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COURT OF APPEALS

STATE OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

-against-

ALIAS STONE,

No. 5
(Papers sealed)

Appellant.

20 Eagle Street
Albany, New York 12207
January 6, 2014

Before:

CHIEF JUDGE JONATHAN LIPPMAN
ASSOCIATE JUDGE VICTORIA A. GRAFFEO
ASSOCIATE JUDGE SUSAN PHILLIPS READ
ASSOCIATE JUDGE ROBERT S. SMITH
ASSOCIATE JUDGE EUGENE F. PIGOTT, JR.
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE SHEILA ABDUS-SALAAM

Appearances:

LEAH FRIEDMAN, ESQ.
FRESHFIELDS BRUCKHAUS DERINGER LLP
Attorneys for Appellant
601 Lexington Avenue
New York, NY 10022

SHEILA O'SHEA, ADA
NEW YORK COUNTY DISTRICT ATTORNEY'S OFFICE
Attorneys for Respondent
One Hogan Place
New York, NY 10013

Sharona Shapiro
Official Court Transcriber

1 CHIEF JUDGE LIPPMAN: Number 5, People v.
2 Stone.

3 Counselor?

4 MS. FRIEDMAN: Leah Friedman, Freshfields
5 Bruckhaus Deringer, for the appellant, Your Honor.
6 I'd like to request two minutes rebuttal time.

7 CHIEF JUDGE LIPPMAN: Two minutes for
8 rebuttal.

9 JUDGE GRAFFEO: Can you speak up a little
10 bit more?

11 MS. FRIEDMAN: Of course.

12 JUDGE GRAFFEO: I didn't hear - - -

13 MS. FRIEDMAN: Is that better, Your Honor?

14 JUDGE GRAFFEO: - - - what you just said.

15 MS. FRIEDMAN: It's Leah Friedman - - -

16 JUDGE GRAFFEO: These are not working.

17 MS. FRIEDMAN: Okay. Leah Friedman,
18 Freshfields Bruckhaus Deringer, for the appellant,
19 Mr. Stone. And I requested two minutes of rebuttal
20 time, Your Honor.

21 The appellant suffers from paranoid
22 schizophrenia. At every stage of his trial, from its
23 inception, through his hearing on the pro se
24 application, through to the conclusion of the trial,
25 Mr. Stone made paranoid, delusional statements about

1 his - - -

2 CHIEF JUDGE LIPPMAN: Was the mental health
3 issue raised by anyone earlier on?

4 MS. FRIEDMAN: Not during the course of the
5 trial. The first time the formal diagnosis was
6 raised with the court was in a - - - a letter that
7 the court received after the conclusion of the trial.

8 CHIEF JUDGE LIPPMAN: So if it wasn't
9 raised earlier, why do you think that it was an abuse
10 of discretion for the judge not to hold a hearing or
11 whatever?

12 MS. FRIEDMAN: Your Honor, Mr. Stone
13 repeatedly, at every stage of the proceedings, made
14 paranoid, delusional statements about a conspiracy
15 between his attorney - - -

16 CHIEF JUDGE LIPPMAN: So the judge should
17 have recognized there's a mental health problem?

18 MS. FRIEDMAN: The judge did recognize that
19 Mr. Stone had an unfounded belief and Mr. Stone - - -

20 CHIEF JUDGE LIPPMAN: Or did the judge just
21 think he had a mistrust of the system and that - - -

22 MS. FRIEDMAN: I think what the judge said
23 was that Mr. Stone had an unfounded belief and that
24 he'd had to give him repeated assurances that this
25 was not the case, and his attorney - - -

1 JUDGE SMITH: Isn't it the fact that almost
2 every defendant who ever decided to go pro se is a
3 little nuts?

4 MS. FRIEDMAN: It's certainly true that
5 many defendants - - -

6 JUDGE SMITH: And nuts in this specific
7 way: They're all out to get me; I can't trust anyone
8 but myself?

9 MS. FRIEDMAN: Many defendants certainly
10 make complaints about unfairness in the system - - -

11 JUDGE SMITH: I guess what I'm saying is,
12 isn't the rule that you're - - - isn't applying the
13 rule you're asking for to this case, wouldn't that
14 essentially nullify the Faretta right entirely?

