

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

Appeal from Pickens County

JUL 06 2016

Honorable James R. Barber, Circuit Court Judge

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

VINCENT MISSOURI,

APPELLANT

APPELLATE CASE NO. 2014-001176

BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Was Appellant denied his Sixth Amendment right to proceed *pro se*?

STATEMENT OF THE CASE

On November 12, 2013, a Pickens County Grand Jury indicted Appellant for entering a bank with intent to steal, armed robbery, and failure to stop for a blue light. R. 237 – 245. On May 19, 2014, Appellant's case proceeded to a jury trial before the Honorable James R. Barber, III. and a jury. R. 14. Aaron Angell represented Appellant. Doug Richardson represented the State. R. 14.

After a two-day trial, Appellant was found guilty of all charges. R. 224. Judge Barber sentenced Appellant to a concurrent twenty-year sentence. R. 234.

Appellant appealed his conviction and sentence. This appeal follows.

STATEMENT OF FACTS

Appellant's Motion to Relieve Counsel

On December 19, 2013, Appellant, defense counsel, and the solicitor appeared before the Honorable Letitia H. Verdin to argue a motion to relieve counsel. Appellant explained to the court:

“Just based on the time and the amount of cases Mr. Aaron has and the complexity of my defenses, I feel it'd be better that I have either someone who doesn't have as much of a case load as he has or either I be prepared to represent myself.”

R. 5, ll. 12 – 17.

Judge Verdin stated that having “lots of clients” should let Appellant know that counsel is a good attorney who knows what he's doing. R. 6, ll. 3 – 5. However, Appellant asserted that his decision was based on the “attorney/client relationship” and that Appellant was still lacking things that he required as part of his defense. R. 6, ll. 6 – 14.

The solicitor opposed Appellant's motion to relieve defense counsel. R. 6, ll. 17 – 23. The solicitor explained that Appellant already had one attorney who was relieved in June of the prior year. R. 6, ll. 17 – 23. He also stated that he planned to try Appellant's case in the spring and that he had already been communicating with counsel. R. 7, ll. 2 – 5.

Defense counsel acknowledged that Appellant was unhappy with him. R. 7, ll. 8 – 9. Counsel informed the judge that he had been successful in getting Appellant a bond reduction in which Appellant was able to be released from jail and wear an ankle monitor. R. 8, ll. 2 – 6.

Appellant concluded that he had “requested and requested” a copy of the indictments from defense counsel. R. 8, l. 23 – R. 9, l. 7. But he had not received copies of the “true billed” indictments which were presented to the Pickens County Grand Jury. R. 8, l. 23 – R. 9, l. 7.

Judge Verdin refused to relieve defense counsel from Appellant's case. The judge told Appellant that the solicitor would be more than willing to provide Appellant with a copy of the indictments that he requested. The judge explained:

"I can't relieve this second attorney but he's an outstanding attorney. If you have any hope of doing well in the spring at trial, we don't need to change horses in midstream."

R. 10, ll. 1 – 7.

The judge concluded:

"We don't need to change horses in midstream. We need to – you need to – from this point forward, you need to do everything you can to work with Mr. Angell and y'all get along. I have no doubt that you will do so. I wish you the best of luck with it."

R. 10, ll. 10 – 15.

The State's Evidence

Appellant's trial began on May 19, 2014. The State's case consisted of testimony from bank employees and several police officers involved in the case.

On June 18, 2012, Rachel White, was working at the Bank of America in Pickens County, South Carolina, as the head bank teller. R. 79 – 80. At about "fifteen till five" White was getting ready for the bank to close when one last customer walked in. R. 81, lines 2 – 9. According to White, the man walked up to White's teller station, handed her a note telling her to

"Place all the money in the bag. Keep left hand on top of camera. Empty drawer with right hand. No die pack. I know who you are."

R. 84, lines 12 – 14.

White stated the customer gave her a grocery bag to put the money in and she managed to push alarm to alert police. R. 83, lines 8 – 11. The customer grabbed the bag from her and ran out the bank. R. 83, lines 12 – 13.

White stated that she was the only the teller at the front of the bank. R. 86, lines 21 – 22. She described the man as wearing “real dark sunglasses and a black shirt with white on it . . . [a]nd he was baldheaded.” R. 85, lines 5 – 6. White admitted that the man was not armed with a weapon nor did he indicate that he was armed. R. 96, lines 15 – 18. White also conceded that the man did not threaten her when he approached her teller station and gave her the note. R. 95, lines 3 – 5.

