

APPEAL FROM GREENVILLE COUNTY  
Court of General Sessions

Edward W. Miller, Circuit Court Judge

Appellate Case No. 2023-000945

**RECEIVED**

DEC 11 2023

SC Court of Appeals

The State .....Respondent,

v.

Bernard J. Jackson, .....Appellant.

**RECORD ON APPEAL**

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ATTORNEY FOR RESPONDENT

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STATE OF SOUTH CAROLINA )  
 ) COURT OF GENERAL SESSIONS  
 COUNTY OF GREENVILLE ) 1998-GS-23-04295  
 )  
 )  
 )  
 THE STATE )  
 ) PLAINTIFF)  
 vs. ) TRANSCRIPT OF RECORD  
 )  
 BERNARD JACKSON )  
 ) DEFENDANT)

---

March 17, 2023  
 Greenville, South Carolina

B E F O R E:

THE HONORABLE EDWARD W. MILLER, Judge.

A P P E A R A N C E S:

KYLE THOMPSON, ESQ.  
 Attorney for the State

CHRISTOPHER SCALZO, ESQ.  
 Attorney for the Defendant

APRIL HERRON  
 Official Court Reporter

There were no witnesses.

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There were no exhibits.

>>>0<<<

Certificate of Reporter 11

1 MR. SCALZO: Is it all right if he sits here?

2 He has trouble standing.

3 THE COURT: Is this Bernard Jackson?

4 MR. JACKSON: Yes, sir.

5 THE COURT: Joseph Bernard Jackson.

6 MR. JACKSON: Yes, sir.

7 THE COURT: As far as I know, the only person

8 charged in a criminal case found not guilty. You the

9 same one?

10 MR. JACKSON: Years ago?

11 THE COURT: Yeah.

12 MR. JACKSON: Yes.

13 THE COURT: Who was your co-defendant, testified

14 against you, what was his name?

15 MR. JACKSON: Cliff Pope.

16 THE COURT: Clifton Eugene Pope, the truth ain't

17 in him. Do you remember me?

18 MR. JACKSON: Yes, sir.

19 THE COURT: Who am I? You don't remember me.

20 MR. JACKSON: Mr. Miller.

21 THE COURT: Yeah.

22 MR. JACKSON: Yes, sir.

23 THE COURT: Who was your lead lawyer?

24 MR. JACKSON: Pat Paschal.

25 THE COURT: Pat race dog Paschal.

1 MR. JACKSON: Yeah, Mr. Paschal.

2 THE COURT: Paschal, yeah. We called him the  
3 race dog. Had racehorse names. He didn't quite get  
4 up to the equine status. He's a dog. We were  
5 partners for 20 years.

6 All right, what do you want to tell me?

7 MR. SCALZO: May it please the court, Your  
8 Honor, this is The Defendant's motion. We move to or  
9 petition The Court to have Mr. Jackson removed from  
10 the electronic monitoring under Jesse's law since,  
11 what, 2007. And he has satisfied the 10 year  
12 requirement, he does not have any current violations.  
13 And has not had any violations while he's been on  
14 electronic monitoring program or that program. We  
15 think by clear and convincing evidence he's  
16 established that he does not need to be monitored any  
17 longer. And we are requesting The Court to remove  
18 the monitor.

19 THE COURT: All right, what's The State's  
20 position?

21 MR. THOMPSON: Your Honor, Kyle Thompson on  
22 behalf of The State, we oppose the motion. First of  
23 all, Mr. Jackson has the burden of proof to prove by  
24 clear and convincing evidence that he has complied  
25 with the terms and that there's no longer a need to

1 monitor. Your Honor, he was -- he pled guilty, he  
2 was sentenced to five years on a charge of sexually  
3 assaulting a 13 year old. Following his release from  
4 prison, while he was on supervision, he was charged  
5 with a number -- a litany of criminal offenses  
6 between 2004, 2007. Multiple Burglaries, grand  
7 larcenies, drug charges, soliciting prostitutes. He  
8 was finally put on electronic monitoring in 2007.  
9 And he has -- the monitor is help keeping an honest  
10 man. So he's not been charged since he went on the  
11 monitoring.  
12 Until Judge, last fall. In 2022 he was charged  
13 with failing to register and with living within a  
14 thousand feet of a school. In violation of sex  
15 offender statutes. Your Honor, some of the documents  
16 I've handed up include the police report related to  
17 that. The sheriff's office in April of 2022 told him  
18 that he was living somewhere where he could not live.  
19 Told him he needed to live at the address where he  
20 was registered. And told him he could not live at  
21 216 Virginia Avenue, which is within a thousand yards  
22 of a park. He did not move until October of 2022, he  
23 was charged with the two offenses. One, failing to  
24 register and one of living within a thousand yards.  
25 He pled guilty to both of those offenses just last

1 month.

2 Your Honor, the -- he was -- this was determined  
3 in part by the electronic monitoring, tab number six  
4 that you have, is electronic monitoring reports over  
5 a two week period that shows he is at his registered  
6 address of 9 Dobb Street for only a small number of  
7 hours over that two week period. It's our position  
8 that he is not complying with the terms by failing to  
9 reside at the address where he is registered and  
10 which is included on the terms of the electronic  
11 monitoring. And that the motion should be denied. I  
12 have with me Agent Parker Scott. As well as Octavia  
13 Wright, which is the assistant general counsel for  
14 probation parole. And I don't know if Ms. Wright  
15 wishes to address The Court or not. My understanding  
16 is they do not take a position on the motion.

17 THE COURT: One thing I'd note, Paragraph 1 says  
18 he pled in front of me April 1, 1999, I wasn't a  
19 Judge. So that's incorrect.

20 Yes, ma'am, anything you want to -- what do  
21 y'all want to tell me?

22 MS. WRIGHT: Yes, Your Honor, may it please the  
23 Court. Again, my name is Octavia Wright, I'm  
24 assistant general counsel for probation. And as  
25 Mr. Thompson just mentioned, probation really takes a

1 neutral stance on this. However, I was made recently  
2 aware of the violation of failure to register.  
3 Probation is also aware that Mr. Jackson is -- has an  
4 arrearage regarding his GPS fees of \$29,820. We  
5 would ask that if The Court allows him to go off the  
6 monitor today, that that be converted to a civil  
7 judgment. So other than that.

8 THE COURT: Okay.

9 MR. SCALZO: Judge --

10 THE COURT: You guys involved in this?

11 AGENT SCOTT: We're here, Your Honor, if you  
12 have any questions about the GPS point reports.

13 THE COURT: Okay. All right.

14 MR. SCALZO: And I'll respond to a couple of  
15 those points, Judge. His conviction was in 1998.  
16 The conviction since then have nothing to do with any  
17 sexual offenses, they are not convictions for this,  
18 the electronic monitoring statute. Which is what is  
19 the standard in the electronic monitoring statute,  
20 number one. Number two, he was put on GPS monitoring  
21 in 2007. That was prior to the Ross decision, which  
22 would have required a independent individualized  
23 decision of whether or not he needed, as a  
24 individual, to be on monitoring. And I don't think  
25 they would have been able to prove that then.

1 Additionally, in Ross, The State made the  
2 argument that Mr. Thompson just made. Which is  
3 simply violating the sex offender registry somehow  
4 would automatically establish somebody needs to be  
5 monitored on GPS. The Supreme Court rejected that  
6 argument. Said you have to establish it on a  
7 individual basis. Mr. Jackson -- to give you the  
8 background on the violation. The dispute was over  
9 whether or not he was residing at the residence with  
10 his girlfriend. He wasn't hiding the residence, it  
11 was whether he was residing there. His residence was  
12 with his father, it's been with his father. His  
13 father lived at 9 Dobb street his whole life and  
14 Mr. Jackson's been there over 30 years.  
15 He is seated here because he has a lot of health  
16 problems. At the time or part of the time, he had a  
17 colostomy bag. It had to be removed, he needed a lot  
18 of help. His girlfriend was helping him with that.  
19 Now, he's pled guilty some I'm not saying walking  
20 back is guilt but what I'm addressing with The Court  
21 is that doesn't rise to the level that needs to  
22 continue to be monitored as a sex offender. There  
23 was no allegation or evidence that he was trying to  
24 commit any new crimes regarding sex offenses.  
25 With regard to the arrears, I had a conversation

1 on the phone with Matt Bucannon, who is to the  
2 attorney for the department of probation. He said  
3 they don't ask for arrears. I ask -- specifically  
4 asked that question. In 2015 when I was  
5 Mr. Jackson's lawyer, I requested that he be given a  
6 hardship for the fees. Probation granted that. He  
7 has not been in violation, he doesn't owe the fees,  
8 he's been given a hardship exception that entire  
9 time. It's my understand and been my understanding  
10 for many years now that probation keeps track of the  
11 arrearage so that when it goes before the legislature  
12 for it's budget, it can request what kind of--

13 THE COURT: You don't need to yell at me.

14 MR. SCALZO: I'm not yelling, Judge.

15 THE COURT: Oh, well --

16 MR. SCALZO: I've gotten -- I'm sorry, I wasn't  
17 yelling. All I'm saying, Judge, is probation  
18 originally said that they weren't asking for the  
19 arrearages. They're not arrearages because he was  
20 given a hardship exception. And that -- I want to  
21 make that point to The Court.

22 THE COURT: So how do you explain the violations  
23 of electronic monitoring?

24 MR. SCALZO: He has not violated the electronic  
25 monitoring statute. He has violated -- he was

1 convicted of violating the sex offender registry

2 statute. They're two separate statutes.

3 THE COURT: Okay. Well, I tell you what, I'm

4 going to deny your motion. You can appeal that and

5 see if I'm right or wrong.

6 MR. SCALZO: Are you denying, Judge, on the

7 basis that that's the same statute?

8 THE COURT: I'm denying it because he violated

9 the home incarceration or whatever the electronic

10 monitoring provisions, he violated that.

11 MR. SCALZO: Okay, Judge, just for the record,

12 those are not part of the statute but okay.

13 THE COURT: Okay. Well, you let an appellate

14 court tell you that. Thank you.

15 MR. SCALZO: We will, Judge, thank you.

16 (WHEREUPON, the proceedings were concluded.)

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1 CERTIFICATE OF REPORTER  
23  
4 STATE OF SOUTH CAROLINA )5 COUNTY OF GREENVILLE )  
6  
78 I, APRIL P. HERRON, Official Court Reporter for the  
9 Thirteenth Judicial Circuit of the State of South  
10 Carolina, do hereby certify that the foregoing is a true,  
11 accurate and 1 Transcript of Record of the proceedings  
12 had and evidence introduced in the trial of the captioned  
13 case, relative to appeal, in the Court of General  
14 Sessions for Greenville County, South Carolina, on the  
15 17th day of March, 2020.16 I do further certify that I am neither of kin, counsel  
17 nor interest to any party hereto.  
1819 March 15, 2023  
20  
21  
2223 April P. Herron24 APRIL P. HERRON, Court Reporter  
25



**DEFENDANT IS ELIGIBLE TO PETITION FOR RELEASE**

4. A person is eligible to petition to be released from the electronic monitoring requirements "[10] years from the date the person begins to be electronically monitored." S.C. Code § 23-3-540(H).

5. As of the date of this Petition, Defendant has been monitored for 16 years and is therefore eligible to petition for removal.

**RELEASE HEARING**

6. A hearing must be held and the circuit solicitor, the Department of Probation, Parole and Pardon Services, and any victims must be notified and given an opportunity to respond to the petition. S.C. Code § 23-3-540(H).

7. At the hearing, the Court may release a person from the monitoring requirements upon proof by "clear and convincing evidence" the person has "complied with the terms and conditions of the electronic monitoring and there is no longer a need to electronically monitor the person." S.C. Code § 23-3-540(H).

**DEFENDANT HAS SATISFIED THE CONDITIONS FOR RELEASE**

8. The evidence is clear and convincing Defendant has complied with the terms and conditions of monitoring and no longer needs to be electronically monitored.

9. Defendant is not currently in violation of a term or condition of electronic monitoring.

10. Defendant has not previously been convicted of violating the terms or conditions of electronic monitoring.

11. Defendant was charged in 2013 with a violation of the terms or conditions of electronic monitoring by warrant 2013A2330202243 solely for being in arrears on payments for electronic monitoring. The prosecutor dismissed the warrant on October 21, 2014, because she determined Defendant's arrears were not willful in that he met the financial hardship exemptions of S.C. Code § 23-3-540(K).

12. On January 23, 2015, Defendant, through undersigned counsel in his capacity as Defendant's attorney through the Greenville County Public Defender's

office, requested a hardship exemption pursuant to S.C. Code § 23-3-540(K) in a letter to the Department of Probation, Pardon & Parole Services.

13. Defendant does not pose a high risk or re-offending and no longer needs to be electronically monitored.

**CONCLUSION**

WHEREFORE, for the above-stated reasons as well as any other reasons which may appear to this Court, Defendant respectfully requests this Court order his release from the electronic monitoring requirements of S.C. Code § 23-3-540.

Respectfully submitted,

TURNER PADGET GRAHAM & LANEY, P.A.



---

Christopher D Scalzo (SC Bar No. 70522)

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Greenville, South Carolina  
February 28, 2023

ATTORNEYS FOR DEFENDANT

F773492

Created by the South Carolina Department of Probation, Parole and Pardon Services

State of South Carolina

IN THE COURT OF GENERAL SESSIONS

County of Greenville

FILED CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL B. MCKENSIMER

No. 98-GS-23-4295 Court

State

2007 MAR -5 10:41

Community Supervision

-vs-

*Amended*

CONTINUATION ORDER

*in reference to 12/11/06 order*

Defendant Bernard Jackson

SID# 00322244

SCDC# or DOB 11-17-63


This matter was brought before me on the 26<sup>th</sup> day of February, 2007, pursuant to a warrant/citation (strike one) charging the Defendant with violating the Defendant's Community Supervision Program and asking the Court to revoke the Defendant's community supervision. I find:

1. The terms of the Community Supervision Program are fair and reasonable;
2. The Defendant has not complied with all terms of the Community Supervision Program;
3. The Defendant has willfully violated terms of the Community Supervision Program;
4. The Defendant should be continued in the Community Supervision Program under its current terms or under other terms and conditions.

The Defendant is ordered continued on Community Supervision subject to all conditions not inconsistent with this order. The Court orders the following additional conditions:

- To be placed under GPS monitoring, in accordance with the Sex Offender Accountability and Protection of Minors Act of 2006
- Credit for 60 Days in Jail.

This 26<sup>th</sup> day of February, 2007  
Greenville SC

  
Presiding Judge Henry B. Simmons Jr.  
Judicial Circuit

This is to certify that I have read or have had read to me the Continuation Order and the Conditions set out therein. I agree to comply with such conditions and the conditions of my supervision order not inconsistent with this order during the period of my supervision. I have received a copy of this court order.

