STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHESTER COUNTY
Court of General Sessions
Honorable John C. Hayes, Circuit Court Judge

Appellate Case No. 2018-001367

THE STATE, ...RESPONDENT,

v.

GERALDO DAMETRIUS LAND, ...APPELLANT.

INITIAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

The trial judge did not err in granting Appellant's request to relieve defense counsel and proceed pro se because the trial record proceedings established Appellant knowingly, intelligently and voluntarily asserted his waiver with a complete understanding of his right to counsel and the dangers and disadvantages of self-representation.

STATEMENT OF THE CASE

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

STATEMENT OF FACTS

On May 5, 2018, the Chester County Grand Jury indicted Appellant Geraldo Demetrius Land on one count of first degree burglary, one count of first degree assault and battery, one count of possession of a firearm during the commission of a violent crime, and two counts of armed robbery from an incident that occurred on April 10, 2017. The case was called for a jury trial on July 11, 2018, before the Honorable John C. Hayes, Circuit Court Judge.

The Appellant was represented by Mr. Geoff Dunn (Dunn) and was tried for the same charges three months prior which ended in a mistrial during jury deliberations. (Tr. p. 57, ll. 8-11; Tr. p. 59, ll. 8-11; Tr. p. 71, ll. 1-3; Tr. p. 300, l. 8; Tr. p. 438, ll. 11-12; Tr. p. 444 l. 25; Tr. p. 445, l. 1.) In this trial, Appellant was represented by Dunn during voir dire, pretrial motions, and delivered the opening statement to the jury. At the closing of opening arguments, the trial judge recessed for lunch for approximately one hour and fifteen minutes. (Tr. p. 70, ll. 7-11.) Upon return from lunch, Dunn informed the court that he and Appellant "entered into some discussions," and Appellant "wish[ed] to fire [Dunn] and to represent himself . . . ." (Tr. p. 71, ll. 20-23.)

The court began by asking Appellant numerous personal questions regarding his age, education, and occupation. (Tr. p. 71, l. 25; Tr. p. 72, ll. 1-7.) The court further inquired into the Appellant's criminal history; specifically, had he any previous involvement in a trial or pleas. (Tr. p. 72, ll. 8-15.) The court asked Appellant whether he understood he has "the right to an attorney" and "an attorney could be of benefit to you and that there's a danger in your representing yourself since you're not an attorney. Do you understand all that?" (Tr. p. 72, ll. 16-19.) Appellant affirmed. (Tr. p. 72, l. 20.) The court colloquy continued "[e]ven though you're not an attorney you would have to be — you would have to follow the court rules and rules of

evidence and the other rules that apply. Even though you're representing yourself the Court requires that you adhere to the rules of court, Do you understand that?" (Tr. p. 72, ll. 21-25; Tr. p. 73, ll. 1-2.) Appellant affirmed. (Tr. p. 73, l. 3.)

The court granted Appellant's request to represent himself after reviewing State v. Samuel, and recognizing there was a different element to that case; further, the court appointed Dunn as standby counsel and informed Appellant that Dunn would be available for questions regarding procedure and rules of court, but would not be there to coach Appellant. (Tr. p. 74, ll. 1-7.)

The court mistakenly thought the solicitor was objecting to Appellant representing himself, and the solicitor clarified:

> MS. LIVELY: I don't have an objection to that, Your Honor. I have an objection to this evidence that he says that's out there that we have no knowledge of. As long as he's been asked the correct colloquy by the Court, which Your Honor has just done regarding the safeguards of having an attorney instead of representing yourself, I just don't think I have an argument in regards to that. I've done the research even briefly, and it seems like our [S]upreme [C]ourt in everything I've looked at has said that that is that being a pretty substantial right as long as he's very clear about the dangers in doing that.

(Tr. p. 74, ll. 16-25; Tr. p. 75, l. 1.) The court responded, "Yeah. Well, you clearly understand it's not the wisest decision you've ever made to represent yourself when you're facing these I think it's five charges, you understand that?" (Tr. p. 75, ll. 2-5.) The Appellant responded, "[e]ight charges, yes, sir, I understand that." (Tr. p. 75, ll. 6-7.)

