

IN THE SUPREME COURT OF FLORIDA

SYLVESTER HOOKS,

Petitioner,

VS.

CASE NO. SC18-1106

LT NOS. 1D16-368

1D16-369

STATE OF FLORIDA,

1D16-370

Respondent.

\_\_\_\_\_/

ON PETITION FOR DISCRETIONARY REVIEW  
OF A DECISION OF THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT OF FLORIDA

APPENDIX TO  
PETITIONER'S INITIAL BRIEF ON THE MERITS

ANDY THOMAS  
PUBLIC DEFENDER  
SECOND JUDICIAL CIRCUIT

DANIELLE JORDEN  
ASSISTANT PUBLIC DEFENDER  
FLA. BAR NO. 0946834  
LEON COUNTY COURTHOUSE  
301 S. MONROE ST., SUITE 401  
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danielle.jorden@flpd2.com

COUNSEL FOR PETITIONER

RECEIVED, 10/24/2018 12:33:25 PM, Clerk, Supreme Court

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been furnished by electronic mail, to Trisha Meggs Pate, Office of the Attorney General, at crimapptlh@myfloridalegal.com and by US Mail to Mr. Sylvester Hooks, DOC # 558276, Century Work Camp, 400 Tedder Rd., Century, FL 32535-3659 on this 24th day of October, 2018.

Respectfully submitted,

ANDY THOMAS  
PUBLIC DEFENDER  
SECOND JUDICIAL CIRCUIT

/s/ Danielle Jorden  
**DANIELLE JORDEN**  
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COUNSEL FOR PETITIONER

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT,  
IN AND FOR LEON COUNTY, FLORIDA

STATE OF FLORIDA

Case No: 1SCF913

vs.

Sylvestek Hooks,

Defendant.

SELF-REPRESENTATION ADVISORY FORM/TRIAL

The Court advises you of the following rights. By initialing below, I acknowledge that I understand the following:

S.H. 1. If I cannot afford a lawyer, the state will appoint me one and pay for it.

S.H. 2. If I can afford a lawyer, I can hire a lawyer of my choice.

S.H. 3. Before trial, a lawyer's legal training and experience may:

- A. Help me get or change bail.
- B. Get information about my case by enforcing the legal rules for discovery.
- C. Uncover violations of my constitutional rights and enforce them.
- D. Make sure I have a speedy trial if I want one.
- E. Make sure the state has followed the statute of limitations.
- F. Identify and preserve favorable evidence for my trial.
- G. Help me get the best possible plea and sentence, if I don't want a trial.
- H. Uncover legal grounds to dismiss my case or suppress evidence against me.
- I. File the proper papers to preserve my right to present defenses at trial, including presenting an alibi.

S.H. 4. At trial, a lawyer's legal training and experience may:

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1-11-16

Bob Inzer

Clerk Of Court & Comptroller  
Leon County, FL

SCANNED

IN  
COMPLETED  
K. W.

- A. Help me pick the best jury, and explain to me challenges for cause, peremptory challenges, and the number of challenges allowed.
- B. Make sure the state follows the proper rules for picking a jury.
- C. Call my witnesses and make sure they were served subpoenas for trial.
- D. Question the witnesses against me.
- E. Present documents and physical evidence to help me.
- F. Advise me on whether I should testify at trial, and the consequences of that decision.
- G. Object and argue to the judge if the state does not follow rules of evidence.
- H. Make effective closing arguments to the jury.
- I. Preserve objections for appeal if I lose the trial.
- J. Prevent improper arguments by the state to the jury.

5. H 5. Self-representation is almost always unwise because:

- A. I will not get any special treatment.
- B. I will not get a continuance just because I represent myself.
- C. If I am in jail, I have limited legal resources for trial research. It may be hard or impossible for me to subpoena my witnesses or my evidence for trial. It will be hard or impossible for me to talk with the state, other witnesses, or other persons on matters that may help my defense.
- D. I will have to follow the rules of criminal procedure and evidence, even though it takes years for a lawyer to learn these laws and rules.
- E. A defendant often gets too emotional during the trial and cannot concentrate, be objective, or be effective in defending the case.
- F. Questioning a witness about what you did or did not do can be awkward and ineffective in the eyes of the jury.
- G. A defendant cannot appeal and claim that lack of legal skills is a ground for a new trial.

6. H 6. The decision to represent myself may be final. The judge might not appoint me a lawyer later for trial just because I decide I made a poor decision to represent myself.

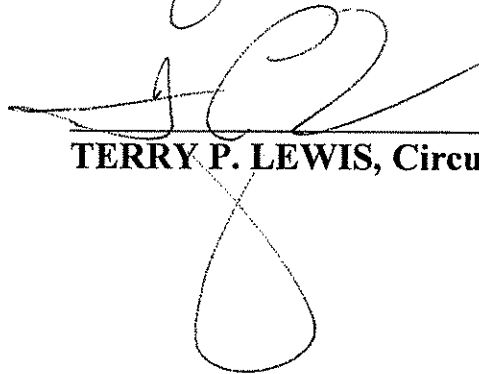
7. H 7. If I represent myself at trial, and if I am convicted, I will have the right to an appointed lawyer for sentencing. Sentencing is a separate proceeding.

I swear I have read and understood the above form.

Defendant signs: 

Date: 1/11/16

Received and filed this 11<sup>th</sup> day of Jan, 2014, in Leon  
County, Florida.

  
TERRY P. LEWIS, Circuit Judge

Copies to:

SAO  
Defendant Pro Se  
Former defense counsel, if any

IN THE CIRCUIT COURT OF THE  
SECOND JUDICIAL CIRCUIT, IN  
AND FOR LEON COUNTY, FLORIDA

CASE NO.: 2012-CF-2477, 2015-CF-913,  
2012-CF-2547

STATE OF FLORIDA

VS.

SYLVESTER HOOKS,

Defendant.

**ORIGINAL**

PROCEEDINGS: FARETTA INQUIRY

BEFORE: THE HONORABLE TERRY P. LEWIS

DATE: January 11, 2016

TIME: Commencing at 12:03 p.m.  
Concluding at 12:05 p.m.

LOCATION: Leon County Courthouse  
Tallahassee, Florida

REPORTED BY: VERONICA G. MCCLELLAN, RPR  
Official Court Reporter  
Notary Public in and for the  
State of Florida at Large



VERONICA G. MCCLELLAN, RPR  
Official Court Reporter  
Leon County Courthouse, Room 341  
Tallahassee, FL 32301

C-02  
BOB INZER  
CLERK & CONTROLLER  
LEON COUNTY, FLORIDA

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## APPEARANCES

### REPRESENTING THE STATE:

ELIZABETH W. DESLOGE, ASSISTANT STATE ATTORNEY  
OFFICE OF THE STATE ATTORNEY  
LEON COUNTY COURTHOUSE  
TALLAHASSEE, FLORIDA 32301

### REPRESENTING THE DEFENDANT:

SYLVESTER HOOKS, PRO SE

KASEY HELMS, ASSISTANT PUBLIC DEFENDER  
OFFICE OF THE PUBLIC DEFENDER  
LEON COUNTY COURTHOUSE  
TALLAHASSEE, FLORIDA 32301

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### WITNESSES:

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VERONICA G. MCCLELLAN, OFFICIAL COURT REPORTER

## PROCEEDINGS

1  
2 THE COURT: I'm going to let y'all consult over  
3 there. But let me, let me have Mr. Hooks and Ms. Helms  
4 come up here real here close to the court reporter so we  
5 can see about Mr. Hooks' decision to represent himself.

6 Early in the morning, Mr. Hooks, your attorney said  
7 you had decided to represent yourself. And I handed to  
8 you what I call a little form for self-representation  
9 which goes over all the things that say I want you to  
10 make sure you know about so I don't have to repeat a lot  
11 of it. Did you get a chance to read over that real  
12 carefully?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Okay. And, and I'll say, again, it's  
15 your absolute right to represent yourself if you want to.  
16 I almost never advise it, because a lawyer -- it says on  
17 that form -- has got a lot of knowledge and experience,  
18 knowledge about procedures, knowledge about rules of  
19 evidence, things that you might not know about. You  
20 don't have to be a lawyer to represent yourself. You  
21 just have to know the disadvantages and to make a  
22 voluntary and knowing decision to do it.

