

OFFICE OF THE PUBLIC DEFENDER

ELIZABETH FULLWOOD
Lexington Public Defender
407½ W. Main St.
Lexington, SC 29072
Telephone (803) 785-8873
Fax (803) 785-1443

Eleventh Judicial Circuit
Lexington, Saluda, Edgefield,
and McCormick Counties

ROBERT M. MADSEN
Circuit Public Defender

BENNETT CASTO
Tri-County Public Defender
Post Office Box 1852
McCormick, SC 29835
Telephone (864) 852-9555
Fax (864) 852-9554

October 31, 2014

The Honorable Jenny Abbott Kitchings
Clerk of Court for Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: The State vs. Brad Alan Day, - appeal
Appellate Case No.: 2014-000306

Dear Ms. Kitchings:

The appeal for the above referenced case number is based on a community supervision violation hearing. The hearing was based on warrant number W-32-13-0318 and citation number C-32-13-0263. Those numbers were referenced in the notice for appeal. Also included with the notice of appeal was a copy of the sentencing order of Judge Hocker. The underlying indictment on which the violation is based is 2007-GS-32-1387.

With this letter, I am including copies of the probation warrant, citation, and the the original sentencing sheet for the indictment. I am also sending another copy of Judge Hocker's order which has the court's findings of facts and law.

Thank you for your assistance in this matter. With kind regards, I am

Sincerely,



David M. Mauldin, Bar No.: 14174
407 ½ West Main Street
Lexington, SC 29072

ENC

RECEIVED

NOV 03 2014

SC Court of Appeals

CC: Robert M. Dudek, Chief Appellate Defender
S. C. Commission on Indigent Defense
P O BOX 11589
Columbia, SC 29211

Alan McCrory Wilson, Esquire
S. C. Attorney General's Office
PO Box 11549
Columbia, SC 29211

Salley W. Elliott, Esquire
S. C. Attorney General's Office
PO Box 11549
Columbia, SC 29211

However, the Supreme Court in State v. Picklesimer, 388 S.C. 264, 695 S.E.2d 845 (2010), ruled that CSP is to use both the suspended and unsuspended portions of the sentence when determining the maximum amount of time a defendant is to be on CSP. "We now definitively state that the 'original sentence,' as referenced in section 24-21-560(D), includes both the suspended and unsuspended portions of a circuit court's sentence; it is, in fact, the total sentence handed down by the court." Id. at 268, 848. Picklesimer also ruled that CSP is either completed through two continuous years of CSP without violations, or the expiration of the original sentence, which includes both suspended and unsuspended portions of the sentence. Id. at 270, 848-849.

Because Defendant Day's original sentence was ten years suspended to the service of five years, the total sentence is ten years. Therefore, Mr. Day has not yet fully completed his sentence. He is to be sentenced to one year incarceration for the violation of the conditions of CSP and is to return to CSP when he is released from incarceration.

It is so ordered.



Donald B. Hocker
Presiding Judge
Eleventh Judicial Circuit

This 5th day of February, 2014

^(DBH) Mr. Day shall receive credit for 37 days served.

2

A TRUE COPY


Lex. Co. C.C.P., G.S. & F.C.

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington
STATE VS

INDICTMENT/CASE#: 07-32-1317
AW#: 5056445
Date of Offense: 2-17-07
S.C. Code §: 16-3-655
CDR Code #: 0397

AKA: Brad Alan Day
Race: [REDACTED] Sex: M Age: [REDACTED]
DOB: [REDACTED] SS#: [REDACTED]
Address: [REDACTED]
City, State, Zip: [REDACTED]
DL# : [REDACTED] SID# [REDACTED]

SENTENCE SHEET

RECEIVE

NOV 03 2013

SC Court of Appeals

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO:

in violation of § 16-3-655 of the S.C. Code of Laws, bearing CDR Code # 397
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS

Mandatory GPS (CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (Defendant initial)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: [Signature] Solicitor
[Signature] Defendant

[Signature] Attorney for Defendant
YRS

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 10 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of 5 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.

