

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from McCormick County
Honorable William P. Keesley, Circuit Court Judge
Appellate Case No. 2012-210646

THE STATE,

Respondent,

vs.

JOE ROSS WORLEY,

Appellant.

**RETURN TO APPELLANT'S MOTION
FOR PARTIAL REMAND**

Respondent ("the State"), through its undersigned counsel, would respectfully show unto the Court as follows:

Procedural History

In November of 2009, Appellant Joe Ross Worley was arrested and charged with three counts of assault and battery with intent to kill and three counts of possession of a firearm during the commission of a violent crime. In February of 2010, the McCormick County grand jury indicted Appellant for three counts of assault and battery with intent to kill and one count of possession of a firearm during the commission of a violent crime. Subsequently, Appellant sought immunity from criminal prosecution pursuant to S.C. Code Ann. § 16-11-450, and a hearing on the immunity issue was commenced in the McCormick County court of general sessions on May 31, 2011, with the Honorable William P. Keesley, circuit court judge, presiding.

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SC Court of Appeals

Following the hearing, Judge Keesley issued an order on July 5, 2011, denying Appellant's request for immunity from prosecution and recusing himself from further participation in the case. Appellant then promptly moved for reconsideration of Judge Keesley's ruling. Thereafter, on December 8, 2011, Judge Keesley issued an order affirming his earlier ruling and denying Appellant's motion for reconsideration. Appellant then filed a notice of appeal appealing Judge Keesley's ruling on the immunity issue on January 18, 2012.

Additionally, prior to Judge Keesley's ruling on the immunity issue, Appellant repeatedly petitioned Judge Keesley for pre-trial bail. On December 3, 2009, February 23, 2010, and August 11, 2010, Judge Keesley denied Appellant's requests for bail and determined Appellant was a danger to the community before recusing himself from further involvement in Appellant's case through his ruling on the immunity issue.¹ Subsequently, Appellant moved for reconsideration of Judge Keesley's decision to deny bail, and a hearing on Appellant's motion was held on September 23, 2011, in the McCormick County court of general sessions with the Honorable Frank R. Addy, Jr., circuit court judge, presiding. Following the hearing, Judge Addy issued an order denying Appellant's bond request on October 3, 2011.² Subsequently, Appellant filed a notice of appeal dated October 12, 2011, and an amended notice of appeal dated October 27, 2011, appealing Judge Addy's ruling on the pre-trial bond issue.

Thereafter, on December 2, 2011, Appellant filed a "Petition for Certification Pursuant to S.C. Code § 14-8-210(B) or in the alternative Petition for Writ of Habeas Corpus" in the Supreme Court. In the petition, Appellant sought "an order from [the Supreme Court], certifying the instant appeal from the South Carolina Court of Appeals, expediting the matter, and establishing a procedure for consideration of pre-trial bond in cases involving application of the

¹ Copies of Judge Keesley's orders denying bail are attached to this return as Exhibits "A," "B," and "C."

² A copy of Judge Addy's order denying bail is attached to this return as Exhibit "D."

Castle doctrine, codified as the 'Protection of Persons and Property Act' at S.C.Code Ann. §16-11-401 et seq. and granting such other relief as may be warranted under the facts." On December 16, 2011, the State filed a return to Appellant's petition, and Appellant filed a reply to the State's return on January 3, 2012.

Subsequently, on January 25, 2012, the Supreme Court issued an order transferring Appellant's appeal from the denial of bond to the Supreme Court, dismissing the appeal, and dismissing the petition for a writ of habeas corpus.³ On the following day, Appellant filed an Initial Brief of Appellant and Designation of Matter in this Court related to the appeal of Judge Addy's ruling on the bond issue. Then, on February 2, 2012, Appellant filed a Motion for Reconsideration in the Supreme Court. Subsequently, on May 29, 2012, the Supreme Court issued an order denying Appellant's motion for reconsideration and, on September 7, 2012, issued remittitur in Appellant's appeal of the denial of pre-trial bond.

