

STATE OF SOUTH CAROLINA

In The Court of Appeals

 ORIGINAL

APPEAL FROM LEXINGTON COUNTY

Donald B. Hocker, Circuit Court Judge

22232

THE STATE,

v.

BRAD DAY

RECEIVED
NOV 10 2015
RESPONDENT,
SC Court of Appeals

APPELLANT

APPELLATE CASE NO. 2014-000306

RECORD ON APPEAL

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1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF LEXINGTON) COURT OF GENERAL SESSIONS
) No. 2007 GS 32 1387

3
 4 STATE OF SOUTH CAROLINA)
 5)
 6 versus) TRANSCRIPT OF RECORD
 7)
 8 BRAD A. DAY)
 9 Defendant)

10 Lexington, South Carolina
 11 January 31, 2014

12
 13 B E F O R E :

14 HONORABLE DONALD B. HOCKER, Judge

15
 16 A P P E A R A N C E S :

17 For the State: AGENT BAKER
 Probation Officer
 18 For the Defendant: DAVID MAULDIN, Esq.
 19 Reporter Present:: CAROL M. THUEME

20
 21
 22 HARRIET P. BENNETT
 23 Reporter, S. C. Court Administration
 46 Regency Oaks Drive
 24 Summerville, S.C. 29485
 25

1 (The within matter came before the Court for hearing
2 on January 31, 2014

3 AGENT BAKER: Brad Day.

4 (Mr. Day was sworn by the Clerk of Court for purposes
5 of the hearing)

6 THE COURT: Ms. Baker.

7 AGENT BAKER: Your Honor, this is Brad Day, and this
8 is a community supervision case. His original sentence was
9 ten years, provided upon five years with no violations and
10 failure to refrain from use of cocaine, and that was a war-
11 rant.

12 Also, a citation basically for failing to pay his sup-
13 ervision fees, his GPS fees, and he also failed to charge
14 his GPS unit on 12 8 of 2013 until 11:27 P.M., causing his
15 unit to lose power.

16 And he was off track for fifty-one hours and forty-
17 five minutes. Failing to notify our GPS tracking center
18 that he was released from jail. He had been instructed to
19 contact them and even given their number.

20 He also was released to stay with his mother at 301
21 Taylor Street. He admitted that he stayed there at the
22 residence. This is an unapproved residence, a residence
23 that is within a thousand feet of a school.

24 He failed to follow the advice and instructions of
25 the agent.

1 This is his fourth violation, Your Honor. He has had
2 three prior violations.

3 On 6 13 2013 for failing to pay moneys; 10 24 13 for
4 failing to pay moneys, failing to work, tested positive for
5 cocaine, methamphetamine, amphetamines and opiates; 11 7 of
6 2013 for failing to refrain from use of illegal substances.

7 He tested positive for cocaine on 11 1 2013 and 11 7
8 2013.

9 I am asking for a one year revocation. This is our
10 legal counsel. He is here to dispute the Defense's motion
11 that he doesn't have any time left on his . . .

12 MR. BROWN: Right.

13 AGENT BAKER: . . . community supervision.

14 THE COURT: And let the record reflect that I had a
15 conference with the lawyers in Chambers and they have to me
16 briefly indicated their respective positions.

17 Of course, they argued further off the record, and I
18 indicated that it probably is a matter that I will take
19 under advisement.

20 Then I will be back here next week on some other mat-
21 ters and we will work this in at that time.

22 All right. Who wants to argue first?

23 MR. MAULDIN: This would be a Defense's Motion.

24 THE COURT: Mr. Mauldin, I'll be glad to hear from you
25 first.

1 MR. MAULDIN: Thank you, Your Honor.

2 The Defense's first position in this case is that Mr.
3 Day should not be supervised under the community supervis-
4 ion program because he has already satisfied his sentence
5 given by Judge Good back on October 29 of 2007.

6 And the . . .

7 THE COURT: When was the sentence?

8 MR. MAULDIN: He was sentenced on October 29 of 2007.

9 THE COURT: Okay.

10 MR. MAULDIN: It is our position that he has satisfied
11 his sentence which was ten years suspended on service of
12 five years.

