STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Orangeburg County
Diane Schafer Goodstein., Circuit Court Judge
Appellate Case No. 2013-001342

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

V.

LAMONT ANTONIO SAMUEL,

APPELLANT.

INITIAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred and violated Faretta v. California. 422 U.S. 806, 95 S.Ct. 2525 (1975), by not allowing appellant to voluntarily and intelligently represent himself?

COUNTER STATEMENT OF ISSUE ON APPEAL

I. Whether the trial judge properly denied Appellant's motion to appear *pro se* at trial because the record supports her finding that he dishonestly responded to her questions about how he had acquired knowledge of trial court procedures, and his responses demonstrated an inability or unwillingness on his part to comply with an indispensable requirement for our judicial system to function? Also, whether his untruthfulness likewise undermined confidence in the credibility of the answers that he gave to the other questions asked of him, it created a concern that he would be dishonest with the trial judge and opposing counsel at trial and indicated that, for undisclosed reasons, he wished to improperly wrest control of the conduct of his trial from the trial judge and manipulate the proceedings?

STATEMENT OF THE CASE

Appellant, Lamont Antonio Samuel, is currently incarcerated in the Perry Correctional Institution, of the South Carolina Department of Corrections, as the result of his Orangeburg County conviction and sentence for murder. The Orangeburg County Grand Jury indicted Appellant in November 2012 for murder (2012-GS-38-0912). **R. pp. ___-__**. The charge stemmed from the March 20, 2012 shooting death of three year old J.J. (the victim). Assistant First Circuit Public Defenders Margaret "Peggy" Hinds and Douglas Mellard represented Carter in the trial court Nicholas Gray Thomas, Esquire, represented him on these charges in the trial court, while Assistant First Circuit Solicitors Donald N. Sorenson and Sara Ford prosecuted the case.

Appellant's case was originally called for a jury trial before the Honorable Diane Schafer Goodstein on May 13, 2013. Following an *in camera* hearing, at which the prosecution was not allowed to be present, Judge Goodstein denied Appellant's request to appear *pro se*. **May Tr. pp. 1-76**. Following jury selection on May 14, 2013, Judge Goodstein denied Appellant's motion to recuse her, which was based upon her finding that appellant was not credible in the motion to appear *pro se*. **May Tr. pp. 179-82**. The trial judge began a *Jackson v. Denno* hearing.[1] However, because of issues with several different jurors, the jury was dismissed before it was sworn.

Following the continuation of the *Denno* hearing and denial of Appellant's motion to suppress on June 10, 2013, Appellant received a jury trial before Judge Goodstein on June 11-14, 2013. The jury convicted him of murder, and each juror confirmed the verdict when polled. **Tr.**

[1] See *Jackson v. Denno*, 378 U.S. 368 (1964).

p. 833, lines 2-20.[2] Judge Goodstein sentenced Appellant to fifty years imprisonment. **Tr. p. 842, lines 2-5.**

Appellant timely served and filed a notice of appeal.

ARGUMENT

I. The trial judge properly denied Appellant's motion to appear *pro se* at trial because the record supports her finding that he dishonestly responded to her questions about how he had acquired knowledge of trial court procedures, and his responses demonstrated an inability or unwillingness on his part to comply with an indispensable requirement for our judicial system to function. His untruthfulness likewise undermined confidence in the credibility of the answers that he gave to the other questions asked of him, it created a concern that he would be dishonest with the trial judge and opposing counsel at trial and it indicated that, for undisclosed reasons, he wished to improperly wrest control of the conduct of his trial from the trial judge and manipulate the proceedings.

Notwithstanding Appellant's arguments to the contrary, Respondent submits that the trial judge properly denied Appellant's motion to appear *pro se* at trial because the record supports her finding that he dishonestly responded to her questions about how he had acquired knowledge of trial court procedures, and his responses demonstrated an inability or unwillingness on his part to comply with an indispensable requirement for our judicial system to function. His untruthfulness likewise undermined confidence in the credibility of the answers that he gave to the other questions asked of him, it created a concern that he would be dishonest with the trial judge and opposing counsel at trial and it indicated that, for undisclosed reasons, he wished to improperly wrest control of the conduct of his trial from the trial judge and manipulate the proceedings.

A. Events in the trial court.

1. The May 13, 2013 hearing on Appellant's motion to appear *pro se*.

[2] Because the trial was in June, Respondent has referred to the record of those proceedings as "Tr. " and the May 2013 proceedings are referred to as "May Tr."

When the case was initially called for trial, Appellant's counsel informed the trial judge that Appellant wanted to proceed *pro se* at trial. The trial judge immediately cleared the courtroom of everyone except for Appellant, his trial counsel, the court reporter, the judge, her law clerk and courtroom security. The trial judge further ordered that the proceedings were being conducted under seal. **May Tr. p. 4, line 11 – p. 9, line 3.**[3]

The trial judge questioned Appellant at the ensuing *ex parte in camera* hearing. When asked about the basis for his concern, Appellant explained that he had been in jail for fourteen months even though he was innocent, and that he did not think his attorneys were working for his best interests. He based this upon counsel's refusal to let him provide the Assistant Solicitor with letters that his co-defendant, Alan Fields, had written him, which he contended proved his innocence and their request to review anything before he gave it to the prosecution. He claimed that "[j]ust as well as [counsel has been] interviewing me, I [have] been interviewing them." He also complained because it appeared that counsel had met with the Assistant Solicitor immediately before meeting with him, on those occasions when he met with them. **May Tr. p. 9, line 4 - p. 11, line 3; p. 14, line 20 – p. 15, line 10.**

He further contended that Ms. Hinds did not give him "the correct answer I was looking for," when he asked her what her interest in the case was because counsel had apparently said something about trying to convince jurors that he was only guilty of a lesser charge. He also claimed that he was the reason that Fields was supposed to plead guilty in this case. **May Tr. p. 11, lines 3-18; p. 13, line 10 – p. 14, line 15.**

[3] Therefore, this case presents a somewhat unusual situation because Appellant is complaining of alleged error by the trial judge, where her ruling prevented the State from having any opportunity to correct the purported error. As will be shown, however, the trial judge did not abuse her discretion.

Then, in response to the trial judge's questions, he stated that he was twenty-one years old and that he graduated high school "with a 4.0 in Honors classes." Although the trial judge stated that he "c[a]me across as exceptionally bright," she stated that she had been a judge for almost sixteen years; that she did not have any "dog in the fight;" and that her only concern was to ensure that justice was done. Also, she was going to discuss some matters that might be frustrating to him. **May Tr. p. 16, line 20 – p. 19, line 4**.

She began by acknowledging that the fourteen month delay between arrest and trial was too long, and that this delay causes frustration, which then erodes the relationship between a defendant and his attorneys. However, she explained that counsel were not the source of the delay. She further explained that it is "incredibly difficult" to be public defender because the lawyer wants "to protect [Appellant]" but the law also requires them to make sure that Appellant understands the "worst possible scenario," even if the lawyers do not believe that this worst case scenario is true. Included in their responsibility to properly represent Appellant was their communications with the prosecutor before talking to him. Appellant indicated that he understood this explanation. **May Tr. p. 19, line 6 – p. 22, line 8**.

