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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable Bentley Price, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MAURICE T. SINGLETON,

APPELLANT

APPELLATE CASE NO. 2023-000553

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge's order removing Appellant from the courtroom during his trial for murder, without representation, violate Appellant's right to be present and confront witnesses under the Sixth Amendment and the Due Process Clause of the Fourteenth Amendment as well as the right to self-representation under the Sixth Amendment and right to counsel under the Sixth Amendment when Appellant's actions in the courtroom were not sufficient to constitute a waiver of constitutional rights and there were alternative ways to deal with any disruption other than removing Appellant from the courtroom?

STATEMENT OF THE CASE

In August of 2021, the Charleston County Grand Jury indicted Appellant, Maurice T. Singleton, for murder, indictment #2021-GS-10-03219.¹ On January 5, 2023, Appellant appeared before the Honorable Bentley Price for a pre-trial hearing. (January 5th and 6th Tr. pp. 1-21). The case had been tried in October and ended in a mistrial because of a hung jury. (January 5th and 6th Tr. p. 3, lines 23-24). Appellant moved to relieve his retained attorney from the first trial. Judge Price relieved prior retained counsel. (January 5th and 6th Tr. p. 9, lines 4-7). The judge allowed Appellant to review the Faretta² warnings overnight. (January 5th and 6th Tr. p. 9, lines 1-7). The next day, Friday, January 6, 2023, Appellant appeared for court but did not wish to sign the written Faretta warnings. (January 5th and 6th Tr. p. 11, lines 18-19). The trial judge generally advised Appellant of the dangers of self-representation. (January 5th and 6th Tr. pp. 13-16). During the January 6, 2023, hearing the State also moved to revoke Appellant's bond. (January 6, 2023, Tr. pp. 1-8). Judge Price denied the motion to revoke bond but added the additional condition that Appellant must report to his bondsman every Monday. (January 6, 2023, Tr. p. 6, lines 17-23).

On March 27, 2023, Appellant proceeded to jury trial before Judge Price. Jordan Alyssa Norvell and Cassity Ann Brewer prosecuted the case. Judge Price appointed Michael Nelson to act as standby counsel. (Trial Tr. p. 12, lines 18-24). Appellant objected to standby counsel as being unqualified. (Trial Tr. p. 13, lines 1-19). As Appellant continued to object, the trial judge warned Appellant that he could be tried in his absence. (Trial Tr. p. 13, line 20 – p. 14, lines 1-

¹ The witness who testified before the grand jury is listed on the indictment as the North Charleston Police Department. (R. p. **). At trial the judge allowed the State to amend the indictment to include the name of Detective Chris Ross, the witness who actually testified before the grand jury. (Trial Tr. p. 51, line 17 – p. 52, lines 1-9).

² 422 U.S. 806, 834, 95 S. Ct. 2525, 2541, 45 L. Ed. 2d 562 (1975).

11). Appellant continued to object and was escorted out of the courtroom. (Trial Tr. p. 14, lines 12-20). The judge took a short recess and asked standby counsel to meet with Appellant. (Trial Tr. p. 14, line 21 – p. 15, lines 1-5). Appellant returned to the courtroom and pre-trial motions continued.

Appellant moved to suppress evidence obtained from his cell phone because the cell phone was illegally seized. (Trial Tr. p. 58, line 18 – p. 59, lines 1-3; p. 59, line 21 – p. 60, p. 61, lines 1-14; pp. 67-72). The judge denied the motion to suppress finding the evidence was obtained pursuant to a valid search warrant. (Trial tr. p. 72, lines 13-15). Appellant continued to object to the admission of contents of the phone and the judge ordered him out of the courtroom. (Trial Tr. pp. 73-77). The prosecutors, standby counsel and the judge discussed technology available to allow Appellant to view the trial without disturbing the proceedings. (Trial Tr. pp. 77-81). Appellant was then returned to the courtroom. (Trial Tr. p. 81, line 10 – p. 82, lines 1-3). After a discovery discussion, a motion for a continuance by Appellant, and the judge denying Appellant's motion for a continuance, the trial began.

