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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of General Sessions

Maite Murphy, Circuit Court Judge

Appellate Case No.: 2024-000583

Ex Parte: South Carolina Commission on Indigent Defense, Respondent,

In Re: The State, Respondent,

V.

Kenneth Henry Eastwood, Appellant.

AMENDED RECORD ON APPEAL

ASHLEY B. CORNWELL
Cornwell Law Firm, LLC
1470 Ben Sawyer Blvd., Suite 14
Mount Pleasant, SC 29464
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ATTORNEY FOR APPELLANT

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ATTORNEY FOR RESPONDENT

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STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)
South Carolina)
Plaintiff,)
vs.)
Kenneth Henry Eastwood)
Defendant,)
_____)

IN THE GENERAL SESSIONS COURT
FOR THE 1st JUDICIAL CIRCUIT
WARRANT Nos.:
2019A3810200238

ENTRY OF APPEARANCE

PLEASE TAKE NOTICE, that the Defendant Kenneth Henry Eastwood has retained the undersigned to represent her in this proceeding.

FILED FOR RECORD
WANDA B. CLARK
2019 DEC 26 PM 2:18
CLARK D. COURT
ORANGEBURG, SC



James K Falk
PO Box 1058
Charleston, SC 29402
(843) 606 6007
jfalclaw@gmail.com

FILED FOR RECORD
WILLIAM B. CLARK (KM)

2023 MAY 18 AM 9:55

CLERK OF COURT
ORANGEBURG, SC

THE STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)
THE STATE)

IN THE COURT OF GENERAL SESSIONS
FIRST JUDICIAL CIRCUIT

Charge(s): Murder

Warrant/Indictment Nos.:

2019A3810200238

ORDER

v.

Kenneth Henry Eastwood
DEFENDANT.

THE DEFENDANT, Kenneth H. Eastwood, contends that he is indigent and in need of services of an attorney as contemplated by law.

THEREFORE, Doug Mellard, Esquire, is appointed as counsel for the Defendant.

FURTHER, as a condition of appointment, the Defendant must pay his \$40.00 application fee to the Clerk of Court no later than _____.

FURTHER, as a condition of appointment, the Defendant's income must be reviewed at the conclusion of his case to ascertain if an additional fee must be paid to the First Circuit Public Defender's Office for his representation; and,

IT IS SO ORDERED.

Date: May 18, 2023
Orangeburg, SC

Presiding Judge

H. P. Taylor

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)
STATE OF SOUTH CAROLINA,)
vs.)
KENNETH HENRY EASTWOOD)
Defendant.)
_____)

IN THE COURT OF GENERAL SESSIONS
FOR THE FIRST JUDICIAL CIRCUIT

WARRANT NUMBER: 2019A3810200238

NOTICE OF APPEARANCE

FILED FOR RECORD
JUN 15 PM 3:16
CLERK OF COURT
ORANGEBURG, SC

PLEASE TAKE NOTICE that the undersigned attorney represents the Defendant, Kenneth Henry Eastwood, and hereby gives notice of appearance as counsel in the above-captioned action. All future pleadings and correspondence should be sent to the attorney at the address below.

CORNWELL LAW FIRM, LLC



Ashley B. Cornwell
SC Bar No.: 76577
Attorney for Defendant
1470 Ben Sawyer Blvd., Suite 14
Mount Pleasant, SC 29464
(843) 595-6003
acornwell@cornwellfirm.com

Mount Pleasant, South Carolina
June 13, 2023

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)
)
STATE OF SOUTH CAROLINA,)
)
vs.)
)
KENNETH HENRY EASTWOOD)
)
Defendant.)
_____)

IN THE COURT OF GENERAL SESSIONS
FOR THE FIRST JUDICIAL CIRCUIT

WARRANT NUMBER: 2019A3810200238

EX PARTE MOTION FOR FUNDING FOR
A FALSE CONFESSION EXPERT

FILED FOR RECORD
JANITA B. CLARK
23 OCT 13 P 12:33
CLERK OF COURT
ORANGEBURG, SC

This motion is made ex parte as authorized by South Carolina Code of Laws §17-3-50(B) and (C). Defendant, through his undersigned counsel, moves this Court, pursuant to the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, S.C. Const. Art. I, §§ 3 & 14, S.C. Code §17-3-50(B) and (C), *Ake v. Oklahoma*, 470 U.S. 68 (1985), *Bailey v. State*, 309 S.C. 455, 424 S.E.2d 503 (S.C. 1992), Rule 602, SCACR, and other applicable federal and state law, to authorize the expenditure of funds for additional expert, investigative, and other services to assist in the preparation and presentation of evidence in his criminal case. Specifically, Defendant requests this court to authorize the expenditure of funds for a False Confession Expert.

Also, pursuant to the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and S.C. Code §17-3-50 (B) and (C), Defendant moves this Court¹ to conduct ex parte, any hearings ancillary to this motion. That is, any such hearings must be conducted outside of the presence of the solicitor, the attorney general, law enforcement personnel, county officials, news media, and the general public. In addition, this Petition, any correspondence related to this matter, and any related Order should be sealed. The factual and legal bases for this motion are set forth below.

On December 14, 2019, Defendant was arrested and served with warrant number 2019A3810200238, charging him with the murder of 35 year old Cara Hodges. Cara Hodges was reported missing on December 10, 2019. Her body was found in the woods in Orangeburg County on

¹ Defendant specifically reserves the right to file for additional funds, as the need becomes apparent as discovery and the investigation progress.



December 12, 2020. Defendant, who was 68 years old at the time of his arrest, was the last known person to be seen with Ms. Hodges. From the time the body was found to the time of his arrest, Defendant was interviewed by law enforcement multiple times, and had both his home and vehicle searched. During the last interview, Defendant made a confession to law enforcement and was placed under arrest. Defendant has remained in custody, without bond, since the date of his arrest.

Defense counsel has contacted Alan Hirsch and reviewed Defendant's case with him. Mr. Hirsch has been qualified as an expert witness regarding false confessions in multiple states, including twice in South Carolina. Mr. Hirsch estimates the cost of his consultation and testimony at trial will be approximately Eight Thousand Dollars (\$8,000.00). This includes pre-trial work of approximately Two Thousand Five Hundred Dollars (\$2,500.00) plus an additional Five Thousand Five Hundred Dollars (\$5,500.00) for expenses and testimony at trial.

The undersigned now requests approval for payment of the above expert services, in an amount not to exceed Eight Thousand Dollars (\$8,000.00).

The South Carolina Supreme Court has been especially concerned that indigent defendants receive competent counsel and the services of experts necessary to a meaningful defense. *Bailey*, 309 S.C. at 459, 424 S.E.2d at 506.

WHEREFORE, based on the above statement of facts and arguments, and any other facts that Defense Counsel may proffer at an ex parte hearing on these issues, Defendant is entitled to funds in an amount not to exceed Eight Thousand Dollars (\$8,000.00) for his False Confession Expert, as they are reasonable, necessary, and appropriate to provide a complete and competent defense at trial. Accordingly, Counsel respectfully moves this honorable Court to approve the Eight Thousand Dollars (\$8,000.00) requested for Mr. Hirsch, which exceeds the statutory limit. Counsel further requests this Petition, any correspondence relating to this matter and any related Order be SEALED.

(Signature Page to Follow)

CORNWELL LAW FIRM, LLC

Ashley B. Cornwell
SC Bar No.: 76577
Attorney for Defendant
1470 Ben Sawyer Blvd., Suite 14
Mount Pleasant, SC 29464
(843) 595-6003
acornwell@cornwellfirm.com

Mount Pleasant, South Carolina
September 19, 2023

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)
)
STATE OF SOUTH CAROLINA,)
)
vs.)
)
KENNETH HENRY EASTWOOD)
)
Defendant.)
_____)

IN THE COURT OF GENERAL SESSIONS
FOR THE FIRST JUDICIAL CIRCUIT

WARRANT NUMBER: 2019A3810200238

EX PARTE ORDER FOR FUNDING FOR
A FALSE CONFESSION EXPERT

FILED FOR RECORD
WILLIAM B. CLARK
2019 OCT 3 PM 12:36
CLERK OF COURT
ORANGEBURG, SC

This matter comes before me in an ex parte proceeding authorized pursuant to S.C. Code §17-3-50 (B) and (C) and *Ex Parte Lexington County*, 314 S.C. 220, 442 S.E. 2d 589 (1994) due to the confidential nature of the matters herein.

Defendant has made an ex parte application for authorization to expend Eight Thousand Dollars (\$8,000.00) to retain a False Confession Expert. Based on the findings of facts and conclusions of law set forth below, this Court finds that this amount is appropriate because the services to be provided are reasonably and necessarily incurred. S.C. Code §17-3-50 (C). Defendant may apply for additional funding as the need arises, but the expenditure of state funds is not to exceed the limits set forth below without further authorization from this Court.

This Court makes the following specific findings of fact:

1. The Defendant was arrested and charged with Murder on December 14, 2019.
2. Defendant has been held in custody without bond since the date of his arrest, thus qualifying him as an indigent person.
3. Defendant requires the services of a False Confession Expert to assist in preparing his defense.
4. These services are reasonable and necessary to adequately represent the Defendant and ensure he has a complete and competent defense at trial.



5. As a matter of fundamental fairness, this Court finds that Defendant is entitled to this funding; otherwise, he "is denied the opportunity to participate meaningfully in a judicial proceeding in which his liberty is at stake." *Ake v. Oklahoma*, 470 U.S. 68, 76 (1985).

In sum, after reviewing the relevant statutory provisions and Defendant's motion for authorization for expenditure of funds for an expert, this Court specifically finds: (a) that the legislature has authorized expert and investigative services; (b) that to consider Defendant's request this Court is authorized to hold an ex parte conference with counsel for Defendant; and (c) the expenditure of funds for an expert is reasonable and necessary.

IT IS THEREFORE ORDERED Defendant is authorized to expend state funds in an amount not to exceed Eight Thousand Dollars (\$8,000.00) for the cost of a False Confession Expert, Alan Hirsch. The expert will bill the Office of Indigent Defense and provide a detailed invoice with a breakdown of the work performed and at what hourly rate. The expert may interim bill the Office of Indigent Defense as services are completed, or may wait until the conclusion of the case.

IT IS FURTHER ORDERED Defendant may apply for additional funds if necessary. The amount listed establishes the maximum amount to be paid without additional authorization from this Court.

IT IS FURTHER ORDERED that Defendant's Petition for Funds, all related correspondence regarding this matter, and this Order shall be SEALED. ANY VIOLATION BY ANY PERSON OF THE CONFIDENTIAL NATURE OF THIS ORDER MAY CONSTITUTE CONTEMPT OF COURT.

IT IS SO ORDERED!


Diane S. Goodstein, South Carolina
Oct. 13, 2023
September 13, 2023


Diane S. Goodstein, Chief Administrative Judge
First Judicial Circuit Mark Murphy

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF ORANGEBURG	)	
	)	WARRANT NUMBER: 2019A3810200238
STATE OF SOUTH CAROLINA,	)	
	)	
vs.	)	EX PARTE MOTION FOR FUNDING FOR
	)	A FORENSIC PATHOLOGIST EXPERT
KENNETH HENRY EASTWOOD	)	
	)	
Defendant.	)	
_____	)	

This motion is made ex parte as authorized by South Carolina Code of Laws §17-3-50(B) and (C). Defendant, through his undersigned counsel, moves this Court, pursuant to the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, S.C. Const. Art. I, §§ 3 & 14, S.C. Code §17-3-50(B) and (C), *Ake v. Oklahoma*, 470 U.S. 68 (1985), *Bailey v. State*, 309 S.C. 455, 424 S.E.2d 503 (S.C. 1992), Rule 602, SCACR, and other applicable federal and state law, to authorize the expenditure of funds for additional expert, investigative, and other services to assist in the preparation and presentation of evidence in his criminal case. Specifically, Defendant requests this court to authorize the expenditure of funds for an **Expert in Forensic Pathology**.

Also, pursuant to the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and S.C. Code §17-3-50 (B) and (C), Defendant moves this Court¹ to conduct ex parte, any hearings ancillary to this motion. That is, any such hearings must be conducted outside of the presence of the solicitor, the attorney general, law enforcement personnel, county officials, news media, and the general public. In addition, this Petition, any correspondence related to this matter, and any related Order should be sealed. The factual and legal bases for this motion are set forth below.

On December 14, 2019, Defendant was arrested and served with warrant number 2019A3810200238, charging him with the murder of 35-year-old Cara Hodges. Cara Hodges was reported missing on December 10, 2019. Her body was found in the woods in Orangeburg County on

¹ Defendant specifically reserves the right to file for additional funds, as the need becomes apparent as discovery and the investigation progress.

December 12, 2020. Defendant, who was 68 years old at the time of his arrest, was the last known person to be seen with Ms. Hodges. From the time the body was found to the time of his arrest, Defendant was interviewed by law enforcement multiple times, and had both his home and vehicle searched. During the last interview, Defendant made a confession to law enforcement and was placed under arrest. Defendant has remained in custody, without bond, since the date of his arrest.

Defense counsel has contacted Dr. Amy Durso of Professional Pathology Services and reviewed Defendant's case with her. Dr. Durso has been qualified numerous times as an expert in forensic pathology. The State intends to introduce their own forensic pathology expert at trial. Dr. Durso estimates the cost of her consultation and testimony at trial will be approximately Five Thousand Five Hundred Dollars (\$5,500.00). This includes pre-trial work, testimony at trial, and all expenses.

The undersigned now requests approval for payment of the above expert services, in an amount not to exceed Five Thousand Five Hundred Dollars (\$5,500.00).

The South Carolina Supreme Court has been especially concerned that indigent defendants receive competent counsel and the services of experts necessary to a meaningful defense. *Bailey*, 309 S.C. at 459, 424 S.E.2d at 506.

WHEREFORE, based on the above statement of facts and arguments, and any other facts that Defense Counsel may proffer at an ex parte hearing on these issues, Defendant is entitled to funds in an amount not to exceed Five Thousand Five Hundred Dollars (\$5,500.00) for his Expert in Forensic Pathology, as they are reasonable, necessary, and appropriate to provide a complete and competent defense at trial. Accordingly, Counsel respectfully moves this honorable Court to approve the Five Thousand Five Hundred Dollars (\$5,500.00) requested for Dr. Durso, which exceeds the statutory limit. Counsel further requests this Petition, any correspondence relating to this matter and any related Order be SEALED.

(Signature Page to Follow)

CORNWELL LAW FIRM, LLC



Ashley B. Cornwell

SC Bar No.: 76577

Attorney for Defendant

1470 Ben Sawyer Blvd., Suite 14

Mount Pleasant, SC 29464

(843) 595-6003

acornwell@cornwellfirm.com

Mount Pleasant, South Carolina
November 1, 2023

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)
STATE OF SOUTH CAROLINA,)
vs.)
KENNETH HENRY EASTWOOD)
Defendant.)
_____)

**IN THE COURT OF GENERAL SESSIONS
FOR THE FIRST JUDICIAL CIRCUIT**

WARRANT NUMBER: 2019A3810200238

**EX PARTE ORDER FOR FUNDING FOR
A FORENSIC PATHOLOGY EXPERT**

This matter comes before me in an ex parte proceeding authorized pursuant to S.C. Code §17-3-50 (B) and (C) and *Ex Parte Lexington County*, 314 S.C. 220, 442 S.E. 2d 589 (1994) due to the confidential nature of the matters herein.

Defendant has made an ex parte application for authorization to expend up to Five Thousand Five Hundred Dollars (\$5,500.00) to retain an Expert in Forensic Pathology. Based on the findings of facts and conclusions of law set forth below, this Court finds that this amount is appropriate because the services to be provided are reasonably and necessarily incurred. S.C. Code §17-3-50 (C). Defendant may apply for additional funding as the need arises, but the expenditure of state funds is not to exceed the limits set forth below without further authorization from this Court.

This Court makes the following specific findings of fact:

1. The Defendant was arrested and charged with Murder on December 14, 2019.
2. Defendant has been held in custody without bond since the date of his arrest, thus qualifying him as an indigent person.
3. Defendant requires the services of an Expert in Forensic Pathology to assist in preparing his defense.
4. These services are reasonable and necessary to adequately represent the Defendant and ensure he has a complete and competent defense at trial.

5. As a matter of fundamental fairness, this Court finds that Defendant is entitled to this funding; otherwise, he "is denied the opportunity to participate meaningfully in a judicial proceeding in which his liberty is at stake." *Ake v. Oklahoma*, 470 U.S. 68, 76 (1985).

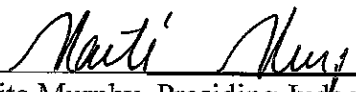
In sum, after reviewing the relevant statutory provisions and Defendant's motion for authorization for expenditure of funds for an expert, this Court specifically finds: (a) that the legislature has authorized expert and investigative services; (b) that to consider Defendant's request this Court is authorized to hold an ex parte conference with counsel for Defendant; and (c) the expenditure of funds for and expert is reasonable and necessary.

IT IS THEREFORE ORDERED Defendant is authorized to expend state funds in an amount not to exceed Five Thousand Five Dollars (\$5,500.00) for the cost of Forensic Pathology Expert, Dr. Amy Durso. The expert will bill the Office of Indigent Defense and provide a detailed invoice with a breakdown of the work performed and at what hourly rate. The expert may interim bill the Office of Indigent Defense as services are completed, or may wait until the conclusion of the case.

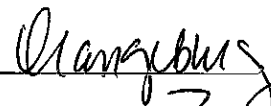
IT IS FURTHER ORDERED Defendant may apply for additional funds if necessary. The amount listed establishes the maximum amount to be paid without additional authorization from this Court.

IT IS FURTHER ORDERED that Defendant's Petition for Funds, all related correspondence regarding this matter, and this Order shall be SEALED. ANY VIOLATION BY ANY PERSON OF THE CONFIDENTIAL NATURE OF THIS ORDER MAY CONSTITUTE CONTEMPT OF COURT.

IT IS SO ORDERED!



Maite Murphy, Presiding Judge
First Judicial Circuit



Orangeburg, South Carolina
November 2, 2023

STATE OF SOUTH CAROLINA)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF ORANGEBURG)	FOR THE FIRST JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA)	INDICTMENT NO.: 2020-GS-38-0943
vs.)	
KENNETH HENRY EASTWOOD)	PETITION FOR RULE TO SHOW CAUSE
Defendant.)	

THE DEFENDANT, by and through his undersigned attorney, hereby petitions this Court for a Rule to Show Cause against the South Carolina Commission of Indigent Defense (hereinafter "SCCID"). As grounds in support thereof, the Defendant respectfully states as follows:

1. The matters set forth in this Petition are controlled by the Ex Parte Order For Funding For Funding For A False Confession Expert and Ex Parte Order For Funding For A Forensic Pathology Expert (hereinafter "Orders") signed on October 13, 2023 and November 2, 2023, respectively. (Attachment A).

2. These Orders were each signed by circuit court judge, Maite Murphy, upon (1) Defendant's Ex Parte Petition For Funding pursuant to the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, S.C. Const. Art. I, §§ 3 & 14, S.C. code §17-3-50(B) and (C), *Ake v. Oklahoma*, 470 U.S. 68 (1985), *Bailey v. State*, 309 S.C. 455, 424 S.E.2d 503 (S.C. 1992), Rule 602, SCACR, and other applicable federal and state law (Attachment B), (2) the Court's finding that services of these experts were a reasonable and necessary expense to ensure Defendant's ability to present a full and complete defense at trial, (3) the Court's finding that Defendant qualified for indigent status, and (4) the Court's finding that the legislature has authorized state funds to be expended for expert and investigative services.

3. In Accordance with these Orders, Defendant was authorized to expend state funds in an amount not to exceed Eight Thousand Dollars (\$8,000.00) for the cost of a False Confession Expert and in an amount not to exceed Five Thousand Five Hundred Dollars (\$5,500.00) for the cost of a Forensic Pathologist Expert, each to be billed to SCCID for direct payment at the conclusion of the case.

4. Each expert rendered services upon agreement of payment in accordance with these Orders, which included testifying at Defendant's trial the week of November 6, 2023. Upon the conclusion of trial, each expert submitted detailed invoices to Defendant.

5. The total cost for the False Confession Expert's services and expenses totaled Seven Thousand Nine Hundred Thirty Four Dollars (\$7,934.00), which is within the amount of state funds Defendant was authorized to expend pursuant to the Order. (Attachment C).

