

SUPREME COURT OF FLORIDA

FLORIDA SUPREME COURT

10/30/2018

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SYLVESTER HOOKS

Appellant

vs.

STATE OF FLORIDA

Appellee

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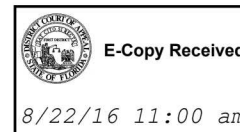
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CASE NO. SC18-1106

DOCKET NO. 1D16-0369

SUPPLEMENTAL RECORD
Volume I
(FILED AUGUST 22, 2016)



**IN THE DISTRICT COURT OF
APPEAL OF FLORIDA
FIRST DISTRICT**

CASE NO: 2015 CF 913

DCA NO: 1D16-369

SPIN: 955

SYLVESTER HOOKS,

APPELLANT,

VS

FILED FTP ON:

STATE OF FLORIDA,

APPELLEE,

**RECORD ON
APPEAL**

**FROM THE CIRCUIT
COURT OF LEON COUNTY, FLORIDA
HONORABLE TERRY LEWIS**

**NANCY DANIELS
PUBLIC DEFENDER
LEON COUNTY COURTHOUSE
301. S. MONROE ST
TALLAHASSEE, FL 32301**

**PAM BONDI
ATTORNEY GENERAL
THE CAPITOL, PL-01
TALLAHASSEE, FL 32399**

ATTORNEY FOR APPELLANT

ATTORNEY FOR APPELLEE

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

CASE NO: 2015 CF 913

DCA NO: 1D16-369

SYLVESTER HOOKS,

PLAINTIFF/APPELLANT,

V.

STATE OF FLORIDA,

DEFENDANT/APPELLEE.

SUPPLEMENTAL

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

SYLVESTER HOOKS,

Defendant/Appellant,

v.

Circuit Case No. 37-2015-CF-913

1st DCA Case No. 1D16-369

STATE OF FLORIDA,

Appellee.

**SUPPLEMENTAL DESIGNATION TO COURT REPORTER
AND DIRECTIONS TO THE CLERK**

The Appellant, pursuant to the order of the First District Court of Appeal (attached), First District Administrative Order 09-1, and Section 27.51(1)(f), Florida Statutes (2008), hereby designates Judy Hussey, (or assigned reporter), Official Court Reporter, to transcribe the proceedings; and file one electronic copy with the First District Court of Appeal and two copies of said proceedings with the Clerk of the Circuit Court, Leon County, Florida.

1. The transcript of the hearing on the motion for in-camera inspection of video evidence held August 13, 2015;
2. The transcript of the hearing on appellant's motion to suppress held on August 19, 2015; and,
3. The transcript of the Faretta inquiry held on January 11, 2016 prior to jury selection,

Pursuant to the First District Court of Appeal's order, the Appellant directs the Circuit Clerk to prepare an original and two copies of a Supplemental Record on Appeal to include the following:

1. The transcript of the hearing on the motion for in-camera inspection of video evidence held August 13, 2015;
2. The transcript of the hearing on appellant's motion to suppress held on August 19, 2015; and,

3. The transcript of the Faretta inquiry held on January 11, 2016 prior to juryselection, and

4. A copy of these directions.

Please prepare and forward the original Supplemental Record on Appeal to Hon. Jon S. Wheeler, Clerk, First District Court of Appeal, 2400 Drayton Drive, Tallahassee, FL 32399-0950; and copies to Hon. Pam Bondi, Attorney General, The Capitol, Tallahassee, FL 32399-1050, and Hon. Nancy A. Daniels, Public Defender, Second Judicial Circuit, Leon County Courthouse, 301 South Monroe Street, Suite 401, Tallahassee, FL 32301, on or before **August 12, 2016**, in accord with the order of the First District Court of Appeal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of this document was provided by electronic transmission to Bob Inzer, Clerk of the Court; Judy Hussey, Official Court Reporter, at: judyh@leoncountyfl.gov ; and Trisha Meggs Pate, Assistant Attorney General, counsel for the State of Florida, at crimappth@myfloridalegal.com; on this date, July 18, 2016.

Respectfully submitted,

NANCY A. DANIELS
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

/s/ Danielle Jorden

DANIELLE JORDEN
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COUNSEL FOR APPELLANT

DISTRICT COURT OF APPEAL, FIRST DISTRICT
2000 Drayton Drive
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Telephone No. (850)488-6151

July 14, 2016

**CASE NO.: 1D16-0368, 1D16-0369,
1D16-0370**
L.T. No.: 37-2012-CF-2477, 37-2015-CF-
913, 37-2012-CF-2547

Sylvester Hooks

v.

State of Florida

Appellant / Petitioner(s),

Appellee / Respondent(s)

BY ORDER OF THE COURT:

Appellant's motion filed July 11, 2016, seeks to supplement the record on appeal with the transcripts of the hearing on the motion for in camera inspection of video evidence held August 13, 2015, the hearing on appellant's motion to suppress held on August 19, 2015, and the Faretta inquiry held on January 11, 2016, prior to jury selection. The motion was filed only in this appeal, but contains the case numbers of all three consolidated appeals. Because the motion appears to request only documents to supplement the record in case number 1D16-0369, and because these appeals have not been consolidated for purposes of the record, the clerk of this court is directed to docket the motion in case number 1D16-0369.

The motion is granted. Counsel for movant shall ensure preparation and transmittal of the supplemental record by the clerk of the lower tribunal on or before August 12, 2016, and time for service of the consolidated initial brief is extended to 30 days following transmittal of the supplemental record.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

Served:

Hon. Pamela Jo Bondi, A. G.
Danielle Jorden, A. P. D.
am

Hon. Nancy A. Daniels, P.D.
Kasey Helms

Steven L. Seliger, A. P. D.
Hon. Bob Inzer, Clerk


JOE S. WHEELER, CLERK



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

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

STATE OF FLORIDA

VS.

SYLVESTER HOOKS,

Defendant.

 ORIGINAL

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16 JUL 29 PM 1:41
CLERK OF COURT
LEON COUNTY
TALLAHASSEE, FLORIDA

16 JUL 29 PM 1:41

FILED

DIGITAL PROCEEDINGS: MOTION HEARING

BEFORE: THE HONORABLE TERRY LEWIS

DATE: August 13, 2015

LOCATION: Leon County Courthouse
Tallahassee, Florida

FOR THE STATE: ELIZABETH DESLOGE, ASSISTANT STATE ATTORNEY
OFFICE OF THE STATE ATTORNEY
LEON COUNTY COURTHOUSE
TALLAHASSEE, FLORIDA 32301

FOR THE DEFENDANT: ALLEN BEARD, ASSISTANT PUBLIC DEFENDER
OFFICE OF THE PUBLIC DEFENDER
LEON COUNTY COURTHOUSE
TALLAHASSEE, FLORIDA 32301

TRANSCRIBED BY: ANNE BETANCOURT
Digital Court Reporter

ANNE BETANCOURT
Official Digital Reporter
Guy A. Race Judicial Complex
Quincy, Florida 32351

ANNE BETANCOURT, OFFICIAL DIGITAL REPORTER

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1 PROCEEDINGS

2 THE COURT: This is on a motion to suppress we had.
3 We kind of tabled it or reserved because you were going
4 to show me something without the defendant seeing it and
5 you were going to educate me a bit on the law maybe.

6 MS. DESLOGE: Yes, sir. And I also brought Sergeant
7 Corbitt and Investigator Arella (phonetic) from TPD tech
8 ops in case the court has any questions about why we
9 shouldn't be allowed to disclose it, why the court
10 shouldn't let us disclose it, et cetera. And so I would
11 ask if we can clear the courtroom before we show the
12 video just because I don't want anyone --

13 THE COURT: Okay.

14 MS. DESLOGE: -- else to be able to see that.

15 THE COURT: All right. If you would, if you're not
16 involved in this case then, we'll ask you to step
17 outside.

18 MS. DESLOGE: And I've spoke to Mr. Beard, there's
19 only like two minutes that's relevant so I'm going to
20 kind of speed it up until it gets relevant and then play
21 the part that's relevant for the court and for Mr. Beard.

