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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Charleston County
Honorable Deadra L. Jefferson, Circuit Court Judge

Opinion No. 2026-UP-227 (heard April 7, 2026 – filed May 13, 2026)
Lower Court Case Nos. 2023-GS-10-02457 and -02458

THE STATE,

RESPONDENT,

V.

NORMAN PHILIP BROWNE,

PETITIONER.

APPELLATE CASE NO. 2024-000872

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS

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CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the petition for rehearing was made and finally ruled on by the Court of Appeals on June 9, 2026. App. 59.

QUESTION PRESENTED

Whether the Court of Appeals erred in holding that Petitioner "had sufficient background to understand the risks of self-representation when he decided to represent himself at trial" despite its determination that the trial court's *Faretta*[1] warnings were constitutionally insufficient?

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

STATEMENT OF THE CASE

In 2019, Petitioner was first indicted by a Charleston County grand jury for the offenses of murder and grand larceny. Petitioner first retained counsel Michael O'Neal to represent him; however, O'Neal was relieved as counsel in February 2023, due to ongoing medical problems. R. 38. In April 2023, counsel Laree Hensley was appointed to represent Petitioner. In May of 2023, Petitioner was then re-indicted by a Charleston County grand jury. R. 208-209; 212-213. On January 18, 2024, Hensley filed a motion to be relieved as counsel and for Petitioner to proceed *pro se*. R. 36. On February 7, 2024, the Honorable Deadra L. Jefferson held a hearing on the motion via Webex. R. 1. Jennifer Shealy represented the state at the hearing. R. 1. On February 15, 2023, Judge Jefferson entered an order relieving Hensley as counsel and allowing Petitioner to proceed *pro se*. R. 39.

On April 15, 2024, Petitioner's case was called to trial before Judge Jefferson and a jury. R. 43. Jennifer Shealy and Elliot Barrow represented the state; Hensley appeared as standby counsel for Petitioner. R. 44. On April 24, 2024, Petitioner was convicted as indicted, and Judge Jefferson sentenced him to life imprisonment for murder and a concurrent term of five years for grand larceny. R. 189, ll. 3-11; 207, ll. 12-19; 210-11; 214-15.

Petitioner noted a timely appeal. Final briefing in the Court of Appeals was completed on April 17, 2025. App. 1-44. On April 7, 2026, the Court of Appeals heard oral argument. On May 13, 2026, the Court of Appeals affirmed Petitioner's convictions and sentences in an unpublished opinion. App. 45-51. A petition for rehearing was filed on May 20, 2026, and thereafter denied by order dated June 9, 2026. App. 52-58; 59.

This petition follows.

STATEMENT OF FACTS

Pre-trial proceedings

During the *Faretta* hearing, the trial court advised Petitioner, in general terms, that "(1) [he] had a right to legal counsel; (2) if [he] could not afford one, the court could appoint counsel; (3) that it is not prudent or advisable to represent oneself; and (4) that self-representation would be against [his] interest and place him in significant jeopardy." App. 48. The trial court's colloquy with Petitioner revealed that Petitioner was forty-nine years old. He had graduated high school and possessed some certificates to work as a mechanic. R. 12-13. He had never had any sort of legal training. R. 13, ll. 24-25. Petitioner further described his only prior experience in the criminal justice system as "a few small mistakes" in "California" "in [his] 20s." R. 17, ll. 12-20. When asked whether an attorney had represented him, he could only respond "I believe so, yes. It's over 30 years ago." R. 17, ll. 19-20. When asked whether Petitioner understood his constitutional rights, Petitioner paraphrased the *Miranda*[2] rights, apparently believing those to be the only constitutional rights relevant to a criminal trial. R. 14, ll. 1-9. The trial court then asked Petitioner whether he understood the Rules of Evidence and to explain them. R. 15, ll. 8-10. Petitioner's response to this inquiry was a paraphrasing of Rule 5, SCRCrimP. R. 15, ll. 11-17. The trial court corrected Petitioner and informed him it was referring to the rules "that govern how a trial operates," explaining that "[t]hey are about five inches thick." R. 15, ll. 18-24.

On February 13, 2024, the trial court issued a written order permitting Petitioner to proceed *pro se* at trial. R. 39-41. Notably, the trial court specifically found that Petitioner "does not meet the *Faretta* requirements to represent himself." R. 40. Nonetheless, because Petitioner was "adamant," the trial court believed itself bound to honor the request. R. 41.

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2 *Miranda v. Arizona*, 384 U.S. 436 (1966).

