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STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM MCCORMICK COUNTY

R. Lawton McIntosh, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JOE ROSS WORLEY,

APPELLANT

APPELLATE CASE NO. 2014-001497

RECORD ON APPEAL

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1 pretrial. And if the judge finds, as a matter of
2 law, that you're entitled to immunity, that's the
3 end of the day. But it doesn't prevent you from
4 also relying on the statute at trial as a defense.
5 And that's why I wanted Your Honor to include the
6 language of the statute, which I have set forth in
7 paragraph -- or request to charge number 11.

8 **THE COURT:** As I told you, you may be right,
9 and you did point out something the court said, you
10 know, we're in new area, and there's a lot of
11 unsettled issues. But the way I read Curry, the
12 fact that the legislature, by its expressed terms,
13 codified the common law, which basically was the
14 self-defense with exception to the duty to retreat,
15 then I just think I don't need to charge it. Okay?

16 **MS. BALLARD:** Just for the record, Your Honor,
17 the Curry case, they seem to go out of their way to
18 say the General Assembly purported to codify the
19 common law. That's on page 2 of the opinion.

20 And then they again, on page 5 of the opinion,
21 as the General Assembly stated its intent to codify.
22 It seems to be leaving open the possibility that
23 they didn't accomplish everything it was trying to
24 accomplish, and that's why I believe that common law
25 survives.

1 Most of the charges, Your Honor, that I handed
2 up to you are included in your standard charge, but
3 I would ask you to consider four other charges that
4 are included in our packet.

5 **THE COURT:** Yes, ma'am.

6 **MS. BALLARD:** Number 5, 6, 7, and 8.

7 **THE COURT:** Okay. Mr. Myers, do you have
8 those?

9 **MS. BALLARD:** I'm sorry. And also number 4.

10 **THE COURT:** Number 4?

11 **MS. BALLARD:** Yes, sir.

12 (Pause.)

13 **MS. BALLARD:** I think the first paragraph of
14 number 4 is in your general charge, but the second
15 paragraph is not.

16 **THE COURT:** I'm sorry?

17 **MS. BALLARD:** I think the first paragraph of
18 our number 4 is included in your general charge, but
19 the second paragraph is not. And we would ask that
20 that be included -- inserted on page 21 before we
21 get to the duty to retreat.

22 **THE COURT:** Well, 26 is where it comes up on --
23 page 26 is self-defense. No, on page 27, it says,
24 The defendant does not have to wait until the victim
25 gets the drop on the person defended. The defendant

1 has a right to act under the law.

2 **MS. BALLARD:** You're right. It's there. I see
3 it.

4 **THE COURT:** So we're okay with what we have?

5 **MS. BALLARD:** Yes, sir. Number 5, I don't
6 think it's covered by Your Honor's charge.

7 **THE COURT:** Okay.

8 (Pause.)

9 **MR. MYERS:** Number 5, we object to that. The
10 jury's never asked to put themselves in the shoes of
11 the victim or the defendant.

12 **THE COURT:** It sounds to me it's almost what
13 the golden rule argument almost.

14 **MS. BALLARD:** Well, I think it's an exception
15 in self-defense. I think the jury has to determine
16 what, you know, your standard charge is they use
17 their own common sense in looking at the facts. And
18 because of the self-defense issue, and that is being
19 charged, I think, by definition, they have to put
20 themselves in the defendant's shoes.

21 **MR. MYERS:** That's a charge on the facts. I
22 couldn't ask the jury to put themselves in the
23 victim's shoes. That's a violation of the golden
24 rule. In the same process, you can't ask the jury
25 to put themselves in the shoes of the defendant.

1 That's totally improper.

2 **MS. BALLARD:** That's a quote from State versus
3 Rash, Your Honor, which is attached earlier in the
4 packet.

5 **MR. MYERS:** It might be talking about the law,
6 but it's not taking about a charge to the jury.

7 **THE COURT:** I understand.

8 Well, it seems to me, number one, that it is
9 you're asking me to charge on the golden rule or
10 close to the facts. The last paragraph seems to be
11 injecting an element that's not part of
12 self-defense, and that is the State has to disprove
13 that a person of ordinary reason, coolness, and
14 prudence would not have acted as the defendant did
15 under the circumstances.

16 **MS. BALLARD:** I agree that the second paragraph
17 is not appropriate, but I think the first paragraph
18 is.

19 **THE COURT:** I'm going to respectfully decline
20 number 5.

21 **MS. BALLARD:** Thank you, Your Honor.

22 Number 6 may cover that charge, but again, it's
23 pulled from a Court of Appeals case.

24 **THE COURT:** Well, let me ask you this: So
25 you're saying, in this case, that from the

1 perspective of the defendant, that knocking on the
2 door or ringing of the doorbell made the person an
3 intruder?

4 **MS. BALLARD:** Yes, sir.

5 **THE COURT:** Did I not hear --

6 **MS. BALLARD:** He was under the -- in order to
7 ring the doorbell or knock on the door, you have to
8 come under --

9 **THE COURT:** Yeah, I was out there and I saw --

10 **MS. BALLARD:** Right. So you're actually in the
11 premises by the time you're knocking on the door,
12 ringing the doorbell just by virtue of the way it's
13 built.

14 **THE COURT:** Well, you're underneath the deck,
15 that's for sure.

16 **MS. BALLARD:** Yes, sir. You're within the
17 premises.

18 **THE COURT:** But did I not hear Mr. Garrett say
19 multiple times that we didn't try to say -- and
20 don't let me put words in your mouth, I know you
21 won't -- that Officer Rushton was trying to get into
22 the house? You didn't say that?

23 **MS. BALLARD:** I don't remember that.

24 **THE COURT:** Okay. Listen --

25 **MR. GARRETT:** I didn't say that he did, but I

1 didn't say he didn't. I didn't know.

2 **THE COURT:** Okay. Mr. Myers, what is your
3 position on number 6?

4 **MR. MYERS:** I don't have any problem with
5 number 6.

6 **THE COURT:** Okay. We'll do it. If y'all
7 agree, then that's fine with me. And where do you
8 think we need -- I'm going to add that at the end of
9 my self-defense charge.

10 **MR. MYERS:** I thought your charge talked
11 something about trespassing, and you may have this
12 language already in as defense of habitation, but
13 anyhow --

14 **MS. BALLARD:** It's on page 31 of your charge.

15 **THE COURT:** On habitation?

16 **MS. BALLARD:** Yes, sir. I think it's at the
17 end of that.

18 **THE COURT:** Okay. I'll add number 6 to -- at
19 the end of habitation. I'm not going to charge
20 number 7, because the law in this case under the
21 statute that I found is the testimony or the
22 evidence presented was it was a shooting at a fox.
23 Even if it's night hunting, even if he was shooting
24 at a fox, he can't use a .30-06; he's got to use a
25 .22 or less. He can't use a .30-06, the way I read

1 -- and y'all pull this up right quick and look at
2 it. And what I'm looking at, please -- and you
3 correct me if I'm wrong -- section 50-11-710,
4 Section A --

5 **MS. BALLARD:** A or 8?

6 **THE COURT:** A as in apple.

7 Oh, never mind. Let me finish reading the
8 charge first before I start declining it.

9 (Pause.)

10 **THE COURT:** Let me just say this: The second
11 paragraph, there's no evidence of trapping in this
12 case. I just don't see that being applicable.

13 **MS. BALLARD:** Correct.

14 **THE COURT:** Mr. Myers, as to the first
15 paragraph under Proposed Charge 7, it says, The
16 General Assembly has provided that night hunting in
17 this state is unlawful; however, the prohibition
18 does not prevent any owner of a property from
19 protecting the property from destruction by wild
20 game as provided by the law.

21 And then you cite my statute I'm looking at.

22 **MS. BALLARD:** Yes, sir.

23 **MR. HENDERSON:** Under subpart G, Your Honor.

24 **THE COURT:** Pop it up on your screen. Let me
25 come down and look at it, if you don't mind.

1 **MR. HENDERSON:** Your Honor, it's in the packet.

2 **THE COURT:** Oh, it is? Okay.

3 **MS. BALLARD:** It's subsection G, yes, sir.

4 **THE COURT:** So the cat being his property?

5 **MR. HENDERSON:** And the house, absolutely.

6 **THE COURT:** Okay. I don't have a problem with
7 it.

8 **MS. BALLARD:** Where are you going to put that
9 one, Your Honor?

10 **THE COURT:** Well, I can put it at the end of
11 habitation.

12 **MS. BALLARD:** That makes sense.

13 **THE COURT:** Mr. Myers, any objection to reading
14 the first paragraph of number 7?

15 **MR. MYERS:** No, sir.

16 **THE COURT:** All right. And so, basically, the
17 rest of yours, Ms. Ballard, including my standard
18 charge, except for number 11, which I have --

19 **MS. BALLARD:** The only other part is the last
20 portion of number 8. I've crossed out the first
21 part of it, because you -- well, that's not
22 applicable, but beginning with, A properly trained
23 police officer may reasonably be expected to
24 exercise a higher degree of restraint than the
25 average citizen. That's a United States Supreme

1 Court case.

2 **THE COURT:** I don't think that's applicable in
3 this case. I may be wrong with my other rulings as
4 well, but I'm not going to charge that. I just
5 don't see that it has applicability on the facts of
6 this case. There's no evidence they were
7 unrestrained. The only evidence was, allegedly,
8 they didn't follow standards and procedures.

9 **MS. BALLARD:** Okay. Just note our exception,
10 Your Honor.

11 **THE COURT:** And I just assume that if I'm not
12 charging it, that you except to my not charging it.

13 **MS. BALLARD:** Yes, sir.

14 **THE COURT:** And -- and by the way, the new
15 circumstantial evidence charge is what I charge.
16 Okay?

17 **MS. BALLARD:** Thank you.

18 **THE COURT:** And just to make sure...

19 **MR. HENDERSON:** Yeah, because our number 9 is
20 Logan verbatim.

21 **THE COURT:** Yeah.

22 **MS. BALLARD:** And I do need to preserve my
23 directed verdict motions on the record.

24 **THE COURT:** I thought you renewed them, but go
25 ahead and do it again.

1 **MS. BALLARD:** I just wanted to make sure that I
2 had done that. Again, with reference to not only
3 what Mr. Henderson argued, but also Your Honor's
4 finding as a matter of law that Mr. Rushton was not
5 a law enforcement officer, and therefore instructing
6 the jury accordingly.

7 **THE COURT:** Anybody disagree that intent is
8 clearly a proper charge -- basic charge in this
9 case?

10 **MR. HENDERSON:** I couldn't hear you, Your
11 Honor.

12 **THE COURT:** I said intent, just the general
13 rule of intent.

14 **MS. BALLARD:** It's in here. Is that something
15 other than the pages that you -- oh, I'm sorry.
16 It's on page 11.

17 **THE COURT:** No. This is on Judge Hill's
18 standard charge.

19 **MS. BALLARD:** Yes, sir.

20 **THE COURT:** If you want me to just give you
21 just kind of a highlight on it so you can make --
22 y'all are welcome to look at anything I have. It
23 says, In order to establish criminal liability,
24 criminal intent is required. For example, the
25 mental state required to be proven by the State for

1 a particular crime might be purpose, intent,
2 knowledge, recklessness or criminal negligence, and
3 go down.

4 **MS. BALLARD:** That's fine.

5 **THE COURT:** Is that okay?

6 **MS. BALLARD:** Yes, sir.

7 **THE COURT:** Is that okay with you, Mr. Myers?

8 **MS. BALLARD:** Yes, sir.

9 **THE COURT:** All right. So if I understand it
10 -- you presented evidence; right?

11 **MR. GARRETT:** I did, Your Honor.

12 **THE COURT:** You did. Okay. So you're going to
13 require them to open on the law?

14 **MR. GARRETT:** I do.

15 **THE COURT:** Okay.

16 **MR. GARRETT:** Fully, Your Honor, on the law and
17 the facts, and then we close and then they rebut.

18 **THE COURT:** Okay.

19 Mr. Myers, are you ready to proceed for the
20 State?

21 **MR. MYERS:** Yes, sir.

22 **THE COURT:** Are you ready to proceed?

23 **MR. GARRETT:** I am, Your Honor.

24 **THE COURT:** Would you bring the jury in,
25 please?

1 (The jury returns to the courtroom.)

2 **THE COURT:** All right. Madame Forelady, ladies
3 and gentlemen of the jury, if you'll recall at the
4 beginning of this case, I told you that in every
5 trial, civil or criminal, there are five phases, and
6 we've been through the opening statements. We have
7 now concluded the presentation of the evidence. The
8 third phase will be closing arguments by the
9 attorneys. After which, I'll give the jury an
10 option to take a quick break or not; up to you,
11 Ms. Forelady, at the end of that, and we'll go over
12 that then. Then I'll charge you on the law. We'll
13 have a brief break after that to see whether I made
14 a mistake or need to add something to what I told
15 you, and then you'll be given word to begin your
16 deliberations. Okay?

17 State ready to proceed?

18 **MR. MYERS:** Yes, sir.

19 **THE COURT:** Defense ready to proceed?

20 **MS. BALLARD:** Your Honor, could we approach one
21 second?

22 **THE COURT:** Yes, ma'am.

23 (Whereupon, a bench conference was held off
24 the record, in the presence of the jury, but out of
25 the hearing of the jury.)

1 **THE COURT:** All right. With that being done,
2 is the defense ready to proceed as well?

3 **MR. GARRETT:** Yes, Your Honor.

4 **THE COURT:** All right. Mr. Myers.

5 **MR. MAYE:** May it please the Court.

6 **THE COURT:** Mr. Maye, excuse me.

7 CLOSING ARGUMENT

8 **MR. MAYE:** Ladies and gentlemen, we're now
9 Thursday, well into the hour of three o'clock. We
10 certainly are cognizant and very mindful of the fact
11 that you've been taken away from what you would have
12 normally been doing this week, to come up here and
13 sit as judges of the facts in this case.

14 We're being required to open on the law in this
15 case. And I'm going to tell you right from the
16 outset, this is going to be exceedingly brief from
17 the State's part, because at the conclusion of all
18 the argument in this case, Judge McIntosh is going
19 to charge you in great detail with what the law is
20 in this case.

21 But I know it seems like a long time ago, but
22 when I first got up and began talking with you in
23 this case, we talked about the defendant in this
24 case, Joe Ross Worley, as he sits over there at that
25 table, is charged with two charges. And they're not

1 complicated, but the Judge is going to charge you
2 with great detail what they are.

3 He's charged with, the first of them, assault
4 and battery with intent to kill. And the first part
5 of that: Assault. The Judge will give you a much
6 greater description of it, but it's basically an
7 offer or an attempt to commit a violent injury upon
8 another person. Just an offer and an attempt. It's
9 not necessary that somebody actually see it. It's
10 just someone offers or attempts to do it.

11 And it's accompanied with a battery. And a
12 battery is simply the unlawful touching of another
13 person.

14 One of the elements of it is malice. I submit
15 to you the Judge will charge you that malice is ill
16 will or hostility. The old cases used to say malice
17 was a depraved heart bent on wickedness. We submit
18 to you malice is nothing more than meanness.

19 With malice aforethought. What's aforethought
20 mean? Just means simply thought about it. And it
21 doesn't have to -- the thought of doing something
22 doesn't have to occur for any appreciable length of
23 time. It can be just an instant before it occurred,
24 just that he thought about it before he did it.

25 That assault and the battery with malice

1 aforethought just has to be accompanied by at least
2 a general intent to commit serious bodily injury.
3 It doesn't have to be a specific intent to kill
4 someone, but at least just a general intent to
5 commit serious bodily injury. And that's the charge
6 of assault and battery with intent to kill for which
7 Joe Ross Worley faces in this case.

8 The next charge is exceedingly simple:
9 Possession of a weapon during the commission of a
10 violent crime. All that is, if a person is in
11 possession of a firearm or visibly displays what
12 appears to be a firearm during the commission of a
13 violent crime, one's guilty of possession of a
14 weapon during the commission of a violent crime.
15 That's all that it takes in this case. And the
16 Judge is going to tell you that assault and battery
17 with intent to kill is most certainly a violent
18 crime.

19 With that little bit said about the two charges
20 for which Joe Ross Worley faces in this case, I'm
21 going to sit down, and the defense is going to have
22 an opportunity to give their closing arguments. And
23 after that, Solicitor Myers is going to get up and
24 give you a full closing argument in this case. And,
25 again, we appreciate your close attention in this

1 case.

2 **THE COURT:** Mr. Garrett.

3 **MR. GARRETT:** May it please the Court.

4 **THE COURT:** Yes, sir.

5 **MR. GARRETT:** Ladies and gentlemen, I
6 appreciate y'all being here. Y'all have been a very
7 good and attentive jury, and I appreciate you taking
8 time away from your homes, your jobs, and your
9 families to hear this case.

10 You know, Joe has been charged with two very
11 serious crimes, you know, assault and battery with
12 intent to kill, possession of a weapon during a
13 violent crime. And he's pled not guilty to those
14 charges because he's not guilty.

15 You see, our law also says that if someone is
16 trying to kill you, you have a right to use
17 self-defense, and you have a right to act upon
18 appearances. If it appears someone's trying to kill
19 you, you have a right to use your self-defense.

20 And what's very interesting in our law, we have
21 something called the defense of habitation. In
22 other words, defense of your house. You also have
23 something called defense of your home and your
24 mother. You have an absolute right to stand firm,
25 fight fire with fire.

1 Now, the State has to prove beyond all and any
2 reasonable doubt that he had malice when this
3 happened. Joe Worley, ladies and gentlemen, didn't
4 even know Bobby. Bobby didn't even know Joe. So
5 how could Joe have some malice against Bobby?

6 You know, I don't want a second -- I don't want
7 not even for a second for you to think that I
8 disrespect or I don't have the greatest respect and
9 admiration for Mr. Rushton. I do. And I appreciate
10 the job he and the law enforcement officers of
11 McCormick County do, but I've got a job to do here
12 as well.

13 I appreciate the Sheffield family, but I also
14 appreciate the Worley family. These three families
15 came upon the worst tragedy that I've ever seen 30
16 years of my law practice, and it was a combination
17 of a lot of mistakes being made.

18 First, you have the Sheffields apparently not
19 getting in touch with the Worleys and letting them
20 know about this cat and a fox. Excuse me. You had
21 the Worleys -- the Sheffields not getting in touch
22 with Joe personally and saying, Joe, I don't
23 appreciate that shooting and yelling; whatever
24 you're doing, I don't appreciate it. And instead of
25 calling Joe and the Worley family, they called law

1 enforcement.

2 Law enforcement, unfortunately, Mr. Rushton
3 wasn't wearing a uniform that night. Not his fault.
4 He just wasn't wearing a uniform. Unfortunately,
5 for the Worley family, they had problems with a fox
6, bothering their cat. So we had a combination of all
7 kind of problems, and that's kind of the way this
8 case gets started.

9 So we need to look at it, ladies and gentlemen,
10 in view of all of these three families and go
11 through and look at this case to try to determine
12 what really happened out there that night so you can
13 examine the evidence. And our Constitution says
14 that we have a right to a trial by jury.

15 You know, the power of the government up here
16 has to go through you to get at us as private
17 citizens, and the State has to prove its case beyond
18 a reasonable doubt. It's the greatest system that's
19 ever been created by mankind. It is a civil way to
20 settle our disputes.

21 And as we began this case, when I first read
22 this case, when I read this case file, I decided, in
23 30 years of practice, this is the worst tragedy I've
24 ever seen. I immediately picked up the phone, and I
25 called my son-in-law. Now, I also have the greatest

1 respect and admiration for law enforcement. My
2 son-in-law is a DNR officer or was a DNR officer, a
3 Department of Natural Resources officer at the time
4 of this. I got on the phone, and I called, I said,
5 Son, I said, Does your uniform, does it have places
6 on it to show that you're a DNR officer on the front
7 and the back? And he responded, It does.

8 **MR. MYERS:** Objection. That's not in evidence,
9 Your Honor.

10 **MR. GARRETT:** I called my nephew, who used to
11 work as a department officer right here in McCormick
12 County, Shane Martin, make sure he had the same
13 thing to just belay my fears because it scared me to
14 death that we have law enforcement officers over
15 here who aren't protected, who don't have proper
16 uniforms, or don't have enough or weren't wearing
17 one on that night in question. So it concerns me.

18 This is not only -- this is a community thing
19 here. This is a community problem. It's not just
20 the Worleys and it's not just the Sheffields and
21 it's not just the Rushton family; it's all of us.
22 We're all involved.

23 So let's get talking about this tragedy. The
24 dark of night, November of '09. Rushton doesn't
25 have his uniform on yet. The Sheffields chose not

1 to talk to Joe directly about his yelling and firing
2 the gun. They call dispatch. Worleys having a
3 problem with a fox trying to kill or injure their
4 cat, Sweet Pea. Joe shoots at the fox and yells.

5 **MR. MYERS:** Objection. Objection. He can't
6 quote what the defendant -- he can't quote the
7 defendant's statement.

8 **MR. GARRETT:** Your Honor, I'm --

9 **THE COURT:** Just one second.

10 Madame Forelady, let me clear up something.
11 Would you take the jury to the jury room, please?

12 (The jury retires to the jury room.)

13 **THE COURT:** Mr. Myers.

14 **MR. MYERS:** Yes, sir. I'm objecting because he
15 is making a statement from facts not in the record.
16 He's testifying what the defendant did. The
17 defendant didn't testify. I didn't want to say that
18 in front of the jury, but he can't get up here now
19 and put himself in the place of the defendant.
20 There's no testimony a fox was out there. There's
21 no testimony the defendant shot at a fox.

22 **THE COURT:** I agree with you. I mean, your
23 statement is not evidence in this case, and that's
24 the only evidence we have that a fox was out there,
25 that he was shooting at a fox. You have to make

1 your argument based on facts in evidence.

2 MR. GARRETT: I understand that.

3 THE COURT: And those aren't in evidence, so
4 I'll sustain the objection.

5 MR. GARRETT: That he was yelling?

6 THE COURT: Well, there is evidence that he was
7 yelling.

8 MR. MYERS: He's yelling, but nobody understood
9 what he said.

10 MR. GARRETT: Okay. That's fine.

11 THE COURT: That he was yelling is fine. And,
12 you know, I hate to mess with somebody during their
13 closing argument, but he's correct.

14 MR. GARRETT: I understand. I understand.

15 THE COURT: All right. You need a second?

16 MR. GARRETT: I'm good.

17 THE COURT: Okay. Bring the jury back in.

18 (The jury returns to the courtroom.)

19 MR. GARRETT: May I continue?

20 THE COURT: Yes, sir.

21 MR. GARRETT: Thank you.

22 So we've got the Sheffields saying that Joe is
23 yelling and apparently discharging a weapon, and all
24 this culminates in between the time that the deputy
25 gets over to see the Rushtons -- the Worleys --

1 excuse me -- gets to the Sheffields within a very
2 short period of time, 107 seconds, Deputy Rushton's
3 shot.

4 In our Exhibit Number 2, State's 2 {sic}, it's
5 very important, as we said from the very beginning,
6 for you folks to recognize that they're talking
7 about Bobby couldn't find them. Dispatch: I'm not
8 getting any response. Headquarters: I'm speaking
9 with them.

10 So we know at 4:29:35, Mr. Rushton is over
11 there with them. And we know that at 4:31:22,
12 Melissa called out, Shots fired, we need an
13 ambulance.

14 Now, how is it possible for this to happen?
15 Well, when you got Mr. Rushton aiming this loaded
16 weapon, it's very clear which way he was aiming it
17 based on the hole in it. And you've got Mr. Worley
18 -- and I won't take it out of the box, but y'all
19 know what it looks like -- aims this high-powered
20 rifle at him. Both of them loaded. Somehow, as a
21 result of somebody pulling on somebody first,
22 somebody gets hurt. And in this case, Mr. Rushton
23 pulled that weapon, and he got shot. The only
24 difference is Mr. Rushton pulled the weapon on
25 Mr. Worley first.

1 Now, that's the way this case began. And let's
2 kind of go through the evidence, if we will. Let's
3 try to think about how that happened in 107 seconds.
4 Let's just go through all the evidence as we can and
5 look at it.

6 Y'all have been out to the house now and you've
7 looked at it, and I hope you recognize it is a
8 rather strangely put together house. It's a little
9 different from the average house. Y'all got to go
10 and look at all the environment around the house.
11 You got to see all the catwalks and things that they
12 have there at that house that are a little bit
13 unusual, and the lay of the land and the lay of the
14 trees and how this thing happened the way it did.

15 Now, the evidence that's shown is that Bobby
16 goes over and talks to the Sheffields. Nick
17 allegedly goes down and knocks on the door, and he
18 rings the doorbell. We've got an incident report in
19 here that y'all ought to look at. Take your time
20 and look at it, because it lays out the facts.
21 There's some different facts. It's going to be up
22 to you as a trial jury to decide whether or not
23 those facts fit together. Has the State proven to
24 your satisfaction beyond all and any reasonable
25 doubt that that whole puzzle fits together? If it

1 doesn't, then you must acquit Mr. Worley of this
2 crime, because the State has the burden of proof.
3 You're not here to reward anybody or hurt anybody.
4 Your job is to find the facts based upon the
5 evidence presented to you.

6 So as we go through this evidence and look at
7 it, I don't think there's any question that this is
8 a deadly weapon. I don't think there's any question
9 that this is a deadly weapon. I don't think there's
10 any question that these bullets right here are
11 deadly weapons that was in Mr. Worley's gun. I
12 don't think there's any question that all these
13 bullets that was in Mr. Rushton's gun are deadly and
14 would kill. I think all the testimony has been
15 that. You had two people sharing guns, pointing
16 them at each other.

17 Now, you've got these brass cartridges.
18 There's no evidence as to what type of bullet was
19 fired out of them based on their own forensics, and
20 the location of one of them is not quite sure, but
21 we do know that two of them were found up on the
22 top, and, allegedly, two were found on the ground,
23 outside of the house. That's pretty
24 straightforward.

25 One of those bullets that rang out ended up in

1 Bobby's hand. Instead of Mr. Worley killing him
2 dead on the spot, shot the gun out of his hand.
3 There's no evidence whatsoever that this second
4 shot, even if they had a bulldozer, if the case is
5 so important to them, that it would have taken a
6 bulldozer to go in and around that area where they
7 allege he was to clean it up to find it. But they
8 know that the bullet fired out through the trees,
9 over their heads.

10 Now, within 107 seconds, all the way over here,
11 Mr. Rushton's got a transverse from here, the garage
12 corner, where he said he was talking to the
13 Sheffields, transverse through those woods, down to
14 this corner, where he allegedly meets Mr. Moore and
15 Melissa. And they allege then that they go in and
16 they're knocking.

17 And I would suggest to you, ladies and
18 gentlemen, that you've heard testimony that, from
19 this position, if all you do is knock, you can't
20 hear on the inside of the house all the way up in
21 the room where Joe was. So -- but if you ring the
22 doorbell, you can hear it. That's what's been
23 testified to.

24 But somehow he had to get here to here.
25 Whatever happened, happened. And then Melissa has

1 to run where she was back in this area right here,
2 back in this area right here. She had to run all
3 the way over here to the car to make the call. If
4 you'll remember, they said she had to go make the
5 call.

6 So y'all have to sit down and think about how
7 many seconds it took her to run all the way over
8 here to the other driveway, not the Worley driveway,
9 to get there. All of that had to happen inside of
10 1.7 seconds. All of that. And he had to finish
11 speaking with them before the 1.7 seconds started.

12 So all of this happened {snapping fingers} just
13 like {snapping fingers}, almost, you know, light
14 came on, shot, boom.

15 Now -- now, what problem did Mr. Worley have
16 with Rushton? He didn't even know him. So there's
17 some questions. There's some questions here about
18 this light. Why is that light important? Well, the
19 light was on, according to the Sheffields, when
20 Mr. Worley shot. When he fired earlier that
21 evening, the light was on. Okay.

22 Some hour or so between the time they said that
23 he was -- or they called in the shots, if it started
24 at 3:15 -- the Sheffields allege that it started at
25 3:15 -- and 20 minutes later, they heard another

1 shot, and thinking they were going to hear another
2 shot, they called the law at 4:06. And we know they
3 called at 4:06 because we've got that on the
4 dispatch, and y'all got the list on all of it.

5 McCormick 9-1-1, what's your emergency?

6 Yes, my name is Alan Sheffield. We reported --
7 I/we --, and I'm assuming that he was talking about
8 his wife having reported something earlier. Nobody
9 told Joe about it. They talked to his mama about
10 it. Nobody knows whether the mama talked to Joe
11 about it.

12 We reported about a month or so ago -- I need
13 to speak to the sheriff or something. My neighbor
14 sits outside and talks at the top of his lungs,
15 sounds like he's firing a gun.

16 Notice it doesn't say anything in here about
17 cussing. Doesn't say a word about cussing.

18 Okay. I'll let you speak with law enforcement
19 dispatch. Hold on.

20 Thank you.

21 Sheriff's office: Yes?

22 Good morning. My name is Alan Sheffield. I
23 live out at 130 Presidents Drive. My wife has
24 reported our neighbor about a month or so ago, sits
25 outside at night talking very loudly, occasionally

1 what appears to be discharging guns. He does it
2 twice tonight, and he's out on the deck again.

3 Okay. That's 4:06.

4 Then it says: Okay. The name of the house is
5 Worley, I think, 146. We're at 130.

6 I'll send someone down.

7 Thank you.

8 The county unit it's announcing dispatcher: Be
9 advised, caller says that he and his wife have
10 complained before about the neighbor.

11 Now, this is her relaying his message back to
12 these officers. Sometimes he says he comes outside
13 and talks very loudly and discharges firearms. He
14 says, He's on his deck doing that now.

15 When Nick calls back: He's discharging the
16 firearm now?

17 So now it's a firearms call because all he
18 knows, that he's out there firing the firearm right
19 now.

20 Now, I've had Dr. Kirkham come in, a renowned
21 specialist, one of the top criminologists in,
22 frankly, the world, who's got all the years of
23 experience. And I'll you this, ladies and
24 gentlemen, he doesn't have anything but the greatest
25 respect for law enforcement. He likes law /

1 enforcement. That's what he does. He works
2 practices and procedures to protect law enforcement
3 officers. He writes books on the subject. He knows
4 his science, and he's an excellent scientist. He
5 knows what he's doing. And he's different from
6 other scientists; he's actually works in the field
7 as a police officers.

8 Affirmative. She says he's discharging his
9 firearm now.

10 So it's a gun call.

11 Subject's at 146, complainant is 3-0, 3-0.

12 10-4.

13 I'm still looking for Presidents Road. That's
14 Melissa.

15 Did you have complainant ask them if they live
16 next door to the right-hand side of the -- with
17 their lights on in the garage?

18 Dispatch: 113 be advised, I'm not getting any
19 response from that residence. Bobby.

20 Notice that. They call the Sheffields'
21 residence. They didn't call the Worley residence.
22 Maybe it would have been nice to call the Worley
23 residence and talk to Ms. Worley. Never had a
24 problem with this family. The sheriff didn't even
25 know them. The sheriff never had a problem with

1 them in all their lives now.

2 Would you have the complainant ask them if they
3 live next door?

4 Then he says: Be advised, I'm not getting a
5 response.

6 Headquarters: I'm speaking with them. Shots
7 fired. We need an ambulance.

8 Then we go down to where Mr. Nick Moore decides
9 that -- and this is the person that led this
10 investigation, as told to us by Officer Willis:
11 We'll get this son of a bitch later.

12 Now, who's using vulgarities at this point?

13 So now we got to go figure out what happens
14 during that span of 107 seconds, and we've got to
15 use this evidence to do it.

16 Well, the first thing: Where did he get shot?
17 There's two pieces of evidence that seem to be
18 conflicting and contradictory. State's 25, I
19 believe, Officer Collier's testimony was 20 feet.
20 And then, here, Defendant's Exhibit 11, what we put
21 in this morning from Mr. Bo Willis, says it was
22 eight feet.

23 I want y'all to look at that kind of close, if
24 you would. Pass that down together and look at it.
25 Y'all look at that for just a minute.

