SC-2025-0623

IN THE SUPREME COURT OF ALABAMA

EX PARTE MAC BAILEY MARQUETTE

In re: STATE OF ALABAMA

v.

MAC BAILEY MARQUETTE

On Petition for Writ of Mandamus from the
Circuit Court of Morgan County
(CC-24-9)

STATE OF ALABAMA'S ANSWER TO PETITION FOR WRIT OF MANDAMUS

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STATEMENT REGARDING ORAL ARGUMENT

The respondent State of Alabama does not request oral argument. Following an evidentiary hearing, the trial court made extensive factual findings and denied the petitioner's motion for pre-trial immunity under Section 13A-3-23 of the Alabama Code. The petitioner, Mac Bailey Marquette, sought a writ of mandamus from the Court of Criminal Appeals asking that court to direct the trial judge to vacate his order. In a well-reasoned opinion joined by Presiding Judge Windom and Judges Kellum, Cole, and Anderson, the Court of Criminal Appeals denied Marquette's petition. Judge Minor concurred in the result.

Marquette now comes to this Court seeking the same relief. For the reasons that follow, as well as those given by both courts below, this Court should deny the petition. It should also deny Marquette's request for oral argument. Marquette asserts that argument would be helpful because of "the Alabama legislature's recent passage of the 'Back the Blue' HB202, now codified as Act 2025-423 (effective date October 1, 2025), and the way courts are to handle immunity requests involving law enforcement officers in the civil and criminal contexts." (Pet. 2.) But Marquette has never argued that the new Act should or would apply to

him, and he expressly acknowledged—without disagreement or caveat—that *his* "request, of course, was not considered under this new law." (Pet. 2.) So while the Court may wish to hold oral argument in a future case where the new law is implicated (and was applied by the trial court), there is no reason to hold argument here, where the trial court simply applied law that is already well established.

Given the limited issues before the Court, the State believes that "[t]he facts and legal arguments are adequately presented" in the parties' briefs such that the Court "would not be significantly aided by oral argument." Ala. R. App. P. 34(a).

TABLE OF CASES AND AUTHORITIES

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STATEMENT OF THE CASE

Mac Bailey Marquette petitions this Court for a mandamus order directing Morgan County Circuit Judge Charles Elliot to grant his request for prosecutorial immunity pursuant to Section 13A-3-23(d) of the Code of Alabama (1975).

During the January 2024 term, a Morgan County Grand Jury issued an indictment charging Marquette with murder in violation of Section 13A-6-2 of the Code of Alabama (1975), for the shooting death of Stephen Perkins. (Pet. Ex. 1.) On January 7, 2025, Marquette moved the circuit court for immunity from prosecution pursuant to Section 13A-3-23(d)(1) and for dismissal of the murder indictment. (Pet. Ex. 2.) A "stand-your-ground" hearing convened on March 25, 2025, during which Marquette presented witness testimony and exhibits in support of his motion. (Pet. Ex. 3.) On April 2, 2025, the circuit court entered an amended order denying Marquette's request for immunity, continuing the trial date, and staying proceedings in circuit court to allow Marquette time to seek review of its order. (Pet. Ex. 5.)

On May 8, 2025, Marquette filed a mandamus petition in the Court of Criminal Appeals challenging the trial court's order denying him

prosecutorial immunity. On August 15, 2025, that court issued a memorandum decision denying relief. (Pet. Ex. 17.) Marquette now petitions this Court for mandamus review of the trial court's order denying his request for prosecutorial immunity.

STATEMENT OF THE FACTS

I. Evidence Adduced During the Hearing

On the evening of September 28, 2023, Caleb Combs was working for Allstar Recovery, which is a company that specializes in automobile repossession. (Pet. Ex. 3 at 8-9.) Combs was paid "[p]er vehicle" and testified that he was incentivized to repossess as many vehicles as possible in a workday and preferred to perform repossessions at night "because of less traffic," "[l]ess chance to meet the debtor, [and] quicker in and out." (Pet. Ex. 3 at 9-10.) After verifying that Stephen Perkins's 2018 GMC truck was subject to an active repossession, Combs proceeded to Perkins's address at 3931 Ryan Drive. (Pet. Ex. 3 at 12-18, 67.)

Perkins's truck was backed into the driveway with the rear of the truck adjacent to the garage. (Pet. Ex. 3 at 19.) Logistically, Combs had to slide the tow truck's boom under the front wheels of the truck but because the truck was rear-wheel drive, he had to disengage the

transmission to release the rear wheels before the truck would tow. (Pet. Ex. 3 at 18-20.) While Combs was disengaging the transmission, he heard the garage door opening. (Pet. Ex. 3 at 20-21.) He crawled out from beneath the truck to find Perkins armed with a pistol. (Pet. Ex. 3 at 21.) Perkins pointed the gun at Combs's chest[1] and said, "Drop my fucking truck and get off my property." (Pet. Ex. 3 at 22.) Combs, unarmed and scared, raised his hands and backed towards the tow truck. (Pet. Ex. 3 at 22-23.) Once inside the tow truck, Combs "unclamped the wheels, dropped the vehicle, and pulled out and left." (Pet. Ex. 3 at 23-24.)

