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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Debra R. McCaslin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CHARLECIA T. LURRY,

APPELLANT

APPELLATE CASE NO. 2025-001606

ANDERS BRIEF OF APPELLANT

GARY H JOHNSON
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether appellant competently and intelligently choose self-representation despite not understanding fundamental aspects of the charge and invalidity of her "defense" due to three imperfect attempts at apprising appellant of the dangers of self-representation by three different Circuit Court judges?

STATEMENT OF THE CASE

Appellant initially appeared before the Honorable William P. Keesley on November 19, 2020, to address "her counsel issue." R. 3, ll. 16 – 19. Judge Keesley conducted a hearing under Faretta v. California.[1] On April 24, 2025, appellant appeared before the Honorable Walton J. McLeod, IV, for an additional hearing in which her legal representation was discussed. R. 22. On July 21, 2025, appellant was before the Honorable Christopher D. Taylor for yet another pretrial hearing regarding counsel. R. 32. In each of these proceedings, the lower court judges found appellant had voluntarily waived the right to counsel and elected to proceed *pro se*. Judge Taylor ordered the appointment of standby counsel. R. 46, ll. 12 – 21.

On August 4, 2025, appellant was tried before the Honorable Debra R. McCaslin and a jury. R. 49. Appellant appeared *pro se* and Christy Oler and Bruce Norton represented the State. R. 49. David Mauldin and Page Christopher appeared as standby counsel. R. 49. The jury convicted appellant as charged and Judge McCaslin sentenced appellant to one year incarceration with credit for time served. R. 192, ll. 12 – 21.

This appeal follows.

[1] 422 U.S. 806 (1975).

STANDARD OF REVIEW

Whether a defendant validly waived his right to counsel "is a mixed question of law and fact that [appellate courts] review de novo on direct appeal." Hines v. State, 443 S.C. 32, 38, 902 S.E.2d 377, 380 (2024) (*citing* State v. Samuel, 422 S.C. 596, 813 S.E.2d 487 (2018)). Appellate courts "review a circuit judge's findings of historical fact for clear error; however, [they] review the denial of the right of self-representation based upon those findings of fact *de novo*." Samuel, 422 S.C. at 602, 813 S.E.2d at 490 (citation omitted).

ARGUMENT

Appellant did not competently and intelligently choose self-representation since she did not understand fundamental aspects of the charge and the invalidity of her "defense" due to three imperfect attempts at apprising appellant of the dangers of self-representation by three different Circuit Court judges.

"[I]n order competently and intelligently to choose self-representation," a criminal defendant "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. U.S. ex rel. McCann, 317 U.S. 269, 279 (1942)). "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. 128, 133, 838 S.E.2d 501, 504 (2020) (*citing* Brewer v. Williams, 430 U.S. 387, 404 (1977)). 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. 293, 295, 391 S.E.2d 575, 577 (1990); Watts v. State, 347 S.C. 399, 403, 556 S.E.2d 368, 370 (2001) (citation omitted).

"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." Prince v. State, 301 S.C. 422, 423–24, 392 S.E.2d 462, 463 (1990). The "ultimate test" is not the warning itself "but rather the defendant's understanding" of the advantages of counsel and the dangers of proceeding *pro se*. Wroten, 301 S.C. at 294, 391 S.E.2d at 576 (*citing* Fitzpatrick v. Wainwright, 800 F.2d 1057, 1065 (11th Cir. 1986)). Because of "the enormous importance and role that an attorney plays at a criminal trial," the Supreme Court has "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) (*citing* Faretta, 422 U.S. at 835-36).

