RECEIVED

Nov 01 2021

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In the Supreme Court

Appeal from Greenville County
The Honorable Robin B. Stilwell, Circuit Court Judge

THE STATE,

Respondent,

v.

JAHRU HAROLD SMITH,

Petitioner.

Appellate Case No. 2021-001106

RETURN TO PETITION FOR WRIT OF CERTIORARI

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General
S.C. Bar No. 14244

J. ANTHONY MABRY
Senior Assistant Attorney General
S.C. Bar No. 11973

Office of the Attorney General
P.O. Box 11549
Columbia, South Carolina 29211-1549
(803) 734-6305

W. WALTER WILKINS, III
Solicitor, Thirteenth Judicial Circuit
(864) 467-8647

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

PETITIONERS QUESTIONS PRESENTED

1. Did the Court of Appeals err in finding that the judge correctly refused to continue the trial in order for the visually impaired Petitioner to obtain prescription eyeglasses so that he could see to assist his attorney with his defense?
2. Did the Court of Appeals err in finding that the judge correctly refused to continue the trial in order for the visually impaired Petitioner to obtain prescription eyeglasses so that he could see in order to exercise his Sixth Amendment right to self-representation?

RESPONDENT'S COUNTER-STATEMENT OF QUESTION PRESENTED

1. Did the Court of Appeals correctly affirm the Circuit Court where the Circuit Court's denial of petitioner's motion for a continuance was not an abuse of discretion on this record and its ruling did not deprive petitioner of (1) his right to assist his attorney or (2) his right to represent himself?

STATEMENT OF THE CASE

On February 3, 2015, petitioner, Jahru Smith, murdered Shamese Logan in Greenville County. In August 2016, that County's Grand Jury indicted petitioner for murder, armed robbery, and possession of a weapon during the commission of a violent crime. (R. 657-60). The case proceeded to trial on March 12, 2018 before Circuit Court Judge Robin B. Stilwell. (R. 1). Petitioner was tried jointly with his brother and co-defendant, Bobby Smith. (R. 9). Alex Kornfeld represented petitioner. (R. 1). Assistant Solicitors Brian J. Moroney and W. Jeffrey Weston represented the State. (R. 1). The jury found petitioner guilty on all charges. (R. 625). Based on his prior criminal record, Judge Stilwell sentenced petitioner to life imprisonment without parole (LWOP) for murder and armed robbery pursuant to S.C. Code Ann. § 17-25-45 and 5 years *concurrent* on the gun charge. (R. 654, l. 7-12). Petitioner appealed his convictions and sentences raising 3 issues. On August 11, 2021, the Court of Appeals affirmed the convictions and sentences for murder and armed robbery and vacated the sentence on the gun charge in an unpublished opinion. State v. Jahru Harold Smith, 2021-UP-298 (Ct. App. 2021). A petition for rehearing was denied. A petition for writ of certiorari was then filed in this Court raising the 2 issues on which the Court of Appeals affirmed. This is Respondent's Return to the Petition for Certiorari.

RESPONDENT'S STATEMENT OF FACTS

Shamese Logan ("Victim") sold crack cocaine in Greenville. Although she kept a firearm in her car, she was not known to carry the weapon or act violently. One of her regular customers was petitioner's brother and co-defendant, Bobby Smith ("Bobby"). Bobby lived off of South Augusta Road in Greenville County, near Donaldson Center. (R. 56-58; 68; 506).

On February 3, 2015, Victim began her evening with a visit to her mother's house, during which, her mother noticed Victim counting $700-800 in cash. Later that evening, Victim met up

with friends at a bar only minutes away from Bobby's house. At around 9:30 pm, Victim received a call from Bobby. After speaking for less than 30 seconds, Victim hung up the phone and left the bar, telling her friends she would be right back. (R. 62; 67; 68; 513).

Shortly after Victim left the bar, Bobby's next door neighbor heard loud voices next door. A few minutes later, the neighbor heard multiple gunshots. The neighbor immediately got down on the floor and called 911, but could not connect to dispatch. Because her children were out running errands, she called them in a panic to warn them about the gunshots. After hanging up the phone, she quickly peered out her window and saw 2 men in Bobby's driveway leaning into the driver's seat of a car. (R. 74; 75; 81; 79; 86 76; 77).

The neighbor's children were only a few minutes away when they received the phone call. When they arrived home, they saw 2 men standing beside a Chrysler 300 in Bobby's driveway. The Chrysler was Victim's car. According to 1 of the children, the 2 men froze as if they had been caught "doing something that they had no business doing." (R. 86; 92; 334; 92, l. 16-17).

Law enforcement arrived on scene at 9:49 pm, about 5 minutes after the neighbor dialed 911. Because the neighbor did not connect with dispatch, the responding officers believed it was a routine "911 hang-up call." While 1 officer was speaking to the neighbor, another saw a dead body in Bobby's driveway near the Chrysler 300. With weapons drawn, officers immediately approached the car to investigate. In the center of the gravel driveway was a puddle of blood with drag marks leading to the dead body. Police later identified the body as Victim. She was lying beside the Chrysler 300, with her feet propped inside the rear passenger floorboard. The driver's door window had also been shattered. (R. 115; 98, l. 10; 99; 202-03; 327; 100; 160; 103).

When backup arrived, police approached Bobby's front door. Bobby opened the front door and came outside. According to 1 officer, "[h]e was really agitated, really animated." When the

officer advised there was a dead woman in his driveway, Bobby replied, "I ain't got shit to do with that. Chalk it up to the streets." (R. 104; 104, l. 19-20; 104, l. 21-25-105, l. 1).

Police detained Bobby and obtained search warrants for his house and Victim's car. Officers recovered 4 spent shell casings in the driveway near the car and 1 shell casing on the rear passenger floorboard. There was blood inside the car, heavily concentrated on the driver's seat. Officers also recovered bullet fragments from the driver's seat, the front passenger floorboard, and the rear driver's side of the car. Although the glass at the top of the driver's window had been shattered, the glass inside the window track remained intact. As such, investigating officers believed the window was partially rolled down when the top of the glass shattered. (R. 231; 326; 206; 236; 232; 244, 254).

