

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

Victoria Bailey Casanova
Casanova Legal Services, LLC
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana
Jesse R. Drum
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Timothy Wicker,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

September 18, 2023

Court of Appeals Case No.
23A-CR-572

Appeal from the Noble Circuit
Court

The Honorable Michael J. Kramer,
Judge

Trial Court Cause No.
57C01-2002-F1-2

Memorandum Decision by Judge Weissmann
Chief Judge Altice and Judge Kenworthy concur.

Weissmann, Judge.

- [1] Timothy Wicker did not show up to his two-day jury trial, at which he was convicted of child molesting. Wicker now requests a new trial, arguing that he did not knowingly and voluntarily waive his constitutional right to be present. Finding the record replete with evidence to the contrary, we affirm.

Facts

- [2] In February 2020, the State charged Wicker with Level 1 and Level 4 felony child molesting. Though Wicker missed the hearing scheduling his October 2022 trial date, he attended a status conference in late June and a final pretrial hearing in August 2022 during which the judge repeatedly mentioned his trial date.
- [3] The evening before his trial was due to begin, court staff called Wicker to remind him of his scheduled trial and Wicker responded that he knew he should attend his trial. But Wicker did not appear the morning of his trial. After a brief recess to wait for Wicker, the trial court asked Wicker's counsel if he had heard from his client. Wicker's counsel stated to the trial court that he had spoken to Wicker the day before and reminded Wicker of the trial date; that he had no reason to believe Wicker did not know of his trial date; and that he did not know of any excuse for Wicker's absence. Although Wicker's counsel objected to proceeding, the trial court overruled the objection, and Wicker's trial commenced without him. On the second day of the trial—with Wicker still absent—the jury found Wicker guilty as charged.

[4] Police later apprehended Wicker and the trial court conducted a brief failure-to-appear hearing before Wicker’s sentencing hearing. But Wicker offered no explanation for his trial absence at either hearing. Ultimately, the trial court sentenced Wicker to 50 years in the Indiana Department of Correction.

Discussion and Decision

[5] On appeal, Wicker claims only that he did not waive his right to be present at his trial. “Both the Federal and Indiana Constitutions afford defendants in a criminal proceeding the right to be present at all stages of their trial.” *Jackson v. State*, 868 N.E.2d 494, 498 (Ind. 2007) (citing U.S. Const. amend. VI; Ind. Const. art. 1, § 13). “A criminal defendant may be tried in absentia, however, if the trial court determines that the defendant knowingly and voluntarily waived that right.” *Smith v. State*, 160 N.E.3d 1152, 1154 (Ind. Ct. App. 2021). The record here establishes Wicker did just that.

[6] To begin, we note that our standard of review requires us only to ensure that the trial court did not abuse its discretion in trying Wicker in absentia. *Id.* “A trial court abuses its discretion if its decision is clearly against the logic and effect of the facts and circumstances before the court or if the court misapplies the law.” *Calvert v. State*, 14 N.E.3d 818, 821 (Ind. Ct. App. 2014).

[7] In the lead-up to his trial, Wicker attended two hearings at which his trial date was mentioned and confirmed. Indeed, at the June 2022 pretrial conference, Wicker was directly asked if he agreed to his trial date. He responded, “Yes your honor.” Tr. Vol. II, p. 61. His trial date was repeated to Wicker at the final

pretrial conference about a month before his trial. In short, Wicker’s presence at these two hearings adequately compensated for his absence from the hearing where his trial date was originally set. *See Jackson*, 868 N.E.2d at 498 (finding defendant waived his right to be present at trial when he was “informed of his trial date” and “never contacted the court prior to his trial to address any confusion he might have had about the trial date”).

[8] Wicker does not dispute that he knew of his trial date and still failed to appear. Instead, Wicker argues only that the trial court did not specifically find or conclude that he had knowingly and voluntarily waived the right to appear at his trial. But this ignores the multiple, detailed steps the trial court made before deciding to continue with the trial in Wicker’s absence. For example, the trial court held multiple recesses for Wicker’s counsel to contact him. The court also gave Wicker’s counsel ample time to develop a record about any excuse or potential confusion Wicker may have had about his trial date. This resulted in only a general statement that Wicker “seemed very confused” when his counsel called him the night before. Tr. Vol. II, p. 73. Yet any concern over this confusion was immediately ameliorated when his counsel—during the same phone call—“reiterated, hey we’ve got jury trial tomorrow.” *Id.* And Wicker did not offer any semblance of an excuse for his trial absence at either his failure-to-appear or sentencing hearings.

[9] Accordingly, the trial court did not abuse its discretion in conducting Wicker’s trial in his absence.

[10] **Affirmed.**

Altice, C.J., and Kenworthy, J., concur.