

No. \_\_\_\_\_

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IN THE SUPREME COURT OF THE UNITED STATES

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WILLIAM WEBB  
Petitioner

v.

STATE OF DELAWARE  
Respondent

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**PETITION FOR WRIT OF CERTIORARI TO THE  
SUPREME COURT OF DELAWARE**

**APPENDIX**

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October 24, 2024



IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILLIAM J. WEBB, JR.,

Defendant Below,  
Appellant,

v.

STATE OF DELAWARE,

Appellee.

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No. 467, 2022

Court Below – Superior Court  
of the State of Delaware

Cr. Id Nos. 1902015015, 1904001943,  
& 1906000296 (N)

Submitted: May 22, 2024  
Decided: July 10, 2024

Before **SEITZ**, Chief Justice; **VALIHURA** and **TRAYNOR**, Justices.

**ORDER**

This 10<sup>th</sup> day of July, 2024, after consideration of the parties' briefs and the record on appeal, it appears to the Court that:

(1) William J. Webb, Jr. has appealed his convictions in the Superior Court of one count each of stalking, act of intimidation, and criminal contempt, and forty-seven counts of breach of conditions of bond. For the reasons that follow, we affirm the Superior Court's judgment.

(2) Webb was arrested on three separate occasions in 2019. Webb's first arrest, on February 14, 2019, resulted from an incident reported by Patricia Burgess, the mother of Webb's child. Burgess, who had a no-contact order in place against

A/

Webb, told officers that Webb had grabbed her by her hair and taken her car keys and car. Webb was arrested again—once more in February and again in April—after contacting Burgess in violation of the no-contact order.

(3) In June 2019, Webb was indicted on charges stemming from the three arrests plus additional charges resulting from Webb’s breach of the no-contact order. The charges included robbery first and second degree, theft of a motor vehicle, offensive touching, non-compliance with bond, act of intimidation, stalking, harassment, breach of conditions of bond, criminal contempt, and misuse of the mail. The State entered a *nolle prosequi* on, and the Superior Court dismissed, certain charges;<sup>1</sup> the remaining charges were scheduled for a single trial.

(4) Webb was provided with court-appointed counsel from the Office of Defense Services (“ODS”). At a February 25, 2019 preliminary hearing in the Court of Common Pleas, Webb complained that his counsel, then Andrew J. Meyer, was not providing effective representation. The court advised Webb he could “discuss any issues [he] had with [his] attorney,”<sup>2</sup> after the hearing, but Webb demanded that the court “give [him] a counsel waiver form right now”<sup>3</sup> so that he could represent himself. Because Webb continued to interrupt the hearing, he was removed from the courtroom but continued to be represented by Meyer at the hearing. After Meyer

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<sup>1</sup> App. to Opening Br. at A1–85.

<sup>2</sup> *Id.* at A101.

<sup>3</sup> *Id.* at A102.

withdrew as Webb's counsel, Brian J. Chapman, also from the ODS, was appointed. Chapman represented Webb at an April 2019 preliminary hearing. Following that hearing, Chapman withdrew and Jonathan Layton from the Office of Conflicts Counsel was appointed.

(5) In July 2019 the court ordered a psychological evaluation to determine whether Webb was competent to stand trial. While the results of that evaluation were pending, Webb filed a *pro se* "motion for self-representation." After Webb was deemed competent to stand trial, the Superior Court held a case review and addressed Webb's motion. At that hearing Dade Werb from the Office of Conflicts Counsel replaced Layton as Webb's appointed attorney. After speaking with Webb, the court determined that he wished to remain represented and considered the motion withdrawn.<sup>4</sup>

(6) Two months later, however, Webb filed a motion to disqualify Werb. The motion requested Werb's disqualification, in part, on the grounds that "Mr. Werb worked at the Public Defender's office when [d]efendant threatened an [a]ssociate friend of Mr. Werb's" and that "[Webb] ha[d] filed a lawsuit against Mr.

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<sup>4</sup> *Id.* at A169 (The Court: "So you prefer to have an attorney? Am I correct? The Defendant: "Yes." . . . The Court: "I will consider the request to represent yourself withdrawn based upon the kind of communication that you've have with the Court.").

Werb and [h]is [l]aw [f]irm.”<sup>5</sup> Webb did not request new counsel in the motion nor did he request to represent himself *pro se*.<sup>6</sup>

(7) Werb also filed a motion to withdraw as Webb’s counsel. In the motion Werb averred that the “appointment arose because Mr. Webb had previously threatened physical harm and/or civil lawsuits upon his prior three attorneys[.]”<sup>7</sup> The motion stated that Webb had threatened Werb: by telephone message, including a voicemail telling Werb to “go kill himself before I catch his f...cking a[...s]”; in multiple letters, that stated: “keep up your n.....d ways g[...p] and you aren’t going to be breathing”; and with civil lawsuits against Werb and his law firm.<sup>8</sup> Werb also testified that Webb told him that he was fired and refused to cooperate with his efforts to represent him in any way.<sup>9</sup> In the motion to withdraw, Werb argued that Webb had forfeited his right to appointed counsel under *Bultron v. State*, a case in which this Court held that a criminal defendant’s right to appointed counsel may be forfeited by “extremely serious misconduct.”<sup>10</sup>

(8) The Superior Court denied Webb’s motion to disqualify and granted counsel’s motion to withdraw. In so doing, the court told Webb that it had “probably

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<sup>5</sup> Motion to Disqualify Counsel at 1–2, *State v. Webb*, Docket No. 29, C.A. No. 1906000296 (Del. Super. Ct. Feb. 25, 2020).

<sup>6</sup> *Id.*

<sup>7</sup> App. to Opening Br. at A171.

<sup>8</sup> *Id.* at A172.

<sup>9</sup> *Id.* at A173, A178.

<sup>10</sup> *Id.* at A173 (citing *Bultron v. State*, 897 A.2d 758, 761 (Del. 2006)).

appointed all the attorneys that anyone is going to appoint for you. You've gone through at least three, maybe four different attorneys who have all had to withdraw from your representation, so it looks like you're going to have to represent yourself in regards to the matter."<sup>11</sup> The court also declined to appoint standby counsel.

(9) Webb represented himself at trial and was convicted on all charges. Because Webb was convicted of felony stalking—a violent felony—and he had prior violent felony convictions, the State moved to declare Webb a habitual offender under 11 *Del. C.* § 4214(d). The motion was granted, and Webb was sentenced as a habitual offender to 25 years at Level V.

(10) On appeal, Webb argues that the Superior Court erred by “forcing Webb to proceed *pro se* without first engaging in a proper colloquy to determine that Webb was knowingly and intelligently waiving his right to counsel under the Sixth and Fourteenth Amendments to the United States Constitution and under Article I, § 7 of the Delaware Constitution.”<sup>12</sup> The State responds that Webb did not waive, but forfeited, his right to court-appointed counsel based on his “extremely serious misconduct” toward counsel.<sup>13</sup>

(11) We agree that the question is whether Webb forfeited his right to counsel. “If a defendant’s behavior is sufficiently egregious, it will constitute

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<sup>11</sup> *Id.* at A178.

<sup>12</sup> Opening Br. at 21.

<sup>13</sup> Answering Br. at 18.

forfeiture. Forfeiture, unlike waiver, does not require [*pro se*] warnings or a warning to discontinue bad conduct.”<sup>14</sup> Accordingly, we do not address the parties’ arguments as to whether a proper *pro se* colloquy occurred; we consider only whether the Superior Court abused its discretion by refusing to appoint new counsel and “forcing Webb to proceed *pro se*[.]”

(12) The Superior Court’s decision not to appoint new counsel is reviewed by this Court for an abuse of discretion.<sup>15</sup> An abuse of discretion occurs only if the trial court’s decision is based on “clearly unreasonable or capricious grounds.”<sup>16</sup>

(13) In *Bultron v. State*, this Court held that the defendant engaged in “extremely serious misconduct” by displaying “insulting and unacceptable behavior” toward appointed counsel that was intended to “prevent the trial from going forward.”<sup>17</sup> The defendant’s conduct was sufficient to warrant a forfeiture even though it “fell short of violence or threats.”<sup>18</sup>

(14) The record here shows, and Webb does not deny, that he threatened to kill his court-appointed counsel. Webb also harassed, refused to cooperate with, and filed civil lawsuits against, his counsel. Webb’s conduct was more than sufficient

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<sup>14</sup> See *Bultron*, 897 A.2d at 765 (“Forfeiture can be found regardless of whether the defendant has been warned about engaging in misconduct, and regardless of whether the defendant has been advised of the risks of proceeding *pro se*.”) (quoting *United States v. Goldberg*, 67 F.3d 1092, 1100 (3d Cir. 1995)).

<sup>15</sup> *Bultron*, 897 A.2d at 765.

<sup>16</sup> *Id.* at 762.

<sup>17</sup> *Id.* at 766.

<sup>18</sup> *Id.*

to support a finding of “extremely serious misconduct” warranting forfeiture under *Bultron*.<sup>19</sup> Accordingly, the Superior Court did not abuse its discretion by refusing to appoint Webb additional or standby counsel and directing Webb to proceed *pro se*. Although the court did not use the words “forfeit” or “forfeiture,” the court’s statement was the functional equivalent of a forfeiture finding, one that is amply supported by the record.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be AFFIRMED.

BY THE COURT:

/s/ Gary F. Traynor  
Justice

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<sup>19</sup> In addition to Werb’s testimony and the affidavit accompanying his Motion to Withdraw, the Superior Court was in possession of a letter from Webb to the prothonotary dated March 10, 2019, in which Webb, using both profanity and racial slurs, threatened to “kill [Meyer] and put his head in front of the court house.” App. to Answering Br. at B1–B3.

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IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

|                   |   |                      |
|-------------------|---|----------------------|
| STATE OF DELAWARE | ) | I.D. NO. N1906000296 |
|                   | ) | N1902006825          |
| v.                | ) | N1902015015          |
|                   | ) | N1904001943          |
| WILLIAM WEBB,     | ) |                      |
| Defendant.        | ) |                      |

BEFORE: HONORABLE WILLIAM C. CARPENTER, JR.

APPEARANCES:

RENEE HRIVNAK, ESQ.  
Deputy Attorney General  
For the State

DADE WERB, ESQ.  
For the Defendant

MOTIONS TRANSCRIPT  
JULY 30, 2020

MICHELE ROLFE, RPR, CRR  
SUPERIOR COURT OFFICIAL REPORTERS  
500 N. King Street  
Wilmington, Delaware 19801  
(302) 255-0567

AS

1 proceeds. But you can't keep threatening your  
2 counsel and then causing delay in the case and then  
3 argue that your case should have gone quicker.

4 THE DEFENDANT: The trial dates were set.

5 THE COURT: Well, it would have gone  
6 quicker, sir, if you had just cooperated --

7 THE DEFENDANT: I would -- he's telling me  
8 false law.

9 THE COURT: We'll see. Okay.

10 Do you have access to the legal library?

11 Where are you housed?

12 THE DEFENDANT: I'm housed in the SHU still.

13 THE COURT: You're in the SHU?

14 THE DEFENDANT: Yes.

15 THE COURT: At Vaughn?

16 THE DEFENDANT: Yup.

17 THE COURT: Ms. Hrivnak, when Mr. Webb was  
18 reindicted, was there just initial contact charges?

19 MS. HRIVNAK: Your Honor, it was in  
20 reference to some letters that he had sent  
21 threatening the DFS worker. I believe those were  
22 the newest charges, the misuse of prison mail,  
23 harassment charges in regards to the DFS worker

1 that was working the case for his daughter.

2 THE COURT: Okay. And they were all just  
3 added to the previous indictments?

4 MS. HRIVNAK: Correct. That brought the  
5 indictment up to 85 counts.

6 THE COURT: Okay. There are four cases, so  
7 I assume they are all then incorporated together?

8 MS. HRIVNAK: It's now up to five cases,  
9 but, yes.

10 THE COURT: Okay. Now five cases. Okay.  
11 All right.

12 MS. HRIVNAK: Your Honor, while I was  
13 looking through the dockets in preparation for the  
14 hearing, my review indicated that the Court had  
15 ordered him to undergo a psychiatric/psychological  
16 evaluation, and that order was signed on March 25th  
17 of 2019. The first indictment went through on  
18 June 10th of 2019. The psych report was filed with  
19 the Court on September 20th of 2019, and then the  
20 reindictment was filed in the docket on July 13th  
21 of 2020, and then the arraignment is listed as  
22 August 11th of 2020 based on the reindictment.

23 THE COURT: So your docket that you reviewed

1 reflected that the psych evaluation actually  
2 occurred?

3 MS. HRIVNAK: The original one that was  
4 issued -- the order was docketed on March 25th of  
5 2019, and then the report was filed on  
6 September 20th of 2019.

7 THE COURT: Okay. So there hasn't been  
8 another psych evaluation done since September 20th  
9 of 2019.

10 Okay. Well, Mr. Werb, I will grant your  
11 motion to withdraw as counsel. It's obvious that  
12 Mr. Webb no longer desires your representation, and  
13 because of the conduct that he has directed towards  
14 you, I think it would be inappropriate for you to  
15 continue to represent him. So that motion is  
16 granted.

17 In regards -- I'm looking at the first  
18 docket I have, which is case 1902015015, that has  
19 the stalking, act of intimidation cases. It looks  
20 like trial was set to begin on June second with a  
21 final case review on May 11th of 2020. Obviously  
22 with the pandemic, that was unable to go forward.  
23 It reflects a series of requests by counsel to

1 withdraw from the case because of Mr. Webb's  
2 conduct. So that appears to be an order. Case  
3 1904001943, the last docket looks like there was a  
4 writ of habeas corpus filed by Mr. Webb and denied  
5 by Judge Primos. There is a motion to dismiss  
6 filed in June, which I received, couldn't go  
7 forward because of the pandemic. Trial again was  
8 set for June second on these cases, and because of  
9 the pandemic, did not go forward. Same is true  
10 with 1902006825. It appears that was set for  
11 trial, but, again, unable to go forward. And then  
12 there's a case, 1906000296. Again, it was set for  
13 trial on June second, 2020, but, again, was unable  
14 to go forward because of the pandemic.

15 So I've reviewed the documents and the  
16 motion to dismiss filed by Mr. Webb. I find the  
17 motion --

18 THE DEFENDANT: Hold on, Your Honor.

19 THE COURT: Yes. Go ahead.

20 THE DEFENDANT: You haven't read the  
21 previous document. The third time it was scheduled  
22 for trial, it was scheduled in October; it was  
23 scheduled in January.

1 THE COURT: That probably was true, but you  
2 kept arguing with your attorneys and kept giving  
3 them a hard time.

4 THE DEFENDANT: My attorney refused to file  
5 the proper things, and do investigation which would  
6 prove my innocence.

7 THE COURT: Okay. Well, what I was about  
8 ready to do --

9 THE DEFENDANT: Ms. Hrivnak has suppressed  
10 the phone calls that exonerate me. So let's deal  
11 with that. Read that motion. I want my motion  
12 read on record in full.

13 THE COURT: Okay.

14 THE DEFENDANT: Or I will take you to the  
15 Supreme Court of Delaware and have you disciplined  
16 for failure for my first amendment rights.

17 THE COURT: Mr. Webb, you wouldn't be the  
18 first and you probably won't be the last, so if you  
19 think I have done anything improper, you're free to  
20 write them. I'm pretty confident I have done very  
21 little with your case other than deal with  
22 attorneys who you keep threatening, so if you --

23 THE DEFENDANT: Your Honor --

1 THE COURT: Wait a minute. It's my turn to  
2 talk. When I talk, you don't. We're going to set  
3 some ground rules here. You do not control this  
4 court, sir. This is my courtroom, not yours. I  
5 will give you the right to have a trial and it will  
6 be a fair one, but you will not interrupt me; you  
7 will not be disruptive and you will not be  
8 discourteous. Okay?

9 And if you do that, sir, that's fine, you'll  
10 watch the trial from your prison cell. All right?

11 So I've ruled that the motion to dismiss the  
12 indictments for lack of speedy trial are without  
13 merit and those motions are denied.

14 I don't believe since he was just reindicted  
15 again, he does not have a new trial date. We will  
16 give it a trial date as soon as the arraignment is  
17 completed with the first case review and a second  
18 case review.

19 All right. So I believe that concludes all  
20 the matters that I have before me, Mr. Werb and  
21 Ms. Hrivnak, unless you have something else?

22 MS. HRIVNAK: Your Honor, I do have a  
23 question.

1 As far as his representing himself, will  
2 there be standby counsel, or how does the Court  
3 expect us to address discovery with him being in  
4 Vaughn and the quantity of disk evidence? I know a  
5 prior case I had, they had to make special  
6 arrangements with the law library where the  
7 defendant had to make arrangements to go in and  
8 listen to that evidence. Does the Court expect to  
9 have standby counsel or will we just, I guess,  
10 contact the prison and send it down for the law  
11 library, or how --

12 THE COURT: I'm hesitant to appoint standby  
13 counsel since he's gone through four other lawyers.

14 MS. HRIVNAK: Okay.

15 THE COURT: And so it would seem to me that  
16 you could send the discovery to the law library  
17 with a copy to Mr. Webb indicating it has been  
18 given.

19 MS. HRIVNAK: Okay.

20 THE COURT: If you have any difficulty with  
21 the institution in that regard, you can let me know  
22 and I'll try to accommodate it.

23 MS. HRIVNAK: Okay.

1 THE COURT: Okay. Anything else?

2 MS. HRIVNAK: No, thank you.

3 THE COURT: Anything else, Counsel?

4 MR. WERB: No, Your Honor. Thank you very  
5 much.

6 THE COURT: Thank you very much. This ends  
7 the proceedings.

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9 (Whereupon, the proceedings concluded.)

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IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
STATE OF DELAWARE )  
 )  
 v. ) Criminal ID Nos.:  
 ) 1902015015  
 WILLIAM J. WEBB, JR., ) 1904001943  
 ) 1906000296  
 Defendant. )

BEFORE: THE HONORABLE WILLIAM C. CARPENTER, JR.

APPEARANCES:

NICHOLE W. WARNER, ESQ.  
JENNA R. MILECKI, ESQ.  
DELAWARE DEPARTMENT OF JUSTICE  
Deputy Attorneys General  
for the State of Delaware

WILLIAM J. WEBB, JR.  
Pro Se Defendant

NOVEMBER 5, 2021  
SUPPRESSION HEARING

THOMAS E. MAURER  
SUPERIOR COURT OFFICIAL REPORTER  
LEONARD L. WILLIAMS JUSTICE CENTER  
500 N. KING STREET, SUITE 2609  
WILMINGTON, DELAWARE 19801-3725  
(302) 255-0566

November 5, 2021  
Courtroom No. 4C

PRESENT:

As noted.

(At 10:23 a.m., the following took place at  
the end of the criminal trial calendar, defendant  
William J. Webb, Jr., not present.)

MS. MILECKI: Your Honor, just procedurally  
for the Webb hearing, the State has witnesses available.  
However, the State would ask that the defendant  
articulate what he is challenging before the State puts  
on any evidence. I think if it's clarified a little  
bit, it is possible that no testimony would be needed  
here today. However, I think that in terms of the  
order, we would ask to do it a little more differently.

Additionally, your Honor, I understand that  
Ms. Hrivnak has had the case previously and that the  
defendant has elected to proceed pro se, I am not sure  
whether a full colloquy was done. So I --

THE COURT: Oh, yes, one has. I mean,  
he's -- let me just say for the record, a colloquy has

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BRIAN DALY

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EXHIBIT INDEX

(All exhibits premarked by Prothonotary Clerk.  
Please refer to Prothonotary Trial Activity Sheet for  
Exhibit Index.)

occurred to the extent that Mr. Webb would allow one to  
occur. He's been adamant about representing himself.  
And if my recollection is correct, he's gone through at  
least two prior attorneys, both of which moved to be  
excused primarily because of Mr. Webb's abusive conduct.  
So I'm pretty confident that even the Supreme Court  
would recognize that Mr. Webb is a difficult individual  
who prefers to represent himself, since he doesn't have  
any confidence in anybody else other than himself.