On the second day of trial Appellant was again removed from the courtroom. (Trial Tr. p. 161, lines 14-18). After the State called four witnesses in the absence of both Appellant and standby counsel, Appellant was allowed to return to the courtroom. (Trial Tr. pp. 210-216). The jury found Appellant guilty as charged. Judge Price sentenced Appellant to life in prison. A timely notice of intent to appeal was served on April 4, 2023. This appeal follows.

STANDARD OF REVIEW

Whether a defendant has knowingly, intelligently, and voluntarily waived his right to counsel is a mixed question of law and fact which appellate courts review de novo. United States v. Lopez-Osuna, 242 F.3d 1191, 1198 (9th Cir. 2000). Specifically, we review a circuit judge's findings of historical fact for clear error; however, we review the denial of the right of self-representation based upon those findings of fact de novo. United States v. Bush, 404 F.3d 263, 270 (4th Cir. 2005). In doing so, this Court must consider the defendant's testimony, history, and the circumstances of his decision, as presented to the circuit judge at the time the defendant made his request. United States v. Singleton, 107 F.3d 1091, 1097 (4th Cir. 1997); State v. Samuel, 422 S.C. 596, 602, 813 S.E.2d 487, 490 (2018).

ARGUMENT

The trial judge's order removing Appellant from the courtroom during his trial for murder, without representation, violated Appellant's right to be present and confront witnesses under the Sixth Amendment and his rights under the Due Process Clause of the Fourteenth Amendment, as well as his right to self-representation under the Sixth Amendment and right to counsel under the Sixth Amendment when Appellant's actions in the courtroom were not sufficient to constitute a waiver of constitutional rights and there were alternative ways to deal with any disruption other than removing Appellant from the courtroom.

On the second day of the murder trial the judge removed Appellant from the courtroom. (Trial Tr. p. 161, lines 14-18). In the absence of both Appellant and standby counsel, the State called four witnesses: 1. Gregory McKean, an eye-witness; 2. Dr. Nicholas Batalis, a forensic pathologist; 3. Nathaniel Pearson, the Assistant Principal at North Charleston High School where the Appellant and the deceased attended school; and 4. Detective Tiffani Crider with the North Charleston Police Department who obtained Appellant's phone. (Trial Tr. pp. 168-209). Appellant's actions did not warrant removal from the court room. The trial judge erred in removing Appellant from the courtroom.

Appellant, who was on bond, did not appear for court the second day of trial. (Trial Tr. p. 134, lines 2-15). The State moved that bond be revoked and a bench warrant issued. (Trial Tr. p. 134, lines 14-15). The judge granted both motions, excused standby counsel, and the trial continued in Appellant's absence. (Trial Tr. p. 134, lines 16-18; p. 135, lines 18-25). During the testimony of the first State's witness called that day the judge learned that Appellant was in the clerk's office making copies. (Trial Tr. p. 156, lines 21-24). The judge ordered the deputies to bring Appellant into the courtroom. (Trial Tr. p. 156, lines 24-25).

When Appellant was escorted into the courtroom, he began questioning the judge. Appellant asked, "Mr. Judge Price, did you order this? Did you order this unlawful search and unlawful detainment?" (Trial Tr. p. 157, lines 2-3). Appellant then asked, "Sir, I have a right to

be heard and today I will get the facts straight as in who is who today in this courtroom. Sir, who is the trier of fact and who is the trier of the case? If you ignore me, sir, let it be shown you're inducing a fraud. I asked you a question to clarify for the record, who is the trier of the case and who is the trier of fact?" (Trial Tr. p. 157, lines 5-11). The judge declined to answer Appellant's question. (Trial Tr. pp. 157-158).

The judge said, "All right. It's 10:32. I instructed the parties to be here at 9:15. My understanding from the deputy, they got an indication from the clerk's office that Mr. Singleton arrived about five to ten minutes ago, and I revoked his bond, and therefore, he will remain in custody. All right. Mr. Singleton, do you want to participate in this trial? Can you behave enough to participate in the trial or not? I will let you face your accuser. I will let you participate in the trial." (Trial Tr. p. 158, line 25 – p. 159, lines 1-8). The judge then asked, "If I take those handcuffs off are you going to behave?" (Trial Tr. p. 159, lines 19-20). Appellant answered, "The fact that these handcuffs are on me is a violation of due process of law. I was at the clerk of court, and you stopped me from filing crucial evidence in my defense. And that – sir, you will be recused. I demand that you be recused because you are not upholding your duty and you are being very partial in this trial proceeding." (Trial Tr. p. 159, line 21 – p. 160, line 1).