On the driver's seat was a Kel-Tec 9 mm semi-automatic handgun. Its clip had 6 live rounds, but there was no round in the chamber. The rounds in the clip were manufactured by a different company than the spent shell casings recovered on scene. (R. 232; 245-46; 406; 409-10).

Inside Bobby's home, police quickly discovered a pair of sweat pants with blood stains. In addition to testing the blood stains, officers swabbed the inside of the waist band for the presence of DNA. Subsequent analysis revealed Victim's blood on the pants and Bobby's DNA inside the waist band. Officers also found Victim's identification and bank card in the toilet. In the freezer, police located Victim's cell phone and swabbed it for the presence of DNA. Subsequent analysis revealed Bobby's DNA on Victim's phone. (R. 216; 445; 447; 209; 213; 444).

Bobby was arrested that night. Officers recovered $107 cash from his pocket. The cash had Victim's blood on it. Officers also seized the shirt Bobby had on. It was also stained with Victim's blood. (R. 331; 147; 148; 180; 448).

As law enforcement was processing the murder scene, a canine officer attempted to track the second suspect spotted by the neighbor and her children. The dog led officers to a shed behind Bobby's house. The canine identified a heavy scent pool, but could not establish a trail leaving the shed because all the odor was concentrated on the shed. (R. 127; 129).

Although the dog could not find a trail to the second suspect, police quickly identified petitioner as a "person of interest." Petitioner's Jeep Cherokee was parked in his brother's front yard. Additionally, law enforcement obtained cell phone tower records from both petitioner and Victim. These records reveal their 2 phones converge upon the area of the crime scene at the time of the murder. After the murder, Victim's cell phone remained at the scene, while petitioner's cell phone left and traveled down I-85 into Anderson County. (R. 328, l. 1; 167; 476).

According to the mother of petitioner's children, petitioner asked her to pick him up at a Waffle House in Anderson County the night of the murder. Although she could not give him a ride, another witness picked him up at the Waffle House between 10:00 and 11:00 pm. The mother of petitioner's children also told law enforcement that when referring to the murder, petitioner said "it was an accident, I didn't mean to."[1] (R. 368-69; 381; 373, l. 14: 375, l. 1-25).

For 10 days, petitioner was wanted for murder before surrendering on February 13, 2015. While on the run, he called his aunt for help. His aunt told investigators petitioner asked for money "to get out of town."[2] Instead of giving money, the aunt suggested petitioner surrender to police

---

[1] At trial, the mother of petitioner's children, Tiffany Petty, initially testified petitioner said "it was an accident and he *didn't do it*." (R. 369, l. 21-22)(emph. added). The solicitor confronted Petty with a recording of her telling investigators petitioner said "it was an accident, I *didn't mean to*." (R. 373, l. 13-14)(emph. added). After listening to the recording, Petty testified "[i]f I said that on the tape, then, obviously, that's the way he said it. But I can't remember." (R. 375, l. 24-25).

[2] Petitioner's aunt also initially denied that she told police that petitioner asked for money to get out of town. (R. 386, l. 1-3). However, when confronted with a recording of her interview, she admitted to making the statement. (R. 388, l. 13-18).

in the presence of a local television news team. Petitioner liked the idea, but first wanted to visit his mother. (R. 369; 576; 383; 388, l. 16-18; 384; St. Ex. 44).

The local television news team ultimately captured Petitioner's surrender for its broadcast. Prior to his arrest, the following colloquy occurred between Petitioner and the on scene reporter:

Reporter:	Why are you just now turning yourself in, Jahru?
Appellant:	My brother is innocent, he shouldn't be in jail.
Reporter:	Are you taking the blame for this?
Appellant:	Yes sir, he didn't do it.
Reporter:	You did?
Appellant:	Yes sir.
Reporter:	You shot the young victim?
Appellant:	Yes sir.

(St. Ex. 44).

Petitioner's arrest did not end the investigation. Five days later, petitioner's attorney contacted police to report the location of a second gun.[3] The weapon was underneath a lawn mower in the shed on the property behind Bobby's house. As noted above, the canine detected a heavy scent pool on the shed, but could not find a trail leaving it. Petitioner instructed his attorney to report the location of the weapon because he believed it was Victim's gun. (R. 316). He also wanted his attorney to remain on scene to ensure police "properly preserved it" for evidentiary purposes. A firearms expert later matched this weapon to the fired shell casings found on scene and the bullet fragments recovered from the Chrysler 300, i.e. it was not Victim's gun, it was the murder weapon. (R. 315-16; 248, 129; 316, l. 13-15; 415).

Finally, Victim's autopsy revealed she had been shot 5 times. The fatal shot[4] entered the left side of her neck, passed through her jugular vein, and exited her right upper back. Victim also

---

[3] This weapon was also a Kel-Tec 9 mm handgun. (R. 251).

[4] Victim was also shot twice in the abdomen. (R. 303-04). The pathologist believed each gunshot to the abdomen was potentially fatal if Victim did not receive immediate medical care. (R. 305).

sustained small pinpoint abrasions ["stippling"] from ejected gun powder on her left cheek. According to the pathologist, this indicated the shooter was less than 2 to 3 feet away from Victim when he fired the gun. The pathologist also noted abrasions to Victim's buttocks indicative of a dragging injury. (R. 303; 306-10).

After the State rested, Bobby testified in his own defense. He confirmed that Victim regularly sold him crack cocaine. Victim also sold crack to his brother, petitioner, but friction arose between the two because petitioner would "short" the victim. In other words, petitioner would not pay the full price. (R. 506; 526, l. 18-21).

According to Bobby, on the day of the murder, petitioner drove Bobby to the hospital because Bobby was having a diabetic episode. After a few hours in the hospital, the two returned to Bobby's house and decided to smoke crack cocaine. Between 6:00 and 7:00 pm, Bobby called Victim to buy some crack. Victim came to the house, delivered the crack, and the 2 men smoked it. When they finished, petitioner wanted to buy more crack. Petitioner called Victim for some more crack, but she would not respond. Bobby had to call her to get more. Victim answered Bobby's call and returned with more crack. (R. 510-14; 527).

