

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SEP 30 2015

Appeal from Greenwood County

SC Court of Appeals

Thomas A. Russo, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

STANLEY WRAPP,

APPELLANT

APPELLATE CASE NO. 2015-000909

INITIAL BRIEF OF APPELLANT

BENJAMIN JOHN TRIPP
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err trying Appellant in his absence where he made no specific findings of fact as to whether Appellant had notice of the trial date or whether his absence was voluntary?

STATEMENT OF THE CASE

On February 2, 2014, the Greenwood County Grand Jury indicted Appellant Stanley Lamar Wrapp for driving under suspension and trafficking cocaine base. R. *. On September 29, 2014, Appellant's case proceeded to trial in absentia before The Honorable Frank R. Addy and a jury. Shane Goranson and Patricia Bolen represented Appellant, and Elizabeth White and Micah Black represented the State. Sept. 29, 2014 Tr. 1; Sept. 29, 2014 Tr. 26, lines 16-17. The jury found Appellant guilty as charged, and Judge Addy entered a sealed sentence. Sept. 29, 2014 Tr. 150, lines 5-12; Sept. 29, 2014 Tr. 152, lines 3-9. On March 30, 2015, Appellant appeared before The Honorable Eugene C. Griffith, who unsealed Appellant's sentence of sixty days' incarceration for the driving under suspension charge and twenty years concurrent for the crack cocaine charge. Mar. 30, 2015 Tr. 157; Mar. 30, 2015 Tr. 158, lines 7-12.

ARGUMENT

THE TRIAL JUDGE ERRED IN DENYING THE MOTION TO CONTINUE TRIAL BECAUSE THE RECORD DOES NOT SUPPORT FINDINGS THAT APPELLANT KNOWINGLY AND VOLUNTARILY WAIVED HIS RIGHT TO BE PRESENT.

STATEMENT OF FACTS

The State alleged that October 17, 2013, police officers pulled Appellant over while driving his car knowing his license was suspended. The officers found crack cocaine in his pocket and crack and a scale in the car. Sept. 29, 2014 Tr. 41, line 2—Sept. 29, 2014 Tr. 43, line 3. Prior to trial, counsel for Appellant moved for a continuance, stating that he had no personal knowledge of why Appellant was not present. Sept. 29, 2014 Tr. 26, lines 16-20. In response, Solicitor White told Judge Addy that Appellant's trial was continued on July 14, 2014 so that counsel for Appellant could conduct additional investigation.¹ Sept. 29, 2014 Tr. 27, lines 16-21. She then explained her understanding of Appellant's notice of the second trial date:

We had a conversation right over here in the courtroom after that continuance was granted. I told Mr. Wrapp that his case would be called for trial the next time we could get to it. I had a conversation -- a private attorney, Mr. Andrew Hodges, called me about this case I think about three weeks ago. And I told him it was on the trial docket. I think Mr. Wrapp had gone to him asking him to represent him and Mr. Hodges declined to get involved due to the fact that it was up for trial. But I think there's been adequate notice certainly even directly to Mr. Wrapp that his case was coming up for trial. . . . And so, Your Honor, the State is ready to proceed with trial, and there's already been a continuance on this.

¹ The same attorneys represented the parties at the prior hearing in front of another judge. July 14, 2014 Tr. 1.

Sept. 29, 2014 Tr. 27, line 23— Sept. 29, 2014 Tr. 28, line 17. Trial counsel then responded that the he was not aware whether Mr. Hodges informed Appellant of any trial date. Sept. 29, 2014 Tr. 29, lines 5-10. Judge Addy then commented, “I don’t know what his situation is or why he’s not here. But it does appear that he was noticed here. For whatever reason he’s not here. . . . I just don’t know that you can make yourself unavailable and then use that as a basis for getting a continuance granted.” Sept. 29, 2014 Tr. 29, line 17— Sept. 29, 2014 Tr. 30, line 4. He then denied the motion for a continuance. Sept. 29, 2014 Tr. 30, lines 8-9.

