

**THE STATE OF SOUTH CAROLINA  
In the Court of Appeals**

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**APPEAL FROM HORRY COUNTY  
Court of General Sessions**

**Benjamin H. Culbertson, Circuit Court Judge**

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**Case No. 2023-GS-26-0428; 2023-GS-26-0429**

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**Ex Parte: LaFredia Todd,**

**Appellant**

**In Re:**

**The State of South Carolina,**

**Plaintiff,**

**v.**

**LaFredia Todd,**

**Defendant.**

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**PETITION FOR WRIT OF SUPERSEDEAS**

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Appellant moves that this Court grant it a Writ of Supersedeas to prevent the circuit court from moving forward with the underlying criminal prosecution of Appellant while this appeal is pending. To support this motion, Appellant would show the following:

## FACTUAL AND PROCEDURAL BACKGROUND

On July 29, 2022, Appellant was charged with Murder in Horry County. Soon thereafter, Appellant was declared indigent and appointed the Fifteenth Circuit Public Defender's Office. James Galmore was initially assigned to the case

Pursuant to a contract with the Fifteenth Circuit Public Defender's Office, Counsel Axelrod was recently assigned to assist Counsel Galmore in preparing the case for trial. On June 6, 2024, Counsel Axelrod formally appeared.

In preparation for the case, on or about June 5, 2024, Counsel Axelrod was brainstorming with another attorney, Tristan Shaffer, about how to proceed with representing Appellant. Mr. Shaffer suggested that Counsel Axelrod investigate whether Appellant was suffering from battered spouse syndrome. Mr. Shaffer suggested that Counsel Axelrod speak with Dr. Danso.

On June 5, 2024, Counsel Axelrod called Dr. Danso and left a voicemail message. However, Dr. Danso did not return Counsel Axelrod's call until June 21, 2024 when she left a voicemail for Counsel Axelrod. On June 26, 2024, Counsel Axelrod sent Dr. Danso an e-mail and was able to connect with her. After making contact with Dr. Danso, Counsel Axelrod confirmed that he should, in fact, investigate whether a battered spouse syndrome or any other mental disease or defect would have impacted Appellant's state of mind at the time of the alleged shooting.

On June 28, 2024, Appellant requested funding to hire Dr. Danso. This funding request only asked for funding for consultation. However, once a favorable opinion was obtained Counsel planned to call Dr. Danso as a witness in the trial of this case. While Appellant did move for a continuance on June 28, 2024, the funding request was separate from Appellant's motion for a continuance.

Around this time, Counsel Axelrod also attempted to resolve the case by way of a favorable plea offer. Counsel Axelrod realized that Appellant needed an evaluation to protect Appellant's constitutional rights and that hiring such an expert would likely delay the trial; therefore, he informed the State of the likelihood of a delay in the case if they could not reach a resolution by way of a plea offer. However, obtaining Dr. Danso was not a delay tactic rather she was necessary for Appellant to present a battered spouse syndrome defense at trial.

On July 2, 2024, Judge Culbertson denied the *ex parte* funding order and the requested continuance. Judge Culbertson indicated that the request was "an attempt to delay the trial of the case." Appellant filed a motion to reconsider the funding order on July 3, 2024. The motion to reconsider was denied on July 23, 2024. The present appeal was filed from Judge Culbertson's denial.

The underlying criminal trial is scheduled to begin today, July 29, 2024. In the Court of General Sessions, Appellant has moved for a continuance until this Court can hear the appeal of this case. This second continuance request was just denied. The trial will not be moving forward until this funding issue is addressed by this Court.

