

FLORIDA SUPREME COURT

10/30/2018

RECEIVED

IN THE SUPREME COURT OF FLORIDA

Sylvester Hooks

vs.

State of Florida

CERTIFIED COPIES OF APPEAL PAPERS

CASE NO. 18-1106

FIRST DCA CASE NO. 16-0369

CASE NO. 18-1106  
DOCKET NO. 16-0369

Sylvester Hooks v. State of Florida

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SYLVESTER HOOKS,  
Defendant/Appellant

v.

STATE OF FLORIDA,  
Plaintiff/Appellee.

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

CASE NO. 37-2015-CF-913  
SPN. NO. 955

NOTICE OF APPEAL


NOTICE IS HEREBY GIVEN that SYLVESTER HOOKS, appeals to the District Court of Appeal, First District of the State of Florida, pursuant to Rule 9.030(b), Florida Rules of Appellate Procedure, the judgment and sentence rendered January 15, 2016, by Circuit Judge Terry P. Lewis.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by email to Willie Meggs, State Attorney, at [sao2\\_leon@leoncountyfl.gov](mailto:sao2_leon@leoncountyfl.gov), and to Trisha Meggs Pate, Assistant Attorney General, at [crimapptlh@myfloridalegal.com](mailto:crimapptlh@myfloridalegal.com), on this 27<sup>th</sup> day of January, 2016.

Respectfully submitted,

NANCY A. DANIELS  
PUBLIC DEFENDER  
SECOND JUDICIAL CIRCUIT

  
KASEY HELMS #106961  
ASSISTANT PUBLIC DEFENDER  
LEON COUNTY COURTHOUSE  
301 S Monroe St., Ste. 401  
Tallahassee, FL 32301  
[kasey.helms@flpd2.com](mailto:kasey.helms@flpd2.com)  
(850) 606-1000

ATTORNEY FOR DEFENDANT

A Certified Copy  
Attest:

Bob Inzer  
Clerk & Comptroller  
Leon County, Florida

By A 1-28-16  
Deputy Clerk





**DISTRICT COURT OF APPEAL  
FIRST DISTRICT  
STATE OF FLORIDA  
TALLAHASSEE, FLORIDA 32399-0950  
(850) 488-6151**

JON S. WHEELER  
CLERK OF THE COURT

KAREN ROBERTS  
CHIEF DEPUTY CLERK

January 29, 2016

Hon. Bob Inzer, Clerk  
Second Judicial Circuit  
301 S Monroe St, Appeals Div  
P.O. Box 1024  
Tallahassee, FL 32302-1024

RE: Sylvester Hooks

v. State of Florida

**CASE NUMBER: 1D16-0369**  
Lower Case Number: 37-2015-CF-913

Dear Hon. Bob Inzer, Clerk

As Clerk of the Court, I acknowledge receipt of the Notice of Appeal from the lower tribunal reflecting a filing date of January 27, 2016. Receipt number N/A for the filing fee attached.

In the future, all pleadings and correspondence filed in this cause must contain this Court's case number.

Before this case can be assigned to a panel of judges for consideration, **the Docketing Statement must be completed and filed with this court** by the appellant. Appellee/Amicus needs to review the information on the appellant's Docketing Statement and file a Docketing Statement, if required, as explained in the attached Docketing Statement or Notice. If the court determines that this case requires expedited emergency consideration, the case may be reviewed before receipt of the Docketing Statement.

Sincerely,  
Jon S. Wheeler

Clerk of the Court

Copies: Hon. Pamela Jo Bondi, A.  
G.

Hon. Nancy A. Daniels, P.  
D.

Kasey Helms

## IN THE DISTRICT COURT OF APPEAL FIRST DISTRICT, STATE OF FLORIDA

### DOCKETING STATEMENT AND NOTICE OF APPEARANCE OF COUNSEL

**APPELLANT/PETITIONER:** If this case involves an original writ, is an appeal of a non-final order, or is a 'child' case (as defined in paragraph 13 below), this Docketing Statement must be completed and submitted immediately. In all other cases, counsel for the appellants or the appellants, if not represented by counsel, must complete and submit the Docketing Statement within 20 days from the date of the court's acknowledgment notice accepting this case and assigning a case number.

**APPELLEE/RESPONDENT (AND AMICUS CURIAE):** Are not required to file a Docketing Statement unless there are amendments, corrections, or additions to the Docketing Statement filed by appellant. Appellees and Amici are only required to file the notice of appearance if counsel's name does not already appear on the certificate of service. Appellee's Docketing Statement and notice of appearance are due no later than the answer brief.

Note: Electronic completion and submission of this Docket Statement is required for attorneys in all cases 1D10-1600 and higher and is encouraged for others registered with eDCA. Electronic completion and submission of the Docketing Statement through eDCA is in lieu of completion and filing with the court of a paper copy. Users who have electronically completed and submitted their Docketing Statement through eDCA are not required or permitted to file a paper version of the docketing statement. As all attorneys in case number 1D10-1600 and higher are required to electronically complete and submit their Docketing Statement, they should not file a paper version of the docketing statement with the court unless it is accompanied by a motion for hardship exception to this court's Administrative Order 10-1, requiring electronic completion and submission of the Docketing Statement through eDCA.

Service of the Docketing Statement is still required to be made by the filer on the opposing side, either by printing and mailing a copy of this Docketing Statement to all Parties of Record or their attorneys or, if permission has been received from the other side to provide service by electronic means, by providing an electronic copy of the Docketing Statement to all Parties of Record or their attorneys.

PLEASE PROVIDE THE FOLLOWING INFORMATION (ATTACH ADDITIONAL PAGES IF NECESSARY):

1. NAME OF CASE:	DCA CASE NUMBER:
<a href="#">Sylvester Hooks v. State of Florida</a>	
2. NOTICE OF APPEARANCE OF COUNSEL.	
ATTORNEY FOR (LIST CLIENT BY NAME):	<a href="#">Sylvester Hooks</a>
ATTORNEY'S PRINTED NAME:	<a href="#">Steven Seliger</a>
BAR NO.:	<a href="#">0244597</a>
ADDRESS:	<a href="#">301 South Monroe Street, Suite 401 Tallahassee, FL 32301</a>
PHONE NO.:	<a href="#">850-606-8537</a>
EMAIL ADDRESS:	<a href="mailto:steven.seliger@flpd2.com">steven.seliger@flpd2.com</a>

Docketing statement of: [Appellant](#)/Petitioner

All correspondence and orders will be sent to counsel as specified above unless the court allows withdrawal or substitution of counsel.

3. TYPE OF CASE: Select the most appropriate type of case.  
[Criminal, Collateral Criminal, and Juvenile Delinquency Appeals](#)  
[Direct Appeal - judgment and sentence](#)

For items 4-12 you are required to provide the information you have. To enter data, fill in the fields provided (for that item) with the information you have and click 'Add'. The data you provided will be listed in the grid. You may list as many items as necessary. You may also delete items listed by clicking 'Delete'.

4. REAL PARTIES IN INTEREST: List names and addresses of all persons, business entities, and organizations having a direct interest in the outcome of this action.

[Sylvester Hooks P. O. Box 2278 Tallahassee FL 32316](#)

5. JUDGES BELOW: List the name and lower tribunal of all judge(s), deputy commissioner(s), master(s), and hearing officer(s)/examiner(s) who were involved in this action below.

[Terry Lewis - 12-CF-2477](#)

6. ATTORNEYS: List the names and addresses of all attorneys who are, or have been, of record in this case and who they represent.

[Kasey Helms 301 S. Monroe St., Suite 401 Tallahassee FL 32301: Appellant](#)

7. If the appeal is an appeal of a final order or of a partial final judgment, are there any matters still pending in the lower tribunal other than those relating to fees and/or costs pending in front of the lower tribunal? If yes, please explain specifically the nature of the order being appealed and what matters remain pending in the lower tribunal.

[None/Unknown](#)

8. RECUSALS: For the information of the court, do you believe any judge(s) on this court should not participate in this case? If so, list the judge(s) and state your reasons for that belief. (Note: Providing information in this box will not supplant the need for an appropriate separate motion if you intend to seek the disqualification of a judge.)

[None/Unknown](#)

9. PENDING CASES:

(a) Are there any other cases now pending before this court arising from the same case in the lower tribunal? If so, list the style and docket number of those cases now.

None/Unknown

(b) Are there any other cases now pending before this court which involve the same or similar issues. If so, list the style and docket number of those cases and state the issue(s).

None/Unknown

(c) Are there any other cases now pending before this court which are related to this case for reasons other than those set forth in 9(a) and 9(b) above, including, but not limited to, cases arising from the same set of facts? If so, list the style and docket number of those cases and state the reason(s) the cases are related.

None/Unknown

10. PRIOR PROCEEDINGS: Are there any prior previously decided or closed proceedings in this court which involve the same parties or issues which are being addressed in this case? If so, list the style, docket number or citation of those cases.

None/Unknown

11. CURRENT AND PRIOR PROCEEDINGS IN OTHER COURTS: Are there any pending or prior proceedings in other cases related to this action. If so, list the style, case number, and court of those cases.

None/Unknown

12. PROCEEDINGS BELOW: Are there any cases other than this case pending before a lower tribunal, or about to be filed in this court, which involve the same controversy or parties, or substantially similar issue(s)? If so, list each such case by style, case number, and tribunal where filed.

None/Unknown

PLEASE READ CAREFULLY

13. CHILD CASES: Does this appeal directly involve and substantially affect child custody/visitation support, placement, juvenile dependency, termination of parental rights or delinquency? placement, juvenile dependency, or delinquency?

No

Unless good cause to the contrary is shown by any party, the court will follow a policy of expediting appeals which involve or affect custody, support, placement, dependency, termination of parental rights, and delinquency. The briefing schedule in dependency and termination of parental rights cases is expedited by court orders. However, no extensions of time for briefing will be granted except in extreme emergency; motions will not toll the running of the briefing schedule; and the case will be processed in an expedited manner and decided as early as the interests of justice permit. (NOTE: In dependency and termination of parental rights cases you are required to comply with the expediting order. In other child cases the court encourages the parties to stipulate to an abbreviated briefing schedule and to arrange with the lower court for the record to be transmitted earlier than the time provided by the Florida Rules of Appellate Procedure.)

CERTIFICATION OF GOOD FAITH AND  
CERTIFICATE OF SERVICE

I certify the following:

- \* The information I provided above is accurate and complete.
- \* I understand that the information I have provided above will be used to compile a Docketing Statement that will constitute a filing with the First District Court of Appeal. The Docketing Statement is used administratively by the Court.
- \* I am familiar with and have had the opportunity to read: Notice to Attorneys and Parties. This document contains important information and is available on the Court's website at [www.1dca.org](http://www.1dca.org).
- \* I am also familiar with the court's
  - \* Electronic Filing Requirements ([www.1dca.org/FAQ/notice%20on%20edca%20filing.pdf](http://www.1dca.org/FAQ/notice%20on%20edca%20filing.pdf)),
  - \* Administrative Order 10-3 ([www.1dca.org/orders/10-3.pdf](http://www.1dca.org/orders/10-3.pdf)), and
  - \* Administrative Order 10-1 ([www.1dca.org/orders/10-1.pdf](http://www.1dca.org/orders/10-1.pdf)).
- \* If this is a Workers' Compensation cases, I have read and am familiar with the court's Notice addressing extensions of time in filing of workers' compensation briefs ([www.1dca.org/FAQ/workers%20comp%20notice%20pdf.pdf](http://www.1dca.org/FAQ/workers%20comp%20notice%20pdf.pdf)).
- \* If I am an appellant in an Unemployment Appeals Commission case, I have read and am familiar with the court's Important Notice in Unemployment Compensation Cases ([www.1dca.org/FAQ/UnemplAppNotice2ndrevised.pdf](http://www.1dca.org/FAQ/UnemplAppNotice2ndrevised.pdf)).
- \* It is my responsibility to ensure that a copy of this Docketing Statement is served on the other side. I certify that I will print and mail a copy of this Docketing Statement to all Parties of Record or their attorneys or, if I have received permission from the other side to provide service by electronic means, I will provide an electric copy of the Docketing Statement to all Parties of Record or their attorneys.

Date: Feb 01, 2016

By: Steven Seliger (Bar No.: 0244597)

**SYLVESTER HOOKS,**  
Defendant/Appellant

v.

**STATE OF FLORIDA,**  
Plaintiff/Appellee.

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

**CASE NO. 37-2015-CF-913**

1016-369

**ORDER OF INDIGENCY AND APPOINTMENT OF PUBLIC DEFENDER**

This cause coming before me upon motion of the defendant, for the appointment of counsel to represent him on appeal from the judgment and sentence rendered January 15, 2016, and this Court having been advised in the premises and having previously made inquiry of the defendant and having found him so indigent that he was incapable of hiring his own attorney, it is hereby

**ORDERED AND ADJUDGED** that the Public Defender, Second Judicial Circuit, in the State of Florida, is hereby appointed to represent the defendant on his appeal in this cause.

It is further **ORDERED AND ADJUDGED** that the defendant is without funds to pay the cost of this appeal and that the State of Florida, shall bear any and all costs necessary and incident to the prosecution of this appeal for the defendant.

**DONE AND ORDERED** this 2 day of Feb January, 2016.

in  
Computer  
C.M.W

  
Circuit Judge

xc: State Attorney  
Attorney General  
Public Defender

A Certified Copy  
Attest:

**Bob Inzer**  
Clerk & Comptroller  
Leon County, Florida

By \_\_\_\_\_  
Clerk



CLERK OF THE CIRCUIT COURT AND COMPTROLLER  
LEON COUNTY, FLORIDA

16 FEB -2 PM 4:02

FILED

RECEIVED, 2/3/2016 3:08 PM, Jon S. Wheeler, First District Court of Appeal

IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT OF FLORIDA

**SYLVESTER HOOKS,**

Appellant,

v.

CASE NO. **1D16-369**

STATE OF FLORIDA,

Appellee.

\_\_\_\_\_/

**MOTION FOR AN EXTENSION OF TIME  
TO FILE APPELLANT'S INITIAL BRIEF**

Appellant, **SYLVESTER HOOKS**, through undersigned counsel, moves this Court for an order extending the time for filing the initial brief in this cause, and as grounds therefore states:

1. The initial brief in this case is due for filing on April 15, 2016. This is the first request for an extension.

2. Appellant is appealing his conviction for felony drugs and sentence of ten (10) years prison. The record on appeal is 305 pages long.

3. An extension of time is essential to the adequate representation of appellant in this cause. Undersigned counsel is currently working on cases that have been previously extended.

4. Assistant Attorney General Trisha Meggs Pate does not oppose this motion.

**WHEREFORE**, appellant requests 30 days in which to file the initial brief, to and including May 16, 2016.

RECEIVED, 4/12/2016 9:44 AM, Jon S. Wheeler, First District Court of Appeal

**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, on this date, April 12, 2016.

Respectfully submitted,

NANCY A. DANIELS  
PUBLIC DEFENDER  
SECOND JUDICIAL CIRCUIT

/s/ Danielle Jordan

**DANIELLE JORDEN**

Assistant Public Defender  
FLA. BAR NO. 0946834  
Leon County Courthouse  
301 S. Monroe St., Suite 401  
Tallahassee, FL 32301  
(850) 606-8544  
danielle.jorden@flpd2.com  
COUNSEL FOR APPELLANT

**DISTRICT COURT OF APPEAL, FIRST DISTRICT  
2000 Drayton Drive  
Tallahassee, Florida 32399-0950  
Telephone No. (850)488-6151**

April 14, 2016

**CASE NO.: 1D16-0369**  
L.T. No.: 37-2015-CF-913

Sylvester Hooks

v.

State of Florida

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Appellant / Petitioner(s),

Appellee / Respondent(s)

**BY ORDER OF THE COURT:**

Appellant's motion filed April 12, 2016, is granted. The initial brief shall be filed on or before May 16, 2016.

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

Served:

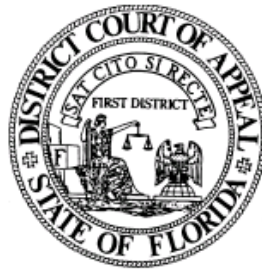
Hon. Pamela Jo Bondi, A. G.  
Danielle Jordan, A. P. D.

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

Steven L. Seliger, A. P. D.

co

  
\_\_\_\_\_  
JON S. WHEELER, CLERK



IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT OF FLORIDA

SYLVESTER HOOKS,

Appellant,

v.