1 (Pause.)

2 **MR. GARRETT:** Ladies and gentlemen, while
3 you're looking at that, I just want to say that this
4 is a real serious case. And measurements, times and
5 distance is very important to the defense of this
6 case, and I want you to listen to it, so we can try
7 to get through it, but I want you to look at that
8 first because I think that sets up the initial
9 problem with this investigation.

10 And I'll tell you, while you're looking at
11 that, these measurements, according to State's
12 Exhibit 24, were obtained on 5/13/2011, the 20-foot
13 precise measurement he's talking about here, Rushton
14 indicated he was standing when shot on November
15 15th, 2009. And you'll have all this back in
16 evidence when you go back there, but I wanted to
17 point it out to you because of the importance of it.

18 And that 20-foot measurement is all laid out
19 there on this report, and I'm just going to lay it
20 right there so y'all can look at it. He's saying
21 it's 20 foot out there. Y'all are welcome to do
22 that. I'm going to let y'all pass that around while
23 I talk a little bit.

24 Now, this State's Exhibit Number 5 shows the
25 location, the path -- the picture from the ground up

1 to the light, and then it goes back a little bit and
2 shows a picture without the light. And I, to be
3 honest with you, let this slip my attention, but
4 there appears to be a big ol', I guess, towel or
5 sheet or something hanging over that balcony on the
6 far left side, and that'll become important in just
7 a little bit.

8 But you'll see that was taken on the morning,
9 according to the evidence. And those big rails
10 right there are important, and that rail right
11 there, all your rails -- see, I'm sure y'all saw
12 those rails while you were out there -- but those
13 rails become important because two things: From
14 Mr. Rushton's point of view, from the down looking
15 up, and from Mr. Worley's point of view, from top
16 looking down, you got to see through that stuff to
17 be able to see each other.

18 I'd like to go to the incident report, talk to
19 you about what Mr. Nick Moore, the investigator who
20 says we'll go back later and get this son of a
21 bitch -- Mr. Worley's a resident of this fine
22 county, and I don't think referring to him in that
23 fashion is appropriate, but I'll leave that up to
24 y'all.

25 And the question about ringing the doorbell and

1 not ringing the doorbell and the light coming on,
2 the light going off, and whatnot are important, and
3 that is what you're going to have to decide in this
4 case. The timing of the light, the knocking and the
5 ringing, the knocking and the ringing. You compare
6 the testimony of the two officers that you heard
7 from that were out there that night.

8 Now, the first thing they're talking about is
9 that when they arrived on the scene, the Worley
10 light was off. Melissa and Mr. Moore went down the
11 side. Melissa stayed back. Mr. Moore says, in his
12 testimony, in his statement, and in the incident
13 report, I knocked and announced, Sheriff's
14 department, sheriff's department; knocking. And, at
15 that time, he said he rang the doorbell. Well,
16 Mr. Worley can hear the doorbell. He said he did it
17 for several seconds.

18 Now, I'm not sure if our 107 seconds has
19 started yet because we know that Mr. Rushton is over
20 across. And where is he at? Mr. Rushton is over
21 with the Sheffields, and he's trying to get some
22 information from the Sheffields. Now, I don't know
23 how much time he spent with the Sheffields or how
24 much information he got because it's not clear. He
25 doesn't report that.

1 But I'm sure -- what I'm assuming is that Nick
2 Moore and Mr. Rushton, by the time they got there,
3 they knew, number one, that there was no lights on,
4 and number two, there was nobody out there shooting
5 a gun. Okay. So let's move on from there.

6 While they're there, the light comes on. While
7 they're there, the light comes on in the Worley
8 residence. Stays on very briefly and goes out.
9 They decide to walk back down there. They had
10 already made the decision to leave. They walk back
11 down there.

12 And in the incident report -- and y'all will
13 have this back there with you -- went to the door
14 and rang the doorbell and knocked. After several
15 seconds, I rang the doorbell and knocked again.
16 After several more seconds with no response, I
17 started to leave the residence, advised the other
18 deputies of that also.

19 So I'm not sure at that second whether or not
20 all of them had gotten together or he advised or
21 hollered to them or how he told Mr. Rushton, who was
22 supposed to be with the Sheffields, that he had
23 decided to leave because nobody was coming to the
24 door.

25 While leaving, we noticed that the porch light

1 came on. I then announced, Sheriff's office, and
2 the light went off.

3 Now, as I heard his testimony, it sounded like
4 he had already started walking towards the back or
5 towards a meeting place with the other officers,
6 officers Moore -- Melissa McAllister and Nick Moore.

7 Then he said: I then knocked on the door
8 again, and the light came back on.

9 Now, that's very important. If all he did was
10 knock on the door and he didn't ring the doorbell
11 and this house is built as it is, Mr. Worley could
12 not have heard it, not even upstairs, not even
13 upstairs in his -- in the living area of the house.
14 He could not hear the knock on the door.

15 And then he says: The light came back on, and
16 I did hear the door open from the upper deck.

17 So now we've got a sliding glass door open.
18 The light came on, sliding glass door opens.

19 I once again announced, Sheriff's office, and
20 then heard the subject say, What do y'all want? I
21 then announced again, Sheriff's office, and the
22 subject yelled, I don't give an F.

23 Now, I went through great detail with Deputy
24 Rushton about what he saw and what he heard as each
25 step of this transpired. According to Rushton, they

1 were both underneath at the door. According to
2 Rushton, he was knocking and yelling to the
3 right-hand side of the door. And notice Mr. Nick
4 Moore, in this statement, doesn't say that.

5 And then I again announced, Sheriff's office,
6 and he yelled out, I don't give an F. And then
7 Deputy Rushton then yelled, Gun. I then drew my
8 weapon and noticed that Rushton had also drawn his
9 weapon. Then I heard a gunshot and saw Mr. Rushton
10 go down.

11 Now, according to Mr. Rushton -- and, you know,
12 they have to prove their case beyond all and any
13 reasonable doubt, and you have to give any benefit
14 of any doubt to Mr. Worley. And this is basically a
15 gunfight.

16 So if you follow Mr. Rushton's versions of what
17 happened, the light never came on. He, Nick Moore
18 -- Nick Moore went to the left side; he went to the
19 right side. They both rang and knocked on the door.
20 They're both underneath the deck. He says the light
21 didn't come on. He said the door opened, somebody
22 stepped out, they heard that. And then the door is
23 opened, the light's still out, and they have this
24 conversation: What do y'all want? I don't give an
25 F.

1 Then he says he starts walking backwards, and
2 he sees what he said he was able to see, in the dark
3 without any lights on, a man standing there,
4 salt-and-pepper hair, holding a gun, not in an
5 aggressive position. He says he announced,
6 Sheriff's department -- or, excuse me, he hollers
7 gun first. He hollers gun first, then sheriff's
8 department, and then put your gun down, is what he
9 says he said.

10 In the process of him coming up -- he didn't
11 know what he did with his flashlight, whether he
12 dropped it or what he did with it. In the process
13 of coming up to shoot or what appeared -- what one
14 may infer to be the shot, as he's coming up to aim,
15 Mr. Worley, not recognizing he's a sheriff's deputy,
16 through all these -- shoots. And Mr. Rushton is
17 injured forever, and the Worley family is injured
18 forever.

19 If you look at Nick Moore's statement of
20 events, the light was on, but at some point in his
21 testimony, he said the light blinded Mr. Rushton.

22 Now, what happened out there? Has the State
23 proven to you beyond all and any reasonable doubt
24 what happened within that 107 seconds, other than we
25 know -- that thing is nasty -- and I know this --

1 this is a deadly weapon. Nobody wants one of these
2 things pointed at you. I don't care if you're a
3 police officer or you're God, you don't want one of
4 these things pointed at you.

5 The officers have testified that it's important
6 that you recognize that the placement of that bullet
7 -- and I hope that some of you folks are firearms
8 people and have used firearms in your past -- but in
9 order for that to happen, he would have had to be
10 holding it like that {indicating} to get shot right
11 there. That's about the place where your middle
12 finger would be. So that bullet ripped through his
13 finger and ripped through the gun and exploded the
14 gun.

15 You know, as I thought about this tragedy, my
16 mama told me something one time a long time ago, she
17 said, Son, in your whole life, what I want you to
18 do, no matter how bad something is, you got to look
19 for something good. And I'm looking for something
20 good here. I'm looking for the -- I'm looking for
21 the practices and procedures to be looked at to make
22 sure this never happens again to anybody, because
23 this is awful and it's so easily preventable.

24 And Dr. Kirkham has given y'all a host of
25 things, not as a Monday morning quarterback or

1 something like that. He sincerely believes in
2 helping law enforcement and their lives. He doesn't
3 want to see somebody shot and killed. Why would
4 anybody want to do that? Why would you not want to
5 protect a police officer?

6 When a police officer comes out and, you know,
7 and he'd just got back from Iraq. I'm not picking
8 on him. What he did, he did, but, you know, the
9 moment that he drew -- he called, Gun, and drew down
10 on somebody, a fellow citizen that he's supposed to
11 be serving and protecting, you know, it's not just
12 the Sheffield family he's supposed to be serving and
13 protecting; he's supposed to be serving and
14 protecting the Worley family. You don't just go in
15 and shoot somebody in their house.

16 You know, couldn't he have just said, whoa, you
17 keep your gun up there, I'm going to keep mine up
18 here, and we're not going to be pulling our guns on
19 each other. Let's talk.

20 You know, if he was exposed like that and a
21 light came on, why do you want to come up and pull
22 up on somebody? Why do you want to be the first to
23 pull on somebody? Why do you need to do that?

24 And if you look at Nick Moore's version, it's
25 almost that they had this conversation, and he went

1 out into the light, looked up, was blinded by the
2 light, then he was shot.

3 But there's a lot of fishy things going on
4 here, and I don't know whether they're just
5 unexplainable or whether they're -- it was a tough
6 night, and the officer did say -- Nick Moore said,
7 you know, I just seen my friend shot and I was upset
8 when I was doing all this, so maybe that had
9 something to do with it. Okay. Maybe the reporting
10 and whatnot.

11 But from Mr. Worley's standpoint, I mean,
12 you've got people throughout, Get that son of a
13 bitch. I mean, the son of bitch he's talking about
14 happens to be Mr. Joe Worley, a member of our
15 society. I mean, he's a lawful member of our
16 society. No reason being called that.

17 And I must tell you that if Mr. Worley said
18 those words, those aren't fighting words, and those
19 aren't words about me killing you, and that ain't
20 words threatening you.

21 Now, if they said Mr. Worley said something
22 like, Y'all better get out of here, I'm going to
23 kill you, I'm going to shoot you, or something like
24 that, then we might have a different discussion.
25 But those words don't give somebody the right, if

1 they were said even. And I submit to you, based on
2 the time, a lot of that wasn't said.

3 When he walked out there and he saw a gun, he
4 hollered, Gun, he went up to shoot, got shot, and
5 fell flat on the ground.

6 Now, if you want to talk about intent to kill,
7 if Joe Worley -- and y'all saw that weapon right
8 there -- if Mr. Joe Worley had wanted to kill that
9 man, kill whoever he was, whether he was a burglar
10 or officer or just Bobby Rushton, he had him dead to
11 rights. He's on top of him. He's got his gun.
12 He's just shot the gun out of his hand and he's down
13 on the gun. The gun's reloaded because it reloads
14 automatically. The safety's off. How hard would it
15 have been for him to put one in him?

16 And they want to say, oh, yeah, he shot at him
17 and missed him. It's interesting that he hit him in
18 the hand the first shot, but that doesn't show an
19 intent to kill. If you want to kill somebody, you
20 shoot them in the head at that distance. Whether it
21 was eight yards, eight feet, or 20 yards, with the
22 high-powered rifle that he had, he could have killed
23 him where he stood or where he fell.

24 And I'm assuming that when he had -- he got up,
25 he was making his way back towards the corner. And

1 this is important. If he's making his way from
2 where he's alleged to have been shot at, this way
3 where Nick Moore was, how easy would it have been
4 for him to kill him? If he stood right here, how
5 easy would it have been for him to kill him?

6 Because he had him laying on the floor,
7 allegedly, in this area right here. And the reason
8 I'm talking about the gun pile -- the pile of
9 materials and whatnot, is we contend that, more
10 likely than not, based upon all of the gun material,
11 probably got shot in here.

12 The problem is, is no matter where he got shot,
13 when he started running in this direction towards
14 that door, that is the only way in and out of that
15 place. And why would you load another -- why would
16 you put another one into your magazine unless you
17 were still worried about the potential of getting
18 hurt?

19 If somebody's, you know, somebody's been shot,
20 shot somebody, you load up your gun again waiting to
21 shoot whoever you've got to shoot, do whatever
22 you've got to do to protect yourself and your
23 family. I'm submitting to you, if he had wanted to
24 kill him, he was right there to kill.

25 He ran towards the door and then a shot rang

1 out. And I submit to you the State has not proven
2 beyond a reasonable doubt -- haven't proved it at
3 all -- that the bullet is in this area, this area,
4 or any of this area right here. And it's easy. We
5 have technology today, if they wanted to go out
6 there. They know it's not there. They know it's
7 not there, if they would have taken a bulldozer and
8 went out there and dug in there and looked.

9 Y'all have seen these metal detector shows
10 where people go out and find metal? How hard would
11 it have been to find that piece of metal?

12 Well, they couldn't find it, because he got
13 shot up here in the trees, and it wasn't down here
14 on the ground.

15 Now, what's Nick Moore doing while all this is
16 going on? I have thought about that and thought
17 about it for the longest. Nick Moore alleges that
18 he's still under there, knocking. As Bobby walks
19 out, he steps out to the side. And y'all went out
20 there, and I'm glad you did, and I hope some of you
21 walked back out this way to see how far you'd have
22 to walk to be able to see out there.

23 According to Nick Moore, he saw a silhouette,
24 didn't see a man, just saw the silhouette of a man
25 standing up there in the complete dark, the

1 silhouette of a man.

2 Well, if he's standing right here and he's just
3 shot my partner, I'm going to kill him. I'm going
4 to kill him where he stands. I'm sorry. Okay? If
5 it happened like they said it happened and he's
6 standing here and Joe's here, I'm going to kill him.
7 And that's just what you got to do.

8 I submit to you, ladies and gentlemen, that he
9 was probably closer to here and he could not see
10 Joe. I submit to you, now that I've seen that
11 picture with the sheet up there, it's even less
12 likely because he'd have to have seen up through the
13 sheet and seen up through these boards that are on
14 the side, these baseboards, these big boards that
15 are up on the top of the deck, and then the lower
16 board, he'd have to have seen through that. That's
17 from his perspective.

18 So I don't know about his testimony, and I
19 don't know whether I keep going back to that -- as
20 to why he said those things.

21 Now, if you read his incident report, after he
22 says, I then drew -- excuse me -- Deputy Rushton
23 yelled gun, I drew my duty weapon, and noticed that
24 Rushton had also drawn his weapon. Then I heard a
25 gunshot and saw Rushton go down, and Rushton stated

1 / he'd been hit. Rushton then made it to me and we
2 both found cover due to the fact that we were all in
3 an unknown location, I wanted to get Rushton and
4 myself away from the residence. We started to
5 create distance between us and the shooter.

6 Notice there that he didn't say anything about
7 hearing a second shot. That's important. The
8 second shot, according to the Sheffields, who were
9 right across the way and could see -- couldn't see
10 the officers, but they could see -- excuse me --
11 they could see Mr. Rushton, they couldn't see
12 anybody else, but they could see Mr. Rushton, and
13 they saw him go down. They said within two seconds,
14 another shot was fired.

15 So he's on the ground, he's up, and within two
16 seconds, another shot's fired. Two shots fired.

17 Now, again, had Joe Worley wanted to take his
18 life, he could have very easily taken his life, and
19 thank God that he didn't.

20 But it's interesting that nowhere in here does
21 it say, you know, that there was a shot. At some
22 point, he says, he's coming around, he's coming
23 around what appears to be this side of the house,
24 saying, Where are you at, you SOB?

25 I submit to you that, as he's throwing off the

1 second round, he's motivating that person to get
2 away from him. He's coming towards his door.
3 Instead of running away, the officer's running
4 towards his door, he thinks he's a burglar running
5 towards his door. He lets off one through the trees
6 and that's what happened.

7 Now, what happens after that? Joe, thinking
8 he's just been -- he's just shot somebody, I'm
9 assuming, apparently, had to, based on the evidence
10 you've heard here, apparently had to load his
11 weapon, put one more in the chamber, put one more in
12 to go out because there was still a threat in his
13 mind. That's what a prudent person would do under
14 same or similar circumstances. A person of ordinary
15 courage.

16 Go down, opens the door, sees out there.
17 Somebody removed the gun and the flashlight, picks
18 it up, and starts going around. Well, unfortunately
19 for Joe, his mistake, on the other side of the house
20 was a police car.

21 And in relationship to where that is, Joe, in
22 order for him to have seen it, would have had to go
23 up on the catwalk, up over there by the cat thing,
24 and stuck his head out to look. No blue lights. No
25 sirens. No nothing to help Joe know that these

1 people were friendlies; they're not here to harm me.

2 There's no way for him to know that.

3 If the man had a full uniform on, ladies and
4 gentlemen, I wouldn't be standing here with you
5 today. If he had a uniform on to identify himself
6 properly -- nobody has an obligation to believe
7 somebody is even if they said they were police
8 officers. And I submit to you, until such time as
9 the window -- the door window -- the sliding glass
10 window opened, he wouldn't have been able to hear it
11 anyway.

12 The other part of that is is that the moment,
13 according to Rushton, the light came on {snapping
14 fingers}, the gunshot was just that fast. How is it
15 possible -- y'all go into the mind of the shooter,
16 Joe Worley. How is it possible for him to have made
17 out this man holding a gun at you through that
18 banister to be able to see him or a gun or see a
19 badge or try to make out that this person was a
20 friendly?

21 According to Mr. Rushton, less than a fraction
22 of a second did it happen: Gun, light came on,
23 boom. But, in the process, he left out one thing:
24 I was aiming at him. And he aimed at Joe first, and
25 Joe responded with the proper force, live force.

1 He gets out here and he sees this. You know,
2 and they keep saying, why would you try to hide a
3 gun -- hide your gun under your couch? Well, we
4 don't know where he kept his gun anyway, but if he
5 was trying to hide and trying to get away from the
6 police, why would he have put the gun in the car?

7 And by the time he gets around here and he sees
8 that it's a deputy's car, Oh, my God, I have shot a
9 deputy. Oh, my God.

10 So when he goes to talk, as he comes up, I'm
11 sure he's -- this family's upset. His mother's out
12 there with him. And then Sheriff Reid comes up and,
13 you know, Dr. Kirkham doesn't know Sheriff Reid, but
14 even Sheriff Reid, he's worried about him, worried
15 about his safety, to think that somebody might shoot
16 Sheriff Reid because Sheriff Reid, you know,
17 everybody knows Sheriff Reid. He walks down there
18 and he isn't worried about a whole lot.

19 But from a police practices and procedures
20 standpoint, it's dangerous for him to do that. It's
21 just dangerous because you have two people down
22 there with flashlights, and you just had a deputy
23 shot. So he's saying that not as a means of
24 criticism, but as a means of a statement to help in
25 the future for these kinds of things never to

1 happen, to protect Sheriff Reid, not to say anything
2 to disparage him, to help him.

3 And then there's some allegations that he said
4 something about ringing a doorbell. All I can tell
5 you about that is, ladies and gentlemen, you never
6 -- we have not heard any of this stuff. There's
7 supposed to be mics out there, various people,
8 sundry people having mics and radios. We never hear
9 them say that or what else he might have said in
10 addition to that, explaining what had happened out
11 there that night.

12 You know, I mean, from his perspective, he sees
13 the car -- think about it. You've just shot
14 somebody who was not wearing a uniform. Is the
15 police officer chasing the guy that I just shot or
16 did I shoot him? I mean, how does he know?

17 So he goes up there and he says, I put the
18 deputy's gun -- he realizes it was a policeman. He
19 drops -- he puts the gun in the car, he walks up
20 there with his mother, and as the sheriff and those
21 folks came down, he surrendered to them without any
22 difficulty.

23 Mama consented to them to go into the house,
24 the Worley family complied with the law, allowed
25 them to go in the house and look at it once they

1 realized it was law enforcement.

2 You know, there are so many things that could
3 have been done to have prevented this. For
4 instance, had the police car just went on down the
5 driveway a little bit, if the police car had went on
6 down the driveway down towards the house property
7 they were talking about that they use sometimes as a
8 driveway right there, and if the police officer had
9 come down there like that and then he could see it
10 was a marked car, he would have been able to see it.

11 You know, Bobby Rushton didn't know that. You
12 know? When you go back and you look at it after the
13 fact, you see it. But, you know, I know with all my
14 heart that if Mr. Rushton had known that he could
15 have pulled his car down on further and Mr. Worley
16 would have been able to see it, that this probably
17 wouldn't have happened.

18 If a phone call had been made, this probably
19 wouldn't have happened. If a blue light was turned
20 on, this probably wouldn't happen.

21 There's been a lot of discussion about what
22 police wear, what they should wear, what they
23 shouldn't wear. I would prefer to use caution,
24 prevail on the side of caution under all
25 circumstances. Frankly, I was shocked to hear that

1 our budget is only \$3,000 for our police officers
2 for uniforms. That's disgusting. That's
3 disgusting.

4 I understand it's tough here in McCormick.
5 That ol' window up there, the clerk over there, she
6 had to get a lawyer to write a letter to the county
7 council because that window looked like it was about
8 to fall in. Y'all see these lights around here?
9 Our government is supposed to be here to protect all
10 of us. If those lights don't work, we need lights
11 in here. We're going to have to write some letters.
12 I'm not complaining, I'm just telling you the
13 purpose of government is not to hurt us, it's to
14 help us, it's to assist us, it's to not call us
15 those words.

16 And in this incident report, you got Nick Moore
17 calling these people by this name. And he was
18 telling this to -- to the sheriff and the chief up
19 here, he says in his statement that he told them
20 to -- and you'll have these back there -- to watch
21 them. And he called Ms. Worley and Mr. Worley a bad
22 name. And it seems to me the only real evidence
23 that we have of people using vulgarities out there
24 that evening was the police officer.

25 And I understand he was mad, I understand he

1 was upset. And to be honest with you, if I were out
2 there and I was backing him up and a man shot him,
3 I'd probably have shot him. And I would be mad at
4 him.

5 Police officers, ladies and gentlemen -- and I
6 believe His Honor will instruct you of this -- has a
7 responsibility. They have a responsibility to use
8 more caution than we do, because we're not trained.
9 We're not trained, they are.

10 I'm just trying to find the language. Well, I
11 can't put my hands on it right now. I'm sorry about
12 that.

13 But y'all are going to have that all back there
14 with you. And as you look at it, think about --
15 think about this case in a way that's fair to both
16 sides, both the State and the defense.

17 And this is interesting. In this report by
18 Mr. Nick Moore, he says, Upon arrival back at the
19 scene, we saw two suspects -- or subjects in the
20 yard walking around with a flashlight. I took cover
21 behind the patrol car, and the sheriff called out to
22 the subjects. The subjects started coming towards
23 us, and I told the sheriff to watch the F'ers.

24 So here we have a police officer who's supposed
25 to be serving and protecting, and he's calling

1 Mr. and Ms. Worley F'ers. And he's in charge of
2 this investigation? And, again, is that
3 professional? Is that the standard that we want to
4 hold law enforcement to, to serve and protect us?

5 I don't know. Maybe you folks are going to
6 have to think about that a little bit. What message
7 are we sending?

8 The other thing I wanted to point out to you
9 about this -- the lay of the land, so to speak, is
10 that there was a question about where he was shot.
11 This is State's Exhibit 18. And there was some
12 question about some tree branches hanging over that
13 cross tie. And, again, I'm not sure those tree
14 branches are hanging over the -- as you know, it's
15 that time of year. So it's fall. So if the trees
16 were where they were at and there were leaves and
17 whatnot hanging over there, there's a chance that,
18 again, those leaves might have obstructed, again,
19 Mr. Worley from seeing Officer Rushton. Those will
20 be back there in evidence with you.

21 In close, hold the State to its burden of proof
22 beyond a reasonable doubt in this case. All of
23 these families have hurt. This is truly -- this
24 should have never even been brought as a criminal
25 case. Mr. Rushton, he's proven that; he's brought a

1 civil case. Why not let a civil jury take care of
2 this? And they will. A civil jury is going to
3 listen to this case and is going to settle it.

4 But because of the right of self-defense, the
5 right of self-defense, mama's defense, the defense
6 of others, and the defense of his habitation, in the
7 split second that Joe Worley had to make a decision
8 whether or not to shoot or not, power against power,
9 he was going to die he thought, or Rushton was going
10 to die, and instead, he shot the gun out of his
11 hand.

12 Thank you.

13 **THE COURT:** Mr. Myers.

14 **MR. MYERS:** Can we take a break, Your Honor?

15 **THE COURT:** Yes, sir.

16 Madame Forelady, we'll take a few-minutes
17 break, then we'll bring you back out here.

18 (The jury retires to the jury room.)

19 **THE COURT:** I anticipate this will be fairly
20 significant after 5:00 before it even comes close to
21 me charging the jury. I'm going to give the
22 Forelady an option to go forward or come back
23 tomorrow. I just think that's the proper thing, and
24 I can tell you that's what Columbia wants us to do,
25 too. So that's what I'm going to do.

1 We'll be in recess for a few.

2 (Brief Recess.)

3 **MR. MYERS:** The State's ready, Your Honor.

4 **THE COURT:** Defense ready?

5 **MR. GARRETT:** Defense is ready.

6 **THE COURT:** Would you bring the jury in,
7 please?

8 (The jury returns to the courtroom.)

9 **THE COURT:** All right. State ready?

10 **MR. MYERS:** Yes, sir. Thank you, Your Honor.

11 **THE COURT:** Yes, sir.

12 **MR. MYERS:** Oh, what a tangled web we weave
13 when first we begin to deceive. Some smart man
14 wrote that when I was in school when I read about
15 it. But, you know, when you get caught, you got to
16 start doing something. You've got to start
17 deceiving.

18 Billy, who broke that glass?

19 I didn't do it.

20 It's broke, Billy. Who broke that?

21 The cat did it.

22 Well, the cat's outside.

23 Johnny did it.

24 Johnny's playing basketball.

25 Suzie did it.

1 But we've got to deceive. And oh, man, we're
2 trying the wrong people. I ought to be trying Nick.
3 He messed up horribly. I ought to be trying
4 Melissa. She's bad. And Bobby, I ought to cut off
5 his other hand. He ain't got the right uniform.
6 And George Reid, let's impeach him. And while we're
7 at it, let's shoot the county council. Got to blame
8 somebody.

9 Oh, what a tangled web we weave when first we
10 start to deceive.

11 Self-defense. Defense of habitation. Well,
12 you know, if a police officer does something, he
13 shouldn't have done it. If a police officer didn't
14 do something, he should have done it. A police
15 officer's life is not a happy one.

16 Now, let's get all these, you know, like the
17 traveling medicine man from Florida. All these
18 hypotheticals and all these what ifs, and, of
19 course, he's going to give everybody the benefit of
20 the doubt. He's going to give these law enforcement
21 officers the benefit of the doubt, the standards and
22 the procedures man.

23 And what did he tell you? Well, what about
24 this? Well, what about that?

25 Well, let's look at what's not here. First of

1 all, didn't that medicine man -- that traveling
2 medicine man talk about a fox? There's a fox out
3 there. There's an old country and western song, A
4 fox on the run. Who saw a fox? Who got on that
5 stand and said, on November the 15th of 2009,
6 between two o'clock in the morning and four o'clock
7 there was a fox out there?

8 Well, the brother testified, and he's in
9 Florida. The traveling medicine man is in Palm
10 Beach in that big ol' house down there. Bo Willis
11 testified. That's their three witnesses. Who said
12 there was a fox out there?

13 If y'all heard it, disregard what I say and
14 hold it against me. I'm bad, too; I'm the
15 Solicitor. But who said there was a fox out there?
16 I'm half deaf, but I swear I didn't hear it.

17 Oh, but the fox been out there before, the fox
18 on the run. I just didn't hear anybody say there
19 was a fox out there that night.

20 You know, they said at the beginning,
21 Mr. Worley had only shot one other time, in
22 September. Well, that ain't right.

23 Mr. Sheffield right here, what did he say? He
24 started coming out, cussing, yelling, shooting
25 around the lake. They didn't want to confront Joe

1 Worley because he said Joe Worley's eccentric.

2 We'll talk to the reasonable person. We'll talk
3 with Mrs. Worley.

4 Mrs. Worley, your son's been out there at night
5 shooting, yelling, cussing. Please talk with him
6 about that. That's disturbing the peace. We're
7 trying to sleep over here, two, three, four o'clock
8 in the morning.

9 Was the matter resolved? No, it wasn't
10 resolved.

11 We went to the responsible person, Mrs. Worley.
12 It wasn't resolved. And then it kept on about every
13 weekend. Two, three, four o'clock in the morning,
14 cussing, yelling, shooting.

15 You know, you'd think after two months, he'd
16 shot that fox. He's such a good shot, isn't he?
17 Seems like the fox on the run would be dead if the
18 fox was out there. That's for you to decide, but I
19 ain't heard it. I tried to listen. I tried to
20 listen.

21 November the 15th, here we go again: Cussing,
22 yelling, shooting. And I think -- and y'all take
23 this right -- I think, from what I heard
24 Mr. Sheffield say, it started about 2:30, three
25 o'clock in the morning. You take what he heard.

1 Here we go again. Light's on. Twenty minutes
2 later, shooting again, cussing again. I ain't going
3 to wait for the third shot. We have filed a report
4 with the sheriff and said, don't do anything, we
5 just want y'all to know what hell we're living under
6 out there in our neighborhood on the weekends. The
7 rest of the time, everything's nice, but on the
8 weekends, we just want to let you know what's going
9 on.

10 Well, he ain't going to wait for the third
11 shot. And you know what? Alan Sheffield, what a
12 scoundrel he is, because he didn't go over there and
13 talk with Joe Worley. What good would it have done?
14 Already talked with mama. Already begged and
15 pleaded.

16 So they call the sheriff's department. The
17 light's still on. When the officers get out
18 there -- now, how can a man, in 20, 25 minutes, calm
19 down from cussing and yelling and shooting, come in
20 and get undressed and go fast asleep? I don't know
21 because there ain't no testimony to that.

22 **MR. GARRETT:** Objection, Your Honor. I object,
23 Your Honor.

24 **THE COURT:** Just one second.

25 Madame Forelady, will you go to the jury room,

1 please?

2 (The jury retires to the jury room.)

3 **MR. GARRETT:** Your Honor, we move at this time
4 for a mistrial. The State has earlier got close,
5 but this time stepped over the boundary where he's
6 specifically speaking about the fact that Mr. Worley
7 didn't offer any testimony, nor did he present any
8 evidence.

9 **MR. MYERS:** No, sir. Had he not stopped me, I
10 was going to say the brother didn't testify to it,
11 the traveling medicine man didn't testify to it, Bo
12 Willis didn't testify to it. That's the three
13 defense witnesses. He stopped me before I could get
14 it.

15 **MR. GARRETT:** Those -- they weren't in the
16 house. They wouldn't have had that knowledge.

17 **THE COURT:** This is really close. I tell you
18 what I'm going to do, I'm going to take it under
19 advisement and think about it, because I think it's
20 very, very close, and it concerns me. I'm not going
21 to try any curative because there's nothing you can
22 do to cure it. I'm going to take it under
23 advisement. I'm going to let him finish up.

24 I can tell both what I'm going to do: We're
25 not going to -- the jury's not going to get this

1 case tonight anyway. It's just too late. I'm going
2 to do -- research a little bit this evening. I'll
3 give you my decision in the morning.

4 **MR. GARRETT:** Yes, sir.

5 **MR. MYERS:** Thank you, sir.

6 **THE COURT:** Yes, sir.

7 Bring the jury back, please

8 (The jury returns to the courtroom.)

9 **THE COURT:** Mr. Myers.

