

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM MCCORMICK COUNTY

R. Lawton McIntosh, Circuit Court Judge

THE STATE,

V.

JOE ROSS WORLEY,

APPELLANT

APPELLATE CASE NO. 2014-001497

MOTION TO HOLD APPEAL IN ABEYANCE
AND

MOTION TO REMAND FOR RECONSTRUCTION OF PRE-TRIAL HEARING ON
APPELLANT'S MOTION FOR IMMUNITY FROM PROSECUTION PURSUANT TO THE
PROTECTION OF PERSONS AND PROPERTY ACT (S.C. CODE ANN. § 16-11-410 et. seq.)

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, undersigned counsel requests an order requiring the parties to reconstruct Appellant's hearing before the Honorable William P. Keesley regarding immunity from prosecution pursuant to the Protection or Persons and Property Act (S.C. Code Ann. § 16-11-410 et. seq.) held on May 31, 2011 through June 1, 2011. While this motion is pending, Appellant asks this Court to hold the timelines for filing his initial brief and designations in abeyance.

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

1. In the early morning hours of November 15, 2009, Appellant shot from the second story balcony of his house at an adult male standing in his yard pointing a handgun at

ORIGINAL

RECEIVED

MAY 04 2016

RESPONDENT

SC Court of Appeals

him. The adult male was McCormick County Sheriff's Deputy Robert Rushton.¹ Appellant's bullet struck Ruston's gun, destroying it, and caused significant injury to Rushton's hand. Rushton and two other deputies were at Appellant's rural lake-house responding to a call from Appellant's neighbor, Alan Sheffield, regarding gunshots fired earlier in the night that Sheffield attributed to Appellant. None of the officers had activated their cars' blue lights or attempted to contact Appellant's residence prior to knocking on his door in the middle of the night. Rushton, who had only recently returned to civilian policing after working as a private contractor in Iraq, was wearing "military style" pants and a dark green collar shirt with no embroidered badge or other police markings on it.

PROCEDURAL HISTORY

2. On February 22, 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.

3. Appellant sought immunity from prosecution under the Protection of Persons and Property Act. On May 31, 2011 and June 1, 2011, a "Stand Your Ground" hearing was held before the Honorable William P. Keesley. Solicitor Donald V. Myers, Assistant Solicitor Ervin J. Maye and Assistant Solicitor H. Franklin Young represented the State. Carson M. Henderson and Billy J. Garrett represented Appellant. *See Exhibit A (Partial Transcript of Immunity Hearing).*

¹ Defense challenged at trial whether Rushton qualified as a law enforcement officer under the immunity statute as he had not taken one of the constitutional oaths required of Sheriff's deputies and had never posted a bond.

4. On July 5, 2011, Judge Keelsley denied Appellant immunity in a written order.² Appellant moved for reconsideration of the order. On December 8, 2011, Judge Keesley issued an order affirming the denial of immunity. *See Exhibit B (Order Denying Immunity on Reconsideration)*.

5. Pursuant to then-existing procedures Appellant filed a timely notice of appeal. *See State v. Duncan*, 405 S.C. 177, 747 S.E.2d 677 (2013). In preparation for the appeal, Appellant ordered transcripts from Court Reporter Rema Thomas. Thomas informed Appellant that several tapes containing testimony and arguments from Appellant's immunity hearing were stolen during a car break in and, thus, were unable to be transcribed. *See Exhibit C (Court Reporter's Memorandum)*.

6. The lost tapes contained an indeterminate portion of the opening arguments by both defense counsel and the State on day one of the immunity hearing. Unknown portions of Alan Sheffield's testimony were also missing. Crucially, all of Appellant's testimony, which occurred during day two of the hearing, was missing. Finally, it also appears that portions of the closing arguments of defense counsel and the State may be missing.

7. Despite large portions of the immunity hearing testimony being unavailable, Appellant filed an Initial Brief and Designation of Matter on April 18, 2012. In the brief, defense counsel attempted to reconstruct the missing portions of Appellant's testimony based upon the notes and recollection of trial counsel. Among other grounds, Appellant raised whether "[b]ecause an agent of the State failed to preserve evidence of critical testimony from the hearing

² The order was first issued on June 24, 2011, but later amended to correct scrivener's errors. *See Exhibit B*.

regarding immunity, does Appellate Court lack sufficient record to conduct meaningful appellate review?” *See Exhibit D (Amended Initial Brief of Appellant)*.

8. On August 20, 2012, the State filed a Motion to Strike and Require Filing of Amended Initial Brief of Appellant. Appellant filed a return opposing the State’s motion and the State filed a reply to Appellant’s return. On September 7, 2012, Appellant filed a Motion to Supplement Record on Appeal and Expedite Briefing. The State filed a return opposing the motion and Appellant filed a reply to the State’s return.

9. On December 19, 2012, this Court issued an order granting the State’s motion to strike and denying Appellant’ motion to supplement the record and expedite briefing. Accordingly, Appellant filed an Amended Initial Brief of Appellant and Amended Designation of Matter on January 8, 2013 conceding that the missing testimony was critical to a “full and fair consideration of the matters” on appeal and that the portion of the record remaining was insufficient to allow for meaningful review. *See Exhibit D (Amended Initial Brief of Appellant)*.

10. On February 7, 2013, the State filed a Motion to Remand for Reconstruction of the Record and Motion to Strike Improperly-Designated Matter from Amended Designation of Matter. The State argued that:

[i]n light of Appellant’s representations and the fact that portions of the pre-trial immunity hearing transcript were lost and unable to be transcribed, the State believes it is necessary for the matter to be remanded to the trial court to allow the trial judge to attempt to reconstruct the missing portions.

The State also advocated that “such a remand would ensure this Court can be provided the most complete and accurate record on appeal that can be obtained prior to undertaking appellate review of the issues raised in this case.” *See Exhibit E (State’s Motion to Remand excluding attachments)*.

11. On February 15, 2013, Appellant filed a Reply to the State's motion to remand. On March 6, 2013, Appellant filed a motion to remand to the circuit court for a *de novo* hearing. *See Exhibit F (Return to Motion to Remand and Motion to Remand)*.

12. On March 28, 2013, this Court granted the State's motion to remand for reconstruction of the missing portions of the hearing transcript. In the same order, this Court also denied Appellant's motion for remand for a *de novo* hearing on the issue of immunity. *See Exhibit G (Order Granting Remand for Reconstruction)*.

13. On June 14, 2013, a reconstruction hearing was held before Judge Keesley. Solicitor Donald V. Myers, Assistant Solicitor Ervin J. Maye and Assistant Solicitor H. Franklin Young represented the State. Desa A. Ballard, Carson M. Henderson, and Billy J. Garrett represented Appellant. *See Exhibit H (Reconstruction Hearing Transcript and Exhibits)*.

14. On August 21, 2013, while the motion for reconstruction was still under consideration by Judge Keesley, the South Carolina Supreme Court issued its decision in *State v. Isaac*, 405 S.C. 177, 747 S.E.2d 677 (2013), holding that the denial of a defendant's request for immunity under the Protection of Persons and Property Act is not subject to immediate appeal. That same day, this Court issued an order rescinding the remand to Judge Keesley and dismissing Appellant's appeal. **Judge Keesley never determined whether the missing portions of the immunity hearing record could be adequately reconstructed.** This Court instructed the parties to "proffer to the court any testimony relevant to the immunity motion that is not presented to the jury." *See Exhibit I (Order Rescinding Remand for Reconstruction)*. Appellant's motion for reconsideration was denied.

15. On November 20, 2013, Appellant filed a petition for writ of certiorari with the Supreme Court seeking to reinstate the reconstruction. The petition was still pending when Appellant proceeded to trial.

16. On December 16-20, 2013, Appellant proceeded to trial before the Honorable R. Lawton McIntosh and jury. Solicitor Donald V. Myers, Assistant Solicitor Ervin J. Maye and Assistant Solicitor H. Franklin Young represented the State. Desa A. Ballard, Carson M. Henderson, and Billy J. Garrett represented Appellant.

17. Pursuant to this Court's instructions, defense counsel proffered into evidence the (1) transcript of the reconstruction hearing, (2) notes from the trial judge, solicitor, defense attorneys, and clerk of court, (3) the police report and court reporter's memorandum regarding the car break-in; and (4) correspondence between court administration and defense counsel. *See Exhibit J (Excerpt of Trial Transcript, relevant exhibits included with Exhibit H).*

18. At trial, Appellant was convicted on all charges. On June 30, 2014, Appellant was sentenced by Judge Macintosh to a combined sentence of twenty years imprisonment.

19. On May 7, 2014, the State filed a motion to dismiss Appellant's petition for writ of certiorari. On June 25, 2014, the South Carolina Supreme Court issued an ordering denying Appellant's petition for a writ of certiorari and denying the State's motion as moot. *Exhibit K (Remittitur and Order Denying Petition for Writ of Certiorari).*

ARGUMENT

20. When a trial transcript has been lost or destroyed, the Court may remand to have the record reconstructed so as to allow for meaningful appellate review. *Whitehead v. State*, 352 S.C. 215, 574 S.E.2d 200 (2002); *China v. Parrott*, 251 S.C. 329, 162 S.E.2d 276 (1968); *Koon v. State*, 358 S.C. 359, 367, 595 S.E.2d 456, 460 (2004); *Dolive v. J.E.E. Developers, Inc.*, 308

S.C. 380, 383, 418 S.E.2d 319, 321 (Ct. App. 1992); *State v. Ladson*, 373 S.C. 320, 325, 644 S.E.2d 271, 273-274 (Ct. App. 2007).

21. In the present case, important portions of the immunity hearing transcript were lost due to theft. Appellant, age 58, is potentially serving the equivalent of a life sentence. A complete transcript of the immunity hearing is necessary for appellate counsel to effectively represent him, and for this Court to give meaningful appellate review of his conviction.

22. Moreover, both the State and the defense have repeatedly affirmed in earlier proceedings before this Court that the reconstruction of the missing testimony and arguments from the immunity hearing is essential to a “full and fair” appellate review of the trial court’s denial of immunity. *See Exhibits D, E, and F.*

23. Appellant respectfully requests an order for the reconstruction of the missing portions of appellant’s immunity hearing transcript in order to perfect the direct appeal in the case. *State v. Ladson*, 373 S.C. at 325, 644 S.E.2d at 273-274. While this motion is pending, Appellant asks this Court to hold the timelines for filing his initial brief and designations in abeyance.

WHEREFORE, in order to allow meaningful appellate review, Appellant respectfully requests that this Court hold Appellant’s appeal in abeyance and remand his case to the McCormick County Court of General Sessions for reconstruction of the missing portion of Appellant’s immunity hearing and to hold the timelines for filing the initial brief of Appellant in abeyance during the pendency of this motion.

Respectfully submitted,

Susan B. Hackett for

John H. Strom
Appellate Defender

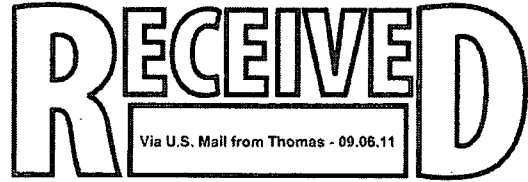
ATTORNEY FOR APPELLANT

This 4th day of May, 2016.

Exhibit A

STATE OF SOUTH CAROLINA)
COUNTY OF MCCORMICK)

COURT OF GENERAL SESSIONS



State of South Carolina,)

PLAINTIFF,)

-VS-)

Joe Ross Worley,)

DEFENDANT.)

2010-GS-35-049, 050, 051, 052

TRANSCRIPT OF RECORD

BEFORE THE HONORABLE WILLIAM P. KEESLEY, JUDGE

MAY 31, JUNE 1, 2011

MCCORMICK, SOUTH CAROLINA

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REMA K. GANTT THOMAS
CIRCUIT COURT REPORTER

I N D E X

PAGE NO.

Exhibit List	4
Testimony of Witnesses	
Robert E. Rushton	
Direct.	5
Cross	102
Redirect.	107
George Kirkham	
Direct.	109
Cross	138
Redirect.	140
Recall.	142
Alan Sheffield	
Direct.	146
Nicholas Moore	
Direct.	158
Cross	171
Redirect	176
Recross	181
Further Direct	183

I N D E X

	PAGE NO.
Sara Melissa McAlister	
Direct	187
Cross	
Closing Arguments	
By the Defense	209
By the State	221
Court Reporter's Certification	

E X H I B I T S

PAGE NO.

FOR THE STATE:

State's Exhibit One A (ID), Oath for county
officers 106

State's Exhibit Two A, Five Statements: Moore,
McAlister, Sheffield, Sheffield, and Reid. . . 146

FOR THE DEFENSE:

Defendant's Exhibit Number One A, Westlaw, Oath,
Deputy Sheriff. 18

Defendant's Exhibit Number Two A, Gun, photos,
four pages. 18

Defendant's Exhibit Number Three A, Statements of
R. E. Rushton; Complaint letter, 3/1/11 to Clerk
of Court; Summons Letter 2/10/10 to Clerk of
Court; Answer filed 6/10/10 82

Defendant's Exhibit Number Four A, Statement,
summary of events 7/27/11, Sheffield 179

E X H I B I T S

PAGE NO.

Defendant's Exhibit Number Five A,
Summary of events, Stallo, 7/22/10 179

Defendant's Exhibit Number Six A, 5/29/07
DNR letter to Sara Melissa Hegler 194

Defendant's Exhibit Number Seven A, Black
notebook prepared by defense attorneys 144

FOR THE COURT:

Court's Exhibit Number One A, Law submitted
by defense 209

1 Tuesday, May 31, 2011

2 (Partial Transcript of
3 Record. See Court Reporter's certification.)

4 THE COURT: Call your next witness,
5 please.

6 MR. GARRETT: Thank you, Your Honor. I
7 call Mr. Rushton to the stand.

8 THE COURT: All right, come around,
9 please.

10 (Whereupon, the witness was
11 sworn.)

12 MR. GARRETT: Thank you, Mr. Rushton.

13 COURT REPORTER: What's his first name,
14 please.

15 THE COURT: State your name for the
16 record.

17 MR. RUSHTON: My name is Robert E.
18 Rushton.

19 COURT REPORTER: Thank you.

20 ROBERT E. RUSHTON, having
21 first been duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. GARRETT:

24 Q Mr. Rushton, you made an oath when you
25 came onto the McCormick County Sheriff's Department,

1 did you not?

2 A I did.

3 Q I'd let to get you to review that oath.

4 (The witness reviews the
5 document presented to him.)

6 Q Is that your oath?

7 A The best that I can remember. It was
8 years ago.

9 Q How long ago was it when you took your
10 oath of office?

11 A I couldn't tell you exactly which year it
12 was.

13 Q Okay.

14 A It's been quite some time.

15 Q Help us understand a little bit about your
16 employment with the McCormick County Sheriff's
17 Department. When did you go to work for them?

18 A I couldn't tell you the exact year it was.

19 Q Okay. Have you been with them ten years,
20 five years, four years?

21 A I believe it was somewhere around six
22 years, and then I had to resign for about four years
23 before I came back.

24 Q So you worked for about six years, then
25 you resigned, and you were gone for four years?

1 A Yes, sir.

2 Q Officer Rushton, where were you gone
3 during those four years?

4 A Iraq.

5 Q All right. And what were you doing in
6 Iraq?

7 A I was an international police advisor.

8 Q And in Iraq, do you all have certain
9 protocols or procedures, or were you all teaching
10 the Iraqi police department how to be police
11 officers or --

12 A It depended on where we were stationed at
13 as to whether or not we were doing classroom
14 teaching or doing advising at stations.

15 Q All right. So you were there four years.
16 How many different stations, duty locations, did you
17 have?

18 A It would be hard to give an honest answer,
19 because at one station, at one location I was
20 assigned, I may have had as many as 12 police
21 stations.

22 Q All right. So a rather diverse group of
23 things you had to do in Iraq, I'm assuming?

24 A Very diverse.

25 Q All right. And when did you come back to

1 the county, to McCormick?

2 A I believe my rehire date was November the
3 first of 2009.

4 Q And this would be, what, 14 days prior to
5 this accidental shooting?

6 A Yes.

7 Q All right. And did you go through any
8 retraining or retesting or anything else before you
9 went back on the active force with the McCormick
10 County Sheriff's Department?

11 A I did. I had to catch up all the training
12 hours that I had missed for the previous four years.

13 Q Okay. And when did you catch those hours
14 up?

15 A Monday through Friday in the Sheriff's
16 Office.

17 Q All right. So you had spent the first two
18 weeks back on working in the Sheriff's Office with
19 training, retraining --

20 A Yes, sir.

21 Q -- getting prepared? All right. And when
22 did you give your new oath of office after having
23 resigned from the prior?

24 A I don't recall coming back over and giving
25 a new oath.

1 Q So prior to this hearing, you haven't
2 given an oath of office to act as a law enforcement
3 officer for the County of McCormick, State of South
4 Carolina, is that correct?

5 A My understanding is the first oath I took,
6 I took forever.

7 Q But you resigned, is that correct? You
8 resigned?

9 A I resigned my position at the Sheriff's
10 Office to go to Iraq.

11 Q All right. And what was your badge
12 number, the old number?

13 A 104.

14 Q What's your badge number when you come
15 back?

16 A 113.

17 Q So they changed your badge number, is that
18 correct?

19 A Actually, before I left to go to Iraq, but
20 my badge number changed numerous times over the
21 years.

22 Q All right. And so you can be gone for
23 four years, and what do you do, reapply? How do you
24 get back to work?

25 A I did fill out a new application and came

1 back.

2 Q Okay. So you were no longer employed.

3 You had terminated your services with the McCormick
4 County Police Department at the time, when you were
5 in Iraq?

6 A Yes, sir.

7 Q Not the Police Department, the Sheriff's
8 Department?

9 A Yes, sir.

10 Q And so you made the application. And at
11 some point in time, who told you that you would be a
12 deputy?

13 A When I came back?

14 Q Yes, sir. Do you remember that?

15 A I don't remember if it was Investigator
16 Collier or Sheriff Reid. I don't remember which one
17 it was.

18 Q So there was no actual sit-down where they
19 said, "Well, here's your badge, and here's your duty
20 weapon," and that kind of thing?

21 A I did come in to speak with the sheriff
22 prior to that, in the interview process.

23 Q Were you given a badge?

24 A Not that day.

25 Q Were you ever given a badge?

1 A Yes.

2 Q And when they handed you the badge, you
3 didn't take an oath of office?

4 A As I stated, I assumed that the first oath
5 of office I took was to protect the citizens of this
6 county, and it was still good.

7 Q But you didn't take an oath?

8 A No.

9 Q All right.

10 A Not that I recall.

11 Q Now, you say you caught up on your
12 training?

13 A Yes.

14 Q And who determined what training you
15 needed to get caught up?

16 A Investigator Collier was also the training
17 officer for the Sheriff's Office.

18 Q Okay.

19 A He had contacted the Academy, and they
20 informed me of what I needed.

21 Q All right. And so you had in-service
22 hours then --

23 A Yes.

24 Q -- for approximately two weeks?

25 A Yes.

1 Q Did you have any field training or field
2 experience?

3 A During that two weeks?

4 Q During the two-week time, yes.

5 ~~A Other than firearms. That was the only~~
6 thing.

7 Q All right. So you had to requalify with
8 your firearm?

9 A Yes.

10 Q All right. And then what about vehicle
11 training? Did you do any vehicle training?

12 A No.

13 Q Other than the in-service training, do you
14 recall the courses that you actually took?

15 A As far as in the in-service training?

16 Q Well, the two weeks that you called your
17 retraining.

18 A You would have had the criminal domestic
19 violence updates that I had to go back through and
20 the legal updates. Exactly what each one pertained
21 to, I couldn't tell you exactly what every one of
22 them said.

23 Q Okay, domestic updates. And what else?

24 A Just the basic legal updates.

25 Q Legal updates -- law?

1 A Yes.

2 Q All right. So obviously if the law has
3 changed since you were last at the Academy or last
4 working during those four years, they had to update
5 you on that?

6 A Yes.

7 Q All right.

8 A Laws change all the time.

9 Q It makes sense. All right, now, how much
10 -- did they take you out and do any -- did you have
11 to go under some other officer or work in the field
12 for any period of time prior to that night? I'm
13 talking about patrolling.

14 A No.

15 Q Was that the first night back?

16 A Yes.

17 Q Is it different working out of Iraq than
18 in McCormick County as a police officer?

19 A As far as my job description?

20 Q No, just the environment.

21 A It's totally different.

22 Q Did you go through any type of
23 psychological discussions or training when you got
24 back to help you differentiate between your role as
25 Iraqi police officer vis-à-vis a McCormick Sheriff's

1 officer?

2 A I was never an Iraqi officer. I would
3 tour and advise and train in classrooms when
4 necessary. ~~But as far as going out here and for~~
5 going out into Iraqi and patrolling the streets and
6 things as a policeman --

7 Q Right.

8 A -- I did not do that, but I was on
9 maneuvers with the military.

10 Q So the military -- the United States
11 military -- would sometimes have police advisors go
12 out with them into areas?

13 A Yes.

14 Q That would be areas where the Iraqis would
15 not have sufficient police to cover those?

16 A No, we were there -- if we went out with
17 them, we went with them to advise and critique the
18 Iraqi police. Then we would go back to the station
19 and tell them where we saw their problems.

20 Q To help train them?

21 A Yes.

22 Q So you trained them?

23 A Yes.

24 Q So you were a trainer?

25 A No, mentor and advise.

1 Q Mentor and advise. So you would not call
2 yourself a trainer of police officers?

3 A Not in that scenario. But in the
4 classrooms, where we did scenarios in the classroom,
5 it was a controlled environment. It's a lot
6 different.

7 Q A lot different, all right. Well, let's
8 talk about the procedure you employed.

9 MR. GARRETT: Judge, I'd like to mark
10 that, if I may. It's the oath of office.

11 THE COURT: Mark it before you enter it
12 into evidence.

13 MR. GARRETT: Okay. While we're doing
14 that, Judge, let me go ahead and mark this one, as
15 well.

16 THE COURT: I said mark it. Just mark it
17 for ID, I guess. I don't know exactly how this is
18 going to proceed.

19 MR. GARRETT: Okay.

20 COURT REPORTER: Defendant's One for
21 identification.

22 (Defendant's Exhibit Number
23 One A, Westlaw, oath, deputy sheriff, was marked for
24 identification purposes.)

25 THE COURT: Do you have another document?

1 MR. GARRETT: I do.

2 THE COURT: Let's mark that. Did you show
3 it to them?

4 MR. GARRETT: I did, Your Honor. They
5 have seen it.

6 THE COURT: Mark that, as well.

7 MR. GARRETT: Your Honor, at this time I'd
8 move to submit the oath of office into the record.

9 THE COURT: It's marked for
10 identification.

11 MR. GARRETT: I move at this time to
12 introduce it. It's an oath that he didn't take.
13 It's one that the law requires that he take.

14 THE COURT: Well, I'm a little bit
15 confused. If I mark it into evidence and the trial
16 proceeds, then --

17 MR. GARRETT: This is pre-trial, Judge, I
18 think. I'm not sure what part --

19 MR. MYERS: Can he it as a Court's exhibit
20 for the purpose of this?

21 THE COURT: I just told him to mark it for
22 ID. That way, it would be preserved for any review.
23 As I understand it -- and I may be wrong -- what I
24 saw in that case that was cited to me this morning,
25 if I were to rule against the defendant, it's

1 immediately appealed.

2 I don't want there to be any
3 confusion. As long as you all are verifying that
4 we're going to have separate exhibit numbers for the
~~5 pre-trial than we do for the trial --~~

6 MR. GARRETT: Yes, sir. We'll stipulate
7 that.

8 MR. MYERS: Yes, sir, we'll agree with
9 that.

10 MR. GARRETT: Okay. What's easier for
11 you?

12 COURT REPORTER: The date. I'll put the
13 dates on this one, and I'll just make it One A and
14 One B.

15 THE COURT: I'll do whatever she wants to
16 do. They're both in evidence for the purposes of
17 the pre-trial hearing.

18 COURT REPORTER: Okay, but I do need to
19 put the stickers on.

20 THE COURT: Yes, ma'am.

21 (Defendant's Exhibit Number
22 One A, Westlaw, oath, deputy sheriff; and
23 Defendant's Exhibit Two A, Gun, photos, four pages,
24 were marked for identification.)

25 COURT REPORTER: So we have Defendant's

1 One A and 2A from 5/31/11 that are in admitted for
2 identification purposes.

3 THE COURT: Thank you, ma'am.

4 EXAMINATION CONTINUED

5 BY MR. GARRETT:

6 Q Now, I'll just show you this -- this is
7 Two A -- and just ask you to review that to see if
8 you recognize that.

9 A Glock 23 40-caliber pistol. I can't
10 completely tell, but I believe it's the one I was
11 carrying the night of February 15.

12 Q All right. This is your duty weapon that
13 you had that evening?

14 A Yes.

15 Q And who provided this duty weapon for you?

16 A The McCormick County Sheriff's Office.

17 Q All right.

18 COURT REPORTER: Who?

19 MR. RUSHTON: McCormick County Sheriff's
20 Office.

21 Q All right. Did you have any more than one
22 weapon?

23 A No.

24 Q And would you agree that the weapon shows
25 the impact of the 30.06 bullet into the handle that

1 caused the damage to your wrist?

2 A Yes.

3 Q And the bullet entry -- the entry of the
4 bullet would be right there?

5 ~~A Yes.~~

6 Q About where your middle finger would have
7 been?

8 A Yes.

9 Q Now, the car that you were driving that
10 night, who provided that car?

11 A McCormick County Sheriff's Office provided
12 it.

13 Q All right. And did you take any training
14 or any special training on how to respond to that
15 car to emergency and/or non-emergency circumstances?

16 A I have in the past.

17 Q All right. When you got back, did you
18 refresh on that issue?

19 A I do not recall.

20 Q So you think you may refreshed on that in
21 those two weeks?

22 A I do not recall.

23 Q All right. And you mentioned gun
24 training.

25 A Yes, sir.

1 Q And tell me about the county-issued
2 uniforms that are required to be issued.

3 A There is not one that's required to be
4 issued.

5 Q There's no required issue uniform for the
6 County of McCormick?

7 A Not that I'm aware of.

8 Q So McCormick County doesn't have uniform
9 that you as a deputy or as a law enforcement officer
10 are required to wear under the law?

11 A Not that are required -- I mean, not that
12 I know.

13 Q On the night in question, what were you
14 wearing?

15 A I was wearing a 5-11 polo tactical shirt.

16 Q A polo type shirt?

17 A Polo type shirt, similar to what I have
18 now. It was green in color with long sleeves.

19 Q Okay. Would it be drab, or would it be --

20 A It was more of a forest green.

21 Q Sir?

22 A More of a forest green.

23 Q Forest green, all right.

24 A And I was wearing a pair of khaki-colored
25 very similar to what I have on now --

1 Q Okay.

2 A -- 5-11 tactical pants.

3 Q Tactical pants?

4 A Yes.

5 Q What else?

6 A I had my duty belt with my holster, badge,
7 radio, cell phone, handcuffs attached to the belt.
8 I had my microphone on. The 5-11 shirts actually
9 have a place where I can put it, and my radio mike
10 was clipped on right in front of me.

11 Q Okay. I see you've got a badge right
12 there on this particular shirt. Did you have a
13 badge on the shirt that you got shot in that night?

14 A No, I didn't.

15 Q All right. The shirt that you had, did
16 you buy that shirt, or was it provided to you by the
17 McCormick County Sheriff's Department?

18 A I had purchased that shirt.

19 Q Personally?

20 A Yes.

21 Q So, again, you can just wear whatever you
22 want to wear?

23 A My uniforms had not come in at the time.

24 Q So you made a -- who made the procedural
25 decision at the Sheriff's Department to allow you to

1 go out that evening without the proper uniform?

2 A As I stated, the Sheriff's Department does
3 not have a set uniform.

4 Q Well, what were you waiting on that you
5 didn't have that you said you were waiting on?

6 A I had just said that my uniforms that had
7 been ordered had not come in.

8 Q All right. But what is the uniform?

9 A I don't know.

10 Q That would be the uniform, the shirt that
11 you have today?

12 A Yes.

13 Q Can I just advise the Court for the record
14 so the Court Reporter will note, would that be a
15 gray shirt?

16 A Yes.

17 Q And that shirt has a badge or emblem of a
18 sheriff's badge on it, is that correct?

19 A Yes.

20 Q In addition to that, I see you're wearing
21 a belt, and you have your badge on your belt on the
22 pants?

23 A Yes.

24 Q You've got tactical pants on?

25 A Yes, I do.

1 Q And what type of shoes are you wearing?

2 A 5-11 footwear. They're 5-11 boots, the
3 boots for law enforcement.

4 Q You've got law enforcement boots. And
5 what about a cap or a police officer's hat?

6 A I was not wearing any.

7 Q You don't wear any?

8 A I was not at that time.

9 Q Do you ever?

10 A I have one, but I'll wear it if it's
11 raining or something. But I was not wearing one
12 that night.

13 Q Is it part of the uniform?

14 A No.

15 Q What color is the hat you would normally
16 wear?

17 A It's black with the word "Sheriff" written
18 in white letters.

19 Q Why would you have a black hat with white
20 across there saying "Sheriff"?

21 A In case it's raining.

22 Q In case it's raining. You're not trying
23 to let people know that you are a sheriff?

24 A The badge speaks for itself, identifying
25 myself.

1 Q If the badge is enough, then you wouldn't
2 really need a Sheriff's Department hat, would you?

3 A I bought it because in inclement weather,
4 I wouldn't get as wet.

5 Q I've seen police officers on the road when
6 they've got an orange vest on or a vest on that says
7 "Sheriff's Department." Do y'all have any of those
8 vests in McCormick County?

9 A Yes, we do.

10 Q And do you have any other vests like that
11 that you can wear to identify yourself as a
12 sheriff's deputy?

13 A Some of our ballistic vests would have an
14 outer shell that may have "Sheriff" or "Sheriff's
15 Department" or "Police" or "Police Department"
16 written on them.

17 Q When would you wear a ballistic vest?

18 A It depends on the situation. Some
19 officers wear it the entire time they're on duty.
20 Some don't wear it at all.

21 Q What about you?

22 A I don't wear one.

23 Q Ever?

24 A When I was in Iraq.

25 Q You haven't worn one since you've been

1 home?

2 A Once.

3 Q And after this, you haven't worn one?

4 A I didn't have one in the previous
5 incident.

6 Q On that night, you didn't have one?

7 A No.

8 Q What other clothing -- you talked about
9 these vests, and you talked about the hat. What
10 other implements of clothing do you have or are
11 available to you to wear at the department?

12 A I'm not really sure. Maybe my jacket.

13 Q Tell me about your jacket.

14 A It's just a dark navy-blue jacket. The
15 outer shell has a badge on it for the emblem. But
16 once I take the outer shell off, there is black
17 fleece underneath it with nothing written on it.

18 Q Does it have a sheriff's badge on it?

19 A On the outer shell, but not the inner
20 shell.

21 Q The outer shell. And is it similar to the
22 badge you have on there?

23 A I believe so.

24 Q All right. Would you agree with me that
25 if you had a light-colored shirt on versus a dark-

1 colored shirt on, if you had the mike on you that
2 night, you could probably see that clearer?

3 A That particular night, the way the
4 floodlights in the yard lit up, there was no
5 mistaking me.

6 Q Let me ask you about that. Are you sure
7 that's a floodlight?

8 A It's a square light, and I've called it a
9 floodlight my entire life.

10 Q Okay. Is it possible that that is a
11 spotlight as opposed to a floodlight?

12 A Very possible.

13 Q Y'all have been down there to investigate.
14 Has anybody looked at up into that to see whether or
15 not it's in fact a 300-watt spotlight, not a 500-
16 watt floodlight?

17 A I personally did not.

18 Q All right. Nobody prohibited you from
19 doing that, though, is that correct?

20 A I wasn't about to climb up there. I was
21 in there to go into the residence. And the only way
22 to tell would be to go into the residence and come
23 all the way out and look at it.

24 Q All right, let's talk about your procedure
25 that you used that evening. Just walk me through

1 it. Are you under somebody else's command that
2 night? Are you by yourself? Are you in your own
3 ~~command?~~ What's the deal?

4 A There was myself, Deputy Nick Moore,
5 Deputy Melissa McAllister. We all actually arrived
6 right about the same time.

7 Q Well, hold on before we get to there. I'm
8 just talking about I'm trying to find out, who was
9 the supervisor of that group?

10 A Emmanuel Crowder.

11 Q Emmanuel?

12 A Yes.

13 Q And what time had y'all started working
14 that evening?

15 A I came in at 6 p.m. that evening. Melissa
16 and Nick came in at 6 p.m. that evening.

17 Q Okay. What about Emmanuel?

18 A I believe he came in around 3 p.m.

19 Q And what time does Emmanuel get off?

20 A He got off about 3 a.m.

21 Q And what time do you get off normally on
22 that shift?

23 A It would have been 6 a.m.

24 Q So you work from six to six?

25 A Yes.

1 Q All right. And Emmanuel works from three
2 to three?

3 A Three.

4 Q And then who supervises during the three
5 to six when Emmanuel is not there?

6 A There's not per se a supervisor on duty.

7 Q All right. But on this occasion, Emmanuel
8 was your supervisor?

9 A He was the supervisor of that shift, yes.

10 Q All right. Who called -- just kind of
11 walk me through it. Where were you at that evening?
12 Where had you been earlier that evening?

13 A I had been all over the county.

14 Q All right. So you were doing general
15 duty, general duty patrol?

16 A Yes.

17 Q Were you in your car by yourself, or were
18 you with someone else?

19 A I was by myself.

20 Q All right. And I'm assuming the other
21 two, Nick Moore and Melissa, were also?

22 A They were by themselves.

23 Q By their selves. What's your car number?

24 A Five twenty-four.

25 Q And is your call number the same thing as

1 your car number?

2 A No, it's not.

3 Q What's your call number?

4 A One thirteen.

5 Q And what's Melissa's call number?

6 A One twelve.

7 Q ~~And what's~~ Nick Moore's call number?

8 A I believe his is 107.

9 Q All right. Tell me, did you call from
10 dispatch at some point in time?

11 A Somewhere after 4 a.m., yes.

12 Q Okay. You got a call from dispatch. I'm
13 assuming y'all have some dispatch logs and what not?

14 A Yes, they call the radios, too.

15 Q Have you ever studied the dispatch logs
16 for that night?

17 A No, I have not.

18 Q Would it surprise you if I told you there
19 was an 18 or 19 minutes' period of time after y'all
20 got on the scene versus the time y'all contacted
21 Sheriff Reid here, who was on the place at that
22 time, that there appears to be nothing on the
23 dispatch log?

24 A I wouldn't know.

25 Q Do you have any idea why that would be?

1 A I wouldn't know.

2 Q So somebody told you to go there, to the
3 location?

4 A Yes.

5 Q Who would it have been that told you to go
6 to the location?

7 A I believe it would have been Joyce
8 Fairfax, the dispatcher that works at night.

9 Q Okay. Did she call out the dispatch, and
10 is she responsible to assign jobs, or does she just
11 called it in and y'all decided who would go?

12 A Dispatchers may not know exactly where
13 each deputy is at in the county. Sometimes they
14 will give out just a general call, and which deputy
15 is closest will respond to it.

16 Q Is that what you did?

17 A I had no idea where the other two deputies
18 were at that night, so I just responded.

19 Q You didn't have anything particular to do
20 at the moment?

21 A There was nothing going on at 4 a.m.

22 Q All right. So you responded?

23 A Yes.

24 Q All right. And I'm assuming -- where were
25 you at when you got the call? Do you know about

1 where you were?

2 A On the four-lane of Number Eight.

3 Q ~~All right.~~ Did you turn around on the
4 four-lane to Plum Branch and cut on back?

5 A No, I was already headed in a north
6 direction. I turned onto Jefferson Street --

7 Q Okay.

8 A -- and turned onto Greenfield, and turned
9 to 378.

10 Q And that was your route?

11 A Yes.

12 Q And went on out to Little River?

13 A Yes.

14 Q All right. And I reviewed, I think you
15 got there a little ahead of everybody else?

16 A Actually, I was behind Melissa.

17 Q Is that a thing where maybe she didn't
18 call in? The report seems to suggest that she got
19 there I think a little after you, that you got there
20 first?

21 A She was in the road in front of me.

22 Q Yes, sir.

23 A And I caught up with her.

24 Q Uh-huh.

25 A And then Deputy Moore caught up with me.

1 Q Now, why would it take three deputies to
2 go down there? Why were all three of y'all going
3 there?

4 A We weren't doing anything else, and that's
5 our job.

6 Q All right. So there was no urgency to the
7 point that you needed to send three. It was just
8 there wasn't a whole lot going on at --

9 A There was nothing else going on.

10 Q -- 4:00 in the morning?

11 A Yes.

12 Q All right. So y'all get a call to go down
13 to -- was it Presidential Drive?

14 A Yes.

15 Q All right. And how long have you known
16 Joe Worley here?

17 A Till that night, I don't think I've ever
18 seen him.

19 Q All right. And what about his mother, Ms.
20 Barbara Worley, did you know her?

21 A I don't believe I did.

22 Q Or the father?

23 A Don't believe I did.

24 Q And during how many years -- you're not
25 sure how many years you were here before you went to

1 Iraq?

2 A I want to say seven, but without checking
3 the record, I wouldn't be a hundred percent sure.

4 Q You don't recall any calls down there to
5 go check on Joe Worley or check on Mary Worley for
6 disturbances, domestic violence, or any of that kind
7 of stuff about him, do you?

8 A No, not particularly about him.

9 Q Are the people down there generally pretty
10 good people on that area down there? Do you know
11 Mr. Stevens? Do you know him?

12 A In Presidential Drive, in that area, I
13 don't think I've ever had a call in that area.

14 Q Okay.

15 A Other areas of that subdivision, I have
16 been on calls.

17 Q Okay. I believe the people that live
18 around there is Mr. Herbert Anderson. Do you know
19 the Andersons?

20 A I know of them.

21 Q Okay. And then Mr. Bill Stevens over at
22 the Capital Bank in Greenwood, any of his family?

23 A I know of them.

24 Q Okay. The Worleys and, of course, then
25 the Sheffields, is that correct?

1 A Yes.

2 Q So when you got there, did you have any
3 reason to believe that based on history that that
4 would be a problem to go down there, there may be a
5 problem in going?

6 A That particular time of the year in
7 McCormick County, I really and truly thought it was
8 somebody shooting at the deer.

9 Q Okay. And you will agree with me that
10 there are deer poachers in that area. I've had the
11 pleasure of representing one of the neighbors up in
12 where it's not been developed.

13 A I would not say in that area.

14 Q Right.

15 A I'd say this entire county.

16 Q The entire county, poachers are bad?

17 A Yes.

18 Q With spotlight, they use the lights and
19 that kind of thing here?

20 A I've never caught one.

21 Q Okay.

22 A So I couldn't tell you what they were
23 doing.

24 Q Y'all have a pretty active DNR here, don't
25 you?

1 A Yes, we do.

2 Q Now, so that's what you kind of had in
3 mind, that's probably what it was, somebody had shot
4 at a deer?

5 A Yes.

6 Q Okay. It's not uncommon in that area for
7 somebody --

8 A I'm not saying in that area. I have not
9 ever responded in that area --

10 Q Okay.

11 A -- to a deer poaching, but it would not be
12 unlikely.

13 Q Because right around that bank, isn't
14 there some houses, and then it's probably about a
15 mile of undeveloped just land right there before you
16 get to the next development, right down that road?

17 A Probably.

18 Q Right there on the right as you're coming
19 down, before you get to the houses.

20 A Right next to the granite sign.

21 Q There are probably four or five lots in
22 there that are undeveloped?

23 A Yes.

24 Q Okay, all right. So after having got the
25 call, you got there or Melissa got there, you got

1 there and then Nick Moore got there?

2 A We were all -- it's not like I got there
3 five minutes before Melissa got there. Minutes -- I
4 mean, we were there together. I could see her car,
5 and I could see his car in my rear-view mirror. We
6 were right there together.

7 Q I'm just saying y'all called in dispatch
8 within about six minutes of each other. But you
9 were there, so you got --

10 A I had no idea what time they called
11 dispatch.

12 Q All right. So you get there, and who's in
13 charge of the three of you?

14 A There was no supervisor over one of us.
15 I've been doing it long enough, Nick's been in law
16 enforcement long enough, we kind of know what we
17 need to do.

18 Q Okay. And are you the -- would you be the
19 senior officer there with experience, or who would
20 be the senior officer?

21 A I'm not sure how many years Nick would
22 have prior to coming to McCormick.

23 Q Do y'all have some type of chain of
24 command circumstance, practice, or procedure that in
25 these situations, if three officers arrive, who is

1 in charge and who is not?

2 A It's not a written rule. It's just a
3 courtesy thing. The first officer on the scene is
4 usually in charge of it.

5 Q All right. So if Melissa got there first,
6 ~~would she be in charge?~~

7 A Yes.

8 Q Okay. Was Melissa in charge of this
9 situation?

10 A Melissa didn't get to the Worley residence
11 first. I did.

12 Q Okay. So you got to the Worley residence
13 first?

14 A I got to the property first.

15 Q Okay. And where did you pull your car?

16 A Behind a vehicle that was parked in the
17 yard.

18 Q Behind a vehicle parked in the yard, okay.
19 Where at?

20 A In the road.

21 Q In which direction was it pointing?

22 A Toward the lake.

23 Q Toward the lake. And what kind of car was
24 it that you parked in front of?

25 A Some type of SUV. I couldn't tell you

1 exactly -- Ford or Toyota, I believe.

2 Q I've seen the photographs after that
3 evening, and I don't recall seeing an SUV out there
4 parked along the driveway or in the driveway of the
5 Worleys' residence. What color was this SUV?

6 A I couldn't tell you.

7 Q Isn't it true that one of you actually
8 pulled down into the Stevens' yard?

9 A Actually, there were two people pulled
10 into the Stevens' yard, and I was not one of them.

11 Q All right. So we had two cars that pulled
12 into the Stevens' yard?

13 A Yes.

14 Q Okay. And then where was your car at?

15 A In the Worleys' yard.

16 Q All right. And you say you parked behind
17 an SUV?

18 A Yes.

19 Q And you don't recall the color of the SUV?

20 A No, I do not.

21 Q All right. So you parked -- why did you
22 park behind -- in the Worleys' yard behind an SUV,
23 and the other folks went over to the Stevens'?

24 A Melissa was in front of me. We were
25 actually given the incorrect numerics, but we were

1 given the Worleys' last name.

2 Q Okay.

3 A And I saw on a piece of wood, driftwood or
4 ~~something~~, a piece of plank or wood or something, it
5 had "Worley" written on it.

6 Q I've got you.

7 A And I immediately turned into that
8 driveway.

9 Q She was ahead of you, so she went --

10 A She went past me.

11 Q I've got you. She drove past you. And
12 those driveways, as I understand it, maybe have a
13 little picket fence between the two?

14 A Further down, closer to the residence,
15 they do. But up toward the front, I think there
16 wasn't.

17 Q You don't recall there being a fence
18 between the two?

19 A No, not toward the front of the driveways.

20 Q All right. So you say two cars went over
21 there, and you went down there?

22 A Yes.

23 Q And then where did y'all meet up?

24 A Came around to the back of the residence
25 -- of the Worley residence.

1 Q Okay.

2 A And I saw a figure in the -- later found
3 to be the Sheffields' residence. And I walked over
4 onto their property to talk to the complainant.

5 Q Did you tell that to the other two
6 officers, that you were going to walk over there and
7 talk with them?

8 A Yes.

9 Q All right. At that time, had y'all
10 decided to try to set up any type of perimeter or
11 anything like that on Mr. Worley's property -- or
12 anything, any kind of practice or procedure to avoid
13 a threat or anything like that?

14 A As I said earlier, I figured it was
15 somebody shooting at a deer. There was no need for
16 anything like that.

17 Q All right. You assumed that's what it
18 was?

19 A I believed it would be something simple
20 like that.

21 Q And if it were so simple as shooting at a
22 fox, that wouldn't shock you either, would it?

23 A No, it would not.

24 Q Okay. Y'all have got a good bit of rabid
25 foxes and raccoons and stuff like that found in

1 McCormick County year after year, don't you?

2 A Not that I'm aware of.

3 Q Really?

4 A There may be one or two cases, but it's
5 not like an outbreak.

6 Q Have you read the actual reports?

7 A No.

8 Q Okay.

9 A But the ones that I've really looked at,
10 there's maybe one or two cases a year.

11 Q Now, after you headed over to the
12 Sheffields', is that correct?

13 A Yes.

14 Q Did you instruct the other two officers,
15 Nick Moore and Melissa, what to do, or not?

16 A No, I didn't.

17 Q Okay. And because you were there on the
18 Worley property first and although you were in
19 command, you didn't tell them what to do or not to
20 do?

21 A No.

22 Q All right. So who would -- they just did
23 what they wanted to do?

24 A We did what we knew needed to be done.

25 Q All right. And what was that?

1 A I talked to the complaints. Deputy Moore
2 went to the residence. They knocked on the door.

3 Q Okay.

4 A And Deputy McAllister stood between the
5 two of us.

6 Q Okay. And there was no light on at the
7 time?

8 A When Deputy Moore went to the residence,
9 there was no light on in the front.

10 Q Okay. And while you were talking -- how
11 long would you say you were at the Sheffields'
12 talking to the Sheffields?

13 A No more than three minutes.

14 Q All right. And during that three minutes,
15 did you say Moore across the road was knocking on
16 the door and maybe ringing the bell, and maybe
17 announcing "Sheriff's Office"?

18 A He was definitely announcing "Sheriff's
19 Office."

20 Q Okay. And do you have any idea of the
21 acoustics inside of that house as to whether or not
22 if you're in that back bedroom, you could hear
23 somebody announce "Sheriff's Office"?

24 A I wouldn't have a clue. I've never in the
25 residence.

1 Q And nobody has done any type of acoustical
2 study or anything like that you're aware of?

3 A Not that I'm aware of.

4 Q All right. Now, after Mr. Moore knocked
5 on the door with Melissa between the two of you --

6 so she wasn't up there against the door. She was
7 kind of at the back of the residence, kind of
8 between the two of y'all?

9 A More of a line.

10 Q Okay. After that, what happened?

11 A A light came on in front of the residence
12 -- well, Deputy Moore was walking back toward us so
13 he got no response.

14 Q Okay.

15 A A light came on. I informed the
16 Sheffields that they needed to go back inside while
17 we talked with them.

18 Q Okay.

19 A As we were turning to walk toward the
20 front of the residence, the light went out.

21 Q Okay.

22 A We got to the front of the residence,
23 myself on one side of the door and Deputy Moore on
24 the other side. Deputy McAllister stood off to the
25 -- if you're looking at the lake, it would have been

1 the right side of the porch. And we were knocking.

2 Q And when you say "We were knocking," now,
3 had all three of you gotten up to the corner of the
4 house at that time?

5 A Yes, I was on one side of the front side
6 of the front door. Deputy Moore was on the other
7 side of the front door. Deputy McAllister was
8 standing in the grass off to the right.

9 Q Okay.

10 A Myself and Deputy Moore were knocking and
11 ringing the door bell.

12 Q Okay. Then what happened?

13 A Somebody yelled, "Who is it?" We informed
14 them "the Sheriff's Department," and we heard "I
15 don't give a fuck." I heard the sliding glass door
16 opening.

17 Q Okay.

18 A I started walking backwards.

19 Q Okay.

20 A I saw your client, Mr. Worley, standing in
21 front of the two windows.

22 Q The door windows, you mean?

23 A No, the windows.

24 Q Windows, okay.

25 A Coming out the sliding glass door, he had

1 went to his right.

2 Q Okay.

3 A I saw, standing like this, the metal, wood
4 -- metal, wood -- immediately recognized it as a
5 weapon.

6 Q Okay.

7 A I yelled "Gun." I'm pulling my gun.
8 We're yelling "Sheriff's Department, drop the gun."
9 The lights come in, and I hit the ground face first.

10 Q All right, let me ask you about this, the
11 lights come in. Have you accounted for the flash of
12 the gun? Obviously, a 30.06 at night is going to
13 let out a pretty big light. Did you see the flash?

14 A Actually, I did not even hear it strike.

15 Q All right. So you didn't hear it or see
16 the flash?

17 A No.

18 Q All right. How far did you get your gun
19 up -- after you hollered "Gun -- Sheriff's
20 Department," how far did you get your gun up towards
21 Mr. Worley before you got hit?

22 A I couldn't tell you. It just happened so
23 fast right then.

24 Q If we look at that --

25 A It was probably at least in this area

1 somewhere.

2 Q You would agree with me, just being a
3 person who owns guns, weapons, and firearms, that in
4 order for that bullet to hit you, that gun had to be
5 pointed at Mr. Worley?

6 A It would have been somewhere in this area.
7 As exactly if it was way up here or right here, I
8 couldn't tell you exactly.

9 Q Did you have it on his body?

10 A I couldn't see him.

11 Q Why did you pull your gun if you couldn't
12 see?

13 A Because he had a gun, we had already
14 identified ourselves as Sheriff's Department, and he
15 said he didn't give a fuck.

16 Q So why didn't you put up your hands and
17 say, "Whoa, whoa, whoa, wait a minute. Wait a
18 minute. Hey, calm down. Look, I see you've got a
19 gun"?

20 A That would be like bringing empty hands to
21 a gunfight.

22 Q Okay. So you considered it a gunfight?

23 A Once I saw the weapon.

24 Q Okay.

25 A And he had already said he didn't give a

1 fuck who we were.

2 Q Okay.

3 A It was time for me to go to my weapon.

4 Q All right. Let me ask you this question.

5 You'd agree that you made prior inconsistent
6 statements about what happened out there that night.
7 You'd agree with that, wouldn't you?

8 A No.

9 Q Well, you would agree that after your wife
10 did help give a statement about what happened after
11 that night on the 20th of November, you also brought
12 a lawsuit, and you made some claims in a lawsuit
13 about negligence on Mr. Worley's part.

14 And in addition to that, when you the
15 Solicitor's Office or Sheriff Reid had the Federal
16 ATF look at it, you gave a statement to them, too,
17 didn't you?

18 A I did speak with an ATF agent.

19 Q Well, the Solicitor's Office has provided
20 me, of course, a copy of that. And if we go back
21 through your statements, they're not consistent
22 about what happened. Is that because you were in
23 shock?

24 A At the time, I was actually shot?

25 Q Yes.

1 A I knew exactly what was going on. I
2 realized that I had been hit, and I realized that I
3 needed to get out of the line of fire.

4 Q Where were you standing when you were hit?

5 A In front of the residence.

6 Q Where at in front of the residence?

7 A Somewhere in the -- after going back out,
8 it was a clean-out drain, I guess, for a septic tank
9 and a cross-tie.

10 Q Is that where you really believe you were?

11 A Yes.

12 Q Do you have any idea how a piece of your
13 gun butt or the gun that's broke off there was found
14 right in front of the flower bed?

15 A I don't know what flower bed. Which one
16 are you referring to?

17 Q If you're looking right out that sliding
18 glass door, there's a flower bed right out there in
19 front of it, 20 feet or so out.

20 A Where the rocks are at?

21 Q Uh-huh.

22 A I wouldn't doubt it was out there.

23 Q You wouldn't doubt that that's where you
24 got shot?

25 A I would doubt that. I wouldn't doubt that

1 a piece of the gun flew that far away. He hit the
2 whole side of my gun.

3 Q Okay. But it blew the gun out. It blew
4 it into your hand, right?

5 A Not all of it.

6 Q I understand. Some of it or most of it
7 went into your hand, a lot of it, didn't it?

8 A I have no idea.

9 Q Did you look at the evidence that was
10 found at that big area, the eight-foot area of Bo
11 Willis Road that was picked up by one of the
12 officers out there that night?

13 A I've seen pieces of shrapnel and plastic
14 and the bullets out of my gun.

15 Q Plastic from your gun?

16 A Yes.

17 Q Okay. How did all those get deposited in
18 that area if you got shot over here in a different
19 location?

20 A I'm going to look at the areas. I think
21 you and I are talking about two different areas.

22 Q Well, you're talking about over at the
23 cross-tie, right?

24 A The cross-tie to where the clean-out
25 drains are.

1 Q Okay. There's two, there's a clean-out
2 drain, there's a cross-tie in that drain, and then
3 there's the bushes in the little flower bed.

4 A ~~I was standing in the area of the cross-~~
5 tie and clean-out drain.

6 Q Okay. After getting shot, did you turn
7 around? Did it spin you around?

8 A It knocked me flat on my face.

9 Q Okay. Did it spin you there?

10 A Yes.

11 Q You were on your face, so you were down
12 for a second or so?

13 A Yes.

14 Q All right. Do you agree with me that if
15 Mr. Worley had intended to kill you, he would have
16 killed you right there on the spot?

17 A No, I do not agree with that.

18 Q Why couldn't he have killed you right
19 there on the spot? Why couldn't he have killed you
20 if he's got an automatic loaded rifle, he's got
21 another one, and it's an automatic?

22 A He obviously didn't know the safety was
23 out on the gun.

24 Q Well, obviously, the safety was off when
25 he shot you. He didn't have to change the safety in

1 order to get another loaded, did he?

2 A And I was face-down on the ground. He may
3 have thought I was dead. I don't know what was
4 going through his mind.

5 Q All right. Then you got up. One report
6 says you said you were crawling, and another report
7 says you were running. Which was it?

8 A My report said I was crawling?

9 Q Yes, sir. Yes, sir, the one you gave to
10 the federal investigator. Do you recall that?

11 A Maybe like crawl back on my hands and
12 knees, but actually crawling off, no.

13 Q Okay.

14 A I yelled I had been hit, because I
15 realized I had been shot.

16 Q You had been hit, okay. You yelled that
17 "I've been hit."

18 A And Deputy Moore yelled to me to come to
19 him.

20 Q Okay. And where was Deputy Moore at that
21 time?

22 A Right at the -- he was almost up under the
23 opposite side.

24 Q Okay. And in order to come towards Moore,
25 you agree you had to also come towards Mr. Worley?

1 A Yes.

2 Q So you came toward Mr. Worley again, and
3 he fired another shot, didn't he?

4 A There was a shot fired as I was running.
5 I don't know if he was shooting toward myself or one
6 of the other deputies.

7 Q You do agree you were running?

8 A Oh, I most definitely was running for my
9 life.

10 Q I understand. And the bullet, where did
11 the bullet hit, do you know?

12 A I have no idea.

13 Q It didn't hit you?

14 A No.

15 Q All right. And from where Joe was, how
16 could you see any other officers there?

17 A Deputy Moore saw him.

18 Q I understand Deputy Moore saw him. I
19 understand that's what Deputy Moore might say. But
20 did Deputy Moore have his gun on Joe?

21 A He had drawn his weapon, I do know that.

22 Q If he had his gun on Joe, wouldn't it be
23 procedure to shoot him if he shot you?

24 A Depends on if he had a fair shot. There
25 was a by-standing person. And if there were

1 bystanders in the background, he did not know what
2 was back there.

3 Q So it was okay for him to let you get
4 shot?

5 A I didn't say that. But I realize with my
6 job, that I may have to give my life to do the duty
7 of my job, and I will do it.

8 Q Okay.

9 A And other deputy says the same thing.

10 Q All right. Let me ask you this. Did you
11 have the right to go ahead and shoot Mr. Worley when
12 he didn't put his gun down?

13 A I did not see his weapon pointed in my
14 direction because the lights came on and blinded me.

15 Q Well, when you did see it, where was it?

16 A I did not see his weapon pointed toward me
17 because the lights came on and blinded me. But as
18 long as his weapon is not pointed toward myself or
19 anyone else, I could not have shot him.

20 Q Where did the lights come from?

21 A I couldn't say.

22 Q Well, I just want to make sure I
23 understand. There was one light on that was the
24 spotlight that was on the porch, right?

25 A And it came on.

1 Q Did you see any other lights on in the
2 house when you stepped out to see Mr. Worley?

3 A No, I did not.

4 Q You identified him. You said he had
5 salt-and-pepper hair.

6 A I did not see any lights on inside the
7 residence.

8 Q But even without that, you identified him
9 as being a person with salt-and-pepper hair, a
10 person who had a long gun in his hand, a gun you
11 believed to be a shotgun.

12 A Yes, I did.

13 Q That's fine. But you said you saw the
14 butt, and you saw the base of the gun.

15 A It was not like this. It was more like
16 this.

17 Q Okay. This position, did you say?

18 A Right.

19 Q All right. And you clearly say in your
20 report it was not pointed at you.

21 A No, it wasn't when I saw it.

22 Q And it was not pointed at any of the other
23 officers.

24 A Not when I saw it.

25 Q All right. Now, how many seconds between

1 the time you say you saw it and you saw this light?

2 A There's no way to answer that.

3 Q Well, in your report, you said, "As I drew
4 my gun and as I was blinded by the light, I was
5 hit."

6 A Yes.

7 Q Well, isn't it true that when you aimed
8 your gun at Mr. Worley, the flash that you saw that
9 blinded you was the muzzle flash of that .06?

10 A If that had --

11 Q There was no light there.

12 A If that had been so, I would have seen the
13 gun pointed in my direction.

14 Q Where was the light? Who cut on a light
15 all of a sudden?

16 A I don't know, because I asked the other
17 ones if there was a motion sensor there.

18 Q There wasn't.

19 A I didn't know if I walked in front of the
20 motion sensor, maybe Deputy Moore, Deputy
21 McAllister, one us walked in front of a motion
22 sensor. I did not.

