STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Orangeburg County
Diane Schafer Goodstein, Circuit Court Judge
Appellate Case No. 2015-002401

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

V.

LAMONT ANTONIO SAMUEL,

PETITIONER.

BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

J. ROBERT BOLCHOZ
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

WILLIAM EDGAR SALTER, III
Senior Assistant Attorney General
S.C. Bar # 4806

P. O. Box 11549
Columbia, South Carolina 29211
(803) 734-6305

DAVID M. PASCOE, JR.
Solicitor, First Judicial Circuit

PO Box 1525
Orangeburg, SC 29116
(803) 533-6252

ATTORNEYS FOR RESPONDENT

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PETITIONER'S QUESTION PRESENTED

Whether the Court of Appeals was correct in ruling that the trial court did not err in refusing to allow petitioner to represent himself?

COUNTER STATEMENT OF QUESTION PRESENTED

Whether the Court of Appeals correctly found no error in the trial judge's denial of Petitioner'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, 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

Petitioner, 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 murdering three year old J.J. (the victim) on March 20, 2012. The Orangeburg County Grand Jury indicted Petitioner in November 2012 for murder (2012-GS-38-0912). *R. pp. 239-240.* Assistant First Circuit Public Defenders Margaret "Peggy" Hinds and Douglas Mellard represented Carter in the trial court, while Assistant First Circuit Solicitors Donald N. Sorenson and Sara Ford prosecuted the case.

Petitioner'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 his request to appear *pro se*. *R. pp. 1-76.* Following jury selection on May 14, 2013, Judge Goodstein denied Petitioner's motion to recuse her, which was based upon her finding that he was not credible in the motion to appear *pro se*. *R. pp. 77-80.* 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 Petitioner's motion to suppress on June 10, 2013, Petitioner 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. *R. p. 237, lines 2-20.* Judge Goodstein sentenced him to fifty years imprisonment. *R. p. 238, lines 2-5.*

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

Petitioner timely served and filed a notice of appeal. After briefing by the parties,[2] the South Carolina Court of Appeals heard oral arguments on February 12, 2015. On August 26, 2015, the Court filed a published opinion affirming Petitioner's conviction and sentence. *State v. Samuel*, 414 S.C. 206, 777 S.E 2d 398 (Ct. App. 2015). Petitioner filed a petition for rehearing on September 10, 2015. However, the Court of Appeals denied rehearing in an October 23,2015 order.

Petitioner filed his Petition for Writ of Certiorari on December 14, 2015. He framed the Question Presented as follows:

> Whether the Court of Appeals was correct in ruling that the trial court did not err in refusing to allow petitioner to represent himself?

The State made a Return to Petition for Writ of Certiorari on January 12, 2016.

This Court filed an Order granting certiorari to review the Court of Appeals' Opinion on October 20, 2016. Petitioner filed his Brief of Petitioner on November 17, 2016 and the State now files the Brief of Respondent.

ARGUMENT

I. The Court of Appeals correctly found no error in the trial judge's denial of Petitioner's motion to appear *pro se* at trial because the record supports her finding that Petitioner dishonestly responded to her questions about how he had acquired knowledge of trial court procedures, and his dishonest responses demonstrated an inability or unwillingness on his part to comply with an indispensable requirement for our judicial system to function.

Notwithstanding Petitioner's arguments to the contrary, Respondent submits that the trial judge properly denied his 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

[2] Petitioner appealed his conviction and submitted a final brief on September 18, 2014. The State filed the Final Brief of Respondent on October 6, 2014.

comply with an indispensable requirement for our judicial system to function. His untruthfulness also 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*.