## DISCUSSION

### **A. The appeal of the denial of *ex parte* funding should be heard by this court prior to the underlying criminal prosecution moving forward.**

In South Carolina, when an indigent defendant seeks funding, it creates a separate *ex parte* proceeding. South Carolina Code section 17-3-50(B) (2003) provides in pertinent part:

*Upon a finding in ex parte proceedings that investigative, expert, or other services are reasonably necessary for the representation of the defendant, the court shall authorize the defendant's attorney to obtain such services on behalf of the defendant and shall order the payment, from funds available to the Office of Indigent Defense, of fees and expenses not to exceed five hundred dollars as the court considers appropriate.*

S.C. Code § 17-3-50(B) (emphasis added). Since a separate *ex parte* proceeding is established by requesting funding, a defendant may appeal the denial of funding as a matter separate from the underlying criminal case. The South Carolina Supreme Court has previously entertained such an *ex parte* funding appeal prior to the resolution of the underlying criminal case. *See Ex Parte Lexington Cnty.*, 314 S.C. 220, 442 S.E.2d 589 (1994).

In *Ex Parte Lexington County*, the Supreme Court looked at whether county officials had standing to object to defense funding in a capital murder case. The trial court had ruled that the county officials could participate in the proceeding related to funding. Prior to the underlying criminal case proceeding forward, the defendant appealed the ruling to the South Carolina Supreme Court. Despite the seemingly interlocutory nature of the appeal, the South Carolina Supreme Court entertained the appeal. *See Ex Parte Lexington Cnty.*, 314 S.C. 220, 442 S.E.2d 589 (1994).

Similarly in the present appeal, Appellant seeks this Court to review the circuit court's denial of funding for an expert witness to assist with the defense of the underlying criminal case. The funding request created a separate *ex parte* proceeding under S.C. Code § 17-3-50(B). This proceeding removes the state as a party to the request. Appellant respectfully submits that the denial of a funding request is not an impermissible interlocutory appeal and rather may be appealed separate from the underlying criminal case.

**B. Supersedeas should be granted to prevent this matter from becoming moot prior to the appeal being heard.**

Although generally applied in appeals from civil actions, this Court has the authority to issue a writ of supersedeas to prevent the Court of General Sessions from proceeding with the underlying criminal prosecution while this appeal is pending. *Cf. State v. Hill*, 314 S.C. 330, 332,

444 S.E.2d 255, 256 (1994) (Although ultimately found to be moot, the State sought a writ of supersedeas to prevent the Court of General Sessions from issuing a bond).

Rule 241(c)(2) states the following:

In determining whether an order should issue pursuant to this Rule, the lower court, administrative tribunal, appellate court, or judge or justice of the appellate court should consider whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot.

If the Court of General Sessions is allowed to proceed forward with the trial of the underlying criminal case it would render this appeal moot. The issue on appeal is whether Appellant should be granted funding for a battered spouse syndrome expert in the underlying criminal case. If the appeal was successful, it would allow Appellant to present an otherwise unavailable defense in the underlying criminal case. If the underlying criminal case proceeds prior to the resolution of this appeal, this appeal would be moot. As such, Appellant submits that supersedeas is necessary to allow appellate review of this matter.

Appellant has requested a continuance in the Court of General Sessions so this appeal can be heard. Since the State is a party to the underlying criminal case, but not this *ex parte* appeal, Appellant sought a continuance in the Court of General Sessions rather than moving for an *ex parte* supersedeas in the circuit court. However, since the relief requested in the lower court would have the same practical effect as a supersedeas, Appellant submits that she has sufficiently complied with her duty to seek supersedeas in the lower court prior to this court. *See* Rule 241(d)(1), SCACR. Unfortunately, the Court of General Sessions denied the continuance request. Therefore, Appellant is seeking a writ of supersedeas from this Court.

CONCLUSION

Based on the foregoing, Appellant respectfully request that this Court grant supersedeas so that this Court can review the denial of funding for an expert in battered spouse syndrome.



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Stuart Mark Axelrod  
Axelrod & Associates, P.A.  
4701 Oleander Drive  
Myrtle Beach, SC 29577  
stuart@gotaxelrod.com  
(843) 916-9300

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