22 THE COURT: Okay.

23 (Whereupon a video with no sound was played.)

24 MS. DESLOGE: That's really all that's relevant as
25 far as this case goes. I do have two cases for the court

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1 that I've pulled. I've given them to Mr. Beard. If I
2 could approach?

3 THE COURT: Thank you.

4 MS. DESLOGE: The first case is based on a best
5 evidence objection. In that case there is a -- I think
6 it's a loss prevention officer who's watching, I believe
7 it's shoplifting occur. It's via live camera though.
8 He's watching a live feed similar to this case where the
9 officer is watching this transaction occur live. And
10 essentially, the court ruled that the officer's or the
11 loss prevention officer's testimony was sufficient, that
12 the video did not need to be played in evidence in order
13 to sustain a best evidence objection because the officer
14 had actually watched it live.

15 The second one -- yes, sir?

16 THE COURT: Not a problem there.

17 MS. DESLOGE: Okay, the second one is -- basically
18 just stands for the proposition of disclosure of a
19 confidential informant. And that's kind of the only
20 relevant similar case law that I could find as far as an
21 analogous situation.

22 And there are a number of cases where we are not
23 required to disclose a confidential informant when we are
24 able to prove our case by alternative means. And so I
25 would argue that the only point at which this video would

1 be required to be disclosed would be if there were any
2 Brady exculpatory material on it or if there were any
3 impeachment evidence on it to impeach the officer's
4 probable cause affidavit or his testimony at trial.

5 And so what I would argue is that we should not
6 be -- we should not have to disclose it because the
7 officer was watching it live. He can testify to the
8 contents of the video. And there is no exculpatory
9 evidence, as the Court has just seen on the video, that
10 is inconsistent with what the officer wrote in his
11 probable cause affidavit.

12 THE COURT: Okay. And the reason for not disclosing
13 it would be?

14 MS. DESLOGE: And that's why I have Sergeant Corbitt
15 here. He can explain why it would --

16 THE COURT: Come on up, sergeant.

17 MS. DESLOGE: -- why it would impair future law
18 enforcement investigations, et cetera.

19 I don't know if the court wants to ask him questions
20 or --

21 whereupon,

22 CHRISTOPHER CORBITT

23 was called as a witness, having been first duly sworn, was
24 examined and testified as follows:

25 THE WITNESS: I do.

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1 THE COURT: Okay. I kind of suspect why but why
2 don't you tell me why it would be injurious to law
3 enforcement to disclose this to the defendant in the
4 case.

5 THE WITNESS: Certainly. Obviously, the police
6 department receives a number of complaints from citizens
7 in neighborhoods and businesses dealing with street level
8 drug sales, other nuisance crimes, and things like that
9 that we try to address.

10 One of the most efficient tools that we have -- or
11 why don't we back up and say, obviously, physical
12 surveillance, putting an officer into an area, in a
13 vehicle, on foot is very, very difficult, given the
14 environment, the foot traffic, whether officers fit into
15 an area, those kind of things make it very, very
16 difficult for an officer to actually get in to do live
17 surveillance themselves.

18 So one of the most effective tools that we have is
19 remote video surveillance where we're able to go in and
20 install a camera and be able to monitor that camera live
21 to do that visual surveillance, and then to have officers
22 on the perimeter be able to come in and actually take
23 enforcement action.

24 A lot of these investigations are longterm in that
25 they're not put up for a day or two to address a specific

1 thing, they're put up to address problem locations over a
2 period of time. The cameras that we use, the methods in
3 which they're installed, the way they look, the way they
4 function are similar, from one camera to another.

5 MS. DESLOGE: Sorry to interrupt but I don't think
6 they can hear him so I think we need to pull the
7 microphone --

8 THE COURT: Oh, is that what that was?

9 THE BAILIFF: You just need to announce your name
10 for the record.

11 MS. DESLOGE: Oh, can you state your name?

12 THE WITNESS: Oh, sorry. Christopher Corbitt,
13 C-O-R-B-I-T-T.

14 So obviously, if one camera were to be compromised
15 then by the similar visual appearance and the way they're
16 installed, and the methods they're installed, then all
17 cameras would be compromised.

18 THE COURT: So for example, in this one if the
19 defendant saw it he would tell his friends and buddies
20 that, listen, here's the angle of it, go wherever that
21 building is, search that out and see what it is.

22 THE WITNESS: Exactly. Once you see the video, as
23 you see here, it would be very easy to go and stand in
24 the position of the defendant, look back at the way
25 they're being looked at, and in pretty short order

1 determine where the camera is.

2 THE COURT: And is it hidden? If I walk down that
3 street, can you see it?

4 THE WITNESS: If you knew what you were looking for,
5 yes, you could.

6 THE COURT: All right.

7 THE WITNESS: And so therein lies the problem, that
8 it has to be exposed to some extent because there has to
9 be a line of sight.

10 THE COURT: Right.

11 THE WITNESS: So we have to be able to see. As you
12 can see, that the camera can pan and tilt. When someone
13 is watching it live you can drive it around so it can't
14 be an extremely tiny enclosure. There is some size to it
15 and it does have to be exposed. The method that we use
16 to conceal them and install them is similar from one
17 location to another. So again, as one goes, they all go.

18 And we have other locations where we do longterm
19 surveillance of this same type of stuff. So to protect
20 all of those, certainly, we would try to not reveal that
21 very specific surveillance technique.

22 THE COURT: All right. Okay. Do you have any
23 questions you want to ask? Well, you may have some
24 additional questions you wanted to do.

25 MS. DESLOGE: That was (inaudible) --

1 THE COURT: Mr. Beard, do you want to ask him any
2 questions?

3 MR. BEARD: I don't have any, Judge.

4 THE COURT: Okay, thank you, sir.

5 THE WITNESS: Thank you.

6 THE CLERK: (Inaudible) but who was this?

7 MS. DESLOGE: Sergeant Corbitt.

8 THE COURT: Christopher Corbitt.

9 THE CLERK: Thank you.

10 THE COURT: Well, there's no law directly on point
11 but using it, I guess, there's certainly no problem about
12 a best evidence rule because just because you recorded
13 it, it doesn't mean you can't testify about what was said
14 or what you saw. And I've got the defense attorney who,
15 being an officer of the court, will not divulge it. But
16 did you see anything, with your knowledge of the case
17 that you could use effectively for a defense or effective
18 cross examination?

19 MR. BEARD: Well, I was writing some notes, Your
20 Honor, before she stopped the video. I'd like to back it
21 up just a few.

22 THE COURT: Okay.

23 (Whereupon a video with no sound was played.)

24 THE COURT: Which one of those is the defendant?

25 MS. DESLOGE: When he comes on screen I'll point him

1 out. It's the man on the bicycle right there, at the
2 left.

3 THE COURT: Uh-huh.

4 MR. BEARD: Well, just to get to what is the -- how
5 we could use the video, if you look at the probable cause
6 affidavit, Your Honor, and you look at the description,
7 there's one inconsistency regarding clothing. The
8 officer describes him as wearing jean shorts.

9 THE COURT: Okay.

10 MR. BEARD: Another thing is the officer also wrote
11 that he described, he puts the drugs back in his pants.
12 You can't really tell what he's putting back in his
13 pants. He does describe the exchange of currency and
14 when the camera zooms in, it appears to be something like
15 currency. But to get to the heart of the issue that this
16 would be injurious to law enforcement in some way, the
17 State hasn't demonstrated that it would be.

18 It would make it more difficult for the officers to
19 conduct surveillance in this area. Sergeant Corbitt
20 described it as an efficient tool, an effective tool.
21 It's difficult to go in on foot and do surveillance,
22 obviously, for a uniformed officer so it makes it easier
23 for law enforcement. There's been no testimony as to any
24 specific investigations that are ongoing and that it
25 would jeopardize those investigations.

