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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Dorchester County
The Honorable Maite Murphy, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

ANTHONY NICHOLAS ARGOE,

APPELLANT.

Appellate Case No. 2023-000223

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

Appellant Anthony Argoe (“Argoe”) was indicted by the Dorchester County grand jury for the offense of murder. (2019-GS-18-1519). Argoe’s case was called to trial on February 6, 2023. Ashley Chisolm, Esquire, represented Argoe. (Tr. p. 1). David Osborne and Mark Hinds were the Assistant Solicitors who prosecuted the case. On February 9, 2023, the jury found Argoe guilty of murder. (Tr. 663, 11. 12-15). Judge Diane Goodstein sentenced Argoe to life in prison. (Tr. pp. 668-669). Argoe directly appealed to this Court raising 1 issue. (Initial Brief of Appellant, p. 1).

Respondent’s Statement of Facts

On June 14, 2019, Anthony Argoe murdered his wife Linda Shuler Argoe by stabbing her 14 times with a knife. The murder occurred in the apartment they shared in Westbury Mews Apartments in Summerville, S.C. Linda Argoe planned to leave Anthony Argoe the next day June 15, 2019, and move in with her daughter in Swansea, S.C. Linda and Anthony were being evicted from their apartment for failure to pay rent which Anthony blamed on Linda. Anthony Argoe also told the property manager that he hated Linda. Anthony Argoe also told his former employer that his wife did not believe he worked but only lay around the house all day drinking and watching T.V. Argoe had been let go from his job for not appearing for work and had failed to pay the rent for 2 months, instead staying home drinking and buying lottery tickets. A neighbor overheard Linda and Anthony Argoe arguing in the months leading to Linda’s murder, including on one occasion arguing over Anthony’s failure to maintain employment. The neighbor also saw Anthony Argoe near his apartment the afternoon of the murder and the neighbor asked Argoe if he was alright, and Argoe responded that everything’s going to be alright. The neighbor then saw Linda arrive home from work and enter her apartment. Video surveillance at a nearby convenience store captured Argoe near his home that afternoon buying alcohol and lottery tickets on two occasions.

Linda's last text message to her granddaughter was around 5:00 p.m. on June 14, 2019. After that she did not respond to calls or text messages. Linda's daughter became concerned and called the police and asked them to perform a wellness check. The apartment was locked and police forced entry and found her murdered body in the apartment shortly after 10:00 p.m. There were no signs of a burglary, and nothing was missing from the home except Anthony Argoe. Linda's body was cold to the touch. There was blood spatter all around where her body was found. Anthony Argoe was found at 5:56 p.m. unconscious nearby in a church parking lot adjacent to their apartment complex with a blood alcohol of .156. Blood spatter on Anthony Argoe's shorts contained the DNA of his murdered wife. She was also a major contributor to DNA on one of Anthony Argoe's sandals. At autopsy, a knife with a 12-inch blade was removed from the victim's neck. The total length of the knife was 1 foot, 7 inches. Terry Gilliam testified he was in jail with Argoe and Argoe admitted to him he stabbed his wife to death. Argoe stated they were arguing, and she was always nagging him, so he shut her up. Argoe did not present a defense. (Tr. 130-55; 163-87; 206-09; 270-31; 233-56; 259-75; 280-365; 378-417; 419-33; 497-505; 527-88).

ARGUMENT

Argoe waived and abandoned his right to self-representation by his subsequent conduct after the initial hearing before Judge Murphy.

What occurred below relevant to this issue

Prior to trial, several pre-trial hearings were held on Argoe's motion to relieve his appointed trial counsel, Ashley Chisholm, and/or to proceed pro se. On July 25, 2022, a hearing was held on Argoe's motion to relieve his trial counsel, Mr. Chisholm. Argoe's main complaints against his counsel were that counsel would not subpoena bank records or provide discovery to Argoe when he received it. Counsel responded the bank records were not relevant to the case, and he provided discovery to Argoe when he received it from the State. The motion to relieve counsel was denied by the Honorable Diane Goodstein. (Tr. July 25, 2022, pp. 1-14).

