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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Chester County

Honorable J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MICHAEL A. WILLIAMS,

APPELLANT

APPELLATE CASE NO. 2021-001033

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court abused its discretion by denying Appellant's "certainly reasonable" request for a continuance without considering Appellant's medical records or physical state where Appellant had suffered a heart attack the week before trial, was unwell, confused, and unable to effectively assist his attorney with his defense?

STATEMENT OF THE CASE

In June 2020 the Chester County grand jury indicted Appellant for one count of Distribution of Cocaine Base, Second Offense. (Indictment). The State, represented by Kaitlyn Easler and Candice Lively, called the case to trial on September 7, 2021, before the Honorable J. Derham Cole and a jury. Appellant was represented by William Frick and Devon Nielson. R. 1.

After a jury had been selected but prior to the presentation of evidence, Counsel Frick moved to continuance the case as Appellant had suffered a heart attack the previous week and was in poor health. R. 24, ll. 10-16. Judge Cole denied the motion to continue, and the case proceed to trial. R. 29, ll. 5-6. The jury found Appellant guilty as charged. R. 125, ll. 13-19. Judge Cole sentenced Appellant to fifteen years imprisonment and a fine of $25,000. R. 138, ll. 5-10.

This appeal follows.

STANDARD OF REVIEW

"'The granting of a motion for a continuance is within the sound discretion of the trial court and will not be disturbed absent a clear showing of an abuse of discretion.'" State v. Geer, 391 S.C. 179, 189, 705 S.E.2d 441, 447 (Ct. App. 2010) (quoting State v. Yarborough, 363 S.C. 260, 266, 609 S.E.2d 592, 595 (Ct. App. 2005)). "'An abuse of discretion arises from an error of law or a factual conclusion that is without evidentiary support.'" Id. (quoting State v. Irick, 344 S.C. 460, 464, 545 S.E.2d 282, 284 (2001)); see also State v. Funderburk, 367 S.C. 236, 239, 625 S.E.2d 248, 249–50 (Ct. App. 2006) ("An abuse of discretion occurs when the trial court's ruling is based on an error of law."). Even if there was no evidentiary support, "'[i]n order for an error to warrant reversal, the error must result in prejudice to the appellant.'" Geer, 391 S.C. at 190, 705 S.E.2d at 447 (quoting State v. Preslar, 364 S.C. 466, 473, 613 S.E.2d 381, 385 (Ct. App. 2005)); see also State v. Wyatt, 317 S.C. 370, 372–73, 453 S.E.2d 890, 891–92 (1995) (stating that error without prejudice does not warrant reversal).

ARGUMENT

The trial court abused its discretion by denying Appellant's "certainly reasonable" request for a continuance without considering Appellant's medical records or physical state where Appellant had suffered a heart attack the week before trial, was unwell, confused, and unable to effectively assist his attorney with his defense.

Relevant Facts

Prior to the jury being sworn in Counsel Frick made a continuance motion. Counsel Frick informed the court that Appellant had suffered a heart attack the previous Monday and was "not in the best of shape." Counsel Frick provided the court with Appellant's medical records[1] and indicated that the parties had discussed the matter in chambers. R. 24, ll. 17-20.

The trial court stated that the request for continuance was "certainly reasonable." However, the court declined to consider the request for a continuance without an affidavit from Appellant's attending physician. The court stated that for it to consider the continuance motion it "had to have a statement by way of affidavit from his [Appellant's] attending physician" telling the court that Appellant was "not able to appear in court because of a medical condition or that requiring him to go forward with the trial in this case would result in significant health risk to him." R. 24, l. 21-Tr. 25, l. 3. Counsel Frick informed the court that he had not learned of Appellant's heart attack until the previous Friday afternoon and had only spoken to Appellant about his health for the first time that morning. Consequently, Counsel Frick had been unable to gather any additional information, aside from the medical records, about Appellant's health. R. 25, ll. 4-12.

