

**FOURTH DIVISION
MCFADDEN, P. J.,
WATKINS and PADGETT, JJ.**

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August 19, 2026

In the Court of Appeals of Georgia

A26A1566. HALE v. THE STATE.

PADGETT, Judge.

Donte Hale was charged with the offenses of murder, two counts of felony murder, aggravated assault, possession of a firearm by a convicted felon and possession of a firearm by a convicted felon during the commission of a crime.¹ Hale represented himself at trial and the jury found him guilty of voluntary manslaughter as a lesser included offense of murder and felony murder, aggravated assault and both firearm possession charges.² Hale filed a timely motion for new trial with the

¹ OCGA §§ 16-5-1(a); 16-5-1(c); 16-5-21; 16-11-131(b); and 16-11-133.

² The trial court sentenced Hale for the offenses of voluntary manslaughter and possession of a firearm by a convicted felon during the commission of a crime, correctly finding that the remaining verdicts were either vacated by operation of law or merged with other offenses.

assistance of counsel which was denied. Hale appeals from the trial court's denial of his motion for new trial and, finding no error, we affirm.

“On appeal from a criminal conviction, the evidence must be viewed in the light most favorable to support the verdict, and the defendant no longer enjoys a presumption of innocence.” *Rodriguez v. State*, 375 Ga. App. 283, 283 (916 SE2d 10) (2025) (punctuation omitted). Viewed in that light, the record shows that on the date in question, Hale was a guest at a motel and walked to the lobby to resolve an issue with the key to his room. At approximately the same time, another guest of the motel, Demarcus Watson, entered the lobby of the motel and began having words with Hale. The entire exchange between Hale and Watson was captured on video which was played for the jury.³

Watson and Hale got into a physical confrontation which was initiated by Watson. As the two men grappled with each other, Watson struck Hale with his fist on more than one occasion. Hale was carrying a concealed firearm in the waistband of his pants which Hale drew and fired. Hale shot Watson twice, once in the chest and once in the neck. Watson crumpled to the floor and passed away from his injuries.

³ However, the video did not include audio.

Hale left the scene of the motel and was eventually found in Miami Beach, Florida a few months later.

After Hale was returned to Georgia, he gave a custodial statement to officers investigating the case. Hale told officers that Watson brought the gun into the fight and that Hale fired three shots during the incident, the first being aimed at Watson's feet. The evidence produced at trial conflicted with some of the claims Hale made during his custodial statement. A crime scene technician testified that only two shell casings were recovered from the scene. The medical examiner identified only two gunshot entry wounds suffered by Watson. Hale testified that he lied during his custodial interview about Watson having possession of the firearm. Hale also acknowledged that he was a convicted felon, was aware that he was not authorized to be in possession of a firearm, and had previously been convicted of having possession of a firearm while simultaneously being a convicted felon.

1. Hale argues that the evidence was insufficient to sustain his convictions. Specifically, Hale argues that the State failed to disprove self-defense beyond a reasonable doubt. We disagree.

When we evaluate claims of insufficiency of the evidence, the evidence is viewed in the light most favorable to the verdict and we determine whether any rational trier of fact could have found Hale guilty beyond a reasonable doubt of the all the crimes for which he was convicted. *Copeland v. State*, 316 Ga. 452, 455(2) (888 SE2d 517) (2023). As previously noted, Hale was only convicted of the offenses of voluntary manslaughter and possession of a firearm by a convicted felon during commission of a crime.⁴ Hale’s arguments relating to sufficiency of the evidence as to other charged crimes for which he was not convicted are rendered moot because the offenses merged or were vacated by operation of law and he was not convicted of those charges. *Long v. State*, 287 Ga. 886, 888(1) (700 SE2d 399) (2010); *Turner v. State*, 376 Ga. App. 681, 683(1) (920 SE2d 726) (2025).

