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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions

Deadra L. Jefferson, Circuit Court Judge

Appellate Case No. 2024-000872

THE STATE,

Respondent,

v.

NORMAN PHILIP BROWNE,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Appellant's Issue Statement

Did appellant knowingly, intelligently, and voluntarily waive his right to counsel before proceeding to trial *pro se* where the court failed to ensure appellant understood the advantages of counsel and the dangers of representing himself?

Respondent's Counterstatement

Whether Appellant, who was adamant in his assertion that he represent himself, knowingly, intelligently, and voluntarily waived his right to counsel before trial after the trial court repeatedly cautioned Appellant of the dangers inherent in self-representation and the advantages of counsel.

STATEMENT OF THE CASE

In May 2023, a Charleston County grand jury indicted Appellant for murder and grand larceny. (R. 208-209, 212-213). On February 7, 2024, Appellant proceeded to a pretrial hearing via WebEx before the Honorable Deadra L. Jefferson regarding a motion to relieve his counsel, Laree Hensley. (R. 1, 35-37).

At the pretrial hearing, the State informed the trial court that Appellant had been arrested in February 2019. (R. 5). The State indicated that Hensley filed a motion to proceed pro se on Appellant's behalf along with a consent order to relieve counsel for Appellant. (R. 5). Appellant confirmed that he asked the trial court to relieve Hensley as his counsel. (R. 5). Appellant stated his reasoning as follows:

> It took six months for us to have an in-person meeting and, upon that meeting, she informed me that she works for the State, not for me. And then she has made it very clear that I am not allowed to have witnesses, according to her and the Court. And she will represent the Court and its best interests, not mine. And we have had several correspondence through email on this issue where she said she was going to relieve herself, and I said that was fine.
>
> Then she filed this motion, which is why we're here today. She also refused to file four motions that I had helped, you know, pre-prepare her for. All she had to do was verify them all and said that—

(R. 6).

Appellant informed the trial court that he understood the trial was scheduled to take place on April 15, 2024, which was a little over two months after the motions hearing. (R. 7). Hensley clarified that she previously explained to Appellant that she had a contract with Indigent Defense but did not work for the State. (R. 10). Even so, Appellant expressed to her that he was dissatisfied with her services and did not want her to represent him, which is why she prepared the motion and consent order. (R. 11).

The trial court asked Appellant if he wished to represent himself, and he stated that he was attempting to put together enough money to retain other counsel. (R. 11). The trial court stated:

> Sir, I need to advise you that you have the right to counsel. If you cannot afford counsel, that we will appoint counsel to represent you in those circumstances.
>
> I would also advise you that it is not prudent to represent yourself, and that it would be clearly against your interest. Knowing that, do you still wish to discharge Ms. Hensley?

(R. 12). Appellant indicated that he still wanted Hensley relieved and did not want the trial court to appoint new counsel. (R. 12).

Appellant then informed the trial court that he was 49 years old, completed high school, obtained "automotive educationals," had been employed with J&J Tools, previously owned a distributor business, and ran a Matco tools truck for a friend. (R. 12-13). Appellant stated that he did not have any legal training. (R. 13). He indicated he understood his constitutional rights, including the right to remain silent, to have an attorney, to have an appointed attorney, and to have a jury trial. (R. 14). The trial court informed Appellant that his murder charge carried a sentencing range of thirty years' imprisonment to life imprisonment if convicted and that he would not be eligible for parole. (R. 14). Appellant indicated that he understood the sentencing range and the ineligibility for parole. (R. 15).

The trial court asked Appellant if he understood the South Carolina Rules of Evidence. (R. 15). He confirmed that he understood the rules, further stating:

> Rules of Evidence have to be supplied to the Court and to the other party, the plaintiff, the State in this case, and all the evidence that I have acquired or developed needs to be presented to both. All evidence that the State has acquired I am supposed to have access to and a full, free copy of. And then the questions are asked based upon the evidence in court.

(R. 15). The trial court clarified that it was asking about the Rules of Evidence that govern how a trial operates and that are utilized during trial for entering evidence, asking witnesses questions, making objections, and for pretrial procedures. (R. 15). The trial court asked if Appellant understood those rules and if he had studied them, indicating that the rules were "about five inches thick." (R. 15). Appellant stated that he had been reading and reviewing the Rules of Evidence and the Rules of Criminal Procedure. (R. 16-17).

