THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of General Sessions

Frank R. Addy, Jr.,[1] Circuit Court Judge

RECEIVED
AUG 31 2017
SC Court of Appeals

Opinion No. 5510 (S.C. Ct. App. filed August 16, 2017)

Appellate Case No. 2015-000909

THE STATE, ... RESPONDENT

v.

STANLEY LAMAR WRAPP, ... APPELLANT.

PETITION FOR REHEARING AND SUGGESTION FOR REHEARING *EN BANC*

On August 16, 2017, this Court issued a published opinion that reversed Appellant Stanley Lamar Wrapp's convictions for possession with intent to distribute (PWID) cocaine base and driving under suspension (DUS), and remanded for a new trial. *State v. Wrapp*, Op. No. 5510 (S.C. Ct. App. filed August 16, 2017). In regard to the remainder of the procedural history,

[1] The caption of this Court's published opinion indicates the trial was held before the Honorable Thomas A. Russo. The recitation in the Court's "Facts and Procedural History" does the same by stating: "On Monday, September 19, 2014, Wrapp's case was re-called for trial before the Honorable Thomas A. Russo." The State now takes this opportunity to respectfully note this was a mistake and that the trial *in absentia* was actually held before the Honorable Frank R. Addy, Jr. The State would also like to apologize for its part in contributing to this error. Although the "Statement of the Case" in the Final Brief of Respondent correctly identified Judge Addy as the trial judge, the cover of that Brief mistakenly references Judge Russo. It appears the same mistake was made in the Final Brief of Appellant and on the cover of the Record on Appeal, and unfortunately it carried over to the opinion filed by this Court.

the "Statement of the Case" in the Final Brief of Respondent is hereby incorporated by reference. Respondent (the State) respectfully petitions the Court for rehearing and suggests rehearing *en banc* pursuant to Rules 219 & 221(a), SCACR.

The State hereby seeks rehearing on the grounds that the Court may have misapprehended, overlooked, or failed to address several crucial points raised by the parties which bear directly upon this Court's ultimate conclusions that: (A) "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 (2) was warned he would be tried *in absentia* if he failed to attend"; and (B) "we need not undertake a harmless error analysis when, as here, the trial court erred in failing to make the requisite findings and the record is devoid of facts allowing us to discern whether Wrapp had notice of the term of court." Specifically, this Court may have misapprehended or overlooked well-established precedent in three specific respects. First, the Court appears to have misapprehended existing precedent on error preservation in finding: "We are not persuaded by the State's argument that his issue is unpreserved," where Wrapp made no objection to the alleged error during trial and then raised it for the first time on appeal. Second, the Court appears to have misapprehended or overlooked existing precedent on trials *in absentia* and the purpose and function of this State's bond forms in providing the requisite notice when it concluded: "[T]he record is devoid of any fact indicating Wrapp had actual notice of the term of court in which his trial would occur." The bond forms gave the requisite notice. Finally, the Court appears to have compounded these two mistakes and overlooked existing precedent on harmless error when it declined to engage in a harmless error analysis to determine if Wrapp suffered prejudice due to his absence from trial.

Rehearing En Banc

The State further suggests rehearing *en banc* on grounds that: (1) consideration by the full court may be necessary to secure or maintain uniformity of the Court's decisions, and (2) the proceeding involves a question of exceptional importance. First, the State submits our appellate courts have a long and consistent history of affirming convictions where the trial courts of South Carolina proceeded with trials *in absentia* based on the "actual notice" given in bond forms which are effectively identical to the ones that were before the trial court in Wrapp's case. In addition to the published opinions referenced in the Final Brief of Respondent, this history is also reflected in a number of unpublished opinions issued by various panels of this Court. *See, e.g.*, *State v. Barnette*, Op. No. 2014-UP-146 (S.C. Ct. App. filed Apr. 2, 2014) (citing *State v. Ravenell*, 387 S.C. 449, 457, 692 S.E.2d 554, 558 (Ct. App. 2010) (finding that a bond form that informed the defendant of his obligation to appear "at such other times and places ordered by the court" and which provided notice that a defendant can be tried *in absentia* may serve as the requisite warning that he may be tried in his absence should he fail to appear)); *State v. Myers*, Op. No. 2016-UP-123 (S.C. Ct. App. filed Mar. 2, 2016) (citing *State v. Ravenell*, 387 S.C. 449, 457, 692 S.E.2d 554, 558 (Ct. App. 2010) (finding that notice of the term of court in which a defendant will be tried is sufficient notice and a bond form that provides notice that a defendant can be tried *in absentia* may serve as the requisite warning that he may be tried in his absence should he fail to appear)); *State v. Kimble*, Op. No. 2016-MO-011 (S.C. Sup. Ct. filed Apr. 13, 2016) (citing *State v. Fairey*, 374 S.C. 92, 646 S.E.2d 445, 449-50 (Ct. App. 2007) (finding that a bond form providing notice that the defendant can be tried *in absentia* may serve as the requisite notice)); *State v. Bell*, Op. No. 2008-UP-249 (S.C. Ct. App. filed May 7, 2008) (finding it is well-settled a bond form that provides notice that a defendant can be tried *in absentia* may

