COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

THOMAS LEONARD,	§	No. 08-14-00139-CR
Appellant,	§	Appeal from
v.	§	120th District Court
THE STATE OF TEXAS,	§	of El Paso County, Texas
Appellee.	§	(TC # 20110D02415)

O P I N I O N

Thomas Leonard appeals his convictions of aggravated assault (Counts I, II, III, and IV). A jury found Appellant guilty of Counts I through IV and assessed his punishment at a fine of $2,000 and imprisonment for two years on Counts I and II, and a fine of $1,000 and imprisonment for ten years, probated for ten years, on Counts III and IV. We affirm.

FACTUAL SUMMARY

Laurie Pulver, a discharge nurse at Providence Memorial Hospital in El Paso, worked with Appellant's father, Walter Leonard, for several years.[1] Walter died in early August 2010, and Laurie spoke with Walter's wife, Linda Leonard, several times by telephone during the month of August. Following one of those conversations, Laurie began asking hospital personnel to

[1] The opinion will refer to Thomas Leonard as Appellant, but will refer to other persons sharing the same last name by their first names unless indicated otherwise.

contribute money to help the Leonard family. Laurie informed Linda by telephone that she had some financial aid paperwork to assist with the burial expenses and some money to give her.

On September 2, 2010, Laurie gathered the financial aid paperwork and $1,000 in contributions to be given to Linda. Laurie, accompanied by her husband, Norman Pulver, and their two young children, went to Linda's home. Norman is a R.N. and he had also worked with Walter. The family went to the door of the Leonard home and rang the doorbell. Appellant answered the door and when Laurie explained why they were there, Appellant stated that he was a lawyer and refused to allow them to speak with his mother, Linda. Norman described Appellant as responding "aggressively." Laurie told Appellant that they were there to help and pleaded with Appellant to allow them to speak with her. Laurie explained that Walter's body could not be left in the morgue, and she had financial aid paperwork to give Linda, but Appellant asked them to leave. Norman told Appellant that if he would not let them speak to Linda, they would call Adult Protective Services. Appellant walked away from the door and returned seconds later with a handgun which he pointed directly in Laurie's face. Norman immediately lunged for the weapon and yelled at Laurie and the children to run. Laurie and the children fled to a neighbor's house and called 911 while Norman continued to struggle with Appellant for the weapon. After fighting with Appellant for one or two minutes, Norman was able to take the gun away from Appellant, and he hit Appellant in the head with it. When Appellant went down to the ground, Norman walked away towards his vehicle while removing the clip from the gun. Appellant yelled at Norman to give him back the gun, but Norman laughed derisively and put the gun in the back of his SUV while he waited for the police. The police soon arrived and Appellant was arrested for aggravated assault. An El Paso County grand jury returned a four count indictment against Appellant alleging that he intentionally and knowingly threatened each of the Pulvers with

imminent bodily injury and used or exhibited a deadly weapon during the commission of the assault.[2] A jury found Appellant guilty of each count, as alleged in the indictment, and assessed Appellant's punishment at imprisonment for two years on the counts involving Norman and Linda Pulver, and assessed punishment at imprisonment for ten years, probated for ten years, on Counts III and IV. Appellant is currently free on an appeal bond.

NO BRIEF FILED

Appellant was represented by at least five different court-appointed attorneys in the trial court, and he was represented by appointed counsel through a portion of the appeal. Appellate counsel filed a brief raising nine issues, but Appellant filed a letter motion to dismiss counsel and represent himself on appeal.[3] At our direction, the trial court conducted a hearing on the motion and admonished Appellant regarding the dangers and disadvantages of proceeding without appellate counsel. *See Faretta v. California*, 422 U.S. 806, 835, 95 S.Ct. 2525, 2451, 45 L.Ed.2d 562 (1975); *Hubbard v. State*, 739 S.W.2d 341, 345 (Tex.Crim.App. 1987). Appellant informed the trial court that he has a bachelor's degree in biology and chemistry from UTEP and a J.D. from Texas Tech. Appellant worked at the Kemp Smith law firm in El Paso, but he had to leave the firm in order to care for his father when he became ill and bedridden. Appellant represented to the trial court that he had handled civil appeals, but no criminal appeals. The trial court also asked Appellant whether he was seeking to represent himself on appeal in order to delay the appeal and obstruct the court. Appellant assured the court that he had been working on his appeal for over a

[2] Norman Pulver and Laurie Pulver are the named victims in Counts I and II, respectively. The children are the named victims in Counts III and IV.