23 Q What light came on, then?

24 A The light on the corner. It's kind a --
25 like a bush there.

1 Q It was already on.

2 A No, it wasn't.

3 Q Which one are you talking about now -- the
4 one facing the house around the back from the lake
5 to the house. The one that was on is the one on the
6 left. Are you saying now that the one on the right
7 came on?

8 A No, I'm saying the one that would have
9 been at the left top corner --

10 Q Yes, sir.

11 A -- was off, and then it came on.

12 Q I understand that.

13 A And that would be the only --

14 Q When you walked out there.

15 A No. I walked out because I heard a
16 sliding glass door.

17 Q Okay.

18 A And I walked backwards.

19 Q Okay.

20 A I saw him standing -- if you were facing
21 the lake, he would have been to the right side of
22 the sliding glass doors. I saw the gun. We were
23 yelling "Gun, Sheriff's Department, drop the gun."
24 I'm coming up with my gun. The light comes on and
25 blinds me -- or a light comes on and blinds me.

1 Q All right. But you don't know what light
2 blinded you?

3 A Whatever light was in that corner right
4 there. It was on his property.

5 Q It was already on, wasn't it?

6 A No.

7 Q Well, hold on. Are you trying to tell me,
8 sir, that you were able to see -- I mean, all the
9 other statements are that the light was on, and
10 that's why they came back down there to knock on the
11 door, the last time. The light had to be on.

12 A No, it didn't. It came on, and then it
13 immediately turned back off.

14 Q Okay.

15 A We go to the residence. We hear someone
16 yell from the upper level of the home, "Who is it?"
17 "Sheriff's Department, Sheriff's Office." And his
18 reply is, "I don't give a fuck."

19 Q Okay.

20 A I hear the sliding glass door open up.

21 Q Okay.

22 A I walk backwards. I see a man standing
23 there with a gun. I yelled, "Gun." Nick Moore and
24 I both are yelling, "Sheriff's Department, drop the
25 gun." A light comes on and blinds me. I get shot.

1 Q You still haven't accounted for the muzzle
2 flash. When did you see the muzzle flash?

3 A I did not see a muzzle flash.

4 Q Well, you know there was one there.

5 A I didn't see the bullet, but I know it was
6 there.

7 Q Right, that's what I'm saying. You know
8 that there was a muzzle flash.

9 A I may have -- the light was too bright and
10 blinding me, and I didn't see it. I don't remember
11 seeing the muzzle flash. I do not remember hearing
12 the shot.

13 Q All right. I'm going to let you go
14 through it. You've got a copy of your statement.

15 Gentlemen, that's Bates stamped pages
16 28 to 272.

17 Beg the Court's indulgence, Your
18 Honor.

19 THE COURT: Yes, sir.

20 Q Officer Rushton, do you recognize that
21 document?

22 A Yes, this is one that my wife typed
23 shortly after I got out of the hospital.

24 Q Okay. And I believe that's the one dated
25 11/20/09?

1 A Yes.

2 Q And it was witnessed by Mr. Collier?

3 A Yes.

4 Q Okay. I'd like to go over this with you.

5 Let's start to the point where -- about six, seven,

6 or eight lines -- "I told Deputy McAllister."

7 A Okay.

8 Q Why don't you read each of those
9 sentences, and let's talk about each one of them at
10 a time.

11 A "I told Deputy McAllister I was going to
12 speak with the neighbors to see if they were the
13 complainants."

14 Q Did you do that?

15 A Yes.

16 Q All right, go ahead.

17 A "While speaking with the neighbors, they
18 informed me that they were the ones that called and
19 made the complaints."

20 Q Okay. You confirmed that with them, that
21 they had called in the complaint.

22 A "They informed me that suspect comes up on
23 Thursdays or Fridays, and he's always coming outside
24 in the early morning hours, yelling and discharging
25 what they believe to be a firearm."

1 Q Okay. So was it a deer situation at that
2 point, or did you think --

3 A No.

4 Q So you thought he might be discharging a
5 firearm on the weekends. Okay, go ahead.

6 A "At this time, I noticed that lights came
7 on in front of the residence."

8 Q And whose residence are you speaking of
9 then?

10 A The Worleys.

11 Q And which light are you talking about?

12 A It would have been somewhere in the front
13 of the residence, facing the lake, because it's kind
14 of a weird setup, the house.

15 Q And from where you were at, at the
16 Sheffields, you could see that a light came on,
17 correct?

18 A A light.

19 Q Go ahead.

20 A Okay. "As I was walking back, the light
21 went off."

22 Q Okay.

23 A "I returned to the front right corner of
24 the house with Deputies McAllister and Moore."

25 Q Okay.

1 A "Deputy Moore rang the doorbell and I
2 announced, 'Sheriff's Department.'"

3 Q Go ahead. Is the light on at this time or
4 off?

5 A It's off.

6 Q Go ahead.

7 A "A few seconds later, I heard what sounded
8 like sliding glass doors open on the deck."

9 Q Go ahead.

10 A "As I was stepping back to see if anyone
11 was coming out of the residence, I saw a middle-aged
12 white male with salt-and-pepper hair and beard
13 standing on the balcony, holding what I thought was
14 a shotgun."

15 Q Okay.

16 A "I could clearly see the wooden stock and
17 wooden arm of a weapon. At this time, it was not
18 pointed at myself or the other deputies, but pointed
19 upward."

20 Q All right, stop right there. Did you have
21 a warrant for Mr. Worley?

22 A No.

23 Q Had a crime been committed in front of
24 you?

25 A No.

1 Q Did Mr. Worley threaten to shoot you, or
2 did he threaten to shoot any of the members of your
3 team?

4 A No.

5 Q Did he threaten to shoot anybody in the
6 house?

7 A Not that I knew of.

8 Q In some of your reports, you said you
9 aimed your gun at him because he failed to obey your
10 authority and your orders.

11 A I never said that part.

12 Q You didn't? At a bond hearing for Mr.
13 Worley on Thursday, December 3, 2009, did you recall
14 saying "As we yelled at him to drop the gun and that
15 we were from the Sheriff's Department, his total
16 disregard for our authority and safety, as well as
17 his profanity laced responses, indicated that he had
18 no intention of complying with our lawful demands in
19 any way." Is that your statement?

20 A That's not saying he's doing it directly
21 toward me. He was doing it in general toward law
22 enforcement's authority.

23 Q Let me ask you this. Do you believe as a
24 law enforcement officer you have authority to tell a
25 man on his balcony at 4:00 in the morning, who you

1 say you identified yourself to, to order that he put
2 down his gun?

3 A Four o'clock in the morning?

4 Q Yes, sir -- 4:30 in the morning.

5 A Or 4:30, more or less. He knew we were
6 law enforcement officers. We identified ourselves,
7 and he let us know he didn't care.

8 Q Suppose he didn't? Suppose he did, let's
9 ask that? Suppose he did know you were law
10 enforcement. Do you have authority to make a man,
11 his house, order him to put his gun down at 4:30 in
12 the morning, even if you are law enforcement?

13 A If he wasn't breaking the law, he wouldn't
14 have a problem with it.

15 Q Okay. So that gave you the right to pull
16 that pistol and point it at him to kill him, is that
17 correct? Is that your position under the law?

18 A If he was pointing it or has a gun in my
19 presence --

20 Q Yes, sir.

21 A -- I can pull my gun out to protect
22 myself.

23 Q I've got no problem with you pulling your
24 gun out. I've got a problem with you pointing it
25 and aiming it at him. That's the problem I've got.

1 A We already had a complaint at the
2 residence of discharging a weapon.

3 Q Okay.

4 A We had no idea if he had or had not
5 committed a crime.

6 Q Okay. Don't you think you ought to do
7 that before you threaten to kill by putting a loaded
8 Glock 40-caliber duty weapon and point it in his
9 face after telling him to drop his weapon?

10 A And he didn't drop the weapon. We didn't
11 know what he was doing.

12 Q Suppose he just decided he didn't want to
13 drop his weapon, he was in his house.

14 A Well, I'm not saying that he's --

15 Q I'm not going to stipulate that he heard
16 you. But let's suppose for a minute. I want to
17 know do you believe that you can tell a person to
18 put down their gun in their own house at 4:30 in the
19 morning.

20 If they don't drop their gun -- they're
21 not pointing it at you, they've just got it up in
22 the air like this -- have you got a right to make
23 them drop it?

24 A Anybody would try to.

25 Q You've got the right to make him drop it

1 if he didn't want to, though?

2 A I can't make him drop it.

3 Q Okay. But you're going to go ahead and
4 aim at his head and not even fire?

5 A And, yes, to protect myself.

6 Q Okay. And the entrance of that gun, the
7 bullet, is pretty clear that you had it aimed right
8 at him. You aren't going to aim it just in the air?

9 A It was in his general direction. But as I
10 stated, I don't know exactly where I had it.

11 Q Now, let me ask you this question. In
12 your lawsuit, you allege negligence?

13 A Right.

14 Q He made a mistake. You understand what
15 I'm talking about? You're suing him for negligence
16 that he made a mistake. Do you know the difference
17 between a mistake and an intentional act?

18 A It was intentional.

19 Q It was intentional, it wasn't a mistake.
20 Is that what you're telling me?

21 A We identified ourselves.

22 Q I'm asking you, was it a mistake? You
23 allege in your lawsuit -- let me let you read that
24 to me. In your lawsuit, paragraph 12 of your
25 complaint -- I'm sorry, paragraph 11. Would you

1 review that for me? Would you read to us what
2 paragraph 11 says?

3 A "That while the plaintiff, Robert E.
4 Rushton, was investigating this reported
5 disturbance, the defendant, Joe Ross Worley,
6 suddenly and without prior warning fired two shots
7 at the plaintiff, Robert E. Rushton, with a 30.06
8 rifle, with one of the shots striking him and badly
9 injuring his right hand."

10 Q Okay. Is that the way it happened?

11 A He didn't warn me he was going to shoot
12 me.

13 Q Okay. And did you warn him that you were
14 going to aim the gun at him?

15 A I did not warn him.

16 Q Did you say, "If you don't put that gun
17 down, I'm going to shoot you"?

18 A No, I did not.

19 Q So y'all didn't really have a whole lot of
20 time to be talking. Once you said "Gun," according
21 to the other officers, shot, bam.

22 A Yes.

23 Q Shot. As soon as you said "Gun," he shot
24 you?

25 A I had a fraction of a second to get my gun

1 up.

2 Q Okay. You do agree that the heading for
3 the first cause of action is "negligence as to
4 defendant Joe Ross Worley," saying that it was
5 negligence.

6 A Yes.

7 Q Which means accidentally. So you're not
8 -- you don't agree with this complaint that he was
9 reacting, that he didn't recognize you as an
10 officer, thought you were something other than
11 officer. You got shot as a result of your not
12 having proper attire on to identify yourself with?

13 A I had my badge properly displayed.

14 Q All right. And you didn't have the badge
15 like you've got it right there now, up on your
16 shirt. It was down here on a belt, is that correct?

17 A Yes. But he could see my gun and see my
18 badge.

19 Q How do you know that?

20 A I was right in front of him.

21 Q Had you begun to turn around?

22 A And I stepped toward him with hands out.

23 Q Did you turn around?

24 A I'm sorry.

25 Q Did you turn around to shoot?

- 1 A My gun?
- 2 Q Did you point? How do you shoot? Do you
- 3 shoot square, or do you shoot at angle?
- 4 A I step back with my right leg.
- 5 Q Your body too, like this?
- 6 A No, it would have been bladed.
- 7 Q Bladed, okay. If you're bladed, where is
- 8 your belt? Where is this? If you're bladed to him,
- 9 where is your badge?
- 10 A My badge would have been pointing toward
- 11 him, because I carried it the same place it is right
- 12 now.
- 13 Q Well, is that where it was on your --
- 14 A Yes, I've always carried my badge right
- 15 there.
- 16 Q Okay. Did you shoot him from this
- 17 direction, from the right, or did you shoot him from
- 18 the left?
- 19 A It would be my left that would have been
- 20 pointing toward him. I dropped my leg backwards,
- 21 and then I fired.
- 22 Q You shot this away -- to your left?
- 23 A I shot like this.
- 24 Q I notice you come up with both hands.
- 25 A Right.

1 Q Did you use both hands that night?

2 A I don't recall. I could have dropped my
3 flashlight. I could have shined my flashlight.

4 Q Well, there's a different police procedure
5 on that. Let me ask you while you're standing there
6 about that. Let's talk about that just a moment.
7 There are two ways to shoot when you've got a
8 flashlight, is that correct? There are several ways
9 it's been taught, but there's two ways you're
10 supposed to shoot with a flashlight?

11 A Yes, ever which is more comfortable.

12 Q Which is more comfortable with you? Show
13 me.

14 A I can shoot both ways.

15 Q Well, give me -- show the Court the ways
16 to shoot with a --

17 A The different ways?

18 Q Yes, the different ways.

19 A Pull your flashlight out to one side.

20 Q With the other arm?

21 A Yes.

22 Q With the other arm pointing towards the
23 subject?

24 A Yes.

25 Q Okay.

1 A Or a lot of officers prefer to shoot like
2 this with the support from their left arm.

3 Q Okay. And it's possible that you dropped
4 the flashlight?

5 A I dropped it that night, but, I mean --

6 Q It was dropped somewhere, is that right?

7 A Yes.

8 Q Do you know whether you dropped it before
9 you were shot, or do you think you dropped it after
10 you were shot?

11 A I don't know.

12 Q Okay. Now, when you talked to the --
13 let's go ahead and let's finish up your statement
14 there. We want to get back to that. Talk to me a
15 little bit about your statement there.

16 A It gives a description of Mr. Worley.

17 Q Now, yes, you got the description. Read
18 that again. What did you say you saw?

19 A "I could clearly see the wooden stock and
20 wooden arm of a weapon."

21 Q Go ahead.

22 A "At this time, it was not pointed at
23 myself or the other deputies but went upward."

24 Q Okay.

25 A "I immediately yelled "Gun," letting the

1 other deputies know."

2 Q Okay.

3 A "Deputy Moore and myself ordered the
4 suspect to put the gun down, or we would shoot."

5 Q Okay.

6 A Right.

7 Q Okay.

8 A "As we continued to yell, 'Put the gun
9 down, Sheriff's Department,' I started to draw my
10 duty weapon."

11 Q Okay.

12 A "The suspect moved, and I was blinded by
13 the floodlights on the upper deck."

14 Q Let me ask you a question. Do you know
15 now that your people sent people out there -- and
16 you were out there as I understand -- an
17 electrician, to see where he would have had to have
18 been. He'd have to go inside the house to cut the
19 light on, wouldn't he?

20 A On the -- if he turned the lights on, yes,
21 but I didn't see him turn the lights on.

22 Q How could another light have come on?

23 A Someone else could have turned it on.

24 Q Someone else could have turned it on.

25 A There was a -- his mother was there.

1 Q So now you're saying the mother turned the
2 light on?

3 A I don't know who turned the lights on.

4 Q Go ahead and read on.

5 A "As it happened, I heard a gunshot and was
6 hit in the right hand and was knocked to the
7 ground."

8 Q As what happened? You wrote that.

9 A As I got shot?

10 Q Pardon?

11 A As I got shot?

12 Q I don't know. I'm asking out --

13 A That's when I heard a gunshot. It's in
14 this here statement. I think I've already mentioned
15 that.

16 Q In that one, you're saying that you heard
17 it? Is it possible that you saw it -- saw the
18 flash?

19 A I have played this night over in my head
20 thousands of times.

21 Q Officer --

22 A I don't remember seeing the gunshot.

23 Q You don't remember seeing the gunshot?

24 A No, I didn't.

25 Q Go ahead, then.

1 A "I yelled that I had been hit. Deputy
2 Moore started yelling at me to come to him. As I
3 was getting off the ground and started running
4 toward Deputy Moore, the suspect then discharged
5 another round."

6 Q Okay.

7 A "Deputy Moore led me to the back of the
8 residence, out of the line of fire. We then heard
9 something that we thought was the suspect coming out
10 of the residence. Deputy Moore then got me to the
11 patrol car as Deputy McAllister covered us."

12 Q All right, thank you. Did you have an
13 occasion to speak to a Bureau of Alcohol, Tobacco,
14 and Firearms agent, Shawn Stallo, on June 9, 2010?

15 A I believe that was his name.

16 Q Tell me how that interview occurred.

17 A I believe -- I'm not real sure if the
18 Solicitor's Office or Investigator Collier contacted
19 me. But I spoke to the agent here at the courthouse
20 about the incident.

21 Q About the incident?

22 A Yes.

23 Q And he's a federal officer?

24 A Yes.

25 Q You know the importance of giving a true

1 and correct statement to him?

2 A Yes.

3 Q All right. And if we go back through and
4 we look at the statement that he says -- can we go
5 down to the narrative where it gets to the point
6 where it's talking about law, approaching the rear,
7 go in the residence.

8 A Okay.

9 Q Let's kind of go through that and talk
10 about the statement that you made there.

11 THE COURT: Before we get into this, let's
12 take a break, if you don't mind.

13 During the break, you cannot discuss
14 your testimony with anybody.

15 We'll be at ease for ten
16 minutes.

17 (Whereupon, court was in
18 recess, after which the following proceedings were
19 had.)

20 THE COURT: All right, are both sides
21 ready?

22 MR. GARRETT: Yes, sir.

23 THE COURT: You may continue.
24
25

1

2

3 Q Officer Rushton, we were reviewing the
4 statement made by Officer Stallo. We'll pick up
5 from there and talk about the section that goes
6 "While approaching."

7 A "While approaching the rear of the Worley
8 residence, Deputy Rushton could hear someone" --

9 THE COURT: Back up and talk into this
10 mike.

11 A "While approaching the rear of the Worley
12 residence, Deputy Rushton could hear someone walking
13 on the second-story deck above. Deputy Rushton" --

14 THE COURT: Hold on.

15 Q Let me ask you this. Did you tell Officer
16 Stallo that before you got to the back of the Worley
17 residence that you heard someone walking on the
18 second-story deck above before the door opened?

19 A I do not recall that. These are his
20 words, not mine.

21 Q I understand. But this is a statement he
22 said that in response to an interview, you
23 essentially stated the following. Is that correct?

24 A Essentially?

25 Q Yes.

1 A But not word for word.

2 Q I understand. My question is, did you
3 tell Stallo under any circumstances that Mr. Worley
4 was already out on his deck when y'all got back to
5 his house?

6 A No --

7 Q Did that happen or not?

8 A No, I did not.

9 Q All right. So if Stallo put that down
10 there, that was a mistake?

11 A Yes, it was.

12 Q So that sentence is a mistake?

13 A Yes, it is.

14 Q All right, let's go on from there.

15 A "Deputy Rushton witnessed Worley walking
16 on the second-story deck with a long gun in his
17 hand. Deputy Rushton drew his firearm and yelled at
18 Worley that he was from the Sheriff's Department."

19 Q All right, stop. Here he says -- did you
20 tell Officer Stallo that you drew your gun and then
21 yelled at Worley that you were from the Sheriff's
22 Department?

23 A I do not recall saying that.

24 Q You were at this interview?

25 A Yes, I was. But as I said, these are his

1 words, not mine.

2 Q Okay.

3 A He was not in there dictating word for
4 word what I said.

5 Q All right. And then Worley responded --
6 after you say "Rushton drew his firearm and yelled
7 at Worley that he was from the Sheriff's Department,
8 Worley responded 'I don't give a fuck.' Deputy
9 Rushton became blinded by a floodlight shining from
10 the back of Worley's residence." Is that true?

11 A No, he yelled "I don't give a fuck" prior
12 to me ever seeing him. And the floodlights would
13 have been -- like I said, when you come in off the
14 driveway, that's actually the rear of the house. So
15 the floodlights would have been by his house, toward
16 the lake.

17 Q All right. And let's look at the next
18 paragraph. Go ahead.

19 A "Deputy Rushton was trying to observe
20 Worley and was suddenly shot in the hand, causing
21 him to drop his duty weapon."

22 Q Is that true?

23 A Yes.

24 Q Okay, go ahead.

25 A "Deputy Rushton fell to the ground and

1 immediately heard a second shot but was not struck."

2 Q Go ahead.

3 A "Deputy Rushton then heard Worley yell,
4 'I'm going to get you, you son of a bitch.'"

5 Q Okay. I notice in your testimony in your
6 earlier statement, you didn't say anything about all
7 of that.

8 A About?

9 Q About this statement, "I'm going to get
10 you, you son of a bitch."

11 A I may have not said that.

12 Q Sir?

13 A I may have not said it in the statement.
14 That doesn't mean it's not true.

15 Q Did you tell Stallo that he made that
16 statement when you described these events that
17 happened, yes or no?

18 A I believe what was said was when we heard
19 him coming out of the residence, he yelled, "Where
20 you at, you son of a bitches?"

21 Q Okay, son of a bitches?

22 A Yes.

23 Q Where did you put that at? In which
24 statement did you put that? I've got all of your
25 statements. I've got your statement from the bond

1 hearing. I've got your lawsuit. I've got your
2 written statement made by your wife. I've got this
3 statement. I'm going to hand you those statements
4 that you made. Do you have any other statements?

5 A It may have been omitted from the
6 statement.

7 Q Okay. So you're wanting to add it today?

8 A I said it all along, except for it's
9 apparently not in the statement. And not
10 necessarily would it have been in a bond hearing
11 statement. My attorneys planned the lawsuit and
12 worded it for me.

13 Q Okay.

14 A And this statement is one that my wife did
15 type for me.

16 Q Is the same thing about the son of a
17 bitches in that?

18 A No, and it was omitted.

19 Q Okay.

20 A Not intentionally omitted.

21 Q Did you at any time prior to this hearing
22 today move to identify or tell the Solicitor's
23 Office or Sheriff Reid or Sperrier, the chief deputy
24 over there, "Hey, man, I left some stuff out of that
25 statement. You know, it was just five days after I

1 got shot. I need to go ahead and finish it"?

2 A I have the one that's -- the Solicitor's
3 Office has a statement, but I did not realize it was
4 not in this statement.

5 Q All right. So there are some statements
6 out there that you informed the Solicitor's Office
7 about that have not been provided to the defense.
8 Is that what you're telling us?

9 A I have no idea what you were or were not
10 provided.

11 Q Well, I've given you the three -- the four
12 items that I have that are statements that were made
13 by you, in your name.

14 A And apparently at some point you were
15 informed --

16 Q What are you talking about?

17 A It says that.

18 Q Says what?

19 A Right here. So at some point, you did
20 know about it.

21 Q That's at a different time.

22 A But you're saying you weren't informed,
23 but you have this.

24 Q It doesn't say "son of a bitches." It
25 says "son of a bitch."

1 A As I just said, this is his words, not
2 mine.

3 Q Okay. So you told Officer Stallo that it
4 was "son of a bitches," plural, meaning that he was
5 going to get more than one person. Is that what
6 you're telling me?

7 A It could have been "son of a bitch." I
8 mean, I had just had my hand blown off.

9 Q Okay.

10 A I wasn't paying a whole lot of attention
11 to his words.

12 Q I understand. But you understand words
13 are important if you're under oath and you're making
14 bogus statements.

15 A It could have "bitch," or it could have
16 been "bitches."

17 Q All right.

18 A I'm really not sure.

19 Q All right.

20 MR. GARRETT: Can I mark this up as
21 evidence, his statements, for purposes of this --
22 I'd like to put them all in as one exhibit.

23 THE COURT: Show it to the Solicitor.

24 MR. MYERS: No objection.

25 THE COURT: Mark that into evidence,

1 please.

2 COURT REPORTER: Defendant's Three A.

3 (Defendant's Exhibit Three
4 A, Statements of R. E. Rushton; complaint letter
5 3/1/11 to Clerk of Court; summons letter 6/10/10 to
6 Clerk of Court; answer filed 6/10/10, were marked
7 for identification.)

8 Q Officer Rushton, have you had an
9 opportunity to review the statements of the other
10 officers who were with you that evening?

11 A I have briefly looked at them.

12 Q When did you do that?

13 A It's been a while that I actually sat down
14 and read them.

15 Q Do you agree that there's a lot of
16 inconsistencies between what you said in your
17 statement and what the other officers who were there
18 say in their statement about what happened?

19 A Yes, I'll agree that some things are not
20 exactly the same.

21 Q Okay.

22 A But a different person's point of view,
23 you're not going to get the same results.

24 Q If Nick Moore in his statement to Stallo
25 basically says that when you pulled your gun, then

1 immediately there was a shot, and you fell - he says
2 you say you pulled your gun, said "Sheriff's
3 Office," and you fell. And there's not "Put the gun
4 down," nothing about a gun, nothing about "Put the
5 gun down." Do you have any idea why Nick Moore
6 would say something different about what happened
7 out there that night?

8 A He could have been focusing his attention
9 on something else. It's speculation. I can't --

10 Q Well, I mean, he's y'all's partner. He's
11 your partner with you that night, right?

12 A When I yelled "Gun," he could have been
13 focusing his attention on Mr. Worley at the time.

14 Q And if he says immediately a shot rang
15 out?

16 A You'd have to ask him.

17 Q I want to talk to you just a little about
18 procedures, if I can. Are all gun calls and shot
19 fired calls -- are they always regarded as high-risk
20 calls by police officers in your training?

21 A They should be, but they're not.

22 Q Was this?

23 A Initially, no.

24 Q Were you trained as an officer to avoid
25 placing yourself in unnecessary danger on such

1 calls?

2 A You try not to place yourself in
3 unnecessary danger, but at times, you can't help it.

4 Q You try to make sure everyone at the
5 location knew that you were a police officer?

6 A There's no way that anyone there didn't
7 hear us, we yelled so loud.

8 Q All right. Were you trained that unless
9 shots were being fired first, seek information from
10 the caller if at all possible?

11 A I did.

12 Q What information did you gather from the
13 Shepherds?

14 A Shepherds?

15 Q I'm sorry, the Sheffields.

16 A With briefly speaking with them, that the
17 Worleys, Joe in particular, would come up on
18 Thursdays or Fridays. Apparently, he had done this
19 quite a few times, gone out in the early morning
20 hours, loud profanity, discharging the weapons.
21 They had spoke with Ms. Worley's mother in attempts
22 to get him to stop doing it, and they failed.

23 Q Okay. To your knowledge, did they ever
24 speak with Joe directly about this?

25 A I have no idea.

1 Q And then did they tell you that on
2 occasion back in September, they had notified law
3 enforcement about the problem, about Mr. Worley?

4 A They did mention something about they had
5 talked to a deputy before.

6 Q Okay. And do you have knowledge or did
7 you look into it to see whether or not the deputy
8 had actually talked with Mr. Worley?

9 A I don't believe he did.

10 Q Did you try to ask him, "Well, is the man
11 mentally unstable?" or some problem with mental or
12 drunk, just disorderly, or any of that stuff?

13 A No. Once we saw the lights come on at the
14 front of the residence --

15 Q Okay.

16 A -- they were asked to go back inside their
17 residence.

18 Q All right. Were you trying to maintain
19 cover and not to expose yourself while involved with
20 such calls approaching a house on a shots fired
21 situation?

22 A There is a difference between concealment
23 and cover.

24 Q Okay.

25 A And depending on the situation, different

1 situations dictate your actions.

2 Q Have you been trained both to conceal
3 yourself and cover yourself under both scenarios?

4 A If possible.

5 Q If possible.

6 A At that particular time, it wasn't
7 possible.

8 Q Why was it not possible?

9 A There was nothing there to hide behind.

10 Q Okay. Why didn't you ask dispatch to
11 locate the Worleys by phone, call them, and ask Mr.
12 Worley to step out and say that the deputies on
13 scene would like to talk with him? Wouldn't that
14 have been a lot safer?

15 A Also, if he had intentions of harming
16 someone, we would make ourselves a target.

17 Q Do what?

18 A We had no idea, once we found out from the
19 Sheffields that he had discharged weapons and things
20 in the early morning hours or at night. I'm not
21 going to call somebody and say, "Yes, I'm outside.
22 Come shoot me."

23 Q Did you have any reason to believe that
24 Joe Worley had anything police officers to shoot a
25 police officer?

1 A I don't know.

2 Q I mean, do you have any evidence that he's
3 crazy or he's involved in some kind of militia, or
4 some kind of sovereignty group, or one of these
5 gangs or something that has a problem with law
6 enforcement?

7 A I have no proof that he doesn't, either.

8 Q Okay. So because you don't have any
9 proof, you assume that he is. Is that what you're
10 telling us?

11 A Not all the way.

12 Q So if there's anybody who doesn't do what
13 you say -- "Drop that gun" -- you have a right to
14 shoot them because you think they might be an
15 anti-police person?

16 A Not necessarily.

17 Q Well, what is necessarily? Necessarily
18 gives the right to shoot somebody on their own land.

19 A If he points the gun at me --

20 Q Okay.

21 A -- yes, I would have shot him.

22 Q He didn't do that, did he?

23 A Apparently, he did. I was shot.

24 Q Only after what?

25 A After I was blinded by the lights from his

1 balcony.

2 Q After what? What else transpired?

3 A He yelled out he didn't give a fuck about
4 being the police.

5 Q What else transpired? You don't think
6 that gun pointed at him had anything to do with it?

7 A Honestly, I think he was going to shoot me
8 either way.

9 Q Well, where do you get that from?

10 A When we yelled "Sheriff's Department," he
11 yelled "I don't give a fuck."

12 Q All right. So then why in the world did
13 you go out there with somebody if you thought
14 somebody was going to shoot you anyway?

15 A I had no idea that he was going to yell "I
16 don't give a fuck" until I was there.

17 Q Well, you hadn't been exposed to him until
18 after he said "I don't give a fuck," right?

19 A Right that second or a few seconds, two or
20 three seconds.

21 Q All of this went done in about two
22 seconds, didn't it?

23 A It was pretty fast.

24 Q It was real fast, wasn't it? And you
25 yelled "Gun," and you pointed your gun at him. That

1 flash you saw was that .06 shoot?

2 A No.

3 Q Quickly. It wasn't any of this "Let's
4 discuss it," like there should have been. It was
5 just pulling the gun on him and pointing it at him,
6 and you got shot.

7 Q Like I told you, the floodlights blinded
8 me.

9 Q All right. So you didn't answer my
10 question about why didn't you just call down there
11 and talk with Ms. Worley or Joe Worley and check on
12 it and just say, "Look, the neighbors are
13 complaining about you shooting down there.
14 Probably, just a deer. Probably somebody down there
15 shooting. Look, you're waking up your neighbors.
16 Don't do that, Joe. Cut that stuff out. Don't be
17 doing that anymore."

18 A I have never done that on a shots fired
19 call, and I never would.

20 Q All right. Then, as an alternative,
21 couldn't you have put your patrol car well back from
22 the house, turned on your emergency lights,
23 spotlight, high beams, and asked Mr. Worley to step
24 out where you could see him? In other words, get in
25 your patrol car. You said you had this little mike

1 on?

2 A Yes.

3 Q Did you have one in your car?

4 A Yes.

5 Q Why couldn't you have pulled the vehicle
6 on down around there, behind the vehicle, behind the
7 block of the vehicle, got on the mike and said, "Mr.
8 Worley" or "Joe Worley" or "Margaret Worley," "We're
9 the police. We're here. We need both of you to
10 come out. Just come out. I've got to talk to you"?

11 A That's one scenario.

12 Q You could have done that, couldn't you?

13 A That's one scenario, yes.

14 Q You could have done that, couldn't you?

15 A Yes.

16 Q You could have called them on the phone?

17 A Could have called the SWAT teams, too.

18 Q You could have.

19 A But that wasn't necessary, either.

20 Q But you didn't. As soon as he said "I
21 don't give a fuck," if he really said that -- if he
22 really said that -- then are you going to walk
23 yourself into harm's way -- if somebody just said
24 that?

25 A Yes, I did.

1 Q All right. And that's part of your
2 training?

3 A I don't recall ever being told to do that,
4 but I did do it.

5 Q Okay. Are you familiar with the terms
6 cover and contact?

7 A Cover, contact, concealment -- yes, I'm
8 very familiar with them.

9 Q Aren't you trained to keep cover behind
10 the engine block of the patrol car.

11 A There's no way possible to get in my
12 patrol car in front of that residence.

13 Q Well, once you heard somebody that sounded
14 like you say, say "What you want?" and you say,
15 "Police." And he says, "I don't give an 'f,'" you
16 know, you're trying to say on one hand it doesn't
17 sound like a bad situation. Why would you just
18 dally outside there and expose yourself to that? I
19 don't understand.

20 A Do you know how many times I've been
21 cussed out by suspects?

22 Q Okay. And so this homeowner was a suspect
23 that night?

24 A There were shots fired. The neighbors had
25 concerns about safety.

1 Q Did you talk --

2 A I have no idea why he shot. It could have
3 very well have been at a fox.

4 Q Okay.

5 A I do not know.

6 Q I know, I know. And I wish somehow I
7 could fix it for all of us. Let me ask you about
8 Ms. Sheffield. Let me ask you about her. Were
9 there lights on, or did they come on when you and
10 the other officers drove up there?

11 A I don't know. When I got out of the car
12 and started walking toward the Worleys' residence, I
13 looked over. I saw lights, what I believed to be a
14 kitchen, and I saw movement.

15 Q All right. Weren't you trained to always
16 try to get the suspect to come to you rather than
17 you going to him, and isn't that the standard police
18 procedure to never put yourself in an exposed
19 position on a shots fired call?

20 A No, that's not true.

21 Q That's not true?

22 A No.

23 Q Well, how would you have done it
24 differently? How were you trained to do it?

25 A I have -- like I said, I've played this

1 over in my head thousands of times. What we did
2 that night, we did the correct way. I wouldn't
3 change a thing.

4 Q Okay.

5 A I got shot. That's just way it is.

6 Q Okay. You wouldn't do anything different?

7 A I can't help I got shot. We did what we
8 needed to do that night.

9 Q Now you've got a uniform that you didn't
10 have that night?

11 A Your uniform doesn't give you your
12 authority. Your badge does, which I had properly
13 displayed.

14 Q Okay. Do you know that active shooter --
15 is or isn't it true that Mr. Worley wasn't an active
16 shooter? Was he an active shooter?

17 A He fired some shots prior to us getting
18 there.

19 Q Do you know what time?

20 A No, I do not.

21 Q Okay. So obviously, if you took all that
22 time to ring the doorbell, he wasn't an active
23 shooter, was he?

24 A He could have been preparing.

25 Q Well, what are you trained -- that

1 somebody that's got all the lights out, that had
2 left the scene or y'all were almost leaving the
3 scene until the light came on, that that person must
4 be inside planning to shoot a police officer?

5 A Jus thought he went back to bed or
6 something.

7 Q Pardon me?

8 A Kind of thought he probably went back to
9 bed.

10 Q Okay. I mean, in theory, you could have
11 just waited till the next morning and went down
12 there and saw him after it turned the light of day,
13 and knocked on the door and said, "Joe, what you
14 doing," right?

15 A Yes. But the Sheffields I'm sure would
16 have complained to the sheriff that we didn't
17 respond to their complaints.

18 Q Well, you did a good job --

19 MR. MYERS: Your Honor, I have not
20 objected but one time I believe on this witness.
21 But I think we've gone far afield about what the
22 statute requires. What the officers could or could
23 not have done is just not relevant.

24 MR. GARRETT: Your Honor, I'll show that
25 it is very relevant, if I may.

1 MR. MYERS: It's not relevant to the
2 statute.

3 MR. GARRETT: May I explain to the Court
4 how it is?

5 THE COURT: Yes, sir.

6 MR. GARRETT: Your Honor, under our
7 statute, it clearly provides that the officer has to
8 announce himself according to applicable law. Under
9 applicable law, if there's no practices and
10 procedures for the McCormick County Sheriff's
11 Department, those applicable law was to the general
12 law and to what he's trained at the Academy.

13 It's clear the procedure used this
14 night in question was not proper procedure. And our
15 next witness will demonstrate that. We believe that
16 the applicable law section requires that police
17 officers follow applicable law in order for them to
18 get the exemption.

19 Our legislature is smart. Our
20 legislature could have said very easily all a police
21 officer has got to do is say "Police officer,"
22 period, and that would be the end of it. Instead,
23 our legislature said, "No, the officer has to give
24 that information that he's a police officer under
25 applicable law."

1 So we believe that based on other
2 jurisdictions -- Colorado, Georgia, Florida -- that
3 that other law means that they have to follow proper
4 procedure when they announce themselves.

5 MR. MYERS: I think -- I'm sorry.

6 THE COURT: Go ahead.

7 MR. MYERS: I think the applicable law is
8 knock and announce. And knocking and announce, this
9 officer said was done. And ringing and announcing,
10 which is analogous with knocking.

11 THE COURT: Since this is such an
12 unsettled situation in the law, I'm going to allow
13 you to ask questions. I've been struggling for the
14 last 30 minutes with a lot of the questions,
15 wondering what they had to do with anything that's
16 within my realm of inquiry.

17 MR. GARRETT: I'll connect it up, Judge,
18 very shortly when I put up my expert.

19 THE COURT: No, you're not going to
20 connect up the things I've been thinking about,
21 because you've been asking him questions like "Why
22 would so and so put down such and such?" You've
23 been asking him why other people did things.

24 I don't -- it sounds like a
25 deposition in large part, Mr. Garrett. But I'm

1 going to let you go ahead. Go ahead..

2 MR. GARRETT: Yes, sir.

3 EXAMINATION CONTINUED

4 BY MR. GARRETT:

5 Q Do you agree that an officer should make
6 every effort to make sure that the homeowner knows
7 that the officer is coming on their property?

8 A In certain circumstances.

9 Q I'm talking about this circumstance.

10 A I didn't want to be a target
11 unnecessarily. I never did. But how else could I
12 have done this other than -- I talked to the
13 Sheffields. Deputy Moore went directly to the
14 residence and started knocking and ringing the
15 doorbell. That was trying to make contact with the
16 residents.

17 Q So do you agree or not that you have to
18 make every effort to make sure that the property
19 owner on this property that you're on knows that
20 you're there?

21 A Which we were trying to do.

22 Q Okay. And is it especially important late
23 at night when people are asleep, weapons may be
24 present, especially in rural areas.

25 A Which we were trying to make contact.

1 Q No, I'm talking about the deer situation.

2 A Right.

3 Q And do you have any idea why this man
4 would have shot a police officer that night?

5 A Some people don't like police.

6 Q Okay. So you think that's why he shot
7 you?

8 A No, I have no idea why he shot me.

9 Q All right. Are you familiar with the
10 terms fatal funnel, killing zone?

11 A Yes.

12 Q Do you know what they mean?

13 A Yes.

14 Q Okay. How about tombstone courage?

15 A Yes.

16 Q Are you familiar with those terms?

17 A Yes.

18 Q What do they mean?

19 A Fatal funnel?

20 Q Yes, sir.

21 A It's when you're pretty much in a funnel.
22 Pretty much, there's no way of surviving. Tombstone
23 courage, there's only heroes and dead heroes.

24 Q Okay, killing zone?

25 A Yes.

1 Q What about rushing a bad call. Do you
2 know what that is when you rush a bad call?

3 A Where I took my time when I went over to
4 the Sheffields to gather intel before going to the
5 residence?

6 Q No, I'm talking about running out there
7 after the first time he said "I don't give a fuck"
8 or whatever.

9 A I wasn't rushing that night.

10 Q Okay. At the time you were shot, isn't
11 it true that you had been walking around a darkened
12 house late at night, exposed with no cover, on a gun
13 case?

14 A The cover was at the side of the house.

15 Q Okay.

16 A And then I had my flashlight.

17 Q And you left the cover?

18 A To go out to the scene.

19 Q Isn't that a dangerous, unnecessary thing
20 to do, reckless?

21 A It depends on whose perspective you look
22 at it.

23 Q I'm looking at yours.

24 A He could have shot through the
25 floorboards, too.

1 Q Sir?

2 A He could have shot straight through the
3 floor and hit us too, because we were directly under
4 him.

5 Q I understand. But he didn't do that, did
6 he?

7 A He could have.

8 Q I understand he could have, but he didn't,
9 did he? And had you not exposed yourself, he
10 wouldn't have gotten a shot on you?

11 A I don't know that.

12 THE COURT: All right. Explain to me how
13 that has anything to do with what I'm trying to
14 decide.

15 MR. GARRETT: All right, Your Honor, I
16 will. His procedure, Your Honor, as to him stepping
17 out recklessly is not proper police procedure. It's
18 our position that when he announced and he committed
19 to shoot my client or aim his gun at my client, my
20 client had every right to self-defense.

21 If you will look at the Castle
22 doctrine, our legislature has allowed under Castle
23 doctrine to incorporate any other defenses which the
24 defense may use, including self-defense, defense
25 habitation, and any other defense, Your Honor.

1 And this section is dealing with the
2 recklessness of him exposing himself to a situation
3 that he didn't need to, improper police procedure.

4 THE COURT: Go ahead.

5 Q You would acknowledge that you were
6 wearing a low visibility uniform, if at all?

7 A Those khaki pants were very visible.

8 Q Have you -- what happened to the pants and
9 the shirt that you had?

10 A I believe EMS cut my shirt off, and when I
11 was in the hospital, the nurses or who cut the pants
12 off me. I have no idea where they ended up.

13 Q This light that you were using, is it
14 standard issue?

15 A No, it is not.

16 Q All right. Who bought that light?

17 A The light was given to myself and a couple
18 of other international police advisors.

19 Q All right. And that's the one that --

20 A Yes.

21 Q -- was left at the house, was yours?

22 A It was issued by the U.S. Department of
23 State, international narcotics and law enforcement.

24 Q All right. And it's not one of those
25 larger mag lights?

1 A No, it was not.

2 MR. GARRETT: Beg the Court's indulgence.

3 THE COURT: All right.

4 Q One other thing. Have you ever had a
5 certificate of reinstatement signed by a Circuit
6 Court Judge prior to your going to work that night?

7 A Not that I'm aware of.

8 Q Sir?

9 A Not that I am aware of.

10 Q You're sure you didn't take an oath of
11 office, and you're sure you didn't sign one of those
12 or have a Judge sign one of those certificates?

13 A Me personally have a Judge sign it? No, I
14 did not.

15 Q You've never seen one?

16 A No.

17 MR. GARRETT: Beg the Court's indulgence.

18 Q I believe that's a certificate of
19 appointment, I believe is the proper word --
20 certificate of appointment?

21 A I did not personally have anyone sign it.

22 Q Okay.

23 THE COURT: Questions for the witness?

24 MR. MYERS: Yes, sir.

25 CROSS-EXAMINATION

1 BY MR. MYERS:

2 Q Bobby, y'all got the call in the early
3 morning hours, after 3:00 a.m.?

4 A Yes.

5 Q Somebody's shooting in our neighborhood?

6 A Yes.

7 Q Firing a gun?

8 A Yes.

9 Q Between 3:30 and 4:00 in the morning?

10 A Yes.

11 Q You get out there at four or a little
12 after, is that right?

13 A Yes, sir.

14 Q You were out there with two other
15 officers?

16 A Yes, sir.

17 Q One officer, Nick Moore, rings the
18 doorbell, knocks on the door, and says "Sheriff's
19 Department," "Sheriff's Office," "Sheriff's
20 Department"?

21 A Yes, sir, he went to the door.

22 Q You ascertained who the complainants are
23 and went over to talk with them next door?

24 A Yes, sir.

25 Q Then y'all come back. I think you said

1 the light came on and off when y'all were fixing to
2 leave?

3 A Yes.

4 Q You went back to the front door?

5 A Deputy Moore actually was walking away
6 from the door, coming toward Deputy McAllister and
7 myself when the lights came on and then immediately
8 went back off.

9 Q Again rang the doorbell, knocked, and said
10 "Sheriff's Department" or "Sheriff's Office," is
11 that right?

12 A Yes, sir, myself and Deputy Moore and
13 McAllister went back to the residence. I know that
14 I was announcing "Sheriff's Department" and Deputy
15 Moore was announcing "Sheriff's Office." I did not
16 hear what Deputy McAllister was saying.

17 Q Okay. And the defendant comes out on the
18 front porch, and y'all yell "Sheriff's Department"
19 again. He replies, "I don't give a blank."

20 A I don't know if he was on the front porch
21 or just had the door cracked, but he did yell that.
22 Yes, sir.

23 Q At any time, did you or any of the
24 deputies try to forcefully enter that residence?

25 A No, sir.

1 Q Did you forcefully go into the residence?

2 A No, sir.

3 Q At any time, did y'all try to forcibly
4 enter or enter the residence?

5 A No, sir.

6 Q I'm want to show you what's -- what is
7 that?

8 A My oath of county and state officers.

9 THE COURT: I didn't hear what he said,
10 I'm sorry.

11 A It's my oath for county and state
12 officers.

13 Q And you signed this?

14 A Yes, sir, obviously I did, because this is
15 my handwriting or my signature.

16 MR. MYERS: We offer this into evidence,
17 Your Honor.

18 THE COURT: Any objection?

19 MR. GARRETT: I'd like to see it. I don't
20 know what date it is. Your Honor, I'm going to
21 object to this because it does comply with the
22 statute.

23 I'd ask the Court to compare the
24 statute with the language on the affirmation vis-à-
25 vis the bond and oath that is required by Section

1 23-13-20 and would tell the Court that the document
2 presented is just not in compliance.

3 THE COURT: It seems to me that goes to
4 the weight of the issue, not the admissibility of
5 the document.

6 MR. GARRETT: Yes, sir.

7 THE COURT: It's overruled. Mark this in.
8 It's the one you already marked before.

9 COURT REPORTER: State's One A, Your
10 Honor, in evidence.

11 THE COURT: All right.

12 (State's Exhibit Number One
13 A, Oath for county officers, was received in
14 evidence.)

15 Q State's One A, what's the name on it?

16 A Robert Edward Rushton.

17 Q What's your name?

18 A Robert Edward Rushton.

19 Q Appointed to what office?

20 A Deputy sheriff, McCormick County.

21 Q What address?

22 A It's Post Office Box 2036, McCormick,
23 South Carolina.

24 Q Whose address is that?

25 A That is the post office box for McCormick

1 Sheriff's Department.

2 Q Term to expire?

3 A Pleasure of the sheriff.

4 COURT REPORTER: Do what?

5 MR. RUSHTON: Pleasure of the sheriff.

6 Q This is the oath for county and state
7 officers from the Secretary of State's Office. It
8 says, "State of South Carolina, County of McCormick,
9 first, I do solemnly swear or affirm that I am duly
10 qualified according to the Constitution of this
11 state, to exercise the duties of the office to which
12 I have been elected or appointed; that I will, to
13 the best of my ability, discharge the duties hereof
14 to preserve, protect, and defend the Constitution of
15 this state and of the United States, so help me,
16 God." It is sworn to, subscribed to, on November 2,
17 2009. Whose signature is that on the bottom of
18 that?

19 A It would be my signature.

20 Q And who was your notary?

21 A At the time, it would have been the Clerk
22 of Court, Catherine Butler.

23 Q And she was the McCormick County --

24 A Clerk of Court.

25 Q Does that mean you took the oath of office

1 when you came back from Iraq?

2 A I must have. I just did not recall doing
3 it.

4 Q Thank you.

5 MR. MYERS: That's all I have.

6 THE COURT: Redirect?

7 REDIRECT EXAMINATION

8 BY MR. GARRETT:

9 Q You do agree that either you, Moore, or
10 Melissa were under the roof area of the house?

11 A Deputy Moore and I were. Melissa, Deputy
12 McAllister, was off to the side.

13 Q And so y'all were under an actual roof
14 where a door was as well as under an area where the
15 only entrance next to that house was while ringing
16 the doorbell --

17 A I believe it was --

18 Q -- and knocking?

19 A -- it was the door and the garage door,
20 the only two.

21 Q But under the roof?

22 A Balcony -- under the balcony. I guess the
23 roof does protrude as far as the balcony does.

24 Q Do you agree that y'all were in a place
25 under the eave or under the roof on the night in

1 question, you and Officer Moore?

2 A Yes, we were standing on the front porch.

3 THE COURT: Further questioning of the
4 witness?

5 MR. MYERS: No, sir.

6 THE COURT: Thank you, sir. You may step
7 down.

8 MR. GARRETT: Nothing further.

9 THE COURT: Call your next witness,
10 please.

11 MR. GARRETT: We call Mr. Kirkham.

12 THE COURT: Come around here, please.

13 (Whereupon, the witness was
14 sworn.)

15 CLERK OF COURT: Thank you.

16 THE COURT: Have a seat and tell us your
17 name, please.

18 DR. KIRKHAM: Yes, Your Honor. My name is
19 George Kirkham.

20 THE COURT: Do you need him to spell that?

21 COURT REPORTER: Your last name, please.

22 DR. KIRKHAM: K-I-R-K-H-A-M.

23 COURT REPORTER: Thank you, sir.

24 MR. GARRETT: May it please the Court?

25 THE COURT: Yes, sir.

1 GEORGE KIRKHAM, having first been
2 duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. GARRETT:

5 Q Dr. Kirkham, would you tell us a bit about
6 you and your background?

7 A Well, basically, I'm a criminologist. I
8 am professor emeritus at the College of Criminology
9 and Criminal Justice at Florida State University and
10 a criminal justice consultant. I can tell you about
11 my education and background, if you'd like.

12 Q Please do.

13 A I hold a bachelor's and master's degree in
14 the field of criminology from California State
15 University at San Jose, a doctorate in criminology
16 from the University of California, Berkeley. I've
17 worked over the years in most parts of the criminal
18 justice system.

19 I've been a probation counselor. I have
20 worked at a state prison, Salt Lake State Prison, as
21 a prison counselor. And I have also been a law
22 enforcement officer with four different agencies as
23 part of their individual research.

24 Q You say you've been a police officer
25 yourself?

1 A Police officer, deputy sheriff, and
2 undercover agent as part of a research project for
3 14 years, along with my university career.

4 Q All right. And have you ever testified in
5 a court of law before?

6 A Yes.

7 Q And how many times would you say you've
8 testified?

9 A I would say I've been involved in some --
10 you're talking about police related cases?

11 Q Yes, sir.

12 A Some thousand police related cases
13 throughout the course of the last 35 years, cases
14 that involved police procedure and standards, which
15 is my field.

16 Q Have you given opinions for both the State
17 and the defense?

18 A Yes, I've given opinions before for
19 plaintiff and defense in civil actions and
20 prosecution and defense in criminal cases.

21 Q Has courts approved you in order to
22 testify as an expert?

23 A Yes. I've been involved in cases very
24 recently and for a number of years.

25 Q Are you a published author, as well?

25 I was able to learn many more things and

1 have spent my entire professional career studying
2 police procedure and standards, trying to make
3 contributions to make the world safer and better for
4 officers and citizens.

5 MR. GARRETT: Your Honor, I'd move at this
6 time to qualify George Kirkham as an expert in the
7 area of criminology.

8 THE COURT: Any voir dire?

9 MR. MYERS: No objection.

10 THE COURT: He is so recognized in that
11 field.

12 MR. GARRETT: Thank you, Your Honor.

13 Q Doctor, have you had an opportunity to
14 review this case file?

15 A Yes, I have.

16 Q All the documents that have been provided
17 to the defense from the Solicitor's Office?

18 A Yes, a very extensive case file.

19 Q All right. And have you had an
20 opportunity to review and synthesize that
21 information?

22 A Yes.

23 Q Have you had an opportunity to go out to
24 the site to see it?

25 A Yes, at nighttime, a very dark night, yes.

1 Q Have you had an opportunity to review the
2 documents of statements, the crime scene
3 photographs, the evidence?

4 A Yes, all of the statements, the
5 photographs, all the evidence material, yes.

6 Q All right. Now, do you have an opinion
7 based upon your review of all those documents as to
8 whether or not the McCormick County Sheriff's
9 Department, and specifically Officer Rushton, on the
10 night question followed proper police procedure as a
11 matter of the law in the sense that we're talking
12 about --

13 MR. MYERS: Your Honor, I don't know what
14 that means, as a matter of law. We're talking about
15 policy and procedures. We're not talking about a
16 matter of law. I'd ask that he be more specific.

17 MR. GARRETT: Your Honor --

18 THE COURT: Yes, sir.

19 MR. GARRETT: -- if I may?

20 THE COURT: Yes, sir.

21 Q You read in the paperwork that McCormick
22 County provided us with a statement that they had no
23 policies and procedures in effect for the officer,
24 for the uniform, for the car, for anything. They
25 have no policies and procedures for McCormick County

1 Sheriff's Department?

2 A Yes, I did.

3 Q All right. And there is no -- you tell me
4 as an expert, if there's no policies and procedures
5 that are in written form for a county sheriff's
6 department, what do we default to, to find out where
7 their true policy and procedures are?

8 A Well, it's important to have policies and
9 procedures in written form so that everyone
10 understands what they're all doing. And whether the
11 department is small -- the average American police
12 force has about ten officers -- or whether it's like
13 LAPD or NYPD, there are some things that are not
14 dealt with in the policies that are dealt with in
15 training.

16 For example, I've trained at the South
17 Carolina Law Enforcement Academy in the past. And
18 those things, even in the absence of written policy,
19 are very well covered in basic recruit training.
20 These are very fundamental points that they follow,
21 which in this case are the actions of the officer,
22 particularly Deputy Rushton.

23 Q If there's no policy or procedure in
24 effect then in McCormick County, where would we look
25 to -- if we're trying to determine whether or not

1 someone acted in accordance with policies and
2 procedures of South Carolina, where would we look?

3 A We could go to a number of places.
4 Probably the most immediate place would be the South
5 Carolina Law Enforcement Training Academy, which has
6 an excellent curriculum and which incorporates some
7 of the -- and has for some years -- some of the
8 state-of-the-art training that is received all over
9 the country, for example, the so-called street
10 survival seminar.

11 It covers -- in fact, officers and
12 deputies in South Carolina through the training
13 academy are given I think 14 or 16 hours of credit
14 for completing street survival training. So there
15 are a lot of sources, including the International
16 Association of Chiefs of Police, the FBI law
17 enforcement training bulletins.

18 There are many, but these are all -- what
19 this case is all about, with all due respect, is
20 following fundamentals, the same way a pilot landing
21 a plane follows basic standards in his profession or
22 a surgeon getting arterial bleeding does certain
23 things.

24 We're talking about basic standards, and
25 they really go more to his training and the

1 absorption of that material than to written
2 policies.

3 Q In addition to having read all of the
4 statements that have been provided by the State --
5 and you just heard Officer Rushton's testimony
6 concerning the foundation upon which decisions were
7 made that evening?

8 A Right.

9 Q I'd like for you to begin at the beginning
10 and tell the Court, if you would, where you see
11 areas, if you see any, of fail to procedures.

12 A And I'll try to do that --

13 Q -- to practice procedures.

14 A I think what is important to do -- and I
15 didn't understand this until I put on a uniform --
16 is to give the officer the benefit of the doubt.

17 MR. MYERS: I hate to interrupt, but I
18 really can't understand you.

19 DR. KIRKHAM: I'm sorry.

20 A You tell me if my voice drops. I had a
21 problem with it earlier. Looking at the whole
22 scenario from square one, I mentioned that it's
23 important -- it's difficult for people who have not
24 walked in the shoes of a police officer to
25 understand what they do.

1 And so when I look at something like this,
2 I'm trying to be objective. I'm trying to give the
3 police the benefit of the doubt. There are some
4 things we don't know. There are things that happen
5 on calls that are totally different than what you'd
6 expect. So with that caveat, I'll try to do that.

7 Q Okay. And as we talked under the Castle
8 doctrine, the first thing an officer is responsible
9 to do or can do to be exempt from the protection of
10 the Castle doctrine is the officer has to identify
11 himself under applicable law.

12 A Now, again, I'm not a lawyer. I'm not a
13 member of the bar anywhere. So I'm speaking to you
14 as a specialist in police procedure in terms of what
15 an officer has to do. But if you wanted me to go
16 back, the best way to approach this is to start with
17 the call and what you do on a call like that, if I
18 may.

19 Q Okay. Why don't you pull that microphone
20 up? We're all having difficulty hearing you.

21 A Okay. The first point is there are calls,
22 and there are calls. The word "gun" defines this
23 type of call. There were shots fired.

24 I've been on numbers of those kinds of
25 calls. There are calls that come to us, we're just

1 in the area floating around. There are rave calls.
2 They will usually go out with a warning or
3 something, some significant notation that they're a
4 serious call.

5 You don't know what you're getting. So
6 the first consideration is, is it an active shooter?
7 And by that we mean are shots being fired now, in
8 which case you would have to do things you would not
9 like to do.

10 You may have to expose yourself. You may
11 take certain risks and do things that you couldn't
12 do otherwise in a different situation.

13 But as this was not -- this didn't go out
14 as an active shooter. It just went out as a report
15 of a lot of disturbance, shots fired. And it
16 remains -- and I'd like to emphasize that I've lived
17 in rural areas myself, as well as metro areas.

18 It doesn't matter where the call goes out
19 in this day and time. It's always a serious
20 situation. So what do you do first? You get all
21 the information from dispatch you can while you're
22 going, and more is better than less when it comes to
23 backup -- two cars, three cars is fine. If there's
24 a supervisor on the road, they would probably
25 monitor it, as well.

1 The first thing you do is you contact what
2 we call the R people. You go out to the location of
3 the R people, the complaining party. And no one --
4 in a situation like this, no one -- remember, we're
5 dealing with night. It's night. We know -- this is
6 very important because I've seen it.

