

No. 07-053

In the Supreme Court of the United States

—————
BEAUREGARD DUKE,
Petitioner,

v.

STATE OF SETONIA
Respondents.

—————
On Writ Of Certiorari To The
Supreme Court of The
United States

—————
BRIEF FOR PETITIONER
—————

University of Baltimore Team 2
Brad Kauffman
Hans Moore
Jason Shultz

TABLE OF CONTENTS

	Page
OPINIONS BELOW.....	1
JURISDICTION	1
CONSTITUTIONAL AND STATUTORY PROVISIONS.....	1
QUESTIONS PRESENTED.....	4
STATEMENT OF THE CASE.....	4
SUMMARY OF THE ARGUMENT	7
ARGUMENT:	
I. AN ARREST WHICH OCCURS IN VIOLATION OF STATE LAW ALSO VIOLATES THE FOURTH AMMENDMENT.....	8
A. The Police must have probable cause in order to make a valid arrest.	8
B. Setonia Law did not authorize the police to arrest Petitioner.	9
C. Evidence obtained as a result of an unlawful arrest in violation of state law must be suppressed.....	12
II. THE SIXTH AMENDMENT DOES NOT PERMIT A STATE TO DENY A DEFENDANT WHO IS COMPETENT TO STAND TRIAL, THE RIGHT TO PROCEED <i>PRO SE</i> AT TRIAL.....	14
A. The United States Constitution and Federal Laws are the Supreme Laws that Bind the States.	14
B. Recognized Constitutional Right to Waive Assistance to Counsel and Proceed <i>Pro Se</i> : The U.S. Constitution’s Sixth Amendment Grants Defendants the Right to Waive Their Right to Counsel.	16
CONCLUSION.....	23

TABLE OF AUTHORITIES

Cases:	Page
<u>Atwater v. City of Lago Vista</u> , 532 U.S. 318 (2001).....	9, 11
<u>Drope v. Missouri</u> , 420 U.S. 162 (1975).....	17
<u>Duke v. State</u> , No. 007-0503 (Sup. Ct. Set. 2008).....	4, 5, 6, 7, 10, 21
<u>Dunaway v. New York</u> , 442 U.S. 200 (1979).....	8
<u>Dusky v. United States</u> , 362 U.S. 402 (1960).....	17
<u>Edwards v. State</u> , 866 N.E.2d 252 (Ind. 2007).....	17, 18, 19, 20
<u>Elizabeth Blackwell Health Center for Women v. Knoll</u> , 61 F.3d 170 (3d Cir. 1995).....	15
<u>Faretta v. California</u> , 422 U.S. 806 (1975).....	16, 17, 18, 20, 21, 22
<u>Faretta v. State</u> , 1974 WL 186116 (U.S.).....	22
<u>Gideon v. Wainright</u> , 372 U.S. 335 (1963).....	18
<u>Godinez v. Moran</u> , 509 U.S. 389 (1993).....	17, 19, 20, 22
<u>Henry v. United States</u> , 361 U.S. 98 (1959).....	8
<u>Johnson v. United States</u> , 333 U.S. 10 (1948).....	10, 12
<u>Johnson v. Zerbst</u> , 304 U.S. 458 (1938).....	17
<u>Jones v. Rath Packing Co.</u> , 430 U.S. 519 (1977).....	15
<u>Kelley v. Benchmark Homes, Inc.</u> , 250 Neb. 367 (1996).....	15
<u>Ker v. California</u> , 374 U.S. 23 (1963).....	11
<u>Mapp v. Ohio</u> , 367 U.S. 643 (1961).....	10
<u>Martinez v. Court of Appeal of California</u> , 528 U.S. 152 (2000).....	20, 21
<u>Michigan v. DeFillippo</u> , 443 U.S. 31 (1979).....	12, 13

Cases – Continued:	Page
<u>Miller v. United States</u> , 357 U.S. 301(1958).....	11
<u>Pate v. Robinson</u> , 383 U.S. 375 (1966).....	17
<u>People v. Andrews</u> , 21 Mich. App. 731 (1970).....	15
<u>Poynter v. State</u> , 749 N.E.2d 1122 (Ind. 2001).....	17
<u>United States v. Calandara</u> , 414 U.S. 338 (1974).....	12
<u>United States v. Clausell</u> , 389 F.2d 34 (C.A.N.Y 1968).....	17
<u>United States v. Robinson</u> , 414 U.S. 218 (1973).....	8
<u>United States v. Watson</u> , 423 U.S. 411 (1976).....	8
<u>Wong Sun v. United States</u> , 371 U.S. 471 (1963).....	13

Constitution, statutes and miscellaneous:

U.S. Const.:

Amend. IV.....	6, 7, 9, 11, 12, 13, 23
Amend. VI.....	3, 7, 14, 16, 17, 18, 19, 20, 21
Amend. VI (Supremacy Clause).....	8, 14, 15
Amend. XIV.....	2, 18

Setonia Code

§ 19.2-74.....	3, 5, 6, 9, 10, 11
§ 19.2-82.....	3, 4

Miscellaneous:

Am. Jur. Const. Law § 51.....	14
-------------------------------	----

In the Supreme Court of the United States

No. 07-053

BEAUREGARD DUKE,
Petitioner,

v.

