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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY

Court of General Sessions
The Honorable Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2022-000112

THE STATE,

Respondent,

v.

TERBIAS JERROD GOFF,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF THE ISSUE ON APPEAL

A defendant may waive his right to be present at trial by voluntarily failing to appear, as long as he has notice of his right to presence and that trial can proceed without him. Goff failed to appear for court and vacated his place of residence without leaving a forwarding address as required by the terms of his bond. Does the record support the trial court's finding that Goff voluntarily failed to appear for trial?

STATEMENT OF THE CASE

An Horry County grand jury indicted Appellant Terbias Goff for failing to register as a sex offender, second offense. Goff failed to appear for trial and was tried in his absence on August 12, 2020. He was convicted as charged and sentenced to 366 days' incarceration. His sentence was unsealed in his presence on January 26, 2022.

Prior to trial, the State presented evidence to establish Goff was voluntarily absent. The State published a trial roster for the week of August 10–14 on July 22, 2020, and Goff's case was listed. (R.p.12). The State mailed the trial roster to each defense attorney with a client whose case was listed, and published the roster on its website and social media pages, and on the judicial website. (R.p.26). The State mailed a subpoena to Goff at the address he provided on his bond form and public defender application, but it was returned as undeliverable. (R.p.5-7). At a roster meeting on August 3, the State indicated the case was ready for trial, and defense counsel indicated he thought Goff would plead guilty. (R.p.12). The State attempted to subpoena Goff for a plea hearing on August 6, but was unable to locate Goff. (R.p.12-13). The State attempted personal service at the address provided by Goff. The tenant of the apartment told the officer that Goff did not live there, nor did the former tenant (with whom Goff was purportedly staying), and the apartment manager told him that Goff was never on the lease. (R.p.15).

The State introduced a copy of Goff's bond form informing Goff of his right to presence at trial and that he would be tried in his absence if he failed to appear.

(R.p.22, 106–08). Goff had signed the acknowledgement of rights. (R.p.23, 107). The form also required Goff to keep the court apprised of any change in his place of residence. (R.p.22, 106). Goff did not appear for the plea hearing on August 6, or for the term of court beginning on August 10.

STANDARD OF REVIEW

In criminal cases, the court of appeals sits to review errors of law only and is bound by the factual findings of the trial court unless clearly erroneous. City of Aiken v. Koontz, 368 S.C. 542, 546, 629 S.E.2d 686, 688 (Ct. App. 2006). Under this standard, appellate courts must affirm if there is any evidence to support the trial court's ruling. State v. Moore, 415 S.C. 245, 251, 781 S.E.2d 897, 900 (2016). The question whether a criminal defendant has waived his right to presence at trial is a factual question. State v. Wrapp, 421 S.C. 531, 537, 808 S.E.2d 821, 824 (Ct. App. 2017) (describing Rule 16 findings as "factual findings"); United States v. Mera, 921 F.2d 18, 20 (2d Cir. 1990) ("The trial judge in his sound discretion determines whether a defendant's absence constitutes a waiver. . . . Where, as here, the trial judge conducts an evidentiary hearing in regard to the 'knowing and voluntary' prong of the analysis, we may not reverse the lower court's decision unless it is clearly erroneous."); Brewer v. Raines, 670 F.2d 117, 120 (9th Cir. 1982) ("The finding of voluntary absence, and, therefore, the existence of a waiver of the right to be present, is basically a question of fact."); Tacon v. Arizona, 410 U.S. 351, 352 (1973) (dismissing certiorari as improvidently granted) ("The only related issue actually raised below was whether petitioner's conduct amounted to a knowing and intelligent waiver of his right to be present at trial. Since this is primarily a factual issue which does not, by itself, justify the exercise of our certiorari jurisdiction, the writ of certiorari is dismissed as improvidently granted.").

ARGUMENT

Evidence supports the trial court's finding that Goff, by conduct, waived his right to be present at his trial.

Goff alleges the trial court erroneously allowed his trial to proceed in his absence. Evidence supports the trial court's finding that Goff, by conduct, waived his right to presence. This Court should affirm.