The trial judge also explained that counsel did not want him to speak with Assistant Solicitor Sorenson. In her estimation, "[t]hat is the absolute wors[t] thing you could do is to talk to Mr. Sorenson. It doesn't matter what you have" because Mr. Sorenson was "committed to prosecuting" Appellant and he was would then be able to "spend his whole time explaining why that doesn't mean a thing." If counsel thinks that the material is beneficial to Appellant's defense and it does not have to be disclosed in discovery, counsel could use this information at trial. **May Tr. p. 22, line 9 – p. 23, line 12**.

The trial judge stated that she had known lead counsel, Ms. Hinds, since becoming a judge and that the trial judge had "never known [Ms. Hinds] not to care deeply about her clients. I have always known her to have to give them everything they need to know, which is the absolute worst scenario, because otherwise she's not doing what she's supposed to do." The trial judge described Ms. Hinds as a "terrific lawyer." Again, Appellant indicated that he understood. **May Tr. p. 23, line 15- p. 24, line 4.**

At that point, the trial judge told Appellant that it was appropriate to be concerned about the case, but she asked him to "give some thought" to what she had told him. She further told him that he had a constitutional right to represent himself. While it "scares me to death for you" to do so, she would respect his exercise of the right if he chose to do so. Appellant again indicated that he understood. **May Tr. p. 24, line 13 – p. 25, line 8.**

The trial judge further explained that he lacked the same expertise and training to be a lawyer that his attorneys had and that she did not want him to represent himself. However, she stated that "I respect you, and I respect, most of all, our constitution that says you have that right." Appellant indicated that he wanted to represent himself and that he was firm in his decision. So, the trial judge stated that if she found that he was capable of representing himself, after explaining the colloquy that was about to happen, ten she would allow him to do so. Again, Appellant indicated that he understood what she had told him. **May Tr. p. 25, line 9 – p. 29, line 14.**

Once Appellant was finally sworn, the trial judge began her colloquy with him. In response to her questioning, Appellant swore that everything he had previously told her up to "[had] been the truth, the whole truth and nothing but the truth" and that he did not "want to

change or alter anything" he had told her. The trial judge explained the definition of *pro se*. Reading from a form, she told him that the United States Supreme Court has held that the Sixth Amendment, which gives defendants the right to counsel, merely required that a defendant "be advised of the nature of the charges[,] ...[of the] right to be counseled regarding that representation and the range of the allowable punishment." **May Tr. p. 29, line 21 – p. 31, line 7.**

In response to further questioning, Appellant swore that he was charged with murder; that he understood that murder carried a minimum sentence of thirty years imprisonment and "up to life in prison without the possibility of parole;" that he was twenty-one years old; that he had graduated high school, in 2010, "with a 4.0 ... [i]n all Honors class;" and, that he had been preparing to go into the military when arrested. He claimed that "before basic training they [were] trying to see if I wanted to go to school first. I was telling them I wanted to go straight into the military, and they [were] telling me you doing pretty good with interviews. We think that you should go to school and try to be a recruit counselor." At one point, he swore that he was helping to recruit people "without pay through the military." Yet, he stated at another point that he was being paid.[4] **May Tr. p. 31, line 9 – p. 33, line 17.**

Appellant further wore that he had never been treated for alcohol, drug or other substance abuse problem; that he had never "received any counseling or any treatment at all for any mental health challenges or emotional challenges;" and that he had not taken any medicine, drugs or alcohol in the seventy-two hours before the plea. Likewise, he swore that he was unaware of "any physical or emotional or nervous problems or issues or challenges" that might keep him from understanding what he was doing; and that he had never "been examined by any doctor or

[4] *Compare* **May Tr. p. 32, lines 11-17** *with* **May Tr. p. 32, line 25 – p. 33, line 12.**

other health care professional to determine [his] mental competency to stand trial." **May Tr. p. 33, line 18 – p. 34, line 19.**

The trial judge and Appellant then had the following exchange, which is important to the issue before this Court:

> THE COURT: Okay. Have you ever studied law?
>
> MR. SAMUEL: Yes, ma'am.
>
> THE COURT: All right. Tell me about that?
>
> MR. SAMUEL: I studied a little bit of law during the -- a law book I used during the course of -- to look at the procedure to stand trial, self-representation. And I look at all the rules and regulations [that are] supposed to be appropriate while I'm standing trial. I know --
>
> THE COURT: And tell me where you got those books?
>
> MR. SAMUEL: I got that book through the mail at the jailhouse.
>
> THE COURT: What … is the name of the book?
>
> MR. SAMUEL: It's called Criminal Law Handbook.
>
> THE COURT: All right. Where did it come from?
>
> MR. SAMUEL: I can't -- All I know I got it through the mail.
>
> THE COURT: Okay. And did somebody help you find that or did you order it or how did you find it?
>
> MR. SAMUEL: Yes. **Mr. Carl Grant told my mama**.
>
> THE COURT: Carl Grant. Okay, and your mother helped you get it?
>
> MR. SAMUEL: Yes, ma'am.
>
> THE COURT: Got it. All right. And you looked at that book?
>
> MR. SAMUEL: Yes, ma'am.
>
> THE COURT: And how much of that book have you read?

MR. SAMUEL: I read, basically, the trial procedures.

THE COURT: Okay. Yes.

MR. SAMUEL: I read -- if you got documents and everything supposed to be going towards your innocence, I read the judge can allow it to go to trial or cannot go to trial. And I read, basically, all the procedures for trial and self-representation.

THE COURT: Okay. Have you ever been in court before?

MR. SAMUEL: No, ma'am.

THE COURT: Okay. This is the first time that you've been charged with any crime?

MR. SAMUEL: Yes, ma'am.

May Tr. p. 34, line 20 – p. 36, line 8. (Emphasis added).

Further, Appellant swore that he understood that "the elements of murder are the unlawful killing of another with malice aforethought" and that "malice means a depraved heart that existed just prior to and at the time of the commission of the act." He further answered affirmatively when asked if he understood that, if he chose to represent himself, the trial judge could not tell him how he should try the case or advise him. **May Tr. p. 36, line 13 – p. 37, line 7.**[5]

[5] Unfortunately, many of the trial judge's questions permitted him to give *pro forma* answers because the trial judge would explain a matter to him and he merely responded "yes, ma'am." *See State v. Cash*, 309 S.C. 40, 43, 419 S.E.2d 811, 813 (Ct . App.1992) (listing "whether the exchange between the accused and the court consisted merely of *pro forma* answers to *pro forma* questions," as one of the factors courts consider in determining whether the accused had a sufficient background to understand the disadvantages of self-representation); *Ex parte Jackson*, 381 S.C. 253, 270, 672 S.E.2d 585, 588 (Ct.App. 2009) (same); *cf. State v. Arthur*, 296 S.C. 495, 498, 374 S.E.2d 291, 293 (1988)("None of the three questions propounded to Arthur was of the nonleading character essential to a meaningful response. Moreover, they failed to inform Arthur of 'the essential ingredients of a jury trial which are necessary to understand the significance of the right he was waiving' ").