When Victim arrived for a second time, Bobby went outside and paid for the crack. As he returned to the house, Bobby saw petitioner come out of the back door heading toward Victim's car. Although he did not see petitioner with a gun, he admitted petitioner regularly carried a gun. According to petitioner's brother, as petitioner approached Victim's car, Victim allegedly said, "I'm going to teach that mother fucker a lesson." Bobby went back inside and did not see anything else. (R. 514, l. 20-22; 515, l. 6-7; 533, l. 23-25; 515, l. 7-8).

According to Bobby, several minutes later, he heard the gunshots. Petitioner knocked on the front door and told him that he shot Victim. Bobby saw Victim slumped in the driver's seat

with her body halfway out of the car. The 2 men tried to move Victim's body to the rear passenger seat, but Bobby dropped her. Bobby took Victim's phone, which had an attachment containing her identification, bank card, and cash.[5] Bobby went inside, tried to flush her i.d. and bank card down the toilet, and put her phone in the freezer. Although he complained it took police a long time to come to his door, he never attempted to call 911. Bobby explained he does not "know how to use them touch phones." (R. 515, l. 12-24; 517, l. 4-25; 541, l. 17-24; 521, l. 2-3: 538, l. 3-6).

On cross-examination by petitioner, Bobby testified Victim pulled a gun out of the glove box and held it at petitioner. When asked why he did not mention that on direct exam, Bobby denied trying to protect his brother. Instead, he explained, "that's the first time he asked me." Largely on this testimony, petitioner argued self-defense. (R. 548; 554; 554, l. 7, 20; 597, l. 8-10).

In response, the State noted Victim's wounds indicated she was in a seated, defensive position when she was shot. The State also pointed out that if Victim was holding a gun at the time she was shot, then there would be blood on it. Additionally, the State noted that Victim's gun had not been fired because there were no shell casings from that gun on scene.[6] Finally, the State argued that if petitioner had acted in self-defense, then surely he would have told the news team when he surrendered. (R. 579, l. 3-8; 579, l. 17-18; 580, l. 12-14; 579, l. 24).

The jury found petitioner guilty of murder, armed robbery, and possession of a weapon during the commission of a violent crime.[7] After the jury announced its verdict, petitioner's

---

[5] Bobby also took marijuana off of the victim's dead body even though he does not smoke marijuana. He explained that "I just got it because I saw it." (R. 542, l. 8).

[6] As noted above, the weapon did not have a round in the chamber. (R. 246, l. 5-6).

[7] With respect to Bobby, the court charged accessory after the fact as a lesser included offense of murder. (R. 563). The jury found Bobby guilty of armed robbery, accessory after the fact of murder, and possession of a weapon during a violent crime. (R. 625-26). Based on Bobby's prior record, he was sentenced to LWOP for armed robbery under § 17-25-45. (R. 631; 634). The court also sentenced him to 15 years for accessory after the fact and 5 years for the gun charge. (R. 635).

attorney informed the court that petitioner did not wish to attend his sentencing. The court ordered him to be appear. Based on petitioner's prior federal conviction for bank robbery, the court sentenced him to life without parole (LWOP) for murder and armed robbery under § 17-25-45. Petitioner was also sentenced to 5 years *concurrent* for the gun charge, which was vacated by the Court of Appeals. (R. 625; 628; 652, l. 21-23; 654, l. 7-15). This petition followed.

ARGUMENT

I. Certiorari should be denied because the Circuit Court's Denial of Appellant's Motion to Continue Did Not Deprive Him of the Right to Assist Counsel or the Right of Self-Representation. In fact, the Court of Appeals correctly affirmed where the Circuit Court's Denial of the Motion to Continue Was Not An Abuse of Discretion Because Petitioner Made No Effort for Weeks to Obtain New Glasses Before Trial, Offered No Proof of Impairment at the Continuance Hearing, and Sustained No Prejudice From the Court's Ruling but Voluntarily Absented Himself from the Trial.

What Occurred Below

Petitioner and his brother, Bobby Smith, were tried jointly for murder, armed robbery, and the weapon charge. (R. 9, l. 7-11). On the morning the case was called for trial, petitioner moved for a continuance in order to obtain a new pair of glasses. (R. 10, l. 2-10). Petitioner's counsel explained that petitioner's glasses broke during an intervening arrest in Anderson County. (R. 10, l. 2-3). Petitioner's attorney claimed that without glasses, his client would be unable to actively assist in the jury selection process. (R. 10). Petitioner failed to provide his prescription, present a doctor's note, or explain his efforts to obtain new glasses while awaiting trial. (R. 10, l. 16-19). The court denied the motion, noting that counsel could read the jury list, confer with petitioner, and convey information during the jury selection process. (R. 11, l. 15-16).

While the circuit court was explaining its rationale, petitioner personally interjected and stated "[i]t seem [sic] like to me, sir, your impartiality is being questioned here." (R. 12, l. 2-3). The court politely noted petitioner's objection and moved on to other pre-trial matters. (R. 12, l.

9-12). After the court resolved these other matters, petitioner personally interjected a second time regarding his broken glasses. (R. 19, l. 15-23). Petitioner estimated that it would take only 2 ½ weeks to get a new pair of glasses. (R. 20, l. 1-2). The court again noted petitioner's objection and explained that he could appeal the ruling if the jury were to convict him at trial. (R. 20, l. 7-11).

While the court was explaining his appellate rights, petitioner interjected, "No sir...I don't want to have to go through that process...I want my right of benefit of the law right now." (R. 20, l. 13-17). The court repeated its assessment that petitioner's vision created no prejudice in moving forward. (R. 21, l. 5-7).

Petitioner did not accept the court's ruling and grew increasingly confrontational. After repeatedly interjecting before the court could finish a sentence, the court warned, "if you continue to talk over me, I can assure you it won't profit you in any way." (R. 22, l. 8-9). Petitioner responded, "It's not profiting me now, sir. And as a matter of fact, what is your name, Your Honor." (R. 22, l. 10-12). After the court responded, petitioner stated, "Rob Stilwell, I thought so."[8] (R. 22, l. 14-15).

