

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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SC Court of Appeals

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**APPEAL FROM CLARENDON COUNTY**  
**Court of Common Pleas**  
**Honorable W. Jeffrey Young, Circuit Court Judge**

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Appellate Case No: 2014-000449

In The Matter of the Care and Treatment of  
Michael Lawyer, Appellant

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**FINAL BRIEF OF APPELLANT MICHAEL LAWYER**

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Charles T. Brooks, III  
Post Office Box 3512  
309 Broad Street  
Sumter, South Carolina 29151  
(803) 418-5708  
Attorney for Appellant

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## TABLE OF AUTHORITIES

### STATUTES:

§44-48-80 South Carolina Code of Laws  
§44-48-110 South Carolina Code of Laws

### CASE LAW:

In the Matter of the Care and Treatment of Brown, 643 S.E. 2d 118) (SC Ct. App. 2007) 372 S.C. 611

In the Matter of the Care and Treatment of Chandler, 676 S.E.2d 676 (SC 2009), 382 S.C. 250

In the Matter of the Care and Treatment of Tucker, 578 S.E. 2d 719 (2003) 353 S.C. 466

## **STATEMENT OF ISSUE ON APPEAL**

- I. DID THE TRIAL COURT ERR BY NOT FINDING PROBABLE CAUSE AND IN DENYING THE APPELLANT'S A POST COMMITMENT TRIAL BY JURY?

## **STATEMENT OF THE CASE**

Michael Lawyer (hereinafter referred to as Appellant) is a patient of the South Carolina Department of Mental Health (SCDMH) and housed in their Sexually Violent Predator (SVP) Program. Appellant was charged with Criminal Sexual Conduct with a Minor and plead guilty in October 2006 to a charge of Lewd Act on a Minor and was subsequently sentenced to 5 years incarceration with the South Carolina Department of Corrections (SCDC). On April 6, 2009 the Appellant was committed by Jury Trial to the custody of SCDMH and their SVP Program. On January 22, 2014 a review hearing in the Appellant's case was held before the Honorable W. Jeffrey Young. At this hearing the Appellant provided expert testimony that the Appellant's condition had so changed that the Appellant was not likely to re-offend or commit further acts of sexual violence. The State had expert testimony to the contrary. At the conclusion of the Annual Review Hearing the Judge ruled that the Appellant did not meet the burden of probable cause and denied the Appellant's right to trial by Jury to determine this matter.

## FACTS

This underlining action was commenced with the filing of the Order of Commitment in which the Appellant was remanded to the custody and control of the South Carolina Department of Mental Health (“SCDMH”) on or about April 6, 2009. (Corr. R. pp 1)

Upon the issuance of the Order of Commitment the Appellant began receiving the prescribed treatment within SCDMH as appropriate and from that date became subject to the Rules and Codes of Law for the State of South Carolina governing the care and treatment of Sexually Violent Predators.

On April 25, 2013 SCDMH Forensic Evaluation Service issued their annual evaluation report for the Appellant (Corr. R. pp 58-63) in which the evaluator gave an opinion that at that time “there is insufficient basis to opine that his mental abnormality has so changed that he is now safe to be at large and no longer likely to engage in acts of sexual violence” (Corr. R. pp 62-63).

A hearing in this matter was commenced on January 22, 2014 before the Honorable W. Jeffrey Young in the Clarendon County Court of Common Pleas for the purposes of determining whether the Appellant was entitled to an Annual Review Hearing. The Appellant’s attorney provided testimony from an Expert Witness Dr. Thomas V. Martin, MD. Dr. Martin testified that he had most recently evaluated the Appellant on or about June 11, 2013 (R. pp 10). Dr. Martin indicated that his evaluation of the Appellant did not yield a finding that the Appellant was not safe to be at large but agreed that the Appellant was now “low risk” and agreed that the Appellant was “safe to be released” (Corr. R. pp 14).

After taking testimony and hearing arguments of counsel for the Appellant and Respondent the Court issued the Order of Continued Commitment for the Appellant denying his

right to an Annual Review Hearing. (Corr. R. pp 2-3). Hence, this appeal followed.

### ARGUMENTS OF THE CASE

BECAUSE THE TRIAL COURT ERRED BY DETERMINING THAT THERE EXISTED NO PROBABLE CAUSE IN THIS MATTER WHEN TESTIMONY HAD BEEN PROVIDED SHOWING THAT THE APPELLANT'S CONDITION HAD SO CHANGED THAT THE APPELLANT IS LESS LIKELY TO COMMIT ACTS OF SEXUAL VIOLENCE AND/OR RE-OFFEND.

