

Competency to Stand Trial and to Waive the Sixth Amendment Right to Self-Representation

Christopher T. Benitez, MD
Fellow in Forensic Psychiatry

John Chamberlain, MD
Assistant Professor of Psychiatry

Department of Psychiatry
University of California San Francisco
San Francisco, CA

The standard of competency to represent oneself at trial is the same standard as competency to stand trial. The federal constitutional right to self-representation requires that a defendant who is competent to be tried for a crime be permitted to proceed *pro se* if that is the defendant's choice.

Edwards v. State, 866 N.E.2d 252 (Ind. 2007), was decided on May 17, 2007, by the Indiana Supreme Court. In this case, Ahmad Edwards had been found competent to stand trial, but the court refused to allow him to represent himself at trial. Following his conviction, he appealed, contending he was denied his Sixth Amendment right to self-representation. The Indiana Supreme Court acknowledged that the trial court's decision seemed reasonable; however, given that the trial court had declared him competent to stand trial, the U.S. Supreme Court precedent required that Mr. Edwards be given the right to represent himself at trial, assuming that his waiver of his right to counsel was knowing and voluntary.

Facts of the Case

On July 12, 1999, Ahmad Edwards stole a pair of shoes. When confronted by a loss-prevention officer, Mr. Edwards fired three gunshots. One shot grazed the officer, and another hit a bystander in the ankle. Mr. Edwards was charged with attempted murder, battery with a deadly weapon, criminal recklessness, and theft.

He was evaluated by two psychiatrists, who diagnosed schizophrenia and declared him incompetent to stand trial. After two years of evaluation and treatment at Logansport State Hospital, Mr. Edwards was found competent by a staff psychiatrist. Later, the trial court ordered another examination by two different psychiatrists, who found him incompetent.

Subsequently, a different staff psychiatrist found that Mr. Edwards was competent. Mr. Edwards then moved to represent himself, but the court denied his request, noting his intention to raise an insanity defense. In June 2005, the case went to trial and resulted in convictions for criminal recklessness and theft. The two other counts resulted in a hung jury, and the court declared a mistrial.

At the subsequent trial on the remaining charges, Mr. Edwards made various motions to represent himself that were ultimately denied. The court reasoned that, although Mr. Edwards had been found competent to stand trial, he lacked the additional capability to defend himself adequately. After a three-day trial, Mr. Edwards was convicted of attempted murder and battery with a deadly weapon. He was sentenced to 30 years' imprisonment. He appealed, claiming that he had been denied his Sixth Amendment right to self-representation. The state contended that the trial court properly found Edwards incompetent to represent himself, because he was incapable of presenting a "meaningful defense." The state argued that due process and the fundamental fairness of a criminal trial are overriding considerations limiting a defendant's right to self-representation.

Ruling and Reasoning

The Indiana Supreme Court agreed that Mr. Edwards was denied his Sixth Amendment right to self-representation. The conviction was reversed and remanded. In its reasoning, the court first explored the legal context for standards of competence and waiving Constitutional rights.

In *Faretta v. California*, 422 U.S. 806 (1975), the U.S. Supreme Court concluded that, although the Sixth Amendment makes no explicit reference to the right to self-representation, the right is implicit because "the right to defend is given to the accused and counsel is to assist, not conduct, the defense." The majority conceded that most criminal defendants would be better defended by counsel, but held that forcing unwanted counsel on a defendant "violates the logic" of the Sixth Amendment. However, the Court also held that, while an accused must "knowingly and intelligently" forego his right to counsel, he need not possess the skill and experience of a lawyer to represent himself.

The dissent in *Faretta* opined that the public confidence in the criminal justice system requires a capable defense and that the right of the accused to

self-representation did not warrant converting that right into an “instrument of self-destruction.” The standard for competence to stand trial was established in *Dusky v. United States*, 362 U.S. 402 (1960), which held that a defendant should have “sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding” and have a “rational as well as factual understanding of the proceedings against him” to be competent.