When asked if he understood the South Carolina Rules of Evidence, he indicated that he did from reading the book he mentioned earlier. When asked if he had any other source for understanding the rules of evidence, he stated that "basically ...Mr. Grant, he tried to coach me on it a little bit." **May Tr. p. 37, lines 8-16**. He also stated that he understood that the rules of evidence determine what is admissible at trial; that in representing himself, he was required to follow those rules; "one of the rules of evidence is the rule against hearsay;" that hearsay evidence was statements that were "made outside the trial which are being admitted for the truth asserted;" that there were "many exceptions" to the rule against hearsay; and that "under our rules ... there are certain motions that can be made before, during, and after the trial." **May Tr. p. 37, line 8 – 38, line 19**.

When asked to name a motion, Appellant stated, "You can put in for a motion for the trial -- it can be a mistrial with a sickness or somebody doing that, they'll reschedule it. And that's -- I think that's all." He then correctly stated "[m]otion in limine" when asked whether he understood that there were motions to suppress evidence. However, he did not know what a directed verdict motion was until the trial judge explained it to him. **May Tr. p. 38, line 19 p. 39, line 21**.

Appellant indicated that he understood that he had the right to testify and the right not to testify in his case; that this was guaranteed by the Fifth Amendment; and that his understanding was that "[t]he Fifth Amendment is to keep silent." He understood that he could be impeached with prior convictions if he testified, but he did not have any prior convictions. Further, he understood that, if he did not testify, the trial judge would instruct jurors that his decision not to testify could not be discussed because that would violate both the United States and South Carolina Constitutions. **May Tr. p. 39, line 23 – p. 42, line 3**.

Appellant was initially unable to list any possible defenses he had to the murder charge, until the trial judge reminded him that he had said that he had one. He then claimed the letters by his co-defendant exonerated him. He stated that he understood that the trial judge's opinion that he 'would be far better defended by a trained lawyer" than he could defend himself; that she thought that it was "unwise" for him to represent himself; that she was concerned that he was "not sufficiently familiar with the law" to represent himself; and that she "strongly urge[d]" him not to represent himself. However, he still wanted to waive his right to be represented by counsel and represent himself, and he stated that his decision was "entirely voluntary." **May Tr. p. 42, line 4 – p. 44, line 20**.

At this point, Appellant made a second mention of being aided in his *pro se* representation by private counsel:

> THE COURT: Do you know anything or anyone that I can have you speak with that might urge you to have a lawyer represent you?
>
> MR. SAMUEL: No, ma'am. I mean, I think -- I mean, **my mama**, basically **paid Mr. Grant a good bit amount of money**. The reason why **he couldn't represent me** is **because** my family -- I **guess his paralegal is related** [to me], you know, **in some manner. So he had decided to just go over the steps with me day by day**. I go through the trial, **I got back to him. I talk to him, he'll tell me things or he won't** -- he's not going to be in the courtroom, present.
>
> THE COURT: Okay. And you know he's not representing you?
>
> MR. SAMUEL: **I know he's not representing me, but he is coaching me** on --
>
> THE COURT: I got you, but he's not representing you?
>
> MR. SAMUEL: Oh, no, ma'am.

May Tr. p. 44, line 21 – p. 45, line 12. (Emphasis added).

Appellant then stated that he understood that the trial judge was going to appoint stand-by counsel, and that he change his mind about representing himself at trial. Further, he understood her explanation that he had the right to make an opening statement if he wished to make one, but that he could not testify in that statement. Rather, he could merely "talk about ... what you believe the evidence will or will not show." He also understood that he would have the right to both offer evidence and to object at trial. **May Tr. p. 45, line 13 – p. 46, line 10**.

Appellant stated that he had reviewed the State evidence against him but thought that "it's not enough evidence." He added, "That's why I tried to get to talk to Mr. Sorenson before we even make it this far." Also, gave a proper understanding of the theory that "the hand of one is the hand of all." While he stated that he did not understand why counsel reviewed trial procedures with him because the Assistant Solicitor could not place him at the scene and his co-defendant was pleading guilty that day, he claimed to understand that this was not within counsel's control. **May Tr. p. 48, line 11 – p. 50, line 4**.

The trial judge stated, "[H]ere's my problem. You're bright enough, the constitution says you're entitled to represent yourself. I don't want you to represent yourself, but I can't violate the law." Appellant's response to her statement was a somewhat rambling complaint about the length of his pretrial incarceration and a protestation of innocence. The trial judge replied by stating that the complaints that he raised were not the fault of his attorneys and that her experience was that defendants who had been frustrated with counsel's performance prior to trial often had no complaint about his or her attorney's performance at trial. **May Tr. p. 50, line 6 – p. 53, line 6**.

The trial judge again hoped that she could persuade him not to appear *pro se*, but she found that he was "bright enough, educated enough" to represent himself, and that he did not have any substance abuse or mental health issue that would interfere with his ability to do so. Likewise, he assured her that he understood the charge that he was facing. **May Tr. p. 53, lines 7-22**.

Appellant then made the following statement:

> I know, basically, you what you're saying is that you're putting your neck on the line by you wouldn't want me to disappoint you. That's what's bringing me to this. **My mama paying Carl Grant to come in and educate me**, at the same time, just because he a lawyer, I mean, I went to school, I'm smart. I can catch onto the common sense I won't put you down when we're going to trial. I won't disappoint you, period, even though the decision the jurors make, a decision that you make, I accept all of that, but I know I went down fighting for my innocence, you know, but at that same time I respect you. I respect all the advice you give me. I respect everything you took time to go over with me. I respect the time you took to sit with me today. I respect all of that, but at the same time I won't let you down.

May Tr. p. 53, line 24 – p. 54, line 13. (Emphasis added).

The trial judge stated that she was going to tell the State that she was inclined to grant Appellant's motion. However, she wanted to speak with Mr. Grant, so that she could more fully understand Mr. Grant's relationship to the case and what discussions he had with Appellant about the case. **May Tr. p. 54, line 14 – p. 55, line 22**.

After Mr. Grant arrived at court, the trial judge resumed an *in camera ex parte* hearing. **May Tr. p. 61, line 2 – p. 62, line 13**.[6] First, she had informed Mr. Grant of Appellant's representations of Mr. Grant's involvement in the case to Appellant's satisfaction. **May Tr. p. 63, line 4 – p. 65, line 9**. Then, Mr. Grant testified that:

> For the record, number one, I have no recollection of ever sharing with Ms. Betty Hickson, his mother, anything pertaining to any rules of evidence or rules in

[6] Other personnel from Mr. Grant's office were present at the courthouse but they were sequestered. **May Tr. p. 61, line 21 – p. 62, line 10**.

