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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM HORRY COUNTY
Court of General Sessions

Paul M. Burch, Circuit Court Judge
Robert J. Bonds, Circuit Court Judge

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Appellate Case No. 2023-001854

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THE STATE,

Respondent,

v.

RODNEY NESMITH,

Appellant.

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# FINAL BRIEF OF RESPONDENT

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## STATEMENT OF ISSUE ON APPEAL

### Appellant's Issue Statement

Did the trial court err allowing appellant to represent himself at trial where although appellant was warned appellant did not understand the important right he waived by choosing to proceed pro se?

### Respondent's Counterstatement

Whether Judge Bonds erred by allowing Appellant to represent himself after conducting a thorough inquiry regarding Appellant's desire to represent himself, including giving Appellant ample opportunities to ask questions, when Appellant was adamant that he did not want to be represented by his second appointed counsel.

## STATEMENT OF THE CASE

In September 2022, an Horry County grand jury indicted Appellant for distribution of cocaine, third offense. (R. 216-217).

On September 12, 2022, Appellant appeared for a pretrial hearing before the Honorable Paul M. Burch. (R. 1). At this hearing, Appellant requested that Judge Burch relieve his court appointed counsel, Nick O'Neil, because O'Neil "had gave [Appellant] misleading information about the cell phone," which was in police custody after his arrest. (R. 2-3). Appellant informed Judge Burch that he had sent a letter to the Horry County Public Defender's Office asking for a different attorney to represent him, but he did not receive new counsel. (R. 3). Appellant did not move for counsel to be relieved before appearing at this hearing but requested new court appointed counsel at the hearing. (R. 4). O'Neil informed Judge Burch that Appellant's phone was taken at the time of his arrest, which Appellant was upset about. (R. 5). Appellant interrupted O'Neil and stated that he was upset about his "rights being violated" and about law enforcement having his phone for over a year. (R. 5).

Appellant stated that he previously told O'Neil that he did not want a speedy trial, despite O'Neil apparently having filed a speedy trial motion. (R. 6). Appellant inquired of O'Neil how law enforcement could take his phone without a search warrant, which O'Neil had agreed to research, but according to Appellant, O'Neil never did. (R. 6). Appellant requested another court appointed lawyer and complained that everything he had filed pro se with the clerk of court's office had gone unanswered. (R. 6). Judge Burch granted Appellant's motion for relief of counsel and continued the case until new counsel was obtained. (R. 6-7).

After being relieved, O'Neil inquired about the status of his speedy trial motion, which was granted by Judge Verdin.[1] (R. 7). He also stated that he would let the Public Defender's Office know that Appellant needed new counsel. (R. 8). Judge Burch instructed O'Neil to tell the Public Defender's Office that it would need to file a motion to vacate the speedy trial order with Judge Verdin because he could not vacate another judge's order. (R. 8).

On Thursday, March 23, 2023, Appellant appeared for a second pretrial hearing, which was conducted before the Honorable Robert J. Bonds. (R. 10). At the hearing, Appellant's second court appointed lawyer, Laura Hiller, informed Judge Bonds that Appellant emailed her the Friday before this hearing and asked her to relieve herself as his counsel. (R. 15). Hiller prepared a motion to be relieved as counsel, which she sent to the State the same Friday and filed with the court the following Monday. (R. 15). On that Monday, counsel and Appellant appeared before a magistrate, and Appellant was allowed to argue his motion to have Hiller relieved as counsel and for a continuance to find new counsel. (R. 15). Between the magistrate's hearing and the second pretrial hearing, Appellant emailed Hiller multiple times to inform her that he did not want her to remain his attorney or represent him at trial. (R. 15-16).

