

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
Jun 11 2025
SC Court of Appeals

Appeal from Aiken County

Honorable Michael G. Nettles, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DALLAN TIMOTHY THORSTENSON,

APPELLANT.

APPELLATE CASE NO. 2024-000049

MOTION TO REMAND FOR RECONSTRUCTION OF
PORTIONS OF APPELLANT'S TRIAL

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, undersigned counsel moves this Court for an order remanding this case to the trial judge in the Aiken County Court of General Sessions to reconstruct portions of appellant's trial from November 27-30, 2023 that are missing from the trial transcript. Counsel would show this Court:

1. Appellant was indicted at the May 2023 term of the Aiken County grand jury for the offenses of murder and possession of a weapon during the commission of a violent crime.
2. Appellant's case was called to trial on November 27, 2023, before the Honorable Michael G. Nettles and a jury. Dayne C. Phillips represented appellant. Jacqueline Charbonneau was the

assistant solicitor prosecuting for the state. Upon information and belief, the defense of habitation was a material issue at trial, and a jury note pertaining to the defense of habitation was sent to the trial judge during deliberations. A recharge on the law of habitation then occurred which apparently instructed on the purported legal means to expel a trespasser who had originally been an invitee in the home of the ejector. Upon additional information and belief, after that recharge on the law, the jury found appellant guilty as indicted and Judge Nettles sentenced him to forty-three years' incarceration for murder and five years concurrent on possession of a weapon during the commission of a violent crime. The jury note about the defense of habitation, the colloquy about it, the recharge on the law of habitation, the jury verdict and sentencing are not included in the trial transcript. This case is now on appeal before this Court.

3. The trial was recorded by the Digital Court Reporter Project (DCRP). The court reporter transcribing the original transcript was Penny M. Johnson.

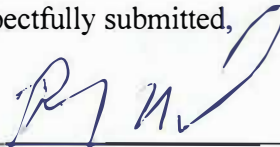
4. Undersigned counsel has consulted with Trial Counsel Dayne Phillips about the missing portions of transcript. The affidavit of Counsel's Phillips regarding the jury note and the recharge on the law of habitation that occurred during jury deliberations -- but were not transcribed -- is attached to this motion to remand. See June 4, 2025 Affidavit of Dayne Phillips attached as Exhibit A to this motion.

5. This Court held this appeal in abeyance in its order dated October 1, 2024 so that missing pre-trial hearing transcripts from November 8, 2023 and November 20, 2023 and the conclusion of appellant's trial could be obtained by this office. The pre-trial hearings from November 8, 2023 and November 20, 2023 were received by this office on or about April 22, 2025 and November 12, 2024, respectively. However, despite the continuing best efforts of this office the recording of the conclusion of appellant's trial as described above cannot be located by Court Administration

for transcription. See Email from Court Reporter Manager Tammie Holmes to Administrative Coordinator Della White stating no recording is available for the afternoon of this November 30, 2023 trial when these events missing from the trial transcript occurred is attached to this motion as Exhibit B.

WHEREFORE, undersigned counsel requests an order from this Court remanding this case to the trial court for the reconstruction of the missing portions of appellant's April 27-30, 2023 trial as outlined above.

Respectfully submitted,



Robert M. Dudek,
Chief Appellate Defender
Attorney for Appellant

This 11th day of June, 2025.

EXHIBIT A

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)
THE STATE,)
)
RESPONDENT,)
)
v.)
)
DALLAN TIMOTHY THORSTENSON,)
)
)
APPELLANT.)
_____)

IN THE SOUTH CAROLINA
COURT OF APPEALS

A F F I D A V I T

PERSONALLY appeared before me, Dayne C. Phillips, Esquire, who being duly sworn, deposes and says:

1. I represented the Appellant in the above-captioned case at trial from November 27-30, 2023, on the charges of murder and possession of weapon during the commission of a violent crime before the Honorable Michael G. Nettles and a jury.


2. I have reviewed pages 557–583 of the trial transcript at the request of Chief Appellate Defender Robert Dudek, and we discussed what appears missing at the end of the trial transcript.

3. After the conclusion of the transcribed portions of the trial, I recall the jury having a question (note) regarding the defense of habitation, and the Trial Court recharged the jury on the defense of habitation. Although I do not remember the exact language used by Judge Nettles, I recall the Court instructing the jury that the chosen means of ejection of a trespasser must be reasonable under the circumstances (i.e., reasonable force to expel the trespasser).

4. The jury issued verdicts of guilty as charged, and Judge Nettles sentenced Appellant to forty-three (43) years' incarceration for murder and five (5) years concurrent on possession of a weapon during the commission of a violent crime.

5. It appears the jury question, the recharge on the law, the verdict, and sentencing were not transcribed by the court reporter.

6. Undersigned counsel is available if further information is needed by this Court.


Dayne C. Phillips, Esquire

SWORN TO before me this 4th day

of June, 2025.

Courtney Parera (L.S.)

Notary Public for South Carolina

My Commission Expires: May 2, 2027

From: Holmes, Tammie <tholmes@sccourts.org>
Sent: Thursday, April 24, 2025 1:49 PM
To: White, Della <dwhite@sccid.sc.gov>
Cc: Kevin Dehlinger <kdehlinger@LegalEagleInc.com>; Legal Eagle Transcripts (transcripts@legaleagleinc.com) <transcripts@legaleagleinc.com>; Transcripts <transcripts@sccourts.org>
Subject: RE: [External] RE: The State v. Dallen Thorstenson

Good afternoon Della.

I have heard back from our vendor regarding the audio of the verdict and sentencing of the above referenced matter. There was no recording with this information from the afternoon of November 30, 2023.

Thank you,

Tammie M. Holmes
Court Reporter Manager
South Carolina Judicial Branch
1220 Senate Street, Ste. 200
Columbia, SC 29201
tholmes@sccourts.org
803-734-1825

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CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Motion to Remand for Reconstruction of Appellant's Trial in the above-referenced case have been served upon Melody J. Brown, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 11th day of June, 2025.



Robert M. Dudek
Chief Appellate Defender

Attorney for Appellant