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1 THE COURT: Well, I think the core of it is we use
2 this tool all over the place. I mean, there's several
3 cameras. And once you understand how it is, what it
4 looks like, and then somebody who wants to evade could
5 figure that out.

6 MR. BEARD: Well, I --

7 THE COURT: Tough luck?

8 Well, you know, you could see that it would be
9 difficult to put a live person in that area. You'd say,
10 who's that guy over there kind of thing. But if you can
11 hide something, obviously, yeah, in the sense of I
12 suppose they want to keep it up. And it's sort of like,
13 just like if you went out under cover and you looked like
14 you look and you made a bust, next time you go out
15 they're going to say there's Beard. Done, you can't use
16 him any more. So it's the same kind of thing once you
17 discover it.

18 So that's the, you know, when I say injurious, yeah,
19 it's a negative impact on our ability to gather
20 information, to do surveillance. But you point out some
21 good things. That, well, if I'm a juror I can look at
22 that and say, wait a second, they said this but look a
23 here, he's not wearing jeans. And I can't tell that he's
24 got drugs. That goes to the credibility of the witness,
25 their abilities.

ANNE BETANCOURT, OFFICIAL DIGITAL REPORTER

1 And they're looking at something on a camera. And
2 the jury can certainly look at that just as well. What
3 do you say to that?

4 MS. DESLOGE: Well, Judge, I think as far as whether
5 or not he's wearing jean shorts, I think that's a factual
6 question. And yes, it could impeach the credibility of
7 the law enforcement officer but I think it's a relatively
8 minor impeachment point --

9 THE COURT: Well, I agree that's relatively minor.

10 MS. DESLOGE: -- as far as the big picture goes.
11 And so I think that in a situation where I choose to play
12 a video versus I choose to have an officer testify,
13 obviously, the jury would prefer to see the video and
14 Mr. Beard would prefer to have the video. But I think
15 that in the grand scheme of things my preference would be
16 to just have the officer testify.

17 THE COURT: And actually, the State would prefer to
18 have the video. There's nothing like showing, here's
19 what it was, you look at it and see. But again, they
20 could say, well, I'm not convinced beyond a reasonable
21 doubt that that's what's going on. It could be something
22 else. It did look to me that was a big wad of money
23 but -- from this distance. You know, if you get up close
24 and I'm sure they have capacity -- you have capacities to
25 zoom in on that, Sergeant Corbitt?

1 THE WITNESS: That's pretty much the extent there --

2 THE COURT: Okay.

3 THE WITNESS: -- of the camera itself. You can go
4 in a little further but it's not going to get much
5 better.

6 THE COURT: Okay. So that's a real disadvantage
7 from, I mean, what do you do. Y'all have got AA, one or
8 more law enforcement officer says, well, I was watching
9 this scene on camera. I guess they'd have to say I
10 watched it on camera. Maybe, I don't know.

11 MS. DESLOGE: It wasn't clear from the probable
12 cause actually.

13 THE COURT: I observed this. Of course being a good
14 defense attorney, he's going to say, well, where were you
15 standing. Well, I wasn't standing. Well, what happened.
16 So it would come up that this was from a camera. If I'm
17 sitting on the jury saying, okay, well, where's the
18 camera. Didn't you save this? And then you have to tell
19 them, well, yes, but we don't want you to see it because,
20 you know, then everybody out there will know where it is,
21 it hurts law enforcement. Which you could do, you could
22 explain it.

23 But then I'm stuck as the defendant saying, well,
24 obviously, if it showed something different, wouldn't I
25 be able to do it? But perhaps, Mr. Beard, having seen

1 it, we could explain to the jury just that, and you could
2 say in cross examination isn't it true, you've looked at
3 it again, and isn't it true that he wasn't wearing jean
4 shorts.

5 MR. BEARD: It really goes to, you know, the heart
6 of our case, Your Honor, in creating reasonable doubt.

7 THE COURT: But listen, and if they say, well, yeah,
8 you're right, I've looked at it and it's shorts. It
9 looked like jeans to me but they're not really, which is
10 what you would say.

11 And isn't it true that you can't really tell it's
12 drugs? Could a lay person looking at that? And he may
13 have. Well, yes. And then you've got a problem if he
14 denies that. I'd say, well, then you get a chance to
15 show it to the jury. But it's sort of like prior
16 deposition.

17 If they make a statement in the deposition and you
18 say, that's not really true then is it. Well, no, it's
19 not. You've impeached them by saying what you saw isn't
20 really true, is it? And then I'd have to let them use it
21 if they deny it.

22 MR. BEARD: Well, I'm thinking mostly in context of
23 the motion to suppress. I think it would be important
24 for the court to hear argument and view the video at the
25 same time.

1 THE COURT: Oh, okay.

2 MR. BEARD: Well, not this second, obviously, but
3 when we have the motion to suppress. It's set for a
4 future hearing date.

5 THE COURT: Certainly. Because I'm not going to
6 disclose it and you won't disclose it.

7 MR. BEARD: But Mr. Hooks will be present.

8 THE COURT: Well, I mean, I wouldn't let him see it.
9 You could still cross examine. You could tell me and
10 I've seen it which is an advantage over the jury who
11 would not have seen it.

12 MR. BEARD: That's primarily what I want the video
13 for, Judge.

14 THE COURT: For me to look at it?

15 MR. BEARD: Yes, during the motion to suppress.

16 THE COURT: Well, I don't see any problem with that.

17 MR. BEARD: Okay.

18 THE COURT: Okay. And like I said, I'm sympathetic
19 to your being able to effectively cross examine. You've
20 got one or more law enforcement officers, you don't have
21 anybody there to say it's different. What do you do if
22 you've got a video that is different. And then, I think
23 you can use it and you can explain to your witnesses this
24 is what we're going to do. And I guess I can look at it
25 more carefully too and determine to what extent I think

1 there's any debatable issue about what it depicts.

2 So now that I've cleared that up. Sorry, I'm
3 looking for some sort of compromise that will give you
4 your probative use and you your probative use of what you
5 had without negatively infecting the use of it for future
6 law enforcement. So when is our motion to suppress
7 scheduled?

8 MR. BEARD: I don't recall the date right off the
9 top of my head.

10 THE COURT: Well, it doesn't matter. We'll come
11 back and we'll have this again. We'll look at it in
12 detail and we'll clear the courtroom again.

13 MR. BEARD: Yes, sir.

14 THE COURT: Okay.

15 THE CLERK: Is it May 19th?

16 MS. DESLOGE: That sounds right.

17 MR. BEARD: I think that's correct.

18 THE COURT: It's coming up soon then.

19 MR. BEARD: Okay. All right, thank you, Judge.

20 THE COURT: Thank you.

21 MS. DESLOGE: Okay. So for right now purposes I'm
22 not being required to (inaudible) we'll revisit it at the
23 motion hearing?

24 THE COURT: Well, yeah, and my leaning is to say,
25 allow him if he can to use it. Let's make the analogy of

1 a video deposition which would be a lot better. You
2 could see facial expressions, et cetera. But say, well,
3 if there's a good reason not to let the jury see the
4 actual video you say, well, you've got a transcript, what
5 did you say. And if he says no, I didn't say that or,
6 you know, a better example would be you got up and
7 glowered at him, didn't you. You tried to intimidate
8 him, didn't you. Well, no, I didn't. That's a little
9 more difficult to do with just a transcript in there. So
10 if Mr. Beard's got something that says, you know, I can't
11 really effectively cross examine him without showing the
12 jury that, then we may have a problem and you may have to
13 show it to them.

