THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas
Honorable Donald B. Hocker, Circuit Court Judge

Appellate Case No: 2015-001955

In The Matter of the Care and Treatment of
Ronald Owen, Appellant

FINAL BRIEF OF APPELLANT

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STATUTES:

§44-48-110, S.C. Code Ann. 3

§44-48-30(1)(a), (b)(Supp. 2007) S.C. Code Ann. 3

STATEMENT OF ISSUE ON APPEAL

DID THE TRIAL COURT ERR BY NOT FINDING PROBABLE CAUSE AND DENYING APPELLANT A POST COMMITMENT TRIAL BY JURY PURSUANT TO THE SOUTH CAROLINA SEXUALLY VIOLENT PREDATOR ACT?

STATEMENT OF THE CASE

Ronald Owen, 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. In 2003, Appellant was arrested for Lewd Act upon a Minor in Newberry County and two counts of Criminal Sexual Conduct with a Minor, First Degree in Berkeley County. Appellant entered an Alford Plea for the Berkeley County charges, which were reduced to one count of Lewd Act on a Child under 16. As a result of the plea, Appellant was sentenced on July 21, 2005, to 15 years incarceration suspended to 12 years. Appellant was sentenced on January 13, 2006, for the Newberry County charge in which he pled *nolo contendere*. Appellant's time for the charges were ordered to run concurrent.

On February 3, 2010, Appellant was committed by jury trial to the custody of SCDMH and the SVP Program. (R. pp. 1-2).

On August 25, 2015, an Annual Review Hearing in the Appellant's case was held before the Honorable Donald B. Hocker. 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. (R. p. 23, lines 10-19) The State presented expert testimony to the contrary. (R. p. 61, lines 11-16) At the conclusion of the Annual Review Hearing, the trial judge ruled that the Appellant did not meet the burden of probable cause and denied Appellant the right to trial by jury to determine the matter of the likelihood to re-offend or commit further acts of sexual violence. (R. p. 4) This appeal follows. (R. p. 108)

ARGUMENT

THE TRIAL COURT ERRED BY NOT FINDING PROBABLE CAUSE AND DENYING APPELLANT A POST COMMITMENT TRIAL BY JURY PURSUANT TO THE SOUTH CAROLINA SEXUALLY VIOLENT PREDATOR ACT.

In an Annual Review Hearing pursuant to the South Carolina Sexually Violent Predator Act, the burden is on the Appellant to submit evidence that probable cause does exist that his condition is so changed that he is not likely to commit acts of sexual violence. S.C. Code Ann. §44-48-110. If such evidence is established, then the offender, Appellant, is entitled to a trial by jury to determine if he/she should be released from the custody of SCDMH.

Under the SVP Act, a sexually violent predator is defined as a person who (a) has been convicted of a sexually violent offense and (b) suffers from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment. S.C. Code Ann. §44-48-30(1)(a), (b)(Supp. 2007).

"On review, the appellate court will not disturb the hearing court's finding on probable cause unless found to be without evidence that reasonably supports the hearing court's finding." *In re the Care and Treatment of Tucker*, 353 S.C. 466, 470, 578 S.E.2d 719, 721 (2003). "In the context of probable cause to believe someone to be a sexually violent predator, probable cause requires that the evidence presented would lead a reasonable person to believe and conscientiously entertain suspicion that the person

meets the definition of a sexually violent predator." *In re the Care and Treatment of Brown*, 372 S.C. 611, 620, 643 S.E. 2d 118, 122-23 (Ct. App. 2007). "Probable cause does not demand any showing that such a belief is correct or more likely true than false." In re the Care and Treatment of Chandler, 678 S.E.2d 676, 382 S.C. 250 (SC 2009)(*citing In re Brown* at 620, 643 S.E.2d at 123 (*quoting Texas v. Brown*, 460 U.S. 730, 742 (1983). "The very term itself, 'probable cause,' does not import absolute certainty." *Id.* at 619, 643 S.E.2d at 122.

The trial judge erred by determining that no probable cause existed in this matter when testimony was provided showing that Appellant's condition had so changed that the Appellant is not likely to commit acts of sexual violence and/or re-offend. In this matter, the Appellant is already committed and came 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 (R. p. 23, line 12). Thus, evidence exists of probable cause pursuant to the statute. Once the Appellant has established probable cause, then he should have been granted an Order permitting a trial to determine if his release is warranted.

The trial judge committed error by finding that probable cause did not exist based on the evidence established by Dr. Thomas V. Martin regarding Appellant's change in condition. Dr. Martin testified that based on a reasonable degree of medical certainty, Appellant's mental condition has so changed that he is less likely to sexually re-offend. (R. p. 23). This evidence meets the burden of probable cause. To deny probable cause was error on the part of the trial judge.

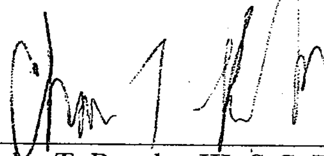
Further, the trial judge also erred by weighing the sufficiency of the evidence established on behalf of Appellant. In the trial court's order denying probable cause, the trial judge weighed and assessed the evidence provided by Dr. Martin by offering an improper conclusion as to the risk factor of Appellant to re-offend. Once Dr. Martin established evidence of the change of condition regarding Appellant, the probable cause standard was met and the issue of the likelihood to re-offend is a jury matter not to be concluded by the trial judge in the probable cause hearing. The trial judge applied a "certainty" standard in this probable cause hearing, and therefore committed reversible error. (R. p. 4)

Therefore, Appellant did meet the probable cause standard based on the evidence established by Dr. Martin. The trial judge committed error and this matter should proceed to a Post Commitment Hearing before a jury to determine the likelihood of Appellant to re-offend or commit further acts of sexual violence.

CONCLUSION

Based on the argument set out above, the trial court should have found probable cause did exist based on the evidence presented that Appellant's condition has changed and this change in the Appellant's status should have entitled him to a Post Commitment trial by jury. The Appellant respectfully request that this honorable Court reverse the trial court's denial of probable cause and set this matter for trial to determine the likelihood of Appellant to re-offend or commit further acts of sexual violence.

RESPECTFULLY SUBMITTED,



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September 20, 2016

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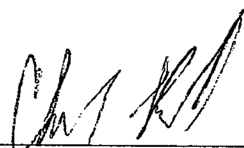
Ronald Owen, Appellant

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief of the Appellant complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitle "Revised Order Concerning Personal Identifying information and Other Sensitive Information in Appellate Court Filings." and Rule 228, SCRAP.



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PROOF OF SERVICE

I do hereby certify that I have this 20th day of September 2016, served a copy of the **FINAL BRIEF, CERTIFICATE OF COUNSEL,** by depositing a copy of the same in the United States mail, with first class postage affixed thereto, addressed as follows:

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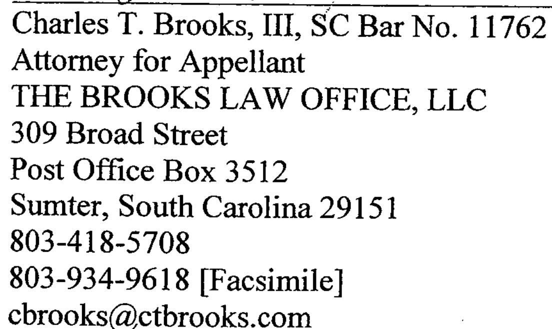

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