Combs returned to the tow lot and reported the incident to the Decatur central police dispatch. (Pet. Ex. 3 at 24-26.) Dispatch told Combs they would send an officer to take his report; however, Combs did not wait for the officer to arrive. Rather, he went to repossess another vehicle. (Pet. Ex. 3 at 26-27.) When Combs again returned to the tow lot, he met with Decatur Police Officer Christopher Mukadam and described the incident at Perkins's house. (Pet. Ex. 3 at 27.) Using the information from Combs's work tablet, Officer Mukadam was able to identify Perkins

[1] Combs testified that the gun was no more than six to eight inches from his chest. (Pet. Ex. 3 at 23.)

as the truck's owner and Combs confirmed that it was the same man who threatened him with the gun. (Pet. Ex. 3 at 27-28.)

Officer Mukadam then explained to Combs the process for obtaining a warrant once the incident report was completed. (Pet. Ex. 3 at 28.) Combs informed Officer Mukadam that his primary concern was completing the repossession so that he could get paid and that he did not intend to press charges. (Pet. Ex. 3 at 28-29.) Combs told Officer Mukadam that he intended to make a second attempt to repossess the truck[2] but "wanted [an officer] there with me for my safety."[3] (Pet. Ex. 3 at 31.) Officer Mukadam explained to Combs that if the police accompanied him, they could not be involved with the repossession. (Pet. Ex. 3 at 31.) Combs did not have a court order to repossess Perkins's truck;[4] thus, he was proceeding pursuant to Section 7-9A-609(b)(2) of the Code of Alabama (1975), which authorizes "self-help" repossession

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[2] "I wanted to get the truck for personal income because that's how I feed my family." (Pet. Ex. 3 at 29.)

[3] Combs contradicted himself on cross-examination when he testified that he did not ask the police to go with him for the second repossession attempt. (Pet. Ex. 3 at 46.)

[4] Combs testified on cross-examination that he was unaware that a court order is required before police may assist with a repossession. (Pet. Ex. 3 at 50.)

without judicial process so long as it can be done "without breach of the peace." (Pet. Ex. 3 at 16, 39.)

Officer Mukadam testified that he was dispatched to the tow yard on Poole Valley Road in response to Combs's complaint. (Pet. Ex. 3 at 55-56.) After Combs described the encounter with Perkins, Officer Mukadam determined that a possible misdemeanor menacing had occurred. (Pet. Ex. 3 at 56-57.) He "took the report" and "gave [Combs] the case number and told him that he needed to go swear out a warrant." (Pet. Ex. 3 at 57.) Combs replied that "he didn't want to get a warrant, he just wanted to get the truck." (Pet. Ex. 3 at 57.) Based on his "experience and training," Officer Mukadam advised:

> I told him that we can escort him over there and just stand by for his safety. I told him we couldn't get involved with the civil matter. I told him we can just stand by for safety. I can't make the person release the truck to him. I can't, you know, get involved with that at all.

(Pet. Ex. 3 at 58.) Officer Mukadam's prior experience involved a situation in July 2023 when he was dispatched to meet a tow truck driver at Lafayette Street after a "female came out and was combative" while the driver was attempting to repossess a vehicle. (Pet. Ex. 3 at 58.) Officer Mukadam accompanied the tow truck driver to Lafayette Street for a

second repossession attempt, which was completed without further incident. (Pet. Ex. 3 at 58-59.) Importantly, this incident occurred during the daytime; did not involve an armed subject; and the female did not exit the house during the second repossession. (Pet. Ex. 3 at 58-59.)

Once Officer Mukadam decided to accompany Combs for a second repossession attempt, he requested "two extra officers or any other available units" to assist. (Pet. Ex. 3 at 60-61.) The shift supervisor, Sergeant Summers, called Officer Mukadam in response to his request for back up and Officer Mukadam apprised him of the situation. (Pet. Ex. 3 at 61.) Sgt. Summers approved the request for backup and said that he would meet the officers at Perkins's address. (Pet. Ex. 3 at 61.) In response, Officers Mac Bailey Marquette (the defendant) and Joey Williams reported to the tow yard. (Pet. Ex. 3 at 31-32, 123.) The three officers conferred before advising Combs to give them a five-minute head start so that they could "go set up" before he arrived to attempt the second repossession. (Pet. Ex. 3 at 32, 84-86.)