serve as the requisite notice and citing *State v. Goode*, 299 S.C. 479, 385 S.E.2d 844, 846 (1989); *State v. Fairey*, 374 S.C. 92, 646 S.E.2d 445, 449-50 (Ct. App. 2007); and *City of Aiken v. Koontz*, 368 S.C. 542, 547-49, 629 S.E.2d 686, 689-90 (Ct. App. 2006)); *State v. O'Donald*, Op. No. 2008-UP-007 (S.C. Ct. App. filed Jan. 2, 2008) (finding that in addition to appearing in court and telling the judge he did not wish to be present, the bond order Appellant signed acknowledged he had been informed he had a right and obligation to be present at trial and if he failed to attend, the trial would proceed in his absence, and quoting *Fairey*, 374 S.C. at 101, 646 S.E.2d at 449 ("A bond form that provides notice that a defendant can be tried *in absentia* may serve as the requisite notice.")); *State v. Johnson*, Op. No. 10210-UP-373 (S.C. Ct. App. filed July 21, 2010) (citing *State v. Ravenell*, 387 S.C. 449, 457, 692 S.E.2d 554, 558 (Ct. App. 2010) (finding defendant waived his constitutional right to be present at trial after he was notified of his right to attend and instructed his failure to appear would result in being tried in his absence, as well as noting defendant's bond form sufficiently warned him of being tried in his absence for failing to appear)). Because the opinion here appears to be a departure from the historically consistent application of *Ravenell* and other trial *in absentia* cases, consideration by the full court is needed in an effort to maintain uniformity.

Second, the State submits this opinion involves a question of exceptional importance because magistrates, judges in the courts of general sessions, solicitors, and other participants in the criminal justice system in South Carolina routinely use and rely on the standard bond forms for the specific purpose for which this Court, in what is essentially the announcement of a new rule,[2] now discounts out-of-hand. Based primarily on the historically consistent case law

[2] This Court states: "It seems logical that for one to voluntarily fail to attend trial or otherwise waive his trial appearance, one must actually know when trial is to occur." Standing alone, the State takes no issue with this statement. However, to the extent it means this Court has concluded Wrapp did not "actually know" when his trial was to occur despite his signing and acknowledging a bond order which directed him to appear in the Greenwood

described above, all parties in the criminal justice process, including the defendant, have come to understand and rely on the knowledge that the actual written notice given to a defendant in the standard bond forms is sufficient to notify a defendant: that when he is released on bond he has a right and obligation to be present at trial; of the term or terms of court for which he needs to be present; and that if he fails to attend, the trial might proceed in his absence. If, as this Court has now decided, the bond form in insufficient to provide the requisite notice, then the advisement about the term of court only serves a purpose if the defendant's trial actually goes forward on the particular term of court identified. This Court is effectively declaring the additional language on the form that: "If 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," to be pointless. Indeed, it appears this Court concludes a defendant must be given specific notice of the particular date of the term of court in which the trial will actually proceed or his waiver of the right to be present is invalid, and a trial *in absentia* always constitutes reversible error. *But see State v. Jackson*, 290 S.C. 435, 436, 351 S.E.2d 167, 167 (1986) ("Notice of the term of court for which the trial is set constitutes sufficient notice to enable a criminal defendant to make an effective waiver of his right to be present."); *Ellis v. State*, 267 S.C. 257, 261, 227 S.E.2d 304, 306 (1976) ("In our courts of general sessions, defendants are generally only given notice of the term of court in which they will be tried and do not know the exact date and time of their trial until shortly before the trial begins. We think such notice is sufficient to enable a defendant to make an effective waiver of his right to be present at his trial."). Not only is this conclusion not supported by existing precedent, it also would create a system that encourages defendants who