10 **MR. MYERS:** Thank you.

11 What happened out there that night? What
12 happened out there? A man's creating a disturbance,
13 and the officers are appropriately responding. And
14 they responded out there -- I think the testimony
15 was that Nick went to the door, and I don't know
16 whether Bobby went there with him at that time or
17 not; you'll have to recall.

18 But Nick went to the door and he started
19 ringing the bell. He started knocking. He started
20 yelling, Sheriff's department. He was at the door
21 down here.

22 We know that Bobby ended up over here at the
23 Sheffields talking with them, as he was supposed to
24 do according to the medicine man, but he didn't stay
25 away long enough. But he stayed over there long

1 enough to find out cussing, shooting, talking loud
2 late at night, going on and on and on. Report filed
3 with the sheriff's department.

4 So he heads back over, and that light comes on.
5 Now, somehow they want that light to be on all the
6 time, but I don't know why, because it goes against
7 them. If the light's on all the time, well then
8 certainly Mr. Worley could see it was officers out
9 there. But if that's the case, let's cut it back
10 off.

11 The officers said they go there and knock on
12 the door again. They knock on the compound, but you
13 can't hear anything. Soundproof, airtight. Can't
14 hear anything at all. Sheriff's department.
15 Sheriff's department.

16 But you know something, if somebody's in that
17 house and it's a compound -- and, you know, the
18 brother testified they had a burglar alarm. So
19 what? Nobody can't get in. You got a burglar
20 alarm. And if you wake up and somebody's beating
21 and knocking at your door, there's no 9-1-1 call to
22 the sheriff's department. If somebody's breaking
23 into your house, seems like you'd call the sheriff,
24 but that wasn't done because there wasn't any
25 break-in. It wasn't anything but people yelling,

1 Sheriff's department, ringing the doorbell, and
2 knocking. You believe -- you're the judges of the
3 facts, and you take it as you deem it appropriate,
4 and you make that determination.

5 I know their witness, Bo Willis, the last
6 witness they called saying the next day after
7 everything was over with, he and Junior Gable were
8 out there, and he goes and knocks on the door
9 downstairs, and Mrs. Worley responds from inside.

10 Now, that's the same Mrs. Worley who's older
11 son testified she's stone deaf. Remember that? I
12 asked him. She's stone deaf. She can't hear, but
13 she responds. And Bo don't ring the bell; he knocks
14 on the door. And she comes down and opens the door
15 for him to come back in. That was their witness, Bo
16 Willis. That's up to you to decide on that.

17 But, you know, the officers again, they're
18 wearing the wrong clothes. They ain't got bell,
19 whistles, and Christmas lights on their uniform.
20 Everything they did was wrong. Nothing they did was
21 right. Whatever they did, they shouldn't have done;
22 whatever they didn't do, they should have done.
23 That's for you to decide.

24 But we know one thing: We know that that light
25 comes back on. Knocking, ringing, Sheriff's

1 department. And then the light comes on. And by
2 this time, Bobby's back over there. The door opens.
3 And when the sliding door opens, Bobby steps out a
4 little bit, and a man -- he's upstairs, the door is
5 open, and he's got a gun, and he's easing to the
6 right.

7 Now, one of the officers said somebody yelled
8 out, What do y'all want? I think Bobby said that.
9 Nick said somebody yelled out, Who is it? But, What
10 do y'all want, or, Who is it, there's no doubt, it's
11 uncontradicted, that both of them yelled, Sheriff's
12 department.

13 Now, when they yell, Sheriff's department, and
14 somebody's up here and the officers are down there,
15 ain't no soundproofed open-air porch, is it? I
16 hadn't heard anybody testify to a soundproof
17 open-air porch. The brother didn't say anything
18 about it.

19 Sheriff's department. And you know what?
20 Didn't make any difference what those officers said,
21 because what was the response? I don't give a
22 blank.

23 Now, that shows malice right there. That shows
24 callousness. It doesn't make any difference who
25 they are. I don't give a blank.

1 And they said, Well, you know what, he was over
2 here by this towel. That's not what Bobby said.
3 Bobby said he was inching over this way.

4 See, the towel, folks, or the blanket or
5 whatever that is, it might have been a cat blanket,
6 I don't know, it's over here {indicating}. Bobby
7 steps out back over here by this cross tie.
8 Mr. Worley's up here. The towel ain't got nothing
9 to do with it. Reckon it's a smoke screen? I don't
10 know.

11 And then when Bobby's shot and the light comes
12 on, they said, Well, the reason Mr. Worley shot him
13 -- they said that -- is because Bobby was pointing
14 his gun at him. Well, he had a right to. He's a
15 law enforcement officer.

16 And when you say, Police, sheriff's department,
17 the fellow says, I don't give a blankety-blank and
18 he's got a gun and he's aiming, what's the officer
19 supposed to do? I guess he's supposed to get a
20 uniform with a big red and white bulls-eye so he can
21 see that light up like a Christmas tree. That's
22 what we got. That's what we got.

23 Bobby's shot, and Nick says, Come to me, come
24 to me. Now he's trying to talk Bobby into coming to
25 him because it knocks Bobby down. Now we've got a

1 situation. And Bobby falls over here somewhere, and
2 he's trying to get to Nick so they can get out of
3 there.

4 Well, they said Bobby, for some reason, starts
5 charging the house. Does that make sense? A man
6 whose hand's blown off is then going to charge the
7 house right where he's been shot? Does that appeal
8 to your common sense, folks, or does it appeal to
9 your common sense like they said, he was trying to
10 get away?

11 And then a second shot. Oh, the mysterious
12 second shot. Oh, it's in the ground, on the ground,
13 two inches down, a foot down, ten feet down, halfway
14 to China. Well, what difference does it make? He
15 shot it. Why is he shooting again? That shows
16 malice again.

17 They said, Oh, if he wanted to kill him, he
18 would have shot him. Well, I don't know how good a
19 shot the man is. I don't know whether he shot at
20 his head and missed. I don't know whether he's
21 shooting at the fox again, but he shot a second time
22 at police officers. Oh, the mysterious second shot.

23 Now, let's talk about some more confusion.
24 They want to bring Bo Willis up here, their witness,
25 and they say, Well, Bo -- he -- he puts this diagram

1 up after he talks to people. And on the diagram, Bo
2 measures from the cross tie to the porch downstairs.
3 See right here? This is what they tried to tell you
4 a little while ago. Right here he says, eight feet
5 from where Bobby was shot. Over here to the edge of
6 the porch, eight feet. And they said, Well, that
7 can't be right because Joe Collier said it was 20
8 feet.

9 Well, where does Joe measure it? Joe ain't
10 measuring to the downstairs. He's measuring to the
11 upstairs. He ain't measuring down here. He's
12 measuring up there. Trying to confuse you, you
13 reckon, folks? Trying to put a little smoke there?
14 I don't know. That's for you to decide. That's for
15 your determination.

16 But we know one thing: What kind of things are
17 these? Well, daddy made them. Well, you know, if
18 daddy made them, you ain't got to shoot them three
19 years later. If daddy made them, he couldn't have
20 put them in the gun. He's been dead for three
21 years.

22 And for whatever reason daddy made them, the
23 brother said, why in the world would you use
24 something like this? Y'all go in there and hold
25 these things. Something like that went through

1 Bobby's hand. That's some bad stuff here, folks.
2 That'll go through most anything. That's malice.
3 That's evil intent.

4 And we know this: You got four here that they
5 took out the gun. You've got four over here that
6 were fired. That's eight shells. The gun holds
7 five. Three more shells had to be reloaded that
8 night. And if it held five and he shot Bobby and
9 that mysterious second shot, he had to reload at
10 least one more. That's malice, folks. That's
11 malice. That's a mind hellbent on evil, intending
12 to do harm.

13 Then he comes out of the house and yells:
14 Where are you at, you SOBs?

15 Now, I recall that Nick said that the defendant
16 came out and went around this way {indicating}. If
17 you think he said the defendant came out that way,
18 you take that for what you heard; don't take it for
19 what I say, because I can't testify. But if the
20 defendant came out and around this way, what was
21 parked right there? A sheriff's department car.
22 Because the mama's car was even with the porch right
23 here, and Bobby parked right behind it.

24 Now, did somebody say, Wait a minute, let me
25 help you. I didn't know you were -- I didn't know

1 you were police, and I shot one -- let me take you
2 somewhere. Let me help you out. Let me do
3 something. Let me call 9-1-1. Let me call the
4 sheriff. What can I do? I've made a mistake. But
5 no: Where are you at, you SOB?

6 Is that malice? Is that an evil heart?

7 And why did he come out anyhow? If he's afraid
8 of somebody and his poor ol' mama is upstairs in a
9 compound with a burglar alarm, what's he doing
10 outside leaving her inside?

11 I don't know whether he had the keys on him.
12 Did he leave the door open? Does that make sense to
13 you?

14 And then they get Bobby away. They get him
15 some help, and they call in reinforcements. And
16 Sheriff Reid, he comes up there. Sheriff Reid comes
17 up there, who violated every standard and procedure
18 known to modern American law enforcement. I don't
19 know how y'all put up with him for 27 years.
20 Violates everything.

21 Did he send his deputies down there? No. Did
22 he send in something else? No. He's going to find
23 out who shot his deputy. Give him a hard time? I'd
24 give him a medal.

25 And some people are coming up in their yard.

1 Now, what is Ms. Worley doing out there? And why
2 did she leave the compound and why did they come out
3 there? And the defendant ain't got no gun. They
4 got flashlights. And they ain't calling 9-1-1.
5 They ain't called nobody in this world. No one.
6 Why is that? Why is that?

7 Don't shine that flashlight in my eyes. Get
8 that flashlight out of my eyes. I guess he violated
9 some procedure, too.

10 And the first thing anybody says is the
11 defendant says, I put your deputy's gun in the
12 patrol car. I put your deputy's gun in his patrol
13 car.

14 The sheriff says, There's been shooting down
15 here. Somebody shot my deputy. Who's shooting?

16 The defendant said, I was. I was. I'm the
17 shooter.

18 You shot my deputy. Why you shot my deputy?

19 The deputy had no business ringing my damn
20 doorbell.

21 Did he say, I didn't know who he was? Did he
22 say, I couldn't tell because he didn't have a
23 Christmas tree uniform on? I couldn't tell because
24 he didn't have a badge plastered to his forehead? I
25 couldn't tell because he didn't have on the blue

1 lights and he didn't have on the sirens and the
2 bullhorn and yelling out and he didn't call me?

3 The deputy had no business ringing my damn
4 doorbell.

5 That's malice. That's bad, folks. That's
6 evil. That's evil. No apologies. No saying this
7 is what happened. No calling anybody. No seeking
8 any help. No doing anything.

9 But you know that traveling medicine man, said
10 he felt sorry for the defendant. That surprised me
11 when he said that. He wants to give everybody the
12 benefit of the doubt. He wants to give the officers
13 the benefit of the doubt. He wants to give the
14 sheriff the benefit of the doubt. But he's sorry
15 for Mr. Worley.

16 He said he testified over 1200 times, and he
17 gets \$6,000 a case, plus in court and expenses.
18 That's over seven million dollars for that traveling
19 medicine man. Give him a buck and he'll travel.

20 Do you believe him? If you do, that's up to
21 you.

22 You know he's so good on his traveling show, he
23 even brings the questions for them to ask. Remember
24 he said, Yeah, I prepared the questions. The
25 traveling medicine man.

1 But he's got those standards and procedures.

2 Now, they're going to say it's self-defense,
3 and self-defense, folks, is a good defense, and
4 we've got to disprove it. And the Judge is going to
5 tell you about self-defense. He's going to read you
6 what the law is on self-defense, and he's going to
7 tell you, number one, that the defendant must be
8 without fault in bringing on the difficulty.

9 If it hadn't been for Joe Worley, none of this
10 would have happened. Is he blameless? Did he have
11 anything to do or fault in bringing on this
12 difficulty? He caused it. The deputies wouldn't be
13 there if it weren't for him.

14 But if you think that he's blameless, he's pure
15 as Ivory soap, and he didn't bring on this
16 difficulty, find for him.

17 Now, if you find that he was at fault in
18 bringing out on the difficulty, self-defense goes
19 out the window. Ain't nothing for self-defense.
20 It's gone.

21 And number two is a long one, it's a very long
22 one: The defendant must have actually believed he
23 was in imminent danger of either losing his life or
24 suffering serious bodily harm. A defendant must
25 actually have believed he was in imminent danger of

1 losing his life or receiving serious bodily harm or
2 that he actually was in imminent danger.

3 How was he in imminent danger of being killed
4 or hurt? He's in a compound. He's got a burglar
5 alarm. Nobody can get in. What kind of danger is
6 he in?

7 You fold up the compound, the burglar alarm's
8 on, and you pick up the phone. Come help me.

9 Did that happen? No, ma'am. No, sir.

10 So how was he in danger from being hurt? He
11 didn't have to go out on that porch. He's in his
12 home. He's in his habitation. What kind of danger
13 is he in?

14 And you know what? Ain't nobody breaking in.
15 The officers are merely knocking on the door and
16 ringing the bell. Knocking on the door and ringing
17 the bell. Ain't got an ax chopping on it. They
18 ain't got nothing trying to drive into it and break
19 in.

20 But if you think the defendant actually
21 believed that he was in imminent danger of being
22 killed or suffering serious bodily harm, y'all find
23 for him.

24 And, number three, folks, it's a long one here.
25 I'm not going to even write it all out. But it goes

1 with number two, and it says this: If the defense
2 is based upon his belief of imminent danger, a
3 reasonably prudent man of ordinary firmness and
4 courage would have had the same belief. Not him,
5 but a man with common sense.

6 If this defense is based upon his belief that
7 he's in imminent danger, it must be such that a
8 reasonably prudent man of ordinary firmness and
9 courage would have had the same belief. A
10 reasonable person would have believed that; if so,
11 find for him.

12 And if self-defense -- and all we've got to do
13 is prove one of these ain't right. If you think he
14 wasn't at fault in bringing on this difficulty, then
15 find for him, but if he was at fault, it ain't
16 self-defense.

17 If you think that he actually believed he was
18 in imminent danger or was in danger, find for him.
19 Don't -- find for self-defense. Or if you think a
20 reasonably prudent man of ordinary firmness and
21 courage would have entertained the same oath, find
22 for him. But if we prove one of those is wrong, it
23 ain't self-defense.

24 And he doesn't have to retreat, by the way.
25 He's in his own home, so he doesn't have to retreat.

1 But he doesn't have to come outside either and bring
2 on the difficulty.

3 And then there's something called defense of
4 habitation, and that means where you're defending
5 your home of a trespasser. Remember that word:
6 Trespasser, trespasser.

7 If a trespasser's coming in and trying to get
8 in somebody's house, then a person can defend their
9 home, their habitation, and they can use force and
10 kill people to get them out. That's reasonable law.

11 But who is the trespasser here? Nick? Is he a
12 trespasser? Bobby? Is he a trespasser? Were they
13 trying to break into his home? That's for you to
14 decide. That's your decision.

15 It doesn't do any good for me to talk anymore.
16 This is a common sense case. Use your good ol'
17 common sense and just do what's right.

18 Who brought on the difficulty? Who wasn't in
19 any danger? Who was in a position that a reasonable
20 man, ordinary prudence, would have believed he
21 wasn't in any danger? And it wasn't self-defense.
22 And he wasn't defending his house from a trespasser.
23 He was out to shoot somebody, and he did.

24 Bobby's lucky to be alive. Even his career is
25 ruined. And you know what, Bobby was out there

1 around some trees, so that gave Mr. Worley the right
2 to shoot him, because they put in these photographs.
3 They got a little flimsy little dead branch up here.
4 And I don't know what the heck that is. I can't see
5 a cross tie or nothing in there. I guess it's a
6 picture of the woods. But so what? If a tree was
7 around there, is that justification for trying to
8 kill a man?

9 I know one thing, State's Exhibit Number 17
10 with that cross tie, and here's the porch right
11 here, that's where Bo measured from, there to the
12 porch, not up to the top. Where is that tree? This
13 was taken that same day. Where is that tree?

14 See that tree in there? I don't see the tree.
15 If you see it in there, then give it whatever weight
16 you deem appropriate.

17 You folks are the judges of the facts. That's
18 intent to kill, folks. Can't even tie his
19 shoelaces. Can't even tie a fishing hook. Can't
20 hold a gun. But they say he can learn to shoot with
21 his left hand. That's like saying, Well, he should
22 lose some weight, let's shoot off another finger.
23 Does that make sense to you? Does that make sense
24 to you?

25 They were giving Andy Griffith a rough time,

1 letting people check themselves in the jail, not
2 doing the right things, not following the standards
3 and procedures. But in a small town, medium-size
4 town, any size town, it's a whole lot better not to
5 follow the book, but to follow your heart.

6 **THE COURT:** All right. Madame Forelady, ladies
7 and gentlemen of the jury, it's 5:30. I'm going to
8 call it a day. I'm going to use my privilege to do
9 that. I don't see us doing anything constructive
10 after -- my charge is going to be 40 minutes, and
11 then I want you to have a fresh mind when I charge
12 you on the law and not feel like you're in a rush to
13 go through these facts and evidence, because this is
14 an important case to both the State and to this
15 defendant.

16 So I'm going to excuse you for the evening with
17 my instruction that you do not speak with anybody,
18 do not read, hear or see anything about this case.
19 Probably -- I'm going to delay getting you back till
20 10:00 tomorrow morning. And, again, I'm going to
21 ask you, before we get started, if anybody's read,
22 heard or seen anything about this case. But thank
23 you for being here and good night.

24 (The jury was excused for the day.)

25 **THE COURT:** All right. Let me tell the

1 parties, I'm going to look for a way not to grant a
2 mistrial. I'm going to be candid with you, that's
3 my job, because it's a drastic remedy.

4 With that being said, that is very, very close
5 to the mark. I'm going to get -- I asked my court
6 reporter to get me the language. I'm going to take
7 it home; I'm going to research it. I'd ask all
8 sides to give me indications that supports their
9 respective sides of the case, and then I'll make my
10 call in the morning. Okay?

11 **MS. BALLARD:** Thank you, Your Honor.

12 **MR. MYERS:** And, once again, I was cut off
13 before I got to finish.

14 **THE COURT:** I got you. And I got that point,
15 too.

16 Anything else from the State before we recess
17 for the day?

18 **MR. MYERS:** Nothing from the State, Your Honor.

19 **MR. GARRETT:** Nothing from the defense.

20 **THE COURT:** All right, guys. Thank you.

21 Let me just say this one thing: Regardless, to
22 all the attorneys, and I say this for your
23 respective clients not for you because you know it,
24 I try cases all over South Carolina, and it is a
25 pleasure, regardless of how hard you fight it, when

1 you have somebody or lawyers who are professional,
2 who are prepared and ready to go forward, both sides
3 in this case were in this matter, and so regardless
4 of whether I grant a mistrial or regardless what the
5 jury does, I want to thank everyone concerned for
6 you being professional and prepared.

7 **MR. GARRETT:** Thank you, Your Honor.

8 **MR. MYERS:** Thank you.

9 **THE COURT:** All right, guys. See you tomorrow
10 morning.

11 (The proceedings were concluded for December
12 19, 2013.)

13 (The following proceedings were held on
14 December 20, 2013.)

15 **THE COURT:** All right. I'll be glad to hear
16 from the defense on the mistrial motion.

17 **MS. BALLARD:** Your Honor, as you know, last
18 night when we recessed, we had made a motion for a
19 mistrial based on the Solicitor's comment on the
20 defendant's silence in failing to take the stand.
21 And we researched the issue last night in some
22 detail. And I want to refer the Court to the State
23 versus Williams case out of the Court of Appeals in
24 2012. The citation is 731 S.E.2d 338. There are a
25 lot of other cases as well. But, essentially, what

1 those cases all say is that, in some cases, a
2 curative instruction might solve the problem.

3 I think we all agreed yesterday a curative
4 instruction would not solve the problem.

5 **THE COURT:** Well, I thought about that. I
6 don't mean to interrupt you, but I thought better of
7 it, and if you would ask me to do it, I'd be glad to
8 do it.

9 **MS. BALLARD:** I think the cat's out of the bag
10 at this point. I think a curative instruction would
11 have had to have been made right then and there in
12 order to solve the problem. And I think our
13 reaction was the same: Solving it -- giving the
14 curative instruction at that point would merely
15 highlight it and make it worse.

16 And so I think -- we know that we have to start
17 at that point, you know, that cat is gone. We can't
18 put it back.

19 In deciding whether or not the Solicitor's
20 error was prejudicial, we've got to look at a couple
21 of different things. Number one, the Doyle versus
22 Ohio case, United States Supreme Court in 1976, made
23 clear what this law was. However, our South
24 Carolina Supreme Court in State versus Myers in
25 1990, specifically warns Solicitors that they cannot

1 comment on silence of the defendant in taking -- in
2 not taking the stand.

3 The Williams case says that in order to employ
4 harmless error analysis, you have to find that the
5 error was harmless beyond a reasonable doubt. But
6 the Williams case specifically found that it can't
7 be harmless -- and I'm quoting from the Williams
8 case -- If the Solicitor's comment directly tied the
9 defendant's silence to his claim of self-defense,
10 the error could not be harmless.

11 And here's what happened: In the earlier part
12 of his closing statement, the Solicitor said
13 something to the effect of, Who said there was a
14 fox, or something like that. He even wrote it on
15 his board up there. That, in itself, was a comment
16 on his failure to take the stand, but we let that
17 go. We didn't say anything about it.

18 A few minutes later, we have the part that
19 Stacy e-mailed us last night where he, again,
20 directly commented on his failure to take the stand
21 when he said, When the officers got out there, how
22 can a man, in 25 minutes, calm down, come in, and
23 get undressed and go fast asleep; I don't know
24 because there ain't no testimony to that.

25 His supposed explanation for that is he was

1 going to ask -- he was going to refer to Bo Willis
2 or Robert Worley, neither of whom were there,
3 neither of whom could have answered that question
4 the way he posed it.

5 **THE COURT:** Well, may I ask you a question?

6 **MS. BALLARD:** Yes, sir.

7 **THE COURT:** What would be the appropriateness
8 of a Solicitor making comments on the issues that
9 have been interjected into the proceedings by the
10 defense, even if the defendant does not take the
11 stand?

12 **MS. BALLARD:** That's exactly what the Williams
13 case addresses, Your Honor. In the self-defense
14 context, what we have introduced, that is our
15 defense, the Solicitor commented on -- he's trying
16 to say -- he's trying to argue that their case is
17 that Mr. Worley laid in wait, you know, waiting for
18 an opportunity to shoot this individual because he
19 said, How could he calm down in 25 minutes?

20 He's suggesting malice. He's suggesting that
21 the evidence shows malice because Joe did not take
22 the stand. He's suggesting it was our burden to
23 show that there was no malice. And, in fact, we
24 don't have a burden to show that. And so not only
25 is it a comment on his right to remain silent, it's

1 a comment, which is almost burden shifting, on our
2 defense, directly on our defense. They're trying to
3 now argue that he laid in wait. He couldn't calm
4 down and go to sleep. There ain't no testimony to
5 that.

6 Well, Mr. Worley's the only one that could have
7 testified to that. It is a direct comment on
8 Mr. Worley's failure to take the stand, and it is a
9 direct undermining of our claim of self-defense,
10 which they have to disprove, and the way they're
11 attempting to disprove it is by pointing out his
12 failure to testify.

13 I don't think there's any question but that
14 we're well past the possibility of a curative
15 instruction being appropriate at this point. I
16 think the only possible remedy at this point is a
17 mistrial.

18 **THE COURT:** All right. Let me say this: I got
19 from Stacy last night the same language that you
20 have, and it is: How can a man, in 25 minutes, calm
21 down from cussing, yelling, and shooting, come in
22 and get undressed and go fast asleep? I don't know
23 because there ain't no testimony to that.

24 When I heard it, I think everybody in here
25 jumped.

1 **MS. BALLARD:** We did.

2 **THE COURT:** And I tell you, if you were to look
3 at that language in isolation, I would agree with
4 you 100 percent that a mistrial would be the
5 appropriate remedy.

6 I think, on the other hand, going through my
7 notes -- and I have not looked through what my court
8 reporter's or my clerk has to verify that my notes
9 are not incorrect -- the defense, in opening
10 statement in this case, made the comment -- and let
11 me -- and I highlighted it -- when he's talking
12 about -- he mentioned that the Sheffields have
13 complained to the defendant's mother, and she did
14 not relate that, the complaints to Mr. Worley, and
15 he said that the defendant goes back to bed and the
16 mother was already asleep.

17 Also, another point in opening statement, he
18 says that, you know, the knocking at the door and
19 the doorbell woke up the defendant. So it seems to
20 me, and I may be wrong, but it seems to me, from a
21 totality of the evidence or issues that have been
22 foisted in this case by the defense, that -- not
23 taking that comment out of context or in isolation,
24 but looking at it and all the evidence presented in
25 this trial, along with the fact that, you know, we

1 had the soundproof nature of the house testified by
2 Mr. Worley's brother, the fact that it's multiple
3 times stated you could not hear knocking at the door
4 when you're upstairs, all this all added together,
5 it seemed to me to be a common sense extrapolation
6 of the issues put into evidence by the defendant,
7 not necessarily a comment on his failure to testify
8 or trying to shift the burden on him to disprove it.
9 I may be wrong. I know it is a very close call.
10 Okay?

11 **MS. BALLARD:** Your Honor, if I could respond
12 just briefly to that.

13 **THE COURT:** Yes, ma'am.

14 **MS. BALLARD:** I agree with you that you can't
15 look at it just in isolation. You have to look at
16 the whole record. And I think we have to look at
17 the fact that the Solicitor, earlier in his closing
18 statement, made reference to the fact, Who said
19 there was a fox, which, again, could only have been
20 Mr. Worley.

21 **THE COURT:** Right, but the fox was interjected
22 -- same basis there, you know, nobody in the State
23 testified to anything about any fox. Mr. Worley
24 testified that Sweet Pea had been injured by a fox,
25 and I think, in opening statement, that was also

1 brought up as well.

2 **MS. BALLARD:** The Sheffields testified that
3 they were aware of the fox issue.

4 **THE COURT:** Right.

5 **MS. BALLARD:** Our expert witness testified
6 that, based on his review of the file; he didn't say
7 anything about his review of any statement of
8 Mr. Worley's. There was testimony in the record
9 about the fox, but Mr. Myers said, Who said there
10 was a fox?

11 And, obviously, the only person who could have
12 said that night there was a fox was Joe Worley.
13 It's a direct comment on his failure to testify, as
14 is the second statement, the direct statement on
15 his, Who could say he was asleep? Nobody but him
16 could say that.

17 **THE COURT:** And, listen, I'm with you. I agree
18 with you, and I know you disagree with me. You
19 know, my goal, obviously, is to avoid a mistrial, if
20 possible, and also not trample on somebody's
21 constitutional rights. I mean, certainly, that's
22 more important than any retrial of any matter.

23 But it just seems to me, in looking at it and
24 thinking about it -- and, quite frankly, to
25 everybody concerned, I called a couple of my

1 brethren on the way home last night and ran the
2 factual scenario by them, and we all kind of came to
3 the same conclusion, although that's here nor there,
4 that while it's a very close call, that it likely is
5 a fair comment on issues that were put into the
6 trial by the defense.

7 **MS. BALLARD:** Your Honor, I think in order to
8 not grant my motion for a mistrial, Your Honor has
9 to find beyond a reasonable doubt that the
10 Solicitor's comments could not be harmless as a
11 matter of law. Beyond a reasonable doubt you have
12 to find that. And if you can't find that, then a
13 mistrial must be granted. So I'm requesting Your
14 Honor to --

15 **THE COURT:** Give me that case. I want to look
16 at it, please.

17 **MS. BALLARD:** Yes, sir. I believe that's in
18 Williams.

19 **THE COURT:** If you'll give us a cite.

20 **MS. BALLARD:** Yes, sir. It is 731 S.E.2d 338.

21 **THE COURT:** Can you write that down? 731 338?

22 **MS. BALLARD:** Yes, sir.

23 **THE COURT:** And that's southeastern?

24 **MS. BALLARD:** Yes, sir. 2012.

25 And I would also point out that opening

1 statements are not evidence -- evidence in the
2 record came --

3 **THE COURT:** I agree, but at the same time -- I
4 agree that it's not evidence, but the defense has
5 done a masterful job in this case in interjecting
6 issues into this matter without having any testimony
7 to really support it. And although it is not
8 evidence in the classical sense, those issues have
9 been foisted upon this jury, and they've heard them.
10 And the case -- if not by direct, by innuendos, as
11 to -- whether or not Mr. Worley is up there
12 sleeping, whether or not he could have been roused
13 from sleep from the knocking on the door, all that.
14 And so I disagree with you on that aspect of it.

15 I want to look at this case. And if I'm wrong,
16 I'll be wrong and I'll correct myself, because my
17 initial thought was I am not going to grant a
18 mistrial. I'm going to look at this case and let me
19 say -- look at it and then come back again. Okay?

20 **MS. BALLARD:** Well, let me just tell you --

21 **THE COURT:** Please, I want you to have a good
22 record.

23 **MS. BALLARD:** First of all, I don't think it's
24 accurate to say that your obligation is to do
25 anything you can to prevent a mistrial. I think

1 your obligation is to see that justice is done for
2 Mr. Worley.

3 **THE COURT:** Right. That's -- you're correct.
4 And let me just say this: I guess that was a poor
5 way of wording it is that, you know, the old
6 terminology we used to use, manifest necessity, I
7 know that's kind of -- we've gotten away from, but
8 the idea of being, you know, it's a drastic remedy,
9 and we try not to do that. And I think everybody
10 will agree. First and foremost, to see that justice
11 is done, you're obviously right, and that
12 constitutional rights are protected and not trampled
13 upon.

14 **MS. BALLARD:** And the only other thing is I
15 would ask once again that Your Honor make a finding
16 that it's harmless beyond a reasonable doubt.
17 That's the only basis upon which you cannot grant a
18 mistrial under these circumstances, which enables me
19 to argue on appeal that that finding was made and it
20 was error.

21 **THE COURT:** Sure. I want you to have a good
22 record.

23 Let me read that case and whatever findings I
24 need to make or if I'll make them. Let me look at
25 it and then I'll come back.

1 **MS. BALLARD:** Thank you very much, Your Honor.
2 I appreciate it.

3 **THE COURT:** Mr. Myers, anything in response to
4 that?

5 **MR. MYERS:** Certainly. As I said last night, I
6 was cut off. I did not finish what I was going to
7 say. And you said you wanted to hear arguments this
8 morning.

9 Let's talk about the law a little bit. In
10 State versus -- well, Michael A. Johnson versus the
11 State of South Carolina, a PCR case, Opinion 24561,
12 decided January 27, 1997. In that case, the
13 prosecutor said the defendant didn't present any
14 evidence and the defendant didn't testify, and the
15 judge will tell you, you can't hold that against
16 him.

17 The PCR judge ruled that was improper. The
18 Court of Appeals and the Supreme Court reversed him
19 and said that was not improper. And they said --

20 **THE COURT:** What case is that?

21 **MR. MYERS:** It's Michael --

22 **MS. BALLARD:** The citation is 480 S.E.2d 733,
23 Your Honor.

24 **MR. MYERS:** Here the PCR court's conclusion
25 that the jury could have drawn an adverse inference

1 from the Solicitor's comment is not supported by the
2 evidence.

3 In context, the comment was simply a statement
4 of the evidence which was before the jury rather
5 than a comment on Johnson's failure to testify. As
6 such, it is distinguishable from the typical comment
7 in which the clear implication is that the defendant
8 has failed to explain the circumstances of the
9 crime.

10 And that's Michael A. Johnson. And in that
11 case, Your Honor, no evidence was put up by the
12 defense.

13 Then we go, Your Honor, to this case. It's the
14 State versus David Lee Meggett, M-e-g-g-e-t-t,
15 Opinion 4994, decided June 27th of 2012. The
16 defendant didn't put up any evidence. And the
17 Solicitor made a statement, There was no evidence
18 the victim was a prostitute as the defense claimed.