When I read his previous motions, contained  
in my decision of October 7th was three areas that I  
believed he was interested in. And if I'm -- we can ask  
Mr. Webb when he comes in -- but the first one is  
involving the opening of mail or taking of mail from  
some party that he has some relationship with, I  
believe. The second was, I think, inappropriately  
intercepting communications at the prison. And I'm not  
quite sure about the third other than what he said. So  
we'll bring him in and ask him exactly what evidence he  
would like to present.

MS. MILECKI: Thank you, your Honor.

CORRECTIONS OFFICER: Okay?

THE COURT: Okay.

All

(Mr. Webb escorted into the courtroom.)

THE COURT: Mr. Webb, good morning.

The Court issued a letter opinion on

October 7th to a series of motions that you had filed.

The one motion that remained outstanding was a motion

that you had filed requesting the suppression of

illegally obtained evidence. And as best as I could

understand from your handwritten motion, that there were

three areas that you were concerned about:

One was the obtaining of mail which was

sent, I think, to the victim that you believed the

police illegally obtained. The second was that the

State had inappropriately and illegally obtained

communications that you had with Mr. Chapman, I assume,

while you were incarcerated. And then the third area

was that they had somehow tampered with evidence, but

I'm not quite sure what you believe they tampered with.

So I ordered that today we would have a

suppression hearing on those issues.

Is there any other -- is that a fair

summary, sir, of what you are objecting to?

MR. WEBB: Yeah. And the affidavit of

probable cause for the robbery charge.

THE COURT: Okay. Well, we don't need a

suppression hearing on that, the affidavit is the

affidavit, I can look at it and see if it's sufficient

or not.

MR. WEBB: Well, no, no, no, it's not,

because the police had -- at the time when they arrested

me, the 911 call, the alleged victim said she thinks I

stole her keys while at her parents' house. At the time

we had the preliminary hearing, it went from she thought

I stole the keys to I stole the keys by pulling her

hair, and she chased after me and kicked the car, and a

couple other incidents. And then two days later under

oath at the PFA hearing, under oath she told another

story that's inconsistent with the first story.

THE COURT: Okay. That's all kind of

cross-examination material that you can use --

MR. WEBB: It's a *Franks* issue.

THE COURT: No. It's a situation where a

witness allegedly has told three different versions of

what has happened, that would provide you an opportunity

if she gets on the stand to question her about the three

inconsistent statements.

The decision as to whether or not there was

sufficient probable cause in an affidavit is one that

the Court would look at the affidavit and determine

whether or not that affidavit was appropriate. That

doesn't mean that everything in it is necessarily

correct, but that's the information that was provided to

the police at that time, and if the judge who looked at

the affidavit would be able to determine whether or not

there's sufficient probable cause within that.

But I understand your *Franks* argument is

that the information was not reliable that was contained

within the affidavit, right?

MR. WEBB: Yeah. Because the police, there

was footprints coming to the house and in the house,

they never took them. My public defender at the time,

he did, he pretty much summarized -- what was it -- the

offensive touching charge eventually got dismissed in

June of 2019, and -- but he never, he never, he never

came to see me before, because I had, I had my phone

that proved that there's no way that the robbery

occurred. And the police still have my phone in their

custody, and they'll have to bring it forth. Because I

did file a motion for a *Franks* hearing, it should be on,

it's on the docket, to challenge the affidavit of

probable cause.

THE COURT: Let me ask you this question

before we get too far into this. When you last appeared

in the courtroom, there was, I think it was in reference

to perhaps Mr. Chapman or someone else moving to no

longer represent you?

MR. WEBB: Yeah. That was Dade Werb, that

was on July, July 30th.

THE COURT: Okay. Is it still your desire

to represent yourself now? Or do you, have changed your

thoughts about that and want somebody to represent you?

MR. WEBB: I mean, I've had three attorneys,

none of them, none of them investigated the facts or the

evidence in my case.

THE COURT: Well, there has been three

attorneys, but they have -- the dispute has been that

you had -- you and them had a disagreement to the point

that they felt they could no longer represent you

because you were being difficult and abusive to them --

I'm not suggesting that happened, but that's what they

represented -- and they had all been excused.

So at this point in time is there anyone

that you contacted, or any attorney that you contacted

1 that you would like to have represent you, or are you  
2 proceeding, still proceeding by yourself?

3 MR. WEBB: I can proceed by myself.

4 THE COURT: All right. So let's kind of  
5 take it one at a time. And, Ms. Milecki, can you tell  
6 me what the State is ready, or what they can, or  
7 Ms. Dunn (sic), which one they can proceed on?

8 MS. MILECKI: Your Honor, the question that  
9 the State has for the defendant before proceeding today,  
10 the State does have witnesses that can testify to  
11 numbers -- or letters A and B in the letter, as  
12 your Honor indicated, the illegally obtained mail that  
13 was sent to the victim, as well as conversations with  
14 the defendant's counsel.

15 To the extent that the defendant is seeking  
16 to suppress conversations with counsel, I think that  
17 that is moot. The State certainly does not seek to  
18 admit conversations between the defendant and any of his  
19 attorneys. The State will also represent to the Court  
20 that it has not reviewed those. So the State's first  
21 question is whether this is a request to suppress that  
22 evidence? in which case I do not believe testimony  
23 would be needed, as the State would not be entering any

1 of those items into evidence.

2 To the extent that the Court is interested  
3 in hearing testimony regarding the obtained mail that  
4 was sent to the victim, the State does have a witness  
5 here today that can provide some testimony, but I would  
6 ask that the defendant just articulate the basis for  
7 that suppression so we can make sure that we tailor our  
8 testimony accordingly.

9 THE COURT: Okay. Can you do that,  
10 Mr. Webb?

11 MR. WEBB: Yeah, yes, your Honor. The basis  
12 for that is is one letter was sent to my daughter and  
13 the other was sent to the alleged victim's father, and  
14 neither one of those people touched them letters. The  
15 mother took them from the mailbox straight to the police  
16 station, and at that time she had no legal basis to open  
17 my daughter's mail where she was not a guardian at the  
18 time or a parent.

19 THE COURT: Okay.

20 MR. WEBB: And the other issue is, this is,  
21 the father -- the father, under legal law, the police  
22 officer had the obligation to call the husband to see if  
23 it was okay for his wife to open his mail. He never

1 seen -- he never seen that letter. She, again, took it  
2 straight to the police station without his knowledge if  
3 he ever received mail from me. And that's legally  
4 opened -- if I send you a letter and somebody else took  
5 it to the police, they have to get a warrant to open  
6 that mail, that's a violation of privacy.

7 THE COURT: Well, it is if they're going to  
8 use the letter that was received. I don't know what  
9 letter -- what was in the letter, whether it's something  
10 you're going to utilize. So I guess that's the first  
11 question?

12 MS. MILECKI: They are, your Honor. These  
13 were letters, although addressed to other people, the  
14 content within the letters was directed to the victim in  
15 this case in violation of the no contact order. The  
16 State would note for the record that the defendant's  
17 daughter at the time, I believe, was approximately nine  
18 months old, and so I'm not sure she could open mail, and  
19 I'm not sure that that is a legal basis to challenge it.

20 Additionally, your Honor, I'm not sure what  
21 the standing would be here to challenge individuals  
22 opening letters while the defendant wrote them and sent  
23 them to an address where the victim was.

1 So the State is prepared to put testimony  
2 forward today to talk about who the letters were  
3 addressed to and the address. I'm not sure that  
4 directly addresses the defendant's argument, but the  
5 State would argue that none of those are basis -- are a  
6 basis to suppress the letters in this case.

7 THE COURT: Well, let's put the evidence on  
8 that you're prepared to move forward with.

9 MS. WARNER: Thank you, your Honor.

10 The State would call Brian Daly.

11 Thank you.

12 THE COURT: Mr. Webb, I'm going to hand you  
13 a pad of paper and a pencil so that you can at least  
14 write something down.

15 MR. WEBB: All right.

16 THE COURT: And the bailiff will come and  
17 get it. Can the bailiff retrieve this and give this to  
18 Mr. Webb (indicating).

19 ... BRIAN DALY,

20 having been duly sworn according to law, was examined  
21 and testified as follows...

22 THE COURT: You may proceed.

23 MS. WARNER: Thank you, your Honor.



IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILLIAM J. WEBB, JR.,

Defendant Below,  
Appellant,

v.

STATE OF DELAWARE,

Appellee.

§  
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§

No. 467, 2022

Court Below – Superior Court  
of the State of Delaware

Cr. Id Nos. 1902015015, 1904001943,  
& 1906000296 (N)

Submitted: July 24, 2024  
Decided: July 29, 2024

Before **SEITZ**, Chief Justice; **VALIHURA**, **TRAYNOR**, **LeGROW**, and  
**GRIFFITHS**, Justices, constituting the Court *en banc*.

**ORDER**

This 29<sup>th</sup> day of July, 2024, the Court has considered the motion for rehearing  
*en banc* filed by appellant, and it appears that the motion is without merit and should  
be denied.

NOW, THEREFORE, IT IS ORDERED that the motion for rehearing *en banc*  
be DENIED.

BY THE COURT:

/s/ Gary F. Traynor  
Justice

A14

In The Superior Court Of The State Of Delaware  
In And For New Castle County

State of Delaware,  
v.  
William J. Webb Jr.,  
Defendant.

Criminal Case Nos.: 1902015015,  
1904001943, and 1902000296  
1902006825,

Motion For Self-Representation.

Comes now, Defendant, William J. Webb Jr., in  
presenting His Motion for Self-Representation  
to be heard at the Court's earliest convenience.

In support the following is offered:

1. Attorney Brian J. Chapman broke client-attorney privilege and helped the State receive information in violation of this privilege which is being
2. Attorneys were incompetent and refuse

to put the State's case to any peremptory  
Challenges where there are Double Jeopardy, Rule  
16 and Brady violations, Selective and Vindictive  
Prosecution claims, Due Process claims, and Judicial  
Impartiality claims, etc...

3. Defendant's knowledge of Court procedures  
and rules is of a mastered and perfected  
status quo.

Wherefore, Defendant, William J. Webb Jr.,  
respectfully requests the Court Honor His Motion.

Respectfully,  
William J. Webb Jr.  
William J. Webb Jr.  
#00256056 / HU #4  
S.C.B. - 23203 Dupont Blvd.  
Georgetown, DE 19947

Dated: August 18, 2019

Certificate of Service

I, William J. Webb Jr., do hereby certify that  
a true and correct copy of the attached Motion  
for Self-Representation was placed in the U.S. Mail  
with prepostage paid upon the following on  
this 18<sup>th</sup> day of August, 2019:

Kathleen Jennings, Esq.  
820 North French Street  
Wilmington, DE 19801

Respectfully,

W. J. Webb Jr.

William J. Webb Jr.

#00258056 / AU #4

S. L.I. - 23203 DuPont Blvd.

Georgetown, DE 19947

Dated: August 18, 2019

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

12:04:16

|                   |   |                      |
|-------------------|---|----------------------|
| STATE OF DELAWARE | ) | I.D. NO. N1906000296 |
|                   | ) | N1902006825          |
| v.                | ) | N1902015015          |
|                   | ) | N1904001943          |
| WILLIAM WEBB,     | ) |                      |
| Defendant.        | ) |                      |

BEFORE: HONORABLE WILLIAM C. CARPENTER, JR.

APPEARANCES:

RENEE HRIVNAK, ESQ.  
Deputy Attorney General  
For the State

DADE WEBB, ESQ.  
For the Defendant

CASE REVIEW COLLOQUY TRANSCRIPT  
DECEMBER 16, 2019

LISA A. MASCIANTONIO, RPR  
SUPERIOR COURT OFFICIAL REPORTERS  
500 N. King Street  
Wilmington, Delaware 19801  
(302) 255-0567

A18

DECEMBER 16, 2019  
Courtroom No. 4B  
12:05 p.m.

PRESENT:

As noted.

-----

THE COURT: Mr. Webb, good morning.

I asked that you be brought here today because I'm now assigned to your case. I'm going to be the judge who is handling the case.

You've been indicted in an 80 Count Indictment on charges involving stalking and robbery and other offenses relating to the breaches of bond and other matters. So it's a long Indictment.

But the primary reason is back in September, you filed a request to represent yourself, and that motion was not considered at that time because it appeared that the psychiatric evaluation that was ordered had not been completed. That now has been completed, and you have been ruled competent to stand trial. And so I wanted to bring you here so that I can handle the motion that you filed in regards to representing yourself.

Now, in regards to that, I asked that the Public Defender's Office appoint someone to go down and talk to you since your prior attorneys are no longer in the case.

MR. WERB: Your Honor, I'm not with the Public Defender's Office. I'm with the Office of Conflict Counsel.

THE COURT: Okay. I'm sorry.

MR. WERB: So the Public Defender's Office, it did start out with that and then it goes to the OCC.

THE COURT: Okay. Thank you. I'm aging myself.

So they appointed Mr. Werb to go down and talk to you to see whether or not you continue to want representation, and if that's the case, then obviously your request to represent yourself would not go forward.

So I wanted you to at least have counsel in the case first, and then if you, after talking with him, decided you still wanted to represent yourself, then I need to talk to you further.

So that's where we are. The case has not

been scheduled yet, but I'll do that because if Mr. Werb is in the case, I need to give him time to get up to speed, and then we'll schedule the case for trial. But that's what it is.

I know Mr. Werb went down and talked to you this morning and you indicated you wanted to talk to me, so here I am.

What do you need to bring to my attention, sir?

THE DEFENDANT: Your Honor, since -- I'd say since June, I've been asking the attorneys to file a motion for a bail reduction because Katharine Mayer is related to Julia Mayer who represented the State at my preliminary for two of them cases that turned into now all one.

And the other thing is, Mr. Chapman had gotten -- he got appointed funds for a private investigator. And when it came down to it, it was found out that he told the private investigator not to investigate anything I was told to tell him. After that, when the guy came back and he asked me the same stuff again, and he went back and he never -- never got none of my witnesses that proved

my innocence.

THE COURT: Okay.

THE DEFENDANT: And I'm at a standpoint where -- I mean, I can represent myself, but I shouldn't have to where there's funds available for an innocent person to get representation that's effective.

THE COURT: Okay.

THE DEFENDANT: And that's where I'm at with it. If I'm not going to -- I've got a bail that's four hundred and something thousand dollars and you've got people with attempted murder with fifty thousand dollar bail, you tell me what the problem is.

THE COURT: Okay.

THE DEFENDANT: And I got a reference letter from a guy that I worked on his house two days before this robbery. This says he's sorry to hear about my thing -- he's sorry to hear about what happened with my daughter. My daughter -- my paternal rights are at stake now.

THE COURT: Okay, Mr. Webb.

THE DEFENDANT: And I can't get one attorney

1 to represent me effectively.

2 THE COURT: Okay. Now, let's talk about it  
3 a couple of ways.

4 You have a right to an attorney, and that is  
5 why the Court asked the Conflict Counsel to be  
6 appointed to represent you. And it is at no cost  
7 to you.

8 So, Mr. Werb used to be with the Public  
9 Defender's Office. He's now gone into private  
10 practice and is in the conflict program, so he  
11 would represent you.

12 Now, having said that, sir, he's not your --  
13 he's not there to do whatever you think he should  
14 do. He's there to represent you in the best way  
15 that he believes appropriate. You certainly can  
16 make requests to him and talk to him about the  
17 case, but he has to have what he believes to be the  
18 appropriate grounds to make that request.

19 Now, Mr. Werb just got into the case. He  
20 certainly can look into it and decide, if you make  
21 a request, whether to file a motion for  
22 modification of your bail. These are very serious  
23 charges, though, and there's a lot of them. All

1 right? So I don't know what the result of that  
2 will be, but he can look at your case and decide  
3 whether or not to file a bail reduction.

4 The only issue today is whether or not you  
5 want to represent yourself, or you want Mr. Werb to  
6 represent you.

7 It is no cost to you. He's a very good  
8 lawyer. He's been doing it a long time. And he  
9 certainly is willing to represent you. But if you  
10 want to represent yourself, you can do so. But I  
11 will tell you in the circumstances that you're in  
12 now, in the SHU, it would be a really difficult  
13 thing. Really difficult. So my recommendation is  
14 that you let Mr. Werb represent you.

15 But you have a right to represent yourself,  
16 but I'm not hearing that that's what you want. You  
17 just weren't happy with your other lawyers, and you  
18 would like to have a lawyer represent you. Right?

19 THE DEFENDANT: I've been trying to get one.

20 THE COURT: Okay. All right.

21 So you prefer to have an attorney. Am I  
22 correct?

23 THE DEFENDANT: Yes.

**A20**

1 THE COURT: Okay. All right.

2 So, Mr. Werb is going to be your Counsel.  
3 He's going to get some of the information in  
4 regards to the case.

5 The Court will set up trial dates for the  
6 matter. If you would like him to file a motion for  
7 reduction of bail, he can do that.

8 And he'll look at the evidence in regards to  
9 discovery that's being provided and decide whether  
10 or not any motions are appropriate based upon that  
11 discovery.

12 So, I will consider the request to represent  
13 yourself withdrawn based upon the kind of  
14 communication that you've had with the Court.

15 Mr. Werb is now your Counsel. All right?

16 Good luck, sir. Thank you.

17 You may take Mr. Webb back.

18 Court is in recess.

19 - - -

20 (Whereupon, the proceedings concluded.)

21 - - -

1 STATE OF DELAWARE:

2 NEW CASTLE COUNTY:

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I, Lisa A. Masciantonio, Official Court

Reporter of the Superior Court, State of Delaware,

do hereby certify that the foregoing is an accurate

transcript of the proceedings had, as reported by

me in the Superior Court of the State of Delaware,

in and for New Castle County, in the case therein

stated, as the same remains of record in the Office

of the Prothonotary at Wilmington, Delaware, and

that I am neither counsel nor kin to any party or

participant in said action nor interested in the

outcome thereof.

This certification shall be considered null

and void if this transcript is disassembled in any

manner by any party without authorization of the

signatory below.

WITNESS my hand this 4th day of August,

2023.

/s/ Lisa A. Masciantonio

LISA A. MASCANTONIO, RPR

**IN THE FAMILY COURT OF THE STATE OF DELAWARE**

STATE OF DELAWARE

v.

WILLIAM WEBB

)  
)  
) ID Nos. 1812001056  
) 1902007647  
)  
)  
)

**NOTICE OF MOTION**

TO: Renee Hrivnak, Esquire  
Deputy Attorney General  
Department of Justice  
820 North French Street, 7<sup>th</sup> Floor  
Wilmington, DE 19801

PLEASE TAKE NOTICE that the attached Motion to Withdraw as Counsel  
will be presented to this Honorable Court at the convenience of the Court.

  
\_\_\_\_\_  
DADE D. WERB, ESQUIRE  
Giordano, DelCollo, Werb & Gagne, LLC  
5315 Limestone Road  
Wilmington, Delaware 19808  
(302) 234-6855  
Attorney for Defendant

DATED: March 10, 2020

**IN THE FAMILY COURT OF THE STATE OF DELAWARE**

STATE OF DELAWARE

v.

WILLIAM WEBB

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)  
)  
)  
)  
)  
)

ID Nos. 1812001056  
1902007647

**MOTION TO WITHDRAW AS COUNSEL**

Undersigned Counsel hereby moves This Honorable Court for an order permitting him to withdraw as counsel due to Defendant's continued threatening and abusive behavior. In support of this motion, Counsel states the following:

1. The Office of Conflict Counsel appointed Counsel to handle two of Defendant's above-numbered criminal cases currently pending in the Family Court on November 19, 2019. Counsel was appointed to represent Mr. Webb on various harassment, endangering the welfare of a child and noncompliance with bond offenses.
2. Upon information and belief, this appointment arose because Mr. Webb had previously threatened physical harm and/or civil lawsuits upon his three prior attorneys assigned to these cases as well as his criminal cases pending in the Superior Court. To date, Andrew Meyer, Esquire, John Denney, Esquire, Brian Chapman, Esquire and Jonathan Layton, Esquire had been previously

assigned to represent Mr. Webb on pending criminal cases and were allowed to withdraw as counsel because of Mr. Webb's behavior.