---

County Court of General Sessions beginning on December 6, 2013, and that, "If no disposition is made during that term, [Wrapp] shall appear and remain throughout each succeeding term of court until final disposition is made of his case, unless otherwise ordered by the court," this statement and the conclusion for which it stands announces a new rule which heretofore did not exist in South Carolina. Announcing a new rule with far-reaching implications raises an issue of exceptional importance.

are released on bond to abscond in order to avoid trial and avoid receiving notice of subsequent terms of court. A defendant who could not be located after release on bond would never face the prospect of a trial unless his case was called for trial at the first term of court. This result would be absurd and would lead to intentional obstruction of the orderly process of justice. The effects of such a ruling would be profound and would require criminal courts in South Carolina to alter the way they do business, not only in regard to trying to give notice to every defendant of each and every term of court, but also in regard to whether the State would seek higher bond amounts in an attempt to curb the number of defendants released on bond in the first place. The State respectfully submits these potential consequences render this proceeding exceptionally important and particularly compelling for *en banc* review.

For these reasons, the State respectfully requests that this Court grant this petition for rehearing, reconsider and rehear this matter, and issue an order affirming Wrapp's convictions and sentence. Alternatively, the State requests that the Court reconsider and rehear this matter and suggests that it be reheard *en banc*.

Statement of Facts

Wrapp was arrested for trafficking in crack cocaine—10 grams or more but less than 28 grams—second offense, and driving under suspension - third offense. On October 18, 2013, he appeared at a bail proceeding before a Greenwood County magistrate judge who set an appearance recognizance bond with surety in the amount of $25,000, ordered that Wrapp appear in the Greenwood County Court of General Sessions beginning on December 6, 2013, and ordered that, "**If no disposition is made during that term, [Wrapp] shall appear and remain throughout each succeeding term of court until final disposition is made of his case**, unless otherwise ordered by the court." Wrapp signed an acknowledgement stating in part: "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**." On the day of the bail proceeding, Wrapp was released from custody when A1 Bonding Company posted a surety bond on his behalf. (R.p. 170-171) (emphasis added).

On July 14, 2014, Wrapp's case was called for trial before the Honorable William P. Keesley. Wrapp was present and was represented by Assistant Public Defender Shane Goranson. The State was represented by Assistant Solicitor Elizabeth P. White. At the call of the case Wrapp moved for a continuance, arguing he needed more time to track down a potential witness named Eric Ross who may have information on the possible defense of entrapment or sentencing manipulation. The State responded that Ross was not a newly discovered witness and that Wrapp had been on notice of the possible issues regarding Ross since he had first been noticed for trial. The solicitor then described the difficulties her office had in going back and forth with Wrapp about whether he was going to hire an attorney or apply for a public defender. She noted this had resulted in a three-month delay that was caused by Wrapp himself. Ultimately, Judge Keesley granted Wrapp's motion and continued the trial. (R.p.1-p.10).

On September 29, 2014, Wrapp's case was re-called for trial, this time before the Honorable Frank R. Addy, Jr. (R.p.11-p.14). After the trial court qualified the jury pool and the parties selected a jury, Counsel for Wrapp moved for another continuance. He explained his client was not present for trial and said he had no personal knowledge as to why. Counsel said he did not know whether Wrapp's absence was voluntary or involuntary and requested a continuance so he could try to locate Wrapp. (R.p.33, lines 22-25; p.36, line 14-p.37, line 14). The solicitor responded that she had first noticed Counsel for trial on June 4, 2014, and was going to try the case the week of July 14th; however, Judge Keesley granted a continuance. The

solicitor noted Wrapp was present and that she personally had a conversation with him in the courtroom after the continuance was granted. During that conversation she told Wrapp his case would be called for trial the next time they could get to it. The solicitor further noted she had received a telephone call from a private attorney, Andrew Hodges, Esquire, three weeks before the current trial date and she told him the case was on the trial docket. She explained Wrapp had contacted Hodges about possible representation but Hodges ultimately declined to get involved. The solicitor argued there had been adequate notice to Wrapp that his case was coming up for trial and said the State was ready to proceed. (R.p.37, line 16-p.38, line 17).