Because petitioner had raised his Sixth Amendment right to defend himself (R. 21, l. 10-11), the court asked if he wanted to fire his appointed attorney. (R. 22, l. 16-17). Petitioner responded that "I don't want to fire my counsel... I want to assert the right to defend myself with the assistance of counsel." (R. 22, l. 18-20). The court noted the inconsistency in petitioner's statement and further explained that an inability to see does not necessarily compromise his ability to make peremptory challenges. (R. 23, l. 6-9). The court explained that race-based challenges are prohibited, and his attorney could convey information regarding body language or facial

[8] The transcript reads as if petitioner was making a subtle threat towards the court.

expressions. (R. 23, l. 10-19). Additionally, the court noted that the jury box was very close to petitioner's seat, further minimizing any difficulty. (R. 23, l. 20-23).

Still unconvinced by the court's reasoning, petitioner asserted that the court did not know his vision capabilities. (R. 23, l. 25). The court replied that "if you were sincere and you were making an honest motion before this Court, you would have brought the prescription, and you would have told me what your eyesight is with specificity...as opposed to just standing up here and saying I can't see. You would have armed Mr. Kornfeld [petitioner's counsel]--" (R. 24, l. 6-14). Before the court could finish its point, petitioner interjected that he had been unable to contact his attorney. (R. 24, l. 15-23). Counsel explained he sent multiple letters and never received a phone call from petitioner. (R. 25). The court, again, repeated its denial of the motion to continue, noting the ruling was "respectfully and with no animus or ill will towards [petitioner]." (R. 25, l. 18-21).

Unfortunately, that did not put the matter to rest. Petitioner stated, "I want to ask you to recuse yourself from this case. Because I find your impartiality questionable...it's a vendetta that you're trying to exercise right here." (R. 25, l. 24-25: 26, l. 1). The court denied the motion to recuse himself, prompting petitioner to announce his desire to file an appeal. (R. 26, l. 10-12).

Upon hearing this motion, petitioner's counsel asked that all motions be made through him in order to preserve them for the record and avoid hybrid representation. (R. 26, l.15-25). The court explained that it was trying to be respectful to petitioner, at which point petitioner again interjected, "I can't tell it...I really can't tell, because you're being unfair right now." (R. 27, l. 9-12). The court politely acknowledged petitioner's "opinion and perspective" and advised that it would hear motions from counsel. (R. 27, l. 17). The court further discouraged petitioner's

interjections and warned that should he become disruptive during the trial, he would be removed from the courtroom. (R. 27, l. 17-24).

At that point, petitioner once again interjected, stating "you can go ahead and remove me from the courtroom now. And y'all go ahead and have y'all [sic] trial. Because that's what you want to do anyway. You want to railroad me. That's what you want to do. I know -- **I know who you are, believe me.**"[9] (R. 28, l. 9-13)(emphasis added). The court acknowledged that petitioner had the right to leave the courtroom if he wanted, but stated its preference that petitioner remain for jury selection. (R. 28, l. 18-19). Petitioner once again cut the court off mid-sentence, stating "How the hell [are] you going to want me to get a fair trial and you won't even postpone the matter for a couple of weeks for me to obtain some prescription eyeglasses -- mandated prescription eye glasses, at that." (R. 28, l. 21-23).

The courthouse deputy ultimately intervened and asked petitioner to have a seat. (R. 29, l. 6-7). The court repeated that it was not removing petitioner from the courtroom. (R. 29, l. 11). Nevertheless, petitioner walked out of the courtroom. As petitioner walked out, he stated "I hope that if you -- you allow him to remain as my attorney" that he file an appeal regarding the judge's recusal in the case. (R. 29, l. 16-19).

After petitioner walked out of the courtroom, the parties proceeded with jury selection. (R. 30, l. 16-17). Petitioner's counsel continued his representation, and the court advised that petitioner could return at any time. (R. 30, l. 10-11). After picking a jury, court was in recess for a lunch break. Prior to adjourning, the court asked counsel to confer with petitioner to see if he wanted to return to the courtroom. (R. 33, l. 15-17).

[9] This portion of the transcript also reads as a subtle threat to the court.

When the parties returned after lunch, counsel advised that petitioner wanted to proceed *pro se*, with his attorney acting as standby counsel. (R. 36, l. 23-25). Petitioner returned to the courtroom, and the court began to warn him of the risks with proceeding *pro se* in accordance with Faretta v. California.[10] (R. 37, l. 19-20). After the court advised that he had a constitutional right to represent himself, petitioner immediately moved for a continuance to obtain a new pair of glasses. (R. 39, l. 1-9). The court informed petitioner it would allow him to proceed *pro se*, but it would not continue the case. (R. 39, l. 15).

The ruling prompted yet another claim by petitioner that the court lacked impartiality and was depriving him of a fair trial. (R. 39, l. 23: 40, l. 2-5). Petitioner then informed the court that, "you can proceed on and try me without my representation and without counsel's representation." (R. 40, l. 11-13). The court asked if he was ready proceed, and petitioner responded, "I'm ready to get up out of here." (R. 40, l. 17-18). The court, again, encouraged petitioner to stay, but he refused. (R. 40, l. 20-25).

As petitioner walked out of the court room, he stated, "my counsel and me, we're leaving. Y'all go ahead and try the case. That's what you're doing anyway. I ain't got no counsel." (R. 41, l. 3-5). The court directed petitioner's counsel to remain in court and represent him. (R. 41, l. 6-7). Petitioner further quipped, "[w]ell I'm directing him to not represent me. I'm representing myself." (R. 41, l. 8-9). With that final remark, petitioner left the courtroom. (R. 41, l. 10-11).

After petitioner left, the court repeated its rationale for denying his motion to continue. The court explained that petitioner failed to provide any documentation, or other evidence, to show he could not see. (R. 42, l. 8-11). Instead, petitioner simply made "a bald-faced representation" of impairment. (R. 43, l. 9). Furthermore, the court believed his attorney could compensate for

[10] 422 U.S. 806 (1975).

any deficiency by reviewing documents and conferring with him. (R. 42, l. 20-23). In sum, the circuit court held that petitioner might be visually impaired, but merely asserting an impairment was insufficient to justify a continuance. (R. 43, l. 10).