Appellant proceeded to represent himself at trial. Appellant was convicted as indicted. (Tr. p. 441, ll. 19-25; Tr. p. 442, ll. 1-13.) The court sentenced Appellant to fifteen years for first degree burglary, ten years for first degree assault and battery, five years for possession of a

weapon during the commission of a violent crime, and ten years for each count of armed robbery; with sentences to run concurrently for a total of 15 years. (Tr. p. 449, ll. 4-10.)

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Mazique, 419 S.C. 282, 288, 797 S.E.2d 730, 733 (Ct. App. 2016). The issue of whether a criminal defendant validly waived right to counsel "knowingly, intelligently, and voluntarily" is reviewed by the appellate court de novo. State v. Samuel, 422 S.C. 596, 602, 813 S.E.2d 487, 490 (2018); See United States v. Singleton, 107 F.3d 1091, 1097 n. 3 (4th Cir. 1997) (whether defendant validly waived right to counsel). The appellate court reviews the findings of historical fact underlying the determination for clear error. United States v. Bush, 404 F.3d 263, 270 (4th Cir. 2005).

However, a defendant's request to proceed pro se must be asserted before the commencement of trial. State v. Reed, 332 S.C. 35, 41, 503 S.E.2d 747, 750 (1998); State v. Sims, 304 S.C. 409, 405 S.E.2d 377 (1991). It is within the "sound discretion of the trial judge" to grant or deny a request to proceed pro se after a trial has commenced and such a ruling is reviewed on appeal for an abuse of discretion. State v. Fuller, 337 S.C. 236, 241, 523 S.E.2d 168, 171 (1999); See Singleton, 107 F.3d at 1099 (reviewing a trial judge's ruling on a mid-trial assertion of the right to self-representation for an abuse of discretion). "An abuse of discretion occurs when the court's decision is unsupported by the evidence or controlled by an error of law." Mazique, 419 S.C. at 288, 797 S.E.2d at 733.

ARGUMENT

The trial judge did not err in granting Appellant's request to relieve defense counsel and proceed pro se because the trial record proceedings established Appellant knowingly, intelligently, and voluntarily asserted his waiver with a complete understanding of his right to counsel and the dangers and disadvantages of self-representation.

Appellant contends the trial judge erred in granting his request to relieve defense counsel and proceed pro se without engaging thoroughly in a prophylactic colloquy in accordance with Faretta[1]. In support of that contention, Appellant maintains the trial judge failed to adequately caution him of the dangers of self-representation to knowingly and intelligently abdicate his right to counsel and to ensure he understood the number of charges he faced. Appellant further contends the colloquy conducted by the trial judge was merely pro forma questions and pro forma answers. To the contrary, the record of the trial proceedings demonstrates the trial judge conscientiously apprised Appellant of the dangers of self-representation, advised him of his trial obligations, and appointed stand-by counsel for Appellant. Further, the record demonstrates Appellant knowingly, intelligently, and voluntarily waived his right to counsel. In light of these facts, the trial judge properly granted Appellant's right to represent himself pro se notwithstanding the decision could be imprudent or unwise. Appellant's convictions should be affirmed.

Pursuant to the United States Constitution and the South Carolina Constitution, a criminal defendant "must be afforded the right to the assistance of counsel" prior to a lawful conviction and penalty of imprisonment. Faretta, 422 U.S. at 807; see U.S. Const. amend. VI ("In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for

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

his defense."); S.C. Const. art. I, § 14 ("Any person charged with an offense shall enjoy the right . . . to be fully heard in his defense by himself or by his counsel or by both."). Nonetheless, "[t]he Sixth Amendment does not provide merely that a defense shall be made for the accused; it grants to the accused personally the right to make his defense." Faretta, 422 U.S. at 819. "The right to defend is given directly to the accused; for it is he who suffers the consequences if the defense fails." Id. at 819-20.

As a result, a defendant may waive his right to counsel and represent himself pro se prior to trial. State v. Thompson, 355 S.C. 255, 262, 584 S.E.2d 131, 134 (Ct. App. 2003). The right of a defendant to represent himself "must be preserved even if the court believes that the defendant will benefit from the advice of counsel." State v. Fuller, 337 S.C. 236, 241, 523 S.E.2d 168, 170 (1999); United States v. Singleton, 107 F.3d 1091 (4th Cir.1997). In fact, even if a defendant's decision to proceed pro se is to his detriment, his decision "must be honored out of that respect for the individual which is the lifeblood of the law." Faretta, 422 U.S. at 834.