Counsel responded that he did not know whether Hodges had actually informed Wrapp of a trial date or not and said Counsel's investigator was out looking for Wrapp as they spoke. (R.p.39, lines 5-16). The trial judge acknowledged he did not know whether Wrapp's absence was voluntary or not, but found "he was noticed to be here." The judge said he did not see any purpose to be served in continuing the case, denied the motion for a continuance, and ruled the trial would proceed whether Wrapp was present or not. (R.p.39, line 17-p.40, line 12). Counsel argued he did not feel that Wrapp had been adequately noticed and objected to proceeding with the trial. He did not object to the trial court's failure to make specific findings of fact about the adequacy of the notice. The trial judge announced the trial would resume at 9:30 the following morning and the jury was released for the day. (R.p.42, lines 6-13).

The next day the jury was sworn and the case proceeded as a trial *in absentia*. In regard to the specific evidence presented at trial, the "Statement of Facts" in the Final Brief of Respondent is hereby incorporated by reference.

At the conclusion of trial, the jury found Wrapp guilty of DUS and PWID crack. Following the verdict, the solicitor described Wrapp's criminal history, which included prior

charges and convictions in 2003, 2006, 2011, and 2012. Counsel then presented facts in mitigation, and **the trial judge reviewed Wrapp's bond paperwork** before issuing a sentence under seal. (R.p.160-p.165).

On March 30, 2015, Wrapp and Assistant Public Defender Patricia Bolen appeared before the Honorable Eugene C. Griffith, Jr., to have the sealed sentence unsealed and read. Wrapp was sentenced to twenty (20) years' imprisonment for possession with intent to distribute crack cocaine – second offense, and sixty (60) days' concurrent imprisonment for driving under suspension – second offense. (R.p.167-p.169).

Argument

In its published opinion, this Court reversed Wrapp's convictions and remanded for a new trial. *State v. Wrapp*, Op. No. 5510 (S.C. Ct. App. filed August 16, 2017). For the reasons noted above and argued in more detail below, the State respectfully requests that this Court grant this petition for rehearing, reconsider and rehear this matter, and issue an order affirming Wrapp's convictions and sentence. Alternatively, the State suggests that this Court rehear this matter *en banc*.

In this appeal, Wrapp argued the trial judge erred in denying his motion for a continuance and holding his trial in his absence because the record does not support the required findings of fact that he knowingly and voluntarily waived his right to be present. He contended his right to be present at all critical stages of the proceedings against him, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution, was violated when the trial court, over Counsel's objection, proceeded with the trial *in absentia*. Specifically, Wrapp argued the trial judge "never made the required findings of fact" that Wrapp (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. He further claimed, "nor could the record have supported such findings." (Brief of Appellant p.7).

The State argued Wrapp's challenge to the trial court's failure to make specific factual findings regarding whether Wrapp knowingly waived his right to be present was not preserved for appellate review because it was never raised to the trial court. The State further argued that even if preserved the trial court did not err in denying Wrapp's continuance motion and proceeding with the trial *in absentia* because the judge did make a factual finding that Wrapp had received adequate notice. The State also argued Wrapp's acknowledgement and signature on the bond court's "Order Specifying Methods and Conditions of Release" showed he had notice of when his trial would begin and was warned of the consequences of his failure to appear. Finally, the State argued that even if the trial court somehow erred in proceeding with the trial, any error was harmless in light of the overwhelming evidence of Wrapp's guilt and a lack of prejudice from the trial proceeding in his absence. The State continues to stand by the arguments and submits that for all of these reasons, Wrapp's convictions should have been affirmed.

Issue Preservation

Initially, the State submitted Wrapp's arguments were not preserved for appellate review because they were not specifically raised to and ruled upon by the trial court. *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003). If an error is not presented to and ruled upon by the trial court, it cannot be raised for the first time to the appellate court. *State v. Freiburger*, 366 S.C. 125, 135, 620 S.E.2d 737, 742 (2005). Indeed, the appellate court will not consider any issues that were not presented to or passed upon by the trial court. *State v. Fleming*, 254 S.C. 415, 421, 175 S.E.2d 624, 627 (1970). In regard to trials *in absentia*, this Court has instructed:

> In order to claim the protection afforded by the rule of law that a criminal defendant may be tried in his absence only upon a trial court's finding that the

> defendant has received the requisite notice of his right to be present and advisement that the trial would proceed in his absence if he failed to attend, a defendant or his attorney must object at the first opportunity to do so, and failure to so object constitutes waiver of the issue on appeal.