Criminal defendants have a right to be present at their trial. This "right of presence" is rooted in the English common law, and is encompassed in the Sixth Amendment right of confrontation. United States v. Gregorio, 497 F.2d 1253, 1257–59 (4th Cir. 1974); Illinois v. Allen, 397 U.S. 337, 342 (1970). However, the right can be waived by a defendant's voluntary absence. Taylor v. United States, 414 U.S. 17, 20 (1973); Ellis v. State, 267 S.C. 257, 260, 227 S.E.2d 304, 305 (1976). A trial judge must determine a defendant voluntarily waived his right to be present at trial in order to try the case in absentia. City of Aiken v. Koontz, 368 S.C. 542, 547, 629 S.E.2d 686, 689 (Ct. App. 2006).

The circumstances in which a trial court may find that a defendant has waived his right of presence are codified in Rule 16 of the South Carolina Rules of Criminal Procedure. The rule provides:

> Except in cases wherein capital punishment is a permissible sentence, a person indicted for misdemeanors and/or felonies may voluntarily waive his right to be present and may be tried in his absence upon a finding by the court that such person has received notice of his right to be present and that a warning was given that the trial would proceed in his absence upon a failure to attend the court.

Rule 16, SCRCrimP. The trial court must make these specific findings on the record. Koontz, 368 S.C. at 547, 629 S.E.2d at 689. Because the findings required by Rule 16 are factual in nature, this Court must affirm the trial court's findings if there is **any evidence** in the record to support them. State v. Moore, 415 S.C. 245, 253, 781 S.E.2d 897, 901 (2016); State v. Wrapp, 421 S.C. 531, 537, 808 S.E.2d 821, 824 (Ct. App. 2017).

The trial court in this case made the findings required by Rule 16. Cf. State v. Wrapp, 421 S.C. 531, 536, 808 S.E.2d 821, 823 (Ct. App. 2017) ("We hold the circuit court erred in trying Wrapp in absentia without making specific findings" required by Rule 16). The Court specifically found "the State satisfied the notice requirements, notified the defendant of the date and term of his trial, as well as he would be tried in his absence." (R.p.37). The court referenced the bond form which informed Goff that he had the right to be present and that trial would proceed in his absence if he did not appear. (R.p.21, 37, 107). The trial court explained Goff waived his right to presence by virtue of his "misconduct" because Goff failed to keep in contact with his attorney, failed to show up for court, and failed to provide the court with an accurate mailing address. (R.p.37).

Underlying the trial court's findings is Goff's history of willfully failing to appear before lawful authority. Goff had already been convicted of failing to register as a sex offender, an offense that in itself shows his disregard for lawful authority and a past willful failure to appear as required by law. See State v. Roberson, 382 S.C. 185, 188, 675 S.E.2d 732, 733 (2009) (overruled on other grounds

by Osbey v. State, 425 S.C. 615, 825 S.E.2d 48 (2019)) ("We find that **given Respondent's criminal history**, his disregard for the instructions of the court, and his inexcusable absence from trial, a waiver by conduct of the right to counsel is inferable.") (emphasis added). Furthermore, Goff had the opportunity to explain his absence when his sentence was unsealed, but offered no explanation. (R.p.93). See Fermin v. State, 975 P.2d 61, 67 (Alaska Ct. App. 1999) ("Fermin has failed to offer any exonerating explanation of why he left the State of Alaska, why he failed to return, and why he failed to maintain contact with his attorney or the court system. He therefore has failed to show that Judge Andrews committed error when she held the renewed suppression hearing without him."). Thus, the record refutes Goff's assertion that there was "no evidence of misconduct on the part of Appellant" to justify the trial court's finding that he waived his right of presence. Brief of Appellant at 9.

Without citation to the record or any authority, Goff asserts the State failed to "properly address the subpoena." Brief of Appellant at 17. Goff claims that the fact that the subpoena was returned as "undeliverable" means that "the address placed on the envelope by the solicitor's office was either incorrect, incomplete, or illegible," and this "cannot be imputed to Appellant." Brief of Appellant at 17. This assertion is not supported by any evidence in the record. The only evidence in the record is that the solicitor's office mailed the subpoena to the address Goff provided.

Goff argues "[t]here is nothing in the record that supports the contention that Appellant had actual notice of his trial date and voluntarily waived his presence."

Brief of Appellant at 9. Goff correctly notes that the trial court acknowledged there was no evidence that Goff had "actual notice" of his trial date. However, Goff incorrectly argues that a defendant must have actual notice of his trial date in order to waive his right to presence.

