

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM DORCHESTER COUNTY
The Honorable Diane Schafer Goodstein, Circuit Court Judge
S.C. SUPREME COURT

Unpublished Opinion No.: 2012-UP-312
Submitted March 1, 2012-Field May 16, 2012

THE STATE, PETITIONER,

v.

EDWARD TWYMAN, RESPONDENT.

APPENDIX

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STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY

Diane Schafer Goodstein, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

EDWARD TWYMAN,

APPELLANT

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
)
COUNTY OF DORCHESTER) 2000-GS-18-00795

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
 VS.) TRANSCRIPT OF RECORD
)
 EDWARD TWYMAN,)
)
 DEFENDANT.)
)
 _____)

NOVEMBER 19, 2010
ST. GEORGE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE DIANE S. GOODSTEIN, JUDGE

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

AGENT CHRISTINE DEBELLO
FOR THE DEPARTMENT OF PROBATION AND PAROLE

SCOTT BISCHOFF, ESQ.
ATTORNEY FOR THE DEFENDANT

BONNIE H. KELLY
CIRCUIT COURT REPORTER

I N D E X

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10

WITNESS/DESCRIPTION PAGE NO.

AGENT DEBELLO

	DIRECT	CROSS	REDIRECT	RECROSS
THE COURT	4		10	
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1 THE COURT: All right. This is community supervision.

2 MS. DEBELLO: Yes, Your Honor.

3 THE COURT: And we needed to have another hearing,
4 right?

5 MS. DEBELLO: Yes, Your Honor.

6 THE COURT: And I can have Ms. DeBello testify.

7 MR. BISCHOFF: Yes, ma'am.

8 THE COURT: And you can cross-examine.

9 MR. BISCHOFF: Yes, ma'am.

10 CHRISTINE DEBELLO, having been
11 first duly sworn, testifies as follows:

12 DIRECT EXAMINATION BY THE COURT:

13 Q And why do you believe that Mr. Twyman has violated
14 the terms of his probation -- I mean, community
15 supervision?

16 A Your Honor, on August -- as part of his community
17 supervision he is ordered to be placed on GPS monitoring
18 for six months -- not less than six months. And also to
19 have no contact with the victim or the victim's family for
20 the duration of supervision.

21 As part of the GPS monitoring and our GPS program I
22 set an exclusionary zone around the victim's residence,
23 which is in Ridgeville, and of course, that zone is -- it's
24 -- I believe about a 500 mile radius circle. So, it
25 extends out beyond the victim's home.

1 Q Why?

2 A That way we have ample warning if he enters that zone.

3 And it's my understanding that Mr. Twyman all lives
4 within those two streets. And the victim is -- is a
5 relative in this case.

6 Mr. Twyman was living in Summerville and I did advise
7 him, you know, regarding contact with his family because of
8 the victim being a relation to him; as well as him not
9 having a whole -- no family in Summerville to help support
10 him. And I basically told him, you know, "You need to stay
11 away from the victim's house -- that area. If your family
12 wants to see you to help you out -- because he was living
13 in a boarding house -- then they need to come to
14 Summerville to see you."

15 On August the 31st of this year, I did receive a GPS
16 alert that he did enter that exclusionary zone around the
17 victim's residence at 12:30 in the afternoon. I was able
18 to verify he did not go to victim's house; however, he was
19 at a house in close proximity to the victim's residence.

20 Q Right. And that 8/31/2010, at 12:41:44 p.m. when he
21 entered. No, that's the exit. The zone was entered it
22 looks like August the 31st, 2010, at 12:30:36. And then
23 exited at 12:41.

24 A Yes, Your Honor.

25 Q Uh-huh. So, it looks like he was there for 11

1 minutes.

2 A Yes, Your Honor.

3 Q And I see that there was an alert to the victim.

4 A Actually, the alert came directly to us. I did --
5 when he was originally released from the Department of
6 Corrections, I attempted to make contact with the victim to
7 see if she wanted to have a pager to be notified if he
8 violated his GPS. She never responded to any of my
9 attempts to contact her.

10 I have spoke with her mother in relation to the
11 hearings that have been scheduled in this case. And they
12 were aware of the hearing here today. And I do not believe
13 that they are in the courtroom.

14 Q Okay. And then it says that on 8/31 -- 8 -- at 8 --
15 on 8/31/2010, at 8:02 a.m., that he again entered the zone.

16 A Oh, Your Honor, that was ---

17 MR. BISCHOFF: That's his residence.

18 A --- that's his residence.

19 Q Okay.

20 A That's his residence. Your Honor, the report you're
21 looking at ---

22 Q Oh, I see. Yeah.

23 A --- the report reads actually from the bottom up.

24 Q Okay.

25 A Because if you see where he exited the victim's

1 residence, there is a great deal of "get current location"
2 requested by Mr. Moran and Mr. Lewis. That was -- we
3 immediately issued the warrant, and myself and Mr. Moran
4 and Ms. Simmons all left our office and were in the process
5 of following his tracking points to find exactly where he
6 was to take him into custody.

7 And we took him into custody within a few steps of his
8 residence as he was walking down the street.

9 Q Got you. Okay. All right. This says that the zone
10 radius is 839 feet.

11 A I'm sorry, Your Honor.

12 Q Is that right?

13 A Yes. Yes.

14 Q Okay. All right. Looks like 279.6 yards.

15 A Your Honor, I've never been very good with calculating
16 distances.

17 Q Very well. All right. Okay. So, it was like a
18 little less than 300 yards. Okay.

19 THE COURT: Yes, sir. Cross-examination.

20 CROSS EXAMINATION BY MR. BISCHOFF:

21 Q Please. Agent DeBello, you would agree that this was
22 Mr. Twyman's only violation since being released from the
23 Department of Corrections in July of this year, correct?

24 A Correct.

25 Q And if he had had any other violations whatsoever,

1 even coming close to the prohibited zone, that would be
2 indicated.

3 A Yes.

4 Q And you were able to confirm that he did not actually
5 visit the residence of the victim, correct?

6 A Correct.

7 Q You maintain that he entered the zone, the prohibited
8 zone that was just shy of 300 yards from the victim's
9 residence.

10 A Yes.

11 Q And you would also agree that he was with his aunt's
12 boyfriend on August 31, 2010, at the time that the zone was
13 entered.

14 A That is what I've been told. I do not have
15 confirmation of that. I did not see them together.

16 Q Okay. But you confirm that he was at -- he left his
17 house the day of the violation at 10 a.m.

18 A Correct.

19 Q And you would also agree that he has gotten a
20 favorable report from his landlord, Ms. Nolan.

21 A Correct.

22 Q You would also agree that he completed counseling in
23 prison for a year, correct?

24 A I have no records of any of the counseling ---

25 Q Okay.

1 A --- he did in prison.

2 Q You would agree that he was transferred from one
3 facility to another while in prison.

4 A I don't -- honestly, I have not reviewed any ---

5 Q Okay.

6 A --- of his records from the Department of Corrections.

7 Q Okay. And you would agree that other than entering
8 the zone, not contacting the victim, but entering the zone,
9 he's had no other violations in that month since he's been
10 released, correct?

11 A Not that I'm aware of.

12 Q And he is scheduled to see Dr. Burke when he's
13 released, but he has not missed an appointment with Dr.
14 Burke to this day, correct?

15 A No. He actually had his initial appointment with Dr.
16 Burke; was scheduled for the week after this incident
17 occurred.

18 Q And you would agree that -- according to your report,
19 that he was told no contact with the victim and/or victim's
20 family, correct?

21 A Correct.

22 Q And you would agree that he was told not to go near
23 the victim, but specifically the radius of the exclusionary
24 zone was not disclosed to him. Let me rephrase that.

25 He was not specifically told how far away from the

1 residence he was allowed to go; is that correct?

2 A I told him not to go to that area in Ridgeville.

3 Q Okay. Okay. But as far as a violation of the zone is
4 concerned, you did not tell him exactly where the radius of
5 the zone was.

6 A That is not our practice to do that. Because then he
7 could calculate the area and be right outside of the zone,
8 and possibly have contact with the victim.

9 Q Okay. Just one second, Your Honor.

10 THE COURT: All right.

11 MR. BISCHOFF: No more questions. Thank you.

12 THE COURT: I do.

13 REDIRECT EXAMINATION BY THE COURT:

14 Q So, what did you tell him? You told him stay away
15 from what?

16 A From the victim -- from the area that the victim was
17 in. And I understood from speaking to him that -- as I
18 said earlier, that their entire family lives within that
19 one of two streets in Ridgeville. And I told him you
20 cannot go there. If you're family wants to see you or try
21 to help you and provide you any assistance, they have to
22 come see you in Summerville.

23 Q In other words, you told him to stay away from
24 Ridgeville.

25 A From the area around the victim's residence, yes, Your

1 Honor.

2 Q In Ridegville.

3 A Yes, Your Honor.

4 Q And where he was was at one of those houses on those
5 two streets.

6 A Yes, Your Honor.

7 Q Okay.

8 THE COURT: Any other questions?

9 MR. BISCHOFF: No, Your Honor.

10 THE COURT: Okay. Very well. All right. Thank you,
11 Ms. DeBello.

12 What -- what do you have for me?

13 MR. BISCHOFF: Your Honor, I'd just point out that
14 this is a community supervision violation. And there was a
15 case decided a few months ago that addressed exactly what
16 was a willful violation of the terms and conditions of
17 community supervision.

18 And the Court defined "willful" -- Court of Appeals
19 defined "willful" as (as read) "a voluntary, intentional
20 act, or consciousness that the act is a violation of the
21 term of community supervision program itself."

22 I believe the community supervision program is to
23 refrain from going within certain distances of -- of
24 houses, as far as these exclusionary zones are concerned.
25 I believe what Agent DeBello is -- is saying is that she

1 informed Mr. Twyman not to go in the area of this
2 particular victim's residence, but I don't know if -- if
3 that in and of itself is a violation to actually break the
4 zone.

5 I do know that my client was with an aunt's boyfriend
6 that day and was out looking for a job. And was going to
7 various locations looking for a job, when they stopped by a
8 residence -- not the victim's residence, but a residence
9 that was near and that my client thought was outside of the
10 zone of this particular house.