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1 The medical records were not made a court's exhibit and therefore are not included on the record on appeal. However, the court acknowledge that Appellant had suffered a "health issue" and the State admitted that Appellant had suffered a heart attack. R. 25, ll. 17-19; R. 28, l. 24-R. 29, l. 4

The court recessed the case until the next morning to allow Counsel Frick an opportunity to obtain the affidavit it was requiring. The jury was released for the afternoon and instructed to return at 10:00 am the following day. R. 25, ll. 17-24. The trial judge state he was "confident Mr. Williams [Appellant] ought to be able to get ahold of his doctor because he's the one that has the condition. So, I suspect they'll answer a call from him." R. 26, ll. 1-3. The judge instructed Appellant and Counsel to take the remainder of the day to work on getting the affidavit from Appellant's doctor, again saying he felt "confident if the condition is reported correctly that you ought to be able to get ahold of that doctor on just, you know, *short moment's notice*." R. 27, ll. 5-11 (emphasis added).

The following morning Counsel Frick renewed the continuance motion stating,

> Judge, just regarding our request for a continuance yesterday, I understand what the Court said. We tried to contact the doctor's office here in Lowrys [South Carolina], doctor's office in Columbia [South Carolina]. Our office had no success, didn't get any more information. Mr. Williams went to Lowrys, was informed that as a new patient they don't have any information on him because it's a referral. I think he attempted to get information from Columbia, and they were unable to provide him anything. So, I do not have the affidavit, but *I have the medical records that we had yesterday that you've seen that does state he did have the myocardial infarction last week. And he does have a follow-up appointment to determine the course of action he should take today at 2:30, I think, in Columbia.* So, in light of all of that I would just renew my request for a continuance.

R. 28, ll. 11-22 (emphasis added).

In response to the continuance request the State argued that although Appellant had suffered a heart attack, he was "mentally able to assist...his public defender in his defense." R. 28, l. 25-R. 29, l. 4. The court denied the motion for a continuance. In denying the motion the trial judge stated that if an affidavit from Appellant's attending physician describing Appellant's condition had been provided to him, he would consider the motion to continue the case.

However, he would not consider the continuance motion without an affidavit from Appellant's physician. R. 29, ll. 7-10.

During the trial the court interacted with Appellant on three occasions. During all three conversations Appellant expressed confusion. The first conversation was about Appellant's right to testify. After taking a fifteen-minute recess, in which Appellant and Counsel Frick discussed the right to testify, Counsel Frick informed the court that Appellant would not be testifying. When the court questioned Appellant about whether he understood the advantages and disadvantages of his decision Appellant replied, "Not really." R. 97, l. 16- Tr. 99, l. 25. The second conversation occurred after the jury had been charged on the law.

The State took exception with the charge when the court did not charge the jury on the defendant's failure to testify. The trial judge stated that the charge was not requested, that the jury had been instructed on the defendant's right to remain silent at the outset and that he often did not re-emphasize that a defendant had not testified unless it was requested. Counsel Frick informed the court that the defense was not requesting a charge on the defendant's failure to testify. When the court inquired as to whether Appellant understood the discussion, he responded, "No, sir." The trial judge attempted to explain the discussion they were having about the jury charge to which Appellant responded that he would "go with it," meaning he would go with whatever Counsel Frick had decided. R. 118, l. 23-Tr. 120, l. 3.

The third conversation occurred prior to sentencing when the court requested that Counsel Frick sign the sentencing sheet. Counsel Frick refused to sign the sheet based on a case out of our Supreme Court which held that where a party had signed a sentencing sheet they assented to the sentence. After Counsel Frick refused to sign the sentencing sheet the court asked Appellant if he too would refuse to sign the sheet. Appellant twice asked, "What I

supposed to sign?" and when he requested further clarification the court cut him off saying "That's fine. I don't really care. That's fine. Don't worry about it." Appellant then stated he would "sign it" but this statement was ignored. R. 136, l. 4-R. 137, l. 7.

Additionally, during mitigation, Counsel Frick informed the court that Appellant was actively dealing with his serious heart related problems. Appellant had suffered his first heart attack earlier in April or May of that year and had a stint implanted. Appellant had also an "issue" at lunch that had required Appellant to get medication "so he could make it through the rest of the trial." Tr. 131, ll. 12-21.

Discussion

The trial court improperly denied the "certainly reasonable" request to continue Appellant's trial when Appellant could not produce an affidavit from his treating physician attesting to his health in less than twenty-four hours. Without such an affidavit, the court refused to consider the merits of the motion, even though the court had been provided with medical records substantiating Appellant's heart attack and could personally observe the condition of Appellant. The failure of the court to consider the information it had in determining whether to continue the case was a failure of the court to exercise its discretion.