However, the South Carolina Supreme Court has also found that "[a] defendant's right to waive the assistance of counsel is not unlimited . . . ." Fuller, 337 S.C. at 241, 523 S.E.2d at 170. A defendant must request to waive counsel "prior to trial." State v. Mazique, 419 S.C. 282, 291, 797 S.E.2d 730, 734 (Ct. App. 2016). "So long as the defendant makes his request prior to trial, the only proper inquiry is that mandated by Faretta." State v. Barnes, 407 S.C. 27, 35, 753 S.E.2d 545, 550 (2014) (citing State v. Winkler, 388 S.C. 574, 698 S.E.2d 596 (2010)).

In Faretta, the United States Supreme Court found that a defendant must "be made aware of the dangers and disadvantages of self-representation so that the record will establish he knows what he is doing and his choice is made with eyes open." Faretta, 422 U.S. at 835. "While a specific inquiry by the trial judge expressly addressing the disadvantages of proceeding pro se

defense is preferred, the ultimate test is not the trial judge's advice but rather the defendant's understanding." Wroten v. State, 301 S.C. 293, 294, 391 S.E.2d 575, 576 (1990). The trial judge should "make a meaningful inquiry into [a defendant's] background to determine whether [the defendant] had sufficient experience or knowledge to waive counsel." Watts v. State, 347 S.C. 399, 403, 556 S.E.2d 368, 371 (2001); see United States v. King, 582 F.2d 888, 890 (4th Cir. 1978) (instructing "no particular form of interrogation is required" in order for a trial judge to determine whether a defendant's waiver of his right to counsel in knowing and intelligent.")

Nevertheless, an "invocation [of the right to self-representation] does not set into motion, rigid, mechanical procedures that must be followed to the letter to avoid error. The invocation of the right and whether the proper procedures were followed must be evaluated in the context of a given case." Swan v. Commonwealth, 384 S.W.3d 77, 94-95 (Ky. 2012). "[W]hile the right is a structural right, it must still be applied in the real world, which sometimes requires a practical approach, not an absolute and unbending one." Id. at 95.

To effectuate a valid waiver of the right to counsel, the Fourth Circuit Court of Appeals found that the invocation of the right to self-representation must be (1) clear and unequivocal, (2) knowing, intelligent and voluntary, and (3) timely. See United States v. Ductan, 800 F.3d 642, 650 (4th Cir. 2015); United States v. Frazier-El, 204 F.3d 553, 558 (4th Cir. 2000). As well, the South Carolina Supreme Court has embraced this same three-part test. City of Columbia v. Assa'ad-Faltas, 420 S.C. 28, 45, 800 S.E.2d 782, 791 (2017).

In the case sub judice, Appellant clearly and unequivocally invoked his constitutional right to self-representation after trial proceedings had commenced. Upon return from a lunch break after opening arguments Appellant's defense counsel (Dunn) informed the court he and Appellant "entered into some discussions," and Appellant "wish[ed] to fire [Dunn] and to

represent himself . . . ." (Tr. p. 71, ll. 20-23). The trial judge received affirmations from Appellant twice regarding his understanding of his right to counsel. Indeed the trial judge informed Appellant that his decision to waive counsel was "clearly . . . not the wisest decision [he has] ever made to represent [himself] . . . ." (Tr. p. 75, ll. 2-5). That said, Appellant did not waver from his desire to represent himself. See Barnes v. State, 528 S.W.2d 370, 372-73 (Ark. 1975) (finding a defendant's invocation clear where on the day of trial, the defendant moved to represent himself because he had been deceived by everyone, including his lawyer, but his explanation on this point "was vague, to say the least"). Appellant does not contend that his decision to represent himself was not made clearly and unequivocally.