When the judge again asked about removing the handcuffs Appellant responded, "I will participate regardless, sir. The fact that you leave – if you leave these cuffs on me, that will show prejudice." (Trial Tr. p. 160, lines 6-9). The judge ordered the deputies to remove the handcuffs. (Trial Tr. p. 160, lines 10-11). Appellant then asked, "And you say you revoked my bond. Sir, that was unlawful to do. You had no grounds to revoke my bond, for I am in no violation of the bond, and I am in complete compliance with my bondsman, and I am up on payment. So if you have revoked my bond, that will be very unlawful and you will be held

accountable.” (Trial Tr. p. 160, lines 12-17). The judge responded saying, “If you threaten me one more time, we’re going to have a real problem.” (Trial Tr. p. 160, lines 18-19). Appellant responded, “I am not threatening you, sir. This is a constitutional remedy I have.” (Trial Tr. p. 160, lines 20-21).

Appellant went on to say, “Anyway, like I was saying, because I’m controlling authority because I have a right to a republic form of government. That means power invested in the people, me, not any corporate entity. You wouldn’t let me file that just now while I was at the clerk trying to file this. You sent your corporate mercenaries down to detain me and they prevented me from filing it, so I am just going to read from it.” The following then took place between the judge and Appellant:

THE COURT: No, you’re not.

MR. SINGLETON: Sir, you have no right to tell me I can’t do that because this is my –

THE COURT: Do you want to go back there, or do you want –
(Simultaneous speaking.)

MR. SINGLETON: I have a right, sir, and –

THE COURT: Do you want to go back there –
(Simultaneous speaking.)

MR. SINGLETON: Sir, did you take an oath to the constitution?

THE COURT: I revoked his bond. Take him in the back. He will not participate.

MR. SINGLETON: I have a right to be heard. I am not going to –

(Mr. Singleton is escorted out of the courtroom.)

(Trial Tr. p. 161, lines 4-18).

The judge then voiced his concerns saying:

For the record, the concern that I have is I just don’t trust that he won’t do anything violent. I just – with the way he’s acting and the way he is behaving,

he's been nothing but violent with ya'll, I don't know if he needs to be evaluated or what, but I don't trust that he's not going to do something with this jury, or continue to try to tamper with them, or even just be violent with somebody, so I'm very concerned about that.

So I don't know what, really, the best options are; whether we just cuff him and bring him in, whether he can participate in that manner, or whether he'll actually be quiet, but the other concern is that he'll do something to unfortunately force a mistrial by saying something or doing something that's inappropriate.

(Trial Tr. p. 162, lines 4-16).

The prosecutor told the judge, “There is case law, Judge, essentially – so, of course the defendant’s conduct must be egregiously disruptive in order to overcome his Sixth Amendment rights to face his accusers at trial; however, Judge, if he has been given his Faretta warnings on the record, which you have done multiple times, and you have a record of your repeated attempts to persuade him to conduct himself in an orderly manner or be held in contempt, then he can be TIA’s with stand-in counsel.” Although standby counsel was appointed, standby counsel was not present when Appellant was absent from the courtroom.

The judge ruled:

All right. For the record, I believe it's been more than obvious that I have been patient with Mr. Singleton. I have attempted to give him several options in which he could participate in his trial. He refuses to acknowledge any of my rulings or orders.

And, to be quite honest with you, I am very fearful for the parties in this case. I am not sure if he would lash out, do something violent towards the jury, or Ms. Norvell, or anyone along those lines, so even for that reason I'm not going to allow him to participate. He has forfeited his constitutional right to represent himself based on his actions and outbursts. I'm not going to let him fight the deputies anymore. Bring them [the jurors] out.

