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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenwood County
The Honorable Eugene C. Griffith, Jr., Circuit Court Judge

THE STATE,

Appellant,

vs.

TERRENCE O'NEIL FRAZIER,

Respondent.

APPELLATE CASE NO 2023-001439

INITIAL BRIEF OF APPELLANT

ALAN WILSON
Attorney General

JOSHUA A. EDWARDS
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

DAVID M. STUMBO
Solicitor, Eighth Judicial Circuit

Post Office Box 516
Greenwood, SC 29649-0516
(864) 942-8800

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutions

STATEMENT OF ISSUE ON APPEAL

Whether Frazier knowingly and intelligently waived his right to counsel.

STATEMENT OF THE CASE

Respondent Terrence Frazier was indicted for carjacking, leaving the scene of an accident, breaking into a motor vehicle, grand larceny of a motor vehicle valued in excess of $10,000, and trafficking methamphetamine, all based on events occurring on July 9, 2015. Frazier proceeded to jury trial pro se before the Honorable Eugene C. Griffith, Jr. on November 16-19, 2015. Following some pretrial motions, Judge Griffith provided Frazier with standby counsel, who was available to assist him throughout jury proceedings. Frazier was convicted as charged, except the jury found him guilty of using a vehicle without permission as a lesser included offense of carjacking. Frazier was sentenced to twenty years imprisonment for trafficking methamphetamine and concurrent sentences for the remaining convictions.

Frazier appealed his convictions, and on November 27, 2019, this Court issued an opinion remanding the case for an evidentiary hearing to determine whether Frazier knowingly and voluntarily waived his right to counsel. State v. Frazier, Op. No. 2019-UP-371 (S.C. Ct. App. filed November 27, 2019). On March 3, 2023, a hearing was convened at the Greenwood County courthouse before Judge Griffith. The court had before it the appellate court opinion and the transcript of the November 16 -19, 2015 trial contained in the record on appeal from Frazier's direct appeal. The Court heard testimony from Brian Moroney, the assistant solicitor who prosecuted the case. The Court also heard testimony from Frazier.

The remand court took the matter under advisement. The court issued an order on August 25, 2023, finding Frazier did not knowingly and intelligently waive his right to counsel. (Order). The court explained:

> Based upon the weighing all of the above factors that the weight of the sufficiency of the factors for the court to consider as whether the Defendant understood his understanding of his rights, This Court finds the lack of a knowing and intelligent

waiver weighs in favor of the defendant. [Sic].

The lower court did not order a new trial. Due to the procedural posture, both parties filed a notice of appeal. Because the ruling below is adverse to the State, the State is designated as the Appellant. This Brief of Appellant follows.

STATEMENT OF FACTS

The facts adduced at trial and at pretrial hearings leading up to trial were recounted as follows in the State's brief to the Court prior to remand. For convenience, they are reproduced here, followed by the facts adduced at the remand hearing.

Underlying facts

Like a tornado, Appellant Frazier blazed a trail through Greenwood businesses on July 9, 2015. Witnesses would describe the affected parts of Greenwood as chaotic. Those witnessing him that day would describe Frazier's behavior as erratic. At the end of trial, the prosecutor noted Frazier was likely high on methamphetamine that day, which explains a lot. R. p. 571. Yet Frazier still had more than nineteen grams of methamphetamine left in his pants when a hospital security guard searched him.

Events started at the Greenwood Chick-Fil-A. Brian Whitaker, manager at Chick-Fil-A, testified Frazier, holding a magazine in a wrapper, approached Whitaker at the walk-up window, and told him he believed the woman on the cover of the magazine was in the drive-thru line at Chick-Fil-A. Frazier threw four or five twenty-dollar bills on the ground, apparently wanting to wager whether or not the woman was actually the coverperson. Whitaker declined the wager, but Frazier left his money on the ground. Whitaker described Frazier's behavior as odd. Frazier started pulling on the door handle of Whitaker's pick-up truck. Whitaker was not so concerned since he did not have anything of value in his truck. Then Frazier jumped in a female customer's pick-up truck and sped away. R. pp. 97-103.