CASE NO. 1D16-369

STATE OF FLORIDA,

Appellee.

\_\_\_\_\_ /

**SECOND MOTION FOR AN EXTENSION OF TIME  
TO FILE APPELLANT'S INITIAL BRIEF**

Appellant, **SYLVESTER HOOKS**, through undersigned counsel, moves this Court for an order extending the time for filing the initial brief in this cause, and as grounds therefore states:

1. Undersigned is employing a rotational system whereby priority is given to cases that have been previously extended over those which have not.

2. An extension of thirty days has been granted in this case. This is second extension sought. Appellant is appealing his conviction of felony drugs and a sentence of 10 years prison. The record on appeal in this case is 305 pages.

3. Undersigned is currently working on cases that have been previously extended. An extension of time is essential to the adequate representation of appellant in this cause.

4. Assistant Attorney General Trisha Meggs Pate does not oppose this motion.

**WHEREFORE**, appellant requests 30 days in which to file the initial brief, to and including June 15, 2016.

**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, on this date, May 16, 2016.

Respectfully submitted,

NANCY A. DANIELS  
PUBLIC DEFENDER  
SECOND JUDICIAL CIRCUIT

/s/ Danielle Jorden

**DANIELLE JORDEN**

Assistant Public Defender  
FLA. BAR NO. 0946834  
Leon County Courthouse  
301 S. Monroe St., Suite 401  
Tallahassee, FL 32301  
(850) 606-8544  
danielle.jorden@flpd2.com  
COUNSEL FOR APPELLANT

**DISTRICT COURT OF APPEAL, FIRST DISTRICT  
2000 Drayton Drive  
Tallahassee, Florida 32399-0950  
Telephone No. (850)488-6151**

May 17, 2016

**CASE NO.: 1D16-0369**  
L.T. No.: 37-2015-CF-913

Sylvester Hooks

v.

State of Florida

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Appellant / Petitioner(s),

Appellee / Respondent(s)

**BY ORDER OF THE COURT:**

Appellant's motion filed May 16, 2016, is granted. The initial brief shall be filed on or before June 15, 2016.

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

Served:

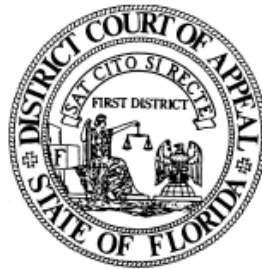
Hon. Pamela Jo Bondi, A. G.  
Danielle Jordan, A. P. D.

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

Steven L. Seliger, A. P. D.

cc

  
\_\_\_\_\_  
JON S. WHEELER, CLERK



IN THE FIRST DISTRICT COURT OF APPEAL  
FIRST DISTRICT OF FLORIDA

**SYLVESTER HOOKS,**

Appellant,

v.

Case No. 1D16-368, 1D16-369  
1D16-370

STATE OF FLORIDA,

Appellee.

\_\_\_\_\_/

**MOTION TO CONSOLIDATE**

Appellant, SYLVESTER HOOKS, by and through undersigned counsel, moves to consolidate cases 1D16-368, 1D16-369, and 1D16-370, for record, briefing, and opinion purposes, and states.

1. In case 1D16-369, Appellant appeals his convictions for possession of PVP with intent to sell within 1000 feet of a community center and possession of cannabis with intent to sell within 1000 feet of a community center, and ten year prison sentence. In cases 1D16-368 and 1D16-370, Appellant appeals findings that he violated the terms of his probation and the revocation of his probation in both cases. Appellant was tried on the new substantive charges, upon which the violations were based. After the verdict was rendered, the violation of probation hearing was held. Sentences in all three cases were imposed at the same sentencing hearing.

2. For convenience and judicial economy, these cases should be consolidated.

WHEREFORE, Appellant moves to consolidate Cases 1D16-368, 1D16-369, and 1D16-370, for record, briefing, and opinion purposes. Appellant requests 30 days after consolidation in which to file the initial brief.

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing has been forwarded by electronic transmission to **TRISHA MEGGS PATE**, Assistant Attorney General, Appellate attorney for the State, The Capitol, Tallahassee, Florida 32399-1050, at [crimapptlh@myfloridalegal.com](mailto:crimapptlh@myfloridalegal.com) on this date, June 14, 2016.

Respectfully submitted,

NANCY A. DANIELS  
PUBLIC DEFENDER  
SECOND JUDICIAL CIRCUIT

/s/ Danielle Jorden  
**DANIELLE JORDEN**  
ASSISTANT PUBLIC DEFENDER  
FLORIDA BAR No. 0946834  
LEON COUNTY COURTHOUSE  
301 SOUTH MONROE STREET, SUITE 401  
TALLAHASSEE, FLORIDA 32301  
(850) 606-8544  
[danielle.jorden@flpd2.com](mailto:danielle.jorden@flpd2.com)  
COUNSEL FOR APPELLANT

**DISTRICT COURT OF APPEAL, FIRST DISTRICT  
2000 Drayton Drive  
Tallahassee, Florida 32399-0950  
Telephone No. (850)488-6151**

July 01, 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

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Appellant / Petitioner(s),

Appellee / Respondent(s)

**BY ORDER OF THE COURT:**

Appellant's motion to consolidate, filed June 14, 2016, is granted. The court notes that separate records on appeal have been filed in each case. Accordingly, the appeals are henceforth consolidated for purposes of briefing, assignment, and disposition. Appellant shall file the consolidated initial brief within 10 days of the date of this order.

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

Served:

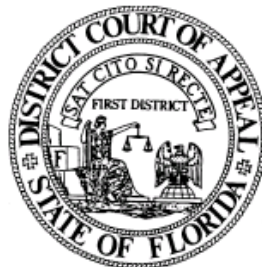
Hon. Pamela Jo Bondi, A. G.  
Danielle Jorden, A. P. D.

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

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

am

  
\_\_\_\_\_  
JON S. WHEELER, CLERK



**DISTRICT COURT OF APPEAL, FIRST DISTRICT**  
**2000 Drayton Drive**  
**Tallahassee, Florida 32399-0950**  
**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.

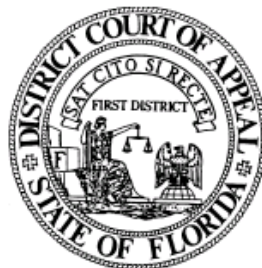
Served:

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

  
\_\_\_\_\_  
JON S. WHEELER, CLERK



**DISTRICT COURT OF APPEAL, FIRST DISTRICT  
2000 Drayton Drive  
Tallahassee, Florida 32399-0950  
Telephone No. (850)488-6151**

July 19, 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 on July 18, 2016, seeking to supplement the record on appeal with a transcript of the Faretta inquiry held on January 11, 2016, prior to jury selection in circuit court case number 2015-CF-913, 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 15, 2016. The time for service of the 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:

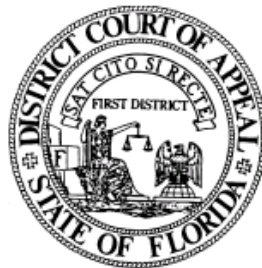
Hon. Pamela Jo Bondi, A. G.  
Danielle Jorden, A. P. D.

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

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

am

  
\_\_\_\_\_  
JON S. WHEELER, CLERK



IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT OF FLORIDA

SYLVESTER HOOKS,  
Appellant,

v.

Case No. 1D16-368 (2012-CF-2477)

Case No. 1D16-369 (2015-CF-913)

STATE OF FLORIDA,  
Appellee.

Case No. 1D16-370 (2012-CF-2547)

\_\_\_\_\_/

**MOTION TO SUPPLEMENT THE RECORD**

Appellant, **SYLVESTER HOOKS**, by and through the undersigned counsel, hereby moves this Court to allow appellant to supplement the record on appeal, and states:

1. Appellant appeals his convictions for possession of PVP with intent to sell within 1000 feet of a community center, possession of cannabis with intent to sell withing 1000 feet of a community center, and two violations of probation and ten year prison sentence.

2. The violation of probation hearings were conducted simultaneously with the trial in circuit case number 2015-CF-913. Appellant represented himself at trial and the VOP hearings.

3. Appellant previously requested that the record on appeal be supplemented with the transcript of the Faretta inquiry held on January 11, 2016, prior to jury selection in case circuit case number 2015-CF-913. The record was supplemented with the transcript of that partial hearing, which occurred at 12:03 p.m.

4. In that transcript the trial court indicated that the matter of self-representation was first raised earlier that morning. There is further indication that at that time Appellant was presented with a "Self-Representation Advisory Form." The record on appeal does not contain a copy of the transcript of the morning of January 11, 2016, during which the issue of self-representation was initially raised and discussed.

5. The above is necessary for full appellate review. Hampton v. State, 591 So. 2d 945 (Fla. 4th DCA 1991).

6. This motion is made in good faith and not for the purpose of delay.

7. Assistant Attorney General **TRISHA MEGGS PATE** does not object to appellant's motion to supplement the record.

**WHEREFORE**, appellant requests that the supplementation of the record with a copy of the afore-mentioned documents be allowed. Appellant also requests that an extension of thirty days after the receipt of the supplemental record be granted in which to file the initial brief.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been furnished by Electronic transmission to **TRISHA MEGGS PATE**, Assistant Attorney General, Counsel for the State, at [crimapptlh@myfloridalegal.com](mailto:crimapptlh@myfloridalegal.com); Honorable Bob Inzer, Clerk of the Court, Judy Hussey, Official Court Reporter, at [judyh@leoncountyfl.gov](mailto:judyh@leoncountyfl.gov), and by U.S. Mail to Sylvester Hooks, #558276, Century Work Camp, 400 Tedder Rd., Century, FL 32535-3659, on this date, September 21, 2016.

Respectfully submitted,

NANCY A. DANIELS  
PUBLIC DEFENDER  
SECOND JUDICIAL CIRCUIT

/s/ 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**

September 23, 2016

**CASE NO.: 1D16-0369**  
L.T. No.: 37-2015-CF-913

Sylvester Hooks

v.

State of Florida

---

Appellant / Petitioner(s),

Appellee / Respondent(s)

**BY ORDER OF THE COURT:**

Appellant's motion filed September 21, 2016, seeking to supplement the record on appeal with a transcript of the proceedings occurring on the morning of January 11, 2016, in lower tribunal case number 2015-CF-913, during which the issue of self-representation was initially raised and discussed, is granted. Counsel for movant shall ensure preparation and transmittal of the supplemental record by the clerk of the lower tribunal on or before October 24, 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.  
Hon. Bob Inzer, Clerk

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

Steven L. Seliger, A. P. D.

am

  
\_\_\_\_\_  
JON S. WHEELER, CLERK



IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT OF FLORIDA

**SYLVESTER HOOKS,**

Appellant,

v.

CASE NO. **1D16-368**  
**1D16-369**  
**1D16-370**

**STATE OF FLORIDA,**

Appellee.

\_\_\_\_\_/

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

**INITIAL BRIEF OF APPELLANT**

NANCY A. DANIELS  
PUBLIC DEFENDER  
SECOND JUDICIAL CIRCUIT

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RECEIVED, 10/31/2016 10:39 AM, Jon S. Wheeler, First District Court of Appeal

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IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT OF FLORIDA

**SYLVESTER HOOKS,**

Appellant,

v.

CASE NO. **1D16-368**  
**1D16-369**  
**1D16-370**

**STATE OF FLORIDA,**

Appellee.

\_\_\_\_\_/

**INITIAL BRIEF OF APPELLANT**

**PRELIMINARY STATEMENT**

Appellant, **SYLVESTER HOOKS**, was the defendant in the trial court and will be referred to in this brief as Appellant or by his proper name. Appellee, the State of Florida, was the prosecution below, and will be referred to herein as the prosecutor or the state.

The record on appeal consists of four original bound volumes and two supplemental volumes in each case, for a total of twelve original volumes and six supplemental volumes. Primarily, the record in Case 1D16-369 will be referenced in this brief, due to duplication, as well as the first volume in each of the other two cases. The record will be referenced as follows:

Case 1D16-369, Volume 1 as V1, Trial transcript as T1, T2, and Supplemental Volumes as S1, S2. Case 1D16-368, Volume 1 as V2. Case 1D16-370, Volume 1 as V3.

### **STATEMENT OF THE CASE AND FACTS**

In First District Court Case 1D16-369 (circuit case 2015-CF-913) Appellant was charged by third amended Information, filed September 22, 2015, with: Count I, possession of PVP with intent to sell within 1,000 feet of a community center, and Count II, possession of cannabis with intent to sell within 1,000 feet of a community center. (V1-5). Appellant also had two pending violation of probation cases; the violations were based on the new charges in 1D16-369. (V2-32-37) (V3-41-45). Those violation of probation cases, 1D16-368 (circuit case 2012-CF-2477) and 1D16-370 (circuit case 2012-CF-2547) accompanied the new substantive case. The violation of probation hearings were held contemporaneously with the trial in the new substantive case, and Appellant was sentenced on all cases during the same hearing and to concurrent sentences. (T1, T2). All three cases have been consolidated for appeal.

### **Motion to Suppress**

On May 5, 2015, Appellant filed a Motion to Suppress evidence obtained during the unlawful search of Appellant's person. (V1-12-17). On August 19, 2015, a hearing was held on the motion. (SR1-97-132).

Officer Brian Perry of the Tallahassee Police Department was surveilling 519 West Brevard Street in March of 2015. (SR1-101). His gang unit conducted surveillance of that area on a weekly

basis and over a hundred times due to complaints of loitering and drug activity. (SR1-101). Perry had personally made about one hundred drug arrests in that area. (SR1-102).

On March 20, 2015, at around 6:00 p.m., Perry observed what, in his experience, appeared to be a hand-to-hand narcotics transaction. (SR1-102). He observed two individuals make contact with each other and separate themselves from the group. (SR1-103). There was an exchange of money. (SR1-102). Perry saw one individual place an item in a bag in his hand and then put it in the back of his pants. (SR1-102). Perry was not able to identify the item put in the bag, but did see that it was a cellophane baggy. (SR1-103).

Officer Britt and Officer Ravenel proceeded to make contact with the suspect while Perry maintained surveillance. (SR1-104). Then, Perry joined them at the scene about forty-five seconds later. (SR1-104). Perry's surveillance was conducted via video which did not have audio capability. (SR1-105). He was uncertain as to how long he surveilled the area that day. (SR1-106).

Officer Steve Britt had witnessed "hundreds" of hand-to-hand transactions in his career. (SR1-106). Britt claimed he was surveilling the area because it was a high crime area with complaints of violence and drug use. (SR1-108).

According to Britt, on that date, he witnessed Appellant socializing in a crowd. (SR1-111). Appellant and another individual then walked away from the crowd, turned their backs to the street, and huddled closely together. (SR1-112). Appellant retrieved something, which appeared to be a plastic bag, from the small of his back, above his buttocks. (SR1-112). Appellant received currency from the other individual and then placed what looked like a baggy back above his buttocks. (SR1-112).

Britt and Revenel approached Appellant, and "moved to arrest him and - - well, gave him some specific commands to stop and put his hands behind his back. And he immediately became defensive and blurted out, 'all this for a dime.'" (SR1-113). Britt stated that Appellant made the same comment twice. (SR1-114). Britt interpreted "dime" as meaning "\$10 of crack or \$10 of weed." (SR1-114). Britt searched Appellant and found a plastic baggy tucked inside his pants in the small of his back, just above his buttocks. (SR1-114). The bag contained multiple bags of suspected cocaine and a bag of suspected marijuana. (SR1-115). Britt believed currency was also found on Appellant's person. (SR1-115). After using his report to refresh his recollection, Britt testified that Appellant was wearing a white shirt, jean shorts, dark ball cap, gold chain, and glasses. (SR1-116).

Britt observed the transaction through video, and only saw a single transaction that day. (SR1-117). The other individual

who was involved in the transaction was not detained due to limited available law enforcement resources. (SR1-117). Britt did not know Appellant prior to this encounter. (SR1-118).

The defense admitted evidence that Appellant was wearing a multi-colored shirt, gray shorts, and two silver chains at the time of his arrest. (SR1-119-120). The trial court found that "the officers had, at the very least, reasonable suspicion to make a stop" and denied the defense motion to suppress. (SR1-121).