13 There was no kind of probation to follow his ten year
14 sentence. It was suspended on service of five years.

15 Mr. Day was originally arrested February 20th of 2007.
16 After he was sentenced he was released from Parker Correc-
17 tions on April 29th of 2011. By my calculations, fifteen
18 hundred and twenty-nine days.

19 In February of 2012, he received a ninety day revoca-
20 tion for retaining supervision. In June of 2012, he was ---
21 there was another violation and he received a year revocation.

22 From my calculation from his arrest date and release
23 date he served three hundred and sixty-one days, and then
24 on the most recent violations after arrest he spent twenty
25 days and thirty-seven days respectively.

1 My total is two thousand and seventeen days, five years
2 --- three sixty-five times five -- eighteen hundred and
3 twenty-five days.

4 As far as the twenty seventeen I might be off a couple
5 of days, but he has certainly served well over five years,
6 day for day, in the Department of Corrections.

7 The original sentence was ten years, suspended on the
8 service of five years, so it is our position that he has
9 done five years, day for day, and has therefore satisfied
10 that sentence.

11 Notwithstanding the community supervision, I think the
12 Probation Department is relying on the Pickel-Symer case, 388
13 SC 264.

14 I would distinguish Mr. Day's case from that case in
15 that the Pickel-Symer case -- the sentence there was ten
16 years suspended on five years and five years probation, and
17 Mr. Pickel's failure to complete a two year term of commun-
18 ity supervision satisfactorily.

19 He basically did the five years day for day without
20 doing the two year community supervision term. It was the
21 Department's position he still had the probationary sentence
22 to follow, and the Court agreed with that determination.

23 Here there is no probationary sentence to follow, and
24 we believe the five year satisfied the sentence.

25 Additionally, on the Pickel-Symer case the Court held

1 the in their reading of the statute regarding community
2 supervision -- I apologize, Your Honor -- 24 21 560 B --
3 where it says that the maximum aggregate amount of time a
4 prisoner may be required to serve when sentenced for succes-
5 sive revocations may not exceed an amount of time equal to
6 the length of incarceration imposed for the original no-
7 parole offense.

8 The original term of incarceration does not include any
9 portion of a suspended sentence, and that is the statute.

10 In the very next sentence the Court goes on to say, we
11 know definitively speaking that the original sentence re-
12 ferred to in that subsection is both the suspended and un-
13 suspended portions of the Circuit Court's sentence.

14 I would note that the term original sentence as used
15 by the Court is in quotes. However, in the statute the term
16 is never used. They never used the term original sentence
17 that was put in quotes by the Court.

18 The only time the word original is used is for the
19 original term of incarceration, and this says the original
20 term of incarceration does not include any portion of a sus-
21 pended sentence.

22 We believe the original term of incarceration here was
23 five years -- that the term of ten years would be satisfied
24 by service of five years, without future obligation such
25 as probation.

1 There is no future obligation of probation to follow
2 that.

3 So basically the argument is on two fronts. Number
4 one, there is no probation to follow and Mr. Day has satis-
5 fied the sentence.

6 Secondly, it appears as though the Court's interpreta-
7 tion may be a little mistaken. It appears in that sentence
8 of the statute, and the very next sentence as far as far as
9 the Court's interpretation appears to be a little bit in
10 conflict.

11 Basically, to have Mr. Day subject to further punish-
12 ment as far as requirements from the Department and poten-
13 tial future prison sentences would violate his right to due
14 process under the Fifth and Fourteenth Amendments of the
15 U. S. Constitution and Article One, Section Three, of the
16 South Carolina Constitution, as well as the additional pro-
17 tections afforded by the right to trial under the U. S.
18 Constitution and Article One, Section Fourteen of the South
19 Carolina Constitution.

20 THE COURT: So I guess this falls -- you don't dispute
21 these violations but you dispute . .

22 MR. MAULDIN: Well, we do not dispute the testing pos-
23 itive for drugs. There is a little discombobulation -- he
24 was arrested and put in jail on that. He did bond out of
25 jail, and while he was in jail his mother went and got his

1 stuff from the motel room but she didn't get the charger
2 for his thing so he didn't have the charger.