3. Counsel has met with Mr. Webb on several occasions regarding his pending criminal cases, however, the attorney-client relationship quickly deteriorated due to Mr. Webb's behavior and conduct towards Counsel.

4. To wit, Mr. Webb has:

- a) Threatened Counsel, by telephone message, on February 12, 2020 by stating, in part, to "go kill himself before I catch his f...ing ass";
- b) Threatened Counsel, in writing, on or about February 9, 2020, in part, to "keep up your n.....rd ways guap and you aren't going to be breathing";
- c) Threatened Counsel with harm in various letters addressed to the prosecutor assigned to his cases;
- d) Threatened to file a civil lawsuit against Counsel and his law firm by advising The Office of Conflict Counsel that a lawsuit is going to be filed with the court in the coming days;
- e) Claimed that my prior employment at the Public Defender's Office created a conflict in my continued representation of him and has "fired" Counsel because of this perceived conflict; and

- f) Not cooperated with or heeded the advice of Counsel in the representation of this matter, making the continued attorney–client relationship untenable.
5. Having practiced criminal law for almost thirty years, Counsel often agrees to take on difficult and complex assignments from The Office of Conflict Counsel and is reluctant to seek to withdraw from an assignment, leaving the Court in a difficult position. Counsel is also aware that the practice of criminal defense often involves strained and contentious relationships with difficult clients.
  6. However, Mr. Webb’s conduct goes far beyond that. This is potentially the fourth consecutive attorney he has threatened with physical harm and/or civil lawsuits. Mr. Webb was warned, upon my appointment, not to continue in such activity, yet he has continued with his abusive behavior.
  7. The United States’ Constitution affords all defendants, in criminal prosecutions, the right to have the assistance of counsel. See U.S. Constitution Amendment IV.
  8. However, the Delaware Supreme Court has held that this right is not absolute and can be waived or forfeited by a defendant. See *Bultron v. State*, 897 A.2d 758, 761 (Del. 2006). A waiver can be made through an affirmative statement or by a defendant’s conduct “after a warning that continued abuse will result

in the consequence of losing court-appointed counsel.” Id. At 763. A defendant can also “forfeit the right to legal representation by engaging in extremely serious misconduct.” Id. At 764.

9. Whether Mr. Webb’s threats are real, an effort to have counsel removed or the product of mental illness, Counsel believes that there is a total breakdown of the attorney-client relationship and respectfully seeks to withdraw from the above-numbered cases pending before the Court.

WHEREFORE, for the foregoing reasons, the undersigned attorney seeks an order permitting his withdrawal from representation of Defendant William Webb in the above-numbered cases.



---

DADE D. WERB, ESQUIRE  
Giordano, DelCollo, Werb & Gagne, LLC  
5315 Limestone Road  
Wilmington, Delaware 19808  
(302) 234-6855  
Attorney for Defendant

**IN THE FAMILY COURT OF THE STATE OF DELAWARE**

STATE OF DELAWARE

v.

WILLIAM WEBB

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ID Nos. 1812001056  
1902007647

**ORDER**

AND NOW, this            day of            , 2020 the foregoing Motion to  
Withdraw having been presented to and considered by the Court:

**IT IS HEREBY ORDERED** Defendant's Motion is:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

\_\_\_\_\_  
The Honorable

**IN THE FAMILY COURT OF THE STATE OF DELAWARE**

STATE OF DELAWARE

v.

WILLIAM WEBB

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ID Nos. 1812001056  
1902007647

**CERTIFICATE OF SERVICE**

I, Dade D. Werb, attorney for William Webb, do hereby certify that I caused two copies of the attached Motion to Withdraw to be served via U.S. Mail, postage pre-paid and/or hand delivery upon:

Renee Hrivnak, Esquire  
Deputy Attorney General  
Department of Justice  
820 North French Street, 7<sup>th</sup> Floor  
Wilmington, Delaware 19801

William Webb, 00256056  
DCC  
1181 Paddock Road  
Smyrna, Delaware 19977



DADE D. WERB, ESQUIRE  
Giordano, DelCollo, Werb & Gagne, LLC  
5315 Limestone Road  
Wilmington, Delaware 19808  
(302) 234-6855  
Attorney for Defendant

DATED: March 10, 2020

12:04:16

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

|                   |   |                      |
|-------------------|---|----------------------|
| STATE OF DELAWARE | ) | I.D. NO. N1906000296 |
|                   | ) | N1902006825          |
| v.                | ) | N1902015015          |
|                   | ) | N1904001943          |
| WILLIAM WEBB,     | ) |                      |
| Defendant.        | ) |                      |

BEFORE: HONORABLE WILLIAM C. CARPENTER, JR.

APPEARANCES:

RENEE HRIVNAK, ESQ.  
Deputy Attorney General  
For the State

DADE WEBB, ESQ.  
For the Defendant

MOTIONS TRANSCRIPT  
JULY 30, 2020

MICHELE ROLFE, RPR, CRR  
SUPERIOR COURT OFFICIAL REPORTERS  
500 N. King Street  
Wilmington, Delaware 19801  
(302) 255-0567

A28

JULY 30, 2020

2:35 p.m.

PRESENT:

As noted.

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THE COURT: All right. So I have Mr. Werb.  
Do I have Mr. Webb?

THE DEFENDANT: Good afternoon, Your Honor.

THE COURT: Good afternoon, Mr. Webb.

And I have Ms. Hrivnak.

MS. HRIVNAK: Yes, Your Honor.

THE COURT: There's a couple of motions. I  
think probably the first we should address is Mr.  
Werb's motion to withdraw as counsel and Mr. Webb's  
request to disqualify Mr. Werb.

So, Mr. Werb, why don't you create whatever  
record you would like.

MR. WERB: Thank you very much, Your Honor.

I was appointed to this case back in  
November from the Conflict Counsel, as Mr. Webb had  
several other attorneys involved in this case. I  
believe it started out with Mr. Meyer of the Public  
Defender's Office, and then went to Mr. Chapman,

and then Mr. Layton, then to myself.

As Your Honor knows from my motion, I filed  
a motion to have myself withdrawn as counsel for  
Mr. Webb.

There really exists no sustainable  
attorney/client relationship here. He refuses to  
follow my advice. He's complained to conflict  
counsel about me. He's filed Office of  
Disciplinary Counsel complaints against me. I've  
gotten at least six or seven threatening letters, a  
phone call back in March. He's also threatened to  
sue our law firm. I think he's already sued  
Mr. Chapman. So there's also civil suits that he's  
filed against prior attorneys.

Your Honor, Mr. Webb was told early on that  
this type of behavior with an attorney will not be  
tolerated. I've tried to stick it out, but it's  
consistent abusive behavior and there's really  
nothing more I can do with Mr. Webb. He wants to  
do everything on his own. So for the reasons I set  
forth in the motion, and I can go into further  
detail, Your Honor, but at this point, there's  
nothing more I can do for Mr. Webb and I ask that I

A29

be withdrawn from the case.

THE COURT: Okay.

Ms. Hrivnak, before I go to Mr. Webb, do you  
want to have any say in the middle of this?

MS. HRIVNAK: I don't have a position on Mr.  
Werb's motion, Your Honor. I'm very familiar with  
Mr. Webb's history of threatening bodily harm to  
his defense attorney through the history of Mr.  
Meyer and Mr. Chapman and Mr. Layton and Mr. Werb,  
so....

THE COURT: Okay.

MS. HRIVNAK: The State doesn't have a  
position on that.

THE COURT: Mr. Webb, Mr. Werb has filed a  
motion to withdraw and you have filed a motion to  
disqualify him. So I assume you have no objection  
to him getting out of the case. Is that fair?

THE DEFENDANT: That's fair to say, Your  
Honor.

THE COURT: Okay. Now, do you intend to  
represent yourself?

THE DEFENDANT: If that need be, I will.

THE COURT: Well, I think we have probably

appointed all the attorneys that anyone is going to  
appoint for you. You've gone through at least  
three, maybe four different attorneys who have all  
had to withdraw from your representation, so it  
looks like you're going to have to represent  
yourself in regards to the matter.

So do you agree with Mr. Werb's comments  
that you and he are not getting along anymore?

THE DEFENDANT: We are not getting along.  
He refused to assert my rights to my freedom.

THE COURT: Okay.

THE DEFENDANT: He was at Family Court and  
keep rescheduling seven times outside these  
guidelines, continuously refiling the case at that  
time, continuously filing continuances in this  
case; failure to file a motion to dismiss. My bail  
is mockery of the 8th Amendment.

THE COURT: Well, we're not here to address  
your bail, we're here to address your counsel.

These are very serious charges, Mr. Webb,  
with lots of --

THE DEFENDANT: They are nonviolent  
offenses, and some are false law.

1 THE COURT: Okay. So I have to ask you some  
2 questions before we can go any further and make  
3 some comments to you, so please listen carefully.

4 If you are representing yourself, you'll be  
5 required to comply with all of the rules and  
6 procedures that would be expected of counsel if  
7 they were representing you. So the conduct in the  
8 courtroom, the filing of papers, and the responses  
9 that would need to be filed, the same rules that  
10 would apply to Mr. Werb in his representation to  
11 you would also apply if you represent yourself.

12 As you know, the trial in this matter has  
13 been stayed for some period of time because of the  
14 Covid-19 pandemic.

15 THE DEFENDANT: No, Your Honor. These  
16 trials were scheduled before that. You can't use  
17 that as a crutch. All of these trials were  
18 scheduled before that.

19 THE COURT: Well, perhaps, but at the  
20 moment --

21 THE DEFENDANT: That's what the Delaware  
22 Constitution, Article 1, Subsection 7 says, and the  
23 Supreme Court directed one-third, they said, within

1 one year, 100 percent of cases shouldn't go to  
2 trial. I was arrested on February 14th, 2019.  
3 I've been held in jail since without a trial, or  
4 anything to get near a trial. You've got to hold  
5 that against the State.

6 THE COURT: All right.

7 You don't have a docket, do you?

8 We're going to print-out a docket, Mr. Webb,  
9 so I can see it.

10 THE DEFENDANT: Another thing that's come to  
11 my attention, I have been reindicted and not  
12 arraigned.

13 THE COURT: Well, Mr. Webb, I have to see  
14 how -- let me try to get a docket so I can see  
15 what's happening.

16 MS. HRIVNAK: Your Honor, he was reindicted  
17 on July 13th and he's got an arraignment scheduled  
18 for August.

19 THE DEFENDANT: That's not within 10 days.

20 THE COURT: I'm sorry. Say that again, sir.

21 THE DEFENDANT: That's not five to seven  
22 days, seven business days. The law says right in  
23 the Supreme Court -- Superior Court Rule 7 --

1 THE COURT: Well --

2 THE DEFENDANT: Indict within seven days.

3 THE COURT: Mr. Webb, you haven't been  
4 reading everything, I don't believe, because there  
5 is an emergency order that's been issued by the  
6 Delaware Supreme Court, so that seven days no  
7 longer applies. There was no Grand Jury from  
8 February to July. There was actually no court  
9 proceedings in March, April and May. And so the  
10 fact that you've now been reindicted and your  
11 arraignment is a few weeks away complies with all  
12 the procedures that are in effect as a result of  
13 COVID 19.

14 So your argument that you should have been  
15 arraigned within seven or 10 days is not applicable  
16 because of the emergency order that's in place.

17 THE DEFENDANT: Was there a Grand Jury,  
18 because it was applicable then. The COVID 19 --  
19 the Supreme Court issue was after that. So I don't  
20 understand how you have a Grand Jury hearing when  
21 people can't come to court. That sounds false to  
22 me.

23 THE COURT: Well, you may have all sorts of

1 conspiracy thoughts in your mind, but the fact of  
2 the matter is, sir, we're not bringing any inmates  
3 in from prison to the courthouse pursuant to the  
4 Supreme Court's Order. We are having cases  
5 indicted, and once they're indicted, they'll be  
6 arraigned. You'll be arraigned by video at the  
7 institution, but you will not be brought to the  
8 courthouse. All right? So that takes place as  
9 scheduled.

10 I'm still waiting for the docket, so just  
11 hold on for a moment.

12 I also would have to assume, Mr. Webb, that  
13 some of the delay is associated with you  
14 threatening every lawyer that you've had so far  
15 and, therefore, we'd have to start all over again  
16 for new counsel. So if you want the process to  
17 proceed forward, obviously you're not going to have  
18 counsel anymore, so you can't make any more of  
19 those threats, so hopefully that will allow the  
20 Court to move your case forward, although I will  
21 tell you that there's hundreds of cases like yours  
22 that have been delayed because of the Court  
23 closure, so we'll have to see how the trial date

1 proceeds. But you can't keep threatening your  
2 counsel and then causing delay in the case and then  
3 argue that your case should have gone quicker.

4 THE DEFENDANT: The trial dates were set.

5 THE COURT: Well, it would have gone  
6 quicker, sir, if you had just cooperated --

7 THE DEFENDANT: I would -- he's telling me  
8 false law.

9 THE COURT: We'll see. Okay.

10 Do you have access to the legal library?

11 Where are you housed?

12 THE DEFENDANT: I'm housed in the SHU still.

13 THE COURT: You're in the SHU?

14 THE DEFENDANT: Yes.

15 THE COURT: At Vaughn?

16 THE DEFENDANT: Yup.

17 THE COURT: Ms. Hrivnak, when Mr. Webb was  
18 reindicted, was there just initial contact charges?

19 MS. HRIVNAK: Your Honor, it was in  
20 reference to some letters that he had sent  
21 threatening the DFS worker. I believe those were  
22 the newest charges, the misuse of prison mail,  
23 harassment charges in regards to the DFS worker

1 that was working the case for his daughter.

2 THE COURT: Okay. And they were all just  
3 added to the previous indictments?

4 MS. HRIVNAK: Correct. That brought the  
5 indictment up to 85 counts.

6 THE COURT: Okay. There are four cases, so  
7 I assume they are all then incorporated together?

8 MS. HRIVNAK: It's now up to five cases,  
9 but, yes.

10 THE COURT: Okay. Now five cases. Okay.  
11 All right.

12 MS. HRIVNAK: Your Honor, while I was  
13 looking through the dockets in preparation for the  
14 hearing, my review indicated that the Court had  
15 ordered him to undergo a psychiatric/psychological  
16 evaluation, and that order was signed on March 25th  
17 of 2019. The first indictment went through on  
18 June 10th of 2019. The psych report was filed with  
19 the Court on September 20th of 2019, and then the  
20 reindictment was filed in the docket on July 13th  
21 of 2020, and then the arraignment is listed as  
22 August 11th of 2020 based on the reindictment.

23 THE COURT: So your docket that you reviewed

1 reflected that the psych evaluation actually  
2 occurred?

3 MS. HRIVNAK: The original one that was  
4 issued -- the order was docketed on March 25th of  
5 2019, and then the report was filed on  
6 September 20th of 2019.

7 THE COURT: Okay. So there hasn't been  
8 another psych evaluation done since September 20th  
9 of 2019.

10 Okay. Well, Mr. Werb, I will grant your  
11 motion to withdraw as counsel. It's obvious that  
12 Mr. Webb no longer desires your representation, and  
13 because of the conduct that he has directed towards  
14 you, I think it would be inappropriate for you to  
15 continue to represent him. So that motion is  
16 granted.

17 In regards -- I'm looking at the first  
18 docket I have, which is case 1902015015, that has  
19 the stalking, act of intimidation cases. It looks  
20 like trial was set to begin on June second with a  
21 final case review on May 11th of 2020. Obviously  
22 with the pandemic, that was unable to go forward.  
23 It reflects a series of requests by counsel to

1 withdraw from the case because of Mr. Webb's  
2 conduct. So that appears to be an order. Case  
3 1904001943, the last docket looks like there was a  
4 writ of habeas corpus filed by Mr. Webb and denied  
5 by Judge Primos. There is a motion to dismiss  
6 filed in June, which I received, couldn't go  
7 forward because of the pandemic. Trial again was  
8 set for June second on these cases, and because of  
9 the pandemic, did not go forward. Same is true  
10 with 1902006825. It appears that was set for  
11 trial, but, again, unable to go forward. And then  
12 there's a case, 1906000296. Again, it was set for  
13 trial on June second, 2020, but, again, was unable  
14 to go forward because of the pandemic.

15 So I've reviewed the documents and the  
16 motion to dismiss filed by Mr. Webb. I find the  
17 motion --

18 THE DEFENDANT: Hold on, Your Honor.

19 THE COURT: Yes. Go ahead.

20 THE DEFENDANT: You haven't read the  
21 previous document. The third time it was scheduled  
22 for trial, it was scheduled in October; it was  
23 scheduled in January.

1 THE COURT: That probably was true, but you  
2 kept arguing with your attorneys and kept giving  
3 them a hard time.

4 THE DEFENDANT: My attorney refused to file  
5 the proper things, and do investigation which would  
6 prove my innocence.

7 THE COURT: Okay. Well, what I was about  
8 ready to do --

9 THE DEFENDANT: Ms. Hrivnak has suppressed  
10 the phone calls that exonerate me. So let's deal  
11 with that. Read that motion. I want my motion  
12 read on record in full.

13 THE COURT: Okay.

14 THE DEFENDANT: Or I will take you to the  
15 Supreme Court of Delaware and have you disciplined  
16 for failure for my first amendment rights.

17 THE COURT: Mr. Webb, you wouldn't be the  
18 first and you probably won't be the last, so if you  
19 think I have done anything improper, you're free to  
20 write them. I'm pretty confident I have done very  
21 little with your case other than deal with  
22 attorneys who you keep threatening, so if you --

23 THE DEFENDANT: Your Honor --

1 THE COURT: Wait a minute. It's my turn to  
2 talk. When I talk, you don't. We're going to set  
3 some ground rules here. You do not control this  
4 court, sir. This is my courtroom, not yours. I  
5 will give you the right to have a trial and it will  
6 be a fair one, but you will not interrupt me; you  
7 will not be disruptive and you will not be  
8 discourteous. Okay?

9 And if you do that, sir, that's fine, you'll  
10 watch the trial from your prison cell. All right?

11 So I've ruled that the motion to dismiss the  
12 indictments for lack of speedy trial are without  
13 merit and those motions are denied.

14 I don't believe since he was just reindicted  
15 again, he does not have a new trial date. We will  
16 give it a trial date as soon as the arraignment is  
17 completed with the first case review and a second  
18 case review.

19 All right. So I believe that concludes all  
20 the matters that I have before me, Mr. Werb and  
21 Ms. Hrivnak, unless you have something else?

22 MS. HRIVNAK: Your Honor, I do have a  
23 question.

A32

1 As far as his representing himself, will  
2 there be standby counsel, or how does the Court  
3 expect us to address discovery with him being in  
4 Vaughn and the quantity of disk evidence? I know a  
5 prior case I had, they had to make special  
6 arrangements with the law library where the  
7 defendant had to make arrangements to go in and  
8 listen to that evidence. Does the Court expect to  
9 have standby counsel or will we just, I guess,  
10 contact the prison and send it down for the law  
11 library, or how --

12 THE COURT: I'm hesitant to appoint standby  
13 counsel since he's gone through four other lawyers.

14 MS. HRIVNAK: Okay.

15 THE COURT: And so it would seem to me that  
16 you could send the discovery to the law library  
17 with a copy to Mr. Webb indicating it has been  
18 given.

19 MS. HRIVNAK: Okay.

20 THE COURT: If you have any difficulty with  
21 the institution in that regard, you can let me know  
22 and I'll try to accommodate it.