Appellant informed the trial court that he was not married and had an adult son who lived and worked in Louisiana. (R. 17). Appellant, after making a "few small mistakes," went through the judicial system in California in his 20's. (R. 17). He recalled being represented by counsel when going through the judicial system in California. (R. 17). Appellant stated he received discovery from Hensley. (R. 23). The trial court, talking to Appellant, stated:

> I'm very concerned. I do not think you meet the obligate—meet the requirements to represent yourself.
>
> People think the law is what they see on television. It is not. It is very complex. Every decision has a very significant consequence, and it just is not advisable for you to represent yourself.
>
> I am inclined, how—you're fairly adamant, however, in your desire to represent yourself. And if I grant that relief, I would still have Ms. Hensley act as standby or shadow counsel for you until such time that you obtain alternate legal counsel and in the event that you don't.

(R. 25-26).

The State informed the trial court that DNA evidence, ballistics testing, and videos from out of state would be relevant at trial. (R. 30). The State wanted the trial court to be aware that multiple scientific areas would be involved at trial before the trial court made a decision. (R. 30). The trial court responded:

> I've advised him that I don't think it's advisable that he represent himself. I can't force him to have a lawyer if that's what he wants to do.
>
> I will tell you, sir, however, that I've had a law degree for over 30 years, and I would not represent myself. If I have challenges, I hire somebody, I write them a check, and I sign a retainer agreement. I can't be my own lawyer. I don't have the objective ability to look at my situation. I need somebody to give me, like, cold facts when I need to hear them.
>
> So, however, I've already advised him . . . that it's not advisable to have a--be your own lawyer, that you place yourself at significant, significant jeopardy. He's acknowledged that. He tells me he thinks he's capable.
>
> He also tells me that he plans to hire someone, and we know that that is a very expensive venture. I'm surprised it's only 30,000. Most charge a whole lot more than that, not to diminish that that's a lot of money. That's a lot of money.
>
> So, you know, I understand the economic challenge that that could pose for him and, in light of that, that's why I've left Ms. Hensley as standby counsel. In the event he has some significant challenge, he needs someone to help him navigate the procedures or otherwise to be available to him.
>
> But if he is adamant and representing himself, you know, there are consequences that flow from that, and I've advised him regarding it.
>
> . . .
>
> You know, he doesn't appear to me to be suffering from any mental disabilities, under the influence of any drugs or alcohol or any other disabilities that would require any type of mental evaluation.

(R. 30-32).

In the trial court's order relieving counsel, the trial court found that Appellant was 49 years old, graduated high school, held multiple gold level certifications in automotive repair from industry and technical schools, held several jobs in the automotive industry, and operated a Matco tools truck distributorship. (R. 40). The trial court determined that Appellant was not married and had an adult child, who lived and worked in Louisiana. (R. 40). The trial court noted that it

questioned Appellant regarding his understanding of the charges against him, his knowledge of the elements of those offenses, his constitutional rights, the sentencing range of the charges, and his understanding of the Rules of Evidence and the Rules of Criminal Procedure. (R. 40). The trial court found Appellant had a limited knowledge of the nature and consequences of the charges against him and did not have an adequate knowledge of criminal procedure, evidence, or the trial process but noted Appellant was making attempts to familiarize himself with them. (R. 40). The trial court specifically found that Appellant "does not meet the *Faretta* requirements to represent himself." (R. 40).

In its order, the trial court stated that during the pretrial hearing, it repeatedly cautioned Appellant of the dangers inherent in self-representation and the advantages of counsel. (R. 40). The trial court advised Appellant of the right to appointed counsel if he could not afford counsel and found that Appellant "has proven an impediment to this caution and is adamant in his assertion that he represent himself." (R. 41). The trial court determined it was "left in the unenviable position of allowing [Appellant] to represent himself." (R. 41). The trial court noted that Appellant was placing himself in "considerable" jeopardy. (R. 41).

The trial court noted that Appellant had a constitutional right to self-representation, and while the trial court articulated its concerns and the grave position Appellant would place himself in by proceeding pro se, Appellant was adamant in his desire to represent himself. (R. 41). The trial court ordered Hensley to be relieved as counsel while staying on as standby counsel unless and until Appellant retained new counsel. (R. 41).

In April 2024, Appellant proceeded pro se to a jury trial also before the Honorable Deadra L. Jefferson. (R. 43). During the trial, Appellant made numerous objections to the State's attempts to enter evidence, many of which the trial court sustained in his favor. (R. 81, 82, 83, 84, 85-86,

87, 88, 89-90, 91, 92, 95, 97). Appellant meaningfully participated in bench conferences and discussions with the trial court and the State during the trial. (R. 60-80, 93-94, 96). Appellant gave a closing argument despite the State objecting numerous times when Appellant mentioned facts not in the record. (R. 160-183).