15 MS. FRIEDMAN: No, Your Honor. Certainly
16 People against Reason recognizes that a decision to
17 allow a defendant to go pro se should, in any case,
18 be premised on applied judicial determination of a
19 defendant's competence to stand trial.

20 What Indiana against Edwards adds is the
21 recognition and a very strong caution against the use
22 of the single standard for determining competency to
23 stand trial - - -

24 JUDGE SMITH: Indiana v. Edwards, as I
25 understand it, says that we can decide, essentially,

1 whether or not - - - maybe I'm oversimplifying it - -
2 - whether or not Godinez is the law in this state, or
3 whether or not we're going to continue to follow
4 Reason. The - - - but if we do what you say and say,
5 oh, no, we're going to have two standards, and a
6 higher standard for going pro se, and it's - - - the
7 standard is so high that this guy can't meet it,
8 who's ever going to meet it?

9 MS. FRIEDMAN: Your Honor, people who would
10 meet it are people who don't suffer from delusional
11 complexes like Mr. Stone did, of course.

12 JUDGE GRAFFEO: But was he really
13 delusional? He was very articulate in responding to
14 the judge.

15 MS. FRIEDMAN: Your Honor, it certainly - -
16 -

17 JUDGE GRAFFEO: He even conducted a fairly
18 decent cross-examination of the one wi - - - of the
19 one witness.

20 MS. FRIEDMAN: It's certainly true that a
21 person who suffers from - - -

22 JUDGE GRAFFEO: I mean - - -

23 MS. FRIEDMAN: - - - mental illness - - -

24 JUDGE GRAFFEO: I mean, he didn't like his
25 attorney and he had - - - he was distrustful of

1 everyone in the justice system, but won't we end up
2 with having to have a competency hearing for everyone
3 that asks for pro se status?

4 MS. FRIEDMAN: Absolutely not, Your Honor.
5 What we're saying is that a person who evinces signs
6 of delusional thinking, a person whose reasoning
7 appears to be faulty - - -

8 CHIEF JUDGE LIPPMAN: What triggers the
9 need to hold some kind of hearing for that issue as
10 to whether or not they can represent themselves?

11 MS. FRIEDMAN: Whether the def - - -

12 CHIEF JUDGE LIPPMAN: What's the trigger?

13 MS. FRIEDMAN: Whether the defendant's
14 conduct raises red flags about his mental health, by
15 which I mean, does the defendant appear to have
16 impaired decision-making capabilities? Does he
17 appear to have impaired cognitive capabilities?

18 CHIEF JUDGE LIPPMAN: So the bottom line is
19 you - - - your argument is that the judge knew or
20 should have known that he had a mental problem?

21 MS. FRIEDMAN: The judge acknowledged that
22 he was behaving in a paranoid nature.

23 CHIEF JUDGE LIPPMAN: But - - -

24 MS. FRIEDMAN: Correct, Your Honor.

25 CHIEF JUDGE LIPPMAN: - - - could the judge

1 not have quite figured it out, but you're saying he
2 should have?

3 MS. FRIEDMAN: Your Honor, we're not
4 suggesting that the court should have found him
5 incompetent. All we're saying is that there was
6 enough there for the court to ask more questions.

7 CHIEF JUDGE LIPPMAN: Yes - - -

8 MS. FRIEDMAN: It wasn't necessary - - -

9 CHIEF JUDGE LIPPMAN: - - - but I'm saying
10 the trigger is, in your view, that the judge knows or
11 should know - - - that would be the test - - - that
12 there's a mental - - - might be a mental problem?