19 It says here, The state -- the victim was a
20 prostitute -- no evidence the victim was a
21 prostitute was a comment on the evidence or lack
22 thereof presented during the trial. The Solicitor's
23 comment did not improperly shift the burden of proof
24 or suggest that Meggett's guilt could be inferred
25 from his failure to testify.

1 Here again, no evidence put up by the defense.

2 The comment was made in reply to allegations
3 defense counsel made in opening and closing
4 arguments that Meggett and the victim were involved
5 in a sex-for-money arrangement. The Solicitor did
6 not state that Meggett failed to put up any
7 evidence.

8 Furthermore, the Solicitor did not suggest to
9 the jury that an adverse inference should be drawn
10 against Meggett based on his failure to testify.
11 The Solicitor only commented on the lack of evidence
12 presented. The comment -- the Solicitor's remark
13 was not improper as it was made to urge the jury to
14 avoid drawing an inference not supported by the
15 record.

16 Now, this clearly says, Even when the defense
17 does not put up any evidence, that the Solicitor can
18 respond to defense counsel's opening and closing
19 comments. That's clear. That's the law, the basic
20 law.

21 Now, State versus Posey, that's 238 S.E.2d 176,
22 a 1977 case, they call it the Posey Doctrine or the
23 Posey Law. It is never permissible for the
24 prosecutor to suggest to the jury that it draw an
25 adverse inference when the defendant fails to

1 present any evidence at trial or testify since the
2 defendant may let the case go to the jury on the
3 basis that the prosecution did not meet its burden
4 of proof.

5 However, where the defendant presents evidence
6 at trial and there are witnesses seemingly
7 accessible to the accused or under his control who
8 are or should be cognizant of material and relevant
9 facts and competent testimony to testify and whose
10 testimony would presumably aid him or substantiate
11 his story if it were true, it is not improper for
12 the prosecuting attorney to comment upon the
13 defendant's failure to testify.

14 **THE COURT:** Well, let me ask you this: What if
15 those material facts could only, only come from the
16 defendant in the matter, such as this case?

17 **MR. MYERS:** That is not this case, and I'm
18 going to get to that.

19 **THE COURT:** Okay.

20 **MR. MYERS:** I'm going to get to that.

21 It says here, the Posey case, the Posey
22 Doctrine, does not apply when the defense presents
23 evidence. That is an exception.

24 **THE COURT:** So what's the distinction there?
25 And you were saying like --

1 **MR. MYERS:** The distinction is this: If they
2 don't offer any witnesses, it's the strict test. If
3 they offer witnesses, that doctrine doesn't reply.
4 It's relaxed.

5 Now, in the opening statement, Mr. Garrett
6 said, The defendant shot twice. He went to bed, and
7 the defendant and his mother were asleep, thought a
8 burglar was coming in. In his closing statement, he
9 said, The defendant went to bed, and he and his
10 mother were awakened by a burglar.

11 Their mother was on the witness list. I didn't
12 get to say that. You look at their witness list.
13 Mrs. Worley was a potential defense witness.

14 Now, not only that, I didn't ask them to take
15 an adverse inference. And I was going to use
16 State's Exhibit Number 28, Nick Moore's incident
17 report. There's nothing in here about that. I was
18 going to say Bo said nothing about that. The
19 brother said nothing about that.

20 But the man from Florida, Hickman (sic), he
21 did. He testified they were awakened in the middle
22 of the night by a burglar, and Mr. Worley went out
23 and shot him. And he said, I would have shot him.
24 The man from Florida. You remember, I jumped on him
25 earlier. I jumped on him about the fox. How could

1 he know about that? How could he know that he was
2 asleep? I didn't get to say all that. I was
3 prevented from that. It wasn't referring to him.
4 The mother was there. The mother could have
5 testified. She was on the defense list.

6 To say I was talking about him is totally
7 wrong. I was going to go after the expert from
8 Florida, and I was going to tell about the mother.

9 **THE COURT:** Anything further?

10 **MS. BALLARD:** Briefly, Your Honor.

11 Mrs. Worley could not testify as to what awoke
12 Mr. Worley. If she knew anything, she knew it
13 because Mr. Worley would have told her that, so it's
14 a direct comment. It could only have come from
15 Mr. Worley.

16 The Posey Doctrine, we respectfully -- does not
17 allow the Solicitor to comment on the defendant's
18 side simply because we put up other witnesses,
19 simply because we chose to put up a defense. We
20 still chose to invoke our right to remain silent.

21 And the State versus Myers case, 1990,
22 certainly overruled any inference from the Posey
23 case that suggested that it was permissible for a
24 Solicitor to comment on the defendant's silence.

25 The Meggett case, I don't have it in front of

1 me, but my recollection from the Meggett case is
2 that the argument had to do with witnesses who did
3 testify, but none of them specifically testified
4 that the woman was a prostitute, and that was not --
5 that was not a comment on the defendant's right to
6 remain silent. That was a comment on whether
7 something was or was not in evidence. So I don't
8 think that case is applicable at all.

9 And, again, I think that the argument that
10 Mr. Myers suggests was what he was about to say is
11 that nobody who did testify could say he was asleep.
12 There's nobody else but Mr. Worley who could have
13 said whether he was asleep or not, and it is a
14 direct comment on his failure to take the stand to
15 say that he personally was asleep. Thank you, Your
16 Honor.

17 **MR. MYERS:** When the defense presents
18 evidence --

19 **THE COURT:** Sir?

20 **MR. MYERS:** When the defense presents evidence,
21 I can comment -- I can comment on what they say in
22 opening and closing, and I can comment on their
23 failure to call a witness. There was another person
24 there. Mrs. Worley was there. She came out and met
25 the sheriff with him.

1 **THE COURT:** I got you.

2 Let me say this: It seems to me that the
3 better part of the valor at this stage would be for
4 me to go ahead charge the jury, take this under
5 consideration while the jury is deliberating and let
6 me read these cases further. I know that sounds
7 kind of backwards, but I hate to sit a jury back
8 there waiting while our research is going to take
9 awhile. So --

10 **MS. BALLARD:** One moment, Your Honor.

11 (Pause.)

12 **MS. BALLARD:** Well, obviously, Your Honor, we
13 have to have your ruling before the jury returns or
14 indicates they're ready to return.

15 **THE COURT:** Well, I will assure you if they say
16 they have a verdict and I have not ruled, I will
17 give you a ruling on the record before we do. Okay?

18 **MS. BALLARD:** Thank you, Your Honor.

19 **THE COURT:** Okay. Anything else other than
20 that at this stage?

21 **MR. MYERS:** Nothing from the State, Your Honor.

22 **THE COURT:** Thank you, ladies and gentlemen.
23 Would you bring the jury in, please?

24 (The jury enters the courtroom at 10:21
25 a.m.)

1 **THE COURT:** All right. Good morning, ladies
2 and gentlemen. I hope you had a nice evening. As I
3 told you I would do, let me ask if anyone, during
4 the evening, has spoken or have been spoken to about
5 this case or whether you've read, heard, or have
6 seen anything about this case during the break; if
7 so, raise your hand.

8 Let the record reflect that no one responded.

9 CHARGE OF THE COURT

10 **THE COURT:** All right. Ladies and gentlemen,
11 it's now the part of the case or the fourth phase of
12 the case where I charge you on the law. I will do
13 my best to minimize the amount of reading I do to
14 you, because nobody likes to have anybody read to
15 them, but I apologize to you in advance that because
16 of the serious nature of this case and the law
17 involved, some of it will be. So I apologize to you
18 in advance.

19 Madame Forelady, if, during the course of this
20 charge, any of your jurors would like to take a
21 break -- I anticipate it will be around 40 minutes
22 -- I'll be glad to do so. Okay?

23 With that being said, ladies and gentlemen, now
24 that you have heard all the evidence, you've heard
25 the arguments of the attorneys, it is my job to

1 instruct you on the law. My instructions will be in
2 three parts. The first part of my instructions will
3 be the general rules that define and control your
4 duties as jurors. The second will be the
5 substantive law that must apply to this case, in
6 other words, what the State must prove in order to
7 make its case. And the third aspect will be some
8 considerations about your deliberations.

9 Excuse me, I have a little bit of a head cold
10 I'm coming down with. If you don't understand
11 anything I say, raise your hand.

12 Now, ladies and gentlemen, as I told you at the
13 beginning of this case, it is your duty to find the
14 facts from the evidence that has been presented here
15 in this courtroom. To those facts, you must and you
16 shall apply the law as I give it to you now, and you
17 must follow it. You must not be concerned with what
18 you would like the law to be, but what it is.

19 Also, you may not and shall not be influenced
20 by any personal likes or dislikes or opinions,
21 prejudice, or undue sympathy that you may have for
22 one side or the other in this case.

23 What that simply means is that you are to
24 determine -- you can make your findings of fact
25 based on the testimony and evidence presented here

1 in this courtroom and according to the law as I give
2 it to you now. And if you will recall at the
3 beginning of this case, you gave an oath where you
4 agreed to do just that.

5 Now, in following these instructions this
6 morning, you must follow all of them. You can't
7 pick out or single out certain aspects of my charge
8 that you like and apply those and disregard other
9 aspects of my charge you may not like. They are all,
10 equally important.

11 And, again, I'll remind you that if I have said
12 or I have done anything throughout the course of
13 this trial that seems to indicate how you are to
14 find the facts, i.e., which verdict you would reach,
15 I'm going to ask you and I'm going to instruct you
16 to disregard that.

17 Again, I have no feeling one way or the other,
18 and our Constitution of South Carolina does not
19 allow any trial judge to make a comment on the facts
20 or to have an opinion on the facts. That is a
21 matter that is entirely up to you, the jury, to
22 decide, and you alone are the judges of the facts.
23 And you determine what those facts are by evaluating
24 and weighing the evidence that you heard during this
25 trial.

1 Now, there's no way for me to give you a set of
2 scales where you can weigh the evidence in the
3 literal sense. This is entirely a mental process.
4 And you evaluate and weigh the evidence by using
5 your good common sense and your sound judgment that
6 you brought here with you when you became jurors.

7 Now, in this case, there's -- this is what the
8 evidence is, and I'll give you a little bit more
9 about it: The sworn testimony by witnesses who came
10 up here on the witness stand, whether it be on
11 direct examination or cross-examination. Also, any
12 exhibits that have been admitted into evidence is
13 evidence. I remind you that the comments and the
14 questions of attorneys is not evidence.

15 Now, Counsel, is there any stipulation of fact
16 in this case? I don't believe there is, is there?

17 **MR. MYERS:** No, sir.

18 **MR. GARRETT:** No, Your Honor.

19 **THE COURT:** So, ladies and gentlemen, that is
20 the only evidence. The testimony, whether it's
21 cross or direct, and the exhibits that you will have
22 back there with you in your jury room is the
23 evidence. That's it.

24 Now, let me go over with you certain things
25 that are not evidence. And, again, the arguments of

1 these attorneys in their opening and their closing
2 statements to you is helpful, but it's not evidence.
3 They have not been sworn. They have not been
4 subjected to cross-examination by one side or the
5 other.

6 So if the facts as you remember them to be
7 differ from what you're told by either or both these
8 sides during this trial, in opening or closing, then
9 your memory will prevail over what you're told.

10 And let me give you a side note to that.
11 Remember that just because something may appear in
12 somebody's notes doesn't mean that it trumps
13 somebody's memory.. Okay?

14 Now, questions and objections by lawyers is not
15 evidence either. Again, attorneys, have an ethical
16 duty to object any time that there's something that
17 goes on in a courtroom that they feel is improper.
18 And as you know, in this case, it was no different.
19 I told you that you may feel like cattle sometimes,
20 being herded in and out of the courtroom, and, in
21 fact, sometimes you kind of appeared to be that way.

22 Madam Forelady, if, during your deliberations,
23 somebody raises the fact that there was an objection
24 and my ruling on that, the extent I have let you see
25 it, you are to stop that. And if the juror refuses

1 to stop going into that area, then you are to let us
2 know by way of written note. Okay?

3 Now, also, ladies and gentlemen, anything that
4 you may have seen or heard when court is not in
5 session is not evidence. The bottom line, ladies
6 and gentlemen, is this: The only evidence on which
7 you are to decide this case is what you heard from
8 this witness stand and by the exhibits which have
9 been admitted.

10 Now, in South Carolina, we recognize two types
11 of evidence. The first is called direct evidence,
12 and it's pretty straightforward. Direct evidence is
13 the testimony of a person who asserts or who claims
14 to have actual knowledge of a fact, such as an
15 eyewitness.

16 Circumstantial evidence is the other type of
17 evidence, and I'm going to tell you a little more
18 about that in a second. But circumstantial evidence
19 is indirect evidence, or put another way, it is
20 proof of a chain of facts and circumstances from
21 which you can infer that another fact exists,
22 although that fact has not been proven directly.

23 And I'll tell you that the law makes absolutely
24 no distinction between the weight or value to be
25 given to either direct or circumstantial evidence.

1 You, the jury, are entitled to consider both.
2 There's not a greater degree of proof required for
3 circumstantial evidence to be considered; however,
4 you may not infer something by speculation or
5 surmise.

6 Now, also, to repeat the two types of evidence:
7 We have direct and circumstantial evidence in this
8 case, or evidence that we recognize in South
9 Carolina, rather. Direct evidence directly proves
10 the existence of a fact and does not require
11 deduction at all. Circumstantial evidence is proof
12 of a chain of facts and circumstances indicating the
13 existence of a fact.

14 Crimes may be proven by circumstantial
15 evidence, ladies and gentlemen. The law makes no
16 distinction between the weight or value to be given
17 to either direct or circumstantial evidence;
18 however, to the extent the State relies on
19 circumstantial evidence, all of the circumstances
20 must be consistent with each other, and when taken
21 together, point conclusively to the guilt of the
22 accused beyond a reasonable doubt.

23 If the circumstances merely portray -- excuse
24 me -- if the circumstances merely portray the
25 defendant's behavior as suspicious, the proof has

1 failed.

2 The State has the burden of proving the
3 defendant guilty beyond a reasonable doubt. This
4 burden rests with the State regardless of whether
5 the State relies on direct evidence, circumstantial
6 evidence or a combination of both.

7 Now, ladies and gentlemen, in deciding what the
8 facts are, you must consider all the evidence in
9 this case, and in doing this, you have to decide
10 which testimony that you want to believe and which
11 testimony you wish not to believe. You have a right
12 to disbelieve all or part of any witness' testimony
13 who appeared before you. You have a right to
14 believe all of any witness' testimony.

15 In making the decision of witness credibility,
16 you may, but, Madame Forelady, are not required to
17 take into account some of the following factors, and
18 let me give those to you:

19 You may ask yourself how well was a witness
20 able to see or hear or know about the things about
21 which that witness testified? How well was the
22 witness able to recall and describe those things by
23 which they testify? What was the witness' manner
24 while they're on the witness stand? In other words,
25 what was their demeanor like? Is there any reason

1 that a witness would want to give testimony that
2 would help or hurt one side or the other? Did that
3 witness have interest in the outcome of this case,
4 or did they have any bias or prejudice towards any
5 party or any matter or issue involved in this case?
6 You may ask yourself how reasonable was the witness'
7 testimony considered in light of all the testimony
8 in the case, and whether the witness' testimony was
9 contradicted by what that witness had said or done
10 at another time or by the testimony of other
11 witnesses or the other evidence that has been
12 admitted in this case.

13 Now, Madame Forelady, ladies and gentlemen of
14 the jury, those are some, but certainly not all the
15 factors that you may consider in making this
16 determination of witness credibility. And, of
17 course, as jurors, you do not check your common
18 sense at the door when you report for jury duty.
19 And so you can and you should use those things in
20 your day-to-day lives that you find indicative of
21 truthfulness or indicative of lack of truthfulness
22 when you make this determination of witness
23 credibility.

24 In making this determination, you can believe
25 as much or as little of any witness' testimony as

1 you think proper. You may believe all or part of
2 any witness' testimony. You may believe one witness
3 over several or several over one. But one thing you
4 cannot do and you shall not do is add up the number
5 of witnesses who may appear for one side or the
6 other in making this determination of witness
7 credibility because it does not matter to you which
8 side or where the truth comes from, but your search
9 is to try to find the truth from the evidence
10 presented in this case.

11 Also, ladies and gentlemen, you have heard
12 testimony from persons described as experts. As I
13 told you during the trial, persons who, by their
14 education or their experience, have become expert in
15 some field may state their opinion on matters in
16 their field of expertise and also state their
17 reasons for their opinion.

18 Expert testimony should be judged just like any
19 other testimony in this case. You may accept it,
20 you may reject it or give it as much weight as you
21 think it deserves considering the witness'
22 education, their experience, the reasons given for
23 their opinion, and all the other evidence in this
24 case.

25 I remind you, ladies and gentlemen, that the

1 fact that this defendant has been charged, arrested,
2 and indicted is not evidence of his guilt. These
3 are the documents I have in my hands, and they will
4 not go back with you to the jury room. These are
5 merely the documents which the State of South
6 Carolina uses to bring a defendant before you, the
7 jury, for a trial and a determination of their guilt
8 or innocence.

9 Also, the fact that they are self-indictments
10 means that you'll have to consider each indictment
11 on its own. In this case, they are somewhat
12 interrelated because one of the charges -- the
13 charges are, rather: Assault and battery with
14 intent to kill and possession of a weapon during the
15 commission of a violent crime. I will tell you now
16 and I'll tell you again that you may not find the
17 defendant guilty, if you think that is appropriate,
18 based on the testimony and evidence, of possession
19 of a weapon during the commission of a violent crime
20 unless you find him guilty of the other charge of
21 assault and battery with intent to kill. I will
22 tell you more about that in just a minute.

23 Now, in this case, ladies and gentlemen, the
24 defendant has pled not guilty to both the
25 indictments; therefore, that puts the burden on the

1 State of South Carolina to prove his guilt by proof
2 beyond a reasonable doubt.

3 A person charged with committing a criminal
4 offense in South Carolina is never, is never
5 required to prove himself or herself innocent. And
6 I'll charge you that it is an important rule of law
7 that a criminal defendant, no matter how serious or
8 not serious the charge may be, will always, will
9 always be presumed to be innocent of the crime for
10 which the indictment or indictments have been issued
11 unless guilt has been proven by evidence satisfying
12 you of that guilt beyond a reasonable doubt.

13 The presumption of innocence does not end when
14 you go back in your jury room and begin your
15 deliberations, but it accompanies this defendant
16 until you, the jury, reach a verdict of guilt based
17 on evidence satisfying you of his guilt beyond a
18 reasonable doubt.

19 It has been said that the presumption of
20 innocence is like a robe of righteousness that's
21 been placed upon the shoulders of the defendant
22 where it remains until it has been stripped from his
23 shoulders by evidence satisfying you of his guilt
24 beyond a reasonable doubt.

25 Now, ladies and gentlemen, the presumption of

1 innocence is not a mere legal theory. It is not
2 just a legal phrase. It is a substantial right
3 which every defendant is entitled unless you, the
4 jury, are satisfied from the evidence of guilt
5 beyond a reasonable doubt.

6 So that leaves me to what is a reasonable
7 doubt? I gave you a short version at the beginning
8 of this trial, and I'm going to redefine it for you
9 now. A reasonable doubt is the kind of doubt that
10 would cause a reasonable, sincere, and honest and
11 conscientious person to hesitate to act in an
12 important matter in their own affairs. Proof beyond
13 a reasonable doubt is proof that leaves you firmly
14 convinced of the defendant's guilt.

15 Now, there are very few things that we know in
16 this world with absolute certainty, and in criminal
17 cases, the law does not require proof that overcomes
18 every possible doubt. If, based on your
19 consideration of the evidence, you are firmly
20 convinced that the defendant is guilty of the crime
21 or crimes charged, you must find the defendant
22 guilty.

23 If, on the other hand, you think there is a
24 real possibility that the defendant is not guilty,
25 then you must give the defendant the benefit of the

1 doubt and find him not guilty.

2 A reasonable doubt may arise from the evidence
3 or from the lack of evidence.

4 And I further instruct you that a defendant is
5 entitled to every reasonable doubt that may arise in
6 a case. What that simply means is this: That if,
7 upon any issue essential to a conviction and a
8 verdict of guilt of the offense for which this
9 defendant has been charged, if you have any
10 reasonable doubt as to how that issue should be
11 resolved, it'll be your duty to resolve that in
12 favor of the defendant.

13 Now, ladies and gentlemen, in order to
14 establish criminal liability, criminal intent is
15 required. For example, the State -- excuse me --
16 for example, the mental state required to be proven
17 by the State for a particular crime might be
18 purpose, intent, knowledge, recklessness, or
19 criminal negligence. Criminal intent may be proven
20 by the State -- excuse me -- criminal intent must be
21 proven by the State beyond a reasonable doubt.

22 Criminal intent is always a matter that must be
23 determined by you, the jury, from the circumstances
24 shown to be surrounding the situation. There's no
25 way to prove intent to a mathematical certainty.

1 There's no way that medical science can dissect a
2 person's brain and determine what that person had in
3 their mind. So the law says that criminal intent
4 may be inferred from the circumstances shown to have
5 existed.

6 Now, ladies and gentlemen, this is how you make
7 the determination of whether or not the element
8 requiring intent was present. It is not necessary
9 to establish intent by direct and positive evidence,
10 but intent may be established by inference in the
11 same way as any other fact by taking into
12 consideration the acts of the parties and all of the
13 facts and circumstances of the case.

14 Criminal intent is a mental state, a conscious
15 wrongdoing. And, ladies and gentlemen, it'll be up
16 to you to determine what the defendant intended to
17 do based on the circumstances shown to have existed.
18 Criminal intent can arise from action or a failure
19 to act. It may arise from negligence, recklessness,
20 or an indifference to duty or to the consequences
21 that is considered by the law to be the equivalent
22 of criminal intent.

23 Ladies and gentlemen, I'll also instruct you
24 and tell you that -- and emphasize to you the fact
25 that the defendant in this case did not testify is

1 not and shall not be a factor that may be considered
2 by you in any manner whatsoever in your
3 deliberations.

4 Madam Forelady, if anyone attempts to interject
5 that fact into the deliberations, you stop it
6 immediately. Okay?

7 Now, that is the first aspect of my charge. I
8 notice that your eyelids are getting a little heavy
9 and I'm sorry for that. Would you like to stand up
10 a minute and kind of get a little break?

11 (Pause.)

12 **THE COURT:** Would anybody like any water or
13 coffee?

14 All right. Ladies and gentlemen, this is the
15 second aspect of my charge. This is the substantive
16 law that applies in this case. It will be the law
17 of assault and battery with intent to kill, the law
18 of possession of a weapon during the commission of a
19 violent crime, the law of self-defense and
20 habitation.

21 Now, ladies and gentlemen, in this case, the
22 defendant has been charged with assault and battery
23 with intent to kill. In order to prove assault and
24 battery with intent to kill, the State must prove
25 beyond a reasonable doubt that the defendant

1 committed an unlawful act of a violent nature to the
2 person of another with malice aforethought.

3 An assault occurs when a person unlawfully
4 attempts or offers to commit a violent injury upon
5 another person and have the present ability to
6 complete the attempted injury.

7 An assault is the intentional creation of a
8 reasonable fear of immediate bodily harm. It is not
9 necessary that the attempted injury or harm actually
10 take place. For example, if I walk up to you and
11 when we are within arm's length, if I were to draw
12 back to hit you, that is an assault.

13 A battery, on the other hand, is the unlawful
14 touching of another person by a person who has
15 committed the assault. An unlawful touching can be
16 caused by a part of the accused's body or by any
17 object that the accused puts in motion. A battery
18 is the completion of the assault by using or
19 applying force to another person, however slight, in
20 a rude, angry, or resentful manner without legal
21 justification for doing so. Using my earlier
22 example, if I carry through the assault by hitting
23 you, then that is the battery.

24 Ladies and gentlemen, malice is hatred, ill
25 will or hostility towards another person. It is the

1 intentional doing of a wrongful act without just
2 cause or excuse and with an intent to inflict an
3 injury or under circumstances that the law will
4 infer an evil intent.

5 Malice aforethought does not require that
6 malice exist for any particular time before the act
7 is committed, but malice must exist in the mind of
8 the defendant just before and at the time the act is
9 committed. Therefore, there must be a combination
10 of the previous evil intent and the act.

11 Malice aforethought may be expressed or
12 inferred. These terms, expressed or inferred, do
13 not mean different kinds of malice, but merely the
14 manner in which malice may be shown to exist, that
15 is either by direct evidence or by inference from
16 the facts and circumstances which are proved.

17 Expressed malice is shown when a person speaks
18 words which express hatred or ill will for another
19 or when the person prepared beforehand to do the act
20 which was later accomplished. For example, laying
21 in wait for a person or any other acts of
22 preparation going to show that the deed was within
23 the defendant's mind would be expressed malice.

24 Malice may be inferred from conduct showing a
25 total disregard to human life.

1 Ladies and gentlemen, if facts are proved
2 beyond a reasonable doubt sufficient to raise an
3 inference of malice to your satisfaction, this
4 inference would simply be an evidentiary fact to be
5 considered by you, along with the other evidence in
6 this case, and you may give it the weight you decide
7 it should receive.

8 A specific intent to kill is not an element of
9 assault and battery with intent to kill, but there
10 must be a general intent to commit a serious bodily
11 injury.

12 Intent means intending the result which
13 actually occurs not accidentally or involuntarily.
14 Intent may be shown by acts and conduct of the
15 defendant and other circumstances from which you may
16 naturally and reasonably infer intent.

17 Evidence of the character of the assault, the
18 character of the instrument used, the manner in
19 which it was used, the purpose to be accomplished,
20 and the resulting wounds or injuries may be
21 considered in determining the intent which -- with
22 which the assault was committed. Intent may be
23 inferred when it is demonstrated that the defendant
24 voluntarily and willfully commits an act, the
25 natural tendency of which is to destroy another's

1 life.

2 All right. Ladies and gentlemen, this is the
3 law of possession of a weapon during the commission
4 of or attempt to commit a violent crime. The
5 defendant is charged with possession of a weapon
6 during the commission of or attempt to commit a
7 violent crime. The State must prove beyond a
8 reasonable doubt that the defendant was in
9 possession of a firearm or visibly displayed what
10 appeared to be a firearm.

11 A firearm means any machine gun, automatic
12 rifle, revolver, pistol, or any weapon which will,
13 is designed to or may be readily converted to expel
14 a projectile.

15 In order to find the defendant guilty of
16 possession of a weapon during the commission of a
17 violent crime, you must first find the defendant
18 guilty of either committing a violent crime or
19 attempting to commit a violent crime.

20 I will charge you, ladies and gentlemen, that
21 assault and battery with intent to kill is, in fact,
22 a violent crime. The State must prove beyond a
23 reasonable doubt that the weapon furthered, advanced
24 or helped in the commission of the crime.

25 Now, in this case, ladies and gentlemen, the

1 defendant has raised the defense of self-defense and
2 habitation. And I'll tell you this: Self-defense
3 is a complete defense, and if it is established, you
4 must find the defendant not guilty.

5 The State has the burden of disproving
6 self-defense by proof beyond a reasonable doubt. If
7 you have a reasonable doubt of the defendant's guilt
8 after considering all the evidence, including the
9 evidence of self-defense, then you must find the
10 defendant not guilty.

11 On the other hand, if you have no reasonable
12 doubt of the defendant's guilt after considering all
13 of the evidence, including the evidence of
14 self-defense, then you must find the defendant
15 guilty.

16 The following elements are required to
17 establish self-defense: Number one, first, the
18 defendant must be without fault in bringing on the
19 difficulty. If the defendant's conduct was the type
20 which was reasonably calculated to and did provoke a
21 deadly assault, the defendant would be at fault in
22 bringing on the difficulty and would not be entitled
23 to an acquittal based on self-defense.

24 The second element of self-defense is that the
25 defendant was actually in imminent danger of death

1 or serious bodily injury or that the defendant
2 actually believed he was in imminent danger of death
3 or serious bodily injury.

4 If the defendant was actually in imminent
5 danger, it must be shown that the circumstances
6 would have warranted a person of ordinary firmness
7 and courage to strike out the fatal blow to prevent
8 death or serious bodily injury.

9 If the defendant believed he was in imminent
10 danger of death or serious bodily injury, it must be
11 shown that a reasonably prudent person of ordinary
12 firmness and courage would have had the same belief.

13 In deciding whether the defendant actually was
14 or believed he was in imminent danger of death or
15 serious bodily injury, you should consider all of
16 the facts and circumstances surrounding the crime,
17 including the physical condition and characteristics
18 of the defendant and the victim.

19 Now, ladies and gentlemen, the defendant does
20 not have to show that he was actually in danger. It
21 is enough if the defendant believed he was in
22 imminent danger and a reasonably prudent person of
23 ordinary firmness and courage would have had the
24 same belief. The defendant has the right to act on
25 appearances even though the defendant's belief may

1 have been mistaken. It is for you to decide whether
2 the defendant's fear of immediate danger of death or
3 serious bodily injury was reasonable and would have
4 been felt by an ordinary person in the same
5 situation.

6 If the defendant was on his own premises, the
7 defendant had no duty to retreat before acting in
8 self-defense.

9 Ladies and gentlemen, a person cannot be
10 required to make an exact calculation as to the
11 degree or amount of force which may be needed to
12 avoid death or serious bodily injury or bodily harm.
13 Therefore, in self-defense, the defendant has the
14 right to use the force needed to avoid death or
15 serious bodily harm.

16 The force used in self-defense does not have to
17 be limited to the degree or amount of force used by
18 the victim. The defendant has a right to use so
19 much force as appeared to be necessary for complete
20 self-protection and which a person of ordinary
21 reason and firmness would have believed to be needed
22 to prevent death or serious bodily injury.

23 If the defendant is justified in defending
24 himself or others and in firing the first shot, then
25 the defendant is also justified in continuing to

1 shoot until it is apparent that the danger of death
2 or serious bodily injury has completely ended.

3 Also, under the law of self-defense, the
4 defendant may take another's life in the defense of
5 others. The right to intervene to protect another
6 person is subject to the same rights and limitations
7 as the right of self-defense. The defendant may
8 take the life of a person who assaults a friend,
9 relative or bystander if that friend, relative or
10 bystander would have had the same right of
11 self-defense.

12 To show that the person being defended had the
13 right of self-defense, it must first be shown that
14 the person being defended and the defendant were
15 both without fault in bringing on the difficulty.
16 If the conduct of the person defended or the
17 defendant was the type which was reasonably
18 calculated to and did provoke a deadly assault, the
19 person would be at fault in bringing on the
20 difficulty and would not have the right of
21 self-defense; therefore, the defendant would not
22 have the right to use deadly force in defending that
23 person.

24 The defense of another person is excusable if
25 the defendant had reasonable grounds to believe and

1 in good faith did believe that the person being
2 defended was in imminent danger of death or serious
3 bodily harm from the victim. In deciding whether
4 the person defended actually was or that the
5 defendant actually believed the person was in
6 imminent danger of death or serious bodily injury,
7 you should consider all the facts and circumstances
8 surrounding the crime, including the physical
9 condition and characteristics of the parties.

10 The defendant does not have to show that the
11 person the defendant defended was actually in
12 danger. It is enough if the defendant believed the
13 person was in imminent danger. The defendant has a
14 right to act on appearances even though the
15 defendant believes he may have been mistaken. The
16 defendant must show that, under the circumstances as
17 they appear to the defendant, the defendant believed
18 the person needed was in danger -- excuse me -- let
19 me do that again.

20 The defendant must show that, under these
21 circumstances as they appeared to the defendant, the
22 defendant believed the person defended was in danger
23 and that a reasonably prudent person of ordinary
24 firmness and courage would have had the same belief
25 under the same circumstances.

1 Ladies and gentlemen of the jury, it is for you
2 to decide whether the defendant's fear of immediate
3 danger or serious bodily injury to the person
4 defended was reasonable and would have been felt by
5 an ordinary person in the same situation. The
6 defendant does not have to wait until the victim
7 gets the drop on the person defended. The defendant
8 has a right to act under the law of
9 self-preservation to prevent the victim from getting
10 the drop on the person defended.

