ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County
Honorable John C. Hayes, III, Circuit Court Judge
Appellate Case No. 2016-000307

THE STATE, Respondent,

vs.

MARQUIS DELLAN EVANS, Appellant.

FINAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUES ON APPEAL 1

STATEMENT OF THE CASE 2

STATEMENT OF FACTS 3

ARGUMENT 8

The circuit court gathered sufficient information and provided ample warnings about the dangers of proceeding *pro se* before granting Appellant's motion to relieve his court appointed counsel and proceed *pro se*. 8

CONCLUSION 11

TABLE OF AUTHORITIES

Cases:

Faretta v. California, 422 U.S. 806 (1975) 8

State v. Barnes, 407 S.C. 27, 753 S.E.2d 545 (2014) 8

State v. Mazique, No. 2012-213631, 2016 WL 6092072 (S.C. Ct. App. Oct. 19, 2016) 9

State v. Starnes, 388 S.C. 590, 698 S.E.2d 604 (2010) 8

STATEMENT OF ISSUE ON APPEAL

The circuit court gathered sufficient information and provided ample warnings about the dangers of proceeding *pro se* before granting Appellant's motion to relieve his court appointed counsel and proceed *pro se*.

STATEMENT OF THE CASE

The State concurs with Appellant's procedural Statement of the Case.

STATEMENT OF FACTS

On January 21, 2016, the York County Grand Jury indicted Appellant Marquis Dellan Evans on one count of failure to stop for a blue light and one count of resisting arrest arising from an incident on June 21, 2015. The case was called for a jury trial on February 8, 2016, before the Honorable John C. Hayes, Circuit Court Judge

Pre-trial, Appellant's counsel advised the court Appellant was unhappy with her representation. The court inquired and learned Appellant was thirty-eight years old and had obtained his GED. When the court inquired about Appellant's employment status, Appellant said "I work at - -," but did not finish the answer. (Trial Transcript [TT], p. 4; Record on Appeal [R.], p. 4).

Appellant's counsel stated she took the case over at the beginning of the year, and the solicitor informed her the case would be put on the trial docket. Counsel immediately tried to locate Appellant, even going out to his residence in Lancaster County, but was unable to make contact with him. (TT, p. 5; R., pp. 5).

Based on information she received in Lancaster County, counsel and her investigator went to a location in Rock Hill, and finally located Appellant. He met with counsel in her office, and she relayed a plea proposal from the solicitor, but he was not happy with the offer, which counsel stated "kind of set us on a bad course." (TT, p. 5; R., p. 5).

Counsel further stated her office provided Appellant copies of the discovery several months prior to trial and she talked to him on the phone several times. She described the conversations as "terse," and indicated Appellant hung up on her a couple of times the week before trial. He requested another copy of discovery the Friday before trial, and even though her office had previously provided the discovery to him, she personally drove another copy of the discovery to his home that day. She informed the court Appellant wanted to make "a number of

informed the court Appellant wanted to make "a number of motions that [she didn't] believe have as much legal merit as he does." (TT, pp. 5-7; R., pp. 5-7).

The court then addressed Appellant, inquiring whether he wanted to relieve his counsel, and Appellant stated he did. The court asked Appellant if he understood relieving his counsel meant he would not have an attorney and he would be going to trial on his own without an attorney. Appellant responded "yes, sir." (TT, p. 8, R., p. 8).

The court further asked Appellant "you're telling me now that even though you ask for an attorney and you got a competent attorney appointed that you choose to represent yourself as opposed to be represented by the attorney the State's paying," and Appellant again indicated he wanted to represent himself. The court then advised Appellant "it's dangerous for you to represent yourself and there is a benefit in having an attorney because an attorney knows the things to bring to the Court's attention and knows the motions and how to try a case." Appellant indicated he understood, and still wanted counsel relieved from representing him. (TT, p. 8; R., p. 8).

The court granted the motion to relieve counsel, but ordered the appointed counsel to remain as standby counsel to assist Appellant with any questions regarding procedure. The court also advised Appellant the trial would start the next day, and if he did not appear, the trial would proceed without him. (TT, pp. 9-10; R., pp. 9-10).

Appellant asked about getting his witnesses to testify on his behalf, and the court ordered standby counsel to assist Appellant in getting his witnesses subpoenaed. Appellant then indicated he just got the discovery the Friday before trial so he had not had time to go over what he wanted to say at trial. Counsel informed the court her office gave Appellant a copy of the document discovery several months before the case was called for trial, and she gave him a copy of the

video approximately two weeks before trial. When he asked for an additional copy the Friday before trial, she personally delivered it to his house. The court found Appellant had sufficient time for discovery. (TT, pp. 10-12; R., pp. 10-12).

