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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Charleston County

The Honorable Bentley Price, Circuit Court Judge

THE STATE,

Respondent,

v.

MAURICE T. SINGLETON,

Appellant.

Appellate Case No. 2023-000553

FINAL BRIEF OF RESPONDENT

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The trial judge did not violate Appellant's Sixth Amendment right to confront witnesses, or otherwise violate Appellant's rights under the Sixth Amendment and Due Process, when, after failing to promptly return to court on the second day of trial, he missed a portion of trial, then was located, restrained and brought to court, and subsequently removed for another portion of the trial when he disregarded the court's rulings, repeatedly interrupted the judge, and demonstrated cause for the judge to have firm concern Appellant may become violent during the proceedings since he had been violent with the courtroom deputies, especially given that the judge had patiently and repeatedly warned Appellant such behavior could result in removal.

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APPELLANT'S 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?

RESPONDENT'S COUNTERSTATEMENT OF ISSUE ON APPEAL

Did the trial judge abuse his discretion in temporarily removing a *pro se* defendant who expressly waived his right to counsel, and also expressly rejected standby counsel, for disruptive, disrespectful, and dangerous behavior?

STATEMENT OF THE CASE

A Charleston County Grand Jury indicted Appellant, Maurice T. Singleton, in August 2021 for the murder of Vaughn McFadden. (R. p. 543-544). Appellant initially stood trial in October of 2022, but the jury was unable to reach a verdict and a mistrial was granted. (R. p. 3, lines 23-24). Appellant had been represented at the October 2022 trial by retained counsel, Peter Shahid, Esq. (R. p. 6, lines 16-20). Counsel moved to be relieved prior to the second trial at the request of his client. (R. p. 7, lines 7-13). Appellant asserted he wished to represent himself. (R. p. 7, lines 12-24; *see also* p. 8-9). In December 2022, Judge Jefferson initially "granted the motion and conducted [a] quasi Faretta hearing," however, no final order had been issued by the time the case was called to trial again in January 2023. (R. p. 4, lines 3-9).

On January 5, 2023, Appellant appeared before the Honorable Bentley Price for a pre-trial hearing. (R. p. 1-21). Because Mr. Shahid was still reflected as Appellant's counsel, Judge Price considered the motion to be relieved. Judge Price relieved counsel, and counsel provided the judge with a consent order signed by Appellant. (R. p. 9, lines 5-12; *see also* p. 10). Judge Price provided Appellant a written form with Faretta warnings to review overnight. (R. p. 9, lines 1-7).

The next day (Friday, January 6, 2023), Appellant appeared for court but refused to sign the written Faretta warnings. (R. p. 11, lines 18-19). Judge Price explained the dangers of self-representation to Appellant and Appellant responded that he understood. (R. p. 13-16). The State also moved to revoke Appellant's bond. (R. p. 22-30). Judge Price denied the motion to revoke bond but added the additional condition that Appellant must report to his bondsman every Monday. (R. p. 27, lines 17-23).

Appellant's jury trial began on March 27, 2023. Judge Price presided. Jordan A. Norvell and Cassity A. Brewer of the Ninth Circuit Solicitor's Office prosecuted the case. Judge Price

again confirmed Appellant's desire as to going to trial without counsel. While Appellant interrupted repeatedly, Judge Price allowed him to continue *pro se* but appointed, over Appellant's objection, Michael Nelson, Esq., to be available to act as standby counsel. (R. p. 42, lines 2-24). Mr. Nelson reported to the judge that Appellant expressly did not wish standby counsel "to sit next to him during the proceedings." (R. p. 40, lines 5-6). Appellant asserted, "Mr. Nelson is disqualified to … assist me in this trial." (R. p. 43, lines 18-19). Thereafter, Appellant conducted the defense apart from a temporary absence when he was ejected for his disruptive conduct after being warned of that potential by the trial judge. The jury convicted as charged. (R. p. 531, line 16- p. 532, line 4). Judge Price sentenced Appellant to life imprisonment. (R. p. 539, lines 2-15). Judge Price also ordered standby counsel to submit a notice of appeal. (R. p. 534, lines 13-18; p. 538, lines 22-25). This appeal follows.

RESPONDENT'S STATEMENT OF FACTS

As the State summarized in opening, "On March 2nd of 2018, 18-year-old Vaughn McFadden was shot 14 times under the Bennett Railyard I-26 overpass. He was lured there by his two best friends from middle school, Maurice Singleton, and a co-defendant, JuJuan Lockwood." (R. p. 119, lines 11-15).

The fire department responded first as a result of a 911 call. Captain Griffieth testified he met "a train conductor who navigated us back to the train yard until we located a male down on the train tracks who … was obviously … deceased." (R. p. 128, line 4- p. 129, line 15). He did not attempt emergency medical measures due to the visible blood loss and injury which were incompatible with life. (R. p. 129, line 20- p. 130, line 3). The division chief of emergency services similarly confirmed no signs of life and pronounced Vaughn dead at 6:38 p.m. (R. p. 146, line 17- p. 147, line 10; p. 148, lines 1-3). Officers arrived shortly thereafter.