> criminal procedure or anything like that. The only discussion that I remember having with Ms. Hickson, and I've had this discussion with her as well as my staff on numerous occasions. The only discussion has been about the legal fee to represent this young man. ... Ms. Hickson has not paid me, not even a dime, as of today's date. ... [W]e have a saying in my office that the big dog does not fight until he's fed. ....
>
> Also, I've not been retained. ... Ms. Hickson[] actually came in my office one day, said she had the legal fee with her on her hip. We were in there, said okay. She said she's going outside to car to get the money, she'd be right back. She never came back in, and that's been several months ago. I've not offered any assistance to anyone, Judge. I've not even given this young man any kind of copy of the rules of evidence or rules of criminal procedure or offered my assistance in any way. Either you're going to retain me to represent you or you're not. And let me also say for the record, that it is my professional and my strong personal opinion that he has two of the finest public defenders in South Carolina already representing him. Lawyers who are experienced, lawyers who are very competent, lawyers whose ethical standards are to the highest, and those who I know would do a great job. In fact, I spoke with Ms. Hinds outside the courthouse a few weeks ago, and I was telling her that the family was saying they were going to retain me and she indicated that she was representing him. I said, well, with a lawyer like you they certainly don't need me, and I feel that way, because she and, of course, Mr. Mellard are great attorneys.

May Tr. p. 65, line 20 – p. 67, line 6.

Based upon his twenty-eight years of experience as a trial attorney, Mr. Grant testified that he would "strongly recommend" that Appellant allow his experienced and knowledgeable attorneys to continue with their representation. Mr. Grant also explained that he had hired an attorney to represent him in a past matter. Further, Mr. Grant testified that he would be unavailable "to provide any assistance to him in any capacity." He could only have represented Appellant if Appellant's family had retained him when they originally approached him. He would not represent Appellant now because the trial judge case was ready to try the case and "I certainly have no intention or desire to derail that process so that you all can go forward." **May Tr. p. 67, line 7 – p. 68, line 9.**

Following Mr. Grant's testimony Appellant thanked him "thank you for your information you provided me. I thank you for your advice and everything and I appreciate you addressing that to Ms. Goodstein." When the trial judge directed Appellant to tell her "what advice and information you are speaking of specifically," he cryptically replied, "Everything he said." When she asked whether he meant "today," Appellant evasively said, "I'm just saying in general. Everything he said makes a whole lot of sense." **May Tr. p. 68, lines 12-24**.

Appellant stated that he understood the extent of Mr. Grant's prior relationship with him, and the trial judge's explanation that he could not depend on Mr. Grant to be present at trial. **May Tr. p. 69, lines 1-6**. Appellant thereafter stated that he and his mother had spoken to Mr. Grant and that the reason Mr. Grant had testified differently was because a paralegal in Mr. Grant's office was related to Appellant and that "his reasons for not coming out and indicating the same is because his reputation was on the line. .... [H]e already had told me and stated if it came down to him coming in front of a judge in front of the attorneys he was going to state that." **May Tr. p. 69, line 20 – p. 70, line 19**. Finally, Appellant stated that he understood the type of mistakes he could make by representing himself, but he still wanted to do so. **May Tr. p. 70, lines 22-25**.

The trial judge denied Appellant's motion after a brief recess. Based upon her earlier colloquy with Appellant, she found that his "educational background ... is very strong," and that he was "very bright ... [and] extremely articulate." When she had discussed Appellant's knowledge of "the rules," he informed her that his mother had provided him with "the rule book and that the title had been given to her by Carl Grant." The trial judge further found that Appellant had told her that that Mr. Grant had been coaching him "with regards to the [legal]

processes" and that Appellant believed that Mr. Grant would also coach him "with regards to the process of a trial, throughout the trial." **May Tr. p. 72, line 12 – p. 73, line 4.**

The trial judge explained that she had Mr. Grant attend the hearing and testify "out of concern that whether Carl Grant had undertaken representation of you and whether or not he would be acting as stand-by counsel in some form or fashion if you were to be self-representing yourself." She found, however, that Mr. Grant had testified that he did not provide Appellant with a book, that he had not coached Appellant; that he had not had any conversations with Appellant about "the processes and that he ha[d] not led [Appellant] to believe that he would, likewise be doing so throughout the trial." **May Tr. p. 73, lines 6-17.**[7]

The trial judge concluded her ruling as follows:

> THE COURT: Now, I have listened to you, I have listened to Carl Grant. I want you to understand I do not believe what you tell me about your relationship with Mr. Grant in terms of his having coached you and his willingness to coach you during the course of the trial. I simply do not believe that. I have to make a determination and I do not believe what you are telling me is accurate.
>
> That brings me to one of our rules, which is Rule 3.3, which is candor towards the tribunal. It also brings me to one of our cases, which is a case called Gardner verses the State at 351 S.C. 407, 570 S.E.2d 184, and this particular case talks about the ability of an individual to self-represent themselves. One of the elements that the Court has to consider is whether or not the defendant is attempting to delay or manipulate the proceedings. I do not believe that you are trying to delay the proceedings. I am concerned that the proceedings are being manipulated. Further, there is case law around the country, not in South Carolina, that I can find, but around the country, that says that someone that wishes to self-represent themselves is not allowed to disrupt the proceedings.
>
> ... I cannot operate without candor. Rule 3.3 places upon attorneys the ethical duty to have candor toward the tribunal. I cannot try a case without candor towards the tribunal. That was an issue that I did not anticipate being presented to me today. I really wanted and sought the information regarding Mr. Grant because I wanted to be -- I wanted to be assured that there wasn't representation there,

[7] Appellant tried to interrupt the trial judge at this point in her ruling but she did not allow him to do so. **May Tr. p. 73, lines 18-21.**

> however, I am very concerned now with regards to your candor. I cannot try a case if the people trying the case are not candid with me.
>
> So when I put together 3.3, ...which requires lawyers to be candid with the court, when I put that together with the case that I mentioned that says you're not allowed to attempt to manipulate the court in your attempts in representation and when I look around the country at the case law regarding the disruption it's not allowed by those wishing to self-represent. When I put those together, I believe that there is authority for me to disallow your self-representation. The reason that I am disallowing your self-representation is because it is impossible for me to [try] a case if I do not have candor from those who are making representations to the court. I cannot do that.
>
> Unfortunately, it has been demonstrated to [me] between this morning and this afternoon that you lack candor with the court. On that basis and the basis of the case law that I have already mentioned I cannot allow you to self-represent. I must have counsel to represent you.

May Tr. p. 73, line 20 – p. 75, line 19.