11 And basically, it's -- what I am saying is that is was
12 not a willful violation.

13 Your Honor, I do understand that -- especially
14 considering the charge, that you know, there needs to be
15 some sort of clarity. Whether or not Mr. Twyman was told
16 "Do not go anywhere near," as Ms. DeBello testified to, or
17 "Do not go into the Town of Ridgeville," I think is a bit
18 of a grey area at this point.

19 My client maintains that he -- all along thought that
20 he was not supposed to go to this victim's house or contact
21 this victim. There's no more testimony that he contacted
22 him through phone, that he contacted him through letter;
23 that he even saw this victim on the day in question of
24 August the 31st.

25 He's been arrested since August 31st, and he -- you

1 know, Judge, he's got a few more months on this GPS
2 monitoring.

3 He has made strides. He tells me that when he was in
4 the Department of Corrections -- he was sentenced in 2000
5 and served just over 10 years of his sentence; was released
6 at 85 percent. He tells me that he got moved from one
7 facility to another, whereby he participated in counseling,
8 successfully completed it. And he tells me that he
9 volunteered to stay another year at that facility to
10 continue his treatment.

11 I haven't been able to confirm that with the
12 Department of Corrections. I tried, but I simply could not
13 get anybody who -- in short amount of time, who could give
14 me records -- verified the records that I could hand up to
15 the Court to confirm that.

16 I know that ---

17 MR. THURBER: He has a completion certificate.

18 MR. BISCHOFF: Well, he does have a completion
19 certificate.

20 This gentleman here is -- please address yourself.

21 MR. THURBER: Donald Thurber.

22 MR. BISCHOFF: And please explain how you know Mr.
23 Twyman.

24 MR. THURBER: Oh, I -- I do prison ministry through
25 the Salvation Army in the prison fellowship. We're

1 primarily in transition now, and I have been mentoring Mr.
2 Twyman since his release.

3 I've actually known him since about 2003, I guess,
4 when I was leading a Christian study group at Allendale.
5 But I communicated with him periodically since then, and I
6 was aware of his -- all through his treatment program, what
7 he did.

8 MR. BISCHOFF: Judge, I maintain that it's not a
9 willful violation of the community supervision program. I
10 -- I do think that Mr. Twyman used poor judgement, but to
11 the extent that it rose to a level that deserves him being
12 revoked -- I believe it's a year is what he can be revoked
13 under community supervision -- I -- I still maintain that
14 he didn't -- did not do that, and I don't believe it's a
15 willful violation.

16 Now, clearly, he's on notice of exactly what the
17 radius is. He has spent time in the -- in the community --
18 the county jail. I think based on him successfully
19 completing these programs in -- in prison, I ask that the
20 Court allow him to go meet with Dr. Burke, see how he's
21 doing, see if he is going to remain an active participant,
22 because ultimately, what we're trying to do here, I believe
23 -- and I hope the Court would agree -- is to prevent this
24 from happening to somebody else.

25 THE COURT: Why was he so long in getting to Dr.

1 Burke? How long had he been out when these events
2 occurred?

3 MS. DEBELLO: Your Honor --

4 MR. BISCHOFF: A month.

5 MS. DEBELLO: -- a month. Within the -- because it is
6 the situation with him, he literally -- he basically came
7 out with nothing, Ms. Nolan's allowed him to stay at the
8 boarding house, which is \$100 a week.

9 I wanted to give him a little bit of time to settle
10 in. He came in and saw me within two weeks of -- the next
11 appointment after he was released was two weeks, I believe,
12 from the time he was released. I contacted Dr. Burke's
13 office and they gave me their next available appointment
14 with Dr. Burke.

15 THE COURT: Got you.

16 MS. DEBELLO: So, it just so happened that it was --
17 it -- it would have been the week after these events
18 occurred, and he was already in custody. So, he did miss
19 that appointment.

20 THE COURT: Got you. I understand. I understand.

21 MR. BISCHOFF: And Judge, I do think it's telling that
22 the victim themselves -- the victim himself, as well as
23 family members, are not here in court. They didn't contact
24 Agent DeBello. I don't believe that Mr. Twyman, based on
25 my conversations with him, had any intention of contacting

1 this victim.

2 Again, the issue is whether or not he entered that
3 zone, and -- and based on the evidence here, he entered the
4 zone, but I don't think it was a willful violation.

5 And I ask that you consider that the victims are not
6 here expressing, you know, their concern about Mr. Twyman
7 being in the community when considering whether or not to -
8 - to keep him under the careful watch of Agent DeBello, and
9 so that he can continue with -- with his counseling with
10 Dr. Burke.

11 I hope that you would agree that -- that the time he's
12 served is enough of a warning to my client, if you will, or
13 at least brings to his attention that the zone is the zone.
14 And it doesn't mean to come close to it. He needs to stay
15 out despite being carried around town by an aunt's
16 boyfriend, looking for jobs or what. If that means jumping
17 out of the car on it's way into Ridgeville, then that's
18 what he needs to do.

19 I think he understands that. In my talks with him he
20 does seem like an educated man. At least, I -- I think he
21 knows that he's in an awful lot of trouble and he's at the
22 mercy of the Court today.

23 I don't believe that he's going to violate any of the
24 supervision terms or exclusionary zones any more. And if -
25 - and if you do, clearly, Judge, they were able to -- to

1 apprehend him within not too much of time. It looks like
2 just an hour. Was it within an hour?

3 MS. DEBELLO: Yes.

4 MR. BISCHOFF: And he was only there for 11 minutes,
5 which I think goes to -- to his story about how he was only
6 at a house down the road for a brief minute and then he got
7 a ride back to his -- his place and out of the zone.

8 So, under the circumstances, Judge, I -- I ask that --
9 that you allow him to come back out on community
10 supervision with zero tolerance for missing any
11 appointments with Dr. Burke; zero tolerance, again, for any
12 sort of entrance into these exclusionary zones. And I
13 think that will accomplish what the community supervision
14 program's about, which is keeping this gentleman away from
15 the victim, as well as any other citizens out there that
16 he's not allowed to have contact with based on the
17 provisions of the -- of the program.

18 So, I ask that you give him all the consideration you
19 can.

20 THE COURT: Thank you so much. I do appreciate that,
21 Mr. Bischoff, for -- appreciate your hard work, appreciate
22 your eloquence, and there isn't any -- there is no way to
23 make it any clearer than it already was clear. And that is
24 what disturbs me so.

25 This gentleman doesn't appreciate "No. Don't." And

1 there's a consequence. This victim -- and of course, I am
2 troubled that the victim isn't here. I don't know that the
3 victim's family is protecting the victim like the victim
4 deserves to be protected. It concerns me and it makes me
5 want to call the Department of Social Services and be up in
6 arms that the fact that the victim's family didn't want a
7 beeper, wouldn't communicate with people for protection of
8 this minor, that they really don't care. But I -- I -- I
9 don't have enough to go forward on that.

10 I'm concerned about it. I'm so concerned about it
11 that I'm going to make a report to the Department of Social
12 Services at the conclusion of this hearing today, because
13 that's two things that's happened, that GPS is made
14 available for the protection of your minor child that has
15 been sexually assaulted and you don't communicate with
16 people trying to give you that? And secondly, you're
17 notified of a hearing where there's been an invasion of the
18 zone for the protection of the child by the community and
19 you don't care? I mean, what that says to me is that
20 somebody in the cycle that is there to protect this minor
21 ain't protecting the minor. And I am concerned about that.

22 I'm going to ask them to take a look and to be sure
23 that the child's protective environment is in place.

24 But yes, I am concerned about that.

25 And ---

1 MR. THURBER: Your Honor, forgive me, but I believe
2 that's ---

3 MR. BISCHOFF: (To Mr. Thurber) Shhhh ...

4 THE COURT: --- and -- and it makes no sense to me
5 that they can presume they -- they're not worried about
6 him. The man just spent 10 years in jail for sexually
7 assaulting an individual.

8 No. There is a place in the law where the rules
9 really are the rules, and you can't push them. He pushed
10 them and he pays the consequences.

11 Respectfully, revoke his community supervision.

12 MR. BISCHOFF: Thank you, Your Honor.

13 MS. DEBELLO: Thank you, Your Honor.

14 THE COURT: Give him all the credit for the time he
15 has served. Thank you.

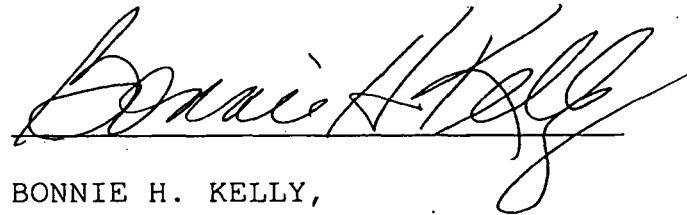
16

-- END OF TRANSCRIPT OF RECORD --

CERTIFICATE

I, THE UNDERSIGNED BONNIE H. KELLY, OFFICIAL COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR DORCHESTER COUNTY, SOUTH CAROLINA, ON THE 19TH DAY OF NOVEMBER, 2010.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



BONNIE H. KELLY,
COURT REPORTER

COLUMBIA, SOUTH CAROLINA

FEBRUARY 15, 2010

IN THE COURT OF GENERAL SESSIONS

No. 00 -GS- 18 - 795
Count

STATE OF SOUTH CAROLINA
COUNTY OF **Dorchester**

Community Supervision
REVOCATION ORDER

STATE
-vs-
Edward Twyman

Defendant

01318834

SID #

269709

SCDC# or DOB

This matter was brought before me on the 19th day of November, 2010, pursuant to a warrant charging the Defendant with violating the Defendant's Community Supervision Program and asking the Court to revoke the Defendant's community supervision. I find:

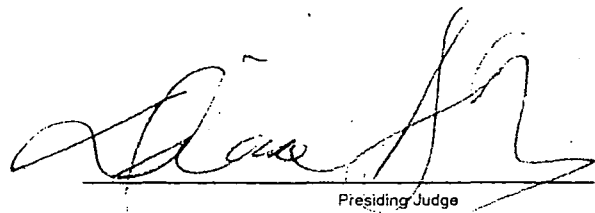
1. The terms of the Community Supervision Program are fair and reasonable;
2. The Defendant has not complied with all terms of the Community Supervision Program;
3. The Defendant has willfully violated terms of the Community Supervision Program;
4. The Defendant should not be continued in the Community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

FILED & RECORDED
2010 NOV 19 PM 4:32
CLERK OF COURT
DORCHESTER COUNTY

IT IS ORDERED that the Defendant be in the custody of the South Carolina Department of Corrections for a term of _____ days _____ months 1 year (total may not exceed one (1) year).