(Trial Tr. p. 164, line 21 – p. 165, lines 1-7). The trial judge did not ask that standby counsel³ be present at trial in Appellant’s absence stating, “At this point it would just be – he’s not abreast

³ Appellant earlier objected to standby counsel as being unqualified. (Trial Tr. p. 13, lines 1-19).

of the case; he was just standby counsel for procedural purposes only, and that's been a nonissue, so it's moot, so we don't need to bring him back." (Trial Tr. p. 166, lines 8-18). The trial continued in the absence of Appellant and the absence of standby counsel with the State calling four witnesses.

During the lunch break the judge asked standby counsel to consult with Appellant. The judge said, "Mr. Nelson [standby counsel], if you will go down and ask Mr. Singleton if he wishes to participate in his trial. If so, he will remain handcuffed and, you know, he won't be able to -- he's not going to come in here and injure anybody. You missed it. He and the deputies got into it, so he had --" (Trial Tr. p. 210, lines 14-18). Standby counsel asked if this took place in the presence of the jury. (Trial Tr. p. 210, line 19). The judge answered, "No, fortunately it was not. He had an extreme outburst and we could not control him, so we had to try to take him in the back, and he fought the deputies. But he's going to remain shackled." (Trial Tr. p. 210, lines 20-23).

When the trial reconvened after the lunch break standby counsel advised the judge that Appellant wished to participate in his defense. (Trial Tr. p. 211, lines 9-13). The judge stated, "So if he wants to participate, then I'm okay with bringing him up but, I mean, he understands if he says one word other than, yes, sir, he's gone." (Trial Tr. p. 212, lines 7-10). When Appellant returned to the courtroom the judge asked standby counsel if Appellant was ready to proceed. (Trial Tr. p. 213, lines 19-20). Standby counsel indicated Appellant was ready to proceed but stated, "And I'm supposed to stay in the back and not participate." (Trial Tr. p. 213, lines 21-22). Appellant told the judge, "Mr. Nelson [standby counsel] does not have standing to speak for me, he is not qualified to be my counsel." (Trial Tr. p. 213, lines 23-24).

Appellant then asked the judge, “Did you purposely deny me my right to cross-examine these witnesses that you – that took the stand in my absence because of you?” The judge responded, “ I did it because of your actions, the way you behaved.” (Trial Tr. p. 214, lines 10-11). The trial then continued with Appellant representing himself and cross-examining witnesses. The judge denied Appellant’s first requests to remove the handcuffs. (Trial Tr. p. 234, lines 22-25; p. 249, lines 2-5). The judge then allowed Appellant’s right hand to be uncuffed. (Trial Tr. p. 255, lines 5-12). Appellant asked about Mr. McKeen, a witness who testified in Appellant’s absence. (Trial Tr. p. 300, lines 14-16). The transcript reflects that Appellant was escorted out of the court room and the trial ended for the day. (Trial Tr. p. 338, lines 3 -p. 33, lines 1-9).

When the trial resumed the following morning Appellant asked that his right hand be released from the handcuffs. (Trial Tr. p. 343, lines 22-23). The judge responded:

No, not after the way you behaved yesterday with assaulting those deputies on the way out. So here’s the procedural background of everything that’s going on here today, Mr. Singleton. The fact that you showed up late, your bond was revoked, and obviously that’s why you are currently incarcerated. And then as the day wore on, there was not once, but twice, instances whereby you accused the Court of perpetrating some fraud. And then when the proceedings were over for the day I witnessed you fight two deputies, if not three, for whatever purpose, I’m not sure, all the way out. So for that I’m going to hold you in contempt, I’m going to give you six months in the county detention center.

(Trial r. p. 343, line 24 – p. 344, lines 1-10).

During the cross examination of a detective with the North Charleston Police Department, Appellant asked to be allowed to cross examine Mr. McKeen, one of the witnesses who testified in Appellant’s absence. (Trial Tr. p. 428, lines 21-22). The judge responded, “We’ve already talked about that. Continue with this witness.” (Trial Tr. p. 428, lines 24-25).