6. The total cost for the Expert in Forensic Pathology's services and expenses totaled Five Thousand Five Hundred Dollars (\$5,500.00), which is within the amount of state funds Defendant was authorized to expend pursuant to the Order. (Attachment D)

7. Pursuant to the Orders, Defendant submitted these invoices (along with a copy of the signed orders) to SCCID requesting direct payment to be made to each expert pursuant to the Orders.

8. On December 12, 2023, SCCID notified Defendant that because they were not consulted prior to the Orders being signed, they were objecting to the funding orders and refusing to submit payment to the experts.

9. Defendant is requesting the Court find SCCID in contempt for knowingly and willingly refusing to comply with these Orders and order SCCID to immediately render payment in full to each expert and to additionally pay Defendant's attorney's fees for the enforcement of this action.

WHEREFORE, Defendant asks this Court to issue its rule to show cause requiring SCCID to show cause, if any, why they should not be held in contempt for failing to abide by the provisions of the Orders, why such Orders should not be strictly adhered to, and such other and further relief as the Court may deem just and proper.

Respectfully Submitted,

CORNWELL LAW FIRM, LLC

By: 

Ashley B. Cornwell, Attorney for Defendant
1470 Ben Sawyer Blvd., Suite 14
Mount Pleasant, SC 29464
(843) 595-6003
acornwell@cornwellfirm.com

December 19, 2023
Mount Pleasant, South Carolina

ATTACHMENT A

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)
)
STATE OF SOUTH CAROLINA,)
)
vs.)
)
KENNETH HENRY EASTWOOD)
)
Defendant.)
_____)

IN THE COURT OF GENERAL SESSIONS
FOR THE FIRST JUDICIAL CIRCUIT

WARRANT NUMBER: 2019A3810200238

EX PARTE ORDER FOR FUNDING FOR
A FALSE CONFESSION EXPERT

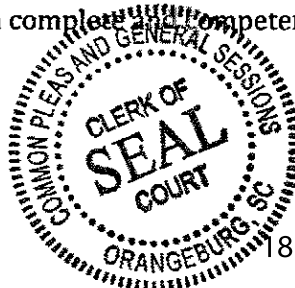
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WINNIE B. CLARK
2019 OCT 3 P 12:36
CLERK OF COURT
ORANGEBURG, SC

This matter comes before me in an ex parte proceeding authorized pursuant to S.C. Code §17-3-50 (B) and (C) and *Ex Parte Lexington County*, 314 S.C. 220, 442 S.E. 2d 589 (1994) due to the confidential nature of the matters herein.

Defendant has made an ex parte application for authorization to expend Eight Thousand Dollars (\$8,000.00) to retain a False Confession Expert. Based on the findings of facts and conclusions of law set forth below, this Court finds that this amount is appropriate because the services to be provided are reasonably and necessarily incurred. S.C. Code §17-3-50 (C). Defendant may apply for additional funding as the need arises, but the expenditure of state funds is not to exceed the limits set forth below without further authorization from this Court.

This Court makes the following specific findings of fact:

1. The Defendant was arrested and charged with Murder on December 14, 2019.
2. Defendant has been held in custody without bond since the date of his arrest, thus qualifying him as an indigent person.
3. Defendant requires the services of a False Confession Expert to assist in preparing his defense.
4. These services are reasonable and necessary to adequately represent the Defendant and ensure he has a complete and competent defense at trial.



5. As a matter of fundamental fairness, this Court finds that Defendant is entitled to this funding; otherwise, he "is denied the opportunity to participate meaningfully in a judicial proceeding in which his liberty is at stake." *Ake v. Oklahoma*, 470 U.S. 68, 76 (1985).

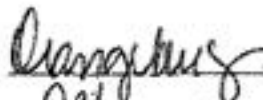
In sum, after reviewing the relevant statutory provisions and Defendant's motion for authorization for expenditure of funds for an expert, this Court specifically finds: (a) that the legislature has authorized expert and investigative services; (b) that to consider Defendant's request this Court is authorized to hold an ex parte conference with counsel for Defendant; and (c) the expenditure of funds for and expert is reasonable and necessary.

IT IS THEREFORE ORDERED Defendant is authorized to expend state funds in an amount not to exceed Eight Thousand Dollars (\$8,000.00) for the cost of a False Confession Expert, Alan Hirsch. The expert will bill the Office of Indigent Defense and provide a detailed invoice with a breakdown of the work performed and at what hourly rate. The expert may interim bill the Office of Indigent Defense as services are completed, or may wait until the conclusion of the case.

IT IS FURTHER ORDERED Defendant may apply for additional funds if necessary. The amount listed establishes the maximum amount to be paid without additional authorization from this Court.

IT IS FURTHER ORDERED that Defendant's Petition for Funds, all related correspondence regarding this matter, and this Order shall be SEALED. ANY VIOLATION BY ANY PERSON OF THE CONFIDENTIAL NATURE OF THIS ORDER MAY CONSTITUTE CONTEMPT OF COURT.

IT IS SO ORDERED!


Diane S. Goodstein, South Carolina
Oct. 13, 2023
September 13, 2023


Diane S. Goodstein, Chief Administrative Judge
First Judicial Circuit Mark Murphy

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)
STATE OF SOUTH CAROLINA,)
vs.)
KENNETH HENRY EASTWOOD)
Defendant.)
_____)

**IN THE COURT OF GENERAL SESSIONS
FOR THE FIRST JUDICIAL CIRCUIT**

WARRANT NUMBER: 2019A3810200238

**EX PARTE ORDER FOR FUNDING FOR
A FORENSIC PATHOLOGY EXPERT**

This matter comes before me in an ex parte proceeding authorized pursuant to S.C. Code §17-3-50 (B) and (C) and *Ex Parte Lexington County*, 314 S.C. 220, 442 S.E. 2d 589 (1994) due to the confidential nature of the matters herein.

Defendant has made an ex parte application for authorization to expend up to Five Thousand Five Hundred Dollars (\$5,500.00) to retain an Expert in Forensic Pathology. Based on the findings of facts and conclusions of law set forth below, this Court finds that this amount is appropriate because the services to be provided are reasonably and necessarily incurred. S.C. Code §17-3-50 (C). Defendant may apply for additional funding as the need arises, but the expenditure of state funds is not to exceed the limits set forth below without further authorization from this Court.

This Court makes the following specific findings of fact:

1. The Defendant was arrested and charged with Murder on December 14, 2019.
2. Defendant has been held in custody without bond since the date of his arrest, thus qualifying him as an indigent person.
3. Defendant requires the services of an Expert in Forensic Pathology to assist in preparing his defense.
4. These services are reasonable and necessary to adequately represent the Defendant and ensure he has a complete and competent defense at trial.

5. As a matter of fundamental fairness, this Court finds that Defendant is entitled to this funding; otherwise, he "is denied the opportunity to participate meaningfully in a judicial proceeding in which his liberty is at stake." *Ake v. Oklahoma*, 470 U.S. 68, 76 (1985).

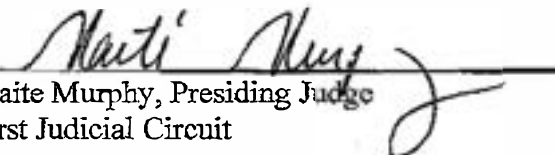
In sum, after reviewing the relevant statutory provisions and Defendant's motion for authorization for expenditure of funds for an expert, this Court specifically finds: (a) that the legislature has authorized expert and investigative services; (b) that to consider Defendant's request this Court is authorized to hold an ex parte conference with counsel for Defendant; and (c) the expenditure of funds for an expert is reasonable and necessary.

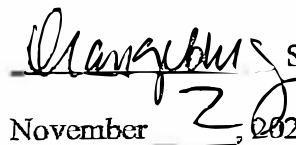
IT IS THEREFORE ORDERED Defendant is authorized to expend state funds in an amount not to exceed Five Thousand Five Dollars (\$5,500.00) for the cost of Forensic Pathology Expert, Dr. Amy Durso. The expert will bill the Office of Indigent Defense and provide a detailed invoice with a breakdown of the work performed and at what hourly rate. The expert may interim bill the Office of Indigent Defense as services are completed, or may wait until the conclusion of the case.

IT IS FURTHER ORDERED Defendant may apply for additional funds if necessary. The amount listed establishes the maximum amount to be paid without additional authorization from this Court.

IT IS FURTHER ORDERED that Defendant's Petition for Funds, all related correspondence regarding this matter, and this Order shall be SEALED. ANY VIOLATION BY ANY PERSON OF THE CONFIDENTIAL NATURE OF THIS ORDER MAY CONSTITUTE CONTEMPT OF COURT.

IT IS SO ORDERED!


Maite Murphy, Presiding Judge
First Judicial Circuit

 South Carolina
November 2, 2023

ATTACHMENT B

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)
STATE OF SOUTH CAROLINA,)
vs.)
KENNETH HENRY EASTWOOD)
Defendant.)
_____)

**IN THE COURT OF GENERAL SESSIONS
FOR THE FIRST JUDICIAL CIRCUIT**

WARRANT NUMBER: 2019A3810200238

**EX PARTE MOTION FOR FUNDING FOR
A FALSE CONFESSION EXPERT**

This motion is made ex parte as authorized by South Carolina Code of Laws §17-3-50(B) and (C). Defendant, through his undersigned counsel, moves this Court, pursuant to the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, S.C. Const. Art. I, §§ 3 & 14, S.C. Code §17-3-50(B) and (C), *Ake v. Oklahoma*, 470 U.S. 68 (1985), *Bailey v. State*, 309 S.C. 455, 424 S.E.2d 503 (S.C. 1992), Rule 602, SCACR, and other applicable federal and state law, to authorize the expenditure of funds for additional expert, investigative, and other services to assist in the preparation and presentation of evidence in his criminal case. Specifically, Defendant requests this court to authorize the expenditure of funds for a False Confession Expert.

Also, pursuant to the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and S.C. Code §17-3-50 (B) and (C), Defendant moves this Court¹ to conduct ex parte, any hearings ancillary to this motion. That is, any such hearings must be conducted outside of the presence of the solicitor, the attorney general, law enforcement personnel, county officials, news media, and the general public. In addition, this Petition, any correspondence related to this matter, and any related Order should be sealed. The factual and legal bases for this motion are set forth below.

On December 14, 2019, Defendant was arrested and served with warrant number 2019A3810200238, charging him with the murder of 35 year old Cara Hodges. Cara Hodges was reported missing on December 10, 2019. Her body was found in the woods in Orangeburg County on

¹ Defendant specifically reserves the right to file for additional funds, as the need becomes apparent as discovery and the investigation progress.

December 12, 2020. Defendant, who was 68 years old at the time of his arrest, was the last known person to be seen with Ms. Hodges. From the time the body was found to the time of his arrest, Defendant was interviewed by law enforcement multiple times, and had both his home and vehicle searched. During the last interview, Defendant made a confession to law enforcement and was placed under arrest. Defendant has remained in custody, without bond, since the date of his arrest.

Defense counsel has contacted Alan Hirsch and reviewed Defendant's case with him. Mr. Hirsch has been qualified as an expert witness regarding false confessions in multiple states, including twice in South Carolina. Mr. Hirsch estimates the cost of his consultation and testimony at trial will be approximately Eight Thousand Dollars (\$8,000.00). This includes pre-trial work of approximately Two Thousand Five Hundred Dollars (\$2,500.00) plus an additional Five Thousand Five Hundred Dollars (\$5,500.00) for expenses and testimony at trial.

The undersigned now requests approval for payment of the above expert services, in an amount not to exceed Eight Thousand Dollars (\$8,000.00).

The South Carolina Supreme Court has been especially concerned that indigent defendants receive competent counsel and the services of experts necessary to a meaningful defense. *Bailey*, 309 S.C. at 459, 424 S.E.2d at 506.

WHEREFORE, based on the above statement of facts and arguments, and any other facts that Defense Counsel may proffer at an ex parte hearing on these issues, Defendant is entitled to funds in an amount not to exceed Eight Thousand Dollars (\$8,000.00) for his False Confession Expert, as they are reasonable, necessary, and appropriate to provide a complete and competent defense at trial. Accordingly, Counsel respectfully moves this honorable Court to approve the Eight Thousand Dollars (\$8,000.00) requested for Mr. Hirsch, which exceeds the statutory limit. Counsel further requests this Petition, any correspondence relating to this matter and any related Order be SEALED.

(Signature Page to Follow)

CORNWELL LAW FIRM, LLC



Ashley B. Cornwell

SC Bar No.: 76577

Attorney for Defendant

1470 Ben Sawyer Blvd., Suite 14

Mount Pleasant, SC 29464

(843) 595-6003

acornwell@cornwellfirm.com

Mount Pleasant, South Carolina
September 19, 2023

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)
STATE OF SOUTH CAROLINA,)
vs.)
KENNETH HENRY EASTWOOD)
Defendant.)
_____)

IN THE COURT OF GENERAL SESSIONS
FOR THE FIRST JUDICIAL CIRCUIT

WARRANT NUMBER: 2019A3810200238

EX PARTE MOTION FOR FUNDING FOR
A FORENSIC PATHOLOGIST EXPERT

This motion is made ex parte as authorized by South Carolina Code of Laws §17-3-50(B) and (C). Defendant, through his undersigned counsel, moves this Court, pursuant to the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, S.C. Const. Art. I, §§ 3 & 14, S.C. Code §17-3-50(B) and (C), *Ake v. Oklahoma*, 470 U.S. 68 (1985), *Bailey v. State*, 309 S.C. 455, 424 S.E.2d 503 (S.C. 1992), Rule 602, SCACR, and other applicable federal and state law, to authorize the expenditure of funds for additional expert, investigative, and other services to assist in the preparation and presentation of evidence in his criminal case. Specifically, Defendant requests this court to authorize the expenditure of funds for an **Expert in Forensic Pathology**.

Also, pursuant to the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and S.C. Code §17-3-50 (B) and (C), Defendant moves this Court¹ to conduct ex parte, any hearings ancillary to this motion. That is, any such hearings must be conducted outside of the presence of the solicitor, the attorney general, law enforcement personnel, county officials, news media, and the general public. In addition, this Petition, any correspondence related to this matter, and any related Order should be sealed. The factual and legal bases for this motion are set forth below.

On December 14, 2019, Defendant was arrested and served with warrant number 2019A3810200238, charging him with the murder of 35-year-old Cara Hodges. Cara Hodges was reported missing on December 10, 2019. Her body was found in the woods in Orangeburg County on

¹ Defendant specifically reserves the right to file for additional funds, as the need becomes apparent as discovery and the investigation progress.

December 12, 2020. Defendant, who was 68 years old at the time of his arrest, was the last known person to be seen with Ms. Hodges. From the time the body was found to the time of his arrest, Defendant was interviewed by law enforcement multiple times, and had both his home and vehicle searched. During the last interview, Defendant made a confession to law enforcement and was placed under arrest. Defendant has remained in custody, without bond, since the date of his arrest.

Defense counsel has contacted Dr. Amy Durso of Professional Pathology Services and reviewed Defendant's case with her. Dr. Durso has been qualified numerous times as an expert in forensic pathology. The State intends to introduce their own forensic pathology expert at trial. Dr. Durso estimates the cost of her consultation and testimony at trial will be approximately Five Thousand Five Hundred Dollars (\$5,500.00). This includes pre-trial work, testimony at trial, and all expenses.

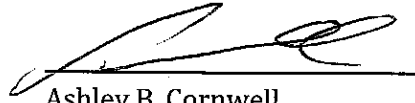
The undersigned now requests approval for payment of the above expert services, in an amount not to exceed Five Thousand Five Hundred Dollars (\$5,500.00).

The South Carolina Supreme Court has been especially concerned that indigent defendants receive competent counsel and the services of experts necessary to a meaningful defense. *Bailey*, 309 S.C. at 459, 424 S.E.2d at 506.

WHEREFORE, based on the above statement of facts and arguments, and any other facts that Defense Counsel may proffer at an ex parte hearing on these issues, Defendant is entitled to funds in an amount not to exceed Five Thousand Five Hundred Dollars (\$5,500.00) for his Expert in Forensic Pathology, as they are reasonable, necessary, and appropriate to provide a complete and competent defense at trial. Accordingly, Counsel respectfully moves this honorable Court to approve the Five Thousand Five Hundred Dollars (\$5,500.00) requested for Dr. Durso, which exceeds the statutory limit. Counsel further requests this Petition, any correspondence relating to this matter and any related Order be SEALED.

(Signature Page to Follow)

CORNWELL LAW FIRM, LLC



Ashley B. Cornwell
SC Bar No.: 76577
Attorney for Defendant
1470 Ben Sawyer Blvd., Suite 14
Mount Pleasant, SC 29464
(843) 595-6003
acornwell@cornwellfirm.com

Mount Pleasant, South Carolina
November 1, 2023

ATTACHMENT C

Professor Alan Hirsch

Williams College, Williamstown, MA (413)458-2192

Invoice for Expert Consultation/Testimony Concerning Eastwood Confession

Services rendered: See p.2

Fee: \$2,500 pre-trial work + 4,000 (flat fee to testify) = \$6,500.00

Expenses: \$1,434.00

Balance due: \$7,934.00

BY CHECK payable to Alan Hirsch (tin #: 125-52-4710) and mail to:

Professor Alan Hirsch

59 Longview Terrace

Williamstown, MA 01267

(413)458-2192

10/17/23: 3.75 (document review)

10/20: 2.75 Q & A

10/26: .5 phone call

10/31: 1 (reviewing new documents & Ashley's Q/A and responding)

11/7: 1.25 prep for testimony

11/8-11/10 (Travel & testimony at trial)

EXPENSES

Flights: \$814

Hotel: \$485

Airport Trans: \$135

TOTAL: \$1,434.00



Albany (ALB) to Charleston (CHS)

American Airlines 5200 5:35pm - Albany, NY, United States (ALB-Albany Intl.) to Washington, DC, United States (DCA-Ronald Reagan Washington National)

Web Fare

- Airline confirmation: DAIUVB (American Airlines)
 - Economy / Coach (K)
 - Wed, Nov 8, 5:35pm - 7:15pm
 - 1h 40m flight duration
-



Layover: 1h 1m

American Airlines 5167 8:16pm - Washington, DC, United States (DCA-Ronald Reagan Washington National) to Charleston, SC, United States (CHS-Charleston Intl.)

- Terminal 2
- Economy / Coach (K)
- Wed, Nov 8, 8:16pm - 10:18pm
- 2h 2m flight duration

Free cancellation expires 24 hours after confirmation

Charleston (CHS) to Albany (ALB)

American Airlines 1059 6:15pm - Charleston, SC, United States (CHS-Charleston Intl.) to Philadelphia, PA, United States (PHL-Philadelphia Intl.)

- Airline confirmation: DAIUVB (American Airlines)
 - Economy / Coach (V)
 - Fri, Nov 10, 6:15pm - 7:58pm
 - 1h 43m flight duration
-



Layover: 1h 2m

American Airlines 5830 9:00pm - Philadelphia, PA, United States (PHL-Philadelphia Intl.) to Albany, NY, United States (ALB-Albany Intl.)