Credit for any time served.

This 19th day of November, 2010



Presiding Judge

St. George

S. C.

1st

Judicial Circuit

This is to certify that I have received this order.

Offender's Signature unavailable

Witnessed by Christy DeBell

Signed this 19th day of November, 2010, at St. George, SC

RETURN

STATE OF SOUTH CAROLINA

COUNTY OF

DORCHESTER

THE STATE

against

EDWARD TWYMAN

INFORMATION ON DEFENDANT

Name EDWARD TWYMAN
Address W 1ST NORTH ST APT 6
SUMMERVILLE SC 29483
Phone (843) 873 2603
Sex Male Race Black Height 508
Weight 130 Birth date 4/29/1972
Social Security Number 1

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

ARREST WARRANT

Offense Violation of Conditions of Community
Supervision Supervision

Offense Section 24 21-560

Date 8/31/2010

Officer and Agency SC Department of Probation
Parole and Pardon Services

Christina F DeBello

Disposition

Sentence

Co-Defendants

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

Edward Twyman

on the 31 day of Aug 2010

[Signature]

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 dealt with according to law

(L S)

Signature of Judge

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

Community Supervision

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

ARREST WARRANT

Indictment Number 00-GS-18-00795

Warrant Number W-18-10-0132

State Identification No. (SID) 01318834

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

It appearing from the attached affidavit that there are reasonable grounds to believe that EDWARD TWYMAN, did on the 31 day of August, 2010 violate the criminal laws of the State of South Carolina as set forth below:

DESCRIPTION OF OFFENSE:

Violation of Community Supervision pursuant to and concurrent to Section 24-21-560 in that the defendant did violate the conditions of his Community Supervision release as approved by the South Carolina Department of Probation, Parole and Pardon Services on July 30, 2010.

Now, therefore, you are empowered and directed to arrest the said defendant and bring EDWARD TWYMAN before me forthwith 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 SUMMERVILLE, S. C. this 31 day of August, 2010.


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

County of DORCHESTER

STATE OF SOUTH CAROLINA

AFFIDAVIT

Personally appeared before me, one Christina F. DeBello, who, first being duly sworn, deposes and says that EDWARD TWYMAN did within this County and State on the 31 day of August, 2010, violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE:

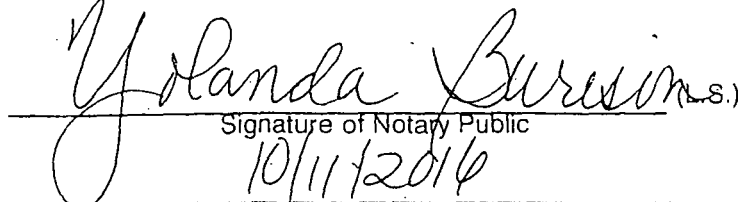
Violation of Community Supervision pursuant to and concurrent to Section 24-21-560 in that the defendant did violate the conditions of his Community Supervision release as approved by the South Carolina Department of Probation, Parole and Pardon Services on July 30, 2010.

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:

Failure to refrain from having contact with the victim (On 08/31/10, subject's GPS tracking shows him entering the exclusion zone around the victim's residence at 12:30pm) Such actions constitute a violation of the special condition of his release agreement.

Sworn to and Subscribed before me
this 31 day of August, 2010.


Affiant


Signature of Notary Public
10/11/2016
My Commission Expires

Address: 212 DEMING WAY
BOX 6
SUMMERVILLE, SC 29483
DORCHESTER
USA
(843) 832-8340

South Carolina Department of Probation, Parole and Pardon Services

Standard Sex Offender Conditions

1. I will register as a sex offender as required by the Code of Laws of South Carolina and as described in the Department's *Notice of Sex Offender Registry*.
2. I will attend, actively participate in, not give cause to be terminated from, and successfully complete any counseling/treatment program, to which I am referred by my agent, which may include polygraph or other treatment related testing, all at my own expense. I waive all rights to confidentiality between myself and my treatment provider, and authorize my treatment provider to disclose to my agent, the Court, the Parole Board, the releasing authority, and/or the hearing officer, information about my attendance and participation in the program. (Must complete Referral Form 1054).
3. I will not have any contact with the victim(s) of my crime, directly or indirectly. This includes but is not limited to physical or face to face contact, contact through letters or written notes, telephone calls, or electronic mail (e-mail), or any contact through a third party, unless such contact is approved in writing by the Court, the Parole Board, or the releasing authority, or the hearing officer. I also will not enter into, travel past, or loiter near a victim's residence or workplace.
4. I will not have any contact with a person under the age of 18, with the exception of my immediate family members and then may only have such contact if approved in advance under conditions set by my treatment provider and my agent. If I have incidental contact with any child, I will be civil and courteous and immediately remove myself from the situation. I will discuss the contact at my next treatment session and will immediately report this contact to my agent.
5. I will not enter into, loiter or work within one thousand (1,000) feet of any area or event frequented by people under the age of 18 including but not limited to: schools, day care centers, playgrounds, arcades, public swimming pools or beaches, shopping malls, theaters, or and festivals, unless approved in advance by my agent.
6. I will not purchase, possess, or use any sexually stimulating or sexually explicit material or device, nor enter into, loiter or work within one thousand (1,000) feet of any place where such material or device is sold or presented as entertainment. This includes but is not limited to adult book stores, sexually explicit internet sites, television services, or telephone services, sex shops, topless bars, strip clubs, and massage parlors. I will not possess or use a computer or any other electronic device which is enabled with internet access for any reason unless approved in advance under conditions set by my treatment provider and my agent. I understand this means that without prior approval, there may not be a computer of any type in my residence, and that I may not access any computer. If approved to use a computer I must sign the Computer Use Agreement for Sex Offenders (Form 1402). If my employer requires me to use a computer, I will provide a written statement from my employer stating the need for such use.
7. I will permit my agent or a representative of the Department, without a warrant and with or without the assistance of any other law enforcement officer, to search my person, residence, any vehicle I own or have permission to use, and any of my possessions, for the presence of sexually stimulating or sexually explicit materials or devices prohibited by these conditions, and to seize said materials. Such materials seized shall be considered property of the court, Parole Board, or releasing authority, and shall be safely kept by the Department or other law enforcement agency until any violations concerning the seized materials have been addressed.
8. I will abide by all curfews as directed by my agent.
9. I will at all times maintain a suitable residence, approved by my agent, which complies with all conditions of my supervision, which may not be within one thousand (1000) feet of any area frequented by people under the age of 18, including but not limited to schools, day care centers, playgrounds, arcades, public swimming pools or beaches, shopping malls, or theaters. I will obtain approval from my agent of my residence and employment and shall obtain prior approval from my agent before changing my residence or employment. I will stay at my approved residence every night and will not sleep or stay overnight anywhere else without prior approval of my agent.
10. I will not consume alcoholic beverages and will submit to alcohol testing as instructed by my agent or treatment provider. I agree that any test results may be used as evidence in any hearing for the violation of the conditions of my supervision and I waive any right to challenge the validity of such results.
11. I will comply with the Department's requirements for any electronic monitoring program which I am ordered to participate in by the Court, the Parole Board, the releasing authority, the hearing officer, or my agent, or as required by statute, all at my own expense.

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 accept and agree to these conditions and understand that any violation could result in the Court, Parole Board, or releasing authority revoking my supervision and reinstating my sentence or returning me to prison. If I refuse to accept these conditions, I must immediately ask my agent to issue legal process and bring my case before the Court, Parole Board, or releasing authority where I will request that my term of supervision be revoked and my sentence be reinstated or that I be returned to prison. I understand that, if I have objections to any of the above conditions but fail to timely take the actions described above, I will waive any right I may have to challenge these sex offender conditions at any future proceeding.

Edward Twyman 8/12/10

 Offender Signature Date
 Edward Twyman

 Offender Name (printed)

Charles F. DeBelle 8/12/10

 Agent Signature Date
 C. DeBelle

 Agent Name (printed)



COMMUNITY SUPERVISION PROGRAM CERTIFICATE

Know all men by these presents:

It having been made to appear to the satisfaction of the SOUTH CAROLINA DEPARTMENT OF PROBATION PAROLE AND PARDON SERVICES that the offender mentioned below who was convicted of the offense(s) indicated below on said date(s) and in said county(ies) meets the requirements for Community Supervision Program as provided for in §24-21-560 of the South Carolina Code of Laws 1976, as amended.

It is therefore ORDERED that the said prisoner enter the Community Supervision Program at the end of his or her active sentence under supervision subject to the specific conditions listed below until the expiration of this Community Supervision Program as indicated below.

This release shall not prevent the delivery of the prisoner to authorities of the Federal Government or any state otherwise entitled to his or her custody.

In witness whereof, this Certificate bearing the approval of the South Carolina Department of Probation, Parole and Pardon Services is issued on the date below.

By Order of: South Carolina Department of Probation, Parole and Pardon Services

By: Jonathan V. Howell, Coordinator, Community Release and Programs

Offender/Prisoner's Name: TWYMAN, EDWARD
Supervision Beginning Date: July 30, 2010
State Identification # (SID): 01318834
SC Dept. of Corrections # (SCDC): 00269706
Supervision Ending Date: July 29, 2012

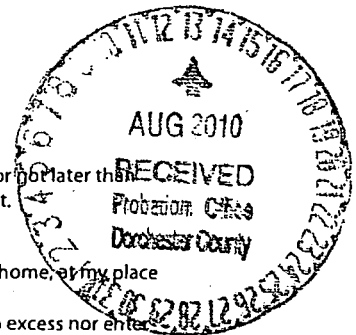
Table with columns: Offense(s), CDR, Indictment #(s), Conviction Date(s), County of Conviction(s), Incarceration Termination Date, Restitution Ordered (\$), Probation to Follow. Row 1: Criminal sexual conduct with minor or Attempt - victim 11 to 14 yrs of age inclusive - Second deg. (SR unless...)

CONDITIONS OF SUPERVISION

Additional Offenses or Notes Page 2

Violation of any of these conditions may result in the immediate revocation of supervision.