At the close of the State's case Appellant moved for a directed verdict and asserted that he was deprived of the right to cross examine witnesses resulting in prejudice. (Trial Tr. p. 448, lines 13-19). The judge denied the directed verdict motion and then stated, "And any prejudice [sic] that the defendant had received have been of his own doings by - -" (Trial Tr. p. 449, lines 4-5). The judge then elaborated on Appellant's actions during the trial. (Trial Tr. p. 449, line 23 – p. 450, lines 1-10). When asked if he had enough time to decide if he wished to testify, Appellant told the judge, "What I would have needed more time for Your Honor, was to cross-examine the witness that I was not able to do because you had me detained." (Trial Tr. p. 451, lines 4-6).

Sixth Amendment Right to Confront Witnesses

Appellant had a Sixth Amendment right to be present in the courtroom and confront the witnesses against him. In Illinois v. Allen, 397 U.S. 337, 338, 90 S. Ct. 1057, 1058, 25 L. Ed. 2d 353 (1970), the Supreme Court of the United States wrote:

The Confrontation Clause of the Sixth Amendment to the United States Constitution provides that: 'In all criminal prosecutions, the accused shall enjoy the right * * * to be confronted with the witnesses against him * * *.' We have held that the Fourteenth Amendment makes the guarantees of this clause obligatory upon the States. Pointer v. Texas, 380 U.S. 400, 85 S.Ct. 1065, 13 L.Ed.2d 923 (1965). One of the most basic of the rights guaranteed by the Confrontation Clause is the accused's right to be present in the courtroom at every stage of his trial. Lewis v. United States, 146 U.S. 370, 13 S.Ct. 136, 36 L.Ed. 1011 (1892).

In State v. Shuler, 344 S.C. 604, 624, 545 S.E.2d 805, 815 (2001), the South Carolina Supreme Court wrote:

The primary interest secured by the Confrontation Clause of the Sixth Amendment is the right to cross examination. Starnes v. State, 307 S.C. 247, 414 S.E.2d 582 (1991) (citing Douglas v. Alabama, 380 U.S. 415, 85 S.Ct. 1074, 13 L.Ed.2d 934 (1965)). The right to confrontation has been referred to as a "trial right." Id. (citing Barber v. Page, 390 U.S. 719, 88 S.Ct. 1318, 20 L.Ed.2d 255 (1968)). The appropriate question under Confrontation Clause analysis is whether

there has been any interference with the defendant's opportunity for effective cross examination at trial. Kentucky v. Stincer, 482 U.S. 730, 745, 107 S.Ct. 2658, 96 L.Ed.2d 631 (1987).

The judge's order excluding Appellant from the courtroom without standby counsel while the State presented four key prosecution witnesses clearly interfered with Appellant's opportunity for effective cross-examination.

Due Process

Appellant also had a Due Process right under the Fourteenth Amendment to be present during his murder trial. In Kentucky v. Stincer, 482 U.S. 730, 745, 107 S. Ct. 2658, 2667, 96 L. Ed. 2d 631 (1987), the Supreme Court of the United State wrote:

The Court has assumed that, even in situations where the defendant is not actually confronting witnesses or evidence against him, he has a due process right "to be present in his own person whenever his presence has a relation, reasonably substantial, to the fulness of his opportunity to defend against the charge." Snyder v. Massachusetts, 291 U.S. 97, 105–106, 54 S.Ct. 330, 332, 78 L.Ed. 674 (1934). Although the Court has emphasized that this privilege of presence is not guaranteed "when presence would be useless, or the benefit but a shadow," id., at 106–107, 54 S.Ct., at 332, due process clearly requires that a defendant be allowed to be present "to the extent that a fair and just hearing would be thwarted by his absence," id., at 108, 54 S.Ct., at 333. Thus, a defendant is guaranteed the right to be present at any stage of the criminal proceeding that is critical to its outcome if his presence would contribute to the fairness of the procedure.

Appellant had a right to be present during the examination of the four prosecution witnesses, a critical stage of the trial.

