

No. _____

ORIGINAL

24-7358

FILED

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

HARRY LEE GOLOSBORO II — PETITIONER
(Your Name)

VS.

STATE OF FLORIDA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE FLORIDA SUPREME COURT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

HARRY LEE GOLOSBORO II #4838407
(Your Name)

BREVARD COUNTY JAIL ATTN: LEGAL MAIL
(Address)

860 CAMP ROAD COCOA, FL 32927
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. Did the 5th DCA depart from the essential requirements of law, pursuant to Fla. R. App. P. 9.030(b)(3) and 9.100, and Article V, section 4(b)(3) of the Florida Constitution, when it declined to invoke its jurisdiction to review the petitioner's writ of prohibition in violation of his due process rights under the 5th and 14th Amendments of the U.S. Constitution?
2. Did the 5th DCA depart from the essential requirements of law by denying certiorari review of the trial court's judgment by permitting the court to prosecute and convict the petitioner in excess of its jurisdiction, which resulted in a miscarriage of justice in violation of the petitioner's 5th and 14th Amendment rights to due process.
3. Did the 5th DCA depart from the essential requirements of law by denying certiorari review and declining to address statutory and constitutional speedy trial violations that present issues of great public importance, and are highly likely to recur, which resulted in a miscarriage of justice and violated the petitioner's rights to due process, and of a fair, impartial, and speedy trial under the 5th, 6th, and 14th Amendments.
4. Did the 5th DCA depart from the essential requirements of law by denying ~~certiorari~~ certiorari review of the trial court's numerous independent and cumulative errors that were fundamental, plain, harmful, and reversible, including but not limited to: denying standby counsel's presence at trial; granting the State's Motion in Limine - Rape Shield; overruling the Defendant's objection to prejudicial expert testimony and surveillance video; allowing the State's discovery violations without holding the required Richardson ^{hearing}; and by denying the Petitioner's Judgment of Acquittal, without ruling on the merits of the Petitioner's claims, which resulted in a miscarriage of justice in violation of his right to due process, and a fair and impartial trial, and right to confrontation protected under the 5th, 6th, and 14th Amendments.
5. Did the 5th DCA depart from the essential requirements of law by denying certiorari review and declining to review the trial court's errors, without considering the merits of the petition by dismissing the writ of prohibition before the record was received, and without providing a written opinion?
6. Did the 5th DCA depart from the essential requirements of law by denying certiorari review and failing to grant the petitioner's writ of prohibition to prevent the lower tribunal from acting in excess of its jurisdiction if a new trial is granted, in violation of the petitioner's 5th, 6th, and 14th Amendments of due process and a fair and impartial trial.
7. Did the 5th DCA depart from the essential requirements of law by denying certiorari review of the trial court's procedural errors, which led to fundamental errors that undermined the petitioner's 5th, 6th, and 14th Amendment rights to due process and a fair and impartial trial, which resulted in a manifest injustice?
8. Did the trial court commit a reversible error and depart from the essential requirements of law by failing to advise the petitioner of his right to self-representation and failure to hold the required Faretta Inquiry during a critical stage of the trial proceedings, in violation of his 5th, 6th, and 14th Amendment rights to due process, right to self-representation, and a fair and impartial trial, which led to a miscarriage of justice?
9. Did the trial court err and depart from the essential requirements of law by failing to bring the petitioner to trial during the 30-day recapture period, and failing to grant the petitioner's Motion For Discharge after the recapture period expired, in violation of the petitioner's 5th and 14th Amendment rights to due process, resulting in a miscarriage of justice?
10. Did the trial court err and depart from the essential requirements of law by granting the State's Motion in Limine - Rape Shield and Various Subject Matters, in violation of his 5th, 6th, and 14th Amendment rights to due process and confrontation, resulting in a miscarriage of justice and requiring reversal?
11. Did the trial court err and depart from the essential requirements of law by failing to hold the required Richardson Hearing after the State disclosed additional discovery before and during trial, which violated the petitioner's 5th, 6th, and 14th Amendment rights to due process and confrontation, and the right to a fair and impartial trial, resulting in a miscarriage of justice and requiring reversal?
12. Did the trial court err and depart from the essential requirements of law by committing independent and cumulative errors that were fundamental, plain, harmful, or reversible, including but not limited to: denying standby counsel upon defendant's request; and refusing to reinstate counsel upon defendant's request; denying standby counsel's presence at trial; granting the State's Motions in Limine; overruling the Petitioner's objections to admitting prejudicial expert testimony and surveillance video; allowing the State to admit evidence not disclosed in discovery without holding the required Richardson Hearing; and by denying the Petitioner's Judgment of Acquittal, which resulted in a manifest error and a miscarriage of justice in violation of his 5th, 6th, and 14th Amendment rights to due process and a fair and impartial trial?

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[✓] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

1. 18th Judicial Circuit - Lower Tribunal, and State Attorney's Office For Brevard County, FL
- ~~2. 5th DCA - District Court of Appeals, and the State of Florida at the Office of the Attorney General~~
3. Florida Supreme Court - highest state court, and State Attorney's Office
4. United States Supreme Court, and United States Attorney General

RELATED CASES

1. 18th Judicial Circuit in and For Brevard County, Florida Lower Tribunal Motion to Dismiss and Motion For Discharge Case No. 052019CF021200AXXX ... August 16th, 2024
2. 5th District Court of Appeals District Court of Appeals Writ of Prohibition Case No. 5D2024-2579 ... September 6th, 2024
3. Notice of Appeal to 5th DCA Case No. 052019CF021200AXXX ... September 6th, 2024
4. 5th DCA Motion Filed and Response to Order to Show Cause Accepted ... October 4th, 2024
5. 5th DCA Order to File Appendix ... October 28th, 2024
6. 5th DCA - Petitioner's Request for Extension to File Appendix ... November 1st, 2024
7. 5th DCA - Order to Show Cause from 5th DCA ... December 9th, 2024
8. 5th DCA - Response to Order to Show Cause - Petitioner's Response ... December 13th, 2024
9. Notice of Appeal to Florida Supreme Court ... January 8th, 2024
10. Florida Supreme Court - Order Dismissing Petitioner's Motion Case No. 5D2024-2579 ... January 24th, 2025
FL SC No. SC2025-0107

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished. (JANUARY 3RD, 2025 FROM THE 5TH DCA)

The opinion of the FLORIDA SUPREME COURT court appears at Appendix A to the petition and is

- ☒ reported at GOLDENBERG V. STATE SC2025-0107 PLA. JAN 24TH 2025; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was 01/24/2025.
A copy of that decision appears at Appendix A.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. 6TH AMENDMENT OF THE U.S. CONSTITUTION

- A. The Trial Court and the State deprived the Petitioner of his Constitutional and statutory rights to a speedy trial
- B. The Trial Court and the State deprived the Petitioner of his right to a fair and impartial trial.
- C. The Trial Court and the State deprived the Petitioner of his right to Confrontation.
- D. The Trial Court and the State deprived the Petitioner of his right to the compulsory process to obtain witnesses in his defense,
- E. The Trial Court deprived the Petitioner of his right to effective counsel by restricting standby counsel's involvement, and refusing to reinstate counsel after defendant requested reinstatement during trial.