- 1. I shall report in person to the South Carolina Department of Probation, Parole and Pardon Services' office on the day of my release or no later than 8:30 AM on the next business day, and as instructed by the Department; and I shall make complete and truthful reports to the Agent. Please report to the office in the County of: DORCHESTER Phone: (843) 832-8340
2. I shall not change my residence or employment without the consent of my Agent. Further, I shall allow my Agent to visit me in my home, at my place of employment, or elsewhere at any time.
3. I shall not use controlled substances, except when properly prescribed by a licensed physician, not consume alcoholic beverages to excess nor enter establishments whose primary business is the sale and drinking of alcoholic beverages. Further, I shall submit to a urinalysis, blood test or provide forensic evidence when instructed by Agents of the Department, and I agree that any of these test results may be used as evidence in any hearing.
4. I shall not possess or purchase any firearms, knives, or dangerous weapons, and I shall not associate with any person who has a criminal record, or any other person whom my Agent has instructed me to avoid.
5. I shall work diligently at a lawful occupation. Further, I shall notify my Agent if I become unemployed.
6. I shall not violate any Federal, State, or local laws and I shall contact my Agent if I am ever arrested or questioned by a law enforcement official for any reason whatsoever.
7. I shall pay a supervision fee as determined by the Department.
8. I shall not leave the State without permission from my Agent. Further, if I am ever arrested in another state for violating these conditions, I hereby irrevocably waive all extradition rights I may otherwise be entitled to and agree to return to South Carolina when directed by my Agent, the court, or by a warrant.
9. I shall obey all conditions of supervision set forth in this order including the payment of fines, restitution, or other payments, and the services of any period of incarceration. I will make all child support payments as ordered by the courts.
10. I shall follow the advice and instructions of my Agent and I agree to comply with any further conditions imposed by the Department or its' Agents.
11. Unless I was convicted of or pled guilty or nolo contendere to a Class C misdemeanor or an unclassified misdemeanor that carries a term of imprisonment of not more than one year, I shall be subject to search or seizure, without a search warrant, with or without cause, of my person, any vehicle I own or am driving, and any of my possessions by: (1) any probation agent employed by the Department; or (2) any other law enforcement officer.



ADDITIONAL CONDITIONS:

- 04 Must have no contact with the Victim and/or Victim's family for duration of supervision.
23 Mental Health Counseling per original court order on 9/28/00.
23 No residence plan submitted.

I hereby certify that the conditions listed above have been read and explained fully to me and in agreement thereto, I attach my signature.

Edward Twyman
Offender Signature Address: I/M HAS NO ADDRESS TO GIVE, USA

07-28-10
Phone: (000) 000-0000 Date

I hereby certify that this Statement of Conditions has been read and explained to the offender and he/she has agreed to them.

Witness Signature

07-28-10 Date



South Carolina Department of Probation, Parole and Pardon Services
COMMUNITY SUPERVISION PROGRAM CERTIFICATE

Page 2

Offender/Prisoner's Name: TWYMAN, EDWARD
Supervision Beginning Date: July 30, 2010
State Identification # (SID): 01318834
SC Dept. of Corrections # (SCDC): 00269706
Supervision Ending Date: July 29, 2012

Offense(s)	CDR	Indictment #(s)	Conviction Date(s)	County of Conviction(s)	Incarceration Termination Date	Restitution Ordered (\$)	Probation to Follow
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ADDITIONAL CONDITIONS:

27 GPS Monitoring Not Less than 6 Months. If I am unable to report on the day of release I understand that I will be confined to my home until I report to SCDPPPS at 8:30 AM the next business day.

31 Attend Sex Offender Counseling.

ADDITIONAL CONVICTIONS:

27

ARREST WARRANT

G-448545

STATE OF SOUTH CAROLINA

County/ Municipality of DORCHESTER

THE STATE against

TWYMAN, EDWARD ANTHONY

Address: 313 CORBIN TOWN ROAD RIDGEVILLE SC 29472-0000

Phone: SSN: Sex: Race: Height: Weight: 000 DL State: SC DL #: 472971975 Agency ORI #: 1800 Prosecuting Agency: DCSB Prosecuting Officer: MARSHALL, SGT. T.M. Offense: CRIMINAL SEXUAL CONDUCT WITH A MINOR Offense Code: 16-3-655 Code/Ordinance Sec.:

This warrant is CERTIFIED FOR SERVICE in the County/ Municipality of The accused is to be arrested and brought before me to be dealt with according to law.

Signature of Judge (L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Edward A. Twyman on 6/6/2000

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA County/ Municipality of DORCHESTER

AFFIDAVIT

Form Approved by S.C. Attorney General July 26, 1990 SCCA 518

Personally appeared before me the affiant MARSHALL, SGT. T.M. being duly sworn deposes and says that defendant TWYMAN, EDWARD ANTHONY did within this county and state on Between 11/01/1999 and April 2000 violate the criminal laws of State of South Carolina (or ordinance of County/ Municipality of) VIOLATION SECTION 16-3-655 OF SC CODE OF LAW in the following particulars: CRIMINAL SEXUAL CONDUCT WITH A MINOR DESCRIPTION OF OFFENSE:

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

SEE ATTACHED AFFIDAVIT

ALL OF WHICH IS AGAINST THE PEACE AND DIGNITY OF THE STATE OF SOUTH CAROLINA AND WILL BE MORE FULLY DESCRIBED ON THE 19 CODE OF LAW.

Sworn to and subscribed before me on May 23, 2000 Signature of Issuing Judge

Signature of Affiant Affiant's Address 212 Deming Way Summerville SC Affiant's Telephone (843) 832-0370

STATE OF SOUTH CAROLINA County/ Municipality of DORCHESTER

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that TWYMAN, EDWARD ANTHONY did violate the criminal laws of the State of South Carolina (or ordinance of) County/ Municipality of as set forth below:

DESCRIPTION OF OFFENSE: VIOLATION SECTION 16-3-655 OF SC CODE OF LAW: CRIMINAL SEXUAL CONDUCT WITH A MINOR

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to defendant at the time of its execution, or as soon thereafter as is practicable.

Signature of Issuing Judge Judge's Address 212 DEMINGWAY RD. SUMMERVILLE SC 29483-0000 Judge's Telephone (803) 832-0370 Issuing Court: Magistrate Municipal Circ

ORIGINAL

C-448545

ORIGINAL

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

. AFFIDAVIT

Personally appeared before me, a magistrate of this County, one DETECTIVE SGT. T. M. MARSHALL who, being duly sworn, deposes and says that (name of defendant)

EDWARD ANTHONY TWYMAN

did within this County and State BETWEEN NOVEMBER 1999 THOUGH APRIL 2000; violate the criminal laws of the State of South Carolina in the following particulars:

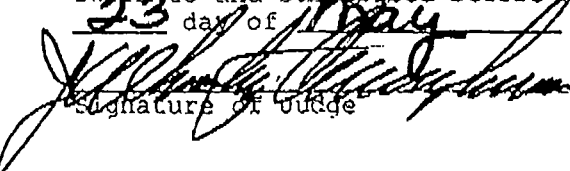
DESCRIPTION OF OFFENSE

CRIMINAL SEXUAL CONDUCT WITH A MINOR 2ND DEGREE VIOLATION OF SECTION 16-3-655 OF THE SOUTH CAROLINA CODE OF LAWS OF 1976 AS AMENDED

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: THAT ON OR BETWEEN NOVEMBER 1999 THOUGH APRIL 2000 DURING THE DAYTIME AND NIGHTTIME, LOCATED AT 313 CORBIN TOWN ROAD, RIDGEVILLE, IN THE COUNTY AND STATE AFORESAID, THE DEFENDANT, EDWARD ANTHONY TWYMAN, DID COMMIT THE OFFENSE OF CRIMINAL SEXUAL CONDUCT WITH A MINOR 2ND DEGREE IN VIOLATION OF SECTION 16-3-655 OF THE S. C. CODE OF LAWS OF 1976 AS AMENDED. IN THAT HE DID WILLFULLY, UNLAWFULLY AND FELONIOUSLY, COMMIT A SEXUAL BATTERY ON A FEMALE 12 YEARS OF AGE BY FONDLING THE VICTIM'S BREAST AND SUCKING HER BREAST. THEN THE DEFENDANT REMOVED HIS CLOTHES PENETRATED THE VICTIM'S VAGINA WITH HIS PENIS AND FINGERS. THE DEFENDANT ALSO HAD THE VICTIM TO PERFORM ORAL SEX ON HIM, AND THEN THE DEFENDANT DID PERFORM ORAL SEX ON THE VICTIM. FACTS TO PROVE THE SAME ARE THAT ON MAY 2, 2000 DORCHESTER COUNTY DEPUTY RECEIVED A CALL FROM DORCHESTER COUNTY DEPT. OF SOCIAL SERVICES OF A POSSIBLE SEXUAL ASSAULT INVOLVING A 13 YEARS OF AGE CHILD WHO LIVES AT THE AFORMENTION ADDRESS. THE VICTIM WAS LATTER INTERVIEWED ON MAY 19, 2000 AND DID GIVE A WRITTEN STATEMENT TO DET. T. MARSHALL OF THE DORCHESTER COUNTY SHERIFF DEPT. THAT DETAILED THE CIRCUMSTANCE SURROUNDING THE AFOREMENTIONED SEXUAL ASSAULT. THE DEFENDANT ALSO GAVE SEVERAL STATEMENT TO A NURSE AT TRIDENT HOSPITAL CONFESSING THAT HE HAD SEXUALLY MOLESTED HIS 13 YEARS OF AGE COUSIN. ALL AGAINST THE PEACE AND DIGNITY OF THE STATE OF SOUTH CAROLINA. WITNESSES TO PROVE THE SAME ARE DETECTIVE T. M. MARSHALL, 13 YEARS OF AGE VICTIM, AND HER BROTHER.

FILED-RECORDED
PH 3:14
DORCHESTER COUNTY


(NAME OF AFFIANT), AFFIANT

Sworn to and subscribed before me this }
23 day of May, 2000 }

Signature of Judge (L.S.)

Address: 212 Deming Way
Summerville SC 29483
Phone: (803) 832-0300

WITNESSES

DET. MARSHALL, DCSD

ARREST WARRANT NUMBER

G448545

Arrested: Jun 06, 2000

ACTION OF GRAND JURY

TRUE BILL

By: *Theresa Braco*

Date: *8/24/00*

representative of Grand Jury

date: August 24, 2000

VERDICT

representative of Petit Jury

date:

DOCKET NO. 2000GS18-0795

The State of South Carolina

County of

DORCHESTER

COURT OF GENERAL SESSIONS

September 18, 2000 TERM

THE STATE

vs.