STATE OF SETONIA
Respondents.

On Writ Of Certiorari To The
Supreme Court of The
United States

BRIEF FOR PETITIONER

OPINIONS BELOW

The opinion of the Supreme Court of Setonia (No. 007-0503) is unreported at 401 F.3d 36. The decision can be found in the Record from pages 2 to 13.

JURISDICTION

The judgment of the Supreme Court of Setonia was entered on January 3, 2008. The petition for a writ of certiorari was granted on February 15, 2008.

CONSTITUTIONAL AND STATUTORY PROVISIONS

United States Constitution, Amendment XIV:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State 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.

United States Constitution, Amendment VI:

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 defense.

United States Constitution, Amendment IV:

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

United States Constitution, Amendment VI (Supremacy Clause):

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Setonia Code § 19.2-74 (2006):

Whenever a person is detained by or is in the custody of an arresting officer for any violation committed in such officer's presence which offense is a violation of any county, city, or town ordinance or of any provision of this Code punishable as a Class 1 or Class 2 misdemeanor or any other misdemeanor for which he may receive a jail sentence, except as otherwise provided in Title 46.2 or §18.2-266, or an arrest on a warrant charging an offense for which a summons may be issued, and when specifically authorized by the judicial officer issuing the warrant, the arresting officer shall take the name and address of such person and issue a summons or otherwise notify him in writing to appear at a time and place to be specified in such summons or notice. Upon giving by such person of his written promise to appear at such time and place, the officer shall forthwith release him from custody. However, if any such person shall fail or refuse to discontinue his unlawful act, the officer may proceed according to the provisions of § 19.2-82.

Setonia Code § 19.2-82 (2006):

A person arrested without a warrant shall be brought forthwith before a magistrate or other listing authority having jurisdiction who shall proceed to examine the officer making the arrest under oath. If the magistrate or other issuing authority having jurisdiction who shall proceed to examine the officer making the arrest under oath. If the magistrate or other issuing authority having Jurisdiction has lawful probable cause upon which to believe that a criminal offense has been committed, and that the person arrested

has committed such offense, he shall issue either a warrant under the provisions § 19.2-72 or a summons under the provisions of § 19.2-73.

QUESTIONS PRESENTED

1) Whether an arrest occurring in violation of State law also violates the Fourth Amendment of the United States Constitution, triggering the exclusionary rule?

2) Whether a State may deny a criminal defendant, deemed competent to stand trial, their Sixth Amendment right to self-representation at their trial?

STATEMENT OF THE CASE

At 2:45 p.m., on December 10th 2005, Beauregard Duke (hereinafter referred to as “Petitioner”) departed from his room in the Motel 8 located in Davenport, Setonia. Duke v. State, No. 007-0503, at 2 (Sup. Ct. Set. 2008) (Hereinafter Sup. Ct. Set. Op.). He entered his 1969 Dodge Charger en route to the Eagle’s Nest Bar off of route 21. Id.

Around the same time that Petitioner reached Route 21, Chief Deputy Rosco of the Hazzard Police Department received a call on his radio that an individual by the name of “Slim” was driving a Dodge Charger on Route 21 with a suspended license. Id. Chief Deputy Rosco, who had been previously assigned to a desk job because of his tendency to engage in “hot pursuits,” instructed his fellow officers to stop Slim. Id. Responding to Chief Deputy Rosco’s instructions, Deputies Strate and Cletus observed a Dodge Charger driving on route 21. Under the assumption that Slim was the driver, Deputies State and Cletus pulled the vehicle over. Id.

Deputies Slate and Cletus asked Petitioner for his license and registration. Id. Even upon realizing they had pulled over the wrong person, the police officers continued

their investigation. Deputies Slate and Cletus determined that Petitioner was driving with a suspended license, which is a Class I misdemeanor. Id. Instead of deputies issuing a summons, Petitioner was immediately handcuffed, read his Miranda rights, and placed in the police car. Id. at 3. Following Petitioner's arrest, the deputies traveled to Davenport, Setonia and searched Petitioner's Motel 8 room finding no contraband. Id. While at the motel, the deputies realized that they had not exercised a search of Petitioner's person due to a miscommunication. Id. A subsequent search of Petitioner's person revealed a substance identified as crack cocaine, a .45 caliber handgun, and \$600.00 in cash. Id.

