

A Fairly Usual Hypothetical

Commonwealth

v.

Juan Smith

The defendant was arraigned on March 5, 2009 in the Mountain Central Court on three counts of kidnaping, one count of car jacking and one count of witness intimidation.

At the arraignment the judge learned a) that the defendant was indigent so the judge appointed the duty lawyer to represent the defendant for the purposes of conducting a bail hearing, b) the judge became aware of the background of the defendant's arrest, c) was informed by the court officers (bailiffs) that the defendant was engaging in bizarre behavior in the lock up: he was talking out loud to people not present, he was pacing in his cell and would not respond in any appropriate way when asked by the lock up personnel to whom he was talking and why he appeared to be agitated.

The duty lawyer who tried to interview the defendant prior to arraignment also reported to the judge her observations and suggested that the defendant may lack competence to complete the arraignment session. The judge requested the forensic mental health worker assigned to his court to conduct an examination of the defendant prior to arraignment and appointed the duty judge as the defendant's counsel for the purpose of the evaluation. By the time the defendant appeared in court the judge could see for himself that the defendant was behaving in a strange manner. The judge learned from the forensic evaluation that the defendant had been treated for a mental illness in the past, had not been taking his medication for weeks, that he was talking to himself at home and stating to his wife that God was telling him to do things including trying to dig up the millions of dollars which he had buried at an unknown location.

The judge discovered he could not engage the defendant in any

sort of meaningful colloquy concerning the charge or even whether the defendant wanted a lawyer to represent him. As was his usual practice, the judge had also read a synopsis of what led to the charges. He learned that the defendant jumped into a vehicle with three women in it, demanded that he be allowed to drive the car and took off heading in an Easterly direction and was stopped twenty miles away. During the ride the women were allowed the use of a cell phone and used it to make 911 calls. During those calls the women were able to explain what was happening to them. The defendant was heard in the background calling the women the devil and accusing them of all sorts of evil doing. Eventually the defendant took the phone away from the women. Other than frightening the women by his bizarre behavior, no physical harm was threatened against the three women. When the police caught up to the vehicle the defendant was yelling, waving his arms and informing the police that he had the "white women devils in his car" and that they should help him. The women were extremely emotional about this experience. It frightened them badly.

The judge determined on what he then knew that the defendant was not likely competent and based upon the facts of the case and the defendant's observed and reported behavior determined and ordered that the defendant be transferred to the only ultra high security forensic unit in the state (some 60 miles away) for further evaluation and continued the case to March 24, 2009 for a report by the hospital forensic team concerning the defendant's mental condition and other evidence upon which the defendant's competency to stand trial could be determined by a judge.

The defendant was returned to court on March 24, 2009 with a detailed report from a PhD forensic psychologist on the staff at the public hospital to which the prior judge ordered the defendant transferred. The crucial parts of the report contained facts from which a judge could determine that the defendant had been restored to competency but only because he had been taking anti psychiatric medication while on the mental health unit.

The defendant is now before you. There was never a bail hearing, no lawyer ever spoke with the defendant between March 5th and today.

What will happen next?

What if you learned that the defendant had been arraigned in the Mountain Central Court, traffic division two days earlier on a minor motor vehicle infraction, waived counsel, pled guilty to an offense and was ordered by a judge to pay a fine.

You learn through the courthouse grape vine that on that day (March 3, 3009) the defendant was agitated with "pressured" speech, refused to stay put in the courtroom, was told to shut off his cell phone, and that he told the judge "I can pay the fine I've got millions buried in my back yard," and saying strange things like "(don't worry judge I'll get the money to those she devils in your office there)."

What is your response as a judge at the March 24th hearing? What do you have to say about the judge's response at the arraignment?