It is well settled law that the failure of the court to exercise discretion amounts to an abuse of that discretion. See, State v. Hawes, 411 S.C. 188, 767 S.E.2d 707 (2015), Samples v. Mitchell, 329 S.C. 105, 112, 495 S.E.2d 213, 216 (Ct. App. 1997). "It is an abuse of discretion for a district court to issue a 'blanket ruling' that disposes of a discretionary determination automatically without analyzing the factors that would enter into the discretionary decision." Kansas Dept. of Revenue v. Powell, 290 Kan. 564, 569–70, 232 P.3d 856 (2010). "When a trial judge is vested with discretion, but his ruling reveals no discretion was in fact exercised, an error

of law has occurred." CEL Prod., LLC v. Rozelle, 357 S.C. 125, 130, 591 S.E.2d 643, 645 (Ct. App. 2004) (internal citations omitted). As our Supreme Court stated in State v. Smith, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981),

> It is an equal abuse of discretion to refuse to exercise discretionary authority when it is warranted as it is to exercise the discretion improperly. We call to the attention of the bench and bar that *the mere recital of the discretionary decision is not sufficient to bring into operation a determination that discretion was exercised. It should be stated on what basis the discretion was exercised.*

Id. at 498, 280 S.E.2d at 202 (emphasis added). "Where a court is clothed with discretion, but rules as a matter of law, the appealing party is entitled to have the matter reconsidered and passed on as a discretionary matter. Fontaine v. Peitz, 291 S.C. 536, 539, 354 S.E.2d 565, 567 (1987) (citing Capps v. Lynch, 253 N.C. 18, 116 S.E.2d 137 (1960)).

In criminal cases Rule 7, SCRCrimP[2], governs continuances. The rule states, in relevant part that "[c]ontinuances may be granted by a presiding judge during a term of court at which he presides...upon a showing of good and sufficient legal cause." Rule 7, SCRCrimP. Rule 7 further clarifies that a continuance motion "granted by a presiding judge cannot extend beyond the next term of court without the approval of the chief administrative judge." Rule 7, SCRCrimP.

There is nothing in Rule 7, nor in the jurisprudence of our State, that *requires* a defendant requesting a continuance on medical grounds to produce an affidavit by a treating physician in order for the court to *consider* the merits of the motion. All that Rule 7 and the case law require is that the party requesting the continuance make a showing of "good and sufficient legal cause."

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2 This rule is not exhaustive. Pursuant to Rule 37, SCRCrimP, "the practice and procedure existing prior to the adoption of the SCRCrimP, found primarily in case law, remains effective where the rule is silent." Alex Sanders & John Nichols, Trial Handbook for South Carolina Lawyers, § 3.1 Continuances, generally (5th ed. 2021)

When considering a motion for a continuance a trial court should therefore considering all the relevant information provided to it prior to issuing a ruling.

In United States v. Brown, 821 F.2d 986 (4th Cir. 1987), the Fourth Circuit Court of Appeals noted the numerous potential considerations a trial court may properly weigh when ruling on a motion for a continuance for medical reasons.

> Whether a defendant's physical condition requires a continuance can be difficult for a trial judge to determine. Medical forecasts are uncertain, and the evidence before the judge will rarely point in just one direction. The judge must assess the degree to which a defendant's health might impair his participation in his defense, especially his right to be present at trial, to testify on his own behalf, and to confront adverse witnesses. If the judge determines that the proceeding is likely to worsen the defendant's condition, that too is relevant. Among the factors that the trial judge may properly consider are the medical evidence, the defendant's activities in the courtroom and outside of it, the steps the court can take to reduce the medical risks, and the steps that defendant himself is or is not taking to improve his condition. See, e.g., United States v. Goldstein, 633 F.Supp. 424, 427 (S.D.Fla.1986).

Id., at 988 (4th Cir. 1987). The court further noted it was proper for the trial court to "consider its observations of the defendant's activity and alertness in ascertaining his physical and mental capabilities." Id. at 989, citing United States v. Silverthorne, 430 F.2d 675, 677 (9th Cir. 1970).