Petitioner was charged with driving under a suspended license, possession of crack cocaine with the intent to distribute, and possession of a firearm while in possession of controlled substances. Id. He was arraigned the next morning and assigned an attorney. Id. The State released Petitioner from their custody when he posted a \$10,000.00 bond set by Judge Dipasquale. Id. On December 26, 2005, Chief Deputy Rosco, linked the .45 caliber to the attempted murder of Jefferson Davis Hogg. Id. at 4. Petitioner was once again arrested, read his Miranda rights, and charged with the attempted murder of Jefferson Davis Hogg. Id. Due to the attempted murder charge, Petitioner was denied bail. Id.

Petitioner appeared before Judge Schoen in the Superior Court of Setonia on April 3, 2006 with his attorney Justin Talley for a suppression hearing. Id. Petitioner moved for the court to suppress the crack cocaine and handgun because the search of his person proceeded from an illegal arrest in violation of Setonia Code § 19.2-74 (2006). Id. Deputy Cletus testified at the hearing that the arrest was in "our discretion. We chose to make the arrest." Id. at 5. Setonia Code § 19.2-74 states that officers are only permitted

to issue a summons to individuals who have committed a Class 1 misdemeanor, which includes the offense of driving with a suspended license. Attorneys for the State argued that the arrest exception in the Setonia statute applies because Petitioner did not appear to discontinue the unlawful act. Id. Setonia Code § 19.2-74 further provides that an arrest can be made for a Class I misdemeanor if the person fails to discontinue the unlawful act. Judge Schoen made no determination that Petitioner tried to drive his car again or that he refused to discontinue the unlawful act. Id. Following a hearing Judge Schoen held that Petitioner's arrest did not violate Setonia law or the Fourth Amendment, and that the evidence obtained from that search was admissible. Id.

Prior to the start of Petitioner's trial on April 9, 2007, Petitioner's counsel moved for a psychological evaluation of Petitioner to determine whether he was competent to stand trial. Id. The court acquiesced and held a competency hearing on October, 16 2006, with Judge Foster presiding. Id. at 6. Doctors Ferges and Tulp testified that Petitioner exhibited symptoms of schizophrenia and delusional thinking. Id. Based on the doctor's testimony, Judge Foster held that Petitioner was not competent to stand trial. Id. Following Judge Foster's decision, Petitioner was ordered to undergo several months of treatment. Id. Following treatment, the court ordered Petitioner to undergo a second competency hearing that took place on April 2, 2007. Id. Doctors Anthony and Dibenedetto conducted the second evaluation were Dr. Anthony opined, and Dr. Dibenedetto concurred, that Petitioner showed signs of grandiosity and had difficulty concentrating for long periods of time, but determined that Petitioner was competent to stand trial and was capable of preparing a defense in collaboration with attorney. Id.

Upon reviewing the results of Petitioner's second evaluation, Judge Foster held that Petitioner was competent to stand trial. Id.

Following the court's determination that he was competent to stand trial, Petitioner moved to remove his counsel as his legal representative and sought to proceed *pro se*. Id. On April 9, 2007, his attorney moved to withdraw from this case. Id. Although Petitioner was found competent to stand trial, Judge Foster believed that he was incompetent to defend himself, resulting in the denial of both motions. Id.

SUMMARY OF THE ARGUMENT

The Supreme Court of Setonia erred when it refused to suppress evidence obtained from an illegal search incident to an arrest, which violated Setonia law. The Fourth Amendment of the United States Constitution requires the police to have probable cause in order to make a valid warrantless arrest. Because the first requirement stipulated in the statute was not satisfied, the officers did not have the authority to arrest the Petitioner. An arrest without probable cause in violation of a state's statute will be declared invalid. Arrests deemed to be invalid due to a violation of State law also violate the Fourth Amendment. Therefore, evidence seized as a result of a search incident to an invalid arrest will trigger the exclusionary rule prompting the suppression of all evidence obtained through the illegal search and seizure.

The Sixth Amendment of the Constitution expressly guarantees citizens the right to have counsel present during criminal procedures. Conversely, it also cedes the right to waive counsel and proceed *pro se* if they are deemed competent to stand trial. The latter right is implied within the Constitution that derives from English law, which was later adopted by the colonies. A "right" is something a person is entitled to, attached to such

entitlement of possession or assertion comes the implied ability to reject that which is given, regardless of whether it is to one's detriment.