7 We have many cases over the years where,
8 sadly, law-abiding citizens were shot by officers,
9 officers were shot by law-abiding citizens, and,
10 saddest of all, friendly fire where officers shot
11 one another because they couldn't see, they didn't
12 know what was going on.

13 So the first thing you have to do is to go
14 from party to party and start -- always start asking
15 the question if backup potential had been observed
16 at a safe distance and not with approach. That
17 violates fundamental officer safety principles the
18 same way that pilots don't do certain things on
19 approach, in violation of aviation procedures.

20 I represent to you that's the same in
21 every state in the country. I've looked at training
22 across the nation in this regard.

23 Q So in this case, are you saying, then,
24 that that happened in this case, there was a breach
25 of the fundamental approach?

1 A Yes, there was a breach of -- this is the
2 first one, which is to go to the reporting party,
3 the Sheffields, in this case. And before we put any
4 officer -- there's always hazard to an officer in
5 this role.

6 Before we put ourselves -- we know we
7 don't have shots fired now. So what do we want to
8 know? We want to know from these people, you know,
9 what was happening. Does this person have any
10 history of mental illness, for example, in relation
11 to a mental hospital?

12 Did he drink, since this has happened
13 before? Did he use drugs? Have you ever had any
14 run-ins with him or know of anybody else that's had
15 run-ins with him? And another big question is, what
16 kind of gun -- do you know what kind of gun he's
17 shooting?

18 I say that because -- you know, I own guns
19 myself -- in rural areas, people commonly own more
20 powerful weapons. And a rifle will go through --
21 you know, those ceramic inserts will go through like
22 a knife through warm butter. So that's another
23 question that would have helped.

24 Okay, so we know that. And they told us
25 -- we'll just say it what the Sheffields have said.

1 "Well, he shoots from time to time." We don't know
2 -- right now, we don't know as we stand here talking
3 to the reporting party, is this just a guy who goes
4 out and shoots his gun from time to time late at
5 night, a little odd to be doing, or is he someone
6 whose emotions are stirred.

7 Is he off his meds? Maybe he's on some
8 antidepressant medication. Has he just killed his
9 wife or his mother? You can watch TV any night of
10 the week and see things like that happen. We know
11 as a police officer these things happen.

12 So we know enough now to know it's high
13 risk -- it's potentially a high-risk situation. And
14 that's where all the training that, again, the South
15 Carolina Law Enforcement Academy in its street
16 survival and officer safety, and cover and contact
17 -- the preference is always get them to come to us.

18 We want to take the situation on our
19 terms. And what's the safest way? There's nothing
20 mystical about this. It's very easy. Officers are
21 trained what to be aware of.

22 What's the safest thing to do? The first
23 thing you do is radio dispatch or call them on the
24 cell phone if you have any radio problems out there
25 and tell them to check the scene directory and to

1 find the Worleys' number -- and I know that they
2 have a house phone out there that goes all through
3 the house -- and to call them up and tell them the
4 McCormick County Sheriff's Department is out here on
5 a call and engage whoever comes to the phone in
6 conversation.

7 "Who are you? We've got our deputies out.
8 We're out here on a call about shots fired." They
9 might say, "Well, I don't know what that's all
10 about." We don't know exactly what their response
11 may be.

12 If it's hang up, or it's expletives, then
13 we know something else. Well, there's no down-side
14 to making -- to having a dispatcher make that call
15 or get us the number and we'll make the call, if
16 they've got a cell -- probably the officers do have
17 cells; I used my cell out there last night -- and
18 then to call up and try to start some dialogue, to
19 get Mr. Worley on the phone.

20 "Mr. Worley, we've got a problem out here.
21 This is Officer So-and-So -- this is Bobby Rushton
22 with the Sheriff's Department. We need for you to
23 come and talk to us, okay?" And then what we're
24 going to do is we're going to -- we don't want to
25 surprise -- this is one of the tragedies; there are

1 statistics all over the country about it.

2 We don't want to surprise someone at night
3 who's, you know, maybe asleep, has weapons in there,
4 coming out of a foggy state of sleep, and it is so
5 dark out there. I think the conditions I saw last
6 night or back on that night, November 15, 2009,
7 there was no moon at all.

8 It was just jet black, and I was concerned
9 about spraining an ankle walking around out there.
10 It was so dark. What we want to do then is, as
11 we're trained in the Academy, from rookies on,
12 patrol car visi-bar lights, we're going to turn on
13 emergency lights, spotlights, if you have a spot on
14 there, and go down there.

15 We immediately take position. We told
16 him, "We want you to come out." We're going to very
17 slowly approach the house. And the officer or
18 officers are going to take a position to cover,
19 which is between the door break -- the doors, as you
20 were -- and the engine block of the car.

21 And if that person comes at you, we are
22 behind a curtain of light. You heard the situation
23 here, the testimony earlier about the spotlight, the
24 deputy blinded by the spotlight.

25 It's the other way around. We want the

1 other person to be blinded by our headlights and our
2 visi-bar lights, which also we've already had a
3 phone call that said, "This is the Sheriff's
4 Department." Knowing about emergency lights, the
5 resident is knowing, you know, obviously we're law
6 enforcement here.

7 And that is immediately. If we draw
8 gunfire, we are in the best cover position we can.
9 Or if someone begins shouting and cursing at us, now
10 we now we've got a potential barricade situation.
11 And I assume that they have a liaison with the State
12 Police or their own SWAT unit. Then it's time to
13 get to get SWAT and HNT, a hostage negotiation unit,
14 out there and start dialogue with this guy.

15 So there would be every reason to expect
16 from all the evidence I've seen that this man, as a
17 criminologist having looked at his background, no
18 reason I could see why he would shoot a police
19 officer, that he would then come out.

20 We told him do not bring his weapon, come
21 out empty-handed. Why do we have to do that? Well,
22 it's important. We have a weapons call, and we
23 explain to him "You need to come out with nothing in
24 your hands." So I'm back there with my Glock, my
25 old .22 or .23, and I'm braced in the door.

1 Other officers are out there in a cover
2 position, whatever the be positioning cars as
3 allowed by the driver. And he comes on around to
4 us. We're behind the Great Divide. We see him.

5 Let's suppose, for example, that you
6 couldn't raise him on the phone for whatever reason.
7 There's no down-side to trying that. Then you use
8 your head, same thing, cover and contact. We're not
9 going to insert to this. We'll walk around the
10 house under those kind of conditions, in darkness.

11 And it wouldn't matter what kind your car
12 was, but the Sheriff's Department -- and I'm not
13 criticizing your car, but it's somewhat dark and you
14 actually apparently carried off waste in it.

15 I don't know why, with all due respect --
16 I've never known an officer, you know, working
17 nights not to carry, and I never have carried
18 anything but a light kind of like really a five-
19 cell. You drop it off a ten-story building, and
20 it's stable and puts out an enormous beam of light.

21 But you're not going to be out there
22 walking around, because police officers die that
23 way. You're exposed, you left cover, and there's no
24 reason to do that. There's no reason to do that at
25 all. There's no hurry.

1 We have no indication of a hostage
2 situation. So we're going to try to get the person
3 to come to us. And if he won't come out, then we're
4 going to have another plan. But those are basic
5 concepts, and these are things you heard as a rookie
6 in the Academy and things that you should be keeping
7 with you in any retraining over the years.

8 But all of the officers involved, you
9 know, we have Moore and McAllister doing the same
10 things. This is just -- this is not a safe way to
11 handle a call. It's a tragedy for officers, and it
12 was tragic for the officer who suffered a grievous
13 wound, and for the homeowner, who may wind up
14 shooting at someone who's there to serve and
15 protect. So that's the long and short of it.

16 Q All right. You say that they are there to
17 serve and protect. Are they there to serve and
18 protect themselves, the neighbors, or who?

19 A Well, everybody. The highest priority is
20 the public. We're there to serve and protect the
21 public. And that's why I say -- and I've learned
22 these things at the Academy, and I've learned them
23 on the street, having been on calls like this many
24 times -- that you can't help anyone if you get
25 killed. And the worst thing, the greatest tragedy,

1 is that you wind up killing an innocent person
2 unwittingly.

3 Q Based on what Officer Rushton said the
4 Sheffields had to say and based upon their
5 statements that are in the file that was provided,
6 did you see any exigent circumstances that would
7 require an officer -- that the Sheffields' safety
8 was at risk at that moment?

9 A No, no. There was an exigent situation.
10 And to try to give you a parallel, we're all
11 familiar with a tragedy or some other issue. If
12 you'd been an officer on the scene when Congressman
13 Giffords was shot, you'd be in a really difficult
14 position.

15 But you would have to rush, and you'd have
16 to stop that active shooter, and you'd be risking
17 hitting innocent people. That is a different
18 situation. This is not an active shooter. It's a
19 cold situation.

20 And so the safety mechanisms should kick
21 in now. And safety says stay back, stay frosty, get
22 some information. And I don't know exactly how much
23 information from his testimony he had, but we've got
24 enough to know gun, knife, private residence, shots
25 fired.

1 We want that guy to come to us under our
2 conditions, so let's try to hold of him. Let's try
3 to call him. Let's try to P.A. him. And if won't
4 respond to those things, now we know something else.

5 Q Let's suppose that the -- and I'm asking
6 about training now. Let's suppose that the officer
7 does not follow the rules, and he leaves cover and
8 puts himself in a risky situation.

9 Suppose that the homeowner -- and would
10 you agree with me that a homeowner should get the
11 highest level of protection as far as a citizen?

12 A Yes, the highest reasonable level that an
13 officer could provide, yes.

14 Q Okay. And if he leaves cover, and he
15 finds that there is a citizen or a homeowner on the
16 balcony, and he's got a gun, but it's not pointing
17 at you, and he's not pointing at anybody else --
18 he's just letting you know he's got a gun -- does
19 that give you the right to point to kill?

20 A It doesn't give you the right to shoot
21 him. It is a definitely what we call a try and
22 point situation. Same factors here, emphasizing
23 that, again, you don't want to be in that situation.

24 It's not like an officer pulls somebody
25 over, and they jump out of the car and start

1 shooting at him because he's got you pulled over for
2 traffic. You know this is a bad call. You don't
3 know what kind of -- what may be going on. There
4 may be nothing.

5 But now what you've done is violated
6 fundamental principles of cover and contact, basic
7 procedures. You are now in the reverse situation
8 that we want. You're now -- I can say this from
9 having stood out there.

10 I'm a reasonably good shot with 20/20
11 corrected vision, and I do a lot of shooting with a
12 Glock .23. And I aim my finger simulating what
13 happened on that porch with what the deputy
14 describes when that spotlight is on. I was totally
15 blind, totally blind. And like I could not see.

16 I had people move. I couldn't tell if
17 there was one or two people on the balcony. I had
18 them point a five-foot broom, pressing out on
19 different points and moving around. I could not see
20 anything, just jet blackness.

21 So now I'm exposed, a deer in the
22 headlights of a car. It's the worst situation.
23 It's what the FBI law enforcement training bulletin
24 calls a killing zone. You put yourself in a killing
25 zone, and there is no reason to.

1 And obviously my concern is I want police
2 officers to go home to their families. Officers die
3 when they do this kind of thing.

4 Q All right.

5 A I know people do this.

6 Q And I guess the question is, are you
7 trying to shoot somebody just because they've shown
8 your their gun in the point position?

9 A No, you can't shoot -- let me emphasize.
10 You're going to be in a ready position. You're
11 going to be braced and pointed and ready to issue
12 commands, "Police" or "Sheriff's Office, drop the
13 gun, drop the gun."

14 You do that, and if there's any movement
15 at all -- any movement at all -- toward you, you're
16 going to shoot.

17 Q What if there's no movement?

18 A Well, here's the problem, from the
19 deputy's testimony, is you can't see anything. I
20 mean --

21 Q Well, the deputy says he saw the man
22 standing there.

23 A Okay.

24 Q The deputy says he saw a sandy-haired man
25 we'll describe as our client.

1 A Salt and pepper?

2 Q He said he saw a gun that appeared to be a
3 long gun, a shotgun. He said he clearly could see
4 the butt and could see the stock. And he could
5 clearly see that it was pointed in a point position,
6 forearm's position.

7 A Right.

8 Q Now, if the officer saw that, does the
9 officer have a right to tell the person in his own
10 yard, in his own house, on his balcony that he has
11 to put his gun down?

12 A With all due respect, I think you're
13 asking a question of law. I'm not familiar with
14 South Carolina law. All I can think of is from a
15 police procedure standpoint, it's a command. It's a
16 point weapon command, drop your weapon. And then if
17 things go black because a light comes in, you're in
18 a hell of a fix.

19 Q Well, between you, if you put yourself in
20 that position, and the homeowner who sees you aiming
21 at him --

22 A Yes.

23 Q -- and who may not know you're a police
24 officer.

25 A That would be --

1 Q Who wins? Who's supposed to shoot?

2 A Well, it's a homeowner. I can't be in the
3 mind of anyone, Officer Rushton or Mr. Worley. But
4 it's a homeowner, bearing in mind that people
5 respond differently when they're asleep and they
6 have --

7 Maybe some of you in here have had the
8 experience of hearing a noise -- and I keep a gun by
9 my bedside -- and reaching for it, but it's only a
10 raccoon. You know, that's why it's so important,
11 purpose and presence of the officer be announced,
12 because if the homeowner sees somebody -- maybe he
13 doesn't see them terribly well, because of their
14 uniform, because of their physical position, because
15 they're bladed in profile -- and sees that person --

16 You know, burglars carry little lights
17 like that. Police officers don't usually carry them
18 in the field on calls. Something like that, and
19 sees them turning toward them with a gun, if I were
20 a homeowner, I'd shoot that person.

21 Q So if the officer makes the mistake, puts
22 himself in that position and he's got his gun in a
23 firing position towards you, if you're the
24 homeowner, you have a right to repel him?

25 A Any sense in that situation -- I mean,

1 anyone in that situation. But it's more than
2 protecting your home. You've got your mother -- his
3 mother is inside the house. She's probably scared.
4 You would -- I mean, you would shoot in that
5 situation.

6 You assume you're dealing with a burglar,
7 a criminal, because there are so many ways for -- as
8 we just talked about -- so many ways for law
9 enforcement to make their purpose and presence
10 quickly known with no risk to anybody. It really
11 falls in the area of criminology we call
12 victimology.

13 Q What does that mean?

14 A We talk about victim of genesis, a person
15 who puts themselves in a position to be victimized.
16 I'm not really making any kind of comparison to the
17 deputy's conduct. This is just by way of example.

18 The guy who slaps his wife around the
19 kitchen and hands her a steak knife, he's drunk. He
20 says, "Go ahead." That's victim participation.
21 Police officers know better because we're trained
22 better.

23 We know about certain things not to do.
24 And nobody expects a law enforcement officer to have
25 a crystal ball. But you don't need one in this

1 situation. It's so clear. I mean, we can see this
2 in training over and over again, every state in the
3 union, err in the direction of caution. Be safe, go
4 home -- you know, do your job.

5 Q So had the officer done those things that
6 you are saying he should have done that he would
7 never have exposed himself to that situation?

8 A There is no reason. Somebody's got to --
9 if I take a knife to a child's throat or something,
10 or somebody's about to commit suicide, the officer
11 may have to -- may have to -- take chances. But
12 this is not that kind of situation. It's a go slow,
13 be careful situation.

14 Q If he had announced himself as a police
15 officer -- let's assume that for a moment -- in this
16 circumstance but he had not followed the proper
17 procedure, has he really identified himself as a
18 police officer at that time, as a police officer is
19 supposed to identify himself as a police officer to
20 a homeowner?

21 A Well, there's no question, there could be
22 no question -- from the dispatch call, the visi-bar
23 lights going on, the spotlight, the P.A. There's no
24 question at all that these are the police.

25 In a situation like that, I have never in

1 my 35 years as a criminologist -- having worked a
2 thousand incidents, I've never seen a situation of
3 someone who opened fire on officers who was this
4 type of person, that he's had no mental arrest
5 history, no anger, no drugs, no alcohol, had no
6 fight with the wife, hadn't just killed members of
7 his family. Ordinary citizens don't do this kind of
8 thing to police officers. It doesn't fit.

9 Q No motive?

10 A There's no motive, no mens rea, no.

11 MR. GARRETT: Beg the Court's indulgence.

12 THE COURT: Yes, sir.

13 Q After having reviewed the entire file and
14 based upon training -- because there's no procedures
15 that the county has, so based upon the South
16 Carolina law enforcement training -- is it fair to
17 say that at the time this officer identified
18 himself, he was not acting in accordance with the
19 procedures that he had been trained at the Academy?

20 A That is absolutely correct, yes.

21 Q And you talked about ways he could have
22 done that, properly identified himself with a host
23 of other things?

24 A Right. I mean no disrespect by this
25 comment, but if you were making a training video for

1 officers, which I've done numbers of, you could use
2 this tragedy in this case as a training video for
3 why not to do this. You could test officers on it.
4 This information is conveyed at the Academy
5 frequently.

6 Q All right. And do you believe policy, the
7 way everything came down that night --

8 MR. MYERS: Leading -- he's leading, Your
9 Honor.

10 THE COURT: Very well.

11 Q Let me ask that as a hypothetical. Based
12 on all the evidence that we've received into
13 evidence, okay --

14 A Okay.

15 Q -- and that you've heard Rushton, and
16 you've studied in this file, based upon the uniform
17 and failure to identify, failure to use the lights,
18 and the failure to phone call, and failure to use
19 the speaker phone, and failure to get all the
20 necessary information, failure to slow down and take
21 time, the failure to keep yourself under cover,
22 these actions by this officer do you believe to be
23 unreasonable to a citizen who's watching this
24 transpire in front of him, the parts that he doesn't
25 know, it's reasonable to think that this is not an

1 officer?

2 A Yes, under the circumstances, it would be
3 eminently reasonable in my view as a criminologist,
4 having --

5 Q And if the individual homeowner --

6 THE COURT: Wait. Had you finished your
7 answer?

8 A It would be eminently reasonable from my
9 view as a criminologist, having evaluated many of
10 these kinds of shooting situations, to not realize
11 that they were law enforcement officers. All the
12 circumstances, all the evidence and material, points
13 to that. It would lead to that conclusion.

14 Q And therefore, if you really didn't
15 believe and if it's reasonable not to believe that
16 he was a law enforcement officer, and he's pointing
17 a deadly gun at you, you've got a right to return
18 fire?

19 A Yes. Under those conditions you would,
20 yes.

21 Q Thank you. Please answer any questions
22 for opposing counsel.

23 CROSS-EXAMINATION

24 BY MR. MYERS:

25 Q You reviewed all the material, Mr.

1 Kirkham?

2 A Yes, I have.

3 Q And you reviewed the neighbors' statements
4 that the defendant had been out shooting on his
5 porch before?

6 A The Sheffields' statements, yes.

7 Q And he was out there talking loudly --

8 A Yes.

9 Q -- and shooting a gun?

10 A Correct.

11 Q They didn't want to call the police, and
12 they talked with the mother?

13 A That's correct.

14 Q It continued to happen, though?

15 A It happened, yes.

16 Q Finally, the night of this incident, they
17 said that they couldn't it anymore, so they called
18 the Sheriff's Department?

19 A I'm sorry?

20 Q The night of this incident, the neighbors
21 said, "We had to call the Sheriff's Department,"
22 they couldn't take it?

23 A Yes.

24 Q And Mr. Sheffield from his house -- you
25 know where his house is?

1 A Yes, I do.

2 Q It's a pretty good ways?

3 A Well--

4 Q A pretty good ways?

5 A Yes.

6 Q Mr. Sheffield, inside his house, he said
7 he could hear the officers knocking and announcing
8 they worked for the Sheriff's Department?

9 A That's what he says, yes.

10 Q And you reviewed the other two deputies'
11 statements, Moore --

12 A And McAllister, yes.

13 Q -- and the lady?

14 A Yes.

15 Q And both of them said when they defendant
16 came out, they yelled, "Sheriff's Department," and
17 he said, "I don't give a blank"?

18 A That's correct. That's what they said.

19 Q Thank you.

20 THE COURT: Redirect?

21 REDIRECT EXAMINATION

22 BY MR. GARRETT:

23 Q Does that say that Mr. Worley was able to
24 hear that in his double-insulated house?

25 A I'm not a building expert. I'm not an

1 acoustics expert. Were I to try to say what's
2 audible at what decibel level in the night in that
3 location, it's a fact question really. It's a jury
4 question really.

5 Q All right. And there's nothing -- as it
6 relates to what the Sheffields heard isn't what is
7 important in this case?

8 A No, it's what -- what seems to be clear
9 that could have prevented this tragedy from
10 happening, proper police procedure. That's all.

11 Q And had we followed proper police
12 procedures, there would not have been a shooting
13 that night?

14 A No risk. It would be the same situation.

15 MR. GARRETT: Beg the Court's indulgence.

16 THE COURT: Yes, sir.

17 MR. GARRETT: That's all.

18 THE COURT: Recross?

19 MR. MYERS: No.

20 THE COURT: Thank you, Doctor. You can
21 step down.

22 DR. KIRKHAM: Thank you, Your Honor.

23 THE COURT: How many more witnesses do you
24 have?

25 MR. GARRETT: Plaintiff's case,

1 petitioner's case.

2 THE COURT: All right.

3 How many witnesses are you calling?

4 MR. MYERS: We don't have any witnesses,
5 Your Honor. But we would like to put in the
6 statements of Deputy Nicholas Moore and Deputy
7 Melissa McAllister, statements of Mr. Allen
8 Sheffield, statements of Gail Sheffield, and the
9 statement of Sheriff Reid.

10 THE COURT: Wait. Is there an objection
11 to that?

12 MR. GARRETT: Your Honor, I object to it.

13 MR. MYERS: Well, they -- they're allowed
14 to put in statements.

15 MR. GARRETT: Your Honor --

16 MR. MYERS: In that pre-trial hearing,
17 they said they put in witness statements. And this
18 last witness says he relied on all that. So if he
19 relied on all that, that makes it part of the
20 record.

21 THE COURT: Mr. Garrett?

22 MR. GARRETT: Your Honor, I request
23 permission to cross-examine those witnesses.

24 MR. MYERS: They've got the statements.
25 And all I'm offering is the statements. And their

1 expert witness just relied on them.

2 MR. MYERS: They might be inconsistent.
3 But the Supreme Court, filed May 9, 2011. They talk
4 about the statements therein. They talk about the
5 statements, 911 tapes, and other things that the
6 State is allowed to introduce.

7 MR. GARRETT: We would obviously object.

8 MR. MYERS: And I get to put them in
9 there. I didn't need to. You asked him if he
10 relied on them.

11 THE COURT: Well, expert witness in the
12 trial of that case. That's what was done in front
13 of another judge.

14 MR. MYERS: Okay, we'll recall the doctor,
15 Your Honor.

16 THE COURT: You want to recall him?
17 Doctor, will you come back up, please?
18 You're still under oath.

19 DR. KIRKHAM: Yes, sir.

20 THE COURT: These statements are in that
21 notebook that they handed up to me -- "they" being
22 the petitioner or the plaintiff?

23 MR. GARRETT: They are not, Your Honor.

24 THE COURT: Okay. I don't know if we ever
25 covered that issue. But they handed me a big

1 notebook and said that they wanted that to be part
2 of the record. You all say they -- are you shaking
3 your head at me?

4 MR. GARRETT: No, no, no.

5 THE COURT: Okay.

6 You are still under oath.

7 (Defendant's Exhibit Number
8 Seven A, black notebook prepared by the defense, was
9 marked for identification.)

10 RECALL EXAMINATION

11 BY MR. MYERS:

12 Q Doctor, this is the statement of Deputy
13 Nicholas Moore, one of the guys that knocked on
14 their door?

15 A Yes.

16 Q And you relied on that statement?

17 A Yes.

18 MR. MYERS: Your Honor, we'd offer this
19 into evidence.

20 THE COURT: Any objection?

21 MR. GARRETT: No objection.

22 THE COURT: Mark it into evidence then,
23 please.

24 MR. MYERS: And this statement, that's
25 Deputy Nicholas Moore -- Nick Moore.

1 THE COURT: What else?

2 Q And then this was five pages of a
3 handwritten statement and a typed statement of the
4 female deputy, Ms. McAllister. Have you read that?

5 A I did.

6 MR. MYERS: I'd offer that into evidence.

7 THE COURT: Any objection to this?

8 MR. GARRETT: Your Honor?

9 THE COURT: Okay, go ahead and mark it in
10 evidence.

11 Q And then also the neighbors, Dr. Kirkham,
12 Alan Sheffield and Gail Sheffield, and Sheriff Reid?

13 A Yes.

14 MR. MYERS: We offer these, too, Your
15 Honor.

16 THE COURT: Any objection to any of these?

17 MR. GARRETT: Subject to the prior
18 objection.

19 MR. MYERS: We'll mark these all as one
20 exhibit, Your Honor.

21 THE COURT: Mark those in the record,
22 please, ma'am.

23 MR. MYERS: That's State's Number Two A.

24 (State's Exhibit Number Two

25 A, 5 Statements, Moore, McAllister, Sheffield,

1 Sheffield, and Reid, were received in evidence.)
2 MR. MYERS: That's all I have.
3 THE COURT: All right, questions of the
4 witness?
5 MR. GARRETT: No further questions.
6 THE COURT: Thank you, Doctor, you may
7 step down.
8 All right, anything else from the
9 State?
10 MR. MYERS: No, sir.
11 THE COURT: Anything from the defense?
12 MR. GARRETT: We call Mr. Sheffield to the
13 stand.
14 THE COURT: Did you say Sheriff Reid?
15 MR. GARRETT: Sir?
16 THE COURT: Did you say Sheriff Reid?
17 MR. GARRETT: No, sir, I call Mr.
18 Sheffield.
19 THE COURT: Sheffield?
20 MR. GARRETT: Mr. Alan Sheffield.
21 THE COURT: Mr. Sheffield, will you come
22 around, please, sir?
23 (Whereupon, the witness was
24 sworn.)
25 THE COURT: If you would state your name,

1 sir.

2 MR. SHEFFIELD: Yes, sir. My name is Alan
3 Sheffield.

4 THE COURT: Wait.

5 Is your first name A-L-L-E-N?

6 MR. SHEFFIELD: A-L-A-N.

7 COURT REPORTER: A-L-A-N?

8 MR. SHEFFIELD: A-L-A-N.

9 THE COURT: Your last name?

10 MR. SHEFFIELD: S-H-E-F-F-I-E-L-D.

11 THE COURT: Thank you.

12 All right, Mr. Garrett.

13 MR. GARRETT: Thank you.

14 ALAN SHEFFIELD, having first been
15 duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. GARRETT:

18 Q Mr. Sheffield, prior to November 15, 2005,
19 have you ever seen Joe Worley with a gun in his
20 hand?

21 A No, sir.

22 Q Had you ever heard shots fired at the lake
23 out there?

24 A Yes.

25 Q And have you ever heard shots prior to

1 that fox out there on the Worleys' property?

2 A Yes.

3 Q How late would you say y'all have heard
4 shots out there?

5 A I'm really not sure.

6 Q Okay. And on the prior occasion where --
7 was it you, or was it your wife that contacted law
8 enforcement to express your concern about Joe
9 Worley?

10 A That was my wife.

11 Q Did you participate in that interview?

12 A No, sir.

13 Q You didn't?

14 A No, sir.

15 Q And on that occasion, did you go over and
16 speak to Joe about discharging a weapon, or getting
17 loud, or anything like that?

18 A I did not speak to Joe, no.

19 Q And did you speak to his mother and tell
20 his mother to tell Joe?

21 A I discussed it with his mother, yes, sir.

22 Q Do you have any knowledge whether or not
23 Ms. Worley talked to him?

24 A She indicated some days later that she
25 did.

1 Q All right. But you don't know that?

2 A I can just tell you what she told me.

3 Q Okay. But you don't know?

4 A No, I don't.

5 Q Okay. So do you know whether or not
6 Officer Carmine (PH) -- I hope I'm pronouncing that
7 right -- I believe he actually came out in September
8 to speak with your wife. Were you there when he
9 spoke to your wife?

10 A My wife actually went to the police
11 station herself.

12 Q All right. And she spoke to Officer
13 Carmine?

14 A I don't know.

15 Q All right. Do you know whether or not
16 Officer Carmine thought it was necessary to go down
17 to the Worley house to talk to Joe Worley about the
18 alleged incident that happened in September?

19 A I believe my wife -- I expressed the
20 concern that we didn't need that done, that we were
21 going to try to handle it ourselves. She felt it
22 was important to have it on record. That was her
23 decision. I don't disagree.

24 Q Y'all moved into that house in 2006?

25 A Six, yes.

1 Q Were y'all in real estate at one time? Is
2 that right?

3 A Yes, I was.

4 Q At some point in time you had a very
5 cordial relationship?

6 A I had a pretty good relationship with him
7 for a while. Well, maybe in '08.

8 Q In '08.

9 A Yes.

10 Q All right. Y'all moved out there in '06.
11 Do you have knowledge about the general makeup of
12 that community in the four years before?

13 A No.

14 Q And had you ever made any complaints about
15 them, or Joe, or anybody in the community at any
16 time in the past?

17 A No.

18 Q None?

19 A No.

20 Q Okay. And after September, you made no
21 complaints until this night, is that correct?

22 A No complaints, that's correct.

23 Q All right. And on this night -- have you
24 ever been in the Worley house?

25 A No, sir.

1 Q Did you ever have the pleasure of meeting
2 Ms. Worley?

3 A Yes, I did.

4 Q And is he a well-educated man?

5 A Appeared to be.

6 Q A nice guy?

7 A Yes, he's a nice guy.

8 Q And he's proud of his house down there?

9 A That never came up in discussion.

10 Q Y'all didn't talk about that?

11 A It was mostly just the neighborhood.

12 Q You didn't talk about the features of
13 double-insulated in the home?

14 A No.

15 Q Have you ever seen any wild dogs down
16 there, any coyotes?

17 A I have not ever seen coyotes, no.

18 Q Seen any fox?

19 A Yes, sir.

20 Q And is it kind of common knowledge that
21 there are fox around there?

22 A I don't recall any conversations about the
23 fox, no.

24 Q But there are foxes down there?

25 A Sure.

1 Q What about Sweet Pea?

2 A Oh, yes. Yes, I've recently seen the cat
3 when she was coming around outside.

4 Q They've got a cat named Sweet Pea?

5 A Correct.

6 Q And did you ever know that they were
7 complaining the cat had gotten into a fight with a
8 fox, or a coyote, or something?

9 A I knew that Sweet Pea had been hurt, but I
10 don't recall any discussion about how that happened.
11 No discussion about that.

12 Q So you wouldn't deny that there's been
13 some problem with some type of wild varmints getting
14 hold of Sweet Pea?

15 A I don't know that.

16 Q Okay. Now, on the night in question, you
17 say you heard the officers knock and announce
18 themselves, November 15th, is that correct?

19 A Correct.

20 Q Did you have your windows open?

21 A Yes.

22 Q So with the windows open, you would not be
23 in a closed location; is that correct?

24 A That's true.

25 Q Now, I did go back and read your

1 statements, and one of the statements that you and
2 your wife gave that there was a shot. And you
3 actually saw the shot that hit Officer Rushton,
4 correct?

5 A I saw Officer Rushton go down to the
6 ground after a gunshot.

7 Q Okay. Well, how did you know it was a
8 gunshot?

9 A It sounded like a gunshot.

10 Q It sounded like it?

11 A Yes, sir.

12 Q Did you see any flash?

13 A No.

14 Q In your position, could you see up on the
15 balcony?

16 A No, sir.

17 Q How far out away from the deck would
18 Officer Rushton have to be in order for you to see
19 him being shot?

20 A Based on where that light is, if he's
21 anywhere out from the side of the house, I would see
22 him.

23 Q Okay. Out from the side of the house?

24 A Well, yes, that's where the light comes
25 down. The spotlight comes down, and if he's

1 anywhere outside of there, if he's not under the
2 deck, I can likely see him.

3 Q Did you look up to see whether or not he
4 was pointing a gun?

5 A It happened too quickly. I could not tell
6 whether Officer Rushton pulled his weapon or not. I
7 was not expecting what happened.

8 Q So you don't know?

9 A No, I don't know.

10 Q And you don't know whether on the southern
11 side of the house whether or not the Worleys
12 (inaudible.)

13 A There's no way for me to know that.

14 Q No way to know that.

15 A Yes.

16 Q I found -- in your affidavit and in Ms.
17 Sheffield's affidavit, I found three different times
18 you -- and I'm not trying to hold you to it, I'm
19 just wondering. But is it fair to say that the one
20 report that you gave Officer Stallo is that it
21 happened around 2:30 in the morning?

22 A I would say that's when it started, yes,
23 around 2:30.

24 Q And there's another one, another report,
25 where you say that it actually began about 3:30?

1 A I didn't realize that. It could be.

2 Q And then there's another one says around
3 3:15.

4 A I only made one statement.

5 Q Well, you made one statement to law
6 enforcement, and then you made one to Officer
7 Stallo.

8 A I didn't make that statement.

9 Q You didn't make any statement to the
10 officer?

11 A I made one statement. The other statement
12 from September was not made by me.

13 Q Who was it made by?

14 A My wife.

15 Q Oh, okay. I would assume your wife saw
16 basically the same thing.

17 A I would assume so.

18 Q And as far as the timing, would it be fair
19 to say you did not make a written statement as far
20 as--.

21 A We did not discuss our statements. We did
22 them at the same time, at the dinner table, with no
23 discussion.

24 Q Okay. And on this particular night,
25 you're not absolutely sure whether you heard one

1 shot?

2 A You're talking about before we called the
3 police?

4 Q Yes.

5 A I'm absolutely certain it was two, yes.

6 Q And at the time of the shooting, how many
7 shots did you hear?

8 A Two.

9 Q And according to your wife the shots down
10 there--

11 A Honestly, I didn't really read my wife's
12 statement very well. The shots where Officer
13 Rushton got shot were within a couple of seconds of
14 each other.

15 Q Okay.

16 A The time frame between the shots fired
17 prior to this time was more in the term of 15 to 20
18 minutes between shots.

19 Q Your wife's statement says it was minutes
20 minutes before the first shot and the second shot.
21 Do you recall that?

22 MR. MYERS: I think he said that he hadn't
23 read his wife's statement.

24 MR. GARRETT: Well, I'm just saying --

25 THE COURT: Are you abandoning your

1 question? I'm asking you, are you abandoning your
2 question? Do I have to rule on that?

3 MR. GARRETT: No, you don't have to rule.
4 I'll rephrase.

5 THE COURT: Go ahead.

6 MR. GARRETT: I'm sorry, Your Honor.

7 Q Officer Stallo said the statement was
8 given by you and Gail Sheffield. Is that incorrect?

9 A The one in September?

10 Q There's one on July the 21st that's made
11 to Shawn Stallo when he interviewed Alan and Gail
12 Sheffield at their residence.

13 A All right, I'm honestly sorry. I forgot
14 that one. I forgot what we were talking about. I
15 thought we were referring to the other.

16 Q Is that correct?

17 A Yes, we were interviewed.

18 Q He said that you said?

19 A Again, those aren't our words, and that's
20 not correct. It was not a few minutes. It was a
21 few seconds.

22 Q Okay. This was an interview by Agent
23 Shawn Stallo, July 21, 2010. It was at your house
24 in McCormick, is that correct?

25 A Correct.

1 Q All right. Let's look at that. Let's go
2 over that statement you gave when he interviewed you
3 and tell me what parts you say that are not the
4 truth. You can just go ahead and read it and tell
5 us what parts are your statement and what parts are
6 not your statement.

7 THE COURT: Let him read over it.

8 MR. GARRETT: Well --

9 Q What part do you disagree with as being
10 your statement?

11 A A couple of minutes between shots, when
12 Officer Rushton was shot.

13 Q A couple of minutes between the shots?

14 A Correct.

15 (The remainder of the testimony of this witness is
16 not available.)

17 (The next available testimony is as follows.)

18 *****

19 THE COURT: I need a break. Let's take a
20 break now.

21 (Whereupon, court was in
22 recess after which the following proceedings were
23 had:)

24 THE COURT: Do you all need Mr. Myers in
25 here?

1 MR. MAYE: No, sir. He told me to go
2 ahead.

3 THE COURT: Okay. Let's go ahead and tell
4 the jury to be here at 2:00 tomorrow afternoon. If
5 you all don't have anything else I can read, the
6 stuff we can do, I'll hear it.

7 All right, you wanted to call another
8 officer?

9 MR. GARRETT: We call Deputy Moore.
10 (Whereupon, the witness was
11 sworn.)

12 THE COURT: All right, Mr. Garrett. I'm
13 sorry, state your name.

14 MR. MOORE: Nicholas Moore.

15 NICHOLAS MOORE, having first been
16 duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. GARRETT:

19 Q Deputy Moore, did you have an opportunity
20 to talk to this Officer Stallo (PH) on Wednesday,
21 July 21, 2010, about what happened at the Worley
22 residence on that evening?

23 A Yes, I did.

24 Q Okay. Are you familiar with that?

25 A Yes, sir.

1 Q Why don't we pick up at the point where it
2 says, "Deputies Rushton, Moore, and McAllister,"
3 about halfway down, "arrived at the incident
4 location." Are you with me?

5 A Uh-huh.

6 Q "Deputy Rushton approached the
7 complainant, Sheffield, while Deputy Moore knocked
8 on the door of Worley's residence," is that correct?

9 A Yes, sir.

10 Q All right. And who was in charge of that
11 operation? Were you in charge, was Rushton in
12 charge, or was Melissa in charge?

13 A Well, nobody was really in charge. Law
14 enforcement in general was out there.

15 Q Okay. So who was the senior-most deputy
16 there?

17 A I would have been.

18 Q Okay. Were you wearing that outfit --

19 A Yes, I was.

20 Q -- or a similar outfit like that?

21 A Yes.

22 Q All right. And did you realize that
23 Rushton did have a uniform on like that?

24 A Yes.

25 Q All right. And you would acknowledge that

1 he didn't have the badge on his shirt --

2 A Yes.

3 Q -- which is something that might have come
4 later, is that correct?

5 A Yes.

6 Q All right. Next, it goes on to say that
7 you knocked on the door for several minutes. You
8 knocked on the door?

9 A Yes.

10 Q And was leaving when the top deck
11 floodlights turned on, is that correct?

12 A Yes.

13 Q All right. So you had already left, and
14 you and Melissa were heading towards the back of the
15 building?

16 A Was leaving the --

17 Q The area.

18 A -- the area of the door.

19 Q Okay. And I'm assuming that Rushton was
20 over there with the Sheffields?

21 A Yes.

22 Q And as y'all were all kind of meeting back
23 up kind of where y'all split off behind the house to
24 go to your various directions, the light came on?

25 A Yes.

1 Q So the light was on. Any question about
2 the light being on?

3 A At what point?

4 Q At that time.

5 A No.

6 Q All right. Deputy Moore returned to the
7 door and heard someone walking on the top deck above
8 his head. Now, did you hear somebody on the deck
9 before the door opened?

10 A No, the door was opened first.

11 Q All right. So you would have heard the
12 door open, and then you would have heard somebody
13 walking?

14 A Step out.

15 Q Okay, step out. And then Deputy Moore
16 witnessed Deputy Rushton walked towards the top
17 deck. Where was Deputy Rushton when you witnessed
18 him walk towards the top deck?

19 A Out to my right.

20 Q All right. So let me make sure I
21 understand you. You're right there. If this is the
22 house -- counsel's desk is the house, okay -- you're
23 to the right of the house?

24 A I'm standing right against the doorway --

25 Q All right. So you're outside the door.

1 A -- outside the house.

2 Q And so he would be in your general area.

3 At that time, was he walking backwards?

4 A No, forward.

5 Q Did he walk towards the house?

6 A Yes.

7 Q Okay. So did he come -- I'm trying to
8 figure out how he came to the house. Did he come to
9 the house along with y'all, or did he come from a
10 different direction?

11 A I do believe he came with me and then
12 walked out to the edge of the woods --

13 Q Okay.

14 A -- and then started to walk -- maybe not
15 really walk but take a step towards to where he
16 could see what was going on, when the lights came
17 on.

18 Q So you would agree from your position you
19 couldn't see Joe up on his balcony?

20 A I could see his silhouette, I'll say.

21 Q Okay. But you couldn't see -- his
22 silhouette? In other words, you could see his
23 general outline?

24 A Yes, him and his general features.

25 Q Okay. And was the light still on?

1 A Yes, I do believe the light stayed on the
2 whole time.

3 Q All right. So there wasn't a situation
4 where the light cut off that blinded -- I mean, cut
5 on that blinded Rushton?

6 A Not once he cut the light off the first
7 time and then back on, he left it.

8 Q Well, when it's back on -- that's my
9 point, Deputy Moore. You said you knocked on the
10 door for several minutes and was leaving when the
11 top deck floodlights turned on. In fact, it was
12 only one light, isn't that correct?

13 A I don't recall. It lit up the whole front
14 yard.

15 Q All right.

16 A You know, I didn't have time to look and
17 count lights.

18 Q All right. And so you also didn't look to
19 the other -- you weren't able to see the other end
20 of the house to see whether that light came on?

21 A No, sir.

22 Q All right. And then you returned to the
23 door and heard someone walking on the top deck above
24 his head, is that correct?

25 A Yes.

1 Q "Deputy Moore returned to the door and
2 heard someone walking at the top above his head, is
3 that right? "Deputy Moore witnessed Rushton walk
4 towards the top deck, heard Rushton yell at the
5 person on the top deck 'Sheriff's Office,' and then
6 yell 'Gun.'"

7 A Yes.

8 Q "Deputy Moore next heard gunfire and saw
9 Deputy Rushton fall to the ground."

10 A Yes.

11 Q You're telling this to a federal law
12 enforcement officer, and you didn't say anything in
13 there about "Who are y'all? What y'all want? You
14 didn't say that in the statement, did you?"

15 A No, sir.

16 Q You didn't say, "I don't give an f-u-c-k"
17 -- you didn't say that either, did you?

18 A No, sir.

19 Q And you didn't say, "Put your gun down,
20 put your gun down, put your gun down." Did you say
21 that?

22 A No.

23 Q All right.

24 A He didn't put it in the statement here,
25 but I don't know if I said it or not. So I would

1 guess I would say no.

2 Q Okay. I mean, it would be important for a
3 United States elected official or ATF officer who's
4 taking a statement -- not a sworn statement, but a
5 statement and a summary of events -- to put down
6 something like you put the guy on notice to put his
7 gun down, would you agree?

8 A Uh-huh.

9 THE COURT: Say "yes" or "no," please.

10 A Yes, sir.

11 Q All right. So you took cover and yelled
12 for Deputy Rushton to come to your location, is that
13 correct?

14 A Yes.

15 Q Did you ever have your gun drawn and aimed
16 at Joe Worley?

17 A I drew my gun, but I never took aim.

18 Q Okay. Is there any way Joe Worley could
19 have seen you where you were?

20 A I can't -- I can't say.

21 Q Well, if you couldn't see him good enough
22 to get aim on him -- I've walked out there. You've
23 got to get way out there to the right side to be
24 able to look up and see somebody up on that deck.

25 A He was on the porch. I never was. So I

1 can't say whether he could see me or not.

2 Q Okay. And what about Melissa? She says
3 in her statements that she was always four or five
4 feet to the back of you towards the trash can. Is
5 that right?

6 A I guess so. I really don't know where she
7 was at.

8 Q All right. I guess when the gunshot went
9 off, did you see the muzzle flash?

10 A I don't recall.

11 Q When he hit the ground, how long was he on
12 the ground?

13 A Two seconds.

14 Q Why didn't you shoot Joe?

15 A I didn't have a shot at him.

16 Q Okay. If you'd have had a shot at him?

17 A I'm not trained to shoot inside of a
18 residence or toward a residence. There may be
19 innocent people inside the residence.

20 Q Okay. And when did you decide that was
21 your position?

22 A Immediately.

23 Q That was your training, okay. And then if
24 Officer Rushton then had aimed his gun at Mr.
25 Worley, what would be the intent of that aim?

1 A From who?

2 Q From Officer Rushton.

3 A I can't tell you what his intent was.

4 Q Okay. Then you heard another gunshot --
5 is that correct -- on your statement?

6 A Yes, there was a total of two gunshots.

7 Q Two gunshots. Now, is it possible that
8 Joe could have shot him on the ground? Is there
9 anything that would prohibit him from shooting him
10 on the ground -- with an automatic 30.06?

11 A No, there was nothing that could have
12 stopped him, I don't guess.

13 Q Rushton couldn't, because he was hit, he
14 was down, he said flat on his face. Is that right?

15 A I don't know about flat on his face, but
16 he fell.

17 Q Well, did it twirl him like Joe said it
18 did? Did he take the impact of the gun, and it
19 turned him around?

20 A I can't say -- I can't say that. I can
21 tell you he fell. I don't know how exactly he fell.

22 Q Okay. So you weren't actually observing
23 his body when he fell?

24 A I wasn't watching him the whole time.
25 When I looked around, he was basically already on

1 the ground.

2 Q Okay. You were at the corner of the
3 house, looking at the silhouette of Joe. And off to
4 your right, you could see Rushton, okay. Did you
5 hear their conversation?

6 A I heard Rushton say something about a gun.

7 Q Okay. Then what did you do?

8 A There wasn't much of a conversation.

9 Q What happened?

10 A I was saying "Sheriff's Office" the whole
11 time.

12 Q Okay.

13 A There was never a conversation between
14 anybody.

15 Q From the time that door opened until the
16 time that shot came out, it was seconds, wasn't it?

17 A If even that long.

18 Q It was that fast. Basically, you heard
19 the door open, you heard a step, bang.

20 A Heard a bang.

21 Q You heard him yell, "Gun." And what about
22 this "I don't give an 'f'" and all that stuff?

23 A That happened while we were beating on the
24 door.

25 Q Well, if that door upstairs is not open,

1 how do you hear all that stuff allegedly from Joe?
2 If he's not out there, how does he hear you, and how
3 do you hear him?

4 A He must have been out there when it
5 happened.

6 Q All right. And is that why you say that
7 -- is that why there's a change in the statement now
8 that he was already out there on the deck when y'all
9 were walking up to the scene?

10 A No, I never said he was on the deck when
11 we was walking up.

12 Q Officer Rushton told Officer Stallo that
13 he was already there on the deck walking on the deck
14 when y'all arrived?

15 A I have no knowledge of what Rushton told
16 Stallo.

17 Q I understand. But you didn't observe that
18 or see anything like that?

19 A Him already on the deck?

20 Q Right.

21 A No, not when I first got there.

22 Q Your statement still is you heard
23 "Sheriff's Office" and then yelled "Gun"?

24 A Yes.

25 Q All right. And how many seconds was there

1 between "Sheriff's Office" and "Gun"?

2 A One, if that many.

3 Q I mean, it was like bam, just like that
4 "Sheriff's Office," "Gun," bam -- something like
5 that?

6 A Right.

7 Q Okay. And then there was another gunshot.
8 Are you -- the State has charged Joe in this case
9 with attempting to kill you. Are you aware of that?

10 A Yes.

11 Q Did he attempt to kill you?

12 A I don't know what his intentions were.

13 Q All right. Well, I mean, you know Joe?

14 A No, never seen him before until then.

15 Q All right. Have you got any reason to
16 believe he don't like you?

17 A I can't answer that question.

18 Q So why would Joe Worley intend to kill
19 you?

20 A Why would he want to intend to kill the
21 other deputy?

22 Q You know, you're lucky probably that he
23 didn't see you point that gun at him at his house on
24 his deck. What do you think?

25 A Well -- oh, well.

1 Q Oh, well. Then, of course, you helped get
2 cover with distance, and you helped Officer Rushton
3 get to safety?

4 A Yes.

5 Q Get himself to get treatment at the
6 Medical University, correct?

7 A Yes.

8 MR. GARRETT: That's all I have of this
9 witness.

10 MR. MYERS: I have just a couple.

11 CROSS-EXAMINATION

12 BY MR. MAYE:

13 Q Officer, the bottom line is when y'all
14 went out there, Bobby Rushton went over to the
15 Sheffield's house -- that's right -- to check on the
16 complaint, right?

17 A Yes, sir.

18 Q At some point in time when you were over
19 there, you saw a light come on and go off on the
20 Sheffield's house, right -- not on the Sheffield's
21 house but on the Worleys' residence, right?

22 A Yes.

23 Q Y'all went over after the light went out,
24 beat on the door, and continually announced
25 "Sheriff's Office" over and over again --

1 A Yes.

2 Q -- did you not?

3 A Yes.

4 Q Okay. At some point in time -- now,
5 there's no light on shining out in the yard. At
6 some point in time, y'all heard the screen door or
7 the sliding door open, is that correct?

8 A Yes.

9 Q Okay. And in response to that, you and
10 Bobby are down on the ground level at the door,
11 beating on it, steady calling "Sheriff's Office" and
12 beating on the door, is that correct?

13 A Yes, I was.

14 Q Wherever you were or wherever he was at
15 that point in time, Mr. Worley in this case, as
16 y'all are hollering "Sheriff's Office," you clearly
17 heard him reply back, in response to that, "I don't
18 give a fuck," is that correct?

19 A Yes.

20 Q Okay. So in acknowledgement of what
21 y'all said, you don't have any doubt that he
22 responded, "I don't give a fuck," when you
23 identified yourself as Sheriff's Office?

24 A No, sir, no doubt.

25 Q Okay. As Officer Rushton walked back out

1 into the yard and looked back up in this case, the
2 light came back on and blinded him at some point in
3 time, is that correct?

4 A Yes.

5 Q Because the light had been off and was not
6 on as he walked down in front of the house, is that
7 correct?

8 A Yes.

9 Q Okay. In response to Officer Rushton
10 telling Mr. Worley or him crying out "Gun," y'all
11 continued to cry out "Sheriff's Office" and identify
12 yourself as law enforcement officers, and there was
13 conversation about him dropping the gun, wasn't
14 there?

15 A Yes.

16 Q Y'all made those demands to him
17 continuously, didn't you?

18 A Yes.

19 Q Then he fired and struck Officer Rushton
20 in this case?

21 A Yes.

22 Q Any doubt in your mind about that?

23 A No doubt.

24 Q He then -- you motioned for him to come to
25 you, is that correct?

1 A Yes.

2 Q And he came to where you were?

3 THE COURT: Motioned for who to come?

4 Q Officer Rushton. You motioned for Officer
5 Rushton to come to you once you realized he had been
6 hit and fell to the ground, correct?

7 A Motioned and both probably told him to
8 come.

9 Q Okay. And he did come to you at that
10 point in time?

11 A Yes.

12 Q Okay. And a subsequent shot was fired by
13 Mr. Worley --

14 A Yes.

15 Q -- at some point in time?

16 A At some point.

17 Q Okay. Now, after you attempted to get him
18 to safety, what did you hear Mr. Worley say as he
19 came back out of the house and onto the ground
20 level, as y'all were fleeing and trying to get the
21 officer to safety? What did you hear him say?

22 A "Where you at, you son of a bitch?"

23 Q Okay. So he was down -- was he in pursuit
24 of y'all at that point in time?

25 A That's what I thought --

1 Q Okay.

2 A -- that he was coming after us.

3 Q Okay. Where was he at that point in time?

4 Was he on the ground level and left the house at
5 that point in time?

6 A He was ground level, would have been on
7 the left side of the house.

8 Q And y'all's primary concern was for
9 Officer Rushton's safety, and y'all got him out of
10 there, correct?

11 A Yes.

12 Q In fact, you left your automobiles there,
13 didn't you?

14 A Yes.

15 Q You only took one car, didn't you?

16 A Yes.

17 Q Because Officer Rushton was severely
18 injured?

19 A Yes.

20 MR. MAYE: Nothing further.

21 THE COURT: Further questions of the
22 witness?

23 MR. GARRETT: Yes, sir.

24 REDIRECT EXAMINATION

25 BY MR. GARRETT:

1 Q I'm just having trouble understanding.
2 While ago, didn't you tell me the light remained on?

3 A The light?

4 Q When I read this to you awhile ago, where
5 we talked about the light that had been on, had come
6 off, and now it was on.

7 A Yes, the light went off, came on -- was
8 off to begin with and came on, went off, and came
9 back on.

10 Q Came back on?

11 A When the actual shot -- when those shots
12 were fired, yes.

13 Q How is that possible?

14 A I guess he left it on.

15 Q He left it on when?

16 A The last time he turned it on.

17 Q All right. So you're not trying to say he
18 went in there and turned the light off and then
19 turned it on to blind Officer Rushton, are you?

20 A I don't know what his intentions were.

21 Q When Rushton was out there, was the light
22 on or off?

23 A Both. It was off to begin with. It came
24 back on.

25 Q Okay. When the shots occurred, were the

1 lights on or off?

2 A On, I do believe.

3 Q On, okay. So the lights didn't get turned
4 off and turned on at the time he got shot. They
5 were already on, isn't that true?

6 A To the best of my knowledge, I do believe
7 they were.

8 Q Okay. That's inconsistent with what you
9 just told Mr. Maye, that they were off, they came on
10 about the time of the shot and blinded Officer
11 Rushton. Did you see -- you already said you didn't
12 see the flash, is that right?

13 A Yes, I don't think I did.

14 Q All right. And all these other statements
15 that you say that happened out there, you didn't
16 tell all that to the agent that was investigating
17 this from the Bureau of Alcohol, Tobacco, and
18 Firearms. You do agree with that, right?

19 A I don't know if I exactly agree with the
20 fact that I may not have told him that. It's not
21 written in the statement, but I can't say that I did
22 or did not tell him that.

23 MR. GARRETT: I'm not sure if I marked
24 this. I want to make sure I mark this, both for
25 identification and submission. That's 143.

1 THE COURT: Is there any objection?

2 MR. MAYE: Nothing, Your Honor, for the
3 purposes of this year, no objection.

4 THE COURT: Mark it in evidence.

5 COURT REPORTER: It's Defendant's Five A,
6 Your Honor.

7 THE COURT: Thank you.

8 (Defendant's Exhibit Number
9 Five A, Summary of events, Stallo, 7-22-10, was
10 marked for identification.)

11 Q Nick, have you had an opportunity to read
12 the other statements of the other officers in this
13 matter?

14 A I may have at some point in time, but I
15 have not recently.

16 Q Okay. And so you -- in preparation for
17 this trial, nobody went over that statement with you
18 in relationship to the other statements?

19 A I was told to go over my statement. I
20 have never sat and read anybody else's statement.

21 Q Okay.

22 A Not lately.

23 Q All right. So at one time, you did?

24 A I'm sure when the incident first occurred,
25 yes, I probably did.

1 Q And here's why I ask the question. Your
2 last statement to the -- the statement that after
3 you heard somebody coming out the door and then
4 yelled "Where you at? Where y'all at?" or something
5 to that effect.

6 Isn't it true that all of the statements
7 say that any other statements were made while he was
8 still up there, and that was made at or about the
9 time of the second shot, hollering and telling them
10 to get out of there, or "I'll get you," or "Get from
11 here," or something to that effect? And that was
12 never made -- y'all had already gone, had cleared
13 the back, back there, before that statement was ever
14 made?

15 A What exactly are you asking me? I'm a
16 little confused.

17 Q Well, you said in your statement something
18 to the effect of -- with the cross-examination just
19 then -- that the officer -- that Joe made the
20 statement after he had come down out of the house
21 and was now on the ground, hollering "I'm going to
22 get you, you sons of bitches," or "you son of a
23 bitch," or something to that effect. What did you
24 say he said?

25 A Yes, he said, "Where you at, you son of a

1 bitch?"

2 Q "Where you at, you son of a bitch?"

3 A Yes.

4 Q He didn't say "bitches," more than one?

5 A We're talking about 2009.

6 Q I understand. But you recognize it as
7 singular as opposed to plural?

8 A I don't recall.

9 Q As best you recall, is that correct?

10 A Best I recall, I would say, "Where you at,
11 you son of a bitch?"

12 Q All right. And then the timing of that,
13 wouldn't that have been at or near the second shot?

14 A No, that was after, a good bit after.

15 Q All right. Is it true that Joe ran back
16 towards the house after he was hit? I'm sorry, is
17 it true that Officer Rushton ran back towards the
18 house after he was hit?

19 A He ran towards me.

20 Q And where were you standing?

21 A The corner of the house.

22 Q So isn't it fair that he ran towards Joe,
23 who was on the balcony of the same house that you
24 were at the corner of?

25 A He ran towards the house, but Joe was up

1 on the top balcony. He couldn't have actually ran
2 towards Joe.

3 Q Well, he ran towards Joe's position.
4 Regardless of whether he was upstairs, he ran
5 towards Joe's house and Joe's position.

6 A Okay.

7 Q Is that fair?

8 A Yes.

9 Q And is it further fair that he ran towards
10 the door?

11 A Yes.

12 Q All right.

13 MR. GARRETT: No further questions.

14 THE COURT: Anything else?

15 MR. MAYE: Just one.

16 RECROSS EXAMINATION

17 BY MR. MAYE:

18 Q The bottom line is this statement here,
19 this line about "I'm going to get you son of a
20 bitches" is included in the ATF agent's statement.
21 So whether or not you told him, Worley told him -- I
22 mean, you told him; Bobby told him, or Melissa told
23 him. After he interviewed all of you, he did
24 include this in his statement, correct?

