

RECEIVED

Feb 07 2022

S.C. SUPREME COURT

**STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

Ex rel: Calhoun County Clerk of Court,
Petitioner

In re:

Mikal D. Mahdi,

vs.

State of South Carolina,

Appellate Case Nos. 2007-045260 (original jurisdiction for direct appeal);
2013-000183 (dismissing PCR appeal as premature);
2014-002131 (PCR appeal);
2017-002212 (successive PCR appeal).

CAPITAL CASE

**RETURN IN OPPOSITION TO PETITION
FOR AN ORDER ALLOWING FOR DISPOSITION OF THE
PHYSICAL EVIDENCE OR BIOLOGICAL MATERIAL**

By petition dated January 25, 2022, the Calhoun County Clerk of Court requested an order allowing for the destruction of State's Exhibit 77 from the original 2006 sentencing proceedings – a Ruger Mini-14 assault rifle. Because Mahdi is still in federal habeas, and the capital case has not yet reached the point such that an execution may proceed, the State of South Carolina opposes the petition. In support of its position, the State would respectfully show the Court:

1. As noted, Mahdi is currently pursuing available federal remedies. This abbreviated procedural history reflects the path to this point: Mahdi pled guilty on November 30, 2006; on December 8, 2006 the Honorable Clifton Newman imposed a sentence of death for the murder of Captain James Myers; and, this Court affirmed after direct appeal review. *Mahdi v. State*, 383 S.C.

135, 137, 678 S.E.2d 807, 808 (2009). Mahdi pursued a post-conviction relief action, but relief was denied, and this Court denied his petition for writ of certiorari. (See Appellate Case No. 2014-002131). Mahdi then entered federal court to seek federal habeas relief. In addition, he also filed another PCR action, which was denied as untimely and improperly successive, and this Court dismissed the attempted appeal. (See Appellate Case No. 2017-002212). Mahdi continued to litigate to completion his federal habeas action in district court. The district court denied habeas relief and Mahdi appealed. On December 20, 2021, after briefing and oral argument, a panel of the Fourth Circuit Court of Appeals issued a split decision affirming the denial of relief. Chief Judge Gregory, in dissent, would have granted a remand and ordered additional federal habeas proceedings. *Mahdi v. Stirling*, 20 F.4th 846, 854 (4th Cir. 2021). Mahdi filed a petition for rehearing on en banc on January 3, 2022, and the State filed its return in opposition to the petition on January 24, 2022. The petition for *en banc* review is currently pending.

2. Additionally, certain facts from the record will lend context to this response. The record shows that Mahdi was from Virginia and traveled down the east coast in a stolen vehicle. He stopped in North Carolina and shot a gas station employee two times in the face. He continued to South Carolina where he car-jacked his way into another vehicle. While unsuccessfully attempting to use stolen card(s) for gas, Mahdi fled on foot and happened upon Captain Myers' residence where he entered a shed that had been outfitted as a workshop. There, he watched TV, went through Captain Myers' gun collection, and selected a shotgun which he then modified by cutting the barrel down. When Captain Myers returned home, Mahdi shot him nine times with a .22, poured fuel over him, and set fire to his body. Mahdi then stole Captain Myers' work vehicle and left with the .22 rifle, the shotgun, and a law enforcement assault rifle, a Ruger Mini 14. When

Mahdi was found in Florida, he took the assault rifle while fleeing law enforcement. Judge Newman, in sentencing, described Mahdi's connection to the weapon:

Following his murder of Captain Myers, Mr. Mahdi was apprehended on July 21st, 2004 in Satellite Beach, Florida, after jumping out of Captain Myers' city issued truck armed with a Ruger .223 assault rifle belonging to the Orangeburg Department of Public Safety.

Following his arrest, Mr. Mahdi stated that, according to Sergeant Darren Frost of the Satellite Beach Police Department, that he did not shoot Sergeant Frost only because the gun was stuck in a three shot burst and he did not think he could shoot him, the other cop, referring to the other police officer, and the F'ing [police] dog.

(Record on Appeal, p. 1818-19).

Should new proceedings be granted, these facts, and the referenced gun, would again be relevant to sentencing.

3. Our Court rules favor retention of capital case exhibits until the death of the defendant. See Rule 606 (c)(1)(A) and (d)(1)(A), SCACR. The Clerk asserts generally that the gun, which was a law-enforcement weapon, must be destroyed according to federal regulations. (See Cover Letter of Jan. 25, 2022, citing 41 C.F.R. § 102-40.175). Those cited federal regulations, however, do not require destruction and/or disposition at a particular time and do not speak to continuing litigation. (Attachment 1). The State submits that given the continuing litigation, the most prudent course is to maintain the exhibit in the Clerk's office. Consequently, the petition should be denied at this time.