Waiver

Appellant did not waive his right to be present and confront the witnesses against him. In Shuler the South Carolina Supreme Court wrote:

Finally, a defendant can waive his right to be present at a crucial stage of the trial by disruptive conduct. State v. Bell, 293 S.C. 391, 360 S.E.2d 706 (1987). A

defendant may be properly excluded when his conduct is disruptive or is interfering with the progress of the trial. Id. (citing In re Dwayne M., 287 S.C. 413, 339 S.E.2d 130 (1986)); see Illinois v. Allen, 397 U.S. 337, 90 S.Ct. 1057, 25 L.Ed.2d 353 (1970) (holding defendant waived his right to be present where he continued to behave in a disorderly manner and continued to interrupt the trial judge after he was warned about his conduct). Although the right to be present is a substantial one, no presumption of prejudice arises from a defendant's exclusion. Bell, supra (citations omitted).

344 S.C. at 625, 545 S.E.2d at 815.

In State v. Bell, 293 S.C. 391, 401, 360 S.E.2d 706, 711 (1987), the South Carolina Supreme Court wrote:

An accused has the right to be present at every stage of his trial. Illinois v. Allen, 397 U.S. 337, 90 S.Ct. 1057, 25 L.Ed.2d 353 (1970). This right, however, may be waived. Ellis v. State, 267 S.C. 257, 227 S.E.2d 304 (1976). A defendant may properly be excluded when his conduct is disruptive or is interfering with the progress of the trial. In re: Dwayne M., 287 S.C. 413, 339 S.E.2d 130 (1986). Although the right to be present is a substantial one, no presumption of prejudice arises from a defendant's exclusion. State v. Whaley, 290 S.C. 463, 351 S.E.2d 340 (1986); State v. Smart, 278 S.C. 515, 299 S.E.2d 686 (1982).

Appellant's actions in the courtroom were not sufficient to constitute a waiver of the right to be present in the courtroom and confront witnesses. Appellant had a physical altercation with the guards and, according to the judge's ruling, Appellant refused to acknowledge the judge's rulings or orders. The record, however, reflects that prior to the judge removing Appellant from the courtroom, Appellant, representing himself, was trying to make a record of what he attempted to file in the clerk's office. (Trial Tr. p. 160, line 22 – p. 161, lines 1-3).

Appellant's actions are distinguished from the actions in Bell where the defendant twice stood and objected during defense counsel's closing argument, the judge excused the jury and then explained that the right to be present had limitations and allowed defense counsel to further explain the matter to defendant, when the jury returned the defendant again interrupted closing

argument, the judge again excused the jury to further explain the right to be present to the defendant who told the judge that he would continue to obstruct the proceedings. The Court found the defendant in Bell waived his right to be present. Appellant in the present case did not indicate that he would continue to obstruct the proceedings and did not interrupt a lawyer. Instead, while Appellant may have interrupted the judge, his interruption was an attempt to make a record as he represented himself. Appellant did not waive his right to be present. After Appellant was removed from the courtroom, the judge should have given him the opportunity to comply with the rules and returned Appellant to the courtroom before the State called the next key witness, Gregory McKean.

Appellant's actions are distinguished from the actions in Shuler where, during a Jackson v. Denno hearing, the defendant not only fought with the guards prior to the hearing but, also had to be restrained during transport to the court, slammed his head on the table prior to the hearing, wore a protective mask to prevent spitting and yelled during court. The Court found that the defendant voluntarily absented himself from the hearing. The Court additionally found that the error was harmless primarily because the hearing was held open so that the defendant could be present. In the present case Appellant's presence was excluded from a portion of his trial, not a pre-trial hearing as in Shuler. Appellant did not voluntarily absent himself from the trial. The error in the present case is not harmless because, despite his requests, Appellant was not given an opportunity to cross-examine the witnesses called by the State during Appellant's absence.

In his concurrence in Illinois v. Allen, 397 U.S. 337, 351, 90 S. Ct. 1057, 1064, 25 L. Ed. 2d 353 (1970), Justice Brennan wrote:

I would add only that when a defendant is excluded from his trial, the court should make reasonable efforts to enable him to communicate with his attorney and, if possible, to keep apprised of the progress of his trial. Once the court has removed the contumacious defendant, it is not weakness to mitigate the

disadvantages of his expulsion as far as technologically possible in the circumstances.