23 MS. HRIVNAK: Okay.

1 THE COURT: Okay. Anything else?

2 MS. HRIVNAK: No, thank you.

3 THE COURT: Anything else, Counsel?

4 MR. WERB: No, Your Honor. Thank you very  
5 much.

6 THE COURT: Thank you very much. This ends  
7 the proceedings.

8 ---  
9 (Whereupon, the proceedings concluded.)  
10 ---

1 STATE OF DELAWARE:

2 NEW CASTLE COUNTY:

3  
4 I, Lisa Masciantonio, Official Court  
5 Reporter of the Superior Court, State of Delaware,  
6 do hereby certify that the foregoing is an accurate  
7 transcript of the proceedings had, as reported by  
8 Michele Rolfe, RPR, CRR, in the Superior Court of  
9 the State of Delaware, in and for New Castle  
10 County, in the case therein stated, as the same  
11 remains of record in the Office of the Prothonotary  
12 at Wilmington, Delaware, and that I am neither  
13 counsel nor kin to any party or participant in said  
14 action nor interested in the outcome thereof.

15 This certification shall be considered null  
16 and void if this transcript is disassembled in any  
17 manner by any party without authorization of the  
18 signatory below.

19  
20 WITNESS my hand this 4th day of August,  
21 2023.

22 /s/ Lisa A. Masciantonio  
23 LISA A. MASCIANTONIO, RPR

A33

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

|                   |   |            |
|-------------------|---|------------|
| STATE OF DELAWARE | : | 1902015015 |
|                   | : | 1904001943 |
| v.                | : | 1902006825 |
|                   | : | 1906000296 |
| WILLIAM WEBB      | : | 2003006008 |

BEFORE: THE HONORABLE FRANCIS J. JONES

APPEARANCES:

DEPARTMENT OF JUSTICE  
RENEE L. HRIVNAK, ESQUIRE  
DEPUTY ATTORNEY GENERAL  
for the State

WILLIAM WEBB, PRO SE  
for the Defendant

- - - - -  
CASE REVIEW TRANSCRIPT  
SEPTEMBER 17, 2020  
- - - - -

JAMES C. PAVONE, RPR  
SUPERIOR COURT OFFICIAL REPORTERS  
Leonard L. Williams Justice Center  
500 North King Street - Suite 2609  
Wilmington, Delaware 19801-3725  
302.255.0564

1 Thursday, September 17, 2020  
2 Courtscribes  
3 9:00 a.m.

4 - - - -

5 THE COURT: Good morning.

6 Ms. Hrivnak, it looks like to me there's  
7 already been a first case review. Do we  
8 know why this -- we're having another?

9 MS. HRIVNAK: So, I -- if I recall  
10 correctly, Your Honor, he had Mr. Werb  
11 previously, and the last hearing that we  
12 had was in reference to addressing  
13 motions to withdraw as counsel.

14 THE COURT: Okay; all right.

15 Mr. Webb.

16 THE DEFENDANT: Good morning, sir.

17 THE COURT: If you guys -- if DOC  
18 could lower the camera just a little  
19 bit. We're only getting the top of  
20 Mr. Webb's head. That's good. Okay,  
21 that's fine.

22 Mr. Webb, I'm Judge Jones. I'm  
23 handling the case review this morning.

A35

1 Ms. Hrivnak is on for the State.

2 Ms. Hrivnak, do you want to give me  
3 a summary of where we are.

4 MS. HRIVNAK: Your Honor, the last  
5 hearing that we had was addressing --  
6 there was some pending motions to  
7 withdraw as counsel. Mr. Werb had been  
8 the latest court-appointed attorney for  
9 Mr. Webb and Judge Carpenter is  
10 specially assigned to this case.

11 After that hearing, Mr. Werb had  
12 been permitted to withdraw as counsel.  
13 My recollection is that the Court began  
14 the pro se colloquy with the defendant,  
15 who -- and then the defendant had  
16 interjected, and so the State's position  
17 is that that was not completely  
18 finished. However, it is clear that he  
19 will not be appointed at State's expense  
20 any more attorneys, as he has gone  
21 through the public defender's office, as  
22 well as three attorneys in the conflicts  
23 program.

1 THE COURT: Okay.

2 MS. HRIVNAK: So I think at this  
3 point, Ms. Warner and I will be sending  
4 a -- an email to Judge Carpenter's  
5 Chambers asking probably for another  
6 hearing so that we can be sure that  
7 there has been a full and complete pro  
8 se colloquy and that all of the Briscoe  
9 factors have been covered with the  
10 defendant from that perspective.

11 In reference to Tuesday's case  
12 review, there is a plea offer that is  
13 being extended to the defendant. The  
14 State does still owe him some discovery.  
15 He had been provided copies of certain  
16 discovery through Dade Werb and we will  
17 be sending him another packet. The  
18 packet that he was initially provided  
19 through Mr. Werb did not contain any  
20 Jencks material. He will most likely  
21 not be getting that, again, early on.  
22 And there is a significant amount of  
23 digital evidence in this case and so

1 we're working on determining how we're  
2 going to get that to him so he can look  
3 at and listen to that material.

4 THE COURT: Mr. Webb, what do you  
5 have to add for me this morning?

6 THE DEFENDANT: I filed a motion --  
7 actually, my reindictment, there was no  
8 grand jury -- through Jan Jurden and I  
9 haven't heard nothing on that, so I  
10 think my rights have not been followed  
11 within the court system to be heard on  
12 the record.

13 THE COURT: All right.

14 THE DEFENDANT: I filed motions  
15 back -- right after August 11th, after  
16 the hearing.

17 THE COURT: And do we have anything  
18 on the docket?

19 THE DEFENDANT: I haven't heard  
20 nothing on that yet.

21 THE CLERK: I see he filed a letter  
22 on August 25th and it was forwarded to  
23 Judge Jurden.

1 MS. HRIVNAK: Your Honor, I believe  
2 he was reindicted on the June 10th grand  
3 jury. He was reindicted on one of the  
4 newer grand juries, and I think his  
5 issue is a copy of the indictment  
6 that --

7 THE DEFENDANT: I never got a copy,  
8 never told -- never told by none of my  
9 attorneys I was reindicted, and there's  
10 been nothing about my whole case. I got  
11 a half million dollar bail -- I mean,  
12 they dropped the ball. I got a  
13 complaint against Julia Mayer,  
14 Ms. Hrivnak. I'm being retaliated  
15 against because I exercised my right to  
16 have hearings.

17 THE COURT: Ms. Callahan, what's  
18 the docket reflect when it was actually  
19 filed?

20 THE CLERK: We have it filed  
21 August 25th, and it was referred to  
22 Judge Jurden.

23 THE COURT: And what was it

1           entitled?

2           THE CLERK: Defendant's Letter to  
3 Judge Jurden, Notice of Objection and  
4 Challenging Grand Jury and the  
5 Reindictment, in Violation of Double  
6 Jeopardy.

7           THE COURT: All right.

8           THE CLERK: So it was referred to  
9 Judge Jurden. It has not been answered.

10          THE COURT: Here's what we're going  
11 to do: This is Judge Carpenter's case.  
12 He's specifically assigned, so he needs  
13 to -- we need to get a hearing on with  
14 Judge Carpenter so we can complete the  
15 pro se colloquy.

16          And we also need to get the motion  
17 that Mr. Webb has filed that he sent to  
18 Judge Jurden to Judge Carpenter --  
19 okay -- so that we can get something  
20 scheduled so that we can get all these  
21 matters that are presently needed to be  
22 resolved.

23          Does that make sense, Ms. Hrivnak?

1 MS. HRIVNAK: That's fine, Your  
2 Honor.

3 THE COURT: All right.

4 Mr. Webb, that's what we're going  
5 to do. I'm going to make sure that your  
6 paperwork that you sent to Judge Jurden  
7 gets to Judge Carpenter and then you'll  
8 be hearing from Judge Carpenter about  
9 setting up a hearing to address the  
10 outstanding matters. Okay?

11 THE DEFENDANT: All right.

12 THE COURT: Thank you.

13 MS. HRIVNAK: Thank you, Your  
14 Honor.

15 THE DEFENDANT: Is there -- I filed  
16 a bail motion. Is that on the record,  
17 too.

18 THE COURT: Ms. Callahan?

19 THE CLERK: When did he file it.

20 THE COURT: When was that filed?

21 THE DEFENDANT: That was filed  
22 before -- it would be filed before  
23 July 30th.

1 I don't understand how -- well, of  
2 course, they're tampering with my mail  
3 here so my mail don't arrive until the  
4 weekend so we can't respond. I already  
5 got two of my Supreme Court dates  
6 dismissed because they're tampering with  
7 my mail down here. They're tampering  
8 with my legal mail. Ms. Hrivnak is well  
9 aware of it.

10 MS. HRIVNAK: Your Honor, the  
11 docket indicates that there's a motion  
12 for reduction of bail that was filed on  
13 July 20th.

14 THE COURT: That's also going to  
15 have to be addressed with  
16 Judge Carpenter. All right, I will make  
17 sure that these matters are brought to  
18 his attention. Okay?

19 THE DEFENDANT: Yeah.

20 THE COURT: Thank you.

21 MS. HRIVNAK: Thank you, Your  
22 Honor.

23 THE COURT: That completes the

1 calendar, Ms. Hrivnak.

2 MS. HRIVNAK: Thank you, Your  
3 Honor.

4 THE COURT: All right.

5 (Court in recess.)  
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A43

CERTIFICATE OF COURT REPORTER

I, James C. Pavone, RPR, Official Court Stenographer of the Superior Court, State of Delaware, do hereby certify that the foregoing is an accurate transcript of the proceedings had, as reported by me, in the Superior Court of the State of Delaware, in and for New Castle County, in the case herein stated, as the same remains of record in the Office of the Prothonotary at Wilmington, Delaware, and that I am neither counsel nor kin to any party or participant in said action nor interested in the outcome thereof.

This certification shall be considered null and void if this transcript is disassembled in any manner by any party without authorization of the signatory below.

WITNESS my hand this 2nd day of August, 2023.

/s/ James C. Pavone  
James C. Pavone, RPR, CSR  
Official Court Reporter

**WILLIAM WEBB,**

**Defendant-Below,  
Appellant,**

V.

**STATE OF DELAWARE,  
Plaintiff-Below,  
Plaintiff-Below,  
Appellee.**

**No. 467, 2022**

**Court Below: Superior Court of the State of Delaware in and for New Castle County**

**Case Below Nos. 1902015015,  
1904001943, 1906000296**

**APPELLANT'S OPENING BRIEF**

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Attorney for William Webb  
Defendant Below-Appellant

Dated: January 2, 2024

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## NATURE OF PROCEEDINGS

William Webb ("Webb") was arrested on February 14, 2019 and charged by indictment on June 10, 2019 in Superior Court case number 1902006825 with the following offenses: Robbery First Degree, Theft of a Motor Vehicle (two counts), Theft under \$1,500, Offensive Touching, Non-Compliance with Bond (two counts), and Robbery Second Degree. (Docket Entry 1,<sup>1</sup> 16). A preliminary hearing was held in case number 1902006825 on February 25, 2019. (Docket Entry 1). As all charges within case number 1902006825 were dismissed or nolle pross'd, this Appeal does not include Superior Court case number 1902006825. (A69).

Webb was again arrested on February 28, 2019 and charged by indictment on June 10, 2019 in Superior Court case number 1902015015 with the following offenses: Act of Intimidation (four counts), Stalking (two counts), Harassment (two counts), and Non-Compliance with Bond (one count). (Docket Entry 1,<sup>2</sup> 5; A1). A preliminary hearing was held in case number 1902015015 on April 24, 2019. (DE1). Webb was found guilty of one count of Stalking and one count of

---

<sup>1</sup> The Superior Court Docket Sheets for Case No. 1902006825 are attached as Appendix 69-85 (Appendix hereinafter cited as "A\_\_").

<sup>2</sup> The Superior Court Docket Sheets for Case No. 1902015015 are attached as A1-22 (hereinafter cited as "DE\_\_").

Act of Intimidation associated with this case number; as such, this Appeal encompasses Superior Court case number 1902015015.

Webb was again arrested on April 9, 2019 and charged by indictment on June 10, 2019 in Superior Court case number 1904001943 with the following offenses: Breach of Conditions (6 counts) and Criminal Contempt (2 counts). (Docket Entry 1,<sup>3</sup> 4; A47). A preliminary hearing was held on April 24, 2019. (Docket Entry 1). Webb was found guilty of one count of Criminal Contempt associated with this case number; as such, this Appeal encompasses Superior Court case number 1904001943.

The June 10, 2019 indictment additionally charged Webb in Superior Court case number 1906000296 with the following offenses: Breach of Conditions (one hundred and thirty-one), Misuse of Mail (eight counts), and Harassment (two counts). (Docket Entry 1;<sup>4</sup> A23-25). This Appeal encompasses Superior Court case number 1906000296.

Pre-trial litigation was protracted, with the following litigation being of note:

---

<sup>3</sup> The Superior Court Docket Sheets for Case No. 1904001943 are attached as A47-68.

<sup>4</sup> The Superior Court Docket Sheets for Case No. 1906000296 are attached as A23-46.

A competency evaluation was ordered on July 17, 2019 (DE13); a motion for self-representation was filed on September 6, 2019 (DE15); the psychological/psychiatric report was filed on September 20, 2019 (DE20); The Honorable William C. Carpenter, Jr. specially assigned the case to his Honor on October 30, 2019 and advised counsel that Webb's motion for self-representation still needs to be addressed now that the psychiatric report has been filed (DE24); the *pro se* motion for self-representation was withdrawn orally at case review on December 16, 2019 (DE31); a *pro se* motion to disqualify counsel was filed on February 21, 2020, denied orally on July 30, 2020 (DE35, 41, 45); a motion to withdraw as counsel was filed by Dade Werb, Esq. on March 11, 2020, granted orally on July 30, 2020 (DE39, 41, 45); Webb was arraigned on August 11, 2020, and acting *pro se*, entered a plea of not guilty and demanding a trial by jury (DE45); a case review was held on September 17, 2020 (DE46); several *pro se* motions were denied in a written order on October 7, 2021, with the exception of the Motion to Suppress Illegally Obtained Evidence, for which a suppression hearing was scheduled (DE60, 61); a suppression hearing, with Webb acting *pro se*, was held on November 5, 2021 and continued to November 29, 2021, with the motion denied orally during the hearing (DE63, 64, 65); and a final case review was held on April 11, 2022 (DE76).

A jury trial was held from May 9, 2022 to May 13, 2022, with Webb acting *pro se*. (DE79, 81, 82). Webb was found guilty on May 13, 2022 of all charges for which he was tried. (DE82). A motion to declare defendant an habitual offender was filed on October 18, 2022. (DE85). Sentencing was continued on October 21, 2022 at Webb's request. (DE85). The motion to declare defendant an habitual offender was granted on December 13, 2022, and Webb was sentenced to 25 years at Level V followed by decreasing levels of supervision. (DE88, 89).

Webb timely filed a notice of appeal *pro se* on December 15, 2022 (DE90, 91). Undersigned counsel was thereafter appointed to represent Webb on his appellate proceedings. (A323). This is Webb's Opening Brief on Appeal.

## SUMMARY OF ARGUMENT

1. The Superior Court violated Webb's Sixth Amendment right to counsel when the court forced Webb to proceed *pro se* despite not holding the required *Faretta* colloquy and not following the *Briscoe/Welty* guidelines nor making a finding on the record that Webb had forfeited or waived via conduct his right to counsel.

## **STATEMENT OF FACTS**

### ***Offenses.***

Webb and the complaining witness, Patricia Burgess ("Ms. Burgess") had an on-again off-again relationship over multiple years, during which Ms. Burgess made multiple claims of abusive behavior against Webb. (A260-262, 287-296). Events that occurred on February 11, 2019 gave rise to the present criminal matter. (A89). Ms. Burgess reported on that date that Webb grabbed her hair, forcibly took her car keys from her person and then drove off with her car. (A90-91, 93). Webb was then arrested for Robbery and related offenses. (A104-105). However, subsequent to Webb's arrest for the February 11, 2019 events, Webb made several calls to Ms. Burgess and sent her mail, while incarcerated, in violation of a no-contact order, prompting the State to file additional charges. (A113-114, 116-117, 241-244, 253-257).

### ***Webb's pro se motion for self-representation and December 16, 2019 case review.***

It is apparent that Webb had conflicts with multiple defense attorneys throughout his court proceedings. As a result, on September 6, 2019, Webb filed a *pro se* motion for self-representation. (DE15). However, during the December 16,

2019 case review, at which point Webb was represented by Dade Werb, Esq., the following exchange occurred:

THE COURT: . . . back in September, you filed a request to represent yourself, and that motion was not considered at that time because it appeared that the psychiatric evaluation that was ordered had not been completed. That now has been completed, and you have been ruled competent to stand trial. And so I wanted to bring you here so that I can handle the motion that you filed in regards to representing yourself. (A168).

The court continued:

THE COURT: So they appointed Mr. Werb to go down and talk to you to see whether or not you continue to want representation, and if that's the case, then obviously your request to represent yourself would not go forward.

So I wanted you to at least have counsel in the case first, and then if you, after talking with him, decided you still wanted to represent yourself, then I need to talk to you further. (A168).

Thereafter, Webb explained to the court his grievances with defense counsel, noting "And I'm at a standpoint where -- I mean, I can represent myself, but I shouldn't have to where there's funds available for an innocent person to get representation that's effective." (A168).

The court then explained to Webb generally how the attorney-client relationship works, and inquired, "[t]he only issue today is whether or not you want to represent yourself, or you want Mr. Werb to represent you." (A169). The

court proceeded to explain, "So my recommendation is that you let Mr. Werb represent you" but noting, "you have a right to represent yourself, but I'm not hearing that that's what you want. You just weren't happy with your other lawyers, and you would like to have a lawyer represent you. Right?" (A169).

The court expressly asked Webb, "So you prefer you have an attorney. Am I correct?" and Webb responded, "Yes." (A169). The court then noted on record that "Mr. Werb is now your Counsel." (A169).

***Motions to Disqualify and to Withdraw as Counsel and July 30, 2020 hearing.***

Subsequently, a *pro se* motion to disqualify counsel was filed by Webb on February 21, 2020. (DE35, 41, 45). On March 11, 2020, Dade Werb, Esq. filed a motion to withdraw as counsel. (DE39).

During a July 30, 2020 hearing, the motions were considered by the court.

Mr. Werb began, explaining:

MR. WERB: I was appointed to this case back in November from the Conflict Counsel, as Mr. Webb had several other attorneys involved in this case. I believe it started out with Mr. Meyer of the Public Defender's Office, and then went to Mr. Chapman, and then Mr. Layton, then to myself.

As Your Honor knows from my motion, I filed a motion to have myself withdrawn as counsel for Mr. Webb.

There really exists no sustainable attorney/client relationship here. He refuses to follow my advice. He's complained to conflict counsel

about me. He's filed Office of Disciplinary Counsel complaints against me. I've gotten at least six or seven threatening letters, a phone call back in March. He's also threatened to sue our law firm. I think he's already sued Mr. Chapman. So there's also civil suits that he's filed against prior attorneys.

Your Honor, Mr. Webb was told early on that this type of behavior with an attorney will not be tolerated. I've tried to stick it out, but it's consistent abusive behavior and there's really nothing more I can do with Mr. Webb. He wants to do everything on his own. So for the reasons I set forth in the motion, and I can go into further detail, your Honor, but at this point, there's nothing more I can do for Mr. Webb and I ask that I be withdrawn from the case. (A178).

The State took no position on Mr. Webb's motion, simply noting the State's familiarity with Webb's history of conflict with prior defense counsel. (A178).

The court then addressed Webb, and the following exchange occurred:

THE COURT: Mr. Webb, Mr. Webb has filed a motion to withdraw and you have filed a motion to disqualify him. So I assume you have no objection to him getting out of the case. Is that fair?

THE DEFENDANT: That's fair to say, Your Honor.

THE COURT: Okay, now do you intend to represent yourself?

THE DEFENDANT: If that need be, I will. (A178).

THE COURT: Well, I think we have probably appointed all the attorneys that anyone is going to appoint for you. You've gone through at least three, maybe four different attorneys who have all had to withdraw from your representation, so it looks like you're going to have to represent yourself in regards to this matter.

So do you agree with Mr. Werb's comments that you and he are not getting along anymore? (A178).

THE DEFENDANT: We are not getting along. He refused to assert my rights to my freedom. (A178).