WHEREFORE, for all the foregoing reasons, the State submits the petition should be denied and the Clerk should retain all exhibits from Mahdi's circuit court actions until after Mahdi's death.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General
S.C. Bar No. 14244

J. ANTHONY MABRY
Senior Assistant Attorney General

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

s/Melody J. Brown

February 7, 2022
Columbia, South Carolina.

By: _____
ATTORNEYS FOR RESPONDENT

ATTACHMENT 1

Code of Federal Regulations

Title 41. Public Contracts and Property Management

Subtitle C. Federal Property Management Regulations System

Chapter 102. Federal Management Regulation (Refs & Annos)

Subchapter B. Personal Property (Refs & Annos)

Part 102–40. Utilization and Disposition of Personal Property with Special Handling Requirements (Refs & Annos)

Subpart E. Categories of Personal Property with Special Handling Requirements

41 C.F.R. § 102–40.175

§ 102–40.175 How do we handle firearms?

Effective: February 10, 2015

Currentness

(a) You must submit reports and transfer documents on excess firearms to GSA (8QSC), Denver, CO 80225–0506. GSA will approve transfers of firearms only to those Federal agencies authorized to acquire firearms for official use, and may require additional written justification from the requesting agency.

(b) GSA may donate only surplus hand guns, rifles, shotguns, and individual light automatic weapons previously used by the Federal Government, with less than .50 caliber in Federal Supply Classification (FSC) 1005, and rifle and shoulder fired grenade launchers in FSC 1010, with a disposal condition code of 4 or better (see condition codes in § 102–36.240 of this subchapter). Only eligible law enforcement entities whose primary function is the enforcement of applicable Federal, state, and/or local laws, and whose compensated law enforcement officers have powers to apprehend and arrest, may obtain these donated firearms for law enforcement purposes.

(c)(1) For purposes of donation under paragraph (b) of this section, each Transfer Order Surplus Personal Property SF 123 must be accompanied by a conditional transfer document, signed by both the intended donee agency and the SASP, which includes the special terms, conditions, restrictions, and other forms or information required for the transfer of the donated firearms. Restrictions on donated firearms are perpetual and may not be amended by the SASP without prior written approval from GSA. Donated firearms must be released or shipped directly from the Federal donor agency to the designated donee.

(2) If the firearms to be donated are subject to the National Firearms Act, 26 U.S.C. Chapter 53, (e.g., machineguns, silencers, short-barrel rifles, short-barrel shotguns, firearms over .50 caliber or with a bore diameter of more than ½ inch, and destructive devices) the SF 123 must be accompanied by an ATF Form 10, Application for Registration of Firearms Acquired by Certain Governmental Entities, completed by the donee agency as specified in 27 CFR 479.104. Upon approval of the donation by the SASP, the Form 10 shall be forwarded in accordance with the form's instructions. The Chief, National Firearms Act Branch, shall notify the donee agency of ATF registration of the donated firearms by returning the approved Form 10 to the donee agency. The donee agency shall provide a copy of the approved Form 10 to the SASP who shall retain a copy of the approved Form 10 and attach it to the SF 123. Firearms shall not be released for shipment until the ATF Form 10 has been approved by the ATF and a copy provided to the SASP. The registration of any firearms on ATF Form 10 is for official use only and subsequent transfers will be approved only to other Governmental entities for official use and in accordance with paragraph (e)(2) of this section. If you have questions concerning whether

particular firearms are subject to the National Firearms Act, contact the Firearms Technology Industry Services Branch, ATF, at (304) 616–4300 or FIRE_TECH@atf.gov.

(d) When authorized by circumstances described in paragraphs (e), (f), (g), or (i) of this section, the destruction of firearms must be performed by an entity authorized by your agency head or designee. The destruction must be witnessed by two additional agency employees authorized by the agency head or designee.

(e)(1) When the approved donee agency no longer needs the donated firearms, the donee agency must notify the SASP. The SASP may, with GSA approval and in accordance with paragraph (e)(2) of this section, reassign firearms to another donee agency within the state or to a donee agency in another state through the appropriate SASP. In such a case, transfer of the firearms must be between eligible donee agencies only. No SASP is eligible to take custody of the firearms. If the firearms are not sought for reassignment, the donee agency and a representative from the SASP, or designee, must witness destruction of the firearms and complete and sign a certificate of destruction, which will be maintained by the SASP. If firearms subject to the National Firearms Act are destroyed, the SASP shall notify the Chief, National Firearms Act Branch, ATF, so the destruction can be noted in the National Firearms Registration and Transfer Record.