Although the trial continued, the court ordered petitioner to be transported to the courthouse every day so that he could participate in his defense if he changed his mind. (R. 119, l. 12-15). During breaks in the proceedings, the court repeatedly asked whether petitioner wanted to attend the proceedings. (R. 190: 280: 281: 351: 431: 491). Petitioner refused every invitation to return to the courtroom. In fact, he laced one response with profanity because he did not appreciate being bothered while eating lunch. (R. 281, l. 12-13).

At the close of the State's case, the court addressed petitioner's refusal to participate. It noted:

> Oftentimes, when you look at a transcript of a record, it's difficult to ascertain what, actually, happened. And I just want to state on the record that, from the Court's perspective, that motion of self-representation, that was entirely pretextual and an attempt from the Defendant to delay the trial. When that was unsuccessful, then he, for the second time, excused himself from the courtroom and elected not to participate in the trial.
>
> So I think it's clear that was a pretextual motion made by him. And I'll state as well, after colloquy, I granted his motion. And he elected, again, not to participate.

(R. 492, l. 6-18).

On appeal Petitioner raised the two issues he raises in the certiorari petition. The Court of Appeals held as follows as to these two issues:

> **PER CURIAM:** Appellant, Jahru Harold Smith, appeals from his convictions and sentences for murder, armed robbery, and possession of a weapon during the commission of a violent crime. He asserts the trial court erred in refusing to continue his trial in order for him to obtain prescription eyeglasses so that he could see to (1) assist his attorney in his defense and (2) exercise his Sixth Amendment right to self-representation. He further argues the trial court erred in (3) sentencing him to five years' imprisonment for the possession of a weapon

during the commission of a violent crime after sentencing him to life without parole (LWOP) for murder and armed robbery. We affirm the trial court's denial of a continuance, his convictions, and his sentences for murder and armed robbery, but we vacate his five-year sentence for possession of a weapon during the commission of a violent crime.

1. We find no error in the trial court's denial of Appellant's motion for a continuance to acquire glasses in order to assist in his defense. Appellant made no showing to the trial court that he required prescription eyeglasses in order to assist in his own defense or to confront witnesses against him. *See* Rule 7(a), SCRCrimP (providing "[c]ontinuances may be granted by a presiding judge . . . only upon a showing of good and sufficient legal cause"). Though Appellant maintained to the trial court that he could not see without his prescription eyeglasses and trial counsel stated his understanding that Appellant received some disability due to his visual impairment, these were mere assertions. During his motion, Appellant presented nothing to the court regarding the extent of his visual impairment or whether it hampered his ability to assist in his defense. He also presented nothing to show he made any effort prior to trial to obtain a new pair of glasses. Further, we find no evidence that the trial court's suggested accommodation of the use of trial counsel to assist Appellant visually, as well as the court's assurance that they could take their time, was insufficient or that Appellant would be prejudiced by use of the suggested accommodation. Additionally, we find Appellant's reliance on *United States v. Scheur*, 547 F. Supp. 2d 580 (E.D. La. 2008), is misplaced. There, the government filed a motion in limine regarding the need for special accommodations for Scheur—who was blind—following allegedly fruitless discussions with defense counsel concerning the defendant's disability. *Id.* at 582, 583. The United States District Court thereafter scheduled an evidentiary hearing on the matter, which was held eleven days *prior* to Scheur's trial date. *Id.* at 584 n.6. In the wake of the hearing, the court observed "an authoritative road map for courts to follow when faced with the trial of a disabled defendant" and ordered certain accommodations for Scheur. *Id.* at 588, 589. Here, the issue is not the extent to which a court should accommodate a defendant's known disability as it was in *Scheur*. Rather, the issue is whether the trial court abused its discretion in denying Appellant's motion for a continuance—made on the day of trial—when no showing was made of (1) the extent of his alleged disability or whether his disability required further accommodations in order for Appellant to assist in his defense beyond those noted available by the court and (2) whether Appellant acted with diligence in attempting to obtain prescription eyeglasses prior to trial or in bringing the matter to the court's attention. *See State v. Mansfield*, 343 S.C. 66, 72, 538 S.E.2d 257, 260 (Ct. App. 2000) ("The granting or denial of a motion for continuance is within the sound discretion of the trial judge."); *id.* ("The trial court's refusal of a motion for continuance will not be disturbed on appeal absent a clear abuse of discretion resulting in prejudice to the appellant."); *State v. Meggett*, 398 S.C. 516, 520, 523, 728 S.E.2d 492, 494, 496 (Ct. App. 2012) (observing that "a party cannot complain of an error which his own conduct has induced" and finding no error in the denial of the defendant's motion for a continuance to test evidence when the defendant—

who raised the matter with trial counsel the morning of trial—had a significant period of time to obtain the testing and his failure to do so was a result of his own inaction) (quoting *State v. Babb*, 299 S.C. 451, 455, 385 S.E.2d 827, 829 (1989)). To the extent Appellant maintains he was unable to present the proper showing to the trial court based upon trial counsel's failures, the proper remedy for such—as observed by Appellant in his brief—is a post-conviction relief (PCR) action. *See State v. Felder*, 290 S.C. 521, 522, 351 S.E.2d 852, 852 (1986) (recognizing PCR, rather than a direct appeal, is the proper avenue for allegations of ineffective assistance of counsel).

2. We likewise find the trial court's denial of Appellant's motion for a continuance did not deprive him of his right to self-representation. First, the trial court did not deny Appellant this right. Rather, the court specifically granted Appellant's motion to represent himself. As with his assistance of counsel claim, Appellant failed to make any showing to the trial court that his visual impairment deprived him of the ability to represent himself or that trial counsel could not provide the needed visual assistance as stand-by counsel. *See State v. Bennett*, 259 S.C. 50, 53-54, 190 S.E.2d 497, 498 (1972) (finding no error in the trial court's denial of the defendant's motion for continuance—made on the day of trial—to allow him to pursue an opportunity to obtain counsel of his choice, as the "[d]efendant's constitutional right to counsel [was] fully met at every stage of the proceeding against him by the representation afforded him by diligent and talented appointed counsel"). It was Appellant's own action in refusing to remain in court and participate in the trial that denied him the opportunity to represent himself. *See State v. Stroman*, 281 S.C. 508, 513, 316 S.E.2d 395, 399 (1984) ("[A] party 'cannot complain of an error which his own conduct has induced.'" (quoting *State v. Worthy*, 239 S.C. 449, 465, 123 S.E.2d 835, 843 (1962))). Likewise, based upon his own conduct, Appellant is unable to show how he was prejudiced by the trial court's ruling. *See Mansfield*, 343 S.C. at 72, 538 S.E.2d at 260 ("The trial court's refusal of a motion for continuance will not be disturbed on appeal absent a clear abuse of discretion *resulting in prejudice to the appellant*." (emphasis added)).