Appellant persisted in arguing with the trial judge's ruling, stating that he had never asked that counsel leave and that counsel "can be aside and stay by my side." Also, Appellant, once again, contended that Mr. Grant had been untruthful about assisting Appellant because "he don't want his reputation ruined." (Sic). **May Tr. p. 75, line 22 – p. 76, line 2**. The trial judge, however, stated that she did not believe Appellant "because that's not what lawyers do. He simply would have a conflict and not be able to represent you. I don't believe you that he would be representing you and saying if it gets out it will ruin my reputation." **May Tr. p. 76, lines 3-8**. When he attempted to further argue the motion, the trial judge stated that she had ruled, she noted his exception to her ruling and she instructed counsel to represent him. **Tr. p. 76, lines 9-19**.

2. Appellant's motion to recuse.

The following day, Appellant (through counsel) moved for the trial judge to recuse herself, based upon her finding that Appellant had not been truthful to her in connection with his motion to represent himself. She denied his motion because Appellant could not point to any alleged bias or prejudice that "stem[med] from extrajudicial source and result[ed] in a decision based on information other than what the judge learned from his or her participation in the case as a judge." **May Tr. p. 179, line 14 – p. 182, line 3**. Counsel renewed this motion at the June trial but the trial judge denied it for the reasons stated in the original denial of the motion. **Tr. p. 166, line 3 – p. 169, line 4**.

3. Counsel's motion to be relieved.

When motions hearings resumed on June 10th, Appellant's trial counsel moved to be relieved. The trial judge heard this motion *ex parte* and ordered the transcript of the proceedings sealed. Counsel based their motion upon Appellant's refusal to tell them to what he planned to testify. Instead, he told them that "you will hear it when it comes out of my mouth." He also suggested that the trial judge would be upset with counsel "once he testifies. And that's all he will say." **Tr. p. 18, lines 9-20**.

Counsel added that "[w]e have no idea what he is likely to say once he gets on the stand," which made it "very, very difficult for us to try to help prepare a defense." In addition to Appellant's refusal to be forthcoming, counsel stated that "[h]e [was] argumentative." Based upon his refusal to cooperate, counsel did not think that they could "effectively defend him" and they moved to be relieved." **Tr. p. 18, line 20 – p. 19, line 6**.

After listening to Appellant's response, **Tr. p. 19, line 9 – p. 21, line 24**, the trial judge denied counsel's motion:

> [A]t the end of the day, though, it's Mr. Samuel's case. And if he chooses not to give you the information in a format and in a way that you believe is appropriate, that is unfortunate. But your tactical decisions in representing him have to be based upon what information he's willing to share with you, and that's just where you all are.
>
> I think you can go forward and represent him. Obviously, it's very -- it's not easy, which is why I'm very grateful that he has, quite frankly, the two of you. He's got some serious lawyers on his side. And I understand your concern completely, but you will have to make your tactics based on the information that he has provided to you. And I am confident that you will.
>
> I will respectfully deny your motion.

Tr. p. 22, lines 12-25. The motion to recuse was thereafter addressed again but denied. **Tr. p. 167, line 1 – p. 169, line 5**.

B. Discussion.

While the Sixth Amendment expressly guarantees a criminal defendant only "the Assistance of Counsel for his defence," U.S. Const. amend. VI, in *Faretta v. California*, 422 U.S. 806, 819, 95 S.Ct. 2525 (1975), the United States Supreme Court held that the Sixth Amendment also protects an implied inverse right of self-representation. Generally this right must be honored even if the trial court believes that the accused would be better served by the advice of counsel. *Id.* at 834, 95 S.Ct. 2525. "The right of self-representation exists 'to affirm the dignity and autonomy of the accused and to allow the presentation of what may, at least occasionally, be the accused's best possible defense.' " *United States v. Frazier-El*, 204 F.3d 553, 558-561 (4th Cir. 2000) (quoting *McKaskle v. Wiggins*, 465 U.S. 168, 176-77, 104 S.Ct. 944 (1984). *See also State v. Barnes*, 407 S.C. 27, 35-36, 753 S.E.2d 545, 550 (2014) ("Recognizing that it may be to the defendant's detriment to be allowed to proceed *pro se*, his knowing, intelligent and voluntary decision "must be honored out of that respect for the individual which

is the lifeblood of the law") (quoting *Faretta,* 422 U.S. at 834, 95 S.Ct. 2525).[8] *Faretta* thus permits an accused to make a (1) timely waiver of his right to counsel if he is (2) advised of his right to counsel, and (3) adequately warned of the dangers of self-representation. *See State v. Winkler*, 388 S.C. 574, 586, 698 S.E.2d 596, 602 (2010); *Gardner v. State*, 351 S.C. 407, 411, 570 S.E.2d 184, 186-87 (2002); *Prince v. State*, 301 S.C. 422, 424, 392 S.E.2d 462, 463 (1990). *See also Frazier-El*, 204 F.3d at 558.

This right to self-representation, however, is not absolute. To the contrary, the Court in *Faretta* made clear that "[t]he right of self-representation is not a license to abuse the dignity of the courtroom. Neither is it a license not to comply with relevant rules of procedural and substantive law defendants may not use the courtroom to engage in "deliberate disruption ... [or] serious and obstructionist misconduct," *Faretta*, 422 U.S. at 834 n. 46, 95 S.Ct. 2525. Additionally, the Court has held that *pro se* defendants must be "able and willing abide by the rules of procedure and courtroom protocol," *Wiggins*, 465 U.S. at 173, 104 S.Ct. 944, because

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[8] As the Court explained in *United States v. Singleton*, 107 F.3d 1091, 1096 (4th Cir. 1997), the rights to counsel and to self-representation are merely two sides of the same coin:

> [N]o Supreme Court case has discussed in any detail the requirements for a waiver of the right to self-representation. This can, perhaps, be explained by recognizing that courts have assumed that the right to self-representation and the right to representation by counsel, while independent, are essentially inverse aspects of the Sixth Amendment and thus that assertion of one constitutes a *de facto* waiver of the other. *See, e.g., Faretta* , 422 U.S. at 835, 95 S.Ct. at 2541 ("When an accused manages his own defense, he relinquishes, as a purely factual matter, many of the traditional benefits associated with the right to counsel "); *Tuitt v. Fair*, 822 F.2d 166 (1st Cir.1987) (holding that the right to counsel and the right to self-representation are mutually exclusive and thus that granting the right to proceed pro se may be conditioned on unequivocal waiver of the right to counsel).
>
> * * *
>
> Of the two rights, however, the right to counsel is preeminent and hence, the default position. [*Fields v. Murray*, 49 F.3d 1024, 1028 (4th Cir.1995) (en banc)]; *United States v. Gillis*, 773 F.2d 549, 559 (4th Cir.1985); *Tuitt*, 822 F.2d at 174 ("Where the two rights are in collision, the nature of the two rights makes it reasonable to favor the right to counsel which, if denied, leaves the average defendant helpless").

"the government's interest in ensuring the integrity and efficiency of the trial at times outweighs the defendant's interest in acting as his own lawyer." *Martinez v. Court of Appeal of California, Fourth Appellate Dist.*, 528 U.S. 152, 162, 120 S.Ct. 684, 145 L.Ed.2d 597 (2000), *see also Sell v. United States*, 539 U.S. 166, 180, 123 S.Ct. 2174, 156 L.Ed.2d 197 (2003) ("the Government has a concomitant, constitutionally essential interest in assuring that the defendant's trial is a fair one").