11 In order to be entitled to defend another, the
12 person defended must have had -- excuse me -- where
13 the person being defended had no duty to retreat,
14 the defendant, likewise, would have no duty to
15 retreat.

16 The defendant had no -- the defendant had no
17 duty to retreat if, by doing so, the danger of being
18 killed or suffering serious bodily injury would
19 increase.

20 Now, ladies and gentlemen, that is the law of
21 self-defense. Let me let you have a break. I know
22 it's long and somewhat involved, so take a break
23 again, and I'm about at the close of my charge.
24 Okay?

25 May I see the attorneys over here right quick?

1 (The jury retires to the jury room.)

2 **THE COURT:** Counsel for the defense has
3 requested -- and don't let me put words in your
4 mouth, but the question as to the proper disposition
5 of the jurors' notes. It's been my practice to let
6 the jurors either take their own notes home or get
7 the Clerk to dispose of them and destroy them at the
8 end of the case, not to make them a part of the
9 record. I mean, I don't know that you were asking
10 that I make it a part of the record --

11 **MS. BALLARD:** No, sir, I was not asking to make
12 it part of the record. What I did want to ask is
13 that the Clerk take possession of them and destroy
14 them.

15 **THE COURT:** I'll definitely do that.

16 I assume that, Mr. Myers, you don't have any
17 problem with that, do you?

18 **MR. MYERS:** No, sir.

19 Now, as to the notes, you made a charge and I
20 think you said something about the notes shouldn't
21 trump something.

22 **THE COURT:** I'm sorry?

23 **MR. MYERS:** You made a charge on the notes, the
24 juror notes.

25 **THE COURT:** Right.

1 **MR. MYERS:** And I didn't quite get it, but it
2 was at the very beginning. You said something about
3 those notes should not trump what they heard. I
4 didn't get --

5 **THE COURT:** What I told them is what I told
6 them at the beginning of the case is this: That
7 just because something may appear in somebody's
8 notes doesn't trump some other juror's memory of
9 what happened in this case. They have to hash that
10 out.

11 **MR. MYERS:** Yes, sir. We submit to you the law
12 is that the one juror cannot share those notes with
13 other jurors, and they can't use their notes to try
14 to convince other jurors in deliberation. They're
15 personal notes for themselves.

16 **THE COURT:** I'm not familiar with that. I
17 don't know how in the world, from a practical
18 aspect, if they're going to deliberate anything, how
19 that can be the case. I mean, it may well be. Give
20 me the thing about it.

21 **MR. MYERS:** I'll try to find it, but I've tried
22 many condemnation cases where they had to take notes
23 because of figures and everything. But the charge
24 has always been, they are personal to the individual
25 juror and one juror can't bring those notes out to

1 argue with others and rely on those notes. They are
2 personal and can't be revealed to other jurors.

3 **MS. BALLARD:** Your Honor, I just think that's
4 absurd.

5 **THE COURT:** Well, I think that's totally
6 impractical, but if you have it, Mr. Myers, I'll be
7 glad to give them a further instruction, but right
8 now, I'm not going to limit them to that. Okay?

9 **MR. MYERS:** Okay. I'll try to look for it.

10 **THE COURT:** All right. Let me go back. From
11 your text pages, it's page 29 and 30. I'm going to
12 start there and then go back to habitation.

13 **MS. BALLARD:** You're starting at duty to
14 retreat?

15 **THE COURT:** Right.

16 **MS. BALLARD:** Okay. Thank you.

17 (Brief recess.)

18 **THE COURT:** All right. Is the State ready to
19 proceed?

20 **MR. MYERS:** Yes, sir.

21 **THE COURT:** Defense ready?

22 **MR. GARRETT:** Yes, Your Honor.

23 **THE COURT:** All right. Very good.

24 Would you bring the jury back in, please,
25 ma'am?

1 (The jury returns to the courtroom.)

2 **THE COURT:** All right. Ladies and gentlemen,
3 we're not too terribly far, so bear with me. I need
4 to go back over one thing and it won't be long.
5 This has to do with duty to retreat.

6 In order to be entitled to defend another, the
7 person defended must have had no other probable way
8 to avoid the danger of death or serious bodily
9 injury than to act as the defendant did in this
10 particular case. Where the person being defended
11 had no duty to retreat, the defendant, likewise,
12 would have no duty to retreat. The defendant had no
13 duty to retreat if, by doing so, the danger of being
14 killed or suffering serious bodily injury would
15 increase.

16 Now, ladies and gentlemen, that concludes the
17 law of self-defense, but also, I'm going to charge
18 the law of habitation of defense.

19 If the defendant or a member of the defendant's
20 household is attacked in the defendant's own home,
21 the defendant may use the force which appears to be
22 needed to protect himself or his household from
23 death or serious bodily injury.

24 If a trespasser refuses to leave the home when
25 asked to leave, the defendant may use the necessary

1 force to eject the trespasser. If, in the effort to
2 eject the trespasser, the life or safety of the
3 defendant or a member of the household is
4 jeopardized, the defendant may take the life of the
5 trespasser. The kind and degree of force which are
6 justified depend on the conduct of the trespasser.

7 If a person entitled to -- if a person entered
8 the dwelling at the invitation of a member of the
9 household, the person becomes a trespasser if the
10 person refuses to leave when asked.

11 If, while legitimately exercising in good faith
12 the right to eject a trespasser, the defendant is
13 assaulted by the trespasser and fears death or
14 serious bodily injury, the defendant would be
15 without fault in bringing about the difficulty.

16 Whether the defendant was acting in good faith
17 in attempting to eject the victim and was assaulted
18 in the process is a question for you to determine.

19 Ladies and gentlemen, a person who attempts to
20 force himself into another person's dwelling is a
21 trespasser. And the law permits an occupant of the
22 dwelling to use as much force as may be reasonably
23 necessary to prevent the obtrusion or to accomplish
24 the expulsion.

25 Finally, ladies and gentlemen, the General

1 Assembly has provided that night hunting in this
2 state is unlawful. However, this prohibition does
3 not prevent any owner of property from protecting
4 the property from destruction by wild game, as
5 provided by law.

6 Madam Forelady, ladies and gentlemen of the
7 jury, that is the substantive law that you must
8 apply in this case. I do not send my charges back
9 to the jury, so if any time you have a question, if
10 you have a question, we'll bring you back out here,
11 and I'll be glad to explain it in as much detail as
12 many times as you need. Okay?

13 Now, with that being said, ladies and
14 gentlemen, let me give you a few final points to
15 consider before we excuse you: Number one, you
16 don't serve as jurors to be partisans or advocates
17 for either side. In fact, you were chosen by both
18 sides because each believed that you could be fair
19 and impartial and decide this case solely on the
20 evidence and according to the law without bias or
21 prejudice towards one side or the other.

22 So when you go back and when you begin your
23 deliberations, which we will instruct you in just a
24 few minutes, I want you to use your good experiences
25 in life and your common sense and your sense of

1 logic and reason in engaging in your deliberations.

2 So let me say something about deliberations.

3 Deliberations is defined as this: It's a careful
4 consideration weighing up with a view to a decision.

5 Regardless of what you may think about our
6 judicial system, I would submit to you that the
7 genus of our judicial system is it allows 12 good
8 men and women who come from different backgrounds,
9 who have different life experiences and perspectives
10 to sit through a trial, to listen to the evidence,
11 to listen to the law, then to go back to talk about
12 that evidence thoroughly and courteously and to
13 ultimately reach a verdict.

14 And we call them deliberations for a reason.
15 You are to consider all the evidence in a careful
16 and deliberate manner, and you're supposed to do so
17 and you shall do so in a calm and courteous manner.
18 Again, you're not partisans or advocates for one
19 side or the other. You are judges of the facts.
20 And your sole interest in this case is to try to
21 determine the truth from the evidence that you have
22 presented to you here in this courtroom.

23 When you are to begin in your deliberations,
24 I'm going to ask and instruct you to listen to
25 everybody's views and their points of view, talk

1 through and walk through all the evidence and
2 discuss it thoroughly and courteously. And
3 remember, if you're doing something deliberately,
4 you should not be in a hurry and you should not be
5 in a hurry today. This is the State's only day in
6 court and this is the defendant's only day in court,
7 and this case is important to both sides.

8 In order for your verdict to stand, it will
9 necessarily have to be unanimous. But with that
10 being said, each of you must decide this case for
11 yourself, and you should only do so after you have
12 impartially considered all the evidence in this
13 case, you've discussed it fully with your fellow
14 jurors, you've listened to their views and their
15 points of view.

16 Don't be afraid to change your opinion if the
17 discussion persuades you that's the right thing to
18 do. On the other hand, do not come to a decision
19 simply because your other jurors think it's the
20 right thing to do.

21 Now, it is important that you try to reach a
22 unanimous verdict, but you can only do so after
23 you've made up your own mind. Do not change an
24 honest belief about the weight or the effect of the
25 evidence simply to reach a verdict, in other words,

1 simply to appease your fellow jurors.

2 With that being said, Madame Forelady, if,
3 during the course of your deliberations, there shall
4 ever be any questions, what I want you to do is
5 write the question down on a piece of paper, sign
6 your name, knock on the door, we will receive it
7 back here in the courtroom, and we'll act on it
8 accordingly. Okay?

9 Also, it will be your function to preside over
10 the deliberations. You're supposed to do that in a
11 democratic manner and not a dictatorial manner.
12 Okay?

13 Now, the verdict form in this case is as
14 follows, and it will be your job, Madame Forelady,
15 to fill it out at the end of the case if the jury
16 can reach a unanimous verdict. The order in which
17 the options appear is of no consequence. I have to
18 put them in some order, and so just pay no attention
19 to the order they appear in.

20 These are your options: As to indictment
21 number 2010-GS-35-52, assault and battery with
22 intent to kill, we, the jury, unanimously find the
23 defendant not guilty. The other option would be, as
24 to indictment 2010-GS-35-52, assault and battery
25 with intent to kill, we, the jury, unanimously find

1 the defendant guilty.

2 Once you have determined which of those the
3 jury unanimously agrees upon, initial it or check
4 it. Okay?

5 Now, if and only if you were to find the
6 defendant guilty of the charge of assault and
7 battery with intent to kill, then you would consider
8 whether or not he would be guilty of possession of a
9 weapon during the commission of a violent crime. If
10 you find that the defendant is not guilty of assault
11 and battery with intent to kill, then you may not
12 and shall not consider the possession of a weapon
13 during the commission of a violent crime charge.

14 But the options for that charge are as follows:
15 As to the indictment 2010-GS-35-49, possession of a
16 weapon during the commission of a violent crime, we,
17 the jury, unanimously find the defendant not guilty.
18 Or as to indictment 2010-GS-35-49, possession of a
19 weapon during the commission of a violent crime, we,
20 the jury, unanimously find the defendant guilty.

21 Once the jury has reached a decision on
22 everything, you are to sign your name and you are to
23 fold over this verdict form, knock on the door, and
24 we'll receive it here in the courtroom. Okay?

25 Now, I'm going to ask that you go back to your

1 jury room right now. I need to go over with the
2 State and the defense whether or not I have
3 misstated some issue of law or I have neglected to
4 tell you something I should have. Do not begin your
5 deliberations yet.

6 And then before we do, we'll send word back
7 that it's okay and we'll bring the alternates back
8 out with us. But I'm going to ask the alternates to
9 go in at this juncture, but do not begin your
10 deliberations. Okay?

11 (The jury retires to the jury room.)

12 **THE COURT:** All right. Mr. Myers, other than
13 the issue of the jurors' notes, any additions or
14 exceptions to the charges given?

15 **MR. MYERS:** No, sir.

16 **THE COURT:** Ms. Ballard, any additions or
17 exceptions to the charges given?

18 **MS. BALLARD:** Not as given, Your Honor. I just
19 want to renew my objections to -- and my request
20 that you charge the defendant's request to charge
21 number 5, number 8, and number 11, which we've
22 already discussed and they're part of the record.
23 And I would incorporate my previous arguments,
24 rather than add to the record more.

25 **THE COURT:** Very good. As well as your motion

1 for a mistrial.

2 **MS. BALLARD:** Yes, sir.

3 **THE COURT:** All right. Anything that we need
4 to do to clean up the record, make sure it's
5 protected?

6 **MR. MYERS:** Yes, sir. I'd like to put in as a
7 Court's Exhibit the defendant's list of witnesses
8 where, on Number 3, they listed Mary C. Worley, the
9 defendant's mother, as a potential State {sic}
10 witness.

11 **THE COURT.** Okay. That will be a Court's
12 Exhibit.

13 **MS. BALLARD:** That will not go back to the
14 jury.

15 **THE COURT:** No, absolutely not.

16 **MS. BALLARD:** Thank you, Your Honor.

17 **THE COURT:** All right. Now, guys, if y'all
18 will double check your exhibits. Here's the verdict
19 form.

20 Madame Clerk, once they get that checked, just
21 go ahead and tell them they can begin their
22 deliberations.

23 I'm going to go back and start doing more
24 research. And before, Mr. Henderson, we let the
25 verdict come in, I'm going to make a decision on the

1 mistrial.

2 **MS. BALLARD:** Thank you, Your Honor.

3 (Court's Exhibit Number 12, defendant's
4 witness list, marked for identification.)

5 (The jury commences its deliberations at
6 11:25 a.m.)

7 (The Judge excused the alternates.)

8 (A recess transpired.)

9 (Court's Exhibit Number 13, jury note,
10 marked for identification.)

11 **THE COURT:** All right, guys. The jury has
12 reached a verdict.

13 Would you bring the jury in, please -- hold on
14 for a second. Is there anything from the State
15 before we bring the jury in?

16 **MR. MAYE:** Nothing from the State, Your Honor.

17 **THE COURT:** From the defense?

18 **MS. BALLARD:** Nothing from the defense.

19 **THE COURT:** Would you bring the jury in?

20 **MS. BALLARD:** Oh, Your Honor --

21 **MS. MAYE:** Mistrial.

22 **THE COURT:** Oh, yeah. I just -- hold them up.

23 Thank you so much. I had told counsel I was
24 denying the motion. I want to put my grounds on the
25 record. And the basis for me denying it is the

1 Meggett case. I thought it was in line with what we
2 had here. But I can tell you what I do recall, and
3 I'll double check it, is, number one, the comment
4 was in response to information or issues that were
5 placed in the record by defense in this matter. So
6 it was commenting on the evidence or the lack of
7 evidence.

8 In no way was it burden-shifting commentary nor
9 did it suggest or infer that the defendant is guilty
10 because he failed to testify, and no comment on the
11 defendant's failing to testify whatsoever. It was
12 just simply commenting on the lack of evidence or --
13 that was raised by the defendant. And, as such, to
14 the extent I have to do this, I find that the
15 comment was harmless beyond a reasonable doubt, if
16 that is, in fact, required. It's supposed to be an
17 appellate court standard. If I need to make that
18 finding, I've made it based on the fact that it is
19 as I've stated.

20 Anything further?

21 **MS. BALLARD:** No, sir.

22 **MR. MAYE:** Your Honor, was the standard that
23 they were looking for clear and convincing evidence?

24 Or what was the standard that you announced
25 that you thought that the Judge needed to make his

1 finding?

2 **MS. BALLARD:** Beyond a reasonable doubt.

3 **MR. MAYE:** Beyond a -- that's fine. I just
4 wanted to make sure the defense was satisfied.

5 **THE COURT:** And I said it was harmless beyond a
6 reasonable doubt, which is, I think, the standard
7 they asked me to address.

8 **MR. MAYE:** I just wanted to make sure that that
9 was the standard they were satisfied with.

10 **THE COURT:** Thank you.

11 Okay. Would you bring the jury in, please?

12 (The jury returns to open court to report
13 its verdict at 3:07 p.m.)

14 **THE COURT:** Madame Forelady, I'm informed by
15 the Clerk that the jury has reached a verdict; is
16 that correct?

17 **MADAME FORELADY:** That's correct.

18 **THE COURT:** Is it unanimous amongst all 12?

19 **MADAME FORELADY:** Yes, it is.

20 VERDICT OF THE JURY

21 **THE COURT:** I've been handed the form. This is
22 the verdict, as to indictment number 2010-GS-35-52,
23 assault and battery with intent to kill, we, the
24 jury, unanimously find the defendant guilty.

25 As to indictment 2010-GS-35-49, possession of a

1 weapon during the commission of a violent crime, we,
2 the jury, unanimously find the defendant guilty.
3 Signed, the Forelady.

4 Ladies and gentlemen, if that was your verdict
5 in the jury room and if that is your verdict now,
6 would you raise your right hand?

7 Let the record reflect that all 12 jurors
8 raised their right hand.

9 All right. Ladies and gentlemen, the Court is
10 never, ever concerned about your verdict, but the
11 Court is concerned that you, as jurors, perform your
12 duties the way you promised that you would. And
13 I've watched you throughout this case, and it's been
14 a week-long trial, and you've stayed engaged and
15 you've paid attention and you did what you're
16 supposed to do.

17 And I tell this to all jurors that I go --
18 wherever I am, that regardless of what you may
19 believe or think about our judicial system, that
20 without citizens like yourselves who are willing to
21 take time away from their homes and their jobs and
22 their families and spend time up here doing the
23 unpleasant task of having to sit in judgment of your
24 fellow citizen here in McCormick County, then
25 there's no way to resolve our disputes in a

1 civilized manner. And if you don't have an outlet
2 to resolve your disputes in a civilized manner, then
3 the only way to do it is in an uncivilized manner,
4 and we see examples of that around the world.

5 So I'm not praising you one way or the other
6 about your verdict, but I thank you for your service
7 and thank you for performing your duties as you said
8 you would. The good thing is, you don't have to
9 come back for three years.

10 Does anybody need a statement from the Clerk
11 for their employer?

12 Do you normally mail those out or do you have
13 them here?

14 **THE CLERK:** I'll give them to the bailiff.

15 **THE COURT:** And there will be a check coming to
16 you in the mail, and it will be a whopper, so don't
17 spend it all in one place, please. But we do thank
18 you in all seriousness. I know this was a tough
19 case.

20 Anything from the State before I excuse this
21 jury?

22 **MR. MAYE:** Nothing. Thank you, Your Honor.

23 **THE COURT:** From the defense?

24 **MR. GARRETT:** No.

25 **THE COURT:** Okay. Ladies and gentlemen, I'm

1 going to ask that you go back to your jury room for
2 one second. I'm going to step back there and I'm
3 going to talk to you one second, then we'll come
4 back out here in the courtroom. Okay?

5 (The jury was excused.)

6 **THE COURT:** I'll be back in just one moment.

7 (Pause.)

8 **THE COURT:** Mr. Worley, Mr. Garrett, would you
9 come around, please, Ms. Ballard, Mr. Henderson?

10 **MS. BALLARD:** Your Honor, can you note for the
11 record my motions being made before sentencing, and
12 I'll put them on the record afterwards?

13 **THE COURT:** Yes, ma'am. Would you rather make
14 them now or would you rather wait till --

15 **MS. BALLARD:** No, I'll be happy -- as long as
16 you'll note for the record that they were made, I'll
17 put them on the record afterwards.

18 **THE COURT:** Absolutely.

19 Mr. Garrett, would you like to give me some
20 information that I haven't heard about Mr. Worley?

21 **MR. GARRETT:** Well, you know, Your Honor, he's
22 55 years of age. He went to high school in Aiken
23 through the 12th grade. He did a year and a half
24 over there at the Aiken Tech part where he studied
25 machining and welding.

1 Judge, he has hardly any criminal record.
2 Years ago, back in the 70s, appears he had a DUI, a
3 simple possession of marijuana, and a failure to
4 stop for a blue light. And other than that, Your
5 Honor, he's led an exemplary life with his family,
6 his brother, his mother. They're a good family.

7 This is a horrible tragedy. As you said, it's
8 a tough case. It's a horrible tragedy. And, you
9 know, the jury has spoken, we understand that, but I
10 ask you to have mercy.

11 You've seen the case as well. You saw the
12 facts and circumstances about how it came about.
13 And obviously, when you have a case like that, the
14 jury's spoken and I respect that, but by the same
15 token, this is so out of character for Joe, and I
16 just think that you should consider that in
17 sentencing him. And, hopefully, at his age,
18 depending on what you do, as to whether or not he'll
19 ever be out of jail.

20 **THE COURT:** How much time has he been in jail;
21 do y'all know?

22 **MR. GARRETT:** He's been in jail for four years
23 and a month.

24 **MR. HENDERSON:** Since November 15th of '09. He
25 has never had bond set, Your Honor.

1 **MR. GARRETT:** I'll say this, too, Judge. He's
2 never had the first disciplinary, as I understand
3 it, with the jail. He's not caused any problems.
4 He's sat over in jail waiting this trial all this
5 time. He's not been a problem.

6 He also developed some sickness during the time
7 he was there. He's got a serious hernia and he's
8 going to need a hernia operation, that's developed
9 during the period of time that he was in jail, but I
10 would say he's been exemplary.

11 **THE COURT:** Well, do you -- since I know this
12 case is going to be appealed, do you wish for your
13 client to give a statement or would you rather him
14 not?

15 **MR. GARRETT:** I would rather him not, Your
16 Honor, because of those issues that may still have
17 to be addressed, and Ms. Ballard will address those
18 after sentencing, Your Honor.

19 **THE COURT:** Is there anything other than the
20 motion? Do you have anything to add to what's been
21 said, Ms. Ballard?

22 **MS. BALLARD:** Your Honor, the only thing that,
23 other than I need to put my motions on the record is
24 I would request that the Judge consider delaying
25 sentencing and having a mental evaluation done of

1 Mr. Worley so that you could have -- his condition
2 has deteriorated while he's been incarcerated, and I
3 think it would be a tremendous benefit to the Court
4 to have the benefit of a current mental evaluation.

5 **THE COURT:** Has there been one performed before
6 today?

7 **MS. BALLARD:** No, sir.

8 **THE COURT:** No?

9 **MS. BALLARD:** No, sir.

10 **THE COURT:** Okay. I'll do that.

11 I'm going to have him held over until --

12 **MR. HENDERSON:** That's fine, Your Honor.

13 **MS. BALLARD:** Absolutely. We'd like to have
14 the evaluation --

15 **THE COURT:** Would there be a -- I can always
16 ride back down here or would you consider bringing
17 him to Anderson?

18 **MS. BALLARD:** Yes, sir.

19 **THE COURT:** We'll cross that bridge --

20 **MS. BALLARD:** Yes, sir. We'd like to get the
21 mental evaluation done so Your Honor has a complete
22 picture before you sentence him.

23 **MR. HENDERSON:** And, I guess, also the full
24 presentence report, Your Honor, because this is kind
25 of an unusual case. And I think the mental

1 health --

2 **THE COURT:** When you say a full, what are you
3 referring to?

4 **MR. HENDERSON:** The probation agent talking to,
5 you know, the family, talking to Mr. Rushton's
6 family. I mean, just getting -- I know there will
7 be a lot of stuff that the Court's already heard --

8 **THE COURT:** Just a presentence evaluation?

9 **MR. HENDERSON:** Right. But there's a lot of
10 stuff --

11 **THE COURT:** Including the psychological.

12 **MS. BALLARD:** Yes, sir.

13 **MR. HENDERSON:** But there's a lot of stuff the
14 Court didn't hear because Mr. Worley did not
15 testify.

16 **THE COURT:** Sure. Well, that's why I asked,
17 because I had some -- I can tell you that I had some
18 concerns, not about his capability of participating
19 in trial, when he stood up and I gave him his Fifth
20 Amendment rights, there just seemed to be something
21 there, couldn't put my finger on it. But, yeah,
22 I'll do that.

23 Mr. Rushton?

24 **MR. RUSHTON:** Yes, sir, Your Honor.

25 **THE COURT:** You have already testified. You

1 are the victim. You have a constitutional right to
2 be heard again if you would like to.

3 **MR. RUSHTON:** Your Honor, Mr. Maye has a
4 victim's impact statement I would just like to pass
5 to you and he's going to give you a brief summary.

6 **MR. MAYE:** Your Honor, if we're going to carry
7 out the full sentence at another point in time, I'm
8 not sure -- with all due respect, I'll do anything
9 you'd like for me to do, but I think that's more
10 appropriate to carry it out at the time that you
11 conduct your sentence.

12 **THE COURT:** And what is your position about
13 having a presentence evaluation at this point? I
14 think it would be appropriate to do, but, I mean, is
15 there any reason why I shouldn't do that?

16 **MR. MAYE:** Your Honor, we've never been
17 apprised that he had any mental difficulties now. I
18 mean, I'm sure that they want to do that for the
19 purpose of mitigation.

20 I don't think there's ever been any issue with
21 this gentleman's competency. And certainly, from
22 the State's standpoint, we see -- with all deference
23 to the Court, your call completely and totally, but
24 we know of absolutely no reason to put this off
25 other than for them to try to generate some sort of

1 mitigation evidence in this case for somebody who
2 has no -- we've never had any indication from the
3 defense that there's any issue with his mental
4 health or mental stability in this case, of course
5 -- because if we would have, we would have insisted,
6 with a case of this gravity and this magnitude and
7 this seriousness, that we'd have had him evaluated.
8 We just think that's an attempt to generate some
9 sort of mitigation at the last minute. We'll leave
10 that to your discretion.

11 **THE COURT:** Well, you know, under the
12 circumstances, when we have somebody who has
13 relatively no record, the DUI and marijuana is not
14 such that caused a whole lot of concern at all,
15 compared to what happened in this case, and in
16 somebody the age that Mr. Worley is, who has
17 otherwise seemed to have been a productive citizen,
18 I think it would be appropriate to go ahead and have
19 the presentence evaluation.

20 Once that is received, we'll schedule a time
21 and place for the sentencing at that point. Okay?

22 **MS. BALLARD:** Thank you, Your Honor.

23 **THE COURT:** Now, Mr. Rushton --

24 **MR. RUSHTON:** Yes, sir.

25 **THE COURT:** -- you will be notified through the

1 Solicitor's office of that date and time. And
2 you'll be granted an opportunity to speak or I
3 thought what I heard you say is you have an impact
4 report that you would --

5 **MR. MAYE:** I do. I'm going to hand up a victim
6 impact statement for the Court. You can certainly
7 have it in between now and then. We'll be happy to
8 make a full presentation whenever the Court
9 dictates.

10 And like I said, Your Honor, that's with all
11 due deference, I completely -- we'll be wherever you
12 say, whenever you say, in order to carry out the
13 sentencing.

14 **MS. BALLARD:** Can we have a copy of that as
15 well?

16 **MR. MAYE:** Sure. We'll get you a copy of it.

17 **THE COURT:** I'm going to leave this with the
18 Clerk's office. Having not ever requested a
19 presentence report, I assume they will come back to
20 the Clerk and I will be notified of that? Is that
21 how it normally goes?

22 **MR. HENDERSON:** Your Honor, the ones I've seen
23 done or have had done is probation will send it to
24 the trial judge and also copy the attorneys and I
25 think the original would go to the clerk.

1 **THE COURT:** Okay. Well, once it comes in then,
2 I will just convene a conference call?

3 **MS. BALLARD:** Yes, sir.

4 **THE COURT:** And we'll go forward from there.
5 Again, I appreciate everybody's professionalism
6 during the case, but we're in recess.

7 **MS. BALLARD:** Can I put my motions on the
8 record?

9 **THE COURT:** Yes, you can.

10 **MS. BALLARD:** Your Honor, we move for a new
11 trial on a number of grounds. The first ground is
12 based on the error by Judge Keesley in denying
13 Mr. Worley the immunity that is provided under the
14 Castle Doctrine. As Your Honor knows, we've
15 attempted to appeal that, and our appeal eventually
16 was dismissed, and that issue still remains.

17 We also move for a new trial on the basis of
18 the disappearance during the original Castle
19 Doctrine hearing of the entire transcript of
20 Mr. Worley's testimony. I don't know how much
21 detail Your Honor's aware of about that, but --

22 **THE COURT:** I have way little bit, but not --
23 go ahead.

24 **MS. BALLARD:** What occurred was when we
25 attempted to appeal Judge Keesley's order, the court

1 reporter had a break-in at her car -- in her car,
2 which was out on Garners Ferry Road in Columbia.
3 And the backup tapes, the electronic recording, and
4 the paper recording of Mr. Worley's testimony was
5 stolen. Nothing else was stolen.

6 And during the appeal, that became an issue
7 because, obviously, the appellant has to create a
8 record, and we attempted to do that. And we were in
9 the process of reconstructing that record before
10 Judge Keesley, upon order of the Court of Appeals,
11 when the Isaac opinion came out.

12 So, at this point, we were denied the
13 opportunity to complete the reconstruction of that
14 record, which we would have had available to us to
15 use during these trial court proceedings. So we
16 think a new trial is appropriate for that reason as
17 well.

18 Also, the grounds that we moved for a directed
19 verdict, the self-defense and the Castle Doctrine
20 issues that should have been ruled on as a matter of
21 law.

22 The issue that I raised, Your Honor, regarding
23 my request that you rule as a matter of law
24 Mr. Rushton was not qualified as a deputy sheriff at
25 the time he entered on Mr. Worley's premises;

1 failure to give the charges, number 5, 8, and number
2 11 that were in our request to charge; your failure
3 to grant a mistrial when the improper comments were
4 made by the Solicitor during the closing argument.
5 And just for the record, I wanted to state again
6 that there were two comments. We did not object
7 until the second comment.

8 And for all of those reasons, Your Honor, we
9 believe a new trial would be appropriate.

10 **THE COURT:** Thank you, ma'am. You noted them
11 on the record.

12 Let me tell you, once I pass sentence,
13 Mr. Worley, you will have ten days to appeal. Okay,
14 sir? That will be after the sentence is passed
15 down. Okay, sir? I just want to make sure that's
16 on the record.

17 Anything further from the defense?

18 **MR. GARRETT:** No, sir.

19 **MR. HENDERSON:** No, sir, Your Honor.

20 **MR. MYERS:** Your Honor, the only thing that I
21 have, just to make the record clear, I know the
22 statement from the defense in this case, that the
23 only things that were taken from the court reporter
24 in this case that she had stolen was purely just the
25 defendant's cross, there were other portions of

1 testimony from another witness that were taken as
2 well. So it was not entirely -- we didn't get a
3 complete transcript of some of the other testimony
4 from the Castle Doctrine hearing, so it was not like
5 that was the only thing that was missing. She had a
6 variety of items stolen from her. A police report
7 was filed, and I think all that's been fully
8 investigated.

9 **MS. BALLARD:** There was cross of one witness,
10 Your Honor. And we'd handed up as a Court's Exhibit
11 that portion of the reconstruction dealing with
12 exhibits that have occurred to date. But the court
13 reporter testified, Court Administration testified,
14 there was a full investigation into the loss of
15 Mr. Worley's testimony. And I just can't stress
16 enough how important it would have been to have the
17 benefit of that testimony at this proceeding.

18 **MR. MYERS:** And the State would have certainly
19 -- would have liked to have had the -- they had the
20 benefit of having sworn testimony from all of the
21 State's witnesses, and we did not have the benefit
22 of having any sworn record with which we would have
23 been able to cross-examine Mr. Worley in this case,
24 Your Honor. Thank you.

25 **THE COURT:** Okay. Does everybody feel like

1 they have what they need to on the record?

2 **MS. BALLARD:** Yes, sir. Thank you very much.

3 **MR. MYERS:** Yes, sir.

4 **THE COURT:** For the jurors who happen to be out
5 in the gallery, what I did, there was a request to
6 delay sentencing to have an evaluation done, there's
7 -- probation will do some reports, a psychological
8 evaluation will be performed. I usually would not
9 do that, but under the circumstances of this case, I
10 feel like it would be appropriate to have that done.
11 Once I get that back, I'll either come back here or
12 they'll come meet me where I am and we'll pass
13 sentence down. All right. Thank you.

14 All right. Ladies and gentlemen, sine die.

15

16 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 trial of the captioned cause, relative to appeal in the Criminal Court for McCormick County, South Carolina, on the 16th - 20th of December, 2013.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

October 4, 2015

s/Stacy L. Sheppard

Stacy L. Sheppard, RPR
Circuit Court Reporter

1 State of South Carolina
2 County of McCormick Court of General Sessions

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 Defendant.)

