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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Greenwood County
Honorable Eugene C. Griffith, Jr., Circuit Court Judge

THE STATE,

PETITIONER,

V.

TERRENCE O'NEIL FRAZIER,

RESPONDENT

Opinion No. 2025-UP-427
(S.C. Ct. App. filed December 23, 2025, re-filed February 4, 2026)

APPELLATE CASE NO. 2026-000372

RETURN TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

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PETITIONER'S STATEMENT OF ISSUE ON CERTIORARI

Frazier represented himself at trial. At a previous term of court, a circuit court judge conducted a *Faretta* hearing warning Frazier of the dangers of self-representation, but there is no transcript of that hearing. The solicitor repeatedly warned Frazier of the dangers of self-representation during pretrial meetings, and the trial court conducted an additional, incomplete *Faretta* colloquy at the start of trial. Finally, the record otherwise demonstrates Frazier understood his right to counsel but chose to represent himself anyway. Did the circuit court err by granting Frazier a new trial?

RESPONDENT'S COUNTERSTATEMENT OF THE ISSUE

The Court of Appeals correctly affirmed the circuit court's conclusion that Frazier's waiver of the right to counsel was not knowingly and intelligently made given the plethora of evidence Frazier was neither adequately warned of the dangers of proceeding pro se nor had sufficient background to understand the risks of self-representation.

STATEMENT OF THE CASE

Respondent Terrence Frazier (Frazier) was indicted for carjacking, leaving the scene of an accident, breaking into a motor vehicle, grand larceny of a motor vehicle valued over ten thousand dollars, and trafficking methamphetamine. R. 649 – 161; *State v. Frazier*, Op. No. 2019-UP-371 at 2 (S.C. Ct. App. filed November 27, 2019). Frazier was tried before the Honorable Eugene C. Griffith, Jr., and a jury, from November 16 – 19, 2015. R. 82. Frazier represented himself but was assisted during part of the trial by standby counsel Patricia Bolen and Elizabeth Able. Standby counsel was appointed after jury selection and pretrial motions. R. 146, l. 16 – 75, l. 147. Brian Moroney and Micah Black prosecuted the case. R. 82; R. 148; R. 149, ll. 9-14.

Frazier was found guilty of leaving the scene of an accident, breaking into a motor vehicle, grand larceny of a motor vehicle valued over ten thousand dollars, and trafficking methamphetamine. The jury found Frazier not guilty of carjacking but convicted him of the lesser offense of using a vehicle without permission. R. 635, l. 17 – 636, l. 24. The trial court sentenced Frazier to concurrent terms of twelve months for leaving the scene of an accident, thirty-six months for using a vehicle without permission, sixty months for breaking into a motor vehicle, sixty months for grand larceny, and twenty years for trafficking methamphetamine, second offense. R. 644, l. 25 – 645, l. 6.

Frazier directly appealed his convictions, and on November 27, 2019, the Court of Appeals issued an opinion in which it found the record did not demonstrate Frazier's decision to represent himself was made with an understanding of the risks of self-representation. *State v. Frazier*, Op. No. 2019-UP-371 (S.C. Ct. App. filed November 27, 2019). App. 734 – 740. The Court of Appeals concluded that the record failed to show whether Frazier was adequately

warned of the dangers of proceeding pro se or had sufficient background to understand the risks of self-representation. *State v. Frazier*, Op. No. 2019-UP-371 at 6. App. 738. The Court of Appeals remanded the case for an evidentiary hearing on the issue. *Id.* at 7. App. 740.

On March 3, 2023, the circuit court held a hearing to determine whether Frazier's waiver of his right to counsel was knowingly and intelligently made. R. 12. After taking the matter under advisement, on or about October 3, 2023, the circuit court issued an order in which it determined Frazier's waiver of counsel was not knowingly and intelligently made. R. 4 – 11.

On appeal of the circuit court's order,[1] the Court of Appeals issued an opinion in which it affirmed the circuit court's finding Frazier's waiver of the right to counsel was not knowingly and intelligently made. *State v. Frazier*, Op. No. 2025-UP-427 (S.C. Ct. App. filed December 23, 2025). Frazier and the State both sought rehearing. On February 4, 2026, the Court of Appeals denied rehearing but issued a substitute opinion in which it affirmed the circuit court's finding Frazier's waiver of the right to counsel was not knowingly and intelligently made and remanded the case for a new trial. *State v. Frazier*, Op. No. 2025-UP-427 (S.C. Ct. App. filed December 23, 2025, Withdrawn, Substituted, and Refiled February 4, 2026). App. 730 – 733. On February 18, 2026, the State filed a petition for writ of certiorari to the Court of Appeals.[2] This return follows.

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[1] Due to the procedural posture of the case, Frazier served notice of intent to appeal to ensure jurisdiction was returned to the Court of Appeals. However, the State served notice of appeal because the ruling was adverse to the State.

[2] The State has filed an Appendix with this Court. For ease of reference, citations to the record herein are made to the Appendix page numbers located in large print on the bottom right of the Appendix pages.

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. Specifically, we review a circuit judge's findings of historical fact for clear error; however, we review the denial of the right of self-representation based upon those findings of fact de novo." *State v. Samuel*, 422 S.C. 596, 602, 813 S.E.2d 487, 490 (2018) (citations omitted).