Offender's Signature Bernard Jackson

Witnessed by [Signature]

Signed this 26<sup>th</sup> day of February, 2007 at Greenville SC

<b>STATE OF SOUTH CAROLINA</b>	)	<b>IN THE COURT OF GENERAL SESSIONS</b>
	)	<b>THIRTEENTH JUDICIAL CIRCUIT</b>
<b>COUNTY OF GREENVILLE</b>	)	
<b>State of South Carolina</b>	)	
<b>vs.</b>	)	<b>ORDER</b>
	)	
<b>Bernard Joseph Jackson,</b>	)	<b>Indictment 1998-GS-23-04295</b>
<b>Defendant</b>	)	
<hr style="width: 35%; margin-left: 0;"/>	)	

This matter came before the Court on March 17, 2023, on Defendant’s Motion for Release from Electronic Monitoring. M. Kyle Thompson of the Thirteenth Judicial Circuit Solicitor’s Office appeared for the State. Octavia Wright appeared on behalf of the South Carolina Department of Probation, Parole, and Pardon Services (SCPPPS). Christopher D. Scalzo of Turner Padgett Graham & Laney, P.A. For the reasons set forth below, the Court denies the Motion.

**Factual Background**

On April 1, 1999, Defendant pled guilty to the offense of Criminal Sexual Conduct 2nd degree with a minor. The Court sentenced him to five years imprisonment. Upon his release from custody, he was required to register on the Sex Offender Registry.

In 2007, following a violation of Community Supervision provisions of the Sex Offender Registry, the Court ordered him to begin wearing an electronic monitor pursuant to Jason’s Law, S.C. Code Ann. § 23-3-540. As part of being subject to electronic monitoring, Defendant is required to comply with GPS Tracking Program Conditions, which is monitored by SCPPPS. Defendant most recently confirmed by his signature that he was aware of these conditions and understood them on April 6, 2022. On that date, he agreed, as Condition 2 of the GPS Tracking Program Conditions, that he would reside at 9 Dobbs St., Greenville, South Carolina 29605.

In October 2022, the Greenville County Sheriff's Office obtained warrants against Defendant for Failing to Register as a Sex Offender (1<sup>st</sup> Offense) and Violating Residency Limitations (1<sup>st</sup> Offense). According to information presented to the Court, Defendant was not living at 9 Dobbs Street, and deputies relied upon the electronic monitoring information provided to obtain those warrants. The Greenville County Sheriff's Office arrested Defendant on those warrants on November 15, 2022, and he pled guilty to both charges on February 9, 2023.

On February 28, 2023, Defendant filed this motion.

#### Legal Analysis

Defendant asserts that he should no longer be subject to electronic monitoring due to more than ten years passing since he began to be electronically monitored. S.C. Code Ann. § 23-3-540(H) states in relevant part:

Ten years from the date the person begins to be electronically monitored, the person may petition the chief administrative judge of the general sessions court for the county in which the person was ordered to be electronically monitored for an order to be released from the electronic monitoring requirements of this section. ... If the court finds that there is clear and convincing evidence that the person has complied with the terms and conditions of the electronic monitoring and that there is no longer a need to electronically monitor the person, then the court may order the person to be released from the electronic monitoring requirements of this section.

Defendant asserted that he has fully complied with the terms and conditions and that there is no need to monitor him.

The Court disagrees. Defendant pled guilty to a criminal charge of failing to register as a sex offender. The warrant to which he pled guilty asserted that he had moved away from the address where he had previously registered (9 Dobbs St.) and had failed to notify the Greenville County Sheriff's Office. His guilty plea was an admission that he was not living at the address provided as part of the GPS Tracking Program Conditions. By failing to reside at the given address on the GPS Tracking Program Conditions, he violated the "terms and conditions of the electronic

Furthermore, Defendant has not provided any evidence that there is no longer a need to electronically monitor him. As the moving party, Defendant has the burden to prove that there is no longer a need to monitor him. He did not introduce any testimony, affidavits, reports, or any other evidence indicating that there is no longer the need to monitor him. On the contrary, the fact that he was not residing at the address provided either to SCPPPS as part of the GPS Tracking Program Conditions or the address provided for the Sex Offender Registry makes it clear that continuing monitoring is needed.

**THEREFORE,**

**IT IS ORDERED** that Defendant's Petition for Release from Electronic Monitoring is denied.

**IT IS SO ORDERED!**

---

**Edward W. Miller**  
**Presiding Judge**

**Greenville, South Carolina**  
**Date** \_\_\_\_\_

**Scalzo, Christopher D**

---

**From:** Thompson, Kyle <KyThompson@greenvillecounty.org>  
**Sent:** Tuesday, March 28, 2023 4:11 PM  
**To:** Miller, Edward W.  
**Cc:** Miller, Edward W. Law Clerk (Stephen Lewis); Scalzo, Christopher D  
**Subject:** State v. Bernard Joseph Jackson, 98-GS-23-04295  
**Attachments:** Order Deny Jackson Motion to Remove Elec Mon.docx

Judge Miller,

On Friday, March 13, 2023, you heard a Petition to Remove Electronic Monitoring filed by Bernard Joseph Jackson. You denied the petition.

Attached is an order I prepared following the hearing. Mr. Scalzo has seen the order and disagrees that it accurately reflects the ruling of the court. My understanding is that he is going to send you a separate proposed order.

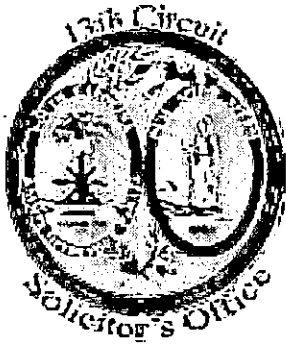
Thank you,

Kyle Thompson

**M. Kyle Thompson, Esq.**  
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**Turner Padget**

Reply to:  
Christopher D. Scalzo  
Email: [CScalzo@turnerpadget.com](mailto:CScalzo@turnerpadget.com)  
Direct Dial: 864-552-4652

March 28, 2023

The Honorable Edward W. Miller  
Thirteenth Judicial Circuit Court Judge  
305 East North Street  
Greenville, SC 29601

Re: State v. Bernard Joseph Jackson  
Docket No.: 98-GS-23-04295

Dear Judge Miller:

I am writing to state my objection to the State's proposed order from the hearing in this matter held by Your Honor on March 17, 2023. As I have already advised Mr. Thompson, I object to the inclusion in the order of any additional rulings beyond the sole ruling made by the Court, which was that Mr. Jackson's convictions for violating the sex offender registry statute are violations of the terms and conditions of the electronic monitoring statute and Mr. Jackson could not be removed from the electronic monitoring under S.C. Code Ann. § 23-3-540(H). Enclosed please find a proposed order reflecting this ruling.

Also enclosed, please find a filed copy of Mr. Jackson's motion to reconsider the Court's ruling. Since the hearing on March 17, 2023, ended upon the Court issuing its ruling on the single issue addressed above, if the Court is going to make additional rulings, I respectfully request a hearing be held so that a full record can be made regarding those additional rulings.

Please do not hesitate to contact me if you have any questions or concerns.

Yours very truly,

  
TURNER PADGET GRAHAM & LANEY, PA

Christopher D. Scalzo, Esquire

Enclosure

Cc: Kyle Thompson, 13<sup>th</sup> Circuit Solicitor's Office  
Matthew Buchanan, Dept. Probation, Parole & Pardon Svcs.



- Whether the State has presented clear and convincing evidence Mr. Jackson poses a sufficient risk to re-offend that justifies requiring him to continue to be electronically monitored.

Consequently, these issues are not the subject of this Motion but would be addressed at a full hearing if the Court grants this Motion.

### RECONSIDERATION

Section 23-3-540(H) does not set forth that a violation of the sex offender registry statute is a bar to removal from electronic monitoring; nor does it set forth that failure to register (or any violation of the sex offender registry law) is also a violation of the terms and conditions of electronic monitoring.

Had the legislature wanted to include registry violations as a bar to removal from electronic monitoring, it would have done so clearly as it did in other sections of § 23-3-540. In other sections, when a violation of the sex offender registry was relevant to electronic monitoring, the legislature referenced "this article" as a way of clearly and specifically referencing registry violations or requirements. See §§ 23-3-540 (C), (D), (E), (F), (H) and (Q). In fact, the references to "this article" in subparagraph (H) are specific references to the basis for being required to register as a sex offender (as opposed to a restriction on being removed). However, the legislature did not use "this article" or any similar language in setting the removal standard. Instead, as is discussed more fully below, the standard is a Fourth Amendment totality of the circumstances assessment of the reasonable ness of monitoring Mr. Jackson; it is not a singular violation of the sex offender registry.

Respectfully, for these reasons, this Court should reconsider its ruling that Mr. Jackson cannot be removed from electronic monitoring because of his failure to register convictions, as the Court's ruling is not supported by the plain language of the statute.

Additionally, the Court should reconsider its ruling because the ruling does not satisfy the safeguards and standards of the Fourth Amendment and relevant case

law. A court's automatic or mandatory order requiring a person submit to electronic monitoring under S.C. Code Ann. § 23-3-540 is unconstitutional when it is based solely on being convicted of failing to registry as a sex offender because such a conclusion does not satisfy the reasonableness requirements of the Fourth Amendment. *State v. Ross*, 423 S.C. 504, 514-515 (2018) (citing *Grady v. North Carolina*, 575 U.S. 306, 135 S.Ct. 1368, 191 L.Ed.2d 459 (2015)). Put another way, violating the sex offender registry cannot be the sole basis for determining someone should be electronically monitored under § 23-3-540 because there must be an individualized determination as to the reasonableness of electronically monitoring that person.

*Ross* concerned a similar scenario to this case (imposing monitoring on a sex offender who had failed to register), where the State argued:

the automatic, mandatory requirement of electronic monitoring—triggered by Ross's failure to register [as a sex offender] in 2011—is reasonable under the Fourth Amendment, and 'the trial court in this case did not need to conduct an individual assessment of reasonableness to order [Ross] to be electronically monitored.'

*Ross*, 423 S.C. at 509-510. Our Supreme Court specifically rejected this argument. *Id.* In doing so, the Court highlighted that "a review of only the [electronic monitoring] program itself is not an adequate review for reasonableness under the Fourth Amendment." *Id.* at 514.

Additionally, the Court highlighted several other important facts about Mr. Ross's case (that are substantively identical to Mr. Jackson's case) it believed supported the need for trial courts to meet the reasonableness standard of the Fourth Amendment:

1. Like Mr. Ross, Mr. Jackson is not currently under supervision for probation or community supervision;
2. Like Mr. Ross, Mr. Jackson has not been convicted of any sexual offenses since the qualifying conviction—

which, in both cases, was more than 20 years prior to the court considering electronic monitoring; and

3. Like Mr. Ross, Mr. Jackson was convicted of failure to register as a sex offender but the State failed to present evidence of a risk to re-offend that made monitoring reasonable under the Fourth Amendment.<sup>1</sup>

*See Ross*, 429 S.C. at 512.

Importantly, none of the above factors, alone, constitute the individualized reasonableness inquiry required by the Fourth Amendment. *See id.* Still more important, the Court was concerned with distinguishing these "technical" violations (even terming them potentially "innocent"), that do not substantially address the required reasonableness standard, from acting as either a bar to removal or an automatic requirement to be electronically monitored. *See id.*

It is important to note that Mr. Jackson—again, like Mr. Ross—was placed on electronic monitoring through a mandatory court order for a violation of supervision; and, like in Mr. Ross's case, the circuit court did not conduct an individualized reasonableness analysis before requiring Mr. Jackson submit to electronic monitoring. *See id.* 507-508. The Court, therefore, is not operating with an already existing record that electronically monitoring Mr. Jackson is reasonable under the Fourth Amendment. Indeed, applying the *Ross* standard to the record in Mr. Jackson's case, the circuit court would not have had sufficient evidence to find "electronic monitoring would not be an unreasonable search based on the totality of

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<sup>1</sup> The Supreme Court clearly distinguished between sexual offenses that indicate a defendant's future or current dangerousness from convictions it termed "technical" violations such as failing to register as a sex offender, which it treated neither as a new sex offense nor as a violation of the electronic monitoring statute itself. *See Ross* at 512-515.

the circumstances presented in [Mr. Jackson's] individual case." *Id.* at 515.<sup>2</sup> Just as in 2007, today, Mr. Jackson does not pose a high risk of reoffending<sup>3</sup> and it is unreasonable under the Fourth Amendment to continue to monitor him. As noted above, Mr. Jackson did not have an opportunity to fully present or address this issue at the March 17<sup>th</sup>.

In 2007, the State failed to present evidence that electronically monitoring Mr. Jackson under § 23-3-540 met the Fourth Amendment's safeguards and standards against an unreasonable search. Presently, that same electronic monitoring continues to be an unreasonable search under the Fourth Amendment warranting, among other reasons, his removal from monitoring under § 23-3-540.

#### CONCLUSION

Respectfully, for the above-stated reasons as well as any other reasons which may appear just and fair, the Court should reconsider its ruling and grant Mr. Jackson a full hearing on his petition to be removed from electronic monitoring, including the reasonableness of continuing to electronically monitor him pursuant to S.C. Code § 23-3-540.

[SIGNATURE PAGE TO FOLLOW]

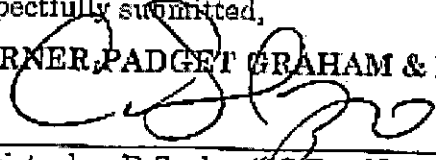
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<sup>2</sup> The timing of when the original order to be monitored was issued is not relevant to the requirement of conducting a reasonableness analysis. In *Ross*, the order for mandatory monitoring was issued in 2011 and his challenge was made 5 years later. Similarly, in *State v. Mitchell*, 427 S.C. 220 (Ct. App. 2019), the original order for Mitchell to be monitored was issued in 2011, and despite the trial court not having "the benefit of *Ross*," the Court of Appeals "nevertheless [reversed] the electronic monitoring order and [remanded] so that a Fourth Amendment inquiry [could] occur." *Id.* at 222.

<sup>3</sup>A "likelihood of re-offending lies at the core" of the statutory scheme set up by the legislature through both the sex offender registry and the electronic monitoring statute. *Ross*, at 514 (quoting *State v. Dykes*, 403 S.C. 499, 507 (2013)).

Respectfully submitted,

TURNER, PADGET GRAHAM & LANEY, P.A.



