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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Fairfield County

Honorable Brian M. Gibbons, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MERCURY LAMONT WILLIAMSON,

APPELLANT

APPELLATE CASE NO. 2024-001309

FINAL BRIEF OF APPELLANT

JOANNA K. DELANY
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the court erred in trying Appellant in his absence where the record did not establish Appellant was warned he could be tried in absentia if he failed to appear for trial?

STATEMENT OF THE CASE

On August 17, 2021, a Fairfield County Grand Jury indicted Appellant, Mercury Williamson, for failure to stop for blue light and siren. R. 89-90. Appellant was tried in his absence before the Honorable Brian M. Gibbons and a jury, on May 25, 2022. Kay Boulware represented Appellant. Riley Maxwell and Julie Hall prosecuted the case. R. 1 – 2; R. 12, l. 1. Appellant was convicted as indicted. R. 77, ll. 15-20. He received a sealed sentence for a second or subsequent offense. R. 91; R. 78, l. 18 – 81, l. 17. On July 29, 2024, Appellant reappeared before the court for his sentence to be unsealed, and the court announced a four-year sentence. R. 83; R. 85, l. 7 – 86, l. 4. This appeal follows.

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). "An appellate court is bound by the trial court's factual findings unless they are clearly erroneous." *Id.*

ARGUMENT

The court erred in trying Appellant in his absence where the record did not establish Appellant was warned he could be tried in absentia if he failed to appear for trial.

Relevant facts

At approximately 8:20 a.m. on May 27, 2021, Officer Anderson was in his marked patrol car near the school zone in Winnsboro, where the speed limit was 35 miles per hour. Anderson saw a gray Honda sedan which was going 44 miles per hour according to his radar. Anderson turned on his blue light and siren and tried to make a traffic stop but the Honda kept going. Anderson pursued the Honda, which had a license plate registered to Appellant's mother, for approximately 10 or 11 miles. Another officer, Officer Newton, joined the pursuit. State's Exhibit #1 (Officer Anderson In-Car Camera Video Footage) (on file with this Court); R. 33, l. 18 – 43, l. 12; R. 54, l. 21 – 55, l. 7.

It was not a high-speed chase. The Honda stopped at the residence of Appellant's mother. Anderson and Newton got on either side of the Honda and the Honda pulled up closer to the woods. According to officers, Appellant was the driver and sole motorist in the Honda. Anderson claimed Appellant was wearing a yellowish shirt and got out of the Honda and ran into the wood line, with officers following. A foot chase through the logged woods ensued for about a mile. Newton claimed he never lost sight of the Appellant until he eventually gave up and sat down, whereupon Newton handcuffed him and they made small talk until Anderson arrived. State's Exhibit #1; State's Exhibit #2 (Officer Anderson's Body Camera Footage) (on file with this Court); R. 37, l. 20 – 46, l. 17; R. 55, l. 5 – 58, l. 17.

On May 24, 2022, the parties appeared before the court and the solicitor put on the record that Appellant did not wish to plead guilty and the trial would be going forward the next day.

Defense counsel asked the court for a continuance because Appellant's mother was ill and in the hospital. The court denied the continuance motion and stated the case would be going forward that week, whether it was a trial or a plea. The judge stated the jury would be there at 9:30 the next morning. The court told Appellant to talk to his lawyer about whether he wanted to plead guilty or go to trial. The hearing concluded. R. 5, l. 4 – 10, l. 9.

The next morning, the solicitor called the case. Defense counsel asked for a continuance, noting Appellant was not present and stating Appellant had spoken to her paralegal by phone and asked for a continuance due to "discovery issues." Defense counsel also argued: "I'm going to ask for a continuance if we look like we're getting ready to do a TIA simply because I would like my client present to exercise his Sixth Amendment right[.]" R. 13, ll. 10-24. Counsel continued: "I can't say he didn't have notice because we went on record with that yesterday." R. 14, ll. 1-2. However, while the record from the prior day showed that Appellant was told his trial would start the next day, it did not establish that Appellant was told he could be tried in his absence if he failed to appear. The solicitor opposed the continuance, and stated Appellant was aware he needed to be there that day. R. 14, ll. 6-10.

The judge denied the continuance request, stating "I did go over everything with him yesterday on the record," but asked if the State was seeking to try Appellant in his absence. The solicitor answered affirmatively. The court then asked defense counsel for a response to that, and defense counsel opposed trying Appellant in his absence and argued he had the right to be present and confront the witnesses against him. R. 14, ll. 11-21. The court issued a bench warrant and ruled the "request by the State to try the Defendant in his absence is granted over the Defense's objection." R. 14, l. 11 – 16, l. 5. The trial proceeded and Appellant was convicted as indicted. R. 77, ll. 15-20.

Discussion

Appellant had the right to be present at trial and the court erred by trying him in his absence without evidence of and a finding that Appellant was warned the trial would proceed in his absence if he failed to attend. "A criminal defendant has a constitutional right guaranteed by the Confrontation Clause of the Sixth Amendment to be present at trial." *City of Aiken v. Koontz*, 368 S.C. 542, 546, 629 S.E.2d 686, 688 (Ct. App. 2006). However,

> 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 (emphasis added). "A trial judge must determine a criminal defendant voluntarily waived his right to be present at trial in order to try the case in absentia." *State v. Castineira*, 341 S.C. 619, 623, 535 S.E.2d 449, 451 (Ct. App. 2000), *aff'd*, 351 S.C. 635, 572 S.E.2d 263 (2002). "[T]he trial 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 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.