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. FEBRUARY 20, 2007 - CREDIT TIME SERVED
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

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

PTUP days/hours Public Service Employment

A TRUE COPY

Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning Lex. Co. C.C.P., G.S. & P.C.
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: must register as sex offender

Recipient:		
*Fine:	\$	
§14-1-206 (Assessments 107.5%)	\$	
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§35.13 (Public Def/Prob)	\$500	\$
§73.3, 1B TP (Law Enforce. Funding)	\$25	\$ 23.00
§33.7, 1B TP (Drug Court Surcharge)	\$100	\$
§50-21-114(BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$
TOTAL		\$125.00

Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

Beth A. Paige Clerk of Court/Deputy Clerk
Court Reporter: Carol Thorne

PRESIDING JUDGE [Signature]
Judge Code: 0111210
Sentence Date: October 29, 2007

Form 16.1 - Arrest Warrant
Form Approved by
SC Attorney General
Section 17-13-160
March 15, 1978

Community Supervision

STATE OF SOUTH CAROLINA

ARREST WARRANT

COUNTY OF LEXINGTON

Indictment Number 07-GS-32-01387

Warrant Number W-32-13-0318

State Identification No. (SID) 00457830

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF LEXINGTON, AND ANY CONSTABLE OF THIS MAGISTERIAL DISTRICT:

It appearing from the attached affidavit that there are reasonable grounds to believe that BRAD ALAN DAY, did on the 5 day of December, 2013 violate the criminal laws of the State of South Carolina as set forth below:

DESCRIPTION OF OFFENSE:

Violation of Community Supervision pursuant to Section 24-21-560.

Now, therefore, you are empowered and directed to arrest the said defendant and bring BRAD ALAN DAY before me for trial to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable. Done at LEXINGTON, S. C. this 5 day of December, 2013.



(L.S.)
Signature of Probation and Parole Agent

County of LEXINGTON

STATE OF SOUTH CAROLINA

AFFIDAVIT

Personally appeared before me, one Lisa S. Baker, who, first being duly sworn, deposes and says that BRAD ALAN DAY did within this County and State on the 5 day of December, 2013, violate the criminal laws of the State of South Carolina in the following particulars:

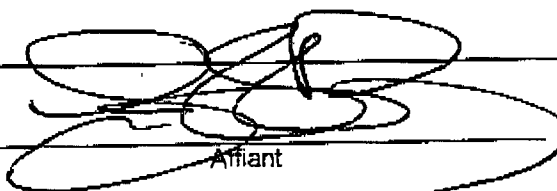
DESCRIPTION OF OFFENSE:

Violation of Community Supervision pursuant to Section 24-21-560.

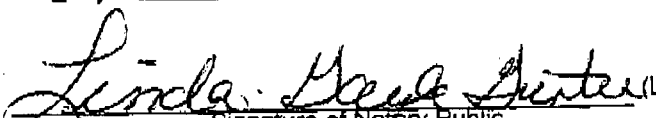
The affiant states that there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

Subject has violated his Community Supervision in the following manner: By failing to refrain from using illegal drugs by admitting to using Cocaine use on 12/1/2013. Such actions constitute a violation of Sections 3 and 10 of the original release agreement dated 5/1/2013.

Sworn to and Subscribed before me
this 5 day of December, 2013.



Affiant



Signature of Notary Public

Address: 605 West Main Street
Suite 104
LEXINGTON, SC 29072
LEXINGTON
USA
(803) 359-2551

4-24-2017

My Commission Expires

RETURN

STATE OF SOUTH CAROLINA
COUNTY OF
LEXINGTON

THE STATE
against

BRAD ALAN DAY

Constable or Law Enforcement Officer

A copy of this Arrest Warrant was delivered by me to the following defendant:

ARREST WARRANT

Offense: Violation of Conditions of Community
Supervision Supervision

Offense Section: 24-21-560

Date: 12/5/2013

Officer and Agency: SC Department of Probation,
Parole and Pardon Services

Lisa S. Baker

on the 5 day of December, 2013
Rusty Rust
Constable or Law Enforcement Officer

This Warrant is certified for service in (County of warrant
Certification) County. The accused is to be arrested and brought
before me to deal with according to law.

(L.S.)
Signature of Judge

Disposition

Sentence

Co-Defendants

INFORMATION ON DEFENDANT

Name BRAD ALAN DAY
Address 2000 POST BLVD ROOM 150
WILMINGTON SC 29403
Phone (800) 000-0000
Sex Male Race White Height 600
Weight 250 Birth date
Social Security Number

INFORMATION ON WITNESSES

Name
Address
Phone
Name
Address
Phone
Name
Address
Phone
Name
Address
Phone

PRELIMINARY HEARING held by

Magistrate
on
with
Attorney for the Defendant.

