

No. _____

In The
Supreme Court of the United States

Khalid Ali Pasha

Petitioner,

v.

State of Florida,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Florida

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I.

After a defendant has asserted the right of self-representation, are his Sixth Amendment and due process rights violated when a judge offers to rehear previously denied motions conditioned on the defendant relinquishing the right of self-representation and agreeing to be represented by court-appointed counsel?

II.

Do police officers violate a person's Fourth Amendment rights when, without knowledge that any crime has been committed, they stop a vehicle and seize the driver after a 911 caller reports viewing the driver's noncriminal suspicious actions?

TABLE OF CONTENTS

	Page No.
QUESTIONS PRESENTED.....	i
TABLE OF AUTHORITIES	iv
PETITION FOR A WRIT OF CERTIORARI.....	1
OPINIONS BELOW.....	1
JURISDICTION	1
RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS	1
STATEMENT OF THE CASE	5
I. Pasha's Pretrial Motions	5
II. The Trial Judge's Offer to Rehear Pretrial Motions in Exchange for Pasha Agreeing to be Represented by Counsel	8
III. The Direct Appeal and Resentencing to Life in Prison	18
REASONS FOR GRANTING THE WRIT	21
<u>ISSUE I</u>	
Certiorari Should be Granted to Determine Whether A Trial Judge Violates the Sixth and Fourteenth Amendment Rights of a Defendant by Offering Him a Benefit to Induce Him to Relinquish His Right of Self Representation	21
<u>ISSUE II</u>	28
Certiorari Should be Granted to Determine Whether Police Violate Fourth Amendment Rights When they Conduct a Vehicle Stop and Seize the Driver After A 911-Caller Reports Noncriminal Suspicious Activity	
CONCLUSION	33

APPENDIX

Opinion of the Supreme Court of Florida Exhibit A

Order of the Supreme Court of Florida denying motion for
rehearing.....Exhibit B

TABLE OF AUTHORITIES

	Page No.
 Cases	
<u>Alabama v. White</u> , 496 U.S. 325 (1990)	28
<u>Baxter v. Downey</u> , 581 So. 2d 596 (Fla. 2d DCA 1991)	26
<u>Brown v. Texas</u> , 443 U.S. 47 (1979)	32
<u>Corbitt v. New Jersey</u> , 439 U.S. 212, 99 S.Ct. 492, 58 L.Ed.2d 466 (1978)	19, 21
<u>Faretta v. California</u> , 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975)	18, 19, 23, 24
<u>Feathers v. Aey</u> , 319 F.3d 843 (6th Cir. 2003)	29, 33
<u>Flanagan v. United States</u> , 465 U.S. 259 (1984)	24
<u>Florida v. J.L.</u> , 529 U.S. 266 (2000)	29, 31
<u>Florida v. Royer</u> , 460 U.S. 491 (1983)	33
<u>J.H. v. State</u> , 106 So. 3d 1001 (Fla. 3d DCA 2013)	30
<u>J.L. v. State</u> , 727 So. 2d 204 (Fla. 1998)	28
<u>Johnson v. Zerbst</u> , 304 U.S. 458 (1938)	25

<u>Landry v. State,</u> 666 So. 2d 121 (Fla. 1995)	25
<u>Maynard,</u> 783 So.2d	21
<u>McKaskle v. Wiggins,</u> 104 S.Ct. 944 (1984)	24
<u>Navarette v. California,</u> 134 S. Ct. 1683 (2014)	28, 29, 32
<u>Pasha v. State,</u> 39 So. 3d 1259 (Fla. 2010)	5
<u>Pasha v. State,</u> 225 So. 3d 688 (Fla. 2017)	20, 21
<u>People v. A. C.,</u> 27 N.Y.2d 79, 261 N.E.2d 620 (1970)	22
<u>People v. Collins,</u> 27 P.3d 726 (Cal. 2001)	22, 25
<u>Simplice v. State,</u> 134 So. 3d 555 (Fla. 5th DCA 2014)	22
<u>State v. Bliss,</u> 222 P.3d 107 (Wash. App. 2009)	32
<u>State v. Z.U.E.,</u> 315 P.3d 1158 (Wash. App. 2014)	32
<u>Terry v. Ohio,</u> 392 U.S. 1 (1968)	28, 32
<u>Tobin v. State,</u> 146 So. 3d 159 (Fla. 1 st DCA 2014)	29, 30
<u>United States v. Arvizu,</u> 534 U.S. 266 (2002)	31
<u>United States v. Blair,</u> 524 F.3d 740 (6th Cir. 2008)	33

<u>United States v. Cortez</u> , 449 U.S. 411 (1981)	28, 31, 32
<u>United States v. Davila</u> , 133 S. Ct. 2139 (2013)	22
<u>United States v. Gonzalez-Lopez</u> , 548 U.S. 140 (2006)	24
<u>United States v. Gonzalez-Melchor</u> , 648 F.3d 959 (9th Cir. 2011)	22
<u>United States v. Hensley</u> , 469 U.S. 221 (1985)	33
<u>United States v. Jackson</u> , 390 U.S. 570 (1968)	21, 22, 23
<u>United States v. Johnson</u> , 620 F.3d 685 (6th Cir. 2010)	30
<u>United States v. Urrieta</u> , 520 F.3d 569 (6th Cir. 2008)	32
Statutes	
28 U.S.C. § 1257(a)	1

PETITION FOR A WRIT OF CERTIORARI

Petitioner Khalid Ali Pasha respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of Florida.

OPINION BELOW

The opinion of the Supreme Court of Florida is published at 225 So. 3d 688.

JURISDICTION

The Supreme Court of Florida entered its opinion on May 11, 2017, and denied a timely filed motion for rehearing on September 7, 2017. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment of the United States Constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Sixth Amendment of the United States Constitution provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be

confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Section 1 of the Fourteenth Amendment of the United States

Constitution provides, in pertinent part:

No State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Florida Rule of Criminal Procedure 3.191 provides in pertinent part:

(b) Speedy Trial upon Demand. Except as otherwise provided by this rule, and subject to the limitations imposed under subdivisions (e) and (g), every person charged with a crime by indictment or information shall have the right to demand a trial within 60 days, by filing with the court a separate pleading entitled "Demand for Speedy Trial," and serving a copy on the prosecuting authority.