Thereafter, Webb addressed some complaints with the court; however, the court then noted:

THE COURT: Okay. So I have to ask you some questions before we can go any further and make some comments to you, so please listen carefully.

If you are representing yourself, you'll be required to comply with all of the rules and procedures that would be expected of counsel if they were representing you. So the conduct in the courtroom, the filing of papers, and the responses that would need to be filed, the same rules that would apply to Mr. Werb in his representation to you would also apply if you represent yourself.

As you know, the trial in this matter has been stayed for some period of time because of the Covid-19 pandemic.

THE DEFENDANT: No, Your Honor. These trials were scheduled before that. You can't use that as a crutch. All of these trials were scheduled before that.

THE COURT: Well, perhaps, but at the moment -- (A178)

THE DEFENDANT: That's what the Delaware Constitution, Article 1, Subsection 7 says, and the Supreme Court directed one-third, they said, within one year, 100 percent of cases shouldn't go to trial. I was arrested on February 14th, 2019. I've been held in jail since without a trial, or anything to get near a trial. You've got to hold that against the State. (A178-179).

A brief discussion regarding Webb's reindictment and need for an arraignment was then held. (A179). After Webb alleged that he had not been timely arraigned, the court noted:

THE COURT: I also would have to assume, Mr. Webb, that some of the delay is associated with you threatening every lawyer that you've had so far and, therefore, we'd have to start all over again for new counsel. So if you want the process to proceed forward, obviously you're not going to have counsel anymore, so you can't make any more of those threats, so hopefully that will allow the Court to move your case forward, although I will tell you that there's hundreds of cases like yours that have been delayed because of the Court closure, so we'll have to see how the trial date proceeds. But you can't keep threatening your counsel and then causing delay in the case and then argue that your case should have gone quicker. (A179-180).

Following a discussion of the status of the docket report, the court stated:

THE COURT: Okay. Well, Mr. Webb, I will grant your motion to withdraw as counsel. It's obvious that Mr. Webb no longer desires your representation, and because of the conduct that he has directed towards you, I think it would be inappropriate for you to continue to represent him. So that motion is granted.

In regards -- I'm looking at the first docket I have, which is case 1902015015, that has the stalking, act of intimidation cases. It looks like trial was set to begin on June second with a final case review on May 11th of 2020. Obviously with the pandemic, that was unable to go forward. It reflects a series of requests by counsel to withdraw from the case because of Mr. Webb's conduct. So that appears to be an order. Case 1904001943, the last docket looks like there was a writ of habeas corpus filed by Mr. Webb and denied by Judge Primos. There is a motion to dismiss filed in June, which I received, couldn't go forward because of the pandemic. Trial again was set for June second on these cases, and because of the pandemic, did not go

forward. Same is true with 1902006825. It appears that was set for trial, but, again, unable to go forward. And then there's a case, 1906000296. Again, it was set for trial on June second, 2020, but, again, was unable to go forward because of the pandemic.

So I've reviewed the documents and the motion to dismiss filed by Mr. Webb. I find the motion -- (A180).

THE DEFENDANT: Hold on, Your Honor.

THE COURT: Yes. Go ahead.

THE DEFENDANT: You haven't read the previous document. The third time it was scheduled for trial, it was scheduled in October; it was scheduled in January. (A180).

THE COURT: That probably was true, but you kept arguing with your attorneys and kept giving them a hard time.

THE DEFENDANT: My attorney refused to file the proper things, and do investigation which would prove my innocence.

THE COURT: Okay. Well, what I was about ready to do --

THE DEFENDANT: Ms. Hrivnak has suppressed the phone calls that exonerate me. So let's deal with that. Read that motion. I want my motion read on record in full.

THE COURT: Okay.

THE DEFENDANT: Or I will take you to the Supreme Court of Delaware and have you disciplined for failure for my first amendment rights.

THE COURT: Mr. Webb, you wouldn't be the first and you probably won't be the last, so if you think I have done anything improper, you're free to write them. I'm pretty confident I have done very little

with your case other than deal with attorneys who you keep threatening, so if you --

THE DEFENDANT: Your Honor -- (A181).

THE COURT: Wait a minute. It's my turn to talk. When I talk, you don't. We're going to set some ground rules here. You do not control this court, sir. This is my courtroom, not yours. I will give you the right to have a trial and it will be a fair one, but you will not interrupt me; you will not be disruptive and you will not be discourteous. Okay?

And if you do that, sir, that's fine, you'll watch the trial from your prison cell. All right?

So I've ruled that the motion to dismiss the indictments for lack of speedy trial are without merit and those motions are denied. I don't believe since he was just reindicted again, he does not have a new trial date. We will give it a trial date as soon as the arraignment is completed with the first case review and a second case review.

All right. So I believe that concludes all the matters that I have before me, Mr. Werb and Ms. Hrivnak, unless you have something else?

MS. HRIVNAK: Your Honor, I do have a question. (A181).

As far as his representing himself, will there be standby counsel, or how does the Court expect us to address discovery with him being in Vaughn and the quantity of disk evidence? I know a prior case I had, they had to make special arrangements with the law library where the defendant had to make arrangements to go in and listen to that evidence. Does the Court expect to have standby counsel or will we just, I guess, contact the prison and send it down for the law library, or how --

THE COURT: I'm hesitant to appoint standby counsel since he's gone through four other lawyers.

MS. HRIVNAK: Okay.

THE COURT: And so it would seem to me that you could send the discovery to the law library with a copy to Mr. Webb indicating it has been given.

MS. HRIVNAK: Okay.

THE COURT: If you have any difficulty with the institution in that regard, you can let me know and I'll try to accommodate it.

MS. HRIVNAK: Okay. (A181).

THE COURT: Okay. Anything else?

MS. HRIVNAK: No, thank you.

THE COURT: Anything else, Counsel?

MR. WERB: No, Your Honor. Thank you very much.

THE COURT: Thank you very much. This ends the proceedings. (A181).

Following the July 30, 2020 hearing, Webb was arraigned on August 11, 2020. (DE45). During the arraignment, Webb represented himself. (DE45).

A case review was held on September 17, 2020 before The Honorable Francis J. Jones, who was not the specially assigned judge to the case. (DE46). During this case review, Webb participated via video as a *pro se* defendant. (A183-184). The prosecutor began by stating:

MS. HRIVNAK: Your Honor, the last hearing that we had was addressing -- there was some pending motions to withdraw as counsel. Mr. Werb had been the latest court-appointed attorney for Mr. Webb and Judge Carpenter is specially assigned to this case.

After that hearing, Mr. Werb had been permitted to withdraw as counsel. My recollection is that the Court began the pro se colloquy with the defendant, who -- and then the defendant had interjected, and so the State's position is that that was not completely finished.

However, it is clear that he will not be appointed at State's expense any more attorneys, as he has gone through the public defender's office, as well as three attorneys in the conflicts program. (A185).

After the court noted "Ok", the prosecutor proceeded:

MS. HRIVNAK: So I think at this point, Ms. Warner and I will be sending a -- an email to Judge Carpenter's Chambers asking probably for another hearing so that we can be sure that there has been a full and complete pro se colloquy and that all of the Briscoe factors have been covered with the defendant from that perspective.

In reference to Tuesday's case review, there is a plea offer that is being extended to the defendant. The State does still owe him some discovery. He had been provided copies of certain discovery through Dade Werb and we will be sending him another packet. The packet that he was initially provided through Mr. Werb did not contain any Jencks material. He will most likely not be getting that, again, early on. And there is a significant amount of digital evidence in this case and so we're working on determining how we're going to get that to him so he can look at and listen to that material. (A186-187).

Webb then addressed the court, raising some issues regarding the reindictment. (A187-189). The court then noted:

THE COURT: Here's what we're going to do: This is Judge Carpenter's case. He's specifically assigned, so he needs to -- we need to get a hearing on with Judge Carpenter so we can complete the pro se colloquy.

And we also need to get the motion that Mr. Webb has filed that he sent to Judge Jurden to Judge Carpenter -- Okay -- so that we can get something scheduled so that we can get all these matters that are presently needed to be resolved.

Does that make sense, Ms. Hrivnak? (A189).

MS. HRIVNAK: That's fine, Your Honor.

THE COURT: All right.

Mr. Webb, that's what we're going to do. I'm going to make sure that your paperwork that you sent to Judge Jurden gets to Judge Carpenter and then you'll be hearing from Judge Carpenter about setting up a hearing to address the outstanding matters. Okay?

THE DEFENDANT: All right.

THE COURT: Thank you.

MS. HRIVNAK: Thank you, Your Honor.

THE DEFENDANT: Is there -- I filed a bail motion. Is that on the record, too.

THE COURT: Ms. Callahan?

THE CLERK: When did he file it.

THE COURT: When was that filed? (A190).

THE DEFENDANT: That was filed before -- it would be filed before July 30<sup>th</sup>.

I don't understand how -- well, of course, they're tampering with my mail here so my mail don't arrive until the weekend so we can't respond. I already got two of my Supreme Court dates dismissed because they're tampering with my mail down here. They're tampering with my legal mail. Ms. Hrivnak is well aware of it.

MS. HRIVNAK: Your Honor, the docket indicates that there's a motion for reduction of bail that was filed on July 20<sup>th</sup>.

THE COURT: That's also going to have to be addressed with Judge Carpenter. All right, I will make sure that these matters are brought to his attention. Okay?

THE DEFENDANT: Yeah.

THE COURT: Thank you.

MS. HRIVNAK: Thank you, Your Honor. (A191).

THE COURT: That completes the calendar, Ms. Hrivnak.

MS. HRIVNAK: Thank you, Your Honor.

THE COURT: All right. (A192).

The next hearing in Webb's case was a suppression hearing held on November 5, 2021 and continued on to November 29, 2021. (A10-13). The docket sheet for ID No. 19020006825 from the dates between the September 17, 2020 case review and the November 5, 2021 suppression hearing do not show that a letter or motion was ever filed by the State with Judge Carpenter requesting that

the *pro se* colloquy be completed. (A80-83). The docket sheets for ID No. 1904001943 and ID No. 1902015015 and ID No. 1906000296 reveal the same. (A10-13, 33-37, 56-59).

During the November 5, 2021 hearing, the new prosecutor assigned to the case, Ms. Milecki, stated:

MS. MILECKI: Additionally, your Honor, I understand that Ms. Hrivnak has had the case previously and that the defendant has elected to proceed *pro se*, I am not sure whether a full colloquy was done. So I -- (A194).

THE COURT: Oh, yes, one has. I mean, he's -- let me just say for the record, a colloquy has occurred to the extent that Mr. Webb would allow one to occur. He's been adamant about representing himself. And if my recollection is correct, he's gone through at least two prior attorneys, both of which moved to be excused primarily because of Mr. Webb's abusive conduct. So I'm pretty confident that even the Supreme Court would recognize that Mr. Webb is a difficult individual who prefers to represent himself, since he doesn't have any confidence in anybody else other than himself. (A194).

Subsequently, the court addressed Webb stating:

THE COURT: Let me ask you this question before we get too far into this. When you last appeared in the courtroom, there was, I think it was in reference to perhaps Mr. Chapman or someone else moving to no longer represent you?

MR. WEBB: Yeah. That was Dade Werb, that was on July, July 30<sup>th</sup>.

THE COURT: Okay. Is it still your desire to represent yourself now? Or do you, have changed your thoughts about that and want somebody to represent you?

MR. WEBB: I mean, I've had three attorneys, none of them, none of them investigated the facts or the evidence in my case.

THE COURT: Well, there has been three attorneys, but they have -- the dispute has been that you had -- you and them had a disagreement to the point that they felt they could no longer represent you because you were being difficult and abusive to them -- I'm not suggesting that happened, but that's what they represented -- and they had all been excused. (A195).

So at this point in time is there anyone that you contacted, or any attorney that you contacted that you would like to have represent you, or are you proceeding, still proceeding by yourself?

MR. WEBB: I can proceed by myself.

THE COURT: All right. (A195-196).

The parties then proceeded to the motion to suppress issues.

The only hearing held following the November 29, 2021 suppression hearing prior to the start of trial was a final case review, held on April 11, 2022, at which Webb proceeded *pro se*. (DE76; A221). There was no discussion during this final case review of Webb's representation status. (A222-230).

Thereafter, a jury trial was held from May 9, 2022 to May 13, 2022, with Webb acting *pro se* during the entirety of the trial. (DE79, 81, 82). Likewise, Webb represented himself during sentencing on December 13, 2022. (DE88, 89).

***Sentencing Hearing.***

During the December 13, 2022 sentencing hearing, Webb requested a continuance, alleging he needed more time to develop mitigating evidence and evidence challenging the State's habitual offender motion. (A317-318, 321). The court denied the request, finding no good faith basis to challenge the motion for habitual offender status at that time. (A318).

**I. THE SUPERIOR COURT ERRED IN FORCING WEBB TO PROCEED *PRO SE* WITHOUT FIRST ENGAGING IN A PROPER *FARETTA* COLLOQUY TO DETERMINE THAT WEBB WAS KNOWINGLY AND INTELLIGENTLY WAIVING HIS RIGHT TO COUNSEL UNDER THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND UNDER ARTICLE 1, § 7 OF THE DELAWARE CONSTITUTION.**

**QUESTION PRESENTED**

Did the Superior Court violate Webb's Sixth Amendment right to counsel and Article 1, § 7 right to counsel when the court forced Webb to proceed *pro se* without first engaging in a proper *Faretta* colloquy to determine that Webb was knowingly and intelligently waiving his right to counsel and without determining Webb had forfeited his right to counsel or had waived his right to counsel through his conduct. This issue was preserved, as Webb moved to disqualify counsel and proceed *pro se*.<sup>5</sup> (A178-181, 195-196).

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<sup>5</sup> See, e.g., *Morrison v. State*, 135 A.3d 69, 71, 74-75 (Del. 2016) (conducting a *de facto de novo* review of the colloquy that followed the defendant's request to self-represent); *Smith v. State*, 996 A.2d 786, 787, 789-792 (Del. 2010) (conducting a *de facto de novo* review of the defendant's claim that the record fails to establish he knowingly, intelligently and voluntarily waived his right to counsel); *Boyer v. State*, 2009 Del. LEXIS 598, \*1, 5 (Del. 2009) (conducting a *de facto de novo* review of the defendant's claim that he did not knowingly and intelligently waived counsel following the defendant's request to proceed *pro se*).

## STANDARD AND SCOPE OF REVIEW

This Court will uphold a “Superior Court judge’s factual findings unless they are clearly erroneous and the record does not support the findings.”<sup>6</sup> This Court reviews questions of law *de novo*.<sup>7</sup> Claims of constitutional violations are reviewed *de novo*.<sup>8</sup> Because this is a claim of a constitutional violation, the applicable standard of review is *de novo*.<sup>9</sup>

## MERITS OF ARGUMENT

The factual record and controlling United States Supreme Court case law, as well as controlling legal precedent of this Court and the Third Circuit Court of Appeals, unquestionably establishes that the trial court failed to engage in a proper *Faretta* colloquy with Webb. As such, Webb did not knowingly and intelligently waive his Sixth Amendment right to counsel, and this Court must reverse and remand for a new trial.

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<sup>6</sup> *Lawson v. State*, 72 A.3d 84, 88 (Del. 2013).

<sup>7</sup> *Dawson v. State*, 673 A.2d 1186, 1190 (Del. 1996).

<sup>8</sup> *Hall v. State*, 788 A.2d 118, 123 (Del. 2001).

<sup>9</sup> *See supra* pp. 21 n.6.

- A. The record unequivocally shows that a complete *Faretta* colloquy was never performed by the Court, in violation of clearly controlling United States Supreme Court and Delaware case law.**

The factual record clearly shows that the Superior Court began the requisite *Faretta* colloquy with Webb, yet never finished it. (A178-181). The record also unequivocally shows that the State was aware of this and mentioned on two known occasions that the *pro se Faretta* colloquy needed to be completed and/or performed. (A185-186, 194).

During the September 17, 2020 case review, the State noted that it planned to send Judge Carpenter a letter requesting a hearing to finish the colloquy. (A185-186). Nowhere in the record is there any evidence that the State filed such a letter with. (A10-13, 33-37, 56-59, 80-83). The record also shows that during that same case review, Judge Jones advised the parties that the court would notify Judge Carpenter that a hearing needed to be scheduled to finish the colloquy. (A189-191). Whether this inter-judge notification occurred is unknown; regardless, it is clear that the hearing to finish the colloquy was never scheduled nor held. (A10-13, 33-37, 56-59, 80-83).

The factual record unequivocally shows that the only further discussion of Webb's representation occurred during the beginning of the November 5, 2021 suppression hearing, at which time the new prosecutor on the case inquired

whether a *pro se* colloquy had been done with Webb. (A194). In response, Judge Carpenter stated:

THE COURT: Oh, yes, one has. I mean, he's -- let me just say for the record, a colloquy has occurred to the extent that Mr. Webb would allow one to occur. . . . (A194).

In stating that “a colloquy has occurred to the extent that Mr. Webb would allow one to occur”, Judge Carpenter implicitly acknowledged that a complete *Faretta* colloquy had not been performed. (A194). The record also shows that Judge Carpenter mischaracterized the factual record, as there is absolutely no indication in the record that Webb refused to engage in a colloquy with the court.

It is true that when Judge Carpenter began the *Faretta* colloquy during the July 30, 2020 hearing, Webb interrupted with a comment regarding delays in scheduling his trial, and from there, the record clearly shows, the parties became distracted discussing that issue and simply never returned to the *Faretta* colloquy.

As the record shows, the court began the colloquy by stating:

THE COURT: Okay. So I have to ask you some questions before we can go any further and make some comments to you, so please listen carefully.

If you are representing yourself, you'll be required to comply with all of the rules and procedures that would be expected of counsel if they were representing you. So the conduct in the courtroom, the filing of papers, and the responses that would need to be filed, the same rules

that would apply to Mr. Werb in his representation to you would also apply if you represent yourself.

As you know, the trial in this matter has been stayed for some period of time because of the Covid-19 pandemic. (A179).

It was at this point Webb interrupted to state: "No, Your Honor. These trials were scheduled before that. You can't use that as a crutch. All of these trials were scheduled before that." (A179). From there, the court responded to Webb's concerns regarding trial delays and then simply moved on to other topics. (A179-181). The prosecutor even returned to the self-representation issue by inquiring whether the court was going to appoint standby counsel for Webb; yet the court still blatantly failed to resume the colloquy. (A181).

Lastly, the record plainly shows that after the newly assigned prosecutor inquired during the November 5, 2021 as to whether a colloquy had been performed, the court simply inquired of Webb: "Is it still your desire to represent yourself now? Or do you, have changed your thoughts about that and want somebody to represent you? . . . . So at this point in time is there anyone that you contacted, or any attorney that you contacted that you would like to have represent you, or are you proceeding, still proceeding by yourself?" (A195-196). Webb responded: "I can proceed by myself." (A196).

Delaware and federal case law is well-settled that that is simply not good enough.

- B. *Faretta* requires that the court hold a proper colloquy with the defendant and make clear factual and legal conclusions on the record that the defendant is knowingly, intelligently and voluntarily waiving his Sixth Amendment right to counsel, which did not occur in this case.**

It is beyond dispute that "[t]he Sixth Amendment safeguards to an accused who faces incarceration the right to counsel at all critical stages of the criminal process."<sup>10</sup> A defendant's Sixth Amendment right to represent himself is made applicable to the States through the due process clause of the Fourteenth Amendment.<sup>11</sup> Similarly, Article I, § 7 of the Delaware Constitution provides that a criminal defendant "has the right to be heard by himself and his counsel."<sup>12</sup> This guarantees to a defendant in a criminal case the right to legal representation.<sup>13</sup>

It is also well settled that a defendant has the constitutional right to proceed without counsel at all critical stages when he voluntarily, knowingly and intelligently elects to do so."<sup>14</sup> Although the right to represent oneself has existed since colonial times, it was not until 1975 that the United States Supreme Court, in

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<sup>10</sup> *Iowa v. Tovar*, 541 U. S. 77, 80-81 (2004).