The jury found Appellant guilty as indicted. (R. 189). Before sentencing, the State informed the trial court that Appellant had a 1994 conviction in Arizona for larceny and a 1996 conviction in California for grand theft of an automobile. (R. 198-199). The trial court sentenced Appellant to life imprisonment for murder and a concurrent 5 years' imprisonment for grand larceny. (R. 207).

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 court's findings of historical fact for clear error but review the sufficiency of a waiver of counsel based on those findings of fact de novo. *See Samuel*, 422 S.C. at 602, 813 S.E.2d at 490. (citing *United States v. Bush*, 404 F.3d 263, 270 (4th Cir. 2005)). "In doing so, [an appellate c]ourt must consider the defendant's testimony, history, and the circumstances of his decision, as presented to the circuit [court] at the time the defendant made his request." *Samuel*, 422 S.C. at 602, 813 S.E.2d at 490.

ARGUMENT

I. The trial court appropriately allowed Appellant to represent himself at trial after advising Appellant of his right to counsel and warning Appellant of the dangers of self-representation.

Criminal defendants in South Carolina have the constitutional right to represent themselves under both the federal and state constitutions. *State v. Barnes*, 407 S.C. 27, 35, 753 S.E.2d 545, 550 (2014). "It is well-established that an accused may waive their right to counsel and proceed *pro se*." *State v. Reed*, 332 S.C. 35, 41, 503 S.E.2d 747, 750 (1998). To effectively invoke the right of self-representation, a defendant must clearly and unequivocally request to proceed pro se and such a request must be made knowingly, intelligently, and voluntarily. *State v. Samuel*, 422 S.C. 596, 602, 813 S.E.2d 487, 491 (2018).

"Although a defendant need not himself have the skill and experience of a lawyer in order competently and intelligently to choose self-representation, he should be made aware of the dangers and disadvantages of self-representation, so that the record will establish that 'he knows what he is doing and his choice is made with eyes open.'" *Faretta v. California*, 422 U.S. 806, 835 (1975) (quoting *Adams v. United States ex rel. McCann*, 317 U.S. 269, 279 (1942)).

To establish a valid waiver of 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 court is responsible for determining whether there is a competent, intelligent waiver made 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)).

During the pretrial hearing, the trial court advised Appellant of his right to counsel and his right to have appointed counsel. (R. 12). Appellant indicated that he understood these rights.

(R. 12). He also stated that he did not want another appointed attorney and that he wanted Hensley to be relieved as his counsel. (R. 12).

The trial court also warned Appellant of the dangers of self-representation. During the same exchange where the trial court informed Appellant of his right to counsel, the trial court also advised Appellant that "it is not prudent to represent yourself, and that it would be clearly against your interests." (R. 12). After receiving further background information from Appellant, the trial court again expressed that the law "is very complex," that every decision made at trial has "a very significant consequence," and that it was not advisable for Appellant to represent himself. (R. 25-26). After the State recited the facts of the case, the trial court reiterated that it had advised Appellant that it was not advisable for him to represent himself. (R. 30).

Judge Jefferson stated that she would not represent herself if she were to have legal challenges because she could not be objective in a case that personally involved her, despite being an attorney for over thirty years. (R. 30-31). The trial court again advised Appellant that he was placing himself in "significant jeopardy" if he proceeded without counsel. (R. 31). The trial court also appointed Hensley as standby counsel and had Hensley explain what standby counsel's role was to Appellant. (R. 26). Therefore, the trial court advised Appellant of the dangers of self-representation. *See Hines v. State*, 443 S.C. 32, 41-42, 902 S.E.2d 377, 382 (2024) (holding that the information the defendant had about his right to counsel after the trial court warned him generally of the dangers of representing himself, the nature of the charges against him, the allowable sentences, and the constitutional rights he had to waive, along with the "whole picture" of the case on appeal, the defendant entered a valid waiver of his right to counsel).

Moreover, nothing in the record indicates that Appellant did not or was unable to understand the implications of waiving his right to counsel. The record indicates the exact

opposite. The record demonstrates that Appellant preferred to proceed pro se instead of being represented by counsel that he believed was not working in his best interests. (R. 6).

However, if this Court holds that the trial court failed to adequately address the disadvantages of appearing pro se as required by the second prong of *Faretta*, then this 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)).

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, as determined by the trial court, Appellant was 49 at the time of the pretrial hearing, had completed high school, achieved numerous automobile certifications, and did not appear to have any physical or mental health issues. (R. 12, 31-32, 40).