When the trial commenced the next day, the court reminded Appellant he had exercised his right to proceed without counsel even though he was advised it was dangerous, and inquired whether Appellant still wanted to proceed without counsel. Appellant stated he would like to have a different attorney because he did not know what he was doing. The court stated:

> Well, I know you don't. That's why I told you yesterday it was dangerous for you to fire your attorney, but you insisted on doing it. I didn't think it was very wise, but whether I think it was wise or not in my eyes now it's up to you to determine whether you're doing something wise. Ms. Lipinski's here. I'll allow her to continue to represent you if she doesn't have any objection to that as she was prepared yesterday. But you've indicated you do not want her to represent you so we're sort of in the land of – Well, we're sort of in a situation where you put yourself in a situation that's going to require you to either us Ms. Lipinski but you don't want to do, or represent yourself, which I told you doesn't really make sense to me, but that's your choice.

(TT, pp. 14-15; R., pp. 14-15). Appellant indicated he wanted to proceed with standby counsel. (TT, p. 15; R., p. 15).

After some discussion regarding mental health professionals Appellant wanted to call as witnesses, Appellant requested a continuance so he "could get prepared." The court responded: "[t]hat's why you need a lawyer cause you don't know how to prepare. The state hired one for you that didn't satisfy you, so." (TT, pp. 15-18; R., pp. 15-18). The court then explained the jury selection and trial process to Appellant. (TT, pp. 18-23; R., pp. 18-23). Appellant participated in jury selection, exercising all his preemptory strikes. (TT, pp. 24-38; R., pp. 24-38).

During his opening statement, Appellant claimed he was "profiled" and started to talk about "what's going on like in the cities or anything like that, but you know, we died about the

weeks (sic) almost like at an alarming rate." The solicitor objected, and the court sustained the objection. Appellant then stated:

> Well it basically this is what I felt. This is why I'm taking a jury trial. This is my life and I know I'm facing fifteen years for this. But as you can see in this video that I was complying with the law. I was driving – you can see I'm driving with blinkers on and everything. And basically y'all (sic) have to say and you will see that basically its profiling. It's a profile thing.

(TT, pp. 45-46; R., pp. 45-46).

Investigator Robert Smith of the Rock Hill Police Department testified he observed Appellant driving on the evening of June 21, 2015, and had reason to believe Appellant was impaired. Appellant did not stop when Smith turned on the blue lights of his patrol vehicle, but ultimately stopped when he got hemmed in by parked cars. Appellant resisted when he got out of the car, and another officer had to use the tazer on Appellant in order to get him under control. (TT, pp. 47-61; R., pp. 47-61).

Appellant cross-examined Smith extensively, questioning him about the basis for the traffic stop, when the blue lights were activated, why Smith approached the vehicle with his gun drawn, and various aspects of the video from Smith's patrol car camera. He also attempted to question Smith about high profile cases involving white officers shooting black suspects, but the court sustained the State's objection. (TT, pp. 62-82; R., pp. 62-82).

The other officer at the scene testified about the circumstances of Smith's traffic stop of Appellant's vehicle, and the subsequent struggle. Appellant also cross-examined him extensively, and attempted to ask him about white police officers killing unarmed black people, but the court again sustained the State's objection. (TT, pp. 83-97; R., pp. 83-97).

After the State rested its case, Appellant's standby counsel raised the issue of a juror appearing to sleep during the testimony. After a discussion regarding the juror, Appellant moved for a mistrial, which the court denied, finding the juror had only closed her eyes because they were irritated by fumes from construction in the courthouse, and there was no manifest necessity for a mistrial. (TT, pp. 100-115; R., pp. 100-115).

Prior to closing statements, Appellant "renewed" his pre-trial motion for more time to prepare, claiming he only had from Friday to Monday to prepare for trial. The court found Appellant had ample time to prepare, and he had an obligation to give his court appointed counsel all the information she needed to get ready for trial. The court also reminded Appellant he had been advised it was dangerous to proceed to trial without counsel, but Appellant chose to go forward *pro se*. (TT, pp. 125-128; R., pp. 125-128). The court also denied Appellant's motion for a directed verdict. (TT, pp. 132-133; R., pp.132-133).

During his closing argument, Appellant went over the testimony of the officers, pointing out what he believed were inconsistencies. He also talked about the video of the traffic stop, and his belief the traffic stop was illegal. (TT, pp. 139-142; R., pp. 139-142).

The jury convicted Appellant of both charges. (TT, pp. 155-157; R., pp. 155-157). While imposing sentence, the circuit court noted Appellant was "a pretty bright man," and sentenced him to concurrent sentences of three years on the failure to stop conviction, and eight years on the resisting arrest charge. (TT, pp. 163-164; R., pp. 163-164). This appeal followed.