14 MR. BEARD: Okay, that this sounds good, Judge.

15 MS. DESLOGE: Okay.

16 (Proceedings concluded.)
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1 CERTIFICATE

2 STATE OF FLORIDA:

3 COUNTY OF GADSDEN:

4 I, Anne Betancourt, Digital Court Reporter, do hereby
5 certify that I transcribed the digital recording of said
6 proceedings that was provided to me and that the foregoing pages
7 are an accurate transcript to the best of my ability.

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

12 DATED this 28th day of July, 2016.
13

14 Anne Betancourt

15 ANNE BETANCOURT
16 OFFICIAL DIGITAL REPORTER
17 GUY A. RACE JUDICIAL COMPLEX
18 24 NORTH ADAMS STREET, 2ND FLOOR
19 QUINCY, FLORIDA 32351
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ANNE BETANCOURT, OFFICIAL DIGITAL REPORTER

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

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

STATE OF FLORIDA

VS.

SYLVESTER HOOKS,

Defendant.



ORIGINAL

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CLERK OF COURT
LEON COUNTY
FLORIDA

16 JUL 29 PM 1:42

FILED

DIGITAL PROCEEDINGS: MOTION HEARING

BEFORE: THE HONORABLE TERRY LEWIS

DATE: August 19, 2015

LOCATION: Leon County Courthouse
Tallahassee, Florida

FOR THE STATE: ELIZABETH DESLOGE, ASSISTANT STATE ATTORNEY
OFFICE OF THE STATE ATTORNEY
LEON COUNTY COURTHOUSE
TALLAHASSEE, FLORIDA 32301

FOR THE DEFENDANT: ALLEN BEARD, ASSISTANT PUBLIC DEFENDER
OFFICE OF THE PUBLIC DEFENDER
LEON COUNTY COURTHOUSE
QUINCY, FLORIDA 32301

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1 PROCEEDINGS

2 THE COURT: Motion to suppress on Mr. Hooks' case.

3 MR. BEARD: Yes, sir, Your Honor.

4 THE COURT: Okay. Have you got any witnesses?

5 MS. DESLOGE: Yes, sir.

6 THE COURT: Okay.

7 MS. DESLOGE: I'd call Officer Perry to the stand
8 first.

9 THE COURT: All right. Good morning.

10 THE WITNESS: How are you, sir?

11 THE COURT: Good.

12 Whereupon,

13 BRIAN PERRY

14 was called as a witness, having been first duly sworn, was
15 examined and testified as follows:

16 THE WITNESS: I do.

17 THE COURT: Have a seat.

18 DIRECT EXAMINATION

19 BY MS. DESLOGE:

20 Q Good morning.

21 A Good morning.

22 Q Can you state and spell your name for the record,
23 please?

24 A Brian Perry. P-E-R-R-Y.

25 Q And where do you work?

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1 A City of Tallahassee Police Department.

2 Q How long have you been with TPD?

3 A Seven years.

4 Q And do you have prior law enforcement experience?

5 A Yes, ma'am, I do.

6 Q And where is that?

7 A I retired from Broward county, Florida, after 20
8 years.

9 Q Okay. Can you tell the court a little bit about
10 your experience, specifically, in street level narcotics?
11 Your training and experience in that.

12 A When I was in South Florida I was part of the FDLE
13 No Fear Task Force. I was a member of the North Florida Task
14 Force. I was also a detective for the city of Wilton Manors.
15 I was cross sworn with the city of Oakland Park, Broward
16 Sheriff's Office, the city of Fort Lauderdale.

17 I spent six years in HIDTA, High Intensity Drug
18 Trafficking Association. I was on the Multi-Agency Gang Task
19 Force sworn in through the sheriff's office. I spent time
20 with the Fort Lauderdale Street Crimes Unit during which time
21 I made hundreds of narcotics purchases as an undercover
22 officer.

23 Q And what was your assignment with TPD back in March
24 of this year, 2015?

25 A I was a member of the gang unit.

1 Q Okay. And did you have occasion to conduct
2 surveillance at 519 West Brevard Street in March of this year?

3 A Yes, ma'am.

4 Q And how often did you or the gang unit surveil that
5 particular area?

6 A Over a hundred times. It would be on a weekly
7 basis, we'd take up points of surveillance.

8 Q And why that area in particular?

9 A Due to numerous complaints from the business owners,
10 neighborhood.

11 Q Complaints regarding what?

12 A Loitering, drugs.

13 Q And have you personally made any drug arrests at
14 that particular location?

15 A Yes, ma'am.

16 Q Can you give any kind of estimate as to how many?

17 A As a unit, I would say at least a hundred.

18 Q Okay. So on -- I'm going to take you back to March
19 20th of this year around 6:00 in the afternoon, at night.
20 Were you conducting surveillance at that area?

21 A Yes, ma'am.

22 Q And what -- did you observe a man that you later
23 determined to be Sylvester Hooks?

24 A Yes, ma'am.

25 Q What did you observe Mr. Hooks do?

1 A While conducting surveillance I observed, based on
2 my training and experience, what looked to be a hand-to-hand
3 narcotics transaction. We observed one subject make contact
4 with another. During the contact there was an exchange of
5 currency which was visible from our point for another item.
6 The contact lasted less than a minute. After the contact the
7 suspect then placed an item in a bag from his hand into the
8 rear of his pants.

9 Q Okay. And did the two individuals, the suspect and
10 the other individual, what did they do before they conducted
11 what you believed to be a hand-to-hand? How did they appear?

12 A They made contact. They were separate. I seen them
13 start conversing, they walked towards each other.

14 Q Did they separate themselves from the rest of the
15 people in that area?

16 A Yes, ma'am.

17 Q Did they appear to be trying to hide themselves from
18 anyone else in that area?

19 A Yes, ma'am. They took their back to the crowd and
20 to the street so that what they were doing was only visible
21 from the back area of the store.

22 Q And did they look around prior to conducting what
23 you believed to be a hand-to-hand?

24 A Yes, ma'am.

25 Q Okay. And in your experience, I know that you

1 discussed that you personally have done about a hundred, I
2 guess you would say, hand-to-hand transactions as an
3 undercover officer. How many do you think you might have
4 witnessed in your law enforcement career?

5 A I'd say over a thousand easily.

6 Q And at the point in which you saw what you believed
7 to be a hand-to-hand -- and you testified that you actually
8 saw currency?

9 A Yes, ma'am.

10 Q And was that in the suspect's hand?

11 A It went from the purchaser to the seller.

12 Q Right. And then the seller then put whatever --
13 were you able to see what it was that he had retrieved from
14 his pants?

15 A No, ma'am. You could just see it appeared to be in
16 a clear cellophane bag.

17 Q Okay. And in your experience do people tend to hold
18 narcotics in cellophane bags?

19 A Yes, ma'am.

20 Q Okay. And then after you saw the hand-to-hand what
21 did you do?

22 A Officer Britt and Officer Ravenel then went to go
23 make contact with the suspect based on the probable cause
24 belief what we just had witnessed. I maintained my point of
25 observation so that while they were going there we kept eyes

1 on the suspect so we'd know where he was at at all times in
2 case he left the area.

3 Q Okay. And then at the point in which you saw that
4 they had arrived on scene, did you then arrive on scene as
5 well?

