IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT OF FLORIDA

ROGER N. ROSIER,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

CASE NO.: 1D16-2327

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

# ANSWER BRIEF OF APPELLEE

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## PRELIMINARY STATEMENT

The record consists of multiple volumes including. The brief will use "R" for main volume and "SR4." Due to the issues raised in the initial brief, it is unnecessary for this brief to cite to other portions of the record. Citations to the record will include the page number.

"IB." will refer to the initial brief, followed by the page number. All issue statements have been reformulated in this appeal.

## STATEMENT OF THE CASE AND FACTS

The State accepts the initial brief's statement of the facts subject to the following supplementation regarding the hearing held on August 14, 2014, which was transcribed and filed with this court after the filing of the initial brief:

After Appellant's arrest, the trial court found Appellant incompetent to proceed on October 7, 2013 and sent Appellant to Florida State Hospital to bring Appellant's competency to an acceptable level for trial. (R. 10-23). In a June 18, 2016 report, Florida State Hospital metal health experts found Appellant competent to proceed. (R. 24-31). After the trial court received the report, the trial court set a date for a competency hearing. (R1. 22-24). On August 14, 2014, the trial court held hearing and discussed Appellant's competency. (R. 2-4).

The August 14, 2014 competency hearing started out with defense counsel

stipulating to the findings in the report and stating that Appellant did not want to waive speedy trial. (SR4. 156). The trial court then conducted the following colloquy with Appellant:

> THE COURT: Okay. How are you doing, Mr. Rosier?
>
> THE DEFENDANT: I'm good.
>
> THE COURT: You're doing good?
>
> THE DEFENDANT: A lot better.
>
> THE COURT: Okay. Good. And you're not on any medications right now?
>
> THE DEFENDANT: I am, it' s just regular over-the-counter medications, pain medications, and things of that nature. No psychotropic –
>
> THE COURT: But no psychotropic – psychotropic medications?
>
> THE DEFENDANT: No, ma'am.
>
> THE COURT: And you're doing okay?
>
> THE DEFENDANT: Yes, ma'am, better.

(SR4. 156-57). The trial court then asked the State if it wanted to add any input and the State declined to add anything. (SR4. 157).

The set the case for trial and stated: "And I'll go ahead and find you competent to proceed." (SR4. 157). On the same date of the competency hearing, the trial court rendered an order finding competent to proceed. (R. 32). The order stated:

> THIS CAUSE having come before the Court on the report of Leslie Dellenbarger, Psy. D. Senior Psychologist, Florida State Hospital of June 19, 2014, that the Defendant is competent to proceed, and the Court being

fully advised in the premises, it is herby

ORDERED AND ADJUDGED:

The Defendant is Currently Competent to proceed to trial.

DONE AND ORDERED this 14 day of August, 2014

(R. 32).

## SUMMARY OF ARGUMENT

### ISSUE I

The transcript of the August 14, 2014 hearing, the competency report from Florida State Hospital, and the trial court's August 14 order refute the initial brief's only claim that the trial court never held a competency hearing. The report, transcript of August 14, 2014 hearing, and the trial court's written order of competency showed the trial court fully complied with the requirements expressed in Dougherty v. State, 149 So. 3d 672 (Fla. 2014) and Merriell v. State, 169 So. 3d 1287 (Fla. 1st DCA 2015) by holding a hearing, making an independent determination that Appellant was competent to proceed, and entering a written order. Therefore, this Court should affirm on this issue.

### ISSUE II

Appellant argues that the trial court erred by imposing a $60 fine pursuant to section 775.083 and related $3 surcharge under section 938.04 without orally announcing it at sentencing because the $60 fine was discretionary. The State recognizes the $60 fine that was imposed under section 775.083 and therefore, the trial court had to orally pronounce it. See Simmons v. State, 196 So. 3d 1287, 1288 (Fla. 1st DCA 2016). Therefore, the fine and the surcharge must be stricken. Ibid. As in Simmons, "on remand, the court may reimpose the discretionary fine and surcharge after giving notice and following the proper procedure." Id.

## ARGUMENT

ISSUE I: WHETHER COMPETENT AND SUBSTANTIAL EVIDENCE SUPPORTS THE TRIAL COURT'S CONCLUSION THAT APPELLANT WAS COMPETENT TO PROCEED?

### Standard of Review

When an appellate reviews a trial court's decision of whether a defendant is competent to stand trial or whether a formal competency hearing should have been held, appellate courts use the abuse of discretion standard of review. See Peede v. State, 955 So. 2d 480, 497 (Fla. 2007) ("The trial court must consider all evidence relative to competence and its decision will stand absent a showing of abuse of discretion."). "[W]hen analyzing a competency determination on appeal" an appellate court "applies the competent, substantial evidence standard of review to the trial court's findings. In other words, a trial court's determination of competency supported by competent, substantial evidence will not be disturbed on appeal." Gore v. State, 24 So. 3d 1, 9 (Fla. 2009).

