximately five - - - during two
15 separate proceedings. And I'd submit that the trial court
16 clearly appreciated the nature of these requests and
17 understood them to be requests for pro se.

18 JUDGE RIVERA: So how is the request after
19 withdrawal of the plea - - - how is that different than
20 Duarte who says, I would like to represent myself? How is
21 that different from, I would love to represent - - - to go
22 pro se?

23 MR. FITZMAURICE: So I think - - - you know, I
24 think that the distinguishing factor in Duarte is the
25 engagement by the court. So when we think about Duarte and

1 actually, Your Honors' decision actually quotes - - -
2 quotes - - - you know, the exchange. The defense says, "I
3 would love to represent myself." And the very next line of
4 the transcript is the court saying, "This matter is on for
5 a Dunaway/Huntley/Wade hearing." It's a non sequitur.
6 It's questionable whether it was even heard.

7 Whereas here, we have the court responding: "So I
8 would love to resent my - - - represent myself. You want
9 to represent yourself? Yes."

10 JUDGE SINGAS: But I think in Duarte we were also
11 saying that it's determined by the facts surrounding.
12 Right? The circumstances surrounding the request. And I
13 think your position is, at least to the second one, during
14 the plea, trying to take the plea back. That request. I
15 think your position is once he said, I want to go pro se,
16 then that should have automatically, right, triggered an
17 inquest.

18 MR. FITZMAURICE: An - - - a step two inquiry
19 would - - - or a Faretta colloquy, whichever never
20 happened, yes.

21 JUDGE SINGAS: And I'm saying that, how does that
22 - - - how does - - - how do we view Duarte in that?
23 Because in Duarte we said, look, you have to look at the
24 surrounding circumstances. And here, if you look at the
25 surrounding circumstances, I don't know that you can make a

1 determination that it was completely unequivocal, because
2 he's doing it in a slew of other requests that he's making
3 in the middle of another hearing. And the judge says,
4 look, we'll deal with that; let's get through this now, and
5 if you want to bring it up again later, you can. And then
6 he never did.

7 So like, in making a determination about whether
8 it was equivocal or unequivocal, I think you have to, and I
9 think our court has said that you have to look at the
10 surrounding circumstances. Do you disagree with that?

11 MR. FITZMAURICE: So I - - - there's a few parts
12 to that. But where you left off, no, I don't inherently
13 disagree with with context playing a role. I do think the
14 first part of context is the court's response. And I think
15 when the court repeats the nature of the request, it's very
16 clear that the court appreciates it as a pro se request.
17 Bearing in mind it's not the first request; there's been a
18 request seven weeks earlier.

19 But even if the request from seven weeks - - -

20 JUDGE TROUTMAN: So when the court began to
21 engage him, are you suggesting the court was making itself
22 clear that he was, in fact, asking to represent himself?

23 MR. FITZMAURICE: Yes, Your Honor. And I think
24 that to answer this question and Judge Singas' question.
25 To the extent that it harbored any reservations about

1 sincerity, initially in the June issue - - - you know, I
2 think that any such reservations had to be dispelled once
3 it's renewed. And let's just take a step back.

4 JUDGE RIVERA: But the question of sincerity - -
5 - is that - - - go to the question of whether or not there
6 has to be an inquiry? Isn't the inquiry only based on
7 whether or not it's unambiguous?

8 MR. FITZMAURICE: Absolutely, Your Honor. But I
9 just think that to the extent that - - - to the extent that
10 - - - you know, maybe he moved on, you know. In the June
11 hearing, maybe, he moved on to something quickly and it
12 kind - - - you know, that might look like Duarte. But when
13 we think about the July circumstance, a plea withdrawal.
14 This is an extraordinary example of something that might
15 reinforce your desire to go pro se. I mean, Mr. Lewis
16 tried to - - - tried to tell everyone that they - - - that
17 they were having his criminal history incorrect. None of
18 the lawyers listened. His own lawyer didn't listen, the
19 court didn't listen. The court said, you know, this isn't
20 relevant unless you go to trial and are convicted. So
21 everyone's giving short shrift to his own views and his own
22 knowledge about his own circumstances. Fast forward a few
23 months, and - - - and it's - - - it's vacated because
24 everyone except, well, Mr. Lewis was right. I can't think
25 of a better example than someone who already might have

1 wanted to go pro se being - - - you know, further - - -
2 further confirming that notion.

3 And - - - and the moment the plea was - - -

4 JUDGE TROUTMAN: But the - - - the issue - - -

5 MR. FITZMAURICE: - - - withdrawn - - -

6 JUDGE TROUTMAN: - - - at the first step, in
7 order for the court to have a obligation to go further, is
8 to determine if it is, in fact, an unequivocal request.
9 There is no ambiguity. If there's no ambiguity, then you
10 would agree that the court has an obligation?