#### **Self-representation - Faretta**

On January 11, 2016, immediately prior to jury selection, defense counsel informed the court that Appellant wished to represent himself. (SR2-155). In response, the trial court informed counsel to give Appellant the "self-representation thing to look over." (SR2-156). The court stated that before Appellant's jury was selected, the court would inquire of Appellant and, "If he still wants to represent himself, we'll go on with it." (SR2-157). A short time later, the court stated,

So I know that, Mr. Hooks, you're over there contemplating representing yourself. I gave you that thing over there. But for the time being for - - I guess you and your attorney, because I would always want you to consult with your attorney anyway.

(SR2-157-158).

About an hour later, the following occurred prior to jury selection.

Court: I'm going to let y'all consult over there. But let me, let 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 chance to read over that real carefully?

Appellant: Yes, sir.

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?

Appellant: Yes, I have. And I do want to represent myself.

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 - -

Court: Yes.

Defense counsel: - - each spot. I can approach with that.

Court: Okay. Did he sign it, too?

Defense counsel: He did sign it, Judge.

Court: Okay.

Defense counsel: I think the only thing we're missing is the case number.

Court: I'll put in.

Clerk: 15-CF-913.

Defense counsel: Thank you.

Court: And the, and the good news is you've sat through two juries - - jury selections. So that may be helpful to you in that. And I'll ask Ms. Helms, just in case you change your mind, because I'm going to ask you when we actually start the trial again if you want to change your mind and give you that option. Once we start the trial, I won't be able to say in the middle of it, oh, I decide I want to, I want to have a lawyer. But I'll let her sit in on this. And when we get to the trial - - I guess Friday we're going on this one? If you still want to represent yourself, that's your business. And if you don't, Ms. Helms could step in and take care of it. Okay?

Appellant: Thank you.

Court: All right.

(SR2-136-138). The record contains a form entitled "Self-Representation Advisory Form/Trial," which bears Appellant's signature and initials. (V1-22-24).

Four days later, immediately prior to trial, the following exchange occurred:

Court: Okay. Well, first thing, let me, let me go back. Mr. Hooks, I told you I'd probably ask you again, because it's a new stage. We selected the jury on Monday, but we're going to start the trial now, and I'm going to offer it again. I see Ms. Helms is in the courtroom, and she is your standby counsel. And once I start the trial, I can't, I can't have her come in and substitute for your attorney. You're stuck to represent yourself.

Appellant: I'm fine, sir.

Court: Have you thought about it any and - -

Appellant: I'm fine.

Court: You still want to represent yourself?

Appellant: Yes, sir.

Court: Okay. Ms. Helms, you're free to go about your business then if you'd like.

Defense counsel: Well, Judge, one thing that I did want to inquire about is I am still representing him on the violation of probation. It is my understanding that you're going to be hearing evidence for the violation of probation during trial. So my concern is - - I mean, certainly, he still has the right to a violation of probation hearing. I am appointed on those case. So I think that if he wants to represent himself, surely that's fine. But I think that we should do a Faretta hearing as to the violation of probation.

Court: Yeah. Mr. Hooks, what do you - - what about that? In other words, I realize

it, but, apparently, you also have a violation of probation, and there was an agreement that I would basically hear that the same time we hear the trial. So if she's representing you on that, they kind of intertwine. They, they mix with each other. Do you want to have your self representation include your violation of probation, as well?

Appellant: No. That won't be necessary. No.

Court: No. You don't understand. In other words, do you, do you want to represent yourself on the violation of probation as well as the - -

Appellant: No.

Court: - - new charge? You don't?

Appellant: She can represent me on - -

Court: So you want Ms. Helms to represent you on the violation of - -

Ms. Saunders: Yeah.

Court: - - probation? Well, she would sit in and do the violation of probation.

Appellant: (Nods head).

Defense counsel: Judge, I don't think he understands.

Appellant: What is he saying? Saying you have to do the trial, because you do the violation?

Defense counsel: Well - -

Court: Well, it's going to amount to the same thing, because she's going to want to ask the same questions that she would ask of the witnesses for the new charge, because it goes to your violation of probation, as well. So I, I couldn't, I couldn't have you asking questions and

her asking questions. So you're going to either have to have her on both. I guess the other way to do it is to have the violation of probation another day, but that's, that's very inefficient, and it's going to be based on the same stuff. There may be other violation - - or other grounds for violation. But if it's based on a new offense, that's going to be there. I'm happy to do it either way. I just don't want to have two people asking questions of the same witness for the same purpose. Do you see what I'm saying?

Appellant: Yes. I see what you're saying. I can't see how she could represent me in the trial when I know she - - I mean, how can she possibly be prepared? I mean she's prepared to represent me?

Court: She says she is.

Appellant: Do you want to look at this?

(Off the record discussion).

Defense counsel: Judge, I think he's indicated that he wants to handle the VOP hearing and the trial.

Court: Okay. Yeah. It's sort of like in for a penny, in for a pound. You're going to be doing the same for both of them. But that's your decision is to represent yourself in both - -

Appellant: Yes, sir.

Court: - - both matters? Okay.

(T1-5-8).

### **Trial, Violation of Probation Hearing, and Sentencing**

Trial commenced. Officer Brian Perry testified similarly to his testimony during the suppression hearing. (T1-20-25). He

stated that he saw what he believed, in his experience, was a hand-to-hand narcotics transaction. (T1-25). The suspect was wearing a white t-shirt and jean shorts. (T1-25). Appellant's attempt at introducing the property slip which showed what he was wearing when he was arrested was objected to on hearsay grounds, and the objection was sustained. (T1-27-29). Perry could not provide a description of the second individual allegedly involved in the transaction. (T1-30).

Officer Steven Britt testified similarly to his testimony at the suppression hearing. (T1-33-47). The video recording of the transaction was admitted into evidence and played for the jury. (T1-48-50). Britt stated that he was familiar with marijuana and had handled it thousands of times. (T1-43). He believed that one of the two substances found on Appellant was marijuana. (T1-44). Britt admitted that they did not respond to arrest Appellant until about ten minutes after the alleged transaction. (T1-50). Britt stated that the officers replayed the video and discussed the matter first. (T1-50-51). Britt admitted that while he saw money exchange hands, he did not see any other item actually exchange hands. (T1-53-56). Britt referred to his report and described Appellant's clothing at the time of his arrest as a white shirt, jean shorts, ball cap, glasses, and gold chain. (T1-68). After being shown the video again, Britt

maintained that the description of Appellant's clothing matched the clothing the suspect was wearing on the video. (T1-70).

Officer Jason Ravenel testified similarly to the other officers regarding the hand-to-hand transaction that he claimed he witnessed on video. (T1-84-88). He also testified about the comment Appellant made prior to arrest. (T1-89).

Kari Lavoie, a crime lab analyst with FDLE, tested the suspected narcotics seized from Appellant during arrest. (T2-121). She stated that State's Exhibit 4 contained pyrrolidinovalerophenone, also known as PVP, which had a similar appearance to cocaine. (T2-121). She stated that FDLE does not test cannabis in amounts less than 20 grams. (T2-121).

The state rested. (T2-123). Appellant made a motion for judgment of acquittal, which was denied. (T2-124). The state and defense presented closing arguments. (T2-133-139). The jury was charged and retired to deliberate. (T2-124-133,139-142). The jury returned with verdicts of guilty to both counts, as charged. (T2-144).

The jury was dismissed and the trial court immediately instructed the state to call the probation officer as a witness for the violation of probation hearing. (T2-145).

Toshmon Dominic Stevens was Appellant's probation officer. (T2-145-146). He stated that Appellant was placed on five years probation on November 8, 2012, for sale of cocaine and possession

of cocaine with intent to sell. (T2-146). On February 25, 2016, Appellant was instructed on the conditions of probation, after he was released from prison and began serving his probationary term. (T2-147). Appellant was instructed not to commit any new law offenses. (T2-147). According to Stevens, the new law violations were the only alleged violations. (T2-148).

The trial court found willful and substantial violations of probation based on violations of condition five. (T2-148). Appellant asked to proceed to sentencing immediately. (T2-149). The trial court offered Appellant counsel for sentencing and he accepted. (T2-149). Appellant was sentenced to ten years in prison on each count in each case, concurrent, with credit for 301 days served. (T2-154). A Notice of Appeal was timely filed on January 27, 2016. (V1-46). This appeals follows.

## **SUMMARY OF ARGUMENT**

### **ISSUE I**

Failure to conduct a proper Faretta inquiry after an unequivocal request for self-representation is made is per se reversible error. The trial court did not make a proper inquiry in this case and relied on a written form which did not satisfy the dictates of Faretta. These cases should be reversed and remanded for a new trial and new violation of probation hearings.

### **ISSUE II**

The trial court erred by denying Appellant's Motion to Suppress. There was neither reasonable suspicion nor probable cause to stop, search, and arrest Appellant for the alleged hand-to-hand drug transaction. These cases should be reversed and, because the motion was dispositive, Appellant should be discharged on the new substantive charges and the violations of probation, based on the new charges, should be dismissed and Appellant's probation reinstated.

## ARGUMENT

### ISSUE I

The trial court erred by allowing Appellant to represent himself without making a proper inquiry pursuant to Faretta v. California, 422 U.S. 806 (1975).

#### Standard of Review and Preservation

The standard of review in determining whether a trial court conducted an appropriate inquiry in response to a defendant's request that his counsel be discharged or that he be allowed to represent himself is the abuse of discretion standard. Brown v. State, 113 So.3d 134, 141 (Fla. 1<sup>st</sup> DCA 2013); Kearse v. State, 605 So.2d 534 (Fla. 1<sup>st</sup> DCA 1992). A trial court's failure to conduct an adequate inquiry after a defendant makes an unequivocal demand for self-representation is per se reversible error. Brown at 141; Flowers v. State, 976 So.2d 665 (Fla. 1<sup>st</sup> DCA 2008); State v. Young, 626 So.2d 655, 657 (Fla. 1993); Case v. State, 865 So.2d 557, 559 (Fla. 1<sup>st</sup> DCA 2004); Wilson v. State, 724 So.2d 144, 145 (Fla. 1<sup>st</sup> DCA 1998).

This matter was not preserved for review, but is fundamental error which can be raised for the first time on appeal. See McGhee v. State, 983 So.2d 1212 (Fla. 5<sup>th</sup> DCA 2008); Clary v. State, 818 So.2d 686 (Fla. 5<sup>th</sup> DCA 2002).

## Merits

The Sixth Amendment to the United States Constitution provides a criminal defendant with the right to represent himself. State v. Bowen, 698 So.2d 248, 250 (Fla. 1997); Faretta v. California, 422 U.S. 806 (1975). This right is incorporated into Rule 3.111(d)(3), Florida Rules of Criminal Procedure, which provides:

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 himself 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.**

(Emphasis added).

When a defendant makes an unequivocal demand for self-representation, the trial court is obligated to conduct a Faretta inquiry. McCray v. State, 71 So.3d 848, 864 (Fla. 2011); State v. Craft, 685 So.2d 1292, 1295 (Fla. 1996); Wilson at 145. Florida law is clear that a trial court's failure to hold a Faretta hearing is not subject to a harmless error analysis, and is per se reversible error. Brown at 141; Laramie v. State, 90 So.3d 341 (Fla. 5<sup>th</sup> DCA 2012); See also Tennis v. State, 997 So.2d 375, 377-80 (Fla. 2008); State v. Young, 626 So.2d 655, 657 (Fla. 1993); Rodriguez v. State, 982 So.2d 1272, 1274 (Fla. 3d DCA 2008); Goldsmith v. State, 937 So.2d 1253, 1256-57 (Fla. 2d DCA 2006).

While a defendant has the right to self-representation, in order to represent himself, the accused must knowingly and intelligently forego the traditional benefits associated with the right to counsel. Faretta v. California, 422 U.S. 806 (1975). In Faretta, the Supreme Court held that a defendant should be made aware of the dangers of self-representation so that the defendant "knows what he is doing and his choice is made with eyes open." Id. at 835. The test is not whether the accused is competent to represent himself adequately, but whether he is competent to make the decision to represent himself. State v. Bowen, 698 So. 2d 249 (Fla. 1997). "[T]he trial judge must make a determination that the defendant is literate, competent and understanding, and that he is voluntarily exercising his informed free will." Smith v. State, 546 So. 2d 61, 63 (Fla. 1<sup>st</sup> DCA 1989). The failure to conduct a proper Faretta inquiry constitutes per se reversible error. Wilson v. State, 724 So. 2d 144 (Fla. 1<sup>st</sup> DCA 1998).

In Wilson v. State, 724 So. 2d 144 (Fla. 1<sup>st</sup> DCA 1998), reversal was mandated even though there was a partial Faretta inquiry made. In that case, the trial court advised Wilson against proceeding on his own, and told him that he would have to follow the rules of evidence and procedure. Id. No inquiry was made into Wilson's age, ability to read, ability to write, education, whether he was currently under the influence of drugs

or alcohol, or had ever been diagnosed or treated for any mental illness, whether he had any physical problems which would hinder self-representation, or whether he had ever represented himself in a trial before. Id. This Court noted that these factors were relevant "to the determination 'that the defendant is literate, competent and understanding and that he is voluntarily exercising his informed free will.'" Id. at 146. This Court found the inquiry inadequate, and thus reversed. See also Smith v. State, 444 So. 2d 542 (Fla. 1<sup>st</sup> DCA 1984), overruled on other grounds, 701 So. 2d 378 (Fla. 1<sup>st</sup> DCA 1997) (Lack of inquiry into the defendant's age, mental status, lack of knowledge, education or experience in criminal proceedings necessitated reversal since those factors are essential to determination of defendant's ability to knowingly and intelligently make the choice of self-representation).

In the cases at bar, the trial court did not conduct a proper Faretta inquiry. Providing Appellant with a written "Self-Representation Advisory Form" for Appellant to sign and initial, without thoroughly reviewing that form, and without determining if Appellant's decision was knowing and intelligent, was inadequate. See (V1-22-24). First, the form only contains general information regarding the dangers of self-representation (lawyers have special training, etc.). (V1-22-24). The form does not contain any interrogatories regarding a defendant's age,

ability to read, ability to write, education, influence of drugs or alcohol, mental illness, physical problems, or whether he had ever represented himself in a trial before. (V1-22-24). Further, in these cases, the trial court never made any inquiry of Appellant regarding any of those matters. As set forth in the Statement of Facts, above, the trial court made a cursory inquiry, at best, simply asking if Appellant wanted to represent himself and asking if he'd signed and initialed the form. (Sr2-136-138) (T1-5-8). There were no questions posed about Appellant's age, education, mental or physical health, education or abilities to read or write, drug use, or prior self-representation. There were no questions posed from which the court could determine if Appellant made a competent decision which was knowing and intelligent.

The trial court allowed Appellant to represent himself at jury selection, trial, and his violation of probation hearings without first making a proper inquiry as to whether he knowingly and voluntarily waived his right to counsel. In this case, no inquiry was made which complied with Faretta or the rule. Absent the requisite inquiries, there was no basis to determine that Appellant was competent to make a knowing and intelligent waiver of counsel. Since the trial court allowed Appellant to proceed pro se in the absence of a proper waiver of counsel, these cases

should be reversed for a new trial and new violation of probation hearings.

## ISSUE II

### **The trial court erred by denying Appellant's Motion to Suppress Evidence.**

#### Standard of Review and Preservation

The trial court's ruling on a motion to suppress is a mixed question of law and fact. Panter v. State, 8 So. 3d 1262, 1265 (Fla. 1st DCA 2009). The trial court's ruling denying a motion to suppress is reviewed by the appellate court to determine whether competent, substantial evidence supports the factual findings. Id.

This issue was preserved through Appellant's written Motion to Suppress, a hearing on the motion, and an adverse ruling by the trial court. (V1-12-17) (SR1-97-132).

#### Merits

There are three classifications of encounters between citizens and law enforcement officers: consensual encounters, temporary investigatory stops or detentions, and arrests. Popple v. State, 626 So.2d 185, 186 (Fla. 1993). A temporary stop or detention requires a reasonable, articulable suspicion by law enforcement that the individual has committed, is committing, or is about to commit a crime. Id. An arrest must be based on probable cause that a crime has been or is being committed. Id.