The information required before a defendant's waiver will be deemed knowingly or intelligently made "will depend on a range of case-specific factors, including the defendant's education or sophistication, the complex or easily grasped nature of the charge, and the stage of the proceeding." Hines v. State, 443 S.C. 32, 40, 902 S.E.2d 377, 381 (2024) (*citing* Iowa v. Tovar, 541 U.S. 77, 78 (2004)). As in this case, a waiver of the right to counsel related to a jury trial is "good only if [the accused] knows of the precise dangers trials pose for the uncounseled." Hines, 443 S.C. at 41, 902 S.E.2d at 381. In Hines, our Supreme Court cited with approval the listing from La Fave, Criminal Procedure § 11.5(c):

> (1) that "presenting a defense is not a simple matter of telling one's story," but requires adherence to various "technical rules" governing the conduct of a trial; (2) that a lawyer has substantial experience and training in trial procedure and that the prosecution will be represented by an experienced attorney; (3) that a person unfamiliar with legal procedures may allow the prosecutor an advantage by failing to make objections to inadmissible evidence, may not make effective use of such rights as the voir dire of jurors, and may make tactical decisions that produce unintended consequences; (4) that there may be possible defenses and other rights of which counsel would be aware and if those are not timely asserted, they may be lost permanently; (5) that a defendant proceeding pro se will not be allowed to complain on appeal about the competency of his representation; and (6) "that the effectiveness of his defense may well be diminished by his dual role as attorney and accused."

§ 11.5(c) Requisite warnings and judicial inquiry, 3 Crim. Proc. § 11.5(c) (4th ed.)

Here, despite three separate hearings in which appellant's decision to proceed *pro se* was discussed, appellant was never warned of any particular danger associated with proceeding to trial unrepresented. At most, generalized statements of the advantages of representation were provided at each succeeding hearing. At no stage was the danger associated with appellant's clear

(and clearly erroneous) belief that *her daughter's current age* was a defense to the indictment discussed with appellant.

> MS. LURRY: I don't need no attorney. *I don't even know what the charges is to be honest.*
>
> THE COURT: I don't either, but I can look at the file. Here is your charge of unlawful neglect of a child.
>
> MS. LURRY: Okay. *A child or an adult? Because I think she's sixteen, running around in your state for the last ninety days by herself*, that I ain't seen or talked to. Now, you do the math. And I don't live here.
>
> THE COURT: So, do you know what the elements of this charge are?
>
> MS. LURRY: No. A runaway child, nothing but assaults for me. I did jail paperwork when I confiscated her, she assaulted me, I go to jail too? I go to jail? I go to jail and she left here on the premises of South -- the State of South Carolina. That she's your all property, that's not mine, at the moment. I don't know where she at. I know where I'm at and my other three kids at. [Inaudible muffled/muted]. I can do what you all want to do.

R. 8, l. 8 – 9, l. 5.

Appellant's clear error in understanding the nature of the charge she faced, as evidenced by her continued reliance on the current "age" of her daughter, was highlighted with each successive hearing on her right to counsel. On April 24, 2025, more than four years from the original attempt to comply with Faretta, appellant confirmed her improper fixation on the current age of her daughter:

> THE DEFENDANT: And the paperwork says child neglect of a helpless person, not unlawful conduct.
>
> MS. TAYLOR: It's unlawful conduct towards a child. It was true billed before the grand jury in November 2020.
>
> THE COURT: So the gist is the case is very old, so

> THE DEFENDANT: *She was 16. Now she'll be 21.*

R. 27, ll. 1 – 8 (emphasis added).

> THE DEFENDANT: No, they have not helped me in 16, 17 -- she's 21 now, so how is a 21-year-old gonna sit up here and you're gonna represent me for a 21-year-old now today when I was 13?

R. 29, ll. 13 – 16.

The State acknowledged the original attempt at a Faretta hearing had grown stale.

> THE COURT: Okay. So she's already been Faretta'd?
>
> MS. TAYLOR: I believe so. It's been so long. remember it and I believe it was Judge Keesley and I remember there was a long colloquy and questions about, you know, rules of evidence, procedure and things like that.

R. 28, ll. 16 – 22.

In the third and final attempt at a complete Faretta hearing, appellant again showed a complete lack of comprehension about the nature of the charge and the impact of her daughter's current age.