11 MR. FITZMAURICE: Absolutely. And that's - - -

12 JUDGE TROUTMAN: But if it's equivocal?

13 MR. FITZMAURICE: If it's equivocal - - - if it's
14 equivocal, then you're right. It fails at step one.

15 JUDGE RIVERA: Okay. So why is it not equivocal?

16 MR. FITZMAURICE: Well, because the court - - -
17 he says, I want to go pro se. And the court says, you want
18 to go pro se? And he says, yes. I mean, right there,
19 that's step one. And - - -

20 JUDGE RIVERA: Well, isn't the next line what
21 seals the deal for you? "I'll deal with that."

22 MR. FITZMAURICE: So I think that to the - - -
23 this is the prosecution's claim that that it was
24 subsequently abandoned because it wasn't renewed at trial.
25 And to that - - -

1 JUDGE RIVERA: Well, can a judge actually do
2 that?

3 MR. FITZMAURICE: Absolutely not, Your Honor. A
4 judge can't do that. McIntyre does not allow a court to
5 defer something until trial, you know. I'm not sure he's
6 meant to make a sixth, seventh, eighth request. And also,
7 you know, we've had this conversation before - - - you
8 know, in a different case, with People v. Dixon, where
9 there was an issue about - - - there was an issue about the
10 prosecution - - - a potential Sixth Amendment issue, with
11 the prosecution listening to certain trial - - - trial
12 preparation calls during trial. And this court - - - you
13 know, might not agree with the decision, but this court's
14 decision was premised on the fact that the - - - the
15 defendant in that case had ample time prior to trial where
16 the Sixth Amendment issue wasn't raised.

17 So this court knows the importance of the right
18 to go pro se, entailing a right to prepare a pro se
19 defense.

20 JUDGE SINGAS: But this court also - - - this
21 court also decided People v. Gillian. And in that case we
22 said if the defendant is using a request so that he can get
23 a newly assigned counsel, then it's not unequivocal. And I
24 think this is what was going on here. I mean, looking at
25 the transcript, he said, "So I take my chance with a new

1 attorney because this attorney is ineffective." And the
2 judge says, "I understand what you're saying." And he
3 said, "How long will it take to hire a lawyer?" And he
4 said, "I would represent myself." So to me, that sounds
5 exactly like Gillian.

6 MR. FITZMAURICE: Well, I think the important
7 difference with Gillian is that a new lawyer was appointed
8 and then the pro se request never existed again. There was
9 no mention of it. And the court in Gillian felt
10 comfortable that - - - that he was satisfied with the - - -
11 with the replacement lawyer.

12 Same in LaValle. I think in LaValle, actually,
13 the court says that everyone is ending with a smile on
14 their face because - - - because the pro se request has
15 been - - - you know, was more - - - more maybe a vehicle to
16 kind of procure a change in counsel. Here, when he's
17 saying - - - you know, I'll represent myself and the court
18 saying, "You want to represent yourself?" I mean, it's - -
19 - this is step one. We're not analyzing if - - - what
20 happened at a Faretta hearing. We're stuck at step one
21 here. And I don't know what else you could do here to
22 invoke - - -

23 JUDGE TROUTMAN: So then - - -

24 MR. FITZMAURICE: - - - step one.

25 JUDGE TROUTMAN: - - - he makes this request.



1 And then, there's a passage of time before the trial
2 happens. So is it, in fact, correct? He doesn't go back.
3 There are no letters written to the court, saying, what
4 about my - - - what about outstanding motions? There's
5 nothing from the court bringing them back to clarify
6 representation? Nothing happened?

7 MR. FITZMAURICE: No. No. The court - - - the
8 court - - - this isn't like a situation where the court
9 said I - - - we've just withdrawn your plea; I understand
10 your request; we don't have time for a Faretta inquiry
11 today - - - you know; the next appearance we'll deal with
12 it. You know, by saying something like - - - not something
13 like - - - by saying, literally, counsel's going to remain
14 on the case, and I'll entertain your application at trial,
15 you know, that's not the response to step one.

16 JUDGE HALLIGAN: Counsel - - -

17 MR. FITZMAURICE: As Your Honor has mentioned,
18 step one, the response is have the inquiry.

19 JUDGE HALLIGAN: What's - - - what's your - - -

20 MR. FITZMAURICE: Sorry.

21 JUDGE HALLIGAN: No, not at all. What's your
22 view about the relationship between the request to go pro
23 se and the trial attorney's request to be relieved? Are
24 they freestanding or somehow, do they have some interplay
25 between - - -

1 MR. FITZMAURICE: Well, they're freestanding
2 insofar as both issues are completely without any support
3 for what the trial court did and what the Appellate
4 Division affirmed. But I do think you're right, that - - -

5 JUDGE HALLIGAN: Well, I'm asking the question,
6 not taking a position.

7 MR. FITZMAURICE: Okay. Well, I'll take the
8 position. Fast forward a few months, the other Sixth
9 Amendment shoe drops. And now we have a situation where
10 defense counsel is asking to be relieved, which is another
11 extraordinary situation. Because you know, normally
12 requests for substitution of counsel, the whole framework,
13 is designed - - - or not designed for, but it's - - - it -
14 - - has the - - - the moving party is normally the
15 defendant. So this court had a situation in Fredericks
16 recently - - -

17 JUDGE HALLIGAN: But how could what happens later
18 bear - - - the request to be relieved, bear on what the
19 trial court did or should have taken from the defendant's
20 request to go pro se previously?

