STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Oconee County

Honorable R. Scott Sprouse, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JEREMY DAVID LARKIN,

APPELLANT

APPELLATE CASE NO. 2025-001481

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court reversibly erred by refusing to grant appellant's motion for a continuance which allowed appellant to be tried *in absentia* where he did not receive actual notice of his trial date, and thus, did not voluntarily waive his right to be present and where counsel indicated that appellant's testimony was critical for appellant to present a defense?

STATEMENT OF THE CASE

In December of 2021, appellant was indicted for trafficking methamphetamine more than 10 grams but less than 28 grams, first offense, possession of a controlled substance Schedule I-IV, first offense, and possession of a weapon during commission of a violent crime. R. *(Indictments). On March 7, 2023,[1] appellant's case was called to trial before the Honorable R.S. Sprouse and a jury. Tr. 1. Christopher Becco prosecuted the case for the state and Suzanne Earle represented appellant. Tr. 2. Appellant was tried in his absence. Tr. 7, ll. 4-6. The jury ultimately found appellant guilty as indicted. Tr. 145, l. 15 – 146, l. 18. Thereafter, on July 8, 2025, the Honorable Jessica Salvini held a sentencing hearing. Sentencing Tr. 1. Blair Stoudemire represented the state and Jason Alderman represented appellant. Sentencing Tr. 2. Judge Salvini imposed the sealed sentence dated March 7, 2023, of seven years imprisonment, and published the sentence. Sentencing Tr. 3, l. 20 – 4, l. 5; 4, l. 14 – 5, l. 16. Appellant timely filed a notice of appeal. R *(Notice of appeal).

This brief follows.

[1] Jury qualification occurred on July 6, 2023. It does not appear from the record that appellant was present for jury qualification.

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." *State v. Ravenell*, 387 S.C. 449, 454, 692 S.E.2d 554, 557 (Ct. App. 2010) (citing *State v. Banda*, 371 S.C. 245, 251, 639 S.E.2d 36, 39 (2006)). "An appellate court is bound by the trial court's factual findings unless they are clearly erroneous." *Id.* The denial of a motion for continuance will not be disturbed absent an abuse of discretion. *Id.* at 455, 692 S.E.2d at 557.

ARGUMENT

The trial court reversibly erred by refusing to grant appellant's motion for a continuance which allowed appellant to be tried *in absentia* where he did not receive actual notice of his trial date, and thus, did not voluntarily waive his right to be present and where counsel indicated that appellant's testimony was critical for appellant to present a defense.

Relevant facts

Motion for continuance

When appellant's case was called to trial on March 7, 2023, the trial court noted that appellant was not present. Tr. 4, ll. 2-8. The trial court inquired whether defense counsel had knowledge of appellant's whereabouts, and defense counsel replied that efforts had been made to find appellant. Tr. 4, ll. 8-11. Specifically, defense counsel informed the court that she sent their investigator to the address they had for appellant, and the home appeared to be abandoned. Tr. 4, ll. 11-14. She made effort to contact the bondsman for appellant's two separate bonds, noting that one was unavailable to provide information due to her own incarceration and the other could not provide information about appellant's bond because appellant's bond was one of the underwritten bonds he was "trying his best to keep track of." Tr. 4, l. 15 – 5, l. 5. Defense counsel also provided that appellant had not changed his address or contact information with the public defender's office. Tr. 5, ll. 6-8. Defense counsel further explained that appellant had appeared on numerous occasions but that he did not appear on November 30 which resulted in Judge McIntosh issuing a bench warrant for his arrest. Tr. 5, ll. 9-12. Defense counsel thus moved for a continuance and argued that "[t]he defense in this case depends entirely on [appellant's] testimony, and without him present it [was] not possible . . . to present a defense."

Tr. 5, ll. 13-16. Defense counsel noted that once appellant was picked up on the bench warrant then appellant would be available for trial. Tr. 5, ll. 16-18.