- Terminal F
- Economy / Coach (V)

- Fri, Nov 10, 9:00pm - 10:13pm
- 1h 13m flight duration

[Manage your itinerary](#)



Travel confidently with the Expedia app

Manage your plans and make trip updates on the fly - wherever the journey takes your. [Explore the app](#)

Price summary

Roundtrip flight

1 traveler

\$712.54

Taxes & fees

\$101.84

Total

\$814.38

LODGING RECEIPT

Room No: 331/NKSQB

Arrival Date: 11/8/2023 11:50:00 PM

59 LONVIEW TERRACE Departure Date: 11/10/2023 9:42:00 AM

Adult/Child: 2/0

WILLIAMSTOWN MA 01267 Cashier ID: TJWESTBURYLOPEZ

UNITED STATES OF AMERICA Room Rate: 158.19

AL:

HH # 512258614 BLUE

VAT #

Folio No/Che 1056627 A

Confirmation Number: 90012047

EMBASSY SUITES NORTH CHARLESTON 11/10/2023 9:41:00 AM

DATE REF NO DESCRIPTION CHARGES

11/8/2023 4353096 GUEST ROOM \$263.62

11/8/2023 4353096 STATE TAX \$23.73

11/8/2023 4353096 CITY TAX \$13.18

11/8/2023 4353096 CHARLESTON DESTINATION FEE \$2.00

11/8/2023 4353096 DESTINATION FEE TAX \$0.18

11/9/2023 4353625 GUEST ROOM \$158.19

11/9/2023 4353625 STATE TAX \$14.24

11/9/2023 4353625 CITY TAX \$7.91

11/9/2023 4353625 CHARLESTON DESTINATION FEE \$2.00

11/9/2023 4353625 DESTINATION FEE TAX \$0.18

11/10/2023 4353868 MC *1263 (\$485.23)

****BALANCE** \$0.00**

R. Hirsch

NORM'S LIMOUSINE AIRPO
573 ASHLAND STREET
NORTH ADAMS, MA 0129795

11/07/2023

12:21:25

CREDIT CARD

MC SALE

Card #	XXXXXXXXXXXX1263
SEQ #:	4
Batch #:	1071
INVOICE	5
Approval Code:	70178P
Entry Method:	Manual
Mode:	Online
Ans Code:	NYZ

SALE AMOUNT

\$135.00

MATT

CUSTOMER COPY

ATTACHMENT D



1330 Lady Street, Suite 401
Post Office 11433
Columbia, South Carolina 29211-1433
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

J. Hugh Ryan, *Executive Director*
Hervey B. O. Young, *Deputy Director and General Counsel*
Lori Frost, *Assistant Director*

December 20, 2023

VIA EMAIL ONLY

The Honorable Maite Murphy
Circuit Court Judge
P.O. Drawer 802
St. George, South Carolina 29477

Re: State v. Kenneth Henry Eastwood
Warrant No.: 2019A3810200238

Dear Judge Murphy:

This office is in receipt of a copy of the Orders for Funding submitted by Ashley B. Cornwell, Esq. in the above referenced case on December 12, 2023. (See Attachment A). I am writing to present the objection of SCCID to the Orders. It is the position of SCCID that the statutes, budget provisos and policies governing this agency do not authorize the use of the Defense of Indigent Funds to pay attorney and/or expert fees or expenses in cases where the defendant has retained private counsel to represent him and is therefore not indigent. SCCID did not participate in any hearings on this matter and were not informed of the request. Likewise, the orders were not presented to SCCID within 15 days of issuance as required by the agency Voucher Payment Policy. Attorney Cornwell was contacted to discuss this matter after SCCID received a copy of the Order herein.

It appears that in this case, Mr. Eastwood was arrested in December 2019 and retained the services of Mr. Jim Falk shortly thereafter to represent him in this matter. Mr. Falk passed in May 2023 and the Public Defender office was appointed on or about May 18, 2023. Mr. Eastwood retained Attorney Cornwell on or about June 13, 2023. The Ex Parte Motion of Attorney Cornwell does not reflect that she was retained in this case. SCCID learned this upon receipt of the order and inquiring about Attorney Cornwell's status in the case since there was not an Order of Appointment presented with the Funding Order. SCCID is not aware of the specifics of Attorney Cornwell's retainer agreement in this case. The request of Attorney Cornwell should have been denied for the following reasons:

1. The funds appropriated to SCCID are restricted by statute and budget provisos of the General Assembly to pay fees and expenses in cases where a defendant is indigent. In this action, Attorney Cornwell was hired by Mr. Eastwood, or on his behalf. The mere fact that a third party gave the money to the attorney does not create anything other than an attorney-client relationship between the attorney and Mr. Eastwood. Under SC law, when counsel is employed, a defendant is presumed to not be indigent.

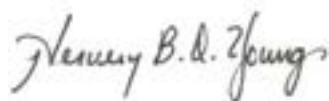
2. Section 17-3-50 and the Budget Provisos of the General Assembly's Appropriations Act are the authorities that allow expenditure of Defense of Indigent Funds. The funds are restricted to pay the fees and expenses of **private counsel appointed** in non-capital cases, post-conviction relief, abuse and neglect, termination of parental rights and sexually violent predator cases. Attorney Cornwell was not court appointed to represent Mr. Eastwood.
3. The Defense of Indigent Fund is not an insurance policy to cover or supplement a Retainer Agreement for private counsel. Private attorneys are required to make a retainer agreement with clients to spell out the details of the representation. Attorneys have an obligation to assess a case to determine the time and labor required and the expected and estimated expenses to perform the legal services properly. SCCID request that the Court require Attorney Cornwell to disclose the retainer agreement between her and Mr. Eastwood so that the Court can consider the terms of the agreement.
4. South Carolina does not have provisions that allow a defendant to be indigent ONLY for case expenses. SCCID is aware of only two states that allows a defendant to retain counsel of his choice and then push the bills of experts and other service providers onto the back of the State taxpayers.
5. Ordering SCCID to expend fund beyond its authority would result in this agency violating the law and mandates of the General Assembly at the order of the court.

In 2006, the SC Supreme Court established rules and procedures for the processing of indigent defense vouchers. The Order restated the legislative intent of the funds managed by this agency to be used for the defense of indigents. The Order provides that SCCID notify the court and trial counsel of any objections. The trial court may determine the matter with or without a hearing in its discretion.

Please let this letter serve as the notice of objection by SCCID to the funding order in this case. SCCID is asking the Court to rescind this order. This letter provides a general explanation of the objection. I will prepare a reply to the Rule to Show Cause filed by Attorney Cornwell after the Christmas holiday. While this Court may determine this matter with or without a hearing, SCCID respectfully requests to be heard on this objection further at a hearing on the record to preserve the same if review is needed. We will await further directions from you on how you wish to handle this matter.

If there are any questions, please do not hesitate to contact this office.

Sincerely,



Hervery B. O. Young

cc: Ashley Cornwell, Esquire (via Email)
J. Hugh Ryan, SCCID Executive Director

Young, Hervery

From: Ashley Cornwell <acornwell@cornwellfirm.com>
Sent: Thursday, January 18, 2024 10:36 AM
To: Murphy, Maite Law Clerk (Christel Lopez Purvis)
Cc: Young, Hervery; Murphy, Maite Secretary (Robin Dukes); Spires, Katherine A.; Christy Davol
Subject: Re: [External] State v. Eastwood: Rule to Show Cause (2020GS3800943)
Attachments: RTSC Hearing Documents.pdf

Judge Murphy:

Attached please find the documents I will be referring to during the hearing this morning, including the order of indigency, affidavit of indigency, case law for State v. Reeves, and my affidavit in support of attorney fees.

Thank you!

Ashley B. Cornwell, Esq.

Cornwell Law Firm, LLC
1470 Ben Sawyer Blvd., Suite 14
Mount Pleasant, SC 29464
843-595-6003
acornwell@cornwellfirm.com

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On Thu, Jan 18, 2024 at 9:30 AM Murphy, Maite Law Clerk (Christel Lopez Purvis) <mmurphylc@sccourts.org> wrote:

Sounds good, thank you.

Christel L. Purvis

Law Clerk for the Honorable Maité Murphy

First Judicial Circuit

5200 East Jim Bilton Boulevard

St. George, South Carolina 29477

From: Young, Hervery <hyoung@sccid.sc.gov>
Sent: Thursday, January 18, 2024 9:29 AM
To: Murphy, Maite Law Clerk (Christel Lopez Purvis) <mmurphylc@sccourts.org>
Cc: Ashley Cornwell <acornwell@cornwellfirm.com>; Murphy, Maite Secretary (Robin Dukes) <mmurphysc@sccourts.org>; Joyce M. Johnson <jjohnson@orangeburgcounty.org>; Brown-Clark, Winnifa <WClark@orangeburgcounty.org>; Spires, Katherine A. <kspires@sccourts.org>
Subject: RE: [External] State v. Eastwood: Rule to Show Cause (2020GS3800943)

***** EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Thank you. I will be on ASAP

Hervery B. O. Young

Deputy Director/General Counsel

SC Commission on Indigent Defense

Post Office Box 11433

Columbia, South Carolina 29211-1433

P: (803) 734-1343

F: (803) 734-1345

E: hyoung@sccid.sc.gov

From: Murphy, Maite Law Clerk (Christel Lopez Purvis) <mmurphylc@sccourts.org>
Sent: Thursday, January 18, 2024 9:27 AM
To: Young, Hervery <hyoung@sccid.sc.gov>
Cc: Ashley Cornwell <acornwell@cornwellfirm.com>; Murphy, Maite Secretary (Robin Dukes) <mmurphysc@sccourts.org>; Joyce M. Johnson <jjohnson@orangeburgcounty.org>; Winnifa B. Clark <WClark@orangeburgcounty.org>; Spires, Katherine A. <kspires@sccourts.org>
Subject: RE: [External] State v. Eastwood: Rule to Show Cause (2020GS3800943)

Good Morning Mr. Young,

That's no problem, we can begin at that time, but please be aware that Judge Murphy has other hearings scheduled to begin in the virtual courtroom at 11:15am.

Thank you,

Christel L. Purvis

Law Clerk for the Honorable Maité Murphy

First Judicial Circuit

5200 East Jim Bilton Boulevard

St. George, South Carolina 29477

From: Young, Hervery <hyoung@sccid.sc.gov>

Sent: Wednesday, January 17, 2024 4:47 PM

To: Murphy, Maite Law Clerk (Christel Lopez Purvis) <mmurphylc@sccourts.org>

Cc: Ashley Cornwell <acornwell@cornwellfirm.com>; Murphy, Maite Secretary (Robin Dukes) <mmurphyse@sccourts.org>; Joyce M. Johnson <jjohnson@orangeburgcounty.org>; Brown-Clark, Winnifa <WClark@orangeburgcounty.org>; Spires, Katherine A. <kspires@sccourts.org>

Subject: Re: [External] State v. Eastwood: Rule to Show Cause (2020GS3800943)

***** EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Good afternoon. I have a 10 am conference call in the morning that didn't get put on my calendar. Is it possible to start this hearing at 10:45 or 10:50?

Hervery B. O. Young

Deputy Director/General Counsel

SC Commission on Indigent Defense

Post Office Box 11433

Columbia, South Carolina 29211-1433

P: [\(803\) 734-1343](tel:(803)734-1343)
F: [\(803\) 734-1345](tel:(803)734-1345)
E: hyoung@sccid.sc.gov

On Jan 16, 2024, at 10:33 AM, Murphy, Maite Law Clerk (Christel Lopez Purvis)
<mmurphylc@sccourts.org> wrote:

Good Morning Mr. Young,

Yes, the court reporter can be available for the virtual hearing, and we can easily allocate 45 minutes for this matter.

Thank you,

Christel L. Purvis

Law Clerk for the Honorable Maité Murphy

First Judicial Circuit

5200 East Jim Bilton Boulevard

St. George, South Carolina 29477

From: Young, Hervery <hyoung@sccid.sc.gov>
Sent: Tuesday, January 16, 2024 10:29 AM
To: Murphy, Maite Law Clerk (Christel Lopez Purvis) <mmurphylc@sccourts.org>; Ashley Cornwell <acornwell@cornwellfirm.com>
Cc: Murphy, Maite Secretary (Robin Dukes) <mmurphyssc@sccourts.org>; Joyce M. Johnson <jjohnson@orangeburgcounty.org>; Brown-Clark, Winnifa <WClark@orangeburgcounty.org>
Subject: RE: [External] State v. Eastwood: Rule to Show Cause (2020GS3800943)

***** EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Prior to consenting, I would like to verify 2 things:

1. Will the virtual hearing have a court reporter available?
2. Each time we (SCCID) have objected and had hearings, the hearings have taken at least 45 minutes to get everything on the record. For timing and scheduling purpose for the Court, will that time be available virtually given other activities for court (trial, pleas, etc.)?

Hervy B. O. Young

Deputy Director/General Counsel

SC Commission on Indigent Defense

Post Office Box 11433

Columbia, South Carolina 29211-1433

P: (803) 734-1343

F: (803) 734-1345

E: hyoung@sccid.sc.gov

From: Murphy, Maite Law Clerk (Christel Lopez Purvis) <mmurphy@sccourts.org>

Sent: Tuesday, January 16, 2024 10:15 AM

To: Ashley Cornwell <acornwell@cornwellfirm.com>; Young, Hervy <hyoung@sccid.sc.gov>

Cc: Murphy, Maite Secretary (Robin Dukes) <mmurphy@sccourts.org>; Joyce M. Johnson <jjohnson@orangeburgcounty.org>; Winnifa B. Clark <WClark@orangeburgcounty.org>

Subject: [External] State v. Eastwood: Rule to Show Cause (2020GS3800943)

Good Morning Counsel,

After reviewing the anticipated timing of this week's jury trial, Judge Murphy asks that the Rule to Show Cause hearing please be rescheduled for Thursday at 10:30am. This can be conducted as a virtual hearing if both sides consent.

Please let me know if everyone is available at that time.

Thank you,

Christel L. Purvis

Law Clerk for the Honorable Maité Murphy

First Judicial Circuit

5200 East Jim Bilton Boulevard

St. George, South Carolina 29477

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THE STATE OF SOUTH CAROLINA )  
COUNTY OF ORANGEBURG )

THE STATE )

IN THE COURT OF GENERAL SESSIONS  
FIRST JUDICIAL CIRCUIT

Charge(s): Murder

Warrant/Indictment Nos.:

2019A38102 00238

ORDER

v.

Kenneth Henry Eastwood  
DEFENDANT.

THE DEFENDANT, Kenneth H. Eastwood, contends that he is indigent and in need of services of an attorney as contemplated by law.

THEREFORE, Doug Mellard, Esquire, is appointed as counsel for the Defendant.

FURTHER, as a condition of appointment, the Defendant must pay his \$40.00 application fee to the Clerk of Court no later than \_\_\_\_\_.

FURTHER, as a condition of appointment, the Defendant's income must be reviewed at the conclusion of his case to ascertain if an additional fee must be paid to the First Circuit Public Defender's Office for his representation; and,

IT IS SO ORDERED.

ATTEST: TRUE COPY

Winnajia B. Clark

CLERK OF COURT  
ORANGEBURG COUNTY, SC

Date: May 18, 2023  
Orangeburg, SC

[Signature]  
Presiding Judge

Heath P. Tauler

STATE OF SOUTH CAROLINA )  
COUNTY OF ORANGEBURG )

AFFIDAVIT OF INDIGENCY

Case Name SOUTH CAROLINA VS Kenneth Henry Eastwood

Criminal Case No. 219A3810200238

Current Address: Kirkland R+3

Are you incarcerated? ☒ Yes (If "Yes") Where? Kirkland R+E  
☐ No

What were you convicted of? murder

What was your sentence? 9999999

Are you appealing from  
☒ trial, ☐ guilty plea ☐ a post-conviction relief hearing?

In what county was this trial/hearing/guilty plea held? ORANGEBURG

Presiding Judge's name? MURPHY, MAITE

Date of trial/guilty plea or post-conviction hearing 11-6-9-23

Were you represented by  
☐ a court-appointed attorney ☐ public defender or ☒ retained counsel?

Name of attorney/public defender? ASHLEY CORNWELL

If retained, how much did you pay for attorney fees? \$ ~~000000~~

If you still owe money to your attorney, how much? \$ 0

1. Are you presently employed? Yes ☐ No ☒

a. If "yes," state the amount of your salary or wages per month, and give the name and address of your employer: \_\_\_\_\_

b. If "no," state the name and address of last employment, date of termination of employment, and amount of your salary or wages per month. Social Security

2. List by name, age and relationship to you, any persons who are dependent upon you for support. Indicate beside each how much you contribute toward their support. 0

3. Have you received within the past twelve months any money from any of the following sources?

a. Business, profession or form of self-employment?  
Yes \_\_\_\_\_ No 0

b. Rent payments, interest or dividends?  
Yes \_\_\_\_\_ No 0

c. Pensions, annuities or life insurance payments?  
Yes \_\_\_\_\_ No 0

d. Gifts of inheritance?  
Yes 2 No ?

e. Any other sources?  
Yes \_\_\_\_\_ No ✓

If the answer to any of the above is "yes," describe each source of money and state the amount received from each during the past twelve months. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Do you own cash, or do you have any money in a checking or savings account?  
Yes \_\_\_\_\_ No ✓

If the answer is "yes," state the total amount of the cash owned. \$ \_\_\_\_\_

5. Do you own any real estate, stocks, bonds, notes or other valuable property (excluding ordinary household furnishing and clothing)? Yes \_\_\_\_\_ No ✓

If the answer is "yes," describe the property and state the appropriate value of the items owned. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. What kind of motor vehicle do you own? 0

Is it paid for? Yes \_\_\_\_\_ No 0

If not, what are the monthly payments? \$ \_\_\_\_\_

7. What are your monthly expenses for the following:

RENT/Mortgage 0

Utilities (Water, Electric/Gas, Sewer, Cable) 0

Food/Groceries 0

Transportation/Gas 0

Car/Homeowners Insurance 0

8. How do you pay the expenses listed in question 7? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I do solemnly swear that the account by me delivered into this Court does contain a true and full account of all my real and personal estate, debts, credits and effects whatsoever without exception, which I, or any person in trust for me, have or at the time of my possession had, or am, or was, in respect, entitled to, in possession, remainder or reversion and that I have not at any time since charges were made against me or before, directly or time since charges were made against me or before, directly or indirectly sold, leased, assigned or otherwise disposed of or made over, in trust for myself or otherwise, other than is mentioned herein.

I understand that the State shall file a claim against me in an amount equal to the cost for representation, but that such claim shall not constitute a lien against my property, unless, the claim is reduced to judgment by the Order of the Court after giving me at least thirty days' notice.

Under penalty of perjury, I certify that the information given by me on this affidavit is true and correct, and I understand that I will be subject to civil and/or criminal penalties if I knowingly furnish false information.

I am financially unable to employ counsel.

This 12 day of JANUARY 2021, \_\_\_\_\_.

Kenneth Eastwood  
Defendant

I understand that I am entitled to at least thirty days' notice before a claim against me may be reduced to judgment, and I do hereby waive the right to such notice.

This \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Defendant

SUBSCRIBED AND SWORN to before me this

12 day of JANUARY 2024

[Signature]

Notary Public for South Carolina

My Commission Expires: MARCH 8, 2026



### PROOF OF SERVICE

|                                            |                   |                                |
|--------------------------------------------|-------------------|--------------------------------|
| SERVED                                     | DATE<br>1/12/2024 | PLACE<br>KIRKLAND R+E          |
| SERVED ON (PRINT NAME)<br>KENNETH EASTWOOD |                   | MANNER OF SERVICE<br>IN-PERSON |
| SERVED BY (PRINT NAME)<br>S. RANDOLPH      |                   | TITLE<br>LT                    |

### DECLARATION OF SERVER

|                                                                                                |                                                                                                           |
|------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------|
| I certify that the forgoing information contained in the Proof of Service is true and correct. |                                                                                                           |
| Executed on 1/12/24                                                                            | <br>SIGNATURE OF SERVER |
|                                                                                                | 4344 BROADVIEW RD COLA SC<br>ADDRESS OF SERVER 29210                                                      |

415 S.C. 366  
782 S.E.2d 747

**Bobby Joe REEVES, Petitioner,**  
**v.**  
**STATE of South Carolina, Respondent.**

**Appellate Case No. 2011-187246.**  
**No. 5359.**

**Court of Appeals of South Carolina.**

**Heard June 1, 2015.**  
**Decided Nov. 12, 2015.**  
**Rehearing Denied March 24, 2016.**

[782 S.E.2d 747]

Jeremy Adam Thompson, of Law Office of Jeremy A. Thompson, LLC, of Columbia, for petitioner.

[782 S.E.2d 748]

Attorney General, Alan McCrory Wilson and Assistant Attorney General, Megan Harrigan Jameson, of Columbia, for respondent.

SHORT, J.

[415 S.C. 368]

Bobby Joe Reeves was convicted of first-degree criminal sexual conduct (CSC) with a minor and lewd act upon a child. He appeals from the denial and dismissal of his application for post-conviction relief (PCR), arguing the PCR court erred in finding his trial counsel was not ineffective for failing to investigate and present the testimony of a gynecological expert witness. We reverse.