State v. Ravenell, 387 S.C. 449, 456, 692 S.E.2d 554, 558 (Ct. App. 2010) (emphasis added).

Here, Wrapp's primary claim was that the trial court erred in denying his continuance motion and proceeding with a trial *in absentia* because it did not make specific factual findings regarding his waiver of his right to be present for trial. However, because Wrapp raised no objection to the trial court's failure to make specific factual findings, Wrapp was precluded from raising such an objection for the first time on appeal. *See State v. Patterson*, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997) ("Wrapp is limited to the grounds raised at trial."); *State v. Adams*, 354 S.C. 361, 380, 580 S.E.2d 785, 795 (Ct. App. 2003) ("[A] defendant may not argue one ground below and another on appeal."). As this Court instructed in *Ravenell*, Wrapp was required to object at his first opportunity to do so in order to preserve any challenge to his trial *in absentia* based on the trial court's failure to make factual findings. Where, as here, Wrapp failed to do so, the issue should not have been considered for the first time on appeal. The trial court was not given the opportunity to address the alleged deficiency. Wrapp should not have been permitted to seek reversal of his conviction based on the trial court's failure to make specific factual findings Wrapp never asked the trial court to make. Wrapp's issue on appeal was not preserved for review and his conviction should have been affirmed.

In its opinion, when finding it was not persuaded by the State's argument that the issue was unpreserved, this Court equated Wrapp's circumstances to those in *Ravenell* and found that in *Ravenell* the Court "[addressed] the merits when trial counsel moved for a continuance but did not specifically object to a trial *in absentia* and never asserted that his client failed to receive adequate notice or warnings." However, in *Ravenell*, counsel moved for a continuance due to his

client's absence and the trial court specifically "found Ravenell was given notice the trial would proceed without him and he would be tried *in absentia* if he failed to appear." *Ravenell*, 387 S.C. at 453, 692 S.E.2d at 556. Here, Wrapp's counsel similarly moved for a continuance due to Wrapp's failure to appear, but, as complained about by Wrapp in this appeal, the trial judge "never made the required findings of fact." Thus, the circumstances are quite different. In *Ravenell* counsel would have had no basis to object to the trial court's failure to make the required findings of fact because the trial court actually made those findings. Here, Wrapp had every reason and every opportunity to object if he believed the trial court's factual findings were not sufficient. He failed to do so at the first opportunity; thus, under basic issue preservation principles, his argument is not preserved. A defendant should not be permitted to seek reversal of his conviction based on the trial court's failure to make specific factual findings that he never asked the trial court to make. *See State v. Vang*, 353 S.C. 78, 84-85, 577 S.E.2d 225, 228 (Ct. Ap. 2003) (finding that to preserve an issue of juror misconduct for appellate review a party must object at the first opportunity at trial).

Standard of Review

A decision on whether to grant or deny a motion for continuance rests in the sound discretion of the trial court. *State v. Yarborough*, 363 S.C. 260, 266, 609 S.E.2d 592, 595 (Ct. App. 2005). Appellate courts in South Carolina typically show great deference to the trial court regarding these decisions. *State v. Colden*, 372 S.C. 428, 435, 641 S.E.2d 912, 916 (Ct. App. 2007). The denial of a motion for continuance will not be disturbed on appeal absent a clear abuse of discretion. *Morris v. State*, 371 S.C. 278, 283, 639 S.E.2d 53, 56 (2006); *Ravenell*, 387 S.C. at 455, 692 S.E.2d at 557. "The granting or refusal of a motion for continuance is within the discretion of the trial judge and his disposition of such a motion will not be reversed on

appeal unless it is shown that there was an abuse of discretion to the prejudice of appellant. . . . [R]eversals of refusal of continuance are about as rare as the proverbial hens' teeth." *State v. Lytchfield*, 230 S.C. 405, 409, 95 S.E.2d 857, 859 (1957).