21 MR. FITZMAURICE: Well, so they're freestanding.
22 But I suppose when the court - - - to link all this up.
23 When the court says I'll entertain your request at trial
24 and faced with a request from counsel to be relieved,
25 doesn't return to conduct the step two, I think that that

1 tells you that the court wasn't really seriously interested
2 in entertaining this request. Nor was it interested in
3 entertaining counsel's request to be relieved.

4 I don't think a response - - - you know, "I want
5 to move this case and want to move this case
6 expeditiously", is an appropriate response when an attorney
7 is telling the client - - - or telling the court that they
8 want to be relieved, while referencing prior requests to be
9 relieved. So in that situation, it's not like Fredericks,
10 where, yes, a defendant is articulating issues with
11 counsel, but at the same time, counsel is giving his own
12 version and explaining, I want to stay on this case.

13 JUDGE TROUTMAN: Well, when, if it's clear,
14 unambiguous, I want to represent myself, does the court
15 have the right to just put that off for another day?

16 MR. FITZMAURICE: In the interest of being
17 reasonable, maybe - - -

18 JUDGE TROUTMAN: Indefinitely?

19 MR. FITZMAURICE: Not indefinitely, and not till
20 trial, you know, whenever that happens, and it happens
21 about three months later. It might have the ability, I
22 don't want to have this court - - - you know, think I'm
23 being too restrictive. Sure. It can put it off until the
24 next appearance. But provided that that appearance begins
25 at step two. You know? And when it doesn't, I think we're

1 in a situation where - - - you know, if this isn't a clear
2 pro se request under McIntyre, then step one's starting to
3 look different. You know? It - - - I don't know what else
4 he could do to request to proceed pro se.

5 He doesn't need to make a motion; that's
6 established. He's repeated it; he shouldn't need to do
7 six, seven, eight - - - how many times can he say it? You
8 know, once the court repeats it back to him - - -

9 JUDGE SINGAS: No. I think the point is, though,
10 if he's only saying it so that he can get some other relief
11 or to get a postponement, then that's something that we
12 could look at. You know, I - - - you're starting at the
13 point where he says, I want to go pro se. But you're not
14 looking at the line above where he says I want a new
15 attorney. And when that's denied, then he says okay, I
16 want to go pro se. And then other times he said, I - - -
17 you know, you're not allowing the victim to come in and
18 testify. I didn't want a jury trial. I - - - you know, so
19 can't the judge look at the totality of what's going on?
20 Isn't the judge, that judge, in the best position to decide
21 whether or not this was a real request, or a request to
22 just delay an inevitable trial?

23 MR. FITZMAURICE: I would submit not at step one.
24 I would submit, potentially, at step two. And again, we -
25 - - we talked about - - - you know, People v. Dixon. In

1 that situation, it was a request made in the alternative,
2 which the court itself said I think your request is
3 equivocal, but we're going to go to step two anyway, and
4 we're going to have an inquiry, and it ended up
5 disentangling - - -

6 JUDGE TROUTMAN: Let me ask you this. On this
7 record, does it appear that the court was acting with the
8 belief that the defendant had, in fact, asserted a right of
9 self-representation?

10 MR. FITZMAURICE: That's a hard question to
11 answer. I'm not sure what was - - -

12 JUDGE TROUTMAN: Before - - -

13 MR. FITZMAURICE: Yeah.

14 JUDGE TROUTMAN: Before trial, during the
15 transcript, he says - - - he tells them, I'm going to
16 basically, I'll paraphrase, put it off - - -

17 MR. FITZMAURICE: Uh-hum.

18 JUDGE TROUTMAN: - - - and if you still want it,
19 we'll deal with it later. Is that a clear indication that
20 the court believes that the right had been invoked of self-
21 representation? Or that the court believed it was
22 equivocal?

23 MR. FITZMAURICE: No. That to me - - - that - -
24 - when the court - - - the first time the court says, well,
25 you made no motion to me, that tells you that it knows it's

1 talking about pro se. And when, the second time it says,
2 I'll entertain your request at trial, we know. We're not -
3 - - this isn't Duarte where we're left wondering did the
4 court even hear us? The court knows what it's doing. And
5 it's - - - what it's not doing is following step two of
6 McIntyre, so.