6 A A short time later, yes.

7 Q Okay. And how long would you say it took you to get
8 there?

9 A Probably between probably about 40 seconds, 45
10 seconds.

11 Q Okay, so a very short amount of time?

12 A Yes, ma'am.

13 Q Okay. So you were not -- you did not participate in
14 the initial detention of Mr. Hooks, is that fair?

15 A Correct.

16 Q Okay.

17 MS. DESLOGE: I don't have any further questions for
18 this witness.

19 THE COURT: Okay. Cross exam?

20 CROSS EXAMINATION

21 BY MR. BEARD:

22 Q Good morning, officer.

23 A How are you, sir?

24 Q Doing well, thanks. The surveillance that you were
25 conducting was via video?

1 MS. DESLOGE: You can say that.

2 THE WITNESS: Yes.

3 BY MR. BEARD:

4 Q Did you write a report in this incident?

5 A No, sir.

6 Q To the best of your recollection what was Mr. Hooks
7 wearing for clothing at the time you observed him?

8 A I don't recall.

9 Q And you testified that from your vantage point you
10 could see currency?

11 A Yes, sir.

12 Q And you're a hundred percent sure of that?

13 A Uh-huh.

14 Q You also said that you saw a cellophane bag in
15 Mr. Hooks' hand?

16 A Yes, sir.

17 Q How sure are you of that?

18 A I'm pretty sure.

19 Q Could you see what was in the bag?

20 A No, sir.

21 Q How many others did you observe that day?

22 A That was the only one.

23 Q What was the period of surveillance of that area and
24 this incident involving Mr. Hooks? In other words, how long
25 had you been watching that area on Brevard?

1 A On that particular day?

2 Q Yes.

3 A I'm not sure from what time we started until we
4 finished. I mean, it was a normal occurrence in our unit.

5 Q Does the -- I'm assuming the video doesn't have any
6 audio capability and can't pick up what is said?

7 A No, sir.

8 Q And just to confirm, you maintained your vantage
9 point, you weren't at the scene where Mr. Hooks was detained
10 and contacted by the officers who responded?

11 A Correct.

12 MR. BEARD: I have no further questions.

13 THE COURT: Redirect?

14 MS. DESLOGE: Just one question.

15 REDIRECT EXAMINATION

16 BY MS. DESLOGE:

17 Q When you would surveil that particular area, do you
18 know about how long you would surveil it? Would it be hours
19 or would it be, you know, a couple of minutes?

20 A Normally it would be, probably, I'd say an hour. It
21 depends on what's going on. Calls for service, you know, with
22 the sergeant calls, if we were downtime in the office where
23 the monitor is at, we would normally put it on.

24 Q Okay.

25 MS. DESLOGE: I have no further questions.

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1 THE COURT: Thank you, sir.

2 THE WITNESS: Yes, sir.

3 THE COURT: Do you want to call your next witness?

4 MS. DESLOGE: The State calls Officer Britt.

5 THE COURT: Good morning.

6 Whereupon,

7 STEVE BRITT

8 was called as a witness, having been first duly sworn, was
9 examined and testified as follows:

10 THE WITNESS: Yes, sir.

11 THE COURT: Thank you, have a seat.

12 THE WITNESS: Thank you.

13 DIRECT EXAMINATION

14 BY MS. DESLOGE:

15 Q Good morning.

16 A Good morning.

17 Q Can you state and spell your name for the record,
18 please?

19 A Yes. Officer Steve Britt. B-R-I-T-T.

20 Q And where do you work?

21 A I work for the Tallahassee Police Department.

22 Q And how long have you been with TPD?

23 A I've been with TPD since October of 2011.

24 Q And prior to TPD do you have law enforcement
25 experience?

1 A Yes.

2 Q And where was that?

3 A I worked for a police department inside the
4 St. Louis metropolitan area.

5 Q Can you describe for the court your experience,
6 specifically your training and experience in street level
7 narcotics?

8 A Yes. I have been on special units pertaining to
9 street level crimes. Specifically drugs, gangs, firearms, for
10 approximately five years. I was, since 2013, January of 2013,
11 I have been on the gang unit for the Tallahassee Police
12 Department and received some gang level training.

13 Prior to working here, I worked for an agency,
14 Belleville (phonetic) Police Department. And I was a street
15 crimes detective for approximately two and a half years there
16 as well, where our sole purpose was street level interdiction
17 of crimes in progress or street level narcotics. I was
18 actually deputized with a county narcotics task force. I
19 attended drug level interdiction training. I've had training
20 hosted by the DEA pertaining to interdiction. And I received
21 also the basic recruit level training.

22 I've also received a number of accommodations in my
23 career that have pertained to street level narcotics and
24 gangs.

25 Q Okay. And are you familiar with what's known as a

1 hand-to-hand transaction?

2 A Yes.

3 Q Can you give the court an estimate as to how many
4 hand-to-hand transactions you've witnessed in your career?

5 A I would estimate probably in the hundreds.

6 Q Did you have occasion to conduct surveillance at 519
7 West Brevard Street in March of this year?

8 A I did.

9 Q And why were you surveilling that particular area?

10 A That area is an extremely high crime area that we
11 have. We've had a number of instances of violence and
12 complaints of quality of life issues there.

13 With the gang unit we're tasked with going to those
14 areas and ferreting out crime. So on that occasion we were,
15 we had resources in the area that would facilitate our
16 surveillance of that because that is such a high crime area.
17 And we were in the process of trying to stop some of that
18 crime.

19 Q Have you had narcotics complaints specific to that
20 area?

21 A Yes.

22 Q Okay. Have you personally made any arrests in that
23 area related to drugs?

24 A Yes, I've personally been involved in arrests in
25 cases there both with my unit and with patrol. I have

1 probably made or been assisted with investigations there
2 hundreds of times.

3 Q And I'm going to take you back to March the 20th of
4 this year around 6:00 in the afternoon. Were you conducting
5 surveillance at that time?

6 A Yes.

7 Q And did you observe an individual who you later
8 determined to be Sylvester Hooks?

9 A Yes.

10 Q And what did you -- can you kind of describe that
11 for the court?

12 A Yes, he was observed interacting with another male
13 in what appeared to be kind of an outside the social norms
14 rapid encounter. And upon closer inspection it appeared that
15 he was conducting a hand-to-hand drug transaction for money.
16 We actually saw money exchange hands and we coordinated a plan
17 to go and apprehend him.

18 Q Okay. Can you kind of explain to me what you mean
19 by outside the social norms interaction?

20 MR. BEARD: Objection, Your Honor. The question was
21 for him to describe outside the social norms. He's not a
22 sociology expert.

23 THE COURT: Overruled. I don't think you'd have to
24 be an expert in sociology to have a legitimate opinion.

25

1 BY MS. DESLOGE:

2 Q What specifically did they do that made you describe
3 it that way?

4 A Yes. I'm sorry, I failed to mention in my training
5 and experience before, I've been to at least four or five, 80,
6 probably 40 to 80 hour each courses on body language and
7 deception.

8 In this case the individuals were originally --
9 Mr. Hooks was originally in a crowd of people and there was
10 social interactions going on there. He appeared to be
11 relaxed, looking around, conversing with various people,
12 facing towards the street of Old Bainbridge, Macomb area, and
13 Brevard.

14 Upon arrival and limited interaction with this other
15 individual those two specifically walked away from the crowd,
16 turned their backs to the street, moved away from a, I would
17 say, an area that would be more public than not, and appeared
18 to exchange items with each other, hovered close together.
19 And when they completed that the two completely departed away
20 from each other. Their entire interaction appeared to take
21 place in probably less than 60 seconds.

22 Q And before the exchange took place did they look
23 around as if to ensure that no one was watching?

24 A I believe so. I'd have to review my report but I
25 believe that there was some concern there between the two of

1 them.

2 Q And did you see where Mr. Hooks retrieved what he
3 was exchanging?

4 A Yes.

5 Q Where was that?

6 A That was in this -- I'd say the small of his back
7 just inside his pants just above his buttocks area.

8 Q So concealed on his person?

9 A Yes.

10 Q Okay. Were you able to see what it was?

11 A I believe, from our perspective it appeared to be
12 like a plastic bag but we weren't exactly sure. I mean, our
13 belief was that he was storing drugs in his butt area but --

14 Q And then what did he -- describe the exchange for
15 me. Describe the hand-to-hand?

16 A Sure. He exchanged -- the two turned their backs,
17 appeared to exchange the items. After he withdrew it he put
18 it back into his buttocks area. And actually, you could see
19 the U.S. currency in his hand that he had received from the
20 other individual.