Officers from the Pickens County Sheriff’s Office responded to the Bank of America. After speaking with a witness who saw a black male running down the sidewalk near the bank and getting into a red truck, Officer Tim Morgan dispatched to other officers in the area that the suspect was in a red Ford pickup truck. R. 130 – 131. Pickens County, Pickens City, and Easley City officers located a truck matching the description with two black males inside. R. 135, lines 6 – 16. The truck was headed towards Greenville, South Carolina. R. 135, lines 6 – 16.

After a “two to three” minute pursuit by officers, the driver of the red truck stopped in a nearby front yard, got out of the truck, and ran into the woods. R. 140, lines 1 – 11; R. 143, lines 16 – 19. Officers arrested the passenger in the truck and tackled and arrested the driver in the woods. Appellant, the driver, was arrested and transported to the detention center. R. 148, lines 10 – 18. Money was recovered in the truck and in a plastic bag in the woods where Appellant was arrested which totaled \$1,750.00. R. 158 – 159.

At the jail, Appellant gave a written statement to Detective Samuel Byers of the Pickens City Police Department admitting to going in the bank. R. 172, line 5 – 175, line 1. No weapons

were recovered during the search of the truck and Appellant's person. R. 158, l. 3 – R. 161, l. 19.

At trial, Appellant admitted to going into the bank, but explained that he was high on crack cocaine and had been addicted to drugs for several years. R. 190, lines 1 – 19. Appellant also denied having a weapon and threatening White. R. 193, ll. 5 – 9.

ARGUMENT

Appellant was denied his Sixth Amendment right to proceed *pro se*.

Appellant was denied his Sixth Amendment right to proceed *pro se*. Appellant requested that he represent himself **five months prior** to trial. Appellant explained to the court his dissatisfaction with defense counsel's performance. However, the court made no inquiry into whether Appellant was aware of his right to counsel and whether Appellant knew of the dangers and disadvantages of self-representation, as required by Faretta v. California, 422 U.S. 806. Because the court failed to comply with Faretta, Appellant was denied his Sixth Amendment right to proceed *pro se* and is entitled to a new trial.

It "is well-established that an accused may waive the right to counsel and proceed *pro se*:" State v. Brewer, 328 S.C. 117, 492 S.E.2d 97 (1997); see State v. Barnes, 407 S.C. 27, 35, 753 S.E.2d 545, 550 (2014) ("A South Carolina criminal defendant has the constitutional right to represent himself under both the federal and state constitutions."). State v. Starnes, 388 S.C. 590, 698 S.E.2d 604 (2010)); S.C. Const. Art. I, § 14.

The Sixth Amendment, which guarantees every criminal defendant the right to a complete defense with the assistance of counsel, also grants "to the accused personally the right to make his defense." Faretta v. California, 422 U.S. 806, 819 (1975).

In Faretta, the United States Supreme Court explained:

"It is the accused, not counsel, who must be 'informed of the nature and cause of the accusation,' who must be 'confronted with the witnesses against him,' and who must be accorded 'compulsory process for obtaining witnesses in his favor.' Although not stated in the Amendment in so many words, the right to self-representation—to make one's own defense personally—is thus necessarily implied by the structure of the Amendment. The right to defend is given directly

to the accused; for it is he who suffers the consequences if the defense fails.”

Id.

The Court continued:

“The counsel provision supplements this design. It speaks of the ‘assistance’ of counsel, and an assistant, however expert, is still an assistant. The language and spirit of the Sixth Amendment contemplate that counsel, like the other defense tools guaranteed by the Amendment, shall be an aid to a willing defendant—not an organ of the State interposed between an unwilling defendant and his right to defend himself personally. To thrust counsel upon the accused, against his considered wish, thus violates the logic of the Amendment.”

Id.

The South Carolina Constitution also affords a criminal defendant the right to represent himself. Article I, § 14 of the South Carolina Constitution provides:

“The right of trial by jury shall be preserved inviolate. Any person charged with an offense shall enjoy the right to a speedy and public trial by an impartial jury; to be fully informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and **to be fully heard in his defense by himself or by his counsel or by both.**” (emphasis added)

See State v. Starnes, 388 S.C. 590, 600, 698 S.E.2d 604, 610 (2010) (“The South Carolina Constitution provides that every criminal defendant has the right to represent himself and makes no distinction between capital and non-capital defendants.”).