The Sixth Amendment does not require that a defendant have actual notice of his trial date in order to waive his right to presence. United States v. Mera, 921 F.2d 18, 20–21 (2d Cir. 1990). Likewise, Rule 16, by its terms, does not require that a defendant have actual notice of his trial date. Rather, the rule requires only that the defendant (1) received notice of his right to be present; and (2) was warned that the trial would proceed in his absence should he fail to attend. Koontz, 368 S.C. at 547, 629 S.E.2d at 689.

"Although the waiver of a constitutional right must be 'knowing' and 'voluntary,' a defendant's **intentional absence** from criminal proceedings, when he is aware that he is the subject of such proceedings, may be tantamount to a voluntary waiver of his right to be present at trial." United States v. Mera, 921 F.2d 18, 20 (2d Cir. 1990) (emphasis added). This is true even if the defendant does not have actual knowledge of his trial date. "[A]n accused who **does not know of and fails to appear at** a proceeding against him may be found to have waived his right to be present there if the record [demonstrates that] criminal proceedings commenced in his presence, that he absconded knowing of his right to attend future proceedings, and that his disappearance has made it impossible to contact him with reference to these [later] proceedings." Fermin v. State, 975 P.2d 61, 66 (Alaska Ct.

App. 1999) (emphasis added) (quoting State v. Cook, 115 Ariz. 146, 149, 564 P.2d 97, 100 (Ct. App. 1977), supplemented, 118 Ariz. 154, 575 P.2d 353 (Ct. App. 1978), and overruled on other grounds by State v. Fettis, 136 Ariz. 58, 664 P.2d 208 (1983)). Thus, a defendant may, by conduct, waive his right to presence by purposefully avoiding actual notice of his trial date.

The Second Circuit Court of Appeals explained the basis for this rule in United States v. Mera, 921 F.2d 18, 20 (2d Cir. 1990). In that case, the defendant was charged with drug crimes, arraigned, and remanded into custody. Mera, 921 F.2d at 19. Following a bond reduction hearing, Mera was accidentally released from custody and fled the country. Id. Even though a tentative trial date had been set, Mera's attorney told the court Mera was not aware of the date, but Mera's mother-in-law testified that she heard Mera discussing the trial date with a co-defendant. Id. The trial court found Mera had notice of the trial date, but held in the alternative that Mera's trial could proceed in his absence, regardless of whether Mera had actual knowledge of the date. Mera, 921 F.2d at 19–20.

The court affirmed the trial court's finding "that appellant's waiver was knowing and voluntary regardless of whether appellant knew the trial date . . . ." Mera, 921 F.2d at 20. Citing the precedent of United States v. Tortora, 464 F.2d. 1202, the court explained:

> Although Tortora factored the defendant's actual knowledge of the trial date into its finding that the defendant had waived his right to be present at trial . . . such knowledge was not a prerequisite for the court's ruling. While a defendant cannot knowingly waive his right to be present at trial unless he has notice of the proceedings against him, Tortora and its progeny establish that a defendant gains such

> knowledge from pleading to the charges at arraignment. We reject appellant's reading of Tortora because knowledge of the trial date does not provide meaningful notice as to the nature of the proceedings against the defendant beyond the notice that the defendant gains at arraignment. **Appellant's interpretation therefore undercuts the rationale of Tortora by allowing a defendant who, by chance or plan, is ignorant of the trial date to determine unilaterally when, or indeed if, he will stand trial.**

Mera, 921 F.2d 18, 20–21 (2d Cir. 1990) (internal citations omitted) (emphasis added). See also Fermin v. State, 975 P.2d 61, 65 (Alaska Ct. App. 1999) ("The question is whether Fermin knowingly stayed away from the remand hearing. Obviously, if Fermin knew of the remand hearing and the date it was to occur, it would be easier to prove that he was knowingly absent from that hearing. But courts have found knowing waivers of the right to be present **even when an absconding defendant did not know for certain that a particular judicial proceeding would be held.**") (emphasis added). These cases establish that a defendant may knowingly waive his right to presence by intentionally avoiding the State's attempts to give him actual notice of his trial date.