Instead, citing State v. Barnes, Reed, Starnes, and Samuel, Appellant contends the trial judge failed to engage in an adequate prophylactic colloquy regarding his desire to proceed pro se, and that colloquy was thus constitutionally deficient. But, Appellant relies on cases that deal with Faretta inquiries made after a defendant has timely requested pre-trial to proceed pro se and not a defendant requesting to proceed pro se after a trial has begun. See State v. Reed, 332 S.C. 35, 41, 503 S.E.2d 747, 750 (1998) ("The right to proceed pro se must be clearly asserted by the defendant prior to trial.").

Further, while the trial judge's inquiries, in this case, may not have been as detailed as the inquiries in State v. Barnes, Reed, Starnes, or even Samuel, which were all murder cases, the inquiries were sufficient given the circumstances. See United States v. Gallop, 838 F.2d 105, 110 (4th Cir. 1988) (instructing "the trial judge is merely required to determine the sufficiency of the waiver from the record as a whole rather than from a formalistic, deliberate, and searching inquiry.") In fact, neither the Supreme Court nor the Fourth Circuit has "prescribed any . . . script to be read to a defendant who states he elects to proceed without counsel." Iowa v. Tovar,

541 U.S. 77, 88 (2004); Spates v. Clarke, 547 Fed. App'x 289, 293 (4th Cir. 2013); see Lopez v. Thompson, 202 F.3d 1110, 1117 (9th Cir.), cert. denied, 531 U.S. 883 (2000) (finding "[n]either the Constitution nor Faretta compels the [trial] court to engage in specific colloquy with the defendant.")

Still, Appellant contends that he was not made aware of the difficulties he would face and was given no examples like the defendant in State v. Barnes. But, upon a close reading of Barnes, the issue there was whether "South Carolina will adopt the higher competency standard permitted by Edwards and thus alter the traditional Faretta threshold inquiry which permits any defendant competent to stand trial to waive his right to counsel." Barnes, 407 S.C. at 35, 753 S.E.2d at 549; Indiana v. Edwards, 554 U.S. 164, 171 L.Ed.2d 345 (2008). What is more, Appellant, citing State v. Barnes, mistakenly contends that the trial judge "just told him he would have to comply with the rules of court, without explaining . . . ." (IBOA p. 7.) When in fact, the following exchange occurred between the trial judge and Appellant:

> THE COURT: You think that you could be candid with the Court and follow the rules of the Court? Even though you're not an attorney you would have to be — you would have to follow the court rules and rules of evidence and the other rules that apply. Even though you're representing yourself the Court requires that you adhere to the rules of court, do you understand that?
>
> THE DEFENDANT: Yes, sir.

(Tr. p. 72, 21-25; p. 73, 1-3). Then, shortly after that exchange, another exchange occurred between trial judge and Appellant:

> THE COURT: . . . I will appoint Mr. Dunn to be your stand-by counsel, that is he will not sit at the table with you and he will not coach you or anything like that, but if you have any questions of procedure or rules of court and you want to ask Mr. Dunn he will be available. Are you ready to proceed?
>
> THE DEFENDANT: Yes, sir.

(Tr. p. 74, 2-6.)

Clearly, the trial judge ensured Appellant not only knew he would have to follow the rules of the court but even provided stand-by counsel to answer questions concerning the rules of court. See State v. Coley, 326 P.3d 702, 710 (Wash. 2014) (finding "[t]he "ad hoc," fact-specific analysis of waiver of counsel questions is best assigned to the discretion of the trial court."); see also Wilson v. Hurt, 29 F. App'x 324, 329 (6th Cir. 2002) ("The continuing presence of advisory counsel also increases the evidence that a decision to proceed pro se was voluntarily made.")

Similarly, Appellant cites Reed and contends there was not an extensive inquiry into his knowledge of the proceedings and what it would mean to represent himself. However, the court in Reed was also dealing with a defendant's competency, which would necessitate a thorough inquiry. Furthermore, the defendant's in Barnes and Reed both made timely pretrial motions to proceed pro se in contrast to Appellant in the case before this Court.