Edward Anthony Twyman

Indictment for

CRIMINAL SEXUAL CONDUCT
WMINOR 2ND DEGREE (V 11-14)

SC Code: 16-03-655(2)

CDR Code: 0396

Class: FEL-C(V)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

INDICTMENT

At a Court of General Sessions, convened on September 18, 2000 the Grand Jurors of Dorchester County present upon their oath

CRIMINAL SEXUAL CONDUCT WMINOR 2ND DEGREE (V 11-14)

That Edward Anthony Twyman, did in Dorchester County, on or between November 1, 1999, and April 30, 2000, willfully and unlawfully engage in criminal sexual conduct with a minor in the second degree in that the defendant did engage in sexual battery with T [redacted] Clinton, who was 12 years of age This offense being a violation of Section §16-3-655(2) of the South Carolina Code of laws, 1976 as amended

Against the peace and dignity of the State, and contrary to the statute in such case made and provided

Walter Bailey

Walter Bailey SOLICITOR

STATE OF SOUTH CAROLINA)
 COUNTY OF DORCHESTER)
 STATE VS)
Edward Anthony Twyman)
 AKA _____)
 Race B Sex M)
 DOB 4/29/72 Age 28)
 SSN _____)
 DL# _____)
 SID# _____)

IN THE COURT OF GENERAL SESSIONS)
 INDICTMENT/CASE#)
2000 -GS- 18 - 0795)
 A/W# G448545)
 Date of Offense 11/1/99 - 4/30/00)
 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 CRIMINAL SEXUAL CONDUCT W/ MINOR 2nd DEGREE 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
Mattie Murphy Solicitor Edward Twyman Defendant Gene W. Duke Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 12 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 _____ 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 128 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	\$ <u>100.00</u>
(Exceptions See § 14-1-211)	
§ 56-5-2995 (DUI)	\$ _____
County (3%)	\$ <u>3.00</u>
TOTAL	\$ <u>103.00</u>

Clerk of Court/Deputy Clerk Seal Esthage
 Court Reporter Kial

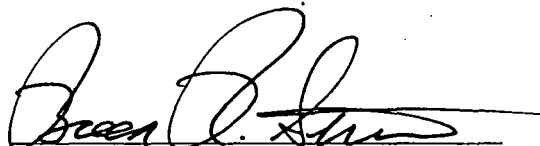
PTUP _____
 _____ days/hours Public Service Employment
 Obtain GED _____
 Attend Voc Rehab or Job Corps _____
 May serve W/E beginning _____
 Substance Abuse Counseling _____
 Random Drug/Alcohol Testing _____
 Fine may be pd in equal, consecutive weekly/monthly pmts of \$ _____ beginning _____
 \$ _____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

2 request del/gnd/or mental counseling
 PRESIDING JUDGE Curt M
 Judge Code 019101
 Sentence Date 01-28-2000

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 August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

July 8th, 2011



Breen Richard Stevens
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Dorchester County

Diane Schafer Goodstein, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

EDWARD TWYMAN,

APPELLANT

FINAL BRIEF OF APPELLANT

BREEN RICHARD STEVENS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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TABLE OF AUTHORITIES

Cases

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S.C. Code § 24-21-560(C)(5) (West, Westlaw current through 2010) 7

STATEMENT OF ISSUE ON APPEAL

- I. Whether Edward Twyman willfully violated terms of the community supervision program when the supervising agent intentionally did not inform Twyman of the actual parameters of the applicable exclusionary zone, Twyman believed he was not within the exclusionary zone, and no contact was made with the victim?

STATEMENT OF THE CASE

On August 24, 2000, Edward Anthony Twyman was indicted by the Dorchester County Grand Jury for second degree criminal sexual conduct with a minor. Twyman pled guilty to the offense on September 28, 2000, and was sentenced to twelve years imprisonment. Twyman later entered the community supervision program on July 30, 2010.

On November 19, 2010, a revocation proceeding was held before the Honorable Diane S. Goodstein to determine whether Twyman violated the terms of the community supervision program. Twyman was represented by Scott Bischoff. Agent Christine DeBello of the Department of Probation, Parole, and Pardon Services represented the State. The court determined Twyman willfully violated the terms of the program, and revoked his community supervision. Twyman was sentenced to one year for violating the terms of the program.

STATEMENT OF THE FACTS

Edward Twyman was released under the community supervision program in late July 2010. R. p. 5, ln. 21-22; R. p. 15, ln. 1-12. Terms of his community supervision included GPS monitoring for at least six months, and to have no contact with the victim of the prior offense, or the victim's family. R. p. 4, ln. 16-19. This was especially challenging, as Twyman's family lived within blocks of the victim's address in Ridgeville, South Carolina.¹

Agent Christine DeBello (Agent DeBello) of the Department of Probation, Parole, and Pardon Services (DPPP) set an 839 foot "exclusionary zone" around the residence of the victim. R. p. 4, ln. 21-24; R. p. 7, ln. 9-19. However, while Agent DeBello told Twyman not to have any contact with or go near the victim, she never told Twyman precisely how far away from the residence he must remain. R. p. 9, ln. 18 – p. 10, ln. 8. When Agent DeBello was pressed by the trial court regarding how far she told Twyman to stay, she responded, "[f]rom the area around the victim's residence." R. p. 10, ln. 23-25. Moreover, when asked on cross-examination whether she told Twyman exactly what the radius of the "exclusionary zone" was, Agent DeBello replied as follows:

"That is not our practice to do that. Because then he could calculate the area and be right outside of the zone, and possibly have contact with the victim."

R. p. 10, ln. 3-8. Thus, Twyman did not have knowledge of the exclusionary zone's actual boundaries. R. p. 10, ln. 16-17.

On August 31, 2010, Twyman was riding with his aunt's boyfriend to look for employment. R. p. 8, ln. 11-14; R. p. 12, ln. 5-6. While driving to various locations, they

stopped from 12:30 pm to 12:41 pm at a residence near the victim's house in Ridgeville. R. p. 5, ln. 21-24; R. p. 12, ln. 6-8. Twyman believed he was outside of the zone of the victim's house. R. p. 12, ln. 9-10. Twyman did not visit the victim's residence or contact the victim in any way (R. p. 8, ln. 4-6; R. p. 9, ln. 7-11). However, the stop made by his aunt's boyfriend was within the "exclusionary zone" arbitrarily set by Agent DeBello that was not specifically communicated to Twyman. Accordingly, the GPS alerted DPPP, and Twyman was arrested approximately one hour later within a few steps of his own residence in Summerville, South Carolina. R. p. 7, ln. 7-8; R. p. 17, ln. 1-2.

The specific condition of community supervision that Twyman allegedly violated was cited by the State in the arrest warrant initiating the revocation proceedings: "Failure to refrain from having contact with the victim (On 08/31/10, subject's GPS tracking shows him entering the exclusion zone around the victim's residence at 12:30 pm)." Arrest Warrant Affidavit. Despite Twyman's assertion that his violation of the "exclusionary zone" was not willful, the Court determined that "there is no way to make it any clearer that it already was clear." R. p. 11, ln. 13—p. 12, ln. 18; R. p. 17, ln. 22-23. Twyman's community supervision was revoked. R. p. 19, ln. 11. This appeal follows.

¹ The victim was also a relative of Twyman. R. 4, ln. 3-5.

ARGUMENT

I. Edward Twyman did not willfully violate the terms of his community supervision by entering an “exclusionary zone” established by the supervising agent, because the agent intentionally did not inform Twyman of the actual parameters of the applicable zone, and no contact was made with the victim.

Twyman was not made aware of the “exclusionary zone” radius established by Agent DeBello, and did not knowingly or willfully enter the zone. R. p. 10, ln. 3-8; R. p. 12, ln. 5-10. Further, Twyman never came into contact with the victim or the victim’s family during the 11 minutes his aunt’s boyfriend stopped at a house in Ridgeville. R. p. 9, ln. 18-21. Accordingly, the trial court abused its discretion by revoking Twyman’s community supervision based on his alleged willful violation of the “exclusionary zone.”²

In order for a court to revoke the prisoner’s community supervision, it must first determine that the person “has wilfully [sic] violated a term or condition of the community supervision program” S.C. Code § 24-21-560(C)(5) (West, Westlaw current through 2010) (emphasis added). The meaning of term “willful” as used in Section 24-21-560(C) was determined in State v. Garrard, 390 S.C. 146, 151, 700 S.E.2d 269, 272 (Ct. App. 2010). In Garrard, the individual on community supervision briefly stopped at his brother’s workplace while helping move appliances for his mother. Id. 390 S.C. at 148, 700 S.E.2d at 270. However, this workplace was within an exclusionary zone specifically prohibited under the conditions of his community supervision: Garrard was within 1000 feet of a

² State v. Garrard, 390 S.C. 146, 151, 700 S.E.2d 269, 272 (Ct. App. 2010) (“Both the decision of whether an alleged violation was willful and the decision of whether to revoke community supervision are discretionary. The trial court will not be reversed unless the appellant has shown an abuse of that discretion.”); see also State v. Archie, 322 S.C. 135, 137 S.E.2d 380, 381 (Ct. App. 1996) (stating the circuit court’s decision to revoke probation

school. Id. 390 S.C. at 148, 700 S.E.2d at 271. Ultimately, the Garrard court construed the term willfully “to require the State prove either: (1) a voluntary and intentional act done in consciousness that the act is a violation of a term of the community supervision program, or (2) the voluntary and intentional failure to do something known to be required by a term of community supervision.” Id. Because Garrard’s actions did not meet the willfulness standard mandated by the community supervision statute, his community supervision was not revoked.

In the present case, Twyman did not willfully violate either the exclusionary zone established by Agent Debello, or the actual term/condition of his community supervision cited by DPPP. First, because as the actual “exclusionary zone” established by Agent Debello—not by the community supervision order—was never communicated to Twyman, the brief stop within the “exclusionary zone” with his aunt’s boyfriend did not constitute a “voluntary and intentional act done in consciousness” that the act was a violation of his community supervision terms. Id. Simply stated, under the statutorily mandated willfulness standard governing community supervision revocations, Twyman could not have violated the “exclusionary zone” when he was intentionally left ignorant of the zone’s parameters by the very agency that established and enforced it. R. p. 10, ln. 2-8. Additionally, enforcement of the arbitrary and undisclosed boundaries of the “exclusionary zone” would amount to enforcement of an unreasonable condition placed upon Twyman by DPPP, and therefore improper. See, e.g., State v. Beckner, 296 S.C. 365, 366, 373 S.E.2d 469, 469

will only be disturbed when the decision was influenced by an error of law, was without evidentiary support, or constituted an abuse of discretion).