Waiver of Right to be Present for Trial

"A criminal defendant has the right to be present at any stage of the criminal proceeding that is critical to its outcome if his presence would contribute to the fairness of the procedure." *State v. Shuler*, 344 S.C. 604, 624, 545 S.E.2d 805, 815 (2001) (citations omitted). However, this right may be waived. *Ellis v. State*, 267 S.C. 257, 260, 227 S.E.2d 304, 305 (1976). The South Carolina Rules of Criminal Procedure provide that a defendant "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. "A defendant's exclusion, or absence, will be reviewed in light of the whole record." *Shuler*, 344 S.C. at 624, 545 S.E.2d at 815. Although the right to be present is a substantial one, no presumption of prejudice arises from a defendant's exclusion. *Id.*; *State v. Williams*, 292 S.C. 231, 232, 355 S.E.2d 861, 862 (1987) (absence from trial is subject to harmless error analysis). "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 process of justice." *Ellis*, 267 S.C. at 261, 227 S.E.2d at 306.

Discussion / Analysis

First, the State submitted that contrary to Wrapp's claim on appeal, the trial judge <u>did</u> make a factual finding that Wrapp received sufficient notice for the trial to proceed in his absence. Indeed, the trial judge found Wrapp "was noticed to be here," a conclusion which

encompasses the findings that Wrapp had notice of when his trial would begin and that Wrapp was warned he could be tried in his absence. When both longstanding precedent and the Rules of Criminal Procedure in South Carolina require such findings, and the trial court specifically finds that notice to the defendant was sufficient and proceeds with a trial *in absentia*, it necessarily constitutes a finding that the defendant made a voluntary waiver of his or her right to attend trial. This is particularly true where the defendant makes no objection to the adequacy of the court's finding at the time it is made. In its opinion, this Court narrowly interpreted the trial court's findings to hold that even if they constituted a finding that Wrapp received notice of his right to be present, there was no finding that Wrapp was informed he could be tried in his absence. Under the standard of review, this Court should have given greater deference to the trial court's factual findings by giving them a broad interpretation that encompassed all required aspects of notice where the court found "[Wrapp] was noticed to be here."

Second, the State submitted the trial court's finding that Wrapp received adequate notice was supported by the record. In *State v. Wright*, 304 S.C. 529, 531, 405 S.E.2d 825, 826 (1991), Wright was not present for his trial on a charge of distributing cocaine. At the outset of trial, Wright's defense counsel moved for a continuance, asserting he had recently been in contact with Wright and believed Wright could be located. *Id.* at 532, 405 S.E.2d at 827. The trial court denied the continuance motion and proceeded with a trial *in absentia*. *Id.* Following his conviction, Wright appealed, arguing the trial court erred in denying the continuance motion. *Id.* On appeal, the Supreme Court affirmed the trial court's ruling, finding the trial court did not abuse its discretion in denying Wright's continuance motion because the record reflected Wright was aware of the term of court in which he was set to be tried and knew he would be tried in his absence if he failed to appear. *Id.*

Here, the trial court likewise did not abuse its discretion in denying Wrapp's continuance motion and proceeding with the trial in Wrapp's absence because the record shows Wrapp knowingly waived his right to be present for trial by not appearing at trial when he had awareness of the fact he had a right to be present, his trial was scheduled to begin, and he would be tried in his absence if he failed to appear. *See State v. Goode*, 299 S.C. 479, 481, 385 S.E.2d 844, 845 (1989) ("[T]he right to be present at trial can be waived if done knowingly and voluntarily."). The solicitor, an officer of the court, advised the trial judge that she personally had a conversation with Wrapp in the courtroom the day the first continuance was granted and told Wrapp his case would be re-called for trial the next term it could be called. The solicitor further noted that three weeks before the trial she called a private attorney Wrapp was attempting to retain and told that attorney the case was on the trial docket. (Tr.p.27, line 16-p.28, line 17). These statements alone constitute sufficient evidence to support the trial court's finding. Yet, the solicitor's comments did not stand alone.