REASONS WHY CERTIORARI SHOULD BE DENIED

There are no "special and important reasons" to grant the petition for writ of certiorari. Rule 242, SCACR. The case presents no novel question of law for this Court to decide. The Court of Appeals' unpublished opinion was unanimous. It applied well-established law. The State argues the case involves a substantial question of constitutional law. Petition for Writ of Certiorari to the Court of Appeals at 13. While it is true this case involves the Sixth Amendment, there is no constitutional deprivation that requires this Court's correction, as the circuit court properly determined Respondent's waiver of counsel was not knowingly and intelligently made, and the Court of Appeals correctly affirmed that decision and remanded for a new trial. This Court should deny the petition for writ of certiorari. Rule 242, SCACR.

ARGUMENT

The Court of Appeals correctly affirmed the circuit court's conclusion that Frazier's waiver of the right to counsel was not knowingly and intelligently made given the plethora of evidence Frazier was neither adequately warned of the dangers of proceeding pro se nor had sufficient background to understand the risks of self-representation.

I. Relevant facts

A. Frazier represented himself at trial. The Court of Appeals remanded for a hearing on whether his waiver of counsel was knowingly and intelligently made.

Frazier was accused in a string of incidents that began at Chick-fil-A in Greenwood on the afternoon of July 9, 2015. The State alleged as follows. The Chick-fil-A owner-operator noticed Frazier behaving oddly and had a strange interaction with him but did not think too much of it because Frazier "looked like a nice guy." However, Frazier got in a dispute with one woman, a customer, who got out of her white F-150 truck to confront Frazier. During the confrontation, Frazier got into the woman's running truck and sped off from Chick-fil-A. App. 170, l. 12 – 175, l. 3; App. 222, l. 9 – 228, l. 11; App. 245, l. 23 – 250, l. 4; App. 262, ll. 17-19.

He then crashed the truck into a second woman's Lincoln MKZ, while she was leaving Frank's Carwash down the street. Frazier then got into a third woman's Chrysler 300 that was being dried at the carwash while she waited inside the business, and he drove away. He drove that car to World Finance and blocked in a fourth woman's Saturn SUV. When law enforcement arrived, Frazier was seated in the Saturn. He was "talking off the wall" and appeared to law enforcement to be under the influence of drugs. App. 307, l. 8 – 310, l. 6; App. 316, l. 19 – 321, l. 18; App.. 328, l. 9 – 331, l. 1; App. 342, l. 20 – 345, l. 4; App. 375, l. 23 – 379, l. 8; App. 410, l. 11 – 414, l. 2.

The jail refused to admit Frazier because of his state, so he was taken to the emergency room. At the hospital, he was stripped and his clothing was searched. A security guard found what he believed to be drugs in Frazier's right front pants pocket. The guard gave the material to law enforcement. According to a representative of SLED, the material was methamphetamine and it weighed 19.92 grams without packaging. App. 412, l. 19 – 418, l. 1; App. 424, l. 1 – 427, l. 11; App. 431, l. 20 – 433, l. 9; App. 445, l. 10 – 447, l. 7; App. 457, l. 3 – 458, l. 20; App. 492, l. 1 – 498, l. 11.

Frazier's first interaction with the trial judge occurred at his October 15, 2015, bond hearing. In response to the judge's inquiry as to why he did not have a lawyer, Frazier responded:

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

The court responded: "You can represent yourself, I can't force a lawyer on you. These young lawyers are smart." Frazier agreed but said that he was going to try to get out on bond and then try to retain an attorney. Frazier noted his desire to have a speedy trial. App. 73; App. 77, l. 24 – 80, l. 10.

One month later, Frazier appeared for trial without a lawyer. The proceedings began with the court asking Frazier: "Are you prepared to represent yourself?" Frazier responded: "Yes, sir." The court asked: "Now, have you had an opportunity to speak with a lawyer of your choosing to see if you wanted help and assistance in defending yourself in this matter? Are you prepared to go to trial?" and "Are you ready to go trial?" Frazier responded: "Yes, sir." App. 82; App. 89, l. 11 – 90, l. 3.

The court heard Frazier's preliminary motions after jury selection. Framed as a motion to "change venue" and "transfer," Frazier complained that he was uneducated and had not been given access to a law library at the local jail in order to prepare a proper defense. Frazier asked if he could be granted access to legal books, but the judge said "if it's not available, it's not available." App. 114, l. 22 – 118, l. 16.

Following the conclusion of the preliminary motions, the prosecutor said: "Your Honor, we wanted to do a *Faretta* Warning about – his rights this afternoon, to get that out of the way."[3] The court asked who did the *Faretta* warning previously. The prosecutor stated that Frazier was brought before a Judge Miller, but stated: *"It was something that probably took five minutes. I don't think it was near in-depth."*[4] App. 144, ll. 8-15 (emphasis added). The court asked Frazier about his educational and work background. Frazier was twenty-five years old and went to the ninth grade. He had worked cutting grass and remodeling houses. Frazier said that he understood the court could appoint him a public defender. The court responded: "Do you want one? I mean you are doing fairly well this afternoon pointing out these motions and pretrial matters. You are doing a very nice job of being organized." App. 144, l. 17 – 145, l. 11.