[3] Appellate counsel filed a motion to withdraw in October 2014 on the ground that Appellant was dissatisfied with his representation, and he asked that a different attorney be appointed to represent Appellant on appeal. At our request, the trial court conducted a hearing, and we denied the motion based on the hearing record. Appellant's attorney filed the brief on March 5, 2015. Appellant subsequently filed a letter in which he unequivocally asserted his right to self-representation on appeal.

year and had completed 95 percent of the research, and he was only waiting for the "complete transcripts" to be filed. The court also warned Appellant that the brief filed by appointed counsel would be struck if Appellant persisted in his desire to represent himself. Appellant indicated he understood but he still wished to represent himself on appeal. The trial court found that Appellant, having been given all of the warnings required by law, persisted in wanting to represent himself on appeal, and his decision to waive counsel and proceed *pro se* was made voluntarily, competently, and intelligently. On April 30, 2015, after reviewing the record of the hearing and the court's findings, the Court granted Appellant's request to dismiss counsel, permitted Appellant to represent himself on appeal, and struck the brief filed by appointed counsel.[4]

The appeal was delayed for several months because the records of some pre-trial hearings had not been filed. The Court granted Appellant's motion to supplement the reporter's record in May 2015 and supplemental records were filed in May and June 2015. Over the next several months, the Court granted several extensions of time for Appellant to file his brief. On February 3, 2016, Appellant filed a second motion to supplement the record and the court reporter confirmed that there were two pre-trial hearing records[5] which had not been prepared and filed. The Court granted the motion to supplement and the records were filed on February 22, 2016. Appellant was provided with a copy of the record on or about February 29, 2016, and the Court ordered Appellant to file his brief no later than March 26, 2016.

Appellant did not file his brief by the due date and the Court granted additional extension requests over the next several months. On July 28, 2016, the Court granted yet another extension request and informed Appellant that his brief was due to be filed August 23, 2016, and no further

[4] Our order is erroneously dated April 30, 2014, but a corrected order has been issued.

[5] The records were from a status conference and a hearing on a motion for continuance.

extension requests would be considered. Appellant did not file the brief. He instead filed another extension motion based upon his explanation that he had been working instead on an "extensive" motion to abate the appeal for an out-of-time hearing on a motion for new trial.[6] On September 7, 2016, the Court denied the request for another extension and ordered that the appeal would be submitted without briefs. Appellant filed a motion on September 19, 2016 requesting that we vacate the order to submit the case without briefs and he asked for additional time to file his brief. We denied the motion, but the letter notice informed Appellant that if he filed his brief by October 13, 2016, the Court would reconsider its decision to submit the case without briefs. Appellant did not file his brief and the case was submitted on October 13, 2016. Appellant filed another motion on the submission date asking the Court to vacate its decision to submit the case without briefs and he asked for an extension of time until October 20, 2016 to file his brief. Appellant represented in the motion that he was confident he could file a complete brief by October 20, 2016. The Court held the motion rather than immediately ruling on it, but Appellant failed to tender his brief for filing. On December 22, 2016, Appellant filed a letter explaining that he had not filed his brief because he had been the victim of harassment, stalking, and terroristic threats in October 2016, and he was under stress from these events. Appellant represented in the letter that he would soon be filing an extension motion. Appellant has not filed his brief or an extension motion.[7]

Rule 38.8(b) of the Texas Rules of Appellate Procedure sets forth the procedure to be followed when an appellant has not filed a brief in a criminal case. TEX.R.APP.P. 38.8(b). When the appellant is represented by counsel, the appellate court is required to remand the case to the

[6] Appellant did not file this motion.

[7] We are certain that Appellant has the resources and ability to file his brief because on January 30, 2017 he filed a twenty-three page motion related to his appeal bond. In the motion, Appellant challenges a bond condition requiring him to forfeit his weapons. The trial court denied that motion and Appellant filed an accelerated appeal pursuant to TEX.CODE CRIM.PROC.ANN. art. 44.04(g)(West Supp. 2016). The appeal has been docketed as cause number 08-17-00038-CR.