Instead, the trial court was also aware that Wrapp received written notice of when his trial would begin and of his right to be present. On October 18, 2013, the magistrate who set Wrapp's bond ordered that Wrapp appear in the Greenwood County Court of General Sessions beginning on December 6, 2013, and further ordered that "[i]f no disposition is made during that term, [Wrapp] **shall appear and remain throughout each succeeding term of court until final disposition is made of his case, unless otherwise ordered by the court**." Wrapp signed an acknowledgement stating in part: "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**." (October 18, 2013 Order Specifying Methods and Conditions of Release) (emphasis added). This bond form was before the trial court and was reviewed by the trial judge

during the sentencing proceedings. (R.p.160-p.165). Through his signature on the acknowledgement form, Wrapp unequivocally demonstrated his full understanding of the consequences of his failure to appear at the scheduled time of his trial. *See State v. Fairey*, 374 S.C. 92, 101, 646 S.E.2d 445, 449 (Ct. App. 2007) ("A bond form that provides notice that a defendant can be tried in absentia may serve as the requisite notice."). Additionally, the form demonstrates Wrapp was aware he was expected to appear in court each weekly term until otherwise notified rather than simply wait for additional notification from the court or the State before appearing.

In its opinion, this Court finds "the record is devoid of any fact indicating Wrapp had actual notice of the term of court in which his trial would occur." This finding flies in the face of the specific notice given to Wrapp in the bond form that his case would be called at the December 6, 2013, term of court and that if no disposition was made, it would be called at each succeeding term of court until final disposition was made. How this does NOT constitute a fact indicating Wrapp had actual notice of the term of court in which his trial would occur is beyond comprehension.

Also supporting the trial court's finding was Wrapp's substantial prior experience with the criminal justice system, which included four prior convictions over the course of a ten-year criminal career. This experience provided him with sufficient knowledge to understand the consequences of his failure to attend his trial. *Cf. Graves v. State*, 309 S.C. 307, 310, 422 S.E.2d 125, 127 (1992) (considering Graves' "extensive criminal background" when reviewing a determination of whether Graves validly waived his right to counsel); *State v. Cash*, 309 S.C. 40, 43, 419 S.E.2d 811, 813 (Ct. App. 1992) (listing the factors different courts have considered in

determining whether a defendant had a sufficient background to waive his right to counsel, which included whether the defendant was previously involved in criminal trials).

In light of the representations of the solicitor regarding Wrapp's awareness of when his trial was set to begin, Wrapp's act of signing the acknowledgement form before he was released on bond, and Wrapp's prior criminal experience, the record was replete with facts indicating Wrapp had notice of the term of court in which he was going to be tried. He was fully aware of his right to be present for his trial, the scheduled date of his trial, and the consequences of his failure to appear for trial. Accordingly, the trial court did not abuse its discretion in denying Wrapp's continuance motion and proceeding with the trial *in absentia* after Wrapp failed to appear at the courthouse for the beginning of his trial. *See Wright*, 304 S.C. at 532, 405 S.E.2d at 827 (1991) (finding no abuse of discretion in the denial of Wright's continuance motion raised before Wright's trial *in absentia* because the record reflected Wright was aware of the term of court in which his case was set to be tried and was aware the trial would proceed in his absence); *Ellis*, 267 S.C. at 261, 227 S.E.2d at 306 ("In our courts of general sessions, defendants are generally only given notice of the term of court in which they will be tried and do not know the exact date and time of their trial until shortly before the trial begins. We think such notice is sufficient to enable a defendant to make an effective waiver of his right to be present at his trial."); *see also State v. Williams*, 321 S.C. 455, 459, 469 S.E.2d 49, 51 (1996) ("The trial court's refusal of a motion for continuance in a criminal case will not be disturbed absent a clear abuse of discretion."). Wrapp's convictions should have been affirmed.

Harmless Error

Appellate courts will generally not set aside a judgment based on insubstantial errors not affecting the result. *State v. Sherard*, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991). "No

definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case." *State v. Wiley*, 387 S.C. 490, 497, 692 S.E.2d 560, 564 (Ct. App. 2010). Error is harmless beyond a reasonable doubt if it does not contribute to the verdict. *State v. Fletcher*, 379 S.C. 17, 25, 664 S.E.2d 480, 484 (2008). "When guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result." *State v. Bailey*, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989). Thus, when overwhelming evidence of guilt has been presented, any trial error may be harmless. *State v. Gathers*, 295 S.C. 476, 480-81, 369 S.E.2d 140, 143 (1988).

In Wrapp's case, even if the trial court erred in conducting the trial without Wrapp in attendance, any error was entirely harmless in light of the overwhelming evidence of Wrapp's guilt. *See State v. Williams*, 292 S.C. 231, 233, 355 S.E.2d 861, 862 (1987) (finding errors resulting from a trial *in absentia* are subject to a harmless error analysis). Even if Wrapp had been present for trial, the result would have been no different. Thus, any error from the trial proceeding without Wrapp does not warrant reversal of Wrapp's conviction and resulted in no actual prejudice to Wrapp. *See Shuler*, 344 S.C. at 625, 545 S.E.2d at 815 ("Although the right to be present is a substantial one, no presumption of prejudice arises from a defendant's exclusion.").