(1) No later than 5 days from the filing of a demand for speedy trial, the court shall hold a calendar call, with notice to all parties, for the express purposes of announcing in open court receipt of the demand and of setting the case for trial.

(2) At the calendar call the court shall set the case for trial to commence at a date no less than 5 days nor more than 45 days from the date of the calendar call.

....

(4) If the defendant has not been brought to trial within 50 days of the filing of the demand, the defendant shall have the right to the appropriate remedy as set forth in subdivision (p).

....

(g) Demand for Speedy Trial; Accused Is Bound. A demand for speedy trial binds the accused and the state. No demand for speedy trial shall be filed or served unless the accused has a bona fide desire to obtain a trial sooner than otherwise might be

provided. A demand for speedy trial shall be considered a pleading that the accused is available for trial, has diligently investigated the case, and is prepared or will be prepared for trial within 5 days. A demand filed by an accused who has not diligently investigated the case or who is not timely prepared for trial shall be stricken as invalid on motion of the prosecuting attorney. A demand may not be withdrawn by the accused except on order of the court, with consent of the state or on good cause shown. Good cause for continuances or delay on behalf of the accused thereafter shall not include nonreadiness for trial, except as to matters that may arise after the demand for trial is filed and that reasonably could not have been anticipated by the accused or counsel for the accused. A person who has demanded speedy trial, who thereafter is not prepared for trial, is not entitled to continuance or delay except as provided in this rule.

(h) Notice of Expiration of Time for Speedy Trial; When Timely. A notice of expiration of speedy trial time shall be timely if filed and served after the expiration of the periods of time for trial provided in this rule. However, a notice of expiration of speedy trial time filed before expiration of the period of time for trial is invalid and shall be stricken on motion of the prosecuting attorney.

....

(j) Delay and Continuances; Effect on Motion. If trial of the accused does not commence within the periods of time established by this rule, a pending motion for discharge shall be granted by the court unless it is shown that:

(1) a time extension has been ordered under subdivision

(i) and that extension has not expired;

(2) the failure to hold trial is attributable to the accused, a codefendant in the same trial, or their counsel;

(3) the accused was unavailable for trial under subdivision (k);
or

(4) the demand referred to in subdivision (g) is invalid.

If the court finds that discharge is not appropriate for reasons under subdivisions (j)(2), (3), or (4), the pending motion for discharge shall be denied, provided, however, that trial shall be scheduled and commence within 90 days of a written or recorded order of denial.

....

(n) Discharge from Crime; Effect. Discharge from a crime under this rule shall operate to bar prosecution of the crime charged and of all other crimes on which trial has not commenced nor conviction obtained nor adjudication withheld and that were or might have been charged as a result of the same conduct or criminal episode as a lesser degree or lesser included offense.

....

(p) Remedy for Failure to Try Defendant within the Specified Time.

(1) No remedy shall be granted to any defendant under this rule until the court has made the required inquiry under subdivision (j).

(2) At any time after the expiration of the prescribed time period, the defendant may file a separate pleading entitled "Notice of Expiration of Speedy Trial Time," and serve a copy on the prosecuting authority.

(3) No later than 5 days from the date of the filing of a notice of expiration of speedy trial time, the court shall hold a hearing on the notice and, unless the court finds that one of the reasons set forth in subdivision (j) exists, shall order that the defendant be brought to trial within 10 days. A defendant not brought to trial within the 10-day period through no fault of the defendant, on motion of the defendant or the court, shall be forever discharged from the crime.

STATEMENT OF THE CASE

In 2002, Petitioner Khalid Ali Pasha was indicted for two counts of first degree murder in Hillsborough County, Florida. In 2007, he was convicted and sentenced to death on both counts. The Florida Supreme Court reversed for a new trial in 2010 because Pasha had been denied the right of self-representation. See Pasha v. State, 39 So. 3d 1259 (Fla. 2010). When the case went back for the retrial, Pasha repeatedly insisted on representing himself.

I. Pretrial Motions

After the case was remanded for a retrial, Pasha litigated numerous pretrial motions pro se, including a motion to suppress incriminating evidence seized from Pasha's van. Testimony was taken at three suppression hearings, in March, May, and June 2011. The judge issued an order denying Pasha's suppression motion in December 2011.

At the suppression hearings, the State presented the testimony of Gisela Sanchez, the 911 caller who worked for a cleaning company at the Woodland Corporate Center on August 23, 2002; her husband, Jose Sanchez, who also worked for the cleaning company; and Deputies Kevin Mason and James Stahlschmidt, two officers who stopped Pasha's van. Pasha presented, among others, Deputy Rembert, who provided back-up and asked Pasha for his ID at the scene of the traffic stop; Deputy Rojak, who handcuffed Pasha;

Deputy Chancey of the crime scene unit; and Barry Malone, a security guard who spoke to the Sanchezes before they called 911.

Hillsborough County Sheriff Deputies Kevin Mason and James Stahlschmidt were assigned to the Selective Enforcement Squad in a zone that encompassed the Woodland Corporate Center. At around 11:21 p.m., on August 23, 2002, they received radio and digital communication from a dispatcher regarding a suspicious person. The transmission from the dispatcher was made via a digital transmission (known as a DXT) and radio communication. The transmission did not state that a crime had occurred. It was not dispatched as a criminal code; it was dispatched as a suspicious person, known as a Signal 13.

Stahlschmidt testified that the dispatcher was not qualified to determine whether a crime is committed, and that if a crime were alleged, the dispatcher would try to put that in a certain criminal code for the dispatch. Deputies Mason and Stahlschmidt were within a mile of the entrance to the business park and arrived there quickly, in a minute or two. The information they had received was of a suspicious person in a vehicle who had emerged from the woodline, had gone through the park, and who appeared to be covered in blood and holding an unknown object, possibly a knife, and entering a van at a different location. The officers were given the tag number of the van. Stahlschmidt repeatedly stated at the suppression hearing that he did not know of any specific crime being committed when he

stopped the van. He also did not have any knowledge of whether any business was opened or closed at that time.

Upon approaching the entrance to the Woodland Corporate Center, the deputies saw a white van, which looked like a work van, followed by a red pickup truck with two occupants. The van was heading northbound approaching an intersection where the traffic light was red; the van came to a stop. People in the red pickup truck were flashing the lights and pointing to the van. The deputies performed a U-turn to pull behind the van, activated red and blue lights on top of their vehicle, and approached the van on foot.