The Fourth Circuit Court of Appeals summarized the limitations on the constitutional right to *pro se* representation in *Frazier-El* as follows:

> The right of self-representation exists "to affirm the dignity and autonomy of the accused and to allow the presentation of what may, at least occasionally, be the accused's best possible defense." *Wiggins*, 465 U.S. at 176–77, 104 S.Ct. 944; *cf. Martinez*, 120 S.Ct. at 689 (noting that with the increased availability of competent counsel, the historical reasons for recognizing the right "do not have the same force"). **The right does not exist**, however, **to be used as a tactic for delay**, *see* [*United States v. Lawrence*, 605 F.2d 1321, 1324-25 (4th Cir.1979)]; **for disruption**, *see Faretta*, 422 U.S. at 834 n. 46, 95 S.Ct. 2525; **for distortion of the system**, *see Singleton*, 107 F.3d at 1102; **or for manipulation of the trial process**, *see Lawrence*, 605 F.2d at 1325. A trial court must be permitted to distinguish between a manipulative effort to present particular arguments and a sincere desire to dispense with the benefits of counsel. The circumstances surrounding Frazier–El's purported waiver of his right to counsel and the assertion of his right to proceed without counsel in this case suggest more a manipulation of the system than an unequivocal desire to invoke his right of self-representation.

Frazier-El, 204 F.3d at 560. (Emphasis added). *See also United States v. Joos*, 638 F.3d 581, 587 (8th Cir. 2011) ("the right to self-representation 'does not exist ... to be used as a tactic for delay, for disruption, for distortion of the system, or for manipulation of the trial process' ") (internal citation omitted). Both this Court and the South Carolina Supreme Court have recognized that "whether the accused was attempting to delay or manipulate the proceedings" is one of the relevant factors to consider in determining whether the accused had a sufficient background to

understand the disadvantages of self-representation. *See Gardner*, 351 S.C. at 412-13, 570 S.E.2d at 186-87; *Cash*, 309 S.C. at 43, 419 S.E.2d at 813; *Ex parte Jackson*, 381 S.C. at 270, 672 S.E.2d at 588.

Here, Respondent submits that the trial judge did not err in denying Appellant's request for self-representation, which was based upon her finding that he was dishonest in his representing that he had obtained a book on criminal procedures that attorney Carl Grant had suggested; that Mr. Grant had been coaching him on the trial process; that his mother had paid Mr. Grant to do so; and that Mr. Grant would continue to provide this type of assistance at trial. On the one hand, Appellant claimed that Mr. Gant had provided this assistance. On the other hand, Mr. Grant's sworn testimony was that (1) he had not provided Appellant with "any kind of copy of the rules of evidence or rules of criminal procedure or offered my assistance in any way;" (2) that he would have only gotten involved in the case if Appellant had retained him; (3) that he had not been retained in this case and that he would be available to provide assistance to Appellant, as stand-by counsel, if Appellant did appear *pro se*. Obviously, Appellant's representations and Mr. Grant's sworn testimony squarely conflicted with one another and both could not be true and the trial judge was required to resolve the question of credibility.

She chose to accept the sworn testimony of Mr. Grant, an officer of the court and a member in good standing of the South Carolina Bar. In giving his testimony, Mr. Grant was subject to the prosecution for the felony of perjury under S.C. Code Ann. § 16-9-10 (2003) for testifying falsely and he was bound by Rule 3.4(c), Rule 407, SCACR, as well as the attorney's oath of office.[9] His testimony clearly supports the trial judge's credibility determination and this

[9] The attorney's oath of office provides, in pertinent part, that:

Court should defer to her credibility assessment because it did not have the opportunity to assess his credibility. *Accord State v. Edwards*, 384 S.C. 504, 509, 682 S.E.2d 820, 822–23 (2009) (in determining whether a *Batson* violation has occurred, appellate courts give the trial court's findings great deference on appeal; the trial court's determination concerning whether purposeful discrimination has occurred rests largely on the court's evaluation of demeanor and credibility; the demeanor of the challenged attorney will often be the best and only evidence of discrimination, and an evaluation of the attorney's mind lies peculiarly within a trial court's province); *State v. Miller*, 375 S.C. 370, 387-88, 652 S.E.2d 444, 453 (Ct.App. 2007) (upholding the trial court's determination of voluntariness because the trial court had the opportunity to listen to the testimony, assess the demeanor and credibility of witnesses, and weigh evidence accordingly when defendant's attorney testified defendant was coerced into making a statement by a promise of a lenient sentence but four witnesses for the State denied any promise of leniency).[10]

> I will maintain the respect and courtesy due to courts of justice, judicial officers, and those who assist them;
>
> ***
>
> I will employ for the purpose of maintaining the causes confided to me only such means as are consistent with trust and honor and the principles of professionalism, and will never seek to mislead an opposing party, the judge or jury by a false statement of fact or law;
>
> ***
>
> I will maintain the dignity of the legal system and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged.

[10] *See also S.C. Dep't of Soc. Servs. v. Forrester*, 282 S.C. 512, 516, 320 S.E.2d 39, 42 (Ct.App.1984) ("The credibility of testimony is a matter for the finder of fact to judge. Because the appellate court lacks the opportunity for direct observation of the witnesses, it should accord great deference to trial court findings where matters of credibility are involved") (citations omitted); *Jones v. Leagan*, 384 S.C. 1, 12, 681 S.E.2d 6, 12 (Ct.App. 2009) (finding the trial court, as trier of fact, "has the task of assessing the credibility, persuasiveness, and weight of the evidence presented," and that an appellate court must affirm the factual findings of the trial court "unless no evidence reasonably supports those findings"); *Gavin v. State*, 473 So.2d 952, 955 (1985) ("even if we wanted to be

In light of the finding that Appellant had been untruthful in responding to the trial judge's questioning of him, it cannot be said that the trial judge erred by denying his request to appear *pro se* because his dishonest unquestionably supports her finding that he was manipulating the proceedings for some, as of then, undisclosed purpose. Granted, his behavior was not obstreperous – he did not curse or engage in otherwise disruptive behavior, unlike the defendant in *United States v. Stewart*, 20 F.3d 911 (8th Cir. 1994) (where the court was unable to conduct a complete *Faretta* colloquy because the obstreperous defendant interrupted every such attempt). Nor did he engage in overtly dilatory conduct. *Contra Frazier-El*, 204 F.3d at 559-60; *Joos*, 638 F.3d at 587. Yet, what he did was **much worse**: **he lied to the trial judge when questioned** by her!