Meanwhile, on April 18, 2012, Appellant filed an Initial Brief of Appellant and Designation of Matter in this Court raising issues related to both Judge Keesley's order denying the request for immunity from prosecution and Judge Addy's order denying the request for pre-trial bond. Following the filing of the Initial Brief of Appellant and Designation of Matter, the State filed a Motion to Strike and Require Filing of Amended Initial Brief of Appellant on August 20, 2012. In response, Appellant filed a return opposing the State's motion, and the State filed a reply to Appellant's return. Subsequently, on September 7, 2012, Appellant filed a Motion to Supplement Record on Appeal and Expedite Briefing. In response, the State filed a return opposing Appellant's motion, and Appellant filed a reply to the State's return.

³ A copy of the Supreme Court's order is attached to this return as Exhibit "E."

Thereafter, on December 19, 2012, this Court issued an order granting the State's motion to strike and denying Appellant's motion to supplement the record and expedite briefing.⁴ Through that order, this Court ordered Appellant to file an amended initial brief striking any arguments related to the pre-trial bond request because that matter was not before this Court, striking any reference to matters not presented to the trial judge, and adding proper citation references as required by the South Carolina Appellate Court Rules.

Following the issuance of the order, Appellant filed his Amended Initial Brief of Appellant and Amended Designation of Matter on January 8, 2013. In his amended initial brief, Appellant alleged the record of the trial court proceedings was insufficient for this Court to conduct meaningful appellate review. After reviewing Appellant's amended initial brief, the State filed a Motion to Remand for Reconstruction of the Record and Motion to Strike Improperly-Designated Matter from Amended Designation of Matter on February 7, 2013. As part of that motion, the State asked this Court to remand the matter to the trial court to allow the trial judge to attempt to reconstruct missing portions of the immunity hearing transcript that were lost after the court reporter from the immunity hearing was victimized in a theft. In response, Appellant filed a return to the State's motion, and the State filed a reply to Appellant's return. Thereafter, on March 6, 2013, Appellant filed a Motion to Remand seeking a "remand in total." In response, the State filed a return to Appellant's motion, and Appellant filed a reply to the State's return.

Subsequently, on March 28, 2013, this Court issued an order granting the State's motion seeking a remand for reconstruction of the missing portions of the hearing transcript and denying Appellant's motion seeking a remand for a de novo hearing. Following the issuance of the order, Judge Keesley scheduled a hearing to address the reconstruction issue for May 17, 2013, and the

⁴ A copy of this Court's order is attached to this return as Exhibit "F."

hearing was subsequently rescheduled to and held on June 14, 2013. Following the hearing, Judge Keesley took the reconstruction issue under advisement, and the matter is currently pending before Judge Keesley on remand. Thereafter, on July 5, 2013, Appellant filed a Motion for Partial Remand.

Return to Appellant's Request for a Partial Remand on the Issue of Pre-Trial Bond

In his Motion for Partial Remand, Appellant is **not** asking this Court to grant him pre-trial release or to grant him an appeal bond. Instead, Appellant asks this Court to remand his case to the circuit court for the limited purpose of allowing him to again raise the issue of pre-trial bond to a circuit court judge. In support of that request, Appellant contends he is not responsible for the delays associated with his appeal and asserts that the circumstances of his case have changed significantly without specifically identifying how those circumstances have changed.

Initially, in regard to Appellant's contentions concerning the source of the delays associated with his appeal, the State notes substantial delays have resulted in Appellant's case based on issues associated with Appellant's initial brief as originally filed, which included references to matter not appearing in the record of the circuit court proceedings and which failed to comply with requirements of the South Carolina Appellate Court Rules. See Henning v. Kaye, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992) (“[T]he South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State. It is incumbent upon counsel to provide material that complies with the Rules and facilitates appellate review.”); South Carolina State Highway Dep't v. Meredith, 241 S.C. 306, 311, 128 S.E.2d 179, 182 (1962) (“[C]ounsel is prohibited from embodying in their briefs any fact which does not appear in the record.”); see also Rule 208(b)(4), SCACR (“In the initial briefs, these references should be to the page and