Indeed, the record demonstrates the trial judge apprised Appellant of what it would mean to represent himself. For instance, the trial judge informed the Appellant that he was appointed an attorney by the state, he has the right to an attorney, and an attorney would be a benefit to him; also informing the Appellant of the rules of court he would be required to follow and he would have stand-by counsel to assist. (Tr. p. 72, ll. 12-25; Tr. p. 73, ll. 1-3; Tr. p. 74, ll. 2-8; Tr. p. 75, ll. 2-5). Further, even if the trial judge did not extensively question Appellant about his knowledge of proceedings, the record shows Appellant would indeed have some knowledge of court proceedings. In fact, Appellant and Dunn as defense counsel previously concluded a trial in which Appellant was tried for the same charges; however, that trial led to a mistrial during jury deliberations. (Tr. p. 438, ll. 11-15.) So, Appellant was at least aware of his possible

defenses, the facts and the evidence to be presented at trial, and some basic knowledge of proceedings having just been through a trial previous to this one for the same charges.

As well, Appellant cites Starnes and contends there were no methodical or careful explanations of the dangers of self-representation by the trial judge; nor did the trial judge ensure Appellant understood the issues that could arise at trial. Nevertheless, the record demonstrates the trial judge engaged the Appellant in discussions regarding the disadvantages of self-representation. (Tr. p. 72, ll. 12-14, 16-19; Tr. p. 75, ll. 2-5). Indeed, the Supreme Court has required trial courts to ensure defendants are "aware of the dangers and disadvantages of self-representation." Faretta, 422 U.S. at 818. But, there is not a requirement of methodical or careful explanations; rather, a trial judge must engage defendants in a "short discussion on the record" regarding the dangers and disadvantages of self-representation. United States v. Brown, 823 F.2d 591, 598 (D.C. Cir. 1987); United States v. Bailey, 675 F.2d 1292, 1300 (D.C. Cir. 1982). Furthermore, the trial judge queried Appellant multiple times whether he understood his explanations and whether he had any questions. See Brown, 823 F.2d at 599 ("Neither case law nor common sense supports the position that a trial court must advise a defendant of each and every difficulty he might encounter in a particular case.")

Additionally, Appellant cites Samuel and contends the trial judge "troublingly" did not conduct his Faretta inquiry ex parte; nor were the charges against Appellant clear because he seemingly did not know the number. (IBOA p. 9.) However, Appellant's motion to proceed pro se was **after** trial had begun and was not made at any point prior to the beginning of his trial. See Reed, 332 S.C. at 41, 503 S.E.2d at 750 (instructing the right to self-representation must be clearly invoked prior to trial); see also United States v. Hilton, 701 F.3d 959, 965 (4th Cir. 2012) (finding a request for self-representation "generally must be asserted before meaningful trial

proceedings have begun."). Generally, Faretta requests are pre-trial motions where the court is in a position to timely manage and coordinate an ex parte hearing. Because Appellant did not timely invoke his right to self-representation, that matter is then left to the sound discretion of the trial judge. Hilton, 701 F.3d at 965.

Moreover, Appellant's contention concerning whether or not he knew the number of charges is meritless. Simply put, this was Appellant's second trial for the same charges. The previous trial led to a mistrial during jury deliberations when one juror refused to deliberate. (Tr. p. 438, ll. 11-12.) Thus, the record shows it would be unreasonable to presume that Appellant was never made aware of his charges because he had multiple opportunities to learn of them.

Surely, even if the trial judge failed to engage in an adequate colloquy with Appellant regarding the invocation of his right to proceed pro se, evidence in the record reveals Appellant's request was made knowingly, intelligently, and voluntarily. Otherwise, in cases where a trial judge fails to conduct a specific inquiry "addressing the disadvantages of a pro se defense" a reviewing court "will look to the record to determine whether petitioner had sufficient background or was apprised of his rights by some other source." In re Christopher H., 359 S.C. 161, 167, 596 S.E.2d 500, 503-04 (Ct. App. 2004); Prince v. State, 301 S.C. 422, 424, 392 S.E.2d 462, 463 (1990). In making such a determination, the following factors may be considered:

> (1) the accused's age, educational background, and physical and mental health; (2) whether the accused was previously involved in criminal trials; (3) whether he knew of the nature of the charge and of the possible penalties; (4) whether he was represented by counsel before trial or whether an attorney indicated to him the difficulty of self-representation in his particular case; (5) whether he was attempting to delay or manipulate the proceedings; (6) whether the court appointed stand-by counsel; (7) whether the accused knew he would be required to comply with the rules of procedure at trial; (8) whether he knew of legal challenges he

> could raise in defense to the charges against him; (9) whether the exchange between the accused and the court consisted merely of pro forma answers to pro forma questions; and (10) whether the accused's waiver resulted from either coercion or mistreatment.