When they arrived at Ryan Drive, all three officers parked their vehicles approximately five houses down from Perkins's house. (Pet. Ex. 3 at 86, 126-27.) Officers Mukadam and Williams both testified that they

were trained to do this for officer safety. (Pet. Ex. 3 at 86-87, 126-27.) They then established a "perimeter for scene security." (Pet. Ex. 3 at 68.) The 2018 GMC truck remained parked in the driveway in front of the garage as before and two lights mounted above the garage doors illuminated the driveway, including where the truck was parked. (Pet. Ex. 3 at 67-68.) Officers Marquette and Williams positioned themselves around the left corner of the garage beyond the illumination of the garage lights. (Pet. Ex. 3 at 68, 129-30, 133-34.) Officer Mukadam positioned himself in the driveway of the house across the street where he had a tactical view of the house, the truck in the driveway, and Officers Marquette and Williams's position beside the garage. (Pet. Ex. 3 at 68-70.) Officer Williams testified that they were taught this "reactionary gap" style positioning to afford more time to assess and react in potentially dangerous situations. (Pet. Ex. 3 at 133-34.) Officer Mukadam concurred that returning to Perkins's house "was potentially a dangerous situation," which informed their decision to employ tactical measures for officer safety. (Pet. Ex. 3 at 80, 88.)

Moments after the officers took up their tactical positions, Sgt. Summers drove past in his police vehicle, but he did not have the

emergency lights activated, and it does not appear that he took an active part in what unfolded next. (Pet. Ex. 3 at 70, 126, 133.) Combs arrived almost immediately after Sgt. Summers. (Pet. Ex. 3 at 33, 70.) Because of their concealed positions, Combs did not initially see the three officers, which surprised him because he thought they would be present and visible. (Pet. Ex. 3 at 33, 48.) Combs backed his tow truck into Perkins's driveway and the work lights on the back provided additional illumination. (Pet. Ex. 3 at 48, 70, 134.) At that point he was able to see Officers Marquette and Williams at the corner of the garage. (Pet. Ex. 3 at 34, 48-49, 71.)

As Combs began backing the tow truck under Perkins's truck he saw a light at the front of the house.[5] (Pet. Ex. 3 at 34-35.) Simultaneously, Officer Mukadam saw movement at the front door of the house and notified Officers Marquette and Williams to be prepared. (Pet. Ex. 3 at 71, 135.) While initiating the repossession, Combs heard Perkins yell, "Hey, drop my fucking truck[!]" (Pet Ex. 3 at 35.) He also saw a light pointing towards the tow truck. (Pet. Ex. 3 at 35.) Undeterred, Combs

[5] Body camera videos of the shooting recorded by Officers Mukadam and Williams were admitted and viewed by the circuit court. They have been made available to this Court as Petitioner's Exhibits 6 and 7.

proceeded to load the truck onto the wrecker. (Pet. Ex. 3 at 35.) Immediately after Perkins yelled out, Combs heard an officer yell, "Police, get on the ground[!]" (Pet. Ex. 3 at 36.) At that point, the light swung in the direction of the garage where the officers were positioned. (Pet. Ex. 3 at 36-37.) The next thing Combs heard was gunfire. (Pet. Ex. 3 at 37.) He "hunkered down" in the truck for a moment, but when the commotion stopped he secured the truck and "got out of there." (Pet. Ex. 3 at 37.)

Officer Mukadam testified that he was initially blinded by the light on Perkins's gun as he exited the house, but that he heard Perkins yell out and then heard Officer Marquette direct Perkins to get on the ground. (Pet. Ex. 3 at 72.) Perkins exited the house at a fast walk heading directly towards the tow truck. (Pet. Ex. 3 at 74.) However, after Officer Marquette ordered Perkins to back down, Perkins "turned and pointed the firearm at Officer Marquette." (Pet. Ex. 3 at 74-75.) As Officers Williams and Marquette moved into position, Officer Williams saw a flash of light moving quickly toward the tow truck. (Pet. Ex. 3 at 135.) Officer Williams could not see Perkins's gun but presumed from his body positioning that he was armed. (Pet. Ex. 3 at 135-38.) He heard Perkins

yell and then Officer Marquette yell for him to stand down. (Pet. Ex. 3 at 138-39.) Gunfire immediately followed. (Pet. Ex. 3 at 139.) After the shooting, the officers administered first aid to Perkins and confirmed that he was armed with a handgun equipped with a tactical flashlight. (Pet. Ex. 3 at 75, 141-42; Pet. Ex. 10.) Perkins succumbed to his injuries.

Both Officers Mukadam and Williams testified that it was common policy at the Decatur Police Department to attend civil matters in a peace-keeping capacity, including providing an escort for self-help repossessions so long as they did not actively participate in the repossession. (Pet. Ex. 3 at 58, 75, 124-25, 143.) Both officers further testified that their decision to conceal their presence during the second repossession attempt was because they believed making their presence known to Perkins would have been tantamount to taking an active role in the repossession. (Pet. Ex. 3 at 83-84, 99, 152-54.) Officer Williams further speculated that had Perkins known of their presence it could have exacerbated the situation. (Pet. Ex. 3 at 154.) Officers Mukadam and Williams both acknowledged the danger presented by the second repossession attempt in the light of Perkins's initial response and the possibility for escalation. (Pet. Ex. 3 at 80, 88, 94-95.) Officer Mukadam

tacitly admitted that Combs's decision to attempt the second repossession created a potentially dangerous situation. (Pet. Ex. 3 at 90-91, 99-100.) Yet, inexplicably, he expected a different outcome despite that fact that none of the contributing factors had changed and Perkins was unaware of their "peacekeeping" presence. (Pet. Ex. 3 at 91-92, 101.)