line number of the transcript prepared by the court reporter or by the page of the material to be referenced[.]”); Rule 210(c), SCACR (“The Record shall not, however, include matter which was not presented to the lower court or tribunal.”). As a result, this Court was required to order Appellant to strike portions of his brief and to file an amended initial brief complying with our appellate court rules, which resulted in delays in the resolution of the appeal. See Exhibit “F.” The State further notes that Appellant chose to proceed forward with his appeal aware that the record of the circuit court proceedings was incomplete without seeking to attempt to remedy the incompleteness of the record with the circuit court judge at that time. See State v. Williams, 321 S.C. 455, 464, n. 4, 469 S.E.2d 49, 55 (1996) (“The burden is on appellant to provide a sufficient record for review.”); see also China v. Parrott, 251 S.C. 329, 334, 162 S.E.2d 276, 278 (1968) (instructing “the duty and responsibility” of settling the question of what the appellate record should contain rests upon the trial judge in a case where portions of the notes of the trial proceedings were lost before the court reporter was able to transcribe them). As a result, this Court was required to remand the matter to the circuit court judge after Appellant filed his Initial Brief of Appellant and Amended Initial Brief of Appellant in order for the circuit court judge to attempt to reconstruct the missing portions of the record of the circuit court proceedings. See State v. Serrette, 375 S.C. 650, 654 S.E.2d 554 (Ct. App. 2007) (declining Serrette’s request to remand for reconstruction of the trial transcript and dismissing Serrette’s appeal where “Serrette’s own actions [were] the reason a transcript of the proceedings below [was] not available”); see also People v. Paris, 4 N.Y.3d 41, 48, 823 N.E.2d 827, 832-833 (N.Y. 2004) (“A defendant who wants a reconstruction hearing, however, should be diligent in maximizing the possibility that such a hearing can accomplish its purpose. That means, as a minimum, that defendant should move for a reconstruction hearing promptly after learning that the minutes have

been lost. A defendant should also pursue promptly whatever other means are available to increase the likelihood that proceedings can effectively be reconstructed. This might well include, in a typical case, contacting defendant's trial counsel, the prosecutor and the judge, to jog their recollections and to ask that they preserve whatever notes or other records of the proceedings might exist; and also to ask that defendant's trial counsel furnish appellate counsel, without a formal hearing, the benefit of his or her notes or recollection. A defendant who does not proceed diligently is open to the suspicion that he thinks the likelihood of really finding significant appellate issues remote – and would prefer failure in reconstructing the proceedings to success, hoping to claim prejudice when reconstruction proves impossible.”). Based on these actions, substantial delays have been incurred in this appeal.

In regard to Appellant’s contentions concerning a change in circumstances allegedly warranting reconsideration of the pre-trial bond issue, the State notes Appellant’s four earlier requests for pre-trial bond were denied by Judge Keesley and Judge Addy based on the danger Appellant posed to the community. See Exhibit “A;” Exhibit “B;” Exhibit “C;” Exhibit “D.” Significantly, in asking this Court to grant a limited remand for reconsideration of the pre-trial bond issue, Appellant has not explained what circumstances have changed that would impact the issue of his suitability for pre-trial bond and, more specifically, has not indicated in particular what circumstances have changed in regard to the circuit court judges’ findings that he was not suitable for pre-trial release based on the danger he posed to the community. As a result, it is unclear what allegedly changed circumstances warrant further consideration of the issue of pre-trial bond.

However, notwithstanding the cause of the delays that have been incurred in Appellant’s appeal or any alleged changes in the circumstances surrounding Appellant’s suitability for pre-

trial release, this Court should deny Appellant's motion for a partial remand because remand is unnecessary for the pre-trial bond issue to be considered by the circuit court judge. The issue currently on appeal in Appellant's case concerns the circuit court judge's denial of Appellant's request for immunity from prosecution pursuant to the South Carolina Protection of Persons and Property Act. Critically, an appeal from the denial of a request for immunity from prosecution does **not** affect the issue of pre-trial bond. See Rule 205, SCACR ("Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal; the lower court or administrative tribunal shall have jurisdiction to entertain petitions for writs of supersedeas as provided by Rule 241. Nothing in these Rules shall prohibit the lower court, commission or tribunal from proceeding with matters not affected by the appeal."). For that reason, a remand to the circuit court would be unnecessary, and this Court should deny Appellant's request to remand his case for a hearing on an issue not related to and not affected by the matter currently before this Court. See Wilson v. Walker, 340 S.C. 531, 539, 532 S.E.2d 19, 23 (Ct. App. 2000) ("Generally, serving notice of appeal divests the lower court of jurisdiction over the order appealed, **except for matters not affected by the appeal.**" (emphasis added)).