Frazier asked if getting a lawyer would "start his case all the way over and take more time?" The judge stated: "It could, but – now, would you like me to see if I can get a lawyer to sit with you to help advise you on procedural matters, like the Court Rules?" Frazier said: "Yeah, that will work." The court told Frazier that Frazier would still handle the case and witnesses himself, since he was "familiar with the facts." Frazier responded again: "Yes sir, that

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

[4] Despite consultation with the Assistant Solicitor, the Greenwood County Clerk of Court's Office, and multiple court reporters, prior appellate counsel was unable to procure a transcript of this matter. The State was not able to obtain it either. App. 24, ll. 17-19.

will work." However, Frazier inquired about whether he could seek a bond reduction if he applied for a public defender and the date of trial was pushed further out. The court responded that he "technically" could but said "you probably wouldn't get it." Frazier responded that he "really want[ed] to get this over with." App. 145, l. 12 – 146, l. 5.

The trial judge asked Frazier if he felt comfortable representing himself, to which Frazier responded "Yeah, I feel – I feel comfortable with the facts of the evidence." Frazier asked that a public defender be able to sit with him, and the judge stated he would see if he could get someone. The judge stated he would speak with Patricia Bolen to see if she or someone else in the office was available, but said that they would "help you with the rules" but have "no responsibility for defending you." Court then adjourned for the day. App. 146, l. 9 – 147, l. 23.

When the parties returned the next day, the court advised Frazier that there would be a member of the public defender's office present to help with "advice on procedures" but the jury would be instructed Frazier was representing himself. App. 149, l. 2 – 150, l. 24. Trial proceeded. As seen, the Court of Appeals remanded this case for a hearing to determine whether Frazier's waiver of counsel was knowingly and intelligently made.

B. The circuit court concluded upon remand that Frazier's waiver of counsel was not knowing and intelligent. The Court of Appeals affirmed.

The circuit court judge at the remand hearing was the same judge who tried the case. During the remand hearing, the circuit court had before it the appellate court opinion remanding this case for an evidentiary hearing, and the Record on Appeal. It heard testimony from Brian Moroney, who prosecuted the case. The circuit court also heard testimony from Frazier. During the hearing, admitted as exhibits were Frazier's arrest warrant for trafficking methamphetamine, and his indictment for the same offense. App. 13 – 14. The testimony at the remand hearing included the following.

Terrence Frazier testified that at the time of his trial, he was 25 years old. Frazier stated that as a child he had ADHD (Attention-Deficit/Hyperactivity Disorder) and he had been to the Beckman Mental Health Center. Frazier said it took him a long time to grow out of the ADHD and he still had trouble concentrating. Frazier explained that he took medication for anxiety, but he did not take that medication at the time of his trial. App. 37, l. 4 – 38, l. 4.

Frazier stated the last grade he completed in school was the eighth grade. Frazier said he did not finish the ninth grade. Frazier admitted he was a drug user when he was arrested on these charges. App. 38, ll. 5-22; App. 47, ll. 1-3.

Frazier stated he had been to court previously for three or four cases, but most of his prior charges had been "basically thrown out or reduced to a lesser charge." Frazier explained he had never been in a general sessions trial before this case. Frazier recalled he had been to court in magistrate's court previously and he pled not guilty and the charge was "thrown out." Frazier explained the charge was a "30-day charge" against "a female" and he represented himself. Frazier stated it was a "hometown" "situation," and he did not question witnesses. Frazier said the court heard the woman's side of the story and his own side of the story. Frazier did not recall if a jury was present. Frazier stated he had never watched a trial the whole way through, either in person or on television. App. 38, l. 25 – 41, l. 1.

Frazier stated he did not know he would be tried for all the offenses at once. Frazier explained he thought the charges in this case were non-violent, and that he was facing zero to ten years for the trafficking methamphetamine offense. Frazier said he thought the trafficking was non-violent because it was his "first time catching a trafficking charge" and he did not understand the nature of enhancement. Frazier testified he did not know the State was going to use a 2009 possession of cocaine conviction to enhance his trafficking charge. Frazier stated he

did not know he was facing trafficking, second offense, at trial. Frazier noted that neither his warrant nor his indictment said second offense. Frazier said he had no notification he faced an enhanced trafficking charge until sentencing. App. 41, l. 2 – 44, l. 10; App. 51, ll. 3-10.

Frazier recalled meeting with Assistant Solicitor Moroney when Moroney brought him a plea offer. Frazier did not recall Moroney mentioning anything about not representing himself or representing himself. Frazier clarified Moroney may have told him it was dangerous to represent himself and he could have a lawyer appointed in the last stages, but not when the plea offer was conveyed. Frazier stated he did not recall a conversation with Moroney about having a charge thrown out in magistrate's court. App. 42, l. 15 – 43, l. 5; App. 46, ll. 14-25; App. 52, ll. 1-21; App. 54, ll. 1-6.

Frazier testified he went to trial about a month after his mother died. Frazier stated he was "really grieving a lot" and his "mind wasn't in the right state" due to her death. Frazier said he did not want the public defender because he was trying to get his family to hire a lawyer. Frazier testified he was not trying to manipulate the courts. App. 45, l. 20 – 46, l. 8; App. 48, ll. 6-9; App. 49, ll. 9-12.

