

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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**Dec 04 2023**

APPEAL FROM GREENWOOD COUNTY  
Frank R. Addy, Jr., Circuit Court Judge

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S.C. SUPREME COURT

Appellate Case No. 2022-000740  
Case No. 2016-CP-24-0157

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Tony Young, .....

Petitioner,

v.

Greenwood County Detention Center and the Greenwood  
County Sheriff's Office, .....

Defendants,

Of which, the Greenwood County Sheriff's Office is .....

Respondent.

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**REPLY MEMORANDUM IN SUPPORT OF  
MOTION FOR COSTS ON APPEAL**

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The Respondent Greenwood County Sheriff's Office, as the prevailing party, has filed a motion pursuant to Rule 222(d) and Rule 242(j), SCACR, for an award of costs on appeal in the amount of \$5,803.64. The Petitioner Tony Young opposes the award of costs on appeal for two reasons: first, he appears to challenge the timing

of the motion for costs on appeal, and second, he asserts without proof that he is indigent and not capable of paying an award of costs.

As to the first argument, the Petitioner seems to suggest that the attorney representing the Respondent makes some type of difference. He claims that when this appeal was handled exclusively by Rusty Harter as defense counsel, the Sheriff's Office made no motion for costs on appeal, and it was only after Andrew Lindemann was retained, that a motion has now been made. That distinction is meaningless. It is not the attorney who makes the motion for costs on appeal; it is the party – in this case, the Greenwood County Sheriff's Office. Before Mr. Lindemann made an appearance, there was no motion made by Mr. Harter on behalf of the Sheriff's Office because quite simply such a motion was not yet ripe. Rule 222(d), SCACR, governs the timing of a motion for costs on appeal and requires that the motion be filed “within fifteen (15) days of the issuance of the remittitur.” In this case, the Remittitur was not issued until November 8, 2023. The Respondent filed its motion on November 23, 2023, which was timely under Rule 222(d) and Rule 242(j)(4). Because the Petitioner sought a writ of certiorari, the Remittitur was not issued immediately after the Court of Appeals issued its unpublished decision in April 2022. The Remittitur was first issued, as indicated, on November 8, 2023. Thus, contrary to the Petitioner's apparent argument, Mr. Harter could not have filed a motion for costs on appeal in the Court of Appeals, and if he had done so, that motion would have likely been denied without prejudice

or at the very least have been held in abeyance until the Remittitur was issued by this Court. In short, the Respondent's motion for costs on appeal has been timely filed, and the attorney representing the Respondent who filed the motion makes no material difference.

As to the second argument, Rules 222 and 242 do not expressly set forth any exceptions to the general rule that the prevailing party is entitled to an award of costs on appeal. Rules 222 and 242 certainly do not include an indigency exception as argued, nor has existing case law recognized such an exception. Nonetheless, as for his indigency claim, the Petitioner has presented no evidence to support that position. He submits only the argument of counsel, which is not evidence nor is it a substitute for evidence. *Bowers v. Bowers*, 304 S.C. 65, 403 S.E.2d 127, 129 (Ct. App. 1991) ("Arguments of counsel are ... not evidence").

Based on the foregoing, the Respondent Greenwood County Sheriff's Office renews its request that this Court award costs on appeal in the amount of \$5,803.64.

Respectfully submitted,

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December 4, 2023