That female customer was Susannah Chatos. She parked in the handicap parking space at Chick-Fil-A and after she exited, Frazier approached her to tell her the woman on the cover of his pornographic magazine was in the drive-thru line. Perhaps sensing Chatos's disinterest, Frazier

approached Whitaker at the walk-up window and put the magazine in front of him to look at. R. pp. 150-51. Chatos intervened: she took the magazine and gave it back to Frazier, telling him, "[L]ook, this is a Christian establishment, . . . we don't look at . . . garbage around here." R. p. 152, lines 2-6. Frazier was insistent – he told them he would bet a $100, throwing the wager on the ground. Frazier walked back to the parking lot. Whitaker offered to walk her back to her pick-up, but she declined. Walking back, she saw Frazier lifting the door handles on Whitaker's pick-up truck. She stepped in her truck and started to pull away when Frazier threw something at her truck. She got out, and confronted Frazier, and Frazier jumped in the pick-up truck. Through the driver window, she had her hands around his neck, but his sweat made him slippery – she fell backwards as he drove away with her truck. She ended up with a fractured rib from the ordeal. R. pp. 152-54. She found the pornographic magazine in her truck the next day and called law enforcement to search the truck for drugs. R. p. 168. Deputy Brian Penn described her demeanor as shaking, upset, teary-eyed, and she nursed a hurt arm. R. pp. 186-87.

Officer Matt Emery testified he observed Frazier on a nearby convenience store surveillance video buying a case of beer, a bag of snacks, and a magazine. R. pp. 220-22. Deputy Johnston picked up the only remaining $20 from off the ground. R. pp. 206-07. He also retrieved a case of beer and a bag of snacks from the back of Whitaker's truck. R. p. 206.

Bessie Williams was the second victim falling in Frazier's path. She was driving her Lincoln out of Frank's Car Wash when Frazier smashed the stolen pick-up into her vehicle. Her Lincoln was totaled. Williams watched as Frazier left the truck, ran behind her vehicle, and began erratically yelling and screaming. To the best of her recollection, at no point before he left in a red Chrysler did Frazier even look in Williams's direction. He certainly never attempted to render her any aid. R. pp. 234-38.

Kimberly Searles was next. Frazier jumped in Searles's red Chrysler while it was getting washed at Frank's Car Wash. The attendant told Frazier, "You can't take this car." Searles added, "You can't take my car." Undaunted, Frazier took her Chrysler and sped away down the road, jumped the sidewalk as he turned the vehicle around, then sped in the opposite direction. R. pp. 257-58. The attendant, Clarence Woolridge, noted other employees needed to jump back to avoid being hit by Frazier as he pulled away with his second stolen car that day. R. p. 273. Lieutenant Caughman described Frank's Car Wash as "chaotic" when he arrived afterwards. The stolen truck was still running when he arrived. R. p. 284, p. 286.

Gwendolyn Gallaham drove by Frank's Car Wash, then noticed she was being followed by a red Chrysler. She pulled into World Finance and got out of her vehicle the same time the driver, Frazier, got out of the Chrysler. He demanded she give him his money. Gallaham, undoubtedly perplexed, asked what money. Frazier repeated his demand and started rummaging through her car, including her trunk. She ran into World Finance and told the employees to call the police. She told them to lock the doors because she thought Frazier was about to pull out a gun when he fumbled with his pants. Instead of pulling out a weapon, Frazier urinated between the two cars. R. pp. 303-08. Law enforcement arrived and arrested Frazier. R. p. 312. Officer William Kay interviewed Gallaham and noted a puddle of liquid running down the parking lot where he was told Frazier urinated. R. p. 317, p. 330.

Officer Trotter first took Frazier to the jail. Officer Trotter escorted him to the patrol car and sat him in the back passenger seat. Officer Trotter was about to leave but Frazier "had gotten up on his seat and had his head bent over and he had his back end sitting up on the ledge of the back seat." R. p. 341, lines 15-20. Officer Trotter and another officer needed to fasten the hobble strap around Frazier's legs to keep Frazier in his seat belt. R. p. 341, lines 20-23. Frazier was sweaty, and he

could not stay still. The nurse at jail told Officer Trotter that Frazier was intoxicated and told him to take Frazier to the hospital. R. pp. 340-41.

Officer Trotter never did a full-blown search of Frazier, just an initial pat-down to ensure he was not armed. However, at the hospital, the security guard gave Officer Trotter a bag of methamphetamine the guard found after the guard searched Frazier. R. pp. 343-45.

The security guard, Travis Rogers, testified Frazier was talkative and acted "very sexual" towards the nursing staff. He exposed himself, offering to have sex with the nurse. For the medical staff's safety, he searched Frazier and found a bag of drugs in his pants pocket. R. pp. 374-75. The SLED chemist testified the substance seized was 19.92 grams of methamphetamine. R. p. 425.