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

The trial judge questioned Petitioner at the ensuing *ex parte in camera* hearing. When asked about the basis for his concern, he 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.[4] 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

[3] While the State submits that the trial judge did not abuse her discretion in denying Petitioner's motion to appear *pro se*, the Court should not lose sight of the fact this case presents an unusual situation because Petitioner is complaining of alleged error by the trial judge, even though her ruling prevented the State from having any opportunity to correct the purported error. *See State v. Stewart*, 283 S.C. 104, 110, 320 S.E.2d 447, 450 (1984) ("[i]t would do well for defense counsel to remember that the people of the State as well as the defendant are entitled to a fair trial"); *Stein v. New York*, 346 U.S. 156, 197 (1953) ("The petitioners have had fair trial and fair review. The people of the State are also entitled to due process of law").

[4] 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 his attorneys' request to review anything before he gave it to the prosecution.

Assistant Solicitor immediately before meeting with him, on those occasions when he met with them. *R. 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 [he] 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. Additionally, he claimed that he was the reason that Fields was supposed to plead guilty in this case. *R. pp. 11 lines 3-18; p. 13, line 10 – p. 14, line 15.*

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. *R. p. 16, line 20 – p. 19, line 4.*

She began by stating that the fourteen (14) 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; that it is "incredibly difficult" to be a public defender because the lawyer wants "to protect [Petitioner]" but the law also requires them to make sure that a client understands the "worst possible scenario," even if the lawyers do not believe that this worst case scenario is true; and that included in their responsibility to properly represent Petitioner was their communications with the prosecutor before talking to him. Petitioner indicated that he understood this explanation. *R. p. 19, line 6 – p. 22, line 8.*

The trial judge also explained that counsel did not want Petitioner to speak with Assistant Solicitor Sorenson because "[t]hat is the absolute wors[t] thing you could do is to talk to Mr. Sorenson. It doesn't matter what you have" since Mr. Sorenson was "committed to prosecuting" Petitioner and 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 Petitioner's defense and it does not have to be disclosed in discovery, counsel could use this information at trial. *R. 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, Petitioner indicated that he understood. *R. p. 23, line 15- p. 24, line 4.*

Next, the trial judge told Petitioner that it was appropriate to be concerned about the case, but she asked him to consider 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. Petitioner again indicated that he understood. *R. p. 24, line 13 – p. 25, line 8.*

The trial judge 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." Petitioner 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, then she would allow him to do so. Again, Petitioner indicated that he understood what she had told him. *R. p. 25, line 9 – p. 29, line 14.*

Once Petitioner was finally sworn, the trial judge began her colloquy with him. Petitioner swore that everything he had previously told her up to that point "[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." *R. p. 29, line 21 – p. 31, line 7.*

Responding to further questioning, he 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."[5] *R. p. 31, line 9 – p. 33, line 17.*

Petitioner further swore that he had never been treated in alcohol, drug or other substance abuse problems; that he had never "received any counseling or any treatment at all for any

[5] 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. *Compare R. p. 32, lines 11-17 with R. p. 32, line 25 – p. 33, line 12.*

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

The trial judge and Petitioner then had the following exchange:

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.

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

Further, Petitioner swore that he understood that "the elements of murder are the unlawful killing of another with malice aforethought," that "malice means a depraved heart that existed just prior to and at the time of the commission of the act;" and he 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. *R. p. 36, line 13 – p. 37, line 7.*[6]

[6] 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

When asked if he understood the South Carolina Rules of Evidence, he indicated that he did from reading the book he mentioned earlier. He further claimed that "basically ...Mr. Grant, he tried to coach me on it a little bit" on the rules of evidence. *R. p. 37, lines 8-16.* He also allegedly 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." *R. p. 37, line 8 – 38, line 1.*

When asked to name a motion, Petitioner 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. *R. p. 38, line 19 - p. 39, line 21.*

Petitioner 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

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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' ").

testify could not be discussed because that would violate both the United States and South Carolina Constitutions. *R. p. 39, line 23 – p. 42, line 3.*

Petitioner 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." *R. p. 42, line 4 – p. 44, line 20.*

At this point, Petitioner 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.