With respect to the crimes for which Hale was convicted, as we assess the sufficiency of the evidence, we do not evaluate witness credibility, attempt to resolve conflicts in the evidence, or assess the overall weight of the evidence, as these are all tasks which are left for the jury to decide. *Copeland*, 316 Ga. at 455(2). In a case

⁴ A conviction is not synonymous with a verdict. A conviction is made up of a finding of guilt, either from an admission of guilt or a guilty verdict, followed by entry of a final judgment that includes the written sentence of the trial court. *Sartin v. State*, 223 Ga. App. 759, 761–62(4) (479 SE2d 354) (1996).

involving a claim of self-defense, the State bears the burden of disproving the claim and the jury decides whether the State has carried its burden. *Id.* It is therefore, “the role of the jury to evaluate the evidence and, when doing so, the jury is free to reject any evidence in support of a justification defense and to accept the evidence that the defendant did not act in self-defense.” *Mills v. State*, 320 Ga. 457, 461(2) (901 SE2d 143) (2024) (punctuation omitted).

It has long been the law of Georgia that “heated arguments, physical beatings, and fear of some danger present sufficient provocation for a voluntary manslaughter conviction.” *Jennings v. State*, 363 Ga. App. 170, 173(1) (869 SE2d 93) (2022) (citation modified). Conduct described as self-defense cannot justify a homicide if the amount of force used was excessive. *Id.* These are all matters for the jury to determine and the jury is free to accept or reject any or all of the evidence offered as part of a claim of self-defense. *Id.* at 173–74.

Here, the jury was not required to rely solely upon the testimony of witnesses to discern the facts that led to Watson’s death, as they had the benefit of a video recording of the incident. The jury was authorized to find that while Watson initiated a physical altercation with Hale, Hale’s introduction of the firearm into the fray and

his use of that firearm to kill Watson was excessive and did not justify the homicide. The evidence also authorized the jury to find that the homicide was mitigated by Watson's conduct in initiating a physical confrontation with Hale. The jury was equally entitled to find that Hale, as an admitted convicted felon, was illegally in possession of a firearm during the commission of the crime of voluntary manslaughter as prohibited by OCGA § 16-11-133(b)(1).⁵ Hale's arguments to the contrary are unavailing. See *Nelson v. State*, 283 Ga. 119, 120(1) (657 SE2d 201) (2008) (the jury was authorized to reject self-defense claim where it concluded that the appellant had used excessive force by shooting the victim after being punched); *Copeland*, 316 Ga. at 455–56(2) (jury was authorized to conclude that the defendant's fear of being struck again by victim did not justify shooting the victim).

2. Hale next argues that the trial court erred in allowing Hale to represent himself during trial. However, these arguments were not made in Hale's motion for

⁵ Hale argues that merely because he was a convicted felon does not prevent him from using force, even deadly force, in defending himself or others. See OCGA § 16-11-138; *Johnson v. State*, 308 Ga. 141, 145–46 (839 SE2d 521) (2020). However, Hale concedes that the jury was charged on this exact point of law. The verdict thus establishes that the jury did not find that his possession of a firearm was excused by the affirmative defense of justification under these facts. Having rejected Hale's claim of justification, the jury was authorized to find him guilty on those counts of the indictment that charged him with unlawful possession of a firearm.

new trial, as amended. Because these points were not raised or argued in the motion for new trial, the trial court did not have occasion to rule on this alleged error and its written order does not address the issue of waiver of counsel.

This Court has held that when a criminal defendant waives his right to a jury trial, is convicted of a crime following a bench trial, and fails to raise any issue concerning the validity of his pretrial waiver within his motion for new trial, the defendant has waived his right to seek appellate review of that issue. *Brown v. State*, 337 Ga. App. 36, 37–38(1) (785 SE2d 674) (2016). This same principle of waiver of appellate review has been held to apply when a defendant raises for the first time on appeal that he was not arraigned,⁶ that there was an unconstitutional delay in the proceedings being initiated,⁷ and that allegedly false evidence was used to convict the defendant.⁸ There are numerous cases which have found waiver of appellate review

⁶ *Small v. State*, 323 Ga. 750, 751(2) (927 SE2d 264) (2026).

