

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM MCCORMICK COUNTY

R. Lawton McIntosh, Circuit Court Judge

THE STATE,

ORIGINAL
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FEB 08 2017
SC Court of Appeals
RESPONDENT,

V.

JOE ROSS WORLEY,

APPELLANT

APPELLATE CASE NO. 2014-001497

MOTION TO PUT INTO ABEYANCE

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, the undersigned counsel requests to put the above-captioned case into abeyance to obtain the transcript of the October 25, 2016 reconstruction hearing so that the Record on Appeal may be in accord with Rule 210(c) of the South Carolina Appellate Court Rules. In support of this motion counsel submits the following.

1. The Initial Brief Appellant and Designation of Matter in this case are due for filing on February 26, 2017. This case is on its third extension.
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.

4. On July 5, 2011, Judge Keelsey denied Appellant immunity in a written order.¹ Appellant moved for reconsideration of the order. On December 8, 2011, Judge Keesley issued an order affirming the denial of immunity.

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.

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. On March 28, 2013, this Court remanded the case for reconstruction of the missing portions of the hearing transcript.

8. 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

¹ The order was first issued on June 24, 2011, but later amended to correct scrivener’s errors..

Young represented the State. Desa A. Ballard, Carson M. Henderson, and Billy J. Garrett represented Appellant.

9. 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." Appellant's motion for reconsideration was denied.

10. 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.²

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

² 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.

12. On May 4, 2016, undersigned counsel filed a motion to hold Appellant's appeal in abeyance and motion to remand for reconstruction of the pretrial immunity hearing. This Court remanded the case to Judge Keesley for reconstruction.

13. Judge Keesley convened a reconstruction hearing on October 25, 2016. On December 30, 2016, Judge Keesley submitted his report to this Court regarding the reconstruction. On January 27, 2017, this Court notified undersigned counsel by letter that the case had been taken out of abeyance and that Appellant's initial brief was due within thirty days.

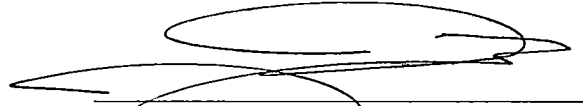
14. Counsel believes that the reconstruction hearing held on October 25, 2016 contains information relevant to Appellant's case that would need to be included in the Record on Appeal, pursuant to SCACR Rule 210(c).

15. Counsel therefore requests that Appellant's case be placed into abeyance pending receipt of the October 25, 2016 transcript. Counsel for the Attorney General's office consents to this request as shown by signature below. Counsel makes this request in good faith and not for purpose of delay.

16. Upon receipt of the missing transcript, Counsel does not anticipate requesting any additional extensions.

WHEREFORE, the undersigned counsel respectfully requests that the Court grant his motion to place the case into abeyance to obtain the October 25, 2016 reconstruction hearing transcript so that the Record on Appeal may be in accord with Rule 210(c) of the South Carolina Appellate Court Rules.

Respectfully submitted,



John H. Strom
Appellate Defender

ATTORNEY FOR APPELLANT

This 8th day of February 2017

I Consent:



J. Benjamin Aplin, Esq.



SCCID

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Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

February 8, 2017

The Honorable Jenny Abbott Kitchings
S.C. Court of Appeals
PO Box 11629
Columbia, SC 29211

RECEIVED

FEB 08 2017

SC Court of Appeals

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 while a transcript of the reconstruction hearing is produced. Thank you for your assistance in this matter.

Sincerely,

John H. Strom
Appellate Defender

JHS/css

Enclosure

cc: J. Benjamin Aplin, Esquire
Mr. Joe Ross Worley