The Supremacy Clause of the U.S. Constitution prohibits States from interfering with the U.S. Constitution or laws that derive therefrom. The Supreme Court of Setonia was wrong when it denied the Petitioner, after it he was found competent to stand trial, his Sixth Amendment right to self-representation.

ARGUMENT

I. AN ARREST WHICH OCCURS IN VIOLATION OF STATE LAW ALSO VIOLATES THE FOURTH AMMENDMENT.

A. The Police must have probable cause in order to make a valid arrest.

Throughout the history of American jurisprudence, this Court has consistently held that the police must have probable cause in order to make a valid arrest. As early as 1959, this Court stated in Henry v. United States, 361 U.S. 98, 100 (1959), that the standard to be applied is whether the police had probable cause to make the arrest. In Dunaway v. New York, 442 U.S. 200, 208 (1979), this Court similarly held that the standard of probable cause applies to all arrests. Therefore, the lawfulness of an arrest is squarely determined upon whether the police had probable cause to make the arrest. United States v. Watson, 423 U.S. 411, 415 (1976). Probable cause will only be satisfied once the police have determined there are reasonable grounds for making the arrest. United States v. Robinson, 414 U.S. 218 (1973). If there are no grounds for making an arrest, evidence seized from the defendant following an arrest without probable cause will violate the Fourth Amendment, rendering them inadmissible at trial. Id.

The Fourth Amendment of the United States Constitution, which applies to the states through the Fourteenth Amendment, provides:

The right of 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, upon probable cause, supported by Oath or affirmation, and particularly describing the place to be seized, and the persons or things to be seized. U.S. CONST. art. IV.

As part of their analysis in determining whether probable cause exists, this Court examines the governing statute of interested States. Atwater v. City of Lago Vista, 532 U.S. 318, 353 (2001).

B. Setonia Law did not authorize the police to arrest Petitioner.

Specifically § 19.2-74 states:

Whenever a person is detained [in] violation...of any county, city or town ordinance or of any provision of this code punishable as a Class 1 misdemeanor....the arresting officer *shall* take the name and address of such person and issue a summons or otherwise notify him in writing to appear at a time and place to be specified in such summons or notice. Upon the giving by such person of his written promise to appear at such time and place, *the officer shall forthwith release him from custody.* (emphasis added).

The Setonia code clearly provides procedures that police must follow when encountering a Class 1 misdemeanor, making such offense, initially, a non-arrestable offense. Petitioner's arrest was therefore precluded by said procedures to which the officers failed to obey; specifically, Setonia law mandated that the officers initially issue a written citation for driving with a suspended license -- a Class 1 misdemeanor -- and unless the officers had a reasonable belief that the misdemeanor would continue after

issuing a citation, they lacked the ability to exercise their discretion to execute an arrest. § 19.2-74.

The police clearly violated Setonia law when they immediately arrested Petitioner without satisfying the initial threshold of issuing a written citation and giving Petitioner an opportunity to cease the unlawful act – driving without a license. Absent the officers satisfying this initial requirement, they were not allowed, under Setonia law, to use their discretion to perform an arrest. There is no evidence on record that the Petitioner failed to discontinue the unlawful act; however, what is evident from the record is that the officers had properly stopped and prevented the unlawful act from continuing because they had control of the car and towed it away, thus permanently thwarting Petitioner’s ability to drive with a suspended license. Without any specific evidence, which is not existent, that Petitioner would continue the underlying misdemeanor, the police had no grounds to arrest him. In fact, the Supreme Court of Setonia noted in their holding that the State even conceded that the police violated the statute when they arrested Petitioner instead of issuing him a summons. Sup. Ct. Set. Op. at 8. The facts in this case demonstrate that initially the police only had the authority to issue a summons and the circumstances never rose to the level that would have allowed officers to carry out the arrest of the Petitioner.

C. Evidence obtained as a result of an unlawful arrest in violation of state law must be suppressed.

This Court has thoroughly established that States are permitted to develop their own rules governing lawful arrests. Mapp v. Ohio, 367 U.S. 643 (1961). This Court stated in Johnson v. United States, 333 U.S. 10, 15 (1948), that the determination of

whether an arrest is lawful depends on state law averring that “[it] determines the validity of arrests without warrants.” In Miller v. United States, this Court held that an arrest is only valid if the police have the statutory authority to carry out an arrest – the authority derives solely from state law. 357 U.S. 301, 304, 306 (1958). Likewise, in Ker v. Californina, this Court held that the lawfulness of an arrest in California was to be determined by California law. 374 U.S. 23, 39 (1963) (holding that because the California statute allowed the police officers to break into a dwelling place, the subsequent arrest was upheld).