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CScalzo@turnerpadget.com

Greenville, South Carolina  
March 28, 2023

ATTORNEYS FOR DEFENDANT

23 MAR 29 PM 3:23  
Paul Henderson C00321 SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF GREENVILLE	)	Docket No.: 98-GS-23-04295
	)	
THE STATE,	)	
	)	
v.	)	<b>ORDER</b>
	)	
BERNARD JOSEPH JACKSON,	)	
	)	
Defendant.	)	
	)	

This matter came before the Court on March 17, 2023, on Defendant's Petition for an Order releasing him from the electronic monitoring requirements of S.C. Code Ann. § 23-3-540. Christopher D. Scalzo of Turner, Padgett, Graham & Laney PA appeared for the Defendant. M. Kyle Thompson of the Thirteenth Circuit Solicitor's Office appeared for the State. Octavia Wright appeared for the South Carolina Department of Probation, Parole and Pardon Services. For the reasons set forth below, the Court denies the Petition.

#### FACTUAL BACKGROUND

On April 1, 1999, Defendant pled guilty to Criminal Sexual Conduct 2<sup>nd</sup> degree with a minor and was sentenced to five years in the South Carolina Department of Corrections. Upon release, he was required to register on Sex Offender Registry.

On February 26, 2007, the circuit court ordered Defendant to submit to mandatory electronic monitoring pursuant to S.C. Code Ann. § 23-3-540(D) for a violation of the Community Supervision Program.

On February 9, 2023, Defendant pled guilty in Summary Court to Failure to Register as a Sex Offender (1<sup>st</sup> Offense) and Violating Residency Limitations (1<sup>st</sup> Offense) and received a time served sentence.

On February 28, 2023, Defendant filed this Petition.

#### LEGAL ANALYSIS

Defendant petitioned for release pursuant to S.C. Code Ann. § 23-3-540(H), which, in relevant part, states:

If the court finds that there is clear and convincing evidence that the person has complied with the terms and conditions of the electronic monitoring and that there is no longer a need to electronically monitor the person, then the court may order the person to be released from the electronic monitoring requirements of this section.

The Court finds that convictions for Failure to Register as a Sex Offender (1<sup>st</sup> Offense) and Violating Residency Limitations (1<sup>st</sup> Offense) are violations of the terms and conditions of the electronic monitoring program and therefore Defendant, having been convicted of those offenses, has not established by clear and convincing evidence he "has complied with the terms and conditions of electronic monitoring" required under S.C. Code Ann. § 23-3-540(H).

IT IS THEREFORE ORDERED that Defendant's Petition for Release from the Electronic Monitoring Requirements of S.C. Code Ann. § 23-3-540 is denied.

AND IT IS SO ORDERED.

---

Honorable Edward W. Miller  
Circuit Judge, 13<sup>th</sup> Judicial Circuit

Greenville, South Carolina  
Date: \_\_\_\_\_

F773492

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 State of South Carolina )  
 )  
 vs. )  
 )  
 Bernard Joseph Jackson, )  
 )  
 Defendant )

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IN THE COURT OF GENERAL SESSIONS  
 THIRTEENTH JUDICIAL CIRCUIT

**ORDER**

Indictment 1998-GS-23-04295

123 APR 3 PM 5:04  
 PAUL RICHARDSON, CLERK

The Court denies Defendant's Motion to Reconsider without prejudice because the motion is premature. On March 17<sup>th</sup>, 2023, the Court held a hearing on Defendant's Motion for Release from Electronic Monitoring. The Court made a ruling on the motion from the bench and instructed the solicitor to prepare an order reflecting the Court's ruling. The written order has not been signed. Despite the absence of a signed written order, the Defense filed a Motion to Reconsider the ruling on March 28<sup>th</sup>.

Rule 59(e) of the South Carolina Rules of Civil Procedure states that "a motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of *the entry of the order*" (emphasis added). "No order is final until it is written and entered." *Corbin v. Kohler Co.*, 351 S.C. 613, 620, 571 S.E.2d 92, 96 (Cl. App. 2002). "Until written and entered, the trial judge retains discretion to change his mind and amend his oral ruling accordingly." *Id.* at 621, 571 S.E.2d at 96. Because a written order has not been entered, there is no final ruling to reconsider at this time.

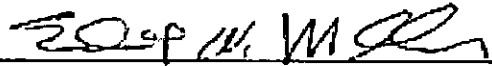
Additionally, the relief requested in Defendant's Motion to Reconsider is a full hearing on the Motion for Release from Electronic Monitoring. A hearing on this motion was held on March

#1  
 EM

17<sup>th</sup>, and defendant failed to present any evidence that release from electronic monitoring was appropriate.

For the reasons stated above, Defendant's Motion to Reconsider is denied without prejudice.

IT IS SO ORDERED!

  
\_\_\_\_\_  
Edward W. Miller  
Presiding Judge

Greenville, South Carolina  
Date 4/7/23

#2  
667

F773492

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 State of South Carolina )  
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 vs. )  
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 )  
 Bernard Joseph Jackson, )  
 )  
 )  
 Defendant )

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IN THE COURT OF GENERAL SESSIONS  
THIRTEENTH JUDICIAL CIRCUIT

**ORDER**

Indictment 1998-GS-23-04295

23 APR 17 AM 11:06  
P021 WICKENHEIMER CDC BDL SC

This matter came before the Court on March 17, 2023, on Defendant's Motion for Release from Electronic Monitoring. M. Kyle Thompson of the Thirteenth Judicial Circuit Solicitor's Office appeared for the State. Octavia Wright appeared on behalf of the South Carolina Department of Probation, Parole, and Pardon Services (SCPPPS). Christopher D. Scalzo of Turner Padgett Graham & Lancy, P.A. For the reasons set forth below, the Court denies the Motion.

**Factual Background**

On April 1, 1999, Defendant pled guilty to the offense of Criminal Sexual Conduct 2nd degree with a minor. The Court sentenced him to five years imprisonment. Upon his release from custody, he was required to register on the Sex Offender Registry.

In 2007, following a violation of Community Supervision provisions of the Sex Offender Registry, the Court ordered him to begin wearing an electronic monitor pursuant to Jason's Law, S.C. Code Ann. § 23-3-540. As part of being subject to electronic monitoring, Defendant is required to comply with GPS Tracking Program Conditions, which is monitored by SCPPPS.. Defendant most recently confirmed by his signature that he was aware of these conditions and understood them on April 6, 2022. On that date, he agreed, as Condition 2 of the GPS Tracking Program Conditions, that he would reside at 9 Dobbs St., Greenville, South Carolina 29605.

1  
*[Handwritten signature]*

Sent to:  
SAR

In October 2022, the Greenville County Sheriff's Office obtained warrants against Defendant for Failing to Register as a Sex Offender (1<sup>st</sup> Offense) and Violating Residency Limitations (1<sup>st</sup> Offense). According to information presented to the Court, Defendant was not living at 9 Dobbs Street, and deputies relied upon the electronic monitoring information provided to obtain those warrants. The Greenville County Sheriff's Office arrested Defendant on those warrants on November 15, 2022, and he pled guilty to both charges on February 9, 2023.

On February 28, 2023, Defendant filed this motion.

#### Legal Analysis

Defendant asserts that he should no longer be subject to electronic monitoring due to more than ten years passing since he began to be electronically monitored. S.C. Code Ann. § 23-3-540(H) states in relevant part:

Ten years from the date the person begins to be electronically monitored, the person may petition the chief administrative judge of the general sessions court for the county in which the person was ordered to be electronically monitored for an order to be released from the electronic monitoring requirements of this section. ... If the court finds that there is clear and convincing evidence that the person has complied with the terms and conditions of the electronic monitoring and that there is no longer a need to electronically monitor the person, then the court may order the person to be released from the electronic monitoring requirements of this section.

Defendant asserted that he has fully complied with the terms and conditions and that there is no need to monitor him.

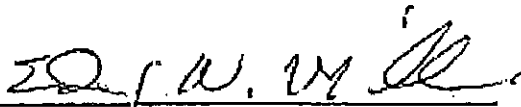
The Court disagrees. Defendant pled guilty to a criminal charge of failing to register as a sex offender. The warrant to which he pled guilty asserted that he had moved away from the address where he had previously registered (9 Dobbs St.) and had failed to notify the Greenville County Sheriff's Office. His guilty plea was an admission that he was not living at the address provided as part of the GPS Tracking Program Conditions. By failing to reside at the given address on the GPS Tracking Program Conditions, he violated the "terms and conditions of the electronic monitoring."

Furthermore, Defendant has not provided any evidence that there is no longer a need to electronically monitor him. As the moving party, Defendant has the burden to prove that there is no longer a need to monitor him. He did not introduce any testimony, affidavits, reports, or any other evidence indicating that there is no longer the need to monitor him. On the contrary, the fact that he was not residing at the address provided either to SCPPPS as part of the GPS Tracking Program Conditions or the address provided for the Sex Offender Registry makes it clear that continuing monitoring is needed.

THEREFORE,

IT IS ORDERED that Defendant's Petition for Release from Electronic Monitoring is denied.

IT IS SO ORDERED!

  
Edward W. Miller  
Presiding Judge

Greenville, South Carolina

Date 4/15/23

<sup>3</sup>  


STATE OF SOUTH CAROLINA ) IN THE COURT OF GENERAL SESSIONS  
 )  
 COUNTY OF GREENVILLE ) Docket No.: 1998-GS-23-04295 (F773492)  
 )  
 THE STATE, )  
 )  
 )  
 )  
 v. ) **DEFENDANT'S MOTION TO**  
 ) **RECONSIDER**  
 )  
 BERNARD JOSEPH JACKSON, )  
 )  
 )  
 )  
 Defendant. )

2023 APR 27 10:56 AM  
 CLERK OF COURT  
 GREENVILLE, SC

**TO: KYLE THOMPSON, ATTORNEY FOR SOLICITOR'S OFFICE  
 MATTHEW C. BUCHANAN, ATTORNEY FOR PROBATION**

COMES NOW Joseph Bernard Jackson ("Defendant") by and through undersigned counsel, who moves this Court to reconsider its Order filed April 17, 2023 (the "Order on Release from EM") and its Order filed April 3, 2023 (the "Order Denying Reconsideration"), both of which were received by undersigned counsel on April 27, 2023, via email from the Clerk of Court.

Defendant respectfully submits the following in support of this Motion to Reconsider both the Order on Release from EM and the Order Denying Reconsideration.

**TIMELY FILING OF MOTION**

A motion to reconsider must be served "no later than 10 days after receipt of written notice of the entry of the order." Defendant received written notice of both orders via email from the Clerk of Court on April 27, 2023. This Motion is timely filed on or before May 8, 2023.<sup>1</sup>

<sup>1</sup> Pursuant to Rule 6(a) of the South Carolina Rules of Civil Procedure, the time period for filing does not include the date of the event nor does it count a weekend day as the last day of the time period. May 7, 2023 is ten days from April 28, 2023, but is a Sunday, making May 8, 2023, the proper final day for service.

### LEGAL ARGUMENT

At the hearing on March 17, 2023, the Court issued an oral ruling in which it found that Defendant's conviction for violations of the sex offender registry was a violation of the terms and conditions of the electronic monitoring statute that barred Defendant's removal from the requirements of electronic monitoring pursuant S.C. Code Ann. § 23-3-540(H). That conclusion was erroneous. Nonetheless, the Court's oral ruling addressed this single issue which it treated as dispositive of Defendant's petition. Consequently, the remaining issues were not ruled on and evidence was not presented nor properly admitted through motion because the Court's oral ruling ended the hearing before those additional issues were fully litigated. This too was erroneous and warrants reconsideration of the orders.

Additionally, the Order on Release from EM is inconsistent with the Court's oral ruling. As offered by the solicitor in its proposed order and accepted by the Court in its written order, the written ruling conducts an analysis of the "GPS Tracking Program Conditions" that the Court did not take up in the hearing nor include in its oral ruling. This ruling is also based on documents neither offered nor properly admitted into evidence. Left in this posture, the Order on Release from EM will have been issued in violation of Defendant's right to due process, as Defendant did not have the opportunity to present evidence of his own.<sup>2</sup> This leaves the Court's rulings in a posture of being unsupported by an evidentiary record. The Court should, therefore, reconsider these rulings and hold a hearing to fully address the relevant admissible evidence, law, and arguments.

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<sup>2</sup> Among the evidence Defendant would have presented in response to properly admitted evidence from the State and in support of his defense to assertions that he changed his residence, was (and is) evidence that, during the time the State alleges he changed his residence, Defendant was treated by Prisma Health for issues stemming from diverticular disease and resulting strictures of the sigmoid colon. The treatment was extensive and spanned many days. This evidence, as well as other evidence, would counter any evidence the State might seek to properly admit and any arguments it may make that Defendant changed his residence or that such a change had any bearing on Defendant's risk of reoffending.

The Court made other additional rulings beyond its oral ruling from March 17, 2023, relying on the State's assertions about evidence neither properly offered nor admitted into evidence. For example, as discussed more fully below, a close look at the documents provided by the State (but neither marked nor admitted as exhibits) shows Defendant was not, as the State claimed, residing at 416 Virginia Avenue, Greenville, SC, for 10 or more consecutive days as is required under the Sex Offender Registry statute to be a violation. Consequently, left in this posture, the Order on Release from EM will have been issued in violation of Defendant's right to due process and unsupported by an evidentiary record. The Court should, therefore, reconsider these rulings and hold a hearing to fully address the relevant admissible evidence, law, and arguments.

Moreover, argument was not finalized on other issues raised by the parties and the Court did not issue an oral ruling on those issues but, as recommended by the solicitor in its proposed order and accepted by the Court in its written order, the written order does address other issues. However, the written order incompletely addresses issues raised and does not address other issues implicated by both the law and facts. Among the issues raised but neither fully heard nor completely ruled on at the hearing are:

- Whether the State met *its* burden to present clear and convincing evidence that it is reasonable under the Fourth Amendment to continue to electronically monitor Mr. Jackson pursuant to *State v. Ross*, 423 S.C. 504 (2018);
- Whether the State met *its* burden to present clear and convincing evidence Mr. Jackson poses a sufficient risk to re-offend that justifies requiring him to continue to be electronically monitored;
- Whether the State met *its* burden to present clear and convincing evidence that there is a need to continue to electronically monitor Mr. Jackson; and

- Whether the State had previously met *its* burden under *Ross* sufficiently establishing it was reasonable to order Defendant to submit to electronic monitoring in the first place.

The Order on Release from EM does not fully or properly address these issues and should be reconsidered. Otherwise, left in this posture, the Order on Release from EMT will have been issued in violation of Defendant's right to due process and without support from an evidentiary record. The Court should, therefore, reconsider these rulings and hold a hearing to fully address the relevant admissible evidence, law, and arguments.