The state responded that its understanding was that appellant appeared in June and August, at which time an offer was extended. Tr. 5, ll. 20-23. The state continued that in November a bench warrant was issued, however, an offer was made that appellant did not accept when he did not show up. Tr. 6, ll. 1-4. The court requested a copy of the bond and read the paperwork,

> I am looking at the bond, which is a 5,000-dollar surety bond and there is a signature by the defendant on September 7th 2021, in which he acknowledges by his signature, 'I understand if I violate any condition of this order a warrant for my arrest will be issued. I understand and have been informed that I have the right of interrogation, to be present at trial, and should I fail to attend, the court trial shall proceed in my absence. If I fail to appear before the Court as required, a warrant will be issued for my arrest.'

Tr. 6, ll. 6-17. The court then stated,

> The Court is not unsympathetic to your situation and it certainly puts a defense attorney in a difficult situation, if a client does not cooperate.
>
> However, Mr. Larkin, this case is a 2021 case and it's been placed in the trial docket in the normal course of scheduling and he had notice, and you made a diligent effort to attempt to locate him, both through correspondence and sending an investigator. And if he did not change his address or give you a place where you could find him, that's entirely his responsibility. So, I'm going to deny your request for a continuance. And the case will proceed.

Tr. 6, l. 18 – 7, l. 6.

Trial

Brandon David O'Kelley, an officer with the Oconee County Sheriff's Department, testified that on September 5, 2021, he was on routine patrol in the area of Salem, South Carolina. Tr. 49, ll. 10-11. While he was at a gas station, he noticed a driver "[b]eing very

suspicious in his activity." Tr. 49, ll. 10-16. He pulled onto the Highway behind the driver and ran his license plate, which came back to a Honda rather than the Acura the plate was displayed on. Tr. 49, ll. 17-20. O'Kelley initiated his blue lights for a traffic stop based off an improperly licensed vehicle. Tr. 49, ll. 20-22. O'Kelley made contact with appellant and learned that appellant was driving under suspension. Tr. 50, ll. 6-12. He noticed a firearm lying across the backseat of the car "in plain view through the window." Tr. 50, ll. 20-24. He informed appellant that he was being detained pending verification of his suspension status. Tr. 51, ll. 2-9.

O'Kelley determined that appellant would be placed under custodial arrest. Tr. 52, ll. 2-4. Appellant was searched. Tr. 52, ll. 7-12. An unlabeled pill bottle with 29 pills of "Clonazepam or Clonopin" was recovered. Tr. 52, ll. 15-21.[2] Because the car was not registered, it could not be allowed on the roadway. Tr. 57, ll. 2-4. O'Kelley testified that he had contacted a wrecker service through dispatch and conducted an inventory of the car, "per department policy," before it was taken by a tow truck. Tr. 57, ll. 4-8. While conducting the search of appellant's car, O'Kelley recovered a rolled up bag of a crystal substance under from the driver's side visor. Tr. 57, ll. 11-14. He believed the substance was methamphetamine. Tr. 57, ll. 14-15.[3] Thereafter, both parties rested. Tr. 109, ll. 17-18; 114, ll. 9-10.

The jury found appellant guilty as indicted. Tr. 145, l. 15 – 146, l. 18. On July 8, 2025, the Honorable Jessica Salvini held a sentencing hearing. Sentencing Tr. 1. Judge Salvini imposed the sealed sentence dated March 7, 2023, which was a total sentence of seven years imprisonment, and published the sentence. Sentencing Tr. 3, l. 20 – 4, l.5; 4, l. 14 – 5, l. 16.

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[2] Meredith Langford, a forensic chemist, later testified that she conducted an analysis which revealed that the pills were Clonazepam, a schedule four controlled substance. Tr. 105, ll. 17-23.

[3] The forensic chemist testified that the crystal substance was 12.57 grams of methamphetamine. Tr. 105, ll. 1-7.

