

ORIGINAL

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM MCCORMICK COUNTY
Court of General Sessions

William P. Keesley, Circuit Court Judge (Immunity Hearing)
R. Lawton McIntosh, Circuit Court Judge (Trial)

RECEIVED

NOV 13 2017

SC Court of Appeals

Appellate Case No. 2014-001497

THE STATE,RESPONDENT

v.

JOE ROSS WORLEY,APPELLANT.

SUPPLEMENTAL RECORD ON APPEAL

WANDA H. CARTER
Appellate Defender

ALAN WILSON
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ATTORNEYS FOR RESPONDENT

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In The Court of Appeals

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State of South Carolina
County of McCormick

Court of General Sessions

State)
)
)
v.)
)
Joe Ross Worley)
)
Defendant.)

Transcript of Record
10-GS-35-0049
10-GS-35-0052

December 16 - 20, 2013
McCormick, South Carolina

B E F O R E:

The Honorable R. Lawton McIntosh, Judge; and a jury.

A P P E A R A N C E S:

Donald V. Myers, Solicitor
Ervin J. Maye, Assist. Solicitor
Attorneys for the State

Billy J. Garrett, Jr., Esquire
Carson M. Henderson, Esquire
Desa Ballard, Esquire
Attorneys for the Defendant

Stacy L. Sheppard, RPR
Circuit Court Reporter

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1 (The following proceedings were held on
2 December 16, 2013.)

3 **THE COURT:** All right. My understanding -- and
4 y'all correct me -- is that there are some matters
5 or whatever that need to be placed on the record
6 because of the status of this case and there's a
7 prior appeal.

8 Ms. Ballard --

9 **MS. BALLARD:** Yes, Your Honor.

10 **THE COURT:** -- do you have some things you
11 wanted to bring up on that?

12 **MS. BALLARD:** That's correct.

13 **THE COURT:** And I also understand that there's
14 some motions in limine in this case; is that
15 correct?

16 **MR. HENDERSON:** Just very quickly, Your Honor,
17 yes, sir.

18 **THE COURT:** Okay. Ms. Ballard, I'm going to go
19 ahead and hear from you first.

20 **MS. BALLARD:** Mr. Worley is not here yet. I'm
21 not sure --

22 **THE COURT:** Thank you. I'm sorry.

23 **MS. BALLARD:** We've been wondering. We don't
24 know whether --

25 **THE COURT:** I assume that y'all have checked to

1. make sure he was properly attired?

2. MS. BALLARD: He was first up today, so he
3. should have been here first thing this morning.

4. (A brief conversation was held off the
5. record.)

6. MS. BALLARD: Your Honor, I'll hand you up this
7. petition. This is --

8. MR. MYERS: On the defendant's pre-trial
9. motions in limine.

10. THE COURT: Okay. This will just be the
11. petition that was filed by Ms. Ballard on behalf of
12. the defendant seeking the court -- Supreme Court to
13. take this case certiorari.

14. MS. BALLARD: That's related to the appeal, Mr.
15. Myers.

16. THE COURT: Do you want to see a copy of this?

17. MR. MYERS: Is it about the appeal?

18. THE COURT: Yes, sir.

19. MR. MYERS: No, sir.

20. (Pause.)

21. (Mr. Worley enters the courtroom.)

22. THE COURT: Before we get started, I just want
23. to make sure just for the sake -- out of abundance
24. of caution that no jurors summoned for this term of
25. court are in the courtroom today.

1 (There was no response.)

2 THE COURT: Okay. Ms. Ballard, that being
3 done, I'll be glad to hear from you.

4 ~~MS. BALLARD:~~ Thank you very much, Your Honor.

5 I am not Mr. Worley's trial counsel. I'm
6 handling some appellate issues. And the reason I
7 wanted to address the Court is to tell you where we
8 are with the appeal because it's had somewhat of an
9 unusual path to get where we are today.

