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Oct 29 2026

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Orangeburg County
Honorable Edgar W. Dickson, Trial Judge
Honorable Kristi F. Curtis, PCR Judge

Appellate Case No. 2025-000344

SHELLY FAULLING,

PETITIONER,

v.

STATE OF SOUTH CAROLINA.,

RESPONDENT.

Petition for Rehearing

Pursuant to Rule 221 of the South Carolina Appellate Court Rules, the State of South Carolina respectfully requests this Court reconsider its opinion reversing the trial conviction of Shelly Faulling and remanding for a new trial. Respondent respectfully submits this Court overlooked the following material facts and points of law:

1. The record is replete with evidence that Faulling had notice of his trial date and that it would proceed in his absence. This Court has overlooked that prior to trial, the parties had an extensive conversation about Faulling's refusal to be transported from the detention center to trial. (App. 44-50). During that conversation, Faulling's attorney—an officer of the Court—relayed that Faulling was aware trial was scheduled for that day but had refused to attend.¹ (App. 27-28). The solicitor—also an officer of the Court—relayed that Faulling had appeared before the trial judge

¹ The Court specifically asked, "And it—had—he is aware that this was—we had a trial scheduled for today. Is that correct?" Counsel replied, "Correct, Your Honor." (App. 45).

on November 20th (less than a month before trial) and was informed that his trial was set for the December 11th term and he could be tried in his absence if he failed to appear.² (App. 47-48).

In reversing this conviction, this Court is elevating form over substance. In the context of the Fifth Amendment's double jeopardy clause, the United States Supreme Court has criticized a lower court for elevating form over substance:

The absence of an explicit finding of 'manifest necessity' appears to have been determinative for the District Court and may have been so for the Court of Appeals. If those courts regarded that omission as critical, they required too much. Since the record provides sufficient justification for the state-court ruling, the failure to explain that ruling more completely does not render it constitutionally defective.

Arizona v. Washington, 434 U.S. 497, 516–17 (1978). Like the lower courts in *Arizona*, the Court of Appeals requires too much. The record here provides sufficient justification for the trial court's denial of the motion to continue. Here, the overwhelming evidence showed Faulling (1) knew his trial was scheduled for that term, (2) knew it would proceed in his absence if he did not attend, and (3) had an opportunity to be transported to trial. Faulling simply refused to get on the bus. By refusing to attend, he waived his right to appear. He should not now be rewarded for this behavior by receiving a new trial. *See State v. Ravenell*, 387 S.C. 449, 456, 692 S.E.2d 554, 558 (Ct. App. 2010) ("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.").

² Because this was a *White* appeal, this Court also had the benefit of the PCR transcript—which contains additional evidence that Faulling was aware of his trial date, aware it could proceed in his absence, and provided transportation that he refused. Specifically, trial counsel testified she advised Faulling that trial could proceed in his absence. (App. 365). Likewise, the solicitor testified that Faulling appeared in court on November 20th and was informed on the record that the case would be set for the December 12th term and if he failed to appear, he would be tried in his absence. (App. 367). The PCR court found the foregoing testimony credible. (App. 9).

2. If the Court believes the findings are insufficient, the appropriate remedy is a remand to allow the trial court to make additional findings—not a reversal of the underlying conviction. *See, e.g., State v. Spears*, 403 S.C. 247, 742 S.E.2d 878 (Ct. App. 2013) (finding appropriate remedy for trial court’s failure to conduct a Rule 403 balancing test to it “remand with instructions for the trial court to conduct an on-the-record balancing test”); *State v. Gray*, 438 S.C. 130, 142, 882 S.E.2d 469, 475 (Ct. App. 2022) (finding trial court erred in not making findings at immunity hearing and remanding for trial court to make specific findings to supports its decision on whether to grant immunity). This is especially true here where the PCR transcript contains additional evidence that Faulling had notice of his trial and that it would proceed in his absence.

3. This Court has reversed this conviction on an unpreserved argument.³ Simply put, Faulling (or counsel) did not ask the trial court to put explicit findings on the record, and this argument should not have been considered by the Court of Appeals for the first time on appeal. Appellant had an opportunity to object if he believed the judge’s factual findings were not sufficient, but he failed to do so. In fact, counsel acquiesced to this ruling by (1) advising the Court that Faulling had notice and (2) not objecting when the court did set forth explicit findings. Based on the context of the on-the-record discussion—which showed a consideration of the relevant factors—it is very likely the judge would have made the requisite findings *had he been asked*. Appellant did not ask, and his conviction should not now be reversed based on the judge’s failure to make specific factual finding that Faulling never asked the trial court to make.⁴ *See State v.*

³ Respondent maintains that the general issue of the court’s denial of the motion to continue based on Faulling’s failure to attend trial is preserved, and the record shows Faulling had notice of his trial date and the fact that it could proceed in his absence. However, the specific issue that the Court of Appeals reversed on—i.e. the trial court’s failure to make explicit factual findings on the record—was not raised at trial *or* the PCR hearing.

⁴ Although *State v. Wrapp*, 421 S.C. 531, 808 S.E.2d 821 (Ct. App. 2017) seems to support that this issue is preserved, it is distinguishable in that the attorney in *Wrapp* “objected to the trial

Patterson, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1992) (“Appellant is limited to the grounds raised at trial.”); *State v. Adams*, 354 S.C. 361, 380, 580 S.E.2d 785, 795 (Ct. App. 2001) (“[A] defendant may not argue one ground below and another on appeal.”); *Ex parte McMillan*, 319 S.C. 331, 335, 461 S.E.2d 43, 45 (1995) (holding that when a party acquiesces to an issue at trial and complains of the issue on appeal, the “issue is procedurally barred”).

Based on the foregoing, Respondent respectfully requests this Court reconsider its opinion reversing Faulling’s trial conviction.

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

DANIELLE DIXON, Bar No. 73999
Assistant Attorney General

s/Danielle Dixon
Danielle Dixon
Assistant Attorney General

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
803-734-3737
ATTORNEYS FOR THE RESPONDENT

This 29th day of October, 2026.

proceeding due to the lack of adequate notice to Wrapp.” *Id.* at 536, 808 S.E.2d at 823. Although trial counsel here moved for a continuance on the basis Faulling refused to attend trial, she did not argue that Faulling did not have notice—in fact, she relayed the very opposite. Unlike *Wrapp*, the record here is replete with evidence that Faulling had notice of the date of trial and that he could be tried in his absence. *Compare State v. Ravenell*, 387 S.C. 449, 456, 692 S.E.2d 554, 558 (Ct. App. 2010) (finding it questionable whether issue was preserved when counsel “never asserted to the trial judge that his client did not receive the requisite notice of his right to be present or a warning that the trial would proceed in his absence if he failed to attend”).

Jensen Helgersen

From: Jensen Helgersen
Sent: Thursday, October 29, 2026 11:31 AM
To: dalexander@sccid.sc.gov; dbast@sccid.sc.gov
Cc: Danielle Dixon; Susan Spencer; firstcircuitpcr
Subject: Shelly T. Faulling v. State | 2025-000344 | Respondent's Petition for Rehearing
Attachments: FAULLING Shelly- Petition for Rehearing (Court of Appeals).pdf

Good afternoon,

Attached for service in the above-referenced case is Respondent's Petition for Rehearing, which will be filed shortly with the Court of Appeals via email filing.

Kindly,

Jensen Helgersen, Legal Assistant
South Carolina Attorney General's Office
Post-Conviction Relief | Post-Adjudication
Office 803-734-3737 | PO Box 11549 | Columbia, SC 29211 | scag.gov

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