14 June 14, 2013
15 Edgefield, South Carolina

16 B E F O R E:

17 The Honorable William P. Keesley, Judge.

18 A P P E A R A N C E S:

19 Donald V. Myers, Solicitor
20 Ervin J. Maye, Assist. Solicitor
21 H. Franklin Young, III, Assist. Solicitor
22 Attorneys for the State

23 Desa A. Ballard, Esquire
24 Carson McCurry Henderson, Esquire
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Stacy L. Sheppard, RPR
Circuit Court Reporter

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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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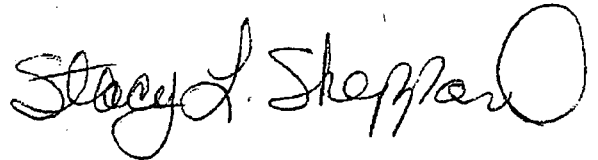
C E R T I F I C A T E

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

FILED
CIVIL DIVISION

2013 JUL 16 PM 12:12



Worley

res of Aikow
310 Vanderbilt Dr.
CLERK OF COURT
McCORMICK COUNTY, SC

- 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 guest ^{100%} totally loading40 years ago some ~~big~~ ^{big} 105

- have an alarm

- turn on

- mom went to bed

- went outside to smoke cig

- there was a fox out there
they have a cat

Sweat pig

- 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} 2000
- ~~shot~~
- had not shot weapon in 20 years
- had shot gun as well
- next door
- Q which neighbor said there was a fox NAME?
- out there
- new neighbors the shettields 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 was a
street light

- have suffered break in to there

it was now stop ringing
COOR ~~BECC~~

- 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
but can't 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

- doorbell started ringing

- Bobby Rushmore
↳
- return to duty
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
- b/h 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 wake
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 Ind.

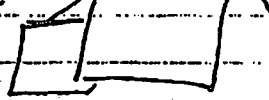
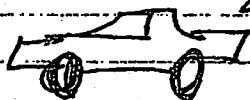
1st sentence

Expert says this has nothing to do w law only police procedure

- active shooter are shots being fired now

(more is better than loss they had 3 ^{and/or} guys go out)

- they sought the ~~Shoffields~~ 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

ways
it's
both
ways

when this was not an active shooter don't rush, no big deal but do all of these extreme measures regarding dealing with them...
one good statement
20-20 collective 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
utrasone 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

↳ never heard firecrackers

↳ 10 - 10:30

↳ his wife called the Sheriff
did not speak to Joe

↳ talked with ~~MS Sheffield~~ MS. Wolkey
she said she talked to
Joe Wolkey

↳ moved in 2006

↳ had a good relationship w
Margaret (his mom)

↳ made complaint met father
nice guy - relevance
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~~

- stalled

- 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

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.

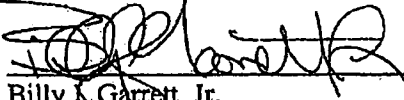
B. CROSS EXAMINATION BY SOLICITOR MYERS

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.

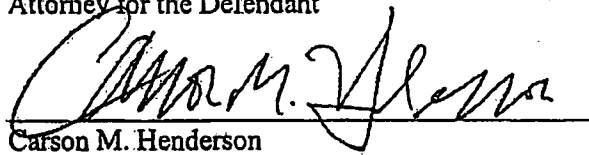
78. Joe always shot the rifle in front of the house toward the lake.
79. On November 14, 2009, Joe saw what appeared to be a fox sometime between 11:00 p.m. and midnight. That's why he got the rifle and shot.
80. The rifle and ammunition were in a gun cabinet with other guns in Joe's mother's bedroom.
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.

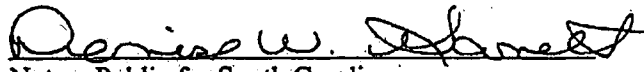


Billy J. Garrett, Jr.
Attorney for the Defendant

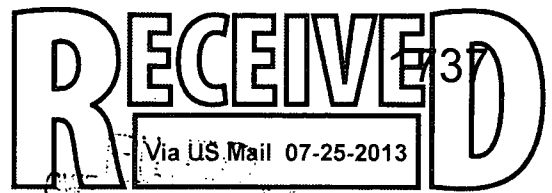


Carson M. Henderson
Attorney for the Defendant

SWORN TO AND SUBSCRIBED BEFORE
ME THIS 7TH DAY OF SEPTEMBER, 2012.



Notary Public for South Carolina
My Commission Expires: 11-22-13



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

Judge's Notes from Hearings Held May 31 – June 1, 2013
Re: Castle Doctrine Hearing / Immunity Under Defense of Persons and Property Act

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

Worley
#1

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

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

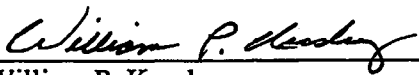
Re-Direct Examination of Joe Ross Worley

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

①

GS-McCormick

5-31-11

State v. Woley

motion

stiller jury

not swear then

then take any motions

A objects

4

pretrial will take a good one-half day

trial not commenced until jury sworn

wants witnesses requested

pursuant to §16-11-44a

law enforcement officer

(2)

(Garrett)

Joe Ross Worley

53 y/o

3/5/58

resident of Asher Co.

Colley Acres

lives w/ mother

lives here in Mc Lee Co. over 40 yrs.

would come to Mc C. prop Thurs. - leaves on Sun.

father worked @ SRS

now 140 - mother

had break-in 30-40 yrs ago

2x

someone has tried to break in to the house.

began alarm exp. - turns on when leaves

mother went to bed

went outside to smoke cig.

saw 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

WPA
#6

(3)

shoot things thrown down toward water when birds
stopped shooting across lake - 20 yrs. ago

always someone shooting somewhere
c/f 9/09, had not shot weapon for 20 yrs.

Sheffields - neighbors told about fox
shot rifle 3-4x between Sept & Dec.
2x each?

c/f 11/05 - no one had come to a & said could
not be shooting weapon @ night

not ~~drinking~~ drinking or on drugs 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

house is double insulated

doorbell ring is on 2d floor - with him up

put on clothes

went to sliding glass door & pitch balls. 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

brunfar runs out w/ diary, pencil, flashlight

(5)

1745

told bryson to freeze
dropped flash light

Ⓢ

gun aimed @ him

shot - turned bryson around

bryson went back, the time & car toward Δ

shot into trees

told him he better haul ass

did not hear say anything

went outside & got flashlight & gun

saw Sheriff's car - pointed toward neighbor's house to
the side

trying to decide if Sheriff or bryson was shot
if cop car, wanted to

↙

mark location of car

went upstairs

noticed neighbor's light on

walked up to main st.

car came across driveway

show flashlight in face

person said do not do this flashlight in face
show " " " " "

he said again

copy
#9

(6)

person said he just woke up - ^{asked who he was} - he said he was Sheriff.

person told them look him up

no uniform

if had not aimed gun @ him, would have been the
 us in fear of dying
 gave him no choice

never identified himself as a law enf. officer

did not know police procedure

had
 automatic weapon

flashlight, dark gun, shadow - ran toward grandmother

never heard since

somebody cut on a blue light, but doesn't know where

no idea if was a police officer

#

Sheffield's informant about for
 man told A's mother

Cat was injured

around helen day of '09 started shoot @ fox
3-4x

Sheepdogs or it.

Stevens or left

went out on balcony to smoke cigarette
saw fox ~ 11-12 - left went to bed -
saw shadow

shots right together

put gun underneath couch

mother was asleep

A went to sleep ~ 12 m.

pitch black dark

light up tops of trees

when smoking, all light was on in house.

no idea what time doorbell started

did not ask who was ringing doorbell

when went to look out sliding glass door, pitch black. - no lights

only light on is night light

thinks light is lit?

A cat on outside light
 turned on outside light
 took one step out

told to freeze

arms

No idea who it was

never identified him

200 ft to Sheffield's home

never heard said anything

never said did not give a f--

one person was out there

max
 ckr

gun turned his sword - he ran toward flower bed,
 then embankment

car was behind her, pulled off behind neighbor's shop
 on driveway

did not call police

not known in 2009

↓

2010

Wade
 #12

Re-Direct

flashlight

guy beside A kept say, "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 object

saw it aim @ A

fox could have caught

~~ff~~
it - cross

ROBERT E. RUSHTON

call taken when came on S/D

worked ~ 6 yrs. - resigned, then 4 yrs.

was in Iraq as International Police Advisor

Ref. 1. ~~Exhibit~~ Exhibit
 Judge Curran order

- Reconstruction Hearing -
 Judge Kearney / Stacy Sheppard

Ref 2 Exhibit

Remun Thomas 1st witness rep by Mr. McElroy w/ AG's office
5/11/11 + 6/11/11 in memo

Police report w/ attachments 03 exhibit

STATE
 + AG no questions

Judge

Deion Allen - witness #2

Exhibit 04 + 05

Atty + witnesses 1 + 2 executed

Gm with #3

Pull notes mailed copy to Mr Garrett, solicitor + Judge.

Put copy in file as well.

2013 JUN 14 PM 2:05
 CLERK
 COURT
 CLERK

State
 6-1-11

Note: Pull Tablet on GSCP for my notes on memo... -

FILED
GWENDOLYN C. CHES

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 6 pm for further instruction.

- #80 Valerie Dubose - 3rd shift protect

- #231 Peter Shaffer - OK

- Pre-Trial

- Motion to request witness in courtroom (see last entry)
motion denied

- Joe Ross Worley	12:17 - 12:54	Garrett	1:15 - 1:21
	12:54 - 1:15	Myers	1:21 - 1:22

Lunch 2:20

- Bobby Rushon 2:25 - 4:14 Garrett 4:24
4:14 - 4:23 Myers

- George Kirkland 4:25 - 5:10 Garrett

Allen Shelfield - 5:11 Garrett 5:31
Myers

- Nick Moore

- 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 - 2yr Probation

- Diane Bletcher - WGS - 18 mts

1754

STATE OF SOUTH CAROLINA)
)
 COUNTY OF MCCORMICK)

IN THE COURT OF GENERAL SESSIONS

2011 DEC -8 AM 11:30
 CLERK OF COURT
 MCCORMICK COUNTY, SC

STATE OF SOUTH CAROLINA,)
)

-vs-)

JOE ROSS WORLEY,)

Defendant,)

AMENDED ORDER ON
 RECONSIDERATION OF THE
 DEFENDANT'S MOTION TO
 BAR PROSECUTION
 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 McMahon. 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 a not a law enforcement officer under the Act. There does not appear to be any dispute as to whether McAllister and Moore were law

1756

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.

WPd
#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.

1758

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.

WPL
#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.

WP
#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

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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.

WPA
#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

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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.

Was Deputy Rushton a Law Enforcement Officer Under the Act?

WPC
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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.

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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.

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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.

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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.

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(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.

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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

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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.

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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.

WPA
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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

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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.

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

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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).

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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

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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.

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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

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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

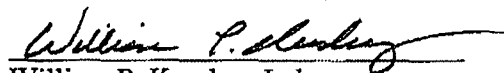
#24 The defendant argues that he is entitled to immunity because he was resisting an unlawful arrest. The court disagrees. There was no evidence that Mr. Worley was placed under arrest or that there was an attempt to place him under arrest prior to his shooting Mr. Rushton. The preponderance of the evidence 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

STATE OF SOUTH CAROLINA
COUNTY OF MCCORMICK

ELEVENTH JUDICIAL CIRCUIT
IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
 -VS-)
 JOE R. WORLEY)
)
 DEFENDANT.)
 _____)

2010-GS-35-49
SENTENCING HEARING
TRANSCRIPT OF RECORD

JUNE 30, 2014
MCCORMICK, SOUTH CAROLINA

BEFORE:

THE HONORABLE R. LAWTON MCINTOSH, JUDGE

APPEARANCES:

ATTORNEY FOR PLAINTIFF:
ERVIN J. MAYE, SOLICITOR

ATTORNEYS FOR DEFENDANT:
BILLY GARRETT, ESQUIRE
BEATTIE ASHMORE, ESQUIRE

TARA T. SCOTT, CVR
CIRCUIT COURT REPORTER

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
	Court's Exhibit 1:		Victim Impact Statement

1 THE COURT: This is the matter in the State of
2 South Carolina v. Joe R. Worley. Back in December of 2013
3 we had a trial where Mr. Worley was found guilty under
4 indictment 2010-GS-35-52 of assault and battery with intent
5 to kill, and under 2010-GS-35-49 possession of weapon during
6 the commission of a violent crime. Defense counsel
7 requested that there be a pre sentence investigation and
8 evaluation prior to my passing sentence. And that's the
9 purpose of why we're here today. Are you ready to proceed?

10 MR. GARRETT: Yes, sir.

11 THE COURT: Okay. Would you like to call -- put any
12 testimony on the record or call any witnesses or would you
13 like to present?

14 MR. GARRETT: No, Your Honor.

15 THE COURT: I'll be glad to hear from you first. And
16 I'm going to hear from the victim later.

17 MR. GARRETT: Thank you, Your Honor. If it please the
18 Court. Your Honor, as his Honor knows, this is a very
19 tragic and unfortunate set of circumstances that combined
20 unusually and unforeseen in this tragic situation that
21 happened over there that evening. Sometimes, you know, the
22 truth is stranger than the fiction. It's just unbelievable
23 the convergence of all the various things that happened --
24 that had to happen and the way they happened in order for
25 this to have occurred. You know, it starts out with, you

1 know, with Joe being an animal lover with his cat, Sweet
2 Pea, and, you know, his intent to shoot the fox that was
3 bothering his cat is not something that is bad. He
4 shouldn't have been shooting out there probably at that time
5 of night, but in the scheme of things, how bad is that? I
6 mean, it's completely lawful for him to do it. And the
7 statutes that your read they say that he had a right to do
8 that.

9 And unusually, Judge, I mean, did you see the work --
10 the lattice work where they had worked to build a place
11 special for this cat? You know, some people just really
12 have a love for their animals, you know. And so he's out
13 there trying to do that. Nobody had ever come to him, the
14 evidence will show. Nobody had ever come to Joe and said,
15 "Joe, don't be shooting out there at that time of night."
16 There was some suggestion that his mother was told that, but
17 there was no evidence that anybody ever told Joe don't shoot
18 out there at night. So that -- if somebody had said to Joe,
19 "Don't shoot out there at night", we might not even be here.

20 The other part is not -- if we had waited just a few
21 hours until the morning time, it's four o'clock in the
22 morning, if we had have waited until daylight where
23 everything wouldn't have been dark, the officers would have
24 been able to see, Mr. Rushton would have been able to see,
25 Mr. Worley would have been able to see. Again, an unusual

1 set of circumstances. How many possibilities are there,
2 Your Honor, that a police officer, if he is and was, was not
3 in uniform? I mean, how unusual could that be on the
4 darkest night. And that's another thing, the darkest night
5 in that month. So now we got a police officer, if he was or
6 not, not in uniform because they hadn't got it yet. Again,
7 a combination of unforeseen, unfortunate circumstances that
8 pulls us in, sucks us into this situation.

9 Now, no sirens. No blue lights. And I understand
10 these officers have their reasons for not doing that. But
11 this was not an undercover scene. There was no reason that
12 they didn't have some blue lights on or do something to
13 announce their presence, other than their testimony is, you
14 know, "We told him we were police officers. He said he
15 didn't care." But, you know, the Court, I hope, listening
16 to the testimony knows that these happen in split seconds.
17 They're not like -- I mean, it happened real quick. So
18 there's no question that but that when Joe was standing on
19 his balcony he had his gun in his port position. He never
20 aimed it at that officer until Mr. Rushton found it
21 necessary to aim his gun, and for all practical and intents
22 and purposes, probably going to shoot him.

23 And some of the testimony was -- in some of the prior
24 testimony that we were unable to get that he was going shoot
25 him if he didn't put his gun down. But there were very few

1 seconds in there where all this happened. Now, Judge, I
2 hate to say it, but if I were in that situation personally,
3 and I didn't know who that was out there that aimed a gun at
4 me, I don't know if I wouldn't have done the same thing. I
5 might be sitting in this same courtroom. I know the jury
6 disagreed with that, and I certainly respect their decision.
7 And I'm not trying to argue against their findings, Your
8 Honor. I'm just saying God help me to ever be in that
9 situation, standing on my own deck, under my own eave with a
10 gun and I see somebody out there who I don't know, who's not
11 in uniform and he takes his gun and he aims up and shoots
12 me.

13 The other part that I think is important, Judge, if he
14 really wanted to kill him, Your Honor, if he really wanted
15 to kill him when he hit him and knocked him down to the
16 ground when he hit his hand and knocked him to the ground,
17 this 30-06 weapon is a very, very powerful weapon. It could
18 have very easily killed him. He had him dead to rights. He
19 was on the ground.

20 Another unfortunate circumstance, we've got a house
21 that's weird. I mean, this house is insulated beyond
22 anything I've ever heard of, and it's only got one door for
23 entrance and exit. And so Officer Rushton, or Mr. Rushton,
24 not knowing where the entrance and exit was when he's
25 escaping, he's running towards the very place that my client

1 would either have to get in or get out of. Obviously,
2 again, a convergence of facts and circumstances that you
3 just can't make up.

4 You know, we made a big deal about this small
5 flashlight, but if you go back and look at the photographs
6 when they were doing their research one night, and it's in
7 the evidence, it's one of those big, long flashlights. So
8 for Mr. -- for Joe here to see somebody out there with a
9 little old bitty flashlight, when he would expect a police
10 officer to have a longer flashlight, again goes to his state
11 of mind. Was he really wanting to hurt somebody or was he
12 trying to defend himself?

13 Now, Joe's got no history of violence. Does a man
14 become 50 years old in our lives without a history of
15 violence and all of a sudden become violent? Maybe so, but
16 it's unusual. There's no history of violence by Joe. He's
17 got some minor violations with the law, but nothing of any
18 real substance. Why would he all of a sudden want to pick
19 on a police officer? Why would he want to call a police
20 officer out and why would he want to shoot a police officer?
21 What kind of idiot or fool would want to shoot a police
22 officer? Who would plan -- you know, if he was a member of
23 some kind of, you know, gang or some kind of, you know,
24 right-wing conspiracy, whatever all that stuff is then it
25 might be a little different here.

1 This man stays home with his mother. He takes care of
2 his mother in his home between Aiken and McCormick. He had
3 been shooting his gun in McCormick all these years. Nobody
4 ever complained about it because it wasn't against the law.
5 It's in the county. In spite of the fact that he's been in
6 jail all this time, he's never caused anybody over at the
7 McCormick County Jail any problem. He's been a model
8 prisoner. If he was a bad sort, he would be out here doing
9 bad things, even in prison. But he's not doing anything bad
10 in prison. As far as I know, he's been a model prisoner.
11 So he's done good in there.

12 He comes from a good family. As I said, his brother
13 served in the service. His mother is 88 years old, and he
14 was home taking care of her. And these bullets that they
15 tried to make out as some kind of cop killer bullets, you
16 know. I'm certain that they would have prosecuted him under
17 the federal level if they could have. But, as we well know,
18 it's not against the law to have those bullets. It wasn't
19 by him either, it was his father who prepared those bullets,
20 not him.

21 Now, His Honor can bring him up and give him 25 years
22 if that's what His Honor decides to do. I mean, we're
23 standing before you for justice. It's a serious crime, I
24 understand that. But I ask you to look at the humanity of
25 this case. The other part of it is if he's convicted of it

1 and His Honor orders restitution to try to help Mr. Rushton
2 with his hand that's horribly deformed for the rest of his
3 life, I mean, there's no money there for him to pay.
4 Whereas, if you put him on probation, let -- you know,
5 convict him for the time that he's served. He's almost
6 served five years already. He's almost served five years.
7 And he's been a model citizen. Let him get out and go to
8 work and start paying Mr. Rushton back for your restitution
9 when you determine what the restitution amount is. Ringing
10 him up is not going to help Mr. Rushton, nor is it going to
11 help the state of South Carolina. He's not been a problem.
12 He wouldn't be here but for this congregation of the most --
13 I mean, it's just impossible for him to be here in this
14 circumstance. So I just ask the Court to consider all these
15 issues. You've heard the case.

16 One other thing, Judge, his testimony got stolen. Have
17 you -- in all -- I mean, to add insult to injury, he comes
18 to court, he testifies under oath, he's cross-examined by
19 Mr. Donny Myers, the greatest prosecutor there is in this
20 state and the longest serving, and he withstood. But all of
21 a sudden that testimony gets stolen. You know, he could
22 have had that. And now after sitting in jail a lot of
23 years, it's just kind of unfair to then try to force
24 somebody to testify against themselves after they've already
25 stood up in court, cross-examined and there was a record.

1 And then he was not allowed to use it. I just ask the court
2 to consider those things.

3 And one other thing, there was a comment made during
4 the closing about his not testifying. That is -- you know,
5 that just makes things just so unfair. So it is what it is.
6 The jury has made its decision, and I ask to put it in your
7 good hands and give us a sentence that we can work -- we can
8 live with, also one that will do good for society and
9 mitigation. He's already served a lot of time.

10 THE COURT: Do any of the other attorneys have anything
11 you want to add to that?

12 MR. ASHMORE: Your Honor, if I may very briefly?

13 THE COURT: Yes, sir.

14 MR. ASHMORE: Good afternoon, Your Honor. Beattie
15 Ashmore. First, let me apologize for the scheduling snafu.
16 I was in federal court this morning. Apologies to Solicitor
17 Myers and all these fine officers for being here today.
18 But, Your Honor, I know you've seen the pre sentence
19 investigation report. It reflects, Your Honor, two prior
20 convictions of DUI, simple possession of marijuana, so he
21 really doesn't have any prior convictions to speak of, Your
22 Honor. He's 56 years old. I have been involved in this
23 case for almost five years because of federal intervention
24 at the onset. And I'm here to tell you, Judge, I have seen
25 a decline in Mr. Worley over the last five years. This has

1 impacted him greatly, as it would most people being
2 incarcerated, but particularly with regard to Mr. Worley,
3 Your Honor. He is not the man he once was. Jail has had a
4 very negative impact on him physically, emotionally,
5 mentally, Your Honor. And I would ask you to take that into
6 consideration. And we're here, Your Honor, simply asking
7 for justice as Mr. Garrett has outlined. And you've got a
8 ton of discretion here today. We understand that. And would
9 ask you to impose what you feel to be the most reasonable
10 sentence.

11 THE COURT: All right. Mr. Myers?

12 MR. MAYE: May it please the Court, Your Honor. And
13 with all deference to the defense in this case, basically
14 what we've heard is a revisiting of arguments that were
15 rejected by both Judge Keesley during the Castle Doctrine
16 hearing, who resoundingly -- I mean, he absolutely rejected
17 their version of the facts of it, to the extent that he
18 recused himself and he said that he had so judged the facts
19 in this case that he was incapable of continuing acting as
20 the trial judge. The jury has rejected all those arguments
21 and has basically said that that is not an accurate version
22 of the facts in this case.

23 Ultimately, Your Honor, we've got a police officer in
24 this case that served in Iraq who came back here on his
25 first night back and gets shot by Mr. Worley. There's just

1 no way to sugarcoat it in this case, Your Honor. Mr. Worley
2 was a man that wanted to shoot a police officer that night.
3 He had rounds chambered in that weapon that were made for no
4 other purpose than to penetrate body armor. Now, they have
5 proffered what we would maintain, and we would maintain the
6 jury agreed with us, is an absolutely audacious and
7 preposterous version of the facts that somehow he was an
8 environmentalist, and he put that off on someone else that
9 these bullets were made to reduce the amount of lead as some
10 sort of environmental concern. The record was clear from
11 the officers that testified in this case, and the experts,
12 there's no other reason to possess rounds like this other
13 than to penetrate either a hardened target or body armor.
14 He was trained as a machinist. It would have certainly
15 taken someone with that level of training and sophistication
16 to manufacture those rounds.

17 This is an individual that was not even supposed to
18 possess any firearms under federal law. I mean, it was
19 clear he wasn't supposed to have any firearms at all in this
20 case.

21 THE COURT: Based on?

22 MR. MAYE: Based on his various record.

23 THE COURT: Why was he not supposed to have --

24 MR. MAYE: He had a previous conviction. We are told by
25 the ATF officer that reviewed this, he had a previous

1 conviction in this case for failure to stop for a blue light
2 that under federal law would have prohibited him from
3 possessing any weapons under federal law. We were told that
4 by Shawn Stilo, ATF.

5 THE COURT: That didn't show up in our pre sentence
6 paperwork.

7 MR. MAYE: I don't know that on the State's side it
8 would have, Your Honor. I don't think that they reviewed
9 that. I can go back and review Agent Stilo's notes, but
10 they did say that he was conclusively an individual that was
11 prohibited from possessing any firearm under federal law.
12 So he should not have had a firearm in any regard under
13 federal law.

14 THE COURT: Do you disagree with that, Mr. Garrett?

15 MR. GARRETT: I do, Your Honor. Under the -- as I
16 understood it, under the federal law. I understand that
17 there was a three year sentence imposed on him way back
18 yonder --

19 THE COURT: But he did have a failure to stop for a blue
20 light?

21 MR. GARRETT: He did. He did have a failure to stop for
22 a blue light that carried more than three -- I think carried
23 three years, at the time. But I also want to point out that
24 the bullets themselves were not unlawful under the federal
25 law. And you can always possess a weapon in self defense.

1 There's numerous federal cases on that point, especially out
2 of the California side where somebody can use a weapon to
3 hunt, fish or to defend yourself. And so...

4 THE COURT: Excuse me, Mr. Myers, for interrupting.

5 MR. MAYE: And, Your Honor, I'm going to go back and
6 refresh my recollection, but that was exactly what we were
7 advised by ATF. He was prohibited under federal law from
8 possession a firearm. Your Honor, in this case he's
9 certainly got a right to exercise his right to trial. He
10 has done so in this case. I worked many years, I guess, for
11 Judge Baggett. One of the things that he told me is
12 certainly there is no penalty for exercising your right to
13 trial. But certainly there are considerations for
14 individuals that accept responsibility. In this, Your
15 Honor, like I said, the version of facts that they posited
16 that he was somehow acting in self defense, that this
17 officer was not adequately addressed or dressed as a police
18 officer, that he didn't know it was a police officer, you've
19 got the testimony of all the officers out there, that they
20 beat on the door, they screamed, they yelled, they
21 identified themselves as law enforcement officers.

22 This is a case of just absolute and pure malice. The
23 officers in this case have testified that in response to
24 them identifying themselves as police officers in this case,
25 that he responded directly to that, "I don't give a fuck."

1 And that's the version of the facts that the jury found was
2 true, and that's the version of the facts that Judge Keesley
3 recognized was true in this case as well. At no time did he
4 ever call law enforcement. They try to posit this dream
5 scenario that he believed somehow he was under assault from
6 a burglar. At no time did they ever summon law enforcement
7 out.

8 After he shot Bobby Rushton, and while he was down, he
9 did fire again and try to strike him, but just missed him
10 again. He fired a second time while Bobby was down. He
11 then reloaded these same bullets with the armor piercing tip
12 loaded in them, reloaded that weapon, came outside. We've
13 got testimony from the officers in this case that once he
14 gets outside on the ground he is looking for them and
15 searching for them, "Where are you, you son of a bitch or
16 son of a bitches." That continues on even after the fact
17 that the -- it is clear that he has shot a police officer.
18 The Sheriff of this county goes back out afterwards, after
19 he is gone, and collected up evidence in this case, moved
20 fragments of his shattered gun into his police car,
21 collected his flashlight, put it into the police car there.
22 The Sheriff encounters him there and asks him, "Who shot my
23 deputy." He responds, "I did. He had no business ringing
24 my damn doorbell." He is not talking anything about at that
25 point in time that he believes he has mistakenly shot a

1 police officer because he thought he was a burglar. His
2 response was, "He had no business ringing my damn doorbell."
3 All of this talk about him believing it was a burglar, that
4 these rounds were done for some environmental purpose, we
5 just maintain are just generating what was an audacious
6 version of the facts in this case to try to mitigate the
7 truth that the jury has accepted in this case is that he
8 knew he was a police officer, he was adequately identified
9 as a police officer, and this individual intentionally shot
10 him with rounds that had no other legitimate purpose other
11 than to defeat body armor. I don't know what was in his
12 mind or what would possess someone to manufacture weapons
13 like that or rounds like that. They have no legitimate
14 sporting purpose. They have no other -- there's no other
15 explanation why anybody would make those. And we would
16 maintain certainly that's what the jury has accepted as fact
17 in this case. They say that he has been well suited for
18 jail. And we would certainly maintain that he's not well
19 suited to be out on the street. He's got a continuing
20 pattern of bad behavior. It is certainly a tragedy for
21 Bobby Rushton. His life has forever been changed. I know
22 that he has passed up previously a statement involving the
23 impact to his life in this case. He survives all of that to
24 come back here and be shot at the hands of Mr. Worley. It's
25 just the ultimate tragedy. Here's an individual that was

1 utterly devoted to being a police officer. He can't carry
2 that out. He's lost a finger off that hand. It's a miracle
3 that he wasn't killed out there that night. And we just
4 believe that it was ongoing pattern of animus that night
5 that manifested itself over and over again. We would
6 certainly ask that you hand down a sentence with your wisdom
7 and discretion that addresses the gravity of this case and
8 the version of the fact that the jury has stated as fact in
9 this case.

10 THE COURT: Mr. Rushton, do you wish to add anything,
11 say anything further on the matter, or do you want to refer
12 to your written statement?

13 MR. RUSHTON: I'll just let my written statement stand.

14 THE COURT: Okay. I will make that a court exhibit.

15 MR. MAYE: Your Honor, I did receive some information
16 from the Sheffields in this case, the complaining victims to
17 begin with.

18 THE COURT: Right.

19 MR. MAYE: They are also here today. They're very
20 concerned. They would ask that anything that you perhaps
21 would sentence. He's not a property owner out there. They
22 don't want to be around him in any regard. And if -- with
23 this being a violent crime, if he was to come out on
24 community supervision or something afterwards, they have
25 asked that he have absolutely no contact with them. They

1 are very much afraid of him. They have testified against
2 him in this case. We would certainly maintain that they are
3 the complaining victims in this case initially. As the
4 result of their complaints to law enforcement about him
5 being out there and being drunk and disorderly and
6 indiscriminately firing his weapon, Officer Rushton
7 responded to the case, and he ultimately became a victim at
8 that point in time. We would like for you to address that
9 as well.

10 THE COURT: I'll be glad to hear from the Sheffield's as
11 well if they want to add. I have your testimony. I've read
12 back through it and my notes.

13 MR. SHEFFIELD: The testimony has everything. I have
14 nothing else to say. I discussed what he just said to you.

15 THE COURT: I just wanted to give you an opportunity.

16 MR. SHEFFIELD: Thank you.

17 MR. MAYE: Thank you, Your Honor.

18 THE COURT: Anything further from either side?

19 MR. GARRETT: Your Honor, I'll just point out, you know,
20 for any sentence Mr. Worley will be happy to stay out of
21 McCormick County period. So he has no reason to ever, ever
22 have any contact with them period. I don't think you'll see
23 Mr. Worley back regardless of what happens in the end.