13 MS. FRIEDMAN: That there is sufficient
14 doubt that the defendant might have a mental problem
15 - - -

16 JUDGE READ: What do we do with Reason?

17 MS. FRIEDMAN: - - - that's correct.

18 I beg your pardon, Your Honor?

19 JUDGE READ: What do we do with Reason? Do
20 we have to overrule it - - -

21 MS. FRIEDMAN: Your Honor - - -

22 JUDGE READ: - - - to find in your favor?

23 MS. FRIEDMAN: - - - to the extent that
24 Reason forbids a trial court from applying different
25 standards to the determination of whether a defendant

1 is competent to stand trial or competent to represent
2 himself, it is inconsistent with the holding in
3 Edwards. And we would say that the holding,
4 respectfully, should be limited in that respect.

5 JUDGE SMITH: Doesn't Edwards say the
6 states can do what they want? Isn't that the gist of
7 Edwards?

8 MS. FRIEDMAN: The permissive language in
9 Edwards related to the authority of a trial court to
10 impose counsel on a so-called gray area defendant.
11 The court gave a very strong caution and didn't
12 really didn't use the permissive language with
13 respect to the application of a dual standard.

14 JUDGE SMITH: So you say - - - you're
15 really saying Edwards overruled Godinez?

16 MS. FRIEDMAN: I think that Edwards clearly
17 distinguished Godinez, and I think the court made
18 that clear.

19 JUDGE SMITH: And it was one of your more
20 aggressive distinguishings, is what you're
21 suggesting?

22 MS. FRIEDMAN: I think - - - I think that
23 the court made it clear that it was - - - it was
24 distinguishing Godinez, because Godinez didn't
25 involve a situation where a defendant who might have

1 JUDGE GRAFFEO: - - - when he said I'm not
2 happy with my attorney, I want to proceed pro se?

3 MS. FRIEDMAN: First, just to answer the
4 question about the rule that the court would apply.
5 If we assume, for the sake of argument, that Mr.
6 Stone was competent to stand trial, then the Supreme
7 Court, as I - - - I mentioned before, didn't set a
8 specific standard for determining competence to
9 represent oneself; it wanted to leave this within the
10 discretion of the trial courts and leave it to them
11 to - - - to experiment. But the court offered one
12 formulation, which we would suggest adopting here,
13 which is whether the defendant has the competence
14 necessary to form the basic tasks associated with
15 presenting a defense without the assistance of
16 counsel.

17 As to what a court should look for and what
18 a court should ask - - - the kinds of questions that
19 a court should ask, that, again, would depend on the
20 circumstances of the case, but what the court should
21 - - -

22 JUDGE GRAFFEO: What should this judge have
23 asked him?

24 MS. FRIEDMAN: Okay. This judge should
25 have, first of all, asked whether the defendant might

1 have had any history of mental illness, whether he
2 was receiving treatment. Even those basic questions
3 probably would have led to an inquiry that would have
4 revealed the diagnosis that unfortunately only came
5 to light at the conclusion of the trial. And the
6 court could have, of course, allowed for a brief
7 recess if it had doubts, referred Mr. Stone to a
8 psychologist for an hour, if it had doubts about his
9 mental health.

10 JUDGE RIVERA: And should the judge have
11 relied on whatever the defendant said? The defendant
12 says no, I'm totally - - - I know exactly what I'm
13 doing.

14 MS. FRIEDMAN: No, Your Honor, and I mean,
15 I think that many cases, including People against
16 Armlin, makes it clear that we can't rely on a
17 severely mentally ill defendant to - - -

18 JUDGE GRAFFEO: Is there any obligation of
19 the defendant's attorney? His lawyer didn't raise
20 any issue with the judge.

21 MS. FRIEDMAN: That's correct, Your Honor.
22 It's not clear from the record why he didn't raise
23 the issue. The case law, Tortorici, Gelikkaya, and
24 so on, do place some emphasis on defense counsel's
25 action or inaction on the competence issue, but they

1 do so among a range of other factors. It's really
2 unclear from the record why he didn't raise the
3 issue. He did say that he had a complete breakdown
4 in communication with Mr. Stone. And it's possible,
5 of course, that he was simply finding Mr. Stone so
6 difficult to deal with that he thought a pro se
7 motion was in everybody's best interests.