The Ninth Circuit Court of Appeals came to the same conclusion in Brewer v. Raines, 670 F.2d 117 (9th Cir. 1982). Citing the United States Supreme Court's decision in Diaz v. United States, 223 U.S. 442 (1912), the court rejected the argument that ignorance of a trial date precludes a waiver finding. The court explained:

> The record shows that the petitioner was informed of his original trial date and that his trial could be held in absentia if he voluntarily failed to appear. This notice was sufficient to evoke a knowledgeable waiver of petitioner's right to be present. Brewer's failure to know of the continued dates of his trial and his date of sentencing is directly attributable to his

> failure to keep in contact with the court and his attorney. **A defendant cannot be allowed to keep himself deliberately ignorant and then complain about his lack of knowledge.**

Brewer, 670 F.2d at 119 (emphasis added).

The same result was reached in State v. Goode, 299 S.C. 479, 385 S.E.2d 844 (1989), although Goode conceded the issue on appeal. In that case, Goode was arrested for breaking into motor vehicles and informed via his bond paperwork that he had the had the right to presence at his trial and that he could be tried in his absence if he did not appear. Goode, 299 S.C. at 480, 385 S.E.2d at 845. Goode failed to appear for his initial court date, and a bench warrant was issued for his arrest. A grand jury subsequently indicted him for both breaking into motor vehicles **and** grand larceny. Goode, 299 S.C. at 481, 385 S.E.2d at 845. Goode was tried in his absence six months after the court date for which he was summoned, meaning he did not have actual notice of the trial date. Goode, 299 S.C. at 481, 385 S.E.2d at 845. He was convicted of both crimes.

Goode challenged both of his convictions on appeal. The Supreme Court held Good's right to presence was violated when he was tried for grand larceny, a charge for which he had never been given notice, and for which he had not been arrested or arraigned. Goode, 299 S.C. at 482, 385 S.E.2d at 846. However, Goode conceded that notice was sufficient for his breaking into motor vehicles charge, the charge for which he had originally been arrested. The Supreme Court noted that Goode received notice of his right to presence for his trial on that charge via his bond paperwork, and the opinion strongly suggests the court believed his right to

presence was not violated as to that charge even though Goode did not have actual notice of his trial date. Goode, 299 S.C. at 482, 385 S.E.2d at 846 ("The bond form only provided Goode with notice of the charge for breaking into a motor vehicle and that he would be tried in his absence if he failed to appear for his trial on that particular charge. This does not suffice as adequate notice for Goode's trial of a separate crime, grand larceny, where Goode had no warning that he faced prosecution for that offense.").

In State v. Johnson, 213 S.C. 241, 49 S.E.2d 6 (1948) (overruled on other grounds by State v. Jackson, 301 S.C. 49, 389 S.E.2d 654 (1990)), the Supreme Court explained the duty of criminal defendants to appear at subsequent terms of court if their case is not disposed of at the term for which they are originally summoned. Johnson was tried in his absence, even though his attorney apparently had not informed him of that term of court. Johnson, 213 S.C. at 244, 49 S.E.2d at 7. The court affirmed the denial of Johnson's motion for a new trial, explaining:

> If a defendant who is recognized to appear at the next ensuing term of Court was under no further duty to appear after the first term of Court if fortuitously his case was not reached at such first term, a chaotic condition of the enforcement of the criminal laws would forthwith result as respects a great number of cases. No notice to defendants or their counsel is necessary but it is their duty to attend all terms of Court in which they are interested, they having statutory notice of the time of the holding of such Courts.

Id. Even though the Johnson court did not engage in the type of waiver analysis now required by Rule 16, it demonstrates that "actual notice" has not historically been required by South Carolina courts in order to proceed with trial in absentia. See also State v. Cain, 277 S.C. 210, 210, 284 S.E.2d 779, 779 (1981) (per curiam)

(finding waiver of the right to counsel by conduct and explaining "appellant was released on a general appearance bond and was represented by counsel at a preliminary hearing. Both the appellant and his attorney knew the case was coming up for trial. The appellant knew he had a duty to stay in touch with his attorney and with the court").

In other cases, South Carolina appellate courts have affirmed the rationale for the rule enunciated in Mera, Brewer, and Fermin. For example, in State v. Holloway the Supreme Court explained:

> A person charged with crime is required to appear at the time set for trial, and he can not be permitted to absent himself for any reason which he chooses. . . . Certainly, prejudice to the State appears when a defendant, without excuse, fails to appear at the time set for trial, thereby obstructing and delaying the orderly administration of justice.