## FACTS

Reeves was tried September 17-18, 2002. At the trial, during a video interview, Victim<sup>1</sup> testified Reeves lived with her and her mother in South Carolina. After she and her mother moved to Georgia, Victim stated she visited Reeves every other weekend. Reeves picked her up in Georgia and

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took her to stay at his house in South Carolina or her mother drove her to South Carolina. She testified she thought of Reeves as a father figure. Victim testified that during her visits with Reeves, he would "touch her private" with his hands and "sometimes with his private." He would "rub his private on [her] private." She was not wearing clothes when these incidents occurred and sometimes Reeves also was not wearing clothes. She explained Reeves would occasionally ask her to "suck his private" and when she did, "yellow stuff would come out." She stated the "yellow stuff" would "sometimes [go] in [her] mouth" and other times it would go "on [her] private." According to Victim, the weekend of July 4, 2000, was the last time she saw Reeves. She stated Reeves "stuck his finger up [her]" for the first time during that weekend. She testified she was four years old when Reeves began touching her. She told her mother about the sexual abuse after her last visit with Reeves.

Dawn Bridgett, Victim's mother, testified she and Victim moved in with Reeves when Victim was eight months old because they needed a place to live. Bridgett stated Victim and Reeves continued to spend time together after she and Victim moved to Georgia. She recalled the last time Victim saw Reeves was the weekend of July 4, 2000. Bridgett drove Victim to South Carolina and Victim did not want Bridgett to leave. Victim was also "very clingy" when she returned to Georgia. Reeves contacted Bridgett to schedule a visit with Victim toward the latter part of July 2000, but Victim refused to go to Reeves' home. When Bridgett questioned Victim about her decision, Victim discussed incidences that occurred in Reeves' bedroom.<sup>2</sup> After the conversation, Bridgett called her sister and the police. On the following Monday, Bridgett took Victim for a medical examination with Dr. Dennis Bash. Several weeks later, Bridgett took Victim for a medical examination with Dr. Maureen O'Brien Claiborne.<sup>3</sup>

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Dr. Bash, an expert in the field of emergency room pediatric care, testified he examined Victim on July 31, 2000. Dr. Bash stated he observed what "appeared to be a healing scar" on Victim's hymen. When asked, "Could you date or in any way tell how much earlier that time [sic] had been inflicted," Dr. Bash responded, "The only thing that you can say about that is that it had time to heal so that it was at least one week before that and probably longer." Dr. Bash opined any kind of penetration, penile or digital, would have caused the injuries. Further, Dr. Bash agreed the healing scar was consistent with some kind of penetration approximately thirty days earlier. During cross-examination, Dr. Bash admitted he did not find any bruising, bite marks, claw marks, or sperm on Victim during the examination. Further, he stated, in "cases where ... it's been a long time period in-between the time that—whatever happened supposedly happened in that time they presented to

[782 S.E.2d 749]

us—we just do a basic screening evaluation and always recommend that they follow-up in the sexual abuse clinic." On re-direct examination, Dr. Bash maintained he would not have expected to see any bruising or sperm even if he had conducted the examination thirty days prior.

Jodi Lee Lashley, the Child Advocate Program Director at Children's Advocacy Center for Abused Children, testified she conducted a forensic interview of Victim on August 11, 2000. Lashley testified Victim stated she was made to "perform oral sex," "touch the private of the person," and "the person touched her private." Lashley testified Victim stated the incidents took place at a male's home and the male had a roommate named "Jessie." According to Lashley, Victim explained the sexual abuse began occurring when she was four or five years old and the last incident occurred during her last visit with the male. Lashley testified she did not observe any signs that Victim was coached to say something during her interview.

Dr. Claiborne, an expert in pediatrics, testified she examined Victim on August 28, 2000. Dr. Claiborne stated she

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examined Victim and took cultures because none were taken in the emergency room. Dr. Claiborne explained, "On [Victim's] genital exam, her hymen appeared normal. She [did not] have any tears or scars. She [did not] have any unusual discharge. And the rectal area also appeared to have normal appearance and tone." Dr. Claiborne acknowledged her examination of Victim took place one month after Dr. Bash's initial evaluation and her results were normal. Dr. Claiborne explained it is common to see normal exams in these types of cases. She elaborated,

What we know is that an awful lot of child abuse, sexual abuse in younger children, is not the violent rape kind of things that you sometimes see in adults or in older kids. A lot of the time in younger kids, it is more of a coercion kind of thing. And, you know, yes[,] penile may not leave terrible scars and stuff. But then you're also dealing with children who have never had consensual sex. So they don't know exactly what's all the way inside them, what is part of the way inside them[,] and what's trying to get inside of them. So, yes, we normally see normal exams. Most kids who have been sexually abused will have normal exams.

Dr. Claiborne opined healing would be in the process or would have taken place two months after the incident. She explained, "It would depend upon the degree of healing. If this had been a violent rape, I would [have] expect [ed] ... bleeding and suturing, I would expect that I would see a lot of evidence." Finally, when asked if her findings, two months after the fact, were consistent with a child who had been digitally penetrated, Dr. Claiborne responded, "Yes." On cross-examination, she admitted her results were

also consistent with the possibility that nothing happened to Victim.

Dr. Carl Brunie, an expert in child psychiatry and Victim's psychiatrist, testified regarding the behavioral changes he noticed in Victim before and after the alleged incident occurred. He stated he began treating Victim in 1999 because she had a history of anger, self-directed aggression, and biting herself. She had threatened to hurt herself, burned her arms with an eraser, suffered from frequent nightmares, exhibited mood swings, experienced significant anxiety, and often expressed fears of some harm coming to her mother. He explained that during his treatment "[he] felt like there was

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history that [he] was missing" and "the picture became considerably clearer after [Victim's] mother reported to [him] that Victim had disclosed the history of sexual abuse." He testified Victim's condition deteriorated after the disclosure as she began to have more nightmares, became depressed and sad, and "would get in the fetal position sucking her thumb, acting like a much younger child."

During closing arguments, the State argued:

But remember what Dr. Bash said when he examined Victim about three weeks after

[782 S.E.2d 750]

the last time she had seen [Reeves]. There was healing scar tissue in her hymen. Ten year old girls who have not been sexually molested do not have healing scar tissue in their hymen. There is no other explanation other than she was penetrated. A ten year old. We're not talking about a grown woman, a sexually active woman. We're talking about a ten year old. That just doesn't happen on its own. And

that is a fact [the defense] cannot overcome.

The State repeated:

[Victim] told you about digital penetration.... And again, 100 percent corroborated by the medical evidence. Three weeks later when a doctor examined her, a doctor who's a pediatric specialist and finds healing scar tissue. It just doesn't happen on its own; not on a ten year old; not in an unsexually active ten year old. It's just not going to be there.... Dr. Bash examines Victim on that day and finds healing scar tissue. Again, there's no other explanation for it other than Victim had been penetrated by something. And that's undisputed testimony.

The jury convicted Reeves of first-degree CSC with a minor and lewd act upon a child, and the trial court sentenced him to concurrent fifteen-year sentences. Reeves filed a direct appeal, and this court affirmed. *See State v. Reeves*, Op. No. 2005-UP-099 (S.C. Ct. App. filed Feb. 10, 2005). Reeves filed an application for PCR, which the PCR court dismissed on February 3, 2011, after a hearing. Reeves filed a petition for a writ of certiorari, which this court granted on January 31, 2014. Reeves now requests that this court grant him post-conviction relief and vacate his convictions and sentences.

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## STANDARD OF REVIEW

An appellate court must affirm the factual findings of the PCR court if they are supported by any probative evidence in the record. *Hyman v. State*, 397 S.C. 35, 42, 723 S.E.2d 375, 378 (2012). "However, reversal is appropriate where the PCR court's decision is controlled by an error of law." *Id.*

## LAW/ANALYSIS

Reeves argues his trial counsel was ineffective in failing to investigate and present the testimony of a gynecological expert witness. We agree.

Trial counsel must provide reasonably effective assistance under prevailing professional norms. *Strickland v. Washington*, 466 U.S. 668, 687–88, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). "[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* at 690, 104 S.Ct. 2052. To receive relief, the applicant must show (1) counsel was deficient and (2) counsel's deficiency caused prejudice. *Stalk v. State*, 383 S.C. 559, 560–61, 681 S.E.2d 592, 593 (2009). Prejudice is defined as "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 693, 104 S.Ct. 2052. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* "Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim." *Id.* at 700, 104 S.Ct. 2052.

At the PCR hearing, Dr. Fredrick Morris Thompson, an expert in gynecology, testified on Reeves' behalf. Dr. Thompson testified injuries in the vaginal area do not necessarily heal quicker than any other area of the body. According to Dr. Thompson, there are multiple ways a trauma may occur in the vaginal area. He stated, "[S]ex is certainly not—or sexual play is not the only way [sic] the vagina can be injured." He explained injuries can occur through accidental injury, self-mutilation, or a fall. Further, Dr. Thompson opined that girls, more than boys, are given to masturbation, and in the course of masturbation, they could potentially injure themselves. However, he admitted there was no way to document what caused Victim's injury. He recalled he thought Dr. Bash

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described Victim's injuries as a minor laceration near the opening of the vaginal area. When asked about Dr. Bash's ability to see a physical injury on

Victim one month after the incident, Dr. Thompson stated,

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If it was a significant health-threatening injury, it probably would be fairly evident. If it was a minor laceration, a tear, it—you know, it could be in various stages of healing, and I know that there's [sic] ways of categorizing bruises to determine how long the bruise has been there. I don't think that was described in [Dr. Bash's] examination. A laceration would be very difficult to date, I think exactly, as to how long it had been there, and certainly difficult to say what exactly had caused that particular injury if there was not any other evidence of trauma.

As to Dr. Claiborne's testimony stating her findings were consistent with some kind of penetration even though the medical exam results were normal, Dr. Thompson stated, "I think it would be very difficult to make a statement as to could physical abuse [have] occurred or not if there were no signs to lead you to believe there was anything out of the ordinary." According to Dr. Thompson, the injury to Victim would have had to be fairly substantial in order to be seen a month after the injury. Further, when asked if an injury observed thirty days after the incident is something he would expect a person to seek medical attention for, Dr. Thompson responded,

Again, you're given someone who may or may not have the expected degree of intelligence. There's a fear involved. There's all sorts of reasons why people fail to seek medical attention, but if your child was bleeding, I would think this would alarm them enough that they would probably want to go to a caregiver of some sort. Again, there's a lot of

pain involved. Again, there would probably be some reaction.

However, he opined he would not expect to see the injury thirty days after the incident if it was a fairly minor laceration.

Trial counsel testified he received Reeves' case from his partner in 2002. He asserted the State made an offer of five years' probation, which Reeves declined because he was adamant he had not done anything wrong. Trial counsel maintained he no longer had his notes and file for this case because the file was destroyed, and he could not remember many

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details about the case. Trial counsel admitted he did not consult with an expert prior to trial even though he knew the State would attempt to admit evidence of a physical trauma. When asked if a medical expert would have been helpful to counteract the State's expert witnesses, trial counsel explained,

It might have, sir. As I remember, [Reeves] was making payments to my partner because he didn't have a lot of money at the time. I do not remember—I remember—I think I saw [Reeves], met with [Reeves] several times before we actually got ready for the trial. He had provided me with a witness list, a long list of people who, you know, would have helped him out. I do not remember whether he did that at my request or he just had it ready for me when I met with him. We decided to go that route. I started going down the list. If I'm correct, the entire defense was that [Victim's] mom had been convicted, [sic] against [Reeves] because [Reeves] had said, 'I don't like the lifestyle. You're not treating [Victim] well. I want you out of my house', if I remember correctly.

When asked again, trial counsel reiterated, "Sir, all I remember is there was a question about money. I know I never did talk to an expert, but whether [Reeves] and I talked about that, I cannot tell you."

The PCR court found Reeves failed to prove trial counsel was ineffective for failing to interview and present a medical expert at trial. The PCR court noted trial counsel testified he had not retained a medical expert because Reeves did not have the funds to do so. The PCR court stated, "A doctor could not state with certainty the exact cause of the injuries discovered and the determination of the cause of the injury was a question for the jury." Further, the PCR court stated, "Dr. Thompson's testimony did not make it any less likely that [Reeves] had committed the crime, in fact, the substance of his testimony at the PCR hearing only confirmed that the cause of the injuries was unclear." Accordingly, the PCR court denied and dismissed this ineffective assistance of counsel claim.

[782 S.E.2d 752]

1234"[C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular

[415 S.C. 376]

investigations unnecessary." *Strickland*, 466 U.S. at 691, 104 S.Ct. 2052. "[A]t a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case." *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 597 (2007) (emphasis omitted) (citation omitted). "[A] particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." *Strickland*, 466 U.S. at 691, 104 S.Ct. 2052. "[S]trategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments

support the limitations on investigation." *Id.* at 690–91, 104 S.Ct. 2052. "[C]ounsel's conversations with the defendant may be critical to a proper assessment of counsel's investigation decisions [.]" *Id.* at 691, 104 S.Ct. 2052.

"[T]he United States Supreme Court has held that the defendant must have 'a fair opportunity to present his defense,' thereby requiring the State to provide the 'basic tools' for an adequate defense to an indigent defendant." *Bailey v. State*, 309 S.C. 455, 459, 424 S.E.2d 503, 506 (1992) (quoting *Ake v. Oklahoma*, 470 U.S. 68, 105 S.Ct. 1087, 84 L.Ed.2d 53 (1985) ). "Thus, although the State is not required to provide the indigent defendant with unlimited funding, it must ensure that the defendant has competent counsel and the services of experts necessary to a meaningful defense[.]" *Id.*

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.

An applicant is only entitled to fees to pay for expert witnesses if the applicant shows a need for the expert testimony. *Thames v. State*, 325 S.C. 9, 11, 478 S.E.2d 682, 683 (1996). The mere possibility the applicant could find a witness

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somewhere to support an allegation is insufficient to warrant authorization of funds. *Id.* Where counsel articulates a valid trial strategy for failing to call an expert witness to testify at trial, such

conduct will not be deemed ineffective. *Legare v. State*, 333 S.C. 275, 281, 509 S.E.2d 472, 475 (1998).

In *Dempsey v. State*, the State called a therapist at the Low Country Children's Center to testify as an expert on child sexual abuse. 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005). The therapist opined the victim had been sexually abused. *Id.* In addition, the State presented expert testimony from a doctor who performed the victim's physical examination. *Id.* The doctor testified she found no physical evidence the victim was sexually abused, but it was likely that if someone was assaulted in the manner in which the victim alleged, there would be no physical evidence of the assault. *Id.* Dempsey's counsel did not call an expert to rebut the State's expert testimony because he believed the lack of physical evidence of abuse, by itself, was enough to rebut the State's expert testimony. *Id.* Our supreme court found Dempsey's counsel's decision not to call an expert witness to rebut the State's expert witness was a legitimate trial strategy. *Id.* Accordingly, the court held the PCR court erred in granting relief on the basis that trial counsel was ineffective in failing to call an expert witness on child sexual abuse. *Id.*

In this case, we find trial counsel was deficient because he should have discussed hiring a medical expert with Reeves to more thoroughly challenge the State's medical evidence presented at trial. *See Strickland*, 466 U.S. at 691, 104 S.Ct. 2052 ("[C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary."). Trial counsel admitted he did not consult with an expert prior to trial even though he knew the State would attempt to admit evidence of a

[782 S.E.2d 753]

physical trauma. Trial counsel recalled he failed to meet with an expert witness because "there was a question about money," but he also stated he could not recall whether he discussed this issue with Reeves at all.<sup>5</sup> Trial counsel could not recall much else about

[415 S.C. 378]

the case or his trial strategy, and he no longer had his notes and file for this case because the file was destroyed. We also find trial counsel did not provide a legitimate trial strategy for failing to consult with an expert before trial or call a medical expert witness to testify at trial. *Contra Dempsey*, 363 S.C. at 370, 610 S.E.2d at 815 (finding a trial counsel's decision not to call an expert witness to rebut the state's expert witness was a legitimate trial strategy and holding the PCR court erred in granting relief on the basis that trial counsel was ineffective in failing to call an expert witness on child sexual abuse); *Legare*, 333 S.C. at 281, 509 S.E.2d at 475 (stating that where counsel articulates a valid trial strategy for failing to call an expert witness to testify at trial, such conduct will not be deemed ineffective); *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (providing an attorney's performance is not deficient if it is reasonable under professional norms).

We further find Reeves was prejudiced by his trial counsel's deficiency. *See Strickland*, 466 U.S. at 700, 104 S.Ct. 2052 ("Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim."). Reeves presented evidence of prejudice through Dr. Thompson's testimony at the PCR hearing. Although Dr. Thompson admitted there was no way to document what was the cause of Victim's injury, he provided additional ways the injury could have occurred, including self-infliction or by accident. These additional theories were not presented during trial. In fact, the State, in its closing arguments, repeatedly argued, "There is no other explanation [for the injury] other than she was penetrated.... And that is a fact [the defense] cannot overcome .... that's undisputed testimony." Further, Dr. Thompson opined Victim's scars would have had to have been substantial to be seen one month after the incident. However, at trial, Dr. Bash's testimony does not indicate the injury was substantial.

[415 S.C. 379]

## CONCLUSION

Accordingly, we find the evidence does not support the PCR court's finding that Reeves failed to prove his counsel was ineffective. Further, we find counsel's ineffectiveness was prejudicial to Reeves.

## REVERSED.

LOCKEMY and McDONALD, JJ., concur.

### Notes:

<sup>1</sup> Victim was ten years old at the time of the incident and twelve years old at the time of trial.

<sup>2</sup> The trial court limited Bridgett's testimony to "date, time, place, and nature but not any names." Therefore, Bridgett did not testify regarding the specific details of her conversation with Victim, only "[she] played a game with [Victim]. [She] named events, and [Victim] told [her] whether it happened[.]"

<sup>3</sup> Dr. Claiborne's name is also spelled Clayborne in the record.

<sup>4</sup> Victim testified Reeves had a roommate named "Jessie" who was at the home during her visits. Additionally, Jessie Wheaton testified at trial, and stated he and Reeves had been roommates, and "[they had] been living together now off and on, a couple of time[s] in different places."

<sup>5</sup> If Reeves was indigent and could not afford to pay for an expert, the South Carolina Office of Indigent Defense could have provided the funds needed to secure an expert witness. *See S.C.Code Ann. § 17-3-50(B)* (2003) ("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....").



|                          |   |                                  |
|--------------------------|---|----------------------------------|
| STATE OF SOUTH CAROLINA  | ) | IN THE COURT OF GENERAL SESSIONS |
| COUNTY OF ORANGEBURG     | ) | FIRST JUDICIAL CIRCUIT           |
|                          | ) |                                  |
| STATE OF SOUTH CAROLINA, | ) | DOCKET NO.: 2020-GS-38-00943     |
|                          | ) |                                  |
| vs.                      | ) | AFFIDAVIT IN SUPPORT OF CLAIM    |
|                          | ) | FOR ATTORNEY FEES                |
| KENNETH EASTWOOD         | ) |                                  |
| Defendant.               | ) |                                  |
|                          | ) |                                  |

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I, Ashley B. Cornwell, hereby certify and attest as follows:

1. I am the attorney for the Defendant in this matter.
2. I was admitted to the South Carolina Bar in 2008 and have been an active member with no suspensions or disciplinary actions since that time.
3. I am requesting the court consider awarding attorney fees in this matter based upon the complexity of this litigation, the time expended, the professional standing of counsel, and fees customarily charged in this area for similar legal services.
4. Prior to and during the course of my representation of Defendant, Defendant was determined to be indigent by the Court.
5. As part of my representation of Defendant, I petitioned for and obtained funding orders from the Court allocating up to \$13,500.00 of state funds for expert services to be paid by the South Carolina Commission on Indigent Defense (SCCID).
6. Pursuant to the funding orders I submitted all the required documentation and invoices to SCCID, along with copies of the funding orders from the Court, for payment to be made to the two experts who provided services to Defendant.
7. After submitting the funding orders and proper documentation to SCCID, I was notified that SCCID was refusing to render payment to the experts despite being ordered by the Court to do so.
8. Given SCCID's refusal to abide by the Court's Order and submit payment to the experts, a Rule to Show Cause was prepared and submitted to the Court and I have had to spend additional time preparing for this hearing.
9. My hourly rate for legal services is typically billed at approximately \$300/hour.
10. The time and expense required for this Motion and Hearing are as follows:

|                                                       |            |
|-------------------------------------------------------|------------|
| 1 hour communicating with SCCID .....                 | \$300.00   |
| 4 hours filing motion and preparing for hearing ..... | \$1,200.00 |

1 hour for hearing .....\$300.00

Total:           \$1,8000.00

11. Given the fees for preparing this matter must be paid by SCCID if ordered, I am willing to stipulate to reducing my fees for this matter to the rate pursuant to the guidelines in S.C. Code of Laws §17-3-50.