[Issue III. omitted, which vacated the concurrent sentence on the gun charge].

AFFIRMED IN PART AND VACATED IN PART.[1]

HUFF, WILLIAMS, and GEATHERS, JJ., concur.

Footnote 1 We decide this case without oral argument pursuant to Rule 215, SCACR.

State v. Jahru Smith, *supra.*

STANDARD OF REVIEW
Motion to Continue

"The denial of a motion for a continuance is within the sound discretion of the trial court and will not be disturbed on appeal absent a showing of an abuse of discretion resulting in prejudice." State v. Barrett, 416 S.C. 124, 134, 785 S.E.2d 387, 392 (Ct. App. 2016)(quoting State v. Meggett, 398 S.C. 516, 523, 728 S.E.2d 492, 496 (Ct. App. 2012). "An abuse of discretion arises from an error of law or a factual conclusion that is without evidentiary support. Id.

Ruling upon a motion to continue "is a matter within the trial court's discretion." State v. Smith, 387 S.C. 619, 622, 693 S.E.2d 415, 417 (Ct. App. 2010). On appeal, the circuit court's decision will not be reversed "unless there was an abuse of discretion that resulted in prejudice." Id. Additionally, in evaluating the denial of a motion to continue, "a party cannot complain of an error which his own conduct has induced." State v. Meggett, 398 S.C. 516, 523, 728 S.E.2d 492, 496 (Ct. App. 2012)(quoting State v. Babb, 299 S.C. 451, 455, 385 S.E.2d 827, 829 (1989). As such, reversing a circuit court's denial of a motion to continue is "about as rare as the proverbial hens' teeth." State v. Williams, 321 S.C. 455, 459, 469 S.E.2d 49, 51 (1996)(quoting State v. Lytchfield, 230 S.C. 405, 409, 95 S.E.2d 857, 859 (1957).

Issue 1: The Circuit Court's Denial of Petitioner's Motion to Continue Did Not Deprive Him of the Right to Assist Counsel.

The circuit court's initial denial of petitioner's motion to continue should be affirmed because it had factual support and petitioner sustained no prejudice. As noted above, petitioner presented no evidence on the extent of his alleged vision impairment, much less any evidence that would render the court's proposed accommodation unreasonable. He offered no prescription, no doctor's opinion, and no lay testimony.[11] In contrast, the court was ready to try the case, the State

[11] As noted above, the mother of petitioner's children, Tiffany Petty, testified during the State's case-in-chief. On cross-examination, she testified that petitioner wears "real thick glasses" and cannot see without them. (R. 371, l. 14-15). She also testified that he receives a monthly disability check because he is legally blind. (R. 371, l. 16- 23). Her testimony occurred after the court

was ready for trial and had 29 witnesses under subpoena, the jury pool was present for selection, and the victim's family was present as well. (R. 2-4; 346-347). Petitioner waited until the morning of the trial to tell anyone he had broken his glasses several weeks ago and now needed more time to obtain new glasses. Simply put, the court acted reasonably in denying the motion to continue and in expecting petitioner to provide *some* proof of his alleged vision impairment before continuing the case.

The record also contains no evidence petitioner made any effort prior to trial to obtain a new pair of glasses. Petitioner's glasses allegedly broke during his arrest on unrelated charges in Anderson. [12] (R. 10, l. 2-3). He should have attempted to obtain a new pair of glasses after they broke, not the morning of his murder trial. At a minimum, he could have notified either the court or the solicitor of the potential issue. Therefore, petitioner's inaction created his predicament, not any error by the court or the State. Petitioner has no one to blame but himself.

Further, petitioner cannot establish any prejudice from the circuit court's ruling. As noted above, petitioner refused to participate in jury selection after the court ruled against him. (R. 29, l. 22-23). Thus, he cannot establish the court's proposed accommodation was unworkable because he did not even attempt to abide by the ruling. Had he remained in court, he might have been able to point to a specific juror whose body language he could not see, a specific portion of the jury list

---

denied petitioner's second motion to continue. As such, the court did not and could not consider it in ruling on petitioner's two motions to continue.

[12] The record is unclear when the intervening arrest in Anderson County occurred. Although no precise date is given, the record is clear that petitioner broke his glasses before the case was set for trial. Petitioner informed the circuit court that his attorney would have known about the broken glasses "if he would have came to see me when -- once he found out that a trial date had been set. He knew I was in Anderson County." (R. 24, l. 19-21). Thus, according to petitioner, his attorney knew he was in the Anderson County jail on the intervening charge before the trial date was set. Additionally, trial counsel sent petitioner "two or three" letters after the intervening arrest, further indicating that petitioner had sufficient time to obtain new glasses. (R. 25, l. 1).

he could not read, or a particular moment where he did not have enough time to confer with his attorney. Because he refused to follow the court's ruling, he can do none of these things.

Petitioner's inaction prior to trial and inability to establish prejudice makes this case analogous to State v. Meggett, 398 S.C. 516, 728 S.E.2d 492 (Ct. App. 2012). In Meggett, the defendant faced burglary and CSC charges after an alleged sexual assault. On the morning his trial started, he moved for a continuance in order to have a relative's bed comforter tested for the victim's DNA. The defendant believed the presence of the victim's DNA on the comforter would corroborate his claim he had an ongoing, consensual relationship with her. The court denied the motion, and the jury convicted him. On appeal, he argued the court abused its discretion in denying his motion to continue. The Court disagreed, noting "a party cannot complain of an error which his conduct has induced." Id. at 523, 728 S.E.2d at 496. Because the defendant could have sent the comforter for testing prior to trial, this Court held that "his failure to do so was a result of his own inaction and not a lack of preparation time."[13] Id. Additionally, he offered nothing to suggest that probative evidence would still be on the comforter. As such, this Court held the circuit court did not abuse its discretion in denying the motion to continue. Id. at 524, 728 S.E.2d at 496.