Furthermore, in Atwater v. City of Lago Vista, which the Supreme Court of Setonia heavily relied upon for its decision, actually substantiates the Petitioner’s position that the authority of the police to arrest an individual is determined by state law. See generally, 532 U.S. 318. In Atwater, the defendant was driving without a seatbelt, which under Texas law is an arrestable offense. Id. at 323. This Court only stated that the arrest satisfied the constitutional requirements under the Fourth Amendment after determining that the police had probable cause to arrest the defendant in accordance with the statute. Id. at 354.

Following the reasoning used by this Court in Atwater, if state law prescribes specific procedures to be followed, thus, establishing a threshold to be satisfied before an arrest may be deemed valid, one must logically conclude that the power to arrest only exists when officers are able to satisfy all of the initial requirements set out by state law, any deviation from clear and unambiguous state law, absent a showing of necessity, will result in an illegal arrest. Hence, the arrest of Petitioner was in clear violation of state law which required officers to act pursuant to the Setonia law § 19.2-74 ordering that a

written citation be issued for Class 1 misdemeanors, for which Petitioner was originally stopped. Evidence was illegally obtained as a direct result of the illegal arrest.

Petitioner's arrest clearly violated state law, which subsequently violated his Fourth Amendment Constitutional protection against unreasonable searches and seizures, which prompts the application of the exclusionary rule – the remedy for illegally obtained evidence. The exclusionary rule, which results in the suppression of the evidence used against the Defendant at trial, was created in order to deter police misconduct and to safeguard the constitutional rights afforded to American citizens by virtue of the Fourth Amendment. United States v. Calandara, 414 U.S. 338 (1974).

In Johnson v. United States, this Court held that evidence seized illegally following an arrest in violation of state law, must be suppressed under the Fourth Amendment. 333 U.S. 10, 15 (1948). In the *sub judice*, Setonia law required a written citation to be issued to Petitioner as the initial step to prevent any further unlawful activity; thus, the search and arrest which followed were in direct violation of Setonia law, and, therefore, illegal – rendering the guns and drugs obtained from the illegal search inadmissible.

This Court should suppress the gun and drugs in order to comply with the holdings of Johnson and Michigan v. DeFillippo, 443 U.S. 31 (1979). In Michigan, this Court held that the Fourth Amendment only permits the seizure of evidence if the seizure was incident to a lawful arrest and authorized by state law. Id. at 36. The defendant was arrested in Michigan for violating a local ordinance that required any people to identify themselves at the request of a police officer. Id. at 33. After a search incident to the arrest the police found drugs, which this Court later determined to have been properly

seized because the arrest was in line with Michigan law; thus, no violation of the Fourth Amendment existed. Id. at 37, 40.

In contrast, the Petitioner's arrest was clearly prohibited by Setonia law absent a demonstrated intention by Petitioner to continue the unlawful act; absent such fact, the police had no authority to conduct a search of the Petitioner's person. Without the illegal means used by the police to obtain the evidence, the gun and drugs would not have been found, much less introduced at trial. Wong Sun v. United States, 371 U.S. 471, 488 (1963).

Accordingly, from a public policy perspective, the actions of the Setonia Police Department should be discouraged because they undermine the State's legislative powers. Society has deemed some crimes to be less serious than others, thereby allowing citations to be given for the sake of judicial economy. While a police officer retains the discretion to make an arrest in certain circumstances, when a statute is explicit in setting forth procedures that should be followed, police discretion is trumped by the state requirement. If the behavior of the officers in the case at bar is upheld, any officer could potentially set aside state laws for minor offenses ranging from cursing in public to loitering, as a justification to conduct an illegal search and seizure of a citizen which would give the police excessive power and would diminish citizen privacy. In order to prevent future misconduct from the Setonia police department, the gun and drugs must be suppressed.

II. THE SIXTH AMENDMENT DOES NOT PERMIT A STATE TO DENY A DEFENDANT WHO IS COMPETENT TO STAND TRIAL, THE RIGHT TO PROCEED *PRO SE* AT TRIAL.

The trial court erred in denying Petitioner his Sixth Amendment Constitutional right to represent himself at trial. Historical English, colonial, and contemporaneous statutory and case law has recognized a criminal defendant's Constitutional right, and not privilege, to waive their right to counsel at trial. The rights granted by the United States Constitution are a promise of certain freedoms to all citizens that do not restrict nor deny the freedom to refuse such rights. As such, no State may ignore or interfere with the rights guaranteed by the United States Constitution that a competent defendant has the right to waive counsel and have the right to self-representation.