On September 16, 2022, the Honorable Maite Murphy heard Argoe's motion to represent himself or relieve counsel. The hearing started with defense counsel informing the court they were there on Argoe's motion to represent himself or to relieve counsel. Defense counsel informed the court that they probably would be going through *Faretta*¹ issues but asked to clear the courtroom. The Solicitor left the courtroom. At this hearing, Argoe again complained that his appointed counsel had not provided discovery timely. Counsel responded he provided discovery to Argoe when he received it from the State. At this hearing, after a colloquy between Argoe and Judge Murphy, which did not comply with *Faretta*, and specific questions to Argoe about his knowledge of the law, Judge Murphy stated she did not think it was in Argoe's best interests or wise to represent himself and Argoe might want to retain his own private counsel. Argoe indicated an interest in hiring his own attorney and stated he would look into the matter. Judge Murphy denied the motion to relieve counsel at the end of the hearing but she also held she believed Argoe

¹ *Faretta v. California*, 422 U.S. 806 (1975).

needed representation in this matter and denied his motion to represent himself and stated he could retain private counsel or Mr. Chisolm would represent him.²

On January 19, 2023, Argoe made a motion to represent himself this time before Judge Goodstein. (Tr. Jan. 19, 2023, pp. 1-12). He had not retained private counsel. At the hearing, defense counsel Ashley Chisolm stated that after consultation with Argoe, Argoe wanted to raise this issue again. Defense counsel stated he believed in order to preserve this issue for appeal he needed to raise the issue again before trial. Defense counsel informed Judge Goodstein that Judge Murphy had previously ruled on the issue. When asked what Judge Murphy ruled, counsel explained Judge Murphy had engaged in a colloquy with Argoe but she also went into asking him questions about his legal knowledge and basically found Argoe was not competent to represent himself. Counsel also informed Judge Goodstein that Argoe was frustrated that counsel did not object to Judge Murphy's questions for findings at the September hearing. After hearing the procedural history of the case from defense counsel, including defense counsel's statement that Judge Murphy had denied Argoe's motion to represent himself in September, and defense counsel's other comments, Judge Goodstein, citing S.C.R.Crim.P. Rule 4(b), found that she could not hear this motion because any order she issued would be void. She decided to treat the motion as a motion to reconsider the denial of Argoe's motion to represent himself by Judge Murphy and held only Judge Murphy could hear a motion to reconsider the denial of Argoe's motion to represent himself. (Id). At the conclusion of this hearing, all the parties at this January 19th hearing and Judge Goodstein agreed on the record that a hearing would take place the following week or as soon thereafter as possible before Judge Murphy on Argoe's motion to reconsider the denial of the

² Trial counsel, who had not been relieved, did not object to Judge Murphy's colloquy with Argoe or her ruling. (Tr. Sept. 16, 2022, pp. 1- 11).

motion to represent himself. (Id). Judge Goodstein stated on the record at the January 19th hearing that she would communicate with Judge Murphy and schedule an appropriate time for the motion to be heard. At this hearing, defense counsel, Argoe, and the Solicitor all agreed they would be there for the hearing in front of Judge Murphy. (Tr. Jan. 19, 2023, pp. 1-12).

The next hearing on any motion occurred on February 3, 2023, before Judge Goodstein. (Tr. Feb. 3, 2023, pp. 1-19). This was the Friday before trial. The February 3, 2023, hearing was regarding a motion by defense counsel himself to be relieved because Argoe had allegedly physically threatened defense counsel during a meeting in preparation for trial. (Id.). Judge Goodstein, the trial judge, heard and denied that motion. (Id.). Judge Goodstein did not hear any motion regarding Argoe representing himself or a motion to reconsider the denial of a motion to represent himself. (Id.).

The trial began on February 6, 2023, before Judge Goodstein with defense counsel Chisolm representing Argoe. Prior to the trial beginning before the jury, Argoe moved to have counsel Mr. Chisolm relieved. (Trial Tr. pp. 104-08). Argoe claimed Mr. Chisolm threatened him but claimed it occurred before the February 3, 2023, hearing. (Trial Tr. pp. 104-08). Argoe had no explanation why he did not notify Judge Goodstein of this at the February 3rd hearing. Judge Goodstein denied the motion. (Trial Tr. 104-08). Argoe did not renew his motion to represent himself at trial. (Trial Tr. 104-08). The trial then began before the jury at the conclusion of which Argoe was found guilty of murder.

The Law

“A South Carolina criminal defendant has the constitutional right to represent himself under both the federal and state constitutions.” *State v. Barnes*, 407 S.C. 27, 35, 753 S.E.2d 545, 550 (2014); *see* U.S. Const. amend. VI; S.C. Const. art. I, § 14. If a defendant makes the request