Hiller informed Judge Bonds that she had been appointed to represent Appellant approximately five months before the second pretrial hearing and had been in contact with Appellant from the beginning of her representation. (R. 16). According to her, Appellant had not been pleased with her representation from the beginning. (R. 16). Hiller stated that Appellant requested "a lot of things" and filed numerous pro se motions for dismissal of his indictments during her representation. (R. 16). By the time Hiller collected everything that Appellant

[1] Judge, now Justice, Verdin was subsequently elected as an associate judge of this Court before being elected as an associate justice of the South Carolina Supreme Court in May 2024.

requested, communication between Appellant and herself, along with their attorney-client relationship, had "completely broke[n] down." (R. 16-17). Hiller stated that the breakdown in communication occurred approximately a month and a half before the second pretrial hearing. (R. 17).

The State informed Judge Bonds that it called the case on the Monday before the second pretrial hearing and told the magistrate that it wished to formally arraign Appellant. (R. 21). Before the magistrate, the State indicated that Appellant was charged with distribution third, which carried a minimum of ten years and a maximum of thirty years, but the State had offered Appellant a negotiated sentence of three years' imprisonment for distribution second, which Appellant rejected. (R. 21). According to the State, after hearing that Appellant rejected the plea deal, the magistrate asked Appellant if he desired to reject the plea deal, and Appellant began discussing "some sort of motion." (R. 21). The State recalled that Appellant asked for a continuance to hire new counsel, which the magistrate denied before telling Appellant that he could ask the next judge for a continuance. (R. 21-22).

Judge Bonds asked Appellant if he wanted to have Hiller, his second court appointed counsel, relieved and to have a third attorney. (R. 22-23). Appellant agreed that he wanted Hiller relieved and indicated that he would represent himself if necessary. (R. 23). Appellant complained that he told Hiller that his constitutional rights had been violated, that his phone had been taken by law enforcement, that he had been incarcerated for twenty-three days, that he lost his job, but Hiller did not do anything with this information. (R. 23). He claimed that all of his grievances were "because of a cop that . . . was messing with a girl that I was messing with before . . . ." (R. 23). Appellant stated that he wanted to tell someone about the misconduct he suffered and "what they did to [him] for almost two years." (R. 23).

Judge Bonds asked Appellant whether Hiller told him that some of the information he shared might not be relevant to his case. (R. 23-24). Appellant claimed that he and Hiller did not speak before he stated that Hiller emailed him the night before the second pretrial hearing to tell him that "she ha[d] no strategy and [his] only option is to plead guilty." (R. 24). Appellant stated that "if [he was] going to go into a battle [against the State], risking [his] life for 30 years for [some]thing [he] didn't do, basically [he] would have to have someone on the same lines as [him], not no misunderstanding." (R. 24).

Judge Bonds asked Appellant what his first attorney, O'Neil, did wrong. (R. 24). Appellant informed the court that O'Neil was relieved because "[h]e was dishonest" and would not email Appellant regarding whether law enforcement was allowed to confiscate his phone without a search warrant. (R. 24). Judge Bonds then asked Appellant why he wanted Hiller relieved. (R. 24). Appellant responded that because he was facing thirty years' imprisonment, he could better explain the situation and better represent himself than Hiller could. (R. 24-25). Judge Bonds asked Appellant if he knew that he was guaranteed an attorney, and Appellant affirmatively responded. (R. 25). Judge Bonds informed Appellant that he was not guaranteed an attorney of his choice and that based on Appellant's issues with O'Neil and Hiller, Judge Bonds did not believe that appointing a third lawyer would end in any different result given how Appellant felt the case needed to be addressed and argued. (R. 25-26). Appellant indicated that he understood, that he recognized before the hearing that he would not get another appointed attorney, and that he would rather represent himself. (R. 26). Appellant stated that it would be best for him to waive his right to counsel and represent himself. (R. 26).

Appellant abruptly changed topics, and informed Judge Bonds that he did not have a witness list containing all the witnesses he wanted to call and alleged that Hiller would not discuss

the witness list with him. (R. 27-28). Judge Bonds reminded Appellant that Appellant had known that his case was supposed to go to trial the week of the second pretrial hearing; however, Appellant denied knowledge of the trial date until two weeks prior to the second pretrial hearing. (R. 28). The State informed Judge Bonds that it sent a subpoena to Appellant on March 6, 2023, notifying him that his case was on the roster for the week of March 20, 2023. (R. 29). At Appellant's arraignment on Monday, March 20, 2023, the State provided a copy of the subpoena to Appellant because Appellant claimed he did not receive the copy that the State sent to him. (R. 29). Hiller stated that she called Appellant to tell him about the trial date "right about when the roster was released." (R. 29).