In re Christoper H., 359 S.C. at 167-68, 596 S.E.2d at 504; Gardner v. State, 351 S.C. 407, 412-13, 570 S.E.2d 184, 186-87 (2002). Critically, "[i]f the record demonstrates the defendant's decision to represent himself was made with an understanding of the risks of self-representation, the requirements of a voluntary waiver will be satisfied." Thompson, 355 S.C. at 263, 584 S.E.2d at 135.

In the case sub judice, Appellant contends factor three weighs in his favor because while Appellant "knew of the incident for which he was tried . . . he was unaware of how many charges he faced (and presumably against which alleged victims), and there was no showing that he knew of the penalties he faced." (IBOA p. 10.) While Appellant contends the trial judge failed to correct his misunderstanding of the number of charges against him and he did not know the charges he was facing, Appellant affirmed that he understood and never questioned the trial judge to the number of charges at any point throughout trial. (Tr. p. 75, ll. 2-7.) Appellant would further have this Court believe that even though he has been through one trial on these exact charges, he still did not know what charges he faced in his second trial.

Admittedly, the only consideration in factor three that should be given weight is there is nothing in the record to show Appellant was aware of the penalties he faced. However, the record does show that Appellant was offered at least one plea deal which would have indicated to Appellant the time he was facing versus the time the State was offering. (Tr. p. 447, ll. 3-4.) Thus, factor three does not weigh in favor of Appellant.

Next, Appellant contends that factors seven and nine weigh in his favor because the colloquy between trial judge and Appellant consisted of pro forma questions and pro forma

answers; and the trial judge's direction regarding rules of the court was "insufficient to establish appellant understood what it meant to comply with the rules of criminal procedure." (IBOA p. 10.) Nonetheless, the record demonstrates that, although brief, Appellant's colloquy with the trial judge did not consist of pro forma questions and pro forma answers. Instead, the colloquy was specific to Appellant while being focused on Appellant's desire to represent himself; such as the trial judge asking Appellant his age, education, and background. Additionally, the trial judge conscientiously informed Appellant of his right to counsel, his requirement to follow the rules of court and rules of evidence even though he is not an attorney, that there is a danger in representing himself, there is a benefit of having an attorney represent him, even that the decision to proceed pro se was not wise.

Accordingly, the trial judge determined that Appellant had a sufficient background and level of understanding to knowingly and intelligently proceed pro se. See Reed, 332 S.C. at 41, 503 S.E.2d at 750 ("The only relevant inquiry is whether the defendant has made a knowing and intelligent waiver of the right to counsel... A decision can be made intelligently, with an understanding of the consequences, without the decision itself being a wise one." (citations omitted)). Therefore, factor nine does not weigh in favor of Appellant.

Likewise, Appellant mistakenly contends factor seven weighs in his favor because the factor does not require the accused must understand what it means to comply with court rules; instead, the factor only requires that the accused **knows** he will have to comply with the rules of procedure at trial. In the instant case, the trial judge specifically asked Appellant if he understood he would have to follow the rules of the court, and further stated that even though Appellant was not an attorney, he would be required to follow the court rules and rules of evidence and other rules that apply. To which the Appellant affirmed that he understood. (Tr. p.

72, ll. 21-25; Tr. p. 73, ll. 1-4.) Thus, factor seven does not weigh in favor of the Appellant, and the record demonstrates Appellant was aware that he would have to comply with the rules of the court at trial.

All in all, the record in the case sub judice demonstrates Appellant knowingly, intelligently, and voluntarily waived his right to counsel before he was allowed to represent himself during trial. Looking at all the relevant factors, Appellant was an intelligent and educated thirty-year-old at the time of his trial, and, by that point in his life had graduated high school, attended some college, and had a job with an intended career path. Nothing presented at trial suggested Appellant had any physical or mental impairments. Appellant had prior experience with the criminal justice system by the time of his trial in multiple cases where he pled, but, most notably, his involvement with his trial three months prior on the same charges.