8 There are cases like People against Morgan,
9 which give far less credence to the role of defense
10 counsel in raising the issue of competence and say
11 that it really is for the trial court's discretion,
12 and the defense counsel's observations really can't
13 be a substituted for that discretion.

14 JUDGE SMITH: How do we avoid the problem
15 that every defendant who's allowed to go pro se, if
16 he gets convicted, is going to be coming here or
17 making a 440 or doing something and saying should
18 have asked more questions here, there was this red
19 flag, there was this question that wasn't asked?
20 They're never going to get it perfect.

21 MS. FRIEDMAN: Your Honor, I mean, I think
22 you're sort of raising, I guess, a catch-22 kind of
23 problem where a - - - where a defendant gets to
24 complain no matter what the outcome is. I think the
25 answer there is that a court, if it asks the right

1 questions and it conducts the right inquiry and it
2 applies the right legal standard, has - - - gets a
3 lot of discretion when it makes its - - -

4 JUDGE SMITH: And how clear is it going to
5 be - - -

6 MS. FRIEDMAN: - - - a lot of difference.

7 JUDGE SMITH: - - - what the right
8 questions are and what the right legal standard is?

9 MS. FRIEDMAN: What the court needs to do
10 is look for exactly the same features and ask pretty
11 similar questions to what the court does when its
12 assessing whether or not to determine a person's
13 competency to stand trial, except recognizing that
14 you require an extended form of the basic
15 capabilities in order to represent yourself without
16 the assistance of counsel. So it's not as though
17 it's a completely foreign set of criteria for
18 competence. We're talking about decisional
19 competence, we're talking about cognitive competence,
20 and we're talking about communicative competence.

21 CHIEF JUDGE LIPPMAN: Okay, counselor.

22 MS. FRIEDMAN: Thank you, Your Honor.

23 CHIEF JUDGE LIPPMAN: You'll have your
24 rebuttal.

25 MS. FRIEDMAN: Thank you, Your Honor.

1 CHIEF JUDGE LIPPMAN: Thanks.

2 Counselor?

3 MS. O'SHEA: May it please the court. My
4 name is Sheila O'Shea, and I represent the respondent
5 on this appeal.

6 CHIEF JUDGE LIPPMAN: Counselor, should the
7 judge have realized that there was a mental problem
8 here? The judge talked about, you know, his problems
9 a little bit. Should that have been obvious to the
10 judge that - - -

11 MS. O'SHEA: Absolutely not, Your Honor.
12 This - - -

13 CHIEF JUDGE LIPPMAN: - - - that this was a
14 mental issue?

15 MS. O'SHEA: As the court has observed, the
16 type of complaints that the defendant here was
17 raising were the run of the mill garden variety
18 complaints.

19 CHIEF JUDGE LIPPMAN: How does the judge
20 distinguish between a really crazy person and just a
21 person whose conduct is a little odd?

22 JUDGE READ: Somebody who's just crazy
23 enough to want to represent themselves - - -

24 CHIEF JUDGE LIPPMAN: Yes.

25 JUDGE READ: - - - as opposed to a really

1 crazy person.

2 MS. O'SHEA: Well here, again, I don't even
3 think we had any indication of a - - - minimally, if
4 you will, of a - - -

5 CHIEF JUDGE LIPPMAN: Well, how does the
6 judge know that there's - - -

7 MS. O'SHEA: Well, here the first thing the
8 defendant got up and said to the court was I want to
9 represent myself because I've spent so much of my
10 life in jail and I've been sold out by so many of my
11 attorneys. So the judge himself recognized, and
12 actually stated on the record, that the source of - -
13 - of the defendant's mistrust of the system was his
14 numerous felony convictions and his - - -

15 JUDGE SMITH: But he - - -

16 MS. O'SHEA: - - - incarcerations.

17 JUDGE SMITH: He thought the jury had been
18 deliberately selected to find him guilty. That was a
19 delusion, wasn't it?