Alternatively, Officer Mukadam suggested that he also intended to investigate Combs's menacing complaint while at Perkins's house. (Pet. Ex. 3 at 97-99.) He explained that regardless of whether Combs wanted to press charges, department policy required him to complete a report. (Pet. Ex. 3 at 103.) Officer Williams testified, however, that he was unaware of an investigation for menacing and that he was there only to assist in keeping the peace. (Pet. Ex. 3 at 156-57.)

ALEA investigator Jamie King investigated the shooting. (Pet. Ex. 3 at 160-61, 163.) He testified extensively regarding both the investigation and his conclusions and submitted a thorough investigative report, which was admitted into evidence. (Pet. Ex. 3 at 160-262; Pet. Ex. 9.) Agent King concluded his report with the following findings:

> Based on the facts of the investigation, Officers Marquette, Mukadam, and Williams had reasonable belief that [the victim] had committed the crime of menacing when he brandished a firearm against the tow truck driver. Officer

> Marquette also had reasonable belief that [the victim] was going to use deadly force against the tow truck driver or himself when he exited from his house with a pistol pointed in the direction of the tow truck driver before turning the pistol in the direction of Officer Marquette.

(Pet. Ex. 9 at 20.) He then recommended that the "case be reviewed by the appropriate prosecuting authority to determine if the officer's use of force was reasonable under the circumstances." (Pet. Ex. 9 at 21.)

On cross-examination, Agent King commented that the officers' decision to conceal their presence from Perkins was "unusual for this circumstance" because visual officer presence is a necessary component for keeping the peace. (Pet. Ex. 3 at 240.) He suggested that alternatively they could have positioned a marked police vehicle where Perkins could have seen it or have made contact with him to make their presence known. (Pet. Ex. 3 at 240.) Agent King further testified that to the extent the officers were there to investigate the earlier incident of menacing, the decision to conceal their presence was, again, unusual "[b]ecause in order to continue that investigation you would have to make contact with him in some way." (Pet. Ex. 3 at 242.)

Finally, Agent King testified that the officers exceeded the scope of their duty in accompanying Combs to Perkins's house for the second

repossession. (Pet. Ex. 3 at 251-52.) Based on his training, officer involvement in civil matters, such as repossessions and foreclosures, without a court order was outside the scope of official duties and could potentially result in personal liability.[6] (Pet. Ex. 3 at 243.) Thus, in his opinion, the officers' duty concluded after they responded to the tow yard, took Combs's report, and explained the process for obtaining a warrant—anything that occurred after that point was tantamount to involvement in the repossession, which was outside the scope of their official duties. (Pet. Ex. 3 at 251-52.)

II. The Circuit Court's Order

In its order denying mandamus relief, the circuit court first set out a thorough statement of the evidence adduced during the hearing. (Pet. Ex. 5.)[7] It then identified the relevant legal standards by which to analyze Marquette's plea for immunity. (Pet. Ex. 5.) First, the court determined

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[6] Nevertheless, Agent King determined during his investigation that it was common practice within the Decatur Police Department to "provid[e] escorts of this nature" but that there was no written policy to this effect at the time of the shooting. (Pet. Ex. 3 at 184.) Subsequently, the Decatur Police Department enacted a written policy regarding police escorts for repossessions. (State's Ex. 1 at 2; see also Pet. Ex. 3 at 332-38.)

[7] Because the order is not paginated, Counsel has referenced specific portions of the record by section and paragraph.

that pursuant to Section 13A-3-23(d), Marquette had to "prove by a preponderance of the evidence that the force used … was justified, and not unlawful." (Pet. Ex. 5 at DISCUSSION, para. 1.) Next, the court determined that, per Darby[8], Marquette's request for immunity had to be analyzed pursuant to Section 13A-3-27(b)(2), as Marquette "was an on-duty law enforcement officer at the time" of the shooting. (Pet. Ex. 5 at DISCUSSION, para. 3.) Moreover, the "proper lens through which to view [Marquette's] actions is that when [he] used deadly physical force, would another reasonable police officer in the same situation have acted similarly" and was he "'acting in his capacity as a police officer.'" (Pet. Ex. 5 at DISCUSSION, para. 3.)