The judge in the present case did not attempt to mitigate Appellant's absence from the courtroom. During pre-trial, when Appellant continued to argue for suppression after the judge denied the motion, the prosecutors, standby counsel and the judge discussed technology available to allow Appellant to view the trial without disturbing the proceedings. (Trial Tr. pp. 77-81). There was, however, no discussion of the use of alternate ways to deal with any possible disturbance before the judge ordered Appellant out of the courtroom on the second day of trial. Additionally, Appellant was not given a second opportunity to conform his conduct before the State was allowed to call four witnesses in his absence and in the absence of standby counsel. Finally, once Appellant returned to the courtroom, he was not given the opportunity to cross-examine the witnesses called during his absence.

Termination of Sixth Amendment Right to Self-Representation

“In Faretta, the United States Supreme Court held that criminal defendants have a fundamental right to self-representation under the Sixth Amendment. 422 U.S. at 819–21, 95 S.Ct. 2525.” State v. Samuel, 422 S.C. 596, 602, 813 S.E.2d 487, 491 (2018). Appellant was generally warned of the dangers of self-representation during the January 6, 2023, hearing prior to the March 27, 2023, trial date. (January 5th and 6th Tr. pp. 13-16). At trial Appellant advised the judge that he wished to proceed *in propria persona* rather *pro se*. (Trial Tr. p. 12, lines 14-17). The judge appointed standby counsel. (Trial Tr. p. 12, lines 18-24). Appellant objected to standby counsel as being unqualified. (Trial Tr. p. 13, lines 1-19).

The trial proceeded with Appellant representing himself. Later in the trial, as discussed above, the judge specifically ruled, “He has forfeited his constitutional right to represent himself based on his actions and outbursts.” (Trial Tr. p. 165, lines 5-6). The judge, however, did not

require standby counsel to be present during Appellant's absence from the trial. In a footnote in Faretta v. California, 422 U.S. 806, 834, 95 S. Ct. 2525, 2541, 45 L. Ed. 2d 562 (1975), the Court wrote:

Moreover, the trial judge may terminate self-representation by a defendant who deliberately engages in serious and obstructionist misconduct. See Illinois v. Allen, 397 U.S. 337, 90 S.Ct. 1057, 25 L.Ed.2d 353. Of course, a State may—even over objection by the accused—appoint a 'standby counsel' to aid the accused if and when the accused requests help, and to be available to represent the accused in the event that termination of the defendant's self-representation is necessary. See United States v. Dougherty, 154 U.S.App.D.C. 76, 87—89, 473 F.2d 1113, 1124—1126.

The trial judge erred in terminating self-representation by Appellant when Appellant did not deliberately engage in serious and obstructionist misconduct. As discussed above, Appellant had a physical altercation with the guards and, according to the judge's ruling, Appellant refused to acknowledge the judge's rulings or orders. While Appellant may have interrupted the judge, the record reflects that prior to the judge removing Appellant from the courtroom, Appellant was trying to make a record of what he attempted to file in the clerk's office. (Trial Tr. p. 160, line 22 – p. 161, lines 1-3).

An opinion by the Texas Court of Appeals is persuasive where the court wrote:

However, even though we rely heavily on the trial court's assessment of an obstreperous defendant when reviewing the court's decision, the court's discretion to deny the right of self-representation is necessarily limited. Faretta empowers the courts to preserve the integrity of the trial by denying self-representation to those who deliberately engage in obstructionist behavior. Allowing a defendant to represent himself will almost certainly result in some disruption or delay in the trial proceedings, but "so long as it is not a *calculated* obstruction, this delay cannot deprive the accused of the right [of self-representation] once properly asserted." Birdwell v. State, 10 S.W.3d 74, 77 (Tex.App.—Houston [14th Dist.] 1999, pet. ref'd) (emphasis added). We address only the instances in which the trial court has observed calculated attempts to disrupt, subvert, or obstruct the trial proceedings. A trial court may not deny the right to self-representation based

simply on “predictions of likely recalcitrant behavior” or delay or disruption incidental to self-representation without a legal education. Scarborough v. State, 777 S.W.2d 83, 92, 94 n. 3 (Tex.Crim.App.1989); Colon v. State, 717 S.W.2d 474, 475 (Tex.App.—San Antonio 1986, no pet.) (“To hold that citizens are unduly disruptive merely because they are inexperienced in the practice of law is tantamount to holding that only attorneys enjoy a constitutional right to self-representation.”).