Deputy Stahlschmidt approached the driver's side and Mason approached the rear. Stahlschmidt could see nothing through his side. Mason used a flashlight to illuminate the inside of the van, looking through the rear window, the side cargo window, and the passenger side front door. He saw articles of clothing, boots and miscellaneous tools. The white articles of clothing and boots in the back of the van appeared to have red material smeared on them, consistent with the report of blood. Stahlschmidt spoke with Mr. Pasha, who was looking straight ahead. Pasha's hands were on the steering wheel, gripping tight, and he was sweating profusely. Mason signaled to Stahlschmidt to use caution.

Stahlschmidt suspected that Pasha might flee, so he stepped back and unstrapped and unholstered his weapon and let Pasha see that he did it. He

then directed Pasha to put the van in park and step out of the vehicle. Mason came around the front of the vehicle and started to talk with Pasha.

Pasha was wearing dress slacks, dress-style socks, and a t-shirt, with small red dots splattered on the left side. Mason pointed out to Pasha that he had blood on his shirt. Mason first asked Pasha if he was injured. He was concerned to see if he needed medical attention, and he was trying to get an explanation for the blood. The conversation went back and forth with Pasha saying he was not injured and with Mason questioning him about whose blood it was. Pasha told Mason that he had been running through the woods, found a rabbit and killed a rabbit and it was rabbit's blood. At that point, Mason immediately advised Pasha of his Miranda rights.

While Mason was talking to Pasha, Deputy Stahlschmidt went to the pickup truck to speak with the occupants. Deputies Rojack and Rembert arrived on the scene. Mason and Stahlschmidt left with the Sanchezes to have them point out where they saw Pasha in the corporate park. Pasha was left standing there, accompanied by at least two other deputies. Behind the maintenance building, in a cul-de-sac area, near the AT&T building, they found a car crashed into a wall and the bodies of two women.

Judge William Fuente issued his ruling denying the motions to suppress at a hearing on December 16, 2011. On January 13, 2012, Pasha filed a Verified Petition For Reconsideration of Denial of Motion to Suppress.

II. Judge Offers to Rehear Pretrial Motions in Exchange for Pasha Agreeing to be Represented by Counsel

In April 2012, Pasha filed a verified motion for disqualification of the trial judge, which Judge Fuente granted in May 2012. Pasha's January 2012 motion for reconsideration of the motion to suppress was then pending. Pasha filed a motion requesting the newly-assigned judge, Judge Kimberly Fernandez, to reconsider Judge Fuente's orders on Pasha's motions, including Fuente's orders denying his motion to terminate standby counsel and motion to suppress evidence. Judge Fernandez denied Pasha's January and May 2012 motions for reconsideration.

On November 7, 2012, Judge Fernandez strongly urged Pasha to accept the appointment of an attorney, but he refused. The judge made a finding "once again, that the defendant is steadfast in representing himself." (30/634). The judge then denied, among other things, Pasha's new Motion to Terminate Standby Counsel. The judge told Pasha that his trial is set for November 26. Pasha said, "I'll be ready to go on November 26th." And he said, "We won't ask for no continuance." (30/644).

A November 19, 2012 hearing was noticed for the State's Motion for Return of Property. Before addressing the motion, Judge Fernandez asked if Pasha wanted her to appoint counsel. Pasha replied, "No, ma'am." (31/653). The judge then offered an inducement, saying that if Pasha would agree to the appointment of an attorney, she will actually allow the attorney to re-

litigate any of the motions that Pasha filed and she ruled on. (31/653). She repeated this offer several times during the hearing.

THE COURT: Any other hearings that we've had in the past, do you want me to appoint an attorney to represent you, and I'll actually allow your attorney to re-litigate any of the motions that you filed and that I ruled on?

THE DEFENDANT: That's --

THE COURT: Do you want me to appoint an attorney to represent you so that you can re-litigate any motions that you filed?

(31/653-54). The judge said she wanted Pasha to rethink his position about representing himself. She said she was making the offer because it was the last time she would see him before the trial started on November 26. When Pasha inquired about the attorney she intended to appoint, the judge said that she intended to appoint Attorney Hernandez and that the trial will have to be postponed. (31/654-55).

I will allow Mr. Hernandez to refile and re-litigate any of the motions that you filed in the past that I've already ruled on because he's more experienced in my opinion. He's a more experienced attorney than you are because you haven't been to law school yet, and you don't have a law degree. So I will offer that to you.

I mean, obviously, we can't have a trial on Monday if Mr. Hernandez is going to re-litigate all of these motions because I know that he's going -- he's going to want some time to review the motions.

I'm doing this, Mr. Pasha, because honestly, this is the last time I'm going to see you. . . . Once Monday morning comes around, we're picking a jury.

THE DEFENDANT: I think he has -- I am, Your Honor. I appreciate your --

THE COURT: Are you sure? -

(31/654-55). The standby counsel—Mr. Hernandez-- had last attempted to see Pasha a couple of months ago at the behest of the State Attorney, but Pasha did not want to answer his questions. (31/671-74). Upon being questioned by the judge, Pasha reaffirmed that he wanted to represent himself and did not want Hernandez to act as his attorney:

THE COURT: All right. And, Mr. Pasha, I'm assuming by the conversation that we just had before we proceed on the substance of this motion and I make a ruling on the motion that you do not want me to -- you do not want Mr. Hernandez to act as counsel for you, correct?

THE DEFENDANT: No, ma'am.

THE COURT: And you still desire to proceed pro se?

THE DEFENDANT: Yes, ma'am.

THE COURT: Because, you know, he is very familiar with your case. He has been, you know, tracking your case for a couple of years now and he's very competent to represent you.

* * * *

Again, you don't want me to appoint Mr. Hernandez to represent you; is that correct?

THE DEFENDANT: No, ma'am.

THE COURT: And you still desire to proceed pro se?

THE DEFENDANT: Yes, ma'am.

(31/675-676). The discussion then turned to the pending motions.

THE COURT: . . . And again before we go through these motions, you do not want me to appoint Mr. Hernandez to represent you on these, either; is that correct?

THE DEFENDANT: No.