Neither party disputed that the officers could not assist Combs in repossessing Perkins's truck without a court order; rather, the dispute regarded whether the officers were acting within the scope of their peace-keeping authority when they accompanied Combs as he returned for the second attempt. Marquette argued that pursuant to common practice, Decatur police often perform various peace-keeping functions in civil matters. However, the court noted the following distinction: "The

[8] Darby v. State, 383 So. 3d 691 (Ala. Crim. App. 2023).

difference between keeping the peace in a domestic matter where an individual is retrieving their personal property from another's residence and a creditor repossessing a vehicle is that there is a specific code section that deals with the repossession of property. See § 7-9A-609 [Committee Comment 3]." (Pet. Ex. 5 at 1. Repossessions, para. 3-4.)

Marquette argued alternatively that the officers went to Perkins's house to investigate Combs's menacing charge. However, the officers were there for "over 6 minutes" before Perkins exited his home and at no time did they attempt to speak with Perkins regarding the earlier incident. Consequently, the court found that Marquette was trespassing on Perkins's property:

> When th[e officers] arrived, there was no crime being committed in their presence. They had the authority to drive down Ryan Drive where Perkins lived. They had the authority to walk towards Perkins's residence. However, after they arrived, they saw that no crime was being committed and Agent King testified that [Marquette's] actions at Perkins's residence were not in furtherance with a menacing investigation. Through the lens of Clark[9] and Shinault[10], [Marquette], in regard to the menacing investigation, was acting outside the scope of his authority and was therefore a trespasser while he was standing on the side of Perkins's residence while waiting for Combs to arrive.

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[9] Clark v. City of Montgomery, 497 So. 2d 1140 (Ala. Crim. App. 1986).
[10] Shinault v. City of Huntsville, 579 So. 2d 696 (Ala. Crim. App. 1991).

(Pet. Ex. 5 at 2. Investigations, para. 5.)

To the extent that Marquette argued that his actions were justifiable pursuant to Section 13A-3-22, the circuit court found this provision inapplicable in this instance because it is to be construed "so narrowly that it 'would never apply to an accusation requiring a particular criminal intent,'" such as murder. (Pet. Ex. 5 at 3. 13A-3-22.)

Finally, the court found a justiciable issue as to whether the officers were performing legitimate peace-keeping functions during the second repossession attempt. Though Marquette argued that they concealed their presence to avoid assisting with the repossession, the court questioned this strategy in the light of the police department's de-escalation policy—which requires interaction with the subject—and the contrast between their actions the night of the shooting versus Officer Mukadam's actions in July 2023, when he attended a second repossession attempt during the day and made his presence known. (Pet. Ex. 5 at 4. Keeping the Peace.)

In finding that Marquette failed to satisfy his burden of proving that he is entitled to immunity from prosecution, the circuit court opined:

> In examining [Marquette's] actions considering § 13A-3-27, Darby, Clark, Shinault, and other cases, the questions

> that must be addressed are: was [Marquette] acting within the scope of his employment and were [his] actions consistent with what a reasonable officer would have done in his situation? Agent King has testified that if [Marquette] was going to Perkins's residence to assist Combs in the repossession, then he was acting outside the scope of his employment as a law enforcement officer. However, if the officers were going to keep the peace, then these two questions are questions of fact that can only be answered by a jury.

(Pet. Ex. 5 at 5. Reasonable Officer Standard.)

STATEMENT OF THE ISSUE

Whether Marquette has shown "a clear legal right" to immunity under Alabama Code § 13A-3-23(d) when the trial court heard evidence *ore tenus* and found that Marquette failed to show by a preponderance of the evidence that he was justified in shooting Stephen Perkins.

STATEMENT WHY THE WRIT SHOULD NOT ISSUE

Marquette Has Not Shown A Clear Legal Right To Prosecutorial Immunity For The Shooting Death Of Stephen Perkins.

Marquette moved the Morgan County Circuit Court for prosecutorial immunity pursuant to Section 13A-3-23(d)(1) of the Code of Alabama (1975), in the shooting death of Stephen Perkins. (Pet. Ex. 2.) Marquette was one of three Decatur police officers who accompanied Caleb Combs when he made a second attempt to repossess Perkins's 2018 GMC truck following a first attempt that resulted in Perkins pointing a

handgun at Combs and demanding that he cease and leave. (Pet. Ex. 3 at 17-31, 55-86.) The officers testified that they accompanied Combs to keep the peace and, alternatively, to investigate Combs's report of menacing during the first attempt but that they did not intend to assist Combs with the repossession because he did not have a court order as is required by Section 7-9A-609 of the Code of Alabama (1975).[11] (Pet. Ex. 3 at 31, 56-58, 60-61, 75, 97-99, 103, 124-25, 143.) During the second attempt, Marquette shot and killed Perkins when—after first pointing his handgun at Combs and demanding that he leave—Perkins then pointed his handgun at Marquette when Marquette ordered him to stand down. (Pet. Ex. 3 at 34-37, 48, 70, 72-75, 134-42.) The circuit court denied Marquette's request for prosecutorial immunity after identifying two "questions of fact that can only be answered by a jury." (Pet. Ex. 5 at 5. Reasonable Officer Standard.)