A. The United States Constitution and Federal Laws are the Supreme Laws that Bind the States.

The Supremacy Clause of the U.S. Constitution clearly commands that “the constitution, and the laws of the United States which shall be made in pursuance thereof...shall be the supreme law of the land... *any Thing in the Constitution or Laws of any State to the contrary notwithstanding.*” U.S. CONST. art. VI, cl. 2 (emphasis added). The U.S. Constitution, however, allows the States to establish its own set of laws absent federal regulation. Moreover, a State may broaden the rights afforded by the U.S. Constitution and its amendments, “but they cannot subtract from the rights [it] guarantees”; the relationship between the federal and State constitutions may be thought of as “the Federal Constitution set[ting] a floor for individual rights, while States’ Constitutions establish a ceiling.” Am. Jur. Const. Law § 51. However, even laws passed pursuant to a State exercising its acknowledged powers “must yield, in case they conflict”

with the federal constitution. Id. The Supremacy Clause of the U.S. Constitution clearly establishes the principal that state law that conflicts with federal law or federal constitutional rights is unenforceable.

In effect, the U.S. Constitution trumps any congressional law or State constitutional provisions falling within federal constitutionally established parameters. The power of the federal constitution over State constitutions, laws, and regulations, whenever they are in direct conflict, has been recognized by various States as being supreme. See generally, Kelley v. Benchmark Homes, Inc., 250 Neb. 367 (1996); Cf. Elizabeth Blackwell Health Center for Women v. Knoll, 61 F.3d 170 (3d Cir. 1995); People v. Andrews, 21 Mich. App. 731 (1970). A State law conflicts with a federal right if the state law “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” Jones v. Rath Packing Co., 430 U.S. 519, 526 (1977). Although Jones v. Rath Packing Co. spoke to congressional acts overriding state law, we may infer that because the U.S. Constitution controls Congressional actions, the standard above is also indicative that violations of the U.S. Constitution occur whenever state constitutions hinder the full purpose and objectives of the rights afforded by the federal constitution.

The trial court committed reversible error in denying the Petitioner the right to waive his Constitutional right to counsel and present his own defense. The State courts of Setonia over stepped their legal boundaries by preventing Petitioner from “master-minding”, crafting, and presenting his defense. This is a right that is reserved to criminal defendants at the trial preparation or trial phase of proceedings, which may not be curtailed by the States.

B. Recognized Constitutional Right to Waive Assistance to Counsel and Proceed *Pro Se*: The U.S. Constitution's Sixth Amendment Grants Defendants the Right to Waive Their Right to Counsel.

In all criminal prosecutions, the accused shall enjoy the right...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 defense.* U.S. CONST. art. VI (emphasis added).

The Sixth Amendment of the U.S. Constitution explicitly grants a defendant the right to elect the assistance of counsel. The Constitution does not force an attorney upon a destitute defendant rather it offers them the opportunity to elect counsel's *assistance* in presenting their defense. If right to counsel did not include the right to waive counsel, it should read that a defendant *must* have counsel represent them at trial proceedings. The right to appear before the court as a *pro se* defendant derives naturally from the explicit right to have counsel assist in one's defense. See generally, *Faretta v. California*, 422 U.S. 806 (1975) (a defendant in a state criminal trial has a constitutional right to proceed without counsel when he voluntarily and intelligently elects to do so, and that the state may not force a lawyer upon him when he insists that he wants to conduct his own defense.)

The right of a defendant to represent himself has also been correctly extracted from the Sixth Amendment by this Court. Specifically, in *Faretta v. California* this Court clearly stated that the right of the assistance of counsel afforded to a defendant is a "defense tool that is guaranteed to a willing defendant", and this privilege should not be construed to signify a State's power to thrust upon a defendant counsel which they are not willing to accept. Id. at 820.

To invoke this Constitutional right a defendant that has been bestowed the privilege must “make an unequivocal request to act as his own lawyer.” United States v. Clause, 389 F.2d 34, 35 (C.A.N.Y 1968). The Sixth Amendment does not extend to the States the discretion to override a competent defendant’s independence in determining to have an attorney by his side at counsel table during criminal proceedings against him.

A criminal defendant must competently and intelligently waive their right to counsel or they must not be tried. See Godinez v. Moran, 509 U.S. 389, 396 (1993) (quoting Pate v. Robinson, 383 U.S. 375, 378 (1966)); see also, Johnson v. Zerbst, 304 U.S. 458, 468 (1938) (holding that a criminal defendant may not be tried unless he is competent and he may not waive his right to counsel or plead guilty unless he does so “competently and intelligently”). Dusky v. United States, delineated the standard for competence to stand trial to be “whether the defendant has ‘sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding’ and has ‘a rational as well as factual understanding of the proceedings against him.’” 362 U.S. 402 (1960). Additionally, a “trial court must satisfy itself that the waiver of the constitutional rights is knowing and voluntary.”¹ Godinez, 589 U.S. at 400. In determining whether a waiver was knowing and voluntary, “the trial court must inform the defendant of the dangers and disadvantages of self-representation.” Edwards v. State, 866 N.E.2d 252, 257 (Ind. 2007)(quoting Poynter v. State, 749 N.E.2d 1122, 1126 (Ind. 2001).