At this point, Hiller provided Judge Bonds with further background information. According to her, O'Neil filed a speedy trial motion during his representation, and when Hiller was assigned to the case, it was on the December 2022 trial roster despite Hiller not yet having received discovery and despite a solicitor not being assigned to the case at that time. (R. 29). The case was continued in December 2022. (R. 29). After being appointed, Hiller and Appellant discussed his pro se motion to dismiss the case and whether the motion would be heard. (R. 29). Hiller attempted to explain to Appellant that his pro se motion would not be addressed until his case was back on a trial roster. (R. 29-30). When the case appeared on a roster, which occurred approximately two months before this pretrial hearing, Hiller conducted a phone conversation with Appellant, who denied that the phone conversation occurred. (R. 30). Hiller admitted that she did not possess written documentation that the phone conversation happened, but she did have email communication from approximately two weeks prior to the second pretrial hearing. (R. 30).

Judge Bonds clarified with Appellant that Appellant wanted to represent himself and wanted a continuance. (R. 30-31). The State indicated that it was ready to proceed and that it

provided discovery to Hiller but expressed concern that Appellant might not have been fully prepared to proceed to trial that day. (R. 31). The State requested that Judge Bonds go through full *Faretta*[2] warnings with Appellant and make findings of fact regarding whether Appellant was able to represent himself and whether Appellant understood the risks involved with self-representation. (R. 31-32).

Hiller argued that it would be unfair to Appellant to not grant a continuance if he was allowed to represent himself because she had been representing him, meaning that everything he filed, including his pro se motions, had been ignored because South Carolina does not permit dual representation. (R. 32-33). Further, Hiller asserted Appellant had not sent any subpoenas on his own, regardless of the validity of any such subpoenas, due to her representation of him at this time. (R. 32-33).

Judge Bonds determined that Appellant "certainly stated with particularity as to why [he] want[ed] to represent [him]self," which was that Appellant thought he could do a better job representing himself than his appointed counsel could. (R. 33). Judge Bonds reiterated that Appellant was not entitled to further court appointed counsel but reminded Appellant that he could hire his own counsel if he wished. (R. 34-35). Judge Bonds granted a 60-day continuance. (R. 35). Judge Bonds found that Appellant did not give sufficient grounds regarding what Hiller did wrong in her representation and noted that Appellant did not agree with this determination. (R. 35). Judge Bonds suggested keeping Hiller as standby counsel. (R. 36). He provided Appellant with a written *Faretta* warnings sheet and took a recess to allow Appellant to review the sheet. (R. 36-37; 57).

[2] *Faretta v. California*, 422 U.S. 806 (1975).

In addition to language discussing the right to an attorney and containing the charges against Appellant with the statutory sentencing range, the *Faretta* warnings sheet included the following, in pertinent part:

> You do have the constitutional right to represent yourself and proceed without an attorney; however, I must inform you of the following:
>
> - Self-representation can be dangerous and you have the right to have the assistance of a lawyer at all stages of the proceedings, and if you cannot afford a lawyer, a lawyer can be appointed to represent you.
> - Criminal defense is a highly specialized and technical area of the law.
> - There may be certain factual, legal, or other defenses to the charge(s) you are facing and if you choose to proceed without the services of a licensed attorney, you may not be aware of certain defenses.
> - There may be issues related to the conduct of trial or guilty plea that could arise in the future that you may not be aware of and it would be your attorney's responsibility to be aware of those issues and how to properly address them before the Court, and, if necessary, preserve the issues for appellate review.
> - There may be collateral consequences of a conviction or plea that you are not aware of, including, but not limited to, you could face increased penalties for subsequent offenses, suspension of your driver's license, the restriction of the right to possess firearms and/or ammunition, and your immigration status may be affected.
> - If you exercise your right to proceed without the services of an attorney, you are responsible for complying with all applicable rules of court, including rules of evidence, procedural rules, and proper behavior before the Judge and/or Jury.
> - You understand that if you waive screening for a court-appointed attorney, that you are responsible for hiring a private attorney if you want one.
>
> I state that I have fully and completely read this document regarding self-representation and I have had any and all of my questions answered to my complete satisfaction.