(1988) (holding the condition placed on the probationer was greatly disproportionate to the intended function it may serve, and was therefore unreasonable).

Moreover, even if Agent DeBello's vague warnings to Twyman sufficiently imparted knowledge of the "exclusionary zone," the evidence presented at the revocation proceeding only showed Twyman's mere presence within the zone of exclusion rather than a voluntary and intentional act made in conscious violation the community supervision term. As indicated by this court under the similar facts of Garrard, willfulness required "proof that he intended to go to the location, and that he knew doing so was a violation" Id. 390 S.C. at 151 n.4, 700 S.E.2d at 272 n.4 (emphasis added).

Here, the State failed to meet this high, conjunctive burden: (1) there is no evidence that Twyman drove the vehicle that stopped at his aunt's house—to the contrary, Twyman asserted through counsel that his aunt's boyfriend drove the vehicle, and briefly stopped at a residence in Ridgeville during his search for employment that day; and (2) there is no evidence Twyman knew the brief stop at the residence with his aunt's boyfriend was a violation of the "exclusionary zone"—rather, Twyman maintained he thought the residence was outside of the zone of the victim's house. R. p. 12, ln. 5-10. In sum, there was no evidence in the record that Twyman intended to go to the location, and that he knew doing so was a violation of the community supervision terms. The State must show both in order to prove Twyman willfully violated the terms of his community supervision. Id. 390 S.C. at 148, 700 S.E.2d at 271. Accordingly, the trial court erroneously determined Twyman willfully entered the "exclusionary zone" established by Agent DeBello.

Further, the actual community supervision term/condition Twyman ostensibly violated was the order placing him on GPS monitoring and to have no contact with the

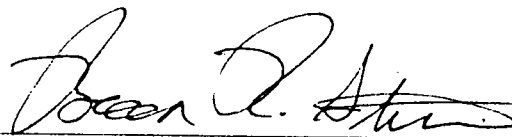
victim or the victim's family. R. p. 4, ln. 16-20; Arrest Warrant Affidavit. As Agent DeBello acknowledged, Twyman neither visited the victim's residence nor contacted the victim or the victim's family. R. p. 8, ln. 4-6; R. p. 9, ln. 18-21. Thus, there was absolutely no evidence of any violation—willful or otherwise—of the actual community supervision program term/condition cited by the State. See Arrest Warrant Affidavit; see also Id. 390 S.C. at 150, 700 S.E.2d at 272.

Finally, Twyman was prejudiced by the trial court's erroneous ruling. Because the trial court did not properly apply the willfulness standard as required by Section 24-21-560(C), Twyman's community supervision was wrongfully revoked and his subsequent sentence of one year imprisonment was improper.

CONCLUSION

For the foregoing reasons, Edward Twyman respectfully requests that the trial court's community supervision revocation order be vacated, and that he be reinstated into the community supervision program.

Respectfully submitted,



Breen Richard Stevens
Appellate Defender

ATTORNEY FOR APPELLANT

This 28th day of July, 2011.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."



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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Dorchester County
Diane Schafer Goodstein, Circuit Court Judge

THE STATE,

RESPONDENT,


V.

EDWARD TWYMAN,

APPELLANT

CERTIFICATE OF SERVICE

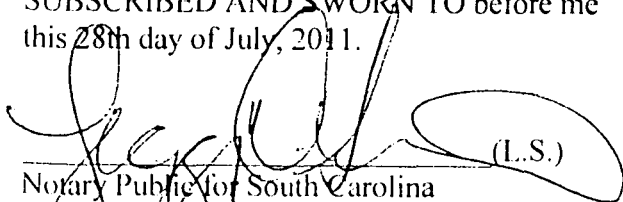
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at P.O. Box 50666, Columbia, SC 29250, this 28th day of July, 2011.



Breen Richard Stevens
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 28th day of July, 2011.



(L.S.)
Notary Public for South Carolina

My Commission Expires: December 4, 2017

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Diane S. Goodstein, Circuit Court Judge

THE STATE, RESPONDENT,

v.

EDWARD TWYMAN, APPELLANT.

FINAL BRIEF OF RESPONDENT

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ATTORNEY FOR RESPONDENT

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RESPONDENT'S STATEMENT OF ISSUE ON APPEAL

1. Whether the circuit court properly revoked Appellant's Community Supervision Program (CSP) where a sufficient factual basis supported the decision that Appellant wilfully violated the conditions of his CSP?

RESPONDENT'S STATEMENT OF THE CASE

Appellant was indicted at the September 18, 2000, term of the grand jury of Dorchester County for second degree criminal sexual conduct (CSC) with a minor. The victim was a 13 year old female cousin. On September 28, 2000, he pled guilty to the offense and was sentenced by the Honorable Luke Brown to twelve (12) years imprisonment. (R.p.27-p.31). He did not appeal his guilty plea or sentence. On July 30, 2010, after satisfying the required "eighty-five percent of the actual term of imprisonment imposed" [quoting § 24-13-150(A) (2007)], Appellant was released, pursuant to section 24-21-560 of the Code, to the South Carolina Department of Probation, Parole and Pardon Services' (the Department's) community supervision program (CSP). His conditions of release included the requirements: (1) that he "Must have no contact with the victim or the victim's family for duration of supervision;" and (2) GPS Monitoring Not Less than 6 Months." Appellant certified that the conditions of supervision were read and explained fully to him and he was in agreement with those conditions. (R.p.25-p.26).

On August 12, 2010, due to Appellant's statutory obligation to register as a sex offender and guidelines developed by the Director pursuant to section 24-21-560(B) of the South Carolina Code, the Department imposed its "Standard Sex Offender Conditions" as additional conditions of Appellant's CSP. Those conditions included the requirements: (1) "I will not have any contact with the victim(s) of my crime, directly or indirectly. This includes but is not limited to physical or face to face contact, contact through letters or written notes, telephone calls, or electronic mail (e-mail), or any contact through a third party, unless such contact is approved in writing by the Court, the Parole Board, or the releasing authority, or the hearing officer. I also will not enter into, travel past, or loiter near a victim's residence or workplace"; and (2) "I will comply with the

Department's requirements for any electronic monitoring program which I am ordered to participate in by the Court, the Parole Board, the releasing authority, the hearing officer, or my agent, or as required by statute, all at my own expense." Appellant certified he had read the sex offender conditions, understood their meaning, and accepted and agreed to those conditions. (R.p.24).

On August 31, 2010, a Warrant was issued charging Appellant with violating the conditions of his CSP in the following respects:

Failure to refrain from having contact with the victim (On 08/31/10, subject's GPS tracking shows him entering the exclusion zone around the victim's residence at 12:30pm) Such actions constitute a violation of the special conditions of his release agreement.

(R.p.22-p.23). Appellant was arrested the same day. On November 19, 2010, he appeared before Honorable Diane S. Goodstein for a violation hearing to determine whether he had violated the terms of his community supervision. Judge Goodstein revoked Appellant's community supervision and sentenced him to one year in the custody of the South Carolina Department of Corrections. (R.p.21). Appellant timely filed a notice of intent to appeal his CSP revocation. This Final Brief of Respondent follows.

ARGUMENT

The circuit court properly revoked Appellant's Community Supervision Program (CSP) where a sufficient factual basis supported the decision that Appellant wilfully violated the conditions of his CSP.

On January 1, 1996, South Carolina's "no parole offense" classification system went into effect. S.C. Code Ann. § 23-13-100 to -175 (2007). At the same time, Section 24-21-560 of the South Carolina Code was enacted, creating the community supervision program (CSP) to be operated by the South Carolina Department of Probation, Parole and Pardon Services (the Department). The statute requires that any sentence for a "no parole offense" include any term of incarceration and completion of the CSP. S.C. Code Ann. § 24-21-560(A) (2007). The CSP may last no more than two continuous years and the terms and conditions of the CSP are in the discretion of the Department based upon guidelines developed by the Director. S.C. Code Ann. § 24-21-560(B) (2007). If the Department determines that a prisoner has violated a term of the CSP and the CSP should be revoked, a probation agent must initial a proceeding in General Sessions Court. S.C. Code Ann. § 24-21-560(C) (2007). The court must then determine whether:

- (1) the terms of the community supervision program are fair and reasonable;
- (2) the prisoner has complied with the terms of the community supervision program;
- (3) the prisoner should continue in the community supervision program under the current terms;
- (4) the prisoner should continue in the community supervision program under other terms and conditions as the court considers appropriate; and
- (5) the prisoner has willfully violated a term of the community supervision program.

S.C. Code Ann. § 24-21-560(C) (2007) (emphasis added). If the court finds the prisoner has willfully violated a term or condition of the CSP, it may impose any other terms and conditions considered appropriate and may continue the prisoner on community supervision, or it may revoke the prisoner’s CSP and impose a sentence of up to one year for the violation. Id.

The Court of Appeals has construed the term “willfully” as used in this section to require that the State prove either: (1) a voluntary and intentional act done with consciousness that the act is in violation of a term of the community supervision program, or (2) the voluntary and intentional failure to do something known to be required by a term of community supervision. State v. Garrard, 390 S.C. 146, 700 S.E.2d 269 (Ct. App. 2010). Depending on the facts of a particular case and the nature of an alleged violation, the specific facts the State must prove may vary. Id. Appellant argues that the circuit court abused its discretion in revoking his CSP based on his admitted entry into a prohibited “exclusion zone” because he was not made aware of the exact exclusion zone radius, and therefore did not knowingly or willfully enter that zone. The State disagrees.

In discussing the standard of review in a CSP case, the Court of Appeals noted that:

Both the decision of whether an alleged violation was willful and the decision of whether to revoke community supervision are discretionary. The trial court will not be reversed unless the appellant has shown an abuse of that discretion.