2. 5TH AND 14TH AMENDMENTS OF THE U.S. CONSTITUTION FOR DUE PROCESS OF LAW

- A. The State's unreasonable 44-month delay deprived the Petitioner of his ability to preserve exculpatory evidence.
- B. The State's unreasonable 44-month delay was presumptively prejudicial and caused actual prejudice to Petitioner's defense.
- C. The State's unreasonable 44-month delay prevented the Petitioner from timely asserting his right to a speedy trial.
- D. The State's unreasonable 44-month delay violated the Petitioner's Constitutional and speedy trial rights.
- E. The Trial Court and the State acted in excess of its jurisdiction.
- F. The Trial Court and State deprived the Petitioner of his right to demand a speedy trial by failing to bring him to trial within 60 days.
- G. The Trial Court deprived the Petitioner of his right to self-representation by denying his request for a Faretta Inquiry at a critical stage of the trial proceedings.
- H. The State deprived the Petitioner of his right to prepare a defense by failing to disclose discovery after multiple demands.
- I. The State committed Brady violations by failing to disclose victim cell phone data and a police interview that contained exculpatory evidence and impeachment evidence.
- J. The Trial Court and State's admission of prejudicial evidence and exclusion of exculpatory evidence violated the Petitioner's due process rights.
- K. The Trial Court's failure to hold the required Richardson Hearing violated the Petitioner's right to due process.
- L. The Trial Court's denial of the Petitioner's Judgment of Acquittal violated the Petitioner's right to due process.
- M. The 5th DCA's dismissal of the Petitioner's Writ of Prohibition before receiving the record and not ruling on the merits, violated the Petitioner's right to due process.
- N. The 5th DCA's failure to invoke its discretionary certiorari review and prohibit the lower tribunal from acting in excess of its jurisdiction, violated the Petitioner's due process rights.
- O. The trial court deprived the Petitioner of his due process rights by excluding standby counsel and refusing to reinstate counsel after the defendant requested reinstatement.

3. FLA. R. CRIM. P. 3.191

- A. The State's unreasonable 44-month delay violated the Petitioner's statutory right to a speedy trial.
- B. The Trial Court's granting of the State's continuance prior to trial in April 2023, violated FLA. R. CRIM. P. 3.191(1)(1-5)
- C. The Trial Court and State's failure to bring the Petitioner to trial during the 30-day recapture period violated the Petitioner's right to speedy trial.

4. FLA. R. CRIM. P. :

- A. 3.220 Discovery
- B. 3.361 Witness Attendance and Subpoenas
- C. 3.580 Court May Grant New Trial
- D. 3.590 Time For and Method of Making Motions
- E. 3.600 Grounds For New Trial (3.600(a)(2) and (3) and (b)(6) and (8)
- F. 3.610(b) Motion For Arrest of Judgment

5. FLA. R. APP. P. :

- A. 9.030(b)(3) Jurisdiction of Courts
- B. 9.100 Original Proceedings.

6. ARTICLE V SECTION 4(b)(3) FLA CONST.

STATEMENT OF THE CASE

1. A sexual battery was reported on 1/29/2018, and a DNA sample connected the defendant to the victim.
2. The Petitioner was arrested on 11/5/2018 for a violation of probation and was transported to Orange County Jail and has been in continuous custody since November 2018.
3. On 3/22/2019, the State filed an Information and issued a capias in the instant case, and placed a detainer on the Petitioner. The State then took no further action for 44 months.
4. The Petitioner filed a Notice of Inquiry on 9/23/2022, and the State transported the Petitioner to Brevard County on 10/12/2022 to be arrested. The Petitioner filed a Notice of Expiration of Speedy Trial Time on 11/07/2022. The capias was served 1,725 days after the allegation, 1,620 days after the DNA match, and 1,310 days after the Information was filed. The Petitioner filed a Motion to Dismiss based on a speedy trial violation that was withdrawn after the State admitted that the statute of limitations had expired. However, due to misconduct by the judge, the motion was withdrawn and not resubmitted.
5. On 1/25/2023, the Petitioner filed a Motion to Dismiss based on constitutional speedy trial violation and due process violation.
6. The Trial Court denied the motion on 3/30/2023, and trial was scheduled for 4/17/2023, but the State admitted it was not ready for trial, and the court granted the State a continuance over the defense's objection, and not permitted under 3141(1).
7. The Petitioner filed a writ of prohibition on 4/15/2023, and the 5th DCA issued a stay that inexplicably lasted 15 months. On 6/12/2024, the 5th DCA denied the writ after the Petitioner filed an Amended writ of prohibition.
8. The Petitioner filed a second Notice of Expiration of Speedy Trial Time and trial was set for 7/22/2024. The Petitioner's counsel misadvised the Petitioner regarding his right to appeal the 5th DCA's denial, and on 8/7/2024, the Petitioner filed a Belated Appeal and Motion For Rehearing.
9. On 7/22/2024, the Petitioner's counsel was unexpectedly ill and substitute counsel waived the Petitioner's right to speedy trial. The Petitioner immediately objected and before concluding the hearing, the Petitioner requested a Faretti Inquiry, twice. The court denied the oral motion and instructed the Petitioner to submit it in writing, but failed to hold the required hearing, inform the Petitioner of his right to self-representation, grant a continuance for extraordinary circumstances without waiving speedy trial, or ordering substitute counsel to submit his request for a continuance in writing. The responsive period expired on 7/24/2024.
10. On 8/21/2024, the 5th DCA dismissed the Belated Appeal. This cause was appealed to the Florida Supreme Court (Case No. SD2023-1321).
11. On 8/16/2024, the Petitioner's Motion to Dismiss and Motion For Discharge (filed on 8/4/2024) were denied by the trial court, and he filed an appeal to the 5th DCA on 9/6/2024. The 5th DCA acknowledged a new case (SD2024-2579) on 10/04/2024, but did not issue a stay.
12. On 10/28/2024, the 5th DCA ordered the Petitioner to file an Appendix, and on November 1st, 2024 the Petitioner requested an extension. On 11/01/2024, the Petitioner filed a Records Request to the 13th Judicial Circuit Clerk of Courts.
13. On 12/09/2024, the 5th DCA ordered the Petitioner to show cause as to why the appeal should not be dismissed since the Petitioner was convicted after jury trial. On 12/13/2024, the Petitioner responded. On 1/03/2025, the 5th DCA denied the appeal without receiving the record, ruling on the merits, or issuing a written opinion. On 12/12/2024, the Petitioner requested the record from 5th DCA.
14. On 1/08/2025, the Petitioner filed a Notice of Appeal to the Florida Supreme Court. On 1/24/2025, the Florida Supreme Court denied the appeal.