North Charleston Officer Weatherford testified that he was called out to the railyard at approximately 6:00 or 6:30 p.m. He secured the scene, (R. p. 138, lines 4-21), and transported the conductor to city hall for a statement, (R. p. 142, lines 4-18). Sergeant Cummins also responded. He testified that as he "approach[ed] the victim" he detected "the odor of marijuana," found Vaughn's driver's license and school identification, along with his phone that was "sticking out" of a pocket. (R. p. 153, line 25- p. 154, line 6). Sergeant Cummins testified they reached out to Vaughn's family who informed them that Vaughn had not been with them, but gave information he was with "Tatem, Maurice, and JaJuan." (R. p. 156, line 21- p. 157, line 19). On investigation, officers found "Tatem" and confirmed that he was not with Vaughn that night. (R. p. 158, lines 9-18). However, the investigation confirmed that Vaughn had been with Maurice and JuJuan. (R. p. 159, lines 3-12). Sergeant Reynold testified that he responded to process the crime scene and collect evidence. (R. p. 169, lines 16-17; p. 170, lines 12-18). He collected Vaughn's phone for

processing, and multiple shell cases among other items, and noted only nine dollars found in Vaughn's pocket. (R. p. 178, line 18- p. 181, line 20).

Mr. McKean, the conductor, testified that in the afternoon of the March 2, 2018, he "heard a gunshot, and ... turned [his] head and ... saw a young gentleman shoot about five, six more times into the ground" or "[t]owards the ground." He saw two "young black men, around 18 – 16 to 20 years old," one with dark clothing with a white stripe on the side or sleeve. (R. p. 202, line 2- p. 203, line 9). After the first caught his attention, he observed the two young men were standing as the shots were fired downward. (R. p. 203, lines 10-24). Both bent down as if picking something up. (R. p. 204, lines 1-13). They then ran from the yard, went through a hole in the fence and toward a nearby neighborhood. (R. p. 204, lines 14-21). Another individual found the body, but having heard the shot, Mr. McKean went over to report what he saw to officers, eventually going with the officers to make a formal statement. (R. p. 206, lines 1-17).

Forensic pathologist Dr. Batalis testified he found "at least 14" gunshot wounds at autopsy. (R. p. 214, lines 15-17). One shot to the neck went back to front. (R. p. 218, lines 15-20). From the location of the wounds, it was possible that Vaughn was holding his hands in front of his face at some point. (R. p. 223, lines 6-8). Vaughn was shot on the left side of his face, in the chest and twice in the forehead on the right side, any of which could have been fatal due to the extreme damage inflicted. (R. p. 223, lines 9-25).

Nathaniel Pearson, who worked as an assistant principal at North Charleston High School, testified that the school had access to video from the buses and could request the video if needed. (R. p. 230, line 14- p. 231, line 7). The school also had attendance records that he could access when asked. (R. p. 232, line 24- p. 233, line 3). Mr. Pearson confirmed that attendance records showed Appellant was in a class with Vaughn at 2:00 p.m. on March 2, 2018, though

both were marked "tardy" in coming to the class that ran until 3:15 p.m. (R. p. 233, line 9- p. 234, line 6). Detective Crider testified that she had previously been a resource officer for the school and recognized the names "JaJuan Lockwood and Maurice Singleton," the young men the department wanted for questioning. (R. p. 235, lines 5-23). She had a good relationship with Appellant from her prior position and reached out to him in hopes of collecting his phone, which she did through Appellant's girlfriend. Other officers had secured a search warrant for the phone so that they could verify Appellant's whereabouts. (R. p. 237, line 4- p. 238, line 20).

Detective Pritchard later came onto the case and reviewed the interviews from prior contact with JuJuan Lockwood and Appellant. (R. p. 249, lines 16-23). Then, after reviewing the crime scene and considering the surrounding area, he was able to obtain video footage from a nearby residence. (R. p. 252, lines 1-25). He also reviewed footage obtained from the school bus and another camera positioned near the area. (R. p. 255, lines 15-25). The bus video showed Appellant in a dark "sweatshirt with gray or white sleeves," and he was exiting with the victim. (R. p. 259, lines 6-16). A neighborhood camera also captured Appellant walking with the victim then going into a store and later walking out of the store, still together. (R. p. 261, lines 1-22). Another video then showed the two joined by the co-defendant, Lockwood. (R. p. 265, lines 17-21). The men walked to a dead-end street that had a "cut" in the fence that allowed access to the railyard. (R. p. 268, lines 7-17). The next available video was around 5:35 or 5:36 p.m. and that was of only Appellant and Lockwood returning. (R. p. 269, lines 6-19). Appellant then had the "hood of his sweatshirt ... up and he was looking down the whole time." (R. p. 269, lines 23-24). The detective also confirmed that Vaughn had recently received a large sum of money, and when his phone was reviewed, the detective "recovered a picture" taken "at school" with Vaughn "wearing the same clothes in class" as he was killed in "with a large amount of money

displayed on his lap" that appeared to be hundreds and twenties. (R. p. 274, lines 19-22; p. 276, lines 6-8; p. 277, lines 12-18). Bank records showed he had withdrawn large sums, and specifically, the day prior to his murder, Vaughn had withdrawn $500.00. (R. p. 276, lines 13-18). A search of Appellant's home yielded a single 9mm bullet and $154.00 – one, one-hundred-dollar bill. (R. p. 279, lines 8-23; p. 186, line 17- p. 187, line 12).

Jerry Roberts, manager for the Digital Evidence Unit in the city police department testified that examination of Vaughn's phone corroborated the location evidence pieced together around the time of the crime, and also that there was no indication of regular movement past 5:45 p.m. (R. p. 358, line 20- p. 364, line 4). The last time the display prior to the police securing the phone was on was 5:31:36 to 5:31:44 p.m. (R. p. 366, line 21- p. 367, line 9).

Detective Sam Riedel, with North Charleston Police Department, testified as a digital forensic examiner. He testified to the examination of the phone from Appellant and co-defendant Lockwood. (R. p. 393, line 10- p. 394, line 19). The phone information showed the phones shared communication, common down time, and a message about bullets, an instruction to delete messages, and an indication to separate for a while. (R. p. 404, line 12- p. 422, line 7).