THE COURT: Again, any of the motions that you previously filed, I'm willing to allow Mr. Hernandez, if you want him to represent you, I would allow him to re-litigate them, which means I would allow him to refile and reargue any of the motions that you previously filed in front of me.

Do you want Mr. Hernandez to represent you? I'm asking you for a third time because I'm getting ready to rule.

(31/677-78). Pasha asked for a second to think. The judge ordered a recess, “[j]ust for five minutes so he can think about my offer again.” (31/678). When the court reconvened, Pasha relented and agreed to the appointment of Hernandez as his attorney:

THE COURT: All right, we're back on the record in State of Florida versus Mr. Khalid Pasha, Case Number 02-13478. I took a little over a five-minute break. Mr. Pasha requested time to think about whether or not he wanted me to appoint Mr. Hernandez to represent him, who is now as standby counsel.

And so, Mr. Pasha, have you been able to rethink?

THE DEFENDANT: One more second. (Conferring with Mr. Hernandez as standby counsel.)

Excuse me. That was nothing. With the name of God, most gracious and most merciful, I'm going to accept that, Your Honor.

THE COURT: Okay. You want me to go ahead and appoint Mr. Hernandez to represent you?

THE DEFENDANT: Yes, ma'am.

THE COURT: Okay.
(31/679).

With Pasha ostensibly agreeing to the judge's terms, the discussion turned to the demand for speedy trial. (31/682-683). Mr. Hernandez said he was "nowhere near ready to try the case," and said that "realistically I would be looking at some time in late summer, early fall." (31/683). The judge told Pasha that accepting the appointment of counsel "comes with a concession" that he is not going to be ready for trial until late next summer. Pasha said he understood, and the judge told him: "So yes, your demand for speedy trial, it gets stricken." The prosecutor interjected that the demand had to be withdrawn. The judge replied, "Let me rephrase that. It doesn't -- it will be withdrawn by Mr. Hernandez." (31/686).

The prosecutor expressed concern to the judge that "we can lose this whole case" if "one of us messes up this part of the deal."

[PROSECUTOR]: If there is a motion, I mean, because this is--obviously, if we, one of us messes up this part of the deal, then we can lose this whole case. This has to be very, very clear what we're doing.

THE COURT: I understand. He's accepting--you're accepting Mr. Hernandez as counsel, correct, Mr. Pasha?

THE DEFENDANT: Yes, ma'am.

THE COURT: He's now formally accepted Mr. Hernandez as his attorney.

MR. GALE: But that does not negate all the motions that have previously been filed when Mr. Pasha was pro se. Those are still effective.

THE COURT: I'm going to allow Mr. Hernandez to re-litigate like the motion to suppress if he wants to where Mr. Pasha was representing himself if Mr. Hernandez wants to refile it. It doesn't negate any of my previous rulings.

MR. GALE: My concern is with the demand for speedy trial, that's not simply negated simply because we've appointed new counsel.

THE COURT: Mr. Hernandez as his attorney, he would withdraw it, he would ask to withdraw it.

(31/686-87). The prosecutor explained to the judge that, while he would rather deal with an attorney than a pro se defendant, given the history of the case, "the State is not going to be surprised that several months down the road Mr. Pasha wants to discharge Mr. Hernandez and represent himself." (31/693). Before adjourning, the judge set the next hearing for December 7, 2012. (31/695).

On November 30, 2012, Pasha filed a "Motion to Proceed Pro Se," in which he recounted the recent events and contended that he was "hoodwinked" by the judge's offer to reconsider all previously denied motions. The offer forced him to make a choice between two co-equal rights, to be heard or to continue pro se, and the offer was made to circumvent his trial date of November 26, 2012. (8/1406-08). He stated that he unequivocally wanted to represent himself without counsel or standby counsel. (8/1408).

Pasha also filed a "Motion to be Heard" in which he states: "As a matter of law, because of the extraordinary circumstance that exist, a trial should be scheduled and began before the expiration date of the recapture period of the Demand for Speedy Trial Petitioner filed on October 24, 2012." (8/1411) He again recounted the recent events and asserted that Judge Fernandez's offer forced him to make a choice between core-equal rights, the right to be heard or the right to continue pro se.

5. Petitioner was hoodwinked by that offer being convinced by Judge Fernandez that justice would prevail. Later realizing that the sole purpose that it was made was to circumvent Petitioner "Demand for Speedy Trial," that was scheduled to start on November 26, 2012.

6. If there is validity in those plea[d]ings and Petitioner believe there is, a just and impartial Judge would have issued an order Granting them or at least reconsider them, and not base Justice on who filed them.

* * * *

These extraordinary circumstance[s have been] brought on by Judge Fernandez being partial to, and running interference for Mr. Hernandez who is an organ of the State, regardless of his actions.

* * * *

As a matter of law and correctness, and because of these extraordinary circumstance, and so that Petitioner won't be irreparably prejudiced, this matter should be returned to Fla. R. Crim. P. 3.191(p)(3) and trial scheduled to start before the expiration of the recapture period.

Wherefore, Petitioner believe that to return to Fla. R. Crim. P 3.191(p)(3), is the only correct solution to this matter short of discharge and pray that this Court will issue an order granting all just and proper remedies in this matter.

(8/1413-15).

On December 7, 2012, the judge addressed Pasha's two motions, in which he was asking to proceed pro se again and asking for a continuation of his speedy trial demand. The judge refused to recognize the continuation of Pasha's speedy trial demand, but she regarded the "Motion to Be Heard" as an entirely new demand for speedy trial.

THE COURT: . . . you filed two motions, additional motions after the last time that we were here.

THE DEFENDANT: Yes, ma'am.

THE COURT: And one of them is a Motion to Proceed Pro Se and the other one is a Motion To Be Heard, and in the body of that Motion To Be Heard, it says that you are demanding speedy trial again.

THE DEFENDANT: It's a continuation of the initial speedy trial.

THE COURT: You already--there is no continuation of the initial speedy trial because you withdrew that motion the last time that we were here. So before we get--before we get into that issue and I allow you to be heard on that issue, the first motion that I am going to take up is your Motion to Proceed Pro Se. And the last time that you were here, which I think is the 19th, I want to say November 19th --

THE DEFENDANT: Yes, ma'am.

THE COURT: -- I had given you a continuance of your trial because you asked for an attorney to assist you. You asked for Mr. Hernandez to assist you. You wanted him to assist you during the course of your trial. . . .