WHEREFORE, Respondent prays that this Court will deny Appellant's request for a limited remand to the circuit court for the purpose of having a motion for pre-trial bond considered; and grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

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Assistant Attorney General

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July 15, 2013

EXHIBIT "A"

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF McCORMICK)	
STATE OF SOUTH CAROLINA,)	
)	
-vs-)	ORDER DENYING BAIL
)	
JOE ROSS WORLEY,)	Case Numbers J-036561, J-036562,
)	J-036563, J-036564, J-036565, J-036566
Defendant.)	

The defendant is before the court for an initial setting of bail on charges of Assault and Battery with Intent to Kill, two counts of Assault with Intent to Kill, and three counts of Possession of a Firearm During the Commission of a Violent Crime. Bail is denied.

The allegations are that this defendant shot at Sheriff's Deputies who were responding to a call from a neighbor about a disturbance. The allegations are that the deputies arrived and went to the door of the home where the defendant was staying. The State claims that the defendant came out with a 30.06 caliber rifle; that the deputies (who were uniformed) identified themselves and ordered the defendant to drop the weapon; that the defendant yelled a profanity laced response to the command and fired the weapon more than once, striking a pistol that Deputy Rushton was holding in his hand. The gunshot caused extensive injuries to Deputy Rushton. The three responding deputies left to see that Deputy Rushton was provided with medical care, and the Sheriff and other officers arrested the defendant at the home. The gun was found inside the residence.

Mr. Worley is 51 years of age. He has never been married, and he lives with his mother, who owns homes in Aiken County and McCormick County. He is a lifelong

resident of this area, having graduated from Aiken High School in 1976. No information was provided as to the defendant's employment or whether he has any history of mental illness.

Mr. Worley's only prior criminal record is for Simple Possession of Marijuana, Failure to Stop for a Blue Light, and DUI. Nonetheless, the court finds that the defendant is a danger to the community and that he must be held without bail.

AND IT IS SO ORDERED.

December 3, 2009

/S/ WILLIAM P. KEESLEY

William P. Keesley, Judge

EXHIBIT "B"

STATE OF SOUTH CAROLINA)
)
COUNTY OF McCORMICK)

STATE OF SOUTH CAROLINA,)
)
-vs-)
)
JOE ROSS WORLEY,)
)
)
Defendant.)

IN THE COURT OF GENERAL SESSIONS

ORDER ON RECONSIDERATION
OF BAIL
Case Numbers J-036561, J-036562,
J-036563, J-036564, J-036565, J-036566

KATHERINE P. BUTLER
CLERK OF COURTS
McCORMICK COUNTY, S.C.

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On December 3, 2009, the court denied bail on charges of Assault and Battery with Intent to Kill, two counts of Assault with Intent to Kill, and three counts of Possession of a Firearm During the Commission of a Violent Crime. Defense counsel moves to have a reasonable bond set. The assertion is that the situation has changed because the State had indicated in December that the case would be tried during this term of General Sessions Court in McCormick; and, the defense has obtained two experts who will opine that the defendant is not guilty of any crime and is entitled exoneration under theories of self-defense and/or the Castle Doctrine. Having reconsidered the matter, the court orders that the defendant be held without bail on the violent-crime charges.

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The allegations are that this defendant shot at Sheriff's Deputies who were responding to a call from a neighbor about a disturbance. The allegations are that the deputies arrived and went to the door of the home where the defendant was staying. The State claims that the defendant came out with a 30.06 caliber rifle; that the deputies (who were uniformed) identified themselves and ordered the defendant to drop the weapon; that the defendant yelled a profanity laced response to the command and fired the weapon more than once, striking a pistol that Deputy Rushton was holding in his hand. The

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gunshot caused extensive injuries to Deputy Rushton. The three responding deputies left to see that Deputy Rushton was provided with medical care, and the Sheriff and other officers arrested the defendant at the home. The gun was found inside the residence.

Mr. Worley is 51 years of age. He has never been married, and he lives with his mother, who owns homes in Aiken County and McCormick County. He is a lifelong resident of this area, having graduated from Aiken High School in 1976. He is retired and cares for his mother. He would agree to live in Aiken County and abide by any restrictions that the court places upon him.