However, the right to proceed without counsel “must be clearly asserted by the defendant prior to trial.” Brewer, 328 S.C. at 119, 492 S.E.2d at 98 (citing State v. Sims, 304 S.C. 409, 405 S.E.2d 377 (1991)); see State v. Winkler, 388 S.C. 574, 698 S.E.2d 596 (2010) (holding that

capital defendant's right to represent himself was "sharply curtailed by his failure to exercise this right prior to trial" where defendant did not make his request to proceed *pro se* at the beginning of trial but at the beginning of the sentencing phase, which is not a separate trial); State v. Fuller, 337 S.C. 236, 523 S.E.2d 168 (1999) (finding defendant's request to proceed *pro se* was valid where defendant made the request on the morning of trial and the request was made due to defendant's growing dissatisfaction with his attorney, not to further delay or stall trial); State v. Reed, 332 S.C. 35, 503 S.E.2d 747 (1998) (finding the trial judge did not err in accepting capital defendant's waiver of the right to counsel where the defendant made the request prior to the guilt phase of trial, the judge held several hearings to determine whether defendant understood his right to have counsel appointed and the dangers and disadvantages of self-representation, and defendant asserted that he understood what he was waiving and that he was making a knowing, intelligent, and voluntary decision to represent himself).

Once the defendant makes the request to proceed *pro se*, thereby waiving his right to counsel, the trial judge must determine whether the waiver is made knowingly and intelligently. State v. Thompson, 355 S.C. 255, 262, 584 S.E.2d 131, 135 (2003). The judge "has the responsibility to ensure that the accused is informed of the dangers and disadvantages of self-representation, and makes a knowing and intelligent waiver of the right to counsel." Brewer, 328 S.C. at 119, 492 S.E.2d at 98. "To effectuate a valid waiver of the right to counsel, the two-pronged Faretta test much be met." Thompson, 355 S.C. at 262, 584 S.E.2d at 134 – 35 (citing Prince v. State, 301 S.C. 422, 392 S.E.2d 462 (1990)).

Faretta requires that a defendant be (1) advised of his right to counsel and (2) warned of the dangers and disadvantages of self-representation. Faretta, 422 U.S. at 834 – 35. A determination by the trial judge that a defendant lacks the "technical legal knowledge to proceed

pro se does not justify a denial of the right to self-representation.” Brewer, 328 S.C. at 119, 492 S.E.2d at 98 (citing Faretta). Such a determination is “not relevant to an assessment of his knowing exercise of the right to defend himself.” Faretta, 422 U.S. at 836.

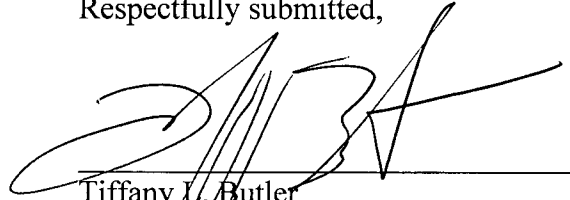
Here, the court denied Appellant his Sixth Amendment right to represent himself at trial. Appellant moved the court to relieve defense counsel and proceed *pro se* on December 19, 2013 – five months before his trial date of May 19, 2014. Appellant explained to the court that he wanted to represent himself because he was not satisfied with defense counsel’s performance. However, the judge did not advise Appellant of his right to have counsel or warn Appellant of the dangers of self-representation, as required by Faretta v California.

Instead, the judge told Appellant that he had “an outstanding attorney.” The judge also told Appellant that they “don’t need to change horses midstream.” See R. 10, ll. 1 – 15. Although Appellant requested to proceed *pro se* months before his trial was scheduled, the judge made no inquiry into Appellant’s understanding of his Sixth Amendment right counsel or the disadvantages of proceeding without counsel. The judge failed to comply with the requirements of Faretta. Thus, Appellant was denied of his Sixth Amendment right to proceed *pro se* and is entitled to a new trial.

CONCLUSION

For the reasons argued above, Appellant Vincent Missouri respectfully requests this Court to reverse his conviction and sentence and remand to the lower court for a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'TBA', written over a horizontal line.

Tiffany L. Butler
Appellate Defender

ATTORNEY FOR APPELLANT

This 6th day of July, 2016.

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Appeal from Pickens County
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THE STATE,

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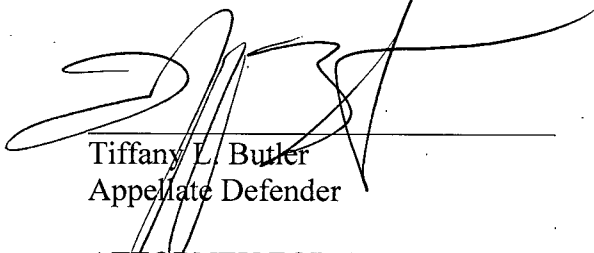
V.

VINCENT MISSOURI,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the Brief of Appellant and Designation of Matter in the above referenced case has been served upon Benjamin Aplin, Esquire, and Vincent Missouri #197996, at Broad River Correctional Institution, this 6th day of July, 2016.


Tiffany L. Butler
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 6th day of July, 2016.

Christian Ford (L.S.)
Notary Public for South Carolina
My Commission Expires: March 1, 2026.