<sup>11</sup> *Faretta v. California*, 422 U. S. 806, 819 (1975).

<sup>12</sup> Del. Const. art. I, § 7.

<sup>13</sup> *Potter v. State*, 547 A.2d 595, 600 (Del. 1988).

<sup>14</sup> *Faretta*, 422 U. S. at 835; *Edwards v. Arizona*, 451 U.S. 477, 482 (1981).

the landmark case of *Faretta v. California*, declared the right to self-representation to be a Constitutional right.<sup>15</sup> In *Faretta*, the United States Supreme Court gave notice to all those involved in the criminal justice system including federal and state judges, that a defendant has the right under the Sixth and Fourteenth Amendments of the United States Constitution to represent himself at trial.<sup>16</sup> The Supreme Court held that once a defendant clearly and unequivocally asserts his right to proceed *pro se*, the trial court must proceed with a hearing to determine if the defendant knowingly, voluntarily, and intelligently waived his right to counsel.<sup>17</sup> Accordingly, "[t]he Sixth Amendment right of self-representation differs from other constitutional rights because it can not be exercised without the concomitant waiver of another fundamental right that is also guaranteed under the Sixth Amendment; the right to counsel."<sup>18</sup> Waiver of the right to counsel "depends in each case upon the particular facts and circumstances surrounding that case, including the background, experience, and conduct of the accused."<sup>19</sup> The

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<sup>15</sup> *Faretta*, 422 U.S. at 826-832.

<sup>16</sup> *Id.* at 807.

<sup>17</sup> *Id.* at 807.

<sup>18</sup> *Buhl v. Cooksey*, 233 F.3d 783, 289 (3d Cir. 2000).

<sup>19</sup> *Edwards*, 451 U.S. at 482 (quoting *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938)); *United States v. Salemo*, 61 F.3d 214, 218 (3d Cir. 1995)(superceded by *United States v. Turner*, 677 F.3d 570 (3d Cir. 2012)).

trial judge must "make a thorough inquiry and . . . take all steps necessary to insure the fullest protection of this constitutional right."<sup>20</sup>

In *United States v. Welty*, the Third Circuit Court of Appeals adopted guidelines for the waiver of counsel inquiry demanded by the United States Supreme Court.<sup>21</sup> As the Third Circuit explained in *Welty*, "[i]n order to ensure that a defendant truly appreciates the 'dangers and disadvantages of self-representation,' . . . the court 'should advise him in unequivocal terms both of the technical problems he may encounter in acting as his own attorney and of the risks he takes if his defense efforts are unsuccessful', 'should tell the defendant, for example, that he will have to conduct his defense in accordance with the [ ] Rules of Evidence and Criminal Procedure, rules with which he may not be familiar', should advise 'that the defendant may be hampered in presenting his best defense by his lack of knowledge of the law', and should advise 'that the effectiveness of his defense may well be diminished by his dual role as attorney and accused.'"<sup>22</sup>

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<sup>20</sup> *Salmemo*, 61 F.3d at 219 (quoting *Von Moltke v. Gillies*, 332 U.S. 708, 722 (1948)).

<sup>21</sup> 674 F.2d 185 (3d Cir. 1982).

<sup>22</sup> *Id.* at 188 (internal citations omitted).

The Third Circuit further explained that “to be valid (a defendant's) waiver must be made with an apprehension of the nature of the charges, the statutory offenses included within them, the range of allowable punishments thereunder, possible defenses to the charges and circumstances in mitigation thereof, and all other facts essential to a broad understanding of the whole matter.”<sup>23</sup> Significantly, the Third Circuit noted that “the mere ‘fact that an accused may tell (the court) that he is informed of his right to counsel and desires to waive this right does not automatically end the judge's responsibility’”, explaining that “[a] judge can make certain that an accused's professed waiver of counsel is understandingly and wisely made only from a penetrating and comprehensive examination of all the circumstances,’ and only after bringing home to the defendant the perils he faces in dispensing with legal representation.”<sup>24</sup> The Third Circuit further held that “[a]fter undertaking such an inquiry, ‘whether there is a proper waiver should be clearly determined by the trial court, and it would be fitting and appropriate for that determination to appear upon the record.’”<sup>25</sup>

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<sup>23</sup> *Id.* at 188-189 (internal citations omitted).

<sup>24</sup> *Id.* at 189 (internal citations omitted).

<sup>25</sup> *Id.* (quoting *Johnson*, 304 U.S. at 465).

In *Briscoe v. State*,<sup>26</sup> this Court adopted the Third Circuit's guidelines as set forth in *Welty*. Specifically, this Court noted that the Third Circuit enunciated the following guidelines for the trial court to use in determining whether a defendant's waiver of his Sixth Amendment right to counsel is knowingly and intelligently made:

- (1) that the defendant will have to conduct his defense in accordance with the rules of evidence and criminal procedure, rules with which he may not be familiar;
- (2) that the defendant may be hampered in presenting his best defense by his lack of knowledge of the law;
- (3) that the effectiveness of his defense may well be diminished by his dual role as attorney and accused.
- (4) the nature of the charges,
- (5) the statutory offenses included within them,
- (6) the range of allowable punishments thereunder,
- (7) possible defenses to the charges and circumstances in mitigation thereof, and
- (8) all other facts essential to a broad understanding of the whole matter.<sup>27</sup>

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<sup>26</sup> 606 A.2d 103 (Del. 1992).

<sup>27</sup> *Id.* at 108.

As this Court noted, only after undertaking this inquiry should the trial court determine whether there is a proper waiver and make this determination on the record.<sup>28</sup>

In *Briscoe*, this Court found that “the procedural prerequisites to an effective waiver of the Sixth Amendment right to counsel, as mandated by the federal courts, were not followed” and therefore, “the judgment of the Superior Court must be reversed.”<sup>29</sup> The trial court had engaged in a limited colloquy with Briscoe, noting:

THE COURT: . . . You may cross-examine the witnesses yourself, if you wish to; but they have to be on the pertinent issues of testimony presented. Do you understand that, Mr. Briscoe?

THE DEFENDANT: Not really, your Honor, but since [my appointed counsel] is here, I think since he's going to be a friend of the Court, then maybe he can guide me through this, your Honor.

THE COURT: All right. Thank you.<sup>30</sup>

A subsequent colloquy occurred with Briscoe mid-trial at the request of standby counsel, as follows:

THE COURT: Do you understand you are bound by the same rules as if [your attorney] was giving the closing statement for you? You may

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<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 104-105.

<sup>30</sup> *Id.* at 105.

not express anything that you personally believe in, but only what the evidence shows; do you understand that?

THE DEFENDANT: I'll try my best, your Honor.

THE COURT: Okay. And if you make a wrong statement about the law, I must correct the jury on that point; do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: All right.<sup>31</sup>

Not only did this Court conclude that the trial court failed to engage in the requisite inquiry with the defendant,<sup>32</sup> but the trial court's use of standby counsel did not "cure" the ineffective waiver.<sup>33</sup>

It is obvious from the record that just like Briscoe, while Webb wanted to be represented by counsel,<sup>34</sup> he had difficulty engaging in a productive attorney-client relationship with the defense counsel assigned to him. Likewise, it is clear that Webb, like all criminal defendants, was and is not entitled to cycle through unlimited defense counsel until he finds one with whom he is happy. As such, it may be that the result of a proper *Faretta* colloquy would have resulted in Webb being granted the right to proceed *pro se*. Nevertheless, it is immaterial what *may*

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<sup>31</sup> *Id.* at 106.

<sup>32</sup> *Id.* at 105-106, 108-109.

<sup>33</sup> *Id.* at 109-111.

<sup>34</sup> A168-169, 178, 181, 195.

have happened, as what *needed* to happen, did not. Simply put, Webb was never apprised of the “dangers and disadvantages of self-representation”<sup>35</sup> and no inquiry ever took place to ensure he was “knowingly and intelligently forgo[ing] [the] relinquished benefits” “associated with the right to counsel.”<sup>36</sup>

A review of the colloquies in which the trial court engaged with Briscoe, which this Court found to be an ineffective waiver of Briscoe’s Sixth Amendment right to counsel, reveal that despite the extremely limited and insufficient colloquies in which the court engaged Briscoe, it was at least more than Webb received in this case. If the limited colloquies considered by this Court in *Briscoe* are an ineffective waiver of the defendant’s Sixth Amendment right to counsel, as this Court concluded, there can be no argument that the even more limited colloquy in which the trial court engaged Webb was an effective waiver of Webb’s right to counsel.

Similarly, in a more recent case, *Morrison v. State*,<sup>37</sup> the defendant requested his appointed counsel be terminated, as he was unhappy with his attorney’s performance.<sup>38</sup> The trial court explained that the defendant’s two

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<sup>35</sup> *Faretta*, 422 U.S. at 835.

<sup>36</sup> *Id.*

<sup>37</sup> 135 A.3d 69 (Del. 2016).

<sup>38</sup> *Id.* at 71.

options were to continue with appointed counsel or proceed *pro se*.<sup>39</sup> The court then engaged in the following colloquy with the defendant:

HE COURT: You want to proceed on your own?

THE DEFENDANT: Yes. I will proceed on my own.

THE COURT: All right. What education do you have, Morrison?

THE DEFENDANT: I don't have as far as like dealing with the law. But as far as, you know, some things—common sense, you know. And I am facing—yeah. Well, I finished school. I finished 12th grade.

THE COURT: Very good. Have you been involved in the criminal justice system before?

THE DEFENDANT: No. No. No, I haven't.

THE COURT: I mean do you have prior convictions?

THE DEFENDANT: Yes, I do.

THE COURT: Okay. Have you represented yourself in any of those earlier matters that you have had?

THE DEFENDANT: No, I haven't.

THE COURT: All right . . . . If I allow you to proceed on a *pro se* basis, do you understand that if you are representing yourself there will be certain laws and requirements you will have to abide by which you don't have any experience over. Do you understand that?

THE DEFENDANT: Yes, I understand.

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<sup>39</sup> *Id.*

THE COURT: Do you also understand the consequences that can happen? In other words, what can happen is that you may not know what to do and we'll be moving on to something else and you may miss something.

THE DEFENDANT: True. I am not saying that I don't want to be represented, but I want to be treated fairly; that's what I want today. If you are not going to dismiss him, you know what I mean, then I don't have no other choice.

THE COURT: . . . you have a right to represent yourself; the law does allow that. But I want to make sure that if that's what you want to do—that's truly what you want to do. It has some great risks for you as an individual not trained in the law.

THE DEFENDANT: I understand. Yes. That's exactly—I don't have no other choice.

THE COURT: . . . I am telling you right now, if you choose to represent yourself you are to abide by all criminal procedures, the rules of this Court, the criminal case manager plan, and the rules of this Court. I am not sure you are familiar with that. If you want to raise an objection or speak, you may not be allowed to do so; and you won't know why. You may be frustrated. It may result in the jury having an adverse opinion of you because of your inexperience. With that understanding, I can allow you to proceed. I can allow you to proceed. But I want you to understand that, if you do that, you are going to be under that type of a gun. And I hate to see that happen to anybody who comes before the system. Do you understand that?

THE DEFENDANT: Yes, I understand that.<sup>40</sup>

It is apparent that the colloquy in which the trial court engaged Morrison was far more detailed and thorough than the colloquy in which the trial court

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<sup>40</sup> *Id.* at 71-73.

engaged Webb. Nevertheless, this Court held that the colloquy at issue in *Morrison* was still an ineffective waiver of the Sixth Amendment right to counsel and required a reversal.<sup>41</sup> As this Court explained:

The record reflects that Morrison was not fully apprised of the dangers of self-representation. The Trial Judge discussed Morrison's criminal history, level of education, warned him about having to abide by the court's rules, and addressed the challenges of having a trained attorney as an adversary. However, the Trial Judge failed to follow the key components set forth by the Third Circuit in *Welty* to determine whether a proper waiver of counsel had been established. While the Trial Judge in Morrison's case covered some of the *Briscoe/Welty* factors, the Trial Judge failed to inform Morrison of the nature of the charges, the statutory offenses included within them, the range of allowable punishments, possible defenses, possible circumstances in mitigation, and the dangers of the dual roles of being an attorney and the accused. Thus, like the trial judge in *Welty*, the Trial Judge in Morrison's case failed to conduct 'a penetrating and comprehensive examination of all the circumstances' in order to find a proper waiver.<sup>42</sup>

The fact that this Court found the colloquy at issue in *Morrison* to be insufficient because the trial court engaged in some but not all of the *Welty* factors must be dispositive on Webb's claim, as the trial court failed to engage in even one full *Welty* factor with Webb.<sup>43</sup> (A179).

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<sup>41</sup> *Id.* at 76.

<sup>42</sup> *Id.* at 74.

<sup>43</sup> *Id.* at 74-75; see also *Boyer*, 2009 Del. LEXIS \*1, 6 (reversing and remanding because the trial court did not properly advise Boyer of the dangers of self-representation); *Smith*, 996 A.2d at 787 (reversing and remanding because the trial court "did not ascertain enough information to establish a basis for a knowing

It should also be noted that the State has tried to argue in other cases, such as *Boyer v. State*,<sup>44</sup> that an insufficient colloquy can be excused where the defendant has made it clear that he wishes to conduct his defense his own way.

However, this Court has rejected such a proposition, holding in *Boyer*:

This argument seems to suggest that a defendant's passion, fervent desire or insistence that he represent himself somehow substitutes for a knowing, intelligent and voluntary relinquishment of the right to counsel or somehow cures an ineffective waiver of counsel. We recognize that a judge may face a defendant who adamantly states that he is aware of his right to counsel and wishes to waive that right; however, those statements do not alleviate the judge's responsibility to conduct a comprehensive evidentiary hearing to explore and explain the defendant's options.<sup>45</sup>

Relatedly, this Court held in *Smith v. State*:

The fact that an accused may tell the trial court that he is aware of his right to counsel, and desires to waive that right, does not eliminate the trial court's responsibility to conduct a 'searching inquiry.' It is undisputed that conducting a 'searching inquiry' into waiver of counsel poses 'a difficult task' for the trial court, particularly when the defendant appears 'experienced in the litigation process and [when] friction has arisen between the defendant and his then-counsel.' A trial judge routinely conducts such inquiries in considering guilty pleas, however, and is expected to make no less of an inquiry before permitting a defendant to proceed pro se.<sup>46</sup>

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and intelligent waiver of the right to counsel").

<sup>44</sup> *Boyer*, 2009 Del. LEXIS 598.

<sup>45</sup> *Id.* at 5-6.

<sup>46</sup> *Smith*, 996 A.2d at 791.

Thus, it is immaterial that Webb wanted to conduct his defense his own way or that he had difficult relationships with his prior appointed counsel. The controlling precedent of the United States Supreme Court and this Court is unambiguous that prior to allowing a defendant to proceed *pro se*, the trial court must first engage in a proper and full colloquy with the defendant addressing the *Briscoe/Welty* factors sufficient to determine, with the finding on the record, that the defendant is knowingly, intelligently and voluntarily waiving his Sixth Amendment right to counsel. The plain fact is, this did not occur in Webb's case and under the clear and controlling precedent of this Court, the United States Supreme Court and the Third Circuit Court of Appeals, Webb's convictions must be reversed and remanded for a new trial.<sup>47</sup>

**C. The trial court did not make a finding on record that Webb's behavior constituted "waiver by conduct" or "forfeiture", nor did the court even suggest that such a finding had implicitly been reached.**

In *State v. Bultron*,<sup>48</sup> affirmed by this Court in *Bultron v. State*,<sup>49</sup> the Superior Court relied on Third Circuit Court of Appeals case law to hold that

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<sup>47</sup> See, e.g., *Briscoe*, 606 A.2d at 104 ("The record reflects that the procedural prerequisites to an effective waiver of the Sixth Amendment right to counsel, as mandated by the federal courts, were not followed. Accordingly, the judgment of the Superior Court must be reversed.") (internal citations omitted).

<sup>48</sup> 2005 Del. Super. LEXIS \*6 (Jan. 21, 2005).

<sup>49</sup> 897 A.2d 758 (Del. 2006).

defendants cannot engage in abusive behavior to create "good cause" for substitute counsel, as such behavior may constitute forfeiture or "waiver by conduct".<sup>50</sup> As the Superior Court explained:

'Waiver by conduct' occurs when defendant has been warned that he will lose his attorney if he engages in further misconduct, and defendant ignores the warning. 'Any misconduct thereafter may be treated as an implied request to proceed pro se and, thus, as a waiver of the right to counsel.' Goldberg and its progeny have developed waiver by conduct. Those cases have bearing on this case's facts. In *United States v. Thomas*, the Third Circuit articulated the consequences of continued misconduct following the court's warning. *Thomas* explained, 'The purpose of a *Faretta/Welty* colloquy is to provide the defendant with notice that continued misconduct may result in the waiver of one's right to counsel; thus, we focus on whether [defendant] was warned of the possible consequences, not whether the warning immediately preceded the [trial court's] order that the defendant must proceed pro se.'

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<sup>50</sup> *Bultron*, 2005 Del. Super. LEXIS 6, \*14-16 (citing *Fischetti v. Johnson*, 384 F.3d 140, 146 (3d Cir. 2004); *United States v. Thomas*, 357 F.3d 357, 362-63 (3d Cir. 2004); *United States v. Leggett*, 162 F.3d 237, 249 (3d Cir. 1998); *United States v. Goldberg*, 67 F.3d 1092, 1100-01 (3d Cir. 1995) (holding that "[o]nce a defendant has been warned that he will lose his attorney if he engages in dilatory tactics, any misconduct thereafter may be treated as an implied request to proceed pro se and, thus, as a waiver of the right to counsel . . . In many situations there will be defendants who engage in dilatory conduct but who vehemently object to being forced to proceed pro se. These defendants cannot truly be said to be 'waiving' their Sixth Amendment rights because although they are voluntarily engaging in misconduct knowing what they stand to lose, they are not affirmatively requesting to proceed pro se. Thus, instead of 'waiver by conduct,' this situation more appropriately might be termed 'forfeiture with knowledge.'" (citations omitted)).

'Forfeiture' does not require that defendant knowingly and intentionally relinquish his right to counsel; rather, it results when defendant 'engages in extremely serious misconduct,' such as physically assaulting his appointed counsel. No warning is necessary to trigger forfeiture.<sup>51</sup>

On appeal, this Court considered the issue as one of first impression and affirmed, finding that "[a] defendant may (1) expressly waive his right to counsel with an affirmative statement, (2) waive his right to court-appointed counsel by his conduct after a warning that continued abuse will result in the consequence of losing court-appointed counsel, or (3) forfeit the text his right because of extremely serious misconduct, such as physical abuse without the need for a prior warning."<sup>52</sup> As this Court further explained:

Regarding waiver and waiver by conduct, before a trial court may determine that a defendant has waived his right to counsel and must proceed pro se, the trial judge must first give certain warnings for any waiver to be valid. As the Third Circuit has held, 'to the extent that the defendant's actions are examined under the doctrine of 'waiver,' there can be no valid waiver of the Sixth Amendment right to counsel unless the defendant also receives Faretta warnings.' 'A 'waiver by conduct' requires that a defendant be warned about the consequences of his conduct, including the risks of proceeding pro se.'<sup>53</sup>

In Webb's case, it is clear that Webb did not waive his Sixth Amendment right to counsel through conduct. The record reveals not one instance of the trial

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<sup>51</sup> *Id.* at 17-19.

<sup>52</sup> *Bultron*, 897 A.2d at 760, 763.

<sup>53</sup> *Id.* at 764.

court expressly advising Webb that if he continued with his arguably difficult behavior when interacting with defense counsel that he risked “waiver by conduct” of his right to counsel and would therefore have to proceed *pro se*.<sup>54</sup> Moreover, even if the Superior Court, which it did not, this Court has held that “waiver by conduct” also requires a proper *Faretta* colloquy.<sup>55</sup> As explained in detail above, a proper *Faretta* colloquy not occur in this case.<sup>56</sup> Thus, under the precedent of this Court and the federal courts, the record is clear that Webb did not waive his right to court appointed counsel by his conduct.<sup>57</sup>

Nor can it be said, based upon the record before this Court, that Webb forfeited his right to court-appointed counsel. While it could be argued that Webb engaged in abusive and threatening behavior with defense counsel, it is apparent that the trial court did not make a finding on the record that Webb had forfeited his right to counsel. As one point, the court stated, “Well, I think we have probably appointed all the attorneys that anyone is going to appoint for you. You’ve gone through at least three, maybe four different attorneys who have all had to withdraw from your representation, so it looks like you’re going to have to represent

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<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *See supra* pp. 23-38.