(R. 57).

When Judge Bonds returned from his recess, he asked Appellant if Appellant understood the charge against him—distribution of cocaine, third offense—and Appellant indicated that he understood the charge. (R. 38-39). Judge Bonds stated that the sentencing range for Appellant's charge was ten to thirty years, and Appellant indicated that he understood this as well. (R. 39-40). Appellant stated that he understood that if convicted, he would have to serve eighty-five percent of any sentence imposed before he became parole eligible. (R. 40). Appellant acknowledged the plea deal and its terms. (R. 40).

Judge Bonds then went through the *Faretta* warnings sheet line by line and inquired after every warning listed on the sheet if Appellant understood the warning. (R. 45-49). Appellant told Judge Bonds that he understood each and every warning listed on the sheet as Judge Bonds went through the list. (R. 45-49). When he finished his inquiry, Judge Bonds asked Appellant if he had any questions for the court. (R. 49). Appellant stated that he did not have any questions. (R. 49).

Judge Bonds ensured that Appellant had a written copy of the warnings and asked Appellant to review the sheet again to make sure Appellant did not have any questions. (R. 49). Judge Bonds instructed Appellant to sign the sheet when he was finished reviewing it if he had no further questions. (R. 49). Appellant and Judge Bonds both signed the sheet, Judge Bonds filed the signed sheet with the clerk of court, and Judge Bonds provided a copy of the signed sheet to Appellant and the State. (R. 49; 57). Judge Bonds then accepted Appellant's waiver of his right to counsel, relieved Hiller as Appellant's counsel, and reiterated that Hiller would continue to serve in a standby counsel role. (R. 51).

On November 27 and 28, 2023, Appellant proceeded to trial before Judge Burch, who presided over the first pretrial hearing, and a jury. (R. 58). Before trial, Appellant argued his motion to dismiss, which the Judge Burch denied. (R. 63-66). Appellant cross-examined all of

the State's witnesses, and successfully recalled three of the State's witnesses during his case in chief. (R. 104-111, 122-123, 124-125, 129-131, 133-135, 143-145, 153-157, 160-172, 174-175, 176-178). Appellant meaningfully participated in the admission of all three of the State's exhibits. (R. 119, 138, 143). One of the State's exhibits was a video recording of Appellant giving an undercover officer two small baggies of cocaine. (R. 119, 142).

Appellant's main argument in his defense was that his arrest warrant was invalid because, despite being signed and dated by a judge after the incident, the date listed at the top of the arrest warrant was before the incident occurred. (R. 85, 103-104, 173). The officer who prepared the arrest warrant after the incident testified that in a case where undercover officers were utilized, such as in this case, arrest warrants are prepared after the incident but with a date of the first of the month in which the incident occurred to protect the identity of the undercover officer. (R. 103, 112, 173-174).

During his case in chief, Appellant attempted to impeach one of the State's witnesses that he recalled. (R. 165-168). In his attempt to impeach the witness, Appellant accused the witness of being untruthful on the stand in front of the jury. (R. 171). Judge Burch stopped Appellant's direct examination of the witness, instructed the jury to disregard Appellant's statement, and sent the jury out of the courtroom. (R. 171). Judge Burch held Appellant in contempt of court for his accusation that the witness was lying from the stand but held sentencing in abeyance. (R. 171-172). Judge Burch stated that Appellant could ask the witness questions but knew better than to accuse the witness of being a liar. (R. 172). Appellant stated that he did not know he could not call a witness a liar and apologized to Judge Burch. (R. 172). Judge Burch allowed Appellant to complete his examination and present a closing argument. (R. 172, 188-189).