Mr. Worley's only prior criminal record is for Simple Possession of Marijuana, Failure to Stop for a Blue Light, and DUI.

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The State indicated that it had planned to call the case for trial, but that the ammunition turned out to be prohibited ammunition which has to be tested in order to determine whether to turn this case over for federal prosecution. The State maintains that SLED has determined that the ammunition is either armor piercing or that it has been modified for a similar purpose.

The court is still convinced that the defendant is a danger to the community and that he must be held without bail.

AND IT IS SO ORDERED.

February 23, 2010

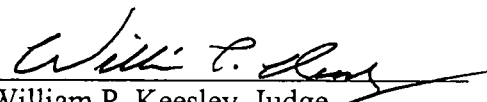

William P. Keesley, Judge

EXHIBIT "C"

STATE OF SOUTH CAROLINA)
COUNTY OF McCORMICK)

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
McCORMICK COUNTY, S.C.)

-vs-

JOE ROSS WORLEY,

Defendant.

ORDER ON RECONSIDERATION
OF BAIL

Case Numbers J-036561, J-036562,
J-036563, J-036564, J-036565, J-036566

This is the third time that the defendant has appeared before the court for bail. On December 3, 2009 and on February 23, 2010, the court denied bail on charges of Assault and Battery with Intent to Kill, two counts of Assault with Intent to Kill, and three counts of Possession of a Firearm During the Commission of a Violent Crime. The defendant's case has not been called for a jury trial, yet, and he moves to set bail. The motion is denied. The defendant also requests that the court set this case for trial during the next term of General Sessions court. That motion, also, is denied, though the court admonishes the State that this case must be expedited and a decision made as to whether to yield to federal authorities who are considering prosecuting the defendant.

The assertion is that the situation has changed since the court last reviewed bail.

First, the defense claims that investigation has established that the defendant had been shooting at wild animals that had attacked a family pet. He then went to bed and was awakened when deputies arrived. He claims that he thought the house was being burglarized when the shots were fired that struck one of the deputies. Therefore, the defense claims that Mr. Worley was armed at a place where he had a right to be and was acting to protect himself from a perceived threat. The State contends, in addition to the

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alleged facts previously presented indicating that the defendant fired at deputies who were outside the house and identified themselves as law enforcement officers, that the defendant was prohibited under federal law from possessing a firearm. The State indicates that an agent with Alcohol, Tobacco, and Firearms (ATF) has investigated this case and made a report that is currently being reviewed by federal prosecutors. The Solicitor stated that he had expected to hear a decision by now from the federal authorities, and the indication is that the State will yield to the federal authorities, if they decide to seek indictments for federal offenses.

Second, the defendant maintains that statutes require that the defendant be tried within two terms. The court does not find that statutory provision to be absolute and finds good cause for the State not having called this case for trial in that the federal authorities are investigating the case. The State indicated in the previous hearing that it had planned to call the case for trial, but that the ammunition turned out to be prohibited ammunition that had to be tested in order to determine whether to turn this case over for federal prosecution. The State maintains that SLED has determined that the ammunition is either armor piercing or that it has been modified for a similar purpose.

Third, the defense claims that the officer who was shot has filed a civil lawsuit in which he asserts negligence. In the defense's view, the assertion of negligence is inconsistent with a claim of a criminal act. The court finds no basis for granting bail on this ground.

With regard to the request that the case be set for the December term of court, that request was made conditionally, being couched in terms of the case being set, if the

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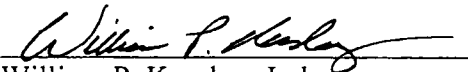
federal authorities do not decide to proceed. The defendant may file a speedy trial motion and have the matter more specifically addressed.

The court has considered all the factors, including the fact that Mr. Worley is a lifelong resident of this area. He has family support. He is retired and cares for his mother. He would agree to live in Aiken County and abide by any restrictions that the court places upon him. His only prior criminal record is for Simple Possession of Marijuana, Failure to Stop for a Blue Light, and DUI.

The court is still convinced that the defendant is a danger to the community and that he must be held without bail.

AND IT IS SO ORDERED.