Vaughn's sister, Niara McFadden, testified and confirmed that her brother would "hang out" with both Appellant and Lockwood, along with "Tatum." (R. p. 436, lines 19-22). She recalled that she saw Appellant with Vaughn the weekend before the murder. (R. p. 436, line 25- p. 437, line 3). She testified Vaughn would have been in the area where the railyard was if he was going to be around Appellant and Lockwood, and that the yard was a place to smoke. (R. p. 437, line 12- p. 438, line 7). She confirmed that the money Vaughn received the prior December was from his late father's pension. (R. p. 441, line 14- p. 442, line 6). As noted above, the jury convicted Appellant of murder after consideration of the evidence presented.

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only and is bound by the factual findings of the trial court unless clearly erroneous." *State v. Patterson*, 367 S.C. 219, 224, 625 S.E.2d 239, 241 (Ct. App. 2006) (citing *State v. Wilson,* 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001); *State v. Preslar, 364* S.C. 466, 613 S.E.2d 381 (Ct.App.2005); *State v. Wood,* 362 S.C. 520, 525, 608 S.E.2d 435, 438 (Ct.App.2004)). *See also State v. Samuel*, 422 S.C. 596, 602, 813 S.E.2d 487, 490 (2018) (the appellate court will "review a circuit judge's findings of historical fact for clear error").

ARGUMENT

The trial judge did not violate Appellant's Sixth Amendment right to confront witnesses, or otherwise violate Appellant's rights under the Sixth Amendment and Due Process, when, after failing to promptly return to court on the second day of trial, he missed a portion of trial, then was located, restrained and brought to court, and subsequently removed for another portion of the trial when he disregarded the court's rulings, repeatedly interrupted the judge, and demonstrated cause for the judge to have firm concern Appellant may become violent during the proceedings since he had been violent with the courtroom deputies, especially given that the judge had patiently and repeatedly warned Appellant such behavior could result in removal.

Introduction:

Rule 16 of the South Carolina Rules of Criminal Procedure provides:

> Except in cases wherein capital punishment is a permissible sentence, a person indicted for misdemeanors and/or felonies may voluntarily waive his right to be present and may be tried in his absence upon a finding by the court that such person has received notice of his right to be present and that a warning was given that the trial would proceed in his absence upon a failure to attend the court.

Further, "a defendant can waive his right to be present at a crucial stage of the trial by disruptive conduct." *State v. Shuler*, 344 S.C. 604, 625, 545 S.E.2d 805, 815 (2001); *State v. Patterson*, 367 S.C. 219, 230, 625 S.E.2d 239, 244 (Ct. App. 2006) ("a defendant may be presumed to waive or forfeit the right to be present by misbehaving in the courtroom").

Here, Appellant waived his right and/or forfeited his right to remain in the courtroom due to his continuous interruptions, failure to abide by the court's rulings, concerns of comments warranting a mistrial, and increasing concerns of violence. As Rule 16 makes clear, a non-capital defendant does not have an unwaivable right to be present in the courtroom during trial proceedings. Procedurally, the rule requires that the defendant have (1) notice of his right to be present and (2) a warning that the trial will proceed in his absence. Appellant was given notice of his right to be present and made clear that he understood. (*See* R. p. 45, line 22- p.46, line 21; p. 56, lines1-8). However, Appellant was also given a warning that the trial would proceed in his

absence unless and until he could control his disruptive behavior. (R. p. 44, lines 1-2). Thus, Rule 16 requirements have been satisfied. Further, this shows no violation of the rights secured by the Sixth and Fourteenth Amendments. Appellant consistently waived his right to counsel, and specifically rejected standby counsel. There is no error.

Relevant Facts:

Though he had counsel in his prior trial, Appellant did not want counsel in the retrial. As noted above, prior to the re-trial, Judge Price asked again to confirm the desire to waive counsel, but his behavior became problematic. Appellant interrupted Judge Price several times, but the judge allowed him to continue *pro se*.[1] The judge appointed Michael Nelson, Esq. to act as standby counsel. (R. p. 41, line 12- p. 42, line 24). Appellant objected. (R. p. 43, lines 2-19). As the judge attempted to ask Appellant if he had any *voir dire* requests, Appellant continued to object to Mr. Nelson's representation of standby counsel. Judge Price informed Appellant that if he continued to interrupt the Court his case would be tried in his absence, took a break in the proceedings, and even requested standby counsel explain that he could not "continuously interrupt" the court proceedings. (R. p. 43, line 8- p. 45, line 5). Mr. Nelson returned to report Appellant "no longer wants to speak with [Mr. Nelson] and had indicated," to Mr. Nelson that Mr. Nelson was "disqualified." (R. p. 45, lines 6-8). Judge Price brought Appellant back into the court. He asked had there been any "evaluations" made, and the Solicitor indicated there had not been any made "nor has it ever been indicated there would be a need for one." (R. p. 45, lines 14-17). Judge Price addressed Appellant and gave him options for going forward and advised that Appellant could not continuously interrupt Judge Price as Appellant had been doing. (R. p. 45,

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[1] While Appellant expressed that he did not wish to be represented by counsel, he asked to appear *in propria persona* and not *pro se*. (R. 42, lines 14-17). Both terms indicate appearance without a lawyer, so his intended point is unclear. *See* PRO SE, Black's Law Dictionary (11th ed. 2019). It does demonstrate, however, that he did not agree with the court on most any point, even on basic definitions.