20 MS. O'SHEA: Well, this is a defendant who,
21 as I said, he was arrested for the first time when he
22 was sixteen, has spent most of his life in jail and
23 feels he's been - - -

24 JUDGE SMITH: He may have - - -

25 MS. O'SHEA: - - - ill served by the

1 system.

2 JUDGE SMITH: He may have reasons for his
3 delu - - - but still, you're not suggesting it was in
4 fact true or may have been true that everybody - - -
5 that his lawyer sat down with everybody else and
6 decided to pick the most hostile jurors he could.

7 MS. O'SHEA: No, absolutely not, Your
8 Honor, but I do think that when it came time for this
9 defendant to participate in voir dire, he certainly
10 understood the role of the jury. He succeeded in
11 obtaining a for-cause challenge against one of the
12 jurors. He asked two jurors about their ability to
13 be fair and impartial, one who'd been a crime victim,
14 one whose father, I believe, was a police officer.

15 JUDGE SMITH: Is the test whether he can do
16 a decent job as his own lawyer?

17 MS. O'SHEA: No, that's not the test,
18 because if that were the test, then no - - - no - - -
19 that would totally abrogate the rights of - - -

20 JUDGE SMITH: Is the test whether he's sane
21 enough to waive the right to self-representation - -
22 -

23 MS. O'SHEA: Well, the test is what this -
24 - -

25 JUDGE SMITH: - - - or his right to a

1 lawyer?

2 MS. O'SHEA: - - - what this court
3 articulated in Reason and what - - - what this court
4 said in Reason and what the People are asking the
5 court to adhere to and reaffirm its commitment in
6 Reason to the Constitutional right to self-
7 representation. And what the court said in Reason
8 was as long as the defendant is mentally competent to
9 stand trial and he makes knowing and intelligent
10 waiver of his right to counsel, that's sufficient.
11 And the reason that's sufficient is because the
12 waiver consideration, necessarily - - - when the
13 judge conducts the waiver, he necessarily will be
14 considering the defendant's competence. So if a
15 defendant - - -

16 JUDGE SMITH: I think I understand what
17 you're saying. Do we have to reach that question
18 here, or is this a case where the evidence of mental
19 problems is so weak that on almost any standard, the
20 guy would be - - -

21 MS. O'SHEA: I think the latter, Your
22 Honor. You can certainly decide this case without
23 even discussing - - -

24 CHIEF JUDGE LIPPMAN: What would be the
25 trigger to conduct some kind of hearing on the issue?

1 MS. O'SHEA: Well, the trigger is what the
2 CPL 730 says the trigger is, which there is a
3 reasonable basis to believe that the defendant is an
4 incapacitated person, and that is defined by statute
5 as someone who, by reason of a mental disease or
6 defect, can't understand the proceedings against him
7 or assist in his own defense. That trigger was not
8 at all - - - that was not satisfied here whatsoever.
9 As I said, these were the garden variety complaints
10 of someone railing against the system.

11 JUDGE SMITH: That's the trigger for a
12 psychiatric examination, a trigger for a hearing on
13 competence. But still, the process of deciding
14 whether he can voluntarily waive is a separate
15 process, isn't it?

16 MS. O'SHEA: Well, that's a process that
17 the judge conducts and that the judge did in fact
18 conduct in this case.

19 JUDGE SMITH: And if the guy seems to be
20 substantially off the beam, that's relevant to the
21 waiver issue?

22 MS. O'SHEA: That's what this court said in
23 Reason, and I believe that, again, that would address
24 any competency concerns.