In *Koontz*, this Court held the "trial court correctly proceeded with a trial in Koontz's absence after making appropriate factual findings on the issue of whether Koontz had notice of the trial and whether he was warned the trial would proceed in his absence." *Id.*, 368 S.C. at 549, 629 S.E.2d at 690. In contrast, in *State v. Jackson*, 288 S.C. 94, 96, 341 S.E.2d 375, 375 (1986), the Supreme Court held that where the record did not show the trial judge made findings of fact regarding 1) whether the appellant had received notice of her right to be present, and 2) whether the appellant had been warned that the trial would proceed in her absence upon a failure

to attend court, this was error which required reversal. Similarly, in *State v. Wrapp*, 421 S.C. 531, 536, 808 S.E.2d 821, 823 (Ct. App. 2017), this Court concluded the circuit court erred in trying the defendant in absentia without making specific findings that Wrapp (1) received notice of his right to be present, and 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. Of note, "there was no finding that Wrapp was informed he could be tried in absentia." *Id. See State v. Ritch*, 292 S.C. 75, 76, 354 S.E.2d 909, 909 (1987) (remanding for new trial where trial judge failed to find appellant received notice of his right to be present at trial and a warning he would be tried in his absence should he fail to attend); *State v. Fleming*, 287 S.C. 268, 269, 335 S.E.2d 814, 814 (Ct. App. 1985) (remanded for new trial where judge did not make a finding of fact that Fleming had received notice of his right to be present for the trial and that Fleming was given a warning that he would be tried in his absence should he fail to attend court).

The record indicates Appellant had notice of his right to be present. *Cf. State v. Ravenell*, 387 S.C. 449, 457, 692 S.E.2d 554, 558 (Ct. App. 2010) (fact that Ravenell was present for first day of trial when his jury was drawn indicates he had notice of his right to appear). However, it did not establish he had been warned he could be tried in his absence if he did not appear. Defense counsel properly asserted Appellant's Sixth Amendment right to be present and opposed a trial in absentia. The trial court erred in trying Appellant in his absence without evidence he knew the trial could proceed without him. *Jackson*, 288 S.C. at 96, 341 S.E.2d at 375; *Wrapp*, 421 S.C. at 536, 808 S.E.2d at 823; Rule 16, SCRCrimP; U.S. Const. amend. VI.

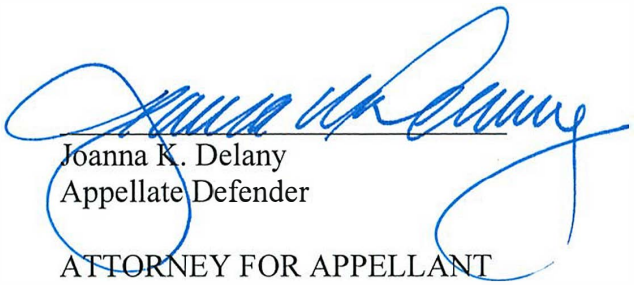
Moreover, this issue is preserved. *See* Jean Hoefer Toal et al., *Appellate Practice in South Carolina* 57 (2d ed. 2002) ("There are four basic requirements to preserving issues at trial for appellate review. The issue must have been (1) raised to and ruled upon by the trial court, (2)

raised by the appellant, (3) raised in a timely manner, and (4) raised to the trial court with sufficient specificity."). Although during her request for a continuance, counsel conceded Appellant had notice "because we went on the record with that yesterday," she obviously referred to him being told to be present. Counsel thereafter opposed a trial in absentia, and the judge ruled the "request to try the Defendant in his absence is granted over the Defense's objection." R. 13, l. 22 – 15, l. 19.

In *State v. Ravenell*, 387 S.C. at 454, 692 S.E.2d at 557, this Court addressed an alleged error in trying the defendant in his absence, where the defendant argued on appeal that the trial judge mistakenly thought he had warned Ravenell about the dangers of not being present, but the record did not reflect this. This Court found it was "arguable" the issue was not preserved since counsel did not object to a trial in absentia and did not assert the defendant had not received notice of his right to be present or a warning the trial would proceed in his absence if he failed to attend. Nevertheless, this Court concluded: "because Ravenell's counsel did move for a continuance, and in light of the fact that the trial judge made findings on the record that Ravenell was given notice the trial would proceed without him and he would be tried in absentia should he fail to appear, we find it proper to address the matter on the merits." *Id.*, 387 S.C. at 456–57, 692 S.E.2d at 558. In this case, Appellant's counsel did object to a trial in absentia, and the record does not show Appellant received a warning he could be tried in his absence. Appellant respectfully requests this Court reach the merits and grant him a new trial.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests this Court reverse his conviction and sentence and remand for a new trial.



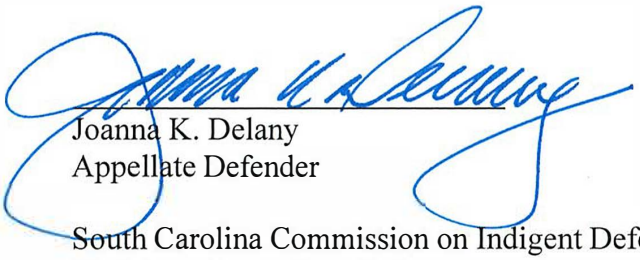
Joanna K. Delany
Appellate Defender

ATTORNEY FOR APPELLANT

This 31st day of August, 2026.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant 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."



Joanna K. Delany
Appellate Defender

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