23 Have you thought about it and decided whether you,  
24 whether you still wanted to represent yourself?

25 THE DEFENDANT: Yes, I have. And I do want to

VERONICA G. MCCLELLAN, OFFICIAL COURT REPORTER

1 represent myself.

2 THE COURT: And you do want to represent yourself.  
3 okay. well, let me have you initial those things and  
4 then sign that form for me. And I'll have that in the  
5 file. And I'll sign it and we'll --

6 MS. HELMS: Judge, he's already initialed --

7 THE COURT: Yes.

8 MS. HELMS: -- each spot. I can approach with that.

9 THE COURT: Okay. Did he sign it, too?

10 MS. HELMS: He did sign it, Judge.

11 THE COURT: Okay.

12 MS. HELMS: I think the only thing we're missing is  
13 the case number.

14 THE COURT: I'll put in.

15 THE CLERK: 15-CF-913.

16 MS. HELMS: Thank you.

17 THE COURT: And the, and the good news is you've sat  
18 through two juries -- jury selections. You have a pretty  
19 good idea about other -- how other people do it. So that  
20 maybe helpful to you in that. And I'll ask Ms. Helms,  
21 just in case you change your mind, because I'm going to  
22 ask you when we actually start the trial again if you  
23 want to change your mind and give you that option.

24 Once we start the trial, I won't be able to say in  
25 the middle of it, oh, I decide want to, I want to have a

1 lawyer. But I'll let her sit in on this. And when we  
2 get to the trial -- I guess Friday we're going on this  
3 one? If you still want to represent yourself, that's  
4 your business. And if you don't, Ms. Helms could step in  
5 and take care of it. Okay?

6 THE DEFENDANT: Thank you.

7 THE COURT: All right.

8 (Inquiry concludes.)  
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## CERTIFICATE

STATE OF FLORIDA:

COUNTY OF LEON:

I, VERONICA G. MCCLELLAN, RPR, Official Court Reporter, do hereby certify that the foregoing proceedings were taken before me at the time and place therein designated; that my shorthand notes were thereafter translated under my supervision; and the foregoing pages are a true and correct record of the aforesaid proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor relative or employee of such attorney or counsel, or financially interested in the foregoing action.

DATED this 17th day of August, 2016.



VERONICA G. MCCLELLAN, RPR  
OFFICIAL COURT REPORTER  
LEON COUNTY COURTHOUSE  
TALLAHASSEE, FLORIDA 32301

VERONICA G. MCCLELLAN, OFFICIAL COURT REPORTER

719 So.2d 873 (Mem)

Editor's Note: Additions are indicated by **Text** and deletions by **Text** .

Supreme Court of Florida.

AMENDMENT TO FLORIDA RULE OF  
CRIMINAL PROCEDURE 3.111(d)(2)-(3).

No. 91536.

|

July 16, 1998.

**Attorneys and Law Firms**

**John F. Harkness, Jr.**, Executive Director, The Florida Bar, Tallahassee, and **Dedee S. Costello**, Chair, The Florida Bar Criminal Procedure Rules Committee, Panama City, for Petitioner.

**Opinion**

PER CURIAM.

The Criminal Procedure Rules Committee, in response to a request from this Court, has filed a petition for expedited review of a proposed amendment to **Florida Rule of Criminal Procedure 3.111(d)(2)-(3)**. We have jurisdiction. **Art. V, § 2(a), Fla. Const.**

In light of the Court's recent decision in **State v. Bowen**, 698 So.2d 248 (Fla.1997), which illustrates the apparent difficulty trial courts are having in complying with the dictates of the United States Supreme Court's decision in *Faretta*<sup>1</sup> the Court asked the Criminal Procedure Rules Committee to make suggestions for standardizing the courtroom colloquies that take place when a criminal defendant seeks self-representation and to consider whether **Rule of Criminal Procedure 3.220(h)(1)** should be amended. In *Bowen*, the Court answered the following certified question in the negative:

Once a trial court has determined that a defendant has knowingly and intelligently waived his or her right to counsel, may that court nonetheless require the defendant to be represented by counsel because of concern that the defendant might be deprived of a fair trial if tried without such representation?

698 So.2d at 249. The Court explained that once a trial judge determines that a competent defendant has

“knowingly and intelligently” waived the right to counsel, the dictates of *Faretta* are met, the inquiry is over, and the defendant may proceed pro se. The judge may not inquire further into whether the defendant is capable of providing a “substantively qualitative defense.” *Id.* at 251.

After considering the Court's request, the rules committee filed the instant petition to amend **rule 3.111(d)(2)-(3)** and advised the Court that it unanimously agreed that the Conference of Circuit Judges should be asked to develop a model *Faretta* colloquy to be used by trial judges. The Conference of Circuit Judges has since informed the Court that it has developed a model colloquy which has been made available to trial judges and is contained in Appendix B.

The proposed amendment was published for comment; however, none were filed with the Court. At the Court's request the Criminal Section of the Conference of Circuit Judges has reviewed the proposed amendment and informed the Court that all but one of the judges are in favor of the proposed amendment and believe the proposed amendment is “unambiguous and will assist the circuit judges in dealing with the issues of waiver of counsel.”

After considering the petition and the comment filed by the circuit judges, we adopt the proposed amendment as reflected in Appendix A to this opinion. New language is indicated by underscoring; deletions are indicated by strike-through type. The amendment shall become effective upon the release of this opinion.

It is so ordered.

**HARDING**, C.J., and **OVERTON**, **SHAW**, **KOGAN**, **WELLS**, **ANSTEAD** and **PARIENTE**, JJ., concur.

**APPENDIX A**

**RULE 3.111. PROVIDING  
COUNSEL TO INDIGENTS**

(a) **When Counsel Provided.** A person entitled to appointment of counsel as provided herein shall have counsel appointed when the person is formally charged with an offense, or as soon as feasible after custodial

restraint, or at the first appearance before a \*874 committing magistrate, whichever occurs earliest.

**(b) Cases Applicable.**

(1) Counsel shall be provided to indigent persons in all prosecutions for offenses punishable by imprisonment (or by incarceration in a juvenile corrections institution) including appeals from the conviction thereof. Counsel does not have to be provided to an indigent person in a prosecution for a misdemeanor or violation of a municipal ordinance if the judge, prior to trial, files in the cause a statement in writing that the defendant will not be imprisoned if convicted.

(2) Counsel may be provided to indigent persons in all proceedings arising from the initiation of a criminal action against a defendant, including postconviction proceedings and appeals therefrom, extradition proceedings, mental competency proceedings, and other proceedings that are adversary in nature, regardless of the designation of the court in which they occur or the classification of the proceedings as civil or criminal.

(3) Counsel may be provided to a partially indigent person on request provided that the person shall defray that portion of the cost of such representation and the reasonable costs of investigation as he or she is able without substantial hardship to the person or the person's family, as directed by the court.

(4) "Indigent" as used herein shall mean a person who is unable to pay for the services of an attorney, including costs of investigation, without substantial hardship to the person or the person's family; "partially indigent" as used herein shall mean a person unable to pay more than a portion of the fee charged by an attorney, including costs of investigation, without substantial hardship to the person or the person's family.

(5) The court shall, prior to appointing a public defender:

(A) inform the accused that if the public defender is appointed, a lien for the services rendered by the public defender may be imposed under [section 27.56, Florida Statutes](#);

(B) make inquiry into the financial status of the accused in a manner not inconsistent with the guidelines established

by [section 27.52, Florida Statutes](#). The accused shall respond to the inquiry under oath;

(C) require the accused to execute an affidavit of insolvency in the format provided by [section 27.52, Florida Statutes](#).

**(c) Duty of Booking Officer.** In addition to any other duty, the officer who commits a defendant to custody has the following duties:

(1) The officer shall immediately advise the defendant:

(A) of the right to counsel;

(B) that if the defendant is unable to pay a lawyer, one will be provided immediately at no charge.

(2) If the defendant requests counsel or advises the officer he or she cannot afford counsel, the officer shall immediately and effectively place the defendant in communication with the (office of) public defender of the circuit in which the arrest was made.