7 JUDGE TROUTMAN: So your argument is the court
8 can't just put it off - - -

9 MR. FITZMAURICE: No.

10 JUDGE TROUTMAN: - - - and not address it?

11 MR. FITZMAURICE: No. No. My - - - that is
12 exact - - - no, the court to - - - no, the court cannot do
13 that. Yes, that is my argument. And I think that there's
14 no harmless error standard that applies here. But - - -
15 and we could be here all day talking about the trial. But
16 I will just say that what happened at trial is not the
17 product of a functioning attorney-client relationship. And
18 I think that the court - - - the court never let either of
19 these Sixth Amendment issues get off the ground. And I
20 think that that requires reversal of Mr. Lewis' conviction.

21 CHIEF JUDGE WILSON: Can I ask you one question
22 that may not be relevant to anything?

23 MR. FITZMAURICE: That's why I'm here.

24 CHIEF JUDGE WILSON: Defendant's initial lawyer
25 was from Legal Aid?

1 MR. FITZMAURICE: Yes.

2 CHIEF JUDGE WILSON: Subsequently, he had an 18B
3 lawyer. Do you know what happened to Legal Aid?

4 MR. FITZMAURICE: Legal Aid is - - - is assigned
5 at the arraignment. So normally - - - you know, they're -
6 - - they're automatically assigned unless you proceed pro
7 se at the arraignment, which is - - - the CPL provides a
8 mechanism for, but it's not commonly invoked. You get
9 automatically assigned a Legal Aid attorney. So then,
10 really, the first attorney he's actually - - -

11 CHIEF JUDGE WILSON: The Legal Aid lawyer made
12 the omnibus motion also?

13 MR. FITZMAURICE: Yes. Quite a good one, yes.

14 CHIEF JUDGE WILSON: Yes. And is that typical?
15 That after that, you then get replaced by an 18B lawyer, in
16 your experience?

17 MR. FITZMAURICE: Yeah. Yeah. I think that - -
18 -

19 CHIEF JUDGE WILSON: Okay.

20 MR. FITZMAURICE: - - - that's - - - that's when
21 the first request would happen, you know. You know, you -
22 - - because you - - - you've - - - you might not really
23 even meet the Legal Aid lawyer, the arraignment lawyer, all
24 that much. You know, this is still very early in the case.
25 And so he requests - - - and by the way, when he requests

1 his first 18B, he doesn't mention pro se. He doesn't twin
2 it. It's not in the alternative. He knows there - - -
3 there's a form for filling out request for counsel. You
4 know, he fills it in. So he knows the difference.

5 This request for pro se only emerges later, after
6 it's very clear that nobody's listening to him. And I
7 think the plea withdrawal context is a - - - an
8 extraordinary example of - - - of a desire. Something
9 that, you know, furthers a desire to proceed pro se.

10 So if there are no - - -

11 JUDGE SINGAS: Are you - - - I'm sorry. Are you
12 saying that he had a Legal Aid attorney for arraignment
13 only, and then in 18B got assigned? Because I think it was
14 several months later, and actually, after indictment, that
15 the second lawyer got assigned.

16 MR. FITZMAURICE: Right. The Legal Aid attorney
17 is automatically assigned and handle the omnibus
18 proceeding, which actually resulted in a reindictment of
19 certain charges. But then - - - but then he moves for
20 reassignment and gets an 18B after the case is re-
21 presented. During which time, he's in Rikers Island on a
22 misdemeanor, so.

23 JUDGE SINGAS: But do you know why that happened?

24 MR. FITZMAURICE: No. No. There's no record of
25 that.

1 Thank you, Your Honors.

2 CHIEF JUDGE WILSON: Thank you.

3 MR. POLLAK: Good afternoon. May it please the
4 court. On behalf of Queens District Attorney Melinda Katz,
5 Assistant District Attorney Charlie Pollak for the People.

6 Defendant's requests for self-representation were
7 equivocal, and they merited no further inquiry from the
8 court.

9 JUDGE RIVERA: What's equivocal? "I would like
10 to represent myself. You're going to represent yourself?
11 Yes." What's equivocal?

12 MR. POLLAK: We have to look at the record as a
13 whole. And so - - -

14 JUDGE RIVERA: Go ahead. What's equivocal?

15 MR. POLLAK: So what's equivocal here is - - -
16 are we talking about the June 4? First, on the June 4th
17 date. So on the June 4th date, what's equivocal is that -
18 - -

19 JUDGE RIVERA: No, I'm actually looking at the
20 withdrawal of the plea.

21 MR. POLLAK: Oh. So okay.

22 JUDGE RIVERA: That's when he says, "I would
23 represent myself. Sorry. I would like to represent
24 myself." That's now twice. "You're going to represent
25 yourself? Yes."

1 MR. POLLAK: So on July 24th - - -

2 JUDGE RIVERA: Yes.

3 MR. POLLAK: - - - at the time of the withdrawal
4 of the plea, the request came after defendant first
5 complained about the court's bias; then complained about
6 his pro se motions not being answered; then he said, "If
7 I'm taking this plea back, I want a new attorney if I'm
8 going to trial." And then the court had said, "Fine. When
9 can you hire a counsel?" And then, that's when he said,
10 "I'll represent myself."

