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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable Roger M. Young, Circuit Court Judge

IN THE MATTER OF THE CARE AND
TREATMENT OF BENJAMIN HEYWARD,

APPELLANT

APPELLATE CASE NO. 2024-001690

RECORD ON APPEAL

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1 STATE OF SOUTH CAROLINA **TRANSCRIPT OF RECORD**
 2 COUNTY OF CHARLESTON CASE NO.:2023-CP-10-05097
 3 ****TRANSCRIPTION OF DIGITAL AUDIO COURTROOM****

4 -----

5 September 3, 2024

6 **BEFORE:** The Honorable Roger Young

7 -----

8 IN THE MATTER OF THE CARE AND TREATMENT OF:
 9 BENJAMIN HEYWARD

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13 -----
 14 APPEARANCES:

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 19

 Christopher Runyan, Esq.
 Appearing for the State/Attorney
 General's Office.

 Nancy Carol Fennell, Esq.
 Appearing for Benjamin Heyward.

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22 Recorded by: BIS Video Courtroom

23 Transcriber: Natalie Dahl, RPR
 24 SC Official Court Reporter

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Transcript Legend

Dash (--) Indicates an interruption in speech
 Ellipses (...) Indicates trailing off in speech
 Phonetic (ph) Indicates a phonetic word
 (Inaudible) Indicates word(s) are not discernable due to audio recording quality

1 P R O C E E D I N G S

2 THE COURT: Are you ready?

3 MR. RUNYAN: Yes, sir, Your Honor. May it
4 please the Court?5 This is Case No. 2023-CP-10-05097, in the
6 Matter of the Care and Treatment of Benjamin
7 Heyward. And, again, we're here today pursuant to
8 the Sexually Violent Predator Act, 44-48-10, for a
9 voluntary commitment hearing. I'll offer a brief
10 procedural history for Your Honor.11 We filed a petition on October 16, 2023.
12 Probable cause was determined by yourself on
13 December 4, 2023. Ms. Fennell was appointed that
14 same day. Mr. Heyward was served with the petition
15 and probable cause order on December 14, 2023. We
16 had a probable cause hearing in Charleston before
17 Judge Bentley Price on February 13, 2024 where
18 Judge Price found probable cause and ordered that
19 Mr. Heyward submit to an evaluation. DMH appointed
20 Dr. Gillen to evaluate Mr. Heyward, and that report
21 was issued on July 25, 2024. And, again, Dr.
22 Gillen opined that Mr. Heyward meets the criteria
23 to be considered as a sexually violent predator,
24 which brings us to the hearing today.

25 It is my understanding that Mr. Heyward has

1 indicated through Ms. Fennell that he will waive
2 his right to a trial and consent to a (inaudible)
3 as a sexually violent predator, and wishes to
4 voluntarily commit to the treatment program.

5 Your Honor, to be considered a sexually
6 violent predator, two things must be shown. One,
7 that Mr. Heyward has a qualified conviction. Under
8 the act, he does. It is assault with attempt to
9 commitment sexual conduct in the second degree.
10 This has been -- I have a copy of the conviction.
11 It has been premarked State's 1, and I would like
12 to enter it into evidence.

13 MS. FENNELL: No objection.

14 (State's Exhibit 1 admitted.)

15 MR. RUNYAN: Second thing, Your Honor, is
16 does Mr. Heyward have a mental abnormality or
17 personality disorder that makes him likely to
18 engage in acts of sexual violence if not confined
19 for long-term control, care and treatment in a
20 secured facility?

21 I'll go ahead and offer what is marked as
22 State's 2, Dr. Gillen's report. I'll enter that
23 into evidence.

24 MS. FENNELL: No objection.

25 (State's Exhibit 2 admitted.)

1 MR. RUNYAN: Your Honor, in this case Dr.
2 Gillen diagnosed Mr. Heyward with other specified
3 personality disorder with antisocial traits. He
4 went on, as he does, to do his risk assessment. He
5 scored Mr. Heyward on the Static-99R as a six,
6 which puts him at a high risk, well above average
7 risk category to re-offend sexually.

8 On the violent risk scale sexually offending
9 actuarial risk assessment, he scored a 34, which
10 put him in the above average risk category to
11 re-offend. Based on that, and Mr. Gillen's
12 interview with Mr. Heyward, his review of his
13 criminal record, he said that his overall risk of
14 recidivism in five years is 38.6 percent, and has a
15 lifetime probability of 61.6 that Mr. Heyward would
16 re-offend sexually if left in the community.

17 Your Honor, that is all I have. I think this
18 establishes the elements we have to show. Again,
19 we would like to commend Mr. Heyward for his
20 insight into his need for treatment, recognizing
21 that is the first step. And we believe if he takes
22 that attitude with him into the treatment program,
23 it will serve him well as he works through that.