The jury found Appellant guilty as indicted, and Judge Burch sentenced him to twenty years' imprisonment. (R. 207, 211). Judge Burch imposed a sentence of time served for Appellant's contempt of court. (R. 211-212).

This appeal followed.

## 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) (citing *United States v. Lopez-Osuna*, 242 F.3d 1191, 1198 (9th Cir. 2000)). Specifically, appellate courts review a circuit judge's findings of historical fact for clear error. *United States v. Bush*, 404 F.3d 263, 270 (4th Cir. 2005).

## ARGUMENT

### I. Judge Bonds appropriately allowed Appellant to represent himself at trial after advising Appellant of his right to counsel and adequately warning Appellant of the dangers of self-representation.

To waive the right to counsel, a defendant must be (1) advised of his right to counsel and (2) adequately warned of the dangers of self-representation. *Prince v. State*, 301 S.C. 422, 392 S.E.2d 462 (1990) (citing *Faretta v. California*, 422 U.S. 806 (1975)). The trial judge is responsible to determine whether there is a competent, intelligent waiver by the defendant. *State v. Dixon*, 269 S.C. 107, 236 S.E.2d 419 (1977) (citing *Johnson v. Zerbst*, 304 U.S. 458 (1938)). If the trial judge fails to address the disadvantages of appearing pro se, as required by the second prong of *Faretta*, an appellate court "will look to the record to determine whether petitioner had sufficient background or was apprised of his rights by some other source." *Prince*, 301 S.C. at 424, 392 S.E.2d at 463 (citing *Wroten v. State*, 301 S.C. 293, 391 S.E.2d 575 (1990)).

> While a specific inquiry by the trial judge expressly addressing the disadvantages of a *pro se* defense is preferred, the ultimate test is not the trial judge's advice but rather the defendant's understanding. **If 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*, 301 S.C. at 294, 391 S.E.2d at 576 (citing *Fitzpatrick v. Wainwright*, 800 F.2d 1057, 1065 (11th Cir. 1986)) (emphasis added).

Here, Judge Bonds conducted a specific inquiry before accepting Appellant's wavier of his right to counsel. (R. 37-51). Judge Bonds provided Appellant, who was represented by his second appointed attorney at that time, with a written *Faretta* warnings sheet and took a recess to allow Appellant to review the *Faretta* warnings with or without the assistance of Hiller. (R. 37-51). After Judge Bonds returned from his recess, he went through every warning on the sheet one at a time and asked Appellant if he understood each warning. (R. 37-51). This provided Appellant

with multiple opportunities to express any misunderstanding or lack of understanding—which he now conveniently asserts on appeal—and have his questions answered in a discussion with Judge Bonds. Further, after going through the *Faretta* warnings sheet with Appellant, Judge Bonds instructed Appellant to review the sheet *for a third time*, and if he had no further questions, to sign and date it. (R. 49). Appellant reviewed the *Faretta* warnings and signed the sheet. (R. 49).

Before *Faretta* warnings were discussed, Appellant clearly and repeatedly expressed to Judge Bonds that he would rather represent himself moving forward than continue to be represented by counsel that had misunderstandings of the argument he wished to present in his defense. (R. 15-16, 18, 22-26, 31, 33).

Judge Bonds informed Appellant of his right to counsel and adequately warned him of the dangers of self-representation. Moreover, nothing in the record indicates that Appellant did not understand the *Faretta* warnings or the implications of waiving his right to counsel. The record indicates the exact opposite. Appellant was fully informed and aware of the dangers of self-representation and preferred to proceed pro se instead of being represented by counsel that he did not believe were working in his best interests.