line 18- p. 47, line 15). He agreed. (R. p. 47, line 16). Judge Price allowed Appellant's handcuffs to be loosened,[2] and attempted to explain the *voir dire* process even though Appellant had waived counsel and had been through the first trial on the charge. (R. p. 49, line 3- p. 51, line 12). Appellant returned to the matter of standby counsel and asked for standby counsel to be relieved, which the court denied, but limited standby counsel's role to simply be available should Appellant request aid, though Appellant objected to that as well. (R. p. 51, lines 13-25). Appellant attempted to test Mr. Nelson and concluded that he believed Mr. Nelson not qualified and maintained an objection that Judge Price overruled. (R. p. 52, line 1- p. 54, line 6). He continued to argue to Judge Price and refused to accept that his motion was denied until, ultimately, he challenged the judge's oath and authority to act. (R. p. 54, line 7- p. 57, line 7). Judge Price warned that he would remove Appellant if he could not "calm down" and "set up" a room outside for him to watch the proceedings. (R. p. 57, lines 17-20). Appellant returned to challenging Mr. Nelson and advised the court that he had a motion to suppress evidence. (R. p. 58, line 5- p. 59, line 10).

Eventually, the remaining motions regarding evidence were set aside so that the jury could be selected. (R. p. 59, lines 21-24). Judge Price directed that the prior trial not be mentioned. (R. p. 60, lines 5-8). The jury was selected, and though he had no objection or motions related to the selection of the jury, Appellant requested juror numbers which Judge Price allowed. (R. p. 77, lines 18-25). Subsequently, other matters as to evidence were addressed, at the conclusion of which the trial court called for a break in the proceedings. Judge Price advised Appellant that he needed to timely return to court that day, reminding him that he had failed to show up timely to court that morning. (R. p. 86, lines 13-25).

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2 Appellant asserted the courtroom deputies were "trying to twist [his] arm" then "trying to break [his] arm through the brief process of taking off the cuffs. (R. p. 48, lines 5-21).

During subsequent motions prior to opening statements, however, Appellant continued to argue with Judge Price's rulings, and Judge Price asked if Appellant wanted to be removed from the courtroom. Appellant simply continued to argue. Eventually, Judge Price firmly stated anything further would result in him being removed. (R. p. 103, line 1- p. 104, line 10). He continued to argue, at which point Judge Price resolved, "We're just going to have to just put him back there [*i.e.*, a room removed from court where he could see], … It's not going to work. He's not going to listen." (R. p. 105, lines 19-21). Appellant objected and indicated he was being "unlawfully removed" because he was "exercising [his] right to be heard…." (R. p. 106, lines 21-23). The separate room would allow him to listen and participate via Webex and had other technology available to aid participation. (R. 107, line 8- p. 108, line 19). Even so, Appellant was brought back again to make motions, and Judge Price again explained that while he can object and make arguments, he cannot continually challenge the ruling. (R. 111, line 12- p. 112, line 3). Notably, during these proceedings, the court also warned Appellant not to have his cellphone on or to record anything while in court. Though he objected, Appellant apparently placed the phone on the desk. (R. p. 112, lines 4-20). Appellant also requested a continuance to review discovery he contended was not timely provided, and Judge Price, after hearing the facts, found no continuance was warranted but allowed Appellant to supplement the record with anything on that point should he need to do so. (R. p. 117, lines 10-24).[3] Appellant asserted the denial of his motions amounted to "malicious abuse of process" and that Judge Price was "denying … [Appellant a] fair and impartial trial." (R. p. 117, line 25- p. 118, line 2). He also asserted the rulings against him "exceeded" Judge Price's "jurisdiction" and as such were "not legal." (R. p. 118, lines 4-6).

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[3] Appellant later confirmed that he would have that opportunity after the end of the first day. (R. p. 160, line 15- p. 161, line 14).

Opening statements were given with Appellant present and participating. (R. p. 118, line 23- p. 127, line 3). Four witnesses were presented by the State with Appellant conducting cross-examination. (R. p. 128-160). Appellant, though, continued to have his phone on and was admonished again. (R. p. 131-133). Proceedings broke for the day with Judge Price instructing everyone that court would resume "promptly at 9:30" the following day, March 28th. (R. p. 160, lines 1-5).

On the morning of March 28th, a jury indicated that someone attempted to contact her about the trial, and reported "feel[ing] scared and threatened and" that "she can no longer be fair and impartial." (R. p. 164, lines 7-21; R. p. 547). The judge dismissed the jury and seated an alternate. (R. p. 164, lines 22-24).

The State then reported that Appellant had failed to return, had failed to appear at a status conference and had been late the previous day, therefore, they moved to revoke his bond and for the issuance of a bench warrant. (R. p. 165, lines 11-15). Judge Price both revoked the bond and issued the bench warrant, and also found that Appellant could be tried in his absence given he was previously advised that could happen. (R. p. 165, line 16- p. 166, line 1). Standby counsel was allowed to leave as he was limited to "procedural issues." (R. p. 166, lines 18-24).

The trial continued with the judge advising the jury that while the defendant was not in the courtroom, "that is not to be taken into consideration by yourself whatsoever" and reminded them the burden of proof was on the State. (R. p. 167, lines 21-25). A witness, John Reynolds, testified as to the crime scene, the location and appearance of the body, the items with the body, and the collection of evidence, but his direct was interrupted at approximately 10:22 a.m. when it was discovered the Appellant was in the clerk's office "making copies" and the court directed the deputies to retrieve Appellant and bring him to court. (R. p. 187, lines 15-25).

When brought in, Appellant contested the lawfulness of his "detainment" and challenged Judge Price and the legitimacy of the proceedings. (R. p. 188, lines 2-24). He also attempted to question the prosecutor about maintaining the charges against him and the prosecution. (R. p. 189, lines 1-13). Judge Price ordered the handcuffs to be taken off, but Appellant continued to contest his treatment and argued interference with his ability to represent himself, and asserted that Judge Price was acting unlawfully and would "be held accountable." (*See* R. p. 191, line 4- p. 192, line 13). Judge Price had Appellant removed, and placed on 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's behaving, he's been nothing but violent with y'all, 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. ...