12. §17-3-50 provides a private attorney be paid for services at a rate of \$40/hour for time spent out of court and \$60/hour for time spent in court, which would total \$260.00 in this matter.

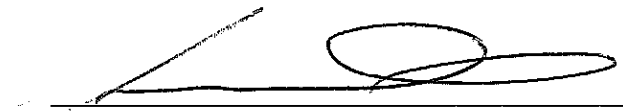
1 hour communicating with SCCID .....\$40.00

4 hours filing motion and preparing for hearing .....\$160.00

1 hour for hearing .....\$60.00

Total:           \$260.00

Respectfully Submitted By:

  
\_\_\_\_\_  
Ashley B. Cornwell, Attorney for Defendant

1 STATE OF SOUTH CAROLINA )  
2 ) IN THE COURT OF  
3 COUNTY OF ORANGEBURG ) GENERAL SESSIONS  
4  
5 THE STATE, )  
6 Plaintiffs, )  
7 Vs ) CASE NO. 2020-GS-38-943  
8 KENNETH EASTWOOD, )  
9 Defendant ) (VIRTUAL)

10  
11 JANUARY 18, 2024

12 ORANGEBURG, SOUTH CAROLINA  
13

14 HONORABLE MAITE MURPHY, JUDGE  
15

16 A P P E A R A N C E S:

17 BY: HARVERY B.O. YOUNG, ESQUIRE

18 Attorney for the Plaintiffs

19 BY: ASHLEY B. CORNWELL, ESQUIRE

20 Attorney for the Defendant  
21  
22

23 KATHERINE A. SPIRES

24 REGISTERED PROFESSIONAL REPORTER  
25

1 THE COURT: Are we ready to proceed  
2 with this morning's hearing?

3 MS. CORNWELL: Yes, Your Honor.

4 THE COURT: All right. Yes, Ms.  
5 Cornwell, I'll be happy to hear from you.

6 MS. CORNWELL: Your Honor, the petition  
7 for rule to show cause thus made to Your Honor,  
8 this is the case that Your Honor presided over back  
9 in November in Orangeburg County, it was a murder  
10 trial where I represented the Defendant, Kenneth  
11 Eastwood. Prior to trial, I had submitted two  
12 separate petitions for two separate experts, one  
13 was a false confession expert and the other was a  
14 forensic pathologist.

15 The submission for the experts I  
16 believe was necessary to present a full and  
17 complete defense on behalf of my client. We did  
18 present to you in both the petition as well as in  
19 email communications with Your Honor regarding his  
20 indigent status, the reason that we felt those  
21 experts were going to be necessary to provide a  
22 full and complete defense for Mr. Eastwood.

23 As Your Honor recalls, the whole basis  
24 of this case, it was a confession case. And so  
25 really the only meaningful defense that we would

1 have had at trial was the false confession expert  
2 as well as the forensic pathologist to kind of  
3 counter what the State's pathologist found as far  
4 as time of death.

5 Your Honor reviewed all of those  
6 documents, all of those communications. We also  
7 submitted the order from Judge Taylor finding Mr.  
8 Eastwood indigent appointing counsel to him. I did  
9 submit that order to Your Honor again just a few  
10 minutes ago. Your Honor did agree that  
11 Mr. Eastwood was indigent. He had been  
12 incarcerated for almost three years at that point  
13 with no ways of making an income. Prior to that,  
14 he was a stock person at the IGA grocery store, so  
15 did haven't a large income to begin with.

16 You did find that he was indigent. You  
17 did agree that the services of the two experts that  
18 I requested were reasonable and necessary to  
19 provide a complete defense in accordance with our  
20 Constitution -- the US Constitution state law in  
21 the statutes, so you did order and allow up to, I  
22 believe, \$8,000 for the forensic -- I'm sorry, for  
23 the false confession expert and up to \$5500 for the  
24 forensic pathologist. You ordered that SCCID must  
25 pay those experts upon submission of their

1 invoices, their times, and proper documentation,  
2 and that it would be paid to them directly by  
3 SCCID.

4 At the conclusion of the case, we did  
5 submit all the proper documentation to SCCID  
6 including Your Honor's signed funding orders  
7 ordering SCCID to pay those upon submission of  
8 those orders and those invoices to SCCID. I was  
9 notified that SCCID was objecting to your orders  
10 and refusing to pay.

11 I did reach out to Mr. Young through  
12 several email communications in an effort to  
13 resolve this. You know, I understand what his  
14 position is. I told him I think that his argument  
15 is more with the legislative and the executive  
16 branch and not the judicial branch, but  
17 unfortunately we were not able to get it resolved  
18 and as a result, I did have to file this petition.

19 It's my position that, you know,  
20 Mr. Eastwood was indigent. He was found indigent  
21 by two separate circuit court judges, yourself and  
22 Judge Taylor. Additionally, I did just send Your  
23 Honor another affidavit of indigency where the  
24 South Carolina -- the appellate court has found him  
25 to be indigent and in need of appointed appellate

1 counsel and I've submitted that affidavit.

2           Given that he was indigent, he is still  
3 entitled to a full and complete defense. The  
4 statute provides that expert services may be  
5 retained should the court find them reasonable and  
6 necessary and that funds for those experts should  
7 be paid by SCCID.

8           In this case, we followed all of the  
9 protocols that have been put in place. I  
10 understand Mr. Young's indication that the statute  
11 state for private appointed counsel and that I was  
12 retained and not appointed. However, I do not  
13 believe that that distinction would make  
14 Mr. Eastwood's claim of indigency any different.  
15 The statute even references the fact that just  
16 because somebody has paid a partial amount to a  
17 private and retained attorney does not mean that he  
18 could not then be indigent later on for appointment  
19 of counsel purposes.

20           When we look at the case law, the *State*  
21 *v. Reeves* case that I just sent Your Honor this  
22 morning, that is a PCR case with the Court of  
23 Appeals did find ineffective assistance of counsel  
24 in that case. That is a case where trial counsel  
25 for Mr. Reeves indicated that he did not meet with

1 | experts, he did not retain experts, or consult with  
2 | experts or present experts at trial in the Reeves  
3 | case and basically said that it wasn't a trial  
4 | strategy not to do that, but it was because the  
5 | client had stopped paying and was not financially  
6 | able to pay for experts and so based on the fact  
7 | that he couldn't pay for experts, they did not  
8 | pursue any experts.

9 |           The court found that that was  
10 | ineffective assistance of counsel and even noted in  
11 | their Footnote 5, you know, if Reeves was indigent  
12 | and could not afford to pay for an expert, the  
13 | South Carolina Office of Indigent Defense could  
14 | have provided the funds needed to secure an expert  
15 | witness and they reference Code 17-3-50(b) which  
16 | was also referenced in both my petition and your  
17 | order regarding these funds.

18 |           The argument that just because somebody  
19 | retains an attorney or has a third party retain an  
20 | attorney on someone's behalf makes them not  
21 | indigent, I don't believe is logical or what our  
22 | statute or our courts have found.

23 |           Again, I understand Mr. Young's  
24 | argument that, you know, the statute specifically  
25 | states court appointed private attorneys and does

1 not mention anything about retained attorneys.  
2 However, our judicial branch has clearly stated  
3 that even with privately retained counsel, if a  
4 person becomes indigent during the course of  
5 representation and cannot afford experts or  
6 investigative services that are necessary and  
7 reasonable to a full and complete defense, then,  
8 you know, it is up to that attorney to seek funds  
9 from the court to provide for those services to  
10 ensure that the Constitutional rights of the  
11 indigent defendant are provided for.

12               We did all that with Your Honor. Your  
13 Honor went through a vigorous process in making  
14 sure that we provided proper evidence and  
15 documentation of his indigency. Once you found  
16 that he was indigent and that these services were  
17 reasonable and necessary, you granted the order and  
18 we're simply asking that, you know, SCCID abide by  
19 your order and submit payment to these experts.  
20 They rendered services. They rendered their  
21 services on the reliance of this order in being  
22 paying paid through this order because both experts  
23 were keenly aware that I didn't want them to start  
24 any work when I consulted with them until and  
25 unless we were able to get the funding order

1 because my client would not be able to pay if there  
2 was not a funding order in place.

3 They knew that. They didn't start  
4 their services until we had funding orders, so  
5 they've detrimentally relied on these funding  
6 orders as well for payment of services that they've  
7 already rendered.

8 Based on that, I would respectfully  
9 request that Your Honor order SCCID to pay these  
10 experts immediately based on the documents that had  
11 been submitted. And I'm also at this point, Your  
12 Honor, asking for attorney's fees for this hearing.  
13 I did submit an affidavit of that -- for that based  
14 on prior conversations with Mr. Young. I think the  
15 order is quite clear and my time preparing for and  
16 going -- preparing for this hearing.

17 I did submit in my affidavit that while  
18 my typical hourly rate is about 300 an hour, that I  
19 would stipulate to my fees in accordance with the  
20 statute which is for \$40 an hour out of court time  
21 and \$60 an hour in court time and all of those fees  
22 are broken down in that affidavit of indigency. I  
23 would just ask for attorney's fees in the amount of  
24 \$260, Your Honor.

25 THE COURT: Thank you, Mr. Cornwell.

1 Mr. Young, good morning. Mr. Young, you're on  
2 mute.

3 MR. YOUNG: Sorry about that. May it  
4 please the Court. For the record, I am Hervery  
5 Young. That's H-E-R-V-E-R-Y. I'm the deputy  
6 director and general counsel for the Commission on  
7 Indigent Defense.

8 If I may, Your Honor, I want to give a  
9 little bit of background information that I've been  
10 able to uncover prior to -- or actually since we  
11 received a copy of the funding order. It's my  
12 understanding that Mr. Eastwood was arrested on or  
13 about December of 2019. Shortly thereafter,  
14 Mr. Eastwood retained the services of James Falk to  
15 represent him. Mr. Falk represented him as a  
16 retained attorney until May of 2023 when Mr. Falk  
17 passed away.

18 From what I've been able to uncover,  
19 because Mr. Falk passed away, Mr. Eastwood or  
20 someone communicated to the public defender's  
21 office that Mr. Eastwood was incarcerated and that  
22 he was informed that Mr. Falk had passed away. The  
23 public defender's office then went to Judge --  
24 gosh, his name escapes me right now -- Judge  
25 Taylor, and got -- secured an order appointing the

1 public defender's office to represent him given the  
2 nature of his charges so that he was not without  
3 counsel sitting in jail.

4           Shortly thereafter, in June of 2023,  
5 after having one meeting with the public defender's  
6 office, Mr. Eastwood retained the services of Ms.  
7 Cornwell. In October -- she represented him until  
8 the conclusion of the case in October or November  
9 timeframe is when she secured the funding orders  
10 that are at issue here.

11           Based on my conversations with Ms.  
12 Cornwell, there were no hearings, no ex parte  
13 hearings that were held. It was just based on the  
14 submission of her documentation which was the  
15 motion and the proposed order.

16           I note that in that motion, nowhere  
17 does it makes any reference to Ms. Cornwell's  
18 status as either court appointed or retained.  
19 Likewise, at that particular time, based upon what  
20 I've learned from the clerk of court's file is that  
21 there was not an affidavit of indigency submitted  
22 at that period of time.

23           So that's a little background  
24 information. Just kind of give a little bit of  
25 information regarding the authority of this court

1 to, one, even have this hearing as well as other  
2 authority that gives this court the ability to  
3 authorize funding.

4 The General Assembly gave this --  
5 created this Commission in order to oversee the  
6 defense of indigency funds and the appointment of  
7 counsel and indigency period across the state. In  
8 Section 17-3-110, it also gave the Supreme Court  
9 the authority to create rules and regulations for  
10 this Commission to comply with.

11 Likewise in 17-3-310 and 340, it gave  
12 the authority to this Commission to create the  
13 necessary policies, rules, procedures, regulations,  
14 and standards that in order to implement or to  
15 comply with things such as voucher processing,  
16 funding orders, the determination of indigency and  
17 things of that nature. This office created a  
18 voucher payment policy that is posted publically on  
19 its website has been provided to all attorneys that  
20 normally does business with us.

21 That policy was originally created or  
22 adopted by the Commission in 2007. In February of  
23 2021, that policy was amended to address a number  
24 of procedural things that the Commission saw in  
25 order to address those things.

1               Likewise in 2006, the Supreme Court  
2   issued an order which is -- which has not been  
3   rescinded in any way which established a process  
4   that once vouchers are submitted to this body --  
5   this agency for processing for payment, that there  
6   is a process in place in order for -- that allows  
7   us to object to vouchers and raise those issues to  
8   the issuing judge as well as trial counsel in order  
9   for those issues to be resolved. It gave the court  
10  the authority to -- the trial court the authority  
11  to decide those decisions on its face or to allow  
12  the court to decide those things through a hearing  
13  such as this hearing today.

14              I bring that authority to the court's  
15  attention so that the court will know that this  
16  agency is in no way willfully trying to refuse any  
17  orders of the court, but there is a process in  
18  place that has been in place at least since 2006 as  
19  to how we deal with vouchers, how we challenge  
20  funding orders and things of that nature.

21              Traditionally, until 2021, we always  
22  had to deal with those things on the back end after  
23  orders have been filed and that is when we find out  
24  that the orders that we may interpret as being  
25  inappropriate orders, that that is when they were

1 issued because we get a voucher and a invoice from  
2 an attorney requesting funding.

3 In 2021, we changed our voucher payment  
4 policy to require that all attorneys who receive  
5 funding orders from the court to file those or  
6 submit those funding orders to us within 15 days of  
7 receiving the signed order from the court. The  
8 purpose of that was to allow us to address any  
9 issues as it relates to the funding order on the  
10 front end of the case before experts begin any  
11 working, before any fees are incurred or anything  
12 along those lines.

13 I will note for the court that in 2021,  
14 Ms. Cornwell was one of our 608 indigent defense  
15 contract attorneys and was provided with a copy of  
16 the new voucher payment policy. Likewise, there  
17 were trainings thereafter that were offered and we  
18 have where Ms. Cornwell at least attended one of  
19 those trainings where we highlighted the fact that  
20 we wanted to get those orders in early so that we  
21 can address any issues whatsoever beforehand.

22 In this particular case, we did not  
23 receive the orders that we are here today on until  
24 sometime in December of 2023, well after the 15  
25 days, well after these experts had performed their

1 work in this particular case.

2 I bring to the court's attention it's  
3 our position as the Commission on Indigent Defense  
4 that the orders in this particular case should not  
5 have been granted for a couple of different reasons  
6 and I will -- I spelled out some of those in my  
7 letter to the court where we stated that we had an  
8 objection and I will go through those, if I may.

9 Initially, it's our position that  
10 Mr. Eastwood is not indigent. Being in jail alone  
11 is not a basis of anyone being considered indigent.  
12 It very well may create a presumption that that  
13 person is indigent because they have been  
14 incarcerated and they have been incarcerated for a  
15 period of time. But Rule 602 provides that other  
16 factors have to be taken into consideration in  
17 order to look at the whole picture or status of a  
18 particular person.

19 In this particular case, when I went  
20 through the background -- well, let me back up. In  
21 South Carolina, the definition of what is  
22 considered an indigent person or what makes a  
23 person indigent is spelled out in statute and in  
24 rule. And it clearly says that a person is  
25 indigent if they are financially unable to retain

1 counsel. And in some -- in Rule 602 and in  
2 Section, I think, 17-3-30 and 45, it says a person  
3 is indigent if they are financially unable to  
4 employ counsel.

5 In South Carolina, there is -- once a  
6 person retains an attorney, then by statute and by  
7 rule, they are no longer indigent. Because South  
8 Carolina does not offer any options for a person  
9 who have retained counsel to be determined to be  
10 indigent only for the purposes of expenses. There  
11 are some states, Florida being one of them, that  
12 does have a specific statute that says, that a  
13 person rather having appointed counsel or retained  
14 counsel may be found indigent for the purposes of  
15 expenses. South Carolina does not have such a  
16 statute. And as we have shared with many other  
17 entities and attorneys, if that is the desire of  
18 the private bar to have access to those things,  
19 then that is a matter that they need to address  
20 with the legislatures and have implemented in law.  
21 However, our agencies and the courts are bound by  
22 what the General Assembly have put in place as  
23 being the restrictions on the defense of indigents.

24 In this particular case, Mr. Eastwood  
25 retained not one, but two attorneys. He initially

1 out the gate retained the services of Mr. Falk. I  
2 do not know what the fee was that he paid Mr. Falk  
3 or what any agreements were with that. I will  
4 attest to the court that I did reach out to the  
5 court receiver in order to see if they could review  
6 the files of Mr. Falk in order to find out what  
7 that retainer fee was, they were not able to locate  
8 an actual file for Mr. Falk regarding Mr. Eastwood.  
9 But I will acknowledge that they were not able to  
10 find a few other files of Mr. Falk's either.

11 We do not know what the fee agreement  
12 was with Mr. Eastwood and Ms. Cornwell. But we do  
13 know that for a short period of time, I believe it  
14 was like 28 days from the time that the public  
15 defender's office was -- or the order was signed  
16 for the public defender's office to the time that  
17 Ms. Cornwell presented a letter or notice to the  
18 public defender's office that she had been  
19 retained. That is significant because in South  
20 Carolina, a person is indigent only if they're  
21 unable to afford -- to employ counsel and in this  
22 case, Mr. Eastwood employed two attorneys.

23 The -- we have not -- other than the  
24 affidavit of indigency that was submitted this  
25 morning by email, I received it while I was in the

1 waiting room waiting for this hearing to start and  
2 briefly glanced over it and noticed that it was  
3 dated January 12, 2024. We had not been able to  
4 identify -- to find any other application or  
5 affidavit of indigency submitted by Mr. Eastwood.  
6 And I will note that in my brief review of that  
7 affidavit that was submitted this morning, there  
8 was a question that asked the question of whether  
9 or not he had retained for a court appointed  
10 attorney and what, if anything, was paid and that  
11 information was checked, yes, retained, listed Ms.  
12 Cornwell. But the information that was written on  
13 there regarding the amount paid was removed from  
14 that affidavit.

15 Under Rule 602, the court must consider  
16 or whoever is screening a person in order to  
17 determine if they are indigent, that entity must  
18 take into account all assets of a person. The  
19 funds that would have been used to pay for an  
20 attorney on behalf of Mr. Eastwood are considered  
21 assets of Mr. Eastwood. The court even in the  
22 Rules of Professional Responsibility, the court has  
23 said that the agreement would be between the  
24 attorney and the client regardless of the source of  
25 those funds and even so much as if that

1 relationship comes to an end, Ms. Cornwell could  
2 have only returned those funds to the Defendant  
3 unless it was otherwise specified in writing.

4 My experience in looking at a number of  
5 retainer agreements in dealing with these cases  
6 where private counsels are asking the State to fund  
7 their experts, almost always there is a provision  
8 in those retainer agreements that says that the  
9 client is responsible for any and all costs and  
10 expenses associated with the representation.

11 We have, and I will acknowledge, and if  
12 we were in person, I would have provided a copy of  
13 that retainer agreement, but we actually in doing  
14 one of these objection hearings found a retainer  
15 agreement by one attorney that specifically said  
16 that if you will pay me X amount of dollars and if  
17 you're not able to afford the experts that you are  
18 -- that are required for your case, then we will  
19 ask the court to require the State to pay those  
20 fees through the Commission on Indigent Defense.

21 When we challenged that and brought  
22 that retainer agreement to the court's attention,  
23 the court was not pleased with the responses.  
24 Likewise, because there were no affidavits  
25 submitted in this case, that is indicative that

1 | there was very little if any screening that was  
2 | done in this particular case of Mr. Eastwood.

3 |           I also want to, as a basis as to why we  
4 | believe that these orders should not have been  
5 | issued is that Mr. Eastwood and Ms. Cornwell  
6 | entered into an agreement in order to provide  
7 | representation. That was a decision of  
8 | Mr. Eastwood in entering into that agreement and,  
9 | therefore, it becomes a contractual matter between  
10 | Ms. Cornwell and Mr. Eastwood -- and Mr. Eastwood.