11 JUDGE RIVERA: But why isn't he the new attorney?

12 MR. POLLAK: Because that's - - - it's - - - I'd
13 say that's not a fair inference from the record here. He's
14 clearly requesting a new attorney.

15 JUDGE RIVERA: We'll go with your inference.
16 Doesn't McIntyre and several of our other cases recognize
17 that usually a defendant, or many times a defendant, may
18 seek to proceed pro se because they are dissatisfied with
19 counsel? That would not be an unusual context. It's one
20 we recognized in McIntyre.

21 MR. POLLAK: Yes. Being dissatisfied with
22 counsel is something that requesting new counsel and going
23 pro se have in common, but they're different requests. And
24 going pro se - - -

25 JUDGE RIVERA: Do you think the judge understood

1 it otherwise?

2 MR. POLLAK: I don't think the judge believed
3 this was an equivocal - - - an unequivocal request.
4 Because it didn't - - -

5 CHIEF JUDGE WILSON: Because he does say we'll
6 deal with it later. Right? We'll deal with it at trial,
7 actually, when pick a jury.

8 MR. POLLAK: He - - - it seems clear to me - - -
9 first of all, in this context, it looks like - - -
10 remember, he says, "I want a new attorney if I'm going to
11 trial." And then he says, "In that case, I'll represent
12 myself." It's not - - -

13 JUDGE RIVERA: But what - - - you want us to
14 consider the context?

15 MR. POLLAK: Yes.

16 JUDGE RIVERA: Fair game. The court has said
17 that.

18 MR. POLLAK: That's right.

19 JUDGE RIVERA: Okay. The court says, "I'll deal
20 with that. Mr. O'Donnell is on the case until you can hire
21 another attorney." That goes to your point. But then he
22 says, "If you choose to go pro se at the time of trial,
23 I'll entertain your application at that point. But Mr.
24 O'Donnell is still on the case." So how can one read that
25 other than to understand that the court appreciates that

1 this is an application to go pro se? "I'll entertain your
2 application at that point."

3 MR. POLLAK: There's two possibilities. One is -
4 - -

5 JUDGE RIVERA: And if there's two, why would you
6 read McIntyre to suggest that you don't make it? This is
7 just about a minimal inquiry. This is not that the court
8 will agree to allow him to go pro se. We're talking about
9 step one.

10 MR. POLLAK: Even if this were unequivocal, which
11 I maintain it is not.

12 JUDGE RIVERA: Yes. Understood.

13 MR. POLLAK: Even if it were unequivocal, it's
14 not written anywhere that the court must immediately spring
15 into action and engage in that minimal inquiry.

16 CHIEF JUDGE WILSON: That's fair. But why isn't
17 this effectively a constructive denial? Because in the
18 real world, if you tell a pro se litigant I'm not going to
19 tell you if I'm going to let you represent yourself until
20 we're actually here picking a jury, what kind of position
21 does that put the defendant in?

22 MR. POLLAK: I think it's the opposite of a
23 constructive denial. I mean, the words are: "I'll
24 entertain your application", at that point, "if you choose
25 to go pro se at trial."

1 JUDGE TROUTMAN: Okay. And what then?

2 JUDGE RIVERA: What person on - - - at trial, who
3 knows what he's decided to do with the lawyer, or not, is
4 going to say now I want to go pro se, and the judge says,
5 okay, we're going pro se. Go - - -

6 MR. POLLAK: This - - -

7 JUDGE RIVERA: - - - go ahead.

8 MR. POLLAK: - - - this defendant was not shy.
9 And in fact, at trial - - - immediately before trial, he -
10 - - he launches into another attack on - - - all about his
11 disputes with his attorney.

12 JUDGE TROUTMAN: You're right. He's not shy.
13 But let me ask this. When you are going to have a trial.
14 He makes it clear. I'm going to go to trial, I'm taking
15 back my plea. You prepare for trial, yes?

16 MR. POLLAK: Yes.

17 JUDGE TROUTMAN: And here, does the court bring
18 him back for a final pre-trial conference or a preliminary
19 pre-trial conference prior to trial, to clear up any
20 outstanding issues?

21 MR. POLLAK: No.

22 JUDGE TROUTMAN: So how can one not arguably, as
23 Judge Rivera said, consider it a denial?

24 MR. POLLAK: Because he invited the defendant to
25 raise this at the trial.

1 JUDGE TROUTMAN: At trial? Is it normal to - - -
2 in my experience, it's not normal for any judge, quite
3 frankly, to have a number of citizens appear in their
4 courtroom for jury selection and then address the issue of
5 representation?