(3) If the defendant indicates he or she has an attorney or is able to retain an attorney, the officer shall immediately and effectively place the defendant in communication with the attorney or the Lawyer Referral Service of the local bar association.

(4) The public defender of each judicial circuit may interview a defendant when contacted by, or on behalf of, a defendant who is, or claims to be, indigent as defined by law.

(A) If the defendant is in custody and reasonably appears to be indigent, the public defender shall tender such advice as is indicated by the facts of the case, seek the setting of a reasonable bail, and otherwise represent the defendant pending a formal judicial determination of indigency.

(B) If the defendant is at liberty on bail or otherwise not in custody, the public defender shall elicit only such information from the defendant as may be reasonably relevant to the question of indigency and shall immediately seek a formal judicial determination of indigency. If the court finds the defendant indigent, it shall immediately appoint counsel to represent the defendant.

**\*875 (d) Waiver of Counsel.**

(1) The failure of a defendant to request appointment of counsel or the announced intention of a defendant to plead guilty shall not, in itself, constitute a waiver of counsel at any stage of the proceedings.

(2) A defendant shall not be deemed to have waived the assistance of counsel until the entire process of offering counsel has been completed and a thorough inquiry has been made into both the accused's comprehension of that offer and the accused's capacity to make an knowing and intelligent and understanding waiver. Before determining whether the waiver is knowing and intelligent, the court shall advise the defendant of the disadvantages and dangers of self-representation.

(3) ~~No waiver shall be accepted if it appears that the defendant is unable to make an intelligent and understanding choice because of a mental condition, age, education, experience, the nature or complexity of the case, or other factors.~~ 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 him 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.

(4) A waiver of counsel made in court shall be of record; a waiver made out of court shall be in writing with not less than 2 attesting witnesses. The witnesses shall attest the voluntary execution thereof.

(5) If a waiver is accepted at any stage of the proceedings, the offer of assistance of counsel shall be renewed by the court at each subsequent stage of the proceedings at which the defendant appears without counsel.

**(e) Withdrawal of Defense Counsel After Judgment and Sentence.** The attorney of record for a defendant in a criminal proceeding shall not be relieved of any duties, nor be permitted to withdraw as counsel of record, except with approval of the lower tribunal on good cause shown on written motion, until after:

(1) the filing of:

(A) a notice of appeal;

(B) a statement of judicial acts to be reviewed, if a transcript will require the expenditure of public funds;

(C) directions to the clerk, if necessary; and

(D) a designation of that portion of the reporter's transcript that supports the statement of judicial acts to be reviewed, if a transcript will require expenditure of public funds; or

(2) the time has expired for filing of a notice of appeal, and no such notice has been filed.

**Committee Notes**

**1972 Adoption.** Part 1 of the ABA Standard relating to providing defense services deals with the general philosophy for providing criminal defense services and while the committee felt that the philosophy should apply to the Florida Rules of Criminal Procedure, the standards were not in such form to be the subject of that particular rule. Since the standards deal with the national situation, contained in them were alternative methods of providing defense services, i.e., assigned counsel vs. defender system; but, Florida, already having a defender system, need not be concerned with the assigned counsel system.

(a) Taken from the first sentence of ABA Standard 5.1. There was considerable discussion within the committee concerning the time within which counsel should be appointed and who should notify defendant's counsel. The commentary in the ABA Standard under 5.1a, b, convinced the committee to adopt the language here contained.

(b) Standard 4.1 provides that counsel should be provided in all criminal cases punishable by loss of liberty, except those types where such punishment is not likely to be imposed. The committee determined that the philosophy of such standard should be recommended to the Florida Supreme Court. The committee determined that possible deprivation of liberty for any period makes a case serious enough that the accused should have the right to counsel.

**\*876 (c)** Based on the recommendation of ABA Standard 5.1b and the commentary thereunder which provides that implementation of a rule for providing the defendant with

counsel should not be limited to providing a means for the accused to contact a lawyer.

(d) From standard 7.2 and the commentaries thereunder.

**1980 Amendment.** Modification of the existing rule (the addition of (b)(5)(A)-(C)) provides a greater degree of uniformity in appointing counsel to indigent defendants. The defendant is put on notice of the lien for public defender services and must give financial information under oath.

A survey of Florida judicial circuits by the Committee on Representation of Indigents of the Criminal Law Section (1978-79) disclosed the fact that several circuits had no procedure for determining indigency and that there were circuits in which no affidavits of insolvency were executed (and no legal basis for establishing or collecting lien monies).

**1992 Amendment.** In light of *State v. District Court of Appeal of Florida, First District*, 569 So.2d 439 (Fla.1990), in which the supreme court pronounced that motions seeking belated direct appeal based on ineffective assistance of counsel should be filed in the trial court pursuant to rule 3.850, the committee recommends that rule 3.111(e) be amended to detail with specificity defense counsel's duties to perfect an appeal prior to withdrawing after judgment and sentence. The present provision merely notes that such withdrawal is governed by Florida Rule of Appellate Procedure 9.140(b)(3).

**1998 Amendment.** The amendments to (d)(2)-(3) were adopted to reflect *State v. Bowen*, 698 So.2d 248 (Fla.1997), which implicitly overruled *Cappetta v. State*, 204 So.2d 913 (Fla. 4th DCA 1967), *rev'd on other grounds*, 216 So.2d 749 (Fla.1968). See *Fitzpatrick v. Wainwright*, 800 F.2d 1057 (11th Cir.1986), for a list of factors the court may consider. See also *McKaskle v. Wiggins*, 465 U.S. 168, 104 S.Ct. 944, 79 L.Ed.2d 122 (1984), and *Savage v. Estelle*, 924 F.2d 1459 (9th Cir.1990), *cert. denied*, 501 U.S. 1255, 111 S.Ct. 2900, 115 L.Ed.2d 1064 (1992), which suggest that the defendant's right to self-representation is limited when the defendant is not able or willing to abide by the rules of procedure and courtroom protocol.

## APPENDIX B

## FARETTA INQUIRY TRIAL STAGE

### Right to Counsel Section:

1. Do you understand that you have a right to a lawyer? If you *cannot* afford to hire your own lawyer, and if you qualify for a court-appointed lawyer, one *will* be appointed for you.

2. The State of Florida will pay for a lawyer to advise you in these Court proceedings.

3. Shall I appoint a lawyer to represent you in this case?

*(Continue to the next section only if defendant says he or she does NOT want a lawyer.)*

### Advantages Section:

4. I would like to *explain* to you some of the ways that having a lawyer to represent you can be to your advantage:  
A. Pretrial: *(Read only if applicable to current posture of case.)*

*-A lawyer's legal knowledge and experience may favorably affect bail or pre-trial release possibilities; may result in obtaining information about the case through skillful use of discovery devices; may uncover potential violations of constitutional rights and take effective measures to address them; may ensure compliance with speedy trial and statute of limitations provisions; and may identify and secure favorable evidence to be introduced later at trial on your behalf.*

B. At trial:

*-A lawyer has the experience and knowledge of the entire process. He [or she] will argue for your side during the whole trial and present the best legal argument for your defense.*

*-Since jury qualification and selection are governed by numerous legal procedures, a lawyer's knowledge and experience may \*877 enhance the selection process on your behalf.*

*-A lawyer can call witnesses for you, question witnesses against you, and present evidence on your behalf.*

-A lawyer can *advise you on whether you should testify*, the consequences of that decision, and what you have a right not to say.

-A lawyer has studied the rules of evidence and knows what evidence can or cannot come into your trial.

-A lawyer may provide assistance in ensuring that the jury is given complete and accurate jury instructions by the court, may make effective closing arguments on your behalf, and may prevent improper argument by the prosecutor.

-A lawyer may ensure that any errors committed during trial are properly preserved for appellate review later by a higher court.

Post-trial:

-If you are convicted, a lawyer's assistance may be useful in preparing for sentencing, ensuring that favorable facts are brought to the attention of the court; ensuring that the court is advised of all legally available favorable dispositions; and in ensuring that the sentence is lawfully imposed.

-An attorney's legal knowledge and experience may be useful in filing an appeal and in seeking release on bail pending the appeal.

Dangers and Disadvantages Section:

5. As it is almost always unwise to represent yourself in Court, let me tell you a few of the disadvantages of representing yourself in Court:

-Do you understand that you will not get any special treatment from the Court just because you are representing yourself?