* * * *

THE COURT: So you've changed your mind again since November 19th, is what's happened.

THE DEFENDANT: Well, really, I didn't ask for him, Ms. Fernandez. You pushed him off on me.

THE COURT: That may be your perception as to what happened, but the record will speak for itself as to what actually occurred on November 19th. We don't have to debate that issue. So the only thing that I need to know right now is right now, you're now telling me you wish to discharge him as your attorney; is that correct?

THE DEFENDANT: Yes.

(32/700-702). When the discussion turned to scheduling, the prosecutor asked for the latest possible date to commence the trial, which was determined to be January 22, 2014. The judge scheduled the jury selection for January 14, 2013. (32/724-726).

On December 17, 2012, Pasha filed a "Notice of Expiration of Speedy Trial Time" and a "Verified Motion for Disqualification," seeking the disqualification of Judge Fernandez. (8/1434-38; 8/1441-54). On December 21, 2012, Judge Fernandez entered a five-page order denying the motion for her disqualification. (8/1455-59).

On January 2, 2013, Pasha filed a motion for discharge for lack of speedy trial (8/1549-51). On January 3, 2013, Judge Fernandez entered an "Order Striking Defendant's Notice of Expiration of Speedy Trial Time and Order Denying Defendant's Motion for Discharge for Lack of Speedy Trial." (8/1552-1569). Pasha filed a motion for reconsideration of motion for discharge for lack of speedy trial on January 14, 2013. (8/1585-89). Judge

Fernandez denied it orally on the record (S61/38). That same day, the prospective jurors were sworn (S61/41-43). Pasha was tried, convicted, and again sentenced to death on both counts.

III. The Direct Appeal and a Resentencing to Life in Prison

On appeal to the Florida Supreme Court, Pasha asserted that the trial judge violated due process and his Sixth Amendment right to counsel when the court offered him a benefit to induce him to waive his right to self-representation, which caused the withdrawal of his demand for speedy trial. He also argued that the police violated his Fourth Amendment rights when they stopped his van and detained him. The Florida Supreme Court rejected the claims, but reversed the death sentences and remanded for resentencing. On remand for resentencing, the State decided not to seek the death penalty. On November 27, 2017, the trial court resentenced Pasha to life in prison on each count.

In rejecting the due process and Sixth Amendment claims, the Florida Supreme Court opined:

Pasha asserts that the trial court's offer of counsel at the hearing held on November 19, 2012, violated his Sixth Amendment right to self-representation under Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975). In Faretta, the Supreme Court held that “a defendant in a state criminal trial has a constitutional right to proceed without counsel when he voluntarily and intelligently elects to do so.” Id. at 807, 95 S.Ct. 2525. The Supreme Court explained that “[t]o force a lawyer on a defendant can only lead him to believe that the law contrives against him.” Id. at 834, 95 S.Ct. 2525 (emphasis added). Faretta does not address whether a trial court can offer a procedural benefit to a defendant that

necessarily requires the defendant to waive his or her Sixth Amendment right to self-representation.

Pasha correctly notes that the trial court's offer of counsel on November 19, 2012, simultaneously included a procedural benefit: permitting Hernandez to refile and relitigate Pasha's previously denied motions. However, contrary to Pasha's assertion, the trial court's offer did not violate his Sixth Amendment right to self-representation because the trial court did not force Pasha against his will to accept Hernandez as counsel. See id. at 807, 835–36, 95 S.Ct. 2525 (recognizing that when a defendant voluntarily, intelligently, and unequivocally elects to proceed without counsel under the Sixth Amendment, a court cannot force the defendant to accept counsel against his or her will). Rather, the record reflects that the trial court offered counsel to Pasha and Pasha accepted.

In fact, the record reflects that the trial court fully respected Pasha's Sixth Amendment rights by permitting Pasha to waive his right to self-representation from November 19, 2012, to December 7, 2012, permitting Pasha to reassert his right to self-representation on December 7, 2012, and permitting Pasha to represent himself at trial. Since the trial court never denied Pasha's constitutional right to self-representation, Pasha is not entitled to relief.

Pasha also asserts that the trial court's offer of counsel violated his right to due process by inducing him to waive his right to proceed pro se. However, as the Supreme Court has recognized, “not every burden on the exercise of a constitutional right, and not every pressure or encouragement to waive such a right, is invalid.” Corbitt v. New Jersey, 439 U.S. 212, 218, 99 S.Ct. 492, 58 L.Ed.2d 466 (1978). Although a trial court's offer of counsel that simultaneously contains a procedural benefit may raise concerns about safeguarding a defendant's right to due process in some circumstances, no cause for concern exists under the facts of this case. First, the record reflects that the trial court had previously considered and ruled on each of the motions in question—thus, the trial court's offer did not require Pasha to give up any right, privilege, or advantage regarding the motions. Second, any procedural benefit obtained by Pasha would have required the prosecutor to relitigate motions that previously favored the State—thus, only the State stood the risk of receiving an unfavorable ruling on the motions. And third,

Pasha waived his right to self-representation from November 19, 2012, to December 7, 2012, Pasha reasserted his right to self-representation on December 7, 2012, and Pasha subsequently represented himself at trial. Accordingly, under the facts of this case, the trial court's offer of counsel did not violate Pasha's right to due process. Pasha further claims that the trial court's offer of counsel violated public policy and constituted fraud in the inducement. We reject these claims as they are unsupported by the record and without merit.

Pasha v. State, 225 So. 3d 688, 701–02 (Fla. 2017).

In rejecting the Fourth Amendment claim, the court opined:

Pasha initially claims that Deputy Stahlschmidt and Deputy Mason lacked reasonable suspicion to justify the investigative stop of Pasha's vehicle because the information provided by the Sanchezes to the 911 dispatcher failed to provide the deputies with reasonable suspicion of ongoing or completed criminal activity. We disagree. The record reflects that the deputies received information from a 911 dispatcher that two witnesses had called 911 to report a man covered in blood, holding a knife-like object, running, changing clothes, throwing something into the woods, and leaving the WCC in a white cargo-style Ford E150 van bearing a specific Florida license plate number. This information provided the deputies with reasonable suspicion of ongoing or completed criminal activity within the WCC.