Discussion

The trial court erred by refusing to grant appellant's motion for a continuance because nothing in the record supports that appellant received actual notice of the trial, or the term of court which his case would be tried during, such that he voluntarily waived his presence. Accordingly, the trial court improperly allowed the case to proceed *in absentia.*

"It is well established that, although the Sixth Amendment of the United States Constitution guarantees the right of an accused to be present at every stage of his trial, this right may be waived, and a defendant may be tried in his absence." *Ravenell*, 387 S.C. at 455, 692 S.E.2d at 557; *see also United States v. Lawrence*, 161 F.3d 250, 255 (4th Cir. 1998) (explaining that the right of a criminal defendant to be present at his own trial is beyond dispute). However, "courts indulge *every reasonable presumption against waiver* of fundamental constitutional rights and . . . *do not presume acquiescence* in the loss of fundamental rights." *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938) (internal quotations omitted) (emphasis added). Courts have recognized that a "wavier is ordinarily an intentional relinquishment or abandonment of a known right or privilege." *Id.*

In determining whether there has been a valid, intelligent wavier of a constitutionally guaranteed right, courts consider the "particular facts and circumstances surrounding that case, including the background, experience, and conduct of the accused." *Id.* Importantly, "[a] defendant's knowing and voluntary waiver of a . . . constitutional right *must be established by a complete record*; and may be accomplished by colloquy between the court and the defendant, between the court and defendant's counsel, or both." *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993) (emphasis added).

Before a defendant may be tried *in absentia,* the trial court must first determine that the defendant voluntarily waived his right to be present as his trial. Additionally, "[t]he judge must

make findings of fact on the record that the defendant (1) received notice of his right to be present and (2) was warned he would be tried in his absence should he fail to attend." *State v. Wrapp*, 421 S.C. 531, 535, 808 S.E.2d 821 (Ct. App. 2017). The trial court's duty to determine a voluntary waiver of the right to be present is also contained in Rule 16 of the South Carolina Rules of Criminal Procedure:

> 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.

In *State v. Ravenell*, this Court determined that Ravenell voluntarily waived his right to be present at trial and was thus properly tried *in absentia*. 387 S.C. at 457, 692 S.E.2d at 558. There, Ravenell was present when his case was called to trial, challenged the composition of the jury and moved for a continuance on that ground, which resulted in a delay in the start of trial until 10:00 a.m. the next day. *Id.* at 452-453, 692 S.E.2d at 557. The following day, Ravenell failed to appear for trial and his counsel "acknowledged the need to go forward with this trial, whether Ravenell was there or not, and that Ravenell obviously had opted not to be there." *Id.* at 453, 692 S.E.2d at 556 (internal quotations and alterations omitted). Despite counsel's statements, counsel requested a continuance until he could locate his client. *Id.* The trial court found that Ravenell was given notice that the trial would proceed without him and that he would be tried *in absentia* if he failed to appear. *Id.* Moreover, the state indicated to the trial court that Ravenell had been noticed by subpoena when his trial was taking place and that he was to appear during that term of court. *Id.* Further, the trial court took notice of the bond signed by Ravenell. *Id.*

This Court explained that Ravenell clearly received notice of his right to be present at trial as the record showed that he was subpoenaed to appear for that week of court. *Id.* at 457, 692 S.E.2d

at 558. Moreover, this Court noted that the trial court made uncontested findings that Ravenell had notice of his right to be present specifically from the warnings the court provided when Ravenell was permitted to remain on bond. *Id.* In addition, this Court determined that "the very fact that Ravenell was present for the first day of trial when his jury was drawn indicates Ravenell had notice of his right to appear." *Id.* This Court continued that the record was clear that Ravenell had been specifically informed that if he did not appear the following day, the trial would go forward without him. *Id.* This Court pointed to Ravenell's bond form which also informed Ravenell that he could be tried *in absentia* if he failed to appear. *Id.* Finally, this Court explained that despite Ravenell's arguments on appeal, "counsel did not contest the trial judge's recollection of his discussion with Ravenell but implicitly accepted the judge's rendition of his discussion with Ravenell." *Id.* Accordingly, this Court held that the trial judge committed no abuse of discretion by denying Ravenell's motion for a continuance. *Id.* at 459, 692 S.E.2d at 559.