Preliminary hearing

Frazier's preliminary hearing was held on September 1, 2015, before the Honorable Municipal Judge Lee Miller. Judge Miller noted for the record that Frazier was present without an attorney. Judge Miller explained for the record that he cautioned Frazier he should not go forward with the preliminary hearing without an attorney, noting it was a critical stage of the proceedings. Frazier confirmed this. Judge Miller then confirmed Frazier was waiving his right to counsel, and Frazier replied he was representing himself and waiving his right to counsel. (Preliminary hearing recording).

Bond hearing

At the October 15, 2015 bond hearing, as Frazier begged for a bond, the trial court asked Frazier why he did not have an attorney and Frazier responded:

> Because my family can't afford a lawyer and I am trying, I look at the cases very frivolous and I understand, I am not saying I am the smartest but I feel like I am smart enough to get through this myself **and I know a little about the law to make it through**.

R. p. 6, lines 1-5. The trial court warned Frazier, "You can represent yourself, I can't force a lawyer on you. These young lawyers are smart." R. p. 6, lines 6-7. Frazier responded he wanted to get out on bond and then work on trying to get an attorney. R. p. 6, lines 8-10. Frazier also advised the trial court that he filed a speedy trial motion. R. p. 8, lines 7-10.

Frazier's performance at trial

Upon the case being called, the trial court verified with Frazier that he refused the State's plea offer. He then advised the trial court he was moving for a change of venue. R. p. 18. Frazier made an in limine motion to make sure the tickets for breaking into a motor vehicle and leaving the scene of an accident would not be admitted at trial. The motion was granted. R. p. 50.

Notably, Frazier asked for copies of the transcripts of his bond hearing and **"representation" hearing.** R. p. 69. The prosecutor then asked the trial court to provide Frazier Faretta warnings. In response to the trial court's inquiry, Frazier advised the trial court he was twenty-five years old, went to ninth grade in school, and cut grass and helped remodel houses. R. p. 72, lines 16-24. Frazier understood he could have a public defender appointed, but did not want one appointed because it would take longer before the case would be tried. R. p. 73.

The trial court noted he was well organized and did "fairly well" with the pretrial motions. The trial court offered to provide counsel to advise Frazier on procedural matters while he handled the witnesses since he was familiar with the facts. R. p. 73, lines 16-22.

Frazier asked if he filled out paperwork for a public defender and the trial was postponed, would he be able to get a bond reduction, and the trial court advised that he probably would not get a bond reduction. R. pp. 73-74. The trial court asked Frazier if he felt comfortable representing himself and Frazier indicated he did with the facts but wanted an attorney to sit with him. Frazier indicated a public defender previously was appointed to represent him on another charge. R. pp. 74-

75.

During opening argument, Frazier implored the jury to observe the witnesses' demeanor, to look at the facts, and told the jury the charges were false. R. pp. 93-97. He concluded: "They are going to try [to] paint a picture in your head that oh, he is just a bad person. He's just a menace to society and dah, dah, dah, dah, dah. No, it's not like that. I want you to look at the facts that they paint, the pictures. Look at it. Look, listen, observe, study it, analyze it, and then make your decision." R. p. 97, lines 18-23.

For the State's first witness, the trial court sustained Frazier's hearsay objection. R. p. 99. Then later, the trial court sustained Frazier's leading objection. R. p. 102. He was allowed to consult with his stand-by counsel during an in-camera argument regarding some surveillance video footage. R. p. 112-13. During cross-examination, Frazier used the statement to refresh the witness's recollection. R. p. 127.

With a later witness, the trial court required the prosecutor to rephrase a question following Frazier's objection that arguably suggested a legal conclusion. R. p. 155. He made an objection to the magazine being admitted into evidence based on chain of custody and lack of foundation, which resulted in the trial court requiring the prosecutor to make a proffer. R. pp. 159-60. Later, the trial court provisionally declined to allow the magazine into evidence through that witness in response to Frazier's argument. R. pp. 164-65. Frazier made successful hearsay objections again during Officer Penn, Officer Emery, Officer Moore, and Officer Caughman's testimony. R. p. 186; p. 223; p. 248; p. 286.