Pasha further claims that the Sanchezes were anonymous informants whose anonymous tip required further police investigation. We disagree. Approximately one minute after receiving the dispatch, the deputies were flagged down by a red pickup truck at a stoplight near the WCC. The occupants of the red pickup truck were yelling, pointing, and flashing their headlights at a white van—the exact same van identified by license plate number within the dispatch—in order to direct the deputies' attention towards the van. We find that the Sanchezes were not anonymous because they called 911 to report suspected ongoing or completed criminal activity within the WCC, told the 911 dispatcher that they were following Pasha's vehicle, and flagged down two deputies at a nearby stoplight. Even considering only the facts known to the deputies at the time of the investigative stop of Pasha's vehicle, the Sanchezes'

identities were easily ascertainable and readily discoverable. See Maynard, 783 So.2d at 229–30. Moreover, the Sanchezes qualified as citizen-informants. There is no indication that the Sanchezes were motivated by any reason other than a concern for the safety of others. See id. at 230.

Under the totality of the circumstances, the facts known to the deputies immediately prior to the investigatory stop of Pasha's van provided them with an objectively reasonable basis to justify the stop. Therefore, the trial court did not err in denying Pasha's motion to suppress because the investigative stop was permissible under the Fourth Amendment.

Pasha, 225 So.3d at 705.

REASONS FOR GRANTING THE WRIT

I. Certiorari Should be Granted to Determine Whether A Trial Judge Violates the Sixth and Fourteenth Amendment Rights of a Defendant by Offering Him a Benefit to Induce Him to Relinquish His Right of Self Representation.

This Court should grant certiorari to resolve whether a trial judge may exert pressure on a defendant who has elected to forego representation of counsel by offering a procedural benefit. In a broad sense, the issue involves competing principles that, on one hand, prohibit the chilling of the exercise of constitutional rights, see United States v. Jackson, 390 U.S. 570, 582 (1968) (“Whatever might be said of Congress' objectives, they cannot be pursued by means that needlessly chill the exercise of basic constitutional rights.”), and, on the other hand, allow some encouragement to waive constitutional rights, see Corbitt v. New Jersey, 439 U.S. 212 (1978) (“not every burden on the exercise of a constitutional right, and not every pressure or encouragement to

waive such a right, is invalid”). The Petitioner argued in the Florida Supreme Court that the principle in Jackson applied and rendered unconstitutional the trial court’s offer of a benefit to induce the Petitioner to waive his asserted right to self-representation. The Florida Supreme Court favored the Corbitt analysis, holding the judge’s offer of a procedural benefit was constitutionally acceptable and not cause for concern.

The competing principles can and must be reconciled by drawing a distinction between whether the inducement is offered by a trial judge as opposed to by another party, such as the prosecutor during plea negotiations. That distinction underlies cases that have used the Jackson principle to find constitutional error. See People v. Collins, 27 P.3d 726, 734 (Cal. 2001) (“In effect, the trial court offered to reward defendant for refraining from the exercise of a constitutional right.”); United States v. Gonzalez-Melchor, 648 F.3d 959 (9th Cir. 2011) (invalidating an appellate waiver that was directly negotiated by the trial judge); People v. A. C., 27 N.Y.2d 79, 86, 261 N.E.2d 620, 625 (1970) (“[A] procedure which offers an individual a reward for waiving a fundamental constitutional right, or imposes a harsher penalty for asserting it, may not be sustained.”); Simplice v. State, 134 So. 3d 555, 557 (Fla. 5th DCA 2014) (reversing for a new sentencing hearing before a different judge where a trial judge twice initiated plea negotiations during trial and offered a sentence substantially lower than the one later imposed). Along that line, in United States v. Davila, 133 S. Ct. 2139, 2148 (2013), this

Court noted that a magistrate judge's "repeated exhortations to Davila to 'tell it all' in order to obtain a more favorable sentence . . . were indeed beyond the pale." Without that distinction, the language in Jackson is rendered meaningless.

Because the inducement here was offered by the judge on her own initiative, under a Jackson analysis, the judge violated the defendant's due process rights. At the pretrial hearing of November 19, 2012, Judge Fernandez offered to reward Pasha by allowing him to relitigate his motions if he would agree to waive his right to self-representation and accept standby counsel, Hernandez, as his attorney and withdraw his demand for speedy trial. Inherent in the judge's offer to Pasha was the implication that the outcome of Pasha's pretrial motions would likely be more favorable to him if he agreed to the judge's terms. Conversely, the judge's offer implied that her prior rulings had been negatively influenced by Pasha's pro se status.

Judge Fernandez's offer to rehear all of Pasha's motions if he accepted an attorney chilled his exercise of self-representation secured under the Sixth Amendment and Faretta v. California, 422 U.S. 806, 834 (1975). Because Pasha was induced to accept the offer, he was also led by the judge into foregoing his asserted right to speedy trial under the operative Florida statute. Judge Fernandez characterized her motive for making the offer as concern for Pasha's best interest, but because Faretta does not permit inquiry into the quality of a defense, Pasha's lack of formal legal education was not a

legitimate reason to justify the offer. Faretta explains that “[t]he language and spirit of the Sixth Amendment contemplate that counsel, like the other defense tools guaranteed by the Amendment, shall be an aid to a willing defendant—not an organ of the State interposed between an unwilling defendant and his right to defend himself personally.” 422 U.S. at 820. A Faretta violation is a structural error, for which prejudice to the defense is presumed. “Obtaining reversal for violation of [the Sixth Amendment right to represent oneself] does not require a showing of prejudice to the defense, since the right reflects constitutional protection of the defendant's free choice independent of concern for the objective fairness of the proceeding.”

Flanagan v. United States, 465 U.S. 259, 268 (1984) (citing McKaskle v. Wiggins, 104 S.Ct. 944, 951 n. 8 (1984)); see also United States v. Gonzalez-Lopez, 548 U.S. 140, 148-49 (2006).

Given that the pretrial motion hearings had occurred over many months, and in the case of the suppression motions, had involved the time-consuming testimony of a number of witnesses, Judge Fernandez’s offer to rehear and reconsider the motions was an enormous carrot to dangle before Pasha. If he had been given time to think about it, Pasha would have then realized that because the judge would only rehear the motions if Attorney Hernandez chose to refile and relitigate them, and because Pasha could not control whether Hernandez would choose to do that, the incentive offered him was an illusory promise. But Pasha was not given any time to think through

the realities of the offer because the judge was pressuring him to make an immediate decision. The jury trial was to start in seven days and acceptance of the offer meant that the trial would be postponed for at least six months to a year.