10 Mr. Worley was arrested originally in November
11 of 2009 and bond was denied. He's been in jail all
12 of this time. The Supreme Court of South Carolina
13 decided the Duncan case in May 2011. The Duncan
14 case was the case that said that a pretrial
15 determination under the Castle Doctrine, since it
16 involved immunity, had to be appealed immediately.
17 So Judge Keesley had the Castle Doctrine hearing in
18 this case in that same month that began on May 31st
19 of 2011. And Judge Keesley issued an order -- there
20 were two orders, but the final one was on July 6th,
21 2011, in which he denied Mr. Worley the right to
22 immunity under the Castle Doctrine Statute.

23 So based on the Duncan case, Your Honor, we
24 took an appeal at that time. When we appealed the
25 case, we learned that the transcript of the

1 proceeding before Judge Keesley was incomplete.

2 What was missing, interestingly enough, was

3 Mr. Worley's own testimony. Everybody else's is

4 here with the exception of, I think,

5 cross-examination of one of the other witnesses, but

6 Mr. Worley's testimony was missing.

7 There were petitions to the Court of Appeals,

8 and the matter was remanded to Judge Keesley to

9 reconstruct the record. We had a hearing in front

10 of Judge Keesley in June of this year. It was a

11 full-day hearing for judge -- the purpose of which

12 was to reconstruct Mr. Worley's testimony from the

13 Castle Doctrine hearing for purposes of the eventual

14 appeal. Well, for purposes of the appeal that was

15 then pending.

16 Two months after we had the hearing, while

17 Judge Keesley was still reconstructing the record,

18 and he had obtained the Solicitor's notes from

19 trial, he obtained the affidavit from the trial

20 counsel as to what the testimony was and the clerk's

21 notes, he obtained all of that information to

22 reconstruct the record, and then in August of 2013,

23 the South Carolina Supreme Court decided the Isaac

24 decision, which said, Well, what we meant to say in

25 Duncan was that if it's a defendant who's appealing,

1 he can appeal after final judgment.

2 So on that same day, the Court of Appeals,
3 Judge Few, issued an order dismissing Mr. Worley's
4 appeal. There was language in that order -- and
5 that order is dated August 21st, 2013 -- it
6 indicated -- and it should be in the Court's file.
7 It indicated that the reconstruction of the missing
8 portion of the Castle Doctrine hearing was no longer
9 necessary. And it proceeded to go on to say that
10 the parties should proffer to the court, meaning at
11 trial, proffer to the court any testimony relevant
12 to the immunity motion that is not presented to the
13 jury.

14 We took issue with that, Your Honor, because it
15 purported to instruct Your Honor what to do at this
16 trial, and we petitioned the Court of Appeals and
17 asked for reconsideration of that issue. Our motion
18 for reconsideration was denied. And we have filed a
19 petition with the Supreme Court seeking certiorari
20 to address the issue of what we believe was a
21 statement by the Court of Appeals that went beyond
22 the issues that were before it.

23 But the gist of where we are is that we are
24 about to proceed in the trial. We have to preserve
25 testimony regarding the Castle Doctrine hearing that

1 was held in May 2011, and we don't have a
2 reconstruction of Mr. Worley's testimony. So Mr.
3 Garrett and Mr. Henderson are going to deal with
4 that at trial.

5 But the point I wanted to make to Your Honor is
6 we filed the petition for writ of certiorari and a
7 petition for writ of prohibition with the Supreme
8 Court. The State's response to that is due today,
9 but there is nothing that prevents the trial from
10 proceeding. I think the trial judge just has to be
11 aware of the Court of Appeals' order, which I think
12 directs how the preservation of the record is
13 supposed to occur with reference to the immunity
14 issues under the Castle Doctrine.