11 |           As I stated earlier, the Rules of  
12 | Professional Responsibility, Rule 1.5 requires that  
13 | before any attorney takes on any case that they're  
14 | required to explain to their client, preferably in  
15 | writing, the scope of their reputation and any and  
16 | all fees and expenses that may be associated with  
17 | that representation. It is clear in the Rules of  
18 | Ethics that that should happen before the  
19 | commencement of the representation.

20 |           I think it is common place that when  
21 | you have a defendant who is charged with homicide  
22 | that there is going to be a need for some experts.  
23 | You may not know the extent of those experts or  
24 | which type of experts at that initial meeting, but  
25 | I can't imagine having practiced criminal defense

1 law for almost 30 years now that any criminal  
2 defense lawyer handling a homicide case would not  
3 acknowledge that they were going to need experts  
4 and would have discussed that with the client  
5 beforehand.

6 And I say that, because Mr. Eastwood  
7 should have been made aware that he was going to  
8 need experts at a certain dollar amount or  
9 estimation and if he was not able to afford those,  
10 then Ms. Cornwell should not have taken on that  
11 representation because she would have known from  
12 day one that he was not able to provide that  
13 representation -- I mean, he was not able to pay  
14 those fees in order to cover his representation  
15 which he was agreeing to do so.

16 It's our position --

17 THE COURT: Mr. Young, let me ask you  
18 this. So then the thought behind that policy then  
19 of course would be that not only would indigent  
20 defense have to pay for the attorney, but also for  
21 the experts; am I following that right? That's how  
22 --

23 MR. YOUNG: That is the --

24 THE COURT: -- preferred to proceed?

25 MR. YOUNG: That is correct. It's our

1 position that if a defendant is considered to be  
2 indigent, that that person would then be appointed  
3 to the public defender's office who would then have  
4 access because they are either appointed private  
5 counsel if they are a conflict attorney or the  
6 public defender's office.

7 Which is what the Statute 17-3-50  
8 provides as the guidelines for expert fees,  
9 attorney's fees, and all that stuff and it clearly  
10 says, when private counsel is appointed pursuant to  
11 this chapter or the public defender's office, then  
12 they are entitled to a reasonable fee for  
13 attorney's fees and they then have access to make a  
14 request to the court for any necessary experts  
15 needed in their case.

16 South Carolina General Assembly did not  
17 provide for if a person retains counsel that they  
18 can request for fees if their client cannot afford  
19 any experts or other expenses related to their  
20 case.

21 Ms. Cornwell made reference to the  
22 section -- the statute, I believe it is 17-3-10  
23 which the last sentence in that which basically  
24 says that if a person had previously engaged or  
25 partially paid private counsel at their own expense

1 in connection with pending charges, shall not  
2 preclude them from being -- preclude a finding that  
3 he is financially unable to retain counsel.

4 That is exactly what the General  
5 Assembly put that in place to cover those  
6 situations when a person is retained for bond  
7 purposes or initial appearances and things of that  
8 nature and cannot afford the rest of the attorney's  
9 fees or if it's a situation where an attorney takes  
10 on an engagement and for some reason or some  
11 circumstances that the client is unable to provide  
12 -- I mean, to continue to pay for that retained  
13 attorney, the statute says they're not precluded  
14 from then asking the court to appoint an attorney  
15 to represent them. That is not the case here.

16 The case here is that Ms. Cornwell has  
17 been paid. She is not complaining that her client  
18 wasn't able to pay her fee, she's just saying that  
19 the client wasn't able to pay for the experts that  
20 were needed to defend him and, therefore, we're  
21 asking that. That statute talks specifically about  
22 the appointment of counsel. And at no point in  
23 time during the course of Ms. Cornwell's  
24 representation did she ask the court to appoint her  
25 because her client could no longer pay her in this

1 case. Which makes her solely a privately retained  
2 attorney who is asking the court to find her client  
3 indigent only for the purposes of paying for his  
4 experts and stuff.

5 It is our position that the General  
6 Assembly did not establish this Commission or this  
7 defense of indigency funds in order to be an  
8 insurance policy for a bad retainer agreement. And  
9 that is basically what we have. Ms. Cornwell has  
10 entered into a retainer agreement that her client  
11 is not able to comply with and, therefore, they are  
12 now wanting the State to foot the rest of that bill  
13 as far as the experts and stuff.

14 Ms. Reeves (verbatim) quoted the case  
15 of *Reeves verses State*. I would argue to this  
16 court that and welcome the opportunity to argue it  
17 on the other -- I mean, on the higher court, but  
18 the consistent interpretation of the Reeves case is  
19 out of place. The court made a footnote in that  
20 case and we're all lawyers and we all know what  
21 footnotes mean. They are not binding law. At no  
22 point in time did that court say that that attorney  
23 was ineffective for not asking the Commission on  
24 Indigent Defense or the presiding trial judge to  
25 determine that his client was indigent.

1           He was ineffective because he failed to  
2 discuss with his client the need for experts and he  
3 failed to other than speculating that his client  
4 was not able to pay for it, he never inquired of  
5 the client of that. That is the reason why the  
6 court felt partly the reason why the court found  
7 him to be ineffective. At no point in time in that  
8 case, and I will be glad to provide a copy of it, I  
9 think Ms. Cornwell provided a copy of it with her  
10 materials that she presented, at no point in that  
11 case does it says that any privately retained  
12 attorney who does not request indigent funds that  
13 they are ineffective in representing their client.

14           It is our position that that footnote  
15 as misplaced as it is, was only an indicator of an  
16 option that if this Defendant was indigent and  
17 unable to continue to pay for his representation,  
18 then there was a statute that provided for them to  
19 pursue.

20           Your Honor, I will also note at the  
21 budget provisos of the General Assembly which are  
22 renewed every single year and they do supercede  
23 statutory law. But they also refer to private  
24 counsel appointed to represent defendants. That is  
25 not the case in this particular situation.

1           It is our position that if this court  
2 requires given the statutory law, given the  
3 budgetary requirements of the General Assembly, if  
4 this court requires the Department of -- I mean,  
5 the Commission on Indigent Defense to pay these  
6 fees in a privately retained case, one, we believe  
7 it will open up Pandora's box because we know that  
8 it is all over the criminal defense association  
9 list serve about pursuing these requests for fees  
10 and things of that nature. We think it will open  
11 up Pandora's box for all private attorneys to come  
12 in and ask for monies that are earmarked for  
13 indigent defendants, truly indigent defendants, and  
14 we believe that it will also require this agency to  
15 violate the mandates and the laws as set by the  
16 General Assembly that dictates our authority to  
17 utilize and pay for these funds and it requires us  
18 to basically violate that law.

19           So we would ask the court to vacate  
20 these orders. And ask that -- we also ask that the  
21 court not require us to pay Ms. Cornwell fees --  
22 attorney's fees as it relates to this rule to show  
23 cause because this is part of the process that has  
24 been established by the Supreme Court's order as  
25 well as the policy of this agency and our voucher

1 payment policy and Ms. Cornwell has been fully --  
2 made fully aware that this is the policy that when  
3 we receive vouchers that we believe are  
4 objectionable that this is the process that we will  
5 follow in doing so. So our actions have not been  
6 anything but in compliance with the law and the  
7 processes as established.

8 THE COURT: Thank you, Counsel. We've  
9 gone past our allotted time, so what I will do, I  
10 will leave the record open for you to supplement  
11 any arguments that you may have, Ms. Cornwell, in  
12 reply. And, of course, Mr. Young, if there's  
13 anything else you'd like to supplement, I will  
14 certainly allow you to do so as well. And I would  
15 ask each side to please prepare proposed orders for  
16 my consideration and review, I'll take the matter  
17 under advisement.

18 MS. CORNWELL: Thank you, Your Honor.  
19 Do you want my response to be in a separate  
20 memorandum and then a proposed order?

21 THE COURT: Yes, ma'am.

22 MS. CORNWELL: Thank you.

23 THE COURT: Thank you.

24 - - -END OF REQUESTED TRANSCRIPT OF RECORD- - -  
25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA        )

COUNTY OF ORANGEBURG         )

I, KATHERINE A. SPIRES, Registered Professional Reporter for the First Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Orangeburg County, South Carolina, on the 18th of January, 2024.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

September 20, 2024

*s/Katherine A. Spires*

Katherine A. Spires

Registered Professional Reporter

|                           |                                  |
|---------------------------|----------------------------------|
| STATE OF SOUTH CAROLINA ) | IN THE COURT OF GENERAL SESSIONS |
| )                         | FOR THE FIRST JUDICIAL CIRCUIT   |
| COUNTY OF ORANGEBURG )    |                                  |
| )                         | INDICTMENT NO.: 2020-GS-38-0943  |
| STATE OF SOUTH CAROLINA ) |                                  |
| )                         |                                  |
| vs. )                     |                                  |
| )                         | RESPONSE TO SCCID'S OBJECTIONS   |
| )                         | TO FUNDING ORDERS                |
| KENNETH HENRY EASTWOOD)   |                                  |
| )                         |                                  |
| Defendant. )              |                                  |
| _____)                    |                                  |

### **INDIGENT STATUS OF DEFENDANT**

The primary argument made by SCCID in objecting to the funding orders that were granted in this matter is that the court erred in finding Mr. Eastwood indigent based solely on the fact that he (or someone on his behalf) was able to retain private counsel to represent him in this matter. He further argues that the funds allocated by the General Assembly to SCCID for the defense of indigent persons can only be used for persons with public defenders or court appointed attorneys. Their position is that once a person retains private counsel they can no longer be considered indigent, regardless of their financial situation. That argument is fundamentally flawed, and is not cited in any constitutional amendment, article, state statute, rule, or case law. Incumbent in an accused's constitutional right to counsel is that it be *effective* counsel, capable of presenting witnesses, evidence, and defenses on an accused's behalf. *See Strickland v. Washington*, 466 U.S. 688, 104 S.Ct. 2052 (1984). Necessary expenses of representation pursuant to this right to effective counsel include fees of expert witnesses, costs of scientific tests or exhibits for trial demonstration, costs of psychiatric examinations, and extraordinary travel expenses. *See* Rule 602 SCRCrimP. In determining whether a person is indigent there are a number of factors that must be considered, including but not limited to, sources of income, debts, assets, family situation,

custodial status, etc. *Id.* Therefore, a person considered indigent through the legal system is one who, ***at the time they are required***, does not have adequate funds to pay a necessary cost of their defense. Accordingly, the question of indigency may be determined ***or redetermined*** by the court at any stage of the matter in which a person is entitled to representation and reasonable funds for necessary expenses may be ordered to provide for that person's defense. *See* S.C. Code of Laws §17-3-30 and §17-3-50. *See also Reeves v. State*, 415 S.C. 366, 782 S.E.2d 747 (S.C. App. 2015).

In Mr. Eastwood's case, at the time funding was requested he had been in custody for over three years. By the time I was retained to represent him he had no source of income or assets in his name. In fact, he had to ask the PD's office to contact me as my office doesn't accept collect calls and he didn't have the funds available to reach out to me himself. After meeting with Mr. Eastwood I agreed to take on the case for a deeply discounted fee, which was paid through a third-party. As I began preparing the case for trial, it was clear that in order to provide Mr. Eastwood with an effective defense strategy we would need to retain the services of two expert witness, which I knew he couldn't afford and would likely exceed the nominal fee I had accepted on his behalf. As a result, I submitted two separate ex parte petitions for funding. In addition to the petitions that were submitted to the Court, there were other communications providing the Court with additional information regarding Mr. Eastwood's indigent status including (1) Mr. Eastwood's current financial status, (2) that he was previously represented by Mr. Faulk for an unknown fee, (3) that after Mr. Faulk's passing the PD's office was appointed to represent Mr. Eastwood, and (4) that I was retained on behalf of Mr. Eastwood for a nominal fee. Upon considering the petition and additional information that was given, the Court found that Mr. Eastwood did qualify as an indigent person at that time and that the expenses he was seeking funds for were reasonable and necessary for a complete defense at trial. Each of the expert witnesses in

this case performed services in accordance with the orders and at the conclusion of Mr. Eastwood's trial invoices for each expert were properly submitted to SCCID for direct payment. SCCID's refusal to render payment to these experts pursuant to these orders is an intentional violation of the Court's orders and could potentially cause irreparable damage to the court and defense counsels reputations with these experts in the future.

### **APPOINTMENT OF COUNSEL**

Mr. Young also argued that SCCID should not be responsible for paying any expenses of a person who has retained counsel, stating that state funds should not be expended simply to cover a bad retainer. Mr. Young opined that any experienced attorney taking on a criminal matter should know that the services of an expert is to be expected and those costs should factor into the retainer agreement, along with the additional notification to the client that they are responsible for any additional costs not included in the lawyer's fee. Instead, he indicated to the court that once a retained lawyer realizes that their client cannot afford to pay the costs associated with their case, they should move to be relieved and request counsel be appointed instead of petitioning the court for funds.

I respectfully disagree. In my experience, most attorneys draft a retainer agreement during their initial consultation for legal fees that they believe are reasonable given the facts and circumstances presented to them at that time. Most of these retainer agreements, mine included, do provide notice to the client that, in addition to the agreed upon legal fee, they are also responsible for all additional costs associated with resolving their case. Oftentimes, the client is unable to pay the entire amount of the legal fees up front, so the retainer agreement provides for an initial deposit and payment plan so the attorney can begin working on their case. Unfortunately, not all clients are financially able to keep up with their payment plans and as a result are also

unable to pay any additional costs associated with defending their case. However, this inability to pay the remainder of their legal fees or additional costs required to defend their case does not constitute a waiver of their right to a complete defense. In these cases, retained counsel can certainly move before the court to be relieved and have counsel appointed, but that course of action is often discouraged by the courts, particularly in criminal cases, where the attorneys in the public defenders' offices are already handling a majority of the criminal matters in the state. The Court could also appoint private counsel through the 608 contract list, but that option would be more costly to the State, because in addition to paying the costs of necessary expenses, the State would also have to pay additional legal fees. Instead, the more reasonable approach, which has been repeatedly accepted by our courts, is for the retained attorney to keep the case and submit an ex parte petition for the funding of expenses they believe to be reasonable and necessary in representing the client as indicated by statute.

### **FUNDING PROCEDURES AND OBJECTIONS**

SCCID also objected to the funding orders because they didn't receive notice of the orders within 15 days of issuance pursuant to the internal policy they enacted in 2021 for attorneys working with SCCID. That argument is not applicable in this case, as that policy is simply a procedural guideline for attorneys who have been appointed on matters. The legislature and our courts specifically allow for matters involving funding orders to be done ex parte and filed under seal. Nowhere in the statute, rule of criminal procedure, or case law does it indicate that SCCID must be consulted or notified when these petitions are made or when funds are ordered. The orders in this case specifically provides that the orders shall be filed under seal and that requests for payment of services may be submitted at the conclusion of the case, which they were.

In response to SCCID's objection to paying attorney fees for this filing pursuant to the objection process outlined in the 2006 Order of the Supreme Court, that objection procedure is specifically for vouchers that were not previously approved and ordered by the court. Paragraph 5 of that order specifically states "if there is an objection to the reasonableness of the amount or the amount requested exceeds the hourly rates or statutory caps provided by S.C. Code Sections 17-3-50 (A) and (B), then the Office of Indigent Defense shall pay such amount as may be authorized by the court." 2006-09-29-01 Order of the South Carolina Supreme Court. In this matter, the Court has already considered the reasonableness of the expenses and ordered that SCCID pay them. Furthermore, nowhere in SCCID's objection or argument to the court have they ever indicated that they believe the expenses submitted are unreasonable or exceed the amount ordered by the court. Accordingly, their refusal to comply with the Court's funding orders and argument that they are simply following the objection procedure outlined in the 2006 Supreme Court Order is erroneous.

### **CONCLUSION**

The Court properly found that Mr. Eastwood qualified as an indigent person at the time he requested funding and that his funding requests were reasonable and necessary to ensure the rights afforded to him by the State. SCCID's refusal to submit payment for the expenses is a willful and intention violation of the Court's order and does not fall within any reasonable objection standard previously outlined by the courts. Accordingly, any objection to the funding orders should be dismissed and SCCID should be ordered to immediately render payment to the expert witnesses, to pay attorney fees in the amount of \$260, and any other and such other relief as the Court may deem just and proper.

*(Signature Page to Follow)*

Respectfully Submitted,

CORNWELL LAW FIRM, LLC

By: /s/ *Ashley B. Cornwell*

Ashley B. Cornwell, Attorney for Defendant

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Mount Pleasant, SC 29464

(843) 595-6003

[acornwell@cornwellfirm.com](mailto:acornwell@cornwellfirm.com)

January 19, 2024

Mount Pleasant, South Carolina

|                         |   |                                     |
|-------------------------|---|-------------------------------------|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF GENERAL SESSIONS    |
|                         | ) |                                     |
| COUNTY OF ORANGEBURG    | ) | FIRST JUDICIAL CIRCUIT              |
|                         | ) |                                     |
| STATE OF SOUTH CAROLINA | ) |                                     |
|                         | ) | Indictment No.: 2020-GS-38-0943     |
| v.                      | ) |                                     |
|                         | ) |                                     |
| KENNETH HENRY EASTWOOD  | ) | SCCID REPLY TO DEFENDANT’S RESPONSE |
|                         | ) |                                     |
| Defendant.              | ) |                                     |
| _____                   | ) |                                     |

The South Carolina Commission on Indigent Defense (SCCID) replies to the Defendant’s Response to SCCID’s Objections to Funding Orders dated January 19, 2024, as follows:

**1. Defense of Indigents Fund for Public Defender and Appointed Attorneys**

Attorney Cornwell asserts that the position of SCCID that defense of indigents funds is only accessible for appointed counsel and public defenders “is fundamentally flawed, and is not cited in any constitutional amendment, article, state statute, rule or case law”. However, there is significant clear and unambiguous legal authority that supports the position of SCCID.

The Defense of Indigents Act can be found in Chapter 3 of Title 17 of the South Carolina Code. Multiple sections reference the payment of fees and/or expenses in cases where the court has appointed counsel, being either the public defender or “private appointed counsel”. Section 17-3-50 is specifically titled “Determination of fees for **appointed counsel and public defenders . . .**” [emphasis added] This section begins with the words “When private counsel is appointed pursuant to this chapter. . .” Section 17-3-80 is titled “Appropriation for expenses of **appointed** private counsel and public defenders; restrictions and limitations.” The text of the section provides that “This fund must be used to reimburse private-appointed counsel, public defenders, and assistant public defenders for necessary expenses, . . . , actually incurred in the

representation of persons pursuant to this chapter, so long as expenses are approved by the trial judge.” Section 17-3-90 is titled “Vouchers for payment for services by private appointed counsel and for reimbursement of expenses; approval and submission for payment.” The section’s text begins with “Private, appointed counsel shall submit . . . , and the public defender shall do likewise. . . .”

The Legislative intent and plain language of Chapter 3 of Title 17 is clear that defense of indigent funds is limited to cases where private counsel or the public defender is appointed. This is also SCCID’s interpretation of this statutory language, which SCCID is tasked with implementing. See *Brown v. DHEC*, 348 S.C. 507, 560 S.E.2d 410 (2002), the Supreme Court has held that “the Court generally gives deference to an administrative agency’s interpretation of an applicable statute or its own regulation.”

## **2. Rule 602, SCACR, Defense of Indigents**

Rule 602 also provides for the appointment of the Public Defender or private counsel but also specifically addresses cases where counsel has been retained. The rule states that **“If counsel shall have been retained and partially paid for his services in either trial or appeal stages, no reimbursement may be had from indigent funds”**. [emphasis added]. Only upon the completion of the trial stage may there be a redetermination of indigency for purposes such as the appeal.

## **3. Determination of Indigency/Ability to Retain Counsel**

Indigency deals with a person’s financial ability to retain or employ counsel. S.C. Code Section 17-3-30 specifically refers to the “affidavit of inability to employ counsel”. South Carolina law and court rules provide that if a person is financially unable to retain or employ counsel, that person may apply for the appointment of counsel. See S.C. Code of Laws § 17-3-

10; § 17-3-30; § 17-3-45. See also Rule 602, SCACR. **In this case nothing triggers the provisions of Chapter 3, Title 17 as the Defendant was able to retain counsel.** SCCID is unaware of any affidavit executed by the defendant prior to the trial stage that he was financially unable to employ counsel.