Despite her concerns that Appellant would not be able to defend himself well against the murder charge, the trial judge did not deny his motion because she he did not adequately understand trial court procedures, as Appellant now suggests. *Accord Faretta*, 422 U.S. at 836, 95 S.Ct. 2525 (defendant's technical legal knowledge "not relevant to an assessment of his knowing exercise of the right to defend himself"); *Barnes*, 407 S.C. at 35-36, 753 S.E.2d at 549-50 (trial court was required to apply the *Faretta* standard for waiver of the right to counsel, rather than a higher competency standard under *Indiana v. Edwards*, 554 U.S. 164, 128 S.Ct. 2379 (2008) (a state may hold a defendant who seeks to represent himself at trial to a higher competency standard than that required to stand trial)).[11] Appellant's contention that she denied

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fact finders, our capacity for such is limited in that we have only a cold, printed record to review. The trial judge who hears the witnesses live, observes their demeanor and in general smells the smoke of the battle is by his very position far better equipped to make findings of fact which will have the reliability that we need and desire") (cited with approval, *Clemmons v. Mississippi*, 494 U.S. 738, 766, 110 S.Ct. 1441 (1990) (Blackmun, J., dissenting).

[11] The record of the subsequent *Jackson v. Denno* hearing demonstrates that he was repeatedly contentious with his attorneys and both contentious and argumentative with the Assistant Solicitor. *See* **Tr. pp. 25-81**. This continued at trial and the trial judge had to admonish him several times to be either responsive to a question asked of him or not

the motion for concerns over the adequacy with which he could represent himself ignores her statement prior to Mr. Grant's testimony that her initial inclination was to grant the motion. She merely wanted to more fully understand Mr. Grant's relationship to the case and what discussions he had with Appellant about the case. **May Tr. p. 54, line 14 – p. 55, line 22.**

Nor did the trial judge apply the wrong standard in denying his motion. Rather, she denied the motion because he lied about how he had obtained whatever knowledge that he did have. His willingness to lie in response to this portion of the trial judge's inquiry demonstrated an inability or unwillingness on his part to comply with an indispensable requirement for our judicial system to function.

An attorney appearing at trial is subject to the ethical requirements of Rule 3.3, Rule 407, SCACR.[12] Further, the duty of an attorney to be honest and candid with the court transcends this ethical requirement and is an indispensable requirement in a judicial system, where the ultimate

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to be argumentative. *See* **Tr. pp. 670-756**. However, concerns of this type of behavior were not the basis for the trial judge's ruling.

[12] Rule 3.3 (a)(1) provides that "[a] lawyer shall not knowingly ... make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer." The Comments 1 and 2 to Rule 3.3 provide that:

> [1] This Rule governs the conduct of a lawyer who is representing a client in the proceedings of a tribunal. See Rule 1.0(n) for the definition of "tribunal." It also applies when the lawyer is representing a client in an ancillary proceeding conducted pursuant to the tribunal's adjudicative authority, such as a deposition. Thus, for example, paragraph (a)(3) requires a lawyer to take reasonable remedial measures if the lawyer comes to know that a client who is testifying in a deposition has offered evidence that is false.
>
> [2] This Rule sets forth the special duties of lawyers as officers of the court to avoid conduct that undermines the integrity of the adjudicative process A lawyer acting as an advocate in an adjudicative proceeding has an obligation to present the client's case with persuasive force. Performance of that duty while maintaining confidences of the client, however, is qualified by the advocate's duty of candor to the tribunal. Consequently, although a lawyer in an adversary proceeding is not required to present an impartial exposition of the law or to vouch for the evidence submitted in a cause, the lawyer must not allow the tribunal to be misled by false statements of law or fact or evidence that the lawyer knows to be false.

goal is to see that justice is done. In *United States v. Shaffer Equipment Co.*, 11 F.3d 450, 457-58 (4th Cir. 1993), the Fourth Circuit Court of Appeals stated that:

> It appears that the district court, in finding that the government's attorneys violated a duty of candor to the court, applied the general duty of candor imposed on all attorneys as officers of the court, as well as the duty of candor defined by Rule 3.3. Although the court referred to Rule 3.3, it also described the duty of candor more broadly as that duty attendant to the attorney's role as an officer of the court with a "continuing duty to inform the Court of any development which may conceivably affect the outcome of litigation." [*United States v. Shaffer Equipment Co.*, 796 F.Supp. 938, 950 (S.D.W.Va. 1992), *aff'd in part and rev'd in part*, 11 F.3d 450 (4th Cir. 1993)]. It concluded, "Thus, attorneys are expected to bring directly before the Court all those conditions and circumstances which are relevant in a given case." *Id.* In its brief, the government did not address the existence, nature, and scope of any general duty of candor and whether its attorneys violated that duty. Nevertheless, we are confident that a general duty of candor to the court exists in connection with an attorney's role as an officer of the court.
>
> **Our adversary system for the resolution of disputes rests on the unshakable foundation that truth is the object of the system's process which is designed for the purpose of dispensing justice. However, because no one has an exclusive insight into truth, the process depends on the adversarial presentation of evidence, precedent and custom, and argument to reasoned conclusions—all directed with unwavering effort to what, in good faith, is believed to be true on matters material to the disposition. Even the slightest accommodation of deceit or a lack of candor in any material respect quickly erodes the validity of the process**. As soon as the process falters in that respect, the people are then justified in abandoning support for the system in favor of one where honesty is preeminent.
>
> While no one would want to disagree with these generalities about the obvious, it is important to reaffirm, on a general basis, the principle that **lawyers, who serve as officers of the court, have the first line task of assuring the integrity of the process**. Each lawyer undoubtedly has an important duty of confidentiality to his client and must surely advocate his client's position vigorously, but only if it is truth which the client seeks to advance. **The system can provide no harbor for clever devices to divert the search, mislead opposing counsel or the court, or cover up that which is necessary for justice in the end. It is without note, therefore, that we recognize that the lawyer's duties to maintain the confidences of a client and advocate vigorously are trumped ultimately by a duty to guard against the corruption that justice will be dispensed on an act of deceit**. *See* 1 Geoffrey C. Hazard, Jr. and W. William Hodes, *The Law of Lawyering* 575–76 (1990) ("[W]here there is danger that the tribunal will be

misled, a litigating lawyer must forsake his client's immediate and narrow interests in favor of the interests of the administration of justice itself.").

