

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

RECEIVED
AUG 24 2018
SC Court of Appeals

Appellate Case No. 2014-001497

THE STATE,.....RESPONDENT

v.

JOE ROSS WORLEY,.....APPELLANT.

**RETURN TO PETITION FOR REHEARING AND
REQUEST FOR HOLDING ON FINAL ISSUE**

On July 18, 2018, this Court issued an unpublished opinion that affirmed Appellant Joe Ross Worley’s convictions for assault and battery with intent to kill (ABIK) and possession of a weapon during the commission of a violent crime. *State v. Worley*, Op. No. 2018-UP-327 (S.C. Ct. App. filed July 18, 2018). On August 1, 2018, Appellant submitted a “Petition for Rehearing and Request for Holding on Final Issue” pursuant to Rule 221(a), SCACR. By letter dated August 14, 2018, this Court asked Respondent (the State) to file a return to the motion. This “Return to Petition for Rehearing and Request for Holding on Final Issue” now follows. The procedural history, the statement of facts, and the substantive arguments recited in the Final Brief of Respondent are hereby incorporated by reference.

The State respectfully asks this Court to deny the petition for rehearing pursuant to Rule 221(a), SCACR, because it did not overlook or misapprehend any points that would warrant further consideration of this matter. First, in regard to the lower court's denial of immunity under the "Protection of Persons and Property Act" (the Act), S.C. Code Ann. §§ 16-11-410 to -450 (2007), this Court affirmed and adopted the lower court's December 8, 2011 order, which itself employed a thorough and proper analysis of each of the arguments raised by Appellant at the immunity hearing before concluding Appellant did not carry his burden of proving he was entitled to immunity under the Act. The lower court followed the appropriate procedure—holding a pretrial hearing, evaluating the credibility of the witnesses and weighing the evidence—and ultimately found Appellant did not carry his burden of proof. Appellant's arguments simply could not prevail under this Court's standard of review. As in *State v. Curry*, 406 S.C. 364, 752 S.E.2d 263 (2013), Appellant's claims of self-defense and defense of habitation presented quintessential jury questions, which is not a situation warranting immunity from prosecution. The trial court's findings that Appellant failed to carry his burden of proving there was an entry or attempted entry, and that Appellant failed to carry his burden of proving he was not without fault in bringing on the difficulty, had evidentiary support and were not controlled by errors of law.

Similarly, the lower court's December 8, 2011 order analyzed and rejected Appellant's myriad grounds for claiming Deputy Rushton was not a "law enforcement officer" within the meaning of the Act. The lower court's findings in this regard served merely as an additional sustaining ground to the overall denial of immunity, and as noted above, that denial was solidly grounded in credibility findings and Appellant's abject failure to carry his burden of proving the required elements of self-defense by a preponderance of the evidence. Indeed, the lower court

held: “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.” (R. p.1767). In other words, the lower court concluded Appellant failed to establish he actually believed he was in imminent danger of losing his life or sustaining serious bodily injury because a reasonably prudent man of ordinary firmness and courage would not have entertained the same belief. *See Curry*, 406 S.C. at 371 n.4, 752 S.E.2d at 266 n.4. (listing the four elements required by law to establish a case of self-defense). Similarly, the lower court found “that the preponderance of the evidence is that the ‘difficulty’ was brought on by [Appellant’s] conduct.” (R. p.1774). These individual findings supported the lower court’s ultimate conclusion that “Appellant has not met his burden of proof” in establishing the elements of self-defense needed for a grant of pretrial immunity. (R. p.1773-p.1774). For all of these reasons, the lower court’s denial of immunity and Appellant’s convictions were properly affirmed by this Court. Rehearing should be denied.

Second, in regard to the lower court’s refusal to grant a mistrial based on the solicitor’s comments in closing arguments, this Court adopted the trial court’s finding that: “the solicitor was commenting on the evidence or the lack of evidence in response to information or issues that were placed in the record by Worley and was not burden-shifting or inferring that Worley was guilty because he failed to testify.” That finding was supported by evidence in the record and was properly affirmed by this Court.

In his petition for rehearing, Appellant contends this Court “in effect has not ruled on this issue as the trial court’s order dated December 8, 2011, which was adopted by this Court as its holding, included no finding on this question.” However, the State submits Appellant reads this

Court's opinion too narrowly. While this Court's opinion could be read to indicate it was adopting the trial court's written December 8, 2011 order as to both issues, this cannot be what was intended where that written order was issued well before closing arguments were ever made at the conclusion of trial. Instead, a reasonable reading of this Court's opinion is that the adoption of the written December 8, 2011 order only pertains to the immunity issue, while the trial court's **oral ruling** at the end of trial was adopted by this Court in regard to the mistrial issues. Consideration of the trial court's oral ruling confirms this more broad and reasonable interpretation.

Indeed, at the conclusion of trial, the trial court ruled as follows:

I had told counsel I was denying the motion [for a mistrial]. I want to put my grounds on the record. And the basis for me denying it is the *Meggett* case. I thought it was in line with what we had here. But I can tell you what I do recall, and I'll double check it, is, number one, **the comment was in response to information or issues that were placed in the record by defense in this matter. So it was commenting on the evidence or the lack of evidence.**

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

(R.p.1636, line 23-p.1637, line 19) (emphasis added). The emphasized language is perfectly in line with the language used in this Court's unpublished opinion, clearly indicating it constitutes the findings that were actually adopted by this Court. Thus, this Court appropriately adopted the lower court's conclusions as to both issues, one by way of the written December 8, 2011 order, and the other by way of the oral ruling at trial. There is no basis for granting rehearing for purposes of obtaining any further ruling from this Court.


WHEREFORE, based on the foregoing argument and the arguments raised in the Final Brief of Respondent, the State respectfully requests that this Court deny Appellant's petition for rehearing, deny Appellant's request for making an additional holding on his final issue, and let stand the unpublished opinion affirming Appellant's convictions and sentence.

Respectfully submitted,

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Senior Assistant Deputy Attorney General

S.R. HUBBARD, III
Solicitor, Eleventh Judicial Circuit

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

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3727

ATTORNEYS FOR RESPONDENT

Columbia, South Carolina
August 24, 2018

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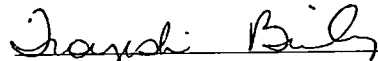
JOE ROSS WORLEY,APPELLANT.

PROOF OF SERVICE

I, Troyeshi Brailey, Legal Coordinator, hereby certify that I have served the within *Return To Petition For Rehearing And Request For Holding On Final Issue*, dated August 24, 2018, on Appellant by depositing a copy of the same in the United States mail, postage prepaid, addressed to his attorneys of record:

Wanda H. Carter, Esquire
Deputy Chief Appellate Defender
Office of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

I further certified that all parties required by Rule to be served have been served. This 24th day of August, 2018.


Troyeshi Brailey
Legal Coordinator

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3727



ALAN WILSON
ATTORNEY GENERAL

August 24, 2018

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Dear Ms. Carter:

I am enclosing one (1) copy of the Return to Petition for Rehearing and Request for Holding on Final Issue in the above-referenced case.

Sincerely,

J. Benjamin Aplin
Senior Assistant Deputy Attorney General
S.C. Bar No. 8729

JBA/tb
Enclosures

cc: Honorable Jenny A. Kitchings (original enclosed)
Victim Services