In *State v. Wrapp*, 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 be 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." 421 S.C. at 536, 808 S.E.2d at 823. There, Wrapp was arrested on October 17, 2023, and on October 18, 2013, signed bond paperwork which provided,

> [i]f no disposition is made during that term, the defendant shall appear and remain throughout each succeeding term of court until final disposition is made of his case. The paperwork also stated, I understand and have been informed that I have a right and obligation to be present at trial and should I fail to attend the court, the trial will proceed in my absence.

Id. at 533, 808 S.E.2d at 822 (internal quotations omitted). A continuance was granted on July 14, 2014, and on September 29, 2014, Wrapp's case was re-called for trial. *Id.* at 534, 808 S.E.2d at 833. At that time, counsel moved for a continuance because Wrapp was not present

arguing that he did not know if his absence was voluntary or involuntary. *Id.* The state responded that following the July 2014 continuance it had told Wrapp the case would be called for trial the "next time we could get to it." *Id.* The trial court noted that a bench warrant had been issued for Wrapp and counsel indicated that an investigatory was looking for Wrapp. *Id.* The trial court thus ruled,

> [T]he difficult thing is you led off with this observation that is we don't know whether his absence here today is a voluntary or not voluntary absence. I don't know what his situation is or why he's not here. But it does appear that he was noticed to be here. For whatever reason[,] he's not here. I don't really have a valid reason. I don't see any purpose that would be served in continuing the case . . .. [I]f he makes himself unavailable, that's—I just don't know that you can make yourself unavailable and then use that as a basis for getting a continuance granted . . .. So I'm going to respectfully deny the motion for a continuance. I hope your investigator finds him this afternoon or this evening and then he can show up and be of assistance to you. But we're going to go ahead and proceed whether he's present or not.

Id.

This Court determined that in considering the trial court's ruling, "[e]ven if we were to construe this as a finding that Wrapp received notice of his right to be present, there was not finding that Wrapp was informed he could be tried *in absentia*." *Id.* at 536, 808 S.E.2d at 823. This Court thus concluded that Wrapp could not be said to have voluntarily waived his right to be present. *Id.* Moreover, this Court explained that "[i]n 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." *Id.* at 824, 808 S.E.2d at 536. Specifically, this Court noted that neither the state's comments that the case would be tried the next time the state got to it nor the language from the bond form identified the term of court Wrapp would be tried. *Id.* Importantly, this Court recognized that "neither party presented any direct evidence—such as a subpoena or a

statement from trial counsel—indicating Wrapp had notice of the term of court in which his case would be tried." *Id.* Therefore, this Court concluded that "[i]t 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." *Id.*

In appellant's case, the record does not contain any evidence that appellant received actual notice of either the date of his trial or the term of court in which he would be tried. Specifically, the trial court based its reasoning for denying appellant's motion for a continuance largely on the language contained in appellant's September 7, 2021, bond paperwork. Tr. 6, l. 6 – 7, l. 6. In doing so, the court merely relied on information that appellant had been informed that he had the right to be present at trial, and, should he fail to attend, the trial would proceed in his absence. Tr. 6, ll. 6-17. However, absent from the bond paperwork was the date of appellant's trial or the term of court during which his case would be called to trial. Tr. 6, ll. 6-17. Further, as in *Wrapp*, neither party presented direct evidence indicating that appellant had notice of the term of court in which his case would be tried. 421 S.C. at 536, 808 S.E.2d at 824; *see* Tr. 4, l. 2 – 7, l. 6. The record does not contain information that appellant had been subpoenaed or a statement from either the state or appellant's trial counsel that appellant had been expressly informed as to the date or term of court of his trial. Tr. 4, l. 2 – 7, l. 6. Instead, the trial court pointed to the general fact that appellant's case had been placed on the trial docket in the normal course of scheduling. Tr. 6, l. 18 – 7, l. 6. Such a finding is not sufficient to demonstrate that appellant had actual notice.