Frazier made a successful Rule 5, SCRCrimP, objection to prevent the recovered $20 bill from being admitted into evidence. R. pp. 207-13. Frazier knew to make a motion to suppress the methamphetamine (but was unsuccessful since it was a third-party search) and challenge the chain of

custody (also unsuccessful). R. pp. 361-72. Frazier made a clever argument against admission of the chemist's report that momentarily seemed to catch the prosecution in a procedural trap. R. pp. 429-33. He later presented the trial court with citation to a case to argue his point. R. p. 435. He also made a reasonable argument against the authority cited by the prosecution. R. p. 438.

After the State rested its case, Frazier made an insightful, albeit unsuccessful, directed verdict argument on the carjacking charge, arguing the lack of evidence to support force or intimidation. R. p. 447-48. During an informal charge conference, Frazier requested an instruction for grand larceny as a lesser offense of carjacking. Ultimately, the trial court provided unauthorized use of a vehicle as a lesser included offense. R. p. 530; p. 551-52.

Frazier let the jury know why he decided to represent himself:

> [B]ut I decide[d] to represent myself **because I got a little knowledge about the law**, know wrong from right, especially common sense. If you got common sense, it's – you may need a little help in certain areas, you may be right, but if you got common sense, the law is common sense.

R. p. 501, lines 2-7.

Frazier was acquitted of one of the two major charges – carjacking, and instead convicted of unauthorized use of a vehicle as a lesser included offense. This favorable result is likely due to his effective closing argument. Frazier pointed out that Whitaker testified he did not see force used on Chatos. R. p. 505, lines 10-21. He then argued to the jury the surveillance video showed that Chatos got out of the truck willingly and not by force. R. p. 506, lines 7-14. He pointed out, "And in the victim's statement, which you will hear today, she admitted to getting out of her truck and that she was very angry, cussing at the suspect, and she attacked [the] suspect, so that, in fact, proves that she wasn't intimidated or scared." R. p. 506, lines 14-18.

Frazier then pushed his legal argument vehemently, advising the jury of the elements of

carjacking, including the requirement of the use of "force or violence or by intimidation while the person was operating the vehicle or while the person was in the vehicle." R. p. 509, lines 20-24. Frazier argued, "She wasn't forced out of her truck. And if somebody threw something at your truck and you get out, you can't be intimidated." R. p. 510, lines 5-7.

Referencing the video, Frazier argued all it showed was the truck pulling off and Chatos walking away, without the appearance of being hurt. "She is not appeared to be injured. It's no proof of carjacking." R. p. 510, lines 22-24. Frazier argued again there was no proof of intimidation. R. p. 510, line 25 – p. 511, line 7.

Frazier turned to the point that "if any violence or force was used or established was or from by the victim [Chatos].... She used physical force, not the suspect." Noting his own professed size of a 135 pounds, "soaking wet," Frazier argued the size disparity contradicted the element of intimidation. R. p. 512-13.

Remand hearing

On remand, the State presented testimony from Brian Moroney, the assistant solicitor who prosecuted Frazier. Moroney testified he met with Frazier several times to deliver discovery and communicate a plea offer. Moroney testified: "I would give him letters each time I would do that. And given the significant penalties he was facing, not only with the carjacking, but trafficking methamphetamine, began talking about the penalties associated with that." Remand Trans. 6, 18. He testified these were "substantive meetings" that lasted "[a]t least 30 minutes, a couple of them." Remand Trans. 17.

He testified Frazier insisted he wanted to represent himself and explained he had successfully represented himself at the magistrate court level. Moroney attempted to explain that circuit court was different than magistrate's court, and that Frazier would be responsible for applying complicated

areas of law such as the rules of evidence. Moroney testified: "I was desperately trying to explain to him how different of a posture he was in now with what he was facing and the jury trial and the rules of evidence and how complicated that can be and that he needed representation to look over this case." Remand Trans. 7. He explained "the rules are a lot tighter" than in magistrate's court. He testified he discussed the potential for Fourth Amendment challenges with Frazier. Reman Trans. 21. He explained his interactions with Frazier "were not cursory, check the box, Terrence, you should get an attorney . . . . We walked through this case step-by-step and the charges that he was facing." Remand Trans. 54.