Id. at 152, 700 S.E.2d at 272 (emphasis added). In this matter, Appellant was charged with having contact with the victim by entering the exclusion zone around the victim’s residence. Probation Agent Christine Debello was sworn in by the Court, and testified on behalf of the State. She explained the conditions of CSP requiring GPS monitoring and that Appellant was to have no contact with the victim or her family for the duration of supervision. Agent Debello also explained how the Department had established an exclusionary zone around the victim’s

residence which extended some distance beyond the victim’s house so the Department would have ample warning if Appellant entered that zone. She testified that Appellant and the victim were relatives and how she advised Appellant that even though his only family members lived within two streets of each other, he needed to stay away from the area around the victim’s house. Agent DeBello testified she advised Appellant that if his family wanted to see him to help him out with anything, they needed to come to Summerville to see him. She testified she received a GPS alert that Appellant had entered an exclusionary zone around the victim’s residence at 12:30 in the afternoon, and that she was later able to verify that while he did not go to the victim’s actual residence, Appellant was at a house in close proximity to the victim’s residence. (R.p.4, line 10-p.5, line 19).

The court questioned Agent DeBello about the size of the exclusion zone, confirming through her testimony that it was a radius of 839 feet, or 279.6 yards from the victim’s residence.¹ (R.p.7, lines 9-18). On cross-examination, Agent DeBello testified that while she did not tell Appellant the exact radius of the exclusion zone, she told him “not to go to that area in Ridgeville.” (R.p.9, line 22-p.10, line 8). On re-direct examination, she reiterated that the entire family lives withing one or two streets of each other in Ridgeville, and that she told Appellant he could not go there. (R.p.10, line 13-p.11, line 7). Appellant offered no testimony in his defense, relying instead upon statements from his attorney to suggest he was with an aunt’s boyfriend out looking for a job. (R.p.12, lines 5-10). His attorney never disputed the fact that Appellant had entered the exclusion zone; rather, he argued the entry was not willful, claiming Appellant believed he only was prohibited from going to the victim’s actual house and actual

¹ This distance is shorter than the length of Sumter Street from the corner of Pendleton to the corner of Gervais. See Google Maps Distance Calculator.

contact with the victim. (R.p.11, line 13-p.12, line 24). The claim contradicts the testimony from Agent Debello that she explained the prohibition extended well beyond the victim's actual residence. Ultimately the court concluded: "... there is no way to make it any clearer than it already was clear," finding Appellant simply "doesn't appreciate 'No. Don't. And there's consequences." The court noted: "There is a place in the law where the rules really are the rules, and you can't push them. He pushed them and he pays the consequences. (R.p.17, line 25-p.18, line 1; p.19, lines 8-10).

The State submits that Agent Debello's testimony, coupled with the court's apparent judgment in regard to the credibility of Appellant's story (as relayed by his attorney), provided ample evidence to support the court's finding of a willful violation and should not be disturbed on appeal. Therefore, the State respectfully submits the CSP revocation should be affirmed.


CONCLUSION

For all of the foregoing reasons, Respondent respectfully submits that the CSP order of the Circuit Court be affirmed, and the Appellant's appeal be dismissed.

Respectfully submitted,

J. Benjamin Aplin
Interim Deputy Director for
Legal Services

South Carolina Department of
Probation, Parole, and Pardon Services
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(803) 734-9220

BY: 

J. Benjamin Aplin
Interim Deputy Director for Legal Services

Columbia, South Carolina
July 18, 2011

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Diane S. Goodstein, Circuit Court Judge


THE STATE, RESPONDENT,

v.

EDWARD TWYMAN, APPELLANT.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR and with the South Carolina Supreme Court's order dated August 13, 2007.



J. Benjamin Aplin
Assistant Chief Legal Counsel

July 18, 2011

cc: Breen Richard Stevens, Appellate Defender

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

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

The State, Respondent,

v.

Edward Twyman, Appellant.

Appeal From Dorchester County
Diane Schafer Goodstein, Circuit Court Judge

Unpublished Opinion No. 2012-UP-312
Submitted March 1, 2012 – Filed May 16, 2012

REVERSED

Appellate Defender Breen Richard Stevens, of Columbia,
for Appellant.

John Benjamin Aplin, South Carolina Department of
Probation, Parole and Pardon Services, of Columbia, for
Respondent.

PER CURIAM: Edward Twyman appeals the revocation of his participation in the Department of Probation, Parole and Pardon Services' (the Department) Community Supervision Program (CSP), arguing the circuit court erred in finding

he willfully violated a condition of CSP by entering an exclusionary zone. We reverse.

FACTS/PROCEDURAL HISTORY

In September 2000, Twyman was sentenced to serve twelve years in prison after pleading guilty to second-degree criminal sexual conduct with a minor. In July 2010, Twyman was released after serving eighty-five percent of his sentence. Thereafter, Twyman was admitted into CSP, as required by section 24-21-560(A) of the South Carolina Code (2007). While in CSP, Twyman was required to wear a tracking device and to comply with the Department's Standard Sex Offender Conditions and the CSP Certificate-Conditions of Supervision. These conditions specified that Twyman was not permitted to "enter into, travel past, or loiter near" the victim's residence or workplace. Furthermore, Twyman was required to adhere to the following conditions: "I shall follow the advice and instructions of my agent[,] and I agree to comply with any further conditions imposed by the Department or its Agents."

Upon his release from prison, Twyman moved to a boarding house in Summerville. One month after Twyman entered CSP, he was arrested after he entered an "exclusionary zone" surrounding the victim's residence. Twyman's extended family and the victim live in the same vicinity of Ridgeville. The tracking device alerted Twyman's Probation Agent, Christine Debello, to Twyman's presence in the exclusionary zone. Agent Debello immediately issued an arrest warrant and proceeded to Twyman's Summerville home, where she arrested him the same day. Twyman told Agent Debello that when the incident occurred, he was a passenger in a car driven by his aunt's boyfriend; they had stopped at a house in the proximity of the victim's residence. The tracking device indicated that Twyman had entered the prohibited area surrounding the victim's residence at 12:30 in the afternoon, and he had remained in the area for approximately eleven minutes.

In November 2010, Twyman appeared before the circuit court for a CSP revocation hearing. Twyman's arrest warrant stated that he had violated CSP by his "failure to refrain from having contact with the victim." At the hearing, Agent Debello explained that an exclusionary zone of 279.60 yards had been established around the victim's residence. Agent Debello testified that although she had told Twyman to stay away from the victim's house, she had not informed him of the radius of the exclusionary zone because "he could calculate the area and be right outside of the zone, and possibly have contact with the victim." Agent Debello had instructed Twyman: "You need to stay away from the victim's house—that area. If your

family wants to see you to help you out . . . then they need to come to Summerville to see you."

Agent DeBello testified that she had verified Twyman did not go to the victim's home; instead, he "was at a house in close proximity to the victim's residence." Although Twyman entered the exclusionary zone, he did not attempt to visit the victim's residence or contact the victim. Twyman had no other CSP violations.

Twyman's counsel argued that Twyman knew he was not to contact the victim or go to the victim's residence. However, because Twyman was unaware of the exact location of the exclusionary zone, his inadvertent entry into the area was not a "willful" violation of CSP.

Following the hearing, the circuit court found Twyman had willfully violated a condition of his CSP, and it sentenced him to serve one year in prison. This appeal followed.

ISSUE ON APPEAL

Did the circuit court err in finding Twyman willfully violated a condition of his CSP when he ventured into an exclusionary zone?

LAW/ANALYSIS

Twyman contends that because he was not aware of the precise location of the exclusionary zone, his entry into this zone was not a "willful" violation of the terms of his CSP. Accordingly, Twyman asserts the circuit court abused its discretion in finding that he willfully violated a condition of CSP. Twyman argues that his mere presence in the prohibited zone was insufficient to support a finding that his entry into the zone was a "voluntary and intentional act done in consciousness." Conversely, the State argues the evidence supports the circuit court's finding that Twyman willfully entered the exclusionary zone, thereby violating a condition of CSP.

When the Department determines that a prisoner has committed a violation warranting revocation of CSP, "a probation agent must initiate a proceeding in General Sessions Court. The proceeding must be initiated pursuant to a warrant or a citation issued by a probation agent setting forth the violations of [CSP]." S.C. Code Ann. § 24-21-560(C) (2007).

If the court determines that a prisoner has willfully violated a term or condition of [CSP], the court may impose any other terms or conditions considered appropriate and may continue the prisoner on community supervision, or the court may revoke the prisoner's community supervision and impose a sentence of up to one year for violation of [CSP].

Id.

"Both the decision of whether an alleged violation was willful and the decision of whether to revoke community supervision are discretionary. The trial court will not be reversed unless the appellant has shown an abuse of that discretion." *State v. Garrard*, 390 S.C. 146, 151, 700 S.E.2d 269, 272 (Ct. App. 2010). "Where there is any evidence to support the court's factual findings, there is no abuse of discretion." *Id.*

In *Garrard*, the defendant violated a condition of his CSP when he drove within 1,000 feet of a school zone. Garrard testified that he was unaware that he had entered the exclusionary zone. *Id.* The circuit court found Garrard's act was not a willful violation of CSP, and this court affirmed. *Id.* In affirming the circuit court's ruling, this court construed the term "willfully," as used in section 24-21-560(C) of the South Carolina Code, as requiring the state to prove either:

- (1) a voluntary and intentional act done with consciousness that the act is a violation of a term of the community supervision program, or
- (2) the voluntary and intentional failure to do something known to be required by a term of community supervision.

Garrard, 390 S.C. at 150, 700 S.E.2d at 272.

We find the court's holding in *Garrard* to be instructive. Agent DeBello acknowledged that Twyman was not aware of the specific dimensions of the exclusionary zone around the victim's residence. The State presented no evidence to suggest that Twyman knowingly or willfully entered the exclusionary zone, or that he made any attempt to contact the victim. In our view, the agent's instruction "not to go near" the victim's residence or workplace was too vague to hold Twyman responsible for committing "a voluntary and intentional act done with consciousness that the act is a violation of a term of the [CSP]." *See id.* As a

result, we hold that Twyman's mere presence in the exclusionary zone—the boundary of which he was unaware—was insufficient to support the revocation of CSP.

CONCLUSION

For the foregoing reasons, the circuit court's order is

REVERSED.

PIEPER, KONDUROS, and GEATHERS, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from Dorchester County
Diane Schafer Goodstein, Circuit Court Judge

Unpublished Opinion No. 2012-UP-312
Submitted March 1, 2012-Field May 16, 2012

The State,

Respondent,

v.

Edward Twyman,

Appellant.