Further, appellant's case is distinguishable from *Ravenell*, given that appellant's record contains no evidence concerning whether appellant was notified by subpoena that his case would be tried during a particular term of court whereas in *Ravenell* the record demonstrated that notice was received of the right to be present at trial from the subpoena that provided the week of court for

which Ravenell was required to appear. *Compare* Tr. 4, l. 2 – 7, l. 6, *with Ravenell*, 387 S.C. at 457, 692 S.E.2d at 558. While both trial counsel and the state acknowledged that appellant had appeared at prior court dates before ultimately a bench warrant was issued the November prior to trial, no representations were made that appellant was informed at those court dates the term of court during which his trial would be held. Tr. 4, l. 2 – 6, l. 4.

Moreover, unlike *Ravenell*, appellant was not present for one day of trial but not the next and trial counsel did not make any statements that appellant "opted" not to be there. *Compare* Tr. 4, l. 2 – 7, l. 6, *with Ravenell*, 387 S.C. at 452-459, 692 S.E.2d at 557-559. Instead, trial counsel informed the court of her efforts to locate appellant and that a bench warrant was issued for appellant in November of the prior year. Tr. 4, l. 8 – 5, l. 18. The trial court was required to make specific findings of fact on the record, however, the trial court merely found that appellant "had notice," relying on the fact that appellant's case was a 2021 case placed on the trial docket in the normal course of scheduling. Tr. 6, l. 18 – 7, l. 6; *Ray*, 310 S.C. at 437, 427 S.E.2d at 174; *Wrapp*, 421 S.C. at 535, 808 S.E.2d at 823. However, this finding cannot constitute a voluntary waiver of appellant's constitutional right to be present at trial when the record is devoid of any fact indicating that appellant had actual notice of the term of court in which his trial would occur. *Wrapp*, 421 S.C. at 538, 808 S.E.2d at 824. Without representations from counsel or direct evidence in the record that appellant received actual notice of the term of court in which he was set to be tried, appellant could not voluntarily waive his presence.

In addition, as trial counsel argued below in support of the motion for a continuance, the defense case relied entirely on appellant's testimony such that it was not possible to present a defense without appellant present. Tr. 5, ll. 13-16. In *State v. Tanner*, 299 S.C. 459, 462, 385 S.E.2d 832, 834 (1989), our Supreme Court not only reiterated the standard of review governing

motions for continuance, but also restated the two primary factors considered when determining whether a motion for continuance is proper: (1) whether there was a showing of any other evidence on behalf of the defendant that could have been produced; and (2) whether any other points on his behalf could have been raised had more time been granted for the purpose of preparing the case for trial. *Id.* (quoting *State v. Squires*, 248 S.C. 239, 244, 149 S.E.2d 601, 603 (1966)). Appellant could demonstrate both prongs as trial counsel posited that appellant's testimony was crucial to the defense case and that evidence could have been raised had the continuance been granted to allow appellant to be present for his trial.

In sum, the trial court erred by denying appellant's motion for a continuance. The trial court improperly relied upon the language from appellant's bond paperwork despite the record lacking evidence, either by way of representation from the parties or subpoena, that appellant had received actual notice of the term of court during which his case would be tried. As this Court recognized in *Wrapp*, "[i]t 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." 421 S.C. at 536, 808 S.E.2d at 824. Accordingly, because the trial court failed to make the requisite specific findings to establish that appellant voluntarily waived his well-established constitutional right to be present at trial, this Court should reverse.

CONCLUSION

Based on the foregoing argument, appellant respectfully requests this Court find the trial court erred in holding appellant's trial *in absentia,* overturn his conviction and sentence, and remand the case to the Oconee County Court of General Sessions for a new trial.

Molly M. Keegan
Appellate Defender

ATTORNEY FOR APPELLANT

This 12th day of May, 2026.