State v. Holloway, 262 S.C. 552, 557, 206 S.E.2d 822, 824 (1974). In Ellis v. State, the Supreme Court wrote:

> The deliberate absence of a defendant who knows that he stands accused in a criminal case and that his trial will begin during a specific period of time indicates nothing less than an intention to obstruct the orderly processes of justice. No defendant has a unilateral right to set the time or circumstances under which he will be tried. The public interest demands that criminal prosecutions be prosecuted with dispatch.

Ellis v. State, 267 S.C. 257, 261, 227 S.E.2d 304, 306 (1976).

At the trial of this case, the State relied on State v. Fairey, 374 S.C. 92, 646 S.E.2d 445 (Ct. App. 2007). Although the case does not present identical facts, it is instructive. In that case, Fairey failed to communicate with or pay his attorney, and his attorney was relieved as counsel. As a pro se defendant, he gave multiple addresses at which the court could reach him to inform him of his trial date. The

court mailed his trial summons to the permanent address he had provided, but not to an additional "temporary" address. Fairey, 374 S.C. at 98, 646 S.E.2d at 448. This Court held Fairey had adequate notice because a summons was mailed to the address he provided, and was not returned as undeliverable. Of course, this fact distinguishes Fairey from this case because Goff's summons was returned as undeliverable, meaning the State could not rely on the legal presumption that Goff received the summons. See State v. Langston, 275 S.C. 439, 441, 272 S.E.2d 436, 437 (1980) (explaining "the mailing of a properly stamped and addressed letter which is not returned by the postal authorities gives rise to a rebuttable presumption that the letter was received by the addressee in the due course of mail"). However, the Fairey court's waiver analysis is on point. This Court held Fairey waived his right to counsel by conduct. It explained:

> Fairey also engaged in delay tactics. He moved throughout the country, making service and notice difficult for the solicitor. In the instances the solicitor was able to track Fairey's whereabouts and serve notice, Fairey made motions to continue, based on the inconvenience of appearing in South Carolina on the noticed dates. The solicitor agreed to Fairey's motions and continuances were granted. When the solicitor sent Fairey a certified copy of his indictment, a consent order for a personal recognizance bond and an acknowledgement for the receipt of the indictment, Fairey failed to sign and return any of the items. Fairey's tactics further delayed the case and required the aforementioned items be addressed at a later hearing in March 2003. Based on Fairey's actions, we find Fairey engaged in deliberate and dilatory conduct sufficient to waive his right to counsel.

Fairey, 374 S.C. at 106, 646 S.E.2d at 451–52. Thus, while this portion of the Fairey opinion involved the waiver of the right to counsel instead of the waiver of

the right to presence, it stands for the proposition that a defendant may "knowingly and voluntarily" waive a constitutional right through dilatory conduct.

These cases stand in stark contrast to cases where the defendant was denied notice of his trial date through no fault of his own and tried in absentia. In State v. Hewitt, the defendant, who could not read or write, was not informed of his trial date or a change in venue. Likewise, his attorney was not notified. After speaking with the solicitor, his attorney believed the case was being held in abeyance and that it would not be submitted to the grand jury. State v. Hewitt, 153 S.C. 365, 150 S.E. 800, 800 (1929). The only notice was the publication of the trial roster, which Hewitt could not read. The Supreme Court held Hewitt had not knowingly waived his right to presence and reversed his conviction.

In State v. Simmons, the defendant's charges were dismissed at a preliminary hearing and he was subsequently indicted by a grand jury. State v. Simmons, 279 S.C. 165, 166, 303 S.E.2d 857, 858 (1983). There was no evidence the defendant received notice of the court date stemming from these indictments. The trial court made no findings of willful conduct, and the defendants were not represented. The Supreme Court held the record insufficient to show Simmons had adequate notice of his trial date in order to waive his right to presence by conduct. See also State v. Green, 269 S.C. 657, 659–60, 239 S.E.2d 485, 486 (1977) ("Although it appears from the record that Green may have possibly received notice of the charges and the court term in which he was to be tried through his attorney, the parties agree, and have so stipulated, that no arrest warrant had ever been

served on appellant, no legal or lawful authority had ever advised the defendant that he was going to be charged or that he had been charged with escape and resisting arrest. Although the appellant was out on an appeal bond in his first case, he had never been arraigned for the purpose of setting a bond in the second case.").