⁷ *Moore v. State*, 278 Ga. 473, 474(2) (604 SE2d 139) (2004).

⁸ *Davis v. State*, 292 Ga. 90, 91–92(2) (734 SE2d 401) (2012).

to exist where the defendant seeks to raise an issue of ineffective assistance of counsel on appeal but did not raise that issue in his motion for new trial.⁹

Hale claims that he was denied due process when he was allowed to represent himself during trial but he failed to raise that issue in his initial or amended motion for new trial. Therefore, we find that this enumeration of error is waived due to Hale's failure to preserve it for appellate review. *Allen v. State*, 368 Ga. App. 554, 558(3) (890 SE2d 479) (2023).

Even if the issue had not been waived, the trial court did not commit error in allowing Hale to represent himself at trial. "Both the federal and state constitutions guarantee a criminal defendant the right to self-representation." *Seymour v. State*, 312 Ga. App. 462, 464(1) (718 SE2d 354) (2011) (citation modified). Defendants in criminal cases also have a constitutional right to counsel under both the federal and state constitutions. *Faretta v. California*, 422 U.S. 806, 807, 818–33(III) (95 SCt 2525, 45 LE2d 562) (1975); Ga. Const. of 1983, Art. I, Sec. I, Par. XII. The trial court is charged with the responsibility of ensuring that the defendant is afforded the right to counsel unless he or she clearly asserts the right to self-representation. Once the

⁹ See, e.g., *Smith v. State*, 310 Ga. 790, 795–96(4) (854 SE2d 721) (2021); *Allen v. State*, 368 Ga. App. 554, 558–59(3) (890 SE2d 479) (2023).

defendant asserts his or her right to self-representation, the trial court must determine whether the defendant has knowingly and intelligently waived his federal and state constitutional right to counsel and that inquiry “must apprise the defendant of the dangers and disadvantages inherent in representing himself so that the record will establish that he knows what he is doing and his choice is made with eyes open.” *Seymour*, 312 Ga. App. at 464(1) (punctuation omitted).

Once a proper request is made by the defendant, the trial court must engage in an inquiry that is commonly referred to as a *Faretta* hearing that is tailored to the unique facts and circumstances of both the defendant and the case against him or her. *Stinson v. State*, 352 Ga. App. 528, 530–31(1)(a) (835 SE2d 342) (2019); *Prater v. State*, 220 Ga. App. 506, 509 (469 SE2d 780) (1996). “The trial court’s ruling as to whether the defendant’s waiver of the right to counsel was valid is reviewed for abuse of discretion.” *Cox v. State*, 317 Ga. App. 654, 654 (732 SE2d 321) (2012).

[T]he validity of a waiver of counsel is a case-by-case determination, and, in making that determination, the trial court is not required to use any particular language, probe a defendant’s case and advise him on legal strategy, make any specific inquiries of a defendant, or apprise a defendant of the specific dangers of self-representation inherent in the defendant’s particular case.

Tariq-Madyun v. State, 361 Ga. App. 219, 222(2) (863 SE2d 703) (2021). On appeal, the test is not whether the accused is capable of good lawyering, but whether the defendant knowingly and intelligently waived his right to counsel; the defendant's technical legal knowledge is irrelevant to the inquiry performed by the trial court. *State v. Evans*, 285 Ga. 67, 69 (673 SE2d 243) (2009).

Here, the record shows that Hale was represented by counsel when an immunity hearing was conducted in November 2024. The trial court entered an order specially setting the case for a jury trial in December 2024. A few days later, Hale's counsel filed a motion to withdraw, which included notice that the case had been specially set for a jury trial on December 16, 2024. On December 6, 2024, the trial court conducted a status hearing to discuss counsel's motion to withdraw and during that hearing, the trial court conducted an extensive *Faretta* hearing.