-Do you understand that you will not be entitled to a continuance simply because you wish to represent yourself?

-(Read if defendant is in custody): You will also be limited to the legal resources that are available to you while you are in custody. *You will not be entitled to any additional library privileges just because you are representing yourself.* A lawyer has fewer restrictions in researching your defense. *Do you understand that?*

-*You are not required to possess the legal knowledge or skills of an attorney in order to represent yourself. However, you will be required to abide by the rules of criminal law and the rules of courtroom procedure. These laws took lawyers years to learn and abide by. If you demonstrate an unwillingness to abide by these rules, I may terminate your self-representation. Do you understand that?*

-Do you understand that if you are disruptive in the courtroom that the Court can terminate your self-representation and remove you from the courtroom, in which case the trial would continue without your presence?

-Do you understand that your access to the State Attorney who is prosecuting you will be severely reduced as compared to a lawyer who could easily contact the State Attorney?

-In addition, the State will not go easier on you or give you any special treatment because you are representing yourself. The State will present its case against you as an experienced lawyer.

-(Read only if a stay-away order is in effect): *Because a "stay-away" order is in effect against you, you will be prohibited from contacting the victim or any other witnesses who are a part of the "stay-away order." But if you are represented by an attorney, your attorney is allowed to speak to these people and question them regarding their testimony.*

-And finally, if you are convicted, you cannot claim on appeal that your own lack of legal knowledge or skill constitutes a basis for a new trial. *In other words, you cannot claim that you received ineffective assistance of counsel.*

*Do you understand these dangers and disadvantages of representing yourself?*

*Do you have any questions about these dangers and disadvantages?*

**\*878 Charges and Consequences Section:**

6. Have you received and read a copy of the charges against you?

7. Do you understand all the charges against you?

8. *During the time that you were represented by counsel in this case, did you discuss this case with him [or her]?*

-Have you ever been diagnosed and treated for a mental illness?

9. *Let me advise you of the possible penalties if you are found guilty of all the charges.*

-Do you have any physical problem which would hinder your self-representation in this case, such as a hearing problem, speech impediment, or poor eyesight?

10. *(Read only if applicable): Do you understand that if you are convicted you may receive an enhanced sentence because (the state is seeking to sentence you as an **habitual offender**) (it is alleged that you used a **firearm** in the commission of the offense)(it is alleged you wore **a mask** during the commission of the offense)?*

-Has anyone told you not to use a lawyer?

-Has anyone threatened you if you hire a lawyer or accept a lawyer appointed by the court?

11. If you are found guilty by *(the jury)(the court)*, the maximum jail or prison sentence you could receive is \_\_\_\_\_, and the minimum jail or prison sentence is \_\_\_\_\_.

-Do you understand that a lawyer appointed by the court will represent you for free?

-Have you ever represented yourself in a trial? What was the outcome of that case?

12. You may be required to report to a probation or community control officer for (length of time).

-Do you have any questions about having a lawyer appointed to defend you?

13. *You may be required to pay a fine or restitution.*

-[Omitted question about understanding dangers/disadvantages, because that is covered in the disadvantages section supra.]

14. You may have a permanent criminal record.

15. Do you understand that if you are not a citizen of the United States, and if you are found guilty you could be deported from this country, excluded from entering this country in the future, and denied the opportunity to become a naturalized citizen?

18. *Having been advised of your right to counsel, the advantages of having counsel, the disadvantages and dangers of proceeding without counsel, the nature of the charges and the possible consequences in the event of a conviction, are you certain that you do not want me to appoint a lawyer to defend you?*

16. *Do you have any questions about the charges or the possible consequences and penalties if you are found guilty as I have explained them to you?*

*(Proceed on only if defendant still does NOT want counsel):*

Competency to Waive Counsel Section:

17. I need to ask you a few questions about yourself to determine if you are competent to make a knowing and intelligent waiver of counsel:

-How old are you?

19. *If I allow you to represent yourself and if you request it, I could have the Assistant Public defender act as standby counsel. He or she would be available to you if you have any questions in the course of these proceedings. Would you like standby counsel?*

-Can you read? Can you write? Do you have any difficulty understanding English?

*(Proceed on only if defendant WANTS standby counsel):*

-How many years of school have you completed?

20. *I will appoint standby counsel to assist you. However, you will still be responsible for the organization and content of presenting your case. You still have the entire responsibility for your own defense. Do you understand that?*

-Are you currently under the influence of any drugs or alcohol?

**\*879** (*Make findings on the record as to whether defendant is competent to waive counsel, and whether his or her waiver of counsel is knowing and intelligent.*)

(*Renew offer of counsel at each subsequent stage of the proceedings.*)

### **FARETTA INQUIRY PLEA STAGE**

#### Right to Counsel Section:

1. Do you understand that you have the right to a lawyer?

-The State of Florida and the United States Constitution guarantee you the right to a lawyer.

-If you *cannot* afford to hire your own lawyer, and if you qualify for a court-appointed lawyer, I will appoint a lawyer *for you* right now.

-The State of Florida will even pay for this lawyer to help you with this decision as to whether or not to enter a plea.

2. Shall I appoint a lawyer to represent you?

(*Continue on only if the defendant says he does not want a lawyer*)

#### Advantages and Disadvantages Section:

3. Let me tell you a few ways a lawyer might help you:

-A lawyer can *advise you as to whether entering a plea is in your best interests.*

-A lawyer has the experience to help you work with the State and even bargain for different terms.

-A lawyer can tell you the advantages and disadvantages of what you might say to the Court *during your plea hearing and the sentencing hearing that will follow.*

-*Do you understand that you will not get any special consideration from the Court just because you are representing yourself?*

4. Do you understand how necessary a lawyer is and how he or she could help you?

#### Consequences of the Plea Section:

5. You are currently charged with (go over offenses and their degrees).

-Have you received a copy of these charges and had a chance to review them?

-Do you understand the serious nature of the charges against you?

6. If you decide to *enter* a plea, you will (go over terms of plea).

-The maximum sentence that can be imposed against you is \_\_\_\_\_.

-You may be forced to report to a probation *or community control* officer for (length of time).

-You may be required to pay a fine or restitution.

-You may have a permanent criminal record.

-If you are not a citizen of the United States, you could be deported from this country, excluded from entering this country in the future, and denied the opportunity to become a naturalized citizen.

-Do you understand these consequences of entering a plea?

-Do you have any questions about these consequences?

7. If you do not fulfill the conditions of your plea, the State can ask to revoke your probation *or community control* and you could be arrested and brought back to Court for a revocation hearing.

8. Do you understand the consequences of any violation or probation *or community control*?

#### Competency to Waive Counsel Section:

9. I need to ask you a few questions about *yourself* to determine if you are competent to make a knowing and intelligent waiver of counsel:

-How old are you?

-Can you read? Can you write? Do you have any difficulty understanding English?

<p>-How many years of school have you completed?</p> <p>-Are you currently under the influence of any drugs or alcohol?</p> <p><b>*880</b> -Have you ever been diagnosed and treated for a mental illness?</p> <p>-Has anyone told you not to use a lawyer?</p> <p>-Has anyone threatened you if you either <i>hire a lawyer or accept one appointed by the court?</i></p> <p>-Do you understand that a lawyer <i>appointed by the court</i> will represent you for free?</p> <p>-Do you have any questions about having a lawyer appointed to defend you?</p> <p><i>-(Omitted question about understanding dangers, disadvantages, because that is covered in the disadvantages section supra.)</i></p> <p>10. <i>Having been advised of your right to an attorney, the advantages of having an attorney, the disadvantages of proceeding without an attorney, the nature of the charges against you, and the consequences of entering a plea, are you</i></p>	<p>sure you do not want me to appoint a lawyer to represent you at this plea hearing?</p> <p><i>(Continue only if defendant insists he or she does NOT want an attorney.)</i></p> <p>11. <i>If I allow you to represent yourself and if you request it, I could have the Assistant Public defender act as standby counsel. He or she would be available to you if you have any questions in the course of these proceedings.</i></p> <p><i>-Would you like me to appoint standby counsel to assist you?</i></p> <p><i>(Continue only if defendant ACCEPTS standby counsel).</i></p> <p>12. <i>I will appoint standby counsel to assist you. However, you will still bear the entire responsibility for your case at the plea hearing. Do you understand that?</i></p> <p><i>(Make findings on the record as to whether defendant is competent to waive counsel, and whether his or her waiver of counsel is knowing and intelligent.)</i></p> <p><i>(After taking the plea, renew offer of counsel prior to imposing sentence.)</i></p> <p><b>All Citations</b></p> <p>719 So.2d 873 (Mem), 23 Fla. L. Weekly S391</p>
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#### Footnotes

**1** [Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 \(1975\).](#)

236 So.3d 1122  
District Court of Appeal of Florida,  
First District.

Sylvester HOOKS, Appellant,  
v.  
STATE of Florida, Appellee.