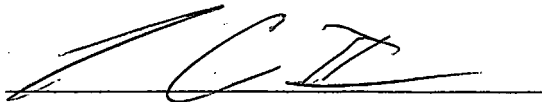
REASONS FOR GRANTING THE PETITION

1. The 5th DCA departed from the essential requirements of law by declining to invoke its certiorari jurisdiction, and allowing the lower tribunal to prosecute the Petitioner in the absence of its jurisdiction resulting in a manifest injustice and irreparable injury occurred.
2. The 5th DCA and lower tribunal committed Fundamental error by denying the Petitioner's Motion to Dismiss and Motion For Discharge, and writ of prohibition, when the Petitioner's constitutional and statutory speedy trial rights were violated, resulting in a miscarriage of justice.
3. The 5th DCA and lower tribunal committed Fundamental, plain, harmful, and reversible error by denying standby counsel's presence at trial, granting the State's Motions in Limine and admitting prejudicial evidence, failing to hold the required Richardson hearing, and by denying the Petitioner's Judgment of Acquittal, and the 5th DCA's Failure to rule based on the merits denied the Petitioner of his right to due process, resulting in a miscarriage of justice.
4. The 5th DCA and lower tribunal committed Fundamental, plain, harmful, and reversible error by excluding exculpatory evidence which violated the Petitioner's right to confrontation and a fair and impartial trial, which violated his rights to due process, resulting in a miscarriage of justice.
5. The U.S. Supreme Court's discretionary review is required to establish specific, clear, and unambiguous guidelines for the starting of the speedy trial clock regarding incarcerated inmates in the state of Florida to eliminate confusion as to the State's responsibility to timely serve the capias, warrant, and notice of charges during the 175-day speedy trial window, and to also prescribe the permissible sanctions for violating a defendant's rights.
6. The U.S. Supreme Court's discretionary review is required to establish specific, clear, and unambiguous guidelines to the trial courts in the 18th Judicial Circuit, the State Attorney's and Public Defender's Office, and the 5th DCA regarding when the speedy trial clock begins for an incarcerated inmate in the State's custody to prevent future injury to hundreds of incarcerated inmates throughout Florida.
7. The U.S. Supreme Court's discretionary review is required to establish specific, clear, and unambiguous guidelines to the trial courts in the 18th Judicial Circuit regarding standby counsel's functions, responsibilities and limitations on participation in trial proceedings, while protecting a defendant's rights to self-representation. This issue affects dozens of inmates who seek self-representation in fair and impartial trial proceedings.
8. An affirmative ruling granting the Petitioner's writ of certiorari would have significant impacts on the 18th Judicial Circuit, district courts of appeals, and the Florida Supreme Court and establish binding precedent on the courts in Florida, which would protect the statutory and constitutional rights of hundreds of incarcerated inmates who were denied the statutory or constitutional rights to speedy trial when the court acted in excess of its jurisdiction.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in dark ink, appearing to be "JCT", is written over a horizontal line.

Date: 22 MAY 2025

HARRY LEE GOLDSBORO II,
DEFENDANT/APPELLANT
v.
STATE OF FLORIDA,
APPELLEE

IN THE CIRCUIT COURT FOR THE EIGHTEENTH
JUDICIAL CIRCUIT IN AND FOR BREVARD COUNTY, FLORIDA

CASE NO.:
2019-CF-021200A XXXX
DATE:
09 DECEMBER 2024

MOTION FOR NEW TRIAL

COMES NOW, on this 9th day of DECEMBER 2024, the DEFENDANT, HARRY LEE GOLDSBORO II, to se and pursuant to Fla. R. Crim. P. Rule 3.580, 3.590, and 3.600, submits this timely Motion For New Trial following the verdict of GUILTY in case number 2019-CF-021200A XXXX after jury trial. The Defendant contends that the Court made fundamental, harmful, prejudicial, plain, and reversible errors throughout the trial process, and the Defendant's constitutional rights to due process of law, right to remain silent, right to a speedy trial, right to a fair trial, and confrontation rights under the 5th, 6th, and 14th Amendments of the United States Constitution were violated. As a result, of the Court's errors and mistakes that affected the Defendant's substantial rights and the integrity of the trial process, the Defendant respectfully requests this Honorable Court to reverse the conviction and grant a new trial.

The Defendant makes the following arguments in support of his claims:

(1) The Court erred as a matter of law in degrading standby counsel's presence at trial; to be present in the courtroom to answer the pro & litigant's questions; to permit him to use the exhibits and police reports that he procured a week prior to trial to have standby counsel print, prior to trial commencing due to a printing issue at the jail; to be prepared to be reinstated as counsel if Defendant decided to terminate his self-representation; and to be present in the courtroom throughout trial to explain and enforce the basic rules of courtroom protocol. The Court's error represents a fundamental error because the Court's complete exclusion of standby counsel permeated the entire trial process from jury selection through and immediately following the verdict. The prejudice to the Defendant's ability to receive a fair trial is plain and apparent on the face of the record and the Court violated his substantial constitutional rights to due process of law and his right to confrontation under the 5th, 6th, and 14th Amendments.

A. The Court's failure to move to dismiss the entire panel after a venire member stated that "Anyone who does that to a child should be locked up for life," due to the majority of the panel's belief that the Defendant had sexually battered a child after the Court read the information. The Court explained the charge, but the statement was only voiced by one person, but several of the potential jurors all thought the Defendant had harmed a child. Due to the Court's deliberate exclusion of standby counsel, the Defendant was not able to ask whether he should dismiss the panel or request a motion for mistrial. The Defendant's due process and right to a fair trial were infringed upon as he was prohibited from asking a relevant procedural question from standby counsel.