trial court to conduct a hearing and to "make appropriate findings and recommendations." TEX.R.APP.P. 38.8(b)(2). After the Court notified Appellant that his appeal would be submitted without briefs, Appellant filed motions arguing that the Court is not authorized to take this action without first remanding the case to the trial court for the required hearing. The purpose of the hearing requirement is to protect the defendant's right to effective assistance of counsel on appeal. The requirement of a hearing does not apply when an appellant chooses to appear *pro se* and has been warned of the dangers of *pro se* representation on appeal. *See Lott v. State*, 874 S.W.2d 687, 688 n.2 (Tex.Crim.App. 1994)(discussing the predecessor to Rule 38.8(b)) *Burton v. State*, 267 S.W.3d 101, 103 (Tex.App.--Corpus Christi 2008, no pet.). Appellant has also asserted that our decision to deny his extension request and submit the case without briefs is an abuse of discretion because he provided a reasonable explanation for needing additional time to file his brief, namely, he was working on an extensive motion to abate the appeal for an out-of-time motion for new trial. Even after the Court denied the extension request and ordered the appeal to be submitted without briefs, Appellant had additional opportunities to file his motion to abate his appeal and his appellant's brief, yet he has not done so. The Court has left Appellant's final extension request pending with the hope that he would file his brief, but none has been filed. When the Court received Appellant's notice of appeal in cause number 08-17-00038-CR and a copy of the twenty-three page motion Appellant filed in the trial court on January 30, 2017, it became apparent that Appellant has absolutely no intention of filing his brief in this case.

When an appellant fails to file a brief, an appellate court's review of the record is limited to fundamental errors. *See Lott*, 874 S.W.2d at 688; *Burton*, 267 S.W.3d at 103. There are three categories of fundamental error: (1) errors recognized by the legislature as fundamental; (2) the violation of rights which are waivable only; and (3) the denial of absolute, systemic requirements.

Burton, 267 S.W.3d at 103, *citing Saldano v. State*, 70 S.W.3d 873, 887-88 (Tex.Crim.App. 2002). The following are considered to be "fundamental errors": (1) denial of the right to counsel; (2) denial of the right to a jury trial; (3) denial of ten days' preparation before trial for appointed counsel; (4) absence of jurisdiction over the defendant; (5) absence of subject-matter jurisdiction; (6) prosecution under a penal statute that does not comply with the Separation of Powers section of the state constitution; (7) jury charge errors resulting in egregious harm; (8) holding trials at a location other than the county seat; (9) prosecution under an *ex post facto* law; and (10) comments by a trial judge which taint the presumption of innocence. *Burton*, 267 S.W.3d at 103, *citing Saldano*, 70 S.W.3d at 888-89. During the course of the appeal, Appellant has filed motions raising a complaint regarding the denial of counsel at a critical stage. We will review this issue.

DENIAL OF COUNSEL AT A CRITICAL STAGE

Appellant has argued in motions filed in this Court that he was deprived of counsel during a critical stage. In order to address Appellant's claim that he was deprived of counsel at a critical stage, it is necessary to set out in detail the facts related to Appellant's representation by counsel in the trial court.

Factual Background

On June 22, 2011, the 327th District Court appointed Thomas Rey to represent Appellant. For reasons not apparent in the appellate record, the court subsequently appointed Blake Barrow as Appellant's attorney. Appellant later filed a *pro se* motion asking for the appointment of new counsel, and his motion contained the following three paragraphs:

> The Texas State Constitution, Article 1 Bill of Rights, Section 10 Rights of Accused in Criminal Prosecutions states that '[The accused] **shall** have the right to be heard by **himself or counsel, or both**.' [Emphasis added].
>
> The Defendant in this case is a licensed attorney in good standing in the State of Texas, bar number xxxxxxxx, who is a former associate attorney in the Labor and

> Employment department of Kemp Smith LLP who has litigation experience in El Paso County District Courts and is familiar with all local and state rules of procedure and evidence.
>
> The Defendant requests that he be allowed to make an entry of appearance as *pro se* counsel in this case until the court is able to appoint new counsel in this case; at that time, the Defendant requests to be *pro se* co-counsel with the new appointed counsel.[8]

On October 1, 2012, the 327th District Court entered an order granting Barrow's request to withdraw. The order states that Barrow notified the Court on September 21, 2012 that Appellant had asked Barrow to withdraw and he wished to proceed *pro* se. The order also recites the following:

> On September 26, 2012, Defendant addressed this Court and reiterated his request that Mr. Barrow withdraw from representing him in this matter. The Court finds that Defendant is an attorney licensed to practice law in the state of Texas and, therefore, should understand the risks and difficulties of proceeding *pro se* in a criminal case. The Court heard from Mr. Barrow that Mr. Barrow believes the Defendant is mentally competent to conduct his own defense and while Mr. Barrow believes defendant's decision is unwise, Mr. Barrow respects Defendant's right to defend himself if that is his choice. Defendant stated to the Court that, in the event the Court does not appoint another lawyer to defend him, he would like to defend his case *pro se*. Defendant acknowledged that this Court has already appointed two lawyers to represent Defendant.