Second, Appellant informed the trial court that he had previous experience with the criminal justice system in California when he was in his 20's. (R. 17). Appellant indicated that he had been represented by counsel during his previous experience. (R. 17). While the exact nature of his prior experience was not brought to the trial court's attention until sentencing, Appellant's prior experience provided another source of knowledge about the assistance of counsel, despite the amount of time between his prior experience and this case. *See generally Hines*, 443 S.C. at 42, 902 S.E.2d at 382 (holding that an appellate court "may consider the whole picture before [it], including [a defendant's] education and experience and *whether he had another source of knowledge about the assistance of counsel*" (emphasis added)).

Third, the trial court informed Appellant of the nature of the charges against him as well as the possible penalties. (R. 14-15). Appellant indicated that he understood he was facing a sentence of life imprisonment. (R. 15).

Fourth, the record indicates that Appellant was represented by two attorneys prior to trial. (R. 38, 39-42). However, the record does not indicate whether either attorney discussed the difficulty of self-representation with Appellant.

Fifth, the record does not indicate that Appellant was attempting to delay the proceedings. He indicated to the trial court that he understood the trial was scheduled for a little over two months after the pretrial hearing. (R. 7). The trial proceeded as scheduled. (R. 43).

Sixth, the trial court did appoint Hensley as standby counsel and had her explain to Appellant the role of standby counsel. (R. 25-26). Appellant was thus informed that Hensley would be available to answer any questions he might have regarding procedural issues and to step in during trial if he determined he no longer wanted to represent himself. (R. 26).

Seventh, while Appellant did not specifically state he understood he would have to comply with the rules of procedure during trial, the conversation between the trial court and Appellant regarding his understanding of the Rules of Evidence and the Rules of Criminal Procedure indicate that Appellant understood he would have to comply with them. Appellant did confirm that he was working toward familiarizing himself with both sets of rules before trial. (R. 15-17).

Eighth, the record does not indicate whether Appellant knew of legal challenges he could raise in his defense at trial.

Ninth, the record does not consist of pro forma questions and answers.

Tenth, nothing in the record suggests that Appellant's waiver resulted from coercion or mistreatment.

While Appellant asserts that *only* prior legal experience or adequate warnings can demonstrate the understanding necessary for a valid waiver, our Supreme Court has held otherwise. *See generally Hines*, 443 S.C. at 42, 902 S.E.2d at 382 (holding that an appellate court "may consider the whole picture before [it], including [a defendant's] education and experience and whether he had another source of knowledge about the assistance of counsel"). If adequate warnings were not provided by the trial court, then this Court is bound to consider the *entire* picture before it rather than merely one of the numerous, and non-exhaustive, factors laid out in *Cash*. When observed as a whole, the facts of this case weigh in favor of a finding that Appellant had the requisite understanding to have entered a valid waiver of his right to counsel.

Appellant's prior experience with the criminal justice system—regardless of how distant that experience may have been—provided him with a source of knowledge about the assistance of counsel.

His decision to decline further appointed counsel when the trial court specifically asked if he wanted a third appointed attorney and indicated that it would appoint one for him indicates his strong desire to represent himself in light of the dangers of self-representation. (R. 12). Much like in *Hines*, Appellant understood the nuances of having legal representation, given he had already had two lawyers in this case. *Hines*, 443 S.C. at 42, 902 S.E.2d at 382. (R. 38).

Appellant's statements that he was reading up on the Rules of Evidence and the Rules of Criminal Procedure, despite the trial court's warning that the rules were "five inches thick" and the implied suggestion that the rules were long, dense, and complex, indicate that Appellant not only knew the rules were not simple and easily digestible but also that he would have to comply with them if he proceeded pro se. (R. 15-17).

Overall, the record supports a holding that Appellant entered a valid, voluntary, knowing, and intelligent waiver of his right to counsel. Merely because Appellant now wants a second bite at the apple due to his dissatisfaction with his own performance at trial does not diminish his understanding of what he was doing when he decided he no longer wanted or needed counsel.

[*conclusion and signature block on following page*]

CONCLUSION

Based on the foregoing, the State requests that this Court affirm Appellant's convictions for murder and grand larceny, as well as his associated sentences.

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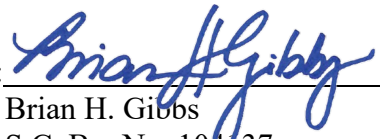
By: 
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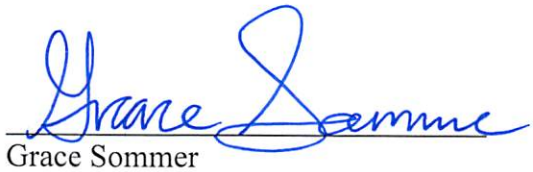
PROOF OF SERVICE

I, Grace Sommer, certify that I have served this Final Brief of Respondent on Jordan M. Wayburn, 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 17th day of April, 2025.



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