25 A Yes.

1 Q All right. . I'm going to make sure -- I
2 know you've been through this over and over again --
3 but when Bobby was over talking to the Sheffields in
4 this case, y'all saw the lights come on. Y'all had
5 already gone over and beat on the door of this
6 house, right?

7 A Yes.

8 Q You saw the lights come on. Y'all then
9 went back over to the Worleys' residence, right?

10 A Yes.

11 Q But that light went off, is that right?

12 A I never actually left the Worleys'
13 residence.

14 Q Okay. You stayed over there in the yard?

15 A Pretty much. I was proceeding to -- I was
16 fixing to leave, but I never actually got out of his
17 yard, and the light came back on.

18 Q As Bobby was over there, the light came
19 on, then it went off, right?

20 A Yes.

21 Q Okay. Y'all went back down there and beat
22 on the door over and over again. The light's off at
23 this point --

24 A Yes.

25 Q -- right?

1 A Yes.

2 Q As Bobby leaves the position of where you
3 two are beating on the door and announcing
4 "Sheriff's Office" and walks back out into the yard,
5 the light comes on and blinds him --

6 A Yes.

7 Q -- right?

8 A Yes.

9 Q You're absolutely certain that that's the
10 order?

11 A Yes.

12 Q Okay.

13 MR. MAYE: Nothing else.

14 THE COURT: All right, anything else?

15 MR. GARRETT: I'm having difficulty
16 understanding.

17 FURTHER REDIRECT EXAMINATION

18 BY MR. GARRETT:

19 Q Was the light on or off when Bobby got
20 shot?

21 A On.

22 Q Okay.

23 A The light came on when the shot was fired.
24 I don't know whether he left it on or turned it back
25 off.

1 Q Say that again?

2 A I said the light was on when Bobby was
3 shot, but I do not recall whether or not he turned
4 it off after he shot Bobby or not.

5 Q He turned the light off after he shot
6 Bobby?

7 A I don't recall if he did or not.

8 Q Okay. But it was clearly on -- the three
9 seconds before Bobby was shot, that light was on?

10 A I don't know if it was three seconds.

11 Q A half a second, a second, two seconds.
12 I'm not asking you to give me precisely, but some
13 time?

14 A Yes, the light was on when Bobby was shot.

15 Q All right. And also in that report, if it
16 was important for you to say about the, you know,
17 "Where you at, you son of a bitch or whatever,"
18 "SOB," whatever, it was important for you to tell
19 him the truth about what happened, is that correct?

20 A Yes.

21 Q So the other stuff about all these other
22 words and all these other things, all that couldn't
23 happen in those seconds, could it?

24 A All of what other things?

25 Q All these "Sheriff's Department," "Gun,"

1 "I don't give an 'f'," "What do y'all want?" -- I
2 mean, we're talking seconds, aren't we?

3 A Not in between Bobby getting shot and him
4 asking "Where you at, you son of a bitch?" It was
5 maybe longer than seconds.

6 Q How many seconds?

7 A I'm going to say 30 to 45, maybe a minute.

8 Q It was a whole minute, then?

9 A I wasn't looking at my watch.

10 Q All right, one other thing. You said the
11 officer crawled to you. That's the first time I saw
12 that, "crawled to you." Did you tell Officer Stallo
13 that he crawled to you?

14 A Crawled to me, walked to me. I don't
15 really -- he got to me somehow. He was injured --

16 Q He ran, didn't he?

17 A -- and he got to me.

18 Q He ran, didn't he?

19 A I don't recall. I can't -- I mean, I
20 can't swear to you that he ran, he crawled, he
21 walked, he jogged. I can't swear to any of it. He
22 got to me, though, I know that.

23 Q In your original statement, you said he
24 ran, and the subsequent statement said he crawled.
25 I just wondered if there's some reason for the

1 change in that part.

2 A Probably the dates in the statements was
3 probably the reason.

4 Q Time had passed?

5 A Yes.

6 Q Thank you.

7 THE COURT: Anything else?

8 Thank you, sir. You can step down.

9 How many more witnesses do you
10 plan to call?

11 MR. GARRETT: Melissa. She'll probably be
12 the last witness, Judge.

13 THE COURT: All right, come on up, please.

14 MS. McALLISTER: Sara Melissa Hegler
15 McAllister.

16 COURT REPORTER: Could you repeat that,
17 please?

18 MS. McALLISTER: Sara Melissa Hegler
19 McAllister.

20 COURT REPORTER: Sara McAllister.

21 MS. McALLISTER: I go by Melissa --
22 Melissa H. McAllister.

23 SARA MELISSA McALLISTER,
24 having first been duly sworn, testified as follows:

25 DIRECT EXAMINATION

1 BY MR. GARRETT:

2 Q Officer McAllister, when did you join the
3 McCormick County Sheriff's Department?

4 A In April of 2008.

5 Q Did you have an opportunity to bag
6 evidence and assist in the crime scene evaluation in
7 this case?

8 A Yes.

9 Q And what can you tell me you did in this
10 circumstance?

11 A In this incident?

12 Q Yes, ma'am.

13 A Photographed.

14 Q And who --

15 A Collected evidence into the bags.

16 Q Okay. And tell me exactly how that went.
17 Tell me how y'all investigated the scene -- who was
18 all involved? Were in charge in the investigation?

19 A I was never in charge of it, no.

20 Q Nick Moore, did he put you -- when the
21 sheriff got there, did he pull you aside to instruct
22 you or ask you to go on and do the evidence bagging
23 and photographing?

24 A No.

25 Q Who did that? Who asked you to do that?

1 A No one.

2 Q You just did it on your own?

3 A Yes.

4 Q So if Mr. Nick Moore said that he saw you
5 doing that, you just did that on your own, is that
6 correct?

7 A Yes.

8 Q You've had some difficulties in the past
9 with truthfulness in investigations, is that
10 correct?

11 A Yes.

12 Q In fact, you were terminated from the
13 Department of Natural Resources for not telling the
14 truth in a crime scene investigation, isn't that
15 correct?

16 A I was terminated, yes.

17 Q For that reason, and that's the stated
18 reason in the letter of termination that's been
19 provided to us from the State. Do you want to see
20 the letter?

21 A Sure.

22 THE COURT: What's your answer?

23 A Yes, I'd like to see the letter.

24 Q Let me get it for you. While I'm waiting
25 on the letter, why don't you just tell me what your

1 version is as to why you were terminated? And I
2 want to be specific about crime scene investigation.
3 I'll let you look at that letter dated May 29, 2007,
4 from the Department of Natural Resources.

5 A Uh-huh.

6 Q Do you recognize that letter?

7 A Yes, sir.

8 Q And would you tell us the basis for the
9 termination? Did your supervisor --

10 A Failure to cooperate with an
11 investigation.

12 Q What else?

13 A "Your failure to be truthful."

14 Q Truthful?

15 A Right.

16 Q Okay, go ahead. What else --

17 A Do you want me to read all of it?

18 Q Well, what were you untruthful about?

19 What does it say?

20 A I wasn't untruthful.

21 Q Did you have some --

22 A I just did not comply.

23 Q There was a DNR death, is that correct?

24 A Uh-huh.

25 Q And I believe you were on one of the other

1 boats?

2 A Uh-huh.

3 Q Is that correct?

4 A Yes, sir.

5 Q Is that a "yes"?

6 A Yes, sir.

7 Q And as a result of the fatality, you were
8 required as a DNR officer to secure the scene, is
9 that correct?

10 A Yes.

11 Q All right. And did you secure the scene?

12 A No.

13 Q What did you not do to secure the scene?

14 A What did I not do?

15 Q Yes, ma'am. What did you fail to do?

16 A Well.

17 Q Tell me about the container of beer. What
18 did you do with the container of beer?

19 A I didn't do anything with the container of
20 beer.

21 Q What did somebody else do with the
22 container of beer?

23 A They took it.

24 Q They took it?

25 A Uh-huh.

1 Q Where did they take it?

2 A I don't know where. I guess it was on the
3 bank.

4 Q You're guessing what?

5 A I'm guessing it was on the bank.

6 Q Somehow it got out of your boat that you
7 were in and got on the bank?

8 A Yes.

9 Q And did you know how that happened?

10 A No.

11 Q But you never reported that to the --

12 A No.

13 Q And they found out later on that happened,
14 is that correct?

15 A Yes, sir.

16 Q And when you were questioned about it, you
17 initially told them no, you didn't know anything
18 about that?

19 A Yes.

20 Q And then you subsequently told them that
21 you did, is that correct?

22 A No, there wasn't any time. I didn't tell
23 them.

24 Q Do you dispute the testimony?

25 A Yes, I didn't tell them.

1 Q All right. And as a result, you got
2 terminated?

3 A Yes, sir.

4 Q All right. Now, what steps did McCormick
5 do in hiring you, or do you know?

6 A I'm not really sure of their process.

7 Q So did you work anywhere from May 29,
8 2007, until you were hired in '08?

9 A No, I did not.

10 Q And you were hired when?

11 A '08.

12 Q '08 -- in what month of '08?

13 A April.

14 MR. GARRETT: We have marked that. I move
15 to introduce Six A into evidence, Your Honor.

16 THE COURT: Any objection to that?

17 MR. MAYE: No.

18 THE COURT: Mark it into evidence.

19 (Defendant's Exhibit Number
20 Six A, Letter of termination from DNR, was marked
21 for identification.)

22 Q Now, was this discussed when you got
23 hired?

24 A Uh-huh.

25 Q Is that a "yes"?

1 A Yes.

2 Q We're from the South, and we're bad about
3 saying "uh-huh" and "huh-uh."

4 A I'm sorry.

5 Q But try to say "yes" or "no" in order to
6 help her, because she can't put an "uh-huh" or "huh-
7 uh," and we won't understand it later on.

8 A Yes, sir.

9 Q Okay, all right. Now, it seems to me that
10 you were kind of back behind Officer Moore, is that
11 correct --

12 A Yes, sir.

13 Q -- when all this stuff went down?

14 A Yes, sir.

15 Q Is that correct?

16 A Yes, sir.

17 Q All right. And he sent you back to go get
18 the car and to call in, is that correct?

19 A Yes.

20 Q And you got back there to the apex of the
21 vehicle, as you said in your report, is that
22 correct?

23 A Yes.

24 Q And waited until Officer Moore and Officer
25 Rushton got back to the bushes there -- or did they

1 get to the bushes first, and then you went to the
2 apex of the car, or how did that work?

3 A All I know is I was running.

4 Q Okay. When did you start running?

5 A When they began retreating.

6 Q Okay. So when Mr. Moore began retreating,
7 you began retreating, all right. What's the closest
8 you go to the corner?

9 A The closest I got to the corner?

10 Q The corner of the house there where the
11 door is.

12 A The catwalk area, where the trash cans are
13 over to the left, yes.

14 Q Eight to ten feet back?

15 A Uh-huh.

16 Q All right. And there's differing stories
17 between your stories and the other officers'
18 stories. Did you see Mr. Worley?

19 A No.

20 Q Did you ever see Mr. Worley?

21 A When he was arrested, yes.

22 Q When he was arrested, all right. And did
23 you see Rushton hit?

24 A I don't believe I saw him get hit. I just
25 heard "Oh, God."

1 Q You heard what?

2 A "Oh, God."

3 Q Who said "Oh, God"?

4 A One of them.

5 Q Bobby?

6 A I'm guessing Bobby did.

7 Q Did Bobby say, "I'm hit"? Do you hear him
8 say, "I'm hit"?

9 A I did not.

10 Q Okay. And you say in your statement you
11 lost vision of him?

12 A Huh?

13 Q You said you lost vision of him.

14 A Uh-huh.

15 Q Of Bobby?

16 A Uh-huh.

17 THE COURT: Try to say "yes" or "no."

18 A Yes, sir.

19 Q Did you see him running back with Nick
20 Moore, or were you already headed out to go get the
21 car?

22 A I saw him going with Nick, and I was
23 running to the car.

24 Q Sprinted on out ahead. Where was your car
25 parked?

1 A Right behind Deputy Moore's.

2 Q And where was Deputy Moore's patrol car?

3 A In the next driveway over.

4 Q And where was your car parked, there?

5 A Yes, right behind him.

6 Q So both of your cars were in the next-door
7 neighbors' driveway?

8 A Yes.

9 Q Is that correct?

10 A Yes.

11 Q So there was only one patrol car at the
12 Worley residence?

13 A Yes.

14 Q And where was it parked?

15 A In the yard.

16 Q Where at?

17 A I couldn't tell you exactly where in the
18 yard.

19 Q At one point, you went out and got Nick
20 Moore's phone, is that correct?

21 A Yes.

22 Q His phone was across in the Stevens'
23 driveway?

24 A Yes.

25 Q All right. And you called in to 911?

- 1 A No, I took the phone to Nick.
- 2 Q Okay.
- 3 A And then I went back to my vehicle to get
- 4 Bobby and Nick.
- 5 Q To get what?
- 6 A To get Bobby and Nick.
- 7 Q Okay. So you backed your car out of the
- 8 Stevens' driveway, pulled down to the Worley
- 9 driveway --
- 10 A Yes.
- 11 Q -- helped Nick load Bobby up?
- 12 A Yes.
- 13 Q And y'all went on up to the first
- 14 responders?
- 15 A Yes, sir.
- 16 Q And they were right there -- is it Sandy
- 17 Springs or Sandy Ridge?
- 18 A Yes, sir.
- 19 Q Right there?
- 20 A Yes, sir, they were already there.
- 21 Q Okay, all right. And what's your version?
- 22 A Huh?
- 23 Q What's your version of what happened?
- 24 A What's my version of what happened?
- 25 Q What happened that night?

1 A You want me to read the statement?

2 Q No, I want you to tell me what you
3 remember. If you don't remember, that's fine.

4 A I do.

5 Q It's been some time.

6 A Yes, it's been a year and a half.

7 Q Okay. Do you feel comfortable enough to
8 talk about it?

9 A Yes.

10 Q Okay, what happened?

11 A We arrived at the scene.

12 Q Okay.

13 A Knocked on the doors.

14 Q Who knocked on the doors?

15 A Nick.

16 Q Okay.

17 A Bobby talked to the next-door neighbors.

18 Q Okay.

19 A Nick knocked and announced again.

20 Q Okay.

21 A So a light had previously gone on and off.

22 Q While y'all were knocking or not knocking?

23 A I'm not really sure because he was the one
24 who -- Nick was the one who told me the light came
25 on.

1 Q He told you it came on and off?

2 A Yes, because I was watching Bobby as he
3 was over at the Sheffields'.

4 Q Oh, okay. So you never saw the light come
5 on or off?

6 A Not until the light came on when someone
7 came out of the house.

8 Q All right, so the light came on, someone
9 came out of the house. Then what happened?

10 A Then what happened?

11 Q Yes.

12 A Bobby was shot.

13 Q Okay. So the light came on, somebody came
14 out of the house, and Bobby got shot?

15 A Yes. Nick stated, "Sheriff's Office," and
16 I heard, "I don't give a fuck."

17 Q Okay.

18 A And that's when shots were fired.

19 Q Gunshots fired?

20 A Yes, sir, as Bobby was stepping out.

21 Q All right. So you never heard anybody say
22 anything like "Who are y'all?" You didn't hear
23 that, did you?

24 A No, I didn't.

25 Q And you didn't hear any statements about

1 "Put your gun down, put your gun down"?

2 A I did.

3 Q Oh, you did?

4 A Yes.

5 Q While ago in your statement, you didn't
6 recall that?

7 A I don't have the statement right here in
8 front of me.

9 Q All right. That wouldn't be important --
10 "Put your gun down, put your gun down"?

11 A Yes.

12 Q Who said it?

13 A Both.

14 Q How many times?

15 A I can't recall.

16 Q More than once?

17 A I guess it would have to be more than
18 once. Nick said it, and Bobby said it.

19 Q Did they say it at the same time?

20 A I don't know.

21 Q When the word "gun" happened, how long was
22 it between the word "gun" and the fired shots?

23 A It all seemed so fast.

24 THE COURT: All of it what, now?

25 A It all seemed so fast.

1 Q Between "gun" and the shot, was it about
2 like bang -- "gun," bang? Was it like that, or was
3 it longer?

4 A I can't recall. I don't know how fast it
5 was.

6 Q Okay. You didn't know Bobby had been hit,
7 is that right?

8 A Huh-uh.

9 Q Why? Is that a "no"?

10 A No, I did not. I did not realize he had
11 been until Nick stated that he was shot. I saw him
12 stumbling towards me, and so they ran. And it was
13 when he laid down, he was on the ground, that I
14 actually realized then.

15 Q That's when they were back behind the
16 house?

17 A The bushes.

18 Q In the bushes, hiding and cover?

19 A Yes.

20 Q When you realized he had been hit?

21 A Yes.

22 Q I believe you said you saw where he had
23 taken the shot where the bullet went in --

24 A Yes.

25 Q -- and maybe took off a finger?

1 A Yes, sir.

2 Q Okay. Do you know Worley?

3 A Huh?

4 Q Do you know Joe?

5 A No.

6 Q Do you have any reason to think he would

7 be trying to kill you -- any motive to kill you?

8 A I have no idea, no.

9 Q All right. You never met him before?

10 A Not that I can recall.

11 Q Do you know Margaret, do you know Ms.

12 Worley; his mom --

13 A No.

14 Q -- Ms. Mary?

15 A I met her that night.

16 Q Okay.

17 A But I wouldn't know her. I don't know

18 her.

19 Q She was very cooperative, wasn't she?

20 A Yes.

21 Q She invited y'all into the house?

22 A I don't know. I didn't go in the house.

23 Q You didn't participate in that?

24 A I didn't go into the house until later.

25 Q Okay. You said you took the photographs?

- 1 A Uh-huh.
- 2 Q That's "yes"?
- 3 THE COURT: That's "yes"?
- 4 A Yes.
- 5 Q Whose camera did you use?
- 6 A The department's.
- 7 Q Did Bo Willis have a camera?
- 8 A Yes.
- 9 Q Is that his camera or a department camera?
- 10 A Two separate cameras.
- 11 Q So y'all use two separate cameras?
- 12 A Yes.
- 13 Q All right. And who took the photographs?
- 14 A I did.
- 15 Q All of it?
- 16 A No. I don't know what Bo took pictures
- 17 of. I can't account for him.
- 18 Q You can't account for Bo Willis?
- 19 A No, I can't.
- 20 Q So you did part of the investigation, and
- 21 he did the other part of the investigation?
- 22 A I have no idea. I did, yes. I'm guessing
- 23 he did. I mean, I was there a little while with Bo,
- 24 but I don't know what he did after I left.
- 25 Q What items of evidence did you pick up?

1 A What items of evidence did I pick up?

2 Q Yes, ma'am, and photographed -- that you
3 bagged and photographed?

4 A The shells.

5 Q The shells?

6 A Yes, the shells and the ammo from Bobby's
7 gun.

8 Q Okay. Where did you find the shells and
9 the ammo from Bobby's gun?

10 A Throughout the yard.

11 Q Throughout the yard?

12 A Yes.

13 Q Have you looked at the drawing that's been
14 prepared in this case by Bo Willis?

15 A No.

16 Q You haven't?

17 A No.

18 Q Have you read his report?

19 A No.

20 Q He draws a round -- basically, just a
21 round area right there in front of the flower bed
22 back to the porch, just around there, and it says
23 "various items found in this area." Did you take
24 any pictures of it as they lay on the ground? Did
25 you take any pictures of that?

1 A Yes.

2 Q Okay. And what about the part that goes
3 from the grass all the way up to the flower bed, did
4 you take any pictures of that?

5 A I don't recall -- the flower bed, no, I
6 didn't.

7 Q There was a piece of Bobby's gun that was
8 found in that area. Did you find that piece?

9 A No.

10 Q Do you know who found that piece? Any
11 idea?

12 A No.

13 Q You just found casings and shells?

14 A What I saw.

15 Q Did you find any distorted bullets or
16 anything like that out there, do you recall?

17 A No, sir, I don't recall.

18 Q If you would have bagged that evidence,
19 would you have put your initials on it?

20 A Yes.

21 Q You took a picture of it. Give me your
22 procedure. What would you do?

23 A What would I do?

24 Q Uh-huh. How do you do it?

25 A How do I do it? I took the photograph and

1 took the paper and the ammo and put into the bag,
2 sealed it, wrote my name, approximately where they
3 were located.

4 Q Okay. Did you take a picture of it where
5 it was located?

6 A Yes.

7 Q Okay. Did y'all use any GPS or anything
8 like that?

9 A No.

10 Q And is there any reason why y'all didn't
11 turn this thing over to SLED to have SLED
12 investigate it for y'all?

13 A Can you say that again?

14 Q Any reason that your department, the
15 Sheriff's Department -- was there any discussion as
16 to why y'all didn't turn it over to SLED and let
17 SLED investigate it?

18 A No.

19 MR. GARRETT: Nothing further.

20 THE COURT: Anything else?

21 MR. MYERS: No.

22 THE COURT: Thank you, ma'am. You may
23 step down.

24 Any other witnesses?

25 MR. GARRETT: No, Your Honor.

1 THE COURT: Is there anything further from
2 you all?

3 MR. MYERS: No, sir.

4 THE COURT: You want to make your
5 arguments tomorrow?

6 MR. GARRETT: Whatever you want to do is
7 fine.

8 THE COURT: Do you all want to make your
9 arguments tomorrow?

10 MR. MYERS: That would be good, Your
11 Honor.

12 THE COURT: You all be here at noon
13 tomorrow. Court is in recess until noon.

14 You all have Mr. Worley here tomorrow at
15 noon, okay?

16 MR. GARRETT: Yes, sir.

17 THE COURT: All right.

18 -- End of Day --

19 Wednesday, June 1, 2011

20 THE COURT: I'm ready. What's your
21 argument?

22 MR. HENDERSON: Your Honor, I'm Carson
23 Henderson and Your Honor, I'd like to get this
24 marked as a Court's exhibit. It's basically some
25 applicable law.

1 (Court's Exhibit 1A,
2 applicable law prepared by the defense, was received
3 in evidence.)

4 THE COURT: All right, go ahead.

5 MR. HENDERSON: Yes, sir, Your Honor, if
6 it pleases the Court. The top documents in this
7 packet, Your Honor, just bears proof that Deputy
8 Rushton had quit the McCormick County Sheriff's
9 Office and was rehired.

10 Your Honor, based on the testimony
11 presented yesterday defense believes it made a prima
12 facia showing that Deputy Rushton is not a qualified
13 deputy of McCormick County, Your Honor.

14 And the documents attached, and I'll just
15 flip through the documents, Your Honor, and this is
16 based upon his sworn testimony yesterday. He said
17 that to the best of his knowledge he'd never been
18 approved by a circuit court judge since he's been
19 rehired as a deputy. And Your Honor, that's code
20 section 23-13-10 which is provided in this packet of
21 materials.

22 Your Honor, this Deputy Rushton testified
23 as well that he'd never given an oath of office as
24 required by code section 23-13-20. But during his
25 testimony the solicitor's office produced a bond,

1 Your Honor. Actually, I've got it in my stack of
2 materials.

3 But under 23-13-20 there are two oaths
4 that are required for every deputy sheriff to be
5 taken, Your Honor. The one that was provided to us
6 was a constitutional oath which is required by
7 section 26 of article 3 of the constitution. The
8 one that he had not taken is the statutory oath and
9 they are different oaths, Your Honor.

10 Under 23-13-20 -- and these oaths are
11 required to be maintained by the Clerk of Court,
12 Your Honor. And I've put the constitutional oath in
13 here, Your Honor, and I've put a copy of the
14 document introduced into evidence yesterday as the
15 constitutional oath. But again, there is no
16 statutory oath. And Your Honor, he never presented
17 any evidence that he provided any bond, for whatever
18 it's worth, Your Honor.

19 We believe that we have put forth a prima
20 facia case that Deputy Rushton when all of this
21 happened on November 15th 2009 was not a duly
22 qualified deputy sheriff of McCormick County. And
23 Your Honor, I would refer to code section 23-13-50
24 which talks about those exact words, "When duly
25 qualified." It is our position that he wasn't duly

1 qualified.

2 Your Honor, under these Castle Doctrine
3 Motions, going back to this State vs. Duncan case
4 that we provided to the Court yesterday, you must
5 examine the Castle Doctrine Motion through the
6 defendant's eyes. In this case this is a law that's
7 designed to protect homeowners.

8 And the General Assembly has made it very
9 clear that they are protecting the right of
10 homeowners so I believe if you look through Mr.
11 Worley's eyes about whether there's sufficient
12 evidence in the record, more likely than not the
13 Castle Doctrine was -- that he's entitled to the
14 protection of the Castle Doctrine.

15 Your Honor, I've put this packet of
16 material together, code section 16-11-420, "That
17 homeowners have a right to expect to remain
18 unmolested and safe within their homes and that no
19 person should be required to surrender his personal
20 safety to a criminal nor should a person be required
21 to needlessly retreat in the face of intrusion or
22 attack."

23 Your Honor, Mr. Worley was clear in his
24 testimony. He thought he was being burglarized. He
25 had heard of home invasions through media. His

1 mother's property where he was at had been
2 burglarized before and there had been an attempted
3 burglary down there.

4 Mr. Worley testified heard this continuous
5 door bell ringing in the middle of the night, early
6 in the morning. He testified he heard no voices,
7 and again this is in the house, heard no voices. He
8 heard no door knock. And you heard the testimony
9 his house was double insulated.

10 And you heard Mr. Worley testify that when
11 he was looking out the upstairs sliding glass doors
12 the only thing he saw was dark. He didn't see any
13 light, didn't see any blue lights, didn't see
14 anything flashing at all.

15 And Mr. Worley indicated he wasn't about
16 to go downstairs and open up the ground floor door
17 when it had no peep hole and no window. Plus there
18 no windows downstairs at all, Your Honor. His only
19 means to look out was this upstairs sliding door and
20 he didn't see anything.

21 Your Honor, based upon Mr. Worley's
22 testimony, at this point in the case, I believe
23 under 16-11-440 he is entitled to the presumption
24 that he believed somebody was in the process of
25 unlawfully and forcefully entering his building or

1 residence. And that there is evidence in the record
2 to suggest that he knew or had reason to believe
3 that an unlawful or forceful entry or act was
4 occurring or was about to occur.

5 Your Honor, I think that at this point in
6 the case I think he's entitled to this presumption.
7 Now, you look at whether or not law enforcement is
8 protection against Mr. Worley's presumption under
9 the Castle Doctrine.

10 The first one is, Your Honor, under 16-11-
11 440, and I've tried to break it down, that the first
12 step the government has to prove is that Mr. Rushton
13 was a law enforcement officer. And Your Honor, as
14 we believe, we believe we put up a prima facia case
15 indicating that he is not a qualified deputy sheriff
16 of McCormick County.

17 But Your Honor, assuming and to play
18 devil's advocate, which we're not conceding, but
19 assume that he is a qualified deputy sheriff of
20 McCormick County, the next issue is whether or not
21 he attempted to enter a dwelling or residence. And
22 Your Honor, by Deputy Rushton and Deputy Moore's own
23 admission they were up under the roof of this porch
24 or balcony ringing door bells and banging on the
25 door.

1 And under the Castle Doctrine the porch
2 area and any area under the roof is included in your
3 definition of residence and dwelling. So I believe
4 we have that element that they were attempting to
5 enter the residence, Deputy Rushton was attempting
6 to enter the residence. And then the issue of in
7 performance of his official duty again we maintain
8 that there can be no official duty if you are not
9 duly qualified to be a law enforcement officer.

10 But without conceding that Deputy Rushton
11 is not, assume that he is for a moment, that he's
12 there in the performance of his official duty. The
13 next issue is did he identify himself in accordance
14 with applicable law.

15 Your Honor, again, going back to the
16 evidence that's in the record Mr. Worley only heard
17 the door bell prior to opening the door. He never
18 heard any knocking, never heard any voices. Again,
19 we're talking about prior to opening the door. Mr.
20 Worley testified he didn't see anyone prior to
21 opening the door, it was pitch black outside. And
22 you heard evidence that this was the darkest night
23 of November '09. Literally there was no moon that
24 night, Your Honor.

25 Deputy Rushton has testified he was not

1 wearing a departmental issued uniform. In fact, he
2 bought these clothes someplace himself and was
3 waiting on his uniform to come in. Your Honor, you
4 heard testimony from Deputy Rushton that he wasn't
5 wearing a hat, that law enforcement officers
6 typically wear.

7 And of course, if he didn't wear a hat he
8 didn't have badge on that hat he's not wearing and.
9 Your Honor, you've heard testimony that he wasn't
10 wearing any clothing marked sheriff's department or
11 law enforcement, police, anything along these lines.
12 And you've heard testimony that Deputy Rushton was
13 wearing no florescent clothing.

14 Your Honor, at the back of this material
15 I've produced code section 23-23-10 and all the
16 subsequent statutes that deal with law enforcement
17 training. Your Honor, actually this is the
18 legislation that created the South Carolina Criminal
19 Justice Academy and made it a stand-alone entity
20 from the Department of Public Safety.

21 And I've underlined various portions of
22 this law, Your Honor, that says the purpose of this
23 criminal justice academy is to train law enforcement
24 officers. That we're setting standards for law
25 enforcement service, that we shall provide

1 facilities and training for officers. So the law is
2 very clear that we've got an agency here in South
3 Carolina, the Criminal Justice Academy that's sole
4 duty is to train police officers in proper procedure
5 and policies.

6 Your Honor, yesterday Dr. Kirkham, our
7 expert witness, testified that in his professional
8 opinion, that all this was a shots fired, a gun
9 call, that the prudent way to do this, the
10 acceptable way to do this would have been Deputy
11 Rushton either have dispatched, called the Worley
12 residence -- Your Honor, the Worley's phone number
13 was in the county phone book at this time.

14 Or the proper thing would be for Deputy
15 Rushton once he got the number to call the Worley
16 residence. Wake them up, let them know law
17 enforcement is outside and wants to talk to them.
18 And then if that didn't work Dr. Kirkham said Deputy
19 Rushton should have used his squad care PA
20 loudspeaker system, some sort of bull horn to wake
21 the people up if you truly wanted to talk to them.

22 And at that point in time, when you're
23 making this contact, with the Worleys, turn on your
24 blue lights. You could have blared your siren. You
25 would have made these people wake up and come out of

1 the house and come to you.

2 Now, Your Honor given -- there's been a
3 lot of factual dispute about what was said after Mr.
4 Worley came outside on November 15th 2009. And Your
5 Honor, I submit to you, it really doesn't matter
6 what was said.

7 Everybody's got a different remembrance
8 about what was said or not said. But according to
9 Dr. Kirkham that if anything was said the actions of
10 Deputy Rushton and these other deputies did not
11 match up with what Mr. Worley saw.

12 He's looking at the darkness. He doesn't
13 see any blue lights. He doesn't hear sirens. All
14 me sees is somebody in his yard with a small
15 flashlight that he testified he believed was a
16 burglar's flashlight. He saw Mr. Rushton not
17 dressed in a uniform. And most importantly, he saw
18 Deputy Rushton aiming a fire arm at him, going to
19 kill him.

20 Deputy Rushton testified to that, that he
21 intended on shooting him. I can only assume that he
22 was going to shoot Mr. Worley, going to shoot him to
23 kill him. That's what Mr. Worley saw that night,
24 Your Honor. Regardless of what got said, anything
25 he could see did not match up with what, you know,

1 what words of anything he heard didn't match up with
2 what he was seeing.

3 And you heard Dr. Kirkham testify that in
4 his professional opinion that Deputy Rushton and
5 other law enforcement officers did not announce
6 themselves in accordance with applicable law, which
7 includes no applicable policies and procedures
8 taught by the South Carolina Criminal Justice
9 Academy.

10 And Dr. Kirkham testified that to his
11 professional opinion that a reasonable homeowner or
12 a person inside a home, inside Mr. Worley's position
13 that night, would not have known that Deputy Rushton
14 was a law enforcement officer.

15 And Your Honor, the Castle Doctrine here
16 under 16-11-450 -- again, I submit to the Court that
17 the Court looks at this through Mr. Worley's eyes,
18 through the homeowner's eyes. And more likely than
19 not was he justified in doing what he did.

20 Your Honor, under 16-11-450 not only do we
21 submit that Mr. Worley is entitled to protection
22 under the Castle Doctrine statute but that code
23 section also incorporates any other applicable
24 provision of law that justifies a homeowner in using
25 deadly force.

1 Your Honor, we would submit this is flatly
2 the case of self defense. We would submit this is a
3 classic case of defense of habitation. But also
4 that Mr. Worley had the right to resist an unlawful
5 arrest assuming that Deputy Rushton is in fact a
6 qualified deputy. Your Honor, I believe pointing
7 and aiming a firearm at you is the most effective
8 means of arrest that can be out there.

9 And also Code section 17-13-20 that Mr.
10 Worley has the absolute right in the nighttime to
11 arrest a person that he believes is felon. And Your
12 Honor, we would submit that under all of these
13 various statutory rights and or common law case law
14 -- and in Your Honor's notebook we provided
15 yesterday there is plenty of law on all of these
16 issues.

17 We would submit that Mr. Worley has proven
18 looking through his eyes more likely than not that
19 he is entitled to protection of the Castle Doctrine.
20 And we would ask, Your Honor, that the indictment be
21 dismissed against Mr. Worley.

22 THE COURT: Solicitor?

23 MR. MYERS: Your Honor, the defense of
24 habitation and/or the Castle Doctrine is all based
25 on reasonableness. The word "reasonable" appears

1 throughout the Doctrine itself. 16-11-420 section
2 (d) says, "The General Assembly finds that it is
3 proper for law-abiding citizens to protect
4 themselves, their families, and others from
5 intruders and attackers."

6 Subsection (e) says, "The General Assembly
7 finds that no person or victim of a crime should be
8 required to surrender his personal safety to a
9 criminal. Nor should a person or victim be required
10 to needlessly retreat in the face of intrusion or
11 attack." That's in the first part.

12 In 16-11-440 (a) (1) talks about a person
13 using deadly force in a home if the person against
14 whom the deadly force is used is in the process of
15 unlawfully and forcefully entering.

16 Subsection (a) (2) says that the person
17 who uses deadly force knows or has reason to believe
18 that an unlawful and forcible entry is occurring or
19 has occurred.

20 Throughout this, Your Honor, it talks
21 about attacks, intrusions, or attackers and
22 intruders. And to come under the statute, the
23 action of the people outside the property must be
24 unlawful, and they must be forcibly entering.
25 There's no evidence to support that. There's no

1 evidence anywhere.

2 The officers were out there lawfully.
3 They were responding to a complaint of a weapon
4 being fired between three and four o'clock in the
5 morning. They were out there to try to calm things
6 down, to stop disturbing the peace, interfering with
7 the neighbors' lives.

8 Now, there were three duly qualified,
9 sworn, certified deputies out there. And it doesn't
10 say he's not a deputy, Your Honor. That's an
11 administrative thing. He has taken the oath of
12 office, he has been to the academy, he trained
13 officers in Iraq. He is a qualified deputy.

14 Coming down, Your Honor, to 16-11-440
15 subsection (d), the presumption provided in
16 subsection (a) does not apply, Castle Doctrine does
17 not apply, if the person against whom deadly force
18 is used is a law enforcement officer who enters or
19 attempts to enter a dwelling, residence, or occupied
20 building, in the performance of his duty, and he
21 identifies himself in accordance with applicable
22 law, or the person using force knows or reasonably
23 should have known that the person entering or
24 attempting to enter is a law enforcement officer.

25 Here again, there's nothing unlawful. And

1 we submit to you that this is an "or" in subsection
2 (4). It's not an "and," it's "or," that he officer
3 identifies himself in accordance with law. Or that
4 the homeowner reasonably should have known the
5 person entering or attempting to enter was a law
6 enforcement officer.

7 They weren't out there unlawfully. They
8 were out there performing their sworn duty. Again,
9 Your Honor, in the same act, in 16-11-450,
10 subsection (a), "A person who uses deadly force as
11 permitted by the belief in this argument or another
12 capital belief or argument is justified in using
13 deadly force and is immune from criminal prosecution
14 in a civil action for the use of deadly force unless
15 the person against whom deadly force was used is a
16 law enforcement officer acting in the performance of
17 his duties and he identifies himself first under the
18 applicable law. Or, again, if the person using
19 deadly force knows or reasonably should have known
20 that the person was a law enforcement officer."

21 We submit to Your Honor, first of all, the
22 main part of 440 does not apply because they have to
23 show that whatever these officers did was unlawful
24 and there was force used to enter or attempt to
25 enter.

1 In Duncan, it cites Fair versus the State
2 of Georgia, 702-SE2nd-420, a 2010 case. That's what
3 they did in this case. They cover that case, which
4 our Supreme Court says it's a similar statute. The
5 Court majority says they can plead that under this
6 that the requirement that the entry or attack must
7 in fact be unlawfully or for the use of threat
8 before it can justify it with the defense of
9 habitation.

10 Therefore, they have failed to begin with
11 on the main part of the statute. They were
12 obviously there lawfully. No force was used
13 whatsoever.

14 The second thing, Your Honor, is these
15 officers out there in their capacity identified
16 themselves as law enforcement officers. That's a
17 jury issue. The defendant says he didn't know. The
18 officers said, "We were shouting, screaming, banging
19 on the door, ringing the bell."

20 Even the next-door neighbors way over
21 across the path over there heard this. I can't
22 believe the man's living in a sound-proof house and
23 he can't hear people talking. That defies common
24 sense.

25 It's a jury question as to that, of them

1 identifying themselves. It's also a jury question,
2 Your Honor, as to whether the defendant reasonably
3 should have known that the person entering or
4 attempting to enter, neither of which occurred, is a
5 law enforcement officer. And I think the clearest
6 thing we have is he knew, because when they said
7 "Sheriff's Department," he said, "I don't give a
8 blank." He didn't. He didn't really care.

9 He said he's been asleep since 11 or 12.
10 Well, that's disputed by the neighbors next door,
11 when the shots occurred 15 or 20 minutes apart,
12 three and four o'clock in the morning. The officers
13 get out there about four. They were performing
14 their duties.

15 We submit to you, Your Honor, the Castle
16 Doctrine was not enacted to prevent officers from
17 carrying out their duties. The officers were
18 carrying out their duties.

19 They identified themselves, they were
20 lawfully there, there was not even an attempt to
21 enter the Worley residence. They were knocking on
22 doors, ringing bells. And they can come in with the
23 Monday morning quarterback and play hindsight all
24 they want to. The facts are the facts.

25 The officers weren't out there to arrest

1 anybody. They go out there, and they would say,
2 "Let's stop all this foolishness. Let's stop this
3 shooting in the middle of the night. Let's have
4 peace in the neighborhood." They were peace
5 officers trying to restore peace. We submit to you
6 this is an issue for the jury, that the Castle
7 Doctrine does not apply.

8 THE COURT: All right, is there any reply?

9 HENDERSON: Very briefly, Your Honor. I
10 think it's the government that's looking at this in
11 hindsight, Your Honor. Mr. Worley has testified
12 about his perceptions that night.

13 And of course, now we know Mr. Worley
14 knows that some of the perceptions he made that
15 night were wrong, they were inaccurate. But, Judge,
16 you look at this more likely than not through the
17 defendant's eyes while this was happening.

18 I mean, this is something that we can't
19 Monday morning - of course, we Monday morning
20 quarterback about it now. But that night, there was
21 no time. Mr. Worley has testified about what he
22 reasonably believed, based upon what he was hearing
23 and seeing at that point. Your Honor, I think
24 that's got to be very clear.

25 And as for this Georgia case, Fair vs.

1 State, Georgia has a somewhat different Castle
2 Doctrine than we do, Your Honor. And plus, in that
3 case, there was a no-knock warrant being served.
4 And the Georgia Supreme Court says because there was
5 a warrant being served that the deputies could not
6 be trying to enter the house unlawfully.

7 That's why we made it very clear in this
8 case, Your Honor, that Deputy Rushton had no
9 warrant. They did not have any lawful right to
10 enter that house to get anybody.

11 Your Honor, in looking through Mr.
12 Worley's eyes here, there is ample evidence in the
13 light most favorable to him, more likely than not,
14 that he believed that somebody was unlawfully and
15 forcefully trying to enter his house to do something
16 to him.

17 And, Your Honor, in talking and going back
18 to the issue about whether or not Deputy Rushton is
19 a qualified law enforcement officer, under the
20 statute I've given you it talks about oaths, and it
21 talks about going in front of the circuit judge.
22 These are "shall," these are not permissive
23 statutes. These are mandates, and from his own
24 testimony he has not been through what the law
25 mandates before he can duly discharge any duties as

1 a deputy sheriff.

2 THE COURT: Anything else, Solicitor?

3 MR. MYERS: No, sir.

4 THE COURT: I'll notify you of my decision
5 in writing. Thank you.

6 MR. MYERS: Thank you.

7 MR. HENDERSON: Your Honor, may I be heard
8 on one other matter?

9 THE COURT: Sure.

10 MR. HENDERSON: Your Honor, we would like
11 to renew our motion for bond. Your Honor, we
12 previously made several motions that the Court has
13 denied based upon the government's allegation that
14 Mr. Worley is a menace and a danger to the
15 community.

16 Your Honor, I believe the testimony that
17 came out yesterday told a totally different side of
18 the story. Yesterday was Mr. Worley's chance to
19 get up in court and put forth evidence about what he
20 says happened through his eyes.

21 Your Honor, we believe that just totally
22 paints a whole different picture. Your Honor, we've
23 repeatedly asked for a speedy trial in this matter,
24 and again the government opted to have this Castle
25 Doctrine hearing at the same time that they wanted

1 to have the trial.

2 I know this Duncan case has just come
3 down. I think it has given us a lot of guidance
4 under these Castle Doctrine cases. I have a feeling
5 this case is going to give us some more guidance
6 from the appeal courts level.

7 Your honor, but based upon what the Court
8 heard yesterday, we would submit that Mr. Worley
9 should be entitled to a reasonable bond. And, Your
10 Honor, as we have suggested to the Court before, we
11 have no problems if the Court put him under house
12 arrest at his primary home in Aiken County and that
13 he can't come to McCormick County unless he is here
14 on court business or visiting one of his attorneys.

15 And, Your Honor, if you wanted him to
16 report to the Aiken sheriff, Aiken probation,
17 whoever, we will consent to any requirements that
18 the Court put on him. But, Your Honor, Mr. Worley
19 has now been incarcerated for 18 months, and we
20 believe that yesterday hopefully shed a different
21 light on what went on at his mother's residence on
22 the night of November 15, 2009.

23 THE COURT: Does the State wish to be
24 heard?

25 MR. MYERS: The State takes the same

1 position they have previously as to the dangers of
2 that, Your Honor.

3 THE COURT: I'll notify you of that
4 decision in writing as well.

5 MR. HENDERSON: Thank you, Your Honor.

6 THE COURT: Thank you very much.

7 --End of Transcript of Record--

8

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

COURT REPORTER'S CERTIFICATION

I, REMA K. GANTT, OFFICIAL COURT REPORTER, AND
NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH
CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
TRUE, ACCURATE BUT PARTIAL TRANSCRIPT OF RECORD OF
THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE
ABOVE-CAPTIONED CASE ON MAY 31, 2011, IN MCCORMICK,
SOUTH CAROLINA.

THIS RECORD IS INCOMPLETE DUE TO AN ILLEGAL
BREAK-IN TO MY PERSONAL VEHICLE ON 6/23/2011,
WHEREIN ITEMS WERE STOLEN FROM THE VEHICLE,
INCLUDING PART OF THIS RECORD; COLUMBIA POLICE
REPORT #110018381.

I FURTHER CERTIFY THAT I AM NEITHER OF COUNSEL
NOR KIN TO ANY OF THE PARTIES TO THIS CAUSE OF
ACTION, NOR AM I INTERESTED IN ANY MANNER IN ITS
OUTCOME.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND
AND SEAL AT LEXINGTON, SOUTH CAROLINA, THIS THE
TWENTY-EIGHTH DAY OF AUGUST 2011.

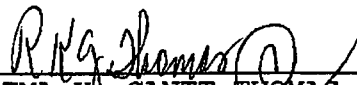

REMA K. GANTT THOMAS
OFFICIAL COURT REPORTER
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES 11/21/2013

Exhibit B

FILED
2011 DEC -8 AM 11:30
CLERK OF COURT
MCCORMICK COUNTY, SC

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF MCCORMICK	)	
STATE OF SOUTH CAROLINA,	)	
	)	
-vs-	)	AMENDED ORDER ON
	)	RECONSIDERATION OF THE
JOE ROSS WORLEY,	)	DEFENDANT'S MOTION TO
	)	BAR PROSECUTION
Defendant,	)	Case Numbers J-036561, J-036562,
	)	J-036563, J-036564, J-036565, J-036566

WPK #1

The defendant moved prior to trial to bar the prosecution of these cases under the immunity provided in S.C. Code Ann. §16-11-410, et seq., the Protection of Persons and Property Act (the Act), which is South Carolina's codification of the common law Castle Doctrine. Pursuant to the holding in *State v. Duncan*, 392 S.C. 404, 709 S.E.2d 662, the court conducted a full-day pretrial hearing and received testimony from various witnesses, including expert testimony for the defense. The motion is denied. Because of the extensive degree of factual determinations that are required to decide this motion, the court recuses itself from this case and any related civil lawsuit (2010-CP-35-00030). The motion to reconsider bond should be directed to The Honorable Frank R. Addy, who has been assigned by the Chief Justice to handle that issue.¹

Synopsis of Factual Background

In November 2009, deputies with the McCormick County Sheriff's Department responded to a call of "shots fired" in a residential neighborhood on Lake Thurmond. One of the people who responded to the call, Robert E. Rushton, was injured by a shot fired by Mr. Worley

¹ The procedure upon recusal required the court to refer the matter to the Chief Judge for Administrative Purposes, Judge McMahan. Upon doing so, he recused himself, and the Chief Justice assigned Judge Addy to hear the bond motion.

using a high-powered rifle. The bullet from the rifle struck the pistol that Rushton was holding in his hand, blowing off part of his hand.

The defendant lives with his mother, who spends time at the lake house and at another home in another county. The court agrees that the home where Mr. Worley was staying that night qualifies as his dwelling and his residence under the definitions of the Act, specifically §16-11-430(1) and (3).

WPC
#2

Mr. Worley admitted firing a weapon earlier in the evening. He testified that he had been trying to scare away a fox that he suspected had injured a pet, and that he had fired the weapon in that fashion on previous occasions. The neighbors are the Sheffields. Because of the previous incidents, Mrs. Gayle Sheffield had made a report to law enforcement months before, but did not want any charges to be brought at that time. Her husband, Mr. Alan Sheffield, testified credibly that he tried to handle the situation in a neighborly fashion. He communicated with Mr. Worley's mother, but the incidents continued to happen and Mr. Worley continued to create loud disturbances in the neighborhood, including firing a weapon at different times, late at night.

Finally, the situation got to the point that the November 2009 call to law enforcement was made. Mr. Worley testified that he had fired the shots to scare the fox on the evening of November 14, 2009, and that he had gone to bed sometime roughly around midnight. Regardless of why Mr. Worley was firing a weapon in a residential neighborhood, the more credible evidence from several prosecution witnesses is that this occurred much later and probably more than once, between 2:00 and 4:00 a.m. on November 15, 2009. Three people responded to the scene: Rushton, McAllister, and Moore, apparently in separate cars.

The defendant raises a claim that Mr. Rushton was not a law enforcement officer under the Act. There does not appear to be any dispute as to whether McAllister and Moore were law

enforcement officers, and the court finds that they were. The court also finds that the greater weight of the evidence supports the determination that Mr. Rushton was a law enforcement officer within the meaning of the Act at the time he was injured. The analysis of that issue is discussed below.

Mr. Worley presented evidence that the night in question was extremely dark, and the court has no reason to disbelieve that evidence. However, the court does not believe that the exterior lights were not turned on at some point prior to the shooting of Deputy Rushton. The court finds no reasonable explanation why a person in his home, perceiving this alleged threat from people who were in his yard, would not cut on exterior lights to see what was happening.

Mr. Worley's testimony is that he was awakened by a doorbell repeatedly ringing. He makes no assertion that anyone attempted to open a door or window, nor that he heard anyone inside his residence or attempting entry. The court finds no evidence that any of the deputies attempted to enter Mr. Worley's home.

WAL
#3

Mr. Worley claims that the house has extensive insulation which prevents noise from being heard. Yet neighbors far away heard and saw a great deal. He denies ever hearing anyone identify himself or herself as a law enforcement officer. He denies seeing any marked patrol cars or blue lights or take-down lights. He denies seeing any badges. In short, he continued to refer to these officers throughout his testimony as burglars, and emphatically denies that he knew or had any reason to know that the people in his yard were law enforcement officers. His testimony in that regard is not credible.

He states that he got a rifle and came onto his deck, which was on a level above the entry door where the doorbell was being rung. He claims that he saw a figure appear below in the yard, raising a gun and pointing a weapon in his direction. Again, Mr. Worley denies that there

was any identification of the people as law enforcement officers, and Mr. Worley fired the rifle in response to what he alleges was an unprovoked threat of death or serious bodily injury. The evidence of damage to the pistol and the angle of the bullet from Mr. Worley's rifle support his position that Deputy Rushton was aiming his Glock pistol at Mr. Worley when the defendant fired.

Mr. Worley states that the impact of the bullet from the rifle spun the person around. The person then ran towards an embankment, realized that the embankment was too steep to safely traverse, and ran back in the direction of the house. People joined the injured person and they left. Mr. Worley said that he then went out into his yard, picked up the Deputy's weapon, and took it up to one of the empty patrol cars, leaving it inside.

WSP
#4

Mr. Worley presented expert testimony in the field of criminology. The gist of the testimony related to whether Deputy Rushton and his fellow deputies followed proper police procedures. Expert testimony was elicited that it is probable that Mr. Worley would not have known that the people in his yard were law enforcement officers. It is the expert's opinion that a "shots fired" call is one that presents a very precarious situation of heightened alert. Once the officers determined that there was no active shooter, the proper procedure, according to the expert, was for the officers to stay a safe distance from the dwelling, cordon off the area, activate blue lights on their vehicles so that they would be easily identified as law enforcement officers, use bullhorns or similar devices, and call the defendant's home to explain why they were there and to establish a dialogue with him. The defendant's expert did not seem to question the right of a law enforcement officer to draw his weapon and point it when he was presented with a person holding a weapon.

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. While there are inconsistencies in details and some deviation between the testimony presented and previous written statements of the prosecution's witnesses, the court's assessment is that the most essential elements of the prosecution's version of the events are consistent and far more rational. Defense counsel did a very thorough job of developing evidence, as well as bringing out the inconsistencies in the prosecution's case and attacking the credibility of its witnesses. Defense counsel has obviously done extensive work and research. However, having observed the witnesses and evaluated their credibility, the court finds that the prosecution's version of what happened is far more believable.

Wld
#5

In an effort to avoid an unnecessarily lengthy recital of the facts, the following is a summary of what the greater weight of the evidence established. On the evening of the shooting, the neighbors had reached the point where they felt that they had to call law enforcement. Mr. Worley had been firing a weapon in the yard again, in a residential area, late at night, and creating another very troubling disturbance. Three law enforcement officers arrived on the scene around 4:00 a.m. They first spoke to the complaining party, then attempted to make contact with Mr. Worley. They rang the doorbell and knocked on the door. They repeatedly announced that they were law enforcement officers. When no one answered, the deputies did not attempt to force their way into the home. Rushton and perhaps the other deputies went back up to the home of the complaining parties. Rushton testified that Moore was headed up toward the Sheffield home. They saw lights come on at the Worley home and returned to it. The lights may have gone off for a period and come back on, and the court recognizes that there is a dispute in the

evidence as to exactly when lights were turned on and where they were located. The court believes that is attributable to the traumatic events that were experienced that night.

Mr. Worley asked who was at his home, and he heard the response that these were law enforcement officers. His response was, "I don't give a f_____." The evidence demonstrates very clearly that the officers knocked and announced repeatedly.

Instead of acting as a reasonable person would have done under the circumstances, including such actions as speaking with his mother who was also in the house, calling law enforcement on the phone, or engaging in some dialogue with the people on his yard until he was satisfied that the situation was safe, Mr. Worley's response was to come out on his deck above these officers holding a high powered rifle. The officers yelled, "gun." Deputy Rushton aimed his weapon at Mr. Worley, ordering him to drop the rifle (which he believed at that point was a shotgun). Deputy Rushton was not wearing a military style uniform, but had his badge displayed.

Worley
#6

It does not matter whether or not Deputy Rushton was blinded by a spotlight momentarily. He had every right to point his weapon at Mr. Worley under those circumstances. At the same time, at least one of the other officers was yelling, identifying himself as law enforcement and ordering Mr. Worley to drop the gun. Mr. Worley fired at Deputy Rushton, hitting the pistol and blowing off part of the deputy's hand. He then fired an additional shot or shots. In the aftermath, he conducted himself as though he was searching for the injured party, not to aid him, but to inflict further harm. He made a statement to the effect of asking, "Where are you, you son of a b_____." He had absolutely no reasonable belief that anyone was breaking into his home or attempting to break into his home. Shell casings were recovered from the deck. The rifle was in the house. The court does not recall any evidence that Mr. Worley attempted to

call law enforcement before, during, or after he shot the deputy. It makes absolutely no sense that three law enforcement officers in a darkened area, responding to a "shots fired" call, would fail to identify themselves as law enforcement officers, loudly and emphatically. The court does not find Mr. Worley to be credible.

Analysis

The motion before the court is an assertion that the State is barred from prosecuting the defendant because he is entitled to immunity under the Act. The defendant has the burden of proving his claim of immunity by the preponderance of the evidence. He has failed to do so.

The critical statute is §16-11-450(A), which reads as follows:

(A) A person who uses deadly force as permitted by the provisions of this article or another applicable provision of law is justified in using deadly force and is immune from criminal prosecution and civil action for the use of deadly force, unless the person against whom deadly force was used is a law enforcement officer acting in the performance of his official duties and he identifies himself in accordance with applicable law or the person using deadly force knows or reasonably should have known that the person is a law enforcement officer.

WSP
#7

The inclusion of the words "another applicable provision of law" is troubling, because it can be read as requiring judges to have separate pretrial hearings in every case where it is asserted that there was a justifiable use of deadly force. More troubling and problematic in this particular case is that the wording of the Act provides an extremely significant granting of immunity to anyone who is "permitted by the provisions of this article or another applicable provision of law" to use deadly force. However, the bulk of the Act is couched in terms of stating presumptions, not authorizations or permissions. Regardless of how the court rules, it is recognized that the ruling will be subject to attack and that other constructions of the statute can be made.

The Act is stated to be an attempt to codify the common law Castle Doctrine. As explained in *State v. Dickey*, 380 S.C. 384, 669 S.E.2d 917 (SC App. 2008), cert. granted Nov. 10, 2009, "Under the Castle Doctrine, one attacked, without fault on his own part, on his own premises, has the right in establishing his plea of self-defense, to claim immunity from the law of retreat, which ordinarily is an essential element of that defense." Citing *State v. Hewitt*, 205 S.C. 207, 212, 31 S.E.2d 257, 258 (1944). The statement of legislative intent is found in §16-11-420, which reads:

(A) It is the intent of the General Assembly to codify the common law Castle Doctrine which recognizes that a person's home is his castle and to extend the doctrine to include an occupied vehicle and the person's place of business.

(B) The General Assembly finds that it is proper for law-abiding citizens to protect themselves, their families, and others from intruders and attackers without fear of prosecution or civil action for acting in defense of themselves and others.

(C) The General Assembly finds that Section 20, Article I of the South Carolina Constitution guarantees the right of the people to bear arms, and this right shall not be infringed.

(D) The General Assembly finds that persons residing in or visiting this State have a right to expect to remain unmolested and safe within their homes, businesses, and vehicles.

(E) The General Assembly finds that no person or victim of crime should be required to surrender his personal safety to a criminal, nor should a person or victim be required to needlessly retreat in the face of intrusion or attack.

WPA
#8

First, to address where there seems to be no ambiguity, the Act does not extend immunity to persons who use deadly force against a law enforcement officer who properly identifies himself as such or whom the person using deadly force knew or should have known was a law enforcement officer. S.C. Code Ann. 16-11-450(A) reads:

A person who uses deadly force as permitted by the provisions of this article or another applicable provision of law is justified in using deadly force and is immune from criminal prosecution and civil action for the use of deadly force, unless the person against whom deadly force was used is a law enforcement officer acting in the performance of his official duties and he identifies himself in

accordance with applicable law or the person using deadly force knows or reasonably should have known that the person is a law enforcement officer.

So, there is no immunity if Rushton was a law enforcement officer acting in the performance of his official duties, who identified himself in accordance with applicable law; or, if Mr. Worley knew or reasonably should have known that Rushton was a law enforcement officer. Under *Duncan*, it presumably would be the burden of Mr. Worley to disprove that those conditions existed.

The greater weight of the evidence supports the conclusion that Deputy Rushton was a law enforcement officer acting in the performance of his official duties and identifying himself in accordance with applicable law. The overwhelming evidence is that Mr. Worley reasonably should have known that the person he was shooting was a law enforcement officer.

WPC
#9

Was Deputy Rushton a Law Enforcement Officer Under the Act?