A defendant deemed competent to stand trial is also sufficiently competent to waive their Constitutional right of assistance of counsel, Godinez, 589 U.S. at 389; driven

¹ A competency inquiry refers to a defendant’s mental capacity, and the “question is whether [they] have the ability to understand the proceedings. Godinez, 589 U.S. at fn. 12 (quoting Drope v. Missouri, 420 U.S. 162, 171 (1975). “Knowing and Voluntary is to determine whether the defendant actually does understand the significance and consequences of a particular decision and whether the decision is coerced.” Faretta, 422 U.S. at 835.

by the reasoning that the decision to waive counsel does not require a substantially “higher level of mental functioning than the decision to waive other constitutional rights.” Id. at 399. Faretta also adds that a court determining whether a defendant is competent to proceed *pro se* must not look to a defendant’s “skills and experience [as] a lawyer in order to represent himself.” 422 U.S. at 835. Furthermore, this Court held in Faretta that a defendant who is literate, competent, and understanding, who desires to waive his right to counsel will be considered to have knowingly and voluntarily exercised his free-will, and his waiver will be valid. Id.

In Gideon v. Wainwright, this Court addressed the issue of whether a State could deny a criminal defendant their Sixth Amendment right of the assistance of counsel, and it held that the Sixth Amendment protection to a criminal defendant is made “obligatory on the states by the [due process clause] of the Fourteenth Amendment.” Cf. 372 U.S. 335, 343 (1963). Hence, it follows that States cannot uproot a defendant’s constitutional right to waive assistance of counsel because this right is also guaranteed in state proceedings by the Fourteenth Amendment. Faretta, 422 U.S. at 818.

The Edwards case mirrors the case *sub judice* factually and establishes an excellent legal reasoning template that adheres to this Court’s opinion in Faretta. In 1999 Edwards was convicted of attempted murder and robbery. 866 N.E. at 253. Prior to trial, Edwards underwent a psychological evaluation with two disinterested psychologists who found Edwards to suffer from schizophrenia; at which point the trial court deemed Edwards incompetent to stand trial. Id. at 254. Two years later in 2001, Edwards was reevaluated by another psychiatrist who found Edwards competent to stand trial. Id. The trial ordered Edwards to be evaluated by “two different disinterested psychiatrists,” who

then concluded Edwards was incompetent to stand trial. Id. Edwards underwent a final evaluation in 2004, where he was found competent to stand trial. Id. Edwards then filed a motion to proceed *pro se* but his motion was denied. Id. The trial court then found Edwards “competent to stand trial but lack[ing] the additional capability required to conduct a defense” and denied his motion. Id.

The trial court bed-rocked its finding that Edwards was incompetent to proceed *pro se* in the final report that found Edwards competent to stand trial, where the psychiatrist found schizophrenia of an undifferentiated type, and Edward’s acknowledgement of “his need for counsel” and the psychiatrist conclusion that “[Edwards] was able to plan a legal strategy in cooperation with his attorney.” Id. at 259-60. The Supreme Court of Indiana correctly adhered to this Court’s holding in Faretta and Godinez when it reversed the trial court’s decision, and concluded that because “Edwards was found competent to stand trial he had a constitutional right to proceed *pro se* and it was reversible error to deny him that right on the ground that he was incapable of presenting his defense.” Id. at 260. In reaching this conclusion, this Court continues to reject the existence of two independent standards when determining a defendant’s competency to stand trial and their competency to waive their Sixth Amendment Constitutional rights; and reaffirms the single standard that a criminal defendant who is found competent to stand trial is also competent to waive federal and state constitutional right to counsel. Id. at 254; see also, Godinez, 589 U.S. at 389, 99.

A defendant need not be a legal scholar nor demonstrate a thorough knowledge of the rules of evidence and law in order to qualify to present a defense on their behalf. All that is required of a defendant is that they are found competent to stand trial, that they

waive their right to counsel knowingly and voluntarily, and that the trial court apprises the defendant of the perils of a *pro se* defense. See supra at 17. A trial court upon finding a *pro se* defendant, who is competent to stand trial, but incapable of properly defending themselves may take alternative measures to ensure the proper administration of justice while not hampering a defendant's Constitutional right to self-representation by appointing "standby-counsel" Martinez v. Court of Appeal of California, 528 U.S. 152, 162 (2000).