While deciding to grant or deny a motion for continuance is often a fact specific inquiry there are also general considerations a trial court weighs in its decision-making process. Among those general considerations are the age of the case[3], the number of previous continuances[4], the

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3 See Mendelsohn v. Whitfield, 312 S.C. 17, 432 S.E.2d 524 (Ct. App. 1993) (court did not abuse discretion in denying motion for continuance where case had been pending for over four years, Appellant appeared at and actively participated in the trial, and his lawyers thoroughly and vigorously tired the case.)

4 See Sheets v. Sheets, 287 S.C. 596, 340 S.E.2d 542 (1986) (reversing denial of husband's continuance motion in divorce case where he was on business and could not be reached; also noting case continued twice before at wife's request)

moving party's opportunity to address the grounds for the motion[5], the absence or incapacity of a party, and whether the delay would hinder the presentation of evidence.[6]

In the case, *sub judice*, the trial court failed to consider Appellant's motion for a continuance. Instead of exercising its discretion, the trial court issued a blanket denial because Appellant was unable to obtain an affidavit from his treating physician on extremely short notice. R 29, ll. 5-10. Notably, the trial court was provided with medical records that it reviewed which substantiated that Appellant had suffered a heart attack the previous week. R. 24, ll. 17-18; R. 28, ll. 16-18. Counsel Frick informed the court that Appellant "was not in the best of shape" and that he had a follow up appointment to determine the best course of action that week. R. 24, ll. 15-16; R. 28, ll. 18-20. Counsel Frick also made it abundantly clear that he had not been able to gather additional information on Appellant's heart attack as he had only learned of it the previous Friday afternoon and only spoken with Appellant about it that morning. R. 25, ll. 4-12.

However, the court did not consider the medical evidence that was provided. The court did not question Appellant or Counsel Frick about Appellant's health to determine if Appellant was able to not only proceed with trial but actively *participate* in his trial. The court did not even offer any consideration to its own observations of Appellant's alertness and activity in determining Appellant's mental and physical health.

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5 See State v. Homewood, 241 S.C. 231, 128 S.E.2d 98 (1962) (no abuse of discretion in denying motion for continuance to review evidence when the opportunity to examine evidence had existed for pendency of the case and counsel had made no effort to examine the evidence during that time)

6 See State v. Squires, 248 S.C. 239, 149 S.E.2d 601 (1966) (No abuse of discretion where court denied a motion for continuance where the only witness that could identify defendants was 74 years old, the other witness had already pass away, and there was no showing that any other evidence on behalf of the appellant's could have been produced if they had been granted more time to prepare for trial).

Additionally, the court did not make inquiries into any general considerations regarding Appellant's case. The court did not ascertain the age of the case, which at the time of trial was approximately fifteen months old. The court did not inquire about previous continuances, one of which had been granted for the defendant when he suffered his first heart attack earlier that year. The court gave no consideration to the fact that there had not been adequate time to fully investigate what medical consequences could arise from Appellant continuing with trial as Counsel Frick had not been able to speak with Appellant about his health until that morning when he made the continuance motion. The court did not consider that Appellant was not in any capacity to assist in his defense and did not question the State as to whether a delay[7] would hinder the presentation of evidence in the case.

In lieu of the wealth of information it had before it, the court required an affidavit from Appellant's treating physician attesting to his condition *before the court would consider the motion for continuance.* When that affidavit could not be produced on such short notice the court denied the motion for continuance without any consideration. This was a failure to exercise discretion and as such an abuse of discretion.

The record reflects that Appellant was prejudiced by the court's abuse of discretion because he was unable to effectively assist his counsel in the defense of his case. The State argued that Appellant, despite having suffered a heart attack, was able to assist Counsel Frick in the defense of his case. The State made this assertion without any factual basis as there was no inquiry made into Appellant's physical or mental health following his heart attack. While the State *assumed* Appellant was able to assist in his defense, the record *demonstrates* that he was

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[7] Per Rule 7, SCRCrimP, the trial court would only have been able to continue the case until the next term therefore the delay would not have been a difficulty to the State, nor would it have been unreasonable under the circumstances presented by Counsel Frick during the continuance motion.

not able to meaningfully assist in the defense of his case as he was not fully in possession of his faculties during trial.