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

Petitioner then stated that he understood that the trial judge was going to appoint stand-by counsel, and that he could 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. *R. p. 45, line 13 – p. 46, line 10.*

He stated that he had reviewed the State's 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, he 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. *R. p. 48, line 11 – p. 50, line 4.*

In response, 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." Petitioner'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. *R. 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. *R. p. 53, lines 7-22.*

Petitioner 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 [is] 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.

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

The trial judge said she was going to tell the State that she was inclined to grant Petitioner's motion, but 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 Petitioner about the case. *R. p. 54, line 14 – p. 55, line 22.* After Mr. Grant arrived at court, the trial judge resumed an *in camera ex parte* hearing. *R. p. 61, line 2 – p. 62, line 13.*[7]

First, she informed Mr. Grant of Petitioner's representations of Mr. Grant's involvement in the case to Petitioner's satisfaction. *R. 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 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

[7] Other personnel from Mr. Grant's office were present at the courthouse but they were sequestered. *R. pp. 61-62.*

> 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.

R. p. 65, line 20 – p. 67, line 6.

Based upon his twenty-eight years of experience as a trial attorney, Mr. Grant "strongly recommend[ed]" that Petitioner allow his experienced and knowledgeable attorneys to continue with their representation. [8]Further, Mr. Grant testified that he would be unavailable "to provide any assistance to him in any capacity." He could only have represented Petitioner if Petitioner's family had retained him when they originally approached him. He would not represent Petitioner 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." *R. p. 67, line 7 – p. 68, line 9.*

Following Mr. Grant's testimony Petitioner 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 Petitioner to tell her "what

[8] Mr. Grant also explained that he had hired an attorney to represent him in a past matter.

advice and information you are speaking of specifically," he cryptically replied, "Everything he said." When she asked whether he meant "today," he evasively said, "I'm just saying in general. Everything he said makes a whole lot of sense." *R. p. 68, lines 12-24.*

Petitioner 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. *R. p. 69, lines 1-6.* Petitioner thereafter claimed 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 Petitioner. Also, "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." *R. p. 69, line 20 – p. 70, line 19.* Finally, Petitioner stated that he understood the type of mistakes he could make by representing himself, but he still wanted to do so. *R. p. 70, lines 22-25.*

The trial judge denied Petitioner's motion after a brief recess. Based upon her earlier colloquy with Petitioner, she found that his "educational background ... is very strong," and that he was "very bright ... [and] extremely articulate." When she had discussed his 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 he had told her that that Mr. Grant had been coaching him "with regards to the [legal] processes" and that he believed that Mr. Grant would also coach him "with regards to the process of a trial, throughout the trial." *R. 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 Petitioner with a book, that he had not coached Petitioner; that he had not had any conversations with Petitioner about "the processes and that he ha[d] not led [Petitioner] to believe that he would, likewise be doing so throughout the trial." *R. p. 73, lines 6-17.*[9]

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, 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

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

> 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.

R. p. 73, line 20 – p. 75, line 19.

Petitioner 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, Petitioner, once again, contended that Mr. Grant had been untruthful about assisting Petitioner because "he don't want his reputation ruined." (Sic). *R. p. 75, line 22 – p. 76, line 2.*

The trial judge, however, stated that she did not believe Petitioner "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." *R. 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. *R. p. 141, lines 9-19.*

2. Petitioner's motion to recuse.

The following day, Petitioner (through counsel) moved for the trial judge to recuse herself, based upon her finding that Petitioner had not been truthful to her in connection with his motion to represent himself. She denied his motion because Petitioner 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." *R. p. 77, line 14 – p. 80, 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. *R. p. 147, line 3 – p. 149, line 25.*

3. Counsel's motion to be relieved.

When motions hearings resumed on June 10th, Petitioner'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 Petitioner'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." *R. p. 85, 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 his 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." *R. p. 85, line 20 – p. 86, line 6.* After listening to Petitioner's response, *R. p. 86, line 9 – p. 88, 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.