24 Nothing further, Your Honor.

25 THE COURT: Okay. What would you like to

1 say?

2 MS. FENNEL: Thank you, Your Honor. So I
3 have talked to Mr. Heyward about his ability to
4 seek an independent evaluation. That would have
5 been the next step in this process, but when we
6 spoke on the phone last week, he informed me that
7 he wants out of the Charleston County Detention
8 Center. He wants to move on to Columbia and move
9 forward. He does not want an independent
10 evaluation.

11 I will say that -- so Mr. Heyward is having
12 some health concerns, and part of his motivation is
13 that he thinks he'll receive better healthcare at
14 Well Path. I've discussed that with him. I
15 haven't made any guarantees about what kind of care
16 or anything that he will receive. I've also
17 explained to him that if he moves forward today,
18 voluntarily commits, that he is giving up his right
19 to a trial, and he cannot change his mind later,
20 regardless of what his motivation is today.

21 But I do think that he understands all of
22 that. I think he has made a well-informed
23 decision. But I do -- he does want to say a few
24 things to the Court, if that's appropriate.

25 THE COURT: Okay. Mr. Heyward.

1 MR. HEYWARD: Thank you, Your Honor.

2 I would like to speak on the evaluation. I
3 went for an evaluation on June 25, 2024. I was
4 transferred to South Carolina Department of Mental
5 Health, and I was evaluated. The evaluation was
6 performed by Dr. Christopher Gillen. And the first
7 day I was there, he tells me that if we don't
8 finish the evaluation, I'm going to have a second
9 one. So he told me I was going to have a second
10 one at the end of the first evaluation, which I
11 never did have.

12 On August 23, I received a letter from my
13 attorney informing me that the opinion on the
14 evaluation wasn't favorable to me. And on
15 October 26, I called my attorney, and that's when I
16 told her I'm not going further in this action. So
17 I waived my right for a trial to return that I'm a
18 sexually violent predator, and I'm committing
19 myself to a long-term treatment center, because as
20 a violent sexual predator, I believe that I'm not
21 going to be successful in this matter because all
22 odds are against me. So that's the reason why I'm
23 committing myself, not because I'm saying I'm a
24 violent sexual predator, it's because I'm not going
25 to be successful in this matter.

1 THE COURT: Successful in what?

2 MR. HEYWARD: I wouldn't be successful for
3 attempting not to prove that I'm not a sexual
4 violent predator.

5 I don't understand why they got three mental
6 experts for one evaluation? I mean, there is a lot
7 of things I don't understand about this. So,
8 really, I'm giving in. I'm willing to take
9 whatever program they have to offer me. I did have
10 a problem with alcohol and cocaine, you know. So
11 I'm willing to just get it over with and face what
12 I have to do to survive, and hope I'm released soon
13 from this program.

14 THE COURT: You understand this is not a
15 Department of Corrections matter? This is a
16 Department of Mental Health matter.

17 MR. HEYWARD: Yes, sir. I understand that.

18 THE COURT: So you might be housed in a
19 facility that is close to a Department of
20 Corrections facility, but it's run separately. So
21 whatever rights that you have with the Department
22 of Corrections has nothing to do going forward with
23 this program. You understand that?

24 MR. HEYWARD: Yes, sir. Yes, Your Honor.

25 THE COURT: Okay. So you still want to go

1 through and give up your right to have this
2 determined by a jury and just --

3 MR. HEYWARD: Yes, sir, I'm willing to give
4 all of that up. And the evidence that the
5 defendant (sic) used against me is 33 years old, a
6 charge that was dismissed. A CSC that was
7 dismissed in '87, and one that my attorney misled
8 me to plead guilty to in 1990. When I was tried
9 with assault with battery, he said if I plead
10 guilty for CSC second, I will get five years
11 probation. Judge Brown gave me 15 years in prison.
12 So I'm just putting that on the record, but....

13 THE COURT: All right. So you want to give
14 up your right to have a hearing in front of a jury?

15 MR. HEYWARD: Yes, sir.

16 THE COURT: Okay. All right. So did anyone
17 promise you anything or threaten you to get you to
18 make this decision?