Mr. Rushton had worked as a deputy, resigned to take a job in the Middle East training law enforcement personnel, and returned to work for the McCormick County Sheriff's Department shortly before this incident. The defendant elicited testimony from Mr. Rushton that he did not remember retaking an oath of office when he returned to employment in McCormick County. However, State's exhibit 1-A is a copy of an oath of office, sworn before Kathryn P. Butler, who was the Clerk of Court and a Notary Public, on November 2, 2009. The court finds that Robert Edward Rushton was appointed as a Deputy Sheriff of McCormick County to serve at the pleasure of the Sheriff, and that he was serving in that capacity at all times in question.

The defendant raises the issue that the oath taken is not the complete oath required for one to be considered a deputy, and the appointment was not approved by a circuit judge. Deputy Rushton signed the following oath on a form entitled "Oath for County and State Officers":

First, I do solemnly swear (or affirm) that I am duly qualified, according to the Constitution of this State, to exercise the duties of the office to which I have been elected (or appointed), and that I will, to the best of my ability, discharge the duties thereof, and preserve and protect and defend the Constitution of this State and of the United States.

So help me God.

The form indicates that it was to be sent to the Secretary of State's office. There is no evidence that it was not. The only reasonable interpretation is that this is the oath required under Article III, Section 26 of the South Carolina Constitution.

The defendant claims that this oath is inadequate because it does not contain the language required under two statutes. First, there is the assertion that Mr. Rushton's appointment had not been approved by a circuit judge. The defense is correct that §23-13-10 provides for a circuit judge to approve appointment of deputies.

SECTION 23-13-10. Appointment; approval by court; responsibility of sheriff for acts of deputy.

The sheriff may appoint one or more deputies to be approved by the judge of the circuit court or any circuit judge presiding therein. Such appointment shall be evidenced by a certificate thereof, signed by the sheriff, and shall continue during his pleasure. The sheriff shall in all cases be answerable for neglect of duty or misconduct in office of any deputy.

To the extent that part of this statute provides for judicial approval of executive branch appointments, it is a clear violation of the separation of powers doctrine. It simply cannot withstand scrutiny. That being the determination of this court, the failure of a circuit judge to sign a form approving the appointment of a deputy cannot reasonably be construed to mean that the deputy is not a law enforcement officer within the meaning of the Act. To rule otherwise would allow the judicial branch to veto personnel decisions made by the Sheriff, a member of the executive branch.

The more seriously argued position relates to §23-13-20, a copy of which was entered as defendant's exhibit 1-A. It reads, as follows:

SECTION 23-13-20. Bond and oath.

Each deputy sheriff shall, before entering upon the discharge of his duty, enter into bond in the sum of one thousand dollars, with sufficient surety, to be approved by the sheriff of the county, conditioned for the faithful performance of his duties and for the payment to the county and to any person of all such damages as they or any of them may sustain by reason of his malfeasance in office or abuse of his discretion. He shall, in addition to the oath of office now prescribed by Section 26, of Article III, of the Constitution, take the following oath (or affirmation) to wit: "I further solemnly swear (or affirm) that during my term of office as county deputy, I will study the act prescribing my duties, will be alert and vigilant to enforce the criminal laws of the State and to detect and bring to punishment every violator of them, will conduct myself at all times with due consideration to all persons and will not be influenced in any matter on account of personal bias or prejudice. So help me, God." The form of such bond shall be approved by the county attorney and, with the oaths, shall be filed with and kept by the clerk of court for the county.

A blanket bond may be used in any county to fulfill the bond requirement of this section upon approval of the County Council and the County Attorney.

WAC #11
The issue related to the question of bond was touched upon at the hearing. The defendant has failed to prove that there was no blanket bond in effect sufficient to prove the bond requirement.

The term "law enforcement officer" does not appear to be defined under the Act. So, the court is left to interpret the meaning of the words used in the statute. A word search was done to try to discover every section of the S.C. Code and Constitution that might attempt to define the term "law enforcement officer" or "deputy" or "sheriff." There are a couple of definitions in the Code, but they really do not add much to what one would understand through the common usage of the term.

Statutory interpretation is a matter of law. The oath prescribed by the Constitution was taken by Mr. Rushton.

In the recent case of *City of Rock Hill v. Harris*, 2011 WL 204799, the South Carolina Supreme Court discussed the interaction between constitutional provisions and legislative enactments. Clearly, Article V, Section 24 of the Constitution of South Carolina provides the General Assembly with authority to establish certain requirements governing sheriffs and their offices. *Harris* cites language from *Hodges v. Rainey*, 341 S.C. 79, 533 S.E.2d 578 (2000) which stands for the general proposition that the cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature. The general proposition requires a court to refrain from statutory construction and apply the statute according to its literal meaning, where the terms in a statute are clear and unambiguous. *Carolina Power & Light Co. v. City of Bennettsville*, 314 S.C. 137, 139, 442 S.E.2d 177, 179 (1994). The *Harris* court explains further, however, that there is an exception.

WHL
#12

Absent ambiguity, the court will look to the plain meaning of the words used to determine their effect. *Hodges*, 341 S.C. at 85, 533 S.E.2d at 581. However, the plain meaning rule is subject to this caveat:

However plain the ordinary meaning of the words used in a statute may be, the courts will reject that meaning when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the Legislature or would defeat the plain legislative intention. If possible, the court will construe the statute so as to escape the absurdity and carry the intention into effect.

Id. (quoting *Kiriakides v. United Artists Commc'ns, Inc.*, 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994)).

The *Hodges* case also stands for a proposition that is critical to the court's analysis. Statutes dealing with the same subject matter must be reconciled, if possible, so as to render both operative. When the Act was written, the Legislature set forth its legislative intent in §16-11-420, which reads:

§ 16-11-420. Intent and findings of General Assembly.

(A) It is the intent of the General Assembly to codify the common law Castle Doctrine which recognizes that a person's home is his castle and to extend the doctrine to include an occupied vehicle and the person's place of business.

(B) The General Assembly finds that it is proper for law-abiding citizens to protect themselves, their families, and others from intruders and attackers without fear of prosecution or civil action for acting in defense of themselves and others.

(C) The General Assembly finds that Section 20, Article I of the South Carolina Constitution guarantees the right of the people to bear arms, and this right shall not be infringed.

(D) The General Assembly finds that persons residing in or visiting this State have a right to expect to remain unmolested and safe within their homes, businesses, and vehicles.

(E) The General Assembly finds that no person or victim of crime should be required to surrender his personal safety to a criminal, nor should a person or victim be required to needlessly retreat in the face of intrusion or attack.

*WHL
#13*

The court finds that the General Assembly recognized that exceptions had to be made for law enforcement personnel. Those exceptions are not without limitation, and they are addressed in the Act. The Legislature left in place the ability to raise the issue of self-defense against a law enforcement officer and to have one's conduct evaluated in that context by a trial where the State bears the burden of proving beyond a reasonable doubt that the accused did not act in self-defense. The precise issue before the court is the immunity provisions which bar the State from any type of prosecution.

It is the court's finding that the General Assembly did not intend for the protections and restrictions related to using deadly force against law enforcement officers to be subject to the strict, technical evaluations argued by the defendant. In trying to construe different statutes and examine the legislative intent, the court concludes that the failure to take an additional or supplementary oath in § 23-13-20 does not deprive the State of the ability to prosecute here for

shooting a deputy, nor does it deprive the victim from asserting that he is a law enforcement officer for purposes of evaluating the applicability of the Act. In the context of interpreting the Act and evaluating it in light of other statutes, the court determines that the oath in §23-13-20 should be read as supplemental to the Constitutional requirement, where the deputy is swearing to uphold the law, and the failure to have those additional words included on a form should not be construed to deprive the State of the ability to prosecute the defendant.

Failure to Prove Reasonable Belief Regarding Law Enforcement Issue

Even if there is some problem in considering Deputy Rushton as a law enforcement officer because of a technical condition he had not fulfilled, the Act does not preclude prosecution. The defendant has not established that he had a reasonable belief that he was not firing upon law enforcement officers. There were three people in the yard (two of whom appear to have admittedly been law enforcement officers) and they were repeatedly yelling out their identification as such. Mr. Worley's claim is that he did not know who he was shooting toward, but acted in self-defense when he saw a figure point a gun at him. The defendant may raise self-defense and any other applicable defenses, but the determination of the court is that the Act does not preclude prosecution.

No Proof of Entry or Attempted Entry

Regardless of the position taken on the preceding issue, the Act does not create a presumption that would prohibit prosecution because none of the people in Mr. Worley's yard were attempting to enter the home.

S.C. Code Ann. §16-11-450(A) reads:

A person who uses deadly force as permitted by the provisions of this article or another applicable provision of law is justified in using deadly force and is immune from criminal prosecution and civil action for the use of deadly force, unless the person against whom deadly force was used is a law enforcement

officer acting in the performance of his official duties and he identifies himself in accordance with applicable law or the person using deadly force knows or reasonably should have known that the person is a law enforcement officer.

Section 16-11-440(A) reads, in part, as follows:

§ 16-11-440. Presumption of reasonable fear of imminent peril when using deadly force against another unlawfully entering residence, occupied vehicle or place of business.

(A) A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force that is intended or likely to cause death or great bodily injury to another person if the person:

(1) against whom the deadly force is used is in the process of unlawfully and forcefully entering, or has unlawfully and forcibly entered a dwelling, residence . . . ; and

(2) who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred.

WMC
dts

The court concludes that the defendant has not established by the preponderance of the evidence that Deputy Rushton was doing anything unlawful. Mr. Worley has not proven that Deputy Rushton was entering or attempting to enter the Worley residence, by force or otherwise. He was there with the other officers, identifying himself as law enforcement, ringing the doorbell and knocking on the door.

Section 16-11-440(B) disallows the presumption of subsection (A), where the person [subsection (1)] against whom the deadly force is used has the right to be in the dwelling; or, [subsection (4)] where the person against whom the deadly force is used is a law enforcement officer who enters or attempts to enter a dwelling in the performance of his official duties, and he identifies himself in accordance with applicable law or the person using force knows or reasonably should have known that the person entering or attempting to enter is a law enforcement officer.

As to both subsections §16-11-440(B)(1) and (4), again, there is no evidence that Deputy Rushton or any of the other officers were in the residence or attempting to enter it. So, neither subsection would provide a presumption related to immunity from prosecution, in the court's determination.

The failure of evidence regarding entry or attempted entry is fatal to the defendant's argument concerning subsection (B). However, there was a great deal of focus in the testimony concerning subsection (B)(4) dealing with the defendant's assertion that Deputy Rushton either was not a law enforcement officer (an issue that was discussed previously) or that he did not follow proper law enforcement procedures. So, the court will address those issues.

Worley
#16

Immunity is inapplicable under §16-11-450 where the person against whom force was used was a law enforcement officer acting in the performance of his official duties who identified himself in accordance with applicable law, or the person using deadly force knew or reasonably should have known that the person was a law enforcement officer. The presumption of fear that would be afforded to Mr. Worley under §16-11-440(A) is inapplicable where the person [subsection (4)] "against whom the deadly force is used is a law enforcement officer who enters or attempts to enter a dwelling, residence, or occupied vehicle in the performance of his official duties, and he identifies himself in accordance with applicable law or the person using force knows or reasonably should have known that the person entering or attempting to enter is a law enforcement officer."

The evidence, in the court's view, established that Deputy Rushton was clearly acting in accordance with his official duties and that he identified himself in accordance with applicable law. He was called to the scene and responded with other officers to a

call of "shots fired." He spoke with the complaining parties, went to check on the person who was alleged to have fired the shots, and properly reacted when the defendant came out holding a gun. Even the defense's expert supported the assertion that an officer can point his weapon when confronted with someone holding a rifle under these circumstances.

To the extent that the defense expert testified that the deputies did not conduct themselves in accordance with applicable law, the court rejects that conclusion. The officers repeatedly and consistently identified themselves as law enforcement officers. Law enforcement officers are permitted to "knock and announce," and the evidence indicates that they did that properly. Even under the defendant's version of the events, the people in his yard were announcing their presence by repeatedly ringing the doorbell. Again, they did not enter the residence or attempt to do so. Thus, while this subsection does not provide immunity from prosecution, the conclusion of the court is that the defendant has also failed to prove that he did not know or that he was reasonable in failing to know that the people in his yard, including Deputy Rushton, were law enforcement officers.²

The defendant has failed to prove that he is entitled to the presumption of Subsection (A) because he has failed to prove that Mr. Rushton was not a law enforcement officer within the meaning of the Act; failed to prove that Mr. Worley did not know that Mr. Rushton was a law enforcement officer within the meaning of the Act; failed to prove that Mr. Worley reasonably

² Though the court does not recall it being specifically raised, there is not a presumption under §16-11-440(C), either. That provision does not appear to vary in any significant way from the typical self-defense situation. Mr. Worley was not in "another place." An appurtenant structure would be part of the dwelling, invoking the exclusions related to law enforcement officers. In the trial, Mr. Worley may raise self-defense.

should have known that he was firing upon a law enforcement officer within the meaning of the Act; and, failed to prove that anyone was entering or attempting to enter his dwelling. The preponderance of the evidence establishes that the persons on Mr. Worley's lawn were law enforcement officers as that term is used in the Act, who were attempting to get Mr. Worley to answer his door and talk to them. He has failed to prove that these persons were doing anything unlawful, including failing to prove that Mr. Rushton was acting unlawfully and improperly when he pointed his weapon at Mr. Worley.

Likewise, the defendant has failed to prove that he is entitled to immunity because the exception for law enforcement officers under §16-11-450 applies. The evidence establishes that the person against whom force was used was a law enforcement officer acting in the performance of his official duties who identified himself in accordance with applicable law, or the person using deadly force knew or reasonably should have known that the person was a law enforcement officer.

Worley
#18

In the alternative, the court believes that there is a reasonable construction of the Act that would provide that the provisions of §16-11-440 largely explain when deadly force is "permitted" under §16-11-450, thus providing when immunity is applicable. Even if people were entering or attempting to enter the residence, the provisions of §16-11-440(B) disallow the presumptions of subsection (A) where Mr. Worley knew or should have known that the people on his lawn were law enforcement officers.

As discussed previously, the language of the Act is problematic because it provides immunity for people "permitted by the provisions of this article or another applicable provision of law" to use deadly force, but the Act seems to do little to define who is permitted to use deadly force. It seems logical and permissible to look at the entire Act and the common law

Castle Doctrine, and to interpret that the General Assembly intended for the language of §16-11-440 to be read in terms of providing who is permitted to use deadly force. If so, then it would be, as stated in the original order, that in order for immunity to attach, §16-11-450(A) would require that Mr. Worley establish that he was permitted to use deadly force by the provisions of §16-11-440 or another applicable provision of law.

It may be that such an interpretation is bolstered by a statement by the Supreme Court in *Duncan*. In determining that immunity was appropriate, the Supreme Court stated: "We find respondent showed by a preponderance of the evidence that the victim was in the process of unlawfully and forcefully entering respondent's home in accordance with § 16-11-440. Accordingly, the circuit court properly found respondent was entitled to immunity under the Act." Arguably, that language gives some credence to an interpretation that §16-11-440 provides situations where deadly force is "permitted" under the Act, thus granting immunity under §16-11-450(A).

WAL
#19

If it is permissible to construe the Act as having §16-11-440(A) provide parameters of who is "permitted" to use deadly force, there would be an inquiry of the disallowance of immunity where force is used against persons who have a right to be in the residence, or against law enforcement officers who are performing their official duties and announce their presence, as specified under §16-11-450(B). That would include whether the defendant has established that he did not know or that it was reasonable for him not to know that the persons were law enforcement officers; and, it would include an inquiry as to whether immunity is available when the person shot was not entering or attempting to enter the residence.

Other Applicable Provision of Law

The defendant asserts that he is granted immunity because he was authorized to use deadly force by "another applicable provision of law" under §16-11-450(A). Specifically, he raises the following principles of law.

(1) Self-Defense

At trial, the State would have to disprove self-defense beyond a reasonable doubt. However, at this stage, to support this claim under "another applicable provision of law," the defendant would have the burden of proving by a preponderance of the evidence that he is entitled to immunity under §16-11-450(A) based on establishing that he acted in self-defense. The court finds that he has not met his burden of proof.

In *State v. Bixby*, 338 S.C. 528, 698 S.E.2d 572 (2010), the Supreme Court of South Carolina stated:

There are four elements required by law to establish a case of self-defense. *State v. Davis*, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984). The four elements are:

First, the defendant must be without fault in bringing on the difficulty. Second, the defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger. Third, if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the [388 S.C. 554] same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life.

Fourth, the defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance. If, however, the defendant was on his own premises he had no duty to retreat before acting in self-defense.

While the court believes that the defendant would like to focus only on the period of approximately one second when Mr. Rushton raised his pistol and Mr. Worley responded by

firing, the court does not believe that to be the proper analysis. The court finds that the preponderance of the evidence is that the "difficulty" was brought on by Mr. Worley's conduct.

The court finds that the greater weight of the evidence is that the defendant knew or should have known that law enforcement officers were on his lawn. He asked who was there. They responded that they were law enforcement officers. The defendant yelled that he did not give a f____, and he then proceeded from the security of the walls of his residence out onto his deck with a loaded rifle. Mr. Rushton acted appropriately in meeting that condition, and Mr. Worley fired upon him.

WAC #21
The court does not find that the defendant has proven any of the four elements of self-defense. In the court's view, the greater weight of the evidence supports the conclusion that Mr. Worley's acts were those of defiance and aggression. Our Supreme Court has noted that there is a difference between being armed in self-defense and acting in self-defense. [See *State v. Gibson*, 390 S.C. 347, 701 S.E.2d 766 (SC App. 2010).]

(2) Defense of Habitation & Common Law Castle Doctrine

The defense also raised the applicability of the defense of habitation as entitlement to immunity under §16-11-450(A). As explained in *State v. Bryant*, 391 S.C. 225, 705 S.E.2d 465 (SC App. 2010):

The defense of habitation provides that defending one's home or premises means ending an unwarranted intrusion through the use of reasonably necessary means of ejection. *State v. Rye*, 375 S.C. 119, 123, 651 S.E.2d 321, 323 (2007). "One defending himself from imminent attack on his own premises is entitled to a charge of defense of habitation." *State v. Lee*, 293 S.C. 536, 537, 362 S.E.2d 24, 25 (1987). "For the defense of habitation to apply, a defendant need only establish that a trespass has occurred and that his chosen means of ejection were reasonable under the circumstances." *Rye*, 375 S.C. at 124, 651 S.E.2d at 323. Unlike the defense of self-defense, the defense of habitation does not require that a defendant reasonably believe that he or his [391 S.C. 234] property was in imminent danger of sustaining serious injury or damage. *Id.* Rather, the defense

of habitation provides "where one attempts to force himself into another's dwelling, the law permits an owner to use reasonable force to expel the trespasser." Id. "The defense of habitation is analogous to self-defense and should be charged when the defendant presents evidence that he was 'defending himself from imminent attack on his own premises.' " State v. Sullivan, 345 S.C. 169, 173, 547 S.E.2d 183, 185 (2001) (quoting Lee, 293 S.C. at 537, 362 S.E.2d at 25). Although self-defense and habitation are analogous, the defenses are not identical. Rye, 375 S.C. at 124, 651 S.E.2d at 323.

Here, the court finds that the defendant has not established, by a preponderance of the evidence, that there was an imminent attack upon his premises or that his actions in confronting the perceived attack were reasonable under the circumstances. For reasons explained in great detail previously, the court's interpretation of the credible evidence is that no one entered or attempted to enter the defendant's home. The fact that the entry door is underneath a deck that is an appurtenant structure to the residence or underneath the eaves of the house, and the officers were at the entry door at times, does not establish an unwarranted entry into the residence of the defendant. The officers were knocking and announcing, and they were ringing the doorbell. The court finds that the greater weight of the evidence does not support that the defendant acted reasonably under the circumstances because he knew or should have known that law enforcement officers were on his lawn, he asked who was there, they responded that they were law enforcement officers, the defendant yelled that he did not give a f____, and he then proceeded out onto his deck in an act of defiance with a loaded rifle. Any reasonable person under those circumstances would expect that the officers would draw and point their weapons in response. Even the defendant's expert witness testified that Mr. Rushton was justified in aiming his pistol at Mr. Worley when there was a call of "gun" under the circumstances that existed at the time.

(3) Citizen's Arrest of a Felon at Night

Motion to Strike Improperly-Designated Matter

In the case at bar, Appellant has designated in his amended designation of matter a Motion Nunc Pro Tunc to Supplement the Record on Rehearing or Take Judicial Notice along with an attached exhibit. However, as previously noted, that motion was filed on February 23, 2012, which was thirty-six days after the notice of appeal was filed in this case. Because Appellant filed the motion and exhibit after the notice of appeal was filed in this case, the trial judge no longer had jurisdiction in Appellant's case and had no jurisdiction to consider the motion or attached exhibit in relation to the ruling being appealed. See Rule 205, SCACR ("Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal[.]"). For that reason, the motion and exhibit were not properly before the trial judge in connection with the ruling on appeal and were not and could not have been considered by the trial judge in issuing that ruling, rendering that matter irrelevant to the current appeal. See Rule 210(c), SCACR ("The Record shall not, however, include matter which was not presented to the lower court or tribunal."); see also Rule 209(b), SCACR ("A party shall not include any matter in his Designation of Matter which is not relevant to the appeal."); see, e.g., Hofer v. St. Clair, 298 S.C. 503, 513, 381 S.E.2d 736, 742 (1989) ("It would be utterly inappropriate for an appellate court to reverse a trial court's decision in reliance on evidence never submitted to the trial court for its consideration."). Therefore, since the motion and attached exhibit were not before the trial court prior to the initiation of the appeal in this case, those documents cannot properly be considered on appeal or included in the Record on Appeal in Appellant's case. Accordingly, the State asks this Court to strike that matter from Appellant's Amended Designation of Matter and preclude its improper inclusion in the Record on Appeal.

The defendant asserted the provisions of S.C. Code Ann. §17-13-20 as "another applicable provision of law" extending immunity under the Act.

§ 17-13-20. Additional circumstances where citizens may arrest; means to be used.

A citizen may arrest a person in the nighttime by efficient means as the darkness and the probability of escape render necessary, even if the life of the person should be taken, when the person:

- (a) has committed a felony;
- (b) has entered a dwelling house without express or implied permission;
- (c) has broken or is breaking into an outhouse with a view to plunder;
- (d) has in his possession stolen property; or
- (e) being under circumstances which raise just suspicion of his design to steal or to commit some felony, flees when he is hailed.

There is no evidence that could be viewed as invoking subsection (d) under any scenario. Moreover, the court recalls no indication whatsoever that the defendant was attempting to place anyone under arrest. His assertion is that he was acting in defense of himself and his home. The court finds that the defendant has failed to prove by a preponderance of the evidence that he is entitled to immunity based on this statute under the Act.

In *State v. Cooney*, 320 S.C. 107, 463 S.E.2d 597 (1995), the Supreme Court of South Carolina stated:

In order to invoke the defense of justifiable killing in apprehending a fleeing felon, appellant at a minimum must show that he had certain information that a felony had been committed, § 17-13-10(b), and he used reasonable means to effect the arrest, *State v. Nall*, supra. There was evidence presented that appellant had certain information that a felony had been committed. However, State courts examining similar situations have found that whether reasonable force was used to apprehend a fleeing felon is a factual question left to the jury. *People v. Couch*, supra; *State v. Clarke*, 61 Wash.2d 138, 377 P.2d 449 (1962).

The determination of reasonableness depends upon the facts of the case and is a question for the jury unless there is no evidence to support a finding of reasonableness. The trial judge found killing an unarmed fleeing suspect is per se unreasonable. We hold it was reversible error to not charge the jury on the

common law of citizen's arrest and the use of reasonable force since evidence placed appellant's reasonableness in apprehending Mr. Williams in issue.

This is a fact-specific issue. The court's view of the overall facts has been repeatedly recited and does not support any determination that there was information that the defendant deemed to be that a felony had been committed. The court doubts the applicability of this statute to this case. Assuming that the statute were to be construed as applicable, then to justify shooting Mr. Rushton, the defendant in this pre-trial hearing under *Duncan* must establish that he used reasonable means under the circumstances in firing upon Mr. Rushton. For reasons stated previously, the court finds that the evidence supports the opposite conclusion.

(4) Resisting an Unlawful Arrest

#24
The defendant argues that he is entitled to immunity because he was resisting an unlawful arrest. The court disagrees. There was no evidence that Mr. Worley was placed under arrest or that there was an attempt to place him under arrest prior to his shooting Mr. Rushton. The preponderance of the evidence is that the officers were attempting to get him to answer the door so that they could talk to him about the neighbor's complaint.

THEREFORE, IT IS ORDERED that the motion to bar prosecution of these cases is denied.

IT IS FURTHER ORDERED that the undersigned judge recuses himself from further involvement in this matter. The attorneys are to notify The Honorable Frank R. Addy to have a hearing scheduled on the defendant's motion to reduce bond.

AND IT IS SO ORDERED.

December 6, 2011

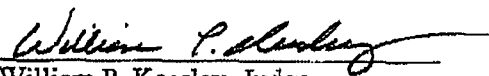

William P. Keesley, Judge

Exhibit C

MEMORANDUM

COPY

TO: Desiree Allen
FROM: Rena K. Thomas
DATE: July 5, 2011
RE: Auto break-in and missing court records

Desiree, I am writing to inform you of a loss of court records I experienced through an auto break-in on Thursday, June 23, 2011. I have been waiting on the police report to send to you with this memo. I received the police report on Friday, July 1, 2011.

On Thursday morning, June 23, I left Chapin to work in Manning. I knew there was a likelihood that I would be in Manning on Friday so I was prepared to stay overnight in Manning. I had in the vehicle a big, expandable briefcase with CDs, paperwork, paper notes and cassette tapes from a motions hearing in McCormick County the week of May 31, 2011.

My plan was to meet on Friday with a transcriber I often use, who lives off Hwy 378 near the V. A. Hospital, and give her the transcript to work on. I had already received four letters requesting the motions hearing, which would have been approximately 300 pages. Several copies would be sold, unusual in today's economic times, justifying using the typist.

This briefcase, with its contents, was taken from the vehicle. The cassette tapes corresponding with the hearing were in a box in the van and were dumped out and strewn about the vehicle with other things. I have photos of what the inside of the van looked like after the vandalism.

Because some of the cassette tapes were broken and unraveled I had to listen to the cassette tapes to know what testimony is where and what I can transcribe. I believe I can transcribe approximately 210 pages of the hearing. At least three cassettes are missing from the group. They were inside the briefcase.

I do not know how you want me to handle notifying the attorneys who have ordered the transcript. Do you want to notify them or do you want me to write to them and tell them the situation, include a copy of the police report and tell them what portions of the requested transcript they can expect to receive? I believe the missing materials relates to one entire witness and part of another witness. It was not a trial, but motions in advance of a trial.

Obviously, this is a very unfortunate situation. As it turned out, I was not going to stay in Manning on Thursday night and I was on my way back to Chapin. I stopped on Hwy 378, on the Sumter Highway, to go into a grocery store to kill time until the typist got off from work. I was inside the store about an hour. When I came out I found the break-in. My entire back-up system was stolen.

I told the police officer the recorders were worth approximately \$100.00 each at a pawn shop because they were old, but they still worked fine. I have learned that it will cost much more than that to replace them. However, my insurance is \$1,000 deductible so I will be out-of-pocket at least that much to buy new equipment. I have been told to file an amended police report reflecting replacement costs for what was stolen. I have been able to borrow a back-up system to use temporarily.

My laptop computer and Stenograph writer was in the back of the van but the thieves didn't open the back hatch. The police officer believed the thieves worked from the side sliding door and would have been seen if they had tried to open the back of the van.

Please let me know how I am to proceed with this situation. I apologize for the problem and the inconvenience to you this will create. For 18 years I have been parking my vehicle overnight at motels and in parking lots all over the state and have been very fortunate to have had no break-ins until now.

Columbia Police Dept SC0400100		INCIDENT REPORT		INFORMATION DATE 08/23/2011		CASE NUMBER 11001639		INQ ENTD	
INCIDENT TYPE				COMPLETED	FORCE/ENTRY	PREMISE TYPE	LAISSEZ-PASS	TYPE VICTIM	
1. 10-13-018D(1)(2). (B) AUTOBREAKING 23G THEFT OF MOTOR VEHICLE PARTS OR ACCESSORIES				YES NO	YES NO	PARKING LOT/GARAGE		Individual Business	
2. 15-12-009(A) LARCENY/PETIT OR SIMPLE LARCENY 23H 23J ALL OTHER LARCENY				YES NO	YES NO	PARKING LOT/GARAGE		Financial Institution	
3.				YES NO	YES NO			Other Unknown	
INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER) 7545 GARNERS FERRY RD, COLUMBIA, SC						ZIP CODE 29205-0000		WEAPON TYPE NONE	
INCIDENT DATE		24 HR. CLOCK		DATE		24 HR. CLOCK		LOCATION NO.	
08/23/2011		09:00		08/23/2011		15:00		465	
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE) THOMAS, REMA				RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	AGE
				GT		S	W	F	65
ADDRESS				CITY		STATE		ZIP CODE	
806 YACHT CLUB PT				COLUMBIA		SC		29035-0000	
VICTIM'S NAME (LAST, FIRST, MIDDLE) THOMAS, REMA				RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	AGE
				GT		S	W	F	65
ADDRESS				CITY		STATE		ZIP CODE	
806 YACHT CLUB RD				CHAPIN		SC		29035-0000	
VICTIM'S RACE				VICTIM'S SEX		VICTIM'S AGE		VICTIM'S HEIGHT	
W				F		65		5'10"	
VICTIM'S WEIGHT				VICTIM'S HAIR		VICTIM'S EYES		VICTIM'S BUILD	
215				GRE		BRO		M	
VICTIM'S OCCUPATION				VICTIM'S EDUCATION		VICTIM'S MARITAL STATUS		VICTIM'S EMPLOYMENT	
VICTIM'S PHONE				VICTIM'S ADDRESS		VICTIM'S CITY		VICTIM'S STATE	
803-545-0821				806 YACHT CLUB RD		CHAPIN		SC	
VICTIM'S DATE OF BIRTH				VICTIM'S DATE OF DEATH		VICTIM'S DATE OF ARREST		VICTIM'S DATE OF RELEASE	
08/23/2011									
VICTIM'S TYPE				VICTIM'S STATUS		VICTIM'S CATEGORY		VICTIM'S SUBCATEGORY	
1				1		1		1	
VICTIM'S COMMENTS				VICTIM'S COMMENTS		VICTIM'S COMMENTS		VICTIM'S COMMENTS	
VICTIM'S SIGNATURE				VICTIM'S SIGNATURE		VICTIM'S SIGNATURE		VICTIM'S SIGNATURE	
VICTIM'S PRINTED NAME				VICTIM'S PRINTED NAME		VICTIM'S PRINTED NAME		VICTIM'S PRINTED NAME	
THOMAS, REMA				THOMAS, REMA		THOMAS, REMA		THOMAS, REMA	
VICTIM'S ADDRESS				VICTIM'S ADDRESS		VICTIM'S ADDRESS		VICTIM'S ADDRESS	
806 YACHT CLUB RD				CHAPIN		SC		29035-0000	
VICTIM'S CITY				VICTIM'S STATE		VICTIM'S ZIP CODE		VICTIM'S LOCATION NO.	
CHAPIN				SC		29035-0000		289	
VICTIM'S DATE OF BIRTH				VICTIM'S DATE OF DEATH		VICTIM'S DATE OF ARREST		VICTIM'S DATE OF RELEASE	
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VICTIM'S TYPE				VICTIM'S STATUS		VICTIM'S CATEGORY		VICTIM'S SUBCATEGORY	
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VICTIM'S SIGNATURE				VICTIM'S SIGNATURE		VICTIM'S SIGNATURE		VICTIM'S SIGNATURE	
VICTIM'S PRINTED NAME				VICTIM'S PRINTED NAME		VICTIM'S PRINTED NAME		VICTIM'S PRINTED NAME	
THOMAS, REMA				THOMAS, REMA		THOMAS, REMA		THOMAS, REMA	
VICTIM'S ADDRESS				VICTIM'S ADDRESS		VICTIM'S ADDRESS		VICTIM'S ADDRESS	
806 YACHT CLUB RD				CHAPIN		SC		29035-0000	
VICTIM'S CITY				VICTIM'S STATE		VICTIM'S ZIP CODE		VICTIM'S LOCATION NO.	
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VICTIM'S SIGNATURE				VICTIM'S SIGNATURE		VICTIM'S SIGNATURE		VICTIM'S SIGNATURE	
VICTIM'S PRINTED NAME				VICTIM'S PRINTED NAME		VICTIM'S PRINTED NAME		VICTIM'S PRINTED NAME	
THOMAS, REMA				THOMAS, REMA		THOMAS, REMA		THOMAS, REMA	
VICTIM'S ADDRESS				VICTIM'S ADDRESS		VICTIM'S ADDRESS		VICTIM'S ADDRESS	
806 YACHT CLUB RD				CHAPIN		SC		29035-0000	
VICTIM'S CITY				VICTIM'S STATE		VICTIM'S ZIP CODE		V	

Exhibit D

THE STATE OF SOUTH CAROLINA
In the Court of Appeals



APPEAL FROM McCORMICK COUNTY

Honorable William P. Keesley, Circuit Judge, 11th Judicial Circuit
Case No. J-036561, J-036562, J-036563, J-036564, J-036565, J-036566

Joe Ross Worley,

Appellant

v.

State of South Carolina,

Respondent.

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SC Court of Appeals

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TABLE OF CONTENTS

Table of Authorities	ii
Statement of Issues on Appeal	1
Statement of the Case	2
Statement of the Facts.....	4
Standard of Review	9
Argument	10
I. BECAUSE AN AGENT OF THE STATE FAILED TO PRESERVE EVIDENCE OF CRITICAL TESTIMONY FROM THE HEARING REGARDING IMMUNITY, DOES APPELLATE COURT LACK SUFFICIENT RECORD TO CONDUCT MEANINGFUL APPELLATE REVIEW.....	10
II. DOES PROPER APPLICATION OF THE ACT DURING A PRE-TRIAL HEARING REQUIRE DEFENDANT TO PRESENT EVIDENCE OF THE APPLICABILITY OF IMMUNITY; AND THEN PLACE UPON THE STATE THE BURDEN OF SHOWING AN EXCEPTION TO IMMUNITY	12
A. Appellant established applicability of the presumption and immunity	14
B. The State must respond to Appellant's showing of entitlement to the statutory presumption and immunity by meeting its burden of production to show an exception to immunity	15
1. The State cannot even meet the first criteria for the exception, as Rushton was not a "law enforcement officer" at the time of the incident	16
a) Interpreted properly, statutorily mandated judicial approval of deputy appointments does not violate the separation of powers ...	17
b) Statutory oath requirement is a distinct and mandatory prerequisite that Rushton failed to satisfy	19
c) Rushton's certification as a Class I law enforcement officer had lapsed, and necessary training to recertify was not completed prior to the events in question.....	21

d) Failure to qualify as a "law enforcement officer" does not bar prosecution, but merely precludes certain exception to immunity.....	22
2. The State cannot support a finding that Appellant knew or should have known Rushton was a law enforcement officer at the time of the incident	22
a) The facts, when viewed properly from the perspective of Appellant as compelled by the common law and codification thereof, compel a finding that Appellant was reasonable in his belief that he was not firing upon a law enforcement officer	23
b) Appellant provided expert testimony regarding the procedural and technical failures of Rushton, Moore, and McAllister that further justify a necessary finding of reasonableness on the part of Appellant.....	27
c) Rushton was not in uniform or appearance a law enforcement officer.....	27
Conclusion	29

TABLE OF AUTHORITIES

CASES

<u>Adams v. H.R. Allen, Inc.,</u> 397 S.C. 652, 656-57, 726 S.E.2d 9, 12 (Ct. App. 2012).....	10, 12
<u>China v. Parrott,</u> 251 S.C. 329, 333-34, 162 S.E.2d 276, 278 (1968).....	10
<u>Carolina Power & Light Co. v. City of Bennettsville,</u> 314 S.C. 137, 139, 442 S.E.2d 177, 179 (1994).....	18
<u>City of Rock Hill v. Harris,</u> 391 S.C. 149, 154, 705 S.E.2d 53 (2011).....	18, 21
<u>Gathers By and Through Hutchinson v. South Carolina Elec. and Gas Co.,</u> 311 S.C. 81, 427 S.E.2d 687 (Ct. App. 1993)	12
<u>Hodges v. Rainey,</u> 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000).....	21
<u>Moseley v. Welch,</u> 209 S.C. 19, 26-27, 39 S.E.2d 133, 137 (1946).....	18
<u>Nelson v. Coleman Co.,</u> 249 S.C. 652, 155 S.E.2d 917 (1967)	12
<u>Stanley Smith & Sons v. D.M.R. Inc.,</u> 307 S.C. 413, 415 S.E.2d 428 (Ct. App. 1992)	14
<u>State v. Bradley,</u> 120 S.E. 240, 242, 126 S.C. 528 (1923).....	29
<u>State v. Dickey,</u> 669 S.E.2d 917, 923, 380 S.C. 384, 396 (Ct. App. 2008)(<i>cert. granted</i>).....	15
<u>State v. Duncan,</u> 392 S.C. 404, 709 S.E.2d 662 (2011)	9, 12, 15
<u>State v. Osborne,</u> 21 S.E.2d 178, 182, 200 S.C. 504, (1942).....	15
<u>State v. Sampson,</u> 12 S.C. 567 (1880).....	15

<u>State v. Williams,</u> 326 S.C. 130, 485 S.E.2d 99 (1997).....	15, 23
<u>Townes Associates, Ltd. v. City of Greenville,</u> 266 S.C. 81, 221 S.E.2d 773 (1976).....	9
<u>Willis v. Aiken County,</u> 26 S.E.2d 313, 203 S.C. 96 (1943)	17, 19, 20

CONSTITUTIONAL PROVISIONS

S.C. Const. art. III, § 26	16
S.C. Const. art. V, § 11	9

STATUTES

S.C. Code Ann. § 16-11-401 <i>et seq.</i> (2006)	2, 4, 9
S.C. Code Ann. § 16-11-420 (2006).....	12
S.C. Code Ann. § 16-11-420(A) (2006)	15
S.C. Code Ann. § 16-11-430 (2006)	15
S.C. Code Ann. § 16-11-440 (2006).....	13, 21
S.C. Code Ann. § 16-11-450 (2006).....	21, 22
S.C. Code Ann. § 16-11-450(A) (2006)	13, 16, 23
S.C. Code Ann. § 23-13-10 (1976).....	16, 17, 18, 20, 21
S.C. Code Ann. § 23-13-20 (1976).....	16, 21, 22
S.C. Code Ann. § 23-13-60 (1976).....	22
S.C. Code Ann. § 50-11-2570(B) (Supp. 1988)	23

OTHER AUTHORITIES

Am. Jur. 2d, Evidence § 123	14
<u>Trial Handbook for South Carolina Lawyers</u> § 12:2 at 472 (4 th ed. 2007).....	14
Rule 607, SCACR.....	10

STATEMENT OF ISSUES ON APPEAL

- I. BECAUSE AN AGENT OF THE STATE FAILED TO PRESERVE EVIDENCE OF CRITICAL TESTIMONY FROM THE HEARING REGARDING IMMUNITY, DOES APPELLATE COURT LACK SUFFICIENT RECORD TO CONDUCT MEANINGFUL APPELLATE REVIEW?
- II. DOES PROPER APPLICATION OF THE ACT DURING A PRE-TRIAL HEARING REQUIRE DEFENDANT TO PRESENT EVIDENCE OF THE APPLICABILITY OF IMMUNITY, AND THEN PLACE UPON THE STATE THE BURDEN OF SHOWING AN EXCEPTION TO IMMUNITY?

STATEMENT OF THE CASE

This matter is before the South Carolina Court of Appeals (Court) following Appellant Joe Ross Worley's arrest on or about November 9, 2009. Appellant was charged with three (3) counts of Assault and Battery with Intent to Kill and three (3) counts of Possession of Weapon during a Violent Crime arising from his firing of a rifle at an unknown person, later revealed to be a newly re-hired employee of the McCormick County Sheriff's Department. Appellant remains in jail, without trial, during these pre-trial proceedings of almost three (3) years.

Appellant raised as a defense to the charges the immunity from criminal prosecution afforded by the "Protection of Persons and Property Act" at S.C. Code Ann. § 16-11-401 *et seq.* (hereinafter "the Act"). On December 3, 2009, the Honorable William P. Keesley denied pre-trial bond. On February 23, 2010, Judge Keesley again denied bond. Defense counsel moved for an order setting the case for trial, which was denied by order dated August 11, 2010. In the same order, Judge Keesley warned the prosecution that the case must be expedited.

Judge Keesley thereafter held a hearing on the applicability of immunity provided by the Act on May 31, 2011 and June 1, 2011. On July 5, 2011, Judge Keesley issued an Amended¹ Order on Motion to Bar Prosecution, denying Appellant's assertion of immunity. In that order, Judge Keesley recused himself from further proceedings in the action, and again denied Appellant's request for bond.

¹ The initial order was issued on June 24, 2011, but later amended to correct scrivener's errors.

On July 6, 2011, Appellant filed a Motion to Reconsider the denial of immunity, and a separate Motion to Reconsider Denial of Bond. Judge Keesley requested briefs² from both Appellant and the State on the immunity issues. Appellant filed his memorandum in support of reconsideration on August 1, 2011 and the State submitted a return on August 12, 2011. Appellant then filed a reply brief on August 22, 2011. On August 22, 2011, Appellant also filed a Motion to Supplement the Record on Rehearing, seeking to have Judge Keesley supplement the record of the hearing on immunity of an attached exhibit that reflected the State's witness Mr. Rushton was not certified as a law enforcement officer at the time of the events in question leading to arrest of Appellant.

Judge Keesley denied the motion to supplement by order dated February 22, 2012. Upon receipt of that order, Appellant realized the exhibit that was submitted in conjunction with the motion to supplement was already part of the hearing record, having been introduced at the hearing, and the actual exhibit intended to be the subject of the motion to supplement had not been presented to Judge Keesley for consideration. Accordingly, Appellant filed a Motion *Nunc Pro Tunc* to Supplement the Record on February 23, 2012. At the time of this initial brief, that motion remains pending before Judge Keesley.

Judge Keesley issued an Amended Order on Reconsideration of the Defendant's Motion to Bar Prosecution that was signed December 6, 2011 and filed December 8, 2011. Appellant timely filed a notice of appeal on January 20, 2012. Appellant subsequently filed two motions for extension of time in which to file the initial Appellant's brief.

² On October 10, 2011, counsel for Appellant provided Judge Keesley with a partial transcript of the proceedings (see discussion in Statement of the Facts *infra*) held before him on May 31 and June 1, 2011, on the immunity issue.

STATEMENT OF FACTS

In the early hours of November 15, 2009, Appellant fired a rifle to shoot an adult male who was pointing a gun at him as he stood on his second floor porch. The shot injured Robert Rushton, who was pointing a gun at Appellant³. Rushton was there with two officers (Nick Moore and Sara McAllister⁴) of the McCormick County Sheriff's Department investigating a report of shots being fired earlier that night. (Tr. p. 33, lines 1 - 11). A hearing on the applicability of immunity provided by the "Protection of Persons and Property Act" at S.C. Code Ann. § 16-11-401 *et seq.* was held on May 31, 2011 and June 1, 2011. Unfortunately, only enough information to compile a partial transcript of this hearing survived a theft from the court reporter's records before a complete written transcript could be completed. (Tr. p. 159, lines 15-17; Tr. p. 231). Regrettably, Appellant's testimony is among the missing portions of the transcript.

At that immunity hearing, a neighbor testified that Appellant's family cat, Sweat Pea, was known to have been injured and that there were foxes in the area. (Tr. p. 152, l. 20 - p. 153, l. 11). Mr. Rushton testified he would not be surprised if Appellant had fired at a fox as Appellant contends. (Tr. p. 41, lines 21 - 23; Tr. p. 93, lines 2-3). Neighbors further testified that they often heard gunshots in the area, although some when Appellant was not at home, and had relayed their objections to the noise to Appellant's mother. (Tr. p. 148, lines 22 - 24; Tr. p. 149, lines 15 - 21). There is no evidence a prior noise report was ever communicated to Appellant by law enforcement. (Tr. p. 86, lines 6 - 9). On

³ The property was owned by Appellant's mother, with whom he resided.

⁴ Entered into evidence was a document detailing the termination of Deputy McAllister from her prior employment with the SC Dept. of Natural Resources. (Defense exhibit 6 from immunity hearing). She was fired because DNR discovered that she had participated in the destruction and concealment of critical evidence in a fatal accident investigation, only to then lie on three separate occasions about her actions during questioning by DNR officials. (Tr. p. 191, lines 8 - 14).

the night in question, the neighbors contacted police regarding shots fired in the area. (Defense Exhibit 4 from hearing).

The neighbors did not advise Appellant they had contacted police, so Appellant had no notice that anyone would be arriving at his home. Testimony conflicted regarding the exact time of the shots heard by the neighbors, with the latest time estimated by a neighbor to be 3:30 a.m. (Statement by Gayle Sheffield dated 11/15/09). Dispatch notified Mr. Rushton of the call sometime after 4:00 a.m. (Tr. p. 30, lines 9 - 11). Appellant shot Mr. Rushton sometime after approximately 4:30 a.m. (Tr. p. 64, line 5).

Appellant testified that by the time of their arrival, he was sound asleep in his bed. (Tr. p. 225, line 9). The neighbors who contacted police were expecting police presence and had their windows open. (Tr. p. 153, lines 20-21). Appellant was located upstairs, inside of a dwelling that he testified was well insulated. (Tr. p. 213, lines 8-9).

Rushton admitted that he believed a deer poacher was active in the area and was responsible for the prior shots. (Tr. p. 35, lines 6 - 8, Tr. p. 36, lines 2 - 5, Tr. p. 41, lines 14 - 15). Rushton did not have on a uniform; instead he was wearing merely khaki pants, a green shirt, and a small badge on his belt. (Tr. p. 21, line 13 - p. 22, line 14). He was not wearing McCormick County's standard deputy uniform, any reflective items such as a vest, or any hat identifying him as law enforcement, even though Rushton had a vest and hat he could have worn. (Tr. p. 22, lines 15 - 23; Tr. p. 25, lines 5 - 9; Tr. p. 24, lines 4 - 8).

Rushton, Moore, and McAllister did not telephone, or have dispatch call, the house in which Appellant was asleep to alert the residents of their impending arrival. (Tr. p. 87, lines 10-22). All arrived without sirens and blue lights in operation; in other

words, they arrived silently. Rushton and Moore approached the house, under a covered porch, knocked on the door, and rang the doorbell. The ground level door that was knocked upon, which was where the doorbell was located and is the only entrance to the house, had no peephole or other means to examine the identity or appearance of the person(s) on the other side. (Tr. p. 213, lines 10-18). There were no windows on the ground level, and no police cars could be seen from the upstairs windows. Id. Rushton's car, without blue lights or siren on, was parked on the other side of the house, out of Appellant's line of sight. (Tr. p. 92, lines 11-12; Tr. p. 213, lines 12-14). Moore's car and McAllister's car weren't parked on Appellant's property, and likewise did not have sirens or lights activated. (Tr. p. 197, lines 24 – p. 198, line 8).

Appellant testified that he had heard media reports of home invasions having occurred in the rural area, his mother's home had been burglarized at least once before successfully, and attempted burglaries had occurred on multiple occasions. (Tr. p. 212, line 23 – p. 213, line 3). Appellant also presented evidence that the night in question was the darkest night of the month. (Tr. p. 125, lines 5-7; Moon calendar submitted as portion of exhibit notebook by Defendant; Amended Order on Motion To Bar Prosecution, p. 3).

Appellant testified that he did not see anyone and only saw total darkness outside. (Tr. p. 213, lines 10-12). Moore and McAllister testified that they saw the light come on initially as they were at the rear of Appellant's house getting ready to leave. (Tr. p. 162, lines 10 – 18.). Every witness is consistent in acknowledging the light was not on continuously. Moore testified that he never had a clear look at Appellant, only seeing his silhouette. (Tr. p. 164, lines 18 – 24). McAllister said she never even saw Appellant. (Tr. p. 196, lines 18 – 21).

The shooting occurred immediately after Appellant stepped onto his balcony, with his weapon in the port position, not aimed at anyone. The State contends there was a verbal exchange prior to that shot wherein Appellant supposedly asked who was at his home, received a response that it was law enforcement, and replied with a statement of non-concern including profanity. (State's Exhibit 2 from immunity hearing).

Deputy Moore's claims a call of "Sherriff's office" and "gun!" were made, after which Appellant immediately fired at Rushton. (State's Exhibit 2 from immunity hearing). It is undisputed that the shooting happened almost immediately after Appellant's entrance onto the balcony, and not after a contemplative, observation of and conversation between those involved. (Tr. p. 45, lines 25 - p. 46, line 9). Rushton testified that "it just happened so fast right then." (Tr. p. 46, lines 22 - 23.)

Evidence of the angle of trajectory and damage to Rushton's weapon and hand confirm that his weapon was aimed at Appellant when Rushton was struck by Appellant's fired bullet. (Tr. p. 66, lines 6 - 10; Amended Order on Motion To Bar Prosecution). Rushton's testimony confirms that he aimed his weapon at Appellant, despite no menacing, threatening, or illegal action having been taken by Appellant, merely by being in possession of a weapon of self-defense. (Tr. p. 46, lines 18 - p. 47, line 1; Tr. p. 47, lines 22 - 23; Tr. p. 54, lines 10 - 14; Tr. p. 63, lines 1 - 7).

Ruston testified the shot knocked him to the ground. (Tr. p. 52, line 2). Although armed with a semi-automatic rifle at the time and therefore capable of doing so, there is no evidence that Appellant sought to hunt down or further injure the person he had just shot. The notion that Appellant would not have shot Rushton if he had known Rushton was there on behalf of the police is not controverted with any evidence as to motive,

substantial prior criminal history, or evidence of ill will towards law enforcement generally. (Tr. p. 34, lines 4 – 8; Tr. p. 204, lines 6 – 8; Tr. p. 136, lines 25 – p. 137, line 8; Tr. p. 126, lines 15 – 19).

Appellant's expert, Dr. George Kirkham, examined the premises at night and reviewed the actions of Rushton, Moore, and McAllister before testifying that the trio failed to follow proper police procedures in many respects, so much so that "if you were making a training video for officers" the actions of these actors could be used to train for what not to do in such a situation. (Tr. p. 137, lines 24 – p. 138, line 3). Dr. Kirkham further stated "what seems to be clear that could have prevented this tragedy from happening[:] proper police procedure. That's all." (Tr. p. 142, lines 8 – 10).

At the hearing and subsequently upon reconsideration, the issue of whether Rushton was a duly authorized deputy was disputed. Rushton's own testimony was that he never took any oath of office, and that his appointment was never approved by any circuit court judge. (Tr. p. 9, lines 21 – p. 10, line 6). When the State produced an oath form signed by Rushton, Ruston testified only that his signature was on the document, not that he had taken the oath. (Tr. p. 109, lines 2 - 3).

STANDARD OF REVIEW

The Supreme Court, in its one opinion directly applying the "Protection of Persons and Property Act" at S.C. Code Ann. § 16-11-401 *et seq.* (hereinafter "the Act") and the procedure to be implemented in the application thereof, both at the trial court and upon appeal, was silent as to the appropriate standard of review that should be applied by appellate courts considering initial trial court determinations of immunity. State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011).

The Circuit Court is a general trial court with original jurisdiction in civil and criminal cases. Article V, § 11. The immunity provided by the Act of course only arises in criminal proceedings. Nevertheless, it is civil in implementation, relying on the civil standard of "preponderance of evidence" and civil in the nature of its relief, as it acts not only to bar to conviction, but a complete bar to a wider range of acts constituting "prosecution" generally. See Duncan, at 409, 664 ("the legislature intended to create a true immunity, and not simply an affirmative defense").

Because the issue of immunity was tried by a judge alone and is equitable in nature, Appellant contends any appellate court considering the judgment should use a standard of review appropriate for equitable actions tried in such a manner. Therefore, the underlying facts in this matter would be reviewed with the ability to find facts in accordance with this Court's own view of the preponderance of the evidence. See Townes Associates, Ltd. v. City of Greenville, 266 S.C. 81, 221 S.E.2d 773 (1976).

ARGUMENT

I. BECAUSE AN AGENT OF THE STATE FAILED TO PRESERVE EVIDENCE OF CRITICAL TESTIMONY FROM THE HEARING REGARDING IMMUNITY, DOES APPELLATE COURT LACK SUFFICIENT RECORD TO CONDUCT MEANINGFUL APPELLATE REVIEW?

Rule 607, SCACR details the requirements for a state-employed court reporter regarding transcripts and tapes of proceedings in circuit court. State-employed reporters are required to maintain both primary and backup tapes of a proceeding for a full five years after the proceeding. Id. The SC Court Reporter Manual, issued pursuant to order of the State Supreme Court, establishes the standards of conduct of all state-employed court reporters in the South Carolina judicial system. It states that a court reporter "is responsible for obtaining a clear, complete, and understandable record of the court proceedings" and that reporter materials "should be kept in a secure and safe manner." Id., p. 14, 17.

Nevertheless, the state-employed court reporter that was tasked with creating a transcript of the immunity hearing proceedings held on May 31, 2011 and June 1, 2011 before Judge Keesley has not produced a complete transcript of those proceedings. (Court Reporter Certification, Tr. p. 231). Importantly, Appellant bears absolutely no responsibility for this failure. Fortunately, missing transcripts and incomplete records, and the need and nature of correction thereof, have been addressed previously by courts in South Carolina.

Where portions of stenographic notes are lost prior to transcription, it is appropriate for the judge to accept affidavits of counsel and the court reporter to determine what transpired. Adams v. H.R. Allen, Inc., 397 S.C. 652, 656-57, 726 S.E.2d 9, 12 (Ct. App. 2012) (citing China v. Parrott, 251 S.C. 329, 333-34, 162 S.E.2d 276, 278

(1968)). "A new trial is therefore appropriate if the appellant establishes that the incomplete nature of the transcript prevents the appellate court from conducting a meaningful appellate review." Id.

Unfortunately, the portions of the immunity hearing transcript that are missing are not limited to mere ancillary matters of record. Rather, the portions missing are of grave and critical importance, including the testimony of the accused himself. Appellant provided that testimony at great risk and jeopardy, requiring first a waiver of his Fifth Amendment right to remain silent, subjecting himself to intense cross-examination by the State well before ultimate trial on the pending charges themselves before a jury of his peers. The critical issues in this matter are determinations of the reasonableness of Appellant's actions on the night in question, and Appellant's proffered information regarding his subjective thoughts and impressions, as well as information regarding the premises at which the events unfolded, are critical to a full and fair consideration of the matters, which is why he willingly waived his right to remain silent and submit sworn testimony at the immunity hearing.

The appropriate remedy for the State's failure should be the augmentation of the record on appeal, which Appellant attempted to bring about through a Motion to Supplement the Record. That motion was denied by order of this Court on December 19, 2012. Absent acceptance of that proffered supplementation then, the matter should be remanded to the lower court with direction to evaluate Appellant's proffered reconstructive materials, as well as any others deemed appropriate through which a meaningful and more complete record for review can be created. Only then is this matter appropriate for appellate review. Recent case law, however, indicates partial

reconstructions may be disfavored. See Adams v. H.R. Allen, Inc., 397 S.C. 652, 726 S.E.2d 9 (Ct. App. 2012) (remanding for new trial in light of rejected attempt at partial record reconstruction).

If augmentation of the existing record is ordered instead of complete re-hearing, Appellant should receive an inference in his favor regarding all testimony and evidence that was not initially preserved for review. If a party fails to produce testimony of an available witness on a material issue, it may be inferred that such testimony would have been adverse to him. Nelson v. Coleman Co., 249 S.C. 652, 155 S.E.2d 917 (1967). Likewise, when a party loses or destroys evidence, an inference may be drawn that the destroyed or lost evidence would have been adverse to that party. Gathers By and Through Hutchinson v. South Carolina Elec. and Gas Co., 311 S.C. 81, 427 S.E.2d 687 (Ct. App. 1993). Although Respondent did not directly lose the portion of the transcript, the actor that did was a State actor, and thus the actions of the court reporter should be imputed to the State as Respondent.

II. PROPER APPLICATION OF THE ACT DURING A PRE-TRIAL HEARING
REQUIRES APPELLANT TO PRESENT EVIDENCE OF THE
APPLICABILITY OF IMMUNITY, AND THEN PLACES BURDEN UPON
THE STATE TO PROVE AN EXCEPTION

As noted by the State Supreme Court, the Act "does not explicitly provide a procedure for determining immunity." State v. Duncan, 392 S.C. 404, 409, 709 S.E.2d 662, 664 (2011). However, the Act does clearly articulate the legislative intent was to codify the common law Castle Doctrine, providing for the ability of law-abiding citizens to protect themselves via their constitutional right to bear arms, and thereby protect their right to "expect to remain unmolested and safe within their homes." S.C. Code Ann. §

16-11-420. The Act provides definitions for certain terms before the critical portions applicable in this matter appear, beginning with the presumption, which provides:

- (A) A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury ... when using deadly force [against] another person if the person:
 - (1) ... has unlawfully and forcibly entered a dwelling ...; and
 - (2) who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred.

S.C. Code Ann. § 16-11-440.