Frazier stated he went in front of Judge Miller and Judge Miller stated "something of the sort like . . . you don't have to represent yourself but if you decide to represent yourself, I can't force a lawyer on you or something." Frazier said Judge Miller did not go into details about what a lawyer could do for him. Frazier stated he told Judge Miller at his preliminary hearing, "I do not waive my rights."[5] Frazier testified he thought the charges were "flimflam" because he had two sets of warrants and he did not receive the warrants in a timely manner. Frazier stated he did not understand that he would have to comply with the criminal procedure rules at trial.

[5] Confusingly, Frazier appeared before both a circuit judge and a municipal judge with the last name Miller. *See State v. Frazier*, Op. No. 2019-UP-371 at 2.

Frazier said that no one had forced him to go to trial pro se or mistreated him in the case. App. 54, l. 14 – 55, l. 10; App. 48, l. 10 – 50, l. 2.

Assistant Solicitor Moroney testified that in the course of prosecuting Frazier, he met with Frazier "several times" at the local jail to hand-deliver discovery, since Frazier had filed a speedy trial motion and indicated he wished to represent himself. Moroney stated the "main part" of those meetings was making sure Frazier had discovery. Moroney stated he explained the plea offer of a cap of ten years which he was extending and went through a "cost/benefit analysis" of what Frazier was facing at trial versus what he would be facing if he accepted the plea offer. According to Moroney, he discussed the penalties that Frazier was facing, and the possibility that he could get consecutive, "double digit" sentences. Moroney said that his meetings with Frazier were approximately 30 minutes long. App. 17, ll. 9-23; App. 26, ll. 3-17; App. 28, ll. 6-8; App. 36, ll. 5-7.

Moroney stated he went through the penalty for each charge with Frazier. Moroney testified *he could not recall* whether he discussed the fact that Frazier was facing sentencing enhancements, but he said he *would have* gone over that. Moroney stated he discussed the fact that there were defenses to the charges. According to Moroney, he was "deferential" to Frazier by telling him he was a "smart guy," and that the jury would be able to tell Frazier was a "nice guy." App. 29, ll. 4-21; App. 32, ll. 8-11; App. 30, ll. 21-25.

Moroney testified that Frazier referenced prior success at a magistrate-level trial. Moroney did not recall in which county the magistrate offense trial was held. Moroney stated he tried to explain to Frazier that this case was in a different posture from that case, that the rules of evidence were complicated, and that Frazier needed legal representation. Moroney stated Frazier was adamant these were "flimflam" charges and he would be able to get himself acquitted.

Moroney said Frazier brought up issues that he saw in this case, such as "scrivener's errors" with his arrest warrants. App. 18, ll. 4-24; App. 34, ll. 4-8; App. 32, ll. 8-11.

Moroney explained that Frazier wanted a private attorney, and Moroney told him that a public defender could be appointed to him. According to Moroney, Frazier did not want a public defender. Moroney said he told Frazier that representing himself was a dangerous prospect because of the time he faced, and that an attorney would help him navigate the case. Moroney testified that he did not recall if he mentioned the Fourth Amendment. App. 19, l. 7 – 20, l. 10; App. 31, l. 17 – 32, l. 17.

Moroney stated he had numerous discussions with Frazier in which Moroney cautioned Frazier about the perils of proceeding pro se. Moroney said he brought Frazier in front of Judge Edward Miller so that Judge Miller could provide Frazier with *Faretta* warnings. According to Moroney, Judge Miller had a conversation with Frazier in the "small courtroom" and explained that these were serious charges, that attorneys had gone to law school and had legal training for several years, that Frazier did not have the benefit of that, and that Frazier could benefit from having someone to aid him in his defenses and assist with the case. Moroney stated Judge Miller told Frazier he would appoint counsel free of charge, but Frazier was adamant that he wanted to represent himself. Moroney believed Frazier's appearance before Judge Miller took place a term or two before his trial. App. 19, l. 21 – 22, l. 20; App. 24, ll. 17-24.

Moroney was recalled to testify again after Frazier testified. At that time, Moroney stated he now recalled telling Frazier about enhanced sentencing provisions and Frazier was advised numerous times about the perils of proceeding unrepresented. Moroney said he did mention concepts such as the Fourth Amendment and suppression, topics about which a lawyer could advise Frazier. App. 60, ll. 17-22; App. 61, l. 4 – 65, l. 1.

The circuit court took the matter under advisement. It issued an order in which it determined Frazier's waiver of the right to counsel was not knowingly and intelligently made; that he was neither adequately warned of the dangers of proceeding pro se nor had sufficient background to understand the risks of self-representation. App. 1 – 11.