In determining whether an officer has reasonable suspicion to stop and detain an individual, courts consider the totality

of circumstances to determine whether the officer has a “‘particularized and objective basis’ for suspecting legal wrongdoing.” United States v. Arvizu, 534 U.S. 266, 273, 122 S.Ct. 744, 151 L.Ed.2d 740 (2002) (quoting United States v. Cortez, 449 U.S. 411, 417-18, 101 S.Ct. 690, 66 L.Ed.2d 621 (1981)). A law enforcement officer must have a reasonable founded suspicion of criminal activity. Moore v. State, 584 So. 2d 1122 (Fla. 4<sup>th</sup> DCA 1991). A hunch or mere suspicion is insufficient to establish reasonable suspicion. Faunce v. State, 884 So.2d 504, 506 (Fla. 1<sup>st</sup> DCA 1998).

In this case, the officers stopped, detained, and searched Appellant based on their belief that they witnessed a single hand-to-hand drug transaction, wherein they saw money change hands but did not see any other item change hands. (SR1-102-103,112). This Court has consistently held in similar factual situations that law enforcement lacked a reasonable, well-founded, particularized suspicion of criminal activity to justify an investigatory stop and detention. See Panter v. State, 8 So.3d 1262 (Fla. 1<sup>st</sup> DCA 2009); Johnson v. State, 610 So.2d 581 (Fla. 1<sup>st</sup> DCA 1993); Stanton v. State, 576 So.2d 925 (Fla. 1<sup>st</sup> DCA 1991); Dames v. State, 566 So.2d 51 (Fla. 1<sup>st</sup> DCA 1990); See also, Messer v. State, 609 So. 2d 164 (Fla. 2d DCA 1992).

For example, in Panter, an officer observed two unknown men in a van pull into a driveway of a house in a high-crime neighborhood. Id. at 1264. The officer saw a third man emerge from the house, approach the van on the driver's side, reach inside of the vehicle and engage in a hand-to-hand transaction. Id. The officer did not see cash, drugs, or anything else pass between the men. Id. The officer testified that based on his training and experience and the fact that this occurred in a high-crime area he was suspicious that this was a drug transaction. Id. The officer stopped the car and subsequently found cocaine. Id. On appeal, this Court held that the officer did not have a reasonable, well-founded, particularized suspicion of criminal activity to justify the investigatory stop. Id. at 1266.

Similarly, in Dames, an officer was on patrol in a well-known drug area when he came around a corner and observed what he thought was a drug transaction. Id. at 52. The defendant was standing in the middle of the street leaning into the passenger window of a vehicle. Id. The driver of the vehicle, upon spotting the officer, immediately sped away. Id. The defendant began to swiftly walk away once he spotted the officer. Id. The officer did not see any money or drugs change hands, but testified that the typical drug transaction in the area took place by way of pedestrians leaning into stopped cars.

Id. The officer exited his car and ordered the defendant to stop and show his hands. Id. The defendant stopped, turned, and raised his hands, dropping a baggy of cocaine when he did so. Id. On appeal this Court held that the officer's stop of the defendant was not warranted. Id. This Court stated that the officer's suspicion was "too tenuous" to justify a stop and was a "mere hunch." Id.

Additionally, in Messer, an officer observed a man approach the defendant's vehicle and appear to pass something to the occupants. Id. at 165. The officer saw only arm movement and could not identify any objects. Id. The officer assumed he had just seen a drug sale, and stopped the defendant's vehicle. Id. The defendant dropped cocaine outside the window of his vehicle. Id. On appeal, the Second District Court found the stop of the defendant was illegal. Id. The Court stated that the "most troublesome aspect of this matter, compelling reversal, is [the officer's] admitted failure actually to have seen objects transferred between [the defendant] and the alleged drug dealer." Id. The Court held that many times in drive-up drug sale cases in high crime neighborhoods the propriety of the stop hinges upon whether the officer can see drugs or money change hands. Id. In instances where no contraband is observed the officer has been deemed to have had only a "bare" rather than "reasonable" suspicion that a person was engaged in criminal activity. Id.

If this Court determines that the officers had reasonable suspicion to justify a temporary stop and detention in this case, Appellant asserts that there was still no probable cause to arrest Appellant. Probable cause to arrest an individual exists when the totality of the facts and circumstances within the officer's knowledge leads to the conclusion by a reasonable person that an offense has been committed and that the defendant is the one who committed it. Revels v. State, 666 So. 2d 213 (Fla. 2d DCA 1995).

In Revels, officers observed a house known to be a regular location for drug sales, based on past arrests. The officers were located in an adjacent vacant house about fifty feet away. Id. at 214. The officers watched the house for several minutes when they saw what they believed were two separate hand-to-hand transactions. Id. A man sitting outside the house walked up to two separate cars and exchanged an unidentified object for currency. Id. Within ten minutes, the defendant arrived at that location on his bike. Id. The man walked over to the defendant, who was holding currency. Id. The defendant gave the money to the man and the man gave the defendant a small object, which the defendant placed in his left jacket pocket. Id. The officers could not tell if the object was narcotics but the transaction was similar to ones witnessed in the past involving drugs. Id. The officers contacted another officer who stopped the defendant

within three blocks of the house. Id. A nonconsensual search of the defendant's pocket yielded crack cocaine. Id. The District Court found that under the totality of the circumstances, "the exchange of money is unlikely to be an exchange for any small object other than crack cocaine." Id. The Court found that probable cause in the case was greatly supported by the fact that the officers witnessed two prior similar hand-to-hand transactions on the same evening at the same location. Id. Based on those circumstances, the case was affirmed. Id. at 217.

The Second District Court addressed "the great difficulty, if not impossibility, involved in delineating the minimum factual basis necessary to establish probable cause under all the circumstances of a drug surveillance operation." Id. at 216. Six factors were set forth that are commonly addressed at suppression hearings "to determine whether the evidence proves probable cause or merely reasonable suspicion." Id. The factors include: the training and experience of law enforcement, the quality of the surveillance procedures, the history of the specific location under surveillance, recent events at the location, prior knowledge of the parties involved, and a detailed description of the entire event. Id. at 216-217.

In Coney v. State, 820 So.2d 1012, 1013 (Fla. 2d DCA 2002), two officers were conducting surveillance in an area where drug arrests were commonly made. The officers saw the defendant

approach on a bike and put his closed hand into a car. Id. The officers could not see what was in the defendant's hand, but saw him with money when the car drove away. Id. The officers stopped the defendant about a block away and searched him, by making him spit out the bag of marijuana that was in his mouth. Id. The District Court found there was only a reasonable suspicion to stop and investigate the defendant, but not probable cause to search him and reversed. Id. at 1014.

The Florida Supreme Court distinguished Coney in State v. Hankerson, 65 So.3d 502, 507 (Fla. 2011). The Supreme Court noted that Coney involved a *single* suspicious event where the officer observed Coney place his closed hand into the car and retrieve money. Hankerson at 507. However, the Supreme Court distinguished the facts in Hankerson, finding that there was probable cause where the officers saw a *series* of exchanges with three separate people, instead of a single transaction. Hankerson at 506.

In Burnette v. State, 658 So.2d 1170 (Fla. 2d DCA 1995), law enforcement was engaged in surveillance of a known drug house and drug dealer. The officer saw what he thought was a hand-to-hand transaction but could not tell what was involved and did not see any money or drugs. Id. at 1171. He radioed to other officers who stopped the defendant, searched him, found cocaine, and arrested him. Id. The District Court found that while the

officers had a reasonable suspicion under a totality of the circumstances to justify a stop, nothing happened after that stop to provide probable cause for an arrest and subsequent search.

Id. In that case, there was a hand-to-hand transaction, officers with substantial narcotics experience, an area known for drug activity, numerous prior arrests, and a known drug dealer. Id.

In the cases at bar, the record does not contain competent substantial evidence to support the trial court's finding that "the officers had, at the very least, reasonable suspicion to make a stop" and its denial of the defense motion to suppress. (SR1-121). In these cases, there was no evidence that Appellant was known to the officers; he was not a known drug user or dealer. (SR1-117). The surveillance that evening took place for only about one hour and that no other suspected drug transactions occurred during that time period. (SR1-105-106,117). While the area was a high crime area, it was also known for crimes other than just drug activity. (SR1-101,108). The officers did have a substantial amount of experience in narcotics transactions and had made numerous arrests in the past, including in that same area. (SR1-102,109). However, while the officers stated that they saw Appellant with a plastic baggy, they could not determine what, if anything, was contained in that baggy. (SR1-103,112). Also, no officer saw Appellant give anything to the other individual. (SR1-102-103,112). Appellant did receive money from

the individual, but there was no evidence that Appellant passed anything to him first. (SR1-102,112). Thus, based on the totality of the circumstances, there was no reasonable suspicion to justify a stop, detention, and search.

Further, there was no probable cause to arrest Appellant. Britt and Revenel intended to arrest Appellant, not just to temporarily detain him. According to Britt, the officers "moved to arrest him and - - well, gave him some specific commands to stop and put his hands behind his back." (SR1-113). The officers, based on the totality of the circumstances, did not have probable cause to arrest Appellant. Even with the statement Appellant allegedly made when the officers were attempting to arrest him ('all this for a dime'),<sup>1</sup> there was insufficient grounds to establish probable cause in this case.

The trial court erred by denying Appellant's Motion to Suppress. These cases should be reversed and, because the motion was dispositive, Appellant should be discharged on the new substantive charges, and the violations of probation, based on the new charges, should be dismissed and Appellant's probation reinstated.

---

<sup>1</sup> (SR1-113).

### **CONCLUSION**

Based on the foregoing argument and authority presented in this Initial Brief, Appellant respectfully requests the following relief: in Issue I, that these cases be reversed for a new trial and new violation of probation hearings, and in Issue II, that these cases be reversed and Appellant discharged on the new substantive charges, and the violations of probation, based on the new charges, should be dismissed and Appellant's probation reinstated.

**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 a true and correct copy has been sent via US Mail to Sylvester Hooks, DOC # 558276, Century Work Camp, 400 Tedder Road, Century, Florida, on this 31st day of October, 2016.

**CERTIFICATE OF FONT SIZE**

I HEREBY CERTIFY that, pursuant to Florida Rule of Appellate Procedure 9.210, this brief was typed in Courier New 12 Point.

Respectfully submitted,

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SECOND JUDICIAL CIRCUIT

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IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT OF FLORIDA

SYLVESTER HOOKS,

Appellant,

v.

STATE OF FLORIDA,

Appellee,

CASE NO. 1D16-368  
1D16-369  
1D16-370

APPELLEE'S FIRST MOTION FOR EXTENSION OF TIME

Pursuant to Florida Rule of Appellate Procedure 9.300, Appellee, the State of Florida (hereinafter "the State"), moves this Honorable Court for an extension of **60 days** to file its answer brief in the above-styled cause, and in support thereof states:

1. The State's answer brief is due on or before November 28, 2016.

2. Due to numerous other demands, the undersigned will be unable to timely complete the above-mentioned brief.

3. As of November 28, 2016, with a staff of 20 attorneys, the Tallahassee Criminal Appeals division has 413 briefs or responses due in the next 90 days. In 2015 the Tallahassee Criminal Appeals division was able to file 1009 briefs in State or Federal court, 251 responses to orders to show cause in State court and/or corpus in federal court and participated in at least 35 oral arguments. The Tallahassee Criminal Appeals Bureau is employing

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every means possible to work more efficiently, but it is doubtful it can be much more productive.

4. Opposing counsel, **Danielle Jorden, Esq.** has no objection to the relief requested in this motion.

5. Appellant is currently incarcerated.

6. This request is not made for the purpose of unnecessary delay, is made in good faith, and will not unduly prejudice the rights of Appellant.

WHEREFORE, the State respectfully requests that this Honorable Court grant it an extension of **60 days (until January 27, 2017)** for the filing of its answer brief.

Respectfully submitted,

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/s/ Jason Rodriguez  
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing APPELLEE'S FIRST MOTION FOR EXTENSION OF TIME has been furnished by electronic mail to **Danielle Jorden**, Esquire, [danielle.jorden@flpd2.com](mailto:danielle.jorden@flpd2.com), this 28<sup>th</sup> day of November 2016.

/s/ Jason Rodriguez

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December 01, 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

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Appellant / Petitioner(s),

Appellee / Respondent(s)

**BY ORDER OF THE COURT:**

Appellee's motion filed November 28, 2016, is granted. The answer brief shall be filed on or before January 27, 2017.

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

Served:

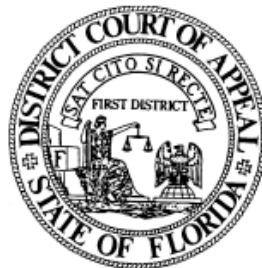
Hon. Pamela Jo Bondi, A. G.  
Danielle Jorden, A. P. D.

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

Steven L. Seliger, A. P. D.  
Jason W. Rodriguez

am

  
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JON S. WHEELER, CLERK



**CASE NOS. 1D16-368; 369; 370**

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IN THE  
DISTRICT COURT OF APPEAL  
FIRST DISTRICT OF FLORIDA

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**SYLVESTER HOOKS**

*Appellant,*

v.

**STATE OF FLORIDA**

*Appellee.*

---

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

---

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**ANSWER BRIEF OF APPELLEE**

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## **PRELIMINARY STATEMENT**

Appellant, Sylvester Hooks, was the defendant in the trial court; this brief will refer to Appellant as such, Defendant, or by proper name. Appellee, the State of Florida, was the prosecution below; the brief will refer to Appellee as such, the prosecution, or the State.

For the purposes of this brief, due to the duplication in this consolidated appeal, this state will rely exclusively on the record contained in 1D16-370, which will be referenced as the Record on Appeal (“R”), followed by any appropriate page number. The record also contains a 2 Supplemental Volumes that will be referenced as R. Supp1. and R. Supp2. respectively, followed by any appropriate page number. “IB” will designate Appellant’s Initial Brief, followed by any appropriate page number.

All bold-type emphasis is supplied, and all other emphasis is contained within original quotations unless the contrary is indicated.

## **STATEMENT OF THE CASE AND FACTS**

### *I. Statement of the Case*

The State accepts Appellant's statement of the case. IB at 2.

### *III. Statement of the Facts*

On March 20, 2015, Officer Brain Perry ("Surveillance Officer") was conducting video surveillance of an area. R. Supp1. at 110. The Surveillance Officer has been with the Tallahassee Police Department for seven years and has 20 years' prior experience with another department. R. Supp1. at 108. The officer previously spent six years in the High Intensity Drug Trafficking Association and was on the Multi-Agency Gang Task Force. R. Supp1. at 108. Additionally, the officer spent time with the Fort Lauderdale Street Crimes Unit and made "hundreds of narcotics purchases as an undercover officer." R. Supp1. at 108. During the course of his career, the officer had witnessed over a thousand hand to hand narcotics transfers. R. Supp1. at 110.

The Surveillance Officer was observing the area because of the numerous complaints of loitering and drugs from business owners in the neighborhood. R. Supp1. at 109. It is an extremely high crime area. R. Supp1. at 117. During his surveillance, the officer saw Appellant and another individual separate themselves from the rest of the people in that area. R. Supp1. at 110. Both individuals appeared to be trying to hide themselves from everyone else in the area. R. Supp1. at 110.

They had their backs to the crowd and street and looked around before conducting what the officer believed to be a hand to hand narcotics transaction. R. Supp1. at 110. During the transaction, the officer saw an exchange of currency for a clear cellophane bag. R. Supp1. at 110, 118. In the officer's experience, individuals tend to hold narcotics in cellophane bags. R. Supp1. at 111. The officers had previously been told by the State attorney's office that "you need to either see drugs or be very sure that it's drugs or you need to see United States currency in order for us to proceed." R. Supp1. at 121.

Two other officers, Officer Britt and Officer Ravenel, went to apprehend Appellant. R. Supp1. at 115. Officer Britt had worked for the Tallahassee police department since October 2011 and prior to that worked for a police department in the St. Louis area. R. Supp1. at 115–16. Officer Britt had been in special units pertaining to drugs, gangs, and firearms for about five years. R. Supp1. at 116. He was also a street crimes detective for two and a half years where the sole focus was "street level interdiction of crimes in progress or street level narcotics." R. Supp1. at 116. He was deputized with a county narcotics force, attended drug level interdiction training, attended training hosted by the DEA, and received a number of accommodations that pertained to street level narcotics. R. Supp1. at 116. Additionally, the officer has taken "four or five, 80, probably 40 to 80 hour each courses on body language and deception." R. Supp1. at 119. Officer Britt has

witnessed hundreds of hand to hand narcotics transactions in his career and has personally made drug arrests in the surveilled area. R. Supp1. at 117.