The due process violation renders involuntary Pasha's purported acceptance of the judge's terms. The coercion used by the judge renders the acceptance of the offer and the withdrawal of the demand for speedy trial an involuntary act. See Johnson v. Zerbst, 304 U.S. 458, 464 (1938) (courts indulge every reasonable presumption against waiver of fundamental rights); People v. Collins, 26 Cal. 4th 297, 312, 27 P.3d 726, 736 (Cal. 2001) ("The manner in which the trial court induced defendant to waive his right to jury trial rendered that waiver involuntary.").

The issue of whether it was error for the trial judge to pressure Pasha to accept counsel in exchange for a procedural benefit is consequential because if the trial judge violated Pasha's constitutional rights in making the offer, then under the Florida law governing the statutory right to speedy trial by demand, Pasha would be entitled to discharge. See, e.g., Landry v. State, 666 So. 2d 121, 126 (Fla. 1995) ("Because the June 25 order denying Landry's demand for speedy trial was a nullity, the trial court further erred by not setting the case for trial in accordance with subdivision (b)(2)."). Pasha should have been restored to his original position when he rescinded his acceptance of the offer in his motion filed on November 30, 2012, wherein he

stated that: “As a matter of law, because of the extraordinary circumstance[s] that exist, a trial should be scheduled and began before the expiration date of the recapture period of the Demand for Speedy Trial Petitioner filed on October 24, 2012.” (8/1411). Pasha’s motions of November 30, 2012, put the State on notice that the deal crafted by the judge on November 19, 2012, was void and he intended to enforce his right to speedy trial by demand. Judge Fernandez elected to treat Pasha’s Motion to be Heard as a new demand for speedy trial, and she continued that erroneous assumption throughout the trial. (S67/1001,1003).

The only demand filed was Pasha’s October 24, 2012 demand, and the 50-day speedy trial period triggered by that demand ended on December 13, 2012. Since Pasha was not brought to trial within 50 days, pursuant to Florida Rule of Criminal Procedure 3.191(b)(4), he had the right to a remedy under the recapture provision in subdivision (p). Pasha’s notice of expiration of speedy trial time, filed on December 17, 2012, triggered the State’s obligation to set a hearing within five days and schedule the trial within the ten-day recapture period after the day of the hearing. It was the State’s burden to schedule a hearing within the five-day period, as the window of recapture operates to the State’s benefit. Baxter v. Downey, 581 So. 2d 596, 598 (Fla. 2d DCA 1991). The time to schedule a hearing and start the trial expired with no hearing being set. No hearings occurred between December

7, 2012, and the start of trial on January 14, 2013. Pasha filed a Motion for Discharge for Lack of Speedy Trial on January 2, 2013. (8/1549).

On January 3, 2013, Judge Fernandez entered an order striking Pasha's notice of expiration of speedy trial and denying his motion for discharge (8/1552-69). Afterward, on January 14, 2013, Pasha filed a Motion for Reconsideration on Motion for Discharge for Lack of Speedy Trial (8/1585). The judge denied this motion too. (S61/38). Pasha filed a Second Amended Motion for Arrest of Judgment on July 30, 2013, that set forth the facts in detail resulting in the violation of the speedy trial rule (10/1958-64; order denying at 11/2057).

If the judge's offer to allow an attorney to refile Pasha's motions was an unconstitutional offer under the Sixth and Fourteenth Amendments, then Judge Fernandez erred when she struck the notice of expiration and denied the motions for discharge. Had the Florida Supreme Court recognized the unconstitutionality of the judge's offer, the remedy would have been to direct that Pasha be discharged pursuant to his October 24, 2012 demand for speedy trial because the State failed to bring him to trial within the statutory time periods, including the "recapture" period. The Florida Supreme Court avoided the speedy trial issue when it concluded that the judge's offer was constitutionally legitimate. This Court should grant certiorari to reaffirm the viability of Jackson and reverse.

II. Certiorari Should Be Granted to Determine Whether Police Violate Fourth Amendment Rights When they Conduct a Vehicle Stop and Seize the Driver After A 911-Caller Reports Noncriminal Suspicious Activity.

“The Fourth Amendment permits brief investigative stops—such as the traffic stop in this case—when a law enforcement officer has ‘a particularized and objective basis for suspecting the particular person stopped of criminal activity.’” Navarette v. California, 134 S. Ct. 1683, 1687 (2014) (quoting United States v. Cortez, 449 U.S. 411, 417–418 (1981)); see also Terry v. Ohio, 392 U.S. 1, 21–22 (1968); Alabama v. White, 496 U.S. 325, 330 (1990). Before stopping a person for the purpose of investigating possible criminal behavior, the officer must have “reasonable suspicion that the person is engaged in criminal activity.” J.L. v. State, 727 So. 2d 204, 206 (Fla. 1998), aff’d, 529 U.S. 266 (2000). “Reasonable suspicion, like probable cause, is dependent upon both the content of information possessed by police and its degree of reliability. Both factors—quantity and quality—are considered in the ‘totality of the circumstances—the whole picture’ . . . that must be taken into account when evaluating whether there is reasonable suspicion.” White, 496 U.S. 325.

The officers stopped Pasha based on transmissions they received from a civilian dispatcher who was not a law enforcement officer and who lacked the training necessary to make a determination of reasonable suspicion. The 911 caller, Gigi Sanchez, was an anonymous tipster for the purpose of the Fourth Amendment analysis because the officers who stopped Pasha based

on the dispatch received had no independent knowledge of the caller's identity. When asked at the hearing if the Sanchezes could have been a couple of pranksters calling 911, the deputy responded, "That could have been possible." (S23/307). In Navarette, 134 S.Ct. at 1689, the anonymous tip from person who claimed eyewitness knowledge of crime bore adequate indicia of reliability for the officer to credit the account, which contrasts with Florida v. J.L., 529 U.S. 266 (2000), in which the anonymous tip came from an informant who did not claim to have personally observed an illegal act. The Florida Supreme Court missed this distinction. This case should fall into the latter category, and the analysis should have been governed by J.L. because Gigi Sanchez did not observe Pasha committing any crime before she called 911, and she did not allege that she had knowledge of any specific crime, in contrast with the tipster in Navarette who claimed to have personal knowledge of reckless driving.