Frazier explained to Moroney that he wanted a private attorney, not a public defender. Frazier was polite and confident in his ability to represent himself. Moroney testified Frazier was focused on "scrivener's errors" and other minor evidentiary issues that were not likely to result in acquittal. He told Fraizer he would not be "able to adequately represent himself like an attorney could do." Remand Trans. 20. In sum, Moroney testified he "warn[ed] [Fraizer] of the dangers of proceeding pro se . . . . numerous, numerous times." Remand Trans. 8–9.

Moroney testified he brought Frazier in front of Judge Edward Miller so that Judge Miller could provide Frazier with Faretta warnings. Remand Trans. 8–9. Judge Miller had a conversation with Frazier in the "small courtroom." Moroney described the hearing as follows:

> It was not a verbatim recitation of the Faretta warning. It was not a recitation from the form, but Judge Miller essentially had a conversational, you know, back and forth with him, getting to the crux of the issue that, do you understand that these attorneys go to law school, have legal training for several years, and you don't have the benefit of that, you know. And these are serious charges you're facing, you know, and somebody can aid you in the defenses. And I know that you're competent, you know, you say you can handle yourself, but you could benefit by having somebody assist you on this case, those kind of things.

Remand Trans. 10. Moroney stated Judge Miller told Frazier he would appoint counsel free of

charge, but Frazier was "adamant" that he wanted to represent himself. Remand Trans. 11. Moroney believed Frazier's appearance before Judge Miller took place a term or two before his trial. Remand Trans. 10–13.

Frazier testified he did not understand how sentencing enhancement works, and did not understand he would be facing a trafficking second offense charge. Remand Trans. 30–31. He testified he was motivated to go to trial so he could get out of jail, and that his mother had died while he was in county jail. Remand Trans. 34–35. He testified he didn't remember Moroney advising him that it was important to have an attorney. Frazier testified he has been diagnosed with ADHD and is easily distracted. Remand Trans. 26. Frazier testified he had been to court on prior charges, but had not had a General Sessions trial. Frazier did not recall whether magistrate's court proceeding at which he represented himself was a jury trial. Remand Trans. 28. He testified he pled not guilty and the charge was "thrown out."

When asked whether he understood what the prosecutor meant when he advise him it wasn't a good idea to represent himself, he responded: "To be honest with you, I think he might have said something of the nature during trial or at trial. But before then, to be honest with you, I never . . . remember him mentioning anything about not representing myself or representing myself. . . . There would be dangers or nothing that . . . I remember him . . . bringing the paper to me about a plea negotiation, but that's about it." Remand Trans. 36. Regarding standby counsel, Frazier testified: "he did assist me . . . with giving me standby counsel to the best of his ability." (Remand Trans. 36). He recalled the hearing in front of Judge Miller and recalled Judge Miller telling him "you don't have to represent yourself, but if you decide to represent yourself, then I can't force a lawyer on you or something." Remand Trans. 38.

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. State v. Samuel, 422 S.C. 596, 602, 813 S.E.2d 487, 490 (2018).

ARGUMENT

Frazier knowingly and intelligently waived his right to counsel.

The lower court found Frazier did not knowingly and intelligently waive his right to counsel. However, the record shows Frazier was aware he could be appointed counsel and freely chose to represent himself, as was his right. This Court should find Frazier's waiver was knowing and voluntary and affirm his convictions.

Pursuant to both the United States Constitution and the South Carolina Constitution, a criminal defendant brought to trial in South Carolina "must be afforded the right to the assistance of counsel before he can be validly convicted and punished by imprisonment." Faretta v. California, 422 U.S. 806, 807 (1975); see U.S. Const. amend. VI ("In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence."); S.C. Const. art. I, § 14 ("Any person charged with an offense shall enjoy the right . . . to be fully heard in his defense by himself or by his counsel or by both."). However, "[t]he right to defend is personal." Faretta, 422 U.S. at 834. As a result, a defendant is entitled to waive his right to counsel and represent himself during a trial in a pro se capacity. State v. Thompson, 355 S.C. 255, 262, 584 S.E.2d 131, 134 (Ct. App. 2003); see State v. Barnes, 407 S.C. 27, 35, 753 S.E.2d 545, 550 (2014) ("A South Carolina criminal defendant has the constitutional right to represent himself under both federal and state constitutions."). Thus, even though it ultimately may be detrimental for a defendant to personally conduct his own defense, that defendant's choice to do so "must be honored out of 'that respect for the individual which is the lifeblood of the law.'" Thompson, 355 S.C. at 262, 584 S.E.2d at 134 (citation omitted).