<sup>57</sup> *Id.* at 763-764.(citing *Thomas*, 357 F.3d at 363; *Goldberg*, 67 F.3d at 1100).

yourself in regards to this matter.” (A178). Such a statement is far short of the trial court stating on record that Webb had forfeited his right to counsel through extremely serious misconduct.

Subsequently, the court also inquired whether Webb had changed his mind and wanted somebody to represent him or if he still desired to represent himself. (A195-196). If the court had found that Webb had forfeited his right to counsel, then there would have been no reason for the court to ask Webb if he had changed his mind about proceeding *pro se* and wanted someone to represent him. Moreover, the court noted to the prosecutor, “So I’m pretty confident that even the Supreme Court would recognize that Mr. Webb is a difficult individual who prefers to represent himself, since he doesn’t have any confidence in anybody else other than himself.” (A194). Again, such a statement is indicative of the court’s belief that Webb wanted to represent himself, not a finding that Webb had forfeited his right to counsel.

As this Court cautioned in *Bultron*, “forfeiture of the right to counsel is an extraordinary circumstance not established by mere disagreements between client and counsel.”<sup>58</sup> With the clear lack of any factual or legal finding on the record

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<sup>58</sup> *Id.* at 766.

that the trial court determined Webb had forfeited his right to counsel, there is no legal or factual basis to apply such an extraordinary circumstances retroactively.<sup>59</sup>

Accordingly, the factual record is clear that under controlling precedent of this Court and the federal courts, Webb did not forfeit his Sixth Amendment right to counsel nor did he waive his Sixth Amendment right to counsel through his conduct.

**D. Webb's convictions must be overturned and the case remanded for a new trial.**

As it is indisputable that trial court failed to engage in a proper and complete *Faretta* colloquy with Webb, the controlling precedent of the United States Supreme Court, the Third Circuit Court of Appeals and this Court are all unquestionably clear that Webb did not knowingly and intelligently waive his Sixth Amendment right to counsel and therefore, Webb's convictions must be overturned and the case remanded for a new trial.<sup>60</sup>

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<sup>59</sup> *C.f. Kostyshyn v. State*, 51 A.3d 416, 418 (Del. 2012) (upholding the trial court's finding, on record, that the defendant had engaged in sufficiently egregious activity as to forfeit his right to counsel).

<sup>60</sup> *Briscoe*, 606 A.2d at 104-105; *Morrison*, 135 A.3d at 76; *Boyer*, 2009 Del. LEXIS \*1, 6; *Smith*, 996 A.2d at 787.

## CONCLUSION

**WHEREFORE**, based on the foregoing, Webb respectfully requests that this Court grant all appropriate relief and overturn his convictions and remand for a new trial.

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Dated: January 2, 2024

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**ARGUMENT 1. THE STATE'S ANSWER IN RESPONSE TO MR. WEBB'S CLAIM THAT THE SUPERIOR COURT'S FAILURE TO HOLD A PROPER AND COMPLETE *FARETTA* COLLOQUY DEPRIVED HIM OF HIS RIGHT TO COUNSEL PURSUANT TO THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE 1, § 7 OF THE DELAWARE CONSTITUTION IS BOTH FACTUALLY AND LEGALLY UNSUPPORTED.**

**A. The correct standard of review is *de novo*.**

The State asserts in its Answering Brief ("Answer") that the applicable standard of review for Mr. Webb's constitutional claim is abuse of discretion.<sup>1</sup> However, as noted in Mr. Webb's Opening Brief,<sup>2</sup> this Court reviews both questions of law<sup>3</sup> and claims of a constitutional violation<sup>4</sup> *de novo*.

Mr. Webb alleged in his Opening Brief that the Superior Court unconstitutionally deprived him of his right to counsel in violation of the Sixth and Fourteenth Amendments to the United States Constitution and Article 1, § 7 of the Delaware Constitution. As such, Mr. Webb alleges a claim of a constitutional violation that raises questions of law. The State even concedes in its Answering Brief that "a defendant's decision to proceed *pro se* either by conduct or waiver

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<sup>1</sup> State's February 5, 2024 Answering Brief at 18 (hereinafter cited as "Answer at \_").

<sup>2</sup> Mr. Webb's January 2, 2024 Opening Brief at 22 (hereinafter cited as "Opening at \_").

<sup>3</sup> *Dawson v. State*, 673 A.2d 1186, 1190 (Del. 1996).

<sup>4</sup> *Hall v. State*, 788 A.2d 118, 123 (Del. 2001).

involves the defendant's Sixth Amendment right to counsel and right to counsel under Article I, section 7 of the Delaware Constitution". (Answer at 18). The State further concedes that "[a]n alleged denial of the constitutional right to counsel is reviewed *de novo*." (Answer at 18). Accordingly, *de novo* is the appropriate standard of review.<sup>5</sup>

**B. The record shows that the Superior Court failed to conduct a proper *Faretta* colloquy, and the State's assertion that proper *Faretta* warnings were given to the contrary is factually and legally unsupported.**

The State's Answer asserts that the Mr. Webb waived his right to counsel by conduct, and because waiver by conduct requires that proper *Faretta*<sup>6</sup> warnings first be given, the State contends that the Superior Court "touched on several of the *Faretta* factors during its interactions with Webb" which was sufficient to meet the requirements of *Faretta*. (Answer at 29-30). The State is incorrect, both factually and legally.

As Mr. Webb explained in the Opening Brief,<sup>7</sup> the Third Circuit Court of Appeals in *United States v. Welty*, adopted guidelines for the waiver of counsel inquiry that is required by the United States Supreme Court to comply with the

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<sup>5</sup> *Id.*; *Dawson*, 673 A.2d at 1190.

<sup>6</sup> *Faretta v. California*, 422 U.S. 806 (1975).

<sup>7</sup> Opening at 28-31.

federal constitution.<sup>8</sup> The Third Circuit explained in *Welty* that “[i]n order to ensure that a defendant truly appreciates the ‘dangers and disadvantages of self-representation,’ . . . the court ‘should advise him in unequivocal terms both of the technical problems he may encounter in acting as his own attorney and of the risks he takes if his defense efforts are unsuccessful’, ‘should tell the defendant, for example, that he will have to conduct his defense in accordance with the [ ] Rules of Evidence and Criminal Procedure, rules with which he may not be familiar’, should advise ‘that the defendant may be hampered in presenting his best defense by his lack of knowledge of the law’, and should advise ‘that the effectiveness of his defense may well be diminished by his dual role as attorney and accused.’”<sup>9</sup>

The Third Circuit further held in *Welty* that “to be valid (a defendant's) waiver must be made with an apprehension of the nature of the charges, the statutory offenses included within them, the range of allowable punishments thereunder, possible defenses to the charges and circumstances in mitigation thereof, and all other facts essential to a broad understanding of the whole matter.”<sup>10</sup> Notably, the Court additionally held that “the mere ‘fact that an accused

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<sup>8</sup> 674 F.2d 185 (3d Cir. 1982).

<sup>9</sup> *Id.* at 188 (internal citations omitted).

<sup>10</sup> *Id.* at 188-189 (internal citations omitted).

may tell (the court) that he is informed of his right to counsel and desires to waive this right does not automatically end the judge's responsibility", explaining that "[a] judge can make certain that an accused's professed waiver of counsel is understandingly and wisely made only from a penetrating and comprehensive examination of all the circumstances,' and only after bringing home to the defendant the perils he faces in dispensing with legal representation."<sup>11</sup> The Third Circuit further held that "[a]fter undertaking such an inquiry, 'whether there is a proper waiver should be clearly determined by the trial court, and it would be fitting and appropriate for that determination to appear upon the record.'"<sup>12</sup>

These guidelines were adopted by this Court in *Briscoe v. State*.<sup>13</sup> Specifically, this Court specified the following guidelines for the trial court to use in determining whether a defendant's waiver of his Sixth Amendment right to counsel is knowingly and intelligently made:

- (1) that the defendant will have to conduct his defense in accordance with the rules of evidence and criminal procedure, rules with which he may not be familiar;
- (2) that the defendant may be hampered in presenting his best defense by his lack of knowledge of the law;

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<sup>11</sup> *Id.* at 189 (internal citations omitted).

<sup>12</sup> *Id.* (quoting *Johnson v. Zerbst*, 304 U.S. 458 465 (1938)).

<sup>13</sup> 606 A.2d 103 (Del. 1992).

(3) that the effectiveness of his defense may well be diminished by his dual role as attorney and accused.

(4) the nature of the charges,

(5) the statutory offenses included within them,

(6) the range of allowable punishments thereunder,

(7) possible defenses to the charges and circumstances in mitigation thereof, and

(8) all other facts essential to a broad understanding of the whole matter.<sup>14</sup>

This Court held that only after undertaking this inquiry should the trial court determine whether there is a proper waiver and make this determination on the record.<sup>15</sup>

There is no question that the record shows that a complete *Faretta* colloquy never occurred in Mr. Webb's case. As explained in the Opening Brief, during the July 30, 2020 hearing, the court began conducting a *Faretta* colloquy, stating:

THE COURT: Okay. So I have to ask you some questions before we can go any further and make some comments to you, so please listen carefully.

If you are representing yourself, you'll be required to comply with all of the rules and procedures that would be expected of counsel if they were representing you. So the conduct in the courtroom, the filing of

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<sup>14</sup> *Id.* at 108.

<sup>15</sup> *Id.*

papers, and the responses that would need to be filed, the same rules that would apply to Mr. Werb in his representation to you would also apply if you represent yourself.

As you know, the trial in this matter has been stayed for some period of time because of the Covid-19 pandemic. (A179).

At that point, Mr. Webb interrupted to make a comment about delays in scheduling. (A179). From there, the court responded to Webb's concerns regarding trial delays and then simply moved on to other topics. (A179-181). As such, it is clear that of the aforementioned *Briscoe/Welty* factors that both state and federal law require so as to comply with the state and federal constitutions, Mr. Webb was advised of only one factor-that the defendant will have to conduct his defense in accordance with the rules of evidence and criminal procedure.

The State attempts to circumvent the court's clear failure to conduct a full and complete colloquy by arguing that because Mr. Webb interrupted the colloquy, he bears the fault for the incomplete colloquy. (Answer at 32-33). This is simply wrong as a legal matter.

The State alleges that Mr. Webb "continually interrupted, sidetracked, and even threatened the court". (Answer at 32). As such, the State alleges that the *Faretta* colloquy could not be conducted because "Webb would allow no other result." (Answer at 33). As a factual matter, this is incorrect. The record clearly

shows that Mr. Webb interrupted the court to raise complaints about the scheduling delays that occurred in his case. (A179-182). What the record does not show is that Mr. Webb refused to engage in a colloquy with the court or that Mr. Webb refused to answer questions asked of him by the court. Rather, what the record shows is that Mr. Webb interrupted the colloquy, the court appeared to get sidetracked with the new topics raised by Mr. Webb, the State inquired whether standby counsel would be appointed, the court declined, and then the hearing concluded. (A179-182). There is absolutely no evidence that Mr. Webb's behavior prevented a colloquy from occurring.

More importantly, the State offers no legal support for the position that a court is somehow relieved of its constitutional duty, as dictated by the United States Supreme Court, the Third Circuit Court of Appeals, and this Court, to ensure the defendant is knowingly and intelligently waiving his or her constitutional right to counsel simply because the defendant is difficult to communicate with. As a practical matter, it can be assumed that many defendants with whom the court must engage in a *Faretta* colloquy because of a desire to proceed *pro se* or because of irreconcilable differences with counsel are difficult to work with and/or communicate with. Yet the constitutional requirements of *Faretta*, *Welty*, *Briscoe*, and their progeny still apply to those defendants.

In an attempt to salvage the court's insufficient colloquy with Mr. Webb, the State argues in its Answering Brief that Mr. Webb still received sufficient *Faretta* warnings, because the Superior Court "touched on several of the *Faretta* factors during its interactions with Webb". (Answer at 29-30). The State cites to the December 16, 2019 hearing and the July 30, 2020 hearing, and argues that statements made by the court during both hearings can be collectively pieced together to constitute one complete *Faretta* colloquy. (Answer at 30-32). Yet the State cites to no legal support for the argument that comments made at separate hearings over the span of several months can be lumped together in order to create one complete *Faretta* colloquy in such piecemeal fashion. Nor is undersigned counsel aware of any such case law that would support the State's novel legal argument.

It is important to note that as a policy matter, the State's legal argument would set a dangerous precedent. Under the State's reasoning, *Faretta*, *Welty*, *Briscoe* and their progeny would be rendered nearly irrelevant, as any reviewing court could go back and find several *Faretta* factors that were "touched upon" during multiple hearings spanning several months or even years and find that a defendant was properly advised of the dangers of waiving his Sixth Amendment right to counsel. Counsel is aware of no case law that supports such an analysis,

and in fact, such an approach would be wholly in contravention of *Faretta* and its progeny.

The State does cite a handful of cases from the Tenth Circuit Court of Appeals which stand for the principle that a *Faretta* colloquy does not need to follow a specific format, using specific language in a specific order, so long as the colloquy serves the purpose of ensuring that the defendant is knowingly and intelligently waiving his or her right to counsel.<sup>16</sup> These non-controlling cases are ultimately irrelevant to the issue at hand, because it is clear that even in the piecemeal fashion advanced by the State, for which there is no legal support, so few *Briscoe/Welty* factors were addressed in Mr. Webb's case that the court could not possibly conclude that Mr. Webb's alleged waiver of counsel was made "with an apprehension of the nature of the charges, the statutory offenses included within them, the range of allowable punishments thereunder, possible defenses to the charges and circumstances in mitigation thereof, and all other facts essential to a broad understanding of the whole matter."<sup>17</sup>

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<sup>16</sup> Answer at 28-29 (citing *Bishop v. United States*, 2021 WL 1792051 (D. Utah May 5, 2021); *United States v. Hansen*, 929 F.3d 1238 (10th Cir. 2019); *United States v. Vann*, 776 F.3d 746 (10th Cir. 2015)).

<sup>17</sup> *Welty*, 674 F.2d at 188-189 (internal citations omitted); see also *Briscoe*, 606 A.2d at 108.

The record shows that Mr. Webb was warned of only one *Briscoe/Welty*-that he will have to conduct his defense in accordance with the rules of evidence and criminal procedure. (A179-182). The December 16, 2019 hearing to which the State cites only shows the court advising Mr. Webb that even though he has a right to represent himself, the court believes it is in his best interest to give appointed counsel a chance. (A168-169).

In the Opening Brief, Mr. Webb cited to and analyzed four cases in which multiple, but not all, *Briscoe/Welty* factors were discussed with the defendant, and this Court determined that the *Faretta* colloquies were insufficient to constitute a proper waiver of the right to counsel.<sup>18</sup> As Mr. Webb explained, if this Court found the colloquies at issue in those cases to be an ineffective waiver of the right to counsel, there can be no rational argument that the exceedingly limited colloquy in which the court engaged Mr. Webb constituted an effective waiver. The State's Answering Brief fails to respond to Mr. Webb's argument and/or distinguish the cited cases.

In light of the aforementioned, and incorporating all arguments and analysis made in the Opening Brief, it is clear that a complete *Faretta* colloquy did not

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<sup>18</sup> Opening at 31-37 (citing *Briscoe*, 606 A.2d 103; *Morrison v. State*, 135 A.3d 69 (Del. 2016); *Boyer v. State*, 2009 Del. LEXIS 598 (Del. 2009); *Smith v. State*, 996 A.2d 786 (Del. 2010)).

occur in Mr. Webb's case. As such, it cannot be said that he validly waived his Sixth Amendment right to counsel, and the State's arguments to the contrary are unpersuasive, as they are both factually and legally unsupported.

- C. **The State's claim that this Court can retroactively find that Mr. Webb forfeited his right to counsel and/or waived his right to counsel through his conduct despite no such finding being made on the record below by the Superior Court, is legally unsupported and contrary to controlling case that holds a *Faretta* violation to be a structural error not subject to a harmless error standard of review and not requiring a showing of prejudice.**

Mr. Webb noted in his Opening Brief that there was never a factual finding made on the record by the Superior Court that Mr. Webb had forfeited his right to counsel nor that he had waived his right to counsel through conduct. (Opening at 38, 40-42). Nevertheless, the State argues in its Answering Brief that Mr. Webb is "wrong". However, the State cites to no section of the record in which the Superior Court stated that Mr. Webb had forfeited his right to counsel by his actions toward defense counsel. Indeed, the State *cannot* cite to such a judicial finding in the record, because one does not exist.

Instead, the State asserts that such a finding can be inferred, because "the court specifically addressed Webb about his representation and his inability to work with the numerous attorneys appointed to represent him." (Answer at 19). In support of the State's proposed argument, the State cites Mr. Webb's negative

behavior towards prior defense counsel and asserts that “Webb’s behavior was sufficiently egregious to constitute forfeiture.” (Answer at 12).

As Mr. Webb noted in his Opening Brief, it was alleged that Mr. Webb engaged in abusive and threatening behavior towards defense counsel. (Opening Brief 41). Had the Superior Court make a factual finding on record that the court was accepting those allegations as true and that based upon his aforementioned actions, Mr. Webb had forfeited his right to counsel, there would be little argument to be made that the Superior Court’s decision was in error. However, that simply did not occur in this case. To overcome this deficit, the State argues that forfeiture can be implicitly found in the record, contending that “when viewed in totality”<sup>19</sup> forfeiture was found, yet cites to no case law that supports the State’s legal position that forfeiture can be assumed or inferred absent any such ruling from the court. Even if such a totality of circumstances analysis were permissible, which the State asserts without legal support, the totality of the circumstances actually demonstrates the opposite-that the Superior Court did *not* find forfeiture.

The State’s predominant factual support for its position that the court implicitly found forfeiture is the court’s statement that “I think we have probably appointed all the attorneys that anyone is going to appoint for you.” (A178). Such

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<sup>19</sup> Answer at 23.

a statement is far short of the court stating on record that the court had determined Mr. Webb had forfeited his right to counsel through extremely serious misconduct.

Moreover, there was a discussion of whether the court would appoint standby counsel to assist Mr. Webb as he proceeded to trial *pro se*. The State fails to address this entirely, as it wholly undercuts the State's implicit forfeiture argument, as it defies logic for the court to conclude that a defendant had engaged in such egregiously abusive and threatening behavior towards his attorney(s) that he had forfeited his right to counsel entirely and then simultaneously appoint another attorney in the position of standby counsel. Notably, when the court declined to appoint standby counsel, the court did not cite forfeiture as the reason, but rather, simply stated: "*I'm hesitant to appoint standby counsel since he's gone through four other lawyers.*" (A181 *emphasis added*).

Additionally, several more statements can be found in the record that show the court was treating this situation as a standard *Faretta* type waiver of the right to counsel based upon the defendant's desire to proceed *pro se* rather than a waiver via conduct or forfeiture. As noted in the Opening Brief,<sup>20</sup> during the July 30, 2020 hearing in which the court declined to appoint any more attorneys for Mr. Webb, the court stated:

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<sup>20</sup> Opening at 10.

THE COURT: Okay. So I have to ask you some questions before we can go any further and make some comments to you, so please listen carefully.

If you are representing yourself, you'll be required to comply with all of the rules and procedures that would be expected of counsel if they were representing you. So the conduct in the courtroom, the filing of papers, and the responses that would need to be filed, the same rules that would apply to Mr. Werb in his representation to you would also apply if you represent yourself. . . .

The court unquestionably began a standard *Faretta* colloquy with Mr. Webb, which the court would have had no reason to do if the court had found Mr. Webb had forfeited his right to counsel.