3 As soon as he realized where it was, he went and got
4 the charger from the motel room. Then he had it charged,
5 but there was this bit of discombobulation on his part as
6 far as getting in and out of jail.

7 During that period of time he did live at the resi-
8 dence and was out of jail, but before they could get money
9 up for him to go back -- he's being staying in motels bas-
10 ically, Your Honor. He can't live anywhere but in some of
11 these motels that are Thirty or Forty Dollars a night, and
12 all of his money goes to his motels.

13 He had just been out of jail for ten days when he got
14 arrested the last time, so he didn't really have time to
15 catch up on the moneys.

16 The family has come up with some money to catch him up
17 today. If you want me to go into mitigation now, I can, or
18 if you want to wait until you have made your decision as far
19 as . . .

20 THE COURT: Let me go ahead and hear everything now.

21 MR. MAULDIN: Okay. He does admit his drug use and
22 technically he did not have the machine charged. He did
23 live with his mother for a day or two when he got out of jail
24 on the original warrant before they issued the citation.

25 Mr. Day is forty-seven, Your Honor. He is from the

1 Columbia area. This is his mother present here in Court
2 with him.

3 He went to the tenth grade in school but does have a
4 GED. Since he has been out of jail this last time apparently
5 his brother in law has helped him out with a job. His
6 brother in law has a place call Sharp's Body Shop where he
7 is a mechanic. Before that he worked at Columbia farms,
8 which is a chicken plant, for about four and a half months
9 but it turned out the things they used to keep the chickens
10 clean damaged his skin and he received a bunch of burns and
11 couldn't work there any more.

12 Most of his life he's done trimming and carpentry work,
13 mechanic work. He is a sex offender and insurance work
14 would be a little bit difficult due to locations maybe, if
15 they are close to a school.

16 He is single. He does have two grown children.

17 Your Honor, he was injured while working at the Depart-
18 ment of Corrections. He has a disc problem in his back and
19 he has given me some paper work from a doctor where they do
20 plan to do some surgery on that disc sometime in February,
21 unless he is in the Department of Corrections. I don't be-
22 lieve they perform those kinds of surgeries but there is the
23 problem with his back.

24 Your Honor, Mr. Day does have a long time cocaine addic-
25 tion, and it is hard for him to let it go. Since he has

1 been out of the Department of Corrections it has been hard
2 for him to find a place to stay. His mother lives at a
3 place where actually it is not approved, and they passed a
4 law after he was convicted saying sex offenders couldn't
5 live within so much of a school or playground. His mother
6 lives close to a church.

7 However, the law does provide that someone who had been
8 living there before the law was enacted can still live
9 there, but they say if he lives there he is violating the
10 law and it is not approved since he is a sex offender.

11 So he has to live in these motels where a lot of seedy
12 stuff goes on as far as people using drugs and that kind of
13 thing. The temptations there are a little bit too much with
14 his outstanding problem with it.

15 At a time he is honest with the probation officer as
16 far as . . .

17 THE COURT: You don't have to go into that.

18 MR. MAULDIN: As far as this violation is concerned, he
19 has been in jail thirty-seven days. I think he came before
20 the Court in December and didn't have a lawyer. I think
21 the Judge decided to revoke his bond. Then he got me and we
22 were able to situate better after that.

23 Basically, Your Honor, Mr. Day does report. He tries to
24 do what he can even though he does have this drug issue,
25 and the money having to go to his hotel. He gets quite

1 discombobulated here and there as far as that and as far
2 as work.

3 THE COURT: Anything in response to Mr. Mauldin's argu-
4 ment as to the violations? Do you want to respond to any-
5 thing there?

6 AGENT BAKER: I just -- about his residence, he wasn't
7 supposed to go to the residence. He has known that he was
8 not supposed to go there. Last night he was at the resi-
9 dence.

10 He was out on another occasion and he was arrested for
11 assaulting his daughter. He knows he is not allowed at the
12 residence.

13 He has been given the number which is the twenty-four
14 hour line that he can call even if he didn't have the charger
15 -- call that number and he could have called that number so
16 we could have brought him a charger.