In order to effectuate a valid waiver of the right to counsel, a defendant must be advised of the right to counsel and adequately warned of the dangers of self-representation. Ex parte Jackson,

381 S.C. 253, 259, 672 S.E.2d 585, 588 (Ct. App. 2009). Before allowing a defendant to proceed pro se, the trial judge should determine whether the defendant knowingly and voluntarily waived his right to counsel, and the **preferred** method for doing so is for the trial judge to conduct a specific inquiry addressing the dangers and disadvantages of pro se representation with the defendant. Thompson, 355 S.C. at 262-263, 584 S.E.2d at 135; see United States v. King, 582 F.2d 888, 890 (4th Cir. 1978) (instructing "no particular form of interrogation is required" in order for a trial judge to determine whether a defendant's waiver of his right to counsel is knowing and intelligent). However, "the ultimate test is not the trial judge's advice but the accused's understanding." State v. Cash, 309 S.C. 40, 42, 419 S.E.2d 811, 813 (Ct. App. 1992). Significantly, "[i]f the record demonstrates the defendant's decision to represent himself was made with an understanding of the risks of self-representation, the requirements of a voluntary waiver will be satisfied." Wroten v. State, 301 S.C. 293, 294, 391 S.E.2d 575, 576 (1990).

Factors used to determine if the accused had sufficient background to understand the disadvantages of self-representation include:

(1) the accused's age, educational background, and physical and mental health;

(2) whether the accused was previously involved in criminal trials;

(3) whether he knew of the nature of the charge and of the possible penalties;

(4) whether he was represented by counsel before trial and whether an attorney indicated to him the difficulty of self-representation in his particular case;

(5) whether he was attempting to delay or manipulate the proceedings;

(6) whether the court appointed stand-by counsel;

(7) whether the accused knew he would be required to comply with the rules of procedure at trial;

(8) whether he knew of legal challenges he could raise in defense to the charges against him;

(9) whether the exchange between the accused and the court consisted merely of pro forma answers to pro forma questions; and

(10) whether the accused's waiver resulted from either coercion or mistreatment.

Cash, 309 S.C. at 43, 419 S.E.2d at 813.

In State v. McLauren, 349 S.C. 488, 563 S.E.2d 346 (Ct. App. 2002), this Court examined whether McLauren, an admitted jailhouse lawyer, freely and voluntarily waived the right to counsel absent any express colloquy regarding the dangers of self-representation. This Court found McLauren's waiver was voluntarily made after assessing the Cash factors, finding in relevant part: (1) "McLauren was a mature man with both formal and informal education. There was no evidence in the record of any physical or mental impairment." (2) McLauren was previously involved in criminal proceedings with a record going back to 1965. (3) McLauren knew the nature of the charge, "address[ing] questions by the court and [making] motions." (4) The court appointed standby counsel to provide McLauren legal advice and sit with McLauren during trial. (5) There was no indication McLauren was attempting to delay or manipulate the proceedings, noting McLauren made a motion for a speedy trial. (6) This Court reiterated McLauren was appointed standby counsel. (7) McLauren knew to comply with the rules and was familiar with them, making motions, calling witnesses, and objecting at times to the prosecutor's questions. (8) McLauren knew of legal challenges he could raise in defense to the charges against him. (9) The exchange between McLauren and the court did not consist of only pro forma answers to pro forma questions. McLauren's actions indicated he understood the legal system. (10) There was no evidence McLauren's waiver was the result of coercion or mistreatment: "McLauren expressly stated that he wanted to represent himself and that he would waive his right to an attorney." Id. at 495-96, 563

S.E.2d at 349-50.

By comparison, in the instant case: (1) Frazier was twenty-five years old with nothing in the record suggesting any physical or mental impairment. (2) Frazier accumulated a substantial criminal record which was probably the source of his legal knowledge he professed to the jury during closing argument. (3) Frazier clearly knew the nature of the charges, and made a sophisticated legal argument that resulted in Frazier being acquitted of carjacking. (4) Like McLauren, Frazier was not represented by counsel before trial, but was assigned standby counsel that was available to Frazier all through the jury proceedings to provide legal advice. (5) Nothing in the record indicated Frazier was attempting to delay or manipulate the proceedings. Like McLauren, Frazier requested a speedy trial. (6) Frazier received stand-by counsel. (7) The record indicates Frazier understood he needed to comply with procedural rules, and his objections and motions indicated some familiarity with the rules. (8) Frazier demonstrated he knew of several defenses to raise, including his successful defense to carjacking, one of the two major charges he was facing. (9) Frazier's actions, like McLauren's, were indicative of some understanding of the legal system. (10) Like McLauren, there is no indication Frazier's decision was the result of coercion or mistreatment. Instead, Frazier unequivocally requested to represent himself. He was aware he could fill out paperwork to have a public defender appointed. R. p. 73, lines 23-24. He previously represented to the judge during the bond hearing that he had some legal knowledge. R. p. 6, lines 1-5. He chose to represent himself at the preliminary hearing despite warnings from the municipal judge.