As to whether Frazier was adequately warned, the order stated the circuit court found Frazier's testimony that he was unaware he faced enhancement for trafficking methamphetamine, second offense, to be credible. It found his testimony was supported by his arrest warrant and indictment, neither of which indicated that he faced enhancement. The circuit court found credible Frazier's testimony that he did not realize a possession charge could enhance a trafficking charge. The court also found credible Moroney's testimony that he did meet with Frazier and did at some point mention enhancements. However, it found Moroney's own difficulty recalling this fact indicated any discussion of enhancements was not lengthy or detailed. App. 8 – 9. (Moroney initially testified he did *not* recall discussing sentencing enhancements with Frazier. He was recalled as a witness after he watched Frazier testify and at that time he stated they did have that discussion.) The order stated the circuit court found Moroney's testimony about the importance of Frazier's appearance before Judge Edward Miller for *Faretta* warnings was overstated in the context of the entire record. The order cited to Moroney's statement to the trial court on the first day of trial that Frazier's appearance before Judge Miller for *Faretta* warnings was brief and was not "near in depth," and he requested the trial court give *Faretta* warnings. App. 9.

The circuit court applied the *State v. Cash*, 309 S.C. 40, 419 S.E.2d 811 (Ct. App. 1992), factors (*Cash* factors) to determine whether Frazier had sufficient background to understand the disadvantages of self-representation. App. 9 – 11. Its order stated its findings as follows.

(1) "[T]he accused's age, educational background, and physical and mental health." This factor cut both ways. Frazier was 25 years old, with an eighth-grade education, and he had ADHD and anxiety. His anxiety was untreated at the time of his decision to represent himself. His mother died while he was in pretrial detention. However, the court observed that Frazier is intelligent.

(2) "[W]hether the accused was previously involved in criminal trials." This factor weighs in favor of the defendant, since Frazier had no prior involvement in general sessions trials, although he had once represented himself in magistrate court.

(3) "[W]hether he knew of the nature of the charge and of the possible penalties." This factor also weighs in favor of the defendant. It was undisputed Frazier was aware of most of the offenses and punishments he faced. However, Frazier was not aware that he faced trafficking methamphetamine, second offense, and its enhanced penalty.

(4) "[W]hether he was represented by counsel before trial or whether an attorney indicated to him the difficulty of self-representation in his particular case." This factor weighs in favor of the defendant, since Frazier was never represented by counsel during the pendency of the case.

(5) "[W]hether he was attempting to delay or manipulate the proceedings." This factor weighs in favor of the defendant. Frazier was not attempting to delay or manipulate the proceedings.

(6) Whether the court appointed stand-by counsel. This factor weighs neutrally. Standby counsel was not appointed until after jury selection and pretrial motions were completed.

(7) "[W]hether the accused knew he would be required to comply with the rules of procedure at trial." This factor weighs in favor of the defendant. The Court of Appeals found the colloquy at trial was inadequate to warn Frazier of the dangers of proceeding without counsel. *State v. Frazier*, Op. No. 2019-UP-371 at 6. Moroney did not testify that there was any caution by Judge Miller about needing to comply with criminal procedure rules. Frazier also testified at the remand hearing he did not know he would be required to comply with the criminal procedure rules.

(8) "[W]hether he knew of legal challenges he could raise in defense to the charges against him." This factor does not weigh in favor of either party. It appears Frazier was both aware and

> unaware of various defenses he could raise. For example, Frazier did mount a successful defense to the offense of carjacking, but he did not attempt to suppress the drugs on Fourth Amendment grounds.
>
> (9) "[W]hether the exchange between the accused and the court consisted merely of pro forma answers to pro forma questions." This factor cut both ways. This Court's exchange with the defendant at trial on his desire to proceed pro se was not merely pro forma answers and questions. However, the colloquy may have made Frazier feel more confident that he could represent himself because the Court told Frazier he was doing a "nice job" of being organized and doing "fairly well" with pretrial motions. ROA. 73, ll. 8-11. Moroney's comments to Frazier that he was "smart" and a "nice guy," which would "come across to the jury" were not helpful in this regard.
>
> (10) "[W]hether the accused's waiver resulted from either coercion or mistreatment." This factor weighs in favor of the State. The waiver was not caused by coercion or mistreatment.

App. 9 – 11.

The circuit court found the balancing of the above factors favored the defendant, and his waiver of the right to counsel was not knowingly and intelligently made. The circuit court concluded Frazier was neither adequately warned of the dangers of proceeding pro se nor had sufficient background to understand the risks of self-representation. App. 11.

The Court of Appeals held "Frazier's decision to represent himself was not made with a sufficient understanding of the risks of self-representation; thus, he did not knowingly and intelligently waive his right to counsel." "After our review of the *Cash* factors, we agree with the circuit court's finding that Frazier's waiver of counsel was not knowingly and intelligently made." *State v. Frazier*, Op. No. 2025-UP-427 (S.C. Ct. App. refiled February 4, 2026). App. 732 – 733.

II. Discussion

A. Absent adequate *Faretta* warnings, courts ask whether a defendant had sufficient background to understand the significance and consequences of his waiver or was apprised of his rights by some other source. Courts apply the *State v. Cash* factors in evaluating the defendant's background.

"A defendant may waive his right to counsel, but he must do so knowingly and intelligently." *State v. Dial*, 429 S.C. 128, 133, 838 S.E.2d 501, 504 (2020). To establish a valid waiver of the right to counsel, the accused must be adequately warned of the "dangers and disadvantages of self-representation so that the record will establish he knows what he is doing and his choice is made with eyes open." *Faretta v. California*, 422 U.S. at 835. "The burden is on the State to demonstrate the validity of a defendant's waiver of his right to counsel." *State v. Dial*, 429 S.C. at 133, 838 S.E.2d at 504 (citing *Brewer v. Williams*, 430 U.S. 387, 404 (1977)). "So important is the right to counsel that the Supreme Court has instructed courts to "indulge in every reasonable presumption against [its] waiver." *Fields v. Murray*, 49 F.3d 1024, 1029 (4th Cir. 1995) (alteration in original) (quoting *Brewer*, 430 U.S. at 404).