6 MR. POLLAK: I would say, Your Honor, that here,
7 the judge - - - they're in the middle of a heated dialogue,
8 it's reasonable for the judge to want to give the defendant
9 a chance to reflect on that.

10 JUDGE TROUTMAN: Fair. Fair.

11 MR. POLLAK: And to make sure that this is a
12 genuine request - - -

13 JUDGE TROUTMAN: Okay.

14 MR. POLLAK: - - - to represent himself and
15 forego his - - -

16 JUDGE RIVERA: But is that - - -

17 MR. POLLAK: - - - his right to counsel.

18 JUDGE RIVERA: - - - the question at that first
19 step? That sounds to me, like the other part of the
20 McIntyre inquiry. All you're deciding here is did he make
21 an unequivocal request? Then you proceed to the inquiry.

22 MR. POLLAK: So - - -

23 JUDGE RIVERA: I think you're collapsing these
24 parts of - - - you know, the stages of McIntyre.

25 MR. POLLAK: I'm trying to - - - I'd say I'm

1 arguing them in the alternative. Because I would say that
2 this is not an unequivocal request, and therefore there was
3 no burden.

4 JUDGE RIVERA: So then the only way to view a
5 request as unequivocal is if the defendant says nothing
6 else but I want to go pro se? Regardless of whatever else
7 is happening at that appearance?

8 MR. POLLAK: No. No, Your Honor. The only way
9 to know whether a request is equivocal or unequivocal,
10 according to the cases from this court, is to look at the
11 record as a whole.

12 JUDGE HALLIGAN: So here in this context, what
13 could the defendant have done differently in order for the
14 request to be unequivocal?

15 MR. POLLAK: Well, I think, first of all, putting
16 it in the middle of a slew of other unrelated complaints,
17 and then immediately - - -

18 JUDGE HALLIGAN: I thought you just responded
19 that you were not taking the position that the defendant
20 couldn't raise other objections alongside the request to go
21 pro se? Is the defendant required to only request to go
22 pro se and can't raise any other issues with the court?

23 MR. POLLAK: I'm not talking about requirements.
24 I'm talking about looking at it holistically. So - - -

25 JUDGE HALLIGAN: I understand. But if we're

1 looking for some indicia, it seems to me that the notion
2 that it is one of several requests, if that weighs heavily,
3 it must be that you'd best only make this request and no
4 other. But maybe there are other indicia - - -

5 MR. POLLAK: Well, let's - - -

6 JUDGE HALLIGAN: - - - you want to point to.

7 MR. POLLAK: I mean, I can point to an example
8 going the opposite direction. In People v. Dixon, for
9 example, the first request there followed a request for
10 reassignment of counsel, and then it was pro se. But it
11 was followed by the judge repeatedly saying, for example,
12 do you want to renew your application for substitute
13 counsel? And the defense saying, no, I've talked to my
14 family; we all agree that going pro se is the right way
15 forward.

16 So that would be an - - - I'm not saying that's a
17 requirement - - -

18 JUDGE HALLIGAN: So - - - so but here - - -

19 MR. POLLAK: - - - but that's an example.

20 JUDGE HALLIGAN: - - - you said there were -
21 there were some different indicia. One, you indicated, was
22 that there were multiple requests. What else could the
23 defendant have done differently, other than make fewer
24 requests in this particular appearance, to communicate
25 unequivocally the request for counsel - - - to go pro se?

1 Sorry.

2 MR. POLLAK: I think there's certainly clearer
3 ways of saying this. I - - - but - - - for - - - the
4 example in Dixon is great. I've talked to all my family;
5 we don't want another counsel; this is the right way
6 forward for me; I want to - - - I have an actual fixed
7 intention desire to present - - - I'm saying - - - I'm not
8 saying there's any magical words. I'm saying we have to
9 look at - - -

10 JUDGE HALLIGAN: Use words that are - - -

11 JUDGE RIVERA: So are you saying that perhaps - -
12 - let - - - I'll go with what you're suggesting here for
13 one moment on this. That until the moment he says I would
14 represent myself, perhaps, he's not really thinking of
15 representing himself. So it - - - when he says I would
16 represent myself, are you looking for something, like, I've
17 changed my mind, I want to represent myself?

18 MR. POLLAK: I'm looking for anything that makes
19 - - -

20 JUDGE RIVERA: If it said that - - - no, no. If
21 it said that, would that satisfy McIntyre's requirement
22 that it has to be unequivocal?

23 MR. POLLAK: I think it would help. Yeah.

24 JUDGE RIVERA: Well, what - - - why is it only -
25 - - why are you hedging? Why are you equivocal?

1 MR. POLLAK: I'm equivocal because I'd want it -
2 - - so - - - so with - - - I just want to understand the
3 hypothetical. It's the entire transcript is the same?

4 JUDGE RIVERA: It simply says, "I've changed my
5 mind. I would represent myself. Sorry. I would like to
6 represent myself. You're going to represent yourself?
7 Yes. I'll deal with it," et cetera, et cetera.