25 CHIEF JUDGE LIPPMAN: You're saying to some

1 degree, inevitably, you'll have to determine
2 competence to figure out whether the waiver was - - -

3 MS. O'SHEA: Exactly, Your Honor, and
4 that's what the court - - - again, that's what the -
5 - -

6 CHIEF JUDGE LIPPMAN: - - - voluntary?

7 MS. O'SHEA: - - - that's what court said
8 in Reason. What the court also recognized in Reason,
9 as I think Judge Smith might have observed earlier,
10 is that to adopt a - - - I mean, really Reason was -
11 - - was twenty-five or thirty years ahead of its
12 time, in some ways, because it addressed the
13 questions that the Supreme Court was reaching in
14 Edwards, and it said that you would be hard pressed
15 to find a workable or so-called higher standard to
16 determine competence to represent oneself without
17 infringing upon the Constitutional right recognized
18 by the New York state Constitution to appear and
19 defend in person.

20 And I just wanted to go back to that point
21 that unlike Faretta, which was decided in 1975, this
22 state, since 1846, I believe, has provided an
23 explicit provision in its Constitution that a
24 defendant shall be allowed to appear and defend in
25 person. This court, in People v. Rosen, recognized

1 that that was an explicit and unambiguous right to
2 self-representation. So even though Faretta wasn't
3 decided until 1975, for over 150 years, this state
4 has safeguarded the right to - - - to - - - the
5 Constitutional right to self-representation.

6 JUDGE SMITH: What good has that right ever
7 done anyone?

8 MS. O'SHEA: Your Honor, it's a
9 Constitutional right. Is it ill-advised? Is it a
10 bad idea? Probably. Can a defendant who has no
11 legal training ever do as good a job as a trained
12 attorney? Probably not. But nevertheless, it's a
13 Constitutional right, and unless and until Faretta is
14 overruled, the defendant has the - - - has the
15 Constitutional right, provided that he makes a
16 knowing and intelligent waiver of his right to
17 counsel.

18 JUDGE PIGOTT: Well, and there's more to
19 life than murders and burglaries. I mean, there's
20 vehicle and traffic infractions. There's minor
21 things where people can defend themselves quite well
22 without going to the expense of attorneys.

23 MS. O'SHEA: That's right. And as I think
24 the court observed, this - - - this defendant
25 actually did some things quite well. As the

1 Appellate Division noted, he delivered a cogent and
2 appropriate opening statement, he reminded the jurors
3 that the burden of proof was on the People, he
4 implored the jurors to keep an open mind, and he
5 presented his defense of innocence. And that's as
6 much as most defense attorneys do. So I think he did
7 a very good job in that regard. As I said, he did a
8 very good job on voir dire; he succeeded in obtaining
9 a for-cause challenge against a juror. I think many
10 pro se defendants would be hard pressed to do that
11 well.

12 So clearly he understood the role of the
13 judge, the jury, the defense attorney and the
14 prosecutor. And also to the extent that he did trip
15 up a little bit during his cross-examination, as
16 Judge Smith pointed out, that was totally to be
17 expected. How could you expect someone without legal
18 training to conduct a polished, perfect cross-
19 examination? It is inherent in the pro se process,
20 if he's questioning someone about his alleged
21 presence in that person's office, he's going to get a
22 little trapped up - - - tripped up and talk about
23 when I allegedly was in your office or when I
24 allegedly left your office.

25 But we can't expect these pro se defendants

1 to be Clarence Darrow; that's not the standard. They
2 do have a Constitutional right under - - - under
3 state law and federal law. And I would urge the
4 court, as I said, to adhere to its reasoning in
5 Reason and not accept the invitation of the United
6 States Supreme Court to trample on a defendant's
7 Constitutional right - - -

8 CHIEF JUDGE LIPPMAN: Okay, coun - - -

9 MS. O'SHEA: - - - to self-representation.

10 CHIEF JUDGE LIPPMAN: Thanks, counselor.

11 Counselor, rebuttal? Counselor, the fact
12 that he gave back the reigns to the real lawyer,
13 wouldn't show that he got it as to what his role is
14 and that, you know, maybe it wasn't the best idea as
15 to - - - and wouldn't that show some rationality?