Section 13A-3-23(d)(1) of the Code of Alabama (1975), affords prosecutorial immunity for the lawful use of deadly physical force. Typically, one claiming immunity must show that the use of force was

[11] "This section does not authorize a secured party who repossesses without judicial process to utilize the assistance of a law-enforcement officer." Id. (Official Comments, 3).

justified pursuant to subsection (a) of this provision; however, because Marquette seeks immunity in his official capacity as a police officer, he must satisfy Section 13A-3-27(b)(2) of the Code of Alabama (1975),[12] regarding his use of force. In this regard, Marquette's actions must be evaluated "from the perspective of a reasonable police officer in the same situation." Darby v. State, 383 So. 3d 691, 702 (Ala. Crim. App. 2023).

> Additionally, regarding the duty to retreat, the accused seeking immunity under subsection (d) for the use of justified deadly force may either (1) establish that he or she complied with the common-law rule regarding the duty to retreat or (2) demonstrate that § 13A-3-23(b) applies and that there was thus no duty to retreat.

Malone v. State, 221 So. 3d 1153, 1157 (Ala. Crim. App. 2016).

Section 13A-3-23(b) provides that before one may stand his ground in self-defense he must not be engaged in any illegal activity and must be "in any place where he or she has the right to be." A person claiming stand-your-ground immunity must "show by a preponderance of the evidence that he or she is immune from criminal prosecution." Ex parte

[12] This provision was amended as part of the "Back the Blue" legislative package to include specific immunity-from-prosecution language. The amended provision became effective on October 1, 2025. Marquette does not argue that it has any application here.

Johnson, 384 So. 3d 52, 57 (Ala. Crim. App. 2023) (citing Ala. Code § 13A-3-23(d)(2) (1975)).

Moreover, the ore tenus rule applies to mandamus review of a trial court's factual findings. Owen v. Rutledge, 475 So. 2d 826, 828 (Ala. 1985). Under that rule,

> where the evidence has been presented ore tenus, a presumption of correctness attends the trial court's conclusion on issues of fact, and this Court will not disturb the trial court's conclusion unless it is clearly erroneous and against the great weight of the evidence, but will affirm the judgment if, under any reasonable aspect, it is supported by credible evidence.

Spencer v. Spencer, 258 So. 3d 326, 328 (Ala. 2018) (citation modified).

"This standard is based on a recognition of the trial court's unique position of being able to evaluate the credibility of witnesses and to assign weight to their testimony." Wehle v. Bradley, 254 So. 3d 178, 183 (Ala. 2017). Thus, this standard applies to the trial court's decision to deny Marquette's motion for immunity, including its weighing of conflicting testimony. See State v. Watson, 221 So. 3d 497, 504 (Ala. Crim. App. 2016) (applying the *ore tenus* rule to the trial court's order granting

immunity from prosecution under Section 13A-3-23(d)).[13] "Under the *ore tenus* rule, the trial court's findings of fact are presumed correct and will not be disturbed on appeal unless these findings are 'plainly or palpably wrong or against the preponderance of the evidence.'" Id. Applying these principles, the trial court was within its discretion to deny Marquette's request for prosecutorial immunity.

A. Section 7-9A-609

Section 7-9A-609 of the Code of Alabama (1975), provides that a secured party may employ "self-help" repossession so long as it can be done "without breach of the peace." However, "[t]his section does not authorize a secured party who repossesses without judicial process to utilize the assistance of a law-enforcement officer." Id. (Official Comments, 3.) Combs did not have a court order when he requested a police escort for his second repossession attempt. (Pet. Ex. 3 at 16, 39, 158.) Officers Mukadam and Williams were aware that they could not assist with the repossession absent a court order. (Pet. Ex. 3 at 31, 58, 124.) Furthermore, ALEA Investigator Jamie King testified that officer

[13] "Absent a gross abuse of discretion, a trial court's resolution of conflicts in the testimony or credibility of witnesses should not be reversed on appeal." Id. (brackets omitted).

involvement in civil matters, such as repossessions and foreclosures, without a court order were outside the scope of official duties. (Pet. Ex. 3 at 243.) Thus, the evidence supported the circuit court's conclusion that to the extent Marquette relied on Section 7-9A-609 as authorization for his presence at Perkins's house at the time of the shooting, that reliance was misplaced. (Pet. Ex. 5 at 1. Repossessions.)

B. Menacing Investigation

Officer Mukadam testified that the officers were also at Perkins's house to investigate the prior incident of menacing. (Pet. Ex. 3 at 97-99.) He explained that department policy required him to complete a report after Combs's reported the incident and he needed to interview Perkins's to do so. (Pet. Ex. 3 at 103.) In contrast, Officer Williams testified that he was unaware of an investigation for menacing and he was there only to assist in keeping the peace. (Pet. Ex. 3 at 156-57.) Agent King testified that the officers' actions on that night belied Officer Mukadam's contention that he intended to conduct an investigation because to investigate "you would have to make contact with [Perkins] in some way," yet the officers concealed their presence. (Pet. Ex. 3 at 242.)