24 THE COURT: Let me tell you. I read back through my
25 notes. I read back through my law clerk's notes and the pre

1 sentence investigation. And there was something that struck
2 me as odd that somebody like Mr. Worley, who really
3 ostensibly didn't have much of any kind of a record that
4 gave me much pause or concern, would act in such the manner
5 that he did. But the testimony was clear that you did act
6 in that manner. And I know that you are saying that -- or
7 your attorneys would raise the issue that it was somebody
8 that he believed to be breaking into your home. But that
9 you had been out shooting a fox. I found that not plausible
10 at all. I found that those -- changing those bullets, and I
11 looked at them. I shoot and I hunt. And I just didn't
12 believe that they were anything other than for piercing
13 abilities. The thing that kind of stands out to me about
14 this case is that for you to have been so quick on the shot.
15 Seems to me that you had designed to carry out what you did.
16 And that for you to cut off -- cut on the light, cut off and
17 for you to be able to shoot that officer as quickly as you
18 had that your gun had to be aimed and ready and cocked, in
19 my opinion. Further, under any testimony in this case, that
20 I recall the fact that you were so quick to shoot, whether
21 it was an officer or not, can't be supported, in my
22 judgment. I think that you were probably a menace to the
23 neighborhood certainly had a huge impact on this gentlemen's
24 life. You have four fine attorneys. They can't do anything
25 other than what the facts are. But it's my job to sentence

1 you in this case. And I'm going to sentence you under the
2 2010-49 possession of a weapon during the commission of a
3 violent crime to five years. On the assault and battery with
4 intent to kill will be twenty years. They will be
5 concurrent. Good luck to you. There will be no contact
6 with the victims

7 MR. GARRETT: Your Honor, may we renew all of our prior
8 motions?

9 THE COURT: You absolutely should and you may. I think
10 you're probably protected on the record. But just if you
11 want to, I'll deny those motions. If you want to go ahead
12 and articulate them now that will be fine.

13 MR. GARRETT: I won't need to, Your Honor.

14 THE COURT: Okay.

15 MR. GARRETT: They are previously stated. What I also,
16 Your Honor, for time served, I'd --

17 THE COURT: I have written out it's November 15, 2009.

18 MR. GARRETT: Yes, sir.

19 THE COURT: According to my notes. Gentlemen,
20 attorneys, y'all did a fine presentation. I appreciate it.

21 (END OF REQUESTED TRANSCRIPT OF RECORD)

22

23

24

25

1 Certificate of Reporter

2 I, the undersigned, Tara T. Scott, CVR, Official Court
3 Reporter for the Eighth Judicial Circuit of the State of
4 South Carolina, do hereby certify that the foregoing is a
5 true, accurate, and complete transcript of record of all the
6 proceedings had and evidence introduced in the trial/hearing
7 of the captioned case, relative to appeal, in the Circuit
8 Court for McCormick County, South Carolina, on the 30th day
9 of June, 2014.

10 I do further certify that I am neither of kin, counsel,
11 nor interest to any party hereto.

12 July 10, 2015

13

14

15

Tara T. Scott

16

Circuit Court Reporter

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STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM MCCORMICK COUNTY

R. Lawton McIntosh, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOE ROSS WORLEY,

APPELLANT

APPELLATE CASE NO. 2014-001497

MOTION TO HOLD APPEAL IN ABEYANCE
ANDMOTION 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 of 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

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 Keelsey 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's 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,

Suran B. Hackett for

John H. Strom

Appellate Defender

ATTORNEY FOR APPELLANT

This 4th day of May, 2016.

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.

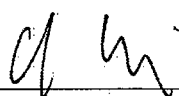
CERTIFICATE OF SERVICE

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.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: May 12, 2025

The South Carolina Court of Appeals

The State, Respondent,

v.

Joe Ross Worley, Appellant.

Appellate Case No. 2014-001497

ORDER

Appellant filed a notice of appeal from his convictions for assault and battery with intent to kill and possession of a weapon during the commission of a violent crime. Appellant asserts the trial court erred in denying his motion for immunity pursuant to the South Carolina Protection of Persons and Property Act. See S.C. Code Ann. § 16-11-450 (2015).

Previously Appellant filed a notice of appeal from the circuit court's denial of his motion for immunity. During the pendency of that appeal, the court reporter's tapes were stolen and only a partial transcript of the immunity hearing was available. This court remanded the case to the circuit court to reconstruct the record. After the circuit court held its reconstruction hearing, but before the circuit court issued its order, the South Carolina Supreme Court issued its decision in *State v. Isaac*, 405 S.C. 177, 747 S.E.2d 677 (2013), finding the denial of a motion for immunity is not immediately appealable. This court rescinded the remand and dismissed Appellant's appeal. Appellant was subsequently tried and convicted.

Appellant now files a motion to hold this appeal in abeyance and remand the case to the circuit court for a reconstruction of the record. The motion is granted and this case is remanded to the McCormick County Court of General Sessions. Counsel for Appellant is ordered to contact counsel for Respondent and the circuit court judge, the Honorable William P. Keesley, within fifteen days of this order to determine if any additional hearings are necessary and whether the transcript can be reconstructed. Counsel for Appellant shall provide an update to the clerk of this

court no later than thirty days from the date of this order, with a copy to counsel for Respondent.

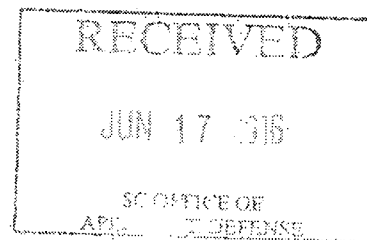

FOR THE COURT

Columbia, South Carolina

FILED

June 17, 2016

cc: The Honorable William P. Keesley
The Honorable Gwendolyn Dorn Chiles
Alan McCrory Wilson, Esquire
~~John Harrison Strom, Esquire~~
John Benjamin Aplin, Esquire



1 State of South Carolina

Court of General Sessions

2 County of McCormick

3
4
5 State)

6)
7 v.)

Transcript of Record

10-GS-35-049 - 051

8 Joe Ross Worley)

9 Defendant.)

10 October 25, 2016

11 McCormick, South Carolina

12
13 B E F O R E:

14 The Honorable William P. Keesley, Judge.

15
16 A P P E A R A N C E S:

17 J. Benjamin Aplin, Assist. Attorney General
Attorney for the State

18 John H. Strom, Esquire
19 Attorney for the Defendant

20
21
22
23
24 Stacy L. Sheppard, RPR
25 Circuit Court Reporter

1 I N D E X

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E X H I B I T S

14	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
15	D-1	Affidavit	21	21
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1 (The following proceedings were held on
2 October 25, 2016.)

3 **THE COURT:** This is in the matter of the State
4 versus Joe Ross Worley. We're convened today based
5 upon an order of the Court of Appeals to reconstruct
6 the record.

7 My recollection, and I stand to be corrected by
8 the attorneys if I state anything incorrectly, was
9 that we had a hearing in 2011 related to the Defense
10 of Persons and Property Act. At that time, we
11 didn't have the benefit of some of the subsequent
12 cases that have come down regarding the proper
13 procedure to use in those hearings.

14 At the conclusion of the hearing, I issued an
15 order which denied immunity under the Protection of
16 Persons and Property Act, and the understanding then
17 was that there was a direct appeal of that. That
18 has since been clarified by the Supreme Court that
19 that's not the procedure that you would use.

20 In any event, I also, in that order, made a
21 determination that because the findings that I had
22 to make in that were so tied to the credibility of
23 the witnesses, that I felt it would be an appearance
24 of impropriety and that the better course would be
25 for me to recuse myself from both the criminal case

1 and the pending civil case. As I understand it, the
2 pending civil case is still pending and it was
3 assigned to Judge Addy to administer and he has
4 issued a stay.

5 A reconsideration motion was filed by the
6 defense. And, at that point, we had a quandary
7 because I had recused myself, but, yet, I had a
8 reconsideration motion and it appeared that it would
9 be very difficult for anyone else to rule on that.
10 So the attorneys, at that time, were all in
11 agreement that I should go forward with the
12 reconsideration matter. And I got Professor
13 Freeman, who is an expert on ethics, and my
14 recollection of his determination, he issued a
15 written opinion that not only did I have the ability
16 to go forward, but I had the obligation to go
17 forward.

18 So I think the first thing that we need to do
19 today is to make sure that everybody's still on the
20 same page regarding recusal, that the Court of
21 Appeals has ordered this to be reconstructed. Since
22 I was the judge who heard it, seems logical for me
23 to do it.

24 I don't have any personal animosity toward
25 Mr. Worley at all. It's not anything where there's

1 an actual conflict, I just was concerned -- in my
2 opinion, the main concern was there was an
3 appearance of impropriety. So is there any issue
4 about me conducting the hearing today?

5 **MR. STROM:** May it please the Court, Your
6 Honor. John Strom on behalf of Mr. Worley. No
7 objection on the defense side as far as you hearing
8 the reconstruction. I think under our case law in
9 reconstruction, you're the only judge that can
10 preside over the reconstruction hearing.

11 **THE COURT:** Thank you.

12 **MR. APLIN:** Your Honor, the State agrees. I'm
13 Ben Aplin, A-p-l-i-n, on behalf of the State. And,
14 again, I think, very similar to what Professor
15 Freeman said before, I think you likely have an
16 obligation to be the person who continues presiding
17 over -- finishing up reconstruction matters in this
18 case.

19 **THE COURT:** All right. Thank you.

20 So then continuing with the history as I recall
21 it, when the transcript was ordered for the appeal,
22 we had a very unfortunate situation. The court
23 reporter, who had taken down that hearing, had her
24 car broken into, and someone stole her computer and
25 some of the backup tapes that I recall or backup

1 recordings. And so she was able to put together a
2 partial transcript but not a complete transcript.

3 So the feeling being, at that time, that the
4 matter was directly appealed. The appeal went
5 forward and I believe the Court of Appeals
6 instructed me to reconstruct the record at that time
7 and we started into that process. And I believe
8 that was something where we had collected
9 affidavits. I know we had at least one proceeding
10 where we were on the record, I believe we did, that
11 was mainly dealing with the procedure that we would
12 follow.

13 And we got into that -- pretty far into it and
14 then the Supreme Court came down with the opinion
15 that said it was not directly appealable in this
16 instance. And Judge Few issued an order telling me
17 to stop, and that was subject to a motion then to
18 have Judge Few reconsider that. And he decided that
19 he would stick with the decision that he had
20 previously made and I was instructed to stop.

21 Since then, I understand that the criminal case
22 has gone forward, that Mr. Worley has been
23 convicted. He's an inmate of the South Carolina
24 Department of Corrections. He is present today. He
25 has a different attorney at this point because he

1 has been appointed counsel, as I understand it. I
2 do see Mr. Henderson, Carson Henderson, there who
3 was previously representing him.

4 Are you still on the case, Mr. Henderson?

5 **MR. HENDERSON:** No, sir, Your Honor, I'm not.

6 **THE COURT:** You're just a witness?

7 **MR. HENDERSON:** Yes, sir.

8 **THE COURT:** All right. So Mr. Aplin is here
9 present for the State as well. Do you all have any
10 suggestions as to how we proceed?

11 **MR. STROM:** Your Honor, I have a -- I believe
12 your clerk may have an affidavit from Billy Garrett.

13 **THE COURT:** I have it.

14 **MR. STROM:** Okay. Who was, obviously,
15 Mr. Worley's co-counsel on Mr. Henderson {sic} just
16 detailing that his previous affidavit that was
17 executed is his best recollection.

18 My plan is, if Your Honor would like to take
19 some testimony, would be to have Mr. Henderson come
20 up and briefly testify as to what he remembers from
21 the hearing. And then other than that, I don't plan
22 on calling Mr. Worley to testify. And that would
23 be, along with our submissions and the exhibits to
24 the motion, the basis for attempting to reconstruct
25 it.

1 **THE COURT:** Mr. Aplin.

2 **MR. APLIN:** Thank you, Your Honor. I don't
3 know, do you have a copy of the big stack of
4 exhibits that Mr. Strom attached to his motion that
5 was in the Court of Appeals?

6 **THE COURT:** I do not.

7 **MR. APLIN:** I don't have any objection if he
8 wants to hand that up because I actually have a
9 couple of motions I'd like to make before we get
10 started and it might be -- those documents might be
11 relevant just to reference, Your Honor. I don't
12 think there's any dispute, I wasn't going to object
13 to him introducing those. They all were documents
14 that were before the Court or the Court of Appeals
15 at different times.

16 And, I guess, the State really has one motion
17 and there are several grounds for that, but my
18 motion would be that there should be no additional
19 proceedings this morning besides finding that this
20 matter is concluded and that an order needs to be
21 issued from this Court.

22 The first ground is really a practical ground
23 and that would be on the basis that this
24 reconstruction hearing that happened June 14th of
25 2013 was extensive enough to reconstruct

1 Mr. Worley's testimony, which is essentially what
2 was missing from that lost transcript. I think when
3 you look at all of the information that was
4 presented to this Court before, there's absolutely
5 no reason for presenting more testimony or
6 information, particularly given the passage of time.

7 There was the affidavit that Mr. Garrett did,
8 Mr. Garrett and Mr. Henderson both signed, I
9 believe, giving a summary of the testimony -- their
10 recollection of the summary of the testimony. You
11 had extensive notes, I think, that you kept during
12 the hearing of the testimony. Assistant Solicitor
13 Maye had notes, maybe not as detailed as the others,
14 but additional to add to that. And then there was
15 the order that you actually issued, the amended
16 order, that came out of this entire process where
17 you gave a very detailed summary of the factual
18 testimony that came from Mr. Worley. And I think
19 when you put all of those things together, that
20 hearing actually concluded.

21 And in the time after the hearing until an
22 order was issued, some time in that time was when
23 the Court of Appeals issued the order asking you to
24 stop the process.

25 So the Státe's position would be from a purely

1 practical matter, there's no reason to draw this
2 process out to try to get additional testimony where
3 we already have everything that you need to make a
4 finding as to reconstruction.

5 Now, the second basis for saying we don't need
6 to go forward is legal in nature. And I think there
7 are several grounds why, legally, we shouldn't take
8 additional testimony or go forward today.

9 First, the State wanted to raise the
10 affirmative defense of laches, that Mr. Worley and
11 his attorneys were aware shortly after the original
12 immunity hearing in 2011, that the transcripts were
13 not available. Instead of immediately trying to
14 reconstruct or ask that it be reconstructed, they
15 pursued this appeal in the Court of Appeals for two
16 years opposing the State at every measure to try to
17 get this sent back for reconstruction until it
18 finally was ordered, which led to that first
19 reconstruction hearing.

20 Since the trial, we've now gone through another
21 couple of years, I believe it is. The trial was on
22 December 16th through 19th of 2013. So we're
23 actually almost three years beyond that trial date.
24 So we're a total of five years from the date of this
25 immunity hearing and I think that, primarily, is the

1 -- the cause of that delay has been the applicant
2 himself -- not the applicant, but the defendant,
3 and, therefore, we wanted to raise latches as a
4 defense to going forward with any additional
5 proceedings in this matter.

6 **THE COURT:** Which hearing -- was it the trial?

7 **MR. APLIN:** The trial in front of Judge
8 McIntosh was December of 2013.

9 **THE COURT:** December 16 through 19, 2013, was
10 the criminal trial.

11 **MR. APLIN:** Was the criminal trial after the
12 stopped reconstruction hearing.

13 **THE COURT:** Okay.

14 **MR. APLIN:** And then tied into that same ground
15 about the matter of time that's passed, there also
16 are -- in regard to reconstructions, of course, the
17 ultimate goal of the defendant is seeking a new
18 trial if the reconstruction isn't sufficient, if
19 it's not enough to allow for a meaningful appellate
20 review.

21 And there's case law, and I apologize, I don't
22 have the cite to it right at this moment, that says
23 if the delay is caused by the defendant, then even
24 if the record can't be properly reconstructed, he's
25 precluded from relief, he's not allowed to get a new

1 trial at the appellate level anyway.

2 And I just wanted to throw that ground out
3 there. I know that's something that would have to
4 be litigated down the road, but it ties, again, into
5 the delay, we feel, that was caused primarily by
6 Mr. Worley and his previous attorneys.

7 The second legal ground why we think this
8 matter shouldn't proceed today, and this is probably
9 even a stronger ground than latches, is Exhibit I
10 that Mr. Strom attached is actually the order from
11 Judge Few, Chief Judge Few at the time, that stopped
12 this Court from proceeding with the reconstruction.
13 And in that order, Judge Few says, It's not
14 necessary because this case didn't go forward to
15 trial. He says, quote, At trial, the parties should
16 proffer to the court any testimony relevant to the
17 immunity motion that is not presented to the jury.

18 So the Court of Appeals essentially ordered
19 that during the trial of this case, if there were
20 any things that were missing that they needed to
21 reconstruct or proffer, that can be done during that
22 trial proceeding.

23 If you look at Exhibit J, when Ms. Ballard
24 appeared at the trial, the beginning of the trial,
25 Judge McIntosh, this is pages 13 through 16 of the

1 trial transcript, gives Ms. Ballard and Mr. Worley
2 the opportunity to present whatever they want to in
3 regards to reconstructing this matter if there's
4 anything else needs to be done. And Ms. Ballard
5 chose to simply put in the transcript and the
6 exhibits from your reconstruction hearing. She
7 introduced those as a court's exhibit during the
8 trial.

9 So the State would submit that by taking those
10 actions, Mr. Worley has essentially waived any right
11 to try to take more testimony or to drag this out
12 any further and have additional reconstruction of
13 this matter.

14 The third legal ground why we submit this
15 shouldn't go forward today is that your order at the
16 immunity hearing, following the immunity hearing,
17 you found repeatedly that Mr. Worley was not
18 credible, that his testimony -- yes, we don't know
19 the exact specifics of it because it was part of
20 that lost transcript, but regardless of what he
21 said, it really makes no difference what his
22 testimony was when it was found not credible for
23 purposes of whether he can adequately pursue an
24 appeal.

25 And on those grounds, there's no -- kind of

1 ties back into practical reasons. Again, there's no
2 reason to prolong and continue trying to reconstruct
3 these things when we know that your order can't
4 change, your findings are done, you've already found
5 he's not credible, so there's no basis that the
6 Court of Appeals could find that the denial of
7 immunity is reversible.

8 So for all of those grounds, the practical
9 reason and the three legal reasons, we would ask
10 that the Court halt these proceedings today, not go
11 any further with them and ask for a proposed order
12 from the parties.

13 **THE COURT:** And what's the response?

14 **MR. STROM:** If I may take them slightly out of
15 order, Your Honor.

16 **THE COURT:** Sure.

17 **MR. STROM:** Addressing the issue of whether or
18 not this delay is the defendant's fault, the case,
19 and, unfortunately, it also escapes -- the name also
20 escapes my memory --

21 **MR. APLIN:** Your Honor, I found that, if it
22 will be helpful. It's State versus Serrette,
23 S-e-r-r-e-t-t-e.

24 **MR. STROM:** In that case, Your Honor, the
25 transcript was unavailable because the defendant

1 fled for such a long period of time that the
2 transcript was no longer retained. This is, you
3 have the defendant's attorneys in a area of changing
4 laws, at that time, making good faith arguments and
5 filing motions in good faith.

6 The fact that it was eventually ordered for
7 reconstruction, I don't think actions on behalf of
8 the defendant through his attorneys were, one,
9 qualified at the same level of bad actions that
10 Serrette states and, two, you know, it was an area
11 of flux. Midway through or three-quarters of the
12 way through, the remitter was rescinded which
13 essentially ended Your Honor's jurisdiction over the
14 matter from Chief Judge Few.

15 That was my -- my biggest concern here is that
16 it's not Mr. Worley's fault. He didn't flee. He
17 was carrying out good faith arguments in accordance
18 with the procedures for how you challenge immunity
19 at the time.

20 I don't have -- obviously, Your Honor has a
21 great deal of discretion as to how you approach
22 reconstructing the record. I do think the State's
23 references to -- from a practical standpoint, have
24 merit to them. If Your Honor doesn't feel that
25 additional testimony by Mr. Henderson, who's my only

1 witness, would aid the Court, then certainly, you
2 know, within your discretion to curtail it.

3 Again, as far as latches goes, everything has
4 been timely filed. He certainly hasn't been
5 sleeping on his rights. It's been an issue of the
6 pace of these different proceedings and trials.
7 There were several delays. And I'm happy to submit
8 to Your Honor letters between my office and the
9 court reporter detailing the delays in getting the
10 trial transcripts, in getting these various
11 transcripts, that make, I think, latches a
12 particularly harsh sanction on the defendant.

13 As to the credibility determination, Your
14 Honor, I take issue with the State's position that
15 there's no way to challenge the immunity order.
16 With all due respect, there are issues in there that
17 are ripe for appeal, that are issues that just, in
18 my review of this case since I've had it, are ones
19 that I will strongly consider raising on appeal.
20 And so while the credibility determination is
21 something that the Court of Appeals gives great
22 deference to the trial court on, it's not as
23 absolute or cut and dry as the State implies.

24 I mean -- and then as far as it's not necessary
25 with regards to judge -- because of Judge Few's

1 order, Your Honor, I think that what was proffered
2 at the beginning of the trial, if Your Honor wants
3 to limit your review to those documents, I think we
4 run the risk of having the issue to where
5 Mr. Worley's testimony cannot be adequately
6 reconstructed. That being said, again, as our case
7 law makes very clear, the manner and method of
8 reconstruction is largely left up to your
9 discretion, sir.

10 And so my main points are that this isn't the
11 defendant's fault, latches are not an appropriate
12 sanction or defense in this case, and that contrary
13 to the State's arguments, the immunity -- there are
14 immunity issues that are relevant to the appeal.
15 That being said, if the motion is simply based on
16 there being no need for additional proceedings in
17 Your Honor's judgment, that's something that you do
18 have a wide latitude in deciding. Thank you, Your
19 Honor.

20 **THE COURT:** All right. Anything else from the
21 State?

22 **MR. APLIN:** No, Your Honor. I did just want to
23 state for the record that Solicitor Myers and
24 Assistant Solicitors Young and Maye are all here in
25 the courtroom just for purposes of the record.

1 Thank you.

2 **THE COURT:** Well, as I recall from the previous
3 proceedings, Mr. Young -- there was a lot of back
4 and forth with Solicitor Young about his notes, and
5 it was ultimately determined that he didn't have
6 any. That's my recollection. He thought he did,
7 but we never were able to find any.

8 Here's the situation as I see it: I'm going to
9 reserve the right to rule inconsistent with what I'm
10 about to say; however, it seems to me we've got
11 everybody together and the thing we need to do is to
12 let the testimony be presented whatever it may be.

13 At first blush, I do not think that I should
14 restrict this based on the concepts of delay and
15 latches. The reconstruction hearing had been done
16 previously, but we were still in the process of, if
17 I recall correctly, were still in the process of
18 having some uncertainty, and I don't know that I had
19 actually completely closed the record. I don't know
20 that I can recall that. I know that I was working
21 on the order at the time.

22 And as far as Judge Few's order, quite frankly,
23 I had forgotten about that aspect of offering the
24 ability to make a proffer at the criminal trial. So
25 I have, really, given that no thought at all. And,

1 again, I may rule inconsistently, but it seems to me
2 that since the Court of Appeals has remanded it to
3 me to reconstruct the record, they've got an order
4 telling me to reconstruct the record now, if they --
5 if they intended for their prior order to say
6 reconstruct the record then, I don't know why they
7 would tell me to reconstruct the record now.

8 So I'm going to go ahead and let you all offer
9 whatever it is, it may be in the nature of testimony
10 in a traditional sense, it may be a proffer, but
11 let's get it on the record, whatever it is that
12 wants to be offered, and then the Court of Appeals
13 can sort through it and decide what's appropriate
14 and what's not.

15 All right. Anything else pre-testimony?

16 **MR. APLIN:** No, Your Honor.

17 **MR. STROM:** No, Your Honor.

18 **THE COURT:** You want to call Mr. Henderson?

19 **MR. STROM:** Yes, Your Honor.

20 **THE COURT:** All right. Come around, please,
21 sir.

22 ****

23 ****

24 ****

25 ****

1 CARSON HENDERSON,

2 having been duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. STROM:

5 Q Good morning, Mr. Henderson. If you'll state
6 your name for the record.

7 A Carson Henderson.

8 Q And you represented Mr. Worley throughout the
9 proceedings?

10 A I did, along with Billy Garrett and Desa
11 Ballard.

12 Q On May 31st and June 1st, 2011, there's a
13 hearing held on a motion that you filed seeking
14 immunity from prosecution pursuant to the Defense of
15 Persons and Property Act. Mr. Worley testified at
16 that hearing. Do you have a specific recollection
17 as to his testimony?

18 A My best recollection is the document that
19 Mr. Garrett and I signed, this affidavit, that we
20 presented another copy to the Court today. And it
21 was our affidavit dated September the 7th of 2012
22 that Mr. Garrett and myself both signed and it was
23 based upon our memories. It was based upon, I
24 think, my fairly extensive notes while Mr. Garrett
25 was examining Joe and my notes while Solicitor Myers

1 was cross-examining Joe. And then just our
2 conversations, knowing our trial preparation, we
3 knew what the -- what the points were that we were
4 going to cover and my notes reflected that.

5 **MR. STROM:** And, Your Honor, I believe you have
6 the original of Mr. Garrett's updated affidavit.

7 **THE COURT:** Yes.

8 **MR. STROM:** The only exhibit, Exhibit A, is the
9 original seven or eight -- yeah, seven-page
10 affidavit submitted by both defense counsels. We'd
11 move, at this time, to admit it as Defense Exhibit
12 1.

13 **THE COURT:** Subject to the State's --

14 **MR. APLIN:** No objection.

15 **THE COURT:** You don't want to preserve what you
16 already offered?

17 **MR. APLIN:** It's the introduction to this
18 particular --

19 **THE COURT:** Subject to previous objections
20 raised about proceeding at all?

21 **MR. APLIN:** Yes, Your Honor, as far as not
22 proceeding with this proceeding, yes.

23 **THE COURT:** It's overruled. Mark it.

24 (Defendant's Exhibit Number 1, affidavit,
25 marked and admitted into evidence.)

1 BY MR. STROM:

2 Q So, Mr. Henderson, your recollection as to the
3 contents of Mr. Worley's testimony was much fresher,
4 much newer, much more detailed back when you
5 executed this affidavit than it is today?

6 A I would have to say so, yes, I mean, just for
7 the passage of time.

8 Q And just to sort of wrap up, if you can give
9 the Court your general outline of Mr. Worley's
10 testimony regarding the shooting of Mr. Rushton?

11 A As it relates to the point of the shooting, Joe
12 was adamant, and always has been adamant and
13 testified as such, that when he finally exited the
14 doors upstairs, that he took a -- when he exited, he
15 had his rifle in his port position pointing up, not
16 aimed at anyone, basically a gun safety measure,
17 that when he stepped out, that he took no more than
18 a step, and all this had to happen instantaneously,
19 a second, and that he noticed someone with a gun
20 aimed at him -- already aimed at him. He then
21 turned around, aimed his rifle from the port
22 position and got off a shot before Mr. Rushton got
23 off a shot. I mean, that -- as it relates to the
24 shooting, that's -- that was what the testimony was;
25 it was instantaneous.

1 And then Joe said Mr. Rushton was down on the
2 ground. And then Joe testified that he could have
3 killed him laying where he was and Joe didn't.
4 Deputy Rushton got up and ran away, then turned
5 around and ran back toward the house and Joe fired a
6 shot over his head up into the tree lines, kind of a
7 motivation shot, I believe, was Joe's testimony.
8 And I believe that was -- I mean, and all this had
9 to have happened in a matter of seconds.

10 Q And to the best of your recollection, was his
11 direct testimony consistent with cross-examination,
12 with his testimony in cross-examination?

13 A Oh, absolutely. I mean, Joe was adamant during
14 his direct and his cross about what happened, no
15 doubt about it.

16 Q He's adamant that he didn't see a badge. He
17 didn't hear them announce, as the officers claimed?

18 A That's correct.

19 Q And he's adamant that there was no pre-shot
20 conversation between himself and the officers?

21 A Correct. Joe's testimony was that this
22 happened instantaneously. There would not have been
23 any time for any type of conversation.

24 Q And that's in large part because, as it was
25 revealed at trial, the house was heavily insulated

1 and it's -- frankly, it would have to be a loud
2 noise for you to hear it outside the house?

3 **A** That's correct, absolutely.

4 **MR. STROM:** Your Honor, I've got no further
5 questions for Mr. Henderson.

6 **THE COURT:** All right. Subject to previous
7 objection, do you wish to question the witness?

8 **MR. APLIN:** I do, Your Honor. Thank you.

9 CROSS-EXAMINATION

10 BY MR. APLIN:

11 **Q** Now, Mr. Henderson, did you end up looking at
12 the notes that were prepared and submitted by Judge
13 Keesley after that immunity hearing for purposes of
14 reconstruction?

15 **A** I did, but I haven't looked at them in a good
16 while.

17 **Q** Back then, do you recall them being at all
18 inconsistent with your own notes? I'm not asking
19 pinning down specifics, just do you remember them
20 being generally consistent with your notes as to
21 what the testimony was?

22 **A** I'm thinking his notes, Judge Keesley's notes,
23 would have been based upon what the testimony was,
24 the same way that my notes were based upon what the
25 testimony was. I know, obviously, Joe's testimony,

1 he testified to one set of events, the officers
2 testified to another set of events, and I think
3 Judge Keesley's notes reflected that. And, again, I
4 don't believe I've ever submitted my notes on what
5 the officers testified to on direct or cross because
6 we have the transcripts.

7 Q Okay. And then you reviewed, I know you did
8 this affidavit for today's proceeding, but you
9 reviewed the old affidavit?

10 A Well, that was Mr. Garrett's affidavit for
11 today that he did.

12 Q I'm sorry. Right.

13 A Because he's out of town -- out of state today
14 actually. And I believe this affidavit was based on
15 conversations that he and Mr. Strom had.

16 Q Okay. But the old affidavit, did you look at
17 it again before you came to testify today?

18 A Oh, absolutely.

19 Q And sitting here today, there's nothing that
20 you recall or jumps out that you suddenly remember a
21 major issue or substantive point that's not
22 reflected in that summary of testimony?

23 A The only thing I believe that probably could be
24 a little clearer, I believe it's set forth, is how
25 instantaneously this happened according to Joe's

1 testimony on direct and also his position on
2 cross-examination by the Solicitor, that there was
3 no conversation, that Joe took a step out onto the
4 deck with his rifle pointed upward, noticed somebody
5 aiming a gun at him and Joe just got off the shot
6 first.

7 **Q** Do you happen to recall if the Solicitor's
8 cross was lengthy or shorter than direct or anything
9 like that?

10 **A** Typically, when I do take notes, as you can see
11 on our original affidavit, I've got direct
12 examination by Mr. Garrett 38 minutes. I had a
13 starting time and an end time. I had a start time
14 on Solicitor Myers' direct, but for some -- cross,
15 but for some reason, I did not have an end time, but
16 based upon my recollection, it was a fair amount
17 shorter than the direct. Now, again, that's just --
18 I mean, that's six years thinking backward and I may
19 very well be wrong about that, but my gut call, it
20 was fairly shorter than that.

21 **Q** Okay. Do you recall raising any objections
22 during his cross?

23 **A** I don't believe so.

24 **Q** Okay.

25 **MR. APLIN:** I have nothing further.

1 **THE COURT:** All right. Redirect.

2 **MR. STROM:** No redirect, Your Honor.

3 **THE COURT:** Thank you, Mr. Henderson. You may
4 step down.

5 **THE WITNESS:** Thank you.

6 **THE COURT:** Anything else from the defendant?

7 **MR. STROM:** Nothing from the defendant, Your
8 Honor.

9 **THE COURT:** The State wish to present anything
10 in addition?

11 **MR. APLIN:** Your Honor, again, subject to the
12 previous objection, if I could just put Solicitor
13 Young on the stand momentarily to answer the
14 question you had earlier about his notes so we have
15 that in the record.

16 **THE COURT:** Are we in agreement that all of the
17 things that have been submitted that were handed up
18 in this big packet, that's part of the record here,
19 including my notes?

20 **MR. STROM:** Yes, Your Honor, that would be the
21 defense's position.

22 **MR. APLIN:** Yes, that's true. That's correct,
23 Your Honor. We agree with that.

24 **THE COURT:** All right. We'll make that a
25 court's exhibit, if that's okay, the packet you said

1 was submitted to the Court of Appeals.

2 **MR. STROM:** Yes, Your Honor.

3 **THE COURT:** We'll make it a court's exhibit.

4 You want to call Mr. Young?

5 **MR. APLIN:** Yes, Your Honor.

6 **THE COURT:** Come around, please, sir.

7 FRANK YOUNG,

8 having been duly sworn, testified as follows:

9 **THE WITNESS:** My name is Frank Young. I'm
10 Assistant Solicitor with the Eleventh Judicial
11 Circuit.