prior to trial, the court must conduct an inquiry as mandated by *Faretta v. California*, 422 U.S. 806 (1975). *Barnes*, 407 S.C. at 35, 753 S.E.2d at 550. Only a clearly and unequivocally expressed request for self-representation will require the court to engage in the *Faretta* inquiry. *United States v. Lorick*, 753 F.2d 1295, 1298 (4th Cir. 1985); *State v. Fuller*, 337 S.C. 236, 241, 523 S.E.2d 168, 170 (1999). The requirement that the request “be clear and unequivocal ... prevents a defendant from taking advantage of and manipulating the mutual exclusivity of the rights to counsel and self-representation.” *United States v. Frazier–El*, 204 F.3d 553, 559 (4th Cir. 2000). The court is placed in a difficult position when a defendant vacillates on the issue—being required to “ ‘traverse ... a thin line’ between improperly allowing the defendant to proceed pro se, thereby violating his right to counsel, and improperly having the defendant proceed with counsel, thereby violating his right to self-representation.” *Id.* (quoting *Fields v. Murray*, 49 F.3d 1024, 1029 (4th Cir. 1995) (en banc)). “In ambiguous situations created by a defendant's vacillation or manipulation, we must ascribe a ‘constitutional primacy’ to the right to counsel because this right serves both the individual and collective good, as opposed to only the individual interests served by protecting the right of self-representation.” *Id.*; see *United States v. Gillis*, 773 F.2d 549, 559 (4th Cir. 1985) (“Of the [rights to counsel and self-representation], the right to be represented by counsel is preeminent.”).

“Even if [a] defendant requests to represent himself, however, the right may be waived through [the] defendant's subsequent conduct indicating he is vacillating on the issue or has abandoned his request altogether.” *Brown v. Wainwright*, 665 F.2d 607, 611 (5th Cir. 1982); see *Gillis*, 773 F.2d at 559 (noting the right to self-representation can be waived “by subsequent conduct giving the appearance of uncertainty”). The “constitutional primacy” given the right to counsel over the right to self-representation is equally applicable to the waiver of the right after

assertion. *See Brown*, 665 F.2d at 611 (“Since the right of self-representation is waived more easily than the right to counsel at the outset, before assertion, it is reasonable to conclude it is more easily waived at a later point, after assertion.”); *Gillis*, 773 F.2d at 559 (indicating the right to self-representation is more easily waived than the right to counsel); *cf. Brewer v. Williams*, 430 U.S. 387, 404 (1977) (stating courts must indulge every reasonable presumption against waiver of *counsel*).

Analysis

Here, five months prior to trial, in September, the circuit court heard Argoe’s motion to relieve counsel or represent himself. (Tr. September 16, 2022 p. 4, ll. 4-6). Again, the motion was based on the same reason Argoe sought to relieve counsel July 25, 2022, based on the alleged failure of counsel to obtain and provide discovery to Argoe in a timely fashion. Counsel again informed the Court, as he did on July 25, 2022, that relevant discovery materials were obtained and provided timely, but counsel could only provide discovery when he received it from the State. Judge Murphy specifically questioned Argoe about why he wanted to represent himself and Argoe stated: because he did not think counsel was doing right by him, i.e. the same discovery complaints alleged above, so he’d rather represent himself. Argoe clearly requested his counsel be relieved or in the alternative, to proceed *pro se*. Rather than engaging in the proper *Faretta* inquiry, the court engaged in an insufficient colloquy and questioned Argoe about his legal knowledge. Judge Murphy advised self-representation was not wise and Argoe may wish to retain counsel. Argoe indicated an interest in retaining counsel and asserted he would look into it. Judge Murphy denied the motion to relieve counsel, denied the motion to represent himself stating in looking out for Argoe’s best interests she thought Argoe needed representation, and advised him to follow up on seeking to retain private counsel and have them notify the Court. (Tr. Sept. 16, 2022, pp. 1-11).

There is no question that the circuit court erred at this pre-trial hearing. *State v. Barnes*, 407 S.C. 27, 35, 753 S.E.2d 545, 550 (2014); *State v. Reed*, 332 S.C. 35, 41, 503 S.E.2d 747, 750 (1998). The only basis upon which a circuit judge may deny a defendant's pre-trial motion to proceed *pro se* is if the court determines the defendant has not knowingly, intelligently, and voluntarily waived his right to counsel. *Barnes*; *Reed*.³

However, this does not end the inquiry. *Brown v. Wainwright*, 665 F.2d 607, 611 (5th Cir. 1982); see *Gillis*, 773 F.2d at 559 (noting the right to self-representation can be waived “by subsequent conduct giving the appearance of uncertainty”). Argoe waived and abandoned the right to self-representation by his subsequent conduct. *Brown*; 665 F.2d at 611; *Gillis*, supra.