Like the defendant in Meggett, petitioner's own inaction, not a lack of preparation time, created the problem he faced on the morning of trial. Petitioner, like any other defendant facing a trial date, should have obtained new glasses while awaiting trial, not the minute he walked into the court room. Also like the defendant in Meggett, he cannot establish prejudice arising from the

[13] Like this case, the attorney in Meggett asserted his client raised the issue to him the morning of trial. Id. at 520, 728 S.E. 2d at 494 ("Defense counsel asserted Meggett, on the morning of trial, raised the issue of having a comforter from his nephew's bed in his sister's home tested for DNA evidence based on Meggett's claim he had consensual sex with Victim in the bed in the months leading up to the incident.").

court's ruling. Because he voluntarily left the courtroom after the ruling, he cannot show the court's accommodation was prejudicial towards him.

In addition to Meggett, a series of 3 cases illustrate the type of prejudice petitioner must show in order to overturn the circuit court. First, in State v. Asbury, 328 S.C. 187, 493 S.E.2d 349 (1997), the defendant went to trial for murder, resulting in a mistrial. Prior to the second trial, he moved for a continuance in order to obtain the transcript from the first trial. After the circuit court denied the motion, the jury found him guilty as charged. On appeal, the Supreme Court upheld the ruling because the defendant failed to establish prejudice. Specifically, the court noted the defendant could have used the court reporter's tapes, if necessary, to impeach witnesses. Id.

The Court of Appeals relied on Asbury in analyzing the second case a few years later, State v. Mansfield, 343 S.C. 66, 538 S.E.2d 257 (Ct. App. 2000). Mansfield involved a motion to continue in order to obtain a transcript after a mistrial. The defendant in Mansfield could point to specific differences in the testimony of a key witness between the 1st and 2nd trial. The Court found no prejudice from the denial of the continuance, noting the differences in the witness's testimony were minor and actually enhanced his credibility.[14] Id. at 77, 538 S.E.2d at 262.

Finally, the Supreme Court addressed the issue again in State v. McMillan, 349 S.C. 17 561 S.E.2d 602 (2002). Like the previous two cases, McMillan involved a motion to continue in order to obtain a transcript following a mistrial. But unlike Asbury and Mansfield, the court reporter did not maintain any backup tapes to use in lieu of the transcript. McMillan, 349 S.C. at 23, 561 S.E. 2d at 605. Furthermore, the defendant in McMillan could point to a specific piece of

[14] In Mansfield, the defense attorney sent a letter requesting the court reporter's tapes one week before trial. This Court noted that the attorney could have sent a subpoena to produce the tapes for trial. As such, he "did not need a continuance to achieve his stated objective." Id. at 77, 538 S.E.2d at 262. The case at bar is similar. Because petitioner could have obtained a new pair of glasses prior to trial, he "did not need a continuance to achieve his stated objective." See Id.

testimony in which the only "neutral" witness actually lied on the stand. Id. at 604. Although the witness lied about a fact irrelevant to the defendant's guilt, the lie affected her overall credibility. Id. at 22, 561 S.E.2d at 604. As the court noted, "the verdict hinged upon her credibility." Id. at 23, 561 S.E.2d at 605. The court held the defendant sustained prejudice based on: (1) the lack of any alternative to the transcript, and (2) the defendant's ability to articulate a specific portion of testimony where a transcript or tape would have affected the trial. As such, the circuit court committed reversible error in denying the motion to continue.

McMillan illustrates the type of prejudice that petitioner simply cannot establish. In McMillan, there was no alternative to the trial transcript because the court reporter did not produce a backup tape. Not so here. Counsel's eyes were a reasonable alternative to petitioner's glasses. As the circuit court noted, counsel could read the jury list to petitioner, confer with him, and convey information during the jury selection process. (R. 11, l. 15-16). The court even reassured petitioner later, advising, "we'll take our time." (R. 39, l. 17). More importantly, unlike McMillan, petitioner cannot articulate how the trial would have changed if he had glasses. As soon as petitioner walked out of the court room, his alleged vision impairment had no impact on the trial. Petitioner cannot point to any witness, piece of evidence, or document that he would not have been able to see. Of course he did not see any witnesses, evidence or documents because he voluntarily chose to be absent from the trial. As such, petitioner sustained no prejudice from the court's ruling.

Petitioner cites United States v. Scheur[15] in arguing the circuit court should have continued the case. In Scheur, a federal district court in Louisiana ruled that a blind defendant was entitled to reasonable accommodations during trial, including the use of his braille computer. Petitioner's reliance on Scheur is misplaced. One critical fact in Scheur distinguishes it from this case: timing.

[15] 547 F. Supp. 2d 580 (E.D. La. 2008).

The Scheur court learned of the defendant's blindness over a month before the trial date. Scheur, 547 F. Supp. 2d at 583. The notice allowed the court to convene a hearing on the issue 11 days before trial and issue an order 4 days before trial. Id. at 580, 588. In other words, the court was not faced with a motion to continue at the last minute because of 1 party's inaction. In fact, the defendant never moved for a continuance because the problem was addressed in advance of trial. Further, the defendant in Scheur actually presented evidence to prove his impairment. Id. at 589.

Unlike Scheur, the issue in this case is not whether wearing glasses is a reasonable accommodation for vision impairment. The circuit court did not order petitioner to check his glasses at the door. Instead, the issue is whether a continuance on the morning of a murder trial is reasonable without any proof of impairment, without making the slightest effort to solve the problem before walking into court, and without demonstrating any resulting prejudice. The circuit court was in the best position to answer this question. It did not abuse its discretion.

Issue 2. The Circuit Court's Denial of Petitioner's Motion to Continue Did Not Deprive Him of the Right to Self-Representation.