(2) If the firearms sought for reassignment are subject to the National Firearms Act, the firearms must be transferred in accordance with 27 CFR 479.90. This regulation requires that the donor agency submit an ATF Form 5, Application for Tax Exempt Transfer and Registration of Firearm, which must be approved prior to transfer of the firearms. Donor agencies wishing to reassign firearms subject to the National Firearms Act shall submit a completed ATF Form 5 to the SASP along with the request to reassign the firearms to another donee agency. The SASP shall forward the ATF Form 5 to the Chief, National Firearms Act Branch. If transfer is approved by the ATF, the donor agency will receive a copy of the Form 5, with approval noted thereon, from the Chief, National Firearms Act Branch, ATF. The donor agency shall provide a copy of the approved Form 5 to the SASP at which time the reassignment shall be approved.

(f) You must not abandon firearms. You must destroy unneeded firearms by crushing, cutting, breaking, or deforming each firearm in a manner to ensure that each firearm is rendered completely inoperative and incapable of being made operable for any purpose except the recovery of basic material content. Destruction of firearms must be performed as stated in paragraphs (d) and (e) of this section.

(g) You must not dispose of functional or repairable firearms under an exchange/sale transaction or by sale. Surplus firearms may be sold only for scrap after total destruction as described in paragraph (f) of this section to ensure that the firearms are rendered completely inoperative and to preclude their being made operative. Such sale shall be conducted under part 102–38 of this subchapter.

(h)(1) Except as provided in paragraph (h)(2) of this section, firearms received as foreign gifts may be offered for transfer to Federal agencies or sold to the gift recipient in accordance with part 102–42 of this subchapter. If sold to the gift recipient, a certification signed by the gift recipient certifying compliance with all Federal, state, and local laws regarding purchase and possession of firearms must be received by the gift recipient's agency and the agency conducting the sale prior to the sale and release of such firearm to the gift recipient.

(2) Firearms subject to the National Firearms Act, 26 U.S.C. Chapter 53 that are received as foreign gifts cannot be lawfully transferred to an individual gift recipient. These firearms must remain the property of the United States or may be transferred to a donee agency in accordance with paragraphs (b) and (c) of this section. In addition, all firearms must

also be transferred, shipped, received, and possessed in accordance with the Gun Control Act of 1968. Persons having questions concerning compliance with the Gun Control Act should contact the nearest ATF field office.

(i) Firearms that are forfeited, voluntarily abandoned, or unclaimed as described in 40 U.S.C. 1306 and 40 U.S.C. 552, must be reported to GSA for disposal in accordance with § 102–41.195 of this subchapter. GSA will direct the disposition of these firearms under this section.

SOURCE: 64 FR 39084, July 21, 1999; 65 FR 10027, Feb. 25, 2000; 80 FR 7353, Feb. 10, 2015, unless otherwise noted.

AUTHORITY: 40 U.S.C. 121(c).

Current through January 27, 2022; 87 FR 4454, except for Title 40 which is current through January 21, 2022; 87 FR 3419.

End of Document

© 2022 Thomson Reuters. No claim to original U.S. Government Works.

**STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

Ex rel: Calhoun County Clerk of Court,
Petitioner

In re:

Mikal D. Mahdi,

vs.

State of South Carolina,

Appellate Case Nos. 2007-045260 (original jurisdiction for direct appeal);
2013-000183 (dismissing PCR appeal as premature);
2014-002131 (PCR appeal);
2017-002212 (successive PCR appeal).

PROOF OF SERVICE

I, Angela Brown, am an employee of the State of South Carolina hereby certify that as per the March 20, 2020 Order of the Chief Justice, the *Return in Opposition to Petition for an Order Allowing for Disposition of the Physical Evidence or Biological Material, and Certificate of Service* has been forwarded to the following parties via email today, February 7, 2022 and by depositing one copy of the same in the United States mail, postage prepaid:

Mr. E. Charles Grose, Jr.
The Grose Law Firm, LLC
404 Main Street
Greenwood, South Carolina 29646
Charles@groselawfirm.com

The Honorable Kenneth Hasty
Calhoun County Clerk of Court
Post Office Box 709
St. Matthews, South Carolina 29135
KHasty@calhouncounty.sc.gov

Robert M. Dudek, Esquire
Office of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211
RDudek@sccid.sc.gov

I further certify that all parties required by Rule to be served have been served.

This 7th day of February, 2022.



ANGELA BROWN
Administrative Coordinator

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