In *Godinez v. Moran*, 509 U.S. 389 (1993), the U.S. Supreme Court reaffirmed the *Dusky* standard, overturning the Ninth Circuit’s ruling that competence to waive the right to assistance of counsel requires a higher level of mental function than is needed to stand trial, holding instead that “the competence that is required of a defendant seeking to waive his right to counsel is the competence to waive the right, not the competence to represent himself” (*Godinez*, 509 U.S., p 399). The Court concluded that the standard of competence for waiving the right to counsel is not higher than that required to stand trial. However, it also held that “a trial court must. . . satisfy itself that the waiver of his constitutional rights is knowing and voluntary. In this sense there is a ‘heightened’ standard for . . . waiving the right to counsel, but it is not a heightened standard of competence” (*Godinez*, 509 U.S., pp 400–1).

The Indiana court cited their own similar reasoning in *Sherwood v. State*, 717 N.E.2d 131 (Ind. 1999), which held that “whereas the competency inquiry focuses on the ability to understand the proceedings, the ‘knowing and voluntary’ inquiry focuses on whether the defendant actually understands the significance and consequences of his choice and whether the decision is uncoerced” (*Sherwood*, 717 N.E.2d, p 135). That decision recognized the “long-standing distinction between competence to choose self-representation, which is measured by competence to stand trial, and competence to represent oneself effectively, which the defendant is not required to demonstrate.”

The state cited the dissenting opinion in *Faretta* and the several opinions in *Martinez v. Court of Appeal of California*, 528 U.S. 152 (2000), to support its position that the denial of Edwards’ request for self-representation was required by due process and fundamental fairness. The state argued that *Martinez* cast doubt on the reasoning in *Faretta* when it held that “[t]he historical evidence relied upon by *Faretta* as identifying a right of self-representation is not al-

ways useful. . . . [A]n individual’s decision to represent himself is no longer compelled by the necessity of choosing self-representation over incompetent or nonexistent representation” (*Martinez*, 528 U.S., p 156). However, the *Martinez* majority view was not shared by all justices in that case. Although several opinions acknowledge that *Martinez* cast doubt on *Faretta*, neither *Martinez*, nor any other Supreme Court decision has overruled *Faretta* or *Godinez*.

The Indiana Supreme Court acknowledged that the trial court’s conclusion “was at minimum, reasonable,” the right to counsel was intended to ensure that a defendant receives a fair trial, a fundamental requirement of due process. However, it was uncontested that Mr. Edwards was competent to stand trial, and no claim was made that his waiver of counsel was not knowing and voluntary. Thus, in light of *Faretta* and *Godinez*, the court stated, “. . . we hold that because Edwards was found competent to stand trial he had a constitutional right to proceed pro se and it was reversible error to deny him that right on the ground that he was incapable of presenting his defense.”

Discussion

The current standard that one who is competent to stand trial is also competent to waive his right to be represented by counsel remains unchanged by this case. However, several compelling questions about the balance of competing fundamental rights are raised.

Mr. Edwards’ diagnosis was schizophrenia, and the trial court observed several deficits that led to the conclusion that he was incapable of adequate self-representation. The court denied his requests out of concern that “justice” might not be served if he were to represent himself. That decision indirectly questioned whether the legal system’s fundamental interest in substantive due process and fairness could be undermined by adherence to the current legal standard for determining whether he was capable of asserting his implied constitutional right to self-representation, simply because he was competent to stand trial. The *Edwards* case has the potential to shift the issue from one focused on honoring the decisions of the individual to one focused on the constitutional interest in the fair administration of justice, particularly where one party is at a decided disadvantage due to mental illness.

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Thus, the issue framed by *Edwards*, “. . . presents an opportunity to revisit the holdings of *Faretta* and *Godinez*, if the Supreme Court decides that it is to be done” (*Edwards*, 866 N.E.2d, p 260). However, although the U.S. Supreme Court granted *certiorari* in this case on December 7, 2007, it plans to address only the more limited question: “May states adopt a higher standard for measuring competency to repre-

sent oneself at trial than for measuring competency to stand trial?” Nonetheless, in light of the U.S. Supreme Court’s past holdings that heavily weigh substantive due process for disadvantaged defendants (e.g., providing for access to counsel and expert witnesses), the Court’s consideration of this case may result in some interesting opinions that will be very important for our field relative to the broader issues.