"[R]ecognizing the enormous importance and role that an attorney plays at a criminal trial, we have imposed the most rigorous restrictions on the information that must be conveyed to a defendant, and the procedures that must be observed, before permitting him to waive his right to counsel at trial." *Patterson v. Illinois*, 487 U.S. 285, 298 (1988). A defendant must know "of the precise dangers trials pose for the uncounseled." *Hines v. State*, 443 S.C. 32, 41, 902 S.E.2d 377, 381 (2024). "[H]e must be warned specifically of the hazards ahead." *Iowa v. Tovar*, 541 U.S. 77, 88–89 (2004). "Where, as in *Faretta*, the defendant is venturing to represent himself at trial, the trial court must rigorously convey specific warnings of the pitfalls of going to trial without a lawyer." *Hines*, 443 S.C. at 40, 902 S.E.2d at 381 (citing *Tovar*, 541 U.S. at 89).

"To establish a valid waiver of counsel, *Faretta* requires the accused be: (1) advised of his right to counsel; and (2) adequately warned of the dangers of self-representation. In the absence of a specific inquiry by the trial judge addressing the disadvantages of a pro se defense as required by the second *Faretta* prong, 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 v. State*, 301 S.C. 422, 423–24, 392 S.E.2d 462, 463 (1990). "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 v. State*, 301 S.C. 293, 294-95, 391 S.E.2d 575, 576 (1990).

"The purpose of the 'knowing and voluntary' inquiry . . . is to determine whether the defendant actually *does* understand the significance and consequences of a particular decision and whether the decision is uncoerced." *Godinez v. Moran*, 509 U.S. 389, 401 n. 12 (1993) (emphasis in original). The "test is what the defendant understands about the scope of the right he wishes to discard[.]" *Hines v. State*, 443 S.C. at 40, 902 S.E.2d at 381. It is the defendant's "understanding of the right—not the incantations of the trial judge or the words on a printed form—that controls the inquiry into whether the waiver is good." *Id.*, 443 S.C. at 39, 902 S.E.2d at 380–81 (cleaned up). "Waiver requires comprehension, and what matters is what the defendant reasonably understood, not what the court said." *State v. Garvin*, Op. No. 28324 (S.C. Sup. Ct. filed April 8, 2026) (Howard Adv. Sh. No. 14 at 12).

Courts consider the following factors in determining if an accused had sufficient background to understand the disadvantages of self-representation. (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. *State v. Cash*, 309 S.C. at 43, 419 S.E.2d at 813.

Where a defendant did not make an "informed decision to proceed without counsel," the remedy is a new trial. *Wroten v. State*, 301 S.C. at 295, 391 S.E.2d at 577; *see In re Christopher H.*, 359 S.C. 161, 596 S.E.2d 500 (Ct. App. 2004) (we reverse and remand for new trial where waiver of counsel was not knowingly and intelligently made).

B. The evidence supported the circuit court's findings and the courts correctly concluded the waiver was not knowingly and intelligently made.

i. The court properly found the *Cash* factors favored Frazier as he lacked sufficient background to make an informed waiver.

It must be crystal clear to the defendant what he is risking and waiving. The lower courts correctly found that was not the case for Frazier. The record supported the circuit court's finding the first *Cash* factor—the accused's age, educational background, and physical and mental health—did not favor the State. (The court found this factor cut both ways.) In *Stevenson v. State*, 337 S.C. 23, 26-27, 522 S.E.2d 343, 344-45 (1999), this Court cited the defendant's lack of "a high school education" in concluding the record did not demonstrate Stevenson "was sufficiently aware of the dangers of self representation to make an informed decision to proceed pro se[.]" In *Prince v. State*, 301 S.C. at 424, 392 S.E.2d at 463, this Court cited Prince's

"mental disturb[ance]" in concluding the record did not demonstrate he was "sufficiently aware of the dangers of self-representation to make an informed decision to proceed pro se." Frazier was twenty-five years old and had an eighth-grade education, and he had ADHD and anxiety. His anxiety was untreated at the time of his decision to represent himself. His mother died while he was in pretrial detention.

The court's finding the second *Cash* factor—whether the accused was previously involved in criminal trials—weighed in favor of Respondent was also supported by the evidence. The State argues "Frazier accumulated a substantial criminal record[.]" However, the existence of a criminal record is not dispositive. *See State v. Dial*, 429 S.C. at 134, 838 S.E.2d at 505 (defendant's prior criminal conviction and exposure to the legal system was insufficient to demonstrate knowing and voluntary waiver). Frazier was not representing himself at a guilty plea or a magistrate court hearing. Frazier had no prior involvement in general sessions trials and had never watched a criminal trial the whole way through, either in person or on television.