(B) The Court denied the Defendant to consult with and have standby counsel present in the courtroom at trial. Although standby counsel is not a constitutional guarantee, having standby counsel appointed, but prohibiting the Defendant to ask questions in any way violates the purpose of having standby counsel appointed. "A trial court may appoint a standby

to aid the accused if and when the accused requests help, and to be available to represent the accused in the event that termination of the Defendant's self-representation is necessary." (Faretta v. California, 422 U.S. 806, 834, 95 S.Ct. 2525, 46 L.Ed.2d 562 (1975)). "Essentially, standby counsel has two purposes - to act as a safety net to insure that the litigant receives a fair hearing of his claims, and to allow the trial process to proceed without the undue delays likely to arise when a layman presents his own case. Standby counsel can serve four functions: 1. Standby counsel must be available if and when the accused requests help. 2. Standby counsel must be ready to step in if the accused wishes to terminate his own representation. 3. The Court may appoint standby counsel in order to explain and enforce the basic rules of courtroom protocol to the accused. 4. The Court may appoint standby counsel in order to overcome routine obstacles that may hinder effective pro se representation." (McKaskle v. Wiggins, 465 U.S. 168, 104 S.Ct. 944, 79 L.Ed.2d 122 (1984); United States v. Botelli, 794 F.2d 1002, 1018-19, 5th Cir. 1993).

The Court explained that the Defendant was responsible for the entirety of his defense and that standby counsel was not his secretary. The Defendant had coordinated with standby counsel to print copies of the reports he needed to use to impeach the 5 witnesses' testimony because the jail had an issue with printing the legal mail that was scanned to the tablets. The Defendant coordinated this support in advance of trial to ensure he was ready and relied on those documents; however, the Court forbade him to use them as he had to acquire any supporting documents on his own. The Defendant had no means of getting these necessary documents, which severely prejudiced his case and ability to present a viable defense. The Court's ruling violated the Defendant's due process rights, right to confrontation, and right to a fair trial under the 5th, 6th, and 14th Amendments. The Court abused its discretion and the error was not harmless.

(C) When the victim made an emotional outburst on the last day of trial, the Defendant had no standby counsel to consult to ask whether the outburst was objectionable because it was inflammatory and prejudicial, and whether a curative instruction should be given or was a mistrial warranted. The State was granted Motion in Limine for Rape Shield, which improperly restricted the Defendant from pursuing a relevant line of questioning challenging the victim's outburst. The Defendant had no recourse and no assistance from counsel to help him overcome the prejudice the outburst caused. The Defendant's due process rights and right to confrontation were violated under the 5th, 6th, and 14th Amendments, due to the Court's failure to allow standby counsel to be present during trial.

(D) The Court failed to reappoint standby counsel as the Defendant's attorney when the Defendant acquiesced to the insurmountable obstacles the Court placed on him by forcing him to subpoena witnesses on the State's witness.

list, acquire his own delayed disclosure of discovery by the State, and to provide his own exhibits prior to the Defense presenting its case after the State rested. The Defendant requested to have standby counsel reappointed, but the Court denied the request and discharged counsel for the remainder of the trial. The Court's actions violated the Defendant's right to counsel, due process, and right to a fair trial under the 5th, 6th, and 14th Amendments. The Court's denial to reappoint standby counsel when the Defendant requested it represents a fundamental error and a plain error.

② The Court erred as a matter of law in approving the State's Motions in Limine - Rape Shield and Various Subject Matters.

A. The State limited the Defendant's ability to cross-examine the victim and witnesses who possessed knowledge that was material to the Defendant's assertion that he knew the victim and that they met to have consensual sex. The State's Motion in Limine prevented the Defendant from cross-examining the victim and the witnesses as to the contents of the victim's phone that contained searches for rape porn, violent porn, rape fantasy, just two days prior to the alleged attack. Furthermore, the Defendant was compelled to testify as this was the only way that he could explain what happened, which violated his 5th Amendment right to remain silent, and his testimony was heavily restricted ("A defendant's right to full and fair cross-examination guaranteed by the 6th Amendment, may limit section 794.022's application when evidence of the victim's prior sexual conduct is relevant to show bias or motive to lie; *Olden v. Kentucky*, 488 U.S. 227, 109 S.Ct. 480, 102 L.Ed.2d 513 (1989); "A state may not apply a rule of evidence that permits a witness to take the stand but arbitrarily excludes material portions of his testimony - *Rock v. Arkansas*, 483 U.S. 44, 107 S.Ct. 2704, 97 L.Ed.2d 37 (1987); *Chambers v. Mississippi*, 410 U.S. 284, 93 S.Ct. 1038, 35 L.Ed.2d 297 (1973). The Court's granting of the State's Motion in Limine Rape Shield and Various Subject Matters prevented the Defendant from questioning the victim about her phone search history, which led to connecting to a website on which the two met and agreed to meet to act out her particular Fantasy. The Court violated the Defendant's 5th, 6th, and 14th Amendment rights to due process, right to remain silent, right to confrontation, and right to a fair trial. This error was not harmless under the circumstances and requires reversal.

③ The Court erred by granting the State's Motion in Limine Various Subject Matters by excluding his testimony that he was in the Air Force, as the victim and her husband were in the Air Force and this material fact was relevant to why the victim was comfortable with meeting the Defendant and the fact that she was married and had an affair while her husband was deployed was her motive to lie and gave her bias against the Defendant. The Defendant's due process rights, right to confrontation, and right to a fair trial were violated.

① The victim's outburst during the State's rebuttal evidence presentation severely prejudiced the Defendant as he had no method for pursuing further cross-examination because the State's motion in limine was so restrictive. The State only presented the victim's version of events, and none of the State's 13 witnesses were witness to any crime, nor possessed any firsthand knowledge of the suspect or evidence related to consent; therefore, there were no eyewitnesses, two versions of events and evidence before the jury was insufficient to find the Defendant guilty beyond any reasonable doubt, and the outburst affected the outcome is possible. The Defendant's inability to object prevented the issue from being preserved, but the fundamental error of not having standby counsel available to consult, combined with the State's misapplication of the Rape Shield law severely prejudiced the Defendant's ability to present a defense and violated his 5th, 6th, and 14th Amendment rights to due process, right to confrontation, and right to a fair trial. This was fundamental error because considered cumulatively with the other errors, the Court deprived the Defendant of a fair and impartial trial. The Florida Supreme Court has explained that where multiple errors are discovered, it is appropriate to review the cumulative effect of those errors because even with competent, substantial evidence to support a verdict and even though each of the alleged errors, standing alone, could be considered harmless, the cumulative effect of such errors [may be] such as to deny to defendant the fair and impartial trial that is the inalienable right of all litigants in this state and this nation." (Rodriguez-Olivera v. State, 328 So.3d 1080 Fla. App. 2021; Smith v. State, 320 So.3d 20, 37 Fla. 2021); "If the appellate court cannot say beyond a reasonable doubt that the error did not affect the verdict, then the error is by definition harmful," quoting State v. Dignilio, 991 So.2d 1129, 1139 Fla. 1986; "It is axiomatic and fundamental to our system of justice that a party may impeach a witness by introducing statements of the witness which are inconsistent with the witness's present testimony." Elmer v. State, 114 So.3d 198, 202 (Fla. 5th DCA 2012). The victim's admitted lack of memory, intoxication and her credibility are central issues and the Defendant's ability to challenge her credibility, motive to lie and bias was unduly encumbered by the Court's multiple substantial errors.