Appeal

Petitioner appealed his convictions to the Court of Appeals, raising the following issue: "Did appellant knowingly, intelligently, and voluntarily waive his right to counsel before proceeding to trial *pro se* where the court failed to ensure appellate understood the advantages of counsel and dangers of representing himself?" App. 1. Petitioner argued that the trial court did not adequately warn him of the dangers of representing himself at trial, instead providing a warning similar to what is required before a defendant represents themselves at a guilty plea. App. 9; 20. Petitioner further asserted that the trial court misunderstood its role, evidenced by its contradictory findings that Petitioner did not meet the *Faretta* requirements to represent himself but permitting him to do so anyway. App. 17. Further, Petitioner argued that he was not otherwise aware of the dangers he faced, specifically asserting that several of the *State v. Cash* factors were less applicable to defendants seeking to represent themselves at trial. App. 22. The Court of Appeals heard oral argument on April 7, 2026. App. 45.

The Court of Appeals found that "considering the timing of [Petitioner's] request and the scope of the warnings provided...the trial court did not provide [Petitioner] with sufficient warnings of the dangers of self-representation." App. 48. However, the Court of Appeals then turned to the question of whether Petitioner "had sufficient background to understand the dangers of representing himself at trial." App. 48. To that end, the Court of Appeals applied the ten-factor test created by that court in *State v. Cash*, 309 S.C. 40, 43, 419 S.E.2d 811, 813 (Ct. App. 1992).

As to the first *Cash* factor, the Court of Appeals noted that Petitioner was fifty years old, a high school graduate, a holder of several automotive repair certifications, and was not physically or mentally impaired. App. 49. As to the second factor, the Court of Appeals noted that Petitioner's only prior experiences with the criminal justice system were thirty-year-old forgery and theft convictions in California, and the record neither indicated whether Petitioner had pleaded guilty to or been convicted at trial of those offenses, nor did the record indicate whether he was represented by an attorney. App. 49. Third, the Court of Appeals held that the trial court had informed Petitioner of the penalties he faced. App. 49.

As to the fourth factor, the Court of Appeals held that there was nothing in the record to suggest that either of Petitioner's prior attorneys had discussed with him the dangers of self-representation. App. 50. However, the Court of Appeals then held that the record showed that Petitioner "appreciated the difficulty of the case" because he had filed motions and believed that Hensley worked "for the State" and not for him. App. 50.

As to the fifth, sixth and seventh factors, the Court of Appeals noted that Petitioner was not trying to manipulate the proceedings, that the trial court had appointed standby counsel, and that Petitioner was aware he would need to comply with the Rules of Evidence and Criminal Procedure. App. 50.

As to the eighth factor, the Court of Appeals noted that Petitioner and Hensley gave different answers as to whether Hensley had discussed potential defenses with Petitioner—Petitioner said no; Hensley said yes. App. 51. Finally, as to the ninth and tenth factors, the Court of Appeals noted that the trial court's colloquy was not merely *pro forma* and that Petitioner did not waive the right to counsel due to coercion or mistreatment. App. 51.

The Court of Appeals did not articulate which of the factors it found weighed in favor or against waiver. However, it ultimately held that the "record demonstrates [Petitioner] had sufficient background to understand the risks of self-representation when he decided to represent himself at trial." App. 51.

ARGUMENT

<u>The Court of Appeals erred in holding that Petitioner "had sufficient background to understand the risks of self-representation when he decided to represent himself at trial" despite its determination that the trial court's *Faretta* warnings were constitutionally insufficient.</u>

As the Court of Appeals recognized, the trial court provided Petitioner with a constitutionally inadequate *Faretta* warning. However, the Court of Appeals, applying a ten-factor, prophylactic test, went on to find that Petitioner had the knowledge meant to be conveyed by the *Faretta* inquiry from another source. For the reasons that follow, the record does not support that holding, and the Court of Appeals' contrary decision should be reversed. Further, this case presents this Court with an ideal vehicle to provide some much-needed guidance to lower courts regarding the proper *Faretta* procedure. This Court should grant certiorari.

A. The Court of Appeals' analysis of the *Cash* factors was erroneous.

Contrary to the Court of Appeals' holding, an analysis of the *Cash* factors does not demonstrate that Petitioner had sufficient background to understand the scope of the right he was waiving. Thus, the Court of Appeals' affirmance of Petitioner's convictions was erroneous. This Court should grant certiorari and reverse.