The 327th District Court transferred the case to the 120th District Court on October 30, 2012. On December 5, 2012, the 120th District Court appointed Salah George Al-Hanna to represent Appellant.

Al-Hanna represented Appellant for several months and litigated a motion to suppress, but on the day the case was set for trial, and while a jury panel was waiting, Appellant announced that he had asked Al-Hanna to file a motion to withdraw because he had refused to file a motion to

[8] The *pro se* motion requesting the appointment of new counsel is file-marked December 18, 2012, but Appellant claims that this is the motion which the 327th District Court considered when it granted Barrow's request to withdraw on October 1, 2012. Although it is not entirely clear, it appears that there was a delay in the filing of the *pro se* motion requesting appointment of new counsel.

recuse the trial judge, the Honorable Maria Salas-Mendoza. Based on the discussions at the hearing, it appears that Appellant had a few days earlier filed a criminal complaint with the FBI against Judge Salas-Mendoza alleging she had violated HIPAA regulations by admitting into evidence confidential patient information during the suppression hearing.[9] Appellant asserted that the trial judge could not be impartial, and there was an appearance of impropriety, because he had filed a criminal complaint against her. Judge Salas-Mendoza informed Appellant that it was counsel's decision whether a motion to recuse should be filed because he is the attorney of record, and the court viewed Appellant as engaging in a blatant tactic to delay trial. Al-Hanna informed the court that he had filed a motion to withdraw and a motion for continuance because Appellant had threatened to sue him and file federal criminal charges related to the HIPAA issue if counsel did not file the motion to recuse. After a discussion on the record, Appellant stated he did not want to proceed without counsel and Al-Hanna agreed to continue representing Appellant. The court denied the Al-Hanna's motion to withdraw but continued the case until July 12, 2013.

On July 11, 2013, Al-Hanna filed a motion to withdraw on the grounds that Appellant had completely refused to communicate with him while counsel was attempting to prepare for trial, and Appellant had filed a grievance against him. The trial court conducted a hearing on the motion the same day because the case was set for trial the following day. Appellant explained that he had filed the grievance because Al-Hanna would not file a motion to recuse or disqualify the court and counsel told him to file the motion himself. The trial judge acknowledged her belief that Appellant was engaging in delay tactics to avoid trial, but she granted the motion to withdraw. When asked whether he wanted to represent himself or proceed with counsel, Appellant asked for the

[9] Appellant has taken the position that the complainant, Laurie Pulver, obtained confidential patient information regarding Appellant's father, Walter Leonard, and she unlawfully disclosed that information to one of the police officers present on the scene at the Leonard home. Further, Appellant accused the trial judge of violating the HIPAA regulations by presiding over the suppression hearing.

appointment of new counsel. He also informed the court that he had prepared a motion to recuse and was prepared to file it. The court instructed Appellant to file the motion to withdraw himself because she anticipated that if the next appointed attorney refused to file it they would be back in court with another motion to withdraw. The court indicated that once the motion to recuse was filed, she would refer it to the administrative judge, and the judge appointed to hear the recusal motion could appoint counsel to represent Appellant on the motion.

Despite telling the trial court that his motion to recuse was ready to be filed on July 11, 2013, Appellant did not file the motion until August 7, 2013. He also filed a formal entry of appearance in the case as his own attorney.[10] The Honorable Stephen Ables, presiding judge of the Sixth Administrative Judicial Region, appointed Judge Susan Larsen to hear the motion to recuse. Judge Larsen set the motion for hearing on September 17, 2013, but Appellant filed a *pro se* motion to recuse Judge Larsen on the day of the hearing alleging she made comments at a hearing in a different case indicating she had prejudged the merits of the motion to recuse.[11] The State asked Judge Larsen to provide Appellant his *Faretta* warnings since he had been unrepresented since July 11, 2013, but Judge Larsen concluded that she could take no action in the case except to refer the recusal motion to the administrative judge. Judge Ables appointed the Honorable Peter Peca to hear that motion.