19 MR. HEYWARD: No, sir.

20 THE COURT: All right. And this is your own
21 freewill?

22 MR. HEYWARD: Yes, sir.

23 THE COURT: And how old are you?

24 MR. HEYWARD: I'm 57.

25 THE COURT: How far did you get in school?

1 MR. HEYWARD: Sixth grade.

2 THE COURT: Okay. Well, do you have any
3 questions you want to ask your lawyer or me before
4 we go forward?

5 MR. HEYWARD: No, sir.

6 THE COURT: Okay. And this is his decision,
7 and you believe he understands what he's doing?

8 MS. FENNEL: It is, Your Honor. But if I
9 may ask him a few questions for the record?

10 THE COURT: Sure.

11 **EXAMINATION**

12 **BY MS. FENNEL**

13 **Q** Mr. Heyward, you understand that you don't
14 know exactly what medical treatment you might
15 receive when you get to Well Path?

16 **A** No, I don't know.

17 **Q** Have I told you that there are no guarantees
18 about what medical treatment you will receive at
19 Well Path?

20 **A** Yes, I understand that.

21 **Q** And did I research the issue to provide you
22 as much information as I could on that issue?

23 **A** Yes.

24 **Q** Knowing that there might be a particular
25 medical procedure that you want, that you might not

1 get at Well Path, do you still want to move
2 forward?

3 **A** Yes. Yes. I understand, yes.

4 **Q** Do you need to speak with an attorney other
5 than me to make that decision?

6 **A** No, ma'am.

7 **Q** Have I answered all of your questions?

8 **A** Yes.

9 **Q** Is there anything that I haven't done for you
10 that you would have wanted me to do to make this
11 decision?

12 **A** Well, no. No. No. But I do have an issue
13 with the probable cause hearing, but I know that
14 don't have nothing to do with this, so I'll deal
15 with that when I get to my destiny.

16 THE COURT: I'm not sure what he was saying.
17 What is he saying?

18 MS. FENNEL: He has an issue with the
19 probable cause issue, he said.

20 THE COURT: Well, he's given up the right to
21 have a probable cause hearing.

22 MS. FENNEL: The probable cause hearing that
23 we had initially as to whether he was going to be
24 detained and evaluated.

25 THE COURT: All right. Well, that's in the

1 past.

2 MR. HEYWARD: Yes. Yes. I understand.

3 THE COURT: It has nothing to do with today.

4 MR. HEYWARD: Yes, sir.

5 THE COURT: So you still want to give up your
6 right to have the jury decide this, and voluntarily
7 agree to commitment?

8 MR. HEYWARD: Yes, sir. Yes, Your Honor.

9 THE COURT: Okay. Do you have any other
10 questions?

11 MS. FENNEL: No. Thank you, Your Honor.

12 THE COURT: Anything further from the State?

13 MR. RUNYAN: No, Your Honor.

14 THE COURT: All right. Well, I find that his
15 decision is freely, voluntarily and intelligently
16 made.

17 Do you have an order for me?

18 MR. RUNYAN: Yes, sir.

19 THE COURT: All right. Thank you.

20 (Whereupon, the proceedings concluded.)

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CERTIFICATE OF TRANSCRIBER

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Case Name: In the Matter of the Care and
Treatment of Benjamin Heyward
Case No.: 2023-CP-10-05097
Date of Hearing: September 3, 2024

* * * * *

I, Natalie Dahl, do hereby certify that the
foregoing transcript is a true and correct record
of the recorded proceedings; **that said proceedings
were transcribed to the best of my ability from the
audio recording.**

I do further certify that I am neither of
kin, counsel, nor have interest to any party
hereto.

Natalie Dahl, Registered Professional
Reporter and transcriber for the State of
South Carolina

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON)	NINTH JUDICIAL CIRCUIT
)	
IN THE MATTER OF THE CARE AND)	CASE NO. 2023-CP-10-05097
TREATMENT OF)	
)	
BENJAMIN HEYWARD,)	ORDER OF VOLUNTARY
)	COMMITMENT
)	
<u>RESPONDENT.</u>)	

FILED
 2024 SEP -3 AM 10:37
 CLERK OF COURT
 CHARLESTON COUNTY

This case was brought pursuant to the Sexually Violent Predator Act (“SVPA”), S.C. Code Ann. §§ 44-48-10, *et seq.* By consent of the parties, a hearing was held on September 3, 2024. The Respondent, Benjamin Heyward, was present and represented by Nancy C. Fennell, Esquire. The State was represented by Assistant Attorney General Christopher Runyan.

Following a probable cause hearing held on February 13, 2024, the Court found probable cause exists that Respondent is a sexually violent predator and ordered Respondent to submit to a mental evaluation. Dr. Christopher Gillen, Ph.D., of the South Carolina Department of Mental Health (“DMH”) was appointed to evaluate Respondent. Dr. Gillen issued a report on July 25, 2024, finding Respondent meets the criteria for civil commitment and recommended he be confined in a secure facility for long-term control, care, and treatment pursuant to the SVPA.