17 He decided not to charge his unit from Sunday Night
18 until thirty minutes before Monday, so he had the whole week-
19 end off until he decided to charge his unit.

20 And I just wanted to tell you about his record. He has
21 a record extending from 2007 for breach of trust, burglary,
22 fraudulent checks, DUS, DUS third, grand larceny, assault
23 and battery of a high and aggravated nature, DUS, DUI second,
24 DUS sixth, breaking and entering a motor vehicle, criminal do-
25 mestic violence, disorderly, false information to police,

1 DUS more than first, DUI second, DUS more than first, simple
2 assault, breaking into motor vehicle, DUI, criminal domestic
3 violence, public drunk, assault and battery.

4 This is currently his seventh case under supervision.

5 THE COURT: All of those offenses since he got out af-
6 ter serving ..

7 AGENT BAKER: No, those were before.

8 MR. MAULDIN: He has had no offenses since then.

9 THE COURT: I thought she said since 2007.

10 AGENT BAKER: No, they were before.

11 THE COURT: I got you. Okay.

12 MR. MAULDIN: Your Honor, I would object as I don't
13 think his record has any bearing on the legal argument. I
14 would ask that that be dismissed.

15 He does admit the violations but we say he should not be
16 on it. But if he is on it, we would admit he violated. I
17 have presented that.

18 AGENT BAKER: Three times.

19 THE COURT: All right. Now, I'll hear your argument.

20 MR. BROWN: The bulk of the Defense's argument is
21 quite understandable because of the Pickel Symer cases and
22 what looks to be something of a contradictory nature.

23 Essentially, prior to Pickel Symer they ran the com-
24 munity service program or community supervision program as
25 requested.

1 When that suspended sentence was completed, the actual
2 active term of incarceration was finished. That would be
3 before the CSP.

4 However, in the Pickel Symers case he did have it sus-
5 pended upon service of five plus five years probation.
6 So after Mr. Pickel Symer served his time or eighty-five
7 percent of his five years he got out on the remaining sup-
8 ervision for about nine months of CSP.

9 The Macruder case came out and it ruled that the --
10 Macgruder was the case that said basically all that would be
11 left after the eighty-five percent would be the fifteen per-
12 cent on CSP and they could not go any further than the sen-
13 tence.

14 THE COURT: What is the cite on Macgruder?

15 MR. BROWN: The cite is 378 SC 320, Your Honor.

16 THE COURT: Thank you.

17 MR. BROWN: When the Macgruder decision came out, it
18 could not go beyond that fifteen percent. The Department
19 looked at the Pickel Symer case and saw that his CSP should
20 have ended, so they did end it and the Department kicked in
21 its probationary case, applying his violation to Pickel Symer
22 probation.

23 Defense counsel made the argument that that should be
24 a successful completion of CSP at expiration so he should
25 not even be under supervision.

1 Kind of a similar case to what we're dealing with here
2 except that it was a suspended sentence, as we are dealing
3 with, with a remaining five years of probation.

4 What was ultimately ruled was that -- the Trial Court
5 ruled in favor of Mr. Pickel Symer and terminated his case.
6 The Department appealed that, and that is what has brought us
7 to this case with Pickel Symer.

8 Again, we are -- the Department was actually asking
9 that his CSP should be continued because of the suspended
10 sentence and that he should still remain on probation.

11 Well, what we ended up getting was a decision that
12 Pickels Symer gives us, which does state that the original
13 sentence does include suspended and unsuspended sentence of
14 the Circuit Court sentence.

15 So now there needs to be a completion of CSP, a maximum
16 of completion of two years CSP as mandated by the statute,
17 subsection B, without any violations, or basically expiring
18 by running out of the entire original sentence, both sus-
19 pended and unsuspended.

20 We have to acknowledge that the statute does read that
21 a term of incarceration does not include any portion of a
22 suspended sentence, but the decision was very, very clear
23 that the Department's original interpretation of the statute
24 was incorrect, and, therefore, what we are dealing with now
25 and what Mr. Mauldin is arguing against is that the suspended

1 and unsuspended sentences are together, and we look at
2 the actual outside total which would be the ten year sen-
3 tence. So, therefore, two full years of CSP must be com-
4 pleted unless he reaches the ten year sentence.