On the date of the recusal hearing before Judge Peca, Appellant filed a response to the State's motion to clarify defense counsel of record and request for *Faretta* warnings. The State's

[10] The entry of appearance states: "Thomas Leonard makes this entry of appearance in the above cause number and will be responsible for the suit and will be the attorney to receive all communications from the court and other parties."

[11] Judge Larsen is a visiting judge and she has been assigned to hear cause number 2012DCV05679, a civil case involving Appellant.

motion had been filed several months earlier and resolved by the trial court at the hearing held on April 24, 2013. The prayer in Appellant's response stated the following, in pertinent part:

> Defendant requests that the court continue allowing hybrid representation that, while the Defendant does not a protected right to have, is permissible and within the discretion of the trial court. Furthermore, as Defendant is NOT invoking a right to proceed pro se, Faretta warnings are unnecessary. Defendant does not currently have appointed counsel and is entitled to same. Currently, there is a pending Motion to Recuse so the trial judge can not make any appointment. Furthermore, there is a current pending Motion to Recuse of the assigned judge so the first assigned judge also has no authority to appoint counsel; therefore, the Honorable Judge Peca is the judge currently with plenary power in this case and Defendant requests the assignment of appointed counsel for the motion to recuse Judge Larsen.

At the hearing before Judge Peca, Appellant argued his recusal motion, but he also asserted that he had not waived his right to counsel, but he was proceeding *pro se* in order to pursue the recusal motions. Appellant vigorously argued that he should be allowed to have hybrid representation in the case. At the conclusion of the hearing, Judge Peca stated that he needed to resolve the question whether counsel should be appointed. Judge Peca did not appoint counsel and he denied the motion to recuse Judge Larsen. Judge Larsen subsequently conducted the hearing on Appellant's motion to recuse Judge Salas-Mendoza and Appellant appeared *pro se* at that hearing. Judge Larsen denied the motion to recuse finding: "There is no evidence that indicates even an appearance of impropriety in this case." On November 14, 2013, the trial court appointed the Public Defender's Office to represent Appellant. Appellant filed a lengthy *pro se* motion to disqualify Judge Salas-Mendoza on March 3, 2014, and the motion was referred to the administrative judge, but Judge Ables denied the motion because the issue had been presented in a prior motion and denied. The case proceeded to trial on April 8, 2014, and a jury found Appellant guilty of all four counts. The trial court appointed Ruben Morales to represent Appellant on appeal.

Sixth Amendment Right to Counsel

The Sixth Amendment right to counsel extends to all critical stages of the criminal proceeding, not just the actual trial. *Gilley v. State*, 418 S.W.3d 114, 120 (Tex.Crim.App. 2014); *Hidalgo v. State*, 983 S.W.2d 746, 752 (Tex.Crim.App. 1999). Not every event following the inception of adversarial judicial proceedings constitutes a "critical stage." *Gilley*, 418 S.W.3d at 120. The pertinent test requires a court to examine the event in order to determine whether the accused required aid in coping with legal problems or assistance in meeting his adversary. *United States v. Ash*, 413 U.S. 300, 313, 93 S.Ct. 2568, 2575, 37 L.Ed.2d 619 (1973); *Gilley*, 418 S.W.3d at 120.

The First Gap

There are two time periods when Appellant did not have appointed counsel in the trial court. The first occurred in the 327th District Court when Appellant did not have counsel from September 26, 2012 through December 5, 2012. Appellant does not identify a particular proceeding at which he was unrepresented by counsel in the 327th District Court. We understand him to argue that he did not have counsel at a point when he could have filed a motion to disqualify various trial judges involved in the case, including the judge of the 120th District Court. All of those judges became involved in the case after the 327th District Court transferred the case to the 120th District Court. Thus, Appellant could not have filed a motion to disqualify them at this stage in the case. Further, no rule required Appellant to file a motion to disqualify within this time period. The 120th District appointed counsel to represent Appellant shortly after the case was transferred, and the court permitted Appellant to engage in hybrid representation by filing a *pro se* motion to disqualify the trial judge. That motion was forwarded to the presiding administrative judge and ultimately denied. Because Appellant did not lose the opportunity to file the motion to

disqualify during this first time period, we conclude that it was not a critical stage of the proceeding.

