

IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
FLAGLER COUNTY, FLORIDA

STATE OF FLORIDA,

v.

JOSEPH FRANK BOVA II,

Defendant.

CASE NO.: 2013-00763-CFFA
JUDGE TERENCE R. PERKINS

MOTION FOR NEW TRIAL

COMES NOW the Defendant, Joseph Frank Bova II, by and through his undersigned Assistant Public Defender and moves this Honorable Court to grant this Motion for New Trial, pursuant to Rules 3.580; 3.590(a) and (b); and 3.600, Fla. R. Crim. Proc. (2018) and various clauses of the United States Constitution and the Florida Constitution. The Defendant states the following grounds:

1. The Defendant was charged by Indictment with First Degree Murder with a Firearm, in violation of § 782.04(1)(a) and §775.087(1) and (2).
2. On Monday, September 30, 2019, the Jury returned a verdict of guilty as charged in the Indictment.
3. This Honorable Court sentenced the Defendant to Life on Count one.

Trial Violated the Defendant's Right to Self-Representation

4. Prior to the start of jury selection, the Defendant unequivocally stated that he wished to represent himself.
5. This Court, during an ex parte colloquy, inquired as to the Defendant's desire.
6. Following this colloquy the Court ruled that the Defendant could not represent himself, citing the Defendant's medications and the Court's concern about the Defendant's physical ability to remain engaged during the trial.
7. The likelihood that a defendant would incompetently represent himself is not a valid reason to deny an unequivocal and knowing request for self-representation. *Petruschke v. State*, 192 So. 3d 376 (Fla. 4th DCA 2016).
8. Once a court determines that a competent defendant of his or her own free will has knowingly and intelligently waived the right to counsel, the dictates of *Faretta* decision on right of self-representation are satisfied, the inquiry is over, and the defendant may proceed unrepresented. *Betts v. State*, 157 So. 3d 376 (Fla. 2nd DCA 2015).
9. In conducting a *Faretta* hearing into a defendant's waiver of the right to counsel, and determining whether a defendant's waiver is knowing and voluntary, the court should include inquiry into the defendant's age, education, mental condition, experience with and knowledge of criminal proceedings, and understanding of the disadvantages and

- dangers of self-representation. *Id;* and *Smith v. State*, 956 So. 2d 1288 (Fla. 4th DCA 2007).
10. Denial of a literate, competent, and understanding defendant's right to voluntary self-representation at any crucial stage of the proceedings requires a new trial. *Kearse v. State*, 858 So. 2d 348 (Fla. 1st DCA 2003).
 11. Court may deny a criminal defendant the right to self-representation on the ground that the defendant will not get a fair trial if the ground for denial is something other than defendant's lack of legal knowledge, e.g., defendant's poor health, provided an evidentiary hearing is held. *Morris v. State*, 667 So. 2d 982 (Fla. 4th DCA 1996), *review dismissed*, 679 So. 2d 29.
 12. In the case at Bar the Court did not thoroughly conduct a *Faretta* inquiry and, without having done so, denied the Defendant the absolute right to represent himself.
 13. The Court denied the request citing the Defendant's health issues and the Court's concern that he could not physically make it through the trial.
 14. The Court repeatedly ruled that the Defendant was competent to proceed, just unable to physically handle the trial.
 15. During the Hearing the Defendant was alert, animated, and gave no indication of health issues.
 16. The Defendant was repeatedly asked throughout the trial whether or not he was taking his medication as prescribed.
 17. The Defendant repeatedly confirmed that he was taking his medications and that he felt okay physically.
 18. The denial of the Defendant's right to represent himself violated his constitutional right to a fair trial contemplated by the right to counsel cases.
 19. A new trial is warranted and the Defendant prays this Court enter an Order granting him a new trial in this case.

WHEREFORE, Defendant prays this Honorable Court grant this Motion and enter an order granting him a new trial.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by delivery to: K. Mark Johnson, Assistant State Attorney, 2446 Dobbs Road, Saint Augustine, FL 32086, and to the defendant, on October 2, 2019.

/s/ Joshua Mosley

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