③ The Court erred as a matter of law in approving the Defendant's Motion in Limine to Exclude Evidence, but allowed the State to admit the evidence over the Defense's objection. The evidence the State admitted was highly prejudicial, irrelevant and immaterial to the fact in issue of consent.

A. The Court granted the Defendant's Motion in Limine to limit the State's DNA expert to testifying that a DNA match was found, only

The Court permitted the DNA expert to testify in front of the jury but would not permit the State to call the witness an expert.

However, over the Defendant's objection, the DNA expert, through the State's direct examination, provided testimony concerning the population Frequency Statistics. During opening statement, the Defense objected to the State telling the jury that the population Frequency statistics revealed that the source of the DNA was 700 billion times more likely to have originated from the Defendant than from any other person. This comment was improper as the facts were not in evidence, prejudicial, and the State lacked personal knowledge to speak about the results. The Defendant argued that the population Frequency statistics were irrelevant to the issue of consent as identity was not an issue because the Defendant never denied that it was his DNA, he denied being at the alleged crime scene when the DNA was transferred. The Court agreed and granted the motion in limine, but then later allowed the State to make its improper comment during opening and then allowed the DNA expert to testify to the same.

The Defendant cross-examined the DNA expert who conceded that: 1.) The DNA sample was found in the cervical sample only, and not in the vaginal, out/external genital swabs, hands or neck and the victim's underwear were not examined. The DNA expert conceded that showering and wiping the area with tissue could wipe away DNA evidence and the victim admitted during her testimony that she showered prior to going to the bar and also wiped herself after the alleged attack, which occurred between midnight and 1:15 a.m. The Defendant testified that he had consensual sex with the victim earlier that night in his car and was not at the scene. 2.) The expert explained that a DNA expert is not authorized to report on consent and determine the issue of consent, and that the discovery of a DNA match does not determine consent. 3.) The Defendant's DNA was not found in the oral, vaginal, or external genital swabs could not conclusively exclude other potential male donors. The Defendant testified that he and the victim had engaged in consensual oral, vaginal, and anal sex, and SAME Nurse Robots confirmed the victim never complained of pain or discomfort to her vagina or anus and there were no visible signs of trauma. 4.) The DNA expert testified that she could not determine how long the DNA was in the cervical sample or what time it was transferred. The Defendant testified that he and the victim had sex between 8:30 p.m. and 9 p.m., and he was with an alibi witness from 10:30 p.m. - 2 a.m. 5.) The expert testified that she did not perform the statistics herself and that a DNA test cannot determine where or what time DNA was deposited. The DNA expert explained that there are four steps to the DNA process: 1. Extraction 2. Quantitation 3. Amplification and 4. Visualization. The expert only participated in the extraction process and that DNA testing involves several analysts who perform separate functions, and a different analyst performed the Quantitation step that determines the population Frequency statistics to which she just testified; therefore, the expert was not qualified to testify to the population statistics because she did not perform that function and possessed no firsthand knowledge. In any respect, the

expert's testimony failed to provide any information relevant to the fact in issue of consent.

When facts are within the ordinary experience of the jury, the conclusion from those facts will be left to them, and even experts will not be permitted to give conclusions in such cases. "The expert opinion should be excluded where the facts testified to are the kind that do not require any special knowledge or experience in order to form a conclusion." (Johnson v. State, 314 So.2d 248 Fla. App. 1975). Section 90.702 Florida Statutes requires that before an expert may render an opinion, two preliminary factual determinations must be made by the court under section 90.105, Florida Statutes. First, the court must determine whether the subject matter will assist the trier of fact in understanding the evidence or in determining a fact in issue. Second, the court must determine whether the witness is adequately qualified to express an opinion on the matter (see Hucker v. State, 881 So.2d 1137 Fla. App. 2004). The State presented no evidence that the Defendant made statements denying sexual activity with the victim, and the State failed to provide any evidence conclusively refuting the possibility that a consensual sexual encounter occurred earlier that night in his vehicle. Therefore, the expert's testimony to the population statistics did not assist the jury in understanding the fact in issue of consent, and understanding that a DNA match was found is a fact that is within the ordinary experience of the members of the jury. The State's expert also failed to provide a full DNA report that disclosed the underlying facts and data used to determine the population statistics. The Court erred in not permitting the Defendant to conduct voir dire of the State's expert and allowed the expert to testify to highly prejudicial facts that outweighed the probative value and violated the Defendant's motion in limine. This error was significantly harmful, especially under the circumstances that prohibited the Defendant from presenting evidence that supports his defense of consent due to the Court granting and upholding the State's Motion in Limine, while failing to sustain the Defendant's motion in limine. The Court violated the Defendant's due process rights, right to confrontation, and right to a fair trial under the 5th, 6th, and 14th Amendments.

(B) The Court erred in granting the Defendant's Motion in Limine to exclude video surveillance as irrelevant, prejudicial, and failure to lay the foundation, as the State presented no eyewitnesses who could testify to what the video depicted was accurate to prove that the Defendant was the driver of the car, that it was indeed his car, that he was present at the scene, and that the victim was also present at the same time; then subsequently the Court allowed the State to admit the video over Defense's objection.