Clearly, Appellant knew the nature of the charges against him based on his arraignment, prior trial on the same charges, and some of his performance during the trial. As well, Appellant was represented at his first trial by Dunn and was subsequently represented by Dunn prior to and at the outset of the trial for the case sub judice. From the record, Appellant was able to consult with Dunn and entered into discussions before choosing to represent himself pro se; and Dunn was appointed stand-by counsel and made available to Appellant for procedural questions. (Tr. p. 71, ll. 19-24; Tr. p. 74, ll. 2-7; Tr. p. 76, ll. 15-17.) As well, the State does not contend that Appellant was attempting to manipulate or delay proceedings by requesting to proceed pro se.

Furthermore, based upon Appellant's performance, he was at least somewhat familiar with the relevant procedural rules during trial. For instance, the many objections Appellant made and had sustained by the trial judge; such as his objection to the solicitor leading the witness at the very beginning of the direct examination of the first witness. (Tr. p. 81, ll. 22-23.) Likewise,

during closing argument Appellant objects to the solicitor introducing evidence not in the record that was sustained. (Tr. p. 386, ll. 3-6.) Appellant successfully questioned witnesses, conducted cross-examinations, made proper objections and motions, and engaged appropriately in conversations with the court and opposing counsel. (Tr. p. 81, l. 22; Tr. p. 85, l. 24; Tr. p. 142, l. 9; Tr. p. 181, l. 15; Tr. p. 182, l. 5; Tr. p. 254, ll. 11-22; Tr. p. 268, l. 9; Tr. p. 386, l. 3.)

In light of these factors, Appellant had a sufficient background and a level of understanding to knowingly and intelligently waive his right to counsel; further, Appellant was constitutionally entitled to invoke his right to self-representation notwithstanding whether that decision – in hindsight – ultimately proved to be imprudent or unwise based upon what transpired at trial. See Reed, 332 S.C. at 41, 503 S.E.2d at 750 ("The only relevant inquiry is whether the defendant has made a knowing and intelligent waiver of the right to counsel . . . . A decision can be made intelligently, with an understanding of the consequences, without the decision itself being a wise one.") (citations omitted).

In summation, although the Faretta colloquy between the trial judge and Appellant was not as thorough as may have been preferred, there was no abuse of discretion in permitting Appellant to proceed pro se. The record demonstrates Appellant's familiarity with trial process and procedure. Further, it shows Appellant had the requisite background to understand the difficulties of self-representation and the willingness to accept those difficulties and proceed pro se. Thus, Appellant's conviction should be affirmed because the record demonstrates Appellant knowingly, intelligently, and voluntarily invoked his right of self-representation.

Nevertheless, should this Court find that the record falls short of showing Appellant's invocation of his right to proceed pro se was knowingly and intelligently made, the appropriate remedy is a remand to enable the trial court to conduct an evidentiary hearing to establish

whether the waiver was knowingly and intelligently made. In re Christopher H., 359 S.C. at 169, 596 S.E.2d at 420-21 ("The typical remedy for failing to show a knowing and intelligent waiver of counsel is to remand to the trial court for an evidentiary hearing to determine whether the waiver was, in fact, knowingly and intelligently made."); see also State v. Dixon, 269 S.C. 107, 100, 236 S.E.2d 419, 420-21 (1977).

CONCLUSION

For all the foregoing reasons, Respondent respectfully requests that the judgment of the lower court be affirmed.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

July 11, 2019

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of General Sessions
Honorable John C. Hayes, Circuit Court Judge

Appellate Case No. 2018-001367

THE STATE, ...RESPONDENT

v.

GERALDO DAMETRIUS LAND. .....APPELLANT.

PROOF OF SERVICE

I, Shana Montgomery, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by sending two copies of the same to:

Joanna K. Delany, Esq.
South Carolina Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211

I further certify that all parties required by Rule to be served have been served. This 11th day of July, 2019.

Shana Montgomery

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ALAN WILSON
ATTORNEY GENERAL

July 11, 2019

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RE: State v. Geraldo Dametrius Land
Appellate Case No. 2018-001367

Dear Ms. Delany:

I am enclosing two (2) copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case.

Sincerely,

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WFS/
Enclosures

cc: The Honorable Jenny A. Kitchings (original and one enclosed)
Victim Advocacy Division