The record also shows that the prosecutor viewed this as a *Faretta* intentional waiver situation and not a forfeiture situation. During the September 17, 2020 case review held before a different judge, the prosecutor stated:

MS. HRIVNAK: Your Honor, the last hearing that we had was addressing -- there was some pending motions to withdraw as counsel. Mr. Werb had been the latest court-appointed attorney for Mr. Webb and Judge Carpenter is specially assigned to this case.

After that hearing, Mr. Werb had been permitted to withdraw as counsel. My recollection is that the Court *began the pro se colloquy with the defendant*, who -- and then the defendant had interjected, and so the State's position is that that was not completely finished.

However, it is clear that he will not be appointed at State's expense any more attorneys, as he has gone through the public defender's office, as well as three attorneys in the conflicts program. (A185 *emphasis added*).

After the court noted "Ok", the prosecutor proceeded:

MS. HRIVNAK: So I think at this point, Ms. Warner and I will be sending a -- an email to Judge Carpenter's Chambers asking probably for another hearing so that we can be sure that there has been a full and complete pro se colloquy and that all of the Briscoe factors have been covered with the defendant from that perspective. (A186).

Of note, the prosecutor who attended the prior hearing at which the court permitted Mr. Webb to proceed *pro se*, specifically stated that the court "began the pro se colloquy" with Mr. Webb, but because Mr. Webb interjected, it had not been finished at that time. (A185). Additionally of note, the prosecutor stated that they should have another hearing to ensure "that there has been a full and complete pro se colloquy and that all of the Briscoe factors have been covered with the defendant". (A186). The record cannot be more clear that the prosecutor knew that a *Faretta* colloquy was needed, that a *Faretta* colloquy had been started but not finished, and that another hearing needed to be held to complete the *Faretta* colloquy and ensure that all of the *Briscoe/Welty* factors had been addressed with Mr. Webb so that he could knowingly and intelligently waive his right to counsel and proceed *pro se*.

Significantly, during the next hearing which was a November 5, 2021 suppression hearing, a different prosecutor who was newly assigned to the case,

stated "I understand . . . that the defendant has elected to proceed *pro se*, I am not sure whether a full colloquy was done. . . .". (A194). This again indicates that the State's understanding of the situation is that this was a *Faretta* type situation in which a colloquy needed to be performed before the defendant could proceed *pro se*.

Notably, the court responded with:

THE COURT: Oh, yes, one has. I mean, he's -- let me just say for the record, a colloquy has occurred to the extent that Mr. Webb would allow one to occur. He's been adamant about representing himself. And if my recollection is correct, he's gone through at least two prior attorneys, both of which moved to be excused primarily because of Mr. Webb's abusive conduct. So I'm pretty confident that even the Supreme Court would recognize that Mr. Webb is a difficult individual who prefers to represent himself, since he doesn't have any confidence in anybody else other than himself. (A194).

Again, this demonstrates that the court recognized this as a situation which required a *Faretta* colloquy and believed one had been done "to the extent that Mr. Webb would allow one to occur". (A194). Notably, the court also mentioned nothing about Mr. Webb forfeiting his right to counsel, instead stating "Mr. Webb is a difficult individual who prefers to represent himself, since he doesn't have any confidence in anybody else other than himself." (A194). The court's response to the prosecutor's inquiry regarding whether the *pro se* colloquy had been

completed wholly refutes the State's argument in its Answering Brief that the court concluded Mr. Webb had forfeited his right to counsel.

In light of the aforementioned, it is clear that the record is wholly absent of any finding from the court that Mr. Webb had forfeited and/or waived his right to counsel through his conduct. The State failed to cite to any controlling case, nor is undersigned counsel aware of any such case law, that permits a retroactive and implicit finding of forfeiture on appeal when the record clearly shows that the court below made no such finding.

The only case which the State cites in alleged support of its novel legal argument is *Bultron v. State*.<sup>21</sup> However, the State's *Bultron* argument is misplaced, as the facts of *Bultron* are wholly distinguishable from the facts of Mr. Webb's case on the issue of forfeiture.

In *Bultron*, the Superior Court, after an extensive discussion with the defendant, the defense attorney and the State, ordered the defendant to represent himself at trial after concluding that the defendant had forfeited his right to counsel through his conduct.<sup>22</sup> On appeal, this Court considered the issue of forfeiture as one of first impression and held that "[a] defendant may (1) expressly

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<sup>21</sup> 897 A.2d 758 (Del. 2006).

<sup>22</sup> 2005 Del. Super. LEXIS \*6, at 6-10, 19 (Jan. 21, 2005).

waive his right to counsel with an affirmative statement, (2) waive his right to court-appointed counsel by his conduct after a warning that continued abuse will result in the consequence of losing court-appointed counsel, or (3) forfeit his right because of extremely serious misconduct, such as physical abuse without the need for a prior warning.”<sup>23</sup> This Court further explained:

Regarding waiver and waiver by conduct, before a trial court may determine that a defendant has waived his right to counsel and must proceed pro se, the trial judge must first give certain warnings for any waiver to be valid. As the Third Circuit has held, ‘to the extent that the defendant’s actions are examined under the doctrine of ‘waiver,’ there can be no valid waiver of the Sixth Amendment right to counsel unless the defendant also receives *Faretta* warnings.’ ‘A ‘waiver by conduct’ requires that a defendant be warned about the consequences of his conduct, including the risks of proceeding pro se.’<sup>24</sup>

After reviewing the record below, this Court determined that although Bultron had been warned of the consequences of his actions, he had not received “complete *Faretta*” warning, and as such, there could be no valid waiver by conduct.<sup>25</sup> Nevertheless, because Bultron had been warned of the consequences of his actions and still continued to engage in “extremely serious misconduct”, this

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<sup>23</sup> *Bultron*, 897 A.2d at 760, 763.

<sup>24</sup> *Id.* at 764.

<sup>25</sup> *Id.* at 765.

Court found no abuse of discretion by the Superior Court in determining Bultron had forfeited his right to counsel and requiring Bultron to proceed *pro se*.<sup>26</sup>

In contrast to *Bultron*, the Superior Court made no factual findings that Mr. Webb was engaging in misconduct in order to force counsel to withdraw nor did the Superior Court determine that Mr. Webb had forfeited his right to counsel through misconduct.<sup>27</sup> To the extent the State argues that Mr. Webb waived his right to counsel by conduct, distinct from forfeiture, *Bultron* is clear that in order to find waiver by conduct, complete *Faretta* warnings must be given.<sup>28</sup> As explained throughout both the Opening Brief and this Reply Brief, Mr. Webb did not receive even minimal *Faretta* warnings, let alone “complete” *Faretta* warnings.

As such, the State’s use of *Bultron* to support its position that Mr. Webb forfeited his right to counsel is ineffectual, as *Bultron* actually supports Mr. Webb’s argument that he did not waive his right to counsel by conduct, as he did not receive complete *Faretta* warnings, and that the Superior Court did not find that Mr. Webb forfeited his right to counsel, as the court made no such statement

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<sup>26</sup> *Id.* at 766.

<sup>27</sup> *C.f. Bultron*, 897 A.2d at 766.

<sup>28</sup> *Bultron*, 897 A.2d at 765.

on record and treated the situation as one which required a *Faretta* colloquy, which would not apply to a forfeiture situation.

It is apparent that the State is essentially asking this Court, without legal support, to apply a harmless error standard of review to Mr. Webb's claim of a *Faretta* violation. The record does not support the State's position that a proper *Faretta* colloquy was performed, and the State is essentially presenting an alternative argument that even if this Court finds that the requirements of *Faretta* were not met, this Court should still deny Mr. Webb's claim because the Superior Court *could have* found forfeiture anyway. Thus, albeit not expressly stating it, the State is asking this Court to find harmless error in the event this Court finds a violation of Mr. Webb's constitutional right to counsel, on the basis that Mr. Webb suffered no harm, as the court could alternatively have concluded that Mr. Webb had engaged in sufficiently egregious behavior to warrant a finding of forfeiture.

The problem with the State's argument, beyond the fact that the State offers no legal or factual support for a retroactive inferred finding of forfeiture, is that controlling federal and state case law has clearly established that a *Faretta* violation is a structural error for which prejudice need not be demonstrated; as such, a harmless error standard of review is inapplicable to Mr. Webb's claim.

In a fairly recent United States Supreme Court case, *McCoy v. Louisiana*, the Supreme Court reaffirming the well-established principle that a violation of a defendant's Sixth Amendment right to counsel is a structural error, stating:

Violation of a defendant's Sixth Amendment-secured autonomy ranks as error of the kind our decisions have called "structural"; when present, such an error is not subject to harmless-error review. Structural error "affect[s] the framework within which the trial proceeds," as distinguished from a lapse or flaw that is "simply an error in the trial process itself." An error may be ranked structural, we have explained, "if the right at issue is not designed to protect the defendant from erroneous conviction but instead protects some other interest," such as "the fundamental legal principle that a defendant must be allowed to make his own choices about the proper way to protect his own liberty." An error might also count as structural when its effects are too hard to measure, as is true of the right to counsel of choice, or where the error will inevitably signal fundamental unfairness, as we have said of a judge's failure to tell the jury that it may not convict unless it finds the defendant's guilt beyond a reasonable doubt.<sup>29</sup>

Likewise, this Court has also stated that "[I]n a criminal proceeding, the right of self-representation is structural"<sup>30</sup> and therefore, "its denial is not

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<sup>29</sup> *McCoy v. Louisiana*, 584 U.S. 414, 427 (2018) (internal citations omitted (citing *McKaskle v. Wiggins*, 465 U.S. 168, 177, n. 8 (1984) (holding that harmless-error analysis is inapplicable to deprivations of the self-representation right, because "[t]he right is either respected or denied; its deprivation cannot be harmless"); *United States v. Gonzalez-Lopez*, 548 U.S. 140 (2006) (choice of counsel is structural); *Waller v. Georgia*, 467 U.S. 39, 49-50 (1984) (public trial is structural)) (quoting *Arizona v. Fulminante*, 499 U.S. 279, 310 (1991); *Weaver v. Massachusetts*, 582 U.S. 286, 295 (2017) (citing *Faretta*, 422 U.S. at 834)).

<sup>30</sup> *Hartman v. State*, 918 A.2d 1138, 1144 (Del. 2007) (citing *United States v. Peppers*, 302 F.3d 120, 127 (3d Cir. 2002)).

amenable to 'harmless error' analysis" as "[t]he right is either respected or denied; its deprivation cannot be harmless."<sup>31</sup> As such, this Court has consistently reversed and remanded where a violation of a defendant's Sixth Amendment right to counsel has been found.<sup>32</sup>

In light of the aforementioned, the State's argument that Mr. Webb either forfeited or waived his right to counsel by conduct is both factually and legally unsupported. Accordingly, this Court must overturn Mr. Webb's convictions and remand for a new trial.

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<sup>31</sup> *Id.* (citing *McKaskle*, 465 U.S. at 177 n.8).

<sup>32</sup> *See, e.g., Briscoe*, 606 A.2d at 104-105; *Morrison*, 135 A.3d at 76; *Boyer*, 2009 Del. LEXIS \*1, 6; *Smith*, 996 A.2d at 787.

## CONCLUSION

**WHEREFORE**, based on the foregoing, Mr. Webb respectfully requests that this Court grant all appropriate relief and overturn his convictions and remand for a new trial.

/s/ Christopher S. Koyste  
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Dated: February 20, 2024



**IN THE SUPREME COURT OF THE STATE OF DELAWARE**

**WILLIAM WEBB,**

**Defendant-Below,  
Appellant,**

**v.**

**STATE OF DELAWARE,  
Plaintiff-Below,  
Appellee.**

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**No. 467, 2022**

**Court Below: Superior Court of the  
State of Delaware in and for New  
Castle County**

**Case Below Nos. 1902015015,  
1904001943, 1906000296**

**MOTION FOR REHEARING EN BANC**

William Webb ("Webb"), through his attorney Christopher S. Koyste, moves for rehearing *en banc* of the Court's July 10, 2024 Opinion. In support thereof, Webb submits the following:

1) On May 13, 2022, Webb was convicted of one count each of Stalking, Act of Intimidation, and Criminal Contempt and forty-seven counts of Breach of Conditions of Bond. Webb timely appealed. On appeal, a panel of this Court denied Webb's appeal in a July 10, 2024 Opinion, affirming the judgment of the Superior Court and finding that the court "did not abuse its discretion by refusing to appoint Webb additional or standby counsel and directing Webb to proceed *pro se*." The Court concluded that "[a]lthough the court did not use the words 'forfeit' or 'forfeiture', the court's statement was the functional equivalent of a forfeiture ruling, one that is amply supported by the record."

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2) In so concluding, the Opinion evaluates the claim under an abuse of discretion standard, which misapplies the standard of review,<sup>1</sup> fails to give appropriate weight to the underlying factual record, or lack thereof, and significantly deviates from controlling federal case law, as well as the Court's own precedent.<sup>2</sup>

3) The factual record unambiguously shows that the Superior Court made no factual finding on record that Webb had forfeited his Sixth Amendment right to counsel. The court held no evidentiary hearing nor did the court take steps to develop the record as to Webb's behavior, followed by a finding that the behavior constituted forfeiture. Nor does the record show any argument from the State to the court that Webb had forfeited his right to counsel.

4) Even more significantly, the factual record shows that the court considered the issue of Webb's request to proceed *pro se* under the *Faretta*<sup>3</sup> waiver standard and not the *Bultron*<sup>4</sup> forfeiture standard. Webb's filings detail that the court began to

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<sup>1</sup> Claims of constitutional violations are reviewed *de novo*. *Hall v. State*, 788 A.2d 118, 123 (Del. 2001). *See also Morrison v. State*, 135 A.3d 69, 71, 74-75 (Del. 2016); *Smith v. State*, 996 A.2d 786, 787, 789-792 (Del. 2010). *See* Opening at 22; Reply at 1-2.

<sup>2</sup> All arguments asserted herein were raised in the Opening and Reply Briefs. (Opening at 38-43; Reply at 11-22).

<sup>3</sup> *Faretta v. California*, 422 U. S. 806, 807 (1975); *United States v. Welty*, 674 F.2d 185, 188-89 (3d Cir. 1982); *Briscoe v. State*, 606 A.2d 103, 108 (Del. 1992).

<sup>4</sup> *Bultron v. State*, 897 A.2d 758 (Del. 2006).

engage in a *Faretta* colloquy with Webb, but after being interrupted, the court appeared to get sidetracked and moved on to other matters without completing the already-begun *Faretta* colloquy.<sup>5</sup> Significantly, the State, during a later hearing, reminded the court: "My recollection is that the Court *began the pro se colloquy with the defendant*, who -- and then the defendant had interjected, and so the State's position is that that was not completely finished."<sup>6</sup> The State further stated that they would be sending an email to Chambers "asking probably for another hearing so that we can be sure that there has been a full and complete pro se colloquy and that all of the Briscoe factors have been covered with the defendant from that perspective."<sup>7</sup>

5) Thereafter, at the next hearing, a newly assigned prosecutor stated: "I understand . . . that the defendant has elected to proceed pro se, I am not sure whether a full colloquy was done. . . ."<sup>8</sup> Significantly, the court responded: "*Oh, yes, one has. I mean, he's -- let me just say for the record, a colloquy has occurred to the extent that Mr. Webb would allow one to occur. He's been adamant about representing himself.*"<sup>9</sup>

6) All of these statements consistently undermine a finding that the court

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<sup>5</sup> A178-181.

<sup>6</sup> A185 (emphasis added).

<sup>7</sup> A186.

<sup>8</sup> A194.

<sup>9</sup> A194.

implicitly made a forfeiture ruling and in fact demonstrates that all parties, including the State and court, viewed this as a *Faretta* situation. The issue of forfeiture has only now arisen in this case after Webb's filings show that the *Faretta* colloquy was, without question, incomplete, and he therefore did not knowingly and intelligently waive his Sixth Amendment right to counsel, which requires that his convictions be overturned and the case remanded for a new trial.<sup>10</sup>

7) Notably, Webb is unaware of any Delaware or federal case law that supports the legal principle that forfeiture of the Sixth Amendment right to counsel can be assumed or inferred absent any such ruling from the lower court. Despite advocating for this principle in the Answering Brief, the State was unable to point to any case law that supports such a legal argument. Similarly, in concluding that the court's decision was the "functional equivalent" of a forfeiture finding, this Court cites to no precedent of this Court nor any controlling federal case law nor any persuasive federal authority to support the legal principle that forfeiture can be assumed or implicitly found.

8) In light of the aforementioned, this Court's Opinion appears to be deciding an issue of first impression and appears to be carving out an exception to the well-

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<sup>10</sup> *Briscoe*, 606 A.2d at 104-105; *Morrison*, 135 A.3d at 76; *Boyer v. State*, 2009 Del. LEXIS 598 (Del. 2009); *Smith*, 996 A.2d at 787.

settled case law of *Faretta* and its progeny. The creation of this new legal principle sets a concerning precedent, as it allows an appellate court to make an after-the-fact finding that a defendant has forfeited his Sixth Amendment right to counsel in order to overcome a deficient *Faretta* colloquy absent any on-record forfeiture ruling by the lower court. Under this new legal principle, the analysis will not be whether the lower court made a forfeiture finding but whether the lower court *could have* made a forfeiture finding. In so doing, this necessarily creates a harmless error exception to a violation of a defendant's Sixth Amendment right to counsel, which is not permitted under United States Supreme Court case law.<sup>11</sup> Nor would this be consistent with this Court's precedent.<sup>12</sup>

9) Viewed under the precedent of this Court, as well as both controlling and persuasive federal authority, the Superior Court did not conclude that Webb forfeited his right to counsel, and because the *Faretta* colloquy was incomplete,<sup>13</sup> the court therefore erred, even under the more deferential abuse of discretion standard, in

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<sup>11</sup> *McCoy v. Louisiana*, 584 U.S. 414, 427 (2018) (internal citations omitted) (citing *McKaskle v. Wiggins*, 465 U.S. 168, 177, n. 8 (1984)) (holding that harmless-error analysis is inapplicable to deprivations of the self-representation right, because "[t]he right is either respected or denied; its deprivation cannot be harmless").

<sup>12</sup> *Hartman v. State*, 918 A.2d 1138, 1144 (Del. 2007) (citing *United States v. Peppers*, 302 F.3d 120, 127 (3d Cir. 2002)).

<sup>13</sup> See Opening at 23-38; Reply at 2-11. The Court did not decide this question due to the Court's finding of forfeiture.

directing Webb to proceed *pro se*.

10) Pursuant to Rule 18, undersigned counsel certifies that this motion is presented in good faith and not for purposes of delay.

/s/ Christopher S. Koyste

Christopher S. Koyste (#3107)

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Defendant Below-Appellant

Dated: July 24, 2024



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July 12, 2024

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RE: State of Delaware v. William Webb  
ID Nos. 1902015015, 1904001943, 1906000296 and Case No. 467, 2022

Dear Mr. Koyste and Ms. Venerick-Giffin:

I am writing to summarize previous correspondence and to update the record in relation to who is appointed by the State of Delaware Office of Defense Services to represent Mr. William Webb during the United States Supreme Court's certiorari review of the judgment entered in Delaware Superior Court case numbers 1902015015, 1904001943 and 1906000296 and on appeal in Delaware Supreme Court case number 467, 2022. Christopher S. Koyste, Esquire and Megan Venerick-Giffin, Esquire are each appointed by the State of Delaware to represent Mr. Webb before the United States Supreme Court in relation to Mr. Webb's case.

Mr. William Webb has established his indigency, which is why he has been entitled to court appointed counsel throughout Delaware Superior Court case numbers 1902015015, 1904001943 and 1906000296 and Delaware Supreme Court case number 467, 2022 in which he was represented by the Law Office of Christopher S. Koyste, LLC. Mr. Webb's indigency status has not changed, which is why the State of Delaware Office of Defense Services has appointed counsel in this matter.

Best regards,

*Stephanie Volturo*

Stephanie J. Volturo, Esq.

**A124**