During the *Faretta* hearing, Hale's counsel advised the trial court that Hale had specifically instructed counsel to withdraw. Hale testified unequivocally that he wanted to represent himself during the upcoming trial. The trial court then engaged in a lengthy colloquy with Hale, advising him that proceeding to a jury trial without counsel would not result in him receiving any special treatment from the court. Hale

revealed that he had never represented himself during a trial. The trial court then established Hale's age, limited level of formal education, work history, and his ability to read, write and speak English. As part of the colloquy between the trial court and the defendant, Hale indicated that he had been seen by a psychiatrist "maybe twice" during prior stints of incarceration but that those "close observation[s]" did not result in the prescription of any medications from a mental health professional. Hale denied ever experiencing hallucinations and confirmed that he was not under the influence of any intoxicants at the time of the hearing. Hale confirmed his understanding of his right to counsel and that proceeding without counsel was dangerous and, in the opinion of the trial judge, was an unwise decision. The trial court went on to explain to Hale that even if he did not know of objections that were available to him during the trial, that Hale was charged with the responsibility of making timely objections and that the trial court would not assist him in making objections or presenting evidence.

The trial court inquired whether Hale would be ready for trial on the date the trial was set and Hale indicated that he would not be ready for trial and that he wanted additional time to prepare. The trial court indicated that it would not reschedule the established trial date and Hale indicated that he understood that ruling and wanted to

represent himself at trial despite the fact that the trial would begin ten days later. The trial court then discussed with Hale that he would have limited access to legal materials, including discovery responses provided by the State, because he was in confinement at the time and would have to abide by the rules of the jail. Hale's attorney then provided Hale with his entire file, but many of the discovery materials were in an electronic format and Hale acknowledged that he would not have the ability to review the electronic materials while incarcerated. The trial court went through the charges and the potential punishment that Hale was facing for each charge, the fact that the State had provided pretrial recidivism notice, and the impact that notice had upon any conviction that might be obtained following the jury trial. Hale testified that he had not been threatened into making his decision to waive his right to counsel and that no promises had been made to induce him into making that decision.

After some additional exchanges between the lawyers in the case, the trial court, and the defendant concerning potential punishment, Hale again clearly expressed his desire to represent himself with the full knowledge of the dangers associated with his decision. The trial court made an oral finding that Hale had elected to proceed without counsel and that his waiver was knowingly and intelligently made. The trial court

appointed Hale's former counsel to act as standby counsel during the trial and subsequently entered a written order that echoed his oral findings.

Contrary to Hale's argument on appeal in which he suggests that the trial court erred in allowing him to represent himself, a trial judge is not authorized to prevent a criminal defendant from exercising his constitutional right of self-representation except under limited circumstances not present here. See *Woodard v. State*, 352 Ga. App. 322, 328(2) (835 SE2d 35) (2019) (if a trial court improperly denies a defendant of his right of self-representation, the denial requires automatic reversal). The trial court conducted the type of hearing anticipated by *Faretta* following Hale's unequivocal invocation of his right to self-representation and thus, even if this issue had not been waived for appellate review, this enumeration of error would be unavailing.

3. In several different enumerations of error, Hale argues that the trial court erred in denying his oral motions for continuance. As noted above, Hale indicated during the *Faretta* hearing that he wanted to continue the specially set trial date. Prior to voir dire, Hale was asked whether he was ready to proceed with the trial of the case. Hale responded "I am, sir." Later, Hale made another oral motion for continuance,

claiming that he did not have certain materials that would normally have been turned over in discovery. His former attorney, who was now acting as standby counsel, advised the court that he had turned over to Hale all of the paper discovery in his possession at the time of the *Faretta* hearing. Hale's former counsel noted that the materials turned over to Hale also included several flash drives that Hale may not have been able to review while incarcerated. The trial court had the State play video clips of the incident that the State did not plan to introduce into evidence and then had a significant amount of discovery material printed from the discovery flash drives and provided those printed materials to Hale prior to trial beginning. The trial court then ordered the prosecutor to identify the witnesses that the State intended to call during trial and explain each witness's role in the case. The trial court also allowed Hale to review other documents, such as the autopsy photos, that the State intended to use at trial. Hale then began asking for items such as a criminal history of the decedent, transcripts of audio recorded interviews, and other materials that did not exist. After allowing Hale to identify all documents or papers he wanted to have and providing him copies of those in the State's possession or allowing him to review the documents in open court, the trial court denied Hale's request for a continuance. However, the

trial court did indicate that no witnesses would be called on the first day of trial to allow Hale to further prepare for trial before any witnesses testified.