To waive the right to counsel, "the accused must be (1) advised of his right to counsel *and* (2) adequately warned of the dangers of self-representation." *Gardner v. State*, 351 S.C. 407, 411, 570 S.E.2d 184, 186 (2002) (emphasis in original); *accord, Faretta v. California*, 422 U.S. 806 (1975)). The waiver of the right to counsel must be "knowing and intelligent." *State v. Barnes*, 407 S.C. 27, 36, 753 S.E.2d 545, 550 (2014). If the trial court does not "adequately" warn the defendant of the dangers of self-representation, the reviewing court will then consider whether the record establishes that the defendant "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). To that end, the Court of Appeals created a ten-factor test:

> Factors the courts have considered in determining if an accused had sufficient background to understand the disadvantages of self-representation 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

State v. Cash, 309 S.C. 40, 43, 419 S.E.2d 811, 813 (Ct. App. 1992). The burden is on the state to demonstrate that Petitioner's waiver was valid. *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)). And this Court must "indulge in every reasonable presumption against waiver." *Brewer*, 430 U.S. at 404.

It was an analysis of these ten factors that form the basis for the Court of Appeals' decision below. However, its analysis of the factors left much to be desired. The Court of Appeals did not identify which factors favored Petitioner's arguments and which favored the state's. Nor did the Court of Appeals explain how much weight it was assigning to any individual factor. Further, the Court of Appeals' application of several of the factors was erroneous.

As to the first factor, the Court of Appeals noted that Petitioner was fifty years old, a high school graduate, and the holder of several different automotive repair certificates. App. 49. This is true; however, it establishes little about Petitioner's ability to understand the scope of the right to an attorney's assistance at trial. To a layperson, the risks of self-representation at trial are both more substantial and less obvious than the risks of self-representation at earlier stages in a criminal proceeding. *Iowa v. Tovar*, 541 U.S. 77, 90 (2004). That is why the trial court's burden under *Faretta* shifts to "rigorously convey[ing] specific warnings about the pitfalls of going to trial without a lawyer." *Hines v. State*, 443 S.C. 32, 40, 902 S.E.2d 377, 381 (2024). That "rigorous convey[ance]" is required because a layperson cannot reasonably be expected to understand the various ins and outs of a massively complex criminal trial. Simply, there was never a *Law-and-Order* episode about, say, error preservation. *See Williams v. Kaiser*, 323 U.S. 471, 475 (1945) ("Even the intelligent and educated layman has small and sometimes no skill in the science of law."). Therefore, it is not clear why Petitioner's high school education and career in the automotive industry would support the idea that he had been "apprised of his rights by some other source." *Watts*, 347 S.C. at 402, 556 S.E.2d at 370. The nature of his employment would not have placed him in contact with the criminal justice system in any way. Although Petitioner's "age, educational background, and physical and mental health permit an inference that he would have understood [his rights] if it had been given, they do not permit an inference that he received that information." *See United States v. Hakim*, 30 F.4th 1310, 1325 (11th Cir. 2022) (internal quotations and citation omitted). Therefore, this factor should weigh only neutrally.

As to the second factor, the Court of Appeals recognized that Petitioner's only prior contact with the criminal justice system was decades ago in California, and the record did not even conclusively establish whether he had been represented by an attorney. App. 49. At the time of trial, these convictions were thirty years old and in an entirely different state for much less serious offenses. *See Wroten v. State*, 301 S.C. 293, 295, 391 S.E.2d 575, 577 (1990) (holding that a previous guilty plea from 1979—eleven years before the opinion was issued—was not sufficient to establish waiver); *Dial*, 429 S.C. at 134, 838 S.E.2d at 505 (fact that defendant "was on probation from a prior conviction," *inter alia*, did not establish waiver). Therefore, the second factor must weigh against waiver.