**I. A conviction for violating the Sex Offender Registry does not act as a bar to Defendant petitioning for removal or being removed from the electronic monitoring requirements of S.C. Code Ann. § 23-3-540(H).**

The plain meaning of S.C. Code Ann. § 23-3-540(H) does not state that violating the Sex Offender Registry is a bar to either petitioning for removal or being removed from electronic monitoring. Section 23-3-540(H) does not say a person must have complied with "this article" or with "the sex offender statute" or any subsection in §§ 23-3-400 through -555. The sole reference in §23-3-540(H) to a person having "complied" with any required terms and conditions is to "electronic monitoring." Consequently, the Court's oral ruling that Defendant's conviction for violating the Sex Offender Registry constituted a violation of the terms and conditions of electronic monitoring was erroneous by the plain meaning of the statute.

Had the legislature wanted to include registry violations as a bar to removal from electronic monitoring, it would have done so clearly as it did in other sections of § 23-3-540. In other sections, when a violation of the sex offender registry was relevant to electronic monitoring, the legislature referenced "this article" as a way of clearly and specifically referencing registry violations or requirements. See §§ 23-3-540 (C), (D), (E), (F), (H) and (Q). In fact, the references to "this article" in

subparagraph (H) are specific references to the basis for being required to register as a sex offender (as opposed to a restriction on being removed). However, the legislature did not use "this article" or any similar language in setting the removal standard. Instead, as is discussed more fully below, the standard is a Fourth Amendment totality of the circumstances assessment of the reasonableness of monitoring an individual person and, thus, cannot be based on a singular violation of the sex offender registry.

Respectfully, for these reasons, the Court should reconsider its ruling that Defendant cannot be removed from electronic monitoring because of his failure to register conviction, as this ruling is not supported by the plain language of the statute.

Additionally, the Court should reconsider its ruling because it does not satisfy the safeguards and standards of the Fourth Amendment and relevant case law. A court's automatic or mandatory order requiring a person submit to electronic monitoring under S.C. Code Ann. § 23-3-540 is unconstitutional when it is based solely on being convicted of failing to registry as a sex offender because such a conclusion does not satisfy the reasonableness requirements of the Fourth Amendment. *State v. Ross*, 423 S.C. 504, 514-515 (2018) (citing *Grady v. North Carolina*, 575 U.S. 306, 135 S.Ct. 1368, 191 L.Ed.2d 459 (2015)). Put another way, violating the sex offender registry cannot be the sole basis for determining someone should be electronically monitored under § 23-3-540 because there must be an individualized determination as to the reasonableness of electronically monitoring that person.

*Ross* concerned a similar scenario to this case (imposing monitoring on a sex offender who had failed to register), where the State argued:

the automatic, mandatory requirement of electronic monitoring—triggered by Ross's failure to register [as a sex offender] in 2011—is reasonable under the Fourth Amendment, and the trial court in this case did not need

to conduct an individual assessment of reasonableness to order [Ross] to be electronically monitored.'

*Ross*, 423 S.C. at 509-510. Our Supreme Court specifically rejected this argument. *Id.* In doing so, the Supreme Court highlighted that "a review of only the [electronic monitoring] program itself is not an adequate review for reasonableness under the Fourth Amendment." *Id.* at 514.

Additionally, the Supreme Court highlighted several other important facts about Mr. Ross's case it believed supported the need for trial courts to meet the reasonableness standard of the Fourth Amendment. These factors are substantively identical to Mr. Jackson's case.

1. Like Mr. Ross, Defendant is not currently under supervision for probation or community supervision;
2. Like Mr. Ross, Defendant has not been convicted of any sexual offenses since the qualifying conviction—which, in both cases, was more than 20 years prior to the court considering electronic monitoring; and
3. Like Mr. Ross, Defendant was convicted of failure to register as a sex offender but the State failed to present evidence of a risk to re-offend that made monitoring reasonable under the Fourth Amendment.<sup>3</sup>

See *Ross*, 423 S.C. at 512.

Importantly, none of the above factors, alone, constitute the individualized reasonableness inquiry required by the Fourth Amendment. See *id.* Still more important, the Supreme Court was concerned with distinguishing these "technical"

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<sup>3</sup> The Supreme Court clearly distinguished between sexual offenses that indicate a defendant's future or current dangerousness from convictions it termed "technical" violations such as failing to register as a sex offender, which it treated neither as a new sex offense nor as a violation of the electronic monitoring statute itself. See *Ross* at 512-515.

violations (even terming them potentially “innocent”), that do not substantially address the required reasonableness standard, from acting either as a bar to removal or an automatic requirement to be electronically monitored. *See id.*

It is important to note that Defendant—again, like Mr. Ross—was placed on electronic monitoring through a mandatory court order for a violation of supervision; and, like in Mr. Ross’s case, the circuit court did not conduct an individualized reasonableness analysis before requiring Defendant submit to electronic monitoring. *See id.* 507-508. The Court, therefore, is not operating with an already existing record that electronically monitoring Defendant is reasonable under the Fourth Amendment. Indeed, applying the *Ross* standard to the record in Defendant’s case, the circuit court would not have had sufficient evidence to find “electronic monitoring would not be an unreasonable search based on the totality of the circumstances presented in [Defendant’s] individual case.” *Id.* at 515.<sup>4</sup> Just as in 2007, today, Defendant does not pose a high risk of reoffending<sup>5</sup> and it is unreasonable under the Fourth Amendment to continue to monitor him. As noted above, Defendant did not have an opportunity to fully present or address this issue at the March 17<sup>th</sup> hearing because the oral ruling ended the hearing before the State presented admissible evidence for consideration.

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<sup>4</sup> The timing of when the original order to be monitored was issued is not relevant to the requirement of conducting a reasonableness analysis. In *Ross*, the order for mandatory monitoring was issued in 2011 and his challenge was made 5 years later. Similarly, in *State v. Mitchell*, 427 S.C. 220 (Ct. App. 2019), the original order for Mitchell to be monitored was issued in 2011, and despite the trial court not having “the benefit of *Ross*,” the Court of Appeals “nevertheless [reversed] the electronic monitoring order and [remanded] so that a Fourth Amendment inquiry [could] occur.” *Id.* at 222.

<sup>5</sup>A “likelihood of re-offending lies at the core” of the statutory scheme set up by the legislature through both the sex offender registry and the electronic monitoring statute. This is a standard that must be met by the State. *Ross*, at 514 (quoting *State v. Dykes*, 403 S.C. 499, 507 (2013)).

In 2007, the State failed to present evidence that electronically monitoring Defendant under § 23-3-540 met the Fourth Amendment's safeguards and standards against an unreasonable search. Presently, that same electronic monitoring continues to be an unreasonable search under the Fourth Amendment warranting, among other reasons, his removal from monitoring under § 23-3-540.

**II. In the current posture of the case, the written Order on Release from EM is issued in violation of Defendant's right to due process and is not supported by an evidentiary record.**

The March 17<sup>th</sup> hearing was ended after the Court's singular oral ruling regarding Defendant's conviction, as discussed above. However, the written Order on Release from EM (1) changes the oral ruling and (2) makes additional rulings that were either not addressed or not fully addressed, and that are not supported by properly admitted evidence. The Court's oral ruling solely addressed the conviction and its implication on petitioning for removal from electronic monitoring. The written order, however, conducts a different analysis, relying on evidence not properly present or admitted, and draws a different conclusion.

The order, as written, makes a factual determination about compliance with the electronic monitoring terms and conditions. However, the oral ruling was a legal conclusion that violating a different statute was also violating § 23-3-540. As such, the posture of these differing rulings deprives Defendant of his right to due process.

Additionally, to the extent the written ruling includes facts or bases its rulings on those facts, it does so without an evidentiary record of support. The State provided the Court and Defendant with a packet of documents at the hearing. However, the State neither marked the packet nor any individual document as an exhibit and did not offer the packet or individual documents into evidence. Perhaps the State intended to and the Court's oral ruling, treated as a threshold to the petition, prevented the State from doing what it intended. Nevertheless, the packet was not marked, offered, or properly admitted into evidence. It remained, at best, items to be

marked for identification purposes. In fact, though, the items were never admitted into evidence. Therefore, the Court's reliance on the State's packet is improper in the case's current posture.

Relying on documents not properly admitted into evidence prejudiced Defendant. The conclusion Defendant, in fact, changed his residence is drawn from hearsay police reports, hearsay warrants, and other documents lacking in foundation for admissibility. Moreover, the conclusions drawn from the packet of not-admitted documents are unsupported by the documents themselves. Case in point, these documents supposedly show Defendant was living at 416 Virginia Avenue rather than 9 Dobbs Street. Yet, these documents do not show 10 or more consecutive days where Defendant was at 416 Virginia Avenue as required under § 23-3-460(D). This one example is sufficient for the Court to reconsider its reliance on the State's documents; and it highlights that a due process violation will be left in this case if the written rulings are not reconsidered in light of a full hearing with properly admitted evidence.

The Court also ruled Defendant has the burden to prove there is no longer a need to monitor him because he is the moving party. Respectfully, this issue was not fully addressed at the hearing and, more importantly, is incorrect. While § 23-3-540(H) does make consideration of the need to continue to monitor Defendant a part of the Court's standard of review, the statute does not place that burden on the petitioner. Furthermore, none of the reported cases analyzing § 23-3-540 and electronic monitoring removal as a legal and constitutional issue have held petitioner bears the burden. See *State v. Dykes*, 403 S.C. 499 (2018); *Ross, supra*; *State v. Mitchell*, 427 S.C. 220 (2019); *State v. Nation*, 408 S.C. 504 (2018); and *In the Interest of Justin B.*, 419 S.C. 575 (2017), cert. denies 138 S.Ct. 483 (2017). To the contrary, these cases all address the legal issues surrounding removal with the State bearing the burden of proof when it is seeking to have a court order an initial submission or a continued submission to electronic monitoring. This is especially true after the *Ross* opinion, as that opinion adopts the Supreme Court of the United State's Fourth

Amendment analysis required under *Grady v. North Carolina*, 575 U.S. 306, 135 S.Ct. 1368, 191 L.Ed.2d 459 (2015).

This case does not have to remain in its current posture. A full evidentiary hearing would provide the Court the opportunity to fully and properly address both the factual and legal issues of this case and to correct any errors of law and fact.

**CONCLUSION**

Respectfully, for the above-stated reasons as well as any other reasons which may appear just and fair, the Court should reconsider its Order on Release from EM and grant Defendant a full hearing on his petition to be removed from electronic monitoring, including the reasonableness of continuing to electronically monitor him pursuant to S.C. Code § 23-3-540.

Respectfully submitted,

  
**TURNER PADGET GRAHAM & LANEY, P.A.**

Christopher D Scalzo (SC Bar No. 70522)

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Greenville, South Carolina 29602

Direct: 864-552-4652

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[CScalzo@turnernadget.com](mailto:CScalzo@turnernadget.com)

Greenville, South Carolina  
May 5, 2023

**ATTORNEYS FOR DEFENDANT**

STATE OF SOUTH CAROLINA )  
 COUNTY OF GREENVILLE )  
 State of South Carolina )  
 vs. )  
 Bernard Joseph Jackson, )  
 Defendant )

IN THE COURT OF GENERAL SESSIONS  
 THIRTEENTH JUDICIAL CIRCUIT

Indictment 1998-GS-23-04295  
 Warrant F773492

**STATE'S RETURN TO  
 DEFENDANT'S MOTION TO  
 RECONSIDER**

23 MAY 15 PM 3:05  
 Paul Wickens@sc-judicial.org

The State submits this return to Defendant's Motion to Reconsider (hereinafter "Motion") this Court's Order filed on April 17, 2023 (hereinafter "Order") denying Defendant's Petition for Release from Electronic Monitoring (hereinafter "Petition") and asks the Court to deny the Motion<sup>1</sup>.

The Defendant raises several arguments in its motion. They can generally be grouped into three categories of arguments: failure to have a full evidentiary hearing; order not supported by evidence and hearing; and State failing to prove that Defendant should be subject to electronic monitoring.

**Failure to Have Full Hearing**

Defendant argues he did not receive a full evidentiary hearing on the Petition prior to the Court issuing its Order. The State's position is that Defendant had a hearing and had the opportunity to present any evidence that he wished to present.

<sup>1</sup> Defendant's Motion also lists a second order of this Court that it asks the Court to reconsider, an order denying a first motion to reconsider filed prior to the Order of April 17, 2023, being entered. The Court denied that first motion to reconsider without prejudice as being filed prematurely. In his current Motion, Defendant references the first motion to reconsider only in the opening paragraphs and then never again in the ten pages that follow, apparently abandoning any argument related to the order denying the premature motion.

Defendant filed the Petition on February 28, 2023, and asked for a hearing. Per the Chief Administrative Judge, this matter was set for hearing on the next available hearing docket, which was March 17, 2023. At the hearing, Defendant had the opportunity to present any evidence, testimony, and argument to the Court he wished. Defendant never once indicated to the Court that he had any witnesses he wished to have testify, he did not submit any materials to the Court for review, and he failed to introduce any evidence. Defendant never indicated that he wished to speak or testify under oath. Defendant concluded his presentation to the Court and essentially rested prior to the State having an opportunity to respond.

Defendant, as the petitioner, had the burden to prove to the Court that he was eligible for release from electronic monitoring. Generally, a party seeking relief has the burden of proof regarding their own motion or other submission. *See, e.g., Wilburn v. Wilburn*, 403 S.C. 372, 382, 743 S.E.2d 734, 740 (2013) ("A party claiming an equitable interest in property upon divorce bears the burden of proving the property is marital."); *Abdulla v. S. Bank*, No. 2019-001142, 2023 WL 2939265, at \*3 (S.C. Ct. App. Apr. 12, 2023) ("It is well-settled that the party seeking to invoke personal jurisdiction over a nonresident defendant via our long-arm statute bears the burden of proving the existence of personal jurisdiction."); *McClurg v. Dcason*, 380 S.C. 563, 575, 671 S.E.2d 87, 94 (Ct. App. 2008), *aff'd*, 395 S.C. 85, 716 S.E.2d 887 (2011) ("A party making a motion under Rule 60(b) has the burden of presenting evidence proving the facts essential to entitle him to relief."); *Bennett v. Invs. Title Ins. Co.*, 370 S.C. 578, 588, 635 S.E.2d 649, 654 (Ct. App. 2006) ("The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact.").

In his own Petition, Defendant stated that, "the Court may release a person from the monitoring requirements upon proof by "clear and convincing evidence" the person has "complied with the terms and conditions of the electronic monitoring and there is no longer a need to

electronically monitor the person." S.C. Code § 23-3-540(H)." (Petition, ¶ 7). He clearly recognized at the time he filed his Petition that he would have to prove that he complied with the terms of electronic monitoring and prove that there was no longer a need for electronic monitoring, as he made assertions supporting that understanding throughout the remainder of the Petition.

Clearly, the State is not going to present evidence that Defendant should be released from monitoring, so that burden falls on Defendant. Defendant failed to present any evidence at the hearing, failed to notify the Court that he had or wished to present evidence to the Court at the hearing, and failed to note on the record after the Court had ruled that he had evidence and/or witnesses he had not had the opportunity to present.