21 Q And you're positive that it was actually currency?

22 A Yes. It was paper bills, yes.

23 Q At that point what did you do?

24 A I coordinated a plan. We're short staffed and I
25 coordinated a plan with two officers. One would be my back up

1 and one would remain in a position of concealed surveillance
2 in order to make sure that if he left, we would know the
3 direction that he went. Myself and Officer Ravenel drove into
4 the area and encountered Mr. Hooks.

5 Q And upon approaching Mr. Hooks, what did he do?

6 A We moved to arrest him and -- well, gave him some
7 specific commands to stop and put his hands behind his back.
8 And he immediately became defensive and blurted out, all this
9 for a dime.

10 Q Was that prior to searching him?

11 A Yes. He made -- at least twice he said all this for
12 a dime which, based on, again, thousands of encounters with
13 street level dope, is slang for either -- it's slang for \$10.
14 It's either \$10 of crack or \$10 of weed. My assertion or my
15 belief was he was attempting to minimize the previous
16 encounter in order to thwart further investigation.
17 Specifically that, all this for a dime bag of weed as though
18 this kind of approach was not necessary. That further
19 solidified my concerns that he was in fact dealing drugs.

20 Q And at that point you conducted a search of his
21 person?

22 A That's correct.

23 Q And what did you find?

24 A I found the exact plastic bag tucked in his -- just
25 above his buttocks in the, just inside the pants above the --

1 they were below the small of his back. And it contained, I
2 believe, multiple bags of cocaine and I believe a bag of weed
3 which corroborated his previous statements.

4 Q And did you find any currency on his person?

5 A I believe so. I would have to look. I remember
6 reading in the PC that there was some currency involved but I
7 would have to check for the exact figures.

8 MS. DESLOGE: I don't have any more questions for
9 this witness.

10 THE COURT: Cross exam?

11 CROSS EXAMINATION

12 BY MR. BEARD:

13 Q Good morning, Officer Britt.

14 A Good morning, sir.

15 Q Now, there's already been testimony that this was
16 surveillance by video. Did you observe the video feed as
17 well?

18 A I did, yes, sir.

19 Q So you were with Officer Perry while the transaction
20 was being observed?

21 A Yes. In fact, this was brought to my attention
22 as -- he was the one that brought it to my attention.

23 Q What was Mr. Hooks wearing on that date?

24 A I would have to defer to the video or my PC but I
25 believe he had on -- I seem to recall he had a chain on that

1 kind of made him stand out as a shiny piece of jewelry. I
2 think he had on a white shirt. It might have been an A-frame
3 tank top, I think. I would have to again refer to my PC and
4 the video specifically.

5 Q Do you have a copy of that?

6 A I'm sure the State has a copy of the --

7 Q I do.

8 A -- of the PC.

9 Q Would you mind?

10 A Yes, I would --

11 MR. BEARD: May I approach the witness, Your Honor?

12 THE COURT: Yes, sir.

13 MR. BEARD: You can use this to refresh your memory.

14 THE WITNESS: Thank you. I appreciate that, sir.

15 Thank you. (Brief pause.)

16 Yes, sir. He had on a white shirt, jean shorts, a
17 dark ball cap, glasses, and a gold chain.

18 BY MR. BEARD:

19 Q What color was the chain?

20 A I believe it was a shiny -- it could have been
21 silver but it was a shiny, it appeared to be, gold chain.

22 Q What you believed to be U.S. currency, you testified
23 that you were pretty much a hundred percent positive it was
24 currency?

25 A I believed it was U.S. currency, yes, sir.

1 Q Is there a chance it couldn't have been currency?

2 A I don't believe so. We have encountered similar
3 instances by doing these kind of apprehensions over the course
4 of my years in the gang unit, and we have specifically been
5 told by the state attorney's office you need to seek out --
6 you need to either see drugs or be very sure that it's drugs
7 or you need to see United States currency in order for us to
8 be proceed. And so as a gang unit we have specifically, while
9 conducting this surveillance, specifically looked for drugs or
10 United States currency.

11 Q Now, I want to talk about Mr. Hooks' statement at
12 the time y'all were detaining him. All this for a dime. Now,
13 without knowing exactly what he was thinking and setting
14 aside, you know, kind of the street use of that term, could it
15 be possible that he meant something else by that?

16 THE COURT: How could he set aside what he knows?
17 Do you mean if it wasn't drugs could it be something
18 else?

19 MR. BEARD: That's correct.

20 THE WITNESS: I don't believe so, sir, I'm sorry.
21 In the vernacular of the street a dime generally means a
22 ten piece, a 10-dollar value of drugs.

23 THE COURT: I guess he means if you didn't know the
24 vernacular of the street and you just heard somebody say
25 all this for a dime, could he be referring to a dime?

1 THE WITNESS: If I did not know that, I guess. But
2 I'm sorry, the term dime bag is so used -- dime and
3 nickel are so used on the street that it's almost like an
4 at or the, it's such a common word.

5 BY MR. BEARD:

6 Q How many transactions did you observe?

7 A Just the single event.

8 Q Was Mr. Hooks known to you prior to that date in
9 contacting him?

10 A No, he was not.

11 Q Did y'all ever detain the other gentleman with whom
12 he was interacting?

13 A We did not have the resources to do so. And during
14 our plan, our plan was to grab what we believed was the
15 dealer. And with the limited resources we had, which was a
16 single other officer for backup, it would not have been safe
17 for us to grab both of them. So the answer to your question,
18 sorry, no.

19 MR. BEARD: May I have just a moment, Your Honor?

20 THE COURT: Yes, sir.

21 (Discussion off the record.)

22 MR. BEARD: I have no further questions, Your Honor.

23 THE COURT: Redirect?

24 MS. DESLOGE: No, sir.

25 THE COURT: Let me ask you a question. You said you

1 saw currency. You didn't see anything that looked like
2 drugs?

3 THE WITNESS: The plastic bag that he contained and
4 later put into his upper back, buttocks area, that's what
5 we believed was drugs.

6 THE COURT: Okay.

7 THE WITNESS: Being that it's a clear plastic
8 wrapper and it kind of stands out as it's probably not
9 his lunch.

10 THE COURT: Like a ziplock type bag?

11 THE WITNESS: Like the tied corner (phonetic) bags
12 that they keep. That was our belief, that it was a
13 storage container for drugs. You know, like potato chips
14 or a sandwich would have kind of stood out but this was
15 just such a small item that when it went in there we
16 believed it was what we call the stash.

17 THE COURT: Okay. And I guess you didn't recognize,
18 personally, Mr. Hooks so you didn't know who to run a
19 history on to see whether had any prior (inaudible) --

20 THE WITNESS: That's correct. I wouldn't be able to
21 say that's John Smith and know that he -- and pull his
22 information. No, sir.

23 THE COURT: Okay. Thank you.

24 THE WITNESS: Thank you, sir.

25 THE COURT: Anything else from the State?

1 MS. DESLOGE: No, sir.

2 THE COURT: How about from the defense?

3 MR. BEARD: We don't have any witnesses, Your Honor.

4 THE COURT: Okay. Well, your motion, you get to
5 argue.

6 MR. BEARD: There's one document that I'm going to
7 move to admit into evidence as Defendant's Exhibit No. 1.
8 It's from the Leon County Jail and it's a property
9 receipt for Mr. Hooks. It contains a description of the
10 clothing at the time of his booking.

11 THE COURT: Any objection?

12 MS. DESLOGE: No, sir.

13 THE COURT: All right.

14 (Defense Exhibit No. 1 received in evidence.)

15 MR. BEARD: May I approach?

16 THE COURT: Yes, sir. Thank you.

17 MR. BEARD: Your Honor, we would argue that the
18 motion to suppress should be granted. Grounds for that
19 are this was a single transaction observed by law
20 enforcement. There's a number of cases I know the
21 State's prepared to argue.