On remand, the State presented evidence that Frazier was advised of his right to counsel but chose to waive that right. The solicitor testified Judge Edward Miller conducted a Faretta hearing in

one of the terms preceding Frazier's trial.[1] Remand Trans. 8–9. While that transcript is not available, the solicitor testified this was a substantial hearing where Judge Miller warned Frazier that he was facing serious charges, that lawyers "go to law school, have legal training for several years," and Frazier didn't "have the benefit of that." Remand Trans. 10.

Moroney testified he had "numerous" conversations with Frazier where he warned him of the dangers of proceeding pro se. Moroney testified Frazier was focused on "scrivener's errors" and other minor evidentiary issues that were not likely to result in acquittal. Moroney discussed the charges and potential penalties with Frazier. He testified Frazier wished to represent himself, and explained he had successfully represented himself at the magistrate court level. Moroney attempted to explain that circuit court was different than magistrate's court, and that Frazier would be responsible for applying complicated areas of law such as the rules of evidence. He explained "the rules are a lot tighter" than in magistrate's court. He testified he discussed the potential for Fourth Amendment challenges with Frazier. He explained his interactions with Frazier "were not cursory, check the box, Terrence, you should get an attorney .... We walked through this case step-by-step and the charges that he was facing." Remand Trans. 54. Moroney reiterated: "To be frank today ... I understand the position Mr. Frazier's in, in wanting to rewrite history, but ... the truth is what I'm telling you today. He was advised numerous times of the perils proceeding unrepresented. And he

[1] At his preliminary hearing, Frazier appeared before Municipal Judge Lee Miller and proceeded pro se. Brief of Respondent filed April 17, 2018, at 5. A recording of the preliminary hearing is on file with this Court, and is referenced in the Court's opinion remanding the case. In its opinion, this Court noted that the municipal court cautioned Frazier about proceeding without an attorney, but the warnings did not adequately warn Frazier of the specific dangers of proceeding pro se. In the trial transcript, the solicitor mentions a hearing before "Judge Miller." R.p. 72, line 13. However, it was not apparent from the transcript that the solicitor was actually referring to Circuit Court Judge Edward Miller, as Moroney explained at the remand hearing. Accordingly, the State wishes to emphasize there was a hearing convened specifically for the purpose of administering Faretta warnings at the circuit court level.

knew that. And he elected to do that on his own accord." Remand Trans. 53.

While this is not the preferred method of advisement, the solicitor spoke with Frazier several times about the pitfalls of self-representation in General Sessions court and testified they had in-depth conversations about the issues and charges against Frazier. He testified his discussions "were not cursory, check-the-box" conversations. Remand Trans. 54. The lower court did not dispute any of these facts. Instead, it ignored most of Moroney's testimony and emphasized that Frazier did not understand certain aspects of his case, such as sentencing enhancement. Order at 8. But that does not bear on Frazier's understanding of his right to counsel and his ability to waive the right. Whether a defendant is "capable of effectively representing himself has no bearing upon his ability to elect self-representation." State v. Samuel, 422 S.C. 596, 603, 813 S.E.2d 487, 491 (2018).

Furthermore, the lower court's order contains confusing language which seems to conflate the question before it. The court wrote that the "lack of a knowing and intelligent waiver weighs in favor of the defendant." Order at 11. But the Cash factors do not weigh "in favor" of either party. The only question is whether the waiver was knowing and voluntary.

The record shows Frazier made a knowing and voluntary decision to proceed without counsel. His convictions and sentences should be affirmed.

CONCLUSION

For all of the foregoing reasons, Frazier's convictions should be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

JOSHUA A. EDWARDS
Assistant Attorney General

DAVID M. STUMBO
Solicitor, Eighth Judicial Circuit

BY: _____
JOSHUA A. EDWARDS

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

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