#### **Order not Supported by Evidence and Hearing**

Defendant alleges that the Order was not consistent with the oral ruling of the Court. He further alleges that the Order was not supported by any evidence or information presented by the State.

According to Defendant, the Court is limited in the Order to the one ground referenced by the Court at the hearing for denying the Petition and not any additional or other grounds that the Court determined were relevant. However, this argument is contrary to case law. In South Carolina, after a judge issues an oral ruling in a matter, that judge retains discretion to change his mind until he enters a written order. See Ford v. State Ethics Comm'n., 344 S.C. 642, 545 S.E.2d 821 (2001). "It is well settled that a judge is not bound by a prior oral ruling and may issue a written order which is in conflict with the oral ruling." Corbin v. Kohler Co., 351 S.C. 613, 621, 571 S.E.2d 92, 97 (Ct. App. 2002) (quoting Badeaux v. Davis, 337 S.C. 195, 204, 522 S.E.2d 835, 839 (Ct. App. 1999)). If a written order conflicts with a prior oral ruling, the written order in controlling. See Parag v. Baby Boy Lovin, 333 S.C. 221, 508 S.E.2d 590 (Ct. App. 1998). The fact that the Order included additional holdings different or beyond what the Court stated orally at

the hearing is without consequence. A judge is allowed to expand on or even change its oral rulings in a written order. This is why Defendant's earlier motion for reconsideration was premature: the Court had not entered a written ruling and was still determining what the final order of the Court would be.

Defendant also alleges that there was no evidentiary support for the Court's ruling. Specifically, he asserts that the Court relied on information the State failed to introduce into evidence. The information the State submitted, attached as Exhibit A to this Return, contained primarily publicly available filed documents or forms that are common to the Department of Probation, Parole, and Pardon Services and were familiar to the Court. While the State did not formally introduce the exhibits into evidence at the hearing, Defendant, whose attorney had the opportunity to review the State's documents before the hearing began, failed to object to the Court reviewing those or taking those into consideration. Therefore, Defendant waived any objection he may have had to those documents being used as part of the hearing on the Petition.

Furthermore, the State notes that South Carolina Rules of Evidence Rule 1101(d)(3) renders the Rules of Evidence inapplicable for various hearings conducted in General Sessions matters. To the extent the hearing on Defendant's Petition fell into one of those categories, the Rules of Evidence would not apply.

Many of the arguments contained in Defendant's Motion reference the State failing to prove various elements by clear and convincing evidence. As previously stated, Defendant as the petitioning party had the burden to prove that he was entitled to the relief sought in the Petition. Defendant's attempts to flip the burden is without evidentiary legal support. His arguments would suggest a criminal defendant has the burden to prove that he is not guilty, or civil defendant would have the burden to prove she is not liable to a plaintiff.

**Order not Supported by Law**

Defendant's third category of arguments deal with whether the law supports the Court's findings.

Defendant argues that the Court's reliance (at the hearing and in the oral ruling) on Defendant's guilty plea to Failure to Register as a Sex Offender was not sufficient to find that Defendant has failed to comply with the terms of electronic monitoring. However, the State's argument at the hearing was not that the conviction for failing to register was itself prima facie evidence of failing to comply with the terms of the electronic monitoring. The State argued that the facts contained in the warrant (that Defendant was not living at the address where he had previously registered) to which Defendant pled guilty (thus admitting the facts set forth in the warrant) were facts sufficient to show that Defendant had not complied with the terms of electronic monitoring (which included a provision that the Defendant had to reside at the provided address). Even though the State did not have the burden to prove anything, such evidence was sufficient to make clear that Defendant could not meet his burden that he had complied.

Defendant spends a great deal of his Motion arguing that the State failed to prove Defendant should have to continue on electronic monitoring or that he should even be subject to electronic monitoring. To the extent that Defendant argues he should not even be subject to monitoring, Judge Charles B. Simmons, Jr., ordered Defendant to begin electronic monitoring in 2007. Defendant did not appeal or otherwise challenge that ruling at the time and has not attacked or challenged the ruling since that time. In fact, Defendant's Petition does not even claim that Defendant was wrongfully ordered to begin electronic monitoring in 2007. Defendant has never sought a ruling that he should not be subject to electronic monitoring until he filed this Motion.

Defendant frequently refers to State v. Ross, 423 S.C. 504, 815 S.E.2d 754 (2018), to support his argument that the State has not shown that Defendant should be subject to monitoring.

He makes numerous comparisons to between Ross and himself. However, none of the references to Ross should have any bearing on the outcome of this matter. Ross dealt with a challenge to the initial order of lifetime electronic monitoring imposed on a sex offender. Defendant, on the other hand, has been subject to monitoring for fourteen years. In Ross, the State had the burden of proof to show that Ross should be subject to monitoring. In the instant matter, the State has previously met that burden as to Defendant. Ross dealt with an individual ordered to begin monitoring following a conviction for a failure to register, whereas Defendant was on community supervision, was subject to warrantless search as part of that supervision, and violated the terms of his supervision prior to the order for monitoring. Defendant's collateral attack on the unappealed order from 2007 is without merit and has no bearing on whether Defendant can now meet his burden with regard to being released from monitoring.

#### Conclusion

Based on the above, the State believes the Court should deny Defendant's Motion to Reconsider. The State further believes that no further hearing is necessary for the Court to rule on the Motion.

Respectfully submitted,

Thirteenth Judicial Circuit Solicitor's Office



M. Kyle Thompson (#68283)  
General Counsel  
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Greenville, SC 29601  
864-467-8647  
kythompson@greenvillecounty.org

May 15, 2023  
Greenville, South Carolina

98-GS-23 J04295

KMB

The State of South Carolina,

County of GREENVILLE

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 1998

(J) 4-1-99

THE STATE

vs.

BERNARD JOSEPH JACKSON

REDACTED

WITNESSES

Jim Austin

GCSO

5-27-98

ARREST WARRANT NO. F-773492

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreman of Grand Jury

VERDICT

CRIMINAL SEXUAL CONDUCT WITH A MINOR  
SECOND DEGREE

ENTERED BY  
ACCT. BS  
VIOLATION § 16-3-655

Dot. Mavigault

0396 Indictment for

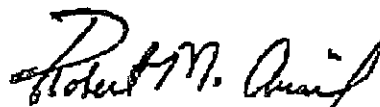
PC9040 800-651-6560  
EXHIBIT  
D

of Petit Jury

Date:

68

FORM 32 (12/87)

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )INDICTMENT FOR  
CRIMINAL SEXUAL CONDUCT WITH A MINOR  
SECOND DEGREEAt a Court of General Sessions, convened on September 22, 1998,  
the Grand Jurors of Greenville County present upon their oath:COUNT ONE - CRIMINAL SEXUAL CONDUCT WITH A MINOR-SECOND DEGREEThat BERNARD JOSEPH JACKSON did in Greenville County on or about May 25, 1998, did  
commit a sexual battery, to wit: sexual intercourse on S.O., a thirteen year old female. This is in  
violation of South Carolina Code of Laws §16-03-0655.Against the peace and dignity of the State, and contrary to the statute in such case made and  
provided.

SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Greenville

STATE vs. Bernard Joseph Jackson

AKA: 310 YMCA St. Greenville SC 29611

Race: B Sex: M

DOB: 11-17-63 Age: 36

SSN: [REDACTED]

DL#: \_\_\_\_\_

SID#: \_\_\_\_\_

IN THE COURT OF GENERAL SESSIONS  
INDICTMENT/CASE#:

98-GS-23-4295

A/W#: F-713492

Date of Offense: 5-25-98

S.C. Code § : 16-3-655

CDR Code #: 0131916

SENTENCE

PLEA  TRIAL

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS TO: CSC 2nd Degree with a Minor

in violation of § 16-3-655 of the S.C. Code of Laws, bearing CDR Code # 0131916

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  17-25-45

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury.

The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST:

[Signature]  
Solicitor

[Signature]  
Defendant

[Signature]  
Attorney for Defendant

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center, for a determinate term of 5 (Five) years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The Defendant is to be given credit for \_\_\_\_\_ days/months jail time.

CONCURRENT or  CONSECUTIVE to sentence on: \_\_\_\_\_

SPECIAL CONDITIONS:

RESTITUTION  Heard,  Waived,  Ordered  
Total: \$ \_\_\_\_\_ plus 20% fee \$ \_\_\_\_\_  
Payment Terms: \_\_\_\_\_  
 set by SCDPPPS \_\_\_\_\_

Recipient: \_\_\_\_\_

\*Fine: ..... \$ \_\_\_\_\_  
§ 14-1-206 - Assessments 100%..... \$ \_\_\_\_\_  
§ 14-1-211 - Surcharge..... \$ 100.00  
(Exceptions: See § 14-1-211)  
§ 56-5-2995 (DUI)..... \$ \_\_\_\_\_  
County (3%)..... \$ 3.00  
TOTAL..... \$ 103.00

PTUP \_\_\_\_\_  
\_\_\_\_\_ days/hours Public Service Employment  
Obtain GED \_\_\_\_\_  
Attend Voc Rehab. or Job Corps \_\_\_\_\_  
May serve W/E beginning \_\_\_\_\_  
Substance Abuse Counseling \_\_\_\_\_  
Random Drug/Alcohol Testing \_\_\_\_\_  
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_  
\$ \_\_\_\_\_ paid to Public Defender Fund.  
Other: \_\_\_\_\_

Clerk of Court/Deputy Clerk [Signature]

Court Reporter: [Signature]

PRESIDING JUDGE [Signature]  
Judge Code: 00131  
Sentence Date: 4-1-99

**South Carolina Department of Probation, Parole and Pardon Services  
Global Positioning Satellite System Tracking Program**

**GPS Tracking Program Conditions**

1. I will report in person to the South Carolina Department of Probation, Parole and Pardon Services office on the day of my sentencing or release and thereafter as instructed by the Department;
2. Upon my sentencing or release, I will reside at the following address:

Homeowner's Name: \_\_\_\_\_

Address: 9 Dobb St., Greenville SC 29605

Telephone Number: 864-631-9862

3. I will maintain a valid address with the Department and with the Sheriff's Office in the county of my residence. Further, I shall allow Agents of the Department to visit me in my home, at my place of employment, or elsewhere, at any time.
4. I acknowledge that GPS Tracking requires cellular or landline telephone coverage and agree to install necessary equipment/service at my residence to meet this requirement, if directed by Agents of the Department.
5. I will not leave the State of South Carolina without notification to the Department before my departure.
6. I will immediately contact the Department, if I am ever arrested or questioned by a law enforcement official for any reason whatsoever.
7. I will abide by all maintenance requirements to ensure the GPS equipment functions properly as directed.
8. I will comply with the GPS Tracking conditions as set forth in the GPS Program - Participant Rules Acknowledgment and Agreement.
9. I will immediately respond to any system alerts or contacts by my Agent.
10. I will pay all fees related to GPS as directed.

I have read, or had read to me, the above conditions and I understand their meaning. I have received a copy of these conditions. I understand that these terms and conditions are being imposed by the South Carolina Department of Probation, Parole and Pardon Services pursuant to Section 23-3-540 (J) of the South Carolina Code, and that any willful violation of these terms and conditions is a felony and, upon conviction, may result in a sentence of up to ten (10) years imprisonment.

Joseph B. Jackson  
Offender's Signature

Date

Agent Signature

Date

4/6/22

Joseph B. Jackson  
Offender Name (printed)

Stephen Parr  
Agent Name (printed)

00322244  
SID No.

**South Carolina Department of Probation, Parole and Pardon Services  
GPS Program - Participant Rules Acknowledgment and Agreement**

Failure to comply with the following conditions may result in a violation and you may be sentenced to a term of incarceration:

1. I will not tamper with the GPS equipment in any manner.
2. If the agent places equipment in my residence, I will not disconnect or move the GPS equipment unless I am approved to do so.
3. I will charge the equipment no less than two hours every day, or as instructed.
4. I will submit schedules for approval to my Agent.
5. I will allow Probation and Parole Agents to inspect the equipment at any time.
6. I acknowledge that intentional damage to the GPS equipment may result in a felony conviction of a fine of not more than \$5,000.00 or not more than five years. I agree to take responsibility and care of the equipment.
7. I will not intentionally block the GPS component or equipment.
8. I acknowledge that if I am indoors I may be instructed to go outside and acquire GPS.
9. I will follow all established GPS Program rules and schedules. Failure to do so may result in a violation.
10. I will not enter areas that are defined to be off-limits (exclusion zones). Entering an exclusion zone may result in the issuance of a warrant for my arrest.
11. If I receive a message on the unit, I will follow the instructions as directed. If unable to reach my agent, I will call the Department's GPS Operations Center at 1-800-283-7191.
12. I agree to pay all fees associated with GPS, which may include a supervision fee and monitoring fee.
13. I agree to return all equipment issued to me when instructed to do so by the Agent.

Homeowner's Name:	<u>To Jackson Sr.</u>
Address:	<u>9 Dobbs St. Greenville SC 29605</u>
Telephone Number:	<u>864-631-9862</u>

14. I acknowledge that during times of an emergency I will go to a shelter designated by SCOPPPS when the first evacuation notice is given. I will also have an emergency plan in place with my Agent to establish a secondary residence.
15. I agree that any data or information gathered or recorded by my Department issued GPS equipment shall be admissible as evidence in any hearing concerning the violation of the conditions of my supervision, criminal action brought against me pursuant to Section 23-3-540 (A) of the South Carolina Code, or any new criminal charge.

*Inclusion Zone, Schedule (if applicable) - Time period that Offender may be away from residence*

	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
<div style="font-size: small;">NO SCHEDULE</div> Leave	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>
Enter	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>

I acknowledge that I have received a copy of this agreement and that the terms of the agreement have been explained to me. I understand that I must comply with these rules and that violation of the terms of this agreement will constitute a violation of the conditions of my supervision, or a (felony if I) have completed my term of supervision.

Offender's Signature <u>Joseph B. Jackson</u>	Date <u>4/6/22</u>	Agent's Signature 	Date <u>4/6/22</u>
Offender Name (Printed) <u>Bernard Jackson</u>	SID <u>00322244</u>		

The undersigned represents that he or she is the owner or tenant of the above identified residence and has voluntarily signed this consent to allow SCOPPPS personnel to enter the residence to locate, maintain or collect the above identified monitoring equipment. The undersigned also understands that the participant must comply with all terms of this agreement. This consent may not be revoked until SCOPPPS regains possession of said equipment.