August 11, 2010


William P. Keesley, Judge

#3

EXHIBIT "D"

activated the blue lights or sirens on their cars when they drove up to Defendant's residence. Testimony indicates that the evening of the incident was extremely dark, and Defendant was presumably sleeping when the deputies knocked and rang the doorbell. The deputies maintain they shouted into the home that they were law enforcement; Defendant denies hearing their announcement of their status, attributing this to the thick insulation on the home. Defendant heard the knocking, armed himself with a rifle, and proceeded onto a balcony on the second story of the home.

(c) Deputy Rushton was pointing his pistol at Defendant as he emerged. Defendant saw this and fired at Deputy Rushton, striking his pistol which shattered from the impact and severely injured Deputy Rushton's hand. A second shot was fired by Defendant which did not strike any deputy. The deputies retreated and Defendant was subsequently taken into custody.

(d) The state maintains that, after knocking on the door and announcing that they were law enforcement, the Defendant shouted, "I don't give a f__!" (*expletive omitted*). After the shooting, Defendant is alleged to have made another comment implying continued malice toward the deputies. Defendant denies both utterances.

3. In finding that Defendant should be denied bond, the court has previously found that release would pose an unreasonable danger to the community. In fact, Defendant has had the issue of bond brought before the court on three (3) separate occasions, and on each occasion, the court denied bond.² I find there is little concern that Defendant would flee the jurisdiction of the court, so I will confine my analysis to the "danger" justification for denying bond. I further note that Defendant is correct in that the law presumes that any individual charged with a non-capital offense is entitled to bond.

4. In assessing the dangerousness of the Defendant and in considering whether Defendant has demonstrated a sufficient change in circumstances to warrant altering his bond status, it is necessary and proper for this court to consider the Defendant's prior record and the facts and circumstances surrounding the present charge. Furthermore, in assessing the facts and circumstances, it is proper for this court to consider the ultimate question of "why did this

² This court reviewed the prior orders dated December 3, 2009, February 23, 2010, and August 11, 2010. At the hearing of May 31, 2011, Defendant renewed his request for bond before Judge Keesley. Due to Judge Keesley having recused himself from further hearings on this matter, this judge was assigned to hear this fourth (4th) request for bond.

incident occur” or “how did this incident come to pass.” In short, what are the potential motives for the Defendant’s conduct? There exist only two possible motives for why the Defendant shot Deputy Rushton:

(a) Arguably, the Defendant may have shot Deputy Rushton out of pure malice. Essentially, the state’s argument boils down to this: Awakened from his bed early in the morning by the deputies pounding on his door and announcing that they were law enforcement, the Defendant believes that the deputies were coming to get arrest him for having fired the earlier shots. Intent on maintaining his liberty at all costs and out of a depraved indifference to the lives of the deputies, Defendant arms himself, exits onto the porch, and fires at Deputy Rushton intending to kill him. But for the swift retreat of Deputy Rushton and the others, Defendant would have surely killed them all.

(b) Alternatively, the Defendant was sleeping when he was awakened by banging on his door. Aware of the prior burglary attempts on his secluded, rural dwelling, he arms himself out of concern that thieves are attempting to enter his home. Because the house is extremely well insulated, Defendant neither hears the deputies announcing their status as law enforcement, nor does he see any blue lights flashing from their cars or hear any sirens. Exiting onto the second story porch, his attention is immediately fixed on a figure, dressed in plain clothes, pointing a pistol at him. Fearing that he was about to be killed, he makes a split-second decision and fires on what he believes to be a burglar. In short, Defendant argues that he was acting under the reasonable belief that he was shooting at a potential intruder.

5. Scenario A is certainly plausible. This characterization would be supported by the testimony of the deputies that the Defendant’s profane statement after the officers knocked and announced their presence. However, the lack of any motive, substantial prior criminal history, or evidence of ill will toward law enforcement makes this theory less convincing that it otherwise would be had the court been provided with some explanation for Defendant’s actions by the state. No evidence exists of any illegal activity taking place at the dwelling. No evidence exists that Defendant is a member of any nihilistic anti-governmental organizations. No evidence exists of any grudge or hatred toward any of the deputies. In short, aside from the possibility that the Defendant “just snapped” that evening, the court is presented with limited evidence to support the first scenario.