PETITION FOR REHEARING

Respondent, the State of South Carolina, respectfully petitions the Court for rehearing pursuant to Rule 221(a), SCACR. The State hereby seeks rehearing on the grounds that the Court may have misapprehended or overlooked an important point in concluding that the circuit court erred in finding Appellant willfully violated a condition of CSP by entering an exclusionary zone. Specifically, the State submits that after correctly reciting the standard of review, the Court may have mis-applied that standard of review because it incorrectly found "the State presented no evidence to suggest that Twyman knowingly or willfully entered the exclusionary zone, or that he made any attempt to contact the victim." For this reason, the State respectfully asks this

Court to grant this Petition for Rehearing and to issue an opinion affirming the decision of the lower court.

A. Statement of the Case

Appellant was indicted at the September 18, 2000, term of the grand jury of Dorchester County for second degree criminal sexual conduct (CSC) with a minor. The victim was a thirteen (13) year old female cousin. On September 28, 2000, he pled guilty to the offense and was sentenced by the Honorable Luke Brown to twelve (12) years imprisonment. (R.p.27-p.31). He did not appeal his guilty plea or sentence. On July 30, 2010, after satisfying the required "eighty-five percent of the actual term of imprisonment imposed" [quoting § 24-13-150(A)]. Appellant was released, pursuant to section 24-21-560 of the Code, to the South Carolina Department of Probation, Parole and Pardon Services' (the Department's) community supervision program (CSP). His conditions of release included the requirements: (1) that he "Must have no contact with the victim or the victim's family for duration of supervision;" and (2) GPS Monitoring Not Less than 6 Months." Appellant certified that the conditions of supervision were read and explained fully to him and he was in agreement with those conditions. (R.p.25-p.26).

On August 12, 2010, due to Appellant's statutory obligation to register as a sex offender and guidelines developed by the Director pursuant to section 24-21-560(B) of the South Carolina Code, the Department imposed its "Standard Sex Offender Conditions" as additional conditions of Appellant's CSP. Those conditions included the requirements: (1) "I will not have any contact with the victim(s) of my crime, directly or indirectly. This includes but is not limited to physical or face to face contact, contact through letters or written notes, telephone calls, or electronic mail (e-mail), or any contact through a third party, unless such contact is approved in writing by the

Court, the Parole Board, or the releasing authority, or the hearing officer. I also will not enter into, travel past, or loiter near a victim's residence or workplace"; and (2) "I will comply with the Department's requirements for any electronic monitoring program which I am ordered to participate in by the Court, the Parole Board, the releasing authority, the hearing officer, or my agent, or as required by statute, all at my own expense." Appellant certified he had read the sex offender conditions, understood their meaning, and accepted and agreed to those conditions. (R.p.24).

On August 31, 2010, a Warrant was issued charging Appellant with violating the conditions of his CSP in the following respects:

Failure to refrain from having contact with the victim (On 08/31/10, subject's GPS tracking shows him entering the exclusion zone around the victim's residence at 12:30pm) Such actions constitute a violation of the special conditions of his release agreement.

(R.p.22-p.23). Appellant was arrested the same day. On November 19, 2010, he appeared before Honorable Diane S. Goodstein for a violation hearing to determine whether he had violated the terms of his community supervision. Judge Goodstein revoked Appellant's community supervision and sentenced him to one year in the custody of the South Carolina Department of Corrections. (R.p.21).¹ Appellant timely filed a notice of intent to appeal his CSP revocation. The parties submitted briefs in support of their respective positions and oral arguments were heard by this Court on April 12, 2012. In an unpublished opinion filed May 16, 2012, this Court

¹ After satisfying the one year revocation, Appellant was re-released to CSP pursuant to Section 24-21-560(D). On May 20, 2012, he successfully completed serving his original twelve (12) year sentenced and was relieved of further supervision.

reversed Appellant's CSP revocation. State v. Edward Twyman, Op. No. 2012-UP-312 (S.C. Ct. App. filed May 16, 2012). This Petition for Rehearing on behalf of the State follows.

B. Argument

In analyzing the appeal, this Court noted that it has construed the term "willfully" as used in the CSP statute to require that the State prove either: (1) a voluntary and intentional act done with consciousness that the act is in violation of a term of the community supervision program, or (2) the voluntary and intentional failure to do something known to be required by a term of community supervision. State v. Garrard, 390 S.C. 146, 700 S.E.2d 269 (Ct. App. 2010). Depending on the facts of a particular case and the nature of an alleged violation, the specific facts the State must prove may vary. Id. This Court found that the circuit court abused its discretion in revoking Appellant's CSP based on his admitted entry into a prohibited exclusionary zone, because he was not made aware of the specific dimensions of the exclusionary zone radius, and therefore did not knowingly or willfully enter that zone. The State disagrees and submits this finding was the result of a mis-application of the standard of review based on an incorrect review of the evidence presented.

In discussing the standard of review, this Court acknowledged that :

Both the decision of whether an alleged violation was willful and the decision of whether to revoke community supervision are discretionary. The trial court will not be reversed unless the appellant has shown an abuse of that discretion.

(quoting Garrard at 152 (emphasis added)). However the Court then seems to have mis-applied this standard. Appellant was charged with having contact with the victim by entering the

exclusion zone around the victim's residence. At the violation hearing, probation Agent DeBello was sworn in by the Court, and testified, on behalf of the State. She explained the conditions of CSP which require a period of GPS monitoring, and that Appellant was to have no contact with the victim or her family for the duration of supervision. Agent DeBello also explained how the Department had established an exclusionary zone around the victim's residence which extended some distance beyond the victim's house so the Department would have ample warning if Appellant entered that zone. She testified that Appellant and the victim were relatives and how she advised Appellant that even though his only family members lived within two streets of each other, *he needed to stay away from the area around the victim's house*. Agent DeBello testified she advised Appellant that if his family wanted to see him to help him out with anything, they needed to come to Summerville to see him. She testified she received a GPS alert that Appellant had entered an exclusionary zone around the victim's residence at 12:30 in the afternoon, and that she was later able to verify that while he did not go to the victim's actual residence, Appellant was at a house in close proximity to the victim's residence. (R.p.4, line 10-p.5, line 19 (emphasis added)).

The court questioned Agent DeBello about the size of the exclusion zone, confirming through her testimony that it was a radius of 839 feet, or 279.6 yards from the victim's residence.² (R.p.7, lines 9-18). On cross-examination, *Agent DeBello testified that while she did not tell Appellant the exact radius of the exclusion zone, she told him "not to go to that area in Ridgeville."* (R.p.9, line 22-p.10, line 8 (emphasis added)). On re-direct examination, she

² This distance is shorter than the length of Sumter Street from the corner of Pendleton to the corner of Gervais. See Google Maps Distance Calculator.

reiterated that *the entire family lives withing one or two streets of each other in Ridgeville, and that she told Appellant he could not go there.* (R.p.10, line 13-p.11, line 7 (emphasis added)).

Appellant offered no testimony in his defense, relying instead upon statements from his attorney to suggest he was with an aunt's boyfriend out looking for a job. (R.p.12, lines 5-10). His attorney never disputed the fact that Appellant had entered the exclusion zone; rather, he argued the entry was not willful, claiming Appellant believed he only was prohibited from going to the victim's actual house and actual contact with the victim. (R.p.11, line 13-p.12, line 24). Whether this was in fact Appellant's belief is unknown because Appellant presented *no evidence* to dispute the specific instructions given by Agent Debello. Instead, the trial court was presented with Agent Debello uncontradicted testimony that *she explained the prohibition extended well beyond the victim's actual residence.* Ultimately the court concluded: "... there is no way to make it any clearer than it already was clear," finding Appellant simply "doesn't appreciate 'No. Don't. And there's consequences.'" The court noted: "There is a place in the law where the rules really are the rules, and you can't push them. He pushed them and he pays the consequences. (R.p.17, line 25-p.18, line 1; p.19, lines 8-10).

Despite the existence of this extensive and one sided evidence in support the lower court's discretionary decision, this Court found: "The State presented no evidence to suggest that Twyman knowingly or willfully entered the exclusionary zone, or that he made any attempt to contact the victim." The State submits that Agent Debello's testimony, coupled with the court's apparent judgment in regard to the credibility of Appellant's story (as relayed by his attorney), provided ample evidence to support the court's finding of a willful violation and should not be disturbed on appeal. The State submits that by reversing the lower court's discretionary decision,

this court has improperly conducted a de novo review of the evidence in contraposition to the standard of review on which it claims to rely. For these reasons, the State respectfully submits the CSP revocation should be affirmed.

C. Conclusion

WHEREFORE, the State respectfully requests that this Court to grant this Petition for Rehearing and issue an order affirming the community supervision program revocation imposed by the circuit court.

Respectfully submitted,

J. Benjamin Aplin
Chief Legal Counsel

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ATTORNEY FOR APPELLANT

BY: 

J. Benjamin Aplin
Chief Legal Counsel

May 24, 2012

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM DORCHESTER COUNTY
The Honorable Diane Schafer Goodstein, Circuit Court Judge

RECEIVED

S.C. SUPREME COURT

Unpublished Opinion No.: 2012-UP-312
Submitted March 1, 2012-Field May 16, 2012

THE STATE, PETITIONER,

v.

EDWARD TWYMAN, RESPONDENT.

CERTIFICATE OF SERVICE

I, Dawn K. Nichols, Executive Administrative Assistant, hereby certify that I have served the within *Appendix*, on Respondent by depositing a copy of the same in the United States mail, postage prepaid, addressed to his attorney of record this 27th day of June, 2012:

Breen Richard Stevens, Appellate Defender
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211-1589

I further certify that all parties required by Rule to be served have been served.



Dawn K. Nichols
Executive Administrative Assistant

South Carolina Department of Probation,
Parole, and Pardon Services
P. O. Box 50666
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State of South Carolina
Department of Probation, Parole and Pardon Services

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JUN 29 2012

S.C. SUPREME COURT

June 27, 2012

The Honorable Daniel E. Shearouse
S. C. Supreme Court Clerk
P. O. Box 11330
Columbia, South Carolina 29211

RE: The State v. Edward Twyman

Dear Mr. Shearouse:

Please find enclosed two (2) copies of the Appendix concerning the above referenced case. Should the Court require anything further, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Benjamin Aplin".

J. Benjamin Aplin
General Counsel

JBA:dkn
Enclosures

cc: Breen Richard Stevens, Appellate Defender- (1)