The video footage was from the back of a business that was in the same shopping center near the alleged crime scene, but was not in view of the alleged crime scene. The video shows a dark colored car driving slowly behind the store with no lights on at 0025 (12:25 a.m.)

on January 30th, 2018). The video never shows the driver enter or exit the vehicle, the license plate, and no eyewitnesses, including the victim, ever mentioned seeing any car, let alone the black car that was seen on video. The State cross-examined the Defendant after he testified as to the whereabouts of his car between 11pm-2am. The Defendant stated that the car was at his alibi witness's house. The State claimed the Defendant opened the door and used the uncorroborated video to impeach the Defendant and use the video as circumstantial evidence. The State offered only one witness, who was the owner of the store in 2029, but not in 2018, and he validated the video's authenticity; however, the Defense's objection to validating the video also went to object to the relevancy of the video and the lack of any witnesses who testified they saw any vehicle, saw the driver enter or exit the vehicle, saw the make and model, or the license plate, or witnessed the Defendant at the scene, at the same time as the victim who testified that she did not remember where she was between 11:03 p.m. when she confirmed it was her walking into a gas station to purchase beer on surveillance video, and 1:15 a.m. when the police were called after the alleged attack. Furthermore, the victim testified that she did not see the suspect arrive in a vehicle, that she was walking on the sidewalk and he walked past her, called her a "Fucking slut", then dragged her into the bus hoo. She testified that she did not know how long the attack lasted, but when he left, she got up just seconds after him and he was nowhere to be found. On cross-examination of the victim's testimony, the Defendant asked her if she saw any vehicle, heard a vehicle, or saw the suspect arrive or leave by vehicle, which she replied "No" to all the questions. Still, the State said the video offered circumstantial evidence because the Defendant owned a black Nissan Altima. The State then introduced testimony from Melbourne Police Officer Strieff who had pictures of the Defendant's car from the vehicle being impounded in March 2018, after the Defendant was arrested on an unrelated charge. The Defendant had two large Philadelphia Eagles Flags on his car in January 2018 and he asked the first witness if he saw any distinguishing features on the vehicle including the flags, to which the witness responded "No". To counter this claim, the State ~~asked~~ asked Officer Strieff if he saw any decals or Eagles flags, to which he responded "No". On cross-examination, the Defendant only asked two questions: 1. "Is that picture from January 2018?" and 2. "Do you have any pictures of the vehicle from January 2018?" to which the witness admitted that the picture was not from January 2018 and that he had no pictures from January 2018.

The Defense argued during the hearing in camera that the video had not been authenticated, it was irrelevant, any material fact, it was prejudicial, and the State failed to lay the foundation. The Defense renewed his objection when the State sought to admit the video evidence under the claim that the Defendant opened the door, which is not true, and the

State attempted to open its own door and provided no conclusive evidence confirming that it was the Defendant's car and that was driving it, and also that the victim was also present at the same time and place. Furthermore, the video clearly shows another unidentified vehicle drive behind the store an hour prior to the 9-1-1 call, and then about 40 minutes after the black car is seen yet another car is seen driving behind the same store. The Court's admission of this highly prejudicial evidence severely prejudiced the Defendant's case and violated his rights to due process and a fair trial. (Ruffin v. State 549 So.2d 250, 251 Fla. 5th DCA 1989; Proctor v. State 97 So.2d 313, 315 Fla. 5th DCA 2012; Charles v. State 79 So.2d 233, 235 Fla. 4th DCA 2012)

④ The Court erred as a matter of law in not holding the required Richardson hearing after the defense informed the Court of the discovery violation. For failing to disclose and turn over audio, video, and photos until after trial had started, despite the discovery being in the State's possession the entire time.

A. In January 2023 Defendant's counsel Nancy Olan demanded discovery. In June 2023 the Defendant had new counsel assigned who also demanded discovery. In August 2024 when the Defendant started self-representation, he filed a Demand For Discovery in which he requested very specific items of discovery that were missing from the discovery the State provided and also from the supplemental discovery. In particular, the State disclosed that the Defendant made specific comments to the victim on January 30th, 2018; however, the State did not disclose what document, recording, hearing, or other media the comments were contained. The Defendant then filed a subsequent Motion to Compel Discovery on September 12th 2024, to which the State never responded. At a hearing on November 8th, 2024, the Defendant explained the State's failure to provide the requested discovery, and the State argued that it had no responsibility to provide discovery and that since Defendant can get it himself since he wanted to be pro se that was one of the constraints. The Court requested that standby counsel facilitate discovery retrieval from the Public Defender's Office and the E-portal. By November 11th 2024, standby counsel provided all the discovery that the State disclosed; the defense was built on this discovery.

On December 2nd, 2024, after conducting hearings in camera on pre-trial motions, the State emailed standby counsel audio, photos and videos that it had not previously disclosed were in its possession. On December 3rd 2024, the Defendant informed the Court of the discovery violation and requested a Richardson hearing. The Court ruled that the hearing was not necessary because the State has no obligation to provide discovery to the Defendant. The State's only obligation is to disclose discovery and permit the Defense to copy, inspect, and photograph discovery. Fla. R. Crim. P. Rule # 3.220 requires the State to disclose discovery to the Defendant in a written discovery exhibit and the State has a continuing obligation. The Defendant was able to view crime scene

photos prior to trial and had no objections aside from having the detective and CSI agents available for cross-examination after a proper Foundation had been laid. However, it was not until the Friday after trial had concluded that the Defendant was able to receive the video of the victim's interview with Melbourne Police Department's Detective Higgins. Not being able to view the video prior to trial and not being informed of its existence severely prejudiced the Defendant's case because it contained victim statements that contradicted her trial testimony and her statements made directly after the alleged attack, and most importantly, it showed that Detective Higgins and Officer Noble conducted a phone extraction that was preserved for copying and inspection, but was not disclosed to the Defense. The State listed Detective Higgins and Officer Noble on its witness list, but refused to call them as witnesses because they possessed evidence that was damaging to its case. The Court's failure to hold the requested Richardson hearing was a reversible error because it undermined the Defendant's ability to prepare his defense; moreover, the State's intentional discovery violations combined with the Court's error created a fundamental error as it reached into the validity of the trial as the Defendant's insistence upon a speedy trial was based upon his knowledge of the case and the discovery and supplemental discovery that the State disclosed. Had the State simply fulfilled its discovery obligations, after being provided several opportunities, the Defendant would have either elected to wait to proceed to trial until he could depose and have Detective Higgins and Noble present for trial or requested the Court to grant a continuance chargeable to the State to ensure that the two witnesses were present. Overall, the State's failure to disclose the discovery and the Court's failure to conduct the required Richardson inquiry undermined the entire trial proceeding as the witnesses possessed information relevant to material facts in issue, and with the State's improper restrictions on the Defendant's testimony, the failure to disclose the existence of the victim's audio statements and video interview prohibited the Defendant from having impeachment evidence that contradicted the State's witnesses' testimony and was relevant to the victim's motive to lie and her bias. The Defendant's rights to due process, confrontation rights, right to remain silent, and fair trial were violated.