In the Annual Review hearing, the burden is on the Appellant to submit evidence that probable cause does exist that his condition is so changed, pursuant to SC Code of Laws §44-48-110. If such evidence is provided then the offender, Appellant, is entitled to a trial by jury to determine if he/she should be released from the custody of SCDMH.

The Court defines probable cause as it relates to the Sexual Violent Predator Act. In re The Care and Treatment of Brown, 372 S.C. 611, 643 S.E. 2d 118 (Ct. App. 2007), The Care and Treatment of Chandler, 678 S.E.2d 676, 382 S.C. 250 (SC 2009) "Probable cause does not demand any showing that such a belief is correct or more likely true than false", Chandler. Further the Court in Chandler indicates that the Appellate Court will not disturb the trial court's findings on probably cause unless found to be without evidence that reasonably supports the trial courts findings citing In the Matter of the Care and Treatment of Tucker, 353 S.C. 466, 470, 578 S.E.2d, 719, 721 (2003).

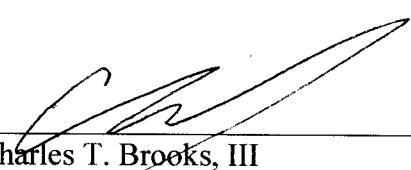
In this matter, the Appellant is already committed and comes before the Court on an

Annual Review. A qualified expert rendered an opinion that the Appellant's condition has so changed that he is less likely to commit future acts of sexual violence (Corr. R. pp 14). Thus, evidence exists of probable cause pursuant to the statute. Once the Appellant has done this, then he should have been granted an Order permitting a trial to determine if his release was warranted. While the above cases cited are matters where the Court was determining probable cause existed for the State's benefit in the commitment proceedings, the Appellant herein would submit that this standard of probable cause is applicable for his own Post Commitment proceeding.

### CONCLUSION

The trial Court should have determined probable cause did exist of the Appellant's condition having changed and this change in the Appellant's status should have entitled him to a Post Commitment trial by jury. After reviewing the transcript, the Appellate Court should so reverse the trial court's denial and set this matter for trial immediately.

RESPECTFULLY SUBMITTED



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Charles T. Brooks, III  
Post Office Box 3512  
309 Broad Street  
Sumter, South Carolina 29151  
(803) 418-5708  
Attorney for Appellant

2/0, 2015

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APPEAL FROM CLARENDON COUNTY  
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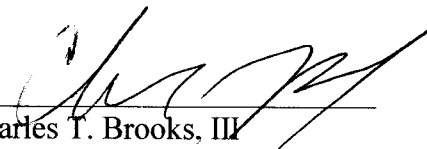
**PROOF OF SERVICE**

I, the undersigned, do hereby certify that on this 9<sup>th</sup> day of February, 2015, I served the foregoing **Final Brief of Appellant** in this matter by depositing a true copy of it in the United States Mail, postage prepaid, on February 9, 2015, addressed to the following as indicated below:

Office of Attorney General  
Attn: Deborah R.J. Shupe  
Post Office Box 11549  
Columbia, South Carolina, 29211

Michael Lawyer  
Bldg. 3, 3<sup>rd</sup> Floor  
7901 Farrow Road  
Columbia, SC 29203

Sumter, South Carolina  
~~January~~ 9, 2015  
Feb

  
Charles T. Brooks, III  
Attorney for the Appellant  
309 Broad Street  
Sumter, South Carolina 29150  
(803) 418-5708

# The Brooks Law Office, LLC

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CHARLES T. BROOKS, III, ATTORNEY AT LAW  
IRMA R. BROOKS, ATTORNEY AT LAW

309 BROAD STREET ~ SUMTER, SOUTH CAROLINA 29150  
POST OFFICE BOX 3512 ~ SUMTER, SOUTH CAROLINA 29151  
(803) 418-5708

FAX: (803) 934-9618 TOLL FREE: (877) 770-8792

Email: [cbrooks@ctbrooks.com](mailto:cbrooks@ctbrooks.com)

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SC Court of Appeals

February 9, 2015

South Carolina Court of Appeals  
Attn: Clerk of Court  
Post Office Box 11629  
Columbia, South Carolina 29211

RE: In the Matter of the Care and Treatment of  
Michael T. Lawyer  
Case No. 2008-CP-14-183  
Appellate Case No.: 2014-000449

Dear Sir or Madam:

Enclosed herewith you will find the original and appropriate copies of the **Final Brief of Appellant** along with **Proof of Service** for filing in reference to the above matter.

If you have any questions or concerns, please contact my office at the number listed above.

With kindest regards, I remain,

Sincerely Yours,

*Charles T. Brooks III*

Charles T. Brooks, III

CTB, III/jlm

Enclosed as stated

cc: Deborah R.J. Shupe, Asst. Attorney General

Michael Lawyer