16 MS. FRIEDMAN: I mean, it could also show
17 that he was panicked and anxious.

18 CHIEF JUDGE LIPPMAN: Yeah.

19 MS. FRIEDMAN: Mentally ill people - - -
20 severely mentally ill people seek help on occasion.
21 But I should say, of course, that his condition
22 varies over time, depending on treatment. It varies
23 in the extent and severity of the symptoms, like all
24 mental illness.

25 JUDGE PIGOTT: Much of what you allege came

1 from the pre-sentence investigation in December.

2 MS. FRIEDMAN: That's correct, Your Honor.

3 JUDGE PIGOTT: Wouldn't that - - - would
4 this be a proper 440 motion then?

5 MS. FRIEDMAN: Your Honor, what we're
6 saying, predominantly, is that Mr. Stone's conduct
7 and demeanor throughout the course of the trial
8 raised enough red flags. So it's not about evidence
9 coming to light at the conclusion of the proceedings.
10 The trial judge recognized that Mr. Stone had an
11 unfounded belief, which he described as paranoid and
12 he described as irrational, that his attorney was
13 engaged in a grand scheme, in league with prosecution
14 and the State, to get him. And the court said that
15 it had to repeatedly give him assurance that the
16 court and the system and the State were not out to
17 get him. The court said that he posed a security
18 threat to the proceedings from their inception.

19 This was not a case in which the trial
20 judge was totally unaware of the defendant's
21 condition. This was a situation in which Mr. Stone
22 expressed paranoid, delusional beliefs and the court
23 acknowledged the paranoid nature of those beliefs and
24 even described the belief itself. So this is a case
25 not where the evidence came to light at the

1 conclusion, although it does give context to his many
2 paranoid, delusional statements and it does indicate
3 what the court might have found if it had conducted
4 some minimum inquiry; it's a case where the evidence
5 was there on the record and the court should have
6 done something to ask - - -

7 JUDGE SMITH: Tell me again what -- exactly
8 what sort of inquiry are you looking for here? What
9 inquiry should he have done? Should he have
10 appointed someone to examine him?

11 MS. FRIEDMAN: At a minimum, the court
12 should have allowed for a brief recess and allowed a
13 psychologist to examine Mr. Stone. But there are
14 other things that the court could have done, of
15 course - - -

16 JUDGE SMITH: So every time a defendant
17 says I want to go pro se because everyone's out to
18 get me, you have to call in a shrink?

19 MS. FRIEDMAN: Not necessarily, depending
20 on the circumstances; the inquiry is a flexible one.
21 The court could simply say to the defense attorney:
22 Does he have any history of mental illness? His
23 comments seem really strange and he's behaving in a
24 really paranoid fashion. I'm not sure he'd really be
25 competent to represent himself; it's an onerous set

1 of duties.

2 The court could do many things. The court
3 could put the question to Mr. Stone, of course. But
4 that, again, is not necessarily going to be decisive.
5 And then, of course, CPL 730 contemplates a sliding
6 scale of mechanisms that the court can adopt. Many,
7 many, many cases don't result in a full evidentiary
8 hearing. There's often no objection when the
9 psychiatric reports come back. So those are - - -

10 CHIEF JUDGE LIPPMAN: Okay, counselor.

11 MS. FRIEDMAN: Thank you, Your Honor.

12 CHIEF JUDGE LIPPMAN: Thank you both.

13 MS. FRIEDMAN: Thank you.

14 CHIEF JUDGE LIPPMAN: Appreciate it.

15 (Court is adjourned)

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

I, Sharona Shapiro, certify that the foregoing transcript of proceedings in the Court of Appeals of The People Of The State Of New York v. Alias Stone, No. 5 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Sharona Shapiro

Signature: _____

Agency Name: eScribers

Address of Agency: 700 West 192nd Street
Suite # 607
New York, NY 10040

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