Decision
BAIL

Date Set
Magistrate
Amount
Surety

Form 16.3
Form Approved by
SC Attorney General
May 1988

CITATION

Indictment Number(s):
07-GS-32-01387

No. C-32-13-0263

SOUTH CAROLINA V. BRAD ALAN DAY	County LEXINGTON	
	SCDC # 00226463	SID # 00457830
	Citation for Violation of <input type="checkbox"/> Parole <input type="checkbox"/> Emergency Powers Act Release <input type="checkbox"/> Supervised Re-entry Program <input checked="" type="checkbox"/> Community Supervision <input type="checkbox"/> Supervised Furlough	

TO: BRAD ALAN DAY

YOU ARE HEREBY NOTIFIED to appear in the above case at the time, date and place specified below.

Place General Sessions Court	Room
	Date and Time 12/20/2013 8:30 AM

YOU ARE HEREBY NOTIFIED that you are charged with violating the conditions of your supervision as stated below.

Violations Charged Violation of Community Supervision pursuant to Section 24-21-560.

YOU ARE HEREBY NOTIFIED that you have the rights listed below.

List of Rights: You have the right at the preliminary hearing to question any person who appears as a witness against you and to have witnesses appear on your behalf. You may present evidence on your behalf. You may have an attorney represent you at the hearing at your expense. An attorney may be appointed to represent you in extraordinary circumstances. It is your responsibility to make arrangements for your witnesses and your attorney to appear at the hearing.
--

IF YOU FAIL TO APPEAR AT THE TIME, DATE AND PLACE SHOWN ABOVE, THE HEARING WILL BE HELD IN YOUR ABSENCE AND YOU MAY BE INCARCERATED.

LEXINGTON, South Carolina	Probation and Parole Agent Sandra Young	Agent # 0812
Date 12/12/2013		

PROOF OF SERVICE

Date Served: 12/12/13	Place: Lex PPP
Served On: (Print Name) Brad Day	
Served By: (Print Name) Justin Price	Title: Agent

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct

Executed on: 12/12/13 DATE	Signature of Server
Address of Server	City State Zip

STATE OF SOUTH CAROLINA

AFFIDAVIT

County of LEXINGTON

Personally appeared before me, Sandra Young, who first being duly sworn, deposes and says that BRAD ALAN DAY did within this county and State on the 12 day of December, 2013, violate certain conditions of release in the following particulars:

DESCRIPTION OF VIOLATION

Violation of Community Supervision pursuant to Section 24-21-560.

The Affiant states that there is probable cause to believe the defendant named committed the violations set forth and that such probable cause is based on the following facts:

Subject has violated his Community Supervision in the following manner. He has failed to pay Intensive Fees being a total in arrears of \$120.00. He has failed to pay GPS fees being a total in arrears of \$440.00 in arrears. Subject has failed to charge his GPS unit as instructed. He has been instructed to charge his unit for 2 hours every day. He was released from LCDC on 12/6/2013 at 6:42 pm and did not charge his unit until 12/8/2013 at 11:27 pm. This caused the unit to lose power and the subject was untracked for 51 hours and 45 minutes. He failed to call the GOC as previously instructed for 24 hour assistance on his GPS unit. He was given their phone number. He admitted that he stayed with his mother at 301 Taylor Street, West Columbia SC 29169. This residence has been unapproved for him to reside as it is within 1000 feet of a school. Subject has failed to follow the advice and instructions of the agent. Such actions constitute a violation of Sections 7, 10, and special conditions of the release certificate dated 5/1/2013 and Sections 3, 10, 11, 13, of the Participant Rules Acknowledgment and Agreement, and Sections 10 and 12 of The Standard Sex Offender Conditions signed by subject dated 5/2/13. This citation is in addition to warrant W-32-13-0318 issued on 12/5/2013 and served on 12/5/2013.

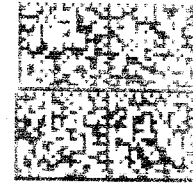
Sandra Young
Affiant

Sworn to and subscribed before me this
12 day of December, 2013

Clare S. [Signature]
Signature of Notary Public

May 29 2018
My Commission Expires

**COUNTY OF LEXINGTON
PUBLIC DEFENDER'S OFFICE
407 1/2 West Main Street
Lexington, South Carolina 29072**



Hester

95-2692773
\$00.699
NOV 31 2014
United From 29072
US POSTAGE

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NOV 03 2014

SC Court of Appeals

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