Consent of the Signatory	Date	Agent's Signature	Date
--------------------------	------	-------------------	------



**Sheriff**

Hobart Lewis  
Greenville County Sheriff's Office

01 22 -1714#2

April 21, 2022

**South Carolina Sex Offender Registry Residency Restriction Notification / Registering with False Information.**

Mr. Bernard Joseph Jackson,

Effective February 14, 2011 and pursuant to Section 23-3-535(4) of the SC Code of Law any person who has been convicted of certain offenses, including Criminal Sexual Conduct with a Minor, will be prohibited from living within 1,000 feet of the nearest property line of the premises of a school, daycare facility, children's recreational facility, park or public playground.

Additionally, Section 23-3-475 of the SC Code of Law makes it unlawful for anyone to knowingly provide false information when registering as an offender.

It has come to my attention that you are currently living at 216 Virginia Ave., Greenville SC 29611 which falls within 1,000 feet of the property line of Shoeless Joe Jackson Park, thus making you in violation of Section 23-3-535(4) of the SC Code of Law.

Moreover, you are currently registered at 9 Dobbs St. Greenville, SC 29605. We have conducted an intensive investigation and have determined you do not live at 9 Dobbs St. and rarely spend your time there, making you also in violation of Section 23-3-475 of the SC Code of Law.

This letter is to officially notify you that you are in violation of SC Code of Law sections 23-3-535(4) and 23-3-475. In order to remedy this situation, you are to immediately move from 216 Virginia Avenue. Failure to do as instructed will result in the Greenville County Sheriff's Office seeking warrants for your arrest on both counts.

I am aware of previous correspondence concerning this matter and that there has been some confusion, however, this letter should clear up any confusion you may have over where you are allowed by law to live. Additionally, we will not be communicating with anyone other than you regarding this matter.

Registry Coordinator Linda Roman will not be available to discuss this with you. Should you have any questions, you can reach me at the number below.

Sergeant T.S. Adams  
Greenville County Sheriff's Office  
Specialized Investigations Division  
864-612-0401 (O)  
tsadams@greenvillecounty.org

21V/11/07/202213:00:39



An Accredited Law Enforcement Agency  
4 McGee Street, Greenville, SC 29601 / (864) 467-5280 / Fax (864) 467-5289

2022 OCT 31 P 2:52

GREENVILLE COUNTY SHERIFF'S OFFICE

EC5 10/26/2022-14:05:49

Incident Report

Agency I.D. SC0230000 RTA 902C,

Case Number

22000171442

Adult/Juv

EVENT	INCIDENT TYPE		OFFENSE COMPLETED	REPORTED PARTY	OFFENSE TYPE	LOBBY	TYPE VICTIM <input type="checkbox"/> Traditional <input type="checkbox"/> Exchange <input type="checkbox"/> Victim of Sex Offense <input type="checkbox"/> Government <input type="checkbox"/> Religious Org. <input type="checkbox"/> Soc / Public <input type="checkbox"/> Other <input type="checkbox"/> Unknown <input type="checkbox"/> Police Officer
	2506 - Fail To Register (Sex Offender-1st)		Y	N	20 - Miscellaneous/Other	0	
	Sex Offender Viol. of Residency Limitations 1st		Y	N	20 - Miscellaneous/Other	0	
	9 DOBBS ST GREENVILLE SC		Classified Information		Zip Code 29605		
VICTIM	Victim Name (Last, First, Middle)	Address	City	State	Zip Code	Phone Number	Police District
	State of South Carolina		Greenville	SC	29605		C111
	Males Injury (Vict 1) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Explain:						
	Victim No. 1 Using Alcohol <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Unk. Drugs <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Unk. Type:						
SUBJECT	<input checked="" type="checkbox"/> Suspect	<input type="checkbox"/> Runaway	<input checked="" type="checkbox"/> Wanted	<input type="checkbox"/> Warrant	<input type="checkbox"/> Arrest	<input type="checkbox"/> Missing	
	Suspect Name (Last, First, Middle) Jackson, Joseph Bernard		Species	Race	Sex	Age	Date of Birth
	9 DOBBS ST						
	Arrested (Is/Is Not) Armed <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Unk. Weapon Type		Arrested (Is/Is Not) On Current Offense <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Unk.		Arrested (Is/Is Not) Cleared By Arrest on Prior Offense <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Unk.		Date of Arrest
NARRATIVE	I arrived at the incident location in response to a failure to register as a sex offender.						
	Jurisdiction of Theft: Not Applicable			Jurisdiction of Recovery: Not Applicable			
	Arrest Location: Greenville, SC - Not Court Related						
VEHICLE	<input type="checkbox"/> Towed	<input type="checkbox"/> Stolen	<input type="checkbox"/> Recovered	<input type="checkbox"/> Suspect	<input type="checkbox"/> Victim	Tag Only <input type="checkbox"/>	
PROPERTY	PLAC	Property Type	Quantity	Property Make	Color	Character	Serial # / OAS
ADMIN	Suspect Identified <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Subject Located <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		<input checked="" type="checkbox"/> Active <input type="checkbox"/> Admin Closed <input type="checkbox"/> Unfounded		<input type="checkbox"/> Arrested Under 18 <input type="checkbox"/> Arrested 18 and Over
	<input type="checkbox"/> Ex-Cleared Under 18 <input type="checkbox"/> Ex-Cleared 18 and Over						
	Reason for Exceptional Clearance <input type="checkbox"/> Offender Death <input type="checkbox"/> No Prosecution <input type="checkbox"/> Victim Declines Cooperation <input type="checkbox"/> Extradition Denied <input type="checkbox"/> Juvenile No Arrest						
Reporting Officer		Date	Unit/Shift	Applying Officer	Phone	Unit/Shift	
ROBER, CHRISTOPHER		10/24/2022	704 / 0076	ADAMS, TINA	10252623	704 / 00270	
Follow Up Investigation <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No							

Agency I.D.  
SCD230000

ECS 10/26/2022-14:05:49

GREENVILLE COUNTY SHERIFF'S OFFICE

Supplemental Report

Ent: [Stroman 11/03/2022  
05:15:38

Case Number

22000171442

Original Report     Status Change     Additional Victims     Additional Stolen Property    Incident Type **2808 - Fail To Register (Sex Offender-1st)**

Supplemental Report     Other Report     Additional Defendants     Additional Recovered Property    Patrol District **07**    Page **1** of **3** Pages

**I.D. OVERFLOW**

Victim     Subject     Runaway     Wanted     Arrest     Missing     Jail     Other

Arrested Armed  Yes  No    Weapon Type: \_\_\_\_\_     On View Arrest     Surrendered     Custody

Juvenile Disposition  Handled Released     Referred To Other Authority

Arrest Location

Overflow:  
 Show of Force: NO  
 Terrorist Affiliation: Not Terrorist related  
 Hate Group Affiliation: Not Hate Group related  
 Latitude: 34.834752 Longitude: -82.409117

Jackson, Joseph Benard: Subject 1  
 Subject Types: Suspect, Wanted, Warrant

CHARGE: Sex Offender Registry Violation, fail to register 1st. WARRANT #: 2022A2310100436  
 CHARGE: Sex Offender violation of Residency Limitation 1st WARRANT #: 2022A2310100437  
 DL STATE/NUMBER: SC/0D4274056 DOB: 11/17/1963

**NARRATIVE**

Narrative:  
 On 10/18/2022, I received a call from Agent Merritt with the South Carolina Department of Probation, Parole and Pardon Services in reference to Bernard Joseph Jackson.

Mr. Jackson was convicted of criminal sexual conduct with Minors 2nd on 04/01/1999. Therefore, he is mandated by South Carolina Code of Law to maintain registration with the South Carolina Sex Offender Registry. Mr. Jackson last registered on 08/23/2022. During this registration, Mr. Jackson was told that if he moves his address that he has three days to report the move to the Greenville County Sheriff's Office. Mr. Jackson also signed and initialed the Sex Offender Information form that explains the laws of the Sex Offender Registry. Mr. Jackson then signed and was given a copy of his appointment sheet that also states that if he moves his address that he has three business days to change his address with the Greenville County Sheriff's office. Mr. Jackson also was advised that could not live within a 1000ft of a restricted place.

Agent Merritt advised me that Mr. Jackson was not staying at his registered address. Agent Merritt advised me that Mr. Jackson would not come in at his appointed time and that he advised her he was in the hospital. However, Agent Merritt advised me that she pulled Mr. Jacksons GPS points from his ankle monitor and he was not in the hospital. Agent Merritt also stated that she was able to see from the points on his monitor that Mr. Jackson is not living at his registered address. At that time, Agent Merritt called me to report the possible Sex Offender Registry violation.

**PROPERTY**

Plate	Property Type	Quantity	Property Name	Color	Description	Serial # / QAN	Value

**ADMIN**

Subject Identified  Yes  No    Subject Located  Yes  No     Active     Admin Closed     Arrested Under 18     Ex-Cleared Under 18  
 Unbonded     Arrested 18 and Over     Ex-Cleared 18 and Over

Reason For Exceptional Clearance  Offender Death     No Prosecution     Victim Declines Cooperation     Exclusion Denied     Juvenile No Arrest

Reporting Officer(s)	Date	Unit/Shift	Approving Officer	Date	Unit/Shift
ROGER CHRISTOPHER	10/26/2022	TSA / 08703	ADAM TINA	10/26/2022	TOT / 10020

Follow Up Investigation  Yes  No

Agency I.D.  
SC0230000

GREENVILLE COUNTY SHERIFF'S OFFICE

Case Number

EC5 10/26/2022-14:05:49

Supplemental Report (Ent: Istroman 11/03/2022 05:15:30)

22000171442

<input type="checkbox"/> Original Report	<input type="checkbox"/> Status Change	<input type="checkbox"/> Additional Victims	<input type="checkbox"/> Additional Stolen Property	Incident Type <b>2005 - Fail To Register (Sex Offender-140)</b>
<input checked="" type="checkbox"/> Supplemental Report	<input type="checkbox"/> Other Report	<input type="checkbox"/> Additional Defendants	<input type="checkbox"/> Additional Recovered Property	Patrol District <b>07</b> Page <b>2</b> of <b>3</b> Pages
I. D. OVERFLOW	<input type="checkbox"/> Complainant		Suspect <b>2074 (M, W, Black)</b>	
	<input type="checkbox"/> Victim	Vehicle Related To Subject		
	<input type="checkbox"/> Subject	Arrested		
	<input type="checkbox"/> Runaway	Mugshot		
<input type="checkbox"/> Wanted	Weight			
<input type="checkbox"/> Arrest	Height			
<input type="checkbox"/> Missing	Hair			
<input type="checkbox"/> Jail	Eyes			
<input type="checkbox"/> Other	Facial Hair, Scars, Tattoos, Scuffs, Clothing, Physical Appearance, Etc.			
<input type="checkbox"/> Vehicle		Complete of any		Vehicle Used
Explain		Yes <input type="checkbox"/> No <input type="checkbox"/>		Drugs <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> Type:
Subject		Using Alcohol <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> Use		Two Man Veh <input type="checkbox"/> One Man Veh <input type="checkbox"/> ALONE <input type="checkbox"/>
Using Drugs <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> Use		Type:		Detective <input type="checkbox"/> Other <input type="checkbox"/> ASSISTED <input type="checkbox"/>
Arrestee Armed <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/>		Weapon Type		<input type="checkbox"/> Arrested on Current Offense
Juv/Disposition <input type="checkbox"/> Held/Released <input type="checkbox"/> Referred To Other Authority <input type="checkbox"/>		On View <input type="checkbox"/>		<input type="checkbox"/> Cleared By Arrest on Prior Offense
Arrest Location		Summated <input type="checkbox"/>		<input type="checkbox"/> Custody

NARRATIVE

After speaking with Agent Merritt, I officially requested a copy of Mr. Jacksons GPS points from 10/07/2022 to 10/18/2022. After reviewing the points, I noticed that Mr. Jackson only spend 14 hours and 31 minutes at his registered address for that time period. However, Mr. Jackson spend 137 hours and 15 minutes at 216 Virginia Ave.

On 04/21/2022 Mr. Jackson was advised that he was not allowed to live at 216 Virginia Ave. due to the address being within 1000ft of a park, Sgt. Adams completed a letter advising Mr. Jackson that he could not live at 216 Virginia Ave. due to the address violating the 1000ft law and I personally hand delivered the letter to him. I also read the letter to him.

In addition to the two aforementioned locations, I also noted that Mr. Jackson spent 32 hours and 58 minutes at Greenville Memorial Hospital (GMH). After being at GMH, Mr. Jackson stayed at 3 Schrader Ct. Piedmont, SC 29687 for 40 Hours 43 Minutes

Per South Carolina Code of Law section 23-3-460 (D) a "temporary address" or "residence" means the location of the individual's home or other place where the person habitually lives or resides, or where the person lives or resides for a period of ten or more consecutive days. For the purposes of this subsection, "habitually lives or resides" means locations at which the person lives with some regularity. Out of a 10 day period (240 hours), Mr. Jackson has not lived at his register address with any regularity but has lived at 216 Virginia Ave. with some regularity, based upon the points of his GPS monitor.

Before presenting the case to Judge Fisher, I noticed the Sex Offender Office had a different name then what is listed first on his criminal history. The Sex Offender Office has the name as Bernard Joseph Jackson and the criminal history had the name as Bernard J. Jackson. At that time, I examined Mr. Jacksons DMV and ID pack. Mr. Jacksons DMV has his name listed as Joseph Bernard Jackson and the ID pack has his name listed as Joseph Bernard Jackson. Mr. Jackson has been arrested under all the above names. However, I believe Mr. Jacksons real name to be Joseph Bernard Jackson because his DMV dates back to 1991.

Since Mr. Jackson moved his address without notifying Law Enforcement within the three business days and has been living within a restricted area, I presented the facts of this case to Judge Fisher and Judge Fisher issued warrant 2022A2310100436 for Failure to Register as a Sex Offender and 2022A2310100437 for Limitation on Places of Residence of Certain Sex Offenders .