> THE WITNESS: My educational background is ESC I was born with autism and learning disability. Currently, still, been going through this for 25 plus years of my life -- having to learn to speak for myself, nobody to represent me, no advocates, nothing.
>
> That's why *I tend to represent myself as now that my child is 21-years-old.* And I had to learn to represent myself.

R. 38, ll. 6 – 13.

In response, Judge Taylor gave a general cautionary statement.

> THE COURT: Okay. Do you understand the risks of representing yourself, meaning that you are not familiar with the procedures in court, and that you as somebody that's not familiar with that will be defending yourself to a jury against the state, who they are familiar with Rules of Criminal Procedure and Evidence. Do you understand? Do you understand you will be at a distinct disadvantage by coming into this courtroom by yourself against

> lawyers who are familiar with the same rules that you have to follow. Do you understand that?
>
> THE WITNESS: Okay, yeah, I'm already disadvantaged. So yes, I understand.

R. 42, ll. 5 – 17.

As to correcting appellant's clear misunderstanding of the nature of the offense she faced and the impact of the current age of her child, the closest statement from the Court warning of this aspect of the dangers of self-representation (a complete misunderstanding of the charge and clear misunderstanding of the impact of something as basic as the age of minor at the time of the charge versus that child's age at trial) came from Judge Taylor:

> THE COURT: That's the second part. You understand that a lawyer can help you go through that discovery and find out you may have a defense to your case, that somebody who's seasoned meaning, has experience in this courtroom can help you with that if you represent yourself, it's you and that packet of paper, and that's it.
>
> THE WITNESS: I understand that I'm going to represent myself.

R. 43, ll. 5 – 13.

None of the court's other warnings—even taken together across the three hearings—were adequate because they failed to address this basic misunderstanding by appellant. At no point in time did the trial courts address appellant's clear misunderstanding that the age of her daughter at the time of trial was not a defense to the original charge from September 3, 2020.

When the trial court inadequately warns a defendant of his right to counsel and the dangers of proceeding *pro se*, appellate courts "will look to the record to determine whether petitioner had sufficient background or was apprised of his rights by some other source." Watts v. State, 347 S.C. 399, 402, 556 S.E.2d 368, 370 (2001) (*quoting* Prince, 301 S.C. at 424, 392 S.E.2d at 463). In Gardner v. State, 351 S.C. 407, 570 S.E.2d 184 (2002), our Supreme Court

identified ten factors to consider when evaluating whether a defendant "has a sufficient background to understand the dangers of self-representation" when the Faretta warnings were insufficient. 351 S.C. at 412-13, 570 S.E.2d at 186-87.

> When determining if an accused has a sufficient background to understand the dangers of self-representation, the courts consider many factors including: (1) the accused's age, educational background, and physical and mental health; (2) whether the accused was previously involved in criminal trials; (3) whether the accused knew the nature of the charge(s) and of the possible penalties; (4) whether the accused was represented by counsel before trial and whether that attorney explained to him the dangers of self-representation; (5) whether the accused 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 the accused knew of legal challenges he could raise in defense to the charge(s) 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.

Gardner, 351 S.C. at 412–13, 570 S.E.2d at 186–87 (*citing* State v. Cash, 309 S.C. 40, 43, 419 S.E.2d 811, 813 (Ct. App. 1992)).

Judge Keesley's original order finding appellant voluntarily waived her right to counsel attempted to address these factors in some detail. R. 202. However, later hearings contradict some of the underlying basis for Judge Keesley's findings. Moreover, some aspects of Judge Keesley's order are clearly in error. Specifically, Keesley noted the "apparent" filing of Rule 5, SCRCrimP, discovery requests filed by appellant after the original Faretta hearing. R. 205. However, the only Rule 5, SCRCrimP, filing was by the State. R. 200. Appellant demonstrated no understanding or appreciation of court procedures or rules at any time.

Importantly, it is the State's burden to prove a valid waiver. State v. Dial, 429 S.C. 128, 133, 838 S.E.2d 501, 504 (2020) ("The burden is on the State to demonstrate the validity of a

defendant's waiver of his right to counsel.") (*citing* Brewer v. Williams, 430 U.S. 387, 404 (1977)). Of the factors that would, potentially, excuse the inadequate Faretta warnings, almost all favor finding appellant did not knowingly waive the right to counsel.