Goff cites State v. Wrapp, 421 S.C. 531, 808 S.E.2d 821 (Ct.App.2017), for the proposition that actual notice of the specific trial date is required to support a finding that a defendant has waived his right to presence. In that case, Wrapp failed to show up for trial, defense counsel told the court that he did not know why Wrapp was absent, and it was unclear whether Wrapp had actual notice of his specific trial date. Wrapp, 421 S.C. at 534, 808 S.E.2d at 822. Basing its decision on Rule 16, this Court held "the circuit court erred in trying Wrapp in absentia **without making specific findings** that Wrapp (1) received notice of his right to present, and necessarily, of the term of court for which he needed to be present, and (2) was warned he would be tried in absentia if he failed to attend." Wrapp, 421 S.C. at 536, 808 S.E.2d at 823 (emphasis added). The court cited to State v. Ritch, 292 S.C. 75, 76, 354 S.E.2d 909, 909 (1987), another case where the Supreme Court reversed a trial in absentia based on the trial court's failure to make the specific findings required by Rule 16.

The court then wrote:

> In addition to the circuit court's failure to make the requisite factual findings, the record is devoid of any fact indicating Wrapp had actual notice of the term of court in which his trial would occur. . . . It seems logical that for one to voluntarily fail to attend trial or otherwise waive his trial appearance, one must actually know when the trial is to occur.

Wrapp, 421 S.C. at 536–37, 808 S.E.2d at 824.

This statement is not binding on this Court because it was made in dicta. Because the court had already found error in the trial court's failure to make specific findings, the statement about actual notice was not necessary to the Court's decision, and is not binding precedent. See Gordon v. Lancaster, 425 S.C. 386, 395, 823 S.E.2d 173, 177 (2018) (Few, J., dissenting) (citing Nash v. Tindall Corp., 375 S.C. 36, 40-41, 650 S.E.2d 81, 83 (Ct. App. 2007) (explaining dictum is language in an opinion that is "not necessary to the decision of the case. . . . Dictum is not the law"); see also Hampton v. Richland Cnty. Council, 296 S.C. 72, 72, 370 S.E.2d 714, 714 (1988) (per curiam) (disregarding as dicta language that was "clearly unnecessary to a resolution of the issue"). The equivocal phrasing of this passage—that it "seems logical" that actual notice is required to support a waiver of the right to presence—is far from the type of definitive statement of law that should bind this court.

Furthermore, such a rule would seriously undermine the important principles enunciated in Ellis, Holloway, Mera, Brewer, and Fermin: that a defendant should not be allowed to thwart the administration of justice through willful avoidance of process. As these cases explain, actual notice cannot be required in all cases. See Mera, 921 F.2d at 21 ("Appellant's interpretation [would allow] a defendant who, by chance or plan, is ignorant of the trial date to determine unilaterally when, or indeed if, he will stand trial."). Such a rule of law would allow a criminal defendant to indefinitely stymie the administration of justice until

prosecution is no longer possible, e.g. due to the death of witnesses. That the Wrapp court did not consider these principles shows the danger in treating statements made in dicta as binding precedent.

The Wrapp court cited as authority the following language from State v. Ravenell, 387 S.C. 449, 692 S.E.2d 554 (Ct.App.2010): "[N]otice of the term of court in which a defendant will be tried is sufficient notice to enable the defendant to make an effective waiver of his right to be present at his trial." Wrapp, 421 S.C. at 536, 808 S.E.2d at 824. The Wrapp court seemed to be asserting that actual notice of the term of court was **required** to find waiver. However, the language in Ravenell was actually expressing that notice of the term of court was **sufficient** to show notice. See Mera, 921 F.2d at 20 ("Although Tortora factored the defendant's actual knowledge of the trial date into its finding that the defendant had waived his right to be present at trial, **such knowledge was not a prerequisite** for the court's ruling") (emphasis added) (discussing United States v. Tortora, 464 F.2d 1202, 1209 (2d Cir. 1972)). With the arguable exception of Wrapp, no South Carolina case holds that actual notice of a specific trial date is a prerequisite for a waiver finding.

The trial court in this case made the factual findings required by Rule 16. The evidence supports its findings that Goff knew of his right to presence at his trial and that trial could proceed without him if he failed to appear, and that Goff knowingly and voluntarily waived his right to presence by his conduct. This Court should affirm.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that the Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled,"Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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