The record shows as follows. On January 19, 2023, Argoe made a motion before Judge Goodstein to represent himself. Defense counsel Chisolm stated after consultation with Argoe, Argoe wanted to raise the issue again and be heard in full. (Jan. 19, 2023, pp. 1-11). Defense counsel explained to Judge Goodstein that Judge Murphy had previously heard the motion, and had conducted a colloquy but had got into questions about Argoe’s legal knowledge such as what hearsay was and a Rule 403 objection. (Jan. 19, 2023, p. 6, ll. 6-19). Defense counsel explained Judge Murphy basically found Argoe was not competent to represent himself. (Jan. 19, 2023, p. 7, ll. 5-14). Counsel told Judge Goodstein he believed that to preserve the issue for appeal, he needed to raise the issue again before trial, and it could be done before Judge Goodstein, the trial judge, or as a motion to reconsider before Judge Murphy. (Jan. 19, 2023, p. 7, ln. 21 – p.8, ln. 6). When Judge Goodstein was told Judge Murphy had previously heard the motion and denied the same, and after Judge Goodstein consulted the South Carolina Rules of Criminal Procedure, Judge

³ As previously stated, defense counsel who had not been relieved made no objection to this error. (Tr. Sept. 16, 2022, pp. 1-11).

Goodstein held she could not hear the matter under Rule 4, S.C.R.Crim.P., otherwise her order would be void, and referred the matter to Judge Murphy to treat as a motion to reconsider. Judge Goodstein stated on the record she was contacting Judge Murphy and scheduling the motion to reconsider hearing. All parties, including Argoe and defense counsel, agreed there would be a motion to reconsider hearing before Judge Murphy in the next week or the following week and all parties would attend where Argoe would raise his motion to reconsider Judge Murphy's denial of his right to represent himself. (Jan 19, 2023, p. 8, ln. 7-9, - p. 9, ln. 20). Argoe did not go forward with that motion or hearing.

The next hearing on any motion occurred on February 3, 2023, before Judge Goodstein. (Tr. Feb. 3, 2023, pp. 1-19). This was the Friday before trial. This hearing was regarding a motion by defense counsel himself to be relieved because Argoe had allegedly physically threatened defense counsel during a meeting in preparation for trial. (Id.). Judge Goodstein, the trial judge, heard and denied that motion. (Id.). At this hearing, Argoe did not move to represent himself. Nor was there any mention of the hearing Judge Goodstein scheduled before Judge Murphy on the motion to reconsider. (Id.).

Then trial began on February 6, 2023, before Judge Goodstein with defense counsel Chisolm representing Argoe. Prior to the trial beginning before the jury, Argoe moved to have counsel Mr. Chisolm relieved. (Trial Tr. pp. 104-08). Argoe claimed Mr. Chisolm threatened him but claimed it occurred before the February 3, 2023, hearing. (Trial Tr. pp. 104-08). Argoe had no explanation why he did not notify Judge Goodstein of this threat at the February 3rd hearing. Judge Goodstein denied the motion. (Trial Tr. 104-08). Argoe did not renew his motion to represent himself at trial. (Trial Tr. 104-08). The trial then began before the jury at the conclusion of which Argoe was found guilty of murder.

The lower court should not be reversed where this issue was raised then ultimately intentionally waived and abandoned by Argoe. *Wood v. Milyard*, 566 U.S. 463, 474, 132 S.Ct. 1826, (2012) (citations omitted)(waiver is “the intentional relinquishment or abandonment of a known right.”); *United States v. Morehouse*, 34 F.4th 381, 395 (4th Cir. 2022) (citations omitted)(When a claim is waived, “it is not reviewable on appeal, even for plain error.”).

A motion to reconsider Judge Murphy’s prior September ruling was scheduled before Judge Murphy by Judge Goodstein to assure a timely consideration of the request, shortly before trial, and Argoe with the assistance of counsel failed to follow through. *Brown v. Wainwright*, 665 F.2d at 611 (“Even if [a] defendant requests to represent himself, however, the right may be waived through [the] defendant's subsequent conduct indicating he is vacillating on the issue or has abandoned his request altogether.”); *see Gillis*, 773 F.2d at 559 (noting the right to self-representation can be waived “by subsequent conduct giving the appearance of uncertainty”). The “constitutional primacy” given the right to counsel over the right to self-representation is equally applicable to the waiver of the right after assertion. *See Brown*, 665 F.2d at 611 (“Since the right of self-representation is waived more easily than the right to counsel at the outset, before assertion, it is reasonable to conclude it is more easily waived at a later point, after assertion.”); *Gillis*, 773 F.2d at 559 (indicating the right to self-representation is more easily waived than the right to counsel); *cf. Brewer v. Williams*, 430 U.S. 387, 404 (1977) (stating courts must indulge every reasonable presumption against waiver of *counsel*). Argoe did not renew his motion to represent himself at the February 3rd hearing or at trial, further waiving and abandoning this claim. *Brown*; *Gillis*.

CONCLUSION

For the above stated reasons, Argoe's conviction and sentence for murder should be affirmed.

Respectfully Submitted,

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