R. p. 89, lines 12-25. The motion to recuse was thereafter addressed again but denied. *R. p. 148, line 1 – p. 149, line 4*.

B. The Court of Appeals' ruling.

The Court of Appeals found that the trial judge had not abused her discretion. It found that "[t]he trial judge considered Samuel's and Grant's conflicting testimony concerning Grant's alleged assistance for Samuel's trial and found Samuel not credible. It was within the province of the trial judge, as the fact-finder in the *Faretta* hearing, to weigh the credibility of the witnesses. ... As the record supports the trial judge's determination Samuel displayed an unwillingness to act as an officer of the court through his lack of candor, we find the trial judge did not abuse her discretion in denying his request to represent himself." *State v. Samuel*, 414 S.C. 206, 211-13, 777 S.E.2d 398, 401-02 (Ct. App. 2015), reh'g denied (Oct. 23, 2015).

C. Discussion.

This Court should deny relief. The Sixth Amendment expressly guarantees a criminal defendant only "the Assistance of Counsel for his defense," U.S. Const. amend. VI, but 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).[10] *Faretta* thus permits an accused to make a (1) timely waiver of his right to counsel if (2) he is advised of his right to counsel, and (3) he is 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.

However, this right to self-representation, 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. The Supreme Court has also 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 "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 (2000), *see also Sell v. United States*,

[10] 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 and the assertion of one constitutes a *de facto* waiver of the other. The Court added that "[o]f 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 v. Fair*, 822 F.2d 166, 174 (1st Cir. 1987)] ('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')." *Singleton*, 107 F.3d at 1096.

539 U.S. 166, 180, 123 S.Ct. 2174 (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 the Court of Appeals and this 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 Petitioner'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, Petitioner claimed that Mr. Gant had provided this assistance. On the other hand, Mr. Grant's sworn testimony was that (1) he had not provided Petitioner 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 Petitioner had retained him; (3) that he had not been retained in this case; and (4) that he would be available to provide assistance to Petitioner, as stand-by counsel, if Petitioner did appear *pro se*. Obviously, Petitioner's representations and Mr. Grant's sworn testimony squarely conflicted with one another and both could not be true.

Accordingly, 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.[11] His testimony clearly supports the trial judge's credibility determination.

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

> 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;

Moreover, this Court and the United States Supreme Court have made clear that it is the province of the trial judge, and not an appellate court, to resolve issues of witness credibility, in a variety of contexts..*Accord Teva Pharm. USA, Inc. v. Sandoz, Inc.*, 135 S. Ct. 831, 850 (2015) ("We have recognized, however, that trial courts have a special competence in judging witness credibility and weighing the evidence"); *Miller v. Fenton*, 474 U.S. 104, 114, 106 S.Ct. 445, 452 (1985) ("when an "issue involves the credibility of witnesses and therefore turns largely on an evaluation of demeanor, there are compelling and familiar justifications for leaving the process of applying law to fact to the trial court"); *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).

***

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.

As the Court of Appeals stated in *S.C. Dep't of Soc. Servs. v. Forrester*, 282 S.C. 512, 516, 320 S.E.2d 39, 42 (Ct.App.1984), "[t]he 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).[12] Here, this Court should defer to the trial judge's credibility assessment because it did not have the opportunity to independently determine either Mr. Grant's or Petitioner's credibility. *Id.*

In light of the finding that Petitioner 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 dishonesty 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

[12] *See also 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"); *Anderson v. City of Bessemer City,* 470 U.S. 564, 575, 105 S.Ct. 1504, 1512 (1985) ("When findings are based on determinations regarding the credibility of witnesses, Rule 52(a) demands even greater deference to the trial court's findings; for only the trial judge can be aware of the variations in demeanor and tone of voice that bear so heavily on the listener's understanding of and belief in what is said"); *Gavin v. State*, 473 So.2d 952, 955 (1985) ("even if we wanted to be 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).