(1) the accused's age, educational background, and physical and mental health;

Appellant's educational background and physical and mental health issues weigh against finding a knowing and intelligent waiver of the right to counsel. Judge Keelsey noted her 8th grade education level. R. 203. While denying mental health problems before Judge Keesley, appellant related a history of mental health issues and special education classes to succeeding courts. R. 6, l. 19 – 7, l. 1; 28, ll. 2 – 7; 38, ll. 6 – 13. While finding her waiver knowing and intelligent, Judge Keesley's order notes the erratic behavior and difficulty in dealing with appellant's demeanor and behavior during the original hearing. R. 206-207.

(2) whether the accused was previously involved in criminal trials;

Appellant concedes there was a history of court matters, both criminal and through other proceedings, that would weigh in favor of finding a knowing waiver. However, the burden in this regard is on the State, who struggled to articulate how the prior matters demonstrated appellant's knowing and intelligent waiver of counsel. R. 12, l. 10 – 13, l. 20.

(3) whether the accused knew the nature of the charge(s) and of the possible penalties;

While the courts attempted to explain the nature of the charge, appellant's continued reference to the age of her daughter at the time of the hearing does not reflect an understanding of the nature of the charge.

> MS. LURRY: I don't need no attorney. I don't even know what the charges is to be honest.
>
> THE COURT: I don't either, but I can look at the file. Here is your charge of unlawful neglect of a child.

> MS. LURRY: Okay. A child or an adult? Because I think she's sixteen, running around in your state for the last ninety days by herself, that I ain't seen or talked to. Now, you do the math. And I don't live here.
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> THE COURT: So, do you know what the elements of this charge are?
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R. 8, l. 10 – 9, l. 5.

(4) whether the accused was represented by counsel before trial and whether that attorney explained to him the dangers of self-representation;

Appellant was never represented by counsel, and was not advised by any counsel of the dangers of self-representation outside the hearing held in this matter. This factor weighs in favor of finding appellant did not knowingly and intelligently waive the right to counsel.

(5) whether the accused was attempting to delay or manipulate the proceedings;

There is no evidence in the record of any attempt by appellant to manipulate the counsel issue to delay proceedings. In fact, she was continuously under the impression that pre-trial hearings related to the attorney issue were in fact trials.

> MS. LURRY: I don't need a attorney.
>
> THE COURT: Do you understand –
>
> MS. LURRY: I'm ready for this case to be get over with.
>
> THE COURT: -- do you understand
>
> MS. LURRY: Did you check speedy trial?

R. 4, ll. 18 – 23.

> THE COURT: All right. Do you intend to represent yourself?
>
> THE WITNESS: I intend to represent myself, over a child that I birthed, yes.
>
> THE COURT: And this case, is set for trial next month?
>
> MS. YONGUE: August 4th, Your Honor.
>
> THE WITNESS: It says trial date today the 21st -- I got served.
>
> THE COURT: No, your trial is going to be August 4th.
>
> THE WITNESS: That's what it says today.
>
> THE COURT: No, no, this is your hearing. This is about your attorney situation. What we're doing today –
>
> THE WITNESS: No. That was in April. This says it's set today -- trial.

R. 36, ll. 8 – 24.

Appellant was not using the appointment issue to delay proceedings, just the opposite. This factor weighs in favor of finding the waiver was not knowing and intelligently made.

(6) whether the court appointed stand-by counsel;

Since standby counsel was appointed, this factor would typically favor a finding of waiver. However, there is no indication in this Record that standby counsel performed any service for appellant prior to the start of trial. During the charge conference, the trial court had Mr. Mauldin review a page of the charge, and Mr. Mauldin made requested changes concerning that single page of the charge. R. 148, l. 11 – 150, l. 6.

