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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FAIRFIELD COUNTY

Court of General Sessions
The Honorable Brian M. Gibbons, Circuit Court Judge

Appellate Case No. 2024-001309

THE STATE,

Respondent,

v.

MERCURY LAMONT WILLIAMSON,

Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF THE ISSUE ON APPEAL

Whether the trial court properly proceeded with trial in absentia where Williamson deliberately failed to appear for the second day of his trial.

STATEMENT OF THE CASE

A Fairfield County grand jury indicted Appellant Mercury Williamson for failure to stop for a blue light. Williamson's case was called for trial on May 24, 2024, before the Honorable Brian M. Gibbons. Williamson moved for a continuance, which was denied. Williamson did not show up for the second day of trial and was tried in his absence. He was sentenced to four years' incarceration, and the sentence was unsealed in his presence on July 29, 2024. This direct appeal follows.

STANDARD OF REVIEW

In criminal cases, the appellate court sits to review errors of law only. An appellate court is bound by the trial court's factual findings unless they are clearly erroneous. State v. Wrapp, 421 S.C. 531, 535, 808 S.E.2d 821, 823 (Ct. App. 2017).

ARGUMENT

The trial court properly proceeded with trial in absentia when Williamson deliberately failed to appear for the second day of his trial.

The trial court properly tried Williamson in his absence when Williamson failed to show up for the second day of his trial. Williamson was warned in writing that he could be tried in his absence if he did not appear and was warned verbally by the trial court that his case was going forward during that term of court one way or another. Williamson deliberately failed to appear, instead calling his attorney and asking her to move for a continuance. He thus waived his right to presence. This Court should affirm.

Williamson initially appeared for trial. The solicitor called his case and indicated Williamson did not want to plead guilty. But Williamson did not seem to want a trial either. Tr.p.7. The solicitor wanted “to make sure he understands . . . that the jury will be here in the morning. We’ll go forward with the trial.” Tr.p.5. Williamson moved for a continuance. The court denied the motion, telling Williamson: “your case is going to trial whether it be you pleading in front of me this week or whether it be a jury trying it or whether it be me trying it without a jury, okay? I mean, those are your options.” Tr.p.8. Williamson responded, “Okay. Right.” Tr.p.9.

The next day, defense counsel informed the court that Williamson was not present. Williamson called the public defender’s office and requested a “continuance due to discovery issues.” Tr.p.28. Counsel acknowledged “we look like we’re getting ready to do a TIA” and moved again for a continuance. Tr.p.28. She

acknowledged “I can’t say he didn’t have notice because we went on the record yesterday.” Tr.p.29. The court asked defense counsel if she had any more argument, and counsel responded: “I believe he should be present to hear the witnesses against him, and to be able to confront them.” Tr.p.29. The court denied the motion for continuance.

Williamson now argues on appeal that he was improperly tried in his absence because he did not have notice that trial would proceed without him if he failed to appear. As an initial matter, this issue is not preserved for review because it was not raised and ruled on by the trial court. Counsel never argued Williamson did not have notice he could be tried in his absence and never argued the trial court improperly failed to find Williamson had been warned. Instead, counsel acknowledged Williamson had notice of trial. Tr.p.30. The trial court’s decision to allow the trial to proceed was not a ruling on the argument Williamson makes on appeal. The trial court’s ruling that trial could go forward “over the defense’s objection” was responsive to counsel’s motion for continuance, which was not based on lack of notice or warning but made in spite of adequate notice. The distinct argument Williamson makes on appeal is not preserved for review. State v. Hopkins, 431 S.C. 560, 569, 848 S.E.2d 368, 372 (Ct. App. 2020) (“To preserve for review an alleged error in admitting evidence, an objection should be sufficiently specific to bring into focus the precise nature of the alleged error so it can be reasonably understood by the trial judge.”).

Even if preserved, Williamson was properly tried in absentia. Williamson clearly had notice of his trial and was explicitly warned by the trial court that his case was going forward one way or another. He deliberately failed to appear. Further, Williamson was warned in writing on his bond form that he would be tried in absentia if he did not appear for trial, a warning he acknowledged with his signature. (Bond form). See City of Aiken v. David Michael Koontz, 368 S.C. 542, 548, 629 S.E.2d 686, 689 (Ct. App. 2006) (explaining bond form gave defendant notice he could be tried in absentia). Even though counsel did not request on-the-record findings about Williamson's notice, the trial noted on the sentencing sheet that Williamson was tried in his absence "after being advised on the record of his trial." (Sentencing sheet). Williamson should not be heard to complain about the lack of specific findings when counsel acknowledged Williamson was "fully aware he needed to be here today," never claimed Williamson was not warned that trial could proceed in his absence (a warning all defendants receive on their bond paperwork), and the trial court explicitly warned Williamson that the case was going forward during that term of court. Tr.p.8, 29. Williamson was aware trial was going forward, and waived his right to presence by conduct. See Ellis v. State, 267 S.C. 257, 261, 227 S.E.2d 304, 306 (1976) ("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."). There is no constitutional violation and no reversible error. This Court should affirm.

CONCLUSION

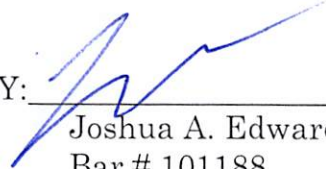
For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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