CASE NOS. 1D16–0368, 1D16–0369 & 1D16–0370

|  
Opinion filed December 6, 2017

|  
Rehearing and Rehearing En  
Banc Denied February 28, 2018

### Synopsis

**Background:** Defendant was convicted in the Circuit Court, Leon County, [Terry P. Lewis, J.](#), of possession of pyrrolidinovalerophenone with intent to sell within 1,000 feet of a community center, possession of cannabis with intent to sell within 1,000 feet of a community center, and violating probation, and he appealed.

The District Court of Appeal, [Winokur, J.](#), held that trial court adequately advised defendant of the dangers of self-representation and determined that he intelligently and knowingly waived his right to counsel.

Affirmed.

**\*1123** An appeal from the Circuit Court for Leon County. [Terry P. Lewis](#), Judge.

### Attorneys and Law Firms

Andy Thomas, Public Defender, Kasey Lacey, Assistant Public Defender, [Steven Seliger](#), Assistant Public Defender, and [Danielle Jorden](#), Assistant Public Defender, Tallahassee, for Appellant.

[Pamela Jo Bondi](#), Attorney General, [Jason Rodriguez](#), Assistant Attorney General, and [Jennifer J. Moore](#), Assistant Attorney General, Tallahassee, for Appellee.

### Opinion

[WINOKUR, J.](#)

**\*1124** Sylvester Hooks appeals his conviction and his judgment and sentence upon violation of probation, raising two issues: whether the trial court erred by conducting an inadequate [Faretta](#)<sup>1</sup> inquiry, and whether the trial court erred by denying Hooks' motion to suppress evidence. We affirm, but write to address Hooks' claim that the trial court's [Faretta](#) inquiry was insufficient.

#### I.

Prior to trial on two counts<sup>2</sup> and on violation of probation, Hooks informed the trial court that he wished to represent himself. The trial court had Hooks read, initial, and sign a form entitled “Self-Representation Advisory Form/Trial” (“the form”). The trial court then asked if Hooks read over the form carefully. Hooks answered in the affirmative. The trial court then proceeded to reiterate the disadvantages of self-representation and that Hooks had to make a voluntary and knowing decision to do so. The trial court then asked if Hooks still wanted to waive his right to counsel. Hooks again answered in the affirmative. The trial court then discharged Hooks' counsel, but allowed her to remain as standby counsel.

Immediately before trial commenced, the trial court once again asked Hooks if he still wanted to represent himself. After speaking to his standby counsel, Hooks replied affirmatively. Hooks then represented himself throughout the trial and probation violation proceedings. The jury found Hooks guilty as charged. The trial court sentenced Hooks accordingly, and found Hooks guilty of violating probation, revoked probation, and sentenced him on those charges as well.

#### II.

Hooks never objected to the sufficiency of the [Faretta](#) inquiry at trial. However, a deficient [Faretta](#) inquiry constitutes fundamental error that can be raised for the first time on appeal. See [Curtis v. State](#), 32 So.3d 759, 761 (Fla. 2d DCA 2010).

## A.

“Under the United States Supreme Court's ruling in *Faretta*, an accused has the right to self-representation at trial.” *Tennis v. State*, 997 So.2d 375, 377 (Fla. 2008). “A defendant's choice to invoke this right ‘must be honored out of that respect for the individual which is the lifeblood of the law.’ ” *Id.* at 377–78 (quoting *Faretta*, 422 U.S. at 834, 95 S.Ct. 2525). A defendant “must be free personally to decide whether in his particular case counsel is to his advantage.” *Faretta*, 422 U.S. at 834, 95 S.Ct. 2525. As such, “the Sixth and Fourteenth Amendments include a ‘constitutional right to proceed *without* counsel when’ a criminal defendant ‘voluntarily and intelligently elects to do so.’ ” *Indiana v. Edwards*, 554 U.S. 164, 170, 128 S.Ct. 2379, 171 L.Ed.2d 345 (2008) (quoting *Faretta*, 422 U.S. at 807, 95 S.Ct. 2525). A defendant who expresses a desire to self-represent must “knowingly and intelligently” \*1125 do so, and the trial court should make the defendant “aware of the dangers and disadvantages of self-representation.” *Faretta*, 422 U.S. at 835, 95 S.Ct. 2525. The Court's purpose in requiring such an inquiry is to ensure that a defendant who chooses self-representation does so “with eyes open.” *Id.* (quoting *Adams v. U.S. ex rel. McCann*, 317 U.S. 269, 279, 63 S.Ct. 236, 87 L.Ed. 268 (1943)).

Central to the *Faretta* Court's rationale is the view that forced representation is constitutionally proscribed. Indeed, the Court viewed the issue through that lens from the outset.<sup>3</sup> Accordingly, the Court found that “a defendant need not himself have the skill and experience of a lawyer in order competently and intelligently to choose self-representation.” *Id.* at 835, 95 S.Ct. 2525.

The United States Supreme Court revisited *Faretta* in *Godinez v. Moran*, 509 U.S. 389, 113 S.Ct. 2680, 125 L.Ed.2d 321 (1993). The Court held that the competency standard for pleading guilty or waiving the right to counsel was not higher than the standard for competency to stand trial. *Id.* at 391, 113 S.Ct. 2680. Specifically, the Court held that whether defendants may be permitted to represent themselves is a “two-part inquiry:” first, the trial court establishes that a defendant is competent; and second, the trial court determines that a waiver of counsel is “knowing and voluntary.” *Id.* at 401, 113 S.Ct. 2680. “The focus of a competency inquiry is the

defendant's mental capacity; the question is whether he has the *ability* to understand the proceedings.” *Id.* at 401, 113 S.Ct. 2680 n.12. “The purpose of the ‘knowing and voluntary’ inquiry, by contrast, is to determine whether the defendant actually *does* understand the significance and consequences of a particular decision and whether the decision is uncoerced.” *Id.* However, the trial court need not make an explicit determination of competency before a defendant may exercise the right to self-representation. See *id.* at 401, 113 S.Ct. 2680 n.13 (holding that a court is not “required to make a competency determination in every case in which the defendant seeks to ... waive his right to counsel;” “[A] competency determination is necessary only when a court has reason to doubt the defendant's competence.” (citing *Drope v. Missouri*, 420 U.S. 162, 180–81, 95 S.Ct. 896, 43 L.Ed.2d 103 (1975); *Pate v. Robinson*, 383 U.S. 375, 385, 86 S.Ct. 836, 15 L.Ed.2d 815 (1966))).

## B.

A review of the history of Florida Rule of Criminal Procedure 3.111(d) is helpful in understanding Florida courts' application of *Faretta*. In 1972, the Florida Supreme Court adopted Florida Rule of Criminal Procedure 3.111, entitled “Providing Counsel to Indigents,” which established procedures for appointment of counsel to indigent defendants. *In re Florida Rules of Criminal Procedure*, 272 So.2d 65 (Fla. 1972). The rule addressed a defendant's waiver of appointed counsel as follows:

No waiver shall be accepted where it appears that the defendant is unable to make an intelligent and understanding choice because of his mental condition, age, education, experience, the nature or complexity of the case, or other factors.