The actual provision providing for immunity under the Act then reads as follows:

- (A) A person who uses deadly force as permitted by the provisions of this article or another applicable provision of law is justified in using deadly force and is immune from criminal prosecution and civil action for the use of deadly force, unless the person against whom deadly force was used is a law enforcement officer acting in the performance of his official duties and he identifies himself in accordance with applicable law or the person using deadly force knows or reasonably should have known that the person is a law enforcement officer.

S.C. Code Ann. § 16-11-450(A).

The statute thus begins with the explanation of the legislative intent by citing the expectations of the state's citizens, and buttresses that starting point by granting an express presumption in their favor if certain criteria are met. Then the immunity provision comes, which has a clear organization of general grant of immunity, then listing of possible exceptions. The State argues the applicability of an exception to that presumption and immunity, but for purposes of the discussion of the statute and its application to Appellant, proper analysis by the lower court necessarily begins with Appellant seeking to establish applicability of the general presumption and immunity.

The burden of producing evidence shifts from side to side as the proceedings progress. Am. Jur. 2d, Evidence § 123. Generally accepted principles of burden of persuasion and burden of production place upon the party seeking relief, and who are in possession of the means by which an affirmative showing can be made, with the obligation to present evidence. Stanley Smith & Sons v. D.M.R. Inc., 307 S.C. 413, 415 S.E.2d 428 (Ct. App. 1992) ("the burden of evidence is imposed on the party best able to sustain it, that is, the party having peculiar knowledge of the facts or control of the evidence relating to an issue). "Once the party to whose advantage the presumption operates has proven the basic facts giving rise to the presumption, the burden of persuasion shifts to the party against whom the presumption operates." Alex Sanders & John S. Nichols, Trial Handbook for South Carolina Lawyers § 12:2 at 472 (4th ed. 2007). Appellant thus contends the burden of persuasion, or at minimum the burden of production, should shift to the State to accomplish application of an exception to immunity.

The lower court, however, goes beyond placing the burden on Appellant of entitlement to the immunity itself, and also places the additional obligation on Appellant of disproving any possible exception. Appellant contends placing that second, additional burden on Appellant beyond mere entitlement to immunity is an error of law necessitating a reversal and remand by the Court of Appeals.

A. Appellant established applicability of the presumption and immunity.

Appellant contends that he has presented evidence that demands application of the statutory presumption and immunity pursuant to the Act, and any factual findings to the contrary would be unsupported by the evidence, clearly wrong, or controlled by error of

law and thus justify reversal and remand. See State v. Williams, 326 S.C. 130, 135, 485 S.E.2d 99, 102 (1997)

The lower court erred as a matter of law by determining Appellant failed to prove entry or attempt at entry into Appellant's dwelling. S.C. Code Ann. § 16-11-420(A) is clear in its intent to absorb and continue the wealth of common law related to the Castle Doctrine. Section 16-11-430 thereafter defines "dwelling." It is undisputed that the home where Appellant was staying that night qualifies as his dwelling and his residence. Given that presence in his dwelling, deep-rooted case law extends the area for qualified defensive action to include Appellant's curtilage, an important aspect of South Carolina jurisprudence continued by express incorporation of the statute. See State v. Sampson, 12 S.C. 567 (1880)(an outhouse can be part of a dwelling if connected under the same roof); State v. Osborne, 21 S.E.2d 178, 182, 200 S.C. 504, (1942)("may repel trespassers in or upon the house...as if he were under his own roof or within his own doors.")..

Rushton had "entered" the dwelling, given his location under the roof and eaves of the house, the very type of place "where the property owner alone has the right to be, to the exclusion of the general public." State v. Dickey, 669 S.E.2d 917, 923, 380 S.C. 384, 396 (Ct. App. 2008)(*cert. granted*). In Duncan, the "victim" was only on the porch of the shooter's residence, which was determined to have been within the scope of the Act's definition of dwelling. 392 S.C. at 407, 709 S.E.2d at 663.

The entrance of Rushton was unlawful because he was not a law enforcement officer, as discussed in detail *infra*, and thus could not have been acting within the proper scope of his duties of employment as a "deputy" while on Appellant's premises that evening. As such, he had no right to be on the premises, and was a trespasser. Moreover,

it is clear that Rushton aimed his weapon at Appellant before Rushton was shot. (Tr. p. 66, lines 6 – 10; Amended Order on Motion To Bar Prosecution).

B. The State must respond to Appellant's showing of entitlement to the statutory presumption and immunity by meeting its burden of production to show an exception to immunity.

S.C. Code Ann. § 16-11-450(A) provides an exception to the statutory immunity. The criteria for the exception requires that the person against whom the deadly force was used was a law enforcement officer, that person was acting in the performance of his official duties, and either he identifies himself in accordance with applicable law, or the person using deadly force knows or should have known that the person was a law enforcement officer.

1. The State cannot even meet the first criteria for the exception, as Rushton was not a "law enforcement officer" at the time of the incident.

"Law enforcement officer" is not defined by the Act. Rushton was hired by the county sheriff to be a "deputy," which is defined apart from the Act in other statutory and constitutional provisions. No one becomes a qualified, recognized deputy sheriff without taking certain actions required by law. First, Article III, Section 26 of the State Constitution requires an oath be taken. Next, S.C. Code Ann. § 23-13-10 requires an appointment and approval process be completed, and S.C. Code Ann. § 23-13-20 contains an additional statutory oath that must be completed. The two (2) oaths have to be filed with the County Clerk of Court. No case law or statutory provision creates an "almost deputy" office that can be held. Therefore, as a matter of law, one is either a

deputy or not. Since Rushton is not, he has no other claim to assume the title of "law enforcement officer" within the meaning of the Act.⁵

The lower court's opinion as written and applied to Appellant, however, expressly invalidates both of the referenced statutory provisions. Appellant submits that all such portions of the Order compelling or evidencing that conclusion and result are errors of law. That error is exploited by the State to qualify Rushton as a deputy, and thereby avail itself of an exception under the Castle Doctrine that it otherwise would not qualify for given the absence of involvement of a "law enforcement officer."

- (a) Interpreted properly, statutorily mandated judicial approval of deputy appointments does not violate the separation of powers.

S.C. Code Ann § 23-13-10 sets out a requirement that the sheriff's appointed deputy "be approved" by a circuit court judge. He made this legal determination, apparently, so as to minimize the failure of the State to satisfy its burden of proving that Rushton was properly deputized. The lower court deems this a violation of the separation of powers, to the extent "it provides for judicial approval of executive branch appointments." (Amended Order on Motion To Bar Prosecution, p. 9). Prior review of the same statutory requirement by the Supreme Court, however, raised no such issues. See Willis v. Aiken County, 26 S.E.2d 313, 315, 203 S.C. 96 (1943) (rejecting argument that deputy was not a separate officer from the Sheriff, and referencing the manner in which deputies were appointed *and* approved). Mere interaction or participation by elements from multiple branches of government is not the equivalent of merger and loss

⁵ Although not made as an argument by the State, Rushton could cite mere employment with the sheriff's department as sufficient to qualify him as a "law enforcement officer" but such a claim would stretch the meaning of that phrase past its logical limits. Otherwise, any janitor employed by a department would carry the same "officer" title with all the rights, privileges and obligations that go along with it.

of separation as the presiding judge gratuitously determined in what appears to be a ruling to lessen the impact of the State's absence of proof on this issue.

As the order cites, statutes are to be construed first upon their plain meaning if unambiguous, as this statute in question is certainly. Carolina Power & Light Co. v. City of Bennettsville, 314 S.C. 137, 139, 442 S.E.2d 177, 179 (1994). However, when judging the constitutionality of a given statute, the courts should if possible

construe[] [the statute] so as to render it valid; every presumption will be made in favor of the constitutionality of a legislative enactment; and a statute will be declared unconstitutional only when its invalidity appears so clearly as to leave no room for reasonable doubt that it violates some provision of the Constitution.

City of Rock Hill v. Harris, 391 S.C. 149, 154, 705 S.E.2d 53 (2011)(citing Moseley v. Welch, 209 S.C. 19, 26-27, 39 S.E.2d 133, 137 (1946)).

Instead, the lower court makes a narrow and most extreme interpretation of the term "approved" and imbues the circuit court judge with the power of veto and rejection of the sheriff's employment decisions.

With an eye toward meeting the obligation to construe it in any way so as to render it effective, however, the "approved" language in S.C. Code Ann § 23-13-10 could, and therefore should, be read to merely require the involvement of the circuit court judge to verify the appointment and completion of the necessary oaths/other actions. In essence, such a reading would merely create judicial certification of compliance with a mandatory process, something judges do every day and in many different ways. This very case involves judicial determination of an executive's compliance with statutory law, and no more implicates the separation of powers than when a notary, and executive branch officer, participates by necessity of law in the completion of any number of judicial activities (completion of affidavits, etc.).

Having thus shown that the statutory provision is capable of interpretation so as to render it valid, the statute remains valid, and the consequences for failure to comply must be addressed by the Court in its opinion. Rushton's own testimony was that he never took any oath, and that his appointment was never approved by any circuit court judge. No evidence to the contrary was presented, and thus the only rational conclusion based on the evidence presented was that Rushton had not been approved as required by statute.

As a matter of law, therefore, the State failed to establish that Rushton met the prerequisites to be a "deputy." By extension, the State failed to prove that Rushton was a "law enforcement officer" for purposes of the immunity exception contained within the Act. Even when the State produced an oath form signed by Rushton, Ruston testified only that his signature was on the document. (Tr. p. 109, lines 2 - 3). Rushton did not testify⁶ he took the oath. (Tr. p. 12, lines 2 - 8, Tr. p. 9, lines 21 - p. 10, line 6).

(b) Statutory oath requirement is a distinct and mandatory prerequisite that Rushton failed to satisfy.

The "right, authority, and duty of a deputy sheriff are thus created by statute." Willis v. Aiken County, 26 S.E.2d 313, 316, 203 S.C. 96 (1943). The Supreme Court in that matter was addressing specifically the same requirements now codified in S.C. Code Ann § 23-13-10, which establishes a separate requirement of the taking of an oath by a deputy "before entering upon the discharge of his duty." The statute expressly mentions the Constitutional Oath of Article III, and sets forth an additional oath that must be completed as set forth verbatim. Clearly the legislature's intent was to add a distinct,

⁶ The order references the Constitutional oath, and states that Appellant produced no evidence it was not forwarded to the Secretary of State, as the form indicated it would be. This is an example of the improper placement of burden of production discussed in section III supra, as it was the State's responsibility to prove compliance with all necessary aspects of Rushton's deputization, not Appellant's burden to produce evidence of non-compliance.

mandatory oath *above and beyond* the constitutionally mandated oath, which the Supreme Court in Willis accepted as a given without discussion or rejection. Again, the evidence presented was that Rushton did not recall taking any oaths upon his employment with the County, and Rushton never testified that he took the oath that he signed, which does not comply with the language required by § 23-13-10.

The Court characterizes Appellant's interpretation of the statute as "strict, technical evaluations." (Amended Order on Motion to Bar Prosecution, P. 13). The statute does not require any complex or "technical" actions. It merely, and in plain language, puts recitation of a particular oath as a barrier to qualification as a deputy, a barrier Rushton and the State cannot surmount. Appellant has only made simple demands for compliance with a simple statute. Surely mere compliance with controlling plain language of a statute cannot be devalued and dismissed as a "strict" interpretation.

Treatment of this statutory oath requirement as just "supplemental" to the Constitutional requirement is at its essence a mere a refusal to enforce the clear, mandatory intent of the legislature. It can be fairly characterized as "additional" or "supplemental" to the Constitutional oath, but neither characterization diminishes or excuses failure to comply with its mandatory nature. That result could not have been intended by the legislature, who went through the trouble of crafting the statute to place the requirement, despite acknowledging the existence of a similar oath requirement already.

The legislature's requirement is a minimal barrier to deputization, but any barriers that the legislature deems fit to impose expressly are intended because of the significant

meaning and consequence created once that process is completed. That significance is destroyed by the lower court's nullification of the mandatory nature of the statute.

In the process of nullifying that provision of the State Code, the lower court's conclusion operates to delete the word "officer" from § 16-11-440 and 450. Once the barrier to becoming an officer is removed, the castle doctrine statute would then provide an exception for any member of "law enforcement," not just officers thereof. Under that standard, mere labeling of any county employee as a "deputy," regardless of demonstrated noncompliance with the requirements set forth in § 23-13-10 or 20, is enough to grant that employee the full protections expressly reserved for "law enforcement officers." Surely that result would be the sort of "plainly absurd" result that courts are to avoid when interpreting statutes. City of Rock Hill v. Harris, 391 S.C. 149, 154, 705 S.E.2d 53, 55 (2011) (citing Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)).

- (c) Rushton's certification as a Class I law enforcement officer had lapsed, and necessary training to recertify was not completed prior to the events in question.

Rushton left his employment with the McCormick County Sheriff's Department and spent four years working abroad between 2005 and 2009. (Tr. p. 7, lines 21 – p. 8, line 4). He testified upon cross examination that he "had to catch up all the training hours I had missed for the previous four years." (Tr. p. 9, lines 11 – 12). He claimed to have taken a criminal domestic violence update and legal update. (Tr. p. 13, lines 16 – 20). No such training, however, is listed on his training record submitted at the hearing.

(Court's Exhibit 1 from hearing). That same document shows he was certified⁷ as a Class I law enforcement officer on June 26, 2010, nearly seven months *after* the night in question. *Id.* The only evidence of training is thus contradicted by a certified document from the Criminal Justice Academy that was entered into the hearing record as an exhibit.

- (d) Failure to qualify as a "law enforcement officer" does not bar prosecution, but merely precludes certain exception to immunity.

The Court justifies its determination that failure to comply with the oath requirement of S.C. Code Ann. § 23-13-20 "does not deprive the State of the ability to prosecute here for shooting a deputy." That first assumes qualification as a deputy, which as shown has not been met as a matter of law. Second, that is an oversimplification of the collateral consequences of Rushton's (and the County's) failures. Failure of an exception is not the equivalent of proof that the underlying immunity applies. The failure here does preclude the State from availing itself of the "law enforcement officer" exception under § 16-11-450, but does not by itself bar prosecution. The bar to prosecution, if any, comes as the result of Appellant's separate preliminary showing of entitlement to the necessary presumption and immunity, as set forth hereinabove in Section III.A.

2. The State cannot support a finding that Appellant knew or should have known Rushton was a law enforcement officer at the time of the incident.

Assuming for the purposes of argument that Rushton is determined to be a "law enforcement officer" as a matter of law or factual finding by the presiding judge, the

⁷ The date referenced is a recertification date. Since Rushton had spent more than three years away from the McCormick County Sheriff's Department, his certification had lapsed. See S.C. Code § 23-23-60. The June 26, 2007 date listed is, upon information and belief, the date of that lapse, and is not indicative of continuous certification that was not renewed until 2010.

State would still need to show that Rushton "identifie[d] himself in accordance with applicable law." S.C. Code Ann. § 16-11-450(A). The State may also make the requisite showing by producing evidence that Appellant knew or should have known Rushton was a law enforcement officer. *Id.* The evidence, however, compels the conclusion that Appellant acted reasonably in ignorance of the fact that Rushton was (purportedly) a law enforcement officer, in part because of Rushton's failure to follow proper procedures for responding to a "shots fired" dispatch. Any factual finding to the contrary is "clearly wrong" such that the findings may be set aside on appeal. *See State v. Williams*, 326 S.C. 130, 485 S.E.2d 99 (1997)

- (a) The facts, when viewed properly from the perspective of Appellant as compelled by the common law and codification thereof, compel a finding that Appellant was reasonable in his belief that he was not firing upon a law enforcement officer.⁸

Appellant testified that he was aware of home invasions occurring, and that his mother's home had been burglarized at least once before successfully, and attempted burglaries had occurred on multiple occasions. (Tr. p. 212, line 23 – p. 213, line 3). The Order mentions that Appellant had discharged his firearm in the area that evening, as he was allowed to do lawfully since his mother's house was in an unincorporated area, not a "neighborhood" as the order claims, and he was protecting his pet from a fox pursuant to S.C. Code § 50-11-2570(B) (right to shoot at furbearing animal damaging property). The Order mentions neighbor complaints to Appellant's mother about Appellant's shooting, but absolutely no firm testimony or evidence indicates that Appellant was ever advised of

⁸ Again, as set forth in detail *supra*, Appellant contends that Rushton was not a "law enforcement officer" within the meaning of the Act,

that conversation. (Tr. p. 149, lines 15 – 18). There is no evidence a prior noise report was ever communicated to Appellant by law enforcement. (Tr. p. 86, lines 6 – 9).

Rushton, Moore, and McAllister did not telephone, or have dispatch call, the house in which Appellant was located, and they were not responding to any contact initiated by Appellant. (Tr. p. 87, lines 10-22). The neighbors that called the police had not contacted Appellant or notified him of police involvement on the night of the shooting or any previous occasion. (Tr. p. 149, lines 15 – 18). As he testified, Appellant was sound asleep in his bed when the disturbance on the property began.⁹ (Tr. p. 225, line 9). He was upstairs, inside of a dwelling that was well insulated. (Tr. p. 213, lines 8 – 9, Amended Order on Motion To Bar Prosecution, p. 3).

The Court's reference to the ability of neighbors to observe and hear various events is irrelevant and misguided. Those neighbors were expecting police presence, as they had in fact initiated police presence, and they had their windows open. (Tr. p. 153, lines 20-21).

The ground level door that was knocked upon, which was where the doorbell was located and is the only entrance to the house, had no peephole or other means to examine the identity or appearance of the person(s) on the other side, which is submitted as a more than appropriate reason for Appellant to not open this door. (Tr. p. 213, lines 10-18). There were no windows on the ground level, and no police cars could be seen from the upstairs windows. Id. Rushton's police car, without blue lights on, was parked on the other side of the house. (Tr. p. 92, lines 11-12; Tr. p. 213, lines 12-14). It was also

⁹ Testimony conflicted regarding the exact time of the shots, although witnesses seemed to agree that there were only two shots fired. Even using a time later than Appellant's own recollection, the 3:30 a.m. time testified to by the neighbor, still puts an hour between the final shot and when Rushton arrived on scene, which was more than ample time for Appellant to reach a deep sleep prior to awakening suddenly.

parked behind an SUV. (Tr. p. 39, lines 16 – 18). Moore's car and McAllister's car weren't parked on Appellant's property, and likewise did not have sirens or lights activated. (Tr. p. 197, lines 24 – p. 198, line 8). Appellant had no obligation to remove and open the only barrier to entry into his home, just to determine the identity of an uninvited, demanding visitor of unknown purpose or identity in the middle of the night. It is unreasonable to require otherwise.

Appellant presented evidence that the night in question was the darkest night of the month, and the Court stated it had no reason to disbelieve that evidence (Amended Order on Motion To Bar Prosecution, p. 3). That raises the issue regarding the use/non-use of a balcony light. Moore and McAllister testified that they saw the light come on initially as they were at the rear of Appellant's house getting ready to leave. (Tr. p. 162, lines 10 – 18.). This clearly explains why Appellant did not see any person in his yard when he first turned on the light and looked out over the yard from within his house.

Every witness is consistent in acknowledging the light was not on continuously. The Court finds that there was a verbal exchange wherein Appellant supposedly asked who was at his home, received a response that it was law enforcement, and replied with a confrontational statement. (Amended Order on Motion To Bar Prosecution, p. 6).

Appellant maintains no such verbal exchange occurred, and there is no evidence to indicate that Appellant was disposed to, or had any reason on the night in question, have reacted in such a cavalier manner to the supposed announced presence of law enforcement, regardless of the time of night. (Tr. p. 46, lines 18 – p. 47, line 1; Tr. p. 47, lines 22 – 23; Tr. p. 54, lines 10 – 14; Tr. p. 63, lines 1 – 7). Thus Appellant's testimony that he would not have shot Rushton if he had known Rushton was there on behalf of the

police, (Amended Order on Motion To Bar Prosecution, p. 3), is uncontroverted and should be accepted by the Court.

Appellant had no death wish, and had no grudge against law enforcement, and thus the only reasonable explanation for why he would turn on the light and step onto his balcony, which also is the actual explanation, is that Appellant had not yet understood or acknowledged the presence of purported law enforcement. The Court acknowledges that Appellant testified about a failure to see any blue lights, or hear sirens, or see that the area was cordoned off, but "his testimony in that regard is not credible." (Amended Order on Motion To Bar Prosecution, p. 4). However, the reason Appellant did not see any blue lights, hear any sirens, or see a cordoned off area is that those actions were *never taken* by anyone, and thus the testimony is not contested in that regard and cannot be found to be no credible.

It is undisputed that the shooting happened almost immediately after Appellant's entrance onto the balcony, and not after a contemplative, observation of and conversation between those involved. (Tr. p. 45, lines 25 – p. 46, line 9). Rushton testified that "it just happened so fast right then." (Tr. p. 46, lines 22 – 23.) Deputy Moore's statement to the ATF was that this action was supposedly met with a call of "Sherriff's office" and "gun!" after which Appellant immediately fired at Rushton. (R. ____). Even without agreement with Moore's statement, it is undisputed that the shooting happened within a very brief after Appellant's entrance onto the balcony, and not after a contemplative, observation of and conversation with or dialogue with any particular person. Accordingly, there is no evidence to support the contention that even had those statements been made, that there was sufficient time to process the information prior to Appellant's shot.

- (b) Appellant provided expert testimony regarding the procedural and technical failures of Rushton, Moore, and McAllister that further justify a necessary finding of reasonableness on the part of Appellant.

The lower court ignores the significant and relevant testimony of Appellant's expert, Dr. George Kirkham. Dr. Kirkham, a member of law enforcement himself, examined the premises at night and reviewed the actions of Rushton, Moore, and McAllister on site that morning. (Tr. p. 114, lines 23 – 24). He testified that the trio failed to follow proper police procedures in many respects, so much so that "if you were making a training video for officers" the actions of these actors could be used to train for what not to do in such a situation. (Tr. p. 137, lines 24 – p. 138, line 3). Dr. Kirkham further stated "what seems to be clear that could have prevented this tragedy from happening[:] proper police procedure. That's all." (Tr. p. 142, lines 8 – 10).

- (c) Rushton was not in uniform or appearance a law enforcement officer.

The Order states that Rushton did not have on a military style uniform, "but had his badge displayed." (Amended Order on Motion To Bar Prosecution, p. 6). There is neither evidence nor any indication how the clothing worn by Rushton differed from the stereotypical outfit a burglar might employ, aside from the small badge on a belt. Rushton did not have on a uniform; instead he was wearing merely khaki pants, a green shirt, and a small badge on his belt. (Tr. p. 21, line 13 – p. 22, line 14). He was not wearing McCormick County's standard deputy uniform, any reflective items such as a vest, or any hat identifying him as law enforcement, even though Rushton had a vest and hat he could have worn. (Tr. p. 22, lines 15 – 23; Tr. p. 25, lines 5 – 9; Tr. p. 24, lines 4 – 8). Appellant testified that he did not see the badge anyway, which is highly likely and

understandable given Rushton's first appearance to Appellant involved a gun aimed at Appellant on a dark night.¹⁰

Appellant's actions after shooting Rushton support this belief, and actions in conformity therewith up until that point, that he was protecting himself within his castle and not mistakenly shooting a purported member of law enforcement. There is absolutely no evidence that Appellant maliciously sought to hunt down or further injure the person he had just shot. Ruston testified the shot knocked him to the ground. (Tr. p. 52, line 2). Appellant was armed with a semi-automatic rifle that contained additional unspent ammunition, including a round in the chamber. (State's Exhibit 2 at immunity hearing, p. 3 (Statement of Moore)). Appellant could have easily fired multiple shots at Rushton if he had intended to be as evil as portrayed by the State.

Instead, Appellant fired a warning shot into the air over Ruston's head. Then, consistent with someone protecting himself and not intent upon attacking known law enforcement, Appellant remained within the protection of the home for a short time, then searched the premises and even helpfully placed Mr. Rushton's damaged pistol inside the patrol car before meeting with the Sheriff who arrived on scene later. (State's Exhibit 2, p. 11 (Sheriff Reid's statement)).

The Order repeats Appellant's statement as "Where are you, you son of a b_____?" (Amended Order on Motion To Bar Prosecution, p. 7). Although not clear from the order, it is important that the statement be clarified as definitively referring to a single person, as Appellant contends he was only aware of a single, un-uniformed person on his premises that evening, and not the trio that the State wants to focus on. Moore

¹⁰ As the Court notes in its order, evidence of the angle of trajectory and damage to Rushton's weapon confirms that it was aimed at Appellant when struck by Appellant's fired bullet.

testified that he never had a clear look at Appellant, only seeing his silhouette. (Tr. p. 164, lines 18 – 24). McAllister said she never even saw Appellant. (Tr. p. 196, lines 18 – 21). These statements, even without reliance upon anything Appellant testified regarding, compel but one factual finding supported by evidence, that Appellant was reasonably ignorant of the presence of more than one person, let alone multiple persons with law enforcement, that dark morning.

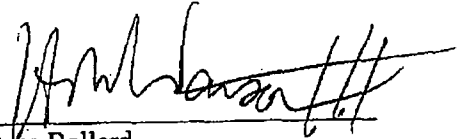
Retrospectively, of course, it is obvious that Rushton, Moore and McAllister were trying to serve the community and do their jobs. But when examined from the perspective of Appellant, or any other reasonable person placed in his shoes, at the relevant time when Appellant was making decisions about what to do, the only evidence available compels a finding in favor of Appellant as to this personal or imputed knowledge, and thus the inapplicability of the State's attempt at proving an exclusion to immunity. The root source of such a perspective is longstanding precedent that says a man may defend his castle "if necessary or apparently so." State v. Bradley, 120 S.E. 240, 242, 126 S.C. 528 (1923). Appellant's actions exist squarely, and necessarily, within the boundaries of "apparently so" without any evidence that may be relied upon to justify a contrary factual finding.

CONCLUSION

Appellant respectfully submits that an insufficient records exists by which this Court can engage in a meaningful review of the relevant facts presented at the hearing, necessitating at minimum a remand for augmentation of the record with an inference in favor of information submitted by Appellant, or in the alternative a complete re-hearing.

However, even on the limited record preserved, appropriate application and enforcement of all relevant provisions of statutory law and common law principles discussed in this memorandum compels extension of immunity to Appellant and rejection of the State's attempted application of an exception thereto. As such, Appellant respectfully requests the denial of immunity from prosecution be reversed, with remand for issuance of a proper order dismissing these matters against Appellant, and for such other and further relief as this Court may deem necessary and proper.

Respectfully submitted,



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ATTORNEYS FOR APPELLANT

January 8, 2013

Exhibit E

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.

**MOTION TO REMAND FOR
RECONSTRUCTION OF THE RECORD
AND
MOTION TO STRIKE
IMPROPERLY-DESIGNATED MATTER
FROM AMENDED DESIGNATION OF MATTER**

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. 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. On December 8, 2011, Judge Keesley issued an order affirming his earlier ruling and denying Appellant's motion for reconsideration. On January 18, 2012, Appellant filed a notice of appeal appealing Judge Keesley's ruling on the immunity issue. Thereafter, on April 18, 2012, Appellant filed his Initial Brief of Appellant and Designation of Matter in this case.

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.

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. Additionally, this Court ordered Appellant to serve and file an amended initial brief within twenty days of the ruling. Following the issuance of the order, Appellant filed his Amended Initial Brief of Appellant and Amended Designation of Matter on January 8, 2012.

Motion to Remand to the Trial Court for Reconstruction of Missing Portions of the Hearing Transcript

In the case sub judice, portions of the testimony presented during the pre-trial hearing on the immunity issue could not be transcribed due to the fact that part of the record was stolen from

the court reporter in a criminal act. (Exhibit "A" – Court Reporter Certification, Pre-Trial Hearing Transcript, p. 231). In his amended initial brief, Appellant notes the missing portions of the transcript include his own testimony while contending those missing portions "are critical to a full and fair consideration of the matters" on appeal. (Exhibit "B" – Amended Initial Brief of Appellant, p. 11). Appellant further maintains "an insufficient record exists by which this Court can engage in a meaningful review of the relevant facts presented at the hearing" and asks this Court to either remand the matter to the trial court for "augmentation of the record" or for a complete rehearing. (Exhibit "B" – Amended Initial Brief of Appellant, p. 12; pp. 29-30).

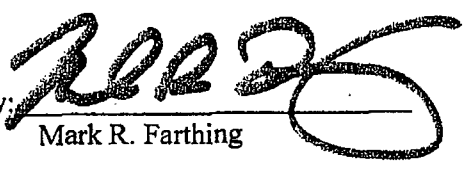
In light of Appellant's representations and the fact that portions of the pre-trial immunity hearing transcript were lost and unable to be transcribed, the State believes it is necessary for the matter to be remanded to the trial court to allow the trial judge to attempt to reconstruct the missing portions of the transcript. See Koon v. State, 358 S.C. 359, 367, 595 S.E.2d 456, 460 (2004) ("Where a transcript has been lost or destroyed, a court may remand to have the record reconstructed."), overruled on other grounds by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); see also Whitehead v. State, 352 S.C. 215, 221, 574 S.E.2d 200, 2003 (2002) (remanding a case to the circuit court for reconstruction of the trial record). Such a remand would ensure this Court can be provided the most complete and accurate record on appeal that can be obtained prior to undertaking appellate review of the issues raised in this case and would enable to the trial judge to attempt to reconstruct the trial court record in the most expedient fashion possible under the circumstances, which would help to maximize the probability that the trial judge will be able to successfully reconstruct the missing portions of the transcript. Accordingly, the State asks that this Court remand the matter to the trial court for reconstruction of the missing portions of the trial court record.

WHEREFORE, Respondent prays that this Court will remand the matter to the trial court to allow the trial judge to reconstruct the missing portions of the trial court record; strike the improperly-designated material not properly presented to the trial judge from Appellant's amended designation of matter; hold this appeal in abeyance pending a ruling on Respondent's motion; and grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

By: 

Mark R. Farthing

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

February 7, 2013



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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July 01, 2014

The Honorable Gwendolyn D. Chiles
133 S Mine St Suite 102
McCormick SC 29835-8357

REMITTITUR

Re: The State v. Joe Worley
Lower Court Case No. 2010GS3500052, 2010GS3500051,
2010GS3500050, 2010GS3500049
Appellate Case No. 2012-210646

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy
CLERK

Enclosure

cc: Desa Allen Ballard, Esquire
Mark Reynolds Farthing, Esquire
Harvey MacLure Watson, III, Esquire
Carson McCurry Henderson, Esquire
Billy J. Garrett, Jr., Esquire

The Supreme Court of South Carolina

The State, Respondent,

v.

Joe Worley, Petitioner.

Appellate Case No. 2013-002477
Lower Court Case Nos. 2010-GS-35-00049, -00050,
-00051, and -00052,

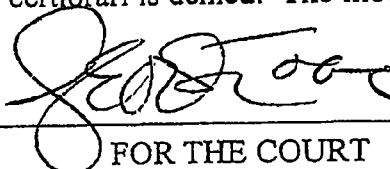
RECEIVED

JUN 26 2014

SC Court of Appeals

ORDER

This matter is before the Court by way of a petition for a writ of certiorari to review the Court of Appeals' order dismissing petitioner's appeal. The State has filed a motion to dismiss the petition. Petitioner has filed a return in opposition to the motion. The petition for a writ of certiorari is denied. The motion to dismiss is denied as moot.


C.J.
FOR THE COURT

Columbia, South Carolina

June 25, 2014

cc:

The Honorable Jenny Abbott Kitchings
Mark Reynolds Farthing, Esquire
Desa Allen Ballard, Esquire
Harvey MacLure Watson, III, Esquire
Carson McCurry Henderson, Esquire
Billy J. Garrett, Jr., Esquire
The Honorable Gwendolyn D. Chiles

The South Carolina Court of Appeals

The State, Respondent,

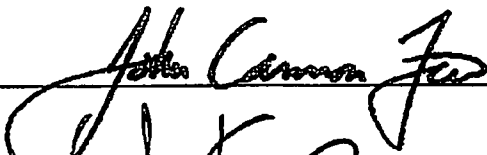
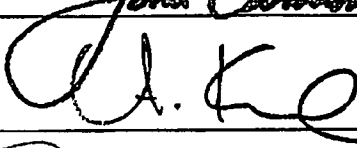
v.

Joe Worley, Appellant.

Appellate Case No. 2012-210646

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 C.J.
 J.
 A.J.

Columbia, South Carolina

cc:

Desa Allen Ballard
Mark Reynolds Farthing
Harvey MacLure Watson, III
Carson McCurry Henderson
Billy J. Garrett, Jr.
William P. Keesley

FILED
10/21/13

Exhibit F

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM McCORMICK COUNTY

Honorable William P. Keesley, Circuit Judge, 11th Judicial Circuit
Case No. J-036561, J-036562, J-036563, J-036564, J-036565, J-036566

Joe Ross Worley,

Appellant

v.

State of South Carolina,

Respondent.

**APPELLANTS' RETURN TO RESPONDENT'S MOTION TO REMAND
AND
MOTION TO STRIKE**

Return to Motion to Remand

Respondent filed a Motion to Remand the matter back to the circuit court, apparently in response to arguments Appellant raised again, but most recently in his Amended Initial Brief. Appellant contends that there would error in proceeding with this appeal given the failure of the State to preserve an adequate record that would allow for a meaningful review by this Court.

As outlined in Appellant's Initial Brief, Appellant is informed and believes the appropriate remedy for the State's failure should be the augmentation of the record on appeal. Appellant attempted to bring that about through an earlier Motion to Supplement the Record that was denied by order of this Court on December 19, 2012. Given that order, Appellant contends that matter should be remanded to the lower court as requested by Respondent in his motion.

However, Respondent does not address the manner in which that augmentation of the record is to occur following remand to the circuit court level. If augmentation of the existing record is ordered instead of complete re-hearing, Appellant should receive an inference in his favor regarding all testimony and evidence that was not initially preserved for review. If a party fails to produce testimony of an available witness on a material issue, it may be inferred that such testimony would have been adverse to him. Nelson v. Coleman Co., 249 S.C. 652, 155 S.E.2d 917 (1967). Likewise, when a party loses or destroys evidence, an inference may be drawn that the destroyed or lost evidence would have been adverse to that party. Gathers By and Through Hutchinson v. South Carolina Elec. and Gas Co., 311 S.C. 81, 427 S.E.2d 687 (Ct. App. 1993). Although Respondent did not directly lose the portion of the transcript, the actor that did was a State actor, and thus the actions of the court reporter should be imputed to the State as Respondent.

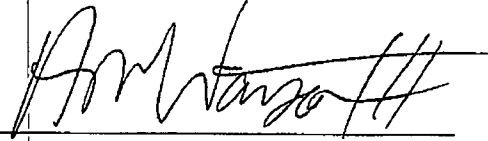
Appellant believes that relevant in this consideration for the nature of any remand is recent case law that appears to indicate partial reconstructions may be disfavored. See Adams v. H.R. Allen, Inc., 397 S.C. 652, 726 S.E.2d 9 (Ct. App. 2012). That matter was remanded for a new trial in light of a failed and unfair attempt at partial record reconstruction that violated procedural due process rights in a worker's compensation matter. Id. at 659, 13. Certainly Appellant warrants greater due process protection than a mere claimant seeking compensation for alleged work injuries.

Return to Motion to Strike Designated Matters

Given the apparent agreement between Appellant and Respondent that this case needs to be remanded back to the circuit court for some manner of record reconstruction, any motion to

strike certain matters designated by Appellant for inclusion in the Record on Appeal is, paradoxically, both premature and moot.

Respectfully submitted,



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February 15, 2013

ATTORNEYS FOR APPELLANTS

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM McCORMICK COUNTY

Honorable William P. Keesley, Circuit Judge, 11th Judicial Circuit
Appellate Case No. 2012-210646

Joe Ross Worley,

Appellant

v.

State of South Carolina,

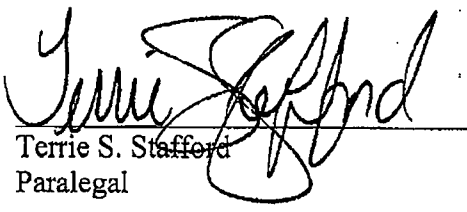
Respondent.

CERTIFICATE OF SERVICE

I, Terrie S. Stafford, an employee with the Law Offices of Ballard Watson Weissenstein, do hereby certify that on February 15, 2013, I served a copy of the **Appellant's Return to Motion to Remand for Reconstruction of the Record and Motion to Strike Improperly-Designated Matter from Amended Designation of Matter** in the above-captioned case on the following individuals 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

February 15, 2013
West Columbia, South Carolina


Terrie S. Stafford
Paralegal

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from McCormick County
Appellate Case No. 2012-210646

Joe Ross Worley,

Appellant

v.

State of South Carolina,

Respondent.

APPELLANT'S MOTION TO REMAND

Appellant Joe Ross Worley (hereinafter "Worley") moves this Honorable Court for an order to remand this matter to the circuit court for a *de novo* hearing on the issues which are currently on appeal. In support of his motion, Worley will show:

1. Worley was arrested following events at his mother's home in the early morning hours of November 15, 2009. He has been incarcerated since that time in the McCormick County jail as a pretrial detainee¹. He has not been tried for the alleged crimes for which he has been incarcerated for more than three years.
2. The exact events of those early morning hours are heavily disputed between the parties to this appeal, but from Appellant's perspective, a full and complete record of the underling proceedings would demonstrate the following:

¹ On three (3) occasions (December 3, 2009, February 23, 2010, and August 11, 2010), the circuit court, via Judge Keesley, denied pretrial bond, finding Worley is a "danger to the community." On the fourth (4th) occasion on which Judge Keesley considered the issue, he recused himself. Judge Frank Addy then heard the pretrial bond motion, and denied it, essentially concluding he could not overrule Judge Keesley. (Order dated September 28, 2011)

On the darkest night of the month, and in the wee hours of the morning, two McCormick County Sheriff's Office deputies (Moore and McAllister) and another employee of the Sheriff, Rushton², approached Worley's mother's house to investigate a gunshot complaint made by Worley's next door neighbors. Worley was sound asleep in his bed but awoke when the police arrived and began ringing the doorbell.³ His mother remained asleep. Worley's bedroom and his mother's bedroom were upstairs, inside of a dwelling that was well insulated. Worley's windows were closed, and the HVAC unit was on and heating the house.

Worley's neighbors had called 911 to complain that Worley had fired a weapon earlier in the evening. The neighbors didn't contact Worley directly to complain and didn't tell Worley they had called the police. Rushton, Moore, and McAllister didn't telephone, or have police dispatch call, the Worley residence, even though Mrs. Worley's telephone number was listed in the local telephone book.

Rushton, Moore, and/or McAllister repeatedly rang the doorbell located at the ground level door. This door is the only entrance to the house. This door has no peephole or other means to examine the identity of the person(s) on the other side, which is why Worley didn't go downstairs and open this door. Also, there were no windows on the ground level of the house.

² Rushton's status as a law enforcement officer on the night of the shooting is disputed. Rushton was a former McCormick County deputy who was newly re-hired by the McCormick County Sheriff's Office after several years of other overseas employment. However, Rushton had not been recertified as a law enforcement officer, and had not been duly qualified to serve as a deputy sheriff, at the time he approached Worley's mother's house and aimed his gun at Worley.

³ Testimony conflicted regarding the exact time of the shots, although witnesses seemed to agree that there were only two (2) shots fired. Rushton admitted that he believed a deer poacher was active in the area and was responsible for the prior shots complained of by the neighbors. Regardless, Worley asserts he went to sleep afterward until roused from his bed by the ringing of the doorbell, and there is no evidence in the record to the contrary. Even using a time later than Worley's own recollection, the 3:30 a.m. time testified to by the neighbor still puts an hour between the final shot and when Rushton arrived on scene, which was more than ample time for Worley to reach a deep sleep prior to being awakened by the ringing doorbell

Worley couldn't see any police cars from the upstairs windows. Rushton's police car, without flashing blue lights on, was parked on the other side of the house and out of Worley's line of sight anyway. Moore's car and McAllister's car weren't parked on Worley's property. No one used sirens, a loud speaker, a bullhorn, or any other device in order to let Worley know that law enforcement was in his mother's yard.

Worley presented evidence that the night in question was the darkest night of the month. Worley testified that he did turn on the light while still inside the house, but did not see anyone and only saw total darkness. Moore and McAllister testified that they saw the light come on initially as they were at the rear of Worley's house getting to ready to leave. Rushton saw the light come on while walking from the neighbors' house to Worley's mother's house. This clearly explains why Worley did not see any person in his yard when he first turned on the light and looked out over the yard from within his house.

Worley testified that he then turned off the light. Every witness is consistent in acknowledging the light was not on continuously. Worley stated he turned off the light to ensure his rifle's safety was off before turning the light on again and exiting onto the balcony. Worley had the rifle in the port position (pointed upward and not at anyone) when he exited onto the balcony. Rushton agreed that Worley had the rifle in the port position when Worley exited onto the balcony. Worley testified that he saw Rushton, yelled "freeze," and then Rushton aimed his weapon at Worley. Rushton's testimony confirms that he aimed his weapon at Worley, despite no menacing, threatening, or illegal action having been taken by Worley, even according to Rushton himself. Worley testified that he would not have shot Rushton if he had known Rushton

was with the McCormick County Sheriff's Office.

Worley was armed with a semi-automatic rifle, and said he could have shot Rushton again when Rushton fell to the ground after being shot. Rushton testified the shot knocked him to the ground. Instead, Worley fired a warning shot into the air over Rushton's head when Rushton started running toward Worley's ground level door, in an effort to motivate the suspected burglar to vacate the premises.

3. Both parties agree that law enforcement officers arrested Worley at his mother's house that morning. Worley was charged with three (3) counts of assault and battery with intent to kill (S.C. Code Ann. § 16-3-0620) and three (3) counts of use of a weapon during a violent crime (§ 16-23-0490).
4. At a pretrial hearing, Worley raised the Castle Doctrine by way of defense. S.C. Code Ann. § 16-11-420 (hereinafter the "Act") codifies the common law Castle Doctrine, and provides for the ability of law-abiding citizens to protect themselves via their constitutional right to bear arms, and thereby protects their right to "expect to remain unmolested and safe within their homes." Id.
5. The Act provides for true immunity from prosecution, and the applicability of the statute is to be determined pretrial. State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011). Judge William P. Keesley held a hearing on May 31, 2011 (continued over onto June 1, 2011) to determine whether Worley was entitled to immunity under the Act, and concluded that Worley was not protected from prosecution. (Orders dated June 24, 2011 and July 5, 2011). Appropriate motions for reconsideration were filed and denied.
6. In his ruling on immunity, Judge Keesley recused himself from further proceedings in this case. Id. This presented such a complex procedural hurdle that Judge Keesley sought

expert advice from retired law professor John Freeman about his ability to decide the motions for reconsideration after having already recused himself. After receiving advice from Freeman, Judge Keesley addressed the motions for reconsideration.⁴

7. The Act does not explicitly provide a procedure for determining immunity. Duncan, 409, 664. In Duncan, the Supreme Court held that the immunity determination under the Act “must be decided prior to trial” upon motion of either party. Id. at 410, 665. The particular facts at issue in Duncan involved a grant of immunity, so the State’s appeal was, in fact, an appeal from a final order. Id. at 407, 663. However, the Supreme Court said a denial determination under the Act “is immediately appealable, as it is in the nature of an injunction.” Id. (footnote 2).
8. Unanswered, however, is whether a defendant who is denied the immunity in a pretrial order must appeal that order pretrial, or simply may do so and preserve the ability to raise the immunity at trial, especially since determination of immunity is not automatic or required but is triggered by pretrial motion of either party.
9. In this case, after the denial of pretrial bond, Worley has thus been given a Hobson’s choice: (1) not appeal Judge Keesley’s order, then go to trial with the risk he will be denied the ability to raise protections afforded by the Act as a defense at trial, or (2) remain in jail while he appeals the pretrial order denying applicability of the Act. In order to protect his rights, Worley has remained in jail while pursuing this appeal. Worley’s effort to seek extraordinary relief from the Supreme Court on the bond issue was denied. Order dated January 25, 2012.

⁴ Eleventh Judicial Circuit Judge R. Knox McMahon has also recused himself from hearing this matter.

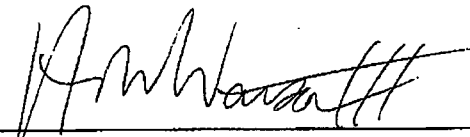
10. This appeal from Judge Keesley's Orders addresses the substantive issue of whether Worley is entitled to the immunity provided by the Act. In preparing the appeal, it was discovered that the court reporter who had recorded the hearing before Judge Keesley could not produce the entire transcript of the proceeding⁵. Oddly enough, all of Worley's testimony was missing, while all of the testimony from law enforcement was intact.
11. To avoid the delays which would accompany a remand, Worley attempted to supplement the appellate record with notes from the hearing taken by Worley's trial counsel. This effort was opposed by the State, and by order dated December 19, 2012, this Court ordered Worley's appellate counsel to amend the initial brief (and designations) to strike the proposed supplements to the record.
12. Following filing of Worley's amended initial brief, the State moved to remand the matter to the circuit court to reconstruct some portion of the record. Worley agreed in a return dated February 15, 2013, and asked that this Court construe the missing evidence adversely to the State.
13. The State has lobbied this Court, by letter dated February 20, 2013, to place some restrictions on the scope of the remand that will be made pursuant to its motion. However, in light of Judge Keesley's recusal, it is apparent that any remand must be a hearing *de novo* so that a complete record can be created for the review of this issue.
14. Cases cited by the State which suggest the trial judge should use his discretion to determine what to reconstruct on remand are not applicable here because Judge Keesley has recused himself. The judge to whom the matter is assigned for remand must start from

⁵ The court reporter produced a police report which indicated her car had been broken into and some tapes stolen. However, most tapes from the hearing before Judge Keesley remained. The only missing tapes included a portion of the neighbor's testimony and all of Worley's testimony.

scratch.

15. During the remand proceedings, the trial judge can address issues regarding any inferences that must be drawn from the failure of the State to produce the entire proceeding before Judge Keesley.
16. Worley moves for remand in total, with direction to the trial court to expedite the proceeding. In essence, this matter has to start again. A new judge will have to hear new evidence, and could well make a different ruling which would moot this appeal.
17. Because Worley remains incarcerated, without availability of bond, due to the State's (or its agents) failure to produce the entire transcript of the proceedings before Judge Keesley. Worley has been in jail since his arrest more than three years ago, all because the State (or its agents) cannot produce a complete record for appeal. For that reason, Worley respectfully requests that this Court's order of remand require expedited proceedings.

Respectfully submitted,



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March 6, 2013

ATTORNEYS FOR APPELLANT

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM McCORMICK COUNTY

Honorable William P. Keesley, Circuit Judge, 11th Judicial Circuit
Appellate Case No. 2012-210646

Joe Ross Worley,

Appellant

v.

State of South Carolina,

Respondent.

CERTIFICATE OF SERVICE

I, Malory L. Hogg, an employee with the Law Offices of Ballard Watson Weissenstein, do hereby certify that on March 6, 2013, I served a copy of the **APPELLANT'S MOTION TO REMAND** in the above-captioned case on the following individuals 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

March 6, 2013
West Columbia, South Carolina

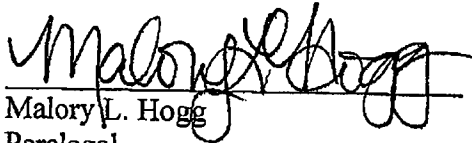

Malory L. Hogg
Paralegal

Exhibit G



The South Carolina Court of Appeals

The State, Respondent,

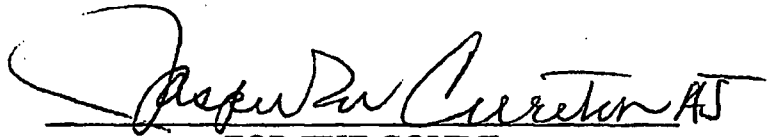
v.

Joe Worley, Appellant.

Appellate Case No. 2012-210646

ORDER

After careful consideration, Respondent's motion to remand for reconstruction of the missing portions of the hearing transcript is granted. Appellant's motion for remand for a de novo hearing is denied. Respondent shall provide this court with a status update on the reconstruction hearing in thirty days.


FOR THE COURT

Columbia, South Carolina

cc:

Desa Allen Ballard

Mark Reynolds Farthing

Harvey MacLure Watson, III

Carson McCurry Henderson

Billy J. Garrett, Jr.

FILED
JP 3/29/13

Exhibit H

1 State of South Carolina Court of General Sessions
2 County of McCormick
3
4

5 State)
6)
7 v.) Transcript of Record
8 Joe Ross Worley) 10-GS-35-0049
9) 10-GS-35-0050
10) 10-GS-35-0051
11) 10-GS-35-0052
12)
13)
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June 14, 2013
Edgefield, South Carolina

B E F O R E:

The Honorable William P. Keesley, Judge.

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

Donald V. Myers, Solicitor
Ervin J. Maye, Assist. Solicitor
H. Franklin Young, III, Assist. Solicitor
Attorneys for the State

Desa A. Ballard, Esquire
Carson McCurry Henderson, Esquire
Billy J. Garrett, Jr., Esquire
Attorneys for the Defendant

J.C. Nicholson, III, Assist. Attorney General
Attorney for Rema Thomas and Desiree Allen

Stacy L. Sheppard, RPR
Circuit Court Reporter

I N D E X

1		
2	<u>WITNESS</u>	<u>PAGE</u>
3	Rema Thomas	
4	Direct Examination By Ms. Ballard	13
5	Desiree Rutledge Allen	
6	Direct Examination By Ms. Ballard	41
7	Gwendolyn Dorn Chiles	
8	Examination By the Court	53
9	Certificate of Reporter	60
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 EXHIBITS

2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
3	D-1	Order of Judge Cureton	10	10
4	D-2	Reconstruction of Joe Worley's	12	12
5		Testimony		
6	D-3	Incident Report	23	24
7	D-4	Letter dated 8/16/11	43	45
8	D-5	Letter dated 9/1/11	43	45
9	C-1	Notes of Ervin Maye	59	

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1 (The following proceedings were held on June
2 14, 2013.)

3 **THE COURT:** This is in the matter of the State
4 versus Joe Ross Worley. This is a McCormick County
5 case. I previously conducted a hearing under the
6 Defense of Persons and Property Act in McCormick
7 quite some time ago and made rulings and basically
8 denied the efforts of the defense to be declared to
9 be immune from further prosecution or civil suit.

10 After that ruling was made and in the written
11 order, I felt that I was having to make such fact
12 specific findings that dealt with the credibility of
13 the claims of Mr. Worley that the appropriate thing
14 for me to do was to recuse myself from further
15 consideration of the civil or criminal cases, and I
16 put that in the order. It wasn't because of any
17 actual bias or animus or anything else. It was just
18 what I felt was the appearance. Having made
19 specific findings on very fact specific issues, I
20 just felt it would be better that I recuse myself.

21 So I notified the other resident judge, Judge
22 McMahon, under the procedure that we're to follow.
23 And my understanding is that he subsequently recused
24 himself and Judge Addy was assigned by the Chief
25 Justice.

1 Now, what I really did not think through, I
2 guess, was that there might be a motion for a
3 reconsideration, which there was. So there was a
4 rather detailed motion for reconsideration that was
5 filed. There also had been bond matters because
6 Mr. Worley has been incarcerated for an extended
7 period of time. He's still incarcerated.

8 Now, Judge Addy was able to deal with the bond
9 issues, but the reconsideration issue, I then had an
10 ethical question as to whether I could having
11 recused myself from the case due to the
12 reconsideration motion. With the consent of
13 counsel, I contacted Professor Freeman, who is, I
14 think, recognized as certainly one of the most fore
15 -- foremost authorities on ethics in South Carolina
16 and got an opinion from him, which should be in the
17 file. And I do have the McCormick Clerk of Court
18 here and the McCormick -- the case file is here. In
19 any event, my recollection of Professor Freeman's
20 response to me was not only did I have the ability
21 to do it, I had the obligation to do it.

22 So the reconsideration motion was, as I
23 mentioned, extensive. It took quite a while to do.
24 I went through all of those things. And I did agree
25 with some of the positions of the defendant and did

1 modify the order. I've got so many different
2 versions of the order in the computer, I have a real
3 hard time figuring out which one is the last one
4 because I've done so many orders in this case.

5 However, there was another twist that came
6 along. The defense had asked if they could get the
7 transcript before I ruled on the reconsideration.
8 And all this is coming from my memory, I apologize
9 to you all. If I state anything incorrectly, you
10 can correct me. They wanted the transcript and it
11 was learned that the court reporter had equipment in
12 a vehicle and the vehicle was broken into and
13 certain things were stolen, and because of that,
14 there are gaps in the record. I have not talked to
15 the court reporter. Having recused myself from the
16 case, I have purposely stayed as far away from it as
17 I possibly can.

18 So I learned that the case had been taken up on
19 appeal. I knew it was going to be appealed
20 regardless of how I ruled because the procedure now
21 is for us to have this Castle Doctrine hearing, the
22 Defense of Persons and Property Act hearing, wherein
23 the defendant had the burden of proof and it's a
24 preponderance of the evidence standard. And it's
25 immediately appealable. So regardless of whether I

1 ruled for the State or the defense, I knew it was
2 going to go up on appeal and it did, apparently.
3 And the South Carolina Court of Appeals has it.

4 And there is, in the memorandum that was
5 submitted and in -- in the letter that was sent to
6 Judge McMahon, there are attachments, one of which
7 is that Judge Cureton has issued an order, which was
8 filed on March 28th, 2013, which denied a motion for
9 a de novo hearing and remanded the matter to this
10 Court for reconstruction of the missing portions of
11 the record. A copy was sent to various attorneys.

12 I didn't know anything about it. Somebody
13 notified me about it. I can't say exactly how I
14 learned. I think it was in an e-mail and -- Oh, it
15 was an e-mail or some sort of response going back
16 because Judge McMahon had said that I was recused,
17 if I recall correctly, and Judge McMahon was recused
18 and they should refer it to Judge Addy. And, of
19 course, Judge Addy wasn't present for the hearing,
20 so we're here.

21 We had previously scheduled this, it was
22 continued. I don't know that a hearing is
23 necessary, but I wanted to afford an opportunity for
24 a hearing and my understanding was that Mr. Worley's
25 counsel was requesting one. And I'm certainly very

1 amenable to allowing the presentation of whatever we
2 need to present today..

3 The first thing I guess I need to cover,
4 however, is that I did not try to seek a second
5 opinion from Professor Freeman because I think the
6 concept's the same. Nobody else is in the same
7 position to decide issues about reconstruction of a
8 record or to attempt to. I don't know how it's fair
9 for any other judge to be put in the position of
10 trying to reconstruct it.

11 A reconstruction of the record doesn't deal
12 with any further rulings as far as any future
13 rulings on the criminal case or the civil case. It
14 just deals with the prior matters that were handled.
15 And so I think the same thing applies that Professor
16 Freeman would say, I've got not only ability, but
17 the obligation. But if any of y'all want to put
18 anything on the record about the recusal, now is the
19 time.

20 **MR. MAYE:** Nothing from the State, Your Honor.

21 **MS. BALLARD:** Nothing from the defendant, Your
22 Honor.

23 **THE COURT:** All right. Now, Ms. Ballard, your
24 side has the burden, so I guess we'll start with
25 you.

1 MS. BALLARD: Yes, sir. Thank you, Your Honor.

2 I've been practicing for 30 years and I've
3 never had to be involved in a reconstruction of a
4 record, so I'm not sure exactly what the procedure
5 is. I looked to the prior case law for guidance on
6 that issue and, fortunately, there was some. I have
7 cases that I can hand up to Your Honor.

8 For the record, China versus Parrott, a 1968
9 case from the Supreme Court of South Carolina, which
10 provides guidance in reconstructing the record that
11 permits affidavits of counsel and an affidavit of
12 the court reporter, also indicates that -- I'm sorry
13 -- There's a subsequent case that permits the trial
14 judge's notes, that's Whitehead versus State, to
15 also be used. That's, again, from the South
16 Carolina Supreme Court in 2002.

17 The most recent case from our appellate courts
18 that address the issue of reconstruction of the
19 record is Adams versus Allen decided by the Court of
20 Appeals in May 2012. There are some other cases as
21 well.

22 What these cases tell me, Your Honor, and I'll
23 hand up copies to you and to the State, that we are
24 supposed to use your notes from the trial. We are
25 supposed to use affidavits of the counsel who

1 attended trial and the testimony of the court
2 reporter, who is present here today, to reconstruct
3 what was missing.

4 Your Honor, I'd like to, if I could, mark Judge
5 Cureton's order dated March 28th, 2013, as an
6 exhibit to this hearing, if that's agreeable.

7 **THE COURT:** Sure. Hand it to the court
8 reporter, please.

9 (Defendant's Exhibit Number 1, Order of
10 Judge Cureton, marked and admitted into evidence.)

11 **MS. BALLARD:** Thank you, Your Honor.

12 As we prepared for this hearing, we have Judge
13 Cureton's order, of course, that remanded it to
14 reconstruct the missing portions of the transcript.
15 And I provided Justin, prior to the hearing, with a
16 copy of the portion of the transcript that we
17 received from the court reporter. And it picks up I
18 can't tell how far into the hearing, but all of the
19 introduction of the hearing, the motions that were
20 made by Mr. Henderson and Mr. Garrett are missing
21 and all of Mr. Worley's testimony is missing.