PROPERTY

Status	Property Type	County	Property Address	Color	Description	Serial # (OAS)	Value

ADMIN

Subject Identified <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Subject Located <input type="checkbox"/> Yes <input type="checkbox"/> No		<input checked="" type="checkbox"/> Active <input type="checkbox"/> Admin Closed	<input type="checkbox"/> Arrested Under 19 <input type="checkbox"/> Arrested 19 and Over	<input type="checkbox"/> Ex-Cleared Under 10 <input type="checkbox"/> Ex-Cleared 19 and Over
Reason For Exceptional Clearance <input type="checkbox"/> Offender Death <input type="checkbox"/> No Prosecution <input type="checkbox"/> Victim Declines Cooperation <input type="checkbox"/> Extradition Denied <input type="checkbox"/> Juvenile No Arrest		Reporting Officer(s)		Date	Yr/Mo/Star	Approving Officer
RODRIGUEZ, CHRISTOPHER		12/24/2022		704 / 00728		ADAMS, TINA

Agency I.D.  
SC0230000

EC5 10/26/2022-14:05:49

**GREENVILLE COUNTY SHERIFF'S OFFICE**  
**Supplemental Report**

Ent: Jstroman 11/03/2022  
05:15:30

Case Number  
22000171442

<input type="checkbox"/> Original Report	<input type="checkbox"/> Status Change	<input type="checkbox"/> Additional Victims	<input type="checkbox"/> Additional Stolen Property	Incident Type: <u>2606 - Fail To Register (Sex Offender-1st)</u>
<input checked="" type="checkbox"/> Supplemental Report	<input type="checkbox"/> Other Report	<input type="checkbox"/> Additional Defendants	<input type="checkbox"/> Additional Recovered Property	Patrol District: <u>07</u> Page: <u>3</u> of <u>3</u> Pages
I.D. OVERFLOW	<input type="checkbox"/> Complete/Identified		Subjects Name (Last, First, Middle)	
	<input type="checkbox"/> Victim	Victim Relationship To Suspect		Inventory
	<input type="checkbox"/> Subject	Address		Phone
	<input type="checkbox"/> Runaway	City		State
	<input type="checkbox"/> Wanted	Height		Weight
<input type="checkbox"/> Arrest	<input type="checkbox"/> Victim Sex	<input type="checkbox"/> Victim Injury	Complaint of any Non-Violent Crime	
<input type="checkbox"/> Missing	Victim No. _____		Victim Using Alcohol <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> Unk	
<input type="checkbox"/> Jail	Victim Race _____		Victim Using Drugs <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> Unk	
<input type="checkbox"/> Other	Subject No. _____		Arrested on Current Offense <input type="checkbox"/>	
Arrested Armed <input type="checkbox"/> Yes <input type="checkbox"/> No		Weapon Type _____		On View Arrest <input type="checkbox"/> Summoned <input type="checkbox"/> Custody
Current Disposition: <input type="checkbox"/> Home Released <input type="checkbox"/> Returned To Court Authority				
Arrest Location				

After I obtained the warrant, I placed the warrant in the warrant office to be served.

NARRATIVE

PROPERTY

Status	PROPERTY Type	QUANTITY	PROPERTY/Make	Color	Description	Serial # / OAN	Value

ADMIN

Subject Identified <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Subject Located <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Active <input type="checkbox"/> Admin Closed <input type="checkbox"/> Unfounded	<input type="checkbox"/> Arrested Under 18 <input type="checkbox"/> Arrested 18 and Over	<input type="checkbox"/> Ex-Cleared Under 10 <input type="checkbox"/> Ex-Cleared 18 and Over
Reason For Exceptional Clearance <input type="checkbox"/> Offender Death <input type="checkbox"/> No Prosecution <input type="checkbox"/> Victim Declines Cooperation <input type="checkbox"/> Exemption Denied <input type="checkbox"/> Juvenile No Arrest				
Reporting Officer(s)	Case	Unit/Star #	Approving Officer	Date
ROSER, CHRISTOPHER	1024/2022	794/0008	ADAMS, FINA	10/25/2022
Follow Up Investigation <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				

31 OCT 81 P 2-52

01 22 -171442

Client Stops

BI Total Access

Account 2011/07/20 11:19

Accessed 10/31/81 10:52:13

Client	ADDRESS	Agency	SECT
Client Name	Client Address	City	State
10/31/81 12:00 PM	10/31/81 12:00 PM	0 days, 12 hrs, 0 mins	9 Days, 0 hrs, 0 mins
10/31/81 12:05 PM	10/31/81 12:05 PM	0 days, 12 hrs, 5 mins	9 Days, 0 hrs, 5 mins
10/31/81 12:10 PM	10/31/81 12:10 PM	0 days, 12 hrs, 10 mins	9 Days, 0 hrs, 10 mins
10/31/81 12:15 PM	10/31/81 12:15 PM	0 days, 12 hrs, 15 mins	9 Days, 0 hrs, 15 mins
10/31/81 12:20 PM	10/31/81 12:20 PM	0 days, 12 hrs, 20 mins	9 Days, 0 hrs, 20 mins
10/31/81 12:25 PM	10/31/81 12:25 PM	0 days, 12 hrs, 25 mins	9 Days, 0 hrs, 25 mins
10/31/81 12:30 PM	10/31/81 12:30 PM	0 days, 12 hrs, 30 mins	9 Days, 0 hrs, 30 mins
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10/31/81 2:25 PM	10/31/81 2:25 PM	0 days, 12 hrs, 25 mins	9 Days, 0 hrs, 25 mins
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10/31/81 3:30 PM	10/31/81 3:30 PM	0 days, 12 hrs, 30 mins	9 Days, 0 hrs, 30 mins
10/31/81 3:35 PM	10/31/81 3:35 PM	0 days, 12 hrs, 35 mins	9 Days, 0 hrs, 35 mins
10/31/81 3:40 PM	10/31/81 3:40 PM	0 days, 12 hrs, 40 mins	9 Days, 0 hrs, 40 mins
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10/31/81 3:55 PM	10/31/81 3:55 PM	0 days, 12 hrs, 55 mins	9 Days, 0 hrs, 55 mins
10/31/81 4:00 PM	10/31/81 4:00 PM	0 days, 12 hrs, 0 mins	9 Days, 0 hrs, 0 mins
10/31/81 4:05 PM	10/31/81 4:05 PM	0 days, 12 hrs, 5 mins	9 Days, 0 hrs, 5 mins
10/31/81 4:10 PM	10/31/81 4:10 PM	0 days, 12 hrs, 10 mins	9 Days, 0 hrs, 10 mins
10/31/81 4:15 PM	10/31/81 4:15 PM	0 days, 12 hrs, 15 mins	9 Days, 0 hrs, 15 mins
10/31/81 4:20 PM	10/31/81 4:20 PM	0 days, 12 hrs, 20 mins	9 Days, 0 hrs, 20 mins
10/31/81 4:25 PM	10/31/81 4:25 PM	0 days, 12 hrs, 25 mins	9 Days, 0 hrs, 25 mins
10/31/81 4:30 PM	10/31/81 4:30 PM	0 days, 12 hrs, 30 mins	9 Days, 0 hrs, 30 mins
10/31/81 4:35 PM	10/31/81 4:35 PM	0 days, 12 hrs, 35 mins	9 Days, 0 hrs, 35 mins
10/31/81 4:40 PM	10/31/81 4:40 PM	0 days, 12 hrs, 40 mins	9 Days, 0 hrs, 40 mins
10/31/81 4:45 PM	10/31/81 4:45 PM	0 days, 12 hrs, 45 mins	9 Days, 0 hrs, 45 mins
10/31/81 4:50 PM	10/31/81 4:50 PM	0 days, 12 hrs, 50 mins	9 Days, 0 hrs, 50 mins
10/31/81 4:55 PM	10/31/81 4:55 PM	0 days, 12 hrs, 55 mins	9 Days, 0 hrs, 55 mins
10/31/81 5:00 PM	10/31/81 5:00 PM	0 days, 12 hrs, 0 mins	9 Days, 0 hrs, 0 mins



ARREST WARRANT  
2022A2310100436

STATE OF SOUTH CAROLINA  
County of Greenville

THE STATE  
against

Joseph Bernard Jackson  
Address: 9 Dobbins St  
Greenville, SC 29603-3958

Phone: [REDACTED]  
Sex: M Race: B Height: 6 Weight: 240

DL State: SC DL # 004734056  
DOB: 11/11/1963 Agency: SC 00220000

Prosecuting Agency: Greenville County Sheriff's Office  
Prosecuting Officer: Christopher J Resier - 506673

Offense: Sex / Sex Offender Registry Violation, fail to register - 1st offense

Offense Code: 2805  
Crim/Offense Sec: 23-3-0170(A)

This warrant is RETURNED FOR SERVICE in the County of Greenville

It is to be returned and brought before me to be dealt with according to the law.

(L-3)

Date: \_\_\_\_\_

RETURN

A copy of this arrest warrant was delivered to defendant on \_\_\_\_\_

COPY

RETURN WARRANT TO:

Wear Greenville Sentencing Court  
101 University Ridge, Suite 3100  
Greenville, SC 29601

AUDIT COPY      AUDIT COPY      AUDIT COPY      AUDIT COPY

STATE OF SOUTH CAROLINA  
County of Greenville

AFFIDAVIT  
I, Christopher J Resier, Sheriff of Greenville County, South Carolina, do hereby certify that the following is true and correct:

Personally arrested below are the affiant Christopher J Resier  
bary day were arrested and they are defendant Joseph Bernard Jackson  
do with the State and State to arrest

State of South Carolina for purposes of County of Greenville

DESCRIPTION OF OFFENSE: Sex / Sex Offender Registry Violation, fail to register - 1st offense

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

Bernard Joseph Jackson was convicted of Criminal Sexual Conduct with a Minor 2nd in 04/01/1999. Therefore, he is required by South Carolina code of law to maintain registration with the South Carolina Sex Offender Registry. Mr. Jackson has registered on 08/23/2022. Mr. Jackson has moved his address and did not notify the Greenville County Sheriff's Office in writing within the required three business days. Therefore, Mr. Jackson is in violation of section 23-3-470 of SC Code of Law. This offense occurred in Greenville County.

Signature of Affiant: C. J. Resier #7081794

STATE OF SOUTH CAROLINA  
County of Greenville  
Affiant's Address: 4 Racine Street  
Greenville, SC 29601  
Affiant's Telephone: (864)271-5210

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

I, \_\_\_\_\_, Sheriff of Greenville County, do hereby authorize you to arrest the defendant named below.

On or about 10/24/2022, defendant Joseph Bernard Jackson  
did violate the criminal laws of the State of South Carolina by offense of

County of Greenville

DESCRIPTION OF OFFENSE: Sex / Sex Offender Registry Violation, fail to register - 1st offense

Having read the contents of the above affidavit and being sworn before me, you are authorized and directed to arrest the said defendant and bring him to the court to be dealt with according to law. A copy of this arrest warrant shall be delivered to the defendant at one time of his execution, or as soon thereafter as is practicable.

Date: 10/24/2022  
Judge/Justice: 301 University Ridge Suite 3100  
Greenville, SC 29601

Judge/Judge: (864)467-4520

Holding Court: [X] Magistrate [ ] Municipal [ ] Circuit

AUDIT COPY      AUDIT COPY      AUDIT COPY      AUDIT COPY

01v/11/07/202212:58:05

**ARREST WARRANT**

**2022A2310100437**

STATE OF SOUTH CAROLINA

County  Municipality of  
Greenville

The State of South Carolina vs. Joseph Edward Jackson

Address: 9 Dobbs St  
Greenville, SC 29605-3917

Phone: 864-655-2625  
Sex: M Age: 31 Height: 6 Weight: 240  
DOB: 1/17/1993 Agency: SC0210000

Pursuing Agency: Greenville County Sheriff's Office  
Pursuing Officer: Christopher J Rosier - 500673  
Charge: Sex / Sex Offender Violation of Residency Limitations, 1st offense

Offense Code: 1674  
Criminal Justice No.: 13-57-655-2625

The warrant is  County  Municipality of Greenville

It is to be served on Joseph Edward Jackson and to be executed according to the law.

(C-8)

**RETURN**

A copy of this warrant was delivered to Joseph Edward Jackson on 10/27/2022

**COPY**

RETURN WARRANT TO:  
West Greenville Summary Court  
301 University Ridge, Suite 5100  
Greenville, SC 29601

AUDIT COPY      AUDIT COPY

STATE OF SOUTH CAROLINA

County  Municipality of  
Greenville

OCT 31 P 2:50  
OFFICIAL COPY

Pursuing Agency: Christopher J Rosier  
Offense Code: 1674  
Criminal Justice No.: 13-57-655-2625

The State of South Carolina vs. Joseph Edward Jackson

Address: 9 Dobbs St  
Greenville, SC 29605-3917

Offense Code: 1674  
Criminal Justice No.: 13-57-655-2625

The warrant is  County  Municipality of Greenville

It is to be served on Joseph Edward Jackson and to be executed according to the law.

(C-8)

I, the undersigned, do hereby certify that the above named person is the person named in the following case:

Joseph Edward Jackson was convicted of Criminal Sexual Conduct with Minor 2nd or 3rd (1674) on 06/01/1999. Therefore, he is restricted by South Carolina Code of Law to Residency Limitations with the South Carolina Sex Offender Registry. For South Carolina Code of Law section 16-3-513 (B), Mr. Jackson being convicted of Criminal Sexual Conduct with Minor 2nd or 3rd on 06/01/1999 cannot live within a 1000 ft of a restricted area. The system has documented evidence that Mr. Jackson is living within 1000 ft of restricted area (address Joe Jackson Park). Therefore, Mr. Jackson is in violation of section 16-3-513 (B) of SC Code of Law. This offense occurred in Greenville County.

Signature of Agent C. J. Rosier - 500673

STATE OF SOUTH CAROLINA

County  Municipality of  
Greenville

Address: 301 University Ridge Suite 5100  
Greenville, SC 29601

Agent's Telephone: (864)271-3270

**ARREST WARRANT**

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR ANY COUNTY CONSTABLE OF THIS COUNTY.

I, the undersigned, do hereby certify that the above named person is the person named in the following case:

Joseph Edward Jackson was convicted of Criminal Sexual Conduct with Minor 2nd or 3rd (1674) on 06/01/1999. Therefore, he is restricted by South Carolina Code of Law to Residency Limitations with the South Carolina Sex Offender Registry. For South Carolina Code of Law section 16-3-513 (B), Mr. Jackson being convicted of Criminal Sexual Conduct with Minor 2nd or 3rd on 06/01/1999 cannot live within a 1000 ft of a restricted area. The system has documented evidence that Mr. Jackson is living within 1000 ft of restricted area (address Joe Jackson Park). Therefore, Mr. Jackson is in violation of section 16-3-513 (B) of SC Code of Law. This offense occurred in Greenville County.

I, the undersigned, do hereby certify that the above named person is the person named in the following case:

Joseph Edward Jackson was convicted of Criminal Sexual Conduct with Minor 2nd or 3rd (1674) on 06/01/1999. Therefore, he is restricted by South Carolina Code of Law to Residency Limitations with the South Carolina Sex Offender Registry. For South Carolina Code of Law section 16-3-513 (B), Mr. Jackson being convicted of Criminal Sexual Conduct with Minor 2nd or 3rd on 06/01/1999 cannot live within a 1000 ft of a restricted area. The system has documented evidence that Mr. Jackson is living within 1000 ft of restricted area (address Joe Jackson Park). Therefore, Mr. Jackson is in violation of section 16-3-513 (B) of SC Code of Law. This offense occurred in Greenville County.