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 Petitioner would not be able to defend himself well against the murder charge, the trial judge did not deny his motion because she found that he did not adequately understand trial court procedures, as Petitioner 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)).[13] Petitioner's contention that she denied 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 Petitioner about the case. **R. 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

[13] 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* **R.** *pp. 90-146.* 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 to be argumentative. *See R. pp. 150-236.* However, concerns of this type of behavior were not the basis for the trial judge's ruling.

an inability or unwillingness on his part to comply with an indispensable requirement for our judicial system to function: candor with the tribunal from counsel and the parties before it.

An attorney appearing at trial is subject to the ethical requirements of Rule 3.3, Rule 407, SCACR.[14] 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 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*

[14] 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.

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); *Matter of Jennings*, 321 S.C. 440, 468 S.E.2d 869 (1996) (disbarment was

warranted by misconduct including misrepresentation regarding billing of several clients, lack of candor toward tribunal, destroying documents regarding improper billing, forging signature on satisfaction of judgment, misleading family court judge, and improperly filing lien for attorney's fees); 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").

Petitioner 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. *See also 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 s*e counsel"). However, Petitioner 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.[15] Yet, there is no similar sanction for a *pro se* defendant, such as Petitioner, who is dishonest in the colloquy to determine whether he should be permitted to represent himself. Accordingly, the only proper course of action was to deny his motion. Moreover, his willingness to lie about the manner by which he familiarized himself with legal procedures undermined any confidence that the trial judge might have otherwise had in the credibility of the answers that he

[15] The trial judge also could take appropriate measures to sanction Petitioner 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).

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) (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); *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, Petitioner's argument lacks merit.

CONCLUSION

Therefore, Respondent submits that this Court should either dismiss certiorari as improvidently granted or affirm the decision of the Court of Appeals.

Respectfully submitted,

ALAN WILSON
Attorney General

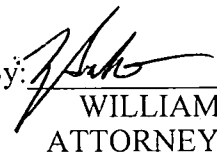
J. ROBERT BOLCHOZ
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

WILLIAM EDGAR SALTER, III
Senior Assistant Attorney General
S.C. Bar # 4806
P. O. Box 11549
Columbia, South Carolina 29211
(803) 734-6305

DAVID M. PASCOE, JR.
Solicitor, First Judicial Circuit
Post Office Box 1525
Orangeburg, SC 29116-1525
(803) 533-6252

December 15, 2016.

By: 
WILLIAM EDGAR SALTER, III
ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Orangeburg County
Diane Schafer Goodstein, Circuit Court Judge
Appellate Case No. 2015-002401

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

V.

LAMONT ANTONIO SAMUEL,

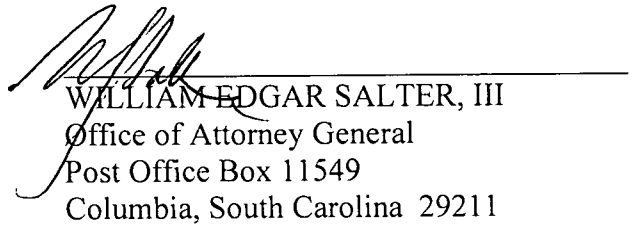
PETITIONER.

PROOF OF SERVICE

I, William Edgar Salter, III, counsel for the Respondent, certify that I have served the within Brief of Respondent on Petitioner by depositing two (2) copies of the same via U.S. mail, first class, postage prepaid to his attorney of record, Robert M. Pachak, Esq., SCCID/Division of Appellate Defense, 1330 Lady Street, Ste. #401, Columbia, South Carolina 29201.

I further certify that all parties required by Rule to be served have been served.

This 15th day of December, 2016.



WILLIAM EDGAR SALTER, III
Office of Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305
ATTORNEY FOR RESPONDENT