5 The concurrent separate Opinion further clarified
6 that where it points out that it is important to recognize
7 that if there as a no-parole straight sentence, not a split
8 sentence -- a split sentence is what we're dealing with
9 here -- suspended to -- some portion suspended.

10 The Macgruder Opinion uses unsuspended portion because
11 the remaining fifteen percent was in fact suspended. Al-
12 though Magruder was released after having served eighty-five
13 percent, good time credit should not be used to suspend the
14 fifteen percent for CSP purposes.

15 Pickel Symer received a split sentence of ten years
16 suspended to five years with five years probation. As a re-
17 sult Pickel Symer had five years and nine months left on his
18 sentence which essentially would have been used to complete
19 CSP.

20 The same thing where we have a ten year sentence with
21 service of five years although it is not suspended with
22 probation. The suspended and unsuspended portions total
23 ten years, as we have in Pickel Symner.

24 The Department's original interpretation was in light
25 or in line with what Mr. Mauldin is arguing, but that argument

1 was -- that interpretation was ruled to be incorrect ac-
2 cording to Pickel Symer.

3 THE COURT: Thank you very much. Anything in response,
4 Mr. Mauldin?

5 MR. MAULDIN: Yes, sir. Just that Magruder is a straight
6 time sentence. Pickel Symer was ten, suspended on five,
7 and five probation.

8 Mr. Day's sentence was ten suspended on five with no
9 probation. With the difference in those, it seems to me
10 that once he has done five that he has satisfied the ten.

11 THE COURT: All right, I will take this under advise-
12 ment. I initially informed the lawyers I would have a de-
13 cision next week which I will try to do.

14 If for some reason I don't, I will be here the last
15 week of -- if I can't do it next week, is there any problem
16 with me getting back to you the last week of February in a
17 session?

18 MR. MAULDIN: I have no problem with that.

19 THE COURT: I will only be free on Tuesday of that week
20 as every other day is going to be done, so what I will do is
21 -- I am making a note now. I will try my best to have a
22 decision next week when I'm back, but if I am not able to
23 I will definitely have Tuesday -- what's that date? The
24 25th.

25 All right, thank you very much.

1 This is an interesting argument and you both have done
2 a very good job. I'll certainly take a hard look at this.

3 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

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1
2 CERTIFICATE

3 I, HARRIET P. BENNETT, Court Reporter for South
4 Carolina Court Administration, hereby certify that the fore-
5 going Transcript was prepared to the best of my ability from
6 the records of Carol M. Thueme, having been heard in the
7 Court of General Sessions for Lexington County on January
8 31, 2014.

9 FURTHER, I certify that I am neither of kin nor coun-
10 sel to any party to this action, nor do I have any inter-
11 est in the same.

12 May 6, 2015

13 *Harriet P Bennett*
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ORIGINAL

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)
)
)
 Plaintiff,)
)
 v.)
)
 BRAD DAY,)
)
 Defendant.)

IN THE COURT OF GENERAL SESSIONS
 FOR THE
 ELEVENTH JUDICIAL CIRCUIT
 WARRANT #W-32-13-0318
 CITATION #32-13-0263

ORDER

FILED
 2014 FEB 7 10 00 AM
 CLERK OF COURT
 LEXINGTON, SOUTH CAROLINA

This Matter came before the Court on January 31, 2014. The Department of Probation, Parole and Pardon Services (PPP) alleged violations of Defendant's Community Supervision Program (CSP) pursuant to S.C. Code 24-21-560. Defendant Day was represented by David Mauldin at the hearing.

In light of the information presented at the hearing, the Court finds that Defendant violated his CSP in the following ways: For testing positive for cocaine and living in an unapproved residence. The Court revokes one year pursuant to section 24-21-560(C). * **DBH**

Also at the hearing, Defendant moved for a finding that he had served his sentence and should no longer be considered to be on CSP. In support of his motion, Defendant showed that he had been sentenced to ten years suspended to the service of five years for indictment 07-GS-32-01387, Criminal Sexual Conduct with a Minor in the Second Degree.