“The grant or denial of a continuance ... is within the discretion of the trial court and will not be disturbed unless it clearly appears the trial court abused that discretion.” *Wilson v. State*, 231 Ga. App. 621, 621(1) (500 SE2d 387) (1998) (punctuation omitted). “Trial judges necessarily require a great deal of latitude in scheduling trials.” *Ealy v. State*, 251 Ga. 426, 429(3) (306 SE2d 275) (1983). When a party seeks a continuance as a tactic for delay, denial of the continuance may be proper. *Wilson*, 231 Ga. App. at 621(1). A criminal defendant appealing his conviction based upon an allegation that the trial court erred in denying his request for a continuance bears the burden of showing both an abuse of discretion and harm stemming from that denial. *Foster v. State*, 322 Ga. 425, 431(3)(a) (920 SE2d 90) (2025).

In its written order denying Hale’s motion for new trial, the trial court found that Hale’s request for a continuance was made for the purpose of delay. This formal finding was in keeping with the oral pronouncements that the trial judge made during the pretrial proceedings. When Hale elected to proceed without counsel a few days

after his jury trial had been specially set, he did so with the full knowledge of the impending trial date and that his ability to view discovery materials that were provided in an electronic format would be difficult or impossible within the confines of the jail. Regardless, he elected to represent himself with those potential impediments being fully known and acknowledged. We cannot say that the trial court abused its discretion in denying Hale's requests for a continuance.

Additionally, Hale has not shown that he was harmed by the denial of his request for a continuance of the trial. In addition to establishing that the trial court erred in denying his request for a continuance, Hale has the burden of showing that he was harmed by the denial. *Allen*, 368 Ga. App. at 556(1). The primary focus of this trial was Hale's claim of self-defense. The interaction between Hale and Watson which resulted in the latter's death was captured on video. Hale had seen the video in full during the immunity hearing in November 2024 and was allowed to see additional angles that were not admitted as evidence by the State prior to the trial beginning. During the trial, Hale asked virtually no cross-examination questions except to further his claim of self-defense. Hale cross-examined the primary detective and had the detective admit that Watson was the primary aggressor in the physical

altercation. On cross-examination of another officer, Hale had the officer admit that he was the victim of a battery before the firearm was introduced into the fray. .

Hale testified at trial that the State had not produced any witnesses that said anything contrary to his own testimony, and that he intentionally did not object to any testimony from the State's witnesses because their testimony was consistent with his own version of events. Hale's closing argument echoed his claim that no witnesses had been presented that disputed his version of events. Hale also argued that the calling of witnesses was a waste of the jury's time and was irrelevant because the sole issue in the trial was his claim of self-defense. Hale's closing argument stressed the fact that law enforcement officers acknowledged that he was not the aggressor and was actually the victim of a battery. The jury's verdict suggests that the jury seriously considered and even credited his testimony and arguments.

In its order denying Hale's motion for new trial, the trial court found that Hale failed to offer any testimony or argument as to how additional time would have changed and benefitted his defense.¹⁰ Hale's briefing to this Court does not suggest that any testimony was offered during the hearing on his motion for new trial that

¹⁰ No transcript of the hearing on Hale's motion for new trial was made a part of this record.

attempted to identify how he would have defended the case differently had he been afforded additional time. We thus find that Hale has failed to show harm in the denial of his request for a continuance as required by Georgia law. “Where no harm is shown, there is no reversible error.” *Moreland v. State*, 213 Ga. App. 75, 77(2) (443 SE2d 701) (1994).

Judgment affirmed. McFadden, P. J., and Watkins, J., concur.