In analyzing this claim, the circuit court considered two contrasting cases. In Clark v. City of Montgomery, 497 So. 2d 1140, 1141-42 (Ala. Crim. App. 1986), the Court of Criminal Appeals found that officers responding to a complaint of a disturbance were not trespassing despite the homeowners request for them to leave, because the officers were actively diffusing the situation and "keep[ing] the peace between neighbors." Id. at 1142. In contrast, it determined in Shinault v. City of Huntsville, 579 So. 2d 696, 697-98 (Ala. Crim. App. 1991), that an officer who remained on Shinault's property after the conclusion of his investigation and after being told to leave was trespassing. Here, though the officers were authorized to approach Perkins's house for the purpose of investigating the menacing charge, they were there for "over 6 minutes" without taking any steps toward investigating. There was no active complaint as the prior menacing episode concluded when Combs left the premises. And there was no crime being committed in their presence. Agent King agreed that their actions after arriving at Perkins's house were "unusual" if their purpose was to investigate the prior incident, "[b]ecause in order to continue that investigation you would have to make contact with him in some way." (Pet. Ex. 3 at 242.)

Consequently, the trial court was within its discretion to find that this case was akin to Shinault, such that even if the officers' initial presence was lawful they became trespassers when they took no steps to investigate the prior menacing incident. (Pet. Ex. 5 at 2. Investigations.)

C. Peace Keeping[14]

Agent King testified—and the trial judge was free to accept—that visual officer presence is a necessary component for keeping the peace and that the officers' decision here to conceal their presence was an "unusual" approach to take if their goal was, in fact, peace keeping. (Pet. Ex. 3 at 240.) Officers Mukadam and Williams both acknowledged the inherent danger in attempting a second repossession and the possibility for escalation. (Pet. Ex. 3 at 80, 88, 94-95.) Officer Mukadam also tacitly acknowledged that Combs's decision to return created the potential for danger to both himself and Perkins. (Pet. Ex. 3 at 90-91, 99-100.) Yet, Officer Mukadam made the decision to accompany Combs for the second

[14] The State pretermits discussion of the circuit court's findings regarding Section 13A-3-22, (Pet. Ex. 5 at 3. 13A-3-22), as Marquette has abandoned that claim in these proceedings. (See Pet. Ex. 3 at 276-79.) Cf. Van Pelt v. State, 202 So. 3d 707, 728 n.4 (Ala. Crim. App. 2015) ("Van Pelt, however, has abandoned this issue on appeal because he does not mention this specific allegation, much less make any argument regarding it, in his brief on appeal.").

attempt despite knowing that Perkins had confronted Combs with a gun during the first attempt; that only a few hours had elapsed since the first encounter; and that the officers intended to conceal their presence from Perkins, thus minimizing any possible peace-keeping effect. (Pet. Ex. 3 at 91-92, 101.)

This assessment was apparently based on a prior experience wherein Officer Mukadam attended a second repossession attempt after the first ended when a "female came out and was combative." (Pet. Ex. 3 at 58.) The second attempt was successful in that case and the female did not come out of the house. (Pet. Ex. 3 at 59.) However, unlike this case, they returned during the day, Officer Mukadam did not conceal his presence, and the female was not armed with a deadly weapon or dangerous instrument. (Pet. Ex. 5 at 4. Keeping the Peace.) The stark differences in these two situations calls into question the reasonableness of the officers' decisions (1) to accompany Combs for a second repossession attempt and (2) to conceal their presence. Consequently, the trial court correctly denied Marquette's request for immunity.

CONCLUSION

"It is well settled that a petition for a writ of mandamus is the proper means to challenge a circuit court's denial of a defendant's claim to pretrial immunity under § 13A-3-23(d), Ala. Code 1975." Ex parte Johnson, 384 So. 3d at 56.

> "A writ of mandamus is an extraordinary remedy, and it will be issued only when there is: 1) a clear legal right in the petitioner to the order sought; 2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; 3) the lack of another adequate remedy; and 4) properly invoked jurisdiction of the court." Ex parte United Serv. Stations, Inc., 628 So. 2d 501, 503 (Ala. 1993).
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> . . . .
>
> "Moreover, the burden is on the petitioner who seeks a writ of mandamus to show that each element required for issuance of the writ has been satisfied." Ex parte Patterson, 853 So. 2d 260, 263 (Ala. Civ. App. 2002) (citing Ex parte Consolidated Publ'g Co., 601 So. 2d 423 (Ala. 1992)).

Id. at 56 (citing Dees v. State, 351 So. 3d 567, 570 (Ala. Crim. App. 2021)) (citation modified). Mandamus "is a drastic and extraordinary writ that will not be issued unless the petitioner has a clear and undisputable right to a particular result." Ex parte Sides, 594 So. 2d 93, 95 (Ala. 1992).