(R. p. 193, lines 3-10).

The State discussed the prevailing case law, waiver by conduct, and noted that the outbursts had been outside the presence of the jury at that point. (R. p. 193, line 18- p. 195, line 16). However, in the State's view, Appellant had evidenced that he did not intend to follow the rulings of the court. (R. p. 195, lines 15-20). Judge Price resolved:

> ... 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.

(R. p. 195, line 21- p. 196, line 7).

The State also expressed a concern about potential witness tampering based on the juror's report from earlier, and the fact that the contact had sparked fear that reduced the juror to tears. (R. p. 196, lines 8-18). The judge acknowledged that the only individuals with the juror's names would be the prosecution and the defense. (R. p. 197, lines 5-7). The judge also did not appoint standby counsel since standby counsel was only appointed for procedural issues. (R. p. 197, lines 12-18). After four witnesses testified, Judge Price requested that standby counsel go back to Appellant and ask

> ... if he wishes to participate in this 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 ...

(R. p. 241, lines 14-18).

Standby counsel confirmed that the display was not before the jury, but Judge Price noted Appellant "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 ... he's going to remain shackled." (R. p. 241, lines 20-23). He again asked standby counsel to "go downstairs" and see if he wanted to participate. (R. p. 242, lines 1-4). Standby counsel spoke with Appellant and reported that he did want to participate, and counsel warned him as well that he could be removed again if he continued inappropriate actions. (R. p. 242, lines 9-21; p. 243, lines 11-12). Judge Price allowed Appellant to return admonishing him to abide by the court's rulings and specifically not to mention the prior trial, and Appellant responded that he would answer the judge's questions as long as the judge answered his questions, indicated that he did not think the proceedings would be "fair and impartial," and told the judge, "you are absurd." (R. p. 244, lines 2-14). Standby counsel intervened and spoke to Appellant, then advised the court that Appellant was ready to participate but that he directed standby counsel "stay in the back and not participate," with Appellant

asserting again his belief standby counsel was "not qualified to be [his] counsel. (R. p. 243, line 18- p. 244, line 24). Appellant then questioned whether the judge had "purposefully den[ied] him the "right to cross-examination" of the witness who testified while Appellant was absent from the courtroom. (R. p. 245, lines 3-6). The judge responded "no," and reminded Appellant it was Appellant's own actions that caused his absence. (R. p. 245, lines 10-11). Appellant then stated "if we could continue, I would ask that this please be a fair and impartial proceeding, because due to your actions I do not feel like this has been a fair trial and will not proceed to be a fair trial," then asked for a "remedy for a wrong sustained" since he did not "face [his] accuser..." (R. p. 245, lines 17-22). The judge responded the "remedy is you're sitting in this courtroom right now." (R. p. 245, lines 23-24). Appellant asked to address the jury, which the judge denied, and also asked to cross-examine the witnesses who testified in his absence, and the judge stated that a witness would be called for him to cross-examine then directed the State to call the next witness in the trial, Detective Pritchard. (R. p. 246, line 12- p. 247, line 11). During his cross-examination of Detective Pritchard, Appellant asked for the shackles to be removed and asserted "its infringing my opportunity to ... raise an affirmative defense...." (R. p. 285, lines 3-6). Judge Price allowed a break in the proceedings at that point and advised Appellant he would consider the request. (R. p. 285, lines 20-25). Judge Price allowed the removal of the restraints on one hand, and Appellant asserted being tried in shackles was prejudicial to him: "being detained in front of the jury is very prejudiced [sic] and shows bias on behalf of ... Judge Price" and "demand[ed] that [Judge Price] be recused." (R. p. 286, lines 13-17). He also attempted to question the revocation of bond, and Judge Price instructed that could be discussed later outside the presence of the jury (the record notes that the jury was returning after the short break). (R. p. 286, lines 18-24). Appellant continued cross-examination, and when the judge allowed the

witness to complete an answer, Appellant asked if the judge was "practicing law from the bench." (R. p. 290, lines 14-15). Judge Price just allowed the cross-examination to continue without rebuking Appellant for the lack of decorum. (R. p. 290, lines 16-17). The cross-examination and recross was not simply unskillful, but often irrelevant, belligerent, and disrespectful to the witness, and the court, while the court remained courteous. (*See* R. p. 293, line 23- p. 305, line 7; p. 308, lines 2-8; p. 314, line 2- p. 318, line 3; p. 322, line 25- p. 330, line 22). Judge Price displayed remarkable patience and courtesy. For example, and for a snapshot of the hostility and non-compliance from Appellant and courteous response from the judge, Judge Price asked Appellant at one point, "Please don't badger the witness. Just ask him a question. Please don't testify." (R. p. 309, lines 10-11).

After the completion of Detective Pritchard's testimony, Appellant asked if Mr. McKean had testified, and as the judge asked the jury to step out on break, Appellant asserted, "Let the record show he's inducing a fraud. Let the record show he's inducing a fraud." (R. p. 331, lines 14-21). At the end of the break, as the judge cautioned Appellant to listen to the individuals assigned to walk with him, Appellant announced the trial was "unlawful" and referenced equity, wanting to know who was "the trustee" in the proceeding, decided it was the judge, and accused him of being "prejudiced and biased." (R. p. 333, lines 7-19). Appellant announced that he would read from his affidavit, and the judge instructed him not to do that. (R. p. 333, lines 20-25). He also wanted to return to the clerk's office to file something, and when the judge offered to aid in the filing, Appellant then pivoted to assert his documents were not printed and that he "was in the process of printing it off and you unlawfully detained me and had me put away in shackles while I was trying to attend the trial and be able to face my accusers and the jury." (R. p. 334, lines 4-14). He asserted that he had "been denied due process of law." (R. p. 334, line 14).