While a specific inquiry expressly addressing the disadvantages of self-representation, such as the one conducted by Judge Bonds, is preferred, as expressed by our Supreme Court in *Wroten*, "the ultimate test is not the trial judge's advice but the accused's understanding." *Wroten*, 301 S.C. at 294, 391 S.E.2d at 576. This Court provided a non-exclusive set of factors that courts have considered in determining if an accused had sufficient background to understand the disadvantages of self-representation. *State v. Cash*, 309 S.C. 40, 43, 419 S.E.2d 811, 813 (Ct. App. 1992). These factors 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 or 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.

*Id.*

First, Appellant's date of birth was listed on the indictment, and indicated that he was either 51 or 52 years old at the second pretrial hearing and at the time of trial. (R. 216-217). While the record does not contain any indication of Appellant's educational background, Appellant did not make any assertion of physical or mental health issues at either pretrial hearing, at trial, nor on appeal. *Cf. Prince v. State*, 301 S.C. 422, 423, 392 S.E.2d 462, 463 (1990) (a defendant who exhibited little understanding of criminal proceedings, relied on the solicitor's advice, was "mentally disturbed" at the time he waived counsel, and underwent years of psychiatric treatment was not sufficiently aware of the dangers of self-representation).

Second, Appellant was charged with distribution of cocaine, third offense. (R. 216-217). At sentencing, the State informed Judge Burch that Appellant had two prior drug convictions. (R. 208). Therefore, the record indicates that Appellant had previous experience with judicial proceedings, as evidenced by his charge for a *third* distribution of cocaine offense and convictions for two prior drug charges. *See Cash*, 309 S.C. at 44, 419 S.E.2d at 813 (discussing Cash's prior experience with judicial proceedings when finding Cash waived his right to counsel).

Third, Appellant understood the nature of the charge against him and the possible penalty. Before Judge Bonds went through *Faretta* warnings sheet with him, Appellant indicated that he

understood he faced up to thirty years in prison. Appellant stated at the second pretrial hearing that "if [he was] going to go in a battle [against the State], risking [his] life for 30 years for [some]thing [he] didn't do, basically [he] would have to have someone on the same lines as [him], not no misunderstanding." (R. 24). Further, Appellant wanted both O'Neil and Hiller dismissed because he believed they were not adequately representing his position, which indicates that he had some understanding of the charge against him and had conversations with them both concerning his charge and his defense. (R. 33). Therefore, Appellant knew of both the nature of his charge and the possible maximum penalty of thirty years' imprisonment.

Fourth, although there was no indication that O'Neil, Hiller, or any other attorney advised Appellant of the difficulty of self-representation, the record shows that Appellant appreciated the difficulty of his case. It is because of that very difficulty that he declined the assistance of counsel and decided to represent himself. His pretrial discussions with both Judge Burch and Judge Bonds indicate that he believed he could do a better job of preparing his defense than either O'Neil or Hiller could. (R. 15-16, 18, 22-26, 31, 33). *See Cash*, 309 S.C. at 44, 419 S.E.2d at 814 (discussing, when finding that Cash waived his right to counsel, that the record indicated Cast was not represented by counsel before trial or advised of the difficulty of self-representation by an attorney, but that Cash's appreciation of his case's difficulty was why he decided to represent himself).

Fifth, the record contains no indication that Appellant was attempting to delay or manipulate the proceedings in declining the assistance of counsel.

Sixth, Judge Bonds appointed Hiller as standby counsel for Appellant. (R. 51). Hiller attended the trial and sat at the defense table with Appellant during the trial. (R. 58).

Seventh, the record indicates that Appellant knew he would have to comply with "all applicable rules of court." (R. 47; 57). Despite Appellant's newfound contention on appeal that Judge Bonds or Judge Burch should have made him "aware of trial procedures," it is not now, nor has it ever been, the law in this state that a trial judge is responsible for instructing a criminal defendant in the applicable rules of court. (App. Br. 9). The inquiry for this factor is merely whether Appellant was aware that he would have to comply with the requisite rules, not whether he had a substantive working knowledge of criminal procedure, evidence, or any other applicable court rule. Here, Appellant acknowledged, both orally and in writing, that he would be required to comply with all applicable court rules, "including rules of evidence, procedural rules, and proper behavior before the Judge and/or Jury." (R. 57). Appellant's subsequent lack of knowledge of the *substance* of the rules, which at one point resulted in Judge Burch holding him in contempt of court for accusing a witness of lying on the stand in front of the jury, is irrelevant to this factor as it does not relate to whether Appellant knew he would have to comply with all applicable rules, whatever those rules might be. (R. 171-172).