15 **THE COURT:** Well, educate me again exactly what
16 the Court of Appeals has ord -- I do not have that
17 opinion in front of me and I would like to get a
18 copy of it, but --

19 **MS. BALLARD:** It should be in the clerk's file,
20 but I'll read it to you, Your Honor, and I'll get
21 you a copy of it. What it said is, This court
22 notes -- this is Judge Few's order -- This court
23 notes that this appeal has been remanded for the
24 reconstruction of the missing portions of the
25 immunity hearing transcript.

1 I'm on the second paragraph, Your Honor.

2 That reconstruction will no longer be
3 necessary, so the remand order is rescinded. At
4 trial, the parties should proffer to the court any
5 testimony relevant to the immunity motion that is
6 not presented to the jury.

7 **THE COURT:** So it's just a matter of making a
8 record and preserving that issue for appeal is what
9 I'm --

10 **MS. BALLARD:** That is the issue for purposes of
11 should there be an eventual appeal following these
12 proceedings, Your Honor. It's a question of we were
13 not -- we didn't finish the reconstruction process.
14 We were right in the middle of it when the decision
15 came out in Isaac, and so the Court of Appeals sua
16 sponte dismissed it. And Judge Keesley had begun
17 the draft of the order to reconstruct the testimony
18 but had not completed it. We took issue with the
19 fact that reconstruction was no longer necessary,
20 because we knew we had a trial coming, and
21 eventually, an appeal, should that become necessary.

22 But I wanted you to be aware that that order
23 was out there, and we have petitioned for cert, but
24 under the appellate court rules, that doesn't
25 prohibit you from proceeding to trial. And that's

1 what I wanted to bring to Your Honor's attention.

2 THE COURT: All right. Let me ask you this --

3 MS. BALLARD: Yes, sir.

4 THE COURT: -- and thank you for doing that,
5 but from a practical matter, from -- so the parties
6 can preserve what issues need to be preserved at
7 this juncture --

8 MS. BALLARD: Yes, sir.

9 THE COURT: -- are the parties -- maybe you're
10 not the right person for me to ask this question to
11 -- is the appellant ready to present, the State
12 ready to present what portions of the testimony they
13 think should be made a part of the record as a court
14 exhibit, not to go to the jury?

15 MS. BALLARD: What I think would be
16 appropriate, Your Honor, is to put in this record
17 all of the information that was introduced before
18 Judge Keesley. And what he had at that point was
19 information from the Solicitor's Office, I believe
20 it was Mr. Maye's notes, he had his own notes, his
21 hand notes, Judge Keesley's notes, and he had the
22 sworn testimony from Mr. Garrett and Mr. Henderson
23 as to their contemporaneous notes regarding what
24 Mr. Worley's testimony had been, and we have a
25 transcript of the hearing on June 14th, 2013.

STATE OF SOUTH CAROLINA
COUNTY OF McCormick
STATE

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010-GS-35-10049

vs.
Joe Ross Worley

FILED
QWENAW...
Date of Offense: 11/15/2009

J036564

AKA: _____
Race: _____ Sex: M Age: 52
DOB: _____ SS#: _____

S.C. Code §: _____

16-23-0490

Address: _____
City, State, Zip: McCormick, SC 29835

CLERK OF COURT
McCORMICK COUNTY, SC

SENTENCE SHEET

DL# * _____ SID# _____
*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
TO: Possession of a Weapon During the Commission of a Violent Crime

In violation of § _____ of the S.C. Code of Laws, bearing CDR Code # _____
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45
(CSC w/minor 1st or Lewd Act)

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury, _____ (def.'s initials)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

Solicitor _____ SC Bar # _____ Defendant _____ Attorney for Defendant _____ SC Bar # _____

WHEREFORE the Defendant is committed to the State Department of Corrections County Detention Center,
for a determinate term of 5 days/months/years or under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: _____
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections (from Nov 15, 2009)
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____

Total: \$ _____ plus 20% fee: _____ \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED

Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning _____

*Fine: \$ _____

Substance Abuse Counseling

§14-1-206 (Assessments 107.5%) \$ _____

Random Drug/Alcohol Testing

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

Fine may be pd. in equal consecutive weekly/monthly

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

pmts. of \$ _____ Beginning _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

\$ _____ Paid to Public Defender Fund

§56-1-286 (DUI Breath Test) \$25 \$ _____

Other: _____

Proviso 47.9 (Public Def/Prob) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§14-1-213 (Drug Court Surcharge) \$150 \$ _____

§50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00

§44-53-450(C) (Conditional Discharge) \$350 \$ _____

3% to County (if paid in installments) \$ 3.90

TOTAL \$ 133.90

Clerk of Court/Deputy Clerk Aven Childs

Presiding Judge [Signature]

Court Reporter: Tara T Scott

Judge Code: 2155

SCCA/217 (06/2010)

Sentence Date 12-19-13

* Sentenced 6-30-14
(Paw MC)

A TRUE COPY
Aven Childs, Clerk of Court, McCormick County

STATE OF SOUTH CAROLINA
COUNTY OF McCormick
STATE

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010-GS-35-00052

VS.
Joe Ross Worley

FILED
Gwendolyn D. Childs
CLERK OF COURT
McCORMICK COUNTY, SC

J036561
Date of Offense: 11/15/2009
S.C. Code §: 16-03-0620
Code #: 0014

AKA: _____
Race: _____ Sex: M Age: 52
DOB: _____ S#: _____
Address: _____

City, State, Zip: McCormick, SC 29835
DL# * _____ SID# _____
*CDL Yes No CMV Yes No Hazmat Yes No

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
TO: Assault & Battery with Intent to Kill
In violation of § _____ of the S.C. Code of Laws, bearing CDR Code # _____
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45
(CSC w/minor 1st or Lewd Act)

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.
ATTEST:

Solicitor _____ SC Bar # _____ Defendant _____ Attorney for Defendant _____ SC Bar # _____
WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center,
for a determinate term of 20 days/months/years or under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are
incorporated by reference.
 CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections. (from NOV 15, 2009)
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.
SPECIAL CONDITIONS:
 RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____
_____ days/hours Public Service Employment

Payment Terms: _____
 Set by SCDPPPS _____
Obtain GED
Attend Voc. Rehab. Or Job Corp. _____

Recipient	*Fine:	\$
§14-1-206 (Assessments 107.5%)		\$
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ <u>100.00</u>
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§14-1-213 (Drug Court Surcharge)	\$150	\$
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
§44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)		\$ <u>3.90</u>
TOTAL		\$ <u>133.90</u>

Clerk of Court/Deputy Clerk Dwain Dulin
Court Reporter: Tara T. Scott
SCCA/217 (06/2010)

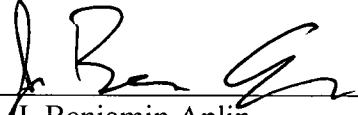
May serve W/E beginning: _____
Substance Abuse Counseling
Random Drug/Alcohol Testing
Fine may be pd. in equal consecutive weekly/monthly
pmts. of \$ _____ Beginning _____
\$ _____ Paid to Public Defender Fund
Other: NO Contact with
Victims including
Neighbors
 Conditional Discharge, §44-53-450(C) requires
\$350 be paid to the Clerk prior to case disposition
 Appointed PD or appointed other counsel
\$47.12 requires \$500 be paid to Clerk
during probation.
Presiding Judge [Signature]
Judge Code: 2155
Sentence Date: 12-19-13

ATRAUECOPY
Dwain D. Childs
Clerk of Court, McCormick County

Sentenced by 30-14
[Signature]

CERTIFICATE OF COUNSEL

Counsel for Respondent certifies that this Supplement Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

BY: 

J. Benjamin Aplin
S.C. Bar No: 8729

November 13, 2017

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NOV 13 2017

SC Court of Appeals