While Rule 3.3 articulates the duty of candor to the tribunal as a necessary protection of the decision-making process, *see Hazard* at 575, and Rule 3.4 articulates an analogous duty to opposing lawyers, neither of these rules nor the entire Code of Professional Responsibility displaces the broader general duty of candor and good faith required to protect the integrity of the entire judicial process. The Supreme Court addressed this issue most recently in *Chambers v. NASCO, Inc.*, 501 U.S. 32, 111 S.Ct. 2123, 115 L.Ed.2d 27 (1991). There, an attorney had taken steps to place certain property at issue beyond the jurisdiction of the district court and had filed numerous motions in bad faith, simply to delay the judicial process. The district court, the court of appeals, and the Supreme Court all agreed that neither Federal Rule of Civil Procedure 11 (subjecting to sanction anyone who signs a pleading in violation of the standards imposed by the rule) nor 28 U.S.C. § 1927 (subjecting to sanction anyone who "multiplies the proceedings ... unreasonably and vexatiously") could reach the conduct. However, the Supreme Court accepted the district court's reliance on the inherent power to impose sanctions, rejecting arguments that Rule 11 and § 1927 reflect a legislative intent to displace a court's power to vacate a judgment upon proof that a fraud has been perpetrated upon the court:

We discern no basis for holding that the sanctioning scheme of the statute [28 U.S.C. § 1927] and the rules displaces the inherent power to impose sanctions for the bad faith conduct described above. These other mechanisms, taken alone or together, are not substitutes for the inherent power, for that power is both broader and narrower than other means of imposing sanctions. First, whereas each of the other mechanisms reaches only certain individuals or conduct, the inherent power extends *to a full range of litigation abuses.* At the very least, the inherent power must continue to exist to fill in the interstices.

501 U.S. at ——, 111 S.Ct. at 2134 (emphasis added).

The general duty of candor and truth thus takes its shape from the larger object of preserving the integrity of the judicial system. For example, in *Tiverton Board of License Commissioners v. Pastore,* 469 U.S. 238, 105 S.Ct. 685, 83 L.Ed.2d 618 (1985), counsel failed to apprise the Supreme Court that during the appeal process, one of the respondents, a liquor store challenging the admission of evidence at a Rhode Island liquor license revocation proceeding, had gone out of business, rendering the case moot. Rebuking counsel for failing to comply with a duty of candor broader than Rule 3.3, the Supreme Court stated, "It is appropriate to remind counsel that they have a ' *continuing duty to inform the Court* of any development *which may conceivably affect the outcome* ' of the litigation." *Id.* at 240, 105 S.Ct. at 686 (quoting *Fusari v. Steinberg,* 419 U.S. 379, 391, 95 S.Ct. 533, 540, 42 L.Ed.2d 521 (1975) (Burger, C.J. concurring)) (emphasis added).

(Emphasis added). *See also Brode v. Brode*, 278 S.C. 457, 460, 298 S.E.2d 443, 445 (1982) (Failure of attorney, who represented guardian *ad litem* of child, to inform court, when seeking supersedeas and stay of family court judgment, that the guardian *ad litem* had joined the position of the parents in opposition to the position being taken by the appeal, was a lack of candor not to be condoned); CJS *Attncli* § 53 ("Lawyers have an obligation of candor to each other and to the judicial system. The requirement of attorney candor towards the tribunal goes beyond simply telling a portion of the truth; it requires every attorney to be fully honest and forthright").

Appellant was bound to comply with the requirement of being honest and candid with the trial judge, in order to appear *pro se*. *See Faretta*, 422 U.S. at 834 n. 46, 95 S.Ct. 2525. *Cf. United States v. West, et al.*, 877 F.2d 281, 287 (4th Cir. 1989) ("By asserting his right of self-representation, Mills assumed the responsibility of acting in a manner befitting an officer of the court. By flouting the responsibility, he forfeited the right. The district court thus acted properly in protecting both the right of Mills' co-defendants to a fair trial and its own authority by removing Mills as *pro se* counsel"). However, he transgressed this requirement during the colloquy held to determine whether he should be allowed to represent himself. An attorney who is dishonest is not only subject to discipline for violating the ethical requirement of being honest to the court and opposing counsel, he or she may also be removed from the case.[13] However, there is no similar sanction for a *pro se* defendant, such as Appellant, who is dishonest in the colloquy to determine whether he should be permitted to represent himself. The proper and only available course of action was to deny his motion.

[13] The trial judge also could take appropriate measures to sanction Appellant for lying before the jury. For instance, the Court found that respect for the integrity of the judicial process justified the admission of unwarned statements as impeachment evidence in *Harris v. New York*, 401 U.S. 222, 91 S.Ct. 643 (1971).

Moreover, Appellant's willingness to lie about the manner by which he familiarized himself with legal procedures undermined confidence in the credibility of the answers that he gave to the other questions asked of him. It also indicated that, for undisclosed reasons, he wished to manipulate and improperly wrest control of the conduct of his trial from the trial judge. Based upon the foregoing authorities and the record of the proceedings below, Respondent submits that the trial judge's ruling must be affirmed. *See also Vanisi v. State*, 117 Nev. 330, 337-41, 22 P.3d 1164, 1169-71 (2001); *United States v. Bush*, 404 F.3d 263, 271-72 (4th Cir. 2005) (holding that district court did not err in denying appellant's motion to represent himself where the district court's finding that he was manipulative was not clearly erroneous); *United States v. Tucker*, 537 Fed.Appx. 257, 264 (4th Cir. 2013) (upholding district court's refusal to allow *pro se* representation because court's finding that appellant's "true motivation for proceeding *pro se* was to manipulate the system and drag out an already long trial process while he remained free on bond" was not clearly erroneous); *Zamora v. Virga*, 2013 WL 3788423, 10 (E.D.Cal. 2013) ("when pretrial behavior strongly indicates that a defendant will be disruptive at trial, a trial court is justified in refusing to allow the defendant to act as his own attorney").

Therefore, Appellant's argument lacks merit.

CONCLUSION

For all of the foregoing reasons, Respondent respectfully submits that and the trial judge's ruling, the judgment of conviction and Appellant's sentence must be affirmed.

Respectfully submitted,

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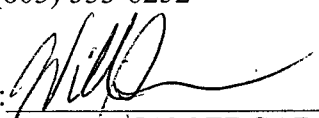
By: 
WILLIAM EDGAR SALTER, III
ATTORNEYS FOR RESPONDENT

September 2, 2014.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Orangeburg County
Diane Schafer Goodstein., Circuit Court Judge
Appellate Case No. 2013-001342

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

V.

LAMONT ANTONIO SAMUEL,

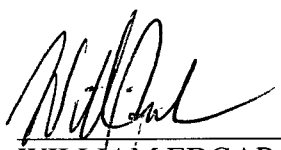
APPELLANT.

PROOF OF SERVICE

I, William Edgar Salter, III, counsel for Respondent, certify that I have served two (2) copies of the within Initial Brief of Respondent on counsel for the Appellant by depositing same in the United States mail, first class, postage prepaid, and addressed as follows:

Robert M. Pachak, Esq.
SCCID - Division of Appellate Defense
1330 Lady St., Ste #401
Columbia, SC 29201

This 2nd day of September, 2014.



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September 2, 2014

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: *The State vs. Lamont Antonio Samuel*
Appeal from Orangeburg County
Appellate Case No. 2013-001342

Dear Ms. Kitchings:

Enclosed for filing in your office is the original Initial Brief of Respondent, Designation of Matter and Certificate of Service in the above-captioned matter.

Thank you for your assistance in this matter.

Sincerely,

William E. Salter, III
Senior Assistant Attorney General

WES/dmd
Enclosures
cc: Robert M. Pachak, Esq. (w/two copies of encls.)