Martinez v. Court of Appeal of California, nor any other decision by this Court has overruled the precedent established in Faretta or Godinez; thus, said precedent that "competency to represent oneself at trial is measured by competency to stand trial" continues to be binding on all the States. Edwards, 866 N.E.2d at 260. The Martinez case speaks to a criminal defendant's Constitutional right to proceed *pro se* on appeal, which is not guaranteed by the Sixth Amendment. Martinez, 528 U.S. at 152.

This Court clearly distinguished the circumstance under which the Constitutional right recognized in Farreta and Godinez comes to life for a criminal defendant. The Constitutional right to waive counsel is reserved to a criminal defendant at trial, but the Constitution does not extend this right to the appeals process because the "[Sixth] Amendment deals strictly with the trial rights and does not include any right to appeal." Id. at 152-53. The right identified in Faretta to waive counsel is embedded in centuries of historical English and colonial statutory and case law; however, "unlike the right recognized in Faretta" there is no support for "an affirmative constitutional right for appellate self-representation" Id. at 152, which is why this Court in Martinez could not

find a right to *pro se* representation at the appellate level. The specific holding of *Faretta* is confined to a criminal defendant at the trial phase to represent themselves. *Id.* at 154.

The function of the Sixth Amendment is to identify the basic rights which are available to a criminal defendant during “the preparation for a trial and at the trial itself; the Sixth Amendment does not include any right to appeal.” *Id.* at 159-60. Plainly speaking, the Sixth Amendment is not applicable to appellate proceedings and is completely irrelevant to the case at hand.

In the present case the Supreme Court of Setonia incorrectly relies on the *Martinez* dissent to support its decision, which is not controlling law. Sup. Ct. Set. Op. at 9. The right denied by *Martinez* is that a criminal defendant does not have a Federal Constitutional right to represent himself on direct appeal. That decision does not affect this Petitioner’s fundamental Constitutional right to waive his right to counsel and represent himself at trial. *See supra* at 19. This right is guarded by the Sixth Amendment and no State may curtail this right absent a Constitutional Amendment or this Court overruling the precedent set forth in *Faretta*.

The trial court incorrectly denied Petitioner’s right to waive assistance of counsel and proceed *pro se*. Sup. Ct. Set. Op. at 6. Judge Foster’s decision was a direct violation of the principle set forth in *Faretta* and *Godinez*, that once a defendant is deemed competent to stand trial they are considered competent to assert their own defense in court. *See supra* at 20. Judge Foster articulated the reason for her decision to be that the “fundamental fairness and due process would be adversely affected.” Sup. Ct. Set. Op. at 6. There is no doubt that a defendant without legal training and knowledge of the court rules, proceedings, and legal defenses, will be disadvantaged from the start, and that an

attorney would better articulate and present a defense on behalf of the defendant. This Court, however, has consistently pronounced the standard which trial courts must adhere to when deciding the appropriateness of a defendant's waiver of their Constitutional right to counsel.

Moreover still, fundamental fairness and due process can only exist where a defendant is able to develop a proper attorney-client relationship which is born from the "client's confidence in his attorney" and subsequently leads to their "full cooperation" in preparation for their defense. Faretta v. State, 1974 WL 186116, 4 (U.S.). (Petitioner's brief). A deviation from the voluntary acceptance of counsel is a unilateral imposition of a circumstance which will inevitably impede a defendant's ability to trust and rely on his attorney, thereby endangering a defendant's defense and placing them in no worse of a position than if they had proceeded under a *pro se* defense. Trial courts retain the authority to impose "stand-by" counsel in the event that a competent defendant – through self-representation - severely hampers judicial proceedings; however, this Court has not uprooted a competent injudicious defendant's right to appear *pro se*. See supra at 17-19.

The Petitioner was deemed competent to stand trial by a psychologist, subsequently the trial court also found Petitioner competent to stand trial. Id. Under this Court's interpretation of the Constitution and subject to the standard previously enunciated in Faretta and Godinez, upon making a competent finding of the Petitioner's state of mind, the Petitioner was capable of asserting his Constitutional right to a *pro se* defense, of which the trial court wrongly deprived him.

CONCLUSION

For the foregoing reasons, this Court should conclude that the search of the Petitioner violated the Fourth Amendment, and hold that evidence obtained as a result of the illegal search was improperly admitted and should be excluded under the exclusionary rule. Moreover, this Court should reverse the erroneous finding by the Supreme Court of Setonia that the Petitioner was not competent to waive his right to counsel and defend himself at trial once he was deemed competent to stand trial.