6. Scenario B is also plausible. This characterization would be supported by the testimony of Dr. George Kirkham, Defendant's expert in criminology. His uncontroverted testimony is that by neglecting to call the defendant's home, to activate the blue lights on the officers' cars, to wear a law enforcement uniform, and to take other proper precautions in responding to a "shots fired" call, the McCormick deputies greatly enhanced the potential for a bad outcome that evening. The absence of any evidence of ill will, intoxication, or mental infirmity on the part of the Defendant could cause a trial jury to conclude this scenario is quite plausible.

7. Ultimately, the question of which scenario is correct will be decided by the finder of fact.³ Again, the court desires to weigh the potential scenarios simply to determine the extent to which the Defendant may pose an unreasonable danger to the community. Under the first scenario, the Defendant would obviously be an extreme danger. Under the second scenario, the Defendant poses minimal risk to the community. As noted in the prior orders, the Defendant's prior criminal history is dated and rather minimal; he was convicted for failure to stop in 1977, simple possession of marijuana in 1987, and DUI in 2000.

8. I am also aware of the delays which may be occasioned by the procedural posture of this case. The parties advised the court that a motion for reconsideration of the July 5, 2011 order has been filed by Defendant. In that order Judge Keesley recused himself from further hearings on this matter, so it remains an open question as to whether he will agree to consider the motion for reconsideration. If the motion for reconsideration is not heard, Defendant will be procedurally unable to appeal, and a full rehearing will have to be held or another judge will have to be assigned to rule on that motion.⁴ If the motion for reconsideration is considered and denied, Defendant may immediately appeal.⁵ As noted in footnote 1 of this order, however, the court reporter is unable to furnish a complete transcript, so the appellate court may

³ Assuming, of course, the trial court's Castle Doctrine ruling stands. See paragraph 8, *infra*.

⁴ Again, the problem with the lack of Defendant's transcribed testimony may prevent any assigned judge from ruling on the motion for reconsideration of the July 5, 2011 order.

⁵ See State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011) (holding in footnote 2 that the immunity granted by Section 16-11-410, *et seq.*, is immediately appealable)

elect to remand for a rehearing based upon this ground alone.⁶ Regardless of which procedural scenario actually comes to pass, this case will be delayed.⁷ This is truly regrettable, yet unavoidable.

9. I have fully considered all the facts, circumstances, and applicable law. Having reviewed the order of July 5, 2011 which was forwarded to the court by counsel for the Defendant, I note that the order reflects a finding that the testimony of the deputies was "far more" credible, and the trial court further notes that "[t]he court does not find Mr. Worley to be credible."⁸ Undoubtedly, the deputies could have employed more reasonable methods in responding to the call, and the court believes even the state would have to concede this point. However, this court is cognizant that on three (3) previous occasions the court has ruled that Defendant poses a danger to the community. The July 5, 2011 order similarly finds that the testimony of the Defendant (which this court cannot review due to the absence of a transcript) to be incredible. In light of this finding, and due to the extremely serious nature of the charges, this court finds that Defendant's motion to reconsider the denial of bond due to change in circumstances should be denied. This finding is supported by the testimony of the deputies that the Defendant, by virtue of his profane response to their knock and announce, clearly knew they were law enforcement officers. Despite this fact, Defendant went onto his balcony and shot Deputy Rushton. Defendant then fired a second shot striking no one, but followed this shot with a statement to the effect of "Where are you, you son of a b _ _ _ _?" (*expletive omitted*). The court takes this statement as evidence of continued hostility toward the deputies despite the fact that they were leaving the property. The record also reflects that the Defendant may have been in possession of or using armor-piercing ammunition which is illegal under federal law.⁹

⁶ As a practical matter, I believe this outcome is very likely. The order of July 5, 2011 required the trial court to assess the credibility of the various witnesses called. For this reason, I believe the testimony of the Defendant would be a crucial part of the record on appeal, and a remand would merely delay the trial further. Alternatively, should the appellate court hear and rule on the appeal, because of the deference normally given to credibility determinations by the trial court, a very likely potential outcome would be affirmation of the July 5, 2011 order.

⁷ I am further informed that McCormick County only holds General Sessions court four (4) times per year, so the unavailability of court time may cause even greater delays.