DISCUSSION

Judge Addy erred in denying the motion to continue trial because the record does not support findings that Appellant knowingly and voluntarily waived his right to be present. “[T]he Sixth Amendment of the U.S. Constitution guarantees the right of the accused to be present at every stage of his trial, and is applicable to the States by reason of the Fourteenth Amendment.” *Ellis v. State*, 267 S.C. 257, 260, 227 S.E.2d 304, 305 (1976) (per curiam); *see also State v. Patterson*, 367 S.C. 219, 229, 625 S.E.2d 239, 244 (Ct. App. 2006) (“Apodictically, a criminal defendant has a constitutional right guaranteed by the Confrontation Clause of the Sixth Amendment to be present at trial.”).²

The State has a very stringent burden to prove a valid waiver of this right.

² *See generally Snyder v. Com. of Mass.*, 291 U.S. 97 (1934) (Accused has a right under “Fourteenth Amendment to be present in his own person whenever his presence has a relation, reasonably substantial, to the fullness of his opportunity to defend against the charge,” and “defense may be made easier if the accused is permitted to be present at the examination of jurors or the summing up of counsel, for it will be in his power, if present, to give advice or suggestion or even to supersede his lawyers altogether and conduct the trial himself.”).

[C]ourts indulge every reasonable presumption against waiver of fundamental constitutional rights and . . . do not presume acquiescence in the loss of fundamental rights. A waiver is ordinarily an intentional relinquishment or abandonment of a known right or privilege. The determination of whether there has been an intelligent waiver of right to counsel must depend, in each case, upon the particular facts and circumstances surrounding that case, including the background, experience, and conduct of the accused.

Johnson v. Zerbst, 304 U.S. 458, 464 (1938) (internal quotations omitted). Thus, “[t]he right at issue is the right to be present, and the question becomes whether that right was effectively waived by his voluntary absence.” *Ellis* at 260-61, 227 S.E.2d at 305-306 (quoting *Taylor v. U.S.*, 414 U.S. 17 (1973)). See also *Patterson* at 229, 625 S.E.2d at 244 (“While Rule 16 permits a knowing and intelligent waiver of the right to be present, such a waiver is permitted only in limited circumstances. A trial judge must determine a defendant voluntarily waived his right to be present at trial in order to try the case in absentia.” (internal quotations omitted)).

“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). “The 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. Castineira*, 341 S.C. 619, 623, 535 S.E.2d 449, 451 (Ct. App. 2000).

In this case, Judge Addy never made the required findings of fact to continue the trial in Appellant's absence, nor could the record have supported such findings. First, Judge Addy was required to find that Appellant received notice of the date of his trial.


The only information provided to Judge Addy on the matter was Solicitor White's claim—during her argument and not given in testimony under oath—that she told Appellant's prior attorney the case was on the trial docket and that she "[thought] there's been adequate notice certainly even directly" to Appellant. Her argument is a far cry from a complete record showing Appellant had notice of the trial date. Indeed, the record strongly supports the opposite due to a communication breakdown with his attorney. Mr. Hodges was involved to an unknown degree in representing Appellant prior to trial, and during this time trial counsel was also representing Appellant. Trial counsel did not know the nature of their interactions and could not say whether Mr. Hodges did or should have notified Appellant of the trial date.

Secondly, Judge Addy made no finding as to the requirement that Appellant be warned that he would be tried in his absence. In the pre-trial colloquy, neither Judge Addy nor the attorneys even mentioned such a warning. Accordingly, the record cannot support a finding that Appellant knew he would be tried in his absence as required to conclude he knowingly waived his constitutional right to be present. Finally, no discussion or findings existed as to whether Appellant's absence from the courtroom was voluntary. Judge Addy therefore committed reversible error in failing to make the findings required to deny Appellant's motion to continue the trial.

CONCLUSION

For the foregoing reasons, Appellant requests that this Court reverse his conviction and remand for a new trial.

Respectfully submitted,


Benjamin John Tipp
Appellate Defender

ATTORNEY FOR APPELLANT

This 30th day of September, 2015.

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IN THE COURT OF APPEALS

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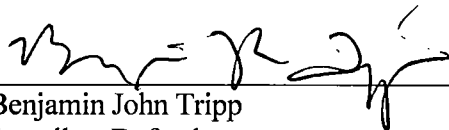
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APPELLANT

APPELLATE CASE NO. 2015-000909

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 30th day of September, 2015.



Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 30th day of September, 2015.



(L.S.)
Notary Public for South Carolina

My Commission Expires: May 12, 2025.