As to the fourth factor, the Court of Appeals recognized that the record contained no indication that either of Petitioner's prior attorneys had informed him of the dangers of self-representation. However, the Court then held the record supported that Petitioner "appreciated the difficulty of his case" because he "prepared motions" for his public defender to file, and he "wanted to contribute [in] handling his case." App. 50. Assuming that the Court of Appeals believed this factor to support waiver, this analysis is erroneous for two separate reasons. First, Petitioner's understanding of the complexities of the *facts* of his trial is a wholly different question than whether Petitioner fully understood the right to counsel and its benefits. *State v. Samuel*, 422 S.C. 596, 603, 813 S.E.2d 487, 491 (2018) ("whether a defendant is capable of effectively representing himself has no bearing on his ability to elect self-representation"); *Dial*, 429 S.C. at 135, 838 S.E.2d at 505 (the state's argument, that the defendant "knew of the significance of the trial and the ability to present a defense," was "not a valid argument"). Second, even if Petitioner's understanding of the "complexities" of his case was relevant, Petitioner's testimony does not establish anything of the sort. Petitioner wished to relieve his public defender because he thought she would act in the state's best interests rather than his own. The Court of Appeals used *Cash* to support its analysis on this point, but *Cash* stands for no such proposition. There, the defendant was aware of extremely high public defender caseloads, he believed he would do a better job representing himself *because* of the complexities of his case, and his belief was that the public defender would not have time to properly prepare. *Cash*, 309 S.C. at 44, 419 S.E.2d at 814. Here, however, Petitioner believed that his public defender was not acting in his best interests. Petitioner would harbor that same concern regardless of the complexity of his case. Thus, the record does not support a knowing and intelligent waiver.

As to the sixth factor, Petitioner was appointed standby counsel. However, the importance of this factor is easy to overstate. Whether Petitioner had a standby counsel that could "advise or coach" him realistically only relates to Petitioner's competence or ability to represent himself, which "is entirely irrelevant to the issue of whether he effectively [waived] his right of self-representation." *Samuel*, 422 S.C. at 604-05, 813 S.E.2d at 492.

As to the seventh factor, the record indicates that Petitioner knew he would be required to comply with the Rules of Evidence and Procedure, but the record does not indicate that he had a strong understanding of either.[3] In fact, Petitioner's very limited understanding of the rules may have led him to believe that he understood them significantly better than he actually did.[4] Regardless, Petitioner's knowledge of the mere existence of rules does not demonstrate that he fully understood "the risks of self-representation." *Wroten*, 301 S.C. at 294, 391 S.E.2d at 576. And, unlike in other cases, *see Cash*, 309 S.C. at 45, 419 S.E.2d at 814 (defendant represented

[3] Some jurisdictions require an inquiry into a defendant's understanding of the rules of evidence and procedure, not just the defendant's knowledge of their existence. *See, e.g., United States v. Stanley*, 739 F.3d 633, 645-46 (11th Cir. 2014) ("(4) the defendant's *understanding* of rules of procedure, evidence, and courtroom decorum" (emphasis added)).

[4] The concept that someone who has very limited knowledge in a given area may vastly overestimate their abilities in that area is well known, and is called the Dunning-Kruger effect. *Dunning-Kruger Effect*, Psychology Today (Apr. 24, 2026), https://www.psychologytoday.com/us/basics/dunning-kruger-effect (last accessed May 21, 2026).

himself at preliminary hearing), Petitioner did not represent himself at any stage prior to trial. For these reasons, the seventh factor does not strongly support waiver.

As to the eighth factor, the Court of Appeals appeared to hold that the record supported the proposition that attorney Hensley informed Petitioner of potential defenses against him. App. 51. However, the record supports no such proposition. During the *Faretta* hearing, the trial court asked: "And I assume, Ms. Hensley, that you've explored any potential defenses with him and made him aware of that as well?" R. 43, ll. 22-24. Trial counsel responded, "Yes, Your Honor." R. 43, l. 25. However, when asked the same question, Petitioner responded in the negative. The only "support" in the record that Petitioner was ever made aware of defenses, therefore, was this single question. For this reason, the state conceded the point in its brief to the Court of Appeals, *see* App. 40, however, that court appears not to have accepted the concession. In other cases where courts have found that a defendant was aware of potential defenses, the record established that they knew of *specific* defenses to raise. *See, e.g., Cash*, 309 S.C. at 45, 419 S.E.2d at 814 (defendant raised the defense that "no sexual battery occurred in fact"). Further, the state must affirmatively establish that Petitioner's waiver was voluntary, and this Court must "indulge in every reasonable presumption against waiver." *Brewer*, 430 U.S. at 404. On this record, that high bar has not been cleared.

All of this underscores the importance of the *Faretta* inquiry. Had the trial court performed its constitutional duty to "rigorously convey specific warnings of the pitfalls of going to trial without a lawyer," a *Cash* factor analysis would not be necessary. *Hines*, 443 S.C. at 40, 902 S.E.2d at 381. The trial court's warning, however, fell woefully short in that regard. What remains is this: Petitioner was a fifty-year-old, non-college-educated mechanic, whose attorneys never told him about the dangers of representing himself and who had very minimal prior experience with the criminal justice system— none with South Carolina's. Based on that alone, the Court of Appeals held that Petitioner had sufficient background knowledge to understand exactly what he was surrendering by representing himself at trial. That decision is incorrect. This Court should grant certiorari and reverse.