"Where a discovery violation has occurred, the failure to conduct a Richardson hearing is not *per se* reversible error, but rather is subject to a harmless error analysis." (see *State v. Schopp*, 653 So.2d 1016, 1020-21 Fla. 1995). The relevant inquiry is whether there is a reasonable possibility that the discovery violation materially hindered the Defendant's trial preparation or strategy (see *Scipio v. State*, 928 So.2d 1138, 1150 Fla. 2006). An analysis of procedural prejudice considers how the defense might have responded had it known about the undisclosed piece of evidence and contemplates the possibility that the defense could have acted to counter the harmful effects of the discovery violation (*Id.*). The Defendant's defense would have been different

as he would not have decided to testify because the detective's testimony and the impeachment evidence from the victim's statements during the interview would have provided evidence related to material facts that the Defendant sought to convey to the jury himself by testifying, which is that he knew the victim, they met to have consensual sex earlier that night in his vehicle, and that she wanted to act out a rape fantasy. However, the Court's misapplication of Florida's Rape Shield prejudiced the Defendant's case by excluding his testimony related to what the detectives found in her phone search history and other undisclosed evidence found during the phone extraction. Although the State provided a police report from Detective Higgins, the four-page summary is not the same substance or content to the very detailed hour-long in-person interview and the detectives possessed other relevant and material testimony relevant to the victim's state of mind, motive to lie, bias, and inconsistencies in her story. This undisclosed evidence was critical to supporting the Defendant's defense ~~of~~ ^{of} not consent.

In *Richardson v. State*, 246 So.2d 771, 775 Fla. 1971, the Florida Supreme Court held that an alleged violation of discovery rules by the State requires a trial court to make "an adequate inquiry into the surrounding circumstances" in an effort to determine whether noncompliance resulted in harm or prejudice to the Defendant. The Court must inquire whether the State's violation was inadvertent or willful, whether the violation was trivial or substantial, and what effect it had upon the Defendant's ability to properly prepare for trial (*Ramirez v. State*, 241 So.2d 744 Fla. 4th DCA 1976). The second aspect of procedural prejudice deals with the proper sanction to invoke for a discovery violation. Sanctions range from calling a recess, to an order to comply, to an exclusion of evidence, or even a mistrial. In *Smith v. State*, 500 So.2d 125 Fla. 1986, the Supreme Court reasoned that "One cannot determine whether the State's transgression of the discovery rules has prejudiced the defendant (or has been harmless) without giving the defendant the opportunity to speak to the question." Because there was no *Richardson* inquiry, the lower court was unable to determine what sanctions, if any, should be imposed against the State (*D.R. v. State*, 588 So.2d 327 Fla. App. 1991).

② The Court erred in ruling that the Defendant had to subpoena the State's witnesses if he wanted to call them to testify, despite the witnesses being on the State's Witness List with confidential addresses, and on the day prior to the State resting its case.

On December 3rd, 2024, the Defendant announced his intentions to call Detective Higgins and Officer Noble to testify. Both witnesses were listed on the State's witness list and the Defense adopted 7 of the State's witnesses on its own witness list because they possessed exculpatory evidence, and one such witness included the victim. The State told the Defendant that if he wanted the witnesses present, then he had to subpoena them. The Court agreed with the State. The Defendant filed a writ motion on the same day (December 3rd, 2024) pursuant to Fla. R. Crim. P. 3.220 and 3.361 to compel the State to serve subpoenas on

(b)(1) F.K. and I may be inspected, photographed, copied and tested during regular and ordinary business hours at: also at BCS.

The state generally states in a supplemental discovery request that "All tangible objects as provided by Fla. R. Crim. P. 3.22

in its possession and available for the defense to copy, inspect, photograph, or test pursuant to Fla. R. Crim. P. Rule 3.220.

① The Court erred in permitting the state to show the surveillance video of the car because the state failed to disclose that the video

present (see *Dufour v. State*, 995 So.2d 154/1986).

defense's list in violation of the discovery rule, and did not notify the defense so that the Defendant or standby counsel could be

further examination. The state saw fit to ensure it subpoenaed only the witnesses that it wanted and talked to witnesses on the

and she stated very specific details while avoiding giving answers that would contradict her story or open the door to

in his ability to impeach her testimony with inconsistent statements because the state allowed her to review her statements

because over six years has passed and her recollection would likely not have improved over time. The Defendant was prejudiced

has very little recollection of the night in question. Therefore, any refuting of the witnesses' testimony would be prejudicial

turning the witnesses' names on his list of defense witnesses. "The victim's statements out-of-court explicitly state that she

indicated that "If defense counsel wants to prohibit against the state's ex parte examination of a witness he can do so by

list which violated discovery rules. Under the dictum in *State v. Barreira*, 732 So.2d 138/140 n.5 Fla. 3d DCA 1983 which

interviewed he without the defense or standby counsel being present because the defense listed the victim as a witness on his

② The Court erred in not sanctioning the state and allowing the victim to testify after she disclosed that the state had

and 14th Amendments.

in his defense, and prejudiced his defense and prevented him from having a fair trial protected under the 5th, 6th,

provide testimony. The Court violated the Defendant's due process rights right to confrontation, right to call witnesses

the witnesses time to be present. Consequently, the subpoenas never made it on time and the witnesses are not present to

timely subpoena its witnesses to be present for trial. The Court disagreed and would not authorize a continuance to allow

list. The Defendant explained that the subpoenas would not make it in time and that the state had the responsibility to

him to serve the subpoenas on the state attorneys so that they could contact the witnesses who were on their own witness

two state attorneys were sitting just away from him and could have either provided the confidential addresses or a flood

the subpoenas, but ordered that the Defendant had to serve the subpoenas to the state attorney's office, despite the fact that

the witnesses. On December 4th, 2024, before trial started, the Defendant presented the motion to the Court and the Court provided

cr # 2018-00034987. "The State never disclosed that it was in possession of the surveillance video, even after the the Defense made a specific demand for all photos and videos on August 8th, 2024. The State then attempted to admit the video into evidence and the Defense objected and was heard on his motion in limine to exclude the video as irrelevant and prejudicial and for the State's failure to lay a proper foundation. The Court agreed with the Defendant and ruled the video inadmissible. However, following the Defendant's testimony, the State over the Defendant's renewed objection, was permitted by the Court to show the edited video to the jury. The video was immaterial to consent and did not prove that the Defendant was in the vehicle or was present at the crime scene or with the victim at the time, or was part of any crime. The Court committed harmful error that requires reversal because the video, in light of the lack of any evidence connecting the Defendant to the crime scene, was highly prejudicial and unquestionably influenced the jury's verdict of guilt, especially with the cumulative effect of the other numerous errors, which violated his 5th, 6th and 14th Amendment rights.

