

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHEROKEE COUNTY

J. MARK HAYES, CIRCUIT COURT JUDGE

APPELLATE CASE NO.: 2012-213064

The State of South Carolina.....Respondent,

vs.

Christopher Chad Wessinger.....Appellant.

FINAL REPLY BRIEF OF APPELLANT

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TABLE OF CONTENTS

Table of Authorities.....	ii
Argument in Reply:	
I. Reply to State’s argument concerning subject matter jurisdiction.....	1
II. Reply to State’s due process argument.....	2
Conclusion.....	3

TABLE OF AUTHORITIES

CASES

<i>Doe v. S.C. Department of Health and Human Services</i> , 398 SC 62, 727 SE 2d 605 (2011).....	1
<i>State v. Green</i> , 397 SC 268, 724 S.E. 2d 664 (2012).....	1

STATUTES

S.C. Code Ann., Section 44-48-10.....	1
S.C. Code Ann., Section 44-48-80.....	1
S.C. Code Ann., Section 44-48-90.....	1
S.C. Code Ann., Section 44-48-30(o).....	1
S.C. Code Ann., Section 44-48-30(7).....	1

I. Reply to State's argument concerning subject matter jurisdiction.

The Sexually Violent Predator Act, South Carolina Code Ann., Sections 44-48-10 et. seq., contains numerous safeguards so as to comply with procedural and substantive due process. This includes a probable cause hearing where the detained person has a right to be represented by counsel, present evidence, cross examine witnesses and view petitions and reports in the Court's file, Section 44-48-80. If probable cause is found the detained person is also afforded the right to a trial which may be in front of a judge alone or a trial by jury, Section 44-48-90.

Within this statutory scheme the legislature has determined that certain offenses constitute sexually violent offenses. Indecent exposure is not one of those offenses. Therefore, a determination must be made under Section 44-48-30 (o) that, "based on the circumstances of the case, the persons's offense should be considered a sexually violent offense." The Act is silent as to who makes this determination except to say "the Judge". Likewise, "judge" is not defined by the Act. However, "court" is defined as the Court of Common Pleas, Section 44-48-30(7). If the Act is continued to mean that the Judge of the Court of Common Pleas is to make the determination under Section 44-48-30 (o) then in the present case the plea judge sitting in the Court of General Sessions had no subject matter jurisdiction to make the determination. On the other hand, if the term "judge" is to be continued to mean "any judge" then a judge sitting in a term of General Sessions would have subject matter jurisdiction to make the determination. However, due process is affected either way as set forth below.

If the Judge of the Court of General Sessions has jurisdiction then a full evidentiary hearing must be held at the time of the plea. If the Judge of the Court of Common Pleas has jurisdiction then the full evidentiary hearing would be held at the time the Appellant's case is reviewed under the Sexually Violent Predator Act. The Appellant in this case has never had such a hearing.

II. Reply to State's due process argument

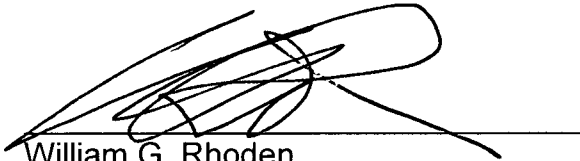
The State in its brief correctly points out that the fundamental requirements of due process are fair notice and proper standards for adjudication. *State v. Green*, 397 SC 268, 724 S.E. 2d 664 (2012). The State further points out that in order to meet the requirements of procedural due process, the State must provide adequate notice, adequate opportunity to be heard, the right to introduce evidence and the right to confront and cross-examine witnesses. *Doe v. S.C. Department of Health and Human Services*, 398 SC 62, 727 SE2d 605 (2011).

Therefore, it appears the State agrees that Appellant is entitled to procedural due process. Since a finding that the offense to which Appellant plead is a sexually violent offense is required under the Sexually Violent Predator Act, then the Appellant is entitled to procedural due process on this issue. Since the State seems to concede this point then this Honorable Court should make the determination as to whether the issue should be remanded to the Court of General Sessions for a full evidentiary hearing or whether this hearing shall be held in the Court of Common Pleas under the Sexually Violent Predator Act.

CONCLUSION

The Court should reverse the finding of the plea judge and remand the case for further proceedings.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'William G. Rhoden', is written over a horizontal line.

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PROOF OF SERVICE

I, William G. Rhoden, Esquire, Counsel for Appellant in the above referenced matter, certify that I have served the within three (3) copies of the **Final Brief** and three (3) copies of the **Final Reply Brief** by depositing a copy of same in the United States Mail, postage prepaid, addressed as follows:

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Dated this 3rd day of April, 2013.



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COURT OF GENERAL SESSIONS
J. MARK HAYES, CIRCUIT COURT JUDGE
CASE NOS.: 2012-GS-11-0362 and 2012-GS-11-0363

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief and Final Reply Brief complies
with Rule 211(b), SCACR,.



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