The parties stipulated to the findings of Dr. Gillen and the State introduced into evidence a copy of Dr. Gillen’s evaluation and the indictments and sentencing sheets for Respondent’s qualifying convictions in Charleston County, which include: 1 count of Assault with Intent to Commit Criminal Sexual Conduct – Second Degree.

The Respondent, through his counsel, has advised the Court he wishes to waive his rights as stated below, will not contest, and consents to his designation as a sexually violent predator pursuant to the SVPA. Respondent also, through counsel, consents to the use of the evaluation prepared by Dr. Gillen dated July 25, 2024, as evidence of his current mental abnormality, personality disorder, and risk evaluation for purposes of committing him for long term control, care, and treatment. The report is hereby entered into evidence for purposes of Respondent’s commitment. The report is to be sealed pursuant to S.C. Code Ann. Section 44-48-150.

The Court determined from the Respondent that he has freely, voluntarily, intelligently, and without coercion waived his rights, including but not limited to, the right to a jury trial, the right to present evidence and the right to cross-examine witnesses, and consented to be committed to long-term control, care, confinement, and treatment at the Department of Mental Health pursuant to the SVPA.

The Court further verified from the Respondent that he was making this decision after consultation with his attorney, and that he was satisfied with the representation of his attorney.



The Court further verified from the Respondent that he was not under the influence of alcohol or drugs at this time, nor did he suffer from any other impairment that might prevent him from understanding his rights and these proceedings.

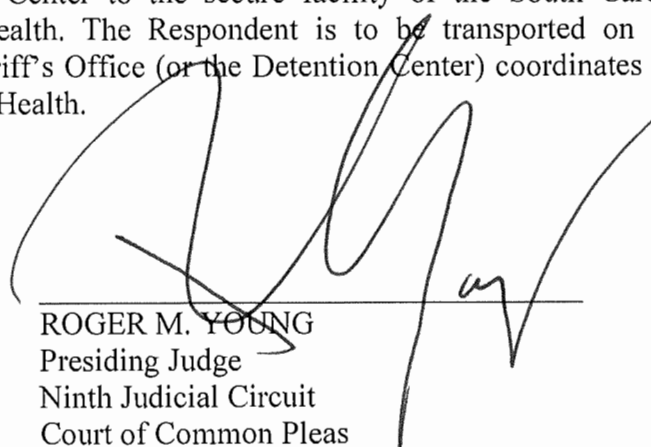
The Court, having heard the presentation of the State's evidence and the statements of the Respondent and his counsel, makes the following findings of fact and conclusions of law pursuant to S.C. Code Ann. §§ 44-48-10, *et seq.*:

1. This Court has jurisdiction of this matter and can determine the merits of the State's case;
2. Respondent freely, voluntarily, intelligently, and without coercion has waived his rights as set forth herein and consented to commitment in the custody of the South Carolina Department of Mental Health for long term control, care, and treatment pursuant to the SVPA;
3. The State has proven beyond a reasonable doubt that Respondent is a sexually violent predator, as the term is defined in S.C. Code Ann. § 44-48-30 of the SVPA; and
4. Respondent should be committed to the Department of Mental Health for his long-term control, care, and treatment pursuant to S.C. Code Ann. §§ 44-48-10, *et seq.*

NOW THEREFORE IT IS ORDERED, ADJUDGED AND DECREED THAT:

1. Respondent, Benjamin Heyward, is committed to the Department of Mental Health for his long-term control, care, and treatment; and
2. Respondent, Benjamin Heyward, shall remain detained in the Charleston County Detention Center. Respondent shall be transported by the Sheriff of Charleston County or the Detention Center to the secure facility of the South Carolina Department of Mental Health. The Respondent is to be transported on such scheduled date as the Sheriff's Office (or the Detention Center) coordinates with the Department of Mental Health.

AND IT IS SO ORDERED.



 ROGER M. YOUNG
 Presiding Judge
 Ninth Judicial Circuit
 Court of Common Pleas

September 3, 2024
 Charleston, South Carolina

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."

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Apr 03 2025

SC Court of Appeals

Respectfully Submitted,



David Alexander

Deputy Chief Attorney for Capital Appeals

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ATTORNEY FOR APPELLANT

This 3rd day of April, 2025.

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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable Roger M. Young, Circuit Court Judge

IN THE MATTER OF THE CARE AND
TREATMENT OF BENJAMIN HEYWARD,

APPELLANT

APPELLATE CASE NO. 2024-001690

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Record on Appeal in the above-referenced case has been served upon Deborah R.J. Shupe, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Benjamin Heyward, at DMH c/o Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 3rd day of April, 2025.



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ATTORNEY FOR APPELLANT