

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS  
Appellate Case No. 2012-210646

6954

---

APPEAL FROM MCCORMICK COUNTY COURT OF GENERAL SESSIONS  
WILLIAM P. KEESLEY, CIRCUIT COURT JUDGE

---

The State,

Respondent,

v.

Joe Worley,

Appellant.

**RECEIVED**

AUG 26 2013

**SC Court of Appeals**

---

**MOTION FOR REHEARING  
AND/OR AMENDMENT**

---

Appellant Joe Worley moves this Court for an order rehearing, reconsidering and amending its order issued in this case *sua sponte* on August 21, 2013. While Appellant agrees that the decision of the Supreme Court in *State v. Isaac*, Opinion No. 27302 (August 21, 2013) determines that the existing appeal is interlocutory, thus warranting the eventual dismissal of the appeal, the Court's order incorrectly concludes that reconstruction of the record for the immunity hearing previously held is not necessary. Further, in reaching that conclusion, it is respectfully submitted that the order provides advisory rulings on novel issues of law, the consequences thereof being deprivation of Appellant's opportunity to litigate those issues at trial or correct error in a potential future appeal following entry of a final, appealable order.

HML

In support of his motion, Appellant would show the following:

1. This is an appeal from an order denying Appellant the immunity provided by the “Protection of Persons and Property Act” at S.C. Code Ann. § 16-11-401 *et seq.* (Supp. 2012) (hereinafter “the Act”). Based on precedent existing at the time of the trial court’s ruling, Appellant was required to take an immediate appeal of that order denying immunity under the Act. *See State v. Duncan*, 392 S.C. 404, 709 S.E.2d 662 (2011).
2. During the appellate process, Appellant discovered missing portions of the transcript of the pretrial hearing conducted on the issue of statutory immunity. After Appellant attempt to supplement the record with his own reconstruction of the missing testimony, the State moved for remand for reconstruction of the missing testimony. That motion was granted. (Order dated March 28, 2013).
3. The trial judge held a hearing on June 14, 2013 for and took testimony and exhibits for purposes of attempting a reconstruction of the underlying record, which remains a work in progress.
4. The Supreme Court’s ruling in *Isaac* does not preclude an appeal of the determination previously made whereby Appellant was denied immunity pursuant to the Act, but rather only delays consideration of that issue raised until after final judgment.
5. The transcript in particular, but the record of the previously held immunity hearing pursuant to the Act held below as a whole, will still be necessary for proper appellate review after the trial is concluded. This Court’s direction to “proffer to the court any testimony relevant to the immunity” cannot be followed unless or until the record of

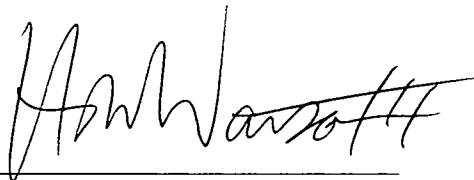
proceedings before Judge Keesley is completely reconstructed, as relevant testimony has already been proffered.

6. Numerous issues remain unanswered by the Supreme Court's decision in *Isaac*, including the manner in which the trial judge should deal with a pretrial ruling which denies immunity under the Act. Those issues have not yet been litigated in any case, and no precedent exists dictating the results, including the *Isaac* opinion itself.
7. This Court's order, however, directing the manner in which denial of immunity pursuant to the Act should be accommodated at a forthcoming trial, does not result from any adjudication of the procedural issues, nor is it the obvious or explained manner for proceeding inevitable conclusion from the Supreme Court's decision in *Isaac*. As such, it is an advisory opinion
8. Further, by its terms the Court's order appears to require an alternate method of reconstructing the record by abruptly terminating the current reconstruction process that continues, despite the Court's receipt of updates regarding that process having been provided previously to advise this Court of the progress made in that regard.
9. The Supreme Court's decision in *Isaac* neither justifies nor compels either action called for in the order. Trial court issues remaining for determination at trial should be addressed by the trial judge pursuant to his authority and discretion, and not dictated preemptively in an order dismissing the appeal.
10. This Court's order of dismissal should not be issued until the reconstruction of the record by Judge Keesley is complete, or until Judge Keesley determines that sufficient reconstruction is not possible.

11. The undersigned has not consulted with opposing counsel, but is informed and believes that such consultation would serve no useful purpose.

Wherefore, Appellant moves for an order:

- A. Amending this Court's order of August 21, 2013 to delete any instructions to the trial judge as to the procedure by which trial court proceedings are to be conducted; and
- B. Holding dismissal of the appeal in abeyance until final action by Judge Keesley on the reconstruction of the record.



Desa Ballard  
Harvey M. Watson III  
**BALLARD WATSON WEISSENSTEIN**  
Post Office Box 6338  
West Columbia, SC 29171  
Telephone 803.796.9299  
Facsimile 803.796.1066  
Email: [desab@desaballard.com](mailto:desab@desaballard.com)  
[harvey@desaballard.com](mailto:harvey@desaballard.com)

Carson Henderson  
**THE HENDERON LAW FIRM, PC**  
109-B Oak Avenue  
Greenwood South Carolina 29646  
Telephone 864.229.8000  
Facsimile 864.229.8001  
Email:  
[carson@carsonhendersonlawfirm.com](mailto:carson@carsonhendersonlawfirm.com)

Billy J. Garrett Jr., Esquire  
**GARRETT LAW FIRM, PC**  
109 Oak Avenue  
Greenwood South Carolina 29646  
Telephone 864.229.8000  
Facsimile 864.229.8001  
Email: [tgarretlaw@hotmail.com](mailto:tgarretlaw@hotmail.com)

August 23, 2013

**ATTORNEYS FOR APPELLANT**

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appellate Case No. 2012-210646

---

APPEAL FROM MCCORMICK COUNTY COURT OF GENERAL SESSIONS  
WILLIAM P. KEESLEY, CIRCUIT COURT JUDGE

---

Joe Ross Worley,

Appellant

v.

State of South Carolina,

Respondent.

---

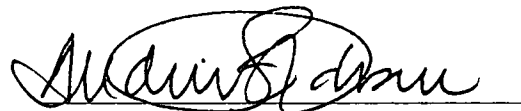
**CERTIFICATE OF SERVICE**

---

I, Andrew L. Johnson, an employee with the law firm of Ballard Watson Weissenstein, do hereby certify that on August 23, 2013, I served a copy of the **Motion for Rehearing and/or Amendment** in the above-captioned matter on the following individual by United States Mail, with sufficient first-class postage affixed, addressed as follows:

**Mark R. Farthing, Esquire**  
**Assistant Attorney General**  
**Attorney General's Office**  
**Post Office Box 11549**  
**Columbia, SC 29211**

August 23, 2013  
West Columbia, South Carolina

  
Andrew L. Johnson  
Law Clerk

**RECEIVED**

AUG 26 2013

**SC Court of Appeals**