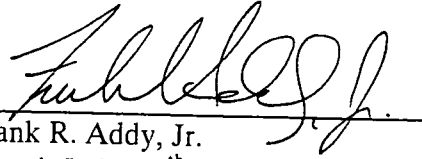
⁸ The court also stated: "With all due respect to the expert, the evidence refuting Mr. Worley's assertions of what occurred is overwhelming and undermines the expert's conclusions." Clearly, the court believed the version of events as proffered by the state's witnesses.

⁹ See order of February 23, 2010.

Clearly, the court's prior findings that the Defendant poses an unreasonable danger to the community is factually supported by the evidence, and Defendant has failed to demonstrate a sufficient change in circumstances to warrant altering the conclusions and denials of bond as explained in the court's three (3) previous bond orders.

WHEREFORE, Defendant's motion for bond is denied.

IT IS SO ORDERED.



Frank R. Addy, Jr.
Circuit Judge, 8th Judicial Circuit

September 28, 2011
Greenwood, South Carolina

EXHIBIT "E"

The Supreme Court of South Carolina

Joe Ross Worley, Petitioner,
v.
State of South Carolina, Respondent.


ORDER

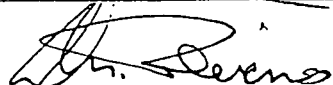
Petitioner has filed an appeal in the Court of Appeals from an order of the circuit court denying bond. Petitioner requests the appeal be certified to this Court, or in the alternative, that this Court issue a writ of habeas corpus. The State has filed a return in opposition to the petition.

We hereby certify the appeal to this Court and dismiss it pursuant to Parsons v. State, 289 S.C. 542, 347 S.E.2d 504 (1986).

The petition for a writ of habeas corpus is denied. Butler v. State, 302 S.C. 466, 397 S.E.2d 87, cert. denied 498 U.S. 972, 111 S.Ct. 442, 112 L.Ed.2d 425 (1990); Parsons, supra.

IT IS SO ORDERED.



C. J.


J.

Donald W. Beatty J.
John R. Bridges J.
Kaye Dean J.

Columbia, South Carolina

January 25, 2012

EXHIBIT "F"

The South Carolina Court of Appeals

RECEIVED

The State, Respondent

DEC 19 2012

v.

ATTORNEY GENERAL'S OFFICE

Joe Worley, Appellant.

MF R/c

Appellate Case No. 2012-210646

ORDER

After careful consideration of the parties' filings, Respondent's motion to strike Appellant's initial brief is granted. Within twenty days, Appellant shall serve and file an amended initial brief that (1) strikes any arguments regarding the denial of Appellant's bond request because an appeal from the orders relating to the bond are not currently before this Court; (2) strikes any citation to matters not presented to the lower court, including counsel's trial notes, pursuant to Rule 210(c), SCACR; and (3) adds proper citation references pursuant to Rule 208(b)(4), SCACR, which requires initial briefs to "contain references to the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [see Rule 210(c)] to support the salient facts alleged" and to cite "to the page and line number of the transcript prepared by the court reporter or by the page of the material to be referenced."

Additionally, after careful consideration of the parties' filings, Appellant's motion to supplement the record and expedite briefing is denied.

Jasper M. Curleton AS
FOR THE COURT

Columbia, South Carolina

FILED
AS 12/19/12

cc:

Desa Allen Ballard

✓Mark Reynolds Farthing

Harvey MacLure Watson, III

Carson McCurry Henderson

Billy J. Garrett, Jr.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from McCormick County
Honorable William P. Keesley, Circuit Court Judge
Appellate Case No. 2012-210646

THE STATE,

Respondent,

vs.

JOE ROSS WORLEY,

Appellant.

PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Return to Appellant's Motion for Partial Remand on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Desa Ballard and Harvey M. Watson, III, Esquires
Ballard Watson Weissenstein
Post Office Box 6338
West Columbia, South Carolina 29171

Carson Henderson, Esquire
The Henderson Law Firm, PC
109-B Oak Avenue
Greenwood, South Carolina 29646

Billy J. Garrett, Jr., Esquire
The Garrett Law Firm, PC
109 Oak Avenue
Greenwood, South Carolina 29646

I further certify that all parties required by Rule to be served have been served.
This 15th day of July, 2013.

Ellen R. DuBois

ELLEN R. DuBOIS

Legal Assistant

Office of the Attorney General

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