#### **4. Redetermination of Indigency**

Attorney Cornwell is incorrect in her assertion that indigency “may be determined or redetermined by the court at any stage of the matter...” Rule 602 is the only authority that references a redetermination of indigency. This redetermination refers to a person begin initially appointed a public defender but subsequently appears able to employ counsel. Rule 602(c) states:

The initial designation of the Public Defender of appointment of counsel to represent an accused shall be subject to review by the court if it subsequently appears that the accused is in fact financially able to employ counsel, has obtained counsel of his own, or for other good cause shown.

Rule 602 also provides for a person’s indigency status to be redetermined at the end of the trial stage so that counsel may be appointed to represent him in the appeal stage of the case. The person must request a determination of his indigency status from the Office of Appellate Defense. (See SCACR 602(4))

Counsel has also referred to and misconstrued the language of S.C. Code Section 17-3-10. The section states:

The fact that the accused may have previously engaged or partially paid private Counsel at his own expense in connection with pending charges shall not preclude a finding that he is financially unable to retain counsel

This provision is for the scenario where a defendant retains someone, for example, only for a bond hearing because that is all they can afford. The fact that they had counsel for the bond hearing, preliminary hearing, etc. should not alone bar someone from being found indigent and appointed counsel if they later cannot afford retained counsel. However, in the current matter there was never any claim he was financially unable to retain counsel, as counsel was retained and remained on the case through the trial of the matter.

#### **5. Defense of Indigents Fund Is Not An Insurance Policy**

The funds appropriated by the General Assembly are intended to provide for indigent representation for those persons that are financially unable to retain counsel. The funds are not appropriated to supplement fees and costs for privately retained counsel. People who are financially able to retain counsel assume the cost of that litigation and it is standard practice in any retainer agreement that issues of litigation costs are addressed and included as part of the contract. Attorney Cornwell states specifically that her retainer agreements “do provide notice to the client that, in addition to the agreed upon legal fee, they are also responsible for all additional costs associated with resolving their case”. The retainer agreement (contract) governs each parties’ obligations to perform under the terms of that agreement. The State is not a party to this contract voluntarily entered between two individual parties.

How an attorney establishes their fee and how much they decide to charge is a decision of that attorney. Rule 1.5 of the Rules of Professional Responsibility provides a list of factors the attorney should consider in determining their fee. The rule requires that the attorney communicate to the client the scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible, preferably in writing, before or within a reasonable time after commencing the representation. According to counsel, Mr. Eastwood had

recently been appointed counsel due to the death of his retained attorney, James Falk. After meeting with the defendant, counsel extended an offer to represent him, and he accepted the offer and retained counsel. Because counsel chose to “discount” her fee or failed to account for possible experts, the State should not then be required to provide taxpayer generated funds appropriated for the defense of persons who are financially unable to employ counsel.

#### **6. Affidavit of Indigency and Other Information**

In Attorney Cornwell’s response to SCCID, she states that “In addition to the petitions that were submitted to the Court, there were other communications providing the Court with additional information regarding Mr. Eastwood’s indigent status including (1) Mr. Eastwood’s current financial status, (2) that he was previously represented by Mr. Faulk [sic] for an unknown fee, (3) that after Mr. Faulk’s [sic] passing the PD’s office was appointed to represent Mr. Eastwood, and (4) that I was retained on behalf of Mr. Eastwood for a nominal fee. Upon considering the petition and additional information that was given, . . .”

This is the first time SCCID is aware of such information being made available to the Court. Counsel represented to the undersigned that in September 2023, an Ex Parte Motion for Funding for a False Confession Expert and a Proposed Ex Parte Order for Funding for a False Confession Expert were delivered to the Court for consideration. In November 2023, counsel delivered an Ex Parte Motion and Proposed Ex Parte Order for a Forensic Pathology Expert. According to Counsel, the orders were signed based on the content of the motions and that no ex parte hearing or meeting took place. There is no evidence, prior to the appeal stage, that the defendant completed and submitted the statutorily required Affidavit of Indigency or other form of financial declaration. The motions, which are almost identical in content, do not contain any information regarding the defendant’s financial status, his previous representation, or any

information regarding Ms. Cornwell's status as being retained counsel. The motion did reference that the "defendant has remained in custody, without bond, since the date of his arrest". However, neither motion asked the court to determine that the defendant was indigent. The proposed orders merely contain a finding that the "defendant has been held in custody without bond since the date of his arrest, thus qualifying him as an indigent person."

The Orangeburg County Clerk of Court's office confirmed no Affidavit of Indigency was submitted by the defendant. The first Affidavit that was completed by the defendant was done in conjunction with the Office of Appellate Defense taking over the case for the appeal stage. The Office of Appellate Defense requires private counsel have their client complete an Affidavit of Indigency in compliance with Rule 602 and statutory law. Ms. Cornwell sent the form provided by Appellate Defense to SCDC to have the defendant complete the form. According to Lt. Randolph at SCDC, this form was completed on January 12, 2024. In the Affidavit, the defendant identified his attorney as Ashley Cornwell and initially answered the question "If retained, how much did you pay for attorney fees?" However, the copy provided to the Court prior to the virtual hearing had the answer redacted. It was unclear if this was marked out by the defendant or counsel.

After the hearing, SCCID made a diligent effort to locate any affidavits of indigency, as they are normally filed as sworn public documents. SCCID was able to secure a copy of the defendant's January 12, 2024, affidavit that was not redacted, and found that the "discounted" fee to retain counsel was \$15,000. (A copy of the original Affidavit and the Affidavit submitted to the Court by Attorney Cornwell on January 18, 2024, is attached as **Exhibit A & Exhibit B**.) The defendant paid the entire retainer fee for counsel's representation.

As previously argued, the amount paid to retain counsel should have been disclosed to the Court and considered as a factor in determining if the defendant was indigent. As Counsel asserts in her reply, Rule 602 states that “In making a determination whether a person is indigent, all factors concerning the person’s financial condition should be considered including income, debts, assets and family situation.” The Court has not been able to consider many of these factors because upon information and belief they have not been provided.

### **7. Constitutional Right to Effective Counsel**

The case law cited by the defendant to support the constitutional argument that the State must provide resources to allow the defendant to present a meaningful defense, except for *Reeves v. State*, 415 S.C. 366, 782 S.E.2d 747 (2015), all involve appointed counsel for indigent defendants. While *Reeves* is a case that involved retained counsel, SCCID maintains it does not stand for the principal that the Defense of Indigents Fund are available to retained counsel. The Court in a footnote (mere dicta) noted the “if Reeves was indigent and could not afford to pay for an expert, the South Carolina Office on Indigent Defense could have provided funds needed to secure an expert”. However, the issue of indigency was never raised in the Reeves’ case at the trial level (and thus not are part of the record) and only referenced in dicta during the appeal stage. The Court did not weigh the factors to determine indigency and did not rule upon or even consider the effect of counsel being retained on the ability to access indigent funds. Had SCCID believed Reeves established a right for retained counsel to access indigent funds the Agency would have sought review by the South Carolina Supreme Court.

### **8. Issue for the General Assembly**

The defendant is asking this Court to ignore the current law and require SCCID to pay costs the Agency firmly believes they do not have the budgetary authority to do. While some

states have made provisions in their statutes, court rules. etc. for retained counsel to potentially have access to taxpayer funds, South Carolina is not one of them. Any decision to provide access to state funds for retained counsel is an issue for the General Assembly to address through their “power of the purse” in the annual appropriations act, statutory changes, additions, etc.

### **9. Detrimental Consequences to Defense of Indigents Fund**

There could be profound detrimental consequences to the indigent defense system if retained counsel has unfettered access to funds for investigative, expert, or other services based upon the mere assertion of indigency after the client has paid what is often a substantial retainer fee. This could create a system ripe for exploitation wherein counsel can collect more in attorneys’ fees by shifting the cost of experts, expenses to the State to cover the cost of a private contractual matter.

The General Assembly has given SCCID and the courts the authority to protect these limited funds to ensure the funds are available for their intended purpose.

### **10. This Situation Could Have Been Avoided by Following Proper Procedures**

Attorney Cornwell appears to argue that a different set of rules should apply to retained counsel versus appointed private counsel. Had counsel followed established procedures this unfortunate situation could have been addressed on the front end before the experts had performed any work and who are now place in the position of not knowing whether the State or Attorney Cornwell (or Defendant through the retainer agreement) will be responsible for payment of their fees.

It has been a long-standing requirement (not since 2021 as alleged by defendant) as established by the September 29, 2006, order of former Chief Justice Toal that “upon appointment by the court in an indigent case or proceeding, counsel shall notify the office of

Indigent Defense within 15 days of said appointment by registering the case online at the Indigent Defense’s website...” (A copy of Justice Toal’s Order is attached as **Exhibit C**). It is also established in the SC Commission on Indigent Defense Voucher Payment Policy that “within 15 days of receiving notice of the appointment or assignment of any indigent defense case, counsel must register the case with SCCID online at [www.sccid.sc.gov](http://www.sccid.sc.gov).” In addition, the Policy also requires “the appointed attorney must submit all Funding Orders approved by the Court to SCCID within 15 days of the date of the order”.

SCCID also has the authority established by S.C. Code Sections 17-3-310(G)(2) and 17-3-340(I) to implement policies for the “delivery of **indigent services**”<sup>1</sup>. Attorney Cornwell’s whole assertion for access to these funds **is that her client was indigent**. Assuming arguendo the client was indigent then she should have followed the procedures established by the Agency for the “delivery of indigent services” which include the policies outlined above. Had those procedures been followed she would have attempted to register the case, but questions would have been raised by the Agency regarding why she did not have an order of appointment. This matter could have been taken before the proper court so all parties would have been aware of the Court’s position after hearing the objections raised by SCCID. There also would have been a second opportunity to address the expert issue had she submitted the funding orders within 15 days from receipt. Attorney Cornwell wants to have it both ways by having access to indigent funds but not having to follow the rules established to avoid the exact scenario we now find ourselves.

## **11. Objection Procedure**

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<sup>1</sup> The General Assembly has also mandated in Proviso 61.4 of the current Appropriations Act (H 4300) that “vouchers must be reviewed and paid pursuant to procedures established by the Commission on Indigent Defense”.

Attorney Cornwell also incorrectly states “that the objection procedure is specifically for vouchers that were not previously approved and ordered by the Court”. If that were the case the right of SCCID to object could be circumvented and defeat the purpose of the objection process. The 2006 Order (merged and incorporated into Agency policy) allows the Agency to object to the reasonableness of the amount and if the rate exceeds the statutory caps provided by S.C. Code Sections 17-3-50(A) and (B). Section 17-3-50(B) sets a statutory cap on expenses of \$500, well below the amounts approved for Defendants experts. The Agency also does not believe the costs are reasonable as they should not have been assessed for the Agency to pay in any amount. The language of the objection provision is that SCCID will pay such amount as authorized by the Court once the Agency’s objection has been heard and/or considered by the Court “with or without a hearing, as may be appropriate, or upon the submission of written materials”.

Not only is the objection filed in accordance with the objection authority granted by the Court but also in accordance with South Carolina procedural rules that provide a party may move to have a court reconsider a ruling and thereafter alter, amend and/or vacate said order. In the current matter SCCID is respectfully requesting the Court vacate the order of the Court requiring SCCID to pay the expert costs.

## **12. Rule to Show Cause**

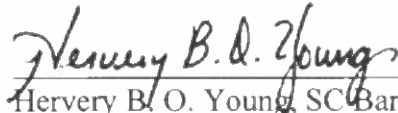
Attorney Cornwell’s rule to show cause filing is frivolous, without merit and filed in bad faith. SCCID is in no way willfully violating an order of Court and the Rule and costs should be denied. SCCID is merely exercising the procedures and policies granted and established by the Court and Legislature as outlined in the previous eleven paragraphs.

Before raising this issue with the Court, SCCID discussed the same with Attorney Cornwell and notified her that the Agency would be filing an objection with the Court to address

its concerns. However, prior to SCCID notifying the Court, Attorney Cornwell filed the Rule to Show Cause.

### CONCLUSION

For the foregoing reasons SCCID respectfully request the funding orders requiring SCCID to pay the costs of certain experts be vacated or in the alternative altered and/or amended to relieve SCCID of any responsibility and require Attorney Cornwell and her client resolve this matter with the experts she hired through a private contractual matter.

  
Hervery B. O. Young, SC Bar 7013  
SC Commission on Indigent Defense  
Post Office Box 11433  
Columbia, South Carolina 29211  
P: (803) 734-1343  
E: [hyoung@sccid.sc.gov](mailto:hyoung@sccid.sc.gov)

Columbia, South Carolina

January 26, 2024

# EXHIBIT A

STATE OF SOUTH CAROLINA )

## AFFIDAVIT OF INDIGENCY

COUNTY OF ORANGEBURG )

Case Name SOUTH CAROLINA VS Kenneth Henry Eastwood

Criminal Case No. 219A3810200238

Current Address: Kirkland R+3

Are you incarcerated? ☒ Yes (If "Yes") Where? Kirkland R+E  
☐ No

What were you convicted of? murder

What was your sentence? 9999999

Are you appealing from  
☒ trial, ☐ guilty plea ☐ a post-conviction relief hearing?

In what county was this trial/hearing/guilty plea held? ORANGEBURG

Presiding Judge's name? Murphy, Maite

Date of trial/guilty plea or post-conviction hearing 11-6-9-23

Were you represented by  
☐ a court-appointed attorney ☐ public defender or ☒ retained counsel?

Name of attorney/public defender? Ashley Cornwell

If retained, how much did you pay for attorney fees? \$ 15,000

If you still owe money to your attorney, how much? \$ 0

1. Are you presently employed? Yes ☐ No ☒

a. If "yes," state the amount of your salary or wages per month, and give the name and address of your employer: \_\_\_\_\_

b. If "no," state the name and address of last employment, date of termination of employment, and amount of your salary or wages per month. Social Security

2. List by name, age and relationship to you, any persons who are dependent upon you for support. Indicate beside each how much you contribute toward their support. 0

3. Have you received within the past twelve months any money from any of the following sources?

a. Business, profession or form of self-employment?

Yes \_\_\_\_\_ No 0

b. Rent payments, interest or dividends?

Yes \_\_\_\_\_ No 0

c. Pensions, annuities or life insurance payments?

Yes \_\_\_\_\_ No 0

d. Gifts of inheritance?

Yes ? No ?

e. Any other sources?

Yes \_\_\_\_\_ No ✓

If the answer to any of the above is "yes," describe each source of money and state the amount received from each during the past twelve months. \_\_\_\_\_

4. Do you own cash, or do you have any money in a checking or savings account?

Yes \_\_\_\_\_ No ✓

If the answer is "yes," state the total amount of the cash owned. \$ \_\_\_\_\_

5. Do you own any real estate, stocks, bonds, notes or other valuable property (excluding ordinary household furnishing and clothing)? Yes \_\_\_\_\_ No ✓

If the answer is "yes," describe the property and state the appropriate value of the items owned. \_\_\_\_\_

6. What kind of motor vehicle do you own? 0

Is it paid for? Yes \_\_\_\_\_ No 0

If not, what are the monthly payments? \$ \_\_\_\_\_

7. What are your monthly expenses for the following:

RENT/Mortgage 0

Utilities (Water, Electric/Gas, Sewer, Cable) 0

Food/Groceries 0

Transportation/Gas 0

Car/Homeowners Insurance 0

8. How do you pay the expenses listed in question 7? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I do solemnly swear that the account by me delivered into this Court does contain a true and full account of all my real and personal estate, debts, credits and effects whatsoever without exception, which I, or any person in trust for me, have or at the time of my possession had, or am, or was, in respect, entitled to, in possession, remainder or reversion and that I have not at any time since charges were made against me or before, directly or time since charges were made against me or before, directly or indirectly sold, leased, assigned or otherwise disposed of or made over, in trust for myself or otherwise, other than is mentioned herein.

I understand that the State shall file a claim against me in an amount equal to the cost for representation, but that such claim shall not constitute a lien against my property, unless, the claim is reduced to judgment by the Order of the Court after giving me at least thirty days' notice.

Under penalty of perjury, I certify that the information given by me on this affidavit is true and correct, and I understand that I will be subject to civil and/or criminal penalties if I knowingly furnish false information.

I am financially unable to employ counsel.

This 12 day of JANUARY 2024, \_\_\_\_\_.

Kearth Eastwood  
Defendant

I understand that I am entitled to at least thirty days' notice before a claim against me may be reduced to judgment, and I do hereby waive the right to such notice.

This \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Defendant

SUBSCRIBED AND SWORN to before me this  
12 day of JANUARY, 2024  
[Signature]  
Notary Public for South Carolina  
My Commission Expires: MARCH 8, 2026



**PROOF OF SERVICE**

|                                            |                   |                                |
|--------------------------------------------|-------------------|--------------------------------|
| SERVED                                     | DATE<br>1/12/2024 | PLACE<br>KIRKLAND R+E          |
| SERVED ON (PRINT NAME)<br>KENNETH EASTWOOD |                   | MANNER OF SERVICE<br>IN-PERSON |
| SERVED BY (PRINT NAME)<br>S. RANDOLPH      |                   | TITLE<br>LT                    |

**DECLARATION OF SERVER**

|                                                                                                |                                                                                                           |
|------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------|
| I certify that the forgoing information contained in the Proof of Service is true and correct. |                                                                                                           |
| Executed on 1/12/24                                                                            | <br>SIGNATURE OF SERVER |
|                                                                                                | 4344 BROADRIVER RD COLA. SC<br>ADDRESS OF SERVER 29210                                                    |

# EXHIBIT B

STATE OF SOUTH CAROLINA )  
COUNTY OF ORANGEBURG )

## AFFIDAVIT OF INDIGENCY

Case Name SOUTH CAROLINA VS Kenneth Henry Eastwood

Criminal Case No. 219A3810200238

Current Address: Kirkland R+3

Are you incarcerated? ☒ Yes (If "Yes") Where? Kirkland R+E  
☐ No

What were you convicted of? murder

What was your sentence? 9999999

Are you appealing from  
☒ trial, ☐ guilty plea ☐ a post-conviction relief hearing?

In what county was this trial/hearing/guilty plea held? ORANGEBURG

Presiding Judge's name? Murphy, Maite

Date of trial/guilty plea or post-conviction hearing 11-6-9-23

Were you represented by  
☐ a court-appointed attorney ☐ public defender or ☒ retained counsel?

Name of attorney/public defender? Ashley Cornwell

If retained, how much did you pay for attorney fees? \$ [REDACTED]

If you still owe money to your attorney, how much? \$ 0

1. Are you presently employed? Yes ☐ No ☒

a. If "yes," state the amount of your salary or wages per month, and give the name and address of your employer: \_\_\_\_\_

b. If "no," state the name and address of last employment, date of termination of employment, and amount of your salary or wages per month. Social Security

2. List by name, age and relationship to you, any persons who are dependent upon you for support. Indicate beside each how much you contribute toward their support. 0

3. Have you received within the past twelve months any money from any of the following sources?

a. Business, profession or form of self-employment?

Yes \_\_\_\_\_ No 0

b. Rent payments, interest or dividends?

Yes \_\_\_\_\_ No 0

c. Pensions, annuities or life insurance payments?

Yes \_\_\_\_\_ No 0

d. Gifts of inheritance?

Yes ? No ?

e. Any other sources?

Yes \_\_\_\_\_ No ✓

If the answer to any of the above is "yes," describe each source of money and state the amount received from each during the past twelve months. \_\_\_\_\_

4. Do you own cash, or do you have any money in a checking or savings account?

Yes \_\_\_\_\_ No ✓

If the answer is "yes," state the total amount of the cash owned. \$ \_\_\_\_\_

5. Do you own any real estate, stocks, bonds, notes or other valuable property (excluding ordinary household furnishing and clothing)? Yes \_\_\_\_\_ No ✓

If the answer is "yes," describe the property and state the appropriate value of the items owned. \_\_\_\_\_

6. What kind of motor vehicle do you own? 0

Is it paid for? Yes \_\_\_\_\_ No 0

If not, what are the monthly payments? \$ \_\_\_\_\_

7. What are your monthly expenses for the following:

RENT/Mortgage 0

Utilities (Water, Electric/Gas, Sewer, Cable) 0

Food/Groceries 0

Transportation/Gas 0

Car/Homeowners Insurance 0

8. How do you pay the expenses listed in question 7? \_\_\_\_\_

I do solemnly swear that the account by me delivered into this Court does contain a true and full account of all my real and personal estate, debts, credits and effects whatsoever without exception, which I, or any person in trust for me, have or at the time of my possession had, or am, or was, in respect, entitled to, in possession, remainder or reversion and that I have not at any time since charges were made against me or before, directly or time since charges were made against me or before, directly or indirectly sold, leased, assigned or otherwise disposed of or made over, in trust for myself or otherwise, other than is mentioned herein.