22 There is another gap in the transcript that
23 begins on page -- another gap that begins on page
24 159 at the -- I can't tell if it was the conclusion
25 of the testimony of Allen Sheffield or whether his

1 testimony was finished. And I can't tell how long
2 the break was.

3 So what we have, Your Honor, we have great
4 concerns about whether a sufficient record can be
5 reproduced at this point. Some of the cases from
6 the appellate courts, particularly State versus
7 Ladson and Koon versus State, as well as the Adams
8 case that I've already referred to Your Honor, talk
9 about the difficulty in reconstructing the record.
10 And, particularly, the Adams case talks about the
11 inability -- if the court is unable to adequately
12 reconstruct the record, the defendant's due process
13 rights are implicated and a new trial will be
14 warranted.

15 That being the case, Your Honor, we have
16 attempted, to the best of our ability, to summarize
17 from trial counsel's notes, Mr. Worley's testimony.
18 It's a document that we had submitted to the Court
19 of Appeals as a proposed portion of the record on
20 appeal. This document was done made -- by Mr.
21 Henderson and Mr. Garrett based on their trial notes
22 taken contemporaneously with Mr. Worley's testimony,
23 but we don't have any other notes of the other
24 witness that was testifying, Mr. Sheffield, of his
25 missing testimony.

1 And all we have -- we don't have anything about
2 what the pretrial motions were other than,
3 apparently, the case was actually being called for
4 trial. And Mr. Henderson made a motion under the
5 Castle Doctrine, which is -- we have that portion of
6 the transcript missing. Mr. Garrett made a motion
7 to sequester witnesses, that, of course, is missing
8 as well. And that portion of the transcript starts
9 with Your Honor saying to Mr. Garrett, Call your
10 next witness. So we have the entire beginning
11 portion of the hearing missing, as well as all of
12 Mr. Worley's testimony.

13 And the problematic thing with that, Your
14 Honor, is that Mr. Worley had the burden of proof.
15 So it's ironic that his is the testimony that is
16 completely missing from the record.

17 I would introduce into evidence, the State has
18 already received this as part of the appellate
19 proceedings, the affidavit of Mr. Henderson and Mr.
20 Garrett with their reconstruction of Mr. Worley's
21 testimony from their contemporaneous trial notes.
22 I'd like to introduce that into evidence as Exhibit
23 2.

24 **THE COURT:** Mark it in the record, please.

25 (Defendant's Exhibit Number 2,

1 reconstruction of Joe Worley's testimony, marked and
2 admitted into evidence.)

3 MS. BALLARD: I have two witnesses, Your Honor.
4 One is the court reporter, Rema Thomas, and her
5 supervisor from Court Administration to talk about
6 the efforts that have been made to -- why the record
7 is missing, first, and the efforts, if any, that
8 have been made to reconstruct the record. I propose
9 calling Ms. Thomas to the stand at this point.

10 THE COURT: All right. Call your witness.

11 MS. BALLARD: Ms. Thomas.

12 REMA THOMAS,
13 having been duly sworn, testified as follows:

14 MS. BALLARD: Your Honor, Ms. Thomas is
15 represented by Mr. Nicholson from the Attorney
16 General's Office. I just wanted to make sure that
17 was noted for the record.

18 THE COURT: All right.

19 DIRECT EXAMINATION

20 BY MS. BALLARD:

21 Q Ms. Thomas, how are you employed?

22 A I'm employed by South Carolina State Court
23 Administration.

24 Q All right. And how long have you been employed
25 as a court reporter?

1 A Nineteen and a half years.

2 Q Are you assigned to a particular judge?

3 A No.

4 Q Are you what they call a roving court reporter?

5 A Yes.

6 Q Were you the court reporter at a hearing held
7 before Judge Keesley on May 31st, 2011 and June 1st,
8 2011?

9 A I was.

10 Q Prior to that hearing, did you test your
11 equipment and determine that everything was working
12 appropriately as far as you could tell?

13 A I did.

14 Q Did you have backup tapes?

15 A I did.

16 Q And did you record, forgive me if I use the
17 wrong term, stenographically versus steno mask?

18 A Stenographically, yes.

19 Q Stenographically. And just for the record,
20 that's the one with the keyboard as opposed to the
21 mouthpiece; is that right?

22 A Correct.

23 Q Okay. And did you take those entire
24 proceedings in the Worley case those two days?

25 A I did.

1 Q Did you maintain a trial log of the proceedings
2 in that case as required by the South Carolina Court
3 Reporter Manual?

4 A I did.

5 Q Ms. Thomas, what did you do after the trial
6 with your tapes and your stenographic notes and your
7 trial log?

8 A They are all assembled, put into an expanding
9 folder and shelved for future reference.

10 Q All right. Where do you keep those?

11 A At my house.

12 Q Do you have a special area set aside where
13 those are retained in a secure location?

14 A I do. I have an office, yes, room.

15 Q Did you receive one or more requests to
16 transcribe those proceedings?

17 A I did.

18 Q How many requests did you receive, if you
19 recall?

20 A I don't recall. I know three for sure.

21 Q All right. And what is your procedure when you
22 receive requests for preparation of a transcript?
23 What do you -- what's your first step?

24 A I would log those requests with the dates
25 they're received onto a log sheet that's used at the

1 end of the month for a report.

2 Q Is this an official form from Court
3 Administration?

4 A The monthly report is that this information is
5 transferred to. And then I would see how far down
6 my list of what's ahead of that transcript.
7 Sometimes there might be 5-, 6-, 800 pages ahead of
8 this one, so I would hold that request until I get
9 to where it's time to transcribe it. And when it's
10 time for that particular one, then I would pull off
11 of my shelf the folder which has everything in it
12 from that week of court, everything.

13 Q All right. The file, the folder I think you
14 called it that you prepared for Mr. Worley's case,
15 what specifically was in that file?

16 A Everything.

17 Q You need to give me more than everything?

18 A It would have my courtroom worksheets. It
19 would have the paper tape from court. It would have
20 the disk out of my machine. It would have the
21 backup tapes. Other words, if I drop dead and Court
22 Administration came to secure everything that I had
23 done, one week's trial work would be contained in a
24 folder. It's not piecemealed here, there and yonder
25 because somebody might need to pull a week's worth

1 off a shelf that needs to all be together.

2 Q Okay. So the folder that you're talking about
3 was not a folder exclusively for Mr. Worley's case,
4 it was a folder for that whole term?

5 A It would have been for the whole term.
6 However, when I pull it off the shelf, I don't take
7 everything out. I mean, I don't take the worksheet
8 for a second or third trial we might have had that
9 week. The backup tapes that pertain to that would
10 be -- I would take those out, put them in a folder
11 like this and set them on the shelf. They'd be
12 left. They wouldn't be pulled down because I
13 wouldn't need them.

14 Q All right. So what did you do when you
15 accessed this file to obtain the materials related
16 to Mr. Worley's hearing?

17 A Usually, at least once or twice a week, I meet
18 with a typist, pick up work from her, take her work.
19 So during that week some time, whenever I had time,
20 I usually go by where she works at night -- or where
21 she lives at night or where she works during the day
22 and I would bring her the next one or two trials or
23 one or two or three guilty pleas, whatever I want
24 her to transcribe next, I would take it to her and
25 pick up what she has ready.

1 Q All right. Who is the typist?

2 A Her name is Becky Mayo, M-a-y-o.

3 Q Is she an employee of the State?

4 A She is, but not for Court Administration.

5 Q Is she employed for the purpose of transcribing
6 -- is she employed by the State for the purpose of
7 transcribing official records?

8 A No. She's employed at the university
9 full-time. She does transcribing at nights and on
10 weekends as a second job.

11 Q All right. And as whose agent does she do that
12 work?

13 A Me. I mean, I'm responsible for the work. She
14 types for me. She has no liability for the job.
15 It's my job that -- there's no way you could ever
16 keep up with transcripts if you didn't have somebody
17 helping you.

18 Q Okay. So is using a typist a procedure that's
19 been approved by Court Administration?

20 A Yes. They encourage it.

21 Q Okay. And I'm sorry, I'm not completely
22 familiar with the Court Reporter Manual. Is that
23 discussed in the Court Reporter Manual?

24 A I don't know. I'm not sure.

25 Q Okay. Tell us what you did to assemble the

1 materials for this request, this transcript request,
2 what you assembled and what you did.

3 A I would pull down the file. I would look on my
4 -- the courtroom log sheet. It would have been
5 audio tapes one through 33 or whatever that would
6 have applied to that particular trial. I would have
7 pulled the other ones out, left them on the shelf
8 and handed her -- and taken the worksheet, the disk
9 from my computer and everything else that was in the
10 file.

11 Q Now, Ms. Thomas, I understand that your vehicle
12 was broken into; is that correct?

13 A Yes.

14 Q Tell us about the circumstances. Where were
15 you and where were you coming from when that
16 occurred?

17 A I'd been, I believe, in Manning in court that
18 day and I was coming back up 378 to Columbia. And I
19 had planned to stop and meet with the typist at the
20 end of the day at 5:00 and I needed to kill just a
21 little bit of time before I got to USC where she
22 works. So I pulled, and I'm not real familiar with
23 378, so I pulled off into -- I was looking for a
24 shopping center somewhere that I could get my nails
25 done or go to a grocery store, somewhere just to

1 kill about an hour or however much time I needed. I
2 don't remember exactly. And that's what I did was
3 just pull into a shopping center to spend some time
4 before it was time to go to meet with her. I came
5 out of the shopping center --

6 Q Let me stop you before you came out of the
7 shopping center. When you went into the shopping
8 center, did you ensure that the materials that you
9 had brought to give to Ms. Mayo were still in your
10 vehicle?

11 A Yes.

12 Q Were they still intact at that time?

13 A Yes.

14 Q And how long were you gone from the vehicle?

15 A I don't know.

16 Q Can you estimate for me?

17 A An hour.

18 Q All right. When you came back, what did you
19 find?

20 A I came back. I got in my van. I left the
21 parking lot. I pulled back out on 378 and I
22 happened to remember that I had passed a fruit stand
23 under a big tent just maybe a half a mile down the
24 road before I had pulled over into the shopping
25 center. So I went back down the road to where the

1 fruit stand was, pulled in, got out, bought peaches,
2 watermelon, cantaloupe, whatever I bought. Then I
3 opened the side door, the sliding door of the van,
4 to put my stuff in and that's when I realized that
5 it had been ransacked and gone through.

6 Q All right. What type of vehicle were you
7 driving?

8 A Toyota van.

9 Q And how is it -- other than the driver's door,
10 how is the back portion of it accessed?

11 A Well, you can lift the gate in the main back,
12 but there's a bench seat across the back there or
13 you can open the sliding glass -- the sliding doors
14 on the sides.

15 Q And where was your file for the Worley case?

16 A In -- I have the seats taken out of the van so
17 I can have boxes and whatever. So when you open the
18 sliding door, they would have been sitting right
19 inside there on the floor where a seat would
20 normally be.

21 Q So that was, essentially, what would have been
22 a back seat?

23 A The middle row seats.

24 Q The middle row seat, all right. When you came
25 back out and got in your van, did it appear to be

1 anything wrong with your van?

2 A I didn't notice anything wrong.

3 Q There were no doors standing open?

4 A No.

5 Q So when you noticed something was amiss, what
6 did you see?

7 A Well, when I opened the sliding door and I
8 looked in, the stuff was just kind of -- there was
9 tapes thrown everywhere. There was papers from
10 other personal stuff that I had in there, just
11 somebody had gone through things quickly and just,
12 you know, dumped them, thrown them out. And -- I
13 mean, it wasn't like I left it. And my big
14 briefcase was gone.

15 Q Your big briefcase which would have -- does the
16 briefcase have anything to do with the file from
17 Mr. Worley's case?

18 A Yes. That briefcase I usually have -- it's
19 big. It has two zippers on each side and inside of
20 it would be those files that's sitting in there.

21 Q All right. So I want to make sure I'm clear.
22 All of Mr. Worley's transcript materials or
23 pre-transcript materials were in the briefcase; is
24 that correct?

25 A Correct.

1 Q And the entire briefcase was gone?

2 A Gone.

3 Q All right. What from Mr. Worley's file was
4 left?

5 A Well, there were some cassette tapes on the
6 floor with other papers and stuff, which was from
7 other stuff in the van. So, at that time, not
8 knowing what numbers or whatever goes with what, I
9 really didn't know. And I didn't try to go through
10 things and touch things and disturb things until I
11 called the police. So as it turned out, there was,
12 I don't know, two or three or four cassette tapes
13 there on the floor that had fallen -- either been
14 thrown out of the briefcase or fallen out or
15 whatever, but they were there on the floor.

16 Q All right. And you testified that you called
17 the police?

18 A Oh, yes, I did immediately.

19 Q Let me show you -- I'll have this marked first.

20 MS. BALLARD: Would you mark this for
21 identification? It's a police report with
22 attachments.

23 (Defendant's Exhibit Number 3, incident
24 report, marked for identification.)

25 Q Ms. Thomas, can you identify what's been marked

1 as Defendant's Exhibit Number 3?

2 A Yes, that looks like it.

3 Q Looks like what?

4 A The police -- the incident report, June the
5 23rd, 2011.

6 Q From the theft of your vehicle?

7 A Correct.

8 MS. BALLARD: Your Honor, I'd move Plaintiff's
9 Exhibit Number -- excuse me -- Defendant's Exhibit
10 Number 3 into evidence.

11 THE COURT: Any objection to this?

12 MR. MAYE: None.

13 THE COURT: Mark it in evidence, please, ma'am.

14 (Defendant's Exhibit Number 3, incident
15 report, admitted into evidence.)

16 BY MS. BALLARD:

17 Q Ms. Thomas, the -- how many police officers
18 responded?

19 A One.

20 Q And I assume you told him essentially what
21 you've told us?

22 A Right.

23 Q Did you go back to the location where your car
24 had been parked for about an hour or did he come to
25 the fruit stand where you were?

1 A He came to the fruit stand.

2 Q All right. Did he take any photographs of the
3 damage?

4 A Not that I know of.

5 Q Did you take any photographs of the damage?

6 A I did while I was waiting on him.

7 Q All right. How many photographs did you take?

8 A Two.

9 Q And are those photographs still in existence?

10 A No.

11 Q What happened to those photographs?

12 A Some time last fall I needed space on my cell
13 phone which had filled up for the capacity of photos
14 I can take, so that was part of photos that I
15 eliminated for space. I had no reason to believe I
16 would need them, so.

17 Q Okay. You were aware at that time, were you
18 not, that we had made a request for the transcript
19 and there was a portion of it missing?

20 A Yes. I knew there was a portion missing.

21 Q Okay. Defendant's Exhibit Number 3 indicates
22 that you called the police about 4:45 in the
23 afternoon. Does that sound about right?

24 A Yes.

25 Q And I'm not good with police reports, but it

1 appears to indicate that the time of the incident is
2 8:00 a.m. Do you see that?

3 A I don't know what that means. I don't know
4 what a 24-hour clock is. I don't know.

5 Q Okay. Well, the police report reflects that
6 the incident date was 6/23/11 at 8 -- 0800 on a
7 24-hour clock ending on 6, it's either 23 or 29, at
8 1500 o'clock. I don't know the 24-hour clock very
9 well either, but that sounds to me like a period of
10 several hours. Did you report to the officer that
11 you weren't sure at what time during the day your
12 car had been broken into?

13 A Oh, no, I was very sure. I just -- no. I was
14 very sure.

15 Q Okay. So what time did you tell him the event
16 had occurred?

17 A Approximately an hour before.

18 Q Okay. And pages two and three of Exhibit
19 Number 3 are what?

20 A Pages two and three are the -- is the memo that
21 I sent to Court Administration letting them know
22 what had occurred.

23 Q Okay. Did you speak with anyone at Court
24 Administration about this event? Don't tell me what
25 they said, just tell me if you had any

1 conversations.

2 A Not at that time.

3 Q Did you ever have any conversations with Court
4 Administration about this event and the request for
5 the transcript?

6 A No.

7 Q What efforts, if any, were undertaken by you to
8 create a transcript with what you had left?

9 A Immediately we transcribed what I had. I
10 started immediately working on what I had.

11 Q What did you have?

12 A What was found on the floor of the van.

13 Q And what was that?

14 A Cassette tapes.

15 Q And those cassette tapes were what? Were they
16 backup tapes?

17 A They were the backup tapes of testimony of some
18 of the witnesses.

19 Q All right. Did you have anything from which
20 you could transcribe from your Stenograph machine?

21 A No.

22 Q So the transcript that's been provided to us
23 that we provided to Judge Keesley was prepared
24 solely from the backup tapes?

25 A Correct.

1 Q If you'd had the -- did you did you do it or
2 did someone else do it?

3 A I did part of it. I started it and I think
4 Becky finished it.

5 Q Okay. Working exclusively from the backup
6 tapes?

7 A Yes.

8 Q Did you have a list of witnesses?

9 A No.

10 Q Did you have a list of -- did you have your
11 trial log?

12 A No.

13 Q Did you attempt, through contact to the Clerk's
14 office or anyone else, to try to obtain any
15 information to assist you in making a better
16 reconstruction of the record?

17 A I did not and I don't know what they would have
18 that would have been beneficial.

19 Q How do we know, looking at the transcript that
20 we have, who the witnesses were since we only have a
21 portion of the transcript?

22 A Well, I guess you just have to assume that
23 what's there is correct.

24 Q All right. So is there anything in the
25 official record that will tell us who the witnesses

1 were, who all the witnesses were?

2 A No.

3 Q Is there anything that, in the official record,
4 that tells us what all the exhibits were?

5 A No.

6 Q In the transcript that was prepared, was it all
7 audible so that you could accurately transcribe it?

8 A Yes, definitely.

9 Q All right. And the references in the
10 transcript to exhibits are simply what was reflected
11 in the backup tapes; is that correct?

12 A Yes.

13 Q All right. So as we sit here today, we don't
14 know how many witnesses' testimony is missing; is
15 that correct?

16 A Correct.

17 Q And when you prepared the transcript to provide
18 to the parties that had requested it, you did a
19 certification which indicated that it was an
20 incomplete record, did you not?

21 A That's correct.

22 Q Did Court Administration assist you in any way
23 in trying to reconstruct the record by obtaining
24 information from the Clerk's office or from any
25 other source?

1 A No, because it's not their job to have that
2 information conclusively. That is the job of the
3 court reporter.

4 Q All right.. But you didn't contact the Clerk's
5 office or attempt in any way to supplement what was
6 left after the theft to create a complete record; is
7 that right?

8 A No, because they wouldn't have anything.

9 Q They being --

10 A The Clerk's office.

11 Q -- the Clerk's office?

12 A No.

13 Q They wouldn't have exhibits?

14 A They would have the original exhibits.

15 Q But you didn't make any effort to ensure that
16 the transcript you prepared identified all of the
17 exhibits, did you?

18 A Well, they were identified inside the -- in the
19 testimony in the transcript.

20 Q So the exhibits that are identified in the
21 partial transcript that we have are only the
22 exhibits that were referenced during that portion of
23 the hearing that we do have backup tapes for,
24 correct?

25 A Correct.

1 Q All right. Now, you've brought with you today
2 what?

3 A Exactly what you handed me except for the
4 subpoena and I have a floppy disk from the
5 testimony -- from the transcript that was prepared
6 from the cassette tapes.

7 Q All right. Now, you had cassette tapes. What
8 happened to the cassette tapes?

9 A The cassette tapes that -- the portion of the
10 transcript that we have were pulled out the first of
11 the year and reused because that's what we do. If
12 we're not notified that there's some challenge to
13 the testimony, then we reuse them.

14 Q All right. So what do you have on the CD?

15 A The transcript.

16 Q Where did that come from?

17 A From the cassette tapes.

18 Q Explain to me, is it an audible CD or is it a
19 PDF of what you typed? What is on the CD?

20 A There's no CD..

21 Q I'm sorry. I thought you said you brought a
22 CD?

23 A I did not. I said I brought the floppy
24 diskette.

25 Q I'm sorry. What's on the floppy diskette?

1 A The transcript that was prepared from the
2 cassette tapes.

3 Q And is that an audible re-creation of the -- is
4 that a copy of the backup tapes, an audible copy of
5 the backup tapes?

6 A It is the transcript that was prepared from the
7 cassette tapes that you audibly listen to and
8 transcribe from.

9 Q All right. So what we have on the floppy disk
10 that you brought today is simply an electronic copy
11 of the transcript that was typed up; is that
12 correct?

13 A That's right.

14 Q All right. So we don't have any audible record
15 or any written record of the proceedings that
16 occurred before Judge Keesley on May 31st, 2011 and
17 June 1st, 2011, other than the partial transcript
18 that you prepared from the backup tapes; is that
19 right?

20 A Yes.

21 MS. BALLARD: Beg the Court's indulgence just a
22 moment.

23 THE COURT: Yes, ma'am.

24 (Pause.)

25 BY MS. BALLARD:

1 Q Was your vehicle locked at the time of this
2 incident?

3 A As far as I know, it was locked.

4 Q Okay. Does it lock -- is it a manual lock or
5 is it one that you click with a key fob?

6 A Both.

7 Q How do you normally lock it?

8 A Manually.

9 Q You push the lock down before you close the
10 door? Before you went into wherever -- the store,
11 did you check to make sure that the car did, in
12 fact, lock when you left it?

13 A I think I probably did.

14 Q Is that your normal custom and habit?

15 A Right, it is.

16 Q When you came back to get into the van, was it
17 still locked?

18 A Well, I hit the key fob to unlock it, so I'm
19 assuming it was locked.

20 Q But you didn't try it to see if it was locked?

21 A I did not.

22 Q Okay. Did you hear anything click when you hit
23 the fob?

24 A I don't recall thinking it was not locked, so.

25 Q Okay. Now, the tapes that were left in your

1 vehicle, what size tapes are these?

2 A Cassette recorder standard tapes.

3 Q They're not mini tapes. They're the size of a
4 pack of cigarettes maybe?

5 A Yes.

6 Q All right. And how many tapes from
7 Mr. Worley's matter remained?

8 A I don't know because the courtroom log sheet
9 was missing also and that would have told me how
10 many tapes there were.

11 Q Were the tapes labeled in any way?

12 A Dates and numbers.

13 Q Dates of the hearing?

14 A Uh-huh. The dates -- right.

15 Q And what else was on there?

16 A The -- they would have been numbered.

17 Q All right. Was there anything on the outside
18 of the tapes that would indicate whose witnesses --
19 whose witnesses' testimony was included on the tape?

20 A No.

21 Q Did the briefcase also contain the disk or
22 memory from your Stenograph machine?

23 A It did.

24 Q All right. Was that also taken?

25 A Yes.

1 Q Does your Stenograph machine have any built-in
2 memory other than a CD or some other tape?

3 A No.

4 Q Before you put the materials in your car to
5 take them to Ms. Mayo, did you copy them on to a
6 hard drive somewhere so you would have a backup in
7 the event there was an accident or some other event?

8 A No.

9 Q All right. So the only place we would have had
10 any record at all was in the back seat of your car
11 that day, correct?

12 A Yes.

13 Q Was there any damage to your car?

14 A The police report says there was no damage, but
15 we did, later that night, notice long scratches
16 along the side of it, so.

17 Q Did any repairs have to be made --

18 A No.

19 Q -- to your vehicle?

20 A No. Well, we didn't -- the scratches are still
21 there. We didn't have it repaired.

22 Q Was a latch broken or anything?

23 A No.

24 Q Do you still have the vehicle?

25 A I do.

1 Q Okay. After you left Manning, had you made any
2 stops before you pulled into this shopping center?

3 A I don't recall.

4 Q You don't recall if you made any or --

5 A If I might have stopped to get gas or something
6 before I left Manning, I really don't remember.

7 Q Okay.

8 MS. BALLARD: I don't have any further
9 questions for this witness.

10 THE COURT: All right. Anything from the
11 State?

12 MR. MAYE: No questions.

13 THE COURT: Mr. Nicholson.

14 MR. NICHOLSON: No questions, Your Honor.

15 THE COURT: All right. Ms. Thomas, if you'll
16 stay there, I'm going to direct the questions to
17 everyone.

18 How did the exhibits get to the Court of
19 Appeals?

20 MS. BALLARD: The exhibits, Your Honor?

21 THE COURT: Yeah. I never did appellate work,
22 so you'll have to forgive me, I don't know.

23 MS. BALLARD: Yes, sir.

24 THE COURT: There's -- I have the Clerk's file
25 up here. I can see on the top that there are

1 exhibits. You asked her about exhibits. I had made
2 a note in my margin to ask the same thing you did,
3 Wouldn't you transmit the exhibits to the clerk at
4 the end of the trial? And the transmittal sheet
5 that I do see is here. So I'm confused about the
6 questioning about how would you know that all of the
7 exhibits were there.

8 MS. BALLARD: Your Honor, I was hired to handle
9 the appeal. I didn't try the case. I had the
10 exhibits that were provided to me by the trial
11 counsel. I did not contact the Clerk's office to
12 get copies of the exhibits because my co-counsel had
13 their own copies.

14 THE COURT: All right. So the Clerk of Court
15 doesn't transmit the exhibits to the Court of
16 Appeals normally?

17 MS. BALLARD: No, sir. The way it works is the
18 appellant is responsible for putting together the
19 record on appeal, which normally includes written
20 documents. If -- there's a rule, and I don't recall
21 the rule number, I can find it for you, that if the
22 original exhibits are demonstrative evidence or
23 they're oversized or otherwise cannot fit into the
24 transcript on appeal, the Court of Appeals issues an
25 order to the Clerk of Court to transmit the original

1 exhibits to the Court of Appeals, but that did not
2 occur in this case.

3 THE COURT: Okay. But as far as the exhibits,
4 they should all be right here should -- whether
5 they're referred to on the tape or not, they should
6 be -- the original exhibits should have been
7 transferred to the Clerk of Court at the conclusion
8 of the hearing.

9 MS. BALLARD: Ms. Thomas should have done that,
10 yes, sir.

11 THE COURT: Which is what this form indicates.
12 It's signed for by Buffey Shorter, who works with
13 the Clerk of Court's office in McCormick, and by Ms.
14 Thomas on June the 1st.

15 MS. BALLARD: Yes, sir. And my question to her
16 was whether she accessed the Clerk's file to ensure
17 that she had identified all of the exhibits in the
18 official transcript and she said she had not.

19 THE COURT: Do y'all have anything else with
20 this witness?

21 MS. BALLARD: Let me check.

22 MR. MAYE: Nothing from the State, Your Honor.

23 THE COURT: Ms. Thomas, did you want to chime
24 in on that at all?

25 THE WITNESS: No, sir.

1 BY MS. BALLARD:

2 Q Have you had any other break-ins to your
3 vehicle?

4 A No.

5 Q And the tapes that were left, were they intact?

6 A One of them had to be rewound. It was pulled
7 out of the casing, but we were able to wind it back.

8 Q And for a two day hearing, how many tapes would
9 you normally have?

10 A Well, you could have one or you could have 30
11 depending on --

12 Q Because the reason I'm asking is we have -- the
13 entire beginning of the hearing is gone. We don't
14 have any of that. And then on page 159, we have
15 another gap. How come?

16 A That's what I found on the floor of the van.

17 Q So we don't know how big that gap on page 159
18 is. We don't know how many witnesses there were or
19 what those proceedings were?

20 A The courtroom worksheet that had the numbers,
21 the witnesses, the cross, the redirect, the recross,
22 the next witness, the tape number, the reference to
23 my paper tape numbers, those were all on the
24 courtroom worksheet.

25 Q And the courtroom worksheet had not been

1 photocopied or scanned or --

2 A No.

3 Q -- duplicated in any way?

4 A And I also would have had the copy of the
5 exhibit sheet. When I hand the exhibits to the
6 Clerk of Court's office, we get a receipt for those.
7 That would have been in there, too. But in, you
8 know, 19 years, I've never had a problem, so.

9 MS. BALLARD: Okay. Thank you, Your Honor. I
10 don't have any further questions for this witness.

11 THE COURT: Thank you, ma'am. You may step
12 down.

13 MR. NICHOLSON: Your Honor, may she be excused?

14 MS. BALLARD: I have no objection.

15 THE COURT: Thank you very much, ma'am.

16 MS. BALLARD: Your Honor, we call Desiree Allen
17 to the stand.

18 THE COURT: Come around, please, ma'am.

19 She's free to go.

20 DESIREE RUTLEDGE ALLEN,

21 having been duly sworn, testified as follows:

22 THE CLERK: Have a seat. State your full name
23 and spell your last name, please.

24 THE WITNESS: Desiree Rutledge Allen,
25 A-l-l-e-n.

1 DIRECT EXAMINATION

2 BY MS. BALLARD:

3 Q My married name is Allen just for your
4 information.

5 A Maybe we're cousins or something.

6 Q Maybe we are. Where do you work, Ms. Allen?

7 A I work for the South Carolina Judicial
8 Department.

9 Q And in what particular office?

10 A The Office of Court Administration.

11 Q What is your specific title?

12 A Program manager.

13 Q Do you have multiple programs that you oversee?

14 A No, just two.

15 Q And what are those two?

16 A Court reporters and court interpreters.

17 Q With reference to your duties as to court
18 reporters, what do those include?

19 A They include the scheduling of court reporters
20 to terms of court, approval of leave, the day-to-day
21 operation of the scheduling of court reporters, any
22 problems that may come up, the overseeing of monthly
23 reports that they file, the approval of travel.
24 Those are the basic things that I can think of.

25 Q What kind of monthly reports are court

1 reporters required to file?

2 A The court reporters are required to file a
3 monthly report of transcript requests that they
4 receive. They have to indicate the date that the
5 request was received, the date of the hearing, how
6 many pages it is, whether they need an extension,
7 whether the case is on appeal. I think that's
8 what's asked for on the form.

9 Q All right. Do the court reporters have to
10 provide you with reports of what proceedings they've
11 taken in the regular course of their duties?

12 A Not specifically. There's no -- like, I would
13 have no idea what cases were heard unless it was
14 requested because then it would be placed on the
15 monthly report.

16 Q By the court reporters?

17 A Yes.

18 Q Okay. Ms. Allen, did you receive communication
19 from Ms. Thomas after the events that she described?

20 A Yes, I did.

21 Q What, essentially, shortly did she tell you?

22 A She described an incident where her vehicle was
23 broken into and various materials were taken.

24 Q Was this a verbal conversation or was it
25 something transmitted to you in writing?

1 A I don't recall. It seems to me that she
2 probably called to let me know that something had
3 happened and then I, in turn, asked her to reduce it
4 to writing so that we would have, you know,
5 something in her file concerning that.

6 Q And referring to Defendant's Exhibit Number 3
7 pages two and three, can you identify what those
8 are?

9 A This appears to be a memorandum that she
10 provided to me after, you know, calling to tell me
11 about the incident.

12 Q And what's the date of that memorandum?

13 A The date of the memorandum is July 5th, 2011.

14 (Defendant's Exhibit Numbers 4 and 5,
15 letters, marked for identification.)

16 Q Let me show you what's been marked for
17 identification as Defendant's Exhibit Number 4. Do
18 you recognize this letter, Ms. Allen?

19 A Not specifically, but it is addressed to me at
20 Court Administration.

21 Q Do you recall receiving that letter? It's a
22 letter from me, correct?

23 A Yes, ma'am.

24 Q Do you recall receiving that letter?

25 A Not specifically.

1 Q Let me show you Defendant's Exhibit Number 5
2 and ask if you can identify that?

3 A This appears to be a letter from your office
4 dated September 1st, 2011, addressed to me.

5 Q And do you recall receiving that letter?

6 A Not specifically.

7 Q Ms. Allen, when it was brought to your
8 attention that Ms. Thomas had incomplete records
9 from the Worley hearing, what, if anything, did
10 Court Administration do to assist her in preparing a
11 complete transcript of the proceedings for May 31st,
12 2011 and June 1st, 2011?

13 A What did we do to assist her in preparing a
14 transcript?

15 Q Yes.

16 A Nothing.

17 Q Did Court Administration contact law
18 enforcement or contact the Clerk's office or do
19 anything to try to produce a complete transcript?

20 A No, ma'am.

21 MS. BALLARD: Your Honor, I'd move Exhibits 4
22 and 5 into evidence, although she's not been able to
23 specifically...

24 THE COURT: Anything y'all need to put on the
25 record?

1 (Pause.)

2 MS. BALLARD: I understand there's no
3 objection, Your Honor.

4 THE COURT: Mark those in evidence.

5 (Defendant's Exhibit Numbers 4 and 5,
6 letters, admitted into evidence.)

7 BY MS. BALLARD:

8 Q Ms. Allen, there's Rule 607 of the appellate
9 court rules that governs court reporters; is that
10 correct?

11 A That's correct.

12 Q And are you -- I assume you're familiar with
13 that rule?

14 A Yes, ma'am.

15 Q Subsection (i) of that rule requires a court
16 reporter to retain backup tapes for a period of five
17 years. Are you familiar with that?

18 A Yes, ma'am.

19 Q Is it permissible for court reporters to
20 dispose of the tapes more than five years -- or less
21 than five years after a proceeding?

22 A No. The rule is clear that the proceedings --
23 the materials from those proceedings should be kept
24 for five years.

25 Q All right. So what's a court reporter supposed

1 to do with the backup tapes after she has prepared a
2 transcript?

3 A If we're talking about after the transcript is
4 prepared, then they only have to keep them for 30
5 days. After that, they are allowed to destroy them.

6 Q All right. So, in this case, when there was
7 only partial backup tapes, what would Court
8 Administration's requirements have been regarding
9 the backup tapes?

10 A Thirty days after the transcript was prepared,
11 those tapes could be destroyed.

12 Q Is there any exception for a circumstance where
13 the court reporter is not able to provide a complete
14 transcript?

15 A No, ma'am.

16 Q Ms. Allen, did you report this event to anybody
17 else in Court Administration or with the judicial
18 department?

19 A No, I did not.

20 Q Was an incident report done at Court
21 Administration regarding the missing tapes or the
22 inability to produce a transcript?

23 A No, there was not.

24 MS. BALLARD: That's all I've got. Thank you
25 very much.

1 THE COURT: Any questions of the witness?

2 MR. MAYE: None from the State, Your Honor.

3 MR. NICHOLSON: Nothing, Your Honor.

4 THE COURT: Anything else?

5 BY MS. BALLARD:

6 Q How often does this happen, Ms. Allen?

7 A How often does what happen?

8 Q That a court reporter is unable to produce an
9 entire transcript.

10 A There's no set time, but I would say that
11 that's not the first time. I don't know.
12 Occasionally.

13 MS. BALLARD: Okay. Thank you.

14 THE COURT: Anything else?

15 MS. BALLARD: Nothing further from this
16 witness.

17 THE COURT: Thank you very much. You may step
18 down.

19 MR. NICHOLSON: Your Honor, may Ms. Allen be
20 excused?

21 THE COURT: Any objection to the witness being
22 excused?

23 MS. BALLARD: No objection.

24 THE COURT: You're free to go. Y'all can go
25 out the back if you would like to leave. You're

1 welcome to stay if you like to stay.

2 Any other witnesses for the defendant?

3 **MS. BALLARD:** Your Honor, I would ask you to
4 accept the summary of the testimony of Mr. Worley --

5 **THE COURT:** Hold on just a second.

6 I'm sorry. Go ahead.

7 **MS. BALLARD:** Your Honor, I had introduced into
8 evidence the affidavits of Mr. Henderson and Mr.
9 Garrett which include the -- their summaries from
10 their contemporaneous notes of the testimony of
11 Mr. Worley, but I don't have anything else that can
12 be used to assist us in reconstructing the record.
13 I know I'm not supposed to ask you, but does Your
14 Honor have any trial notes from the hearing that can
15 be used to help reconstruct the record?

16 **THE COURT:** I'm trying to locate them. The
17 order -- the orders that have been entered, my
18 recollection is, pretty much contain all --
19 everything. But I looked this morning. I will let
20 you all know if I have problems locating them. I'll
21 just have to look. I did not know it would come to
22 this. I suspect they're somewhere in the office in
23 a file. One of my law clerks went through at my
24 direction and reorganized everything and --

25 **MS. BALLARD:** I was a law clerk. I know how

1 that's done.

2 **THE COURT:** Well, I have a file with
3 Mr. Worley's name on it right here that I have kept
4 in my handwriting in my office, but I know -- I seem
5 to recall sitting over there doing those orders and
6 going through each of those witnesses and the notes.

7 Now, I have affidavits from the attorneys. Is
8 there any kind of affidavit or anything from
9 Mr. Worley that you all want to put in?

10 **MS. BALLARD:** No, sir.

11 **THE COURT:** I'll let y'all know what I find out
12 about the notes. If I can't find my notes -- I
13 don't know why I won't be able to find them except
14 I've just been doing this so long that there's a big
15 stack.

16 **MS. BALLARD:** Your Honor, the cases that I've
17 read indicate that the judge's notes can be used to
18 assist in reconstructing the testimony.

19 **THE COURT:** I have no problem whatsoever. If I
20 can locate them, then I will make a copy of them. I
21 know they're not going to be legible, so I'll
22 probably have to type out what they say and attach
23 the handwritten copy to it. And if I cannot find
24 them, I will say my mea culpas and say I just cannot
25 find them.

1 **MS. BALLARD:** I guess my question was going to
2 be could we -- if you do find them, could we
3 introduce them as part of the record?

4 **THE COURT:** Oh, yeah. I think the remand is
5 for me to try to reconstruct the record. And I've
6 always thought any notes that I might have would be
7 about the only means by which I could reconstruct
8 the record.

9 **MS. BALLARD:** Well, the case law, fortunately,
10 lets us have affidavits as well.

11 **THE COURT:** That I could reconstruct the
12 record. I'm sorry. I'm still phrasing that poorly.
13 That personally I would be able to say anything
14 about what happened. But, yes, I agree with the
15 affidavits and the concept. I do have -- do y'all
16 have anything y'all want to put in?

17 **MR. MAYE:** Your Honor, I have my raw notes. I
18 mean, I think anything else almost gets to advocacy.
19 I've got my raw notes here and you can certainly
20 have them, but I've got, you know, I got Worley's
21 name written down and I've got the things that I've
22 noted that he wrote down. And I wrote it
23 contemporaneously. And I haven't edited or changed
24 it in any way, but I have my raw notes here as to
25 his testimony.

1 It looks like it's about -- looks like about
2 seven pages. And I looked through it to make sure I
3 didn't put any editorial comments like I need to go
4 to the bathroom or anything bad. It looks all
5 pretty clean to me. So I can -- I'll certainly be
6 glad to give it to the Court for what it's worth.

7 **THE COURT:** I don't want them modified.
8 Whatever you've got --

9 **MR. MAYE:** No. I got just as I wrote it back
10 then.

11 **THE COURT:** All right. You've got notes of the
12 direct examination of Mr. Worley.

13 **MR. MAYE:** Yes, it appears to me. I just
14 pulled in this notebook right here -- I mean, pulled
15 it out of.

16 **THE COURT:** I recall Solicitor Myers being
17 there and I recall you being there. I don't know if
18 Mr. Young was there or not.

19 Were you there too, Mr. Young?

20 **MR. YOUNG:** Your Honor, I personally went back
21 and tried to find my notes. I had written some
22 notes, investigatory notes, on the front of the
23 folder he's referring to, but I cannot locate the
24 notes that I made. I will go look again.

25 **THE COURT:** All right. Well, do you recall who

1 conducted the cross-examination of Mr. Worley?

2 MR. MAYE: Solicitor Myers.

3 THE COURT: That's what I was thinking, but I
4 wasn't certain.

5 MR. MAYE: And, Your Honor, I just sat as I
6 normally did and I jotted down --

7 THE COURT: Is the testimony of the Clerk of
8 Court in there, in the transcript?

9 MS. BALLARD: No, sir.

10 THE COURT: Do you all recall -- at some point
11 in time, the -- what was the name of the person who
12 was shot?

13 MS. BALLARD: Mr. Rushton.

14 THE COURT: Mr. Rushton was testifying about
15 not recalling whether he ever took the oath or not
16 and somebody went down to the Clerk's office and got
17 the oath, which is part -- a copy of the written
18 note is one of these exhibits. Do you all recall
19 whether the Clerk took the stand?

20 I thought -- it wasn't you. It would have been
21 Ms. Butler.

22 MS. BALLARD: Mr. Garrett says he recalls her
23 taking the stand.

24 MR. GARRETT: Or did we stipulate?

25 THE COURT: I don't recall.

1 All right. Let me ask you this, and the
2 Clerk's here and I don't know how formal this has to
3 be, what does the Clerk write down about the
4 witnesses and what kind of log does the Clerk keep
5 during court?

6 MS. BALLARD: That would be helpful, Your
7 Honor.

8 THE COURT: You probably need to do this under
9 oath. Can you come around and be sworn?

10 GWENDOLYN DORN CHILES,
11 having been duly sworn, testified as follows:

12 THE CLERK: Have a seat. State your full name
13 and spell your last name, please.

14 THE WITNESS: My full name is Gwendolyn Dorn
15 Chiles, C-h-i-l-e-s.

16 EXAMINATION

17 BY THE COURT:

18 Q And, Madame Clerk, you're now the Clerk of
19 Court of McCormick County; is that correct?

20 A Yes, sir.

21 Q And at the time of this hearing we're talking
22 about, what position did you hold?

23 A I was the Deputy Clerk of Court at the time.

24 Q Do you recall whether you were in the courtroom
25 or not?

1 A Yes, sir, I was.

2 Q Do you remember if you were there the whole
3 time?

4 A Pretty much the whole time.

5 Q And the Clerk of Court was who?

6 A The Clerk of Court was Kathryne Butler.

7 Q And Ms. Butler has now been elected probate
8 judge and you were elected Clerk -- you were first
9 appointed Clerk and then elected Clerk of Court,
10 correct?

11 A Yes, sir, that's correct.

12 Q All right. Now, how long have you worked in
13 the Clerk's office?

14 A I've been in the Clerk of Court's office for 23
15 years.

16 Q What's the normal procedure and what would have
17 taken place as far as what notes the Clerk of Court
18 would have made? Is there any kind of log or
19 journal or anything that the Clerk maintains in a
20 hearing of this sort?

21 A As the deputy clerk, I took the position as to
22 create my own little journal. I have a --

23 MS. BALLARD: May I get a little closer, Your
24 Honor?

25 THE COURT: Sure.

1 **THE WITNESS:** I have a five subject tablet that
2 I use to write notes. And usually I do try to write
3 down the time and the date and the name of the
4 witness that was present or that testified that day.

5 **BY THE COURT:**

6 **Q** Do you know if you have that in this case?

7 **A** I'm sure that I do because I've been doing this
8 for quite some time.

9 **Q** Can you find it?

10 **A** Yes, sir, I can.

11 **Q** All right. Would you mind sharing it with us?

12 **A** I have no problem with sharing it. I'll be
13 glad to.

14 **Q** Do you swear to me you will not modify it in
15 any way?

16 **A** I swear to you I will not modify it in any way.

17 **Q** All right. Well, would you obtain it, secure
18 it, make copies of it, put a copy of your notes in
19 the file that you brought today, send a copy to the
20 attorneys for both sides for me?

21 **A** Yes, sir, I will.

22 **THE COURT:** All right. Do y'all want to ask
23 her --

24 **Q** But what about is there any other official
25 record? Is there any kind of journal or log? I see

1 clerks writing down there and I don't know what
2 they're writing. Is there any kind of journal or
3 official record aside from your notebook?

4 A No, sir. I can and will check with Ms. Butler
5 to see if there's anything that she have, but I
6 don't think so. I think I was mostly the record
7 keeper.

8 Q Do you recall if Ms. Butler took the witness
9 stand or anyone took the witness stand from the
10 Clerk's office to certify that that oath was in the
11 files of the Clerk's office?

12 A I don't think Ms. Butler took the stand. I
13 think we obtained the information that was needed
14 from the administrative secretary, the information
15 that she had, along with the information that we had
16 on record, I think that was used. But I don't think
17 she took the stand.

18 THE COURT: All right. Do you want to ask her
19 any questions?

20 MS. BALLARD: No, sir. I just was up here
21 because I wanted to make sure I could hear.

22 THE COURT: Do you want to ask her anything?

23 MR. MYERS: No.

24 THE COURT: Thank you very much, Madame Clerk.
25 We'll just adjourn this hearing then and I will

1 attempt to obtain my notes, we'll get Mr. Maye's
2 notes --

3 MS. BALLARD: Can I get a copy of Mr. Maye's
4 notes?

5 THE COURT: Sure.

6 MR. MAYE: Sure. And, Your Honor, I haven't
7 looked at them since the day that we had the hearing
8 nor have I touched them since the day. I looked in
9 the notebook here and they were in here and I have
10 them just exactly they were that day. They're not
11 voluminous.

12 THE COURT: Can we make your originals part of
13 the record?

14 MR. MAYE: Sure, as long as I can get a copy.

15 THE COURT: Ms. Newby, would you make copies of
16 this for both sides and for me?

17 THE CLERK: Sure.

18 MR. MAYE: Your Honor, that's raw just as I
19 took them that day.

20 THE COURT: That's the way mine are going to be
21 too when I locate them.

22 MR. MAYE: Because I note the next thing that I
23 have in there is I wrote Bobby Rushton's name and I
24 went down and -- what else is missing, just his?

25 THE COURT: Well, we don't know what's missing

1 at this point, that's the problem. If you've got
2 other notes, make them all part of the record.

3 MR. YOUNG: Your Honor, again, I will make an
4 effort to try to locate any notes that I may have.

5 THE COURT: Give me all the notes from the
6 hearing.

7 MR. MAYE: Sure.

8 THE COURT: Because one of the questions is
9 what witnesses may be left out in this and, of
10 course, her journal is going to help a lot once we
11 get that.

12 All right. I'm just going to recess this
13 hearing then until we can try to supplement -- get
14 this additional information. If we need to
15 reconvene, y'all let me know, all right?

16 MS. BALLARD: Yes, sir. And I just want to
17 reserve my right to make any motions after we have a
18 reconstructed record as to the sufficiency of the
19 record.

20 THE COURT: Certainly.

21 MS. BALLARD: Thank you, Your Honor.

22 THE COURT: All right. Now, if there's any
23 matters about Mr. Worley's bond or anything else
24 aside from the reconstruction of the record, y'all
25 take those up with Judge Addy, all right.

1 MS. BALLARD: Thank you, Your Honor.

2 THE COURT: Thank you very much. Thanks for
3 accommodating me today.

4 (Court's Exhibit Number 1, notes of Ervin
5 Maye, marked for identification.)

6

7

END OF PROCEEDINGS

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C E R T I F I C A T E

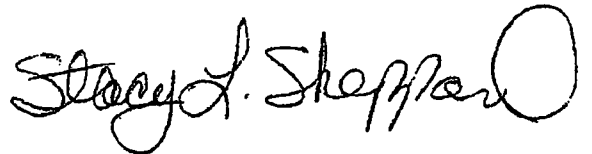
STATE OF SOUTH CAROLINA

COUNTY OF MCCORMICK

I, the undersigned, Stacy L. Sheppard, Circuit Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Criminal Court for McCormick County, South Carolina, on the 14th of June, 2013.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

July 31, 2013

A handwritten signature in black ink, reading "Stacy L. Sheppard", followed by a large circular flourish.

Stacy L. Sheppard, RPR
Circuit Court Reporter

State of South Carolina v Joe Ross Worley

Case no: J-036561, J-036562, J-036563, J-036564, J-036565, J-036566

Index

1. Letter to Desiree Allen from Desa Ballard - 8.16.11.
2. Letter to Desiree Allen from Desa Ballard - 9.1 .11
3. Clerk of Court – immunity hearing notes (filed 6.14.13)
4. Clerk of Court – typed immunity hearing notes (filed 07.16.13)
5. Judge Keesley’s immunity hearing notes (filed 07.22.13)
6. Police report and Court Reporter memo
7. Prosecutor's notes from immunity hearing (filed 7.16.13)
8. Testimony of Worley at immunity hearing (reconstructed) 9-7-2012
9. Transcript of hearing to reconstruct immunity hearing record – 6.14.13



**Ballard
Watson Weissenstein**
PERSISTENT. UNWAVERING.

Desa Ballard
Harvey M. Watson II
Stephanie Weissenstein
Attorneys at Law

Post Office Box 6338 | West Columbia, SC 29171

August 16, 2011

226 State Street | West Columbia, SC 29169 | ph 803.796.9299 | fx 803.796.1066 | desaballard.com

Via U.S. Mail

Desiree Allen
Manager, Court Reporting and Court Interpreters
Calhoun Building
1015 Sumter Street, Suite 200
Columbia, South Carolina 29201-3739

Re: *State of South Carolina v. Joe Ross Worley*
Case No: J-036561, J-036562, J-036563,
J-036564, J-036565, J-036566.
Hearing, McCormick County, Judge Keesley, May 31, 2011-June 1, 2011

Dear Desiree:

Our office has been retained to represent Joe Ross Worley in a pending matter. Prior to our involvement, a hearing had been held on the dates above. Karl Brehmer, who is handling a companion civil case, had ordered the transcript from the hearing and I believe others had ordered it as well. We have attempted to obtain the transcript, and have received the enclosed documents from the court reporter.

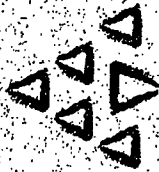
Please advise us what, if anything, has been done or is being done to try to reconstruct the record from the hearing held in Mr. Worley's case May 31, 2011-June 1, 2011 in McCormick County.

With warm personal regards, I am,

Sincerely yours,

Desa Ballard
desab@desaballard.com

c: Carson Henderson, Esquire
Billy J. Garrett, Jr., Esquire
Karl Brehmer, Esquire
Rema K. Thomas



**Ballard
Watson Weissenstein**
PERSISTENT. UNWAVERING.

Desa Ballard
Harvey M. Watson III
Stephanie Weissenstein
Attorneys at Law

Post Office Box 6338 | West Columbia, SC 29171
226 State Street | West Columbia, SC 29169 | ph 803.796.9299 | fx 803.796.1066 | desaballard.com

September 1, 2011

Via U.S. Mail
Desiree Allen
Manager, Court Reporting and Court Interpreters
Calhoun Building
1015 Sumter Street, Suite 200
Columbia, South Carolina 29201-3739

Re: *State of South Carolina v. Joe Ross Worley*
Case No: J-036561, J-036562, J-036563,
J-036564, J-036565, J-036566
Hearing, McCormick County, Judge Keesley, May 31, 2011-June 1, 2011

Dear Desiree:

Our office wrote you on August 16, 2011, (letter enclosed) regarding the transcript of Mr. Joe Ross Worley's hearing held on May 31, 2011, to June 1, 2011. Please advise us what, if anything, has been done or is being done to try to reconstruct the record from the hearing.

We understand from Rema Thomas that your office is assisting in the matter. Please advise at your earliest convenience what steps are being taken to reconstruct the record of the referenced proceedings.

With warm personal regards, I am,

Sincerely yours,

Desa Ballard
desab@desaballard.com

Enclosure

c: Carson Henderson, Esquire
Billy Garrett, Esquire
Karl Brehmer, Esquire
Rema K. Thomas



**Ballard
Watson Weissenstein**

PERSISTENT. UNWAVERING.

Desa Ballard
Harvey M. Watson III
Stephanie Weissenstein
Attorneys at Law

Post Office Box 6338 | West Columbia, SC 29171

August 16, 2011

226 State Street | West Columbia, SC 29169 | ph: 803.796.9299 | fx: 803.796.1066 | desaballard.com

Via U.S. Mail

Desiree Allen
Manager, Court Reporting and Court Interpreters
Calhoun Building
1015 Sumter Street, Suite 200
Columbia, South Carolina 29201-3739

Re: *State of South Carolina v. Joe Ross Worley*
Case No: J-036561, J-036562, J-036563,
J-036564, J-036565, J-036566
Hearing, McCormick County, Judge Keesley, May 31, 2011-June 1, 2011

Dear Desiree:

Our office has been retained to represent Joe Ross Worley in a pending matter. Prior to our involvement, a hearing had been held on the dates above. Karl Brehmer, who is handling a companion civil case, had ordered the transcript from the hearing and I believe others had ordered it as well. We have attempted to obtain the transcript, and have received the enclosed documents from the court reporter.

Please advise us what, if anything, has been done or is being done to try to reconstruct the record from the hearing held in Mr. Worley's case May 31, 2011-June 1, 2011 in McCormick County.

With warm personal regards, I am,

Sincerely yours,

Desa Ballard
desab@desaballard.com

c: Carson Henderson, Esquire
Billy J. Garrett, Jr., Esquire
Karl Brehmer, Esquire
Rema K. Thomas

54

Wants witness signature
present to 516-11-440
few employees after

trial not commencing until 10:00 am

prison will take a good one-half day

4

A delay

motion
prison
not over the
the taking motion

Stater. v. Wiley

65-McDonnell

5-31-11

①

Office DEPOT.

1-800-GO-DEPOT
(1-800-463-3768)
www.officedepot.com

(2)

Connett)

Joe Ross Worley

53 y/o

3/5/58

resident of Asher Co.

Colley Acres

lives w/ mother

lives here in Mc Com Co. over 40 yrs.

would come to Mc C. prop Thurs. - leaves on Sun.

first worked @ SRS

now 40 - mother

had break-in 30-40 yrs ago

2x

someone has tried to break in to the house.

bring alarm exp. - turns on when alarmed

mother went to bed

went outside to smoke cig.

saw fox outside

have a cat - elaborate cat walk

a fox had injured cat previously

went 30-06 to get fox out of area "motivated it out of area"

180 grain bullet

WPR #6

(3)

shot things thrown down toward water when kids
stopped shooting across lake - 20 yrs ago

always someone shooting somewhere
w/f 9/29, had not shot weapon for 20 yrs.

Sheffield - neighbors told about fox
shot rifle 3-4x between Sept & Dec.

2x each?

w/f 11/15 - no one had come to a & said could
not be shooting weapon @ night

not ~~chasing~~ chasing or on dump that night
thought could legally shoot @ fox

~11-12 m. went out

thought was part of fox's territory

motivated him out of area - shot 2x

unloaded gun - put under bed & went to bed

gun was his father's - left to his mother

doorbell rang - real early in morning

does not know what time

did not hear anyone knocking or saying anything

Wife
#1

(4)

house is double insulated

doorbell ring is on 2d floor - with him up

put on clothes

went to sliding glass door & pitch ball. dark

did not turn on lights

decided not to go to door

no peep hole

no window near door

if broke into that door, also have to break in 2d floor

did not see any blue lights

" " " any car or car lights

over 100 ft.

no one called on phone to say officers coming

thought might be home invasion

door bell repeatedly ringing

got gun - loaded gun

did not know if safety was on or off

went to night light to see if safety on

Went
#8

longer runs out w/ dirty, small flashings

had longer to guess
dropped front legs

you arrived @ home

ohet - turned longer around

longer have back, the time & in forward Δ

ohet into forward

told him he better have on

did not hear anything

went outside & got flashlight & gun

was Shelly's car - partial front passenger door to
the side

trying to decide if Shelly's longer was shot

if cap car, wanted to

main location of car

went upstairs

noticed neighbor's light on

walked up to main fl.

car came across driveway

ohet flashlight in floor

power cord of not to ohet flashlight in floor

ohet

in car and again

(6)

person said he just woke up - ^{asked who he was} said he was Schiff -

person told him last thing

no uniform

if had not aimed gun @ him, would have been in
was in fear of dying
gave him no choice

never identified himself as a law enf. officer

did not know police procedure

had
an automatic weapon

flashlight, dark gun, shadows - ran toward submachine

never heard gun

somebody cut on a blue light, but doesn't know when

no idea it was a police officer

##

Sheffield informed about for
man told A's mother

(7)

Cat was injured
around 1st day of '09 started shortly @ for
3-4x

Sheepskin on it.
Stomach on left

Went out on balcony to smoke cigarettes
maybe - 11-12- left went to bed -
our shadow

photos night together
put 5ft - underneath couch

mother was asleep
A went to sleep ~ 12 m.

pitch black dark
light up tops of trees
when coming, all lights were on in house.

no idea what time doorbell rang
did not see who was ringing doorbell
when went to look, one sliding glass door, pitch black - no lights
only light on is night light
thinner light in bed?