8 MR. POLLAK: I think that'd be a lot closer. I
9 know I'm still being equivocal.

10 JUDGE RIVERA: Yes. Why isn't it past the line?
11 When he said - - - if we take the earlier, right? I - - -
12 I'm going with your suggestion. Of course, the court has
13 said in Duarte, I don't agree, but - - - about this
14 context. Take the context say in - - - before that he
15 wasn't really at all thinking of going pro se. It was not
16 what he intended. But then once the judge says, how long
17 is it going to take you to hire a lawyer, he figures out,
18 oh, I can't do that. I've changed my mind. I don't want
19 to hire a lawyer. I would represent myself.

20 MR. POLLAK: I understand the question. And
21 honestly, the reason I'm hedging, as you're - - -

22 JUDGE RIVERA: Yes.

23 MR. POLLAK: - - - quite accurately describing -
24 - -

25 JUDGE RIVERA: No, it's fair. It's fair.

1 MR. POLLAK: - - - is because I'm - - - I think
2 it would still give me pause that it's immediately
3 following, "I want new counsel at trial" and the judge
4 saying you're going to have to hire counsel.

5 JUDGE RIVERA: Even though, he's saying, "I have
6 changed my mind"?

7 MR. POLLAK: It still smells like leverage to me,
8 like we had in Gillian.

9 JUDGE RIVERA: But isn't that the - - -

10 CHIEF JUDGE WILSON: Wait, wait, wait.

11 JUDGE RIVERA: - - - that's the point. Isn't
12 that the other part of McIntyre? This is just about
13 whether or not it's unequivocal. Not whether or not it's
14 genuine. Not whether or not it's a delay tactic. Those
15 are other parts of McIntyre. This is just this.

16 MR. POLLAK: No. I don't think - - - I think
17 under Gillian and LaValle, that's not the other parts of
18 McIntyre.

19 JUDGE RIVERA: Okay.

20 MR. POLLAK: I think that that is the test for
21 whether or not it's unequivocal. So I - - - yeah.

22 JUDGE CANNATARO: So is it one of the context
23 clues that we were talking - - -

24 MR. POLLAK: Yes.

25 JUDGE CANNATARO: - - - about earlier?

1 MR. POLLAK: Yes, exactly.

2 JUDGE CANNATARO: So if it follows immediately
3 upon an unsuccessful attempt to substitute counsel - - -

4 MR. POLLAK: It's a big red flag.

5 JUDGE CANNATARO: - - - that's a indication that
6 it might not be sincere or unequivocal?

7 MR. POLLAK: Yes. That's what this court's cases
8 said.

9 JUDGE TROUTMAN: Do you disagree that it would
10 have been helpful if, perhaps, this had been explored more
11 before the trial, before that span of time?

12 MR. POLLAK: No, of course not. It would save us
13 all a lot of time here today. However, in Silburn, this
14 court addressed that exact question, which is, if a
15 defendant makes an equivocal request, does the court have
16 an obligation to dig further and get to the bottom of that?
17 And actually, in Silburn, the court said no. Maybe it's
18 the better practice, but it's - - -

19 JUDGE TROUTMAN: Correct.

20 MR. POLLAK: - - - not a - - - it's not a
21 violation of constitutional rights.

22 JUDGE TROUTMAN: That is - - -

23 JUDGE RIVERA: It avoids an appellate issue.

24 JUDGE TROUTMAN: It - - - and that is what I'm
25 asking. And sometimes not just because you're required,

1 but in experience, I have found that it is simpler to take
2 a few moments and go there. You bring it up, you've asked,
3 I'm going to inquire about it. Because the record belongs
4 to the trial judge. I know one may not be obligated, but
5 it certainly makes life easier.

6 MR. POLLAK: I'm not going to argue that - - -
7 that there are better practices or best practices that are
8 not being engaged in here. I think the question is, is
9 this a violation of his right - - - his constitutional
10 right? Does this merit throwing out the entire trial and
11 doing it over again? Because - - -

12 JUDGE TROUTMAN: Because all of these other
13 things were going on. There's some things he said that one
14 would argue were ridiculous.

15 MR. POLLAK: Not my words, Your Honor, but I
16 don't disagree.

17 JUDGE TROUTMAN: So there were a lot of things
18 that were going on at the time. But the question, even as
19 to those things, the transcript doesn't seem questionable
20 with respect to the counsel, it's just left out there. The
21 issue is just left. The court says I'll deal with it
22 later, and it's just left.

23 MR. POLLAK: Well, the court court says - - - the
24 court invites him to raise it later and he doesn't. And -
25 - -



1 JUDGE TROUTMAN: So it's on him?

2 MR. POLLAK: I think - - -

3 JUDGE TROUTMAN: He can bring it up. The court
4 doesn't have to rule right away or within a reasonable
5 time. He can - - - are you suggesting some kind of waiver?