Officers Britt and Ravenel approached Appellant and instructed him to put his hands behind his back. R. Supp1. at 121. Appellant “immediately became defensive and blurted out, all this for a dime.” Appellant repeated that statement at least once more. R. Supp1. at 121. A “dime, which, based on, again, thousands of encounters with street level dope, is slang for either -- it’s slang for \$10. It’s either \$10 of crack or \$10 of weed.” R. Supp1. at 121. A “dime generally means a ten piece, a 10-dollar value drugs.” R. Supp1. at 124–25. This statement “solidified [Officer Britt’s] concern that he was in fact dealing drugs.” R. Supp1. at 121. Subsequent to this statement, the officers searched Appellant and found a plastic bag that contained multiple bags of cocaine and a bag of weed.” R. Supp1. at 120–21.

### **SUMMARY OF THE ARGUMENT**

The trial court correctly denied Appellant's motion to suppress for four reasons. First, the officer possessed a reasonable suspicion that Appellant was engaged in criminal activity based on their observations. Second, the Officers had probable cause to arrest Appellant and perform a search incident to arrest of his person based on the totality of their observations and Appellant's statement. Third, alternatively, the officers made an objectively reasonable mistake of law regarding whether the facts they observed rose to the legal level of reasonable suspicion and probable cause, and such mistakes do not give rise to Fourth Amendment violations. Fourth, even if the officers violated the Fourth Amendment, the evidence should not be suppressed under the good faith exception to the exclusionary rule.

## **ARGUMENT**

### **I. THE STATE CONCEDES THAT THE TRIAL COURT’S *FARETTA* INQUIRY WAS LEGALLY DEFICIENT BECAUSE THE COURT FAILED TO INQUIRE WHETHER APPELLANT WAS ABLE TO READ.**

The State concedes that the trial court failed to conduct a proper inquiry under *Faretta v. California*, 422 U.S. 806 (1975) because the trial court failed to inquire whether Appellant was able to read and understand the form the trial court gave him. *See R.* at 22–23; 133–35; 147.<sup>1</sup> *Stanley v. State*, 192 So. 3d 1291 (Fla. 1st DCA 2016).

### **II. THE TRIAL COURT CORRECTLY DENIED APPELLANT’S MOTION TO SUPPRESS.**

#### ***Standard of Review***

A trial court’s ruling a motion to suppress is presumed correct, *McNamara v. State*, 357 So. 2d 410, 412 (Fla. 1978), and a “reviewing court should not substitute its judgment for that of a trial court, but rather, should defer to the trial court’s authority as a fact finder,” *Wasko v. State*, 505 So. 2d 1314 (Fla. 1987). Thus, this Court must “interpret the evidence and reasonable inferences and deductions derived therefrom in a manner most favorable to sustaining the trial court’s ruling,” *Rodriguez v. State*, 187 So. 3d 841, 845 (Fla. 2015), and “is bound by the trial court’s

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<sup>1</sup> The State notes, however, that the form was not deficient for failure to inquire regarding Appellant’s age or education level. *Edenfield v. State*, 45 So. 3d 26, 31 (Fla. 1st DCA 2010).

factual findings if they are supported by competent, substantial evidence.” *Pagan v. State*, 830 So. 2d 792, 806 (Fla. 2002). Competent, substantial evidence is evidence that is “sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached.” *Perdue v. TJ Palm Associates, Ltd.*, 755 So. 2d 660, 665 (Fla. 4th DCA 1999). In other words, “[c]ompetent substantial evidence is tantamount to legally sufficient evidence.” *In re M.F.*, 770 So. 2d 1189, 1192 (Fla. 2000). The trial court’s application of the law to those facts is reviewed *de novo*. *State v. Teamer*, 151 So. 3d 421, 425 (Fla. 2014).

### ***Burden of Persuasion***

Appellant bears the burden of demonstrating prejudicial error. Section 924.051(7), Fla. Stat. provides:

In a direct appeal . . . the party challenging the judgment or order of the trial court has the burden of demonstrating that a prejudicial error occurred in the trial court. A conviction or sentence may not be reversed absent an express finding that a prejudicial error occurred in the trial court.

“In appellate proceedings the decision of a trial court has the presumption of correctness and the burden is on the appellant to demonstrate error.” *Applegate v. Barnett Bank of Tallahassee*, 377 So. 2d 1150, 1152 (Fla. 1979). Moreover, because the trial court’s decision is presumed correct, “the appellee can present any argument supported by the record even if not expressly asserted in the lower court.” *Dade*

*County School Bd. v. Radio Station WQBA*, 731 So. 2d 638, 645 (Fla. 1999); *see Robertson v. State*, 829 So. 2d 901, 906-907 (Fla. 2002).

### ***Merits***

The Fourth Amendment protects the “right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. Const. amend. IV. This constitutional protection is incorporated against the states “by virtue of the Fourteenth Amendment.” *Hayes v. Florida*, 470 U.S. 811, 812 (1985). Florida courts are constitutionally required to interpret the protections against unreasonable searches and seizures in conformity with the Fourth Amendment to the United States Constitution. Fla. Const. art. I, § 12.

A seizure occurs “whenever a police officer accosts an individual and restrains his freedom to walk away.” *Terry v. Ohio*, 392 U.S. 1, 16 (1968). “A person is seized through a show of authority only if he yields to the authority; however, if the person flees, he is seized only when he is caught.” *State v. Law*, 112 So. 3d 611, 613 (Fla. 3rd DCA 2013) (citing *California v. Hodari D.*, 499 U.S. 621, 629 (1991)). Under *Terry*, police may seize an individual when they have “a reasonable suspicion that a person has committed, is committing, or is about to commit a crime.” *Popple v. State*, 626 So. 2d 185, 186 (Fla. 1993). However, police need probable cause to make an arrest. *Bailey v. United States*, 133 S. Ct. 1031, 1037 (2013). The analysis for both reasonable suspicion and probable cause is so fact specific that “one determination

will seldom be a useful ‘precedent’ for another” *Ornelas v. United States*, 517 U.S. 690, 698 (1996) (quoting *Illinois v. Gates*, 462 U.S. 213, 239 n.11 (1983)); *State v. Hankerson*, 65 So. 3d 502, 506 (Fla. 2011).<sup>2</sup>

Here, the trial court correctly denied Appellant’s motion to suppress for four reasons. First, the officers possessed reasonable suspicion to detain Appellant under *Terry*. Second, the officers had probable cause to make an arrest based on Appellant’s statements and their previous observations. Third, alternatively, the officers’ actions resulted from an objectively reasonable mistake of law as to whether the facts they observed gave them reasonable suspicion and probable cause and therefore do not violate the Fourth Amendment. Fourth, the evidence should not be excluded under the good faith exception to the exclusionary rule.

**A. The Officers Possessed the Reasonable Suspicion to Detain Appellant Under *Terry*.**

Reasonable suspicion is a “less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence,” *Illinois*

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<sup>2</sup> Appellant cites multiple cases that have important factual distinctions from this case. IB. at 22; *Panter v. State*, 8 So. 3d 1262, 1264 (Fla. 1st 2009) (“The deputy did not actually see cash or drugs or anything else pass between the man standing outside and the driver during the episode.”) *Johnson v. State*, 610 So. 2d 581, 583 (Fla. 1st DCA 1992) (“simply having cash in his hand did not create a founded suspicion of criminal activity sufficient to warrant detention, as the officer observed no exchange of drugs, money, or anything else”). Here, the officers observed United States currency exchanged for a cellophane bag consistent with drug use. R. Supp1. at 110, 118.

*v. Wardlow*, 528 U.S. 119, 123 (2000) (holding flight in a high crime area is sufficient to give officers reasonable suspicion), but more than a mere “hunch,” *Terry*, 392 U.S. at 27. Reasonable suspicion is a “commonsense, nontechnical” inquiry that focuses on the factual and practical considerations “on which reasonable prudent men, rather than legal technicians, act.” *Ornelas*, 517 U.S. at 696 (quoting *Gates*, 462 U.S. at 231). The primary inquiry is whether the “historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to reasonable suspicion.” *Ornelas*, 517 U.S. at 696. In determining reasonable suspicion, courts consider “the time of day, the day of the week, the location, the physical appearance and behavior of the suspect, the appearance and manner of operation of any vehicle involved, or anything incongruous or unusual in the situation as interpreted in the light of the officer’s knowledge.” *Gipson v. State*, 537 So.2d 1080, 1081 (Fla. 1 DCA 1989) (quoting *State v. Stevens*, 354 So.2d 1244, 1247 (Fla. 4 DCA 1978)). “‘In determining whether an officer acted reasonably under the circumstances,’ courts must give ‘due weight’ to ‘the specific reasonable inferences which officers are entitled to draw from the facts in light of their experience.’” *McCray v. State*, 177 So. 3d 685, 688 (Fla. 1st DCA 2015) (quoting *Terry*, 392 U.S. at 16). “Thus, even if none of the facts standing alone would give rise to a reasonable suspicion, when taken *together*, as viewed by an experienced officer, they can provide clear justification for a brief detention.” *State v. Pye*, 551 So. 2d 1237, 1238 (Fla. 1st DCA

1989). Ultimately, “the totality of the circumstances—the whole picture—must be taken into account.” *Id.* (quoting *Tamer v. State*, 484 So.2d 583, 584 (Fla. 1986).

Here, the trial court’s decision should be affirmed because the officers had reasonable suspicion to believe Appellant was engaged in criminal conduct. The officers were highly experienced in drug transactions, with the Surveillance Officer having 27 years’ prior experience as a police officer, six of which were spent as a part of the High Intensity Drug Trafficking Association. R. Supp1. at 108. This officer had also made hundreds of narcotics purchases as an undercover officer, R. Supp1. at 108, and witnessed over a thousand hand to hand narcotics transfers, R. Supp1. at 110. Moreover, the officers were monitoring the area specifically because it was a high crime area replete with drug activity. R. Supp1. at 117. Officer Britt, similarly, has a great deal of experience with narcotics investigations. R. Supp1. at 116. He was a street crimes detective for two and a half years where the sole focus was “street level interdiction of crimes in progress or street level narcotics.” R. Supp1. at 116. He was deputized with a county narcotics force, attended drug level interdiction training, attended training hosted by the DEA, and received a number of accommodations that pertained to street level narcotics. R. Supp1. at 116. Additionally, Officer Britt has taken “four or five, 80, probably 40 to 80 hour each courses on body language and deception.” R. Supp1. at 119. Officer Britt has

witnessed hundreds of hand to hand narcotics transactions in his career and has personally made drug arrests in the surveilled area. R. Supp1. at 117.

While monitoring this high crime area, these experienced officers saw Appellant and another individual separate themselves from the rest of the people in that area. R. Supp1. at 110. Both individuals appeared to be trying to hide themselves from everyone else in the area. R. Supp1. at 110. They had their backs to the crowd and street and looked around before conducting what the officer believed to be a hand to hand narcotics transaction. R. Supp1. at 110. During the transaction, the officer saw an exchange of currency for a clear cellophane bag. R. Supp1. at 110, 118. In the officer's experience, individuals tend to hold narcotics in cellophane bags. R. Supp1. at 111. After observing all of these events, the officers moved to detain Appellant. Taken in totality, these facts in conjunction with these officer's extensive experience, gave the officers reasonable suspicion to believe that Appellant was engaged in criminal activity. Therefore, the trial court correctly denied Appellant's motion to suppress because there was no Fourth Amendment violation.

**B. The Officers Possessed Probable Cause to Arrest Appellant Based on the Totality of Their Observations and Appellant's Statement.**

Police must normally have probable cause to make an arrest. *Bailey v. United States*, 133 S. Ct. 1031, 1037 (2013). “Probable cause to arrest exists when facts

and circumstances within an officer’s knowledge and of which he had reasonably trustworthy information are sufficient to warrant a person of reasonable caution to believe that an offense has [been] or is being committed.” *Delhall v. State*, 95 So. 3d 134, 154 (Fla. 2012) (alterations in original) (quoting *Caraballo v. State*, 39 So.3d 1234, 1246 (Fla. 2010)). “Probable cause is not a conviction, based on reasonable doubt, nor is it even a prima facie showing; it is simply an ‘assessment of probabilities.’ *State v. Rand*, No. 1D15-335, 2016 WL 1295081, at \*3 (Fla. 1st DCA Apr. 4, 2016) (quoting *State v. Hankerson*, 65 So. 3d 502, 506 (Fla. 2011)). Thus “probable cause is a fluid concept—turning on the assessment of probabilities in particular factual contexts—not readily, or even usefully, reduced to a neat set of legal rules.” *Illinois v. Gates*, 462 U.S. 213, 232 (1983); *Maryland v. Pringle*, 540 U.S. 366, 371 (2003) (“The probable-cause standard is incapable of precise definition or quantification into percentages because it deals with probabilities and depends on the totality of the circumstances.”). Ultimately, probable cause exists when a “fair probability” on which “reasonable and prudent [people,] not legal technicians, act.” *Florida v. Harris*, 133 S. Ct. 1050, 1055 (2013) (quoting *Gates*, 462 U.S. at 235).

Here, the trial court correctly denied Appellant’s motion to suppress because the officers had probable cause to believe Appellant had committed a crime. The State incorporates by reference the discussion in section A. above as if set out fully

herein. In addition to these facts, after the police detained Appellant, Appellant “immediately became defensive and blurted out, all this for a dime.” Appellant repeated that statement at once more. R. Suppl. at 121. A “dime, which, based on, again, thousands of encounters with street level dope, is slang for either -- it’s slang for \$10. It’s either \$10 of crack or \$10 of weed.” R. Suppl. at 121. A “dime generally means a ten piece, a 10-dollar value drugs.” R. Suppl. at 124–25. This statement “solidified [Officer Britt’s] concern that he was in fact dealing drugs.” R. Suppl. at 121. This statement in conjunction with Appellant’s behavior leading up to his detention gave the officers probable cause to arrest Appellant and perform a search incident to arrest of his person. An arrest with probable cause does not violate the Fourth Amendment. *Bailey*, 133 S. Ct. at 1037. Therefore, the trial court correctly denied Appellant’s motion to suppress because the officers did not violate the Fourth Amendment.

**C. Alternatively, Police Made a Reasonable Mistake of Law Regarding Whether They Had Reasonable Suspicion and Probable Cause and Reasonable Mistakes of Law Do Not Violate the Fourth Amendment.**

“[T]he ultimate touchstone of the Fourth Amendment is ‘reasonableness.’” *Riley v. California*, 134 S.Ct. 2473, 2482 (2014). “To be reasonable is not to be perfect, and so the Fourth Amendment allows for some mistakes on the part of government officials, giving them ‘fair leeway for enforcing the law in the community’s protection.’” *Heien v. North Carolina*, 135 S. Ct. 530, 536 (U.S. 2014)

(quoting *Brinegar v. United States*, 338 U.S. 160, 176 (1949)). Thus, “if officers with probable cause to arrest a suspect mistakenly arrest an individual matching the suspect’s description, neither the seizure nor an accompanying search of the arrestee would be unlawful” so long as the factual mistake is reasonable. *Heien*, 135 S. Ct. at 536. “[R]easonable men make mistakes of law, too, and such mistakes are no less compatible with the concept of reasonable suspicion.” *Id.* “Reasonable suspicion arises from the combination of an officer’s understanding of the facts and his understanding of the relevant law. The officer may be reasonably mistaken on either ground.” *Id.* “There is no reason, under the text of the Fourth Amendment or our precedents, why this same result should be acceptable when reached by way of a reasonable mistake of fact, but not when reached by way of a similarly reasonable mistake of law.” *Id.* Therefore, an officer’s objectively reasonable mistake of law does not violate the Fourth Amendment. *Id.* at 539; *cf. Herring v. United States*, 555 U.S. 135, 139 (2009) (“When a probable-cause determination was based on reasonable but mistaken assumptions, the person subjected to a search or seizure has not necessarily been the victim of a constitutional violation. The very phrase “probable cause” confirms that the Fourth Amendment does not demand all possible precision.”).

For example, the United States Supreme Court has held that an officer’s reasonable mistake regarding a legal standard still provides reasonable suspicion.