12 DIRECT EXAMINATION

13 BY MR. APLIN:

14 **Q** Mr. Young, you participated in or were present
15 at least during the immunity hearing that we've been
16 discussing?

17 **A** That's true.

18 **Q** And you took notes from that hearing to your
19 recollection?

20 **A** I did.

21 **Q** And when this matter was attempted to be
22 reconstructed previously, did you look for or try to
23 find those notes?

24 **A** Extensively.

25 **Q** And what was the result of that searching?

1 **A** We found none of the notes.

2 **Q** So your notes, to what extent they ever
3 existed, as far as you know, are gone now?

4 **A** As far as I know, we cannot locate any of those
5 notes.

6 **Q** And so those notes, if they did exist, were
7 never made part of any kind of record for that
8 reconstruction?

9 **A** Not to my knowledge.

10 **MR. APLIN:** That's all I have, Your Honor.

11 **THE COURT:** Cross.

12 **MR. STROM:** Nothing from this witness, Your
13 Honor.

14 **THE COURT:** Thank you, sir. You may step down.
15 Anything else from the State?

16 **MR. APLIN:** No, Your Honor.

17 **THE COURT:** Anything else from the defense?

18 **MR. STROM:** No, Your Honor.

19 **THE COURT:** Well, the only real comment I want
20 to make about this is I've got to go back and look
21 at everything that you've handed up and try to
22 refresh my memory. This is not a situation, though,
23 like most situations would be, where I would, five
24 years later, just have no recollection of the
25 hearing at all. I remember this hearing very

1 clearly.

2 I can't -- I'm not saying I know every single
3 detail of everything that was said and how it was
4 nuanced and all of that, but this was such an
5 unusual situation that was both factually unusual
6 and legally unusual that it's not something that I
7 forgot easily.

8 I recall at the time that they issued the first
9 direction to reconstruct the record, that I went
10 back and looked at the order and I thought the order
11 was about as good as I could do. Now, it might not
12 be correct, but as far as reciting what I heard, I
13 thought it was about as good as I could do without
14 putting out a hundred page order.

15 It was a situation where, basically, the
16 officers were saying one thing and Mr. Worley was
17 saying that he had no idea they were officers. The
18 officers said they banged on that door and banged on
19 that door. There were three of them out there.
20 They repeatedly announced. And my recollection is
21 that he testified that the doorbell just kept
22 ringing and ringing and ringing. So I don't know
23 how that coincides with the instantaneous claims
24 being made here today because my recollection was
25 that he was awakened by the doorbell ringing

1 repeatedly.

2 I found that it was not credible at that time
3 that he did not know, plus what the State was
4 hinging a lot of their argument on, as I recall --
5 and I'll be honest with y'all, I haven't looked at
6 this, I'm not proud of what I'm about to say, but I
7 haven't looked at this since y'all contacted me,
8 this is all off the top of my head. The State was
9 focusing repeatedly on the alleged exchange between
10 when the officers identify themselves and Mr. Worley
11 responded with expletives in response.

12 Now, having said what I've said, I'll give
13 y'all a chance to say anything you would like to
14 say.

15 **MR. STROM:** Court's indulgence.

16 **THE COURT:** Yes.

17 (Pause.)

18 **MR. STROM:** To clarify, the instantaneous is
19 that from the time he opens the door stepping out
20 onto his porch, sees Rushton pointing a gun at him
21 and shoots and then retreats -- shoots twice and
22 retreats back, that's the instantaneous.

23 I think everyone's in agreement that at -- that
24 there's a doorbell ringing constantly for a period
25 of time, it wakes Mr. Worley up and that because of

1 the unusual arrangement of the house, there's no
2 windows on the ground floor, so you really have to
3 step out on the porch to see who's ringing the
4 doorbell below. He flips on the flood lights, which
5 I guess are pointed in an upward angle, sees officer
6 -- or sees Rushton at that point pointing a gun at
7 him and opens fire.

8 It's that quick, that's the instantaneous part.
9 It's generally a quick situation, but as far as that
10 second, that's what -- when Mr. Henderson refers to
11 instantaneous, that's what the defense is talking
12 about.

13 **THE COURT:** Well, there was a lot of
14 discussions, as I recall, about whether the light
15 was on or whether the light was not on, who saw what
16 light, when it went on exactly. There was a whole
17 lot of discussion and dispute about that.

18 But, I guess, I should also comment what hadn't
19 been brought up today. There was that issue about
20 whether the person who was shot was a law
21 enforcement officer within the definition of the
22 act. I don't know that the situation's the same if
23 somebody walks out on their deck and shoots somebody
24 whom they have been told is a law enforcement
25 officer.

1 But, again -- I mean, I've got to go back
2 through all of this. When they filed that
3 reconsideration motion, they challenged -- the
4 attorneys were as diligent as any I've ever
5 experienced. They challenged every single thing
6 that I thought could be challenged, including my
7 grammar, in that order. There was a question as to
8 whether the term SOB, I won't say the term out, was
9 singular or plural. I mean, there was all kinds of
10 challenges and I went through every single one of
11 them and I did make some modifications. So it may
12 be a while before you get an order from me.

13 I'm going to try to take the same tact. I'm
14 going to try to go through every single thing. I
15 want to be absolutely sure I'm doing the best I can.
16 And if I'm wrong, and the Court of Appeals or the
17 Supreme Court tells me I'm wrong, well, I'm wrong.
18 That's the way it is.

19 What did you want to say?

20 **MR. STROM:** As -- with respect to the
21 conversation allegedly had between the defendant and
22 the officers, that testimony shifts a little bit at
23 trial, Your Honor, for whatever reason from the
24 officers. And I don't know if Your Honor has the
25 trial transcript. I don't believe I included it in

1 my packet. I'm happy to submit it for your
2 consideration.

3 **THE COURT:** When I recused myself, I stepped
4 away from this case. I didn't touch it. I didn't
5 have a thing to do with it. The only thing I did
6 was notify the Chief Justice that they needed to
7 appoint a judge from outside the circuit to
8 administer it. So I do not have it. If I need to
9 consider it, you need to give it to me.

10 **MR. STROM:** Yes, Your Honor.

11 **THE COURT:** Because I don't have it. But I
12 don't know that that's reconstructing a record if
13 I'm considering something that happened after the
14 hearing, that's more me making a new record.

15 Do y'all have anything else you need to put on
16 the record?

17 **MR. APLIN:** Just in response to your question
18 about our comments, Your Honor, and I think your
19 recollection is pretty stunning considering it's
20 been that many years and you haven't looked at that
21 material, but just to clarify, obviously, we're here
22 to reconstruct Mr. Worley's testimony. And you're
23 right, I mean, there was a difference in the story
24 between his version and what the officers testified
25 to.

1 And, of course, the State's version from the
2 three officers was he recognized not only that they
3 were officers because he responded to them with the
4 expletive and then as the first shot was fired as
5 they were retreating across the yard, he, according
6 to them, pursued them and fired the second shot over
7 their heads and used another expletive, and, again,
8 whether it was singular or plural or not. Of
9 course, Mr. Worley's testimony disputed that. And I
10 think that's what you reflected both in your order
11 and your notes.

12 **THE COURT:** Yeah, that went to the issue of
13 whether he thought there was more than one person
14 out there or not and what his level of apprehension
15 was at the time, that got into why -- whether it was
16 singular or plural, the expletive that was given in
17 the yard.

18 Now, my recollection was -- I don't recall --
19 and I'll go back and look and make sure, but
20 Mr. Henderson said that the officer was knocked to
21 the ground. I recall it being he was spun around
22 and that he ran toward the lake and he got down
23 there and realized he couldn't go because of the
24 terrain so he had to turn around or he did turn
25 around and ran back the other way which ran him back

1 into the area of where Mr. Worley was and, at some
2 point, that shot took place, and then Mr. Worley
3 came down and retrieved -- was it a flashlight that
4 he retrieved and a gun that was blown out of his
5 hand?

6 **MR. STROM:** Yes, Your Honor, the remains of the
7 gun and the flashlight.

8 **THE COURT:** And then I think he walked up to
9 the neighbor's house and put those in the -- the
10 police car? I remember this thing. I mean, it's
11 amazing, but like I said, it was so unusual, both
12 legally and factually, that it presented some very
13 interesting things.

14 All right. I'll do the best I can with what
15 I've got. Thank you very much.

16 (Court's Exhibit Number 1, defense packet,
17 marked for identification.)

18

19

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 25th of October, 2016.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

February 24, 2017

s/Stacy L. Sheppard

Stacy L. Sheppard, RPR
Circuit Court Reporter

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF McCORMICK	)	
STATE OF SOUTH CAROLINA,	)	
	)	
-vs-	)	REPORT REGARDING RECONSTRUCTION
	)	OF THE RECORD
JOE ROSS WORLEY,	)	
	)	(Appellate Case Number: 2014-001497)
Defendant,	)	Case Numbers: 2010-GS-35-00049;
	)	2010-GS-35-00050; 2010-GS-35-00051; and,
	)	2010-GS-35-00052

The South Carolina Court of Appeals instructed this court to attempt to reconstruct the record from a hearing related to a claim of immunity under the Defense of Persons and Property Act (the Act), S.C. Code Ann. §16-11-410, *et seq.* The original immunity hearing was held on May 31 and June 1, 2011.¹ The court submits this report in order for the appellate court to evaluate whether meaningful appellate review can be had based on the reconstructed record and the degree of prejudice, if any, to the defendant from the loss of portions of the record.

Procedural Background

Following this court's decision to deny immunity in 2011, an immediate appeal was taken. The procedure at that time was thought to be that the appeal from a denial of immunity took place prior to the criminal trial proceeding. An appeal was filed (Old Appellate Number: 2012-210646), and it was determined that a complete transcript of the immunity hearing could not be prepared because someone had broken into the court reporter's vehicle and stolen

¹ Because of the fact-intensive findings required to decide the immunity issue, the undersigned judge had recused himself from the case. After obtaining an ethics opinion indicating that the undersigned judge had the right and the obligation to hear a previous reconsideration motion after recusal, the parties agreed that the same logic extends to the remand for reconstruction of the record. There was no objection to the undersigned judge acting in this capacity, despite the previous recusal, at either of the reconstruction hearings. The matter was discussed on the record and any issue regarding the recusal was waived.

equipment and recordings. By order filed March 28, 2013, the Court of Appeals issued its original remand to reconstruct the record. Upon receiving notice, the court first had to determine what portions of the proceeding were missing. The parties were given an opportunity to amass information regarding the record. The defendant moved to have a *de novo* hearing to consider immunity under the Act, but the Court of Appeals denied that motion.

The first reconstruction hearing was held on June 14, 2013. Present for the State were the same attorneys who were present at the 2011 immunity hearing: The Honorable Donald V. Myers, Solicitor of the 11th Judicial Circuit, and Assistant Solicitors Ervin J. Maye and H. Franklin Young, III. Notice was sent to the appellate attorney for the State, Assistant Attorney General Mark R. Farthing, who chose not to appear. The defendant was present, along with his counsel, Billy J. Garrett, Esquire and Carson M. Henderson, Esquire (both of whom were present at the immunity hearing), as well as Desa A. Ballard, Esquire, who was one of the attorneys hired to assist with the first reconsideration effort and the appeal.

The defendant called witnesses regarding why portions of the record were missing. The court reporter for the immunity hearing, Rema Thomas, testified, as well as Desiree Allen, Manager of Court Reporting and Court Interpreters for South Carolina Court Administration. The Clerk of Court for McCormick County, The Honorable Gwendolyn D. Chiles, also testified. The Clerk's notes about the order of the presentation of the case were made part of the record at that hearing. Julius C. Nicholson, III, of the Office of the South Carolina Attorney General was present representing the court reporter.

After the first reconstruction hearing, but before the issuance of a report, *State v. Isaac* was decided. Based thereon, the old appeal of the denial of immunity was determined to be interlocutory. By order filed August 20, 2013, the South Carolina Court of Appeals directed the

undersigned judge to cease the reconstruction effort. Specifically, the Court of Appeals vacated that portion of the remand that gave the circuit court the authority to conduct the reconstruction, and stated:

The 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.** [Emphasis added.]

Counsel for Mr. Worley asked the Court of Appeals to reconsider its ruling. That request was denied, and this court was divested of jurisdiction. Following the criminal trial and conviction, this appeal was taken, resulting in this second remand. A second reconstruction hearing was conducted on October 25, 2016.

At the beginning of the second reconstruction hearing, the State argued that there should be no additional proceedings. First, it was asserted that the reconstruction hearing held on June 14, 2013 was sufficient. The court finds that the second reconstruction hearing should be allowed, the matter having been remanded to this court for that purpose. Secondly, it was asserted that this court should not hold an additional reconstruction hearing for the following reasons.

1) Laches was raised based on the argument that the defendant opposed the State's efforts for two years. The State argued that, to the extent that a meaningful reconstruction of the record might not be accomplished, the delay caused by the defendant must be held against him. The court finds no basis to cease the reconstruction hearing due to laches.

2) The State also argued that the second reconstruction hearing is not appropriate because the order of the Court of Appeals specifically provided that

the defense attorneys should make a proffer of the immunity issues at the criminal trial. That trial was held on December 16 through 19, 2013. The transcript of the criminal trial reflects that the trial judge gave the defense attorneys the opportunity to put up additional evidence on the question of immunity by proffer. At the criminal trial, the defense submitted the transcript of the first reconstruction hearing as a proffer. The State's argument on this issue appears to relate more to a preservation question that is more appropriately addressed to the Court of Appeals. Moreover, the order of the Court of Appeals suggests that it was anticipated that evidence of self-defense would be submitted to the jury in the criminal trial, and that such evidence would overlap and be relevant to the issue of immunity. If convicted, a transcript of that evidence would be available on appeal, and there would be no need to have redundant testimony and evidence in a proffer. The specific language from the Court of Appeals stated: "At trial, the parties should proffer to the court any testimony relevant to the immunity motion **that is not presented to the jury.** [Emphasis added.] This court reads that language as an indication that the Court of Appeals, in assessing the immunity claim, intends to consider the evidence relevant to that issue that was presented to the jury, plus any proffer of things that were not presented to the jury. A remand was issued directing reconstruction, and this court's jurisdiction is limited. This court elects to go forward with the second reconstruction hearing, develop the record, and leave it for the appellate court to decide whether there was any waiver of opportunity to present further evidence on the immunity claim.

3) Finally, the State argued that this court repeatedly found that the testimony of the defendant was not credible in the immunity hearing. The State maintains that this court's order finding a lack of credibility cannot be changed and is conclusive on the issue. The appellate court will have the record of all the proceedings and the reconstruction submissions. The appellate court will also have the orders related to immunity. It is this court's view that the defendant should be given an opportunity to provide information concerning reconstruction of the missing portions of the record. Therefore, the court directed the second reconstruction hearing to proceed.

Standard for Record Reconstruction

Where no transcript or record exists from a proceeding, the record may nevertheless be artificially "reconstructed." China v. Parrott, 251 S.C. 329, 162 S.E.2d 276 (1968); Koon v. State, 358 S.C. 359, 595 S.E.2d 456 (2004); Whitehead v. State, 352 S.C. 215, 574 S.E.2d 200 (2002).

In *State v. Ladson*, 644 S.E.2d 271, 373 S.C. 320 (S.C. App. 2007), our Court of Appeals held that a record may be successfully reconstructed only if it provides for "meaningful appellate review." Judge Kittredge further predicted that "[w]e believe our Supreme Court would follow a rule requiring the party challenging a reconstructed record on appeal to demonstrate prejudice flowing from an inadequate record."

Applying this standard, the Court of Appeals found that the appellant in *Ladson* established prejudice and that the reconstructed record failed to allow for meaningful appellate review. The court concluded that a reconstruction hearing that generated only "gratuitous references to generic motions and objections" could not adequately replicate Ladson's three-day

criminal trial. The gaps sought to be filled were simply too large to be replaced by a “bare bones summary of the evidence” and speculative conclusions of the trial participants.

In *Adams v. H.R. Allen, Inc.*, 726 S.E.2d 9, 397 S.C. 652 (S.C. App. 2012), the court stated:

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. *China v. Parrott*, 251 S.C. 329, 333-34, 162 S.E.2d 276, 278 (1968). However, the reconstructed record must allow for meaningful appellate review. *State v. Ladson*, 373 S.C. 320, 321, 644 S.E.2d 271, 271 (Ct.App.2007). “A new trial [397 S.C. 657] 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.* at 325, 644 S.E.2d at 274 (citations and internal quotation marks omitted).

Why the Record is Incomplete

Because this issue was the subject of testimony and evidence in the first reconstruction hearing, and because there seemed to be some insinuation of collusion or impropriety between the State and the Court Reporter in causing portions of the transcript to be missing, this court will address why the record of the immunity hearing is incomplete. The testimony of the Court Reporter who served at the immunity hearing is contained in the transcript of the first reconstruction hearing on June 14, 2013.

The Court Reporter explained that she used an outside typist to assist in preparing transcripts. She followed her standard practice of putting all of the materials to prepare the transcript into a briefcase and box that were inside her vehicle. A thief stole almost all of the materials, including the trial log, the stenograph notes and disk, and some backup tapes. From the backup tapes that were left, she created the transcript that has been filed, and she noted it was incomplete. She filed a statement about this, notifying Court Administration of the theft and the resulting gap. That statement is in the record of the first reconstruction hearing.

To the extent that this court was to evaluate whether any improprieties existed by any court officials or the prosecutor's office that caused any loss of the record, the court finds absolutely no wrongdoing on the part of anyone other than the thief who stole the items from the court reporter's vehicle.

The Missing Sections

The first task in the effort to reconstruct the record was to determine what sections of the record are missing. There is a partial transcript, so the record is not completely lost. There is no need to cover things that are included in the partial transcript or the exhibits that were admitted in the immunity hearing. The Clerk of Court's notes show the order of the witnesses. Despite any implications to the contrary, none of the exhibits admitted during the immunity hearing appear to be missing. They were filed with the Clerk of Court using a proper transmittal form.²

Loss of record concerning objections or legal rulings: The court does not recall any rulings on objections in the missing portions, nor does it recall any claim that there is an inability to preserve appellate issues due to missing transcription of any objections or rulings. If there was dialogue between counsel and the court regarding objections and rulings thereon, the court is unaware of that issue being raised, so this report does not address it except to state that the contemporaneous notes do not seem to indicate that there were legal rulings made during the missing portions of the immunity hearing transcript. The court believes that all legal issues raised were addressed in the final order that was issued by this court, following reconsideration.

² The attorneys for the appellant requested the Clerk of Court's records pursuant to the duties imposed upon the Clerks of Court in the manual issued by Court Administration and as required by South Carolina Code Ann. §§14-7-540(2) and (3), as well as §14-17-510 and §14-17-570.

However, when the immunity hearing was held, there was a brief discussion at the beginning about the procedure to be followed. The court does not believe that those are in the partial transcript. It was the first such hearing conducted in the 11th Circuit, and there was some question with the procedure outlined in *State v. Duncan*, 709 S.E.2d 662, 392 S.C. 404 (2011). This court is unaware of anything in those discussions that relates to any issue raised on appeal, and the court recalls that there was general unanimity as to how to proceed and the burden of proof being on the defendant. It seems clear that the only relevant things missing from the records of the hearings on May 31 and June 1 are the following sections of testimony from the transcript:

- 1) the testimony of the first witness, the defendant, Mr. Joe Ross Worley, in its entirety; and,
- 2) portions of the testimony of a neighbor, Alan Sheffield, as noted by the court reporter in the transcript, beginning at or around page 159.

Materials Obtained for Reconstruction of the Record

A. The affidavits of defense counsel, Mr. Garrett and Mr. Henderson: Billy Garrett, Esquire and Carson M. Henderson, Esquire represented Mr. Worley at the immunity hearing. They issued a joint affidavit on September 7, 2012, which set forth 93 separately-numbered paragraphs reciting their recollection of Mr. Worley's testimony at the immunity hearing. Mr. Garrett could not be present for the second reconstruction hearing, so he executed another affidavit dated October 20, 2016, and attached the prior affidavit from 2012.

- a. The main issue that this court has with these affidavits of defense counsel concerns the examination of Mr. Worley about whether he ever called out

demanding to know who was outside his home and the alleged verbal exchange that followed. He was questioned about whether he was told that they were law enforcement officers, and strongly questioned on cross-examination about whether he then said, "I don't give a f___k." The affidavits of defense counsel, in Paragraphs 84 and 87, state that Mr. Worley denied asking who was outside his home and denied that he said anything to anyone in the yard. That is correct, but the court's recollection is that these questions and answers were not that generic – they were pointedly related to whether he knew that these people were law enforcement officers. He was specifically asked in cross-examination about whether he called out asking who was ringing the doorbell, whether he was told that these were law enforcement personnel, and whether he responded that he did not care. He denied all of that.

- b. The court does not take issue with the recitation in defense counsel's affidavits that Mr. Worley testified that he could have killed whomever was in his yard that night, if he wanted to do so; but, the court understood that to relate to opportunities after the initial shot was fired. The first shot was fired directly at the deputy.
 - i. The testimony about Mr. Worley's second shot was that he fired a warning shot to try to get the person or persons out of his yard, instead of attempting to fire directly at anyone.
 - ii. There was testimony that could support a finding of animosity or continued animosity by Mr. Worley or, in the defense's view, his continued belief that a burglary had been attempted. Specifically, there

was testimony that Mr. Worley yelled something to the effect of "Where are you, you son of a b*tch?" or "Where are you, you sons of b*tches?"

With those caveats, the court finds no substantial issue with the averments of Mr. Garrett and Mr. Henderson as to their recollection of the testimony of Mr. Worley. Their affidavit breaks the testimony down by direct and cross examination, and it is detailed.

B. The Court's Handwritten Notes (also typed for clarity)

- i. To assist in review of the validity of this reconstruction, if deemed appropriate, the notes taken by the court concerning the testimony of Mr. Joe Ross Worley given on May 31, 2011, are included in the record.
- ii. To assist in review of the validity of this reconstruction, if deemed appropriate, the notes taken by the court concerning the missing testimony of Mr. Alan Sheffield are included in the record.

C. Assistant Solicitor Maye's Handwritten Notes

To assist in review of the validity of this reconstruction, if deemed appropriate, a copy of the complete handwritten notes of Assistant Solicitor Ervin J. Maye related to the entire immunity hearing are included in the record. These include notations about his own observations, which normally would be protected from disclosure; but, the State has agreed to supply them in an unredacted fashion.

D. Transcripts and Exhibits from the June 14, 2013 and October 25, 2016 Reconstruction Hearings. These are part of the record on appeal.

REPORT ON MISSING SECTIONS OF THE IMMUNITY HEARING

MR. WORLEY'S TESTIMONY

Ladson points to the degree of information needed for meaningful appellate review. Unlike *Ladson*, here there is a partial transcript of the immunity hearing. There is also a transcript of the criminal trial in which the defendant was permitted to proffer evidence on the immunity issue and his overlapping claims of self-defense and defense of habitation. The immunity hearing was a swearing contest between Mr. Worley and the officers, with some bolstering of the officers' testimony coming from the neighbor, Mr. Alan Sheffield. The only part of their testimony that is missing is a small portion of the examination of Mr. Sheffield.

As the record shows, the gist of the officers' testimony was that they were adamant that they repeatedly announced their identity as law enforcement officers. They testified that they knocked on the exterior door and rang the doorbell many times. There was evidence that they never attempted to enter the home. They testified that Mr. Worley acknowledged their presence as law enforcement officers prior to his firing the shots. The officers testified that Mr. Worley asked them, from inside the home, who they were, that they identified themselves as law enforcement officers, and that Mr. Worley responded, "I don't give a f__k."

Diametrically opposed to the State's version were Mr. Worley's unshakable claims listed below. He testified as follows.

- 1) Mr. Worley was at his home/residence.
- 2) The residence is heavily insulated, making it almost soundproof.
- 3) It was a pitch-black night.
- 4) He was awakened by the repeated ringing of the doorbell for the entrance door on the first floor.
- 5) He was in a bedroom on the second floor.
- 6) He decided not to go downstairs to the door.
- 7) There had been previous burglaries and/or incidents in the neighborhood that caused Mr. Worley to have concern.
- 8) There is no peep hole or window near that entrance door.

- 9) He did not turn on the lights initially (there was uncertainty about when lights were turned on), but the appellate review may take whatever version is most favorable to Mr. Worley.
- 10) He did not see any blue lights or car lights.
- 11) No one called the residence to alert him to the officers coming over.
- 12) He did not call 911 to report someone at his door.
- 13) He had fired a weapon earlier trying to scare a fox that had injured the family cat.
- 14) He loaded the gun upon hearing the commotion of ringing the doorbell.
- 15) He put on his clothes.
- 16) He went out of the sliding glass door off his bedroom onto a deck above where the entrance door is located.
- 17) He saw the "burglar" running out with "a dinky" flashlight.
- 18) He told the "burglar" to freeze.
- 19) He saw the "burglar" aim a gun at him, and he fired a shot that turned the person around."³
- 20) The person then ran toward an embankment (the lake), turned, and ran back toward him.
- 21) Mr. Worley then fired a warning shot into the trees.
- 22) Mr. Worley went into the yard after the shooting and after the officers had fled. He yelled, "Where are you, you son of a b*tch," or "Where are you, you sons of b*tches." He shouted some kind of warning to the person or persons.
- 23) There were no visible police cars or identifying insignia observable that would put him on notice that these were law enforcement officers.
- 24) He thought the home was being burglarized (he repeatedly and consistently referred to the person or people outside as being a burglar or burglars).
- 25) He never heard anyone identified as a law enforcement officer before, during, or immediately after the shooting.
- 26) He never had a verbal exchange with the people during which he asked who they were, and he never heard anyone say that they were law enforcement officers prior to or during the incident.
- 27) He never said to the people outside that he did not give a f___k [that they were law enforcement officers].
- 28) He denies that he was ever instructed to put his weapon down by law enforcement officers.
- 29) He acted instinctively for his own protection and fired in the direction of the "burglar" who was pointing a gun at him.
- 30) He went out into the yard later and picked up the pistol and flashlight that the person had.
- 31) He eventually saw a Sheriff's vehicle at his neighbor's house, and he went up there and put the pistol into a patrol car.
- 32) He was in fear for his life before and at the time of the shooting, and immediately thereafter, and he fired to protect himself and his property.

³ The court accepts the assertion by Mr. Henderson in the October 2016 reconstruction hearing that events happened rather instantaneously once Mr. Worley opened the sliding glass door and stepped outside with the rifle. The court accepts that the evidence indicates that Deputy Rushton spun out from underneath the deck area with his gun drawn, pointing it at Mr. Worley on the elevated deck, and Mr. Worley fired the first shot immediately upon seeing Deputy Rushton with the gun drawn. The first bullet was the only one that struck Deputy Rushton, blowing part of the Deputy's hand off.

MR. SHEFFIELD'S MISSING TESTIMONY

As noted above, much of Mr. Sheffield's testimony contained in the partial transcript. He began describing the events of that night on page 153. There is a gap in the transcript of the immunity hearing beginning on page 159, so the rest of Mr. Sheffield's testimony is omitted.

Mr. Alan Sheffield made the complaint that brought law enforcement to the scene. The court does not recall him providing any evidence on the reconstruction issue. The transcript includes his testimony related to his hearing the officers knock and announce their presence at the Worley residence, and the alleged discrepancy between what he told an ATF agent about the timing of the shots.

The court submits the following as a reconstruction of the missing section of the neighbor's testimony.

- 1) Mr. Sheffield testified that Mr. Worley's mother came over after the shooting of Deputy Rushton and appeared to be confused. [She was inside the home during the incident. She did not testify or present affidavits on the immunity issue in any of the proceedings before this court.]
- 2) Mr. Sheffield testified that he does not know if any shots were ever fired at his house or at him or his wife.
- 3) When Mr. Sheffield was being examined by the Solicitor's office, he testified that shots were fired around Labor Day. Then, a set of shots were fired each weekend until Deputy Rushton was shot in November. When re-examined by Mr. Garrett on reply, Mr. Sheffield stated that the shots may not have been every weekend, but on a lot of weekends between Labor Day and the date of the incident.

- 4) He testified that he discussed Mr. Worley's firing shots in the neighborhood with Mr. Worley's mother in an attempt to resolve it, and Mr. Sheffield and his wife were just hoping that Mr. Worley would stop shooting the rifle in the neighborhood.

Except for the reference to Mr. Worley's mother coming to the Sheffield home after the incident and appearing confused, none of the notes taken during the period of the missing gap in Mr. Sheffield's transcript appear to be describing what took place on the night of the shooting.

Conclusion

The court submits this report and the attachments thereto, along with the recitations in the orders from the immunity hearing, in order for the appellate court to assess whether it constitutes a meaningful reconstruction of the sections of the transcript that are missing and whether Mr. Worley suffers any prejudice in his appellate rights caused by the absence of these parts of the record.

December 30, 2016

Respectfully submitted,

William P. Keesley
Circuit Judge

WITNESSES

BROCK

MCSO

ARREST WARRANT NUMBER

J036564

ACTION OF GRAND JURY

True Bill

Carl Dyer

Foreperson of Grand Jury

Date: FEB 22 2010

VERDICT

Foreperson of Petit Jury

Date:

FEB 22 2010

DOCKET NO. 2010-GS-35- *049*

The State of South Carolina

County of MCCORMICK

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2010

THE STATE

vs.

JOE ROSS WORLEY

CDR#0549

Indictment for

POSSESSION OF A WEAPON
DURING A VIOLENT CRIME

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF MCCORMICK)

INDICTMENT FOR
POSSESSION OF A WEAPON
DURING A VIOLENT CRIME

At a Court of General Sessions, convened on February 22, 2010 the Grand Jurors of McCormick County present upon their oath:

That JOE ROSS WORLEY, did in McCormick County on or about November 15, 2009, unlawfully have in his possession a firearm, Remington rifle, during the commission of the violent crime of Assault and Battery with Intent to Kill, in violation of Section 16-23-490 of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ASSISTANT SOLICITOR

WITNESSES

BROCK

MCSO

ARREST WARRANT NUMBER

J036561

ACTION OF GRAND JURY

True Bill

Carol Dyer
Foreperson of Grand Jury

Date: FEB 22 2010

VERDICT

Foreperson of Petit Jury

Date:

FEB 22 2010

DOCKET NO. 2010-GS-35- 052

The State of South Carolina

County of MCCORMICK

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2010

THE STATE

vs.

JOE ROSS WORLEY

CDR#0014

Indictment for

ASSAULT AND BATTERY WITH
INTENT TO KILL

DONALD V. MYERS, SOLICITOR

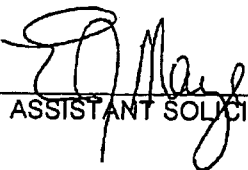
STATE OF SOUTH CAROLINA)
COUNTY OF MCCORMICK)

INDICTMENT FOR
ASSAULT AND BATTERY
WITH INTENT TO KILL

At a Court of General Sessions, convened on February 22, 2010 the Grand Jurors of McCormick County present upon their oath:

That JOE ROSS WORLEY, did in McCormick County on or about November 15, 2009, with malice aforethought, commit an assault and battery with intent to kill the victim, Robert Rushton, in that the defendant, Joe Ross Worley, did shoot a rifle at the victim and striking him in his right hand, with the intent to kill the victim, Robert Rushton, in violation of the Common Law of South Carolina, with punishment provided for in Section 16-3-620 of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

1865

RECEIVED

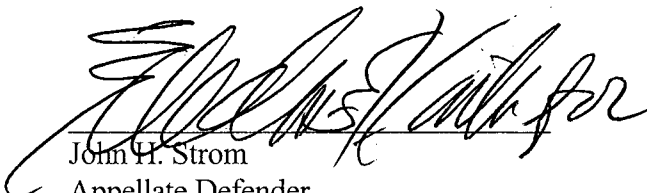
OCT 23 2017

SC Court of Appeals

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

This 23rd day of October, 2017.


John H. Strom
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR APPELLANT