Up
#11

12/12/00

2000

not back in 2009
↓

did not call police

no driveway

car was behind her, pulled off behind neighbor's shop

more car

you turned her around - the car toward flower bed, the car behind

on person was not there

there could not get in by -

man back and out by

look at Shaggy's house

man sitting down

he was when it was

down

look to jump

look on step or

found a small light

Δ cut on outside light

Re-Direct

flashlight

guy beside a kept saying "you shot him"

A said. "They rang doorbell"

Did not give chance to say that "pointed gun in face"

could not tell if man or woman

could make out digit

saw it aiming @ A

fox could have caught

M - cross

ROBERT E. RUSHTON

oath taken when came on S/D

worked ~ 6 yrs. - resigned, then 4 yrs.

was in Iraq as International Police Advisor

FILED
GWENDOLYN CHILES
2013 JUL 16 PM 12:12
CLERK OF COURT
McCORMICK COUNTY, SC

Pre-Trial

- Motion to sequester witness in courtroom (i.e Law Enf)
Motion Denied
- Joe Worley 12:17 -12:54 Redirect
 12:54 - 1:15 Garrett 1:15 – 1:21
 Myers 1:21 – 1:22
- Lunch 2:20
- Bobby Rushton 2:25 – 4:16 Garrett 4:24
 4:16 – 4:23 Myers
- George Kirkland 4:25 – 5:10 Garrett
- Allen Shelfield 5:11 Garrett 5:31
 Meyers
- Nick Moore
- Melissa H McAllister 6:21

June 1, 2011

State vs Worley

- Def (Henderson) 12:05 – 12:23
State (Meyers) 12:23 – 12:30
- Motion Denied
- Both taken under advisement

State vs. Joe Ross Worley
2010-GS-35-00049, 2010-GS-35-00050, 2010-GS-35-00051, 2010-GS-35-00052
Appellate Case Number; 2012-210646

FILED
GIVE
2013 JUL 22 AM 11:10

Judge's Notes from Hearings Held May 31 – June 1, 2013
Re: Castle Doctrine Hearing / Immunity Under Defense of Persons and Property Act
CLERK OF COURT
McCORMICK COUNTY, SC

Testimony of Joe Ross Worley

Direct Examination of Joe Ross Worley

53 years old
Born 3/5/58
Resident of Aiken County
College Acres
Lives with mother
Lake house in McCormick County, over 40 years
Would come to McCormick property on Thursday, leave on Sunday
Father worked at Savannah River Site (SRS)
Mother was housewife
Had break-ins 30-40 years ago
Two times
Someone has tried to break in the house
Burglar alarm system – turns on when leaves house
Mother went to bed
Defendant went outside to smoke a cigarette
Saw a fox outside
Have a cat – elaborate cat walk
A fox had injured cat previously
Used 30.06 to get fox out of area – "motivated it out of area"
180 grain bullet
Not trying to kill the fox – been shooting in that area for 40 years
Shoot things thrown down toward water when kids
Stopped shooting across lake about 20 years ago
Always someone shooting somewhere
Before September 2009, had not shot weapon for 20 years
Sheffields – neighbors told about fox
Shot rifle 3 to 4 times between September and December
2 times each?
Before November 15, no one had come to the defendant and said could not be shooting weapon
at night
Not drinking or on drugs that night
Thought could legally shoot at fox
About 11:00 to 12:00 midnight, went out
Thought was part of fox's territory
Motivated him out of the area – shot 2 times

Unloaded gun – put under bed and went to bed
Gun was his father's – left to his mother
Doorbell rang – real early in the morning
Does not know what time
Did not hear anyone knocking or saying anything
House is double insulated
Doorbell ringer is on second floor – woke him up
Put on clothes
Went to sliding glass door and it was pitch black dark
Did not turn on lights
Decided not to go to door
No peep hole
No window near door
If break into that door, also have to break in second floor
Did not see any blue lights
Did not see any car or car lights
Over 100 feet
No one called on phone to say officers coming
Thought might be home invasion
Doorbell repeatedly ringing
Got gun – loaded gun
Did not know if safety was on or off
Went to night light to see if safety on
Burglar runs out with dinky, small flashlight
Told burglar to freeze
Dropped flash light
Gun aimed at him
Shot – turned burglar around
Burglar ran to bank, then turned and ran toward defendant
Shot into trees
Told him he better haul ass
Did not hear say anything
Went outside and got flashlight and gun
Saw Sheriff's car – pointed toward neighbor's house to the side
Trying to decide if Sheriff or burglar was shot
If cop car, wanted to mark location of car
Went upstairs
Noticed neighbor's lights on
Walked up to main road
Car came across driveway
Shove flashlight in face
Person said not to shine flashlight in face
Shone flashlight in face
He said again
Person said he just woke up – asked who he was, said he was Sheriff
Person told them lock him up

No uniform
If had not aimed gun at him, would have been ok
Was in fear of dying
Gave him no choice
Never identified himself as a law enforcement officer
Does not know police procedure
Defendant had automatic weapon
Flashlight, dark gun, shadows -- ran toward embankment
Never heard siren
Somebody cut on a blue light, but does not know when
No idea it was a police officer

Cross Examination of Joe Ross Worley

Sheffields informed about fox
Man told defendant's mother
Cat was injured
Around Labor Day of 2009 started shooting at fox
3 to 4 times
Sheffields on right
Stevens on left
Went out on balcony to smoke cigarette
Saw fox -- 11:00 to 12:00 -- before went to bed
Saw shadow
Shots right together
Put gun underneath couch
Mother was asleep
Defendant went to sleep around 12:00 midnight
Pitch black dark
Light up tops of trees
When smoking, all lights were on in house
No idea what time doorbell started
Did not ask who was ringing the doorbell
When wen to look out sliding glass door, pitch black -- no lights
Thinks light in kitchen
Defendant cut on outside light
Turn on outside light
Took one step out
Told to freeze
Aims
No idea who it was
Never identified himself
200 feet to Sheffields' house
Never said anything
Never said did not give a f _____
One person was out there

W/pc
#3

Gun turned him around – he ran toward flower bed, then embankment [in margin, "mark car"]
Car was behind house, pulled off behind neighbor's shop
On defendant's driveway
Did not call police
Not broken in 2009 to 2010

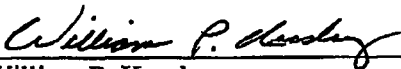
Re-Direct Examination of Joe Ross Worley

Flashlight
Guy beside defendant kept saying "you shot him"
Defendant said "they rang doorbell"
Did not give chance to say that "pointed gun in face"
Could not tell if man or woman
Could not make out object
Saw it aiming at defendant
Fox could have been coyote

No Notes Taken for Re-Cross of Joe Ross Worley

=====

A photocopy of the presiding judge's original notes of the testimony of Joe Ross Worley is attached.



William P. Keesley
Presiding Judge

Edgefield, South Carolina
July 17, 2013

MEMORANDUM

COPY

TO: Desiree Allen
FROM: Rema K. Thomas
DATE: July 5, 2011
RE: Auto break-in and missing court records

Desiree, I am writing to inform you of a loss of court records I experienced through an auto break-in on Thursday, June 23, 2011. I have been waiting on the police report to send to you with this memo. I received the police report on Friday, July 1, 2011.

On Thursday morning, June 23, I left Chapin to work in Manning. I knew there was a likelihood that I would be in Manning on Friday so I was prepared to stay overnight in Manning. I had in the vehicle a big, expandable briefcase with CDs, paperwork, paper notes and cassette tapes from a motions hearing in McCormick County the week of May 31, 2011.

My plan was to meet on Friday with a transcriber I often use, who lives off Hwy 378 near the V. A. Hospital, and give her the transcript to work on. I had already received four letters requesting the motions hearing, which would have been approximately 300 pages. Several copies would be sold, unusual in today's economic times, justifying using the typist.

This briefcase, with it's contents, was taken from the vehicle. The cassette tapes corresponding with the hearing were in a box in the van and were dumped out and strewn about the vehicle with other things. I have photos of what the inside of the van looked like after the vandalism.

Because some of the cassette tapes were broken and unraveled I had to listen to the cassette tapes to know what testimony is where and what I can transcribe. I believe I can transcribe approximately 210 pages of the hearing. At least three cassettes are missing from the group. They were inside the briefcase.

I do not know how you want me to handle notifying the attorneys who have ordered the transcript. Do you want to notify them or do you want me to write to them and tell them the situation, include a copy of the police report and tell them what portions of the requested transcript they can expect to receive? I believe the missing materials relates to one entire witness and part of another witness. It was not a trial, but motions in advance of a trial.

Obviously, this is a very unfortunate situation. As it turned out, I was not going to stay in Manning on Thursday night and I was on my way back to Chapin. I stopped on Hwy 378, on the Sumter Highway, to go into a grocery store to kill time until the typist got off from work. I was inside the store about an hour. When I came out I found the break-in. My entire back-up system was stolen.

I told the police officer the recorders were worth approximately \$100.00 each at a pawn shop because they were old, but they still worked fine. I have learned that it will cost much more than that to replace them. However, my insurance is \$1,000 deductible so I will be out-of-pocket at least that much to buy new equipment. I have been told to file an amended police report reflecting replacement costs for what was stolen. I have been able to borrow a back-up system to use temporarily.

My laptop computer and Stenograph writer was in the back of the van but the thieves didn't open the back hatch. The police officer believed the thieves worked from the side sliding door and would have been seen if they had tried to open the back of the van.

Please let me know how I am to proceed with this situation. I apologize for the problem and the inconvenience to you this will create. For 18 years I have been parking my vehicle overnight at motels and in parking lots all over the state and have been very fortunate to have had no break-ins until now.

COLUMBIA

Columbia Police Dept
SC0400100

INCIDENT REPORT

INFORMATION ONLY

INCIDENT NUMBER

10018381

INQ. ENTD.

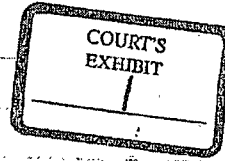
INCIDENT TYPE		COMPLETED	FORCE ENTRY	PREMISE TYPE	UNIT	TYPE VICTIM
1. 16-13-4180(1)(2), (3) AUTOBREAKING 23G THEFT OF MOTOR VEHICLE PARTS OR ACCESSORIES		YES NO	YES NO	PARKING LOT/GARAGE		Individual Business Person or Governmental Role Other Unknown Person OR
2. 16-13-0030(A) LARCENY/PETIT OR SIMPLE LARCENY 23H 23H ALL OTHER LARCENY		YES NO	YES NO	PARKING LOT/GARAGE		
3.		YES NO	YES NO			
INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER) 7545 GARNERS PERRY RD, COLUMBIA, SC				ZIP CODE 29209-0000	WEAPON TYPE NONE	
INCIDENT DATE	24 HR. CLOCK	TO	DATE	24 HR. CLOCK	LOCATION NO.	
06/23/2011	09:00		06/23/2011	18:00	465	
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE) THOMAS, REMA		RELATIONSHIP TO SUBJECT		RESIDENT	RACE/SEX	AGE
				S	W F	55
ADDRESS 808 YACHT CLUB PT		CITY COLUMBIA		STATE SC	ZIP CODE 29209-0000	LOCATION NO. 289
VICTIM'S NAME (LAST, FIRST, MIDDLE) THOMAS, REMA		RELATIONSHIP TO SUBJECT		RESIDENT	RACE/SEX	AGE
				S	W F	55
HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.		
504	218	GRE	BRO			
ADDRESS 808 YACHT CLUB RD		CITY CHAPIN		STATE SC	ZIP CODE 29008-0000	LOCATION NO. 289
VICTIM USING ALCOHOL		YES NO UNK		COMPLAINANT'S SIGNATURE		
VICTIM USING ALCOHOL		YES NO UNK		TYPE		
TWO-WAY		ONE-WAY		OTHER		
SUSPECT		NAME (LAST, FIRST, MIDDLE)		RACE/SEX	AGE	ETH
UNKNOWN, UNKNOWN						
WANTED		FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.		DATE OF BIRTH		
WARRANT				HEIGHT/WEIGHT		
ARREST		ADDRESS		CITY	STATE	ZIP CODE
JAIL		NO KNOWN ADDRESS		LOCATION NO.		
SUMMONS		SUBJECT USING ALCOHOL		DATE/TIME OF OFFENSE		
YES NO UNK		YES NO UNK		DATE/TIME OF ARREST		
TOTAL ARRESTS		YES NO				
DAY OF THE WEEK		HOW REPORTED		OFF. FACTOR		
S M T W T F S UNK		A= OFFICER DISPATCHED ON CALL B= REPORT TAKEN BY PHONE C= COMPLAINANT WALKED IN		A= RESISTANCE/HOSTILITY B= WEAPONS C= UNFOUNDED CALLS D= MENTAL SUBJECT		
1 2 3 4 5 6 7 8		A B C D E F		E= COMPLAINT FILED F= DOMESTIC G= NORMAL		
COMPLAINANT STATES THAT UNKNOWN SUBJECTS GAINED ACCESS TO LISTED VEHICLE. UPON GAINING ENTRY, UNKNOWN SUBJECTS REMOVED TWO SONY BRAND AUDIO RECORDERS VALUED AT \$100 EACH AND A BROWN BRIEFCASE VALUED AT \$50. CONTAINED IN THE BRIEFCASE ARE VARIOUS COURT DOCUMENTS. REPORTING OFFICER DID NOT PROCESS THE VEHICLE DUE TO THERE BEING NOTHING TO PROCESS. COMPLAINANT STATES THAT THE VEHICLE WAS LOCKED AT THE TIME THAT THE LARCENY OCCURRED BUT NO DAMAGE WAS NOTICED ON THE VEHICLE.						
JURISDICTION OF VIOLATION LAW ENFORCEMENT AGENCY SC0400100				JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY		
TYPE OF LOSS		2E	2B	TOTAL VALUE		
STOLEN		\$200.00	\$00.00	\$200.00		
DAMAGED				\$0.00		
BURNED				\$0.00		
RECOVERED				\$0.00		
LOST				\$0.00		
SUBJECT IDENTIFIED		SUBJECT LOCATED		S.F.		
YES NO		YES NO		AN		
ADVISOR FOR OPTIONAL CLEARANCE		OFFENSE/REASON		ADVISOR FOR OPTIONAL CLEARANCE		
OFFENSE/REASON		2. NONPROSECUTION		3. EXTRAJURISDICTION		
REPORTING OFFICER(S)		DATE		APPROVING OFFICER		
PARKER, WALTER E		06/23/2011 06:56:30 PM		BRANHAM, AMANDA L		
UNIT NUMBER		22148		DATE		
				06/23/2011 07:32:04 PM		
FOLLOWUP		INVESTIGATION		OFFICER		
YES NO		YES NO				

Worley

FILED
CLERK OF COURT

2013 JUL 16 PM 12:12

CLERK OF COURT
McCORMICK COUNTY, SC



res of Aikow Co
310 Vanderbilt Dr.

Father owns residence

came to prop about every wknd
Thurs, Fri, Sat

Daddy was SRS eng

Mama's is housewife

lives w her both places

every question totally leading

40 years ago some ~~hiding~~ 155

have an alarm

turno

mom went to bed

went outside to smoke cig

there was a fox out there
they have a cat

Sweat pea

- thinks Fox got into cat
- "he motivated it out of there"
- think it was a 180 grain bullet
- shot at fox 2 times?
- 9) w armor piercing rounds?
- off to on
- quit shooting
- In Sept ^{prior to 2009} 2009
- ~~shot~~
- had not shot weapon in 20 years
- had shotgun as well

Q - next door which neighbor said there was a fox ^{out there} NAME?

new neighbors the sheffields said there was a fox

saw him one weekend

- mom

- from 0 Sept 09

till

NOV 15

- no one told him
before NOV 15th
~~there was~~ it was illegal to shoot
cats

- think that was

- shot two times at fox

then^h he unloaded it & set
it under the couch

- it is mamas gun

- brother served in secret service

- next DOOR BELL RINGS

- real early in morning

- could not hear knocking

- could not hear anything

Sidewalls have insulation
double insulated

- if you are in Bedroom

- can hear doorbell

- had dressed for bed

- just listening

- walked out looked out
window

- if it was pitch black dark

Q → then how had he
seen the fox &
shot

- Q Do burglars RING DOORBELLS?

- saw no blue lights

- he said he was looking up
driveway there are 6
street light

- have suffered break in & there

it was now stop ringing
DOOR BELL

- he loads the gun & chambers it
- did not know if it was went to
- flipped light on

- the Burglar runs out
he said freeze

guy drops flashlight
& shot the gun out
of his hand

- he runs to a bank
& stopped

Q - & he can see all
of this in this pitch
black dark
then he let one off into
trees

- holding gun he shoots left
handed

Q - and he can see all
of this in this pitch black dark

- car had lights on in neighbors driveway

he said

- he put gun in car to mark location of car

- he said headlight were on

- was that a sheriff or a burglar

(Q - but he can see well enough to shoot a gun out of someones hand)
~~did not~~ but cant see it's a cop
put the gun in car to mark location

- sent mom to neighbors house Q (with a burglar on the loose?)

- Sheriff says give me a minute I am just waking up

- told sheriff gun is in ^{the} car
person did not have a uniform

saw fox around 11 or 12

- just saw a shadow

Nov 15 2009

- 1st shot around 11 or 12
he says shot 2 times @ once

- unloads gun & put it
under the couch

- most times it wakes her up

- then around 12

- balcony light is on when
they

- when ^{lights} ~~there~~ were on w the
lights

- shadow of a fox

- door bell started ringing

- Bobby Pushtow
 ↳ to duty
- returned Nov 1, 2009
- go through
- had to catch up
 M-F in S. Office - retraining
- have not given an oath of office
- 1st oath I took forever
- D14
- badge # 113
- badge # changed numerous times
- filled out a new
- "try to claim he was not an officer" "do you readminister oaths"
- veh training
- legal updates
- 1st night Back
 (psychological ^{go through} training)

- narcotics officers, investigators
many officers wear different
clothing

- Dispatcher called her

- where did Bobby park
- his vehicle parked in yard

- he turned in

- came to back of residence

~~- are there any cases of failure of
being resident? as to status?~~

{ how long would you keep
your job if you woke
up every neighbor hollering on
- a p A and turning on lights
and driving through someone's
yard...

- George Kirkham

- Opinion

- followed proper police procedure

- Street Survival Training

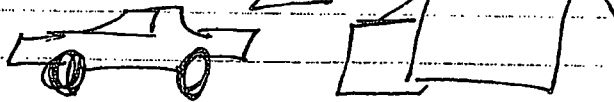
- Square One -

1st sentence
expert says this has nothing
to do w law only
police procedure

- active shooter are shots being fired now

(- more is better than less
they had 3 guys ^{and/or girls} go out

- they sought the ~~shofields~~ out



- Failure to stop + DUI
↳ history of not complying w
officers + abuse of alcohol

- radio dispatch - house phone
call them up

- go out w a phone call
while he murders someone ~~etc~~
and/or prepares for the arrival
of police they never do that

- they should have called on phone

- driven out into the yard w/ lights ON - blue lights and demanded that the guy come outside

- if he did not come out then call the State Police SWAT

when this was not an active shooter about rush, no big deal but do all of these extreme measures regarding dealing with them...

one good statement
AD-AD corrective vision
→ which is all this is

- officers die because people such as Worley shoot them

- you have to believe him, (Worley's) version of this for any of this to apply

- so this is Bobby's fault... that Worley shot him

this guy responded

"I don't give a
Fuck"

and had
body armor piercing rounds

- said Bobby had not followed
proper police procedures

you could use ~~this~~ as
a training video on
what not to do

↳ drive up in the
yard w lights going

- it would be reasonable for a
citizen to think this
unreasonable was ~~not~~ a policeman b/c
of his failure to ~~identify~~
~~himself~~ follow proper police
procedures

↳ how would a citizen
know what proper
procedures were to draw
such a conclusion

- he could have shot through the
windshield of the car from
that balcony

Alan Sheffield

- prior to Nov 15, 2009

→ never saw him

→ ever heard firecrackers

→ 10-10:30

→ his wife called the Sheriff
did not speak to Top

→ talked with ~~MS Sheriff~~ Ms. Wokery
she said she talked to
Joe Wokery

→ moved in 2006

→ had a good relationship w
Margaret (his mom)

→ made complaint met father
nice guy - relevant
double insulation

→ never seen Coyote

→ never had conversation with
Cat...

Cont deny . . . improper question

- heard officers knock and announce they had windows outside

(- if someone was outside on the deck would they have heard the officers identifying themselves

- 1st shots

- shot generally 1 time per weekend

~~NICK Moore~~

- Stallo

- who was in charge

- nobody really in charge

- Nick was Senior most deputy
Rushton

- did not have badge on shirt

- no question

- do believe light

- he cut light back on

(It lit up whole front
yard)

(steady)

(I don't give a fuck)

grasp at str

6/14/13

6/14/13

Exhibit 1

- Reconstitution Hearing -
Judge Keasley / Stacy Sheppard

Judge Curton order

Exhibit 2

Rein Thomas 1st witness rep by Mr. McElm w/ AG's office

5/11/11 + 6/11/11 in interview

Police report w/ attachments 03 exhibit

State
+ AG no questions

Judge

Desira Allen - witness #2

Exhibit 04 + 05

Att'y + witnesses 1st excuse

Gunn without #3

Pull notes mailed copy to Mr Garrett, solicitor + Judge.

Put copy in file as well.

2013 JUN 14 PM 2:05
CLERK OF COURT
SOUTH CAROLINA COUNTY, SC

11/11/13

Note: Pull Tablet on ES/CP for my notes on interview

FILED
GWENDOLYN D. CHILES

2013 JUL 16 PM 12:12

CLERK OF COURT
MCCORMICK COUNTY

State vs Joe Ross Worley 2010-49-52

- Juror excused around noon - are to call back after 6pm for further instruction.

- #80 Valerie Dubose - 3rd shift protect

- #231 Peter Shatter - OK

- Pre-Trial -

- Motion to request witness in courtroom (~~at~~ the local Bar)
motion denied

- Joe Ross Worley 12:17 - 12:54 Garrett ^{redirect} 1:15 - 1:21
12:54 - 1:15 Myers 1:21 - 1:22

Lunch 2:20

- Bobby Rushon 2:25 - 4:16 Garrett 4:24
4:16 - 4:23 Myers

- George Kibland 4:25 - 5:10 Garrett

Allen Shelfield - 5:11 Garrett 5:31
Myers

- Nile Mobse

- Melissa H McAllister - 6:21

June 1, 2011

2011 = 28, 29, 30, 31 + 91

State vs Roy Gilchrist

Cont til August 29, 2011 before
Judge Cottingham

- STATE vs WORLEX

Def. (Henderson)

12:05 - 12:23

STATE (Meyers)

12:23 - 12:30

Motion for bond

Both taken under advisement -

- Christopher White - WGS - 18 mts

- Shanigna Marie-Caraballo - WGS - 2yrs Probation

- Diane Bletcher - WGS - 18 mts

JOE ROSS WORLEY'S TESTIMONY ON TUESDAY, MAY 31, 2011

A. DIRECT EXAMINATION BY MR. GARRETT (38 minutes)

1. His background information – how old he is, his education, his work history, and where he lives.
2. He lives with his mother, Mary Worley, in Aiken, South Carolina.
3. Mrs. Worley was a housewife
4. His father, Robert Fred Worley, Sr., who was an engineer at the SRS bomb plant, is deceased. Mr. Worley died in December 2006.
5. Joe's brother, Robert, was in the Secret Service.
6. His father and mother purchased property on the lake in McCormick in the 1960's, placed a mobile home on the property, and later built a house on the property.
7. Joe and his father hunted on the property and shot firearms on the property from the time his parents bought the property.
8. Joe's father bought a 742 Woodmaster 30.06 rifle years before. The rifle, along with other guns, was stored in Joe's mother's bedroom.
9. The McCormick house is owned solely by Mary Worley, and Joe and his mother stayed at the McCormick house most weekends each month.
10. Joe had cared for his mother since his father's death.
11. Joe and his mother would stay at the McCormick house about every Thursday through Sunday year round.
12. The McCormick house is located on Lake Thurmond in a rural area of the county with a lot of animals such as deer, raccoons, foxes, etc. There are a lot of animal poachers in the area.
13. Joe's father built the McCormick house with the help of his wife and family. The house is double insulated, two stories, the only door into and out of the house is on the first floor, no peephole in the downstairs door, and no windows downstairs to see who is at the door.

14. The front door faces the lake, and there's no outdoor lighting between the house and the lake.
15. There is a balcony on the second floor facing the lake, and the balcony can be assessed only through two-panel sliding glass doors on the second floor.
16. The front door is under the balcony on the second floor, and the second floor balcony is under the roof's eave.
17. Both bedrooms are on the second floor at the rear of the house, farthest from the lake.
18. Joe sleeps in one bedroom, and his mother sleeps in the other bedroom.
19. His parents' mobile home was burglarized twice years ago.
20. After the house was built, someone tried to break into the house, and that is why Joe's parents installed a burglar alarm.
21. Joe had read about home invasions and had seen reports about home invasions on TV in recent times.
22. Joe and his father built a ramp for his mother's cat, Sweet Pea, to climb from the ground to the second floor balcony, and also built a house for the family's cats on the second floor balcony.
23. Joe referred to Sweet Pea as "my good fat cat."
24. On November 14, 2009, Joe and his mother ate supper and watched TV. Joe's mother went to bed first.
25. On November 14, 2009, Joe went outside to smoke around midnight.
26. There was no moon, as this was the darkest night of November 2009.
27. Joe noticed what appeared to be a fox in the yard.
28. Joe went inside to get the rifle and ammunition.
29. While outside on the balcony, Joe used his father's rifle to shoot twice at a fox suspected of harming Sweet Pea. Joe wasn't trying to kill the fox, but was trying to motivate the fox to leave the yard.
30. Joe fired the shots around midnight.

31. Sweat Pea had previously been injured by a wild animal, thought to be a fox, and had to be treated by a veterinarian.
32. Joe went back inside, unloaded the rifle, put the rifle under the couch, and went to sleep.
33. The A/C unit was running on the second floor while Joe and his mother slept.
34. Joe was woken by a constant ringing of the downstairs doorbell. Joe said it sounded like, "ding, ding, ding, ding." The door bell ringer was loud and was on the second floor.
35. Joe got up and put on his clothes.
36. It was dark inside the house.
37. Joe didn't hear anyone knocking on the downstairs door.
38. Joe refused to go downstairs and answer the door, because he was afraid that he would be robbed or attacked and he wouldn't see it coming. Joe was worried about a possible home invasion.
39. Joe looked outside through the closed upstairs sliding glass doors, but didn't see anything in the yard.
40. Joe didn't see any cars or any blue lights; didn't hear sirens, a bull horn or loud speaker; and didn't receive a telephone call from his neighbors, dispatch, or law enforcement.
41. Joe got the rifle and ammunition, loaded the rifle, walked to the sliding glass doors, and turned on the upstairs balcony lights.
42. Joe didn't go outside. He stopped, realizing that the rifle's safety may be off. He needed to check the safety on the rifle.
43. Joe turned off the balcony lights prior to checking the rifle's safety. He walked into the kitchen near a small night light where he checked the rifle's safety.
44. Joe went back to sliding glass doors, looked outside where he didn't see or hear anyone, then turned on the balcony lights, opened the sliding glass doors, and walked outside.
45. When he walked outside onto the balcony, Joe had his father's rifle in the port position pointing upward.
46. When Joe got onto the balcony, he immediately saw a person moving in the yard about thirty (30) feet from him somewhat straight ahead of him near a flower bed, Joe yelled

"freeze," the person in the yard turned toward Joe and immediately aimed what looked like a gun at Joe, and Joe shot toward the person's hands.

47. The person in the yard appeared to be a burglar.
48. The person in the yard wasn't dressed in a police uniform and wasn't wearing a hat, vest, coat, badge, shirt, or anything else readily identifying himself as a law enforcement officer.
49. The person spun around and fell down after being shot.
50. The person got up, ran across the yard, and stopped. The person almost fell into a gully area, but stopped near a railroad tie and sewer cap.
51. The person turned and started running toward Joe and the house's downstairs door.
52. Joe fired a second shot into the air into the trees way over the person's head to motivate the person to leave.
53. Joe went inside and spoke to his mother, who had woken.
54. Joe waited. He went downstairs after a period of time and listened. He didn't hear anyone.
55. Joe opened the downstairs door and waited some more. He stepped outside. He saw no one. He heard no one. He walked into the yard. Joe believed that the burglar had been run off. Joe didn't know whether he had shot the person or not.
56. Joe saw the person's "dinky, small" flashlight in the grass and picked it up. He also picked up what remained of the person's gun and unloaded the gun as he walked back to the house.
57. Joe walked around the house and saw a police car parked approximately 120 feet behind and to the side the house.
58. Joe put what remained of the person's gun in the police car.
59. This police car couldn't be seen while Joe was standing on the balcony facing the lake, and couldn't be seen from the upstairs windows.
60. Joe denied hearing the person in the yard say anything.
61. Joe denied seeing or hearing Deputy Moore and Deputy McAllister.

62. Joe wouldn't have come out of the house with a rifle if he had known law enforcement was in the yard.
63. Joe wouldn't have shot the person in the yard if the person hadn't aimed a gun at Joe.
64. Joe had no choice but to shoot.
65. Joe could have killed the person in the yard if he had wanted to.
66. Joe denied that his mother, the neighbors, the police, or anyone else had ever complained to him about shooting on his mother's property.
67. There were no subdivision rules or local ordinances which prohibited him from shooting in his mother's yard.
68. Joe and his father had fired guns on the property for forty (40) years.
69. No one had ever requested that Joe not shoot on his mother's property.
70. Joe's neighbor, Mr. Sheffield, had told Joe's mother about the fox, and Joe's mother had told Joe about the fox.
71. Joe and his mother surmised that it was the fox which had injured Sweet Pea.
72. Prior to November 14, 2009, Joe had shot at what appeared to be a fox on three (3) or four (4) occasions. Joe first shot at the fox in September 2009. Prior to September 2009, and after his father's death, Joe had not shot guns on his mother's property.
73. Joe wasn't drinking alcohol or taking legal or illegal drugs on November 14-15, 2009.
74. Numerous people fire guns or explode fireworks in the area at all times of the day and night.

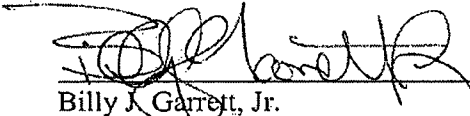
B. CROSS EXAMINATION BY SOLICITOR MYERS

75. Joe's parents' mobile home and house had been burglarized many years ago, and not recently.
76. Joe's mother told Joe about the fox, and she learned about the fox from the neighbor, Mr. Sheffield.
77. Joe had previously shot his father's rifle three (3) or four (4) times at an animal that appeared to be a fox in the shadows.

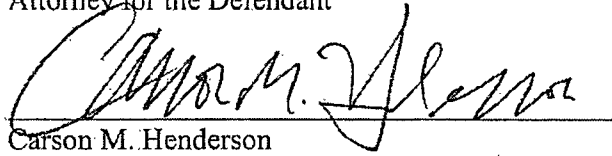
78. Joe always shot the rifle in front of the house toward the lake.
79. On November 14, 2009, Joe saw what appeared to be a fox sometime between 11:00 p.m. and midnight. That's why he got the rifle and shot.
80. The rifle and ammunition were in a gun cabinet with other guns in Joe's mother's bedroom.
81. Joe shot at the fox while smoking and sitting with his face toward the lake. The balcony light to Joe's right was on, and it was the only light on. (Looking from the lake toward the house, the balcony light would be to Joe's left.)
82. Joe could see shadows and movement on the ground while sitting and smoking on the balcony.
83. Joe said the door bell woke him up.
84. Joe denied opening the balcony door and asking, "Who's down there?"
85. Joe said he watched the hands of the person in the yard, because you can only be hurt by someone's hands.
86. The person in the yard aimed a gun at Joe.
87. Joe denied saying anything to anyone in the yard.
88. Joe said he was shooting at the hands of the burglar.
89. Joe didn't see the police car in the neighbors' yard until after the incident when he walked around his mother's house.
90. Joe put part of the person's gun into the police car to mark the location.
91. Joe wasn't sure why or who he was marking the location for.
92. Joe didn't call the police.
93. Joe didn't know who was driving the police car or where the driver was.

THE ABOVE SUMMARY OF THE TESTIMONY GIVEN BY JOE ROSS WORLEY UNDER OATH ON MAY 31, 2011, IS ACCURATE TO THE BEST OF OUR RECOLLECTION AND CONTEMPORANEOUS NOTES.

THIS SUMMARY OF MR. WORLEY'S TESTIMONY WAS RECONSTRUCTED USING CONTEMPORANEOUS NOTES.

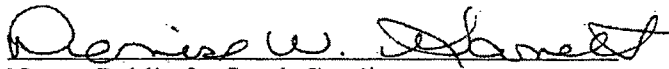


Billy J. Garrett, Jr.
Attorney for the Defendant



Carson M. Henderson
Attorney for the Defendant

SWORN TO AND SUBSCRIBED BEFORE
ME THIS 7TH DAY OF SEPTEMBER, 2012.



Notary Public for South Carolina
My Commission Expires: 11-22-13

Exhibit I



The South Carolina Court of Appeals

The State, Respondent,

v.

Joe Worley, Appellant.

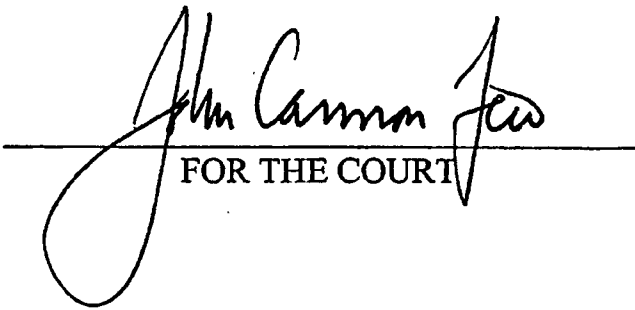
Appellate Case No. 2012-210646

ORDER

Appellant has filed a notice of appeal from the denial of his motion for immunity pursuant to the Protection of Persons and Property Act (the Act).¹ Because the denial of a request for immunity under the Act is not immediately appealable, this appeal is dismissed. *See State v. Isaac*, Op. No. 27302 (S.C. Sup. Ct. filed Aug. 21, 2013) ("[T]he denial of a defendant's request for immunity under the Act is an interlocutory order not subject to immediate appeal . . .").

This court notes that this appeal has been remanded for the reconstruction of the missing portions of the immunity hearing transcript. That reconstruction will no longer be necessary, so the remand order is rescinded. At trial, the parties should proffer to the court any testimony relevant to the immunity motion that is not presented to the jury.

Finally, because this appeal has been dismissed, Appellant's motion for partial remand to request a pre-trial bond hearing is moot.


FOR THE COURT

¹ S.C. Code §§ 16-11-410 to -450 (Supp. 2012).

Columbia, South Carolina

cc:

Desa Allen Ballard

Mark Reynolds Farthing

Harvey MacLure Watson, III

Carson McCurry Henderson

Billy J. Garrett, Jr.

FILED

21 August 201

Exhibit J

1 State of South Carolina Court of General Sessions
2 County of McCormick
3
4
5 State)
6)
7 v.) Transcript of Record
8) 10-GS-35-0049
9 Joe Ross Worley) 10-GS-35-0052
10)
11)
12)
13)
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16)
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18)
19)
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21)
22)
23)
24)
25)

December 16 - 20, 2013
McCormick, South Carolina

B E F O R E:

The Honorable R. Lawton McIntosh, Judge; and a
jury.

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

Donald V. Myers, Solicitor
Ervin J. Maye, Assist. Solicitor
Attorneys for the State

Billy J. Garrett, Jr., Esquire
Carson M. Henderson, Esquire
Desa Ballard, Esquire
Attorneys for the Defendant

Stacy L. Sheppard, RPR
Circuit Court Reporter

I N D E X

	<u>WITNESS</u>	<u>PAGE</u>
1		
2		
3	Joseph E. Collier, Jr. (In Camera)	
	Direct Examination By Mr. Maye	80
4	Voir Dire By Mr. Garrett	84
	Direct Examination Cont. By Mr. Maye	85
5	Cross-Examination By Mr. Garrett	96
	Redirect Examination By Mr. Maye	99
6	Recross-Examination By Mr. Garrett	100
	Opening Statement	
7	By Mr. Maye	125
	By Mr. Garrett	143
8	Nicholas Moore	
	Direct Examination By Mr. Maye	153
9	Cross-Examination By Mr. Garrett	202
	Donald Garman	
10	Direct Examination By Mr. Maye	266
	Robert Charles Densmore	
11	Direct Examination By Mr. Maye	270
	Cross-Examination By Mr. Garrett	288
12	Bobby Rushton	
	Direct Examination By Mr. Maye	289
13	Cross-Examination By Mr. Garrett	317
	In Camera Examination By Mr. Garrett	372
14	Cross-Examination Cont. By Mr. Garrett	375
	Alan Sheffield	
15	Direct Examination By Mr. Myers	375
	Cross-Examination By Mr. Garrett	395
16	Joseph E. Collier, Jr.	
	Direct Examination By Mr. Maye	402
17	Cross-Examination By Mr. Garrett	434
	Redirect Examination By Mr. Maye	451
18	Recross-Examination By Mr. Garrett	452
	Kenneth H. Whitler	
19	Direct Examination By Mr. Maye	454
	Cross-Examination By Mr. Garrett	461
20	George H. Reid	
	Direct Examination By Mr. Myers	463
21	Cross-Examination By Mr. Garrett	471
	Robert Worley	
22	Direct Examination By Mr. Garrett	505
	Cross-Examination By Mr. Myers	547
23	Redirect Examination By Mr. Garrett	563
	Recross-Examination By Mr. Myers	567
24	Nicholas Moore (In Camera)	
	Direct Examination By Mr. Garrett	582
25		

1		I N D E X	
2	<u>WITNESS</u>		<u>PAGE</u>
3	George Kirkham		
4	Direct Examination By Mr. Garrett		586
5	In Camera By Mr. Garrett		626
6	Direct Examination Cont. By Mr. Garrett		628
7	Cross-Examination By Mr. Myers		634
8	Redirect Examination By Mr. Garrett		705
9	Bo Willis		
10	Direct Examination By Mr. Garrett		714
11	Cross-Examination By Mr. Maye		727
12	Redirect Examination By Mr. Garrett		747
13	Closing Argument		
14	By Mr. Maye		794
15	By Mr. Garrett		797
16	By Mr. Myers		836
17	Charge of the Court		879
18	Verdict of the Jury		919
19	Certificate of Reporter		935
20			
21			
22			
23			
24			
25			

1	E X H I B I T S			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
3	S-1	Aerial Map	154	154
4	S-2	Aerial Map	156	156
5	S-3	Magazine and Bullets	85	188
6	S-4	Diagram	159	163
7	S-5	Photograph	167	167
8	S-6	Remington Rifle	183	183
9	S-7	Photograph	184	184
10	S-8	Photograph	184	184
11	S-9	Photograph	184	184
12	S-10	Photograph	184	184
13	S-11	Shell Casings	189	191
14	S-12	Photograph	189	189
15	S-13	Photograph	189	189
16	S-14	Photograph	189	189
17	S-15	Eight Bags of Unfired Rounds	193	193
18	S-16	Photograph	194	194
19	S-17	Photograph	194	194
20	S-18	Photograph	194	194
21	S-19	Photograph	195	195
22	S-20	Photograph	197	198
23	S-21	Photograph	285	286
24	S-22	Photograph	285	286
25	S-23	Bullet Fragments	285	286

1	E X H I B I T S			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
3	S-24	Measurement Report	406	410
4	S-25	Photograph	410	410
5	S-26	Shell Casings	412	412
6	S-27	Nicholas Moore's Statement	433	433
7	S-28	Incident Report	433	433
8	S-29	SLED Report	461	461
9	S-30	Photograph	467	467
10	S-31	Photograph	467	467
11	S-32	Photograph	467	467
12	S-33	Police Magazine	656	656
13	D-1	Dispatch Log	200	203
14	D-2	Timeline	200	203
15	D-3	Timeline	200	203
16	D-4	Oath of Office	319	320
17	D-5	Training Records	325	326
18	D-6	Criminal Justice Academy	327	327
19		Records		
20	D-7	Gun	358	358
21	D-8	Photograph	566	566
22	D-9	Photograph	566	566
23	D-10	CD	572	573
24	D-11	Diagram	714	725
25	C-1	Defendant's Voir Dire Request	73	

1	E X H I B I T S		
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID. EVD.</u>
3	C-2	Record Reconstruction	200
4	C-3	Nicholas Moore's Statement	250
5	C-4	Incident Report	250
6	C-5	Civil Lawsuit	372
7	C-6	Code of Laws	493
8	C-7	Oath of Office	582
9	C-8	Oath of Office	582
10	C-9	Oath of Office	585
11	C-10	Oath of Office	585
12	C-11	Defendant's Requested Jury	760
13		Charges	
14	C-12	Defendant's Witness List	917
15	C-13	Jury Note	917
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

1 (The following proceedings were held on
2 December 16, 2013.)

3 **THE COURT:** All right. My understanding -- and
4 y'all correct me -- is that there are some matters
5 or whatever that need to be placed on the record
6 because of the status of this case and there's a
7 prior appeal.

8 Ms. Ballard --

9 **MS. BALLARD:** Yes, Your Honor.

10 **THE COURT:** -- do you have some things you
11 wanted to bring up on that?

12 **MS. BALLARD:** That's correct.

13 **THE COURT:** And I also understand that there's
14 some motions in limine in this case; is that
15 correct?

16 **MR. HENDERSON:** Just very quickly, Your Honor,
17 yes, sir.

18 **THE COURT:** Okay. Ms. Ballard, I'm going to go
19 ahead and hear from you first.

20 **MS. BALLARD:** Mr. Worley is not here yet. I'm
21 not sure --

22 **THE COURT:** Thank you. I'm sorry.

23 **MS. BALLARD:** We've been wondering. We don't
24 know whether --

25 **THE COURT:** I assume that y'all have checked to

1 make sure he was properly attired?

2 **MS. BALLARD:** He was first up today, so he
3 should have been here first thing this morning.

4 (A brief conversation was held off the
5 record.)

6 **MS. BALLARD:** Your Honor, I'll hand you up this
7 petition. This is --

8 **MR. MYERS:** On the defendant's pre-trial
9 motions in limine.

10 **THE COURT:** Okay. This will just be the
11 petition that was filed by Ms. Ballard on behalf of
12 the defendant seeking the court -- Supreme Court to
13 take this case certiorari.

14 **MS. BALLARD:** That's related to the appeal, Mr.
15 Myers.

16 **THE COURT:** Do you want to see a copy of this?

17 **MR. MYERS:** Is it about the appeal?

18 **THE COURT:** Yes, sir.

19 **MR. MYERS:** No, sir.

20 (Pause.)

21 (Mr. Worley enters the courtroom.)

22 **THE COURT:** Before we get started, I just want
23 to make sure just for the sake -- out of abundance
24 of caution that no jurors summoned for this term of
25 court are in the courtroom today.

1 (There was no response.)

2 **THE COURT:** Okay. Ms. Ballard, that being
3 done, I'll be glad to hear from you.

4 **MS. BALLARD:** Thank you very much, Your Honor.

5 I am not Mr. Worley's trial counsel. I'm
6 handling some appellate issues. And the reason I
7 wanted to address the Court is to tell you where we
8 are with the appeal because it's had somewhat of an
9 unusual path to get where we are today.

10 Mr. Worley was arrested originally in November
11 of 2009 and bond was denied. He's been in jail all
12 of this time. The Supreme Court of South Carolina
13 decided the Duncan case in May 2011. The Duncan
14 case was the case that said that a pretrial
15 determination under the Castle Doctrine, since it
16 involved immunity, had to be appealed immediately.
17 So Judge Keesley had the Castle Doctrine hearing in
18 this case in that same month that began on May 31st
19 of 2011. And Judge Keesley issued an order -- there
20 were two orders, but the final one was on July 6th,
21 2011, in which he denied Mr. Worley the right to
22 immunity under the Castle Doctrine Statute.

23 So based on the Duncan case, Your Honor, we
24 took an appeal at that time. When we appealed the
25 case, we learned that the transcript of the

1 proceeding before Judge Keesley was incomplete.
2 What was missing, interestingly enough, was
3 Mr. Worley's own testimony. Everybody else's is
4 here with the exception of, I think,
5 cross-examination of one of the other witnesses, but
6 Mr. Worley's testimony was missing.

7 There were petitions to the Court of Appeals,
8 and the matter was remanded to Judge Keesley to
9 reconstruct the record. We had a hearing in front
10 of Judge Keesley in June of this year. It was a
11 full-day hearing for judge -- the purpose of which
12 was to reconstruct Mr. Worley's testimony from the
13 Castle Doctrine hearing for purposes of the eventual
14 appeal. Well, for purposes of the appeal that was
15 then pending.

16 Two months after we had the hearing, while
17 Judge Keesley was still reconstructing the record,
18 and he had obtained the Solicitor's notes from
19 trial, he obtained the affidavit from the trial
20 counsel as to what the testimony was and the clerk's
21 notes, he obtained all of that information to
22 reconstruct the record, and then in August of 2013,
23 the South Carolina Supreme Court decided the Isaac
24 decision, which said, Well, what we meant to say in
25 Duncan was that if it's a defendant who's appealing,

1 he can appeal after final judgment.

2 So on that same day, the Court of Appeals,
3 Judge Few, issued an order dismissing Mr. Worley's
4 appeal. There was language in that order -- and
5 that order is dated August 21st, 2013 -- it
6 indicated -- and it should be in the Court's file.
7 It indicated that the reconstruction of the missing
8 portion of the Castle Doctrine hearing was no longer
9 necessary. And it proceeded to go on to say that
10 the parties should proffer to the court, meaning at
11 trial, proffer to the court any testimony relevant
12 to the immunity motion that is not presented to the
13 jury.

14 We took issue with that, Your Honor, because it
15 purported to instruct Your Honor what to do at this
16 trial, and we petitioned the Court of Appeals and
17 asked for reconsideration of that issue. Our motion
18 for reconsideration was denied. And we have filed a
19 petition with the Supreme Court seeking certiorari
20 to address the issue of what we believe was a
21 statement by the Court of Appeals that went beyond
22 the issues that were before it.

23 But the gist of where we are is that we are
24 about to proceed in the trial. We have to preserve
25 testimony regarding the Castle Doctrine hearing that

1 was held in May 2011, and we don't have a
2 reconstruction of Mr. Worley's testimony. So Mr.
3 Garrett and Mr. Henderson are going to deal with
4 that at trial.

5 But the point I wanted to make to Your Honor is
6 we filed the petition for writ of certiorari and a
7 petition for writ of prohibition with the Supreme
8 Court. The State's response to that is due today,
9 but there is nothing that prevents the trial from
10 proceeding. I think the trial judge just has to be
11 aware of the Court of Appeals' order, which I think
12 directs how the preservation of the record is
13 supposed to occur with reference to the immunity
14 issues under the Castle Doctrine.

15 **THE COURT:** Well, educate me again exactly what
16 the Court of Appeals has ord -- I do not have that
17 opinion in front of me and I would like to get a
18 copy of it, but --

19 **MS. BALLARD:** It should be in the clerk's file,
20 but I'll read it to you, Your Honor, and I'll get
21 you a copy of it. What it said is, This court
22 notes -- this is Judge Few's order -- This court
23 notes that this appeal has been remanded for the
24 reconstruction of the missing portions of the
25 immunity hearing transcript.

1 I'm on the second paragraph, Your Honor.

2 That reconstruction will no longer be
3 necessary, so the remand order is rescinded. At
4 trial, the parties should proffer to the court any
5 testimony relevant to the immunity motion that is
6 not presented to the jury.

7 **THE COURT:** So it's just a matter of making a
8 record and preserving that issue for appeal is what
9 I'm --

10 **MS. BALLARD:** That is the issue for purposes of
11 should there be an eventual appeal following these
12 proceedings, Your Honor. It's a question of we were
13 not -- we didn't finish the reconstruction process.
14 We were right in the middle of it when the decision
15 came out in Isaac, and so the Court of Appeals sua
16 sponte dismissed it. And Judge Keesley had begun
17 the draft of the order to reconstruct the testimony
18 but had not completed it. We took issue with the
19 fact that reconstruction was no longer necessary,
20 because we knew we had a trial coming, and
21 eventually, an appeal, should that become necessary.

22 But I wanted you to be aware that that order
23 was out there, and we have petitioned for cert, but
24 under the appellate court rules, that doesn't
25 prohibit you from proceeding to trial. And that's

1 what I wanted to bring to Your Honor's attention.

2 **THE COURT:** All right. Let me ask you this --

3 **MS. BALLARD:** Yes, sir.

4 **THE COURT:** -- and thank you for doing that,
5 but from a practical matter, from -- so the parties
6 can preserve what issues need to be preserved at
7 this juncture --

8 **MS. BALLARD:** Yes, sir.

9 **THE COURT:** -- are the parties -- maybe you're
10 not the right person for me to ask this question to
11 -- is the appellant ready to present, the State
12 ready to present what portions of the testimony they
13 think should be made a part of the record as a court
14 exhibit, not to go to the jury?

15 **MS. BALLARD:** What I think would be
16 appropriate, Your Honor, is to put in this record
17 all of the information that was introduced before
18 Judge Keesley. And what he had at that point was
19 information from the Solicitor's Office, I believe
20 it was Mr. Maye's notes, he had his own notes, his
21 hand notes, Judge Keesley's notes, and he had the
22 sworn testimony from Mr. Garrett and Mr. Henderson
23 as to their contemporaneous notes regarding what
24 Mr. Worley's testimony had been, and we have a
25 transcript of the hearing on June 14th, 2013.

1 I would propose that be made a part of this
2 record as well so that it can all go up together.
3 And I think that will enable us to have as much of a
4 record as we can have to reconstruct that testimony.

5 **THE COURT:** Okay. And just so I'm clear, in
6 reading the order denying the immunity from
7 prosecution, it sounded as if there was two days of
8 full trial testimony taken by Judge Keesley.

9 **MS. BALLARD:** Yes, sir. It's a rather large
10 record.

11 **THE COURT:** Right. And I think what you're
12 saying is turn in the transcript of that, any
13 supplemental notes or records you think you need to
14 add, but you're not seeking to reconstruct the
15 actual hearing itself.

16 **MS. BALLARD:** No, sir. What I'd like to do is
17 put in the reconstruction hearing, which was the
18 transcript --

19 **THE COURT:** Sure.

20 **MS. BALLARD:** -- from the June 14th hearing,
21 plus all of the exhibits. And I can't refer you to
22 exhibit numbers because the way we did it is, at the
23 hearing, Judge Keesley kind of explored what might
24 be out there. And he had the clerk send her notes
25 and Mr. Maye sent his notes, and we had already

1 introduced into testimony {sic} Mr. Worley's
2 testimony. But an order never came about because we
3 didn't finish the proceedings on remand.

4 So I think the best thing I can do, to protect
5 my client, is to introduce the June 2013 hearing
6 before Judge Keesley and all of the exhibits from
7 that in order to satisfy the Court of Appeals'
8 order.

9 **THE COURT:** Mr. Myers.

10 **MR. MYERS:** We have no objection.

11 **MS. BALLARD:** Thank you, Your Honor. I'll get
12 those things marked, and we'll have them made part
13 of the record.

14 **THE COURT:** Thank you.

15 **MS. BALLARD:** Thank you.

16 **THE COURT:** Anything further with regard to the
17 issue of preservation?

18 **MS. BALLARD:** Nothing for the defendant, Your
19 Honor.

20 **THE COURT:** Do you think it's a good time to go
21 ahead and go through the pretrial motions in limine
22 from the defense at this stage? Any reason why we
23 can't?

24 Well, it's 15 till 1:00. We've got the jury
25 coming in at 2:00; is that right?

1 **THE CLERK:** Yes, sir.

2 **THE COURT:** What would be the -- how long do
3 you anticipate your case in chief to be, Mr. Myers?

4 **MR. MYERS:** We should finish tomorrow
5 afternoon.

6 **THE COURT:** Tomorrow afternoon?

7 **MR. MYERS:** Yes, sir.

8 **THE COURT:** And I know this is a soft question,
9 but, roughly, do you anticipate, if you were to
10 present evidence, how long it would be?

11 **MR. HENDERSON:** And I'm assuming Mr. Myers is
12 starting tomorrow morning, because I assume the jury
13 qualification would take up all afternoon.

14 **THE COURT:** Well, that's not necessarily a safe
15 assumption.

16 **MR. MYERS:** We can start this afternoon,
17 whatever Your Honor would like.

18 **MR. HENDERSON:** That's --

19 **THE COURT:** I'm trying to get that in mind
20 right now for me so I can tell...

21 **MR. HENDERSON:** At least a day, Your Honor.

22 **THE COURT:** At least a day?

23 **MR. HENDERSON:** Yes, sir.

24 **THE COURT:** If you present some -- okay. Let's
25 do this then: Let's go ahead and pick our jury this

1 afternoon. Let's try to do pretrial motions after
2 we get through, then start it tomorrow afternoon.
3 That makes the most sense to me at this stage. Any
4 reason why that wouldn't be appropriate from the
5 State's position?

6 **MR. MYERS:** No, sir. You want us to go ahead
7 and take up everything today and start the case in
8 the morning?

9 **THE COURT:** Yes, sir.

10 **MR. MYERS:** That would be fine.

11 **THE COURT:** I think that would work.

12 **MR. HENDERSON:** That would be fine with us as
13 well, Your Honor.

14 **THE COURT:** Unless somebody's got a better
15 suggestion, let's go ahead and do that.

16 **MS. BALLARD:** No, sir. And just to explain my
17 absence, I was day one in a nonjury in Richland
18 County today, so my partner went, and I have to
19 attend a status conference tomorrow morning, but
20 I'll get here as soon as I can tomorrow. They can
21 certainly proceed without me; I'm simply the
22 appellate counsel.

23 **THE COURT:** Very good. All right. We'll be in
24 recess until two o'clock.

25 **MR. HENDERSON:** Thank you.

Exhibit K



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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July 01, 2014

The Honorable Gwendolyn D. Chiles
133 S Mine St Suite 102
McCormick SC 29835-8357

REMITTITUR

Re: The State v. Joe Worley
Lower Court Case No. 2010GS3500052, 2010GS3500051,
2010GS3500050, 2010GS3500049
Appellate Case No. 2012-210646

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy
CLERK

Enclosure

cc: Desa Allen Ballard, Esquire
Mark Reynolds Farthing, Esquire
Harvey MacLure Watson, III, Esquire
Carson McCurry Henderson, Esquire
Billy J. Garrett, Jr., Esquire

The Supreme Court of South Carolina

The State, Respondent,

v.

Joe Worley, Petitioner.

Appellate Case No. 2013-002477
Lower Court Case Nos. 2010-GS-35-00049, -00050,
-00051, and -00052,

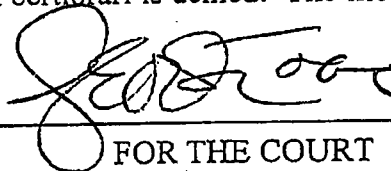
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JUN 26 2014

SC Court of Appeals

ORDER

This matter is before the Court by way of a petition for a writ of certiorari to review the Court of Appeals' order dismissing petitioner's appeal. The State has filed a motion to dismiss the petition. Petitioner has filed a return in opposition to the motion. The petition for a writ of certiorari is denied. The motion to dismiss is denied as moot.

 C.J.

FOR THE COURT

Columbia, South Carolina

June 25, 2014

cc:

The Honorable Jenny Abbott Kitchings
Mark Reynolds Farthing, Esquire
Desa Allen Ballard, Esquire
Harvey MacLure Watson, III, Esquire
Carson McCurry Henderson, Esquire
Billy J. Garrett, Jr., Esquire
The Honorable Gwendolyn D. Chiles

The South Carolina Court of Appeals

The State, Respondent,

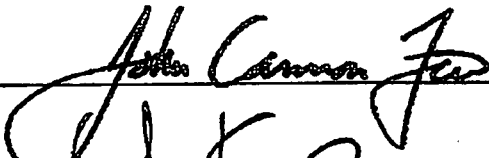
v.

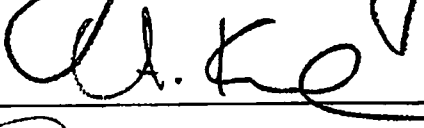
Joe Worley, Appellant.

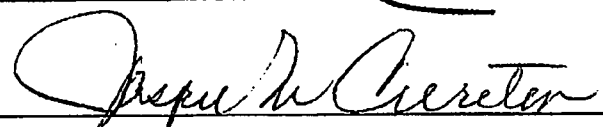
Appellate Case No. 2012-210646

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.


C.J.


J.


A.J.

Columbia, South Carolina

cc:

Desa Allen Ballard
Mark Reynolds Farthing
Harvey MacLure Watson, III
Carson McCurry Henderson
Billy J. Garrett, Jr.
William P. Keesley

FILED
10/21/13

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from McCormick County

Honorable R. Lawton McIntosh, Circuit Court Judge

JOE ROSS WORLEY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the motion to hold appeal in abeyance and motion to remand for reconstruction of pretrial hearing on appellants motion for immunity from prosecution pursuant to the protection of persons and property act in the above referenced case has been served upon opposing counsel, J. Benjamin Aplin at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, Esquire and Joe Ross Worley, #360529 at McCormick Correctional Institution this 4th day of May, 2016.

Susan B. Slackett for

John H. Strom
Appellate Defender

Attorney for Petitioner

SUBSCRIBED AND SWORN TO before me
this 4th day of May, 2016.

cl m (L.S.)
Notary Public for South Carolina

My Commission Expires: May 12, 2025

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SC Court of Appeals



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

ORIGINAL

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Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

May 4, 2016

RECEIVED
MAY 04 2016
SC Court of Appeals

The Honorable Jenny Abbott Kitchings
S.C. Court of Appeals
PO Box 11629
Columbia, SC 29211

Re: The State v. Joe Ross Worley

Dear Ms. Kitchings:

Enclosed are an original and six copies of the motion to hold appeal in abeyance and motion to remand for reconstruction of pretrial hearing on appellants motion for immunity from prosecution pursuant to the protection of persons and property act in the above-captioned case. Thank you for your assistance in this matter.

Sincerely,

John H. Strom

John H. Strom
Appellate Defender

JHS/css

Enclosure

cc: J. Benjamin Aplin, Esquire
Mr. Joe Ross Worley