### Merits

Before the filing of the latest and fourth supplemental record, the initial brief argues that the trial court reversibly erred by failing to hold a competency hearing. The supplemental record containing the August 14, 2014 competency hearing, the competency report in the original record, and the trial court's August 14 order refute the initial brief's claim. The report, transcript of August 14, 2014 hearing, and the

trial court's written order of competency prove the trial court fully complied with the requirements expressed in Dougherty v. State, 149 So. 3d 672 (Fla. 2014) and Merriell v. State, 169 So. 3d 1287 (Fla. 1st DCA 2015) by holding a hearing and making an independent determination that Appellant was competent to proceed

In Merriell, this Court relied on Dougherty in recognizing that after experts examine a defendant's competency, then there must be "generally, a proper hearing required the calling of court-appointed experts, a determination of competency, and entry of an order." Merriell 169 So. 3d at 1288 (citing Dougherty, 149 So. 3d at 677). Most importantly the Merriell Court held that:

> [t]he plain language of rule 3.212(a), however, does not require the calling of expert witnesses or any additional witnesses because the word "may" is used. Further, "where the parties and the judge agree, the trial Court may decide the issue of competency on the basis of the written reports alone."

Id. at 1288 (emphasis added) (quoting Dougherty, 149 So. 3d at 677)

In Merriell, this Court affirmed a trial court's determination that a defendant was competent after the trial court "conducted a competency hearing; although it did not call experts, it had the competency evaluation from Appellant's treating facility, the court stated that it had reviewed the evaluation, and specifically stated that it was finding Appellant competent to proceed." Id. at 1289. This Court held that the trial court properly made an independent finding on the basis of the expert reports. Id. This Court held that the only error that needed correcting was the failure to render a

written order finding Merriell competent to proceed. Id.

In the instant case, the trial court followed the proper competency procedure and made an independent determination that Appellant was competent to proceed after listening to the parties, conversing with Appellant, reviewing the report, and filing a written order. In a June 18, 2016 report, Florida State Hospital metal health experts found Appellant competent to proceed. (R. 24-31). After the trial court held a competency hearing on August 14. The August 14, 2014 competency hearing started out with defense counsel stipulating to the findings in the report and stating that Appellant did not want to waive speedy trial. (SR4. 155). The trial court then conducted the following colloquy with Appellant:

> THE COURT: Okay. How are you doing, Mr. Rosier?
>
> THE DEFENDANT: I'm good.
>
> THE COURT: You're doing good?
>
> THE DEFENDANT: A lot better.
>
> THE COURT: Okay. Good. And you're not on any medications right now?
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> THE DEFENDANT: I am, it' s just regular over-the-counter medications, pain medications, and things of that nature. No psychotropic –
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> THE DEFENDANT: No, ma'am.
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> THE COURT: And you're doing okay?
>
> THE DEFENDANT: Yes, ma'am, better.

(SR4. 156-57). The trial court then asked the State if it wanted to add any input and the State declined. (SR4. 157).

The set the case for trial and stated: "**And I'll go ahead and find you competent to proceed.**" (SR4. 157) (emphasis added). On the same date of the competency hearing, the trial court rendered an order finding competent to proceed. (R. 32). The order stated:

> **THIS CAUSE having come before the Court on the report of Leslie Dellenbarger, Psy. D. Senior Psychologist, Florida State Hospital of June 19, 2014, that the Defendant is competent to proceed, and the Court being fully advised in the premises, it is herby**
>
> **ORDERED AND ADJUDGED:**
>
> **The Defendant is Currently Competent to proceed to trial.**
>
> **DONE AND ORDERED this 14 day of August, 2014**

(R. 32) (emphasis added).

The record clearly proves the trial court held a competency hearing and trial court properly made an independent determination that Appellant was competent after reviewing the expert report, conversing with Appellant, and being informed that the Defense had no objection to the trial court relying on the report instead of witnesses. This Court should affirm on this issue because the trial court fully complied with Dougherty and Merriell.

ISSUE II: WHETHER THE TRIAL COURT IN IMPOSING A MAY RECEIVE AN ADDITIONAL 60 DAYS WORTH OF JAIL CREDIT?

## Standard of Review

The legality of a sentence is a question of law that is reviewed de novo. See Clowers v. State, 31 So. 3d 962, 966 (Fla. 1st DCA 2010).

## Merits

After preserving this sentencing argument through a rule 3.800(b) motion, Appellant argues that the trial court erred by imposing a $60 fine pursuant to section 775.083 and related $3 surcharge under section 938.04 without orally announcing it at sentencing because the $60 fine was discretionary. Appellant argues that the trial court erred by imposing a $60 fine pursuant to section 775.083 and related $3 surcharge under section 938.04 without orally announcing it at sentencing because the $60 fine was discretionary. The State recognizes the $60 fine that was imposed under section 775.083 and therefore, the trial court had to orally pronounce it. See Simmons v. State, 196 So. 3d 1287, 1288 (Fla. 1st DCA 2016). Therefore, the fine and the surcharge must be stricken. Ibid. As in Simmons, "on remand, the court may reimpose the discretionary fine and surcharge after giving notice and following the proper procedure." Id.

## CONCLUSION

Based on the foregoing discussions, the State respectfully requests this Court affirm Appellant's convictions and sentence while striking the discretionary fine and remanding with directions for the trial court to follow Simmons if it wishes to impose the fine.

## CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been furnished on August 23, 2017, by e-mail to Appellant's counsel, Assistant Conflict Counsel Melissa J. Ford at mina.ford@rcl.myflorida.com.

## CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the requirements of Florida Rule of Appellate Procedure 9.210, as it was computer generated using Times New Roman 14-point font.

Respectfully submitted and certified,

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