In its opinion, this Court found it did not need to undertake a harmless error analysis because "the trial court erred in failing to make the requisite findings and the record is devoid of facts allowing [the Court] to discern whether Wrapp had notice of the term of court." As noted above, the State contends the record is not devoid of facts showing Wrapp had the requisite notice; therefore, the Court's reason for declining a harmless error analysis is not supported by

the record. In any event, the precedent determining this issue is subject to a harmless error analysis does not suggest such analysis hinges solely on the defendant's absence from trial and the absence of notice. Instead, it depends on whether that absence was prejudicial. Thus, regardless of whether the trial court failed to make the requisite findings or the record failed to include evidence of adequate notice, this Court should have conducted a harmless error analysis to determine if Wrapp was in fact prejudiced by his absence from trial. For the reasons above, the State submits he was not, and that his conviction should have been affirmed.

Conclusion

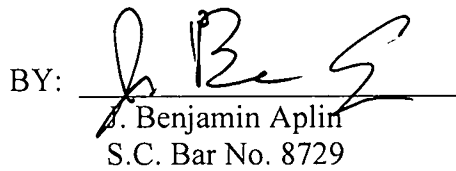
WHEREFORE, based on the foregoing argument and the arguments raised in the Final Brief of Respondent, the State respectfully requests that this Court grant this petition for rehearing, reconsider and rehear this matter, and issue an order affirming Wrapp's convictions and sentence. Alternatively, the State requests that the Court reconsider this matter and suggests that it be reheard *en banc.*

Respectfully submitted,

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Senior Assistant Deputy Attorney General

DAVID MATTHEW STUMBO
Solicitor, Eighth Judicial Circuit

BY: 

J. Benjamin Aplin
S.C. Bar No. 8729

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3727

ATTORNEYS FOR RESPONDENT

Columbia, South Carolina
August 31, 2017

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of General Sessions

Frank R. Addy, Jr., Circuit Court Judge

RECEIVED
AUG 31 2017
SC Court of Appeals

Opinion No. 5510 (S.C. Ct. App. filed August 16, 2017)

Appellate Case No. 2015-000909

THE STATE, ...RESPONDENT

v.

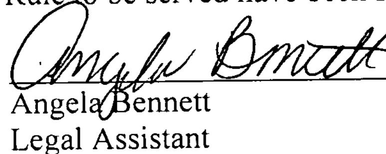
STANLEY LAMAR WRAPP, ...APPELLANT.

PROOF OF SERVICE

I, Angela Bennett, Legal Assistant, hereby certify that I have served the within *Petition for Rehearing and Suggestion for Rehearing En Banc*, dated August 31, 2017, on Appellant by depositing a copy of the same in the United States mail, postage prepaid, addressed to his attorney of record:

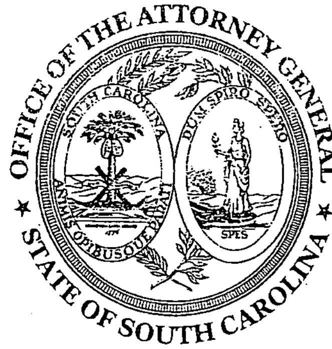
Taylor D. Gilliam, Appellate Defender
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211-1589

I further certified that all parties required by Rule to be served have been served. This 31st day of August, 2017.



Angela Bennett
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3727



ALAN WILSON
ATTORNEY GENERAL

August 31, 2017

Taylor D. Gilliam, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211-1589

RECEIVED
AUG 31 2017
SC Court of Appeals

State v. Stanley Lamar Wrapp
Appellate Case No. 2015-000909

Dear Mr. Gilliam:

I am enclosing one (1) copy of the Petition for Rehearing and Suggestion for Rehearing En Banc in the above-referenced case.

Sincerely,

J. Benjamin Aplin
Senior Assistant Deputy Attorney General
S.C. Bar No. 8729

JBA/ab
Enclosures

cc: Honorable Jenny A. Kitchings (original enclosed)
Victim Services