ARGUMENT

The circuit court gathered sufficient information and provided ample warnings to Appellant about the dangers of proceeding *pro se* before granting Appellant's motion to relieve his court appointed counsel and proceed *pro se.*

Appellant contends the circuit court erred in allowing him to proceed *pro se* without engaging in a prophylactic inquiry under Faretta v. California, 422 U.S. 806 (1975). When the record is viewed as a whole, however, it is clear Appellant understood the risk of proceeding *pro se*, and ultimately tried to use the relief of his counsel as a basis to delay the trial.

"A South Carolina criminal defendant has the constitutional right to represent himself under both the federal and state constitutions." State v. Barnes, 407 S.C. 27, 753 S.E.2d 545, 550 (2014). The trial judge must ensure the defendant is informed of the dangers and disadvantages of self-representation, and makes a knowing and intelligent waiver of the right to counsel. *Id.*

Citing Barnes and State v. Starnes, 388 S.C. 590, 698 S.E.2d 604 (2010), Appellant contends the circuit court's inquiry in this case was constitutionally deficient. He cites no authority indicating the waiver of counsel dialog must follow any particular script, or contain particular phrases. While the court's inquires in this case may not have been as detailed as the inquiries in Barnes and Starnes, which were capital murder cases, the inquiries were sufficient. In addition to determining Appellant's age and education level, the court was aware of the issues with the appointed counsel, and was able to observe Appellant's demeanor and ability to present his case coherently.[1]

---

[1]The court did inquire about Appellant's employment status, and Appellant stated "I work at . . ." (TT, p. 4; R., p. 4). While the record does not reflect he completed the statement, his limited response does indicate he was employed as of the date of trial.

The court also advised Appellant that proceeding without counsel was "dangerous," and there were benefits to having counsel. In the face of that warning, Appellant expressly stated he wanted the court to relieve counsel. The court then ordered appointed counsel to remain as standby counsel, and explained to Appellant counsel would be seated behind him during the trial and available to assist him with any procedural issues. (TT, pp. 8-9; R., pp. 8-9).

After an overnight recess, the court again inquired whether Appellant wanted to proceed *pro se*. Appellant stated he wanted a different attorney, but indicated he would proceed with counsel serving as standby counsel.[2] (TT, pp. 14-15; R., pp. 14-15).

Ultimately, Appellant asked for a continuance so he could "get prepared," even though the record indicates he had copies of all the discovery materials at least two weeks before the case was called for trial. Further, his appointed counsel reported the difficulty getting in touch with Appellant, and he even hung up on her several times during the week before trial. (TT, pp. 5-7, 18-19; R., pp. 5-7, 18-19).

Thus, to the extent Appellant was unprepared, it was the result of his own conduct, and he was not entitled to delay the trial due to his self-representation. *See* State v. Mazique, Appellant Case No. 2012-213631, 2016 WL 6092072, at *3 (S.C. Ct. App. Oct. 19, 2016) (right of self-representation does not exist to be used as a tactic to delay, disrupt, distort or manipulate the trial process, and the 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 record indicates delay was Appellant's motive for relieving his court appointed counsel, and the circuit court recognized it as such.

[2]Counsel had already done considerable work for Appellant by getting certain witnesses subpoenaed during the overnight recess.

Finally, Appellant's performance during the trial, particularly his statement regarding the sentence he was facing and his cross-examination of the two officers, showed Appellant was intelligent and he understood the judicial system well enough to make a knowing and intelligent waiver of his right to counsel. He also was able to get his "profiling" theory before the jury even though the court had ruled it was inadmissible.

The record amply supports the circuit court's decision to grant Appellant's motion to relieve his court-appointed counsel and proceed *pro se*. Appellant was advised such a decision was dangerous and he would be better served by allowing counsel to represent him, but he chose to stick with his decision, even after having an opportunity to reconsider during the overnight recess. Accordingly, Appellant's convictions should be affirmed.

CONCLUSION

Based on the foregoing reasons, Respondent respectfully submits the circuit court's ruling and Appellant's convictions should be affirmed.

Respectfully submitted,

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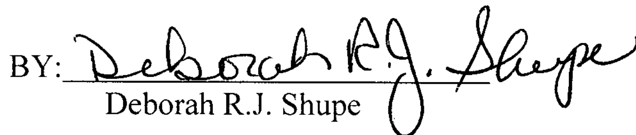
BY: 
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February 3, 2017

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CERTIFICATE OF COUNSEL

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

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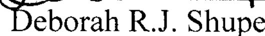
BY: 
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