Fla. R. Crim. P. 3.111(d)(3) (1973). Two years after this rule became effective, the United States Supreme Court decided *Faretta*, which, as stated, recognized that \*1126 a defendant has the right to self-representation. But based on Rule 3.111(d), Florida courts held that a trial court must make specific inquiry on the record relating to the defendant's age, ability to read and write, education, and other factors, before a waiver of counsel was deemed

sufficient. See e.g. *Wilson v. State*, 724 So.2d 144, 145 (Fla. 1st DCA 1998); *Gillyard v. State*, 704 So.2d 165 (Fla. 2d DCA 1997); *Smith v. State*, 512 So.2d 291 (Fla. 1st DCA 1987). By mandating these specific questions, these cases suggested that a court had an obligation to deny a request for self-representation unless the defendant was sufficiently aged, educated, and literate, to handle self-representation, seemingly in conflict with *Faretta*.

The Florida Supreme Court addressed the tension between the waiver of counsel provision of Rule 3.111(d) and *Faretta* in *State v. Bowen*, 698 So.2d 248 (Fla. 1997). In *Bowen*, the trial court refused to accept the defendant's waiver of counsel based upon the factors enumerated in Rule 3.111(d)(3), in particular that the defendant's education was insufficient to represent himself in a complex case. *Bowen*, 698 So.2d at 250–51. The supreme court reversed, holding that “once a court determines that a competent defendant of his or her own free will has ‘knowingly and intelligently’ waived the right to counsel, the dictates of *Faretta* are satisfied, the inquiry is over, and the defendant may proceed unrepresented.” *Id.* at 251. “[N]o citizen can be denied the right of self-representation—or any other constitutional right—because he or she has only a high school diploma.” *Id.* at 252. In concurrence, Justice Wells expressed concern that Rule 3.111(d)(3) was inconsistent with the court's ruling in *Bowen* and other decisions. *Id.* (Wells, J., concurring).

In light of *Bowen*, the Florida Supreme Court amended the rule, removing the requirement that a court refuse to permit a waiver of counsel based upon the defendant's mental condition, age, education, experience, the nature or complexity of the case, or other factor, and replaced it with the following:

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 him 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.

Fla. R. Crim. P. 3.111(d)(3) (1998); *Amendment to Florida Rule of Criminal Procedure 3.111(d)(2)–(3)*, 719 So.2d 873 (Fla. 1998). Thus, Rule 3.111(d) reflects the understanding that *Faretta* does not require certain

“magic words” to effectuate self-representation. *Potts v. State*, 718 So.2d 757, 760 (Fla. 1998). The amended rule also added a provision to subsection (2) of Rule 3.111(d) requiring the court to “advise the defendant of the disadvantages and dangers of self-representation” before determining whether a waiver of counsel is knowing and intelligent.<sup>4</sup>

In short, a competent defendant who does not suffer from severe mental illness and who has been advised of the disadvantages and dangers of self-representation cannot be denied the right to \*1127 self-representation, regardless of age, education, experience, or the nature or complexity of the case. While these factors may be relevant in determining competence, failure to inquire specifically into any of the factors does not automatically render a *Faretta* inquiry deficient. We ruled in *Edenfield v. State*, 45 So.3d 26 (Fla. 1st DCA 2010), that any case imposing such a requirement was applying the pre-1998 version of Rule 3.111(d):

The current version of Rule 3.111(d) does not require questions regarding any of the information emphasized by *Edenfield*. Some cases indicate a mechanical, rote process must be followed, requiring specific questions about the defendant's age, education, mental condition, and experience with criminal proceedings. However, these holdings are based on a prior version of Rule 3.111(d)(3). This prior version stated a waiver was unacceptable unless the trial court found on the record that the defendant had made a competent choice based on his “mental condition, age, education, experience, the nature or complexity of the case, or other factors.” This language was removed from the Rule in 1998, following *Bowen*'s holding that the inquiry needs to ensure only that the defendant is proceeding “with eyes open.” 698 So.2d at 251. Regardless, asking such questions can often be a redundant exercise. Much of the information covered by the questions is already provided to the court by other means. For example, in the instant case, the County Court had access to *Edenfield*'s probable cause affidavit and DUI citation.

*Edenfield*, 45 So.3d at 30 n.11. See also *Neal v. State*, 60 So.3d 1132, 1135 (Fla. 4th DCA 2011) (noting that “[a]lthough a prior version of the rule required the court to find on the record that the defendant had made a competent choice of self-representation based on his

‘mental condition, age, education, experience, the nature or complexity of the case, or other factors,’ that express requirement was eliminated in the current version of the rule”). As we did in *Edenfield*, we emphasize again that no “magic words” or specific questions are necessary to ensure an adequate *Faretta* inquiry. 45 So.3d at 30. If the trial court has adequately determined that the defendant is competent to waive counsel, and is satisfied that the defendant understands its advice regarding the dangers and disadvantages of self-representation, then not only does the court not err in permitting self-representation, but is required to do so.

### III.

The form given to Hooks informed him of his right to counsel and explained, in detail, the advantages and disadvantages of self-representation. Hooks had to initial every numbered statement on the form and sign his name at the bottom of the form. The form is exhaustive and states as follows:

1. If I cannot afford a lawyer, the state will appoint me one and pay for it.
2. If I can afford a lawyer, I can hire a lawyer of my choice.
3. Before trial, a lawyer's legal training and experience may:

- A. Help me get or change bail.
- B. Get information about my case by enforcing the legal rules for discovery.
- C. Uncover violations of my constitutional rights and enforce them.
- D. Make sure I have a speedy trial if I want one.
- E. Make sure the state has followed the statute of limitations.
- F. Identify and preserve favorable evidence for my trial.

**\*1128** G. Help me get the best possible plea and sentence, if I don't want a trial.

H. Uncover legal grounds to dismiss my case or suppress evidence against me.

I. File the proper papers to preserve my right to present defenses at trial, including presenting an alibi.

4. At trial, a lawyer's legal training and experience may:

A. Help me pick the best jury, and explain to me challenges for cause, peremptory challenges, and the number of challenges allowed.

B. Make sure the state follows the proper rules for picking a jury.

C. Call my witnesses and make sure they were served subpoenas for trial.

D. Question the witnesses against me.

E. Present documents and physical evidence to help me.

F. Advise me on whether I should testify at trial, and the consequences of that decision.

G. Object and argue to the judge if the state does not follow rules of evidence.

H. Make effective closing arguments to the jury.

I. Preserve objections for appeal if I lose the trial.

J. Prevent improper arguments by the state to the jury.

5. Self-representation is almost always unwise because:

A. I will not get any special treatment.

B. I will not get a continuance just because I represent myself.

C. If I am in jail, I have limited legal resources for trial research. It may be hard or impossible for me to subpoena my witnesses or my evidence for trial. It will be hard or impossible for me to talk with the state, other witnesses, or other persons on matters that may help my defense.

D. I will have to follow the rules of criminal procedure and evidence, even though it takes years for a lawyer to learn these laws and rules.

E. A defendant often gets too emotional during the trial and cannot concentrate, be objective, or be effective in defending the case.

F. Questioning a witness about what you did or did not do can be awkward and ineffective in the eyes of the jury.

G. A defendant cannot appeal and claim that lack of legal skills is a ground for a new trial.

6. The decision to represent myself may be final. The judge might not appoint me a lawyer later for trial just because I decide I made a poor decision to represent myself.

7. If I represent myself at trial, and if I am convicted, I will have the right to an appointed lawyer for sentencing. Sentencing is a separate proceeding.

I swear I have read and understood the above form.

After Hooks read and signed the form, the trial court addressed Hooks regarding his understanding of his rights, his competence to waive them, and his understanding of the form:

THE COURT: [L]et me have Mr. Hooks and Ms. Helms come up here real close to the court reporter so we can see about Mr. Hooks' decision to represent himself.

Early in the morning, Mr. Hooks, your attorney said you had decided to represent yourself. And I handed to you what I call a little form for self-representation which goes over all the things that say I want you to make sure you know about so I don't have to repeat a lot of it. Did you get a \*1129 chance to read over that real carefully?

[HOOKS]: Yes, sir.

THE COURT: Okay. And, and I'll say, again, it's your absolute right to represent yourself if you want to. I almost never advise it, because a lawyer—it says on that form—has got a lot of knowledge and experience, knowledge about procedures, knowledge about rules of evidence, things that you might not know about. You don't have to be a lawyer to represent yourself. You just have to know the

disadvantages and to make a voluntary and knowing decision to do it.

Have you thought about it and decided whether you, still wanted to represent yourself?