*Heien*, 135 S. Ct. at 539. In *Heien*, an officer following a vehicle noticed that only one brake light was operational. *Id.* at 534. The officer pulled the vehicle over, gained consent to search, discovered cocaine, and arrested the defendant. *Id.* at 535. The defendant filed a motion to suppress, which the trial court denied. *Id.* The North Carolina Court of Appeals reversed because it construed the brake light statute to require only one working break light. *Id.* The state appealed to the North Carolina Supreme Court, arguing only that the officer's construction of the statute was objectively reasonable and therefore no Fourth Amendment violation occurred. *Id.* The North Carolina Supreme Court reversed the appeals court, and held that because the officer's mistaken interpretation of the law was reasonable there was no Fourth Amendment violation. *Id.* The United States Supreme Court agreed that an officer's mistaken, but objectively reasonable, interpretation of controlling law permits the officer to stop a defendant without violating the Fourth Amendment. *Id.* at 537. The Supreme Court noted that officers may confront issues in the field where the application of the law is unclear, and thus deserve the same margin of error as when they make objectively reasonable mistakes of fact. *Id.* at 539. Therefore, an officer's objectively reasonable mistake of law does not violate the Fourth Amendment. *Id.*

Similarly, this Court has recognized that an officer's reasonable mistake of law does "not defeat a finding that probable cause existed." *State v. Rand*, No. 1D15-335, 2016 WL 1295081, at \*3 (Fla. 1st DCA Apr. 4, 2016). In *Rand*, an officer

arrested a defendant for trespassing on school property at 2:00 a.m. *Id.* at \*2. The officer had been instructed by the principal that no one was to be on school grounds after hours. *Id.* The trial court determined that there was no probable cause to arrest the defendant, but this Court reversed. *Id.* at \*3. While this Court determined there was probable cause, it also determined that even if probable cause was absent, the officer's reasonable mistake of law would have sufficed. *Id.* Therefore, an officer's reasonable mistake of law does not violate the Fourth Amendment. *Id.*

Here, assuming *arguendo* the officers did not have reasonable suspicion or probable cause, the officers made an objectively reasonable mistake of law regarding whether the facts they observed rose to the legal level of reasonable suspicion and probable cause. The State incorporates by reference the discussion in sections A. and B. above as if set out fully herein. Just like the officer in *Heien*, the officers here were mistaken regarding a legal standard. However, as in *Heien*, this mistake was objectively reasonable. The officers had been explicitly instructed by the State Attorney's office that "you need to either see drugs or be very sure that it's drugs or you need to see United States currency in order for us to proceed." R. Supp1. at 121. The officers observed an exchange of United States currency and a cellophane bag consistent with drug use. R. Supp1. at 110, 118. In light of their extensive experience, their observations, and the State Attorney's instructions, and Appellant's statement, it was objectively reasonable for the officers to believe they had

reasonable suspicion and probable cause. This is especially true because reasonable suspicion and probable cause are far from clear legal standards, but rather “fluid concepts that take their substantive content from the particular contexts in which the standards are being assessed.” *Ornelas*, 517 U.S. at 696. Thus, if officers were mistaken, they made a reasonable mistake of law as to whether the conduct they observed rose to the legal level of reasonable suspicion and probable cause and there was no Fourth Amendment violation. *Cf. Heien*, 135 S. Ct. at 539. Therefore, the trial court correctly denied the motion to suppress.

**D. Even If the Officers Violated the Fourth Amendment, the Evidence Should Not Be Excluded Pursuant to the Good Faith Exception to the Exclusionary Rule.**

The Supreme Court of the United States has “repeatedly rejected the argument that exclusion is a necessary consequence of a Fourth Amendment violation.” *Herring v. United States*, 555 U.S. 135, 141 (2009). Rather, the exclusionary rule is a “judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect, rather than a personal constitutional right of the party aggrieved.” *United States v. Calandra*, 414 U.S. 338, 348 (1974). “If the purpose of the exclusionary rule is to deter unlawful police conduct, then evidence obtained from a search should be suppressed only if it can be said that the law enforcement officer had knowledge, or may properly be charged with knowledge, that the [their actions were] unconstitutional.” *United States v. Peltier*, 422 U.S. 531,

542 (1975). “To trigger the exclusionary rule, police conduct must be sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system.” *Herring*, 555 U.S. at 144. “Suppression of evidence, however, has always been our last resort, not our first impulse.” *Hudson v. Michigan*, 547 U.S. 586, 591 (2006). Thus, the Supreme Court has carved out certain exceptions to the exclusionary rule in situations that would not serve its deterrent purpose. *Davis v. United States*, 564 U.S. 229, 244 (2011). One of these exceptions precludes the suppression of evidence when “police act with an objectively “reasonable good-faith belief” that their conduct is lawful.” *Id.* at 238. Police act in good faith unless there is “deliberate, reckless, or grossly negligent conduct, or in some circumstances recurring or systemic negligence.” *Herring*, 555 U.S. at 144. This good faith exception applies when officers have “an objectively reasonable belief that they possessed a reasonable articulable suspicion” and later obtain a warrant, *United States v. Kiser*, 948 F.2d 418, 422 (8th Cir. 1991), and is so broad that it also covers “the investigatory acts of an officer outside of his or her jurisdiction . . . if during the investigation the officer has a good faith belief that the crime occurred within his or her jurisdiction,” *Nunn v. State*, 121 So. 3d 566, 568 (Fla. 4th DCA 2013).

Here, the good faith exception applies for two reasons. First, imposing the exclusionary rule in situations where officers have an objectively reasonable good

faith belief that they have met the legal standard of reasonable suspicion or probable cause results in no appreciable deterrence. Second, in this case, the officers' belief that they had reasonable suspicion and probable cause was objectively reasonable.

1. The exclusionary rule should not apply when officers have an objectively reasonable, good faith, but mistaken, belief that they have probable cause or reasonable suspicion because such a rule has no appreciable deterrent effect.

The analysis for both reasonable suspicion and probable cause is so fact specific that “one determination will seldom be a useful ‘precedent’ for another” *Ornelas v. United States*, 517 U.S. 690, 698 (1996) (quoting *Illinois v. Gates*, 462 U.S. 213, 239 n.11 (1983)). Rather, these are “fluid concepts that take their substantive content from the particular contexts in which the standards are being assessed.” *Ornelas*, 517 U.S. at 696. The exclusionary rule, however, “is not an individual right and applies only where it ‘result[s] in appreciable deterrence.’” *Herring v. United States*, 555 U.S. 135, 141 (2009) (quoting *United States v. Leon*, 468 U.S. 897, 909 (1984)). It does not apply when there might only be “marginal deterrence.” *Pennsylvania Bd. of Prob. & Parole v. Scott*, 524 U.S. 357, 368 (1998). This is because the “principal cost of applying the rule is, of course, letting guilty and possibly dangerous defendants go free—something that ‘offends basic concepts of the criminal justice system.’” *Herring*, 555 U.S. at 141 (quoting *Leon*, 468 U.S. at 908). Therefore, since the “purpose of the exclusionary rule is to deter police officers from violating the Fourth Amendment, evidence should be suppressed ‘only

if it can be said that the law enforcement officer had knowledge, or may properly be charged with knowledge, that the search was unconstitutional under the Fourth Amendment.”” *Illinois v. Krull*, 480 U.S. 340, 348–49 (1987) (quoting *United States v. Peltier*, 422 U.S. 531, 542 (1975)).

Several federal courts recognized evidence should not be suppressed when officers have an objectively reasonable, although mistaken, belief that they have reasonable suspicion or probable cause. *United States v. Kiser*, 948 F.2d 418, 422 (8th Cir. 1991); *United States v. Fletcher*, 91 F.3d 48, 51 (8th Cir. 1996); *United States v. McClain*, 444 F.3d 556, 566 (6th Cir. 2005) (holding the good faith exception applied when officers performed a warrantless search of a house with an objectively reasonable belief that they had probable cause and another officer subsequently received a warrant based on information obtained through the initial warrantless search);<sup>3</sup> *but see United States v. McGough*, 412 F.3d 1232, 1240 (11th

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<sup>3</sup> While the officers in these cases secured warrants, this fact is irrelevant because the warrants were only obtained **after** the initial constitutional violation and with evidence obtained as a direct result of the violation. In *Fletcher*, the officers detained the defendant’s bag without reasonable suspicion and subsequently received a warrant. *Fletcher*, 91 F.3d at 50. Likewise, in *Kiser*, the officers detained the defendant’s bag to perform a dog sniff and only received a warrant based on the dog’s positive alert. *Kiser*, 948 F.2d at 422. Similarly, in *McClain*, the officer received a warrant based on evidence obtained from an unconstitutional, warrantless entry into a home. *McClain*, 444 F.3d at 566 (6th Cir. 2005). Thus, the fact that a warrant was obtained in these cases is ultimately irrelevant.

Cir. 2005) (refusing to apply the good faith exception when the officer did not have an objectively reasonable belief that he could enter a house without a warrant).<sup>4</sup>

For example, the Eighth Circuit determined that an officers' mistaken, but objectively reasonable, belief that they had reasonable suspicion to detain a defendant's luggage did not require suppression of the evidence. *Fletcher*, 91 F.3d at 52. In *Fletcher*, the officers detained a defendant's bag without consent and allowed a drug detection dog to sniff the bag. *Id.* at 50. When the dog alerted, the officers applied for and received a search warrant. *Id.* The Eighth Circuit determined that the officers did not have reasonable suspicion support the initial detention of the bag, as required by the Fourth Amendment. *Id.* at 51. The Eighth circuit specifically pointed out that "[r]easonable suspicion is a fact-based determination where 'similar fact patterns [can] led to different results.'" *Id.* at 51–52 (quoting *United States v. O'Neal*, 17 F.3d 239, 241 (8th Cir. 1994)). In light of this, the Eight Circuit held that although the officers violated the Fourth Amendment, the evidence should not be suppressed because of their objectively reasonable belief that they had reasonable suspicion. *Fletcher*, 91 F.3d at 52.

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<sup>4</sup> The rule that the State seeks to invoke here does not permit an officer without an objectively reasonable, good faith belief that he has reached the legal level of probable cause or reasonable suspicion to perform a search, detention, or arrest, without consequence. In such circumstances, when the lack of probable cause or reasonable suspicion is objectively clear to a reasonable officer, the evidence should be suppressed because it would result to deter the officer from performing future actions when the lack of reasonable suspicion or probable cause is clearly apparent.

Here, the exclusionary rule should not apply because the officers' had an objectively reasonable belief that the conduct they observed rose to the legal level of reasonable suspicion and probable cause. This is especially true because probable cause and reasonable suspicion are "fluid concepts that take their substantive content from the particular contexts in which the standards are being assessed." *Ornelas*, 517 U.S. at 696. Indeed, these standards are so fluid that the Supreme Court of the United States has noted that "one determination will seldom be a useful 'precedent' for another" *Id.* at 698.

If, as the Supreme Court has noted, one determination of reasonable suspicion or probable cause is rarely helpful for the same determination in a different case, exclusion cannot result in appreciable deterrence because officers are only able to alter their conduct if they deal with the exact same factual situation. Moreover, unless there is binding court precedent dealing with the exact same factual situation, or the lack of reasonable suspicion or probable cause is blatantly apparent, officers cannot be said to have "knowledge, or [] properly be charged with knowledge, that the search was unconstitutional under the Fourth Amendment." *Cf. United States v. Peltier*, 422 U.S. 531, 542 (1975)).

It also appears that the officers were relying on instructions from the State Attorney's Office that seeing United States currency exchanged for something else would be sufficient. R. Supp1. at 121. Thus, when an officer has a mistaken, but

objectively reasonable, good faith belief that the facts he observed rises to the legal level of probable cause or reasonable suspicion, the evidence should not be excluded.

2. The officers' belief that they had reasonable suspicion and probable cause was objectively reasonable.

Here, the officers had an objectively reasonable belief that they had reasonable suspicion and probable cause. In light of: the advice from the State Attorney's Office; the officer's extensive experience; the exchange of currency for a cellophane bag consistent with drug use; Appellant's suspicious behavior; and the high crime area, R. Suppl. at 108, 110, 117–18, 121, it was objectively reasonable for the officer to believe he had reasonable suspicion to detain Appellant. Therefore, the exclusionary rule is inapplicable and the trial court properly denied the motion to suppress.

### **CONCLUSION**

Based on the foregoing discussions, the State respectfully requests this Honorable Court affirm the trial court's denial of Appellant's motion to suppress.

### **CERTIFICATE OF SERVICE**

I certify that a copy hereof has been furnished to the following by electronic mail on January 27, 2017 to Danielle Jordan, Assistant Public Defender, at danielle.jordan@flpd2.com.

### **CERTIFICATE OF COMPLIANCE**

I certify that this brief was computer generated using Times New Roman 14 point font.

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IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT OF FLORIDA

**SYLVESTER HOOKS,**

Appellant,

v.

CASE NO. **1D16-368**

**1D16-369**

**STATE OF FLORIDA,**

**1D16-370**

Appellee.

\_\_\_\_\_/

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

**REPLY BRIEF OF APPELLANT**

ANDY THOMAS  
PUBLIC DEFENDER  
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IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT OF FLORIDA

**SYLVESTER HOOKS,**

Appellant,

v.

CASE NO.   **1D16-368**  
                  **1D16-369**  
                  **1D16-370**

**STATE OF FLORIDA,**

Appellee.

\_\_\_\_\_ /

**REPLY BRIEF OF APPELLANT**

**PRELIMINARY STATEMENT**

Appellant, **SYLVESTER HOOKS**, was the defendant in the trial court and will be referred to in this brief as Appellant or by his proper name. Appellee, the State of Florida, was the prosecution below, and will be referred to herein as the prosecutor or the state.

The record on appeal consists of four original bound volumes and two supplemental volumes in each case, for a total of twelve original volumes and six supplemental volumes. Primarily, the record in Case 1D16-369 will be referenced in this brief, due to duplication, as well as the first volume in each of the other two cases. The record will be referenced as: Case 1D16-369, Volume 1 as V1, Trial transcript as T1, T2, and Supplemental Volumes as S1, S2. Case 1D16-368, Volume 1 as V2. Case 1D16-370, Volume 1 as V3. Appellant's Initial Brief will be referred to as "IB," while Appellee's Answer Brief will be referred to as "AB."

## ARGUMENT

### ISSUE I

**The trial court erred by allowing Appellant to represent himself without making a proper inquiry pursuant to Faretta v. California, 422 U.S. 806 (1975).**

In its Answer Brief Appellee concedes error, agreeing that the trial court's Faretta inquiry was "legally deficient" in this case. (AB-6). As this Court has held:

Failure by the trial court to ask questions pertaining to the defendant's competency to waive counsel requires reversal, even where the trial court has complied with the requirement to advise the defendant about the advantages and disadvantages of self-representation.

Stanley v. State, 192 So.3d 1291, 1292 (Fla. 1<sup>st</sup> DCA 2016).

Where, as here, the trial court fails to inquire about "the factors which have come to be recognized as relevant to the determination 'that the defendant is literate, competent and understanding, and that he is voluntarily exercising his informed free will'" reversal is required. Id. at 1292 (quoting Wilson v. State, 724 So.2d 144, 146 (Fla. 1<sup>st</sup> DCA 1998)). While Appellee does not discuss the proper remedy in this case, "[t]he failure to conduct an adequate Faretta inquiry is per se reversible error." Flowers v. State, 976 So.2d 665, 666 (Fla. 1<sup>st</sup> DCA 2008); See also Brown v. State, 113 So.3d 134, 141 (Fla. 1<sup>st</sup> DCA 2013); State v. Young, 626 So.2d 655, 657 (Fla. 1993). Appellant's cases should be reversed for a new trial and new violation of probation hearings.