⑤ The Court erred as a matter of law by denying the Defendant's Motion for Judgment of Acquittal after the State rested its case. The State called 11 witnesses to testify, and 10 out of the 11 witnesses had absolutely no firsthand knowledge of the alleged attack, the location, time, the suspect's identification, what happened, or personally witnessed any attacks. The State's sole witness with any firsthand knowledge was the victim, and she was admittedly intoxicated, did not see the suspect's face, had a significant memory of 2 hours, had no witnesses who saw her between 8pm-1:30 am, could not describe a specific location of the attack, or specific details of the attack. The State failed to even prove that any crime had been committed and failed to meet its burden by failing to prove the elements of the crime of sexual battery. The Defendant provided a reasonable explanation that the two met earlier that night to have a consensual sexual encounter and the State provided no physical evidence connecting the Defendant to the alleged crime scene. The victim never identified the Defendant as the suspect, and the State provided no evidence or testimony that conclusively rebutted that a consensual sexual encounter occurred earlier that night as there was opportunity and the evidence did not contradict the Defendant's consent defense. Moreover, had the defendant been able to perform a full cross-examination and present the evidence from the victim's phone search history, the likelihood of the jury reaching a guilty verdict beyond all reasonable doubt would have been significantly decreased. The State simply failed to meet its burden, but the Court committed fundamental error in not granting the judgment of acquittal because the State failed to prove every element of the crime beyond a reasonable doubt. The Court erred, violated the Defendant's right to due process, right to confrontation, and right to a fair trial under the 5th, 6th, and 14th.

⑤ The Court entered as a matter of law by permitting the State to prosecute the case in excess of the Court's jurisdiction, due to the State's violation of the Defendant's statutory and constitutional speedy trial rights, due process and the Compulsory process to obtain witnesses in his defense, which violated his 5th, 6th, and 14th Amendment rights, by delaying the arrest and notice of charges for 44 months while Defendant was in custody in Florida.

④ The Court erred by denying the Defendant's First Motion to Dismiss filed on November 8th 2022. The State contacted defense counsel and informed him that the State could not prosecute the case due to the statute of limitations expiring. Defense counsel announced in open court that the original motion to dismiss was rescinded and the State said the motion to dismiss based on the statute of limitations was well taken. The judge ordered the State to make sure that they could not prosecute the case and scheduled a second hearing one week later. The State admitted at the next hearing that the motion was well taken and over defense's objection. The judge gave the State another week. At the third hearing, the State said the statute of limitations had not expired and counsel failed to reinstate his original motion to dismiss.

On January 16th, 2023, the Defendant's new counsel filed a Motion to Dismiss based on constitutional speedy trial. The Court held a hearing on March 10th, 2023 and the Defendant subsequently testified that he had ~~inconsequential~~ sex with the victim in his car earlier that night and had a cell phone that had text messages, pictures, a video of ~~unnatural sex~~ and geolocation data as well as contact information for his alibi witness, but due to the State's unreasonable delay, he was unable to preserve this evidence. The Defendant testified that he met the victim online. The Court denied the motion to dismiss and trial was set for April 17th, 2023. At the pre-trial conference on April 10th, 2023 the State admitted it was not ready for trial and offered no reasons that an extended exceptional circumstances to delay trial when speedy trial had not been waived under Fla. R. Crim. P. Rule 3.191. The Defense subsequently filed a writ of prohibition to the 5th DCA on April 15th, 2023. However, after 15 months with no ruling, the Defendant filed a pro se Motion to Set Aside the Stay of Proceedings and Motion to Annul Writ of Prohibition. Within 10 days of receiving the motions, the 5th DCA denied the writ without an opinion. The Defendant then filed a Writ of Expiration of Stay. Trial Time on June 18th, 2024. Trial was set for July 22nd, 2024.

On the day of trial, the former counsel was ill and substitute counsel appeared and informed the Defendant that he could be continuing his speedy trial. The Defendant adamantly refused and at no point did the Court or substitute counsel request a stay of proceedings to allow counsel to return. The Defendant explained that he would go on his own, but he is limited in his resources and he asked for another lawyer to be appointed, but the Court stated it had no one available and would advise him to proceed with his speedy trial.

The Defendant then requested a Faretta Inquiry, to which the Court stated that he could submit it in writing, and the Defendant stated that he was submitting an oral request for a Faretta Inquiry, but the Court denied it again. This was reversible error because the Defendant's unrequited request for self-representation was required to be heard by the Court who must conduct the required inquiry to the Defendant's knowing and intelligent waiver of his right to counsel.

Based on these failures by the Court, the Defendant filed his own Motion to Dismiss and Motion for Discharge for the Court's Failure to try the Defendant during the 30-day recapture period. The Court denied these motions as well. The Court's denials of the Defendant's multiple Motions to Dismiss severely prejudiced the Defendant's ability to present a defense because he no longer possessed the evidence that he needed to support his claims of consent. The Court violated the Defendant's right to a speedy trial, right to confrontation and due process rights under the 5th, 6th, and 14th Amendments.

⑧ By denying the Defendant's Motion to Dismiss, the Court prejudiced the Defendant's case because he had to provide testimony to demonstrate how the State's unreasonable 44-month delay prejudiced his case, and the State took advantage of the knowledge of this testimony and anticipated his answers and testimony and had rebuttal witnesses prepared, but also moved to limit his testimony under Florida's Rape Shield law. By prosecuting the Defendant in excess of its jurisdiction, the Court prejudiced the Defendant's case and he was unable to receive a fair and impartial trial. The prejudice to the Defendant is not speculative, the prejudice was real and the results of trial echo the prejudice suffered by the State's unreasonable 44-month delay and reinforces the dangers of prejudice presented in *Barker v. Wingo*, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972) and the Court failed to properly apply the *Barker* Test, especially as it relates to the Defendant's case being prejudiced. The Court's error was not harmless, and given the totality of the circumstances, the error rises to level of fundamental error as the entire validity of the trial is questionable. The Court violated the Defendant's due process rights, right to confrontation, right to obtain witnesses in his defense and right to a speedy trial under the 5th, 6th, and 14th Amendments.

WHEREFORE the Defendant prays that this Honorable Court considers the cumulative errors made by the Court and declares a mistrial and grants the Defendant a new trial.