[HOOKS]: Yes, I have. And I do want to represent myself.

THE COURT: And you do want to represent yourself. Okay. Well, let me have you initial those things and then sign that form for me. And I'll have that in the file. And I'll sign it and we'll—

[DEFENSE COUNSEL]: Judge, he's already initialed—

THE COURT: Yes.

[DEFENSE COUNSEL]: —each spot. I can approach with that.

THE COURT: Okay. Did he sign it, too?

[DEFENSE COUNSEL]: He did sign it, Judge.

THE COURT: Okay.

[DEFENSE COUNSEL]: I think the only thing we're missing is the case number.

THE COURT: I'll put in.

In summary, the trial court gave Hooks, through the self-representation form, a thoroughly detailed account of his right to counsel, the benefits of counsel, and the dangers and disadvantages of self-representation. Hooks initialed every paragraph and signed the form, swearing that he read and understood the form. The court then reiterated on the record the dangers of self-representation, specifically asked Hooks on the record whether he read the form carefully (to which Hooks responded affirmatively), and told him that his decision to represent himself must be voluntary. We see nothing in the record that would have given the court “reason to doubt the defendant's competence,” *Godinez*, 509 U.S. at 401 n.13, 113 S.Ct. 2680, and Hooks has suggested none. We conclude that the trial court adequately advised him of the dangers of self-representation and determined that he intelligently and knowingly waived his right to counsel.

## IV.

## A.

Hooks argues that the inquiry was inadequate because the court failed to ask questions about his age, education, mental or physical health, ability to read and write, drug use, or prior self-representation. Again, the failure to ask any specific questions does not render a *Faretta* inquiry inadequate. *Iowa v. Tovar*, 541 U.S. 77, 88, 124 S.Ct. 1379, 158 L.Ed.2d 209 (2004) (stating there is no formula or script to a *Faretta* inquiry and the waiver need only be made with “eyes open”); *Edenfield*, 45 So.3d at 30 (noting that “since there are no ‘magic words’ required in a *Faretta* inquiry, there is no requirement that any specific questions be asked”). A requirement that trial courts ask certain questions of the defendant verbatim is contrary to the Florida Supreme Court’s recognition that “self-representation is best safeguarded not by an arcane maze of magic words and reversible error traps, but by reason and common sense.” *Potts*, 718 So.2d at 760. Moreover, these sorts of requirements may very well frustrate the purpose and intent of *Faretta* itself.

**\*1130** Hooks represented that he was literate, as he affirmed twice, once in writing and once on the record, and that he read and understood the form explaining the dangers and disadvantages of self-representation. Hooks argues that the court asked no questions from which it could determine that he was competent to waive counsel, but the colloquy here is similar to the colloquy in *Edenfield*. A specific inquiry into Hooks’ age and education was not necessary because his actions and answers to the trial court’s colloquy indicated that he understood the disadvantages of self-representation and that he made the choice “with eyes open.” *Faretta*, 422 U.S. at 835, 95 S.Ct. 2525. See *Potts*, 718 So.2d at 759 (noting that a decision regarding a sufficient *Faretta* inquiry “turns primarily on [the trial court’s] assessment of demeanor and credibility”).

## B.

The State disagrees with Hooks that his *Faretta* inquiry was deficient for failing to inquire regarding his age or education level, citing *Edenfield*. However, the State

concedes that Hooks’ waiver was deficient because no direct inquiry was made regarding his ability to read and whether he understood the form given to him by the trial court. The State relies on our decision in *Stanley v. State*, 192 So.3d 1291 (Fla. 1st DCA 2016). In *Stanley*, we held that trial courts “must consider ‘the defendant’s mental condition, age, education, and any other factor bearing on his capacity to choose self-representation.’ ” *Id.* at 1292 (quoting *White v. State*, 21 So.3d 77, 79 (Fla. 1st DCA 2009) (emphasis added)). However, consideration of these factors does not mean that trial courts must engage in rote recitation of certain key phrases or questions. That is precisely what the 1998 revision to Rule 3.111(d) was meant to prevent.

The record shows that Hooks read and signed the self-representation form, which included a provision that Hooks swore that he understood the form. The trial court then asked Hooks if he read over the form carefully, and Hooks answered in the affirmative. Clearly, the trial court ascertained Hooks’ literacy when Hooks verified that he read the form carefully. Asking a defendant who has just stated that he has read and understood a written form “can you read?” is, at best, superfluous.

In *Faretta*, the trial court engaged in an exhaustive colloquy where the defendant was quizzed on “the intricacies of the hearsay rule and the California code provisions that govern challenges of potential juror on *voir dire*.” 422 U.S. at 836, 95 S.Ct. 2525. At no point did the trial court ask the defendant if he was literate. *Id.* at 808 nn. 2 & 3, 95 S.Ct. 2525. Yet, the Court found that the trial court’s colloquy had shown that the defendant was “literate, competent, and understanding, and that he was voluntarily exercising his informed free will.” *Id.* at 835, 95 S.Ct. 2525. The touchstone of *Faretta* is a common-sense inquiry of whether a defendant is competent to knowingly and voluntarily waive the right to counsel, not a mechanical recitation of boilerplate questions.

Hooks informed the court that he read, understood, and signed a form detailing an exhaustive list of his constitutional right to counsel, as well as the pitfalls of representation and the advantages of retaining counsel. This satisfied the trial court that his age and educational level were sufficient to make a knowing and voluntary choice to waive his right to counsel. Any further probing into his age and education would serve only to ascertain whether Hooks could effectively represent himself, which

is precisely the sort of inquiry that the United States Supreme Court and the Florida Supreme Court have proscribed.

### \*1131 V.

Again, the Florida Supreme Court has clearly held that the adequacy of a *Faretta* inquiry is not based on the “specific advice rendered by the trial court” or “magic words” that the trial court must utter to the defendant, “but rather on the defendant’s general understanding of his or her rights.” *Potts*, 718 So.2d at 760. See also *McCray v. State*, 71 So.3d 848, 867 (Fla. 2011) (noting that “what matters is not the words the trial court employs but rather that the record reflects a defendant who makes a knowing and voluntary waiver of counsel” (internal quotations omitted)); *McKenzie v. State*, 29 So.3d 272, 281–82 (Fla. 2010) (rejecting claim that *Faretta* inquiry was insufficient for failure to inquire into the defendant’s experience with the criminal justice system). However, we must address language in the supreme court’s opinion in *Aguirre–Jarquin v. State*, 9 So.3d 593 (Fla. 2009) that appears to conflict with this well-settled rule.

In assessing the adequacy of a *Faretta* inquiry, the supreme court in *Aguirre–Jarquin* wrote, “[i]n order to ensure the waiver is knowing and voluntary, the trial court must inquire as to the defendant’s age, experience, and understanding of the rules of criminal procedure.” *Id.* at 602. By writing that the trial court “must” make these specific inquiries, *Aguirre–Jarquin* seems to conflict with other supreme court decisions that reject an approach mandating specific questions for an adequate waiver of counsel and hold that the analysis turns on “the defendant’s general understanding of his or her rights.” *Potts*, 718 So.2d at 760.

*Aguirre–Jarquin* cites *Porter v. State*, 788 So.2d 917, 927 (Fla. 2001), for the contention that the trial court “must” ask specific questions to ensure a knowing and voluntary waiver of counsel. However, *Porter* did not in fact make this contention. *Porter* merely recounted a list of “factors to be considered” in determining whether a waiver of counsel is knowing and voluntary. *Id.* The *Porter* court drew this list from *United States v. Fant*, 890 F.2d 408 (11th Cir. 1989).<sup>5</sup> *Porter* did not hold, as *Aguirre–Jarquin* suggests, that a trial court “must” ask any particular questions to assure a valid waiver of counsel.

While it might be tempting to view the disputed language in *Aguirre–Jarquin* as an anomaly that the supreme court later rejected in cases such as *McKenzie* and *McCray*, the supreme court recently cited that provision of *Aguirre–Jarquin* in *McGirth v. State*, 209 So.3d 1146, 1157 (Fla. 2017).

We find that the supreme court did not intend to create a new rule of law in *Aguirre–Jarquin*—invalidating self-representation unless the trial court asks particular questions of the defendant—for two reasons. First, as noted above, such a rule conflicts with a substantial body of case law from both the Florida Supreme Court and the United States Supreme Court rejecting that approach.