"The constitutional guarantee of due process in a criminal trial 'is, in essence, the right to a fair opportunity to defend against the State's accusations.'" Ferrell v. Estelle, 568 F.2d 1128, 1131 (5th Cir.1978) (quoting Chambers v. Mississippi, 410 U.S. 284, 294 (1973)). "That guarantee encompasses both the right of a defendant to confront witnesses against him *and his right to assist in his own defense.*" Id. (emphasis added). "Granting a continuance is one measure the court may use to protect an accused's due process rights." State v. Owens, 346 S.C. 637, 664, 552 S.E.2d 745, 759 (2001), overruled on other grounds by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005) citing State–Record Co., Inc., v. State of South Carolina, 332 S.C. 346, 504 S.E.2d 592 (1998). Admittedly, "[t]here are no mechanical tests for deciding when a denial of a continuance is so arbitrary as to violate due process. The answer must be found in the circumstances present in every case, particularly in the reasons presented to the trial judge at the time the request is denied." Ungar v. Sarafite, 376 U.S. 575, 589 (1964).

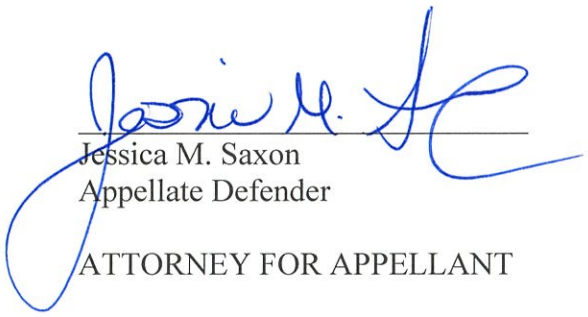
On the few occasions that the trial court interacted with Appellant he was confused and unable to follow the conversation. He had to be thrice instructed on his right to testify, twice by the trial court and once by counsel. R. 97, l. 16- R. 99, l. 25. When the State took exception to the jury charge regarding the defendant's right to testify the trial court asked Appellant if he understood the discussion. Appellant stated that he did not understand and when it was again explained he simply replied that he would go along with what Counsel Frick decided. R. 118, l. 23-R. 120, l. 3. Finally, during sentencing when Counsel Frick refused to sign the sentencing sheet, the trial court asked Appellant if he would sign the sentencing sheet and Appellant's repeated response was "[w]hat I supposed to sign?" R. 136, l. 4-R. 137, l. 7. Additionally,

Counsel Frick informed the court that during lunch Appellant had issues that required medication so that he could simply *"make it through the rest of the trial."* R. 131, ll. 12-21.

Due process requires more than the mere presence of the accused at the trial. It demands that a defendant have a meaningful ability to assist counsel and defend himself against the charges leveled against him by the State. The denial of Appellant's motion to continue based upon valid, substantiated, and serious medical reasons was arbitrary and unreasonable. The trial court exercised no discretion in denying the motion and the denial prejudiced Appellant as he was barely able to make it through the trial, much less actively participate in his defense. The trial court abused its discretion and in doing so violated Appellant's most basic due process rights. Appellant respectfully request that this Court overturn his conviction and remand the matter back to the circuit court for a new trial.

CONCLUSION

By reason of the foregoing arguments, Appellant respectfully request that this Court reverse his conviction and sentence and remand this case to the Chester County Court of General Sessions for a new trial.



Jessica M. Saxon
Appellate Defender

ATTORNEY FOR APPELLANT

This 9th day of November, 2022.

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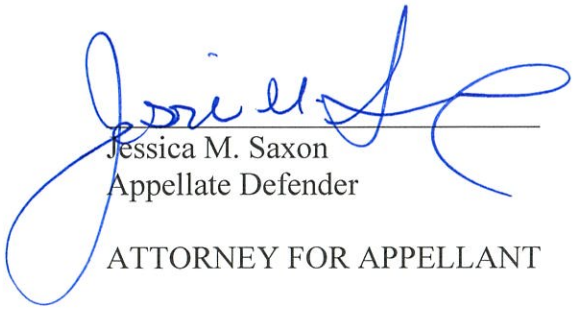
CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Final Brief of Appellant and Designation of Matter in the above-referenced case has been served upon William M. Blitch, Jr., Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 9th day of November, 2022.



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