Judge Price directed the State to call its next witness and testimony continued. The court recessed overnight during the witness direct testimony (Mr. Roberts). (R. p. 368, lines 4-15).

The next day, the court addressed another problem. Keyshon Poinsette, who came to the courthouse with Appellant's girlfriend, Destiny Forrest, to bring Appellant clothes, had a list of the jurors' names. Forrest claimed that she had Appellant's "papers" in her car, and that Appellant had asked for the list with juror names. Standby counsel confirmed the list was in his handwriting and though he did share the list with Appellant in order to select the jury, he thought that he took the list back. There was no determination on the record as to why he would need the list at that point in trial. (R. p. 373, line 9- p. 375, line 13). Appellant then returned to the courtroom and immediately asked for his right hand to be free from the shackles. Judge Price 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.
>
> So, Mr. Singleton, we're going to proceed today in a little bit more of an orderly fashion. I'm going to be a little bit more strict and keep you on a tighter leash, so for every time that you have an outburst, or you do anything around these deputies, I'm giving you another six months.

(R. p. 375, line 24- p. 376, line 16).

Appellant denied that he "raised a hand against the deputies," to which the court replied, "Of course you didn't. You were shackled," and further argument is not recorded due to,

"Simultaneous speaking." (R. p. 376, lines 17-22). Judge Price ended the exchange and directed the trial to continue. (R. p. 376, lines 24-25). Appellant continued to contest the allegation of fighting, and also requested aid in printing an affidavit for filing in the case. (R. p. 377, lines 1-15). He would later explain he wanted to print an affidavit "[o]f bias and prejudice." (R. p. 425, lines 16-18). Appellant also asked to cross-examine Mr. McKean which he was not able to do when he was removed from the courtroom and the judge declined. (R. p. 377, lines 19-23).

Testimony resumed with Mr. Roberts. The State concluded the examination with no further questions, then Appellant cross-examined the witness and there was a short re-direct. (*See* R. p. 378, line 12- p. 388, line 4). Another witness was called, Detective Riedel, and Appellant again argued with the court over the pre-trial ruling allowing the phone extraction testimony. (R. p. 398, line 17- p. 400, line 17).

The State recalled one witness, Detective Pritchard, to summarize the evidence into one timeline. During cross-examination, Appellant asked a question that indicated a reference to Mr. McKean, and Appellant again requested that he be allowed to cross-examine Mr. McKean. The judge had him move along. (R. p. 460, lines 15-25). He cross-examined the detective about the detective's assessment of Mr. McKean's testimony regarding the clothing description. (R. p. 465, line 10- p. 467, line 5). The questioning was repetitive and veered more than once to the improper. (*See* R. p. 469, lines 6-17; p. 473, lines 13-18; p. 476, lines 23-24). Eventually, the witness testimony was completed, and the State rested. (R. p. 479, line 10).

During the directed verdict motion, Appellant again asserted prejudices, and began speaking over the judge and attempting to direct the judge to take action. (R. p. 481, lines 4-22). Judge Price reminded Appellant he was ejected because of his own "outlandish behavior, his

continued interruption … a constant, continuous process" having continued to that time where Judge Price was then again addressing Appellant's disruptive behavior. (R. p. 481, line 23- p. 482, line 10). Any prejudice from removal was of his own making. (R. p. 482, lines 9-10).

Appellant declined to present any evidence, and, when asked if had time to discuss matters with his attorney or family, Appellant noted that he did not have an attorney, stating: "Let the record show Mr. Nelson is not my attorney." (R. p. 482, lines 17-23). Appellant stated that the only additional time he needed was time "to cross-examine the witness that I was not able to do because" the judge "detained" Appellant. (R. p. 483, lines 4-6). Appellant again asked to have the jury know about the prior trial. (R. p. 485, lines 1-7). Appellant then reversed himself and offered to call his father to speak to the violation of Appellant's rights. (R. p. 486, lines 3-11). He changed again and considered calling Keyshon Poinsette. (R. p. 488, lines 12-16). Having shown no indication of relevant evidence in his proffer, the judge disallowed calling the offered witness(es). (R. p. 491, lines 3-5). He returned again to request the jury hear about the prior trial. (R. p. 492, lines 1-25). The case eventually went to closing and the jury instruction.

In his instructions to the jury, Judge Price also instructed that while Appellant had been absent for some of the trial, the law allows him to be tried in absence, but the fact of the absence must "not be considered against the defendant…." (R. p. 522, lines 1-5). Appellant objected to not having a charge to inform the jury of the prior trial, to which Judge Price responded, "For the 1,000th time, we are not going to mention the prior trial." (R. p. 524, lines 20-21). It was noted that Appellant was also inappropriately looking at the jury and "mouthing 'please' at the jurors during" the instructions. (R. p. 524, lines 6-10).

In deliberations, the jury returned a note asking if Appellant had their names or only their juror numbers. (R. p. 527, lines 11-14; R. p. 548). Judge Price instructed the jury to

consider only the evidence presented, and "[a]ny other issues will be addressed post trial." (R. p. 528, lines 11-15). While the jury was out, Appellant offered an apology to Judge Price indicating that his actions were for trial, and not personal. (R. p. 529, lines 4-10).