\*1132 Second, while the *Aguirre–Jarquin* court suggested that a trial court “must” ask specific questions, it neither disapproved the *Faretta* inquiry given there because the specific questions were not asked, nor did it approve it because the specific questions were asked. The *Aguirre–Jarquin* court found that the *Faretta* inquiry was sufficient, but did not indicate whether the trial court asked those questions. *Aguirre–Jarquin*, 9 So.3d at 602. As such, the alleged requirement for specific questions was *dicta* in this context.

### VI.

There is competent substantial evidence in the trial record that Hooks knowingly and voluntarily waived his right to counsel and understood the disadvantages of doing so. That is what *Faretta* and Rule 3.111(d) require. Any further inquiry runs afoul of the constitutional guarantee of self-representation. However, in order to resolve the issue raised by *Aguirre–Jarquin*, we certify the following as a question of great public importance:

IS A *FARETTA* INQUIRY INVALID IF THE COURT DOES NOT EXPLICITLY INQUIRE AS TO THE DEFENDANT’S AGE, EXPERIENCE, AND UNDERSTANDING OF THE RULES OF CRIMINAL PROCEDURE?

AFFIRMED.

ROWE and OSTERHAUS, JJ., CONCUR.

**ON MOTION FOR REHEARING, REHEARING EN BANC, AND/OR CERTIFICATION OF CONFLICT**

DENIED.

WINOKUR, J., concurring.

We certified a question of great public importance to resolve an apparent conflict in case law regarding the specificity of questions that must be asked to ensure a voluntary waiver of counsel. Hooks asks that we also certify conflict. I concur in the denial of this motion, including his request for rehearing and rehearing en banc.

I write separately to emphasize two points. First, Hooks claims we have overlooked that the Supreme Court “approved” a standard *Faretta* colloquy as part of the 1998 amendment to [Florida Rule of Criminal Procedure 3.111\(d\)](#) and “added” the standard colloquy to the rule. In fact, the model colloquy is not part of [Rule 3.111](#). The Court only asked the Criminal Procedure Rules Committee to make suggestions for standardizing *Faretta* inquiries. [Amendment to Florida Rule of Criminal Procedure 3.111\(d\)\(2\)-\(3\)](#), 719 So. 2d 873 (Fla. 1998). The Court’s request was passed to the Conference of Circuit Judges, which developed a model colloquy. *Id.* The Court attached the model colloquy as an appendix to its opinion amending the rule in order to make it available to trial judges. *Id.* The Court neither “approved” the model colloquy nor “added” it to [Rule 3.111](#). While the model colloquy is useful, it does not establish an enforceable standard for ensuring an adequate waiver of counsel. *See Neal v. State*, 60 So. 3d 1132, 1135 (Fla. 1st DCA 2011) (noting that “[w]hile the model colloquy contained in the rules is very helpful, failure to follow it to the letter does not compel a finding that a defendant has not made a knowing and intelligent choice of self-representation.”); *Vega v. State*, 57 So. 3d 259, 262 (Fla. 5th DCA 2011) (“trial courts are not bound to follow the model *Faretta* colloquy suggested by the supreme court”).

Second, Hooks argues that we have overlooked the trial court’s failure to ask him numerous questions about, for instance, his age, his education, his “mental status,” and

his experience in criminal proceedings, and that without answers to these questions the court failed to ensure \*1133 that he was competent to waive counsel. I note that he does not claim that his answers to any of these questions would have suggested that he was not competent to waive counsel. In fact, the record shows the opposite. Before jury selection, Hooks gave a clear statement regarding the issues in the case and his defense theory. Hooks actively participated in jury selection, making two cause challenges and a peremptory strike. Hooks gave a coherent opening statement, cross-examined all four of the State’s witnesses, actively participated in sidebar discussions, moved for judgment of acquittal after the State rested, and gave a cogent closing argument. The court confirmed at every critical stage of the proceeding that Hooks wished to continue representing himself, until sentencing, when Hooks chose to be represented by stand-by counsel. At sentencing, the court indicated that Hooks appeared to be a “pretty intelligent guy,” and called him “articulate.” Hooks asks that we reverse the trial court not because the court allowed an incompetent defendant to represent himself, but because the court failed to ask a list of questions that would have shown what the record already shows, and what even Hooks himself does not dispute.

Unlike a plea colloquy, where the case is usually over soon after the defendant enters the waiver (of trial), a *Faretta* inquiry allows the case to proceed after the defendant enters the waiver (of counsel). Thus—and again unlike a guilty plea—the court has ample opportunity after the waiver of counsel to determine whether the defendant appears competent. In my view the questions to ascertain competency prior to the waiver are far more important in the plea context than in the waiver-of-counsel context. \* Here, nothing that occurred at trial would have given the trial court any indication that, perhaps, Hooks had not been competent to waive counsel.

I recognize that the Florida Supreme Court has held that *Faretta* and [Rule 3.111\(d\)](#) “require reversal when there is not a proper *Faretta* inquiry.” *State v. Young*, 626 So. 2d 655, 657 (Fla. 1993). *See also Case v. State*, 865 So. 2d 557, 559 (Fla. 1st DCA 2003) (citing *Young* for the proposition that “[w]hen a defendant waives the right to counsel, the trial court’s failure to perform an adequate *Faretta* inquiry is per se reversible error”). As such, Hooks is not obligated to show that he was incompetent. However, the United States Supreme Court has held that a court is required

to make a competency determination when a defendant seeks to waive his or her right to counsel “only when a court has reason to doubt the defendant's competence.” *Godinez v. Moran*, 509 U.S. 389, 401 n.13 (1993). In other words, a defendant who is plainly competent cannot show prejudice from the court's failure to ask questions to confirm that he is competent. Nothing else demonstrates more that this case is an example of “Simon Says” jurisprudence, where judgments are to be reversed not because a party suffered prejudicial error, but because the court failed to say the right words the right way.

In this case, the trial court adequately determined that Hooks' waiver of counsel was voluntary. As Hooks has failed to demonstrate that we overlooked any law or facts, his motion should be denied.

#### All Citations

236 So.3d 1122, 42 Fla. L. Weekly D2578

#### Footnotes

- 1 *Faretta v. California*, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975).
- 2 Possession of Pyrrolidinovalerophenone with intent to sell within 1,000 feet of a community center, and possession of cannabis with intent to sell within 1,000 feet of a community center.
- 3 See *id.* at 807, 95 S.Ct. 2525 (Succinctly stating that the issue before the Court “is whether a State may constitutionally hale a person into its criminal courts and there force a lawyer upon him, even when he insists that he wants to conduct his own defense. It is not an easy question, but we have concluded that a State may not constitutionally do so.”).
- 4 In 2009, the Florida Supreme Court added the following clause to the end of the sentence in [Rule 3.111\(d\)\(3\)](#): “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.” *In re Amendments to Florida Rule of Criminal Procedure 3.111*, 17 So.3d 272, 275 (Fla. 2009). This addition followed the United States Supreme Court decision in *Indiana v. Edwards*, which held that a person suffering from severe mental illness, even if competent to stand trial, may be denied self-representation. 554 U.S. 164, 128 S.Ct. 2379, 171 L.Ed.2d 345 (2008).
- 5 The factors set out in *Fant* were as follows:  
(1) the background, experience and conduct of the defendant including his age, educational background, and his physical and mental health; (2) the extent to which the defendant had contact with lawyers prior to trial; (3) the defendant's knowledge of the nature of the charges, the possible defenses, and the possible penalty; (4) the defendant's understanding of the rules of procedure, evidence and courtroom decorum; (5) the defendant's experience in criminal trials; (6) whether standby counsel was appointed, and the extent to which he aided the defendant; (7) whether the waiver of counsel was the result of mistreatment or coercion; or (8) whether the defendant was trying to manipulate the events of the trial.  
*United States v. Fant*, 890 F.2d 408, 409–10 (11th Cir. 1989).
- \* This does not include, of course, the situation where the defendant waives counsel and enters a guilty plea at the same time. But in this circumstance, the court must also comply with the requirements for ensuring a valid guilty plea, irrespective of the requirements for ensuring a valid waiver of counsel.