Marquette has not shown a clear legal right to immunity from prosecution in the shooting death of Perkins. The circuit court correctly

found that, based on Marquette's proffer of evidence, there remain open questions regarding whether he had a legal right to be at Perkins's house and/or was operating within the scope of his duties as a police officer at the time of the shooting—questions more appropriately decided by a jury. See Ala. Code § 13A-3-23(d)(4) (1975) (providing that the defense of self-defense remains viable even if the defendant was unsuccessful in proving an entitlement to immunity). Consequently, this Court should deny the writ.

Respectfully submitted,

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By:

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/s/Kristi O. Wilkerson
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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the word limitation set forth in Ala. R. App. P. 21(d) and 32(b)(3). According to the word-count function of Microsoft Word, the brief contains 5,799 words from the Statement of the Case through the Conclusion. I further certify that this brief complies with the font requirements of Ala. R. App. P. 32(a)(7). The brief was prepared in the Century Schoolbook font using 14-point type. See Ala. R. App. P. 32(d).

/s/Kristi O. Wilkerson
Kristi O. Wilkerson
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of October, 2025, I electronically filed a copy of the foregoing with the Clerk of the Court, and I served an electronic copy on the attorneys for Marquette at the email addresses listed on the cover page of Marquette's petition, as follows:

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APPENDIX

APPENDIX INDEX

DECATUR POLICE DEPARTMENT

Decatur, Alabama

General Order No. 437.0

Subject: Written Directive System	Effective Date: January 25, 2024	Revised Date:
Title: Civil Disputes	Pages: 3	Distribution: All Members
Cross Reference: CALEA Reference Chapter **N/A**	Chief of Police Approval **Todd Pinion**	

POLICY

The Decatur Police Department recognizes that a law enforcement presence at civil dispute calls can play an important role in the peace and safety of the community. Subject to available resources, officers may respond to the scene of civil disputes with the primary goal of safeguarding persons and property, preventing criminal activity and maintaining the peace. When handling civil disputes, members will remain impartial and refrain from providing legal advice or recommending specific legal counsel.

PURPOSE

This policy provides general guidance for addressing conflicts between persons when no criminal investigation or enforcement action is warranted (e.g., civil matters), with the goal of minimizing any potential for violence or criminal acts.

PROCEDURES

A. General Considerations

When appropriate, officers handling a civil dispute should encourage the involved parties to seek the assistance of resolution services, legal counsel or take the matter to the civil courts. When handling civil disputes, officers:

1. Should be alert that civil disputes tend to be confrontational and can escalate to violence very quickly. De-escalation techniques should be used when appropriate.

2. Should not dismiss alleged or observed criminal violations as a civil matter and should initiate the appropriate investigation and report when criminal activity is apparent.

3. When appropriate, should inform parties when they are at risk of violating criminal laws.

4. Shall not enter a residence or private property without legal authority.

Note: When practical, reasonable attempts should be made to ensure all parties involved are aware of police involvement/presence.

B. Standby Requests

1. Officers responding to a call for a standby for assistance to retrieve property should meet the person requesting assistance at a neutral location to discuss the process.

2. If the other party is uncooperative, the person requesting standby assistance should be instructed to seek private legal advice and obtain a court order to obtain the items.

3. The officer may advise the person to seek private legal advice as to the distribution of disputed property.

4. Officers should not order the other party to allow entry or the removal of any items. If there is a restraining, protection from abuse or similar order against any person involved, the officer must contact a supervisor to review the order and determine legal authority.

5. If the other party is not present at the location, the officer will not allow entry into the location or the removal of property from the location unless the requesting party has a legal right to be at that location.

C. Vehicles and Personal Property

Officers may be faced with disputes regarding possession or ownership of vehicles or other personal property. Officers may review documents provided by parties or available databases (e.g., vehicle registration), but should be aware that legal possession of vehicles or personal property can be complex (example "marital property…").

Generally, officers shall not take any enforcement action unless a crime is apparent.

In the event of repossessions, the officer is to take no action and can have no participation in repossessions. The officer's sole responsibility is to keep the peace between all parties.

If a debtor refuses to relinquish the property, or if there is or was a breach of peace, the bank or plaintiff must stop the repossession process and be referred to the courts.

D. Court Orders

Disputes involving court orders can be complex. Where no mandate exists for an officer to make an arrest for a violation of a court order, the matter should be addressed by documenting any apparent court order violation in a report. If there appears to be a more immediate need for enforcement action, the investigating officer should consult a supervisor prior to making any arrest. Additionally:

1. With the exception of protection from abuse orders, court orders should be enforced by the Sheriff's Office having jurisdiction over the location of the incident.

2. If a person appears to be violating the terms of a court order but is disputing the validity of the order or its applicability, the officer should document the following in an incident/offense report or I/O supplement:

    a. The person's knowledge of the court order or whether proof of service exists.

    b. Any specific reason or rationale the involved person offers for not complying with the terms of the order.

    c. A copy of the court order should be attached to the report if possible.