6 MR. POLLAK: I'm saying that there is - - - yes.
7 I'm not suggesting - - - and I stated outright in our
8 brief, there is some waiver. If he's invited to raise it
9 again later, and he doesn't, there is waiver. And I've
10 cited the cases in there.

11 JUDGE RIVERA: But that's not what McIntyre
12 requires or allows. McIntyre is not a two-request rule.
13 You made your request. Judge has to make an inquiry. I
14 get - - - the judge might decide not to grant it. It's not
15 about the grant or not.

16 MR. POLLAK: But there - - - even in McIntyre's
17 progeny, there are plenty of cases where it says that where
18 a - - - an unequivocal - - - even when an unequivocal
19 request is made, that can be waived by the defendant if
20 they don't act on it later. If they don't move for it
21 later. And that's what we have here. And what we're left
22 with is the next time the court meets - - - I see my red
23 light is on. Can I finish?

24 CHIEF JUDGE WILSON: Yeah. Please finish, yes.

25 MR. POLLAK: The next time the court meets,



1 defendant is - - - remains very vocal. Remains very
2 descriptive of his conflict with counsel and all the
3 strategic differences they're having. But despite the
4 court's invitation, does not raise his pro se request. And
5 I should add, he then hijacks his trial halfway through and
6 has two witnesses prepared that were his strategy. So as
7 far as being able to prepare for trial, it seems he was
8 able to do that as well, even though his pro se request
9 hadn't been ruled on.

10 So with that, Your Honors, unless the court has
11 further questions, the People rely on their briefs. Thank
12 you.

13 CHIEF JUDGE WILSON: Thank you.

14 JUDGE TROUTMAN: Counsel, could you pick back up
15 where the People left off with the argument that the court
16 didn't simply ignore, but invited the defendant to address
17 the issue in the future if that was, in fact, what he
18 wanted?

19 MR. FITZMAURICE: So yeah. As we discussed, the
20 fact that it's even making that invitation tells you that
21 it appreciates it to be a pro se request. I think that
22 what this is very like is, it's very like situation in
23 Holmes, you know. In Holmes, which - - - which actually,
24 the prosecution attaches in their appendix. Holmes
25 involved a situation where a single sentence, "I'd like to

1 go pro se", was met with the court kind of conducting a
2 Faretta monologue, not a Faretta inquiry. And this court
3 said, well, if it's already - - - if it's moving on, it
4 clearly understands the request. And it didn't conduct a
5 searching inquiry. So this court sent it back down. And I
6 think that that's the situation here. Both courts
7 understood the request. The only difference is, rather
8 than conducting an inappropriate Faretta monologue, it just
9 indefinitely deferred it until trial.

10 And we've already addressed how the right to go
11 pro se entails an ability to prepare.

12 JUDGE TROUTMAN: Did he have the opportunity to
13 speak before the trial started about any outstanding issues
14 that he had?

15 MR. FITZMAURICE: Absolutely. And speak he did.
16 You know, which again, consistent with his desire to - - -
17 to represent himself. I push back very strongly on the
18 notion of hijacking a trial when what we're talking about
19 is testifying in your own defense, which is one of the most
20 core rights that a defendant has. But I - - - it's not
21 meant to be impossible to satisfy step one. You know, as
22 Your Honor alluded to, the origin of step one, McIntyre,
23 came along and it standardized the inquiry statewide. Step
24 one, stop pro se issues being - - - you know, ambushing
25 appellate courts. So let's make sure there's a clear and

1 timely request. It's not very controversial. And I submit
2 that this is not an example of ambushing an appellate court
3 with a trial - - - with a pro se request when he's made it
4 on two different occasions, including immediately after
5 withdrawing a plea. So I think the McIntyre framework
6 applies to shy defendants and not-shy defendants alike.

7 And - - - you know, I don't think that anything
8 in McIntyre, or any case following McIntyre, allowed a
9 court to understand the nature of the request, repeat it
10 back, and to just do nothing.

11 So I think that this is an example of a core
12 Sixth Amendment right not being taken seriously. And to
13 the extent that the prosecution claims that it was
14 subsequently waived, you know. The cases that dealt with
15 waiver, the actual holding of those cases is that the
16 defendant in those cases acted in a manner that
17 subsequently indicated satisfaction with counsel. And I
18 don't think there's a single universe where we can say that
19 this trial reflected Mr. Lewis acting in a manner that
20 indicated his satisfaction with Mr. O'Donnell.

21 So if there are no further questions, Your
22 Honors, I'd ask that this court vacate Mr. Lewis'
23 conviction and remit the matter for a new trial.

24 Thank you.

25 CHIEF JUDGE WILSON: Thank you.



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C E R T I F I C A T I O N

I, Chrishanda Sassman-Reynolds, certify that the foregoing transcript of proceedings in the Court of Appeals of People v. Laquawn Lewis, No. 48 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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