The warrant is  County  Municipality of Greenville

It is to be served on Joseph Edward Jackson and to be executed according to the law.

(C-8)

AUDIT COPY      AUDIT COPY      AUDIT COPY      AUDIT COPY      AUDIT COPY      AUDIT COPY      AUDIT COPY

**West Greenville Summary Court**  
**CASE HISTORY FOR CASE 2022A2310100436**  
 The State of South Carolina VS Joseph Benard Jackson

FILED DATE: 11/15/2022  
 INDICTMENT NUMBER:

CASE TYPE: CR  
 ASSIGNED JUDGE: Fisher, Darrell Scott  
 DISPOSITION JUDGE: Fisher, Darrell Scott  
 ARRESTING AGENCY: Greenville County Sheriff's Office

STATUS: Disposed

**CASE PARTIES:**

Defendant Jackson, Joseph Benard  
 9 Dobbs St, Greenville, SC 29605-3958

Officer Rosier, Christopher J  
 4 Mcgee Street, Greenville, SC 29601-

Bond Entry Jackson, Joseph Benard  
 9 Dobbs St, Greenville, SC 29605-3958

Witness Merritt, Elizabeth  
 350 Halton Rd Suite 100, Greenville, SC 29607

**CERTIFIED COPY**  
**DARRELL FISHER, JUDGE**

**CASE HISTORY FOR CASE 2022A2310100436**

Jackson, Joseph Benard  
 9 Dobbs St  
 Greenville, SC 29605-3958

Age: 59  
 DL#: 004274056

DOB: [REDACTED]  
 SSN: [REDACTED]

CHARGE	VIOL. DATE	DISPOSITION	DISP. DATE
2606 Sex / Sex Offender Registry Violation, fail to register - 1st offense	10/24/2022	Guilty Bench Trial Credit Time Served	2/9/2023

COST	ORIGINAL	BALANCE DUE	DISBURSED	PAY PRIORITY
Charge: Sex / Sex Offender Registry Violation, fail to register - 1st offense				
Fine to General Fund	\$0.00	\$0.00	\$0.00	999
Victim Services Asm 38.0013% / 5.783	0.00	0.00	0.00	999
Victim Conviction Surcharge \$100 / \$24	0.00	0.00	0.00	999
Law Enforcement Funding Surcharge \$	0.00	0.00	0.00	999
State Assessment	0.00	0.00	0.00	999
<b>Total:</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	

DATE	TIME	EVENT DESCRIPTION
11/15/2022	9:30 PM	Court event: Bond Hearing
11/15/2022	9:33 PM	Filing recorded: Bond Comment To Notes Screen
11/15/2022	12:00 AM	Bond 3 was set in the amount of 0 by Peden, Seldon T
11/15/2022	12:00 AM	RLOWDEN recorded the following Case Note: MUST REGISTER WITHIN 24 HOURS OF RELEASE
11/22/2022	12:00 AM	MHAYES recorded the following Case Note: Rescheduled Case
11/22/2022	12:00 AM	Filing recorded: Archived Court Summons

Print Date: 03/15/2023  
 Print Time: 5:41:49AM  
 Requested By: MHAYES

CaseHistory.rpt V6.1

Page 1 of 2

**CERTIFIED COPY**  
**DARRELL FISHER, JUDGE**

**West Greenville Summary Court**  
**CASE HISTORY FOR CASE 2022A2310100437**

The State of South Carolina vs Joseph Bernard Jackson

FILED DATE: 11/15/2022  
 INDICTMENT NUMBER:

CASE TYPE: CR

STATUS: Disposed

ASSIGNED JUDGE: Fisher, Darrell Scott

DISPOSITION JUDGE: Fisher, Darrell Scott

ARRESTING AGENCY: Greenville County Sheriff's Office

**CASE PARTIES:**

Defendant Jackson, Joseph Bernard  
 9 Dobbs St, Greenville, SC 29605-3958

Officer Rosier, Christopher J  
 4 McGee Street, Greenville, SC 29601-

Bond Entity Jackson, Joseph Bernard  
 9 Dobbs St, Greenville, SC 29605-3958

**CERTIFIED COPY**  
**DARRELL FISHER, JUDGE**

**CASE HISTORY FOR CASE 2022A2310100437**

Jackson, Joseph Bernard  
 9 Dobbs St

Age: 59  
 DL#: 004274058

DOB: [REDACTED]  
 SSN: [REDACTED]

Greenville, SC 29605-3958

CHARGE	VIOL. DATE	DISPOSITION	DISP. DATE
3674 Sex / Sex Offender Violation of Residency Limitations, 1st offense	10/24/2022	Outly Bench Trial Credit Time Served	2/9/2023

CDST	ORIGINAL	BALANCE DUE	DISBURSED	PAY PRIORITY
Charge: Sex / Sex Offender Violation of Residency Limitations, 1st offense				
Fine to General Fund	\$0.00	\$0.00	\$0.00	999
Victim Services Asm 38.0013% / 5.783	0.00	0.00	0.00	999
Victim Conviction Surcharge \$100 / \$21	0.00	0.00	0.00	999
Law Enforcement Funding Surcharge \$:	0.00	0.00	0.00	999
State Assessment	0.00	0.00	0.00	999
Total:	\$0.00	\$0.00	\$0.00	

DATE	TIME	EVENT DESCRIPTION
11/15/2022	9:30 PM	Court event: Bond Hearing
11/15/2022	9:33 PM	Filing recorded: Bond Comment To Notes Screen
11/15/2022	12:00 AM	Bond 4 was set in the amount of 0 by Peden, Seldon T
11/15/2022	12:00 AM	FLOWGEN recorded the following Case Note: MUST REGISTER WITHIN 24 HOURS OF RELEASE
11/22/2022	12:00 AM	MHAYES recorded the following Case Note: Rescheduled Case
11/22/2022	12:00 AM	Filing recorded: Archived Court Summons
12/15/2022	2:00 PM	Court event: Criminal/Traffic Court
1/12/2023	10:00 AM	Court event: Criminal/Traffic Rescheduled

**CERTIFIED COPY**  
**DARRELL FISHER, JUDGE**

Print Date: 03/15/2023  
 Print Time: 9:41:34AM  
 Requested By: MHAYES

CaseHistory.rpt V6.1

Page 1 of 2

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 State of South Carolina )  
 )  
 vs. )  
 )  
 Bernard Joseph Jackson, )  
 )  
 Defendant )  
 \_\_\_\_\_ )

IN THE COURT OF GENERAL SESSIONS  
 THIRTEENTH JUDICIAL CIRCUIT

23 MAY 26 PM 12:20  
 Paid Hickenbotham COO GUIL SC

ORDER

Indictment 1998-GS-23-04295

F 7734 92

This matter was initiated by Petitioner’s Motion to Remove Electronic Monitoring. A hearing was held on that Motion on March 17, 2023. Before the Court filed its written order on the matter, Defendant filed a Motion to Reconsider on March 28. The Court denied Defendant’s original Motion to Reconsider for being premature and untimely, then filed its Order denying Petitioner’s Motion to Remove Electronic Monitoring (“Order”) on April 17, 2023. On May 5, 2023, Defendant filed a second Motion to Reconsider (“Motion”) asking this Court to reconsider its Order. The Defendant also asked for a hearing on his Motion. On May 15, 2023, the State filed a Return to Defendant’s Motion (“Return”) asking the Court to deny the motion and not to hold another hearing.

The Court has reviewed the Motion and the Return. Pursuant to Rule 29(a), SCRCrimP, the Court determines it is not necessary to set a hearing to consider the current pending Motion and the Court rules based on the submissions of the parties.

The Court denies Defendant’s Motion. Defendant had an opportunity at the hearing on March 17, 2023, to present whatever evidence and testimony that he wished to present. As the moving party, Defendant had the burden to prove that he was entitled to the relief sought.

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According to S.C. Code § 23-3-540(H), Defendant had to prove, by clear and convincing evidence, that he had complied with the terms of electronic monitoring and that there was no longer a need for electronic monitoring. He had the first argument and did not introduce any evidence or call any witnesses, nor did he notify the Court that he had evidence or testimony he wished to present. As such, he failed to meet his burden.


Furthermore, the Court, in issuing its written order, is never limited to its oral ruling at the conclusion of the hearing. No order of a court is final until it is reduced to writing and filed of record. *See Ford v. State Ethics Comm'n*, 344 S.C. 642, 545 S.E.2d 821 (2001). The Order of this Court was based on arguments of counsel and the evidence, or lack thereof, presented at the March 17, 2023, hearing.

Defendant's reliance on *State v. Ross*, 423 S.C. 504, 815 S.E.2d 754 (2018) is misplaced. In that case, the Supreme Court held that a Defendant who was subject to mandatory electronic monitoring for the first time based on a conviction for failure to register as a sex offender was entitled to an individualized inquiry in the reasonableness of monitoring. In this case, Defendant has been on monitoring for over 15 years and was already on community supervision at the time he was ordered into electronic monitoring. The ruling in *Ross* does not apply to the relief requested in the Defendant's petition.

THEREFORE,

IT IS ORDERED that Defendant's Motion for Reconsideration is denied.

IT IS SO ORDERED!

  
\_\_\_\_\_  
Edward W. Miller  
Presiding Judge

Greenville, South Carolina

Date 5/26/23

**RECEIVED**

Sep 11 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY  
Court of General Sessions

Edward W. Miller, Circuit Court Judge

Case No. 1998-GS-23-04295

The State,

Respondent,

v.

Joseph Bernard Jackson,

Appellant.

AMENDED NOTICE OF APPEAL

Joseph Bernard Jackson appeals the order of the Honorable Edward W. Miller, dated April 17, 2023, denying appellant's petition for removal from the electronic monitoring requirements of S.C. Code Ann. § 23-3-540. Appellant received written notice of this order from the Clerk of Court on May 31, 2023.

TURNER PADGET GRAHAM & LANEY, P.A.

Christopher D Scalzo (SC Bar No. 70522)

Post Office Box 1509

Greenville, South Carolina 29602

Direct: 864-552-4652

Fax: 864-282-5947

[CScalzo@turnerpadget.com](mailto:CScalzo@turnerpadget.com)

ATTORNEYS FOR APPELLANT

Greenville, South Carolina  
September 11, 2023

Other Counsel of Record  
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Senior Assistant Deputy Attorney General  
Attorney General's Office  
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Columbia, SC 29211

[MFarthing@scag.gov](mailto:MFarthing@scag.gov)

ATTORNEY FOR RESPONDENT

**RECEIVED**

**Sep 11 2023**

**SC Court of Appeals**

**APPEAL FROM GREENVILLE COUNTY  
Court of General Sessions**

**Edward W. Miller, Circuit Court Judge**

Appellate Case No. 2023-000945

The State ..... Respondent,

v.

Joseph Bernard Jackson, ..... Appellant.

**APPELLANT'S MOTION TO  
AMEND ITS NOTICE OF APPEAL**

Pursuant to Rule 240 of the South Carolina Rules of Appellate Practice, Appellant moves to amend its notice of appeal to correct the date of the order being appealed. Appellant would show the following in support of the motion.

1. Appellant timely filed a notice of appeal on June 9, 2023.
2. In his notice, Appellant correctly identified the order being appealed as the order "denying appellant's petition for removal from the electronic monitoring requirements of S.C. Code Ann. § 23-3-540." Notice of Appeal.
3. Appellant inadvertently used the date "May 26, 2023" as the date of the order denying the petition when the correct date is April 17, 2023.
4. Appellant inadvertently attached the May 26<sup>th</sup> order believing it to be the April 17<sup>th</sup> order.
5. May 26, 2023, is the date of the final written order denying Appellant's motion to reconsider the April 17<sup>th</sup> order denying the petition.

6. The amendment does not create a new issue on appeal nor does it deprive Respondent of notice of the appeal.

7. The initial brief is being filed at the same time as this motion, along with an amended notice of appeal and a substitute copy of the lower court order denying the petition. Given the early stage of this appeal, there is no prejudice to Respondent by the amendment.

WHEREFORE, Appellant respectfully requests this Court grant his motion and allow him to amend his notice of appeal and substitute the previously filed order on appeal.

Respectfully submitted,

**TURNER PADGET GRAHAM & LANEY, P.A.**

*s/Christopher D. Scalzo*

Christopher D Scalzo (SC Bar No. 70522)

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ATTORNEYS FOR APPELLANT

September 11, 2023

# The South Carolina Court of Appeals

The State, Respondent,

v.

Bernard Joseph Jackson, Appellant.

Appellate Case No. 2023-000945

The Honorable Edward W. Miller  
Greenville County  
Trial Court Case No. 1998GS2304295

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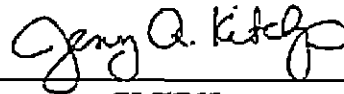
## ORDER

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Appellant filed a motion to amend the notice of appeal. No return was filed. This motion is granted. The initial brief of respondent and designation of matter is due to be served and filed thirty days of the date of this order.

FOR THE COURT

BY



CLERK

Columbia, South Carolina

cc:

Alan McCrory Wilson, Esquire  
Christopher D. Scalzo, Esquire  
Mark Reynolds Farthing, Esquire

**FILED**  
**Sep 27 2023**

**RECEIVED****Jun 09 2023****SC Court of Appeals****NOTICE OF APPEAL**

**THE STATE OF SOUTH CAROLINA**  
**In The Court of Appeals**

**APPEAL FROM GREENVILLE COUNTY**  
**Court of General Sessions**

**Edward W. Miller, Circuit Court Judge**

**Case No. 1998-GS-23-04295**

**The State, Respondent,**

**v.**

**Joseph Bernard Jackson, Appellant.**

**NOTICE OF APPEAL**

Joseph Bernard Jackson appeals the order of the Honorable Edward W. Miller, dated May 26, 2023, denying appellant's petition for removal from the electronic monitoring requirements of S.C. Code Ann. § 23-3-540. Appellant received written notice of this order from the Clerk of Court on May 31, 2023.

**TURNER PADGET GRAHAM & LANEY, P.A.**

**Christopher D Scalzo (SC Bar No. 70522)**

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**ATTORNEYS FOR APPELLANT**

**Greenville, South Carolina**  
**June 9, 2023**

**Other Counsel of Record**  
**M. Kyle Thompson, Esq.**  
**General Counsel**  
**13<sup>th</sup> Judicial Circuit Solicitor's Office**  
**305 E. North St., Ste 325**  
**Greenville, SC 29601**  
**[KyThompson@greenvillecountv.org](mailto:KyThompson@greenvillecountv.org)**  
**ATTORNEY FOR RESPONDENT**

## CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with 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."

Respectfully submitted,

  
**TURNER PADGET GRAHAM & LANEY, P.A.**

---

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December 7, 2023

ATTORNEYS FOR APPELLANT

**RECEIVED**

DEC. 11 2023

SC Court of Appeals