## ISSUE II

### **The trial court erred by denying Appellant's Motion to Suppress Evidence.**

In its Answer Brief, Appellee attempts to factually distinguish the cases cited by Appellant in his Initial Brief,<sup>1</sup> claiming that in the cases at bar "the officers observed United States currency exchanged for a cellophane bag consistent with drug use. R. Suppl. at 110, 118."<sup>2</sup> (AB-9). First, the record pages cited do not support the factual allegations made by Appellee. Second, Appellee has apparently misconstrued the facts. The record shows that both Officer Perry and Officer Britt observed what they believed to be a narcotics transaction through video. (SR1-117). Officer Perry observed two individuals make contact with each other and separate themselves from the group. (SR1-103). He saw "an exchange of currency." (SR1-99). Perry saw Appellant with a cellophane baggy in his hand, but could not see what was in the baggy. (SR1-102). He saw Appellant put the baggy in the back of his pants. (SR1-

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<sup>1</sup> Panter v. State, 8 So.3d 1262 (Fla. 1<sup>st</sup> DCA 2009); Johnson v. State, 610 So.2d 581 (Fla. 1<sup>st</sup> DCA 1993); Stanton v. State, 576 So.2d 925 (Fla. 1<sup>st</sup> DCA 1991); Dames v. State, 566 So.2d 51 (Fla. 1<sup>st</sup> DCA 1990); Messer v. State, 609 So. 2d 164 (Fla. 2d DCA 1992); (IB-21-23).

<sup>2</sup> In arguing that the officers had reasonable suspicion, Appellee again asserts the same factual misconception, "During the transaction, the officer saw an exchange of currency for a clear cellophane bag." (AB-12).

99,102). Perry did not see Appellant provide a baggy, any item from a baggy, nor any other item, to the other individual in exchange for money.

Officer Britt also observed Appellant and another individual separate themselves from the crowd, turn their backs to the street, and huddle closely together. (SR1-112). He saw Appellant retrieve something, which appeared to Britt to be a plastic bag, from the small of his back, above his buttocks. (SR1-112). However, Britt admitted that he was not "exactly sure" if the item was a plastic bag. (SR1-107). Appellant received currency from the other individual and then placed what appeared to be a baggy back above his buttocks. (SR1-112). Britt stated, "We actually saw money exchange hands..." (SR1-107).

A critical fact is that Britt and Perry both admitted that the alleged "exchange" occurred when Appellant and the other individual had their backs turned; Britt and Perry observed them on video from behind. (SR1-99,108-109). Britt and Perry assumed an "exchange" occurred because they saw what they believed to be a baggy in Appellant's possession, and because when he turned back around they could see money in his hand. However, they never actually saw Appellant pass anything to the other individual. This is insufficient to establish reasonable suspicion. See Panter v. State, 8 So.3d 1262 (Fla. 1<sup>st</sup> DCA

2009); Johnson v. State, 610 So.2d 581 (Fla. 1<sup>st</sup> DCA 1993); Stanton v. State, 576 So.2d 925 (Fla. 1<sup>st</sup> DCA 1991); Dames v. State, 566 So.2d 51 (Fla. 1<sup>st</sup> DCA 1990); See also, Messer v. State, 609 So. 2d 164 (Fla. 2d DCA 1992).

Appellee asserts that the officers also had probable cause to arrest Appellant, focusing primarily on the officers' prior experience and the location of the alleged transaction. (AB-10-13). However, Appellee fails to address three of six factors commonly addressed "to determine whether the evidence proves probable cause or merely reasonable suspicion." Revels v. State, 666 So. 2d 213, 216 (Fla. 2d DCA 1995). Appellee does not specifically address the quality of the surveillance procedures, prior knowledge of the parties involved, and a detailed description of the entire event. Id. at 216-217. The officers in these cases observed the alleged transaction on a video screen of unknown quality, had no prior knowledge of Appellant, and saw Appellant and another individual from behind.

Further, Appellee does not address that here there was a single suspicious event between Appellant and another individual, rather than a series of suspected exchanges, which the Florida Supreme Court found was significant in determining whether there was probable cause to arrest. State v. Hankerson, 65 So.3d 502, 507 (Fla. 2011).

Appellee's assertion that "[a]lternatively, police made a reasonable mistake of law regarding whether they had reasonable suspicion and probable cause and reasonable mistakes of law do not violate the Fourth Amendment" is misplaced and inaccurate. (AB-14). In support of this assertion, Appellee cites State v. Rand, 2016 WL 1295081 (Fla. 1st DCA, Apr. 4, 2016), in which this Court found the trial court's determination that there was no probable cause to be in error. (AB-16-17). However, since Appellee filed its Answer Brief the Rand opinion has been withdrawn and this Court has issued a new opinion finding that there was no probable cause to arrest the defendant, which was based on the officer's mistake, and affirming the trial court's decision to apply the exclusionary rule. State v. Rand, 2017 WL 535370 (Fla. 1<sup>st</sup> DCA, Feb. 10, 2017). This Court found that "the officer's excuse wasn't that he misunderstood the legal standard, but that he hadn't paid attention to it." Id. at \*5.

There was no assertion in the cases at bar in the court below that the officers made any "mistake of law" in this case. Mistakes of law are typically alleged in traffic violation and traffic stop cases where the law may be "ambiguous." See Heien v. North Carolina, 135 S.Ct. 530, 190 L.Ed.2d 475 (2014) (where officer's mistake of law that a single non-functioning brake light was illegal was reasonable); But see Springer v. State, 125 So.3d 271, 272 (Fla. 4th DCA 2013) (where the court found that the

officer was mistaken about the law which did not require a side view mirror on the driver side, and held that the stop was illegal); Hilton v. State, 961 So.2d 284, 299 (Fla. 2007) ("The misconception that a vehicle may be stopped for any windshield crack or imperfection constitutes a mistake of law, and such a mistake cannot provide objective grounds for reasonable suspicion.").

Appellee asserts that if "the officers did not have reasonable suspicion or probable cause, the officers made an objectively reasonable mistake of law regarding whether the facts they observed rose to the legal level of reasonable suspicion and probable cause." (AB-17). Appellee, however, does not provide a single case in which any court has held that in similar circumstances of suspected hand-to-hand narcotics transactions the court has found probable cause based on a "mistake of law." Mistake of law does not apply in this case.

Appellee also asserts that the "good faith exception to the exclusionary rule" applies in this case. (AB-18-24). Appellant respectfully disagrees. The primary purpose of the exclusionary rule is to "deter future unlawful police conduct." Stone v. Powell, 428 U.S. 465, 484 (1976). Should this Court allow officers to detain, arrest, and search individuals without probable cause or reasonable suspicion, based only on what they assume to be narcotics transactions, then police misconduct would

be rampant. In this case, the officers did not see an exchange of any item for money. Instead, while the individuals' backs were turned and the officers could not see what was occurring, Appellant took what may have been a baggy from his buttocks and then put it back. (SR1-99,102,107,112). When he turned back around he had money in his hand. (SR1-99,102,107,112). Without more, this does not rise to the level of reasonable suspicion, nor does it provide an "objectively reasonable belief" on the part of the officers that they had reasonable suspicion and probable cause, as asserted by Appellee. See (AB-24).

Thus, based on the totality of the circumstances here, there was no reasonable suspicion to justify a stop, detention, and search. Further, there was no probable cause to arrest Appellant. The trial court erred by denying Appellant's Motion to Suppress. These cases should be reversed and, because the motion was dispositive, Appellant should be discharged on the new substantive charges, and the violations of probation, based on the new charges, should be dismissed and Appellant's probation reinstated.

### **CONCLUSION**

Based on the argument and authority presented in his Initial and Reply Briefs, Appellant respectfully requests the following relief: in Issue I, that these cases be reversed for a new trial and new violation of probation hearings, and in Issue II, that these cases be reversed and Appellant discharged on the new substantive charges, and the violations of probation, based on the new charges, should be dismissed and Appellant's probation reinstated.

**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 a true and correct copy has been sent via US Mail to Sylvester Hooks, DOC # 558276, Century Work Camp, 400 Tedder Road, Century, Florida, on this 21st day of February, 2017.

**CERTIFICATE OF FONT SIZE**

I HEREBY CERTIFY that, pursuant to Florida Rule of Appellate Procedure 9.210, this brief was typed in Courier New 12 Point.

Respectfully submitted,

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IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT, STATE OF FLORIDA

SYLVESTER HOOKS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

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

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Opinion filed December 6, 2017.

An appeal from the Circuit Court for Leon County.  
Terry P. Lewis, Judge.

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.

WINOKUR, J.

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'

<sup>1</sup> *Faretta v. California*, 422 U.S. 806 (1975).

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.

<sup>2</sup> 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.

## 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). A defendant “must be free personally to decide whether in his particular case counsel is to his advantage.” *Faretta*, 422 U.S. at 834. 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 (2008) (quoting *Faretta*, 422 U.S. at 807). A defendant who expresses a desire to self-represent must “knowingly and intelligently” 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. 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 (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.

The United States Supreme Court revisited *Faretta* in *Godinez v. Moran*. 509 U.S. 389 (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. 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. “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 n.12. “The purpose of the ‘knowing and voluntary’ inquiry, by contrast, is to determine whether the defendant

<sup>3</sup> See *id.* at 807 (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.”).

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 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 (1975); *Pate v. Robinson*, 383 U.S. 375, 385 (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 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>

<sup>4</sup> 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

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 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 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 (2008).

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.
  - 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 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, 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 (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.

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. *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. At no point did the trial court ask the defendant if he was literate. *Id.* at 808 nn. 2 & 3. 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. 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.

## 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

<sup>5</sup> The factors set out in *Fant* were as follows:

*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.

(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).

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.

IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT OF FLORIDA

**SYLVESTER HOOKS,**

Appellant,

v.

CASE NO. **1D16-368**  
**1D16-369**  
**1D16-370**

**STATE OF FLORIDA,**

Appellee.

\_\_\_\_\_/

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

APPELLANT, **SYLVESTER HOOKS**, through the undersigned attorney, pursuant to Rule 9.330, Florida Rules of Appellate Procedure, moves this Court for rehearing of its affirmed decision in this Court's opinion issued December 6, 2017. As grounds for this motion, Appellant states:

1. After a trial by jury, Appellant was convicted of: Count I, possession of PVP with intent to sell within 1,000 feet of a community center, and Count II, possession of cannabis with intent to sell within 1,000 feet of a community center. He was also found in violation of his probation in his two other cases, based on the new law violations. Appellant was sentenced to ten years in prison on each count in each case, concurrent.

2. Appellant filed an Initial Brief, raising two issues, (1) The trial court erred by allowing Appellant to represent himself without making a proper inquiry pursuant to Faretta v.

California, 422 U.S. 806 (1975); and (2) The trial court erred by denying Appellant's Motion to Suppress Evidence. This Court affirmed Appellant's convictions and sentences, addressing only the Faretta inquiry issue, and certified 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?

Appellant seeks rehearing of the affirmance of his conviction, based on the argument raised in Issue I of his Initial Brief.

3. In reaching the affirmed decision on the Faretta inquiry issue this Court appears to have overlooked or misapprehended several facts and points of law.

First, this Court seems to have misapprehended that while a Faretta "inquiry" does not involve the use of specific wording or "magic words"<sup>1</sup> it does require an inquiry into certain areas or topics, in order to determine that the waiver of counsel is fully comprehended, and is knowing and intelligent.

Florida Rule of Criminal Procedure 3.111(d) (2) states:

A defendant shall not be considered 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 a knowing and intelligent waiver*. Before determining whether the waiver is knowing and intelligent, the court shall advise the defendant of

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<sup>1</sup> Potts v. State, 718 So.2d 757, 760 (Fla. 1998).

the disadvantages and dangers of self-representation. (Emphasis added). It is this "thorough inquiry" that allows the court to determine "the accused's comprehension of that offer and the accused's capacity to make a knowing and intelligent waiver." Without questions posed to a defendant, regardless of their specific wording, about a defendant's age, ability to read, ability to write, education, influence of drugs or alcohol, mental illness, physical problems, whether he had ever represented himself in a trial before, and the dangers of self-representation, the court cannot determine if the defendant truly comprehends the waiver of counsel and is making a knowing and intelligent waiver.

As this Court noted in its opinion, the Florida Supreme Court did state 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." State v. Bowen, 698 So.2d 248 (Fla. 1997). What this Court has misconstrued is that there must be some inquiry into a defendant's age, ability to read, ability to write, education, influence of drugs or alcohol, mental illness, physical problems, whether he had ever represented himself in a trial before, and the dangers of self-representation, before a court can determine if the defendant comprehends his waiver. It

appears that this Court has misapprehended that while there are no "magic words,"<sup>2</sup> there are areas of inquiry necessary to discern a defendant's comprehension.

In fact, in promulgating the amendment to Rule 3.111, made in response to the Florida Supreme Court's ruling in Bowen, 698 So.2d 248, the Court stated:

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 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.... 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.

Amendment to Fla. Rules of Crim. Pro. 3.111(d)(2)-(3), 719 So.2d 873 (1998). The Florida Supreme Court therefore approved a standard Faretta colloquy to be used by trial courts when self-representation is requested. The colloquy includes detailed questions to determine a defendant's understanding of the advantages of having legal representation, the dangers of self-

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<sup>2</sup> Potts v. State, 718 So.2d 757, 760 (Fla. 1998).

representation, and the charges and penalties. The model colloquy includes questions regarding a defendant's age, ability to read, write, and understand English, his or her education, influence of drugs or alcohol, history of mental illness, physical problems that could affect self-representation, coercion or threats received, and prior self-representation. While "a trial judge is not required to follow the colloquy word for word" the rule requires a thorough inquiry to ascertain the defendant's comprehension. Aguirre-Jarquin v. State, 9 So.3d 593, 602 (Fla. 2009). So while this Court has focused on the change in the Rule after Bowen, this Court has overlooked that when the Rule was amended, the model colloquy was added.

Further in Hooker v. State, 152 So.3d 79 (Fla. 4<sup>th</sup> DCA 2014), the Court stated that

[t]he purpose of a Faretta hearing is "to determine whether the defendant is knowingly and intelligently waiving his right to court-appointed counsel." "Whether this standard is met in a given case is a *fact-specific determination which must take into account all of the surrounding circumstances, including the background, experience and conduct of the accused.*"

(Citations omitted) (emphasis added). It is the thorough inquiry - the questions posed by the trial court and responses by the defendant - that provide the facts necessary to determine if a defendant understands and is knowingly and intelligently waiving his right to counsel.

In order to ascertain if a defendant is making the waiver

"with eyes open"<sup>3</sup> there must be a thorough inquiry (as the rule requires). Presenting a defendant with a form, asking him if he read it, telling him that "lawyers have knowledge about rules and evidence," with no further inquiry, as occurred in this case, does not constitute a "thorough inquiry" and could not have allowed the trial court to determine if Appellant fully comprehended the waiver of counsel and that his waiver was knowing and intelligent.

Further, the form provided to Appellant in this case, which included some of the areas of inquiry suggested on the model Faretta colloquy (dangers of self-representation), failed to include the section of the model colloquy regarding personal information - age, education, mental health, etc. While the trial court's Faretta form was likely promulgated in the interest of judicial economy (As the trial court stated: "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.") there is no substitute for a verbal inquiry with a defendant, wherein the court can inquire about a defendant, personally, and determine his level of comprehension. Without such an inquiry, the trial court could not adequately make such a determination in this case.

In its opinion, this Court stated "A specific inquiry into

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<sup>3</sup> Faretta v. California, 422 U.S. 806, 835 (1975).

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'." This Court must have overlooked that the entire Faretta "inquiry" in this case involved the trial court asking Appellant if he read the form, the court telling Appellant that a lawyer has knowledge and experience about procedures and rules, and the court asking Appellant if he "thought about it" and decided to represent himself. The trial court never ascertained if Appellant understood the form or any of the dangers of self-representation or his waiver. When asked if he read the form, Appellant replied "Yes, sir," but the court did not inquire as to whether he understood it, or if he understood any other aspect of self-representation. The court did not inquire about Appellant's age, ability to read, write, and understand English, his education, influence of drugs or alcohol, history of mental illness, physical problems that could affect self-representation, coercion or threats received, or prior self-representation - the areas of inquiry in the model colloquy. Once again, this Court has focused on the "eyes open" and "no magic words" language in caselaw and overlooked that the rule requires a "thorough inquiry" and a determination of the defendant's comprehension. Without inquiry into the areas this Court deems unnecessary (as

stated above) there can be no determination of comprehension - no way to conclude that a defendant's eyes are wide open.

It is this misapprehension that has perhaps resulted in this Court's conclusion that the language in Aguirre-Jarquin v. State, 9 So.3d 593, 602 (Fla. 2009) ("[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 rule of criminal procedure") is dicta. That language is an explanation of the rule - the requirement that there is a thorough inquiry to determine comprehension of the waiver. If a defendant does not have a complete understanding of what he is facing without counsel, he cannot make a knowing and intelligent waiver of counsel. In Aguirre-Jarquin, the issue was the particular language used by the trial court regarding the portion of the colloquy regarding access to the prosecutor and negotiation of a plea deal. The Court directed its language in the opinion to that particular issue. The Court also referred to the use of the model colloquy.