Discussion:

"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." *Illinois v. Allen,* 397 U.S. 337, 338 (1970). However, "[i]t is essential to the proper administration of criminal justice that dignity, order, and decorum be the hallmarks of all court proceedings in our county." *Id.* Consequently, "a defendant can waive his right to be present at a crucial stage of the trial by disruptive conduct." *State v. Shuler*, 344 S.C. 604, 625, 545 S.E.2d 805, 815 (2001).

"A defendant may properly be excluded when his conduct is disruptive or is interfering with the progress of the trial." *State v. Bell*, 293 S.C. 391, 401, 360 S.E.2d 706, 711 (1987). Further, "[a]lthough the right to be present is a substantial one, no presumption of prejudice arises from a defendant's exclusion." *Id.* Rather, "[d]enials of a defendant's right to be present, as well as other constitutional violations, are subject to a harmless error analysis." *Shuler*, at 626, 545 S.E.2d at 816 (citing *State v. Williams*, 292 S.C. 231, 355 S.E.2d 861 (1987)).

In *Allen,* the Supreme Court recognized that discretion to deal with disruptive conduct was necessary, and upheld the removal of a defendant from trial as being within the trial court's discretion:

> It is not pleasant to hold that the respondent Allen was properly banished from the court for a part of his own trial. But our courts, palladiums of liberty as they are, cannot be treated disrespectfully with impunity. Nor can the accused be permitted by his disruptive conduct indefinitely to avoid being tried on the charges brought against him. It would degrade our country and our judicial system to permit our courts to be bullied, insulted, and humiliated and their orderly progress thwarted and obstructed by defendants brought before them charged with crimes. As guardians of the

> public welfare, our state and federal judicial systems strive to administer equal justice to the rich and the poor, the good and the bad, the native and foreign born of every race, nationality, and religion. Being manned by humans, the courts are not perfect and are bound to make some errors. But, if our courts are to remain what the Founders intended, the citadels of justice, their proceedings cannot and must not be infected with the sort of scurrilous, abusive language and conduct paraded before the Illinois trial judge in this case. The record shows that the Illinois judge at all times conducted himself with that dignity, decorum, and patience that befit a judge. Even in holding that the trial judge had erred, the Court of Appeals praised his 'commendable patience under severe provocation.'
>
> We do not hold that removing this defendant from his own trial was the only way the Illinois judge could have constitutionally solved the problem he had. We do hold, however, that there is nothing whatever in this record to show that the judge did not act completely within his discretion. Deplorable as it is to remove a man from his own trial, even for a short time, we hold that the judge did not commit legal error in doing what he did.

Id., at 346–47.

Allen is instructive and shows how carefully Judge Price handled the tense and unrelenting situation while balancing the need for decorum expected in such proceedings. Judge Price demonstrated remarkable patience, and reiterated multiple times that he wanted Applicant to be able to participate in his trial. (*See* R. p. 45, lines 22-25; p. 56, lines 4-8; p. 108, lines 11-13; p. 110, lines 6-11; p. 190, lines 5-15; p. 242, lines 1-14). Like Allen, Appellant was repeatedly warned by the judge that continuing the impermissible behavior would result in his being removed from the courtroom. (*See* R. p. 43, line 20- p. 44, line 20; p. 195, line 21- p. 196, line 7). *Id.*, at 346 ("[p]rior to his removal [Allen] was repeatedly warned by the trial judge that he would be removed from the courtroom if he persisted in his unruly conduct"). Further, Appellant was charged with contempt and was advised that for every outburst he would get an additional six months but was not removed at that time. (*See* R. p. 375, line 24- p. 376, line 6). *Id*, at 344-345 (considering lower court's notation of "the possible availability of contempt

of court as a remedy to make Allen behave"); *id.*, at 346 (noting "Allen was constantly informed that he could return to the trial when he would agree to conduct himself in an orderly manner."). Judge Price affirmatively did what *Allen* teaches and sought to avoid or limit ejection by multiple means.

However, Applicant forfeited his presence by engaging, repeatedly, in actions that he was warned interfered with the integrity of the judicial process. Applicant was not present *due to his own misconduct* for the direct or cross examination of four witnesses: Greggory McKean (conductor); Nicholas Batalis (forensic pathologist); Nathaniel Pearson (Assistant Principal); and Tiffani Crider (North Charleston Police Department). Ultimately, the resolution here falls on the fact that Appellant cannot complain of errors of his own making. *State v. Babb,* 299 S.C. 451, 455, 385 S.E.2d 827, 829 (1989) ("a party cannot complain of an error which his own conduct has induced"). At any rate, Appellant has made no attempt to show specific prejudice. *See Bell, supra*. At trial, the only witness of concern to Appellate appeared to be the conductor, however, he brought out (perhaps improperly so, but nonetheless) credibility concerns regarding the conductor's testimony during Detective Pritchard's testimony. (*See* R. p. 467, lines 2-22). However, it appears that Appellant attempted to rely on the assertion that he was unrepresented during his absence and prejudice should be assumed. (*See* Appellant's Brief, at 18). The reliance on such an argument is misplaced for both procedural and substantive reasons.

Appellant's argument that the judge should have appointed standby counsel is not preserved for review and Appellant never asserted an error based on denial of counsel. *See, e.g., State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693–94 (2003) ("Issues not raised and ruled upon in the trial court will not be considered on appeal."). Again, the removal from the trial was limited and temporary. Appellant resumed his *pro se* representation and contested his absence,

not the failure to appoint counsel during the absence. (*See* R. p. 245, lines 17-22; p. 334, lines 4-14; p. 460, lines 15-25). Notably, Appellant did not complain even after trial based on deprivation of counsel. (*See* R. p. 537, line 6- p. 538, line 4). And the record shows that Appellant continued to act *pro se*. Appellant is wrong that his right to self-representation was terminated.