22 In those there were either multiple transactions or
23 other factors present that aren't in this case. The
24 officers said they're sure the currency changed hands but
25 there's been no testimony that the officers could tell

1 exactly what went from Mr. Hooks to this other gentleman.
2 The other gentleman was never detained following the
3 incident so there's no way to know pre-arrest what was
4 being exchanged.

5 There's no testimony that Mr. Hooks was known to any
6 of the officers or that he had a history or was known as
7 a street level drug dealer. Again, there was one
8 transaction. Based on that, Your Honor, we'd argue there
9 wasn't reasonable suspicion nor probable cause for
10 Mr. Hooks to be arrested.

11 And the clothing description in Officer Britt's
12 report describes a man in a white shirt, jean shorts, a
13 dark ball cap, glasses, and a gold chain. The property
14 receipt that we entered into evidence indicates that
15 Mr. Hooks was wearing gray shorts, a multi-colored shirt,
16 and he had two silver chains.

17 THE COURT: Okay.

18 MS. DESLOGE: May I approach with the case law?

19 THE COURT: Yes, ma'am.

20 MS. DESLOGE: I've provided it to the defense.

21 THE COURT: Thank you.

22 MS. DESLOGE: In cases such as this the inquiry is
23 extremely fact specific. There are probably thousands of
24 cases dealing with officers observing hand-to-hand
25 transactions.

1 And each one is very factually different from the
2 other. And so it's very difficult to find cases that are
3 factually similar to the case at bar or any case because
4 they're so different. However, the courts have
5 determined a number of factors that the court can
6 consider when deciding whether or not to grant a motion
7 to suppress based on an observation of a hand-to-hand
8 transaction. I'm going to go through the cases and kind
9 of summarize them for the court first and then I will
10 draw the analogy with this case. I tried to pull the
11 cases that were the most similar to this case in
12 particular.

13 So the first one that I handed the court and the
14 defense is Hankerson vs. State, it's 65 So.3d 502. It's
15 a Florida Supreme court case from 2011. In that case an
16 officer was participating in surveillance of a residence
17 that was suspected of being the location of illegal drug
18 transactions. They observed the defendant arrive at the
19 residence, exit an SUV and approach people on the front
20 porch.

21 The defendant looked up and down the street and then
22 opened his hand and then three individuals consecutively
23 took something from his hand and gave him currency in
24 return. The officer could not see what was in the hand
25 but he testified, based on his experience and training in

1 street level narcotics, that he believed that the
2 defendant had participated in a narcotics transaction.

3 He radioed to the other officers to perform a
4 traffic stop on the defendant after the defendant got
5 back in his car. Another officer pulled him over, asked
6 him to exit, asked him to remove his shoes, and one of
7 his shoes contained cocaine.

8 The Florida Supreme Court found that there was
9 probable cause to search the defendant. They reasoned
10 that because the defendant was at a home where there had
11 been drug complaints and he engaged in a series of
12 hand-to-hand transactions exchanging small items for U.S.
13 currency, the officers had probable cause. They
14 additionally commented that the defendant's demeanor, as
15 in looking up and down the street prior to engaging in
16 the hand-to-hand transactions also bolstered their
17 conclusion that there was probable cause.

18 The second case is Knox vs. State, it's 689 So.2d
19 1224 out of the Fifth. In that case an officer was
20 assigned to a store with numerous complaints of narcotics
21 activity similar to the case at bar. They conducted
22 surveillance in that case for two hours. They observed
23 the defendant approach a vehicle and pass something to
24 the occupants, and then they saw the defendant with cash
25 in his hand. They noted that the objects exchanged for

1 the cash had been concealed on the defendant.

2 They did not believe that they had probable cause at
3 that point, actually, so they approached the defendant
4 and they conducted a pat down of him. The court found
5 that the pat down was improper but that the officers at
6 that point had probable cause to search the defendant.
7 And so they found that there was probable cause even
8 though they conducted an improper pat down and then, so
9 they reversed the case.

10 Williams vs. State, I believe, is the most factually
11 similar. It's 717 So.2d 1109 out of the Fifth. An
12 officer in that case, very experienced in street level
13 narcotics, observed the defendant who was known to the
14 officer as someone who had been subject to various
15 arrests, look around to assure no one was watching, reach
16 into his buttocks area under his pants and produce
17 something from which he extracted something else, handed
18 it to two people who approached him in exchange for
19 something that he actually couldn't identify. So he
20 didn't actually see money exchange hands, he saw him
21 reach into his pants, exchange something with two people
22 and get something in return.

23 After he looked around -- after the exchange he
24 looked around again and then replaced whatever it was
25 into his pants in his buttocks area. He was searched,

1 cocaine was found. The court found that there was
2 probable cause to search him at that point.

3 And then the other case, the next case I've handed
4 the court is Burnette vs. State, it's 658 So.2d 1170 out
5 of the Second. In that case an officer observed the
6 defendant pull up in a car and exchange something with a
7 known drug dealer. They stopped the defendant's car and
8 they found cocaine. The court found sufficient for
9 reasonable suspicion but not probable cause. They said
10 it was not clear from the record whether or not there was
11 an intervening event between seeing the transaction
12 occur, such as a confession from the defendant or a
13 glimpse of the cocaine that would have established
14 probable cause.

15 So they weren't able to determine whether or not
16 there was probable cause; however, they did note that if
17 the defendant had made some sort of statement, like I had
18 drugs on me or something along those lines, that they
19 would have felt that that would be sufficient for
20 probable cause at that point after just witnessing a
21 transaction with a known drug dealer not witnessing what
22 actually was exchanged.

23 The final case that I've handed the court is Revels
24 vs. State, it's 666 So.2d 213. It's out of the Second.
25 In that case two experienced officers were surveilling a

1 house known for crack cocaine sales. They saw two events
2 where cars pulled up and a man walked to each car and
3 they observed hand-to-hand transactions where currency
4 was exchanged for an unidentified object. They couldn't
5 tell what it was. Within ten minutes the defendant
6 arrived on a bike, the same man walked over to him and
7 they saw currency in the defendant's hand. The defendant
8 gave the man money and the man placed a small object in
9 the defendant's hand and the defendant then put it in his
10 pocket.

11 They stopped him within three blocks and found
12 cocaine in his pocket. The court said that in the
13 overall context of the case the exchange of money is
14 unlikely to be an exchange for any small object other
15 than crack cocaine. They cited to several similar cases
16 noting that the opinions were not clear as to the extent
17 of surveillance in the area or arrests in the area. And
18 so they said that in those cases where the motion to
19 suppress was granted, the level of surveillance was
20 important.

21 And so how long the officers were surveilling or how
22 often the officers surveilled the area was important.
23 Because in those other cases they said they found that it
24 was an isolated police event and that they didn't have
25 probable cause because they were not surveilling the area

1 for an extended period of time.

2 There are a variety of factors that the courts have
3 delineated that the court can consider when deciding
4 whether or not to grant a motion to suppress based on
5 these kind of factual scenarios. Those factors are time,
6 day of the week, location, physical appearance of the
7 suspect, behavior of the suspect, appearance and manner
8 of operation of any vehicle involved, training and
9 experience of law enforcement, quality of surveillance
10 procedures, history of the specific location under
11 surveillance, recent events at the location and prior
12 knowledge of the parties involved.

13 So now we get to this case and whether or not those
14 factors apply in this case. This case is obviously,
15 we're talking about a known drug area, both officers
16 testified that they've personally made arrests and that
17 their unit had made hundreds of arrests at this
18 particular location, and that they were conducting
19 surveillance at this location for an extended period of
20 time. And that it was a regular thing that they would do
21 pretty often and that that on average they would do it
22 for about an hour depending on calls for service, et
23 cetera.