Defendant served eighty-five percent of his five years and was released to the supervision of PPP under CSP pursuant to S.C. Code 24-21-560 on September 12, 2011. Since that time, he has served one 90-day revocation period and a one-year revocation period. It is undisputed Defendant has served more than the full five years of his unsuspended sentence.

#1
 DBH

A TRUE COPY

[Signature]
 Lex. Co. C.C.P., G.S. & F.C.

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

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

It is so ordered.



Donald B. Hocker
Presiding Judge
Eleventh Judicial Circuit

This 5th day of February, 2014

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

2

A TRUE COPY


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

RETURN

STATE OF SOUTH CAROLINA
COUNTY OF
LEXINGTON

THE STATE
against

BRAD ALAN DAY

INFORMATION ON DEFENDANT

Name BRAD ALAN DAY
Address [REDACTED]
Phone (000) 000-0000
Sex Male Race White Height 600
Weight 250 Birth date [REDACTED]
Social Security Number [REDACTED]

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 _____

Constable or Law Enforcement Officer

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

ARREST WARRANT

Offense: Violation of Conditions of Community
Supervision Supervision

Offense Section: 24-21-560

Date: 12/5/2013

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

Lisa S. Baker

on the 5 day of December 2013

Rusty Rust

Constable or Law Enforcement Officer

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

Signature of Judge

(L.S.)

Disposition _____

Sentence _____

Co-Defendants _____

WARRANT

Form 15.1- Arrest Warrant
Form Approved by
SC Attorney General
Section 17-13-160
March 16, 1978

Community Supervision

STATE OF SOUTH CAROLINA

ARREST WARRANT

COUNTY OF LEXINGTON

Indictment Number 07-GS-32-01387

Warrant Number W-32-13-0318

State Identification No. (SID) 00457830

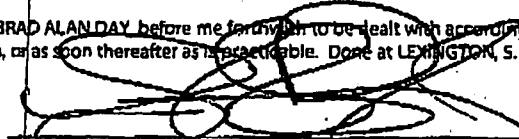
TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF LEXINGTON, AND ANY CONSTABLE OF THIS MAGISTERIAL DISTRICT:

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

DESCRIPTION OF OFFENSE:

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

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



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

County of LEXINGTON

STATE OF SOUTH CAROLINA

AFFIDAVIT

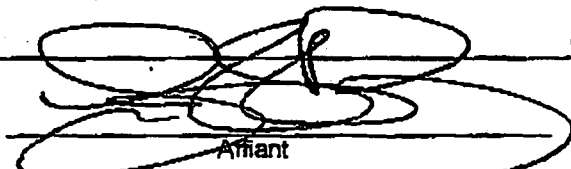
Personally appeared before me, one Lisa S. Baker, who, first being duly sworn, deposes and says that BRAD ALAN DAY did within this County and State on the 5 day of December, 2013, violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE:

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

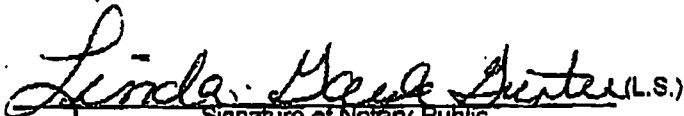
The affiant states that there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

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



Affiant

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



Signature of Notary Public

4-24-2017

My Commission Expires

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

ARREST WARRANT

J-056445

STATE OF SOUTH CAROLINA
COUNTY OF Lexington

THE STATE
against ORIGINAL

Brad Alan Day
Address: [REDACTED]
West Columbia, SC 29169
Phone: [REDACTED] SSN: [REDACTED]
Sex: M Race: W Height: 5-0 Weight: 200
DL State: SC DL#: [REDACTED]
DOB: [REDACTED] Agency ORI#: 3200
Prosecuting Agency: L. C. S. D.
Prosecuting Officer: Det. Russell
Offense: CSC WITH MINOR
Offense Code
Code/Ordinance Sec.: 16-3-655

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.

(LS)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered
to defendant Brad Alan Day
on

02-21-2007

Samuel E. Owens

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO

GARY REINHART JUDGE
139 EAST MAIN STREET
LEXINGTON, SC 29072
785-2525

FEB 21 2007

Lexington Co. Sheriffs Dept.