The circuit court's finding the third *Cash* factor—whether the accused knew of the nature of the charge and of the possible penalties—weighed in favor of Respondent was also supported by the record. *See Hines*, 443 S.C. at 41, 902 S.E.2d at 382 (waiver knowing and intelligent where, inter alia, defendant was advised of allowable sentences); *Tovar*, 541 U.S. at 81 (knowing and intelligent requirement for waiver is satisfied "when the trial court informs the accused of the nature of the charges against him . . . and of the range of allowable punishments attendant"). Frazier thought that he was facing up to ten years for the trafficking methamphetamine offense. He did not understand the nature of enhancement. Frazier

mistakenly thought he faced a less severe sentence for trafficking than he actually faced.[6] Frazier's waiver was not knowing and intelligent because he did not understand the consequences he faced. The court found Frazier *credible* that he was not aware he faced trafficking methamphetamine, second offense, and its enhanced penalty. *See State v. Johnson*, 413 S.C. 458, 467, 776 S.E.2d 367, 371 (2015) ("[I]t is well-established under South Carolina law that credibility determinations are entitled to great deference."). Moreover, the court noted Frazier's testimony was corroborated by Frazier's arrest warrant and indictment, neither of which indicated he faced enhancement. App. 660; App. 657 – 658. Frazier did not make an intelligent waiver of the right to counsel because he did not know critical information regarding the nature of the charge and its penalty.

The record also supported the court's finding the fourth *Cash* factor—whether the accused was represented by counsel before trial or whether an attorney indicated to him the difficulty of self-representation in his particular case—weighed in favor of Respondent. It was undisputed Frazier was never represented by counsel during the case. The record supported the court's finding the fifth *Cash* factor—whether the accused was attempting to delay or manipulate the proceedings—weighed in favor of Respondent. It was undisputed that Frazier was not attempting to delay or manipulate the proceedings. The record supported the court's finding the sixth *Cash* factor—whether the court appointed stand-by counsel—did not favor the State. (The court found this factor weighed neutrally.) Standby counsel was not appointed until after jury

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[6] *See* S.C. Code Ann. § 44-53-375(C)(1) (providing penalty for first offense trafficking in methamphetamine, 10 – 28 grams, is imprisonment of not less than three years nor more than ten years and a fine of twenty-five thousand dollars; penalty for second offense trafficking in methamphetamine, 10 – 28 grams, is imprisonment of not less than five years nor more than thirty years and a fine of fifty thousand dollars).

selection and pretrial motions were completed. *See Gomez v. United States*, 490 U.S. 858, 876 (1989) (jury selection is a critical stage of a criminal trial).

The record supported the court's finding the seventh *Cash* factor—whether the accused knew he would be required to comply with the rules of procedure at trial—weighed in favor of Respondent. In the Court of Appeals' 2019 opinion, the Court of Appeals found the colloquy at trial was inadequate to warn Frazier of the dangers of proceeding without counsel. *State v. Frazier*, Op. No. 2019-UP-371 at 6. Moroney did not testify that there was any caution by Judge Miller about needing to comply with criminal procedure rules. Frazier stated he did not understand that he would have to comply with the criminal procedure rules at trial. Additionally, the court's remarks to Frazier at trial about standby counsel's role regarding the court rules were confusing.

The record supported the court's finding the eighth *Cash* factor—whether the accused knew of legal challenges he could raise in defense to the charges against him—did not favor the State. (The court found this factor did not weigh in favor of either party.) Frazier was both aware and unaware of various defenses he could raise. As emphasized by the State, Frazier admittedly mounted a successful defense to the offense of carjacking. However, this Court has held that "is not a valid argument." *State v. Dial*, 429 S.C. at 135, 838 S.E.2d at 505. *See State v. Samuel*, 422 S.C. at 603, 813 S.E.2d at 491 ("whether a defendant is capable of effectively representing himself has no bearing upon his ability to elect self-representation").

The evidence supported the court's finding the ninth *Cash* factor—whether the exchange between the accused and the court consisted merely of pro forma answers to pro forma questions—did not favor the State. (The court found this factor cut both ways.) A model *Faretta* inquiry "must be followed by a strong admonishment that the court recommends *against* the

defendant trying to represent himself or herself[.]" *United States v. Williams*, 641 F.3d 758, 767 (6th Cir. 2011) (emphasis added). The court's exchange with Frazier at trial on his desire to proceed pro se was not merely pro forma answers and questions. However, the colloquy made Frazier feel more confident that he could represent himself because the Court told Frazier he was doing a "nice job" of being organized and doing "fairly well" with pretrial motions. Similarly, Moroney's comments to Frazier that he was "smart" and a "nice guy," which would "come across to the jury" were not helpful in this regard. *See Gardner v. State*, 351 S.C. 407, 413, 570 S.E.2d 184, 187 (2002) ("although the guilty plea proceeding did not consist merely of pro forma questions and answers, the transcript on its face poses several other problems which would indicate the plea itself was not knowing and voluntary"). The record supported the court's finding the tenth *Cash* factor—whether the accused's waiver resulted from either coercion or mistreatment—weighed in favor of the State. It was undisputed that the waiver was not caused by coercion or mistreatment.