B. This case presents an ideal vehicle for this Court to provide guidance on the proper *Faretta* inquiry on the eve of trial.

The Court of Appeals correctly held that the *Faretta* warning given by the trial court was constitutionally insufficient. While that holding was correct, this case and others like it demonstrate the need for this Court's guidance about the proper *Faretta* inquiry on the eve of trial. This case presents an ideal vehicle to provide such guidance, and this Court should grant certiorari.

Prior to allowing a defendant to represent himself at a guilty plea, the trial court need only warn the defendant (1) the nature of the charges against him; (2) of his right to be counseled regarding the plea; and (3) the range of permissible punishments for the offense to which he pleads guilty. *Tovar*, 541 U.S. at 81. This is because the disadvantages of representing oneself at a guilty plea are "less substantial and more obvious than they are at trial." *Id.* at 90. At trial, however, the Constitution "impose[s] 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…." *Patterson v. Illinois*, 487 U.S. 285, 298 (1988). Before allowing a defendant 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; *Tovar*, 541 U.S. at 88-89 ("before a defendant may be allowed to proceed *pro se*, he must be warned specifically of the hazards ahead").

Essentially, the law imposes minimum requirements for *Faretta* warnings before a guilty plea, and then holds that *Faretta* warnings before a trial must do more. What exactly is meant by "rigorous" or "specific" warnings, however, is not clear. Trial judges who may seek to "engage in a more detailed *Faretta* dialogue," *Hines*, 443 S.C. at 43, 902 S.E.2d at 383, are forced to look to secondary sources for suggestions on what dangers specifically defendants should be warned of. *See, e.g.*, 3 WAYNE LAFAVE, CRIMINAL PROCEDURE § 11.5(c) (2025) (providing six examples of specific warnings to be given during a *Faretta* colloquy). The resultant position that trial courts are left in is unenviable, described by some as a "catch-22." *Samuel*, 422 S.C. at 618, 813 S.E.2d at 499 (Kittredge, J., dissenting).

The complexities and pitfalls of the *Faretta* process were on full display in this case. The trial court found specifically that Petitioner "does not meet the *Faretta* requirements to represent himself." R. 40. Yet, apparently believing it was bound to honor a *Faretta* waiver so long as Petitioner was "adamant," R. 41, the trial court permitted him to proceed *pro se* anyway. This strange holding begins to make sense when viewed against the backdrop of the fractured and incomplete agglomeration that is *Faretta* jurisprudence. The bench and bar need guidance on the proper scope of pre-trial *Faretta* inquiries. This Court should grant certiorari to provide such guidance.

CONCLUSION

For the foregoing reasons, this Court should grant certiorari to allow fuller briefing on the issue presented.

Respectfully submitted,

W. Chandler Norville
Appellate Defender

ATTORNEY FOR PETITIONER

This 19th day of June, 2026.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Charleston County
Honorable Deadra L. Jefferson, Circuit Court Judge

Opinion No. 2026-UP-227 (heard April 7, 2026 – filed May 13, 2026)

Lower Court Case Nos. 2023-GS-10-02457 and -02458

THE STATE,

RESPONDENT,

V.

NORMAN PHILIP BROWNE,

PETITIONER.

APPELLATE CASE NO. 2024-000872

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the petition for writ of certiorari to the Court of Appeals and the appendix in the above-referenced case has been served upon Brian H. Gibbs, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and the South Carolina Court of Appeals; this 19th day of June, 2026.

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Appellate Defender

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Warren, Kaylynn

From: Warren, Kaylynn
Sent: Friday, June 19, 2026 3:40 PM
To: Brian Gibbs
Cc: Norville, Chandler; Grace Sommer
Subject: 2024-000872 The State v. Norman Philip Browne
Attachments: 2024-000872 The State v. Norman Philip Browne Petition for Writ of Certiorari to the Court of Appeals.pdf; 2024-000872 The State v. Norman Philip Browne Record on Appeal.pdf; 2024-000872 The State v. Norman Philip Browne Appendix.pdf

Good Afternoon,

Attached for service in the above-referenced case are the Petition for Writ of Certiorari to the Court of Appeals, the Record on Appeal previously filed in the Court of Appeals, and the Appendix which will be filed today, June 19, 2026, with the Supreme Court and the Court of Appeals via email filing.

Respectfully,
Kaylynn

Kaylynn Warren
Administrative Assistant
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