This Court has also overlooked that

[i]n limited circumstances, a trial judge may determine that a defendant is competent to waive counsel even where the inquiry is insufficient. But in that event, "Faretta and [Rule 3.111(d)(2)-(3)] require that the trial court make a [determination of record sufficient to indicate] 'how the defendant's background, including his age, mental status, and education, affects his competency to waive his right to counsel.'"

Silva v. State, 190 So.3d 151 (Fla. 3<sup>rd</sup> DCA 2016) (quoting McGee

v. State, 983 So.2d 1212, 1215 (Fla. 5th DCA 2008) (citing Flowers v. State, 976 So.2d 665, 666 (Fla. 1st DCA 2008)). Here, where the inquiry was insufficient, the trial court did not make the required determination on the record as to how the defendant's age, mental status, and education affected his competency to waive his right to counsel. So, while a court can conduct an inadequate Faretta inquiry and still find a defendant competent to waive counsel (in limited circumstances) the court must still make the findings that an adequate Faretta inquiry would yield - that a defendant's age, mental status, and education indicated a knowing and intelligent waiver. In the case at bar, there was no determination of those areas in regard to Appellant.

It appears that this Court has also overlooked that its decision in the case at bar conflicts with the decision of the Florida Supreme Court in Aguirre-Jarquín v. State, 9 So.3d 593, 602 (Fla. 2009), as well as this Court's own decisions in Stanley v. State, 192 So.3d 1291, 1291-92 (Fla. 1<sup>st</sup> DCA 2016) ("In determining whether the waiver is knowing and intelligent, the trial court must consider 'the defendant's mental condition, age, education, and any other factor bearing on his capacity to choose self-representation.' (citation omitted)), and Flowers v. State, 976 So.2d 665 (Fla. 1<sup>st</sup> DCA 2008)) (where the court did not conduct an adequate Faretta inquiry; "[a]lthough the trial court did advise the defendant of the disadvantages and dangers of

self-representation, the trial court did not advise the defendant of the advantages of representation by counsel nor did it inquire into the defendant's age, education, ability to read and write, or any mental or physical conditions."); and the decisions of other the other District Courts: Snell v. State, 210 So.3d 115 (Fla. 2d DCA 2016) ("Because a Faretta inquiry is directed at determining whether the defendant's waiver of his right to counsel is knowing and voluntary, it must include 'inquiry into the defendant's age, education, mental condition, experience with and knowledge of criminal proceedings, and understanding of the disadvantages and dangers of self-representation.'" (citation omitted)); Silva v. State, 190 So.3d 151 (Fla. 3<sup>rd</sup> DCA 2016) ("Faretta and [Rule 3.111(d)(2)-(3)] require that the trial court make a [determination of record sufficient to indicate] 'how the defendant's background, including his age, mental status, and education, affects his competency to waive his right to counsel.'" (citations omitted)); Hooker v. State, 152 So.3d 79 (Fla. 4<sup>th</sup> DCA 2014) ("In conducting such a hearing, 'the trial court is obligated to inquire about the defendant's age, education, and legal experience'" (citation omitted)); Davis v. State, 910 So.3d 176 (Fla. 5<sup>th</sup> DCA 2009) ("A Faretta inquiry is inadequate when the trial court does not advise the defendant of the dangers and disadvantages of self-representation, the advantages of representation by counsel, or inquire into the

defendant's age, education, ability to read and write, or any mental or physical conditions.") Should this Court deny rehearing in this case and affirm, Appellant requests that this Court certify conflict.

4. Based on the argument set out above, Appellant moves this Court to rehear him on Issue I presented in his Initial Brief, and to reconsider the Affirmed decision that was issued in this case.

WHEREFORE, Appellant respectfully requests that this court rehear this matter.

I express a belief, based on a reasoned and studied professional judgment, that the panel decision is contrary to the following decisions of this court: Stanley v. State, 192 So.3d 1291, 1291-92 (Fla. 1<sup>st</sup> DCA 2016) and Flowers v. State, 976 So.2d 665 (Fla. 1<sup>st</sup> DCA 2008), and that a consideration by the full court is necessary to maintain uniformity of decisions in this court.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail to Jason Rodriguez, Assistant Attorney General, at [crimapptlh@myfloridalegal.com](mailto:crimapptlh@myfloridalegal.com), and by US Mail to Sylvester Hooks, DOC # 558276, Century Work Camp, 400 Tedder Road, Century, Florida, on this 21<sup>st</sup> day of December, 2017.

Respectfully submitted,

ANDY THOMAS  
PUBLIC DEFENDER  
SECOND JUDICIAL CIRCUIT

/s/ Danielle Jorden

**DANIELLE JORDEN**

Assistant Public Defender  
FLA. BAR NO. **0946834**  
Leon County Courthouse  
301 South Monroe Street, Suite 401  
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(850) 606-8500

COUNSEL FOR APPELLANT

FIRST DISTRICT COURT OF APPEAL  
STATE OF FLORIDA

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Nos. 1D16-368  
1D16-369  
1D16-370  
(Consolidated for disposition)

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SYLVESTER HOOKS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

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On appeal from the Circuit Court for Leon County.  
Terry P. Lewis, Judge.

February 28, 2018

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

PER CURIAM.

DENIED.

ROWE and OSTERHAUS, JJ., concur; WINOKUR, J., concurs with  
opinion.

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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 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.

\* 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.

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.

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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.

# MANDATE

from

## FIRST DISTRICT COURT OF APPEAL

### STATE OF FLORIDA

This case having been brought to the Court, and after due consideration the Court having issued its opinion;

YOU ARE HEREBY COMMANDED that further proceedings, if required, be had in accordance with the opinion of this Court, and with the rules of procedure, and laws of the State of Florida.

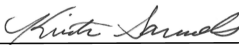
WITNESS the Honorable Bradford L. Thomas, Chief Judge, of the District Court of Appeal of Florida, First District, and the seal of said Court at Tallahassee, Florida, on this day.

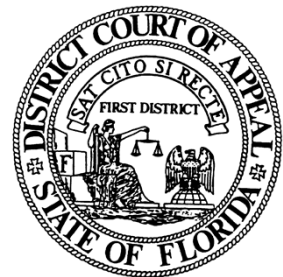
March 21, 2018

Sylvester Hooks v.  
State of Florida

DCA Case No.: 1D16-0369

Lower Tribunal Case No.: 37-2015-CF-913

  
KRISTINA SAMUELS, CLERK  
District Court of Appeal of Florida, First District



ms

Mandate and opinion to: Hon. Gwen Marshall, Clerk

cc: (without attached opinion)

Hon. Pamela Jo Bondi,  
AG

Hon. Andy Thomas, PD  
Jennifer J. Moore, AAG

Steven L. Seliger, APD  
Kasey Helms Lacey

Danielle Jorden, APD

Jason W. Rodriguez, AAG

IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT OF FLORIDA

**SYLVESTER HOOKS,**

Appellant,

v.

CASE NOS. 1D16-0368  
1D16-0369  
1D16-0370

STATE OF FLORIDA,

Appellee.

\_\_\_\_\_ /

**NOTICE TO INVOKE DISCRETIONARY JURISDICTION**

NOTICE IS GIVEN that **SYLVESTER HOOKS**, Appellant, invokes the discretionary jurisdiction of the Florida Supreme Court to review the decision of this Court rendered on March 21, 2018. The decision rendered by this Court passes on a question certified to be of great public importance.

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a copy of the foregoing has been furnished by electronic transmission to Trisha Meggs Pate, Assistant Attorney General, at: [crimapptlh@myfloridalegal.com](mailto:crimapptlh@myfloridalegal.com), on this date, April 16, 2018.

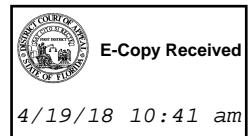
Respectfully submitted,

ANDY THOMAS  
PUBLIC DEFENDER  
SECOND JUDICIAL CIRCUIT

/s/ Danielle Jorden

**DANIELLE JORDEN**

Assistant Public Defender  
Florida Bar No. **0946834**  
ATTORNEY FOR APPELLANT/PETITIONER  
Leon County Courthouse  
301 South Monroe Street, Suite 401  
Tallahassee, Florida 32301  
(850) 606-8544



# Supreme Court of Florida

THURSDAY, APRIL 19, 2018

**CASE NO.: SC18-594**

Lower Tribunal No(s).:

1D16-368; 372012CF002477AXXXXX; 1D16-369; 372015CF000913AXXXXX;  
1D16-370; 372012CF002547AXXXXX

SYLVESTER HOOKS

vs. STATE OF FLORIDA

---

Petitioner(s)

Respondent(s)

It appearing to the Court that the notice was not timely filed, it is ordered that the cause is hereby dismissed on the Court's own motion, subject to reinstatement if timeliness is established on proper motion filed within fifteen days from the date of this order. See Fla. R. App. P. 9.120.

A True Copy

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A handwritten signature in black ink, appearing to read "John A. Tomasino", written over a horizontal line.

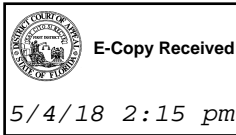
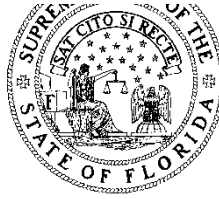
John A. Tomasino  
Clerk, Supreme Court



td

Served:

TRISHA MEGGS PATE  
DANIELLE JORDEN  
HON. KRISTINA SAMUELS, CLERK  
HON. GWEN MARSHALL, CLERK  
HON. TERRY POWELL LEWIS, JUDGE



# Supreme Court of Florida

Office of the Clerk  
500 South Duval Street  
Tallahassee, Florida 32399-1927

JOHN A. TOMASINO  
CLERK  
MARK CLAYTON  
CHIEF DEPUTY CLERK  
JULIA BREEDING  
STAFF ATTORNEY

PHONE NUMBER: (850) 488-0125  
[www.floridasupremecourt.org](http://www.floridasupremecourt.org)

## ACKNOWLEDGMENT OF NEW CASE

May 4, 2018

RE: SYLVESTER HOOKS vs. STATE OF FLORIDA

CASE NUMBER: SC18-670

Lower Tribunal Case Number(s): 1D16-368; 1D16-369; 1D16-370;  
372012CF002477AXXXXX; 372012CF002547AXXXXX;  
372015CF000913AXXXXX

The Florida Supreme Court has received the following documents reflecting a filing date of 5/2/2018.

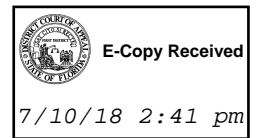
Petition for Belated Discretionary Review with Appendix

The Florida Supreme Court's case number must be utilized on all pleadings and correspondence filed in this cause.

tr

cc:

TRISHA MEGGS PATE  
DANIELLE JORDEN  
HON. KRISTINA SAMUELS, CLERK



# Supreme Court of Florida

TUESDAY, JULY 10, 2018

**CASE NO.: SC18-670**

Lower Tribunal No(s).:

1D16-368;

1D16-369; 1D16-370;

372012CF002477AXXXXX;

372012CF002547AXXXXX;

372015CF000913AXXXXX

SYLVESTER HOOKS

vs. STATE OF FLORIDA

---

Petitioner(s)

Respondent(s)

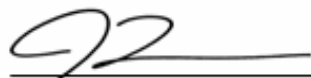
The original petition seeking belated discretionary review is hereby granted and a new case styled *Hooks v. State*, Case No. SC18-1106, has been set up as a notice to invoke discretionary jurisdiction seeking review of the First District Court of Appeal's decision in *Hooks v. State*, 236 So. 3d 1122 (Fla. 1st DCA 2017). Case No. SC18-670 is closed.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

CANADY, C.J., and PARIENTE, LEWIS, QUINCE, and LAWSON, JJ., concur.

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John A. Tomasino  
Clerk, Supreme Court



**CASE NO.:** SC18-670

Page Two

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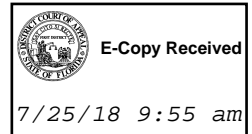
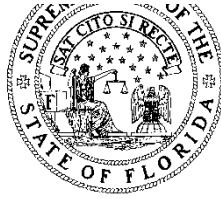
Served:

TRISHA MEGGS PATE

DANIELLE JORDEN

HON. KRISTINA SAMUELS, CLERK

HON. GWEN MARSHALL, CLERK



# Supreme Court of Florida

Office of the Clerk  
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JOHN A. TOMASINO  
CLERK  
MARK CLAYTON  
CHIEF DEPUTY CLERK  
JULIA BREEDING  
STAFF ATTORNEY

PHONE NUMBER: (850) 488-0125  
[www.floridasupremecourt.org](http://www.floridasupremecourt.org)

## ACKNOWLEDGMENT OF NEW CASE

July 25, 2018

RE: SYLVESTER HOOKS vs. STATE OF FLORIDA

CASE NUMBER: SC18-1106

Lower Tribunal Case Number(s): 1D16-368; 1D16-369; 1D16-370;  
372012CF002477AXXXXX; 372012CF002547AXXXXX;  
372015CF000913AXXXXX

The Florida Supreme Court has received the following documents reflecting a filing date of 7/10/2018.

Notice to Invoke Discretionary Jurisdiction seeking review of opinion dated December 6, 2017, in which rehearing was denied February 28, 2018.

The Florida Supreme Court's case number must be utilized on all pleadings and correspondence filed in this cause.

tr

cc:

TRISHA MEGGS PATE

DANIELLE JORDEN

HON. KRISTINA SAMUELS, CLERK

# Supreme Court of Florida

TUESDAY, SEPTEMBER 4, 2018

**CASE NO.: SC18-1106**

Lower Tribunal No(s):

1D16-368; 1D16-369; 1D16-370;

372012CF002477AXXXXX;

372012CF002547AXXXXX; 372015CF000913AXXXXX

SYLVESTER HOOKS

vs. STATE OF FLORIDA

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Petitioner(s)

Respondent(s)

The Court accepts jurisdiction of this case.

Petitioner's initial brief on the merits must be served on or before September 24, 2018; respondent's answer brief on the merits must be served twenty days after service of petitioner's initial brief on the merits; and petitioner's reply brief on the merits must be served twenty days after service of respondent's answer brief on the merits.

The Clerk of the First District Court of Appeal must file the record which must be properly indexed and paginated on or before November 5, 2018. The Clerk may provide the record in the format as currently maintained at the district

CASE NO.: SC18-1106

Page Two

court, either paper or electronic.

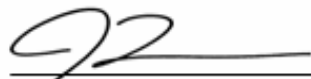
CANADY, C.J., and PARIENTE, POLSTON, LABARGA, and LAWSON, JJ.,  
concur.

LEWIS and QUINCE, JJ., dissent.

Oral argument will be set by separate order. Counsel for the parties will be  
notified of the oral argument date approximately sixty days prior to oral argument.

A True Copy

Test:

  
\_\_\_\_\_  
John A. Tomasino  
Clerk, Supreme Court



kj

Served:

TRISHA MEGGS PATE  
DANIELLE JORDEN  
HON. KRISTINA SAMUELS, CLERK

## CERTIFICATE OF SERVICE

STATE OF FLORIDA

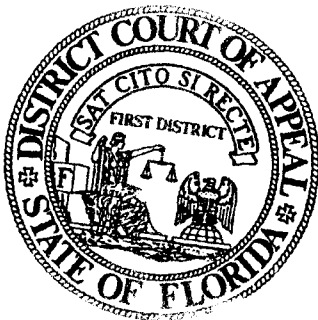
COUNTY OF LEON

I, Kristina Samuels, Clerk of the District Court of Appeal, First District, State of Florida, do hereby certify that the foregoing pages contain a correct transcript of the record of the judgment in the case of **SC18-1106/1D16-0369 SYLVESTER HOOKS v. STATE OF FLORIDA** and a true and correct recital and copy of all such papers and proceedings in said cause as appears from the records and files in my office.

One volume of record and two supplemental records are e-filed separately and are certified to me by the Clerk of the Circuit Court for Leon County, Florida.

In Witness Whereof, I have unto set my hand and affixed the Seal of said Court this 31ST day of OCTOBER 2018.

KRISTINA SAMUELS, CLERK



By: Tancia Ishijit  
DEPUTY CLERK