As noted above, after jury selection petitioner briefly returned to the courtroom and asked to represent himself. (R. 37, l. 12-20). As the court was proceeding with Faretta warnings, petitioner made a second motion to continue in order to obtain glasses. (R. 39, l. 4-21). The court allowed petitioner to proceed *pro se* with counsel acting in a standby capacity, but denied the motion to continue. (R. 39). Once the motion to continue was denied, petitioner refused to participate further. (R. 40). Petitioner walked out of the courtroom, and counsel continued to represent him in his absence. (R. 41, l. 10-25). On appeal, petitioner argues the denial of the second motion to continue the case deprived him of the right to self-representation. It did not.

The circuit court's ruling on the second motion to continue should be affirmed for the same reasons as the first. Nothing changed between petitioner's first and second motions to continue.

Petitioner still offered no proof of impairment. Petitioner still failed to show any due diligence in obtaining new glasses prior to trial. And petitioner still suffered no prejudice from the court's ruling. Although the court permitted petitioner to represent himself, he walked out of the court room. Had he attempted to represent himself, then perhaps he could point to a witness that he was unable to cross-examine, or a piece of evidence he could not see. Because he cannot articulate how the trial would have been different, petitioner has failed to establish prejudice. See e.g. McMillan, 349 S.C. 17, 561 S.E.2d 602 (2002); Cf. Rule 7(b), SCRCrimP (in motions to continue based on the absence of a witness, the moving party not only must establish that the motion is not intended for delay, but also must demonstrate due diligence in securing the witness).

Nor can petitioner rely on his voluntary absence from the courtroom during the trial to establish prejudice. As this Court has noted:

> An accused has the right to be present at every stage of his trial. **This right, however, may be waived**. A defendant may properly be excluded when his conduct is disruptive or is interfering with the progress of the trial. **Although the right to be present is a substantial one, no presumption of prejudice arises from a defendant's exclusion**.

State v. Bell, 293 S.C. 391, 401, 360 S.E.2d 706, 711 (1987)(emph. added). In other words, Petitioner cannot claim prejudice arising from his voluntary decision to leave the court room.

Nevertheless, petitioner argues that the record does not support the circuit court's finding that his alleged impairment was "simply a bald-faced assertion." In support of this argument petitioner notes that trial counsel informed the court that petitioner receives a disability check for his impairment. But the circuit court is not required to rely on the word of counsel alone. By petitioner's logic, the circuit court would be required to accept every representation by counsel as gospel. Petitioner offered no disability paperwork, no prescription, no doctor's note, and no lay

testimony in support of counsel's argument.[16] The absence of any evidence supporting counsel's assertion at the time the issue was raised justifies the circuit court's finding.

Petitioner also argues the trial court erred in finding petitioner's motion to represent himself was a pretext to delay the trial. Petitioner notes a defendant's "improper motive or unethical conduct is not enough to preclude him from exercising his right to self-representation." (quoting State v. Samuel, 422 S.C. 596, 606, 813 S.E.2d 487, 493 (2018)). Petitioner's argument is misplaced. It confuses 2 separate issues: the motion to continue and the motion to proceed *pro se*.

Petitioner attempts to cloak the denial of his motion to continue into a constitutional issue of self-representation, but the court never precluded petitioner from proceeding *pro se*. The circuit court explicitly allowed it, stating "All right. Mr. Smith, I'll allow you to represent yourself." (R. 39, l. 14-15). The court subsequently made its ruling even more explicit, stating that "I granted his motion." (R. 492, l. 16-17). Nothing prevented petitioner from proceeding *pro se*.

Further, although petitioner's "improper motives" might not preclude him from invoking his right to self-representation under Samuel, those motives are relevant in assessing a motion to continue. As discussed above, the record reveals petitioner acting in bad faith throughout the trial.[17] First, his courtroom demeanor suggested bad faith. He repeatedly interjected over his

---

[16] As noted in footnote 13 above, the mother of petitioner's children, Tiffany Petty, testified during the State's case-in-chief. On cross-examination, she provided some details regarding petitioner's alleged vision impairment. (R. 371, l. 14- 23). However, as noted above, the testimony occurred after the circuit court denied both of petitioner's motions to continue.

[17] Arguably, petitioner's attempts to manipulate the system began before trial. For example, petitioner did not immediately turn himself into law enforcement. Instead, he waited ten days to do so. After he decided to surrender, petitioner first visited his mother and then arranged for a local television news station to capture his arrest. In front of the television camera, he stated that his brother "shouldn't be in jail" because petitioner "shot the young victim." (St. Ex. 44). But in opening statements petitioner's attorney told the jury that "people say things that they didn't do all the time to try to protect other people." (R. 52, l. 3-5). In other words, petitioner's trial counsel told the jury that his client confessed to manipulate the system and protect his brother. Furthermore, petitioner asked his attorney to report "the victim's" weapon to law enforcement and

attorney, interrupted the court, and walked out in protest. Second, and more concerning, petitioner twice made subtle threats to the court. (R. 22, l. 14-15: 28, l. 9-13). Third, after the motion to continue was denied, he challenged the court's impartiality and demanded the court's recusal. (R. 25, l. 23-24). Because he had no evidence to support recusal, petitioner's demand was another indirect attempt at delay. Fourth, petitioner's inconsistent positions reveal his desire to represent himself was also a pretext for delay. As the court noted, at first petitioner explicitly states he does not want to fire his attorney. (R. 22, l. 18-20). Once he realizes the trial will continue without him, he returns to announce his desire to proceed *pro se*. (R. 37, l. 13-15). Petitioner's first act as counsel was a motion to continue. (R. 39). When that motion is denied, he refuses to continue. (R. 41).

Petitioner likely thought his demeanor would throw a curveball that would derail the trial or create an appellate issue. The court rightfully did not reward his behavior by granting a continuance. Because the court acted within its discretion, the petition should be denied.

CONCLUSION

The Court of Appeals affirmance of Judge Stillwell's denial of petitioner's motion to continue on both issues should be affirmed. The petition for writ of certiorari should be denied.

Respectfully submitted,

J. ANTHONY MABRY

By: *s/ J. Anthony Mabry*
J. Anthony Mabry
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211-1549
(803) 734-6305

ATTORNEYS FOR RESPONDENT

November 1, 2021.

---

ensure law enforcement properly collected it. (R. 316, l. 3-15). At trial, he objected to the introduction of the very evidence he asked his attorney to report to the police. (R. 280, l. 7-11).