The Second Gap

There is a second period when Appellant did not have counsel. The 120th District Court granted Al-Hanna's motion to withdraw on July 11, 2013. The record reflects that the trial judge anticipated that Appellant would continue to insist that counsel file a motion to recuse and that appointed counsel might continue to refuse. Thus, she instructed Appellant to file his motion to recuse and suggested that counsel could be appointed by the judge assigned to hear the recusal motion. Counsel was not appointed and Appellant represented himself at the recusal hearings. After the motion to recuse Judge Salas-Mendoza was denied, she appointed the Public Defender's Office on November 14, 2013 to represent Appellant, and he was represented by counsel throughout the remainder of the trial court proceedings.

We conclude that attending a motion to recuse hearing and presenting the motion is a critical stage of the trial because it would require an attorney's assistance in coping with legal problems or assistance in meeting his adversary. *See Gilley*, 418 S.W.3d at 120. While the trial court did not intend for Appellant to be unrepresented at the recusal hearings, the judges assigned to hear the recusal motions did not appoint counsel and Appellant had to argue the motions himself. Thus, Appellant's Sixth Amendment right to counsel was violated. This does not end the inquiry because not all constitutional violations amount to reversible error.

The total deprivation of counsel throughout the entire proceeding is presumed harmful and is not subject to a harmful error analysis. *See Gideon v. Wainwright*, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963). Further, the absence of counsel during a critical stage where rights are preserve are lost is presumed harmful. *See White v. Maryland*, 373 U.S. 59, 83 S.Ct. 1050, 10

L.Ed.2d 193 (1963)(counsel not appointed and defendant appeared at a preliminary proceeding and entered guilty plea); *Hamilton v. Alabama*, 368 U.S. 52, 54, 82 S.Ct. 157, 159, 7 L.Ed.2d 114 (1961)(not represented by counsel at arraignment and, under Alabama law, available defenses may be irretrievably lost if not asserted then).

Deprivation of the Sixth Amendment right to counsel is subject to a harmless error analysis when the deprivation does not contaminate "the entire criminal proceeding." *Satterwhite v. Texas*, 486 U.S. 249, 257, 108 S.Ct. 1792, 100 L.Ed.2d 284 (1988); *Cooks v. State*, 240 S.W.3d 906, 911 (Tex.Crim.App. 2007). The record reflects that the denial of counsel at the recusal hearing did not result in the loss of any defenses or valuable rights. Appellant is an attorney who claims to have considerable litigation experience. As might be expected from an attorney, Appellant filed an articulate motion to recuse Judge Salas-Mendoza. At the hearing, he vigorously argued his motion and effectively presented his argument that a HIPAA violation had occurred. While Appellant certainly had the right to be assisted by counsel at the recusal hearing, there is nothing in the record supporting a conclusion that the absence of counsel caused Appellant to lose any valuable rights with respect to the recusal motion or the case in general. Accordingly, we find that the deprivation of counsel at the recusal hearing did not contaminate the entire criminal proceeding. Further, we conclude that the error is harmless beyond a reasonable doubt. This issue is overruled.

***FARETTA* WARNINGS**

Appellant also argues in his motions that the 327th District Court failed to give him the *Faretta* warnings before granting Barrow's request to withdraw. A defendant who chooses to represent himself and waive his right to counsel may do so. *Faretta v. California*, 422 U.S. 806, 819, 95 S.Ct. 2525, 2533, 45 L.Ed.2d 562 (1975). In order for the trial court to assess whether the defendant's decision is made knowingly, the court should make the defendant aware of the dangers

and disadvantages of self-representation, so that the record will establish that he knows what he is doing and his choice is made with his eyes open. *Faretta*, 422 U.S. at 835, 95 S.Ct. at 2541. Appellant's motion reflects that he is a licensed attorney with litigation experience, and his motion can be read as requesting that he be allowed to represent himself because he was unhappy with the two attorneys appointed to represent him. Under the circumstances, the trial court had a basis in the record for concluding that Appellant knew what he was doing when he chose to represent himself and he made his choice with his eyes open. *See Burgess v. State*, 816 S.W.2d 424, 430 (Tex.Crim.App. 1991). This issue is overruled.

In addition to considering the above issues, we have reviewed the entire record and have found no fundamental error. *See Lott*, 874 S.W.2d at 688. Accordingly, we affirm the judgments of conviction. All pending motions are denied as moot.

April 26, 2017

ANN CRAWFORD McCLURE, Chief Justice

Before McClure, C.J., Rodriguez, and Hughes, JJ.
Hughes, J., not participating

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