The court's findings on the *Cash* factors were proper. *State v. Cash*, 309 S.C. at 43, 419 S.E.2d at 813. Contrary to the State's argument, *State v. McLauren*, 349 S.C. 488, 490-91, 563 S.E.2d 346, 347 (Ct. App. 2002), does not support its position and should be distinguished. Petition for Writ of Certiorari at 16 – 17. McLauren was a "jailhouse lawyer" on trial for practicing law without being a member of the South Carolina Bar who insisted on representing himself. He had a formal education, a criminal record stretching back to 1965, and knew the nature of the charge. *Id.* at 495-96, 563 S.E.2d at 349-50. This was a far cry from Frazier's circumstances.

ii. The court properly found Frazier was not adequately apprised of his rights by some other source.

The circuit court properly considered the record before it. The State's argument that the circuit court disregarded an earlier *Faretta* hearing in front of Judge Miller and Frazier should not receive a new trial "merely" because there is no transcript of that hearing is without merit. Petition for Writ of Certiorari to the Court of Appeals at 18; 20. The circuit court did not disregard the Judge Miller hearing. Rather, Judge Griffith accepted at face value the Assistant Solicitor's statement pretrial that Judge Miller's remarks to Frazier were brief and not "near in depth" and *Faretta* warnings still needed to be effectuated. Moroney thus admitted the earlier hearing was insufficient. App. 144, ll. 8-15. The Court of Appeals found Judge Griffith's own attempt to warn Frazier was inadequate. App. 739. The circuit court in its order properly relied upon the Assistant Solicitor's trial representation that Judge Miller's warnings were inadequate. It was not required to accept the State's Hail Mary at the remand hearing that the hearing it had earlier admitted did not satisfy *Faretta*, now satisfied *Faretta*. App. 9.

The State argues Frazier was adequately apprised of his rights by the Assistant Solicitor but the circuit court "ignored" most of his testimony. Petition for Writ of Certiorari at 19 – 20. The circuit court's order contains a summary of Moroney's testimony that is more than two pages long; thus, the court necessarily considered that testimony. App. 2 – 4. Rather than ignoring Moroney's testimony, the order implicitly rejects the accuracy of his recall and credits Frazier's memories instead. The circuit judge was in the best position to weigh this testimony as it watched the testimony. The prosecutor's testimony should also be considered in context—prosecutors talk to thousands of people about legal matters over the years, including victims, witnesses, officers, defense lawyers, and defendants. In contrast, a defendant only has conversations about his case. Additionally, the prosecutor was Frazier's adversary, who was trying to get him to plead guilty. It would be reasonable for Frazier to perceive his comments as

puffery or for them not to register. Regardless, it is ultimately the defendant's understanding which controls, since Frazier was not trying to manipulate the court system. *See Hines v. State*, 443 S.C. at 39, 902 S.E.2d at 380-81 (It is the defendant's understanding of the right—not the incantations of the trial judge or the words on a printed form—that controls the inquiry into whether the waiver is good.). The circuit court correctly found Frazier was not adequately warned of the dangers of proceeding pro se.

Finally, the State argues the last "page of the circuit court's written order . . . contains incoherent language which calls into question the court's analysis." Petition for Writ of Certiorari to the Court of Appeals at 20. Apparently it is referring to phrasing in the order that: "the lack of a knowing and intelligent waiver weighs in favor of the defendant," since in its brief of appellant, it argued that language was incorrect because "the *Cash* factors do not weigh 'in favor' of either party." *See* App. 687. It is clear what the court meant: the weight of the evidence favored Frazier. The circuit court was an experienced trial judge who held a lengthy hearing, closely considered the testimony and record, and issued a detailed order. Its order was not incoherent.

C. This Court should affirm the circuit court and Court of Appeals.

The conclusion of the lower courts, that Frazier's decision to represent himself was not made with a sufficient understanding of the risks of self-representation, was correct. Frazier was not attempting to manipulate the courts. He was never represented by counsel. The circuit court found Frazier credible he did not know the penalties he faced when he decided to proceed without counsel. App. 8. Frazier did not understand the significance and consequences of his decision—that he was proceeding without counsel on a much more serious offense. The Assistant Solicitor stated at trial that earlier *Faretta* warnings by Judge Miller were brief and not

in depth. App. 144, ll. 8-15. The Court of Appeals held the *Faretta* colloquy by Judge Griffith was inadequate. This was not an intelligent waiver as Frazier did not understand the "significance and consequences" of the decision. *Godinez v. Moran*, 509 U.S. at 401 n. 12. He did not know the "precise dangers trials pose for the uncounseled." *Hines*, 443 S.C. at 41, 902 S.E.2d at 381.

Courts should "indulge in every reasonable presumption against" waiver of the right to counsel. *Fields v. Murray*, 49 F.3d at 1029. The State did not meet its burden to show the waiver of counsel was knowingly and intelligently made. U.S. Const. amend. VI; U.S. Const. amend XIV; *Faretta v. California*, 422 U.S. at 835; *Cash*, 309 S.C. at 47, 419 S.E.2d at 815. The Court of Appeals correctly held Frazier is entitled to a new trial. *Wroten*, 301 S.C. at 295, 391 S.E.2d at 577.

CONCLUSION

Based on the foregoing argument, Respondent respectfully requests this Court deny the petition for writ of certiorari.

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This 17th day of April, 2026.