Eighth, the record indicates that Appellant was aware prior to trial of possible legal challenges he could raise in defense of the charge against him. At trial, Appellant cross-examined witnesses about distribution and about his arrest warrant argument. (R. 104-105, 122-123).

Ninth, the exchange between Appellant and Judge Bonds consisted of more than just pro forma questions and answers. Prior to Judge Bonds and Appellant discussing the *Faretta* warnings, Appellant stated that he no longer wished to have Hiller represent him and explained that he believed Hiller was not working in his best interests due to misunderstandings between them. (R. 24). He also believed he could better represent himself. (R. 24-25, 33). Additionally, because Judge Bonds gave Appellant the *Faretta* warnings sheet and gave him time to review it before

reviewing it together, Appellant had ample opportunity to raise any questions or concerns with Judge Bond. Additionally, when Judge Bonds went through the sheet on the record with Appellant, inquiring after every warning whether Appellant understood that specific warning, Appellant could have said that he did not understand or sought further clarification or explanation. Appellant, however, did not do so. Moreover, Judge Bonds gave Appellant more time to review the sheet after reviewing it with him and to ask any further questions he might have. Appellant, again, did not raise any questions, concerns, or clarifications to Judge Bonds. While the questions and answers themselves may be described as pro forma, the exchange itself consisted of more than merely those questions and answers. Appellant was presented with multiple opportunities to clarify anything about his right to counsel and the dangers of proceeding pro se. However, despite these opportunities, he indicated to Judge Bonds that he was fully aware of his right to counsel and of the dangers of proceeding without counsel even though he did not seek further clarification or ask a single question.

Tenth, the record indicates that Appellant's waiver was not the result of coercion or mistreatment.

In this case, the record demonstrates that Appellant made a voluntary, intelligent, and knowing waiver of his right to counsel after being informed of his right to counsel and of the dangers of proceeding pro se.

[*conclusion and signature block on following page*]

## CONCLUSION

Based on the foregoing, the State requests that this Court affirm Appellant's conviction for distribution of cocaine, third offense, as well as his associated sentence.

Respectfully submitted,

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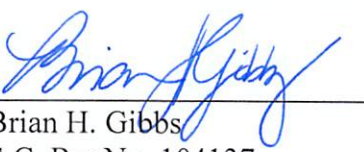
By: 
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February 24, 2025
Columbia, South Carolina

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THE STATE OF SOUTH CAROLINA
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APPEAL FROM HORRY COUNTY
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Appellate Case No. 2023-001854

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THE STATE,

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Appellant.

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**PROOF OF SERVICE**

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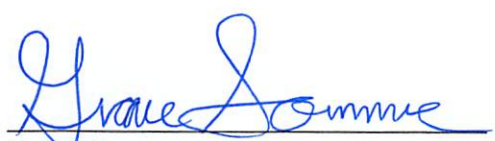
I, Grace Sommer, certify that I have served this Final Brief of Respondent on Sarah E. Shipe, Esquire, counsel of record for the Appellant, by electronic mail to the address listed for counsel in AIS.

I further certify that all parties required by Rule to be served have been served.

This 24th day of February 2025.



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**From:** Grace Sommer
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**Subject:** The State v. Rodney Nesmith (2023-001854)
**Attachments:** NESMITH Rodney - FBOR.pdf

Good Afternoon Ms. Shipe,

Attached please find the Final Brief of Respondent in The State v. Rodney Nesmith (2023-001854). This Brief will be filed today with the Court of Appeals via the AIS OneDrive System.

If you will, please confirm receipt of this email.

Thank you,

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