24 Obviously, both law enforcement officers that
25 testified here today have a significant level of

1 experience in street level narcotics and they have
2 significant training. They both testified they've
3 witnessed hundreds and hundreds of hand-to-hand
4 transactions. And Officer Perry has even personally
5 performed about a hundred hand-to-hand transactions
6 himself as an undercover officer.

7 In this case the defendant shows up, he starts
8 talking to an individual, they kind of sequester
9 themselves from the rest of the group of people. They
10 put their backs to the street, they both look around as
11 if trying to make sure that no one is around and no one
12 is watching them do this, and the defendant then reaches
13 into his buttocks area, pulls out something that's in a
14 cellophane bag, which the officers testified was
15 consistent with something that would store narcotics in
16 their training and experience. He then hands something
17 out of that bag to this individual he's sequestered
18 himself with, and then that individual hands him
19 currency, and then the defendant then puts the bag back
20 into his buttocks area.

21 And the officers clearly see currency. They've
22 testified that they are sure that it's currency. They're
23 a hundred percent positive. A number of the factors are
24 present in this case. Again, they're not always going to
25 have all of the factors. They're not always going to be

1 factually exactly the same as all of the cases that deal
2 with these kind of transactions.

3 First, I'm going to argue that the officers did have
4 probable cause at the point at which they saw the
5 transaction occur based on the totality of the
6 circumstances that I've just gone through with the court.
7 However, if the court doesn't feel that they did have
8 probable cause, which I would argue that they did, I
9 would argue then that they had reasonable suspicion to
10 detain him.

11 But at that point in which they detained him, he
12 then said all this for a dime which in their experience
13 is slang for narcotics. And that bolstered their
14 reasonable suspicion to a level of probable cause. And
15 then they definitively had probable cause to search him
16 and arrest him at that point. So I would ask that the
17 motion to suppress be denied.

18 MR. BEARD: Your Honor, I'll talk about the cases
19 that the State cited and distinguish them from this case.

20 In the Hankerson case, that case involved a series
21 of transactions. In this case we have a single
22 transaction. In the Knox case, it likewise involved a
23 series of multiple transactions. And in this case
24 there's a single transaction.

25 Although the State has argued there was an extended

1 period of surveillance, it would be our argument that the
2 testimony doesn't support that claim. It seems like it
3 was a very brief time that the officers observed
4 Mr. Hooks and the other man.

5 In the Williams case the subject that was arrested
6 was known to the officers, they were familiar with his
7 history and his, I guess his reputation for engaging in
8 street level narcotics sales. We don't have that in this
9 case. Mr. Hooks is not known to either of the officers.
10 Likewise, in Burnette, the subject in that case was
11 personally known to the officers. And again, Mr. Hooks
12 was not known to Officer Perry nor Officer Britt.

13 In the Revels case multiple transactions were
14 observed. Here there's one transaction. Additionally,
15 they were observing a house which is, I would argue, a
16 location more specific than an area near a store where,
17 you know, a group from the community is gathering.

18 With respect to, all this for a dime, we would argue
19 that it's unclear what Mr. Hooks' intention was in making
20 that statement. Without asking any kind of clarifying or
21 follow-up questions or knowing what he was thinking, we
22 just -- we don't know.

23 There was no contraband observed changing hands.
24 Both of the officers testified that they saw what they
25 believed to be but they're not a hundred percent positive

1 that there was a plastic bag that Mr. Hooks held on his
2 person.

3 The last point I want to make in our argument is
4 just with respect to weighing how accurate. The scene is
5 depicted by officers and their testimony was they were
6 able to see what was going on. The clothing in Officer
7 Britt's report, it differs from the description of the
8 clothing in Mr. Hooks' jail property receipt. In Officer
9 Britt's report he described it as a white shirt. The
10 jail property receipt described it as multi-colored.
11 He's described in the report as wearing jean shorts. In
12 the property report it says he's wearing gray shorts.
13 And Officer Britt thought that was -- Mr. Hooks was
14 wearing a gold chain. And in the property report he's
15 described as wearing a silver chain. We would ask the
16 motion be granted, Your Honor.

17 THE COURT: Okay. Well, I'm going to deny the
18 motion and I'll tell you why. My first observation is I
19 can't imagine with all the numbers of stops and arrests
20 for drug dealing in that area that the drug dealers don't
21 get smart enough to say, well, gosh, everybody is getting
22 arrested around here, maybe we should do something else.
23 But you know, be that as it may, all the factors that
24 Ms. Desloge pointed out I think are fair.

25 I'm just trying to apply some common sense. Some of

1 these cases that I see in there, they do their best,
2 well, this was present but this wasn't present, and so
3 you did have probable cause or you didn't have probable
4 cause. I'm just trying to apply some common sense here.
5 I mean, I'm not an expert, I don't have a whole lot of
6 training in it but I can't imagine what else I would
7 conclude from what you'd see on that video but that there
8 was a drug transaction going on. So I think the officers
9 had, at the very least, reasonable suspicion to make a
10 stop.

11 The Fourth Amendment is designed to stop
12 unreasonable searches, I just don't think this was
13 unreasonable based on the factors that are pointed out so
14 I'll deny the motion. It's an interesting issue though
15 and that, in conjunction with the issue about the tape.
16 Now, I did a compromise and I let the attorney see the
17 video who, as an officer of the court can't divulge it to
18 protect the law enforcement effectiveness in that area.
19 But it's something that I wouldn't mind getting some
20 guidance from the appellate court.

21 If you want to appeal that, it wouldn't hurt my
22 feelings at all and we can see what the -- maybe the
23 First DCA can give us a little more clearance but I just
24 have a hard time looking and trying to figure out, well,
25 what else were they doing. I got no, I mean, you can

1 think of something possibly but that's not a standard, I
2 don't think, they that applies in a probable cause or a
3 reasonable suspicion situation. So that's my reason.
4 Sorry but I'm going to deny your motion.

5 Are we set for trial for Mr. Hooks?

6 MS. DESLOGE: Yes, sir.

7 MR. BEARD: Yes, sir.

8 MS. DESLOGE: Next week.

9 THE COURT: Okay. We'll see you back then.

10 MR. BEARD: Thank you, Judge.

11 (Proceedings concluded.)
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CERTIFICATE

STATE OF FLORIDA:

COUNTY OF GADSDEN:

I, Anne Betancourt, Digital Court Reporter, do hereby
certify that I transcribed the digital recording of said
proceedings that was provided to me and that the foregoing pages
are an accurate transcript to the best of my ability.

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 28th day of July, 2016.



ANNE BETANCOURT
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QUINCY, FLORIDA 32351

ANNE BETANCOURT, OFFICIAL DIGITAL REPORTER

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

16 AUG 18 AM 9:46

FILED

1 APPEARANCES

2 REPRESENTING THE STATE:

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

7 REPRESENTING THE DEFENDANT:

8 SYLVESTER HOOKS, PRO SE

9 KASEY HELMS, ASSISTANT PUBLIC DEFENDER
10 OFFICE OF THE PUBLIC DEFENDER
11 LEON COUNTY COURTHOUSE
12 TALLAHASSEE, FLORIDA 32301

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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

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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
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TALLAHASSEE, FLORIDA 32301

VERONICA G. MCCLELLAN, OFFICIAL COURT REPORTER

CERTIFICATE OF CLERK

STATE OF FLORIDA

COUNTY OF LEON

I, Bob Inzer, Clerk and Comptroller Leon County, Florida, do hereby certify that the foregoing page(s) of the inclusive contain the record of the SYLVESTER HOOKS V. STATE OF FLORIDA and is a true and correct recital of all such papers and proceedings in said cause as appears in the records and files in my office that have been directed to be included in said record pursuant to the Florida Rules of Appellate Procedure.

In Witness Whereof, I have hereunto set my hand and affixed the Seal of said 22ND AUGUST 2016.

BOB INZER
CLERK AND COMPTROLLER
LEON COUNTY, FLORIDA

BY: DAVID L. HUBERT
David L. Hubert, Deputy Clerk