Indeed, Appellant was very vocal on rejecting counsel. There is no indication appointment of counsel would have been acceptable. *See Faretta v. California*, 422 U.S. 806, 836 (1975) ("In forcing Faretta, under these circumstances, to accept against his will a state-appointed public defender, the California courts deprived him of his constitutional right to conduct his own defense."). There is no clearly established Supreme Court precedent that speaks to a mandate to appoint counsel where a *pro se* defendant has been removed from the courtroom due to his disruptive or disrespectful behavior. *See United States v. Stanley*, 739 F.3d 633, 650 (11th Cir. 2014) (denying federal habeas corpus relief noting the absence of clearly established Supreme Court precedent that "*required*" the appointment of counsel where right to counsel is waived, and defendant then absents himself from trial); *Davis v. Grant*, 532 F.3d 132, 145 (2d Cir. 2008) ("regardless of whether or not we might conclude that Davis was erroneously deprived of his right to counsel when he was removed from the courtroom for disruptive conduct and no standby counsel was appointed to represent him in his absence, we cannot conclude that the result constituted an unreasonable application of Supreme Court precedent"). By footnote, the Supreme Court referenced in *Faretta* that "the trial judge may terminate self-representation by a defendant who deliberately engages in serious and obstructionist misconduct." *Faretta*, at 834 n. 46. This is not absolute; it is permissive. Thus, it works against Appellant's position. Constitutional rights are not suggestions that may be disregarded. Thus, there is no constitutional mandate to *assume* forfeiture of self-representation and *mandate* appointment.

Cf. State v. Barnes, 407 S.C. 27, 37, 753 S.E.2d 545, 550 (2014) (declining to recognize *Indiana v. Edwards,* 554 U.S. 164 (2008) that recognized that a state could deny a self-representation request where a defendant is "competent enough to stand trial under *Dusky* but who still suffer from severe mental illness to the point where they are not competent to conduct trial proceedings by themselves") (citing *Edwards,* at 178)).

Further, the record is very clear that defendant made a voluntary waiver of his right to counsel. Certainly, a defendant, when warned of the dangers of self-representation, may waive his right to counsel by conduct. *Osbey v. State*, 425 S.C. 615, 621, 825 S.E.2d 48, 51 (2019). Waiver may be made verbally or by conduct. *State v. Thompson,* 355 S.C. 255, 262, 584 S.E.2d 131, 134 (Ct.App.2003). Further, by particularly egregious behavior, the right to counsel may be forfeited. *Id. See also City of Columbia v. Assa'ad-Faltas*, 420 S.C. 28, 47, 800 S.E.2d 782, 791–92 (2017) ("the municipal court would have been justified in insisting that Appellant proceed with the assistance of counsel" considering her "long history of abusing the judicial process").

Here, though, there was an appropriate waiver at the beginning of trial (which is not contested on appeal), and there was no express retraction of the waiver that would focus the inquiry on the appointment of counsel during the defendant's absence. There is no indication that Appellant would have offered a retraction – he was firm in his responses and arguments to the trial court that he did not wish standby counsel to be appointed or involved at all. Further still, again based on this record, one would "have little doubt that if" the trial judge ordered standby counsel "to pick up the representation" the appellate court "would be confronted with the argument that the" trial judge "had improvidently and without any record support overruled [the] earlier unambiguous desire for self-representation." *Stanley*, 739 F.3d at 650. That a retraction of his prior waiver may have been a better choice for Appellant to make is not a relevant

consideration in the constitutional analysis. *State v. Brewer*, 328 S.C. 117, 119, 492 S.E.2d 97, 98 (1997) ("Although a defendant's decision to proceed *pro se* may be to the defendant's own detriment, it 'must be honored out of that respect for the individual which is the lifeblood of the law.'") (quoting *Faretta*, 422 U.S. at 834).

Even so, Appellant failed to preserve the issue of some type of interim appointment during his absence from court. This Court should decline to address the deprivation of counsel argument on the merits as it is procedurally barred.

CONCLUSION

Based on the foregoing, this Court should affirm.

Respectfully submitted,

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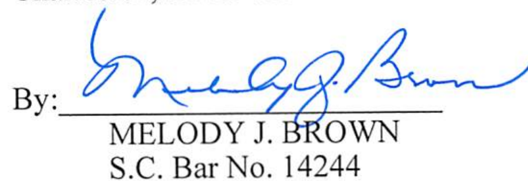

By:________________________
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August 5, 2024

ATTORNEYS FOR RESPONDENT

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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Charleston County

The Honorable Bentley Price, Circuit Court Judge

THE STATE,

Respondent,

v.

MAURICE T. SINGLETON,

Appellant.

Appellate Case No. 2023-000553

CERTIFICATE OF SERVICE

The undersigned certifies that as per the March 20, 2020 Order of the Chief Justice, the *Final Brief of Respondent* has been forwarded to Appellant' s counsel, Kathrine H. Hudgins, Esquire via email today to KHudgins@sccid.sc.gov, and to her assistant Chris Stock, at Cstock@sccid.sc.gov.

This 5th day of August 2024.

By:__________________________
MELODY J. BROWN

From: Angela Brown
To: "khudgins@sccid.sc.gov"; Stock, Chris
Cc: Melody Brown
Subject: The State v. Maurice Singleton (2023-000553)
Date: Monday, August 5, 2024 11:13:00 AM
Attachments: Singleton, Maurice - Final Brief of Respondent - August 5, 2024 (03656302xD2C78).PDF
image001.png

Ms. Hudgins, please find attached the Final Brief of Respondent in reference to the above appeal. The Brief will be electronically filed with the Court of Appeals on today's date.

Thank you,

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