(7) whether the accused knew he would be required to comply with the rules of procedure at trial;

The trial courts certainly attempted to explain this aspect of self-representation to appellant. R. 208. However, a warning was all that was provided and does not establish

appellant understood and appreciated the nature of the warning. In fact, Judge Keesley noted the "apparent" filing of Rule 5, SCRCrimP, discovery requests filed by appellant after the original Faretta hearing. R. 205. However, the only Rule 5, SCRCrimP, filing was by the State. R. 200. Appellant demonstrated no understanding or appreciation of the court procedures or rules at any time. This included during trial - waiving opening statements and closing statements. R. 93, l. 16 – 94, l. 3; 155, ll. 4 – 9.

(8) whether the accused knew of legal challenges he could raise in defense to the charge(s) against him;

Without a doubt, as expressed concerning the adequacy of the Faretta warnings, this factor weighs heavily in favor of finding appellant did not make an informed decision to waive counsel. She was unaware of the nature of the charge and believed, without any basis, that the current age of her child was a defense to an act that occurred five years before trial.

(9) whether the exchange between the accused and the court consisted merely of pro forma answers to pro forma questions;

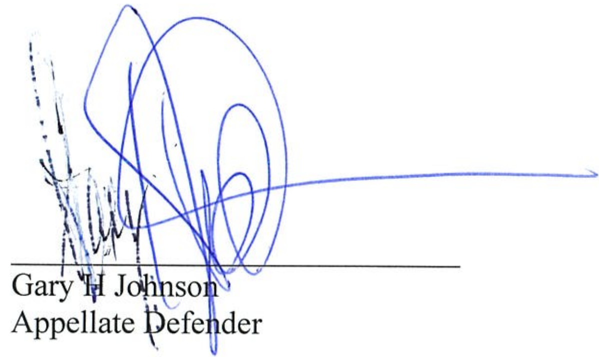
Here, appellant's apparent frustration with the various courts played a significant role. Despite repeated indications regarding confusion and misunderstanding of the nature of the process, appellant and the various judges reverted to pro forma answers and questions to get to the end of the matter. This dual frustration with the conduct of the hearings can be seen throughout appellant's interactions with the three different judges related to her representation.

(10) whether the accused's waiver resulted from either coercion or mistreatment.

This factor would weigh in favor of waiver. There is no evidence of coercion or mistreatment. Rather, there is considerable confusion and frustration from all parties during the three hearings on the matter.

CONCLUSION

Since the three attempted Faretta hearings were insufficient, the burden was on the State to demonstrate a voluntary and knowing waiver of the right to counsel before trial across a "range of case-specific factors, including the defendant's education or sophistication, the complex or easily grasped nature of the charge, and the stage of the proceeding." Hines v. State, 443 S.C. 32, 40, 902 S.E.2d 377, 381 (2024). Here, the State did not meet that burden and appellant's conviction should be set aside and the matter remanded to the Court of General Sessions for Lexington County for a new trial and an adequate hearing on appellant's decision to knowingly proceed without representation.



Gary H Johnson
Appellate Defender

ATTORNEY FOR APPELLANT

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CHARLECIA T. LURRY,

APPELLANT

APPELLATE CASE NO. 2025-001606

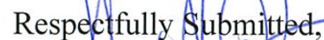
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Charlecia Lurry states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Debra R. McCaslin, which was held on Aug. 4, 2025, Nov. 19, 2020, April 24, 2025 & July 21, 2025, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Charlecia Lurry.

Respectfully Submitted,



Gary H Johnson
Appellate Defender

ATTORNEY FOR APPELLANT

This 5th day of June, 2026.

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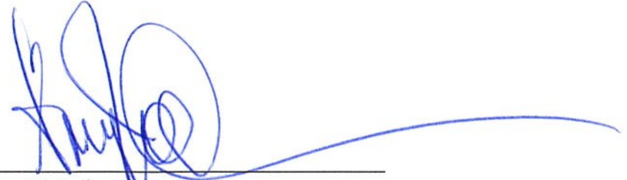
CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



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Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
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This 5th day of June, 2026.