Here, the officers made no corroborative observations suggesting that Pasha had engaged in actual or potential criminal activity before they stopped his vehicle and inspected the interior with a flashlight. See Feathers v. Aey, 319 F.3d 843, 850 (6th Cir. 2003) ("An anonymous tip that an individual pointed something at a tipster does not support a finding of reasonable suspicion even when police find the described individual in the relevant area."); Tobin v. State, 146 So. 3d 159, 162 (Fla. 1st DCA 2014) (anonymous report of a disturbance where someone was overheard yelling

'Shoot me now,' did not provide reasonable suspicion for the stop of vehicle leaving the property); J.H. v. State, 106 So. 3d 1001, 1003 (Fla. 3d DCA 2013) (no reasonable suspicion for stop where officer responded to scene of fight reported by anonymous caller and observed no fight, but stopped a youth matching description who was sweating, out of breath, and nervous).

When the officers stopped Pasha's van and ordered him out of the vehicle, the officers lacked information as to the Sanchezes' basis for initiating the suspicious person report. Officer Stahlschmidt did not speak to the Sanchezes or even discuss the situation with Officer Mason before he unsnapped his gun holster and made sure that Pasha saw him do it and ordered Pasha out of the vehicle.

Even if the tipster is considered a citizen informant, the stop and subsequent detention were still illegal. The dispatcher classified the call as a Signal 13, which was not a criminal code. This fact, by itself, should have alerted the officers that the dispatcher did not possess a basis for a vehicle stop. There were not enough facts in the possession of the officers for a Terry stop because no allegation was made in the 911 call that a crime had been committed or was being committed. See United States v. Johnson, 620 F.3d 685, 693-94 (6th Cir. 2010) ("To the extent that the caller suggested a limited, unspecified possibility of criminal activity, her tip could not be considered reliable unless the officers' own observations raised the prospect of criminal activity."); Tobin, 146 So. 3d at 162 ("[E]ven if, as the State argues, we could

characterize the callers as citizen informants, there still was insufficient information given to support a reasonable, articulable suspicion that a crime had been, or was being, committed.”);

Gigi Sanchez did not provide the dispatcher sufficient information to support a reasonable suspicion for the stop because she did not know or allege that a crime had occurred. In fact, the security guard who spoke to Gigi Sanchez, Barry Malone, had declined to make the 911 call because he did not think there was reason to do so. (5/804;S76/2225-26). The issue here is whether the officers had reasonable suspicion, not whether Gigi had it. Nevertheless, she conceded on the 911 call that she did not know what the man was doing. On the call, when the operator asked Gigi if the man was bleeding, Gigi said: “I don’t know if he’s bleeding or that come from somebody but he’s up to something. He’s up to no good.” (S80/750). (The transcript of the 911 call entered shows Gigi saying “I don’t know if he’s bleeding or he got into a fight with somebody . . .” (S78/698)).

Reasonable suspicion requires that the tip be reliable in its assertion of illegality, not just in its tendency to identify a determinate person. See J.L., 529 U.S. 266, 272. A reviewing court must “look at the ‘totality of the circumstances’ of each case to see whether the detaining officer has a ‘particularized and objective basis’ for suspecting legal wrongdoing.” United States v. Arvizu, 534 U.S. 266, 273 (2002) (quoting Cortez, 449 U.S. at 417–418)). “Even a reliable tip will justify an investigative stop only if it creates

reasonable suspicion that ‘criminal activity may be afoot.’” Navarette, 134 S. Ct. at 1690 (quoting Terry, 392 U.S. at 30); see also Cortez, 449 U.S. at 417 (“An investigatory stop must be justified by some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity.”); Brown v. Texas, 443 U.S. 47, 52 (1979) (“In the absence of any basis for suspecting appellant of misconduct, the balance between the public interest and appellant's right to personal security and privacy tilts in favor of freedom from police interference.”).

“[A] mere ‘hunch’ does not create reasonable suspicion.” Navarette, 134 S. Ct. 1683, 1687 (quoting Terry, 392 U.S. at 27). “The officer's suspicion must relate to a particular crime rather than a generalized suspicion that the person detained is ‘up to no good.’” State v. Z.U.E., 315 P.3d 1158, 1163-64 (Wash. App. 2014) (quoting State v. Bliss, 222 P.3d 107 (Wash. App. 2009)). “The Fourth Amendment simply does not allow a detention based on an officer's ‘gut feeling’ that a suspect is up to no good.” United States v. Urrieta, 520 F.3d 569, 578 (6th Cir. 2008).

The totality of the circumstances did not provide the officers with the required founded suspicion for the investigative stop. The officers conceded as much at the suppression hearing when they repeatedly said that they did not know what crime may have been committed when they made the vehicle stop. When a dispatcher issues a bulletin in the absence of reasonable suspicion, then a stop in the objective reliance upon it violates the Fourth

Amendment. United States v. Hensley, 469 U.S. 221, 232 (1985). “[I]f the dispatcher lacked sufficient information to satisfy the reasonable suspicion requirement, and the officers’ subsequent observations did not produce reasonable suspicion, then the stop violated [the Defendant’s] Fourth Amendment rights.” Feathers v. Aey, 319 F.3d 843, 849 (6th Cir. 2003)(discussing Hensley).

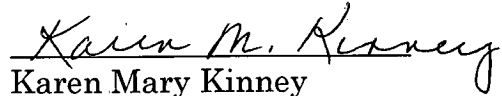
“[A]n investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop.” Florida v. Royer, 460 U.S. 491, 500 (1983). Pasha was read his Miranda rights after he was asked to provide an explanation for the blood, and he told the officers that he had encountered a dead rabbit in the woods. Deputies Mason and Stahlschmidt then left Pasha at the intersection with other officers while they went to look for evidence of any crime. The officers had no probable cause to continue detaining him at this point. See United States v. Blair, 524 F.3d 740, 753 (6th Cir. 2008) (“Officer Holmes did not possess the reasonable, articulable suspicion of criminal activity necessary to extend the scope and duration of the stop.”). This Court should grant certiorari to decide whether Pasha’s Fourth Amendment rights were violated.

CONCLUSION

The petition for a writ of certiorari should be granted.

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