ORIGINAL COURT COPY

STATE OF SOUTH CAROLINA
COUNTY OF Lexington

AFFIDAVIT

Personally appeared before me the affiant Det. Eric Russell who
being duly sworn deposes and says that defendant Brad Alan Day
did within this county and state on 02/19/2007 violate the criminal laws of the
State of South Carolina (or ordinance of)
in the following particulars:
DESCRIPTION OF OFFENSE: CSC WITH MINOR 2nd Degree

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

That on or about 02-19-07 the defendant, Brad Alan Day, who was 40 years old at the time
and the uncle of the victim, did engage in sexual intercourse with the victim, a 15 year
old female. This incident occurred at 304 Taylor St. West Cloumbia (Lexington County) SC.
The defendant has admitted this to law enforcement.

Signature of Affiant

Affiant's Information
LCSD
Det. Eric Russell
521 Gibson Rd.
Lexington, SC 29072
801-785-8230

STATE OF SOUTH CAROLINA
COUNTY OF Lexington

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
on 02/19/2007 defendant Brad Alan Day
did violate the criminal laws of the State of South Carolina (or ordinance of
) as set forth below:

DESCRIPTION OF OFFENSE:
16-3-655 CSC WITH MINOR 2nd Degree
CRIMINAL SEXUAL CONDUCT WITH MINORS

Having found probable cause and the above affiant having sworn before me, 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 the defendant at the time of its execution, or as soon thereafter as is
practicable.

Sworn to and subscribed before me
on 02/21/2007

Signature of issuing Judge
Judge code: 683 Issuing Court: Magistrate

Issuing Judge

THOMAS H. RAWL
605 WEST MAIN ST. SUITE 100
LEXINGTON, SC 29072
803-785-8221

ORIGINAL COURT COPY

ORIGINAL COURT COPY

07014682

BAIL set by

Judge _____

on 2/21/69 _____

Type and Amount: 50,000.00 B _____

Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____

on _____

Defense Attorney: _____

Decision: _____

DISPOSITION before

Judge _____

on _____

by _____

(indicate jury trial, bench trial, plea, not crim., etc.)

Disposition: _____

Sentence: _____

JURORS

WITNESSES

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

CODEFENDANTS

100-10210

FILED
MAR 23 1969
COURT OF COMMON PLEAS
CANTON, OHIO

26

STATE OF SOUTH CAROLINA

AFFIDAVIT

County of LEXINGTON

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

DESCRIPTION OF VIOLATION

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

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

Subject has violated his Community Supervision in the following manner. He has failed to pay Intensive Fees being a total in arrears of \$120.00. He has failed to pay GPS fees being a total in arrears of \$440.00 in arrears. Subject has failed to charge his GPS unit as instructed. He has been instructed to charge his unit for 2 hours everyday. He was released from LCDC on 12/6/2013 at 6:42 pm and did not charge his unit until 12/8/2013 at 11:27 pm. This caused the unit to lose power and the subject was untracked for 51 hours and 45 minutes. He failed to call the GOC as previously instructed for 24 hour assistance on his GPS unit. He was given their phone number. He admitted that he stayed with his mother at 301 Taylor Street, West Columbia SC 29169. This residence has been unapproved for him to reside as it is within 1000 feet of a school. Subject has failed to follow the advice and instructions of the agent. Such actions constitute a violation of Sections 7, 10, and special conditions of the release certificate dated 5/1/2013 and Sections 3, 10, 11, 13, of the Participant Rules Acknowledgment and Agreement, and Sections 10 and 12 of The Standard Sex Offender Conditions signed by subject dated 5/2/13. This citation is in addition to warrant W-32-13-0118 issued on 12/5/2013 and served on 12/5/2013.	
--	--

Sandra Young
Affiant

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

Clare V. [Signature]
Signature of Notary Public

May 29 2018
My Commission Expires

Form 16.3
Form Approved by
SC Attorney General
May 1988

CITATION

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

No. C-32-13-0263

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

TO: BRAD ALAN DAY

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

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

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

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

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

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

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

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

PROOF OF SERVICE

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

DECLARATION OF SERVER

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

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

SCDRPPS
806 West Main Street, Ste#104
Lexington, SC 29072

DOCKET NO. 2007-GS-32-1387

WITNESSES

LCSD
Russell, E.