Lewis v. State, 532 S.W.3d 423, 431–32 (Tex. App. 2016)(n. 5 omitted). In ruling the Texas Court of Appeals wrote, “On this record, the trial court did not abuse its discretion in determining that appellant’s behavior demonstrated an attempt at calculated obstruction and delay, not an earnest attempt to act in his own defense. The delay caused by appellant’s questions, interjections about his proper name, and general refusal to give answers responsive to the trial court’s questioning were not regular incidents of self-representation.” Lewis, 532 S.W.3d at 432. In contrast, Appellant’s behavior in the present case was not an attempt at calculated obstruction and delay.

The error in in the trial judge’s termination of Appellant’s right to self-representation is further complicated by the fact that counsel was not appointed once Appellant was removed the courtroom. While standby counsel had been appointed, standby counsel was not present when Appellant was absent. Appellant was entirely unrepresented while the State called four witnesses to testify at trial.

In United States v. Ductan, 800 F.3d 642, 654 (4th Cir. 2015), the United States Court of Appeals for the Fourth Circuit reversed finding that the Appellant did not waive his right to counsel. In a concurrence Judge Diaz wrote:

Of course, the right to self-representation is “not absolute.” Fields, 49 F.3d at 1035. Thus, a pro se defendant who is disruptive in the courtroom may forfeit his right to self-representation. Faretta, 422 U.S. at 834 n. 46, 95 S.Ct. 2525 (“[T]he trial judge may terminate self-representation by a defendant who deliberately

engages in serious and obstructionist misconduct.”). In these cases, the proper course of action is to revoke the defendant's right to self-representation and appoint counsel. See, e.g., United States v. Mack, 362 F.3d 597, 601 (9th Cir.2004) (“A defendant does not forfeit his right to representation at trial when he acts out. He merely forfeits his right to represent himself in the proceeding.”); United States v. Pina, 844 F.2d 1, 15 (1st Cir.1988) (suggesting that a trial judge “employ his or her wisdom to appoint standby counsel” to represent a defendant who is removed or discharges counsel); see also United States v. West, 877 F.2d 281, 287 (4th Cir.1989) (affirming the defendant's conviction where the district court found him incompetent to represent himself and immediately appointed his standby counsel to replace him).

Ductan at 654. (n. 2 omitted).


Appellant maintains that the trial judge erred in finding that Appellant forfeited his right to self-representation because he did not deliberately engage in serious and obstructionist misconduct. Assuming, arguendo, that the judge did not err in that finding, the judge erred by not appointing counsel in Appellant’s absence. “The Sixth Amendment guarantees to a criminal defendant the right to the assistance of counsel before he can be convicted and punished by a term of imprisonment. U.S. Const. amend. VI; Gideon v. Wainwright, 372 U.S. 335, 339–40, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963). The right to counsel is fundamental to our system of justice; beyond protecting individual defendants, it is ‘critical to the ability of the adversarial system to produce just results.’ Strickland v. Washington, 466 U.S. 668, 685, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).” United States v. Ductan, 800 F.3d 642, 648 (4th Cir. 2015). Allowing the trial to go forward in Appellant’s absence while entirely unrepresented violated Appellant’s Sixth Amendment right to counsel. Under the unusual circumstances of this case, Appellant did not waive the right to counsel once he was removed from the courtroom.

The error in denying Appellant the right to self-representation is structural and not subject to a harmless error analysis. McKaskle v. Wiggins, 465 U.S. 168, 104 S.Ct. 944, 79 L.Ed.2d 122 (1984); The error in denying Appellant the right to counsel is also structural and

not subject to a harmless error analysis. United States v. Gonzalez-Lopez, 548 U.S. 140, 148–50, 126 S.Ct. 2557, 165 L.Ed.2d 409 (2006). The multiple constitutional violations require reversal.

CONCLUSION

Based on the above arguments, this Court should reverse the conviction and remand for a new trial.


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 15th day of November, 2023.