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

APRIL TERM 2007

THE STATE

vs.

Brad Alan Day
AKA Brad A Day

A-2007-32-00687

4/19/2007 10:37 AM

ARREST WARRANT NUMBER

J056445

ASSIGNED TO GRAND JURY
TRUE BILL

Cliff K...

Foreman

Foreperson of Grand Jury

Date: 4-30-07

CDR# 0397

Indictment for

Criminal Sexual Conduct with Minor 2nd
Degree 14 to 16 and or Position of familial,
custodial, etc.

§16-3-655(C)

DONALD V. MYERS, SOLICITOR

VERDICT

Foreperson of Petit Jury

Date:

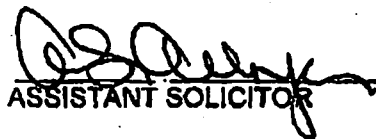
STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON) INDICTMENT FOR
) Criminal Sexual Conduct with Minor 2nd Degree 14 to
) 16 and or Position of familial, custodial, etc.

§16-3-655(C)

At a Court of General Sessions, convened on APRIL, 2007, the Grand Jurors of Lexington County present upon their oath:

That Brad Alan Day, did in Lexington County on or about February 19, 2007,
 commit a sexual battery upon and with the body of **Minor** being a child of at least
 fourteen (14) years of age but who is less than sixteen (16) years of age, and Brad Alan
 Day was in a position of familial, custodial, or official authority to coerce the victim to
 submit or was older than the victim, to wit: the defendant and victim did engage in sexual
 intercourse in violation of § 16-3-655 (C) [formerly section 16-3-655(3) of the Code of
 Laws of South Carolina, 1976, as amended.

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



 ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington
STATE VS
Brad Alan Day
AKA:
Race: W Sex: M Age: 32
DOB: [REDACTED] SS#: [REDACTED]
Address:
City, State, Zip:
DL# _____ SID# _____

INDICTMENT CASE#: 07-GS-32-1387
AW#: 2056445
Date of Offense: 2-17-07
S.C. Code §: 16-3-655
CDR Code #: 0397

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: SC 16-3-655 - Defeg 397

in violation of § 16-3-655 of the S.C. Code of Laws, bearing CDR Code # 397
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS (CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (Defendant initial)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.
ATTEST: [Signature] Solicitor [Signature] Defendant [Signature] Attorney for Defendant YRS

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 10 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of 5 days/months/years and/or payment of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

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

SPECIAL CONDITIONS:

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

PTUP _____ days/hours Public Service Employment
A TRUE COPY
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning 10/29/07 Co. C.O.P., G.S. & P.C.
Substance Abuse Counseling
Random Drug/Alcohol Testing
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: must register as sex offender

Recipient: _____
*Fine: _____
\$14-1-208 (Assessments 107.5%) _____
\$14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
\$14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
\$56-5-2995 (DUI Assessment) \$12 \$ _____
\$35.13 (Public Def/Prob) \$500 \$ _____
\$73.3, 1B TP (Law Enforce. Funding) \$25 \$ 23.00
\$33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____
\$50-21-114(BUI Breath Test Fee) \$50 \$ _____
\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
3% to County (if paid in installments) _____
TOTAL \$ 125.00

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

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

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

RECEIVED

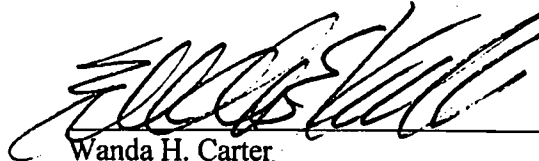
NOV 10 2015

SC Court of Appeals

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

November 10th, 2015



Wanda H. Carter
Deputy Chief Appellate Defender

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

ATTORNEY FOR APPELLANT



31
RECEIVED

NOV 10 2015

SC Court of Appeals

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

November 10th, 2015

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ATTORNEY FOR APPELLANT