I understand that the State shall file a claim against me in an amount equal to the cost for representation, but that such claim shall not constitute a lien against my property, unless, the claim is reduced to judgment by the Order of the Court after giving me at least thirty days' notice.

Under penalty of perjury, I certify that the information given by me on this affidavit is true and correct, and I understand that I will be subject to civil and/or criminal penalties if I knowingly furnish false information.

I am financially unable to employ counsel.

This 12 day of JANUARY 2021.

Keith Eastwood  
Defendant

I understand that I am entitled to at least thirty days' notice before a claim against me may be reduced to judgment, and I do hereby waive the right to such notice.

This \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Defendant

SUBSCRIBED AND SWORN to before me this  
12 day of JANUARY, 2021  
[Signature]  
Notary Public for South Carolina  
My Commission Expires: MARCH 8, 2026



### PROOF OF SERVICE

|                                            |                   |                                |
|--------------------------------------------|-------------------|--------------------------------|
| SERVED                                     | DATE<br>1/12/2024 | PLACE<br>KIRKLAND R+E          |
| SERVED ON (PRINT NAME)<br>KENNETH EASTWOOD |                   | MANNER OF SERVICE<br>IN-PERSON |
| SERVED BY (PRINT NAME)<br>S. RANDOLPH      |                   | TITLE<br>LT                    |

### DECLARATION OF SERVER

|                                                                                                |                                                                                                           |
|------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------|
| I certify that the forgoing information contained in the Proof of Service is true and correct. |                                                                                                           |
| Executed on 1/12/24                                                                            | <br>SIGNATURE OF SERVER |
|                                                                                                | 4344 BROADRIVER RD COLA. SC<br>ADDRESS OF SERVER 29210                                                    |

# The Supreme Court of South Carolina

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## ORDER

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In 1993, the General Assembly created the Office of Indigent Defense under the jurisdiction of the Commission on Indigent Defense. By virtue of statutory amendment effective July 1, 2005, the Office of Indigent Defense was expanded and was additionally authorized to serve as the entity which "distributes all funds appropriated by the General Assembly for the defense of indigents, including funds allocated to counties' public defender offices pursuant to formula, funds for the defense of capital cases, funds for attorney fees and expenses in noncapital cases, and other funds appropriated for these purposes." S.C. Code Section 17-3-330(A)(1). Prior to this legislation being passed, S.C. Code Section 17-3-90 required that vouchers approved by the trial judge for attorney fees and costs be transmitted to the Judicial Department for payment to the appropriate party, while the new law requires the Office of Indigent Defense to effectuate payment. Both of these provisions remain in the Code and conflict with one another; accordingly, as to payment, the most recent statute shall control. See *Hodges v. Rainey*, 341 S.C. 79, 533 S.E.2d 578 (2000).

Moreover, the General Assembly, in S.C. Code Section 17-3-110, authorized the Supreme Court to establish such rules and procedures as may be necessary for proper administration of Chapter 3 of Title 17 pertaining to indigent defense. Accordingly, pursuant to S.C. Code Section 17-3-110, and Article V, Section 4 of the S.C. Constitution, the procedures outlined herein are adopted for the processing of indigent defense vouchers.

1. Upon appointment by the court in an indigent case or proceeding, counsel shall notify the Office of Indigent Defense within 15 days of said appointment by registering online at Indigent Defense's website at [www.sccid.sc.gov](http://www.sccid.sc.gov). Counsel shall further submit such documentation as may be required by the Office of Indigent Defense.
2. Upon appointment and registration, counsel is hereby approved and entitled under S.C. Code Section 17-3-50 to the payment of reasonable fees and costs based on the hourly rate and caps provided therein.
3. Vouchers for payment shall be submitted online through the Indigent Defense website or may be mailed directly to the Office of Indigent Defense if electronic access is not available. Vouchers should not be mailed to the Clerk of Court for transmittal.
4. If there is no objection to the reasonableness of the request and the amount requested is within the hourly rates and statutory caps, then the Office of Indigent Defense is authorized to make payment of the requested amount without further action of the Court.
5. If there is an objection by the Office of Indigent Defense to the reasonableness of the amount or the amount requested exceeds the hourly rates or statutory caps provided by S.C. Code Sections 17-3-50 (A) and (B), then the Office of Indigent Defense shall pay such amount as may be authorized by the trial court. The Office of Indigent Defense shall notify the trial court and counsel of any objection and shall forward any necessary

materials to the trial court in writing or electronically. The trial court may determine the matter with or without a hearing, as may be appropriate, or upon the submission of written materials.

6. The Office of Indigent Defense, along with S.C. Court Administration, subject to the approval of the Chief Justice or the Supreme Court, may establish such additional procedures for the electronic award of fees and costs to minimize delay and to facilitate the administration of the Indigent Defense Chapter of the Code; any procedure to provide for the use of electronic signatures for the issuance of payment and falling within the Uniform Electronic Transactions Act in Title 26, Chapter 6 of the S.C. Code shall also be coordinated with the S.C. State Budget and Control Board or Comptroller General when necessary or as may be required by law.
7. The Office of Indigent Defense shall notify counsel of any action taken on a voucher.
8. The Office of Indigent Defense shall provide such reports as may be requested by the Chief Justice or S.C. Court Administration.
9. Nothing herein shall preclude the trial court from taking immediate action on ex parte requests for fees and costs during the pendency of a case as may be authorized by statute or court rule.
10. These procedures shall become effective within 30 days of the approval of this order and shall remain in effect until altered or changed by subsequent order or legislation.

IT IS SO ORDERED.

FOR THE COURT:

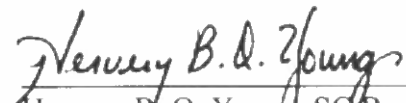
s/Jean H. Toal C.J.  
Jean Hoefer Toal  
Chief Justice

September 29, 2006  
Columbia, South Carolina

|                         |   |                                  |
|-------------------------|---|----------------------------------|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF GENERAL SESSIONS |
|                         | ) |                                  |
| COUNTY OF ORANGEBURG    | ) | FIRST JUDICIAL CIRCUIT           |
|                         | ) |                                  |
| STATE OF SOUTH CAROLINA | ) |                                  |
|                         | ) | Indictment No.: 2020-GS-38-0943  |
| v.                      | ) |                                  |
|                         | ) |                                  |
| KENNETH HENRY EASTWOOD  | ) | <b>CERTIFICATE OF SERVICE</b>    |
|                         | ) |                                  |
| Defendant.              | ) |                                  |
| _____                   | ) |                                  |

I certify that I have served a copy of SCCID REPLY TO DEFENDANT’S RESPONSE on the defendant, through counsel, Ashley B. Cornwell, by electronic mail only on Friday, January 26, 2024, addressed to the electronic mail address registered through the SC Courts Attorney Information System (AIS) at **acornwell@cornwellfirm.com**. This has been the means of service use in addressing this matter by the defendant and SCCID.

January 26, 2024

  
 Hervery B. O. Young, SC Bar 7013  
 General Counsel for SCCID

STATE OF SOUTH CAROLINA  
COUNTY OF ORANGEBURG

FILED FOR RECORD IN THE COURT OF COMMON PLEAS  
WINNIEFA B. CLARK FIRST JUDICIAL CIRCUIT  
INDICTMENT NO.: 2020-GS-38-00943  
2024 FEB 28 A) 9:02

State of South Carolina,

v.

Kenneth Henry Eastwood,

Defendant.

CLERK OF COURT  
ORANGEBURG, SC

**ORDER DENYING DEFENDANT'S  
RULE TO SHOW CAUSE**

**THIS MATTER** came before the Court on a Rule to Show Cause filed by Defendant, by and through his retained counsel, and on an objection letter submitted by the South Carolina Commission on Indigent Defense (SCCID). A virtual hearing was held on January 18, 2024, and both parties submitted additional responses in writing. For purposes of this order, this Court makes the following findings of fact and conclusions of law:

**PROCEDURAL HISTORY**

On December 16, 2019, Kenneth Henry Eastwood was arrested and charged with Murder in the above-captioned matter. Bond was denied and he remained in custody. Eastwood did not apply for the appointment of counsel. Between the date of arrest and February 24, 2020, Eastwood retained attorney James Falk to represent him in this case.<sup>1</sup> Falk continued to be the attorney of record until his death on May 9, 2023. Because of the nature of the charge, his retained counsel's death, and the fact that Eastwood was in custody, a public defender was appointed to represent him on May 18, 2023. On or about June 15, 2023, Eastwood retained Attorney Ashley Cornwell to represent him, and the public defender was relieved. On or about September 19, 2023, Cornwell submitted to this Court an Ex Parte Motion and proposed Ex Parte Order for Funding for a False

<sup>1</sup> According to the Clerk of Court files, Attorney James Falk filed a Motion for Discovery in the case.

ATTEST: TRUE COPY  
*Winnifra B. Clark*  
CLERK OF COURT  
ORANGEBURG COUNTY, SC

Confession Expert. This Court signed the proposed order on October 13, 2023.

On or about November 1, 2023, Cornwell submitted another Ex Parte Motion and a proposed Ex Parte Order for Funding for a Forensic Pathologist Expert. This Court signed the proposed order on November 2, 2023. Cornwell filed both orders with the Clerk of Court, under seal, but did not submit the orders to SCCID. A jury trial was held in this case on November 8–9, 2023, and both experts testified for the defense. On November 9, 2023, the jury found Eastwood guilty, and this Court sentenced him to life in prison.

Cornwell later submitted the funding orders and expert invoices to SCCID on December 12, 2023. SCCID discussed the submissions with Cornwell and informed her that, because she was retained counsel and there were questions of whether Defendant had been screened for indigency, the Agency did not have the funding authority to pay the expert costs. SCCID informed Cornwell the Agency would file an objection with the Court requesting the Court reconsider the granting of the funding orders and vacate and/or alter/amend the orders. On December 19, 2023, Cornwell filed a Rule to Show Cause petition. SCCID notified the Court that they were preparing an objection letter and filed the letter on December 20, 2023.<sup>2</sup> A virtual hearing was held on the Rule to Show Cause and SCCID's objection on January 18, 2024.

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **1. Indigency Determination**

“The United States Supreme Court has held that the defendant must have ‘a fair opportunity to present his defense,’ thereby requiring the State to provide the ‘basic tools’ for an adequate

---

<sup>2</sup> The S.C. Supreme Court, by Order dated September 29, 2006, established procedures for the processing of indigent vouchers to include the ability of SCCD to file objections regarding the reasonableness of the submission.

defense to an indigent defendant.”<sup>3</sup> And, “although the State is not required to provide the indigent defendant with unlimited funding, it must ensure that the defendant has competent counsel *and the services of experts* necessary to a meaningful defense.”<sup>4</sup>

“In making a determination whether a person is indigent, all factors concerning the person’s financial condition should be considered including income, debts, assets and family situation.”<sup>5</sup> Rule 602, SCACR, includes the presumption that “a person is indigent if that person is financially unable to employ counsel.” However, this presumption can be overcome. The General Assembly has provided, “[t]he fact that the accused may have previously engaged and partially paid private counsel at his own expense in connection with pending charges shall not preclude a finding that he is financially unable to retain counsel.”<sup>6</sup> Ultimately, “the final determination whether the accused is indigent shall be made by a judge of the court in which the matter is to be heard.”<sup>7</sup>

A defendant’s incarceration is a factor to be considered in determining whether a person is indigent. The law also provides for a potential presumption of indigency based on a person’s income. In this case, Eastwood had already been incarcerated for nearly four years when he petitioned this Court for Funding Orders to secure expert witnesses. Thus, it had been nearly four years since Eastwood lost his job and source of income. Furthermore, Eastwood had already been appointed a public defender for those very same charges. That public defender was only relieved upon Eastwood retaining Cornwell. In petitioning the Court for *ex parte* funding, Cornwell disclosed that Eastwood had retained her services at a reduced rate.

<sup>3</sup> *Bailey v. State*, 309 S.C. 455, 459, 424 S.E.2d 503, 506 (1992) (quoting *Ake v. Oklahoma*, 470 U.S. 68, 76, 77 (1985)).

<sup>4</sup> *Id.* (emphasis added).

<sup>5</sup> Rule 602(b), SCACR (flush language).

<sup>6</sup> S.C. Code Ann. § 17-3-10.

<sup>7</sup> Rule 602(b), SCACR (flush language).

Therefore, it is the finding of the Court that Defendant is indigent, and was indigent at the time the Funding Orders were granted.

## **2. Defense of Indigents Fund Is Restricted for Public Defender and Private Court-Appointed Counsel**

Chapter 3 of Title 17 of the South Carolina Code contains the Defense of Indigents Act. Multiple sections reference the payment of fees and/or expenses in cases where the court has appointed counsel, being either the public defender or “private appointed counsel.” Section 17-3-50 is specifically titled “Determination of fees for appointed counsel and public defenders . . . .” This section begins with the words: “When private counsel is appointed pursuant to this chapter . . . .”<sup>8</sup> Similarly, § 17-3-80 is titled “Appropriation for expenses of appointed private counsel and public defenders; restrictions and limitations.” The text of the section provides: “This fund must be used to reimburse private-appointed counsel, public defenders, and assistant public defenders for necessary expenses . . . actually incurred in the representation of persons pursuant to this chapter, so long as expenses are approved by the trial judge.” Finally, § 17-3-90 is titled “Vouchers for payment for services by private appointed counsel and for reimbursement of expenses; approval and submission for payment.” The section’s text begins: “Private, appointed counsel shall submit a voucher . . . , and the public defender shall do likewise . . . .” No part of Chapter 3 of Title 17 (the “Defense of Indigents” Chapter) provides a protocol for privately retained counsel to obtain funds for indigent clients.

However, an argument can be made that the specific provision concerning expert funding makes no stipulation that counsel be appointed. That provision reads, in its entirety:

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<sup>8</sup> S.C. Code Ann. § 17-3-50(A).

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.<sup>9</sup>

This is immediately followed by a provision for increasing those funding caps, which likewise has no express qualifier that defense counsel must be court appointed:

Payment in excess of the hourly rates and limits in subsection (A) or (B) is authorized only if the court certifies, in a written order with specific findings of fact, that payment in excess of the rates is necessary to provide compensation adequate to ensure effective assistance of counsel and payment in excess of the limit is appropriate because the services provided were reasonably and necessarily incurred.<sup>10</sup>

Nevertheless, SCCID's interpretation, based on the statutory language and legislative intent, is that the Defense of Indigents Fund is limited to cases where the courts have appointed private counsel or a public defender. This Court gives deference to that interpretation.<sup>11</sup>

Further authority that reimbursement shall not be had from indigent funds in this matter is the unambiguous language of Rule 602(c), SCACR, which provides "if counsel shall have been retained and partially paid for his services in either the trial or appeal stages, no reimbursement may be had from indigent funds."

Therefore, both the S.C. Code and Rule 602, SCACR, prohibit SCCID from expending indigent funds in this matter where counsel was not appointed, and where the defendant paid for legal services in the trial stage.

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<sup>9</sup> § 17-3-50(B).

<sup>10</sup> § 17-3-50(C). Notably, the next and final provision of § 17-3-50—subsection (D)—states "Nothing in this section shall be construed to alter the provisions of Section 17-3-10 concerning those defendants who are entitled to legal representation." As mentioned previously, § 17-3-10 includes the protection, "[t]he fact that the accused may have previously engaged and partially paid private counsel at his own expense in connection with pending charges shall not preclude a finding that he is financially unable to retain counsel."

<sup>11</sup> See Doe v. Keel, 440 S.C. 427, 431, 892 S.E.2d 427, 284 (2023) ("[T]he Court generally gives deference to an administrative agency's interpretation of an applicable statute or its own regulation." (quoting Brown v. Bi-Lo, Inc., 354 S.C. 436, 440, 581 S.E.2d 836, 838 (2003))).

### **3. Defense Failed to Follow SCCID Policies in Seeking Remittance for Expert Funding**

Former Chief Justice Toal, in a 2006 Supreme Court Order, established the requirement that, “upon appointment by the court in an indigent case or proceeding, counsel shall notify the office of Indigent Defense within 15 days of said appointment by registering the case online at the Indigent Defense’s website . . . .”<sup>12</sup> The SCCID Voucher Payment Policy likewise requires, “within 15 days of receiving notice of the appointment or assignment of any indigent defense case, counsel must register the case with SCCID online at [www.sccid.sc.gov](http://www.sccid.sc.gov).” In addition, the Policy also requires “the appointed attorney must submit all Funding Orders approved by the Court to SCCID within 15 days of the date of the order.”

SCCID has the authority established by §§ 17-3-310(G)(2) and 17-3-340(I) to implement policies for the “delivery of indigent services.”<sup>13</sup> As such, SCCID points out that Cornwell was subject to the procedures established by the Agency for the “delivery of indigent services,” which include the policies outlined above. Had those procedures been followed, SCCID could have timely notified Cornwell of the requirement that she be court appointed. Cornwell could then have taken the appropriate steps<sup>14</sup> to comply with SCCID policy while also protecting Eastwood’s right to a meaningful defense.

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<sup>12</sup> S.C. Sup. Ct. Order dated Sept. 29, 2006.

<sup>13</sup> The General Assembly has also mandated in Proviso 61.4 of the current Appropriations Act (H 4300) that “vouchers must be reviewed and paid pursuant to procedures established by the Commission on Indigent Defense.”

<sup>14</sup> For example, Cornwell could have moved to be relieved as counsel, or asked to be appointed rather than retained. Such steps would be in harmony with *Reeves v. State*, 415 S.C. 366, 377 n.5, 782 S.E.2d 747, 753 n.5 (Ct. App. 2015). In *Reeves*, the Court of Appeals indicated the defendant, who had retained counsel, could have potentially received expert funding from SCCID. *Id.* However, the *Reeves* Court did not articulate what procedural steps that defendant would need to take to comply with SCCID policy.

#### 4. Rule to Show Cause

SCCID was not in willful violation of this Court's Orders by refusing to remit the expert funding to Ms. Cornwell. SCCID has followed the procedures and policies granted and established by the Court and Legislature to address concerns regarding submitted expert vouchers.

#### CONCLUSION

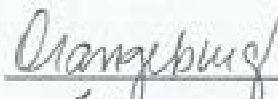
Defendant asks this Court to compel SCCID for expert funding. Although Defendant was properly found indigent, State statutes and Court rules limit indigent funding to cases involving appointed private counsel or a public defender. In cases of retained counsel, Rule 602, SCACR, specifically states that if "counsel shall have been retained and partially paid for his services in either trial or appeal stages, no reimbursement may be had from indigent funds." Furthermore, even if such funds were available to retained counsel, Cornwell failed to adhere to SCCID policy in seeking a remittance of those funds, and thus would not be in a position to compel SCCID to remit such funds.

#### IT IS THEREFORE ORDERED:

1. Defendant's Petition for Rule to Show Cause is denied.
2. SCCID is NOT in contempt for failing to remit expert funding.
2. Attorney Cornwell's request for attorney fees is denied.

#### AND IT IS SO ORDERED.

  
\_\_\_\_\_  
The Honorable Maité Murphy  
Circuit Court Judge, First Judicial Circuit

  
\_\_\_\_\_, South Carolina  
Feb. 26, 2024

STATE OF SOUTH CAROLINA )  
)  
COUNTY OF ORANGEBURG )  
)  
STATE OF SOUTH CAROLINA )  
)  
vs. )  
)  
)  
)  
KENNETH HENRY EASTWOOD )  
)  
Defendant. )  
\_\_\_\_\_ )

**IN THE COURT OF GENERAL SESSIONS  
FOR THE FIRST JUDICIAL CIRCUIT**

**INDICTMENT NO.: 2020-GS-38-0943**

**MOTION AND MEMORANDUM TO  
RECONSIDER**

Defendant, Kenneth Henry Eastwood, by and through his undersigned counsel, respectfully moves this Court to reconsider its Order Denying Defendant's Rule to Show Cause entered on February 28, 2024. This motion is submitted based upon the Court's error of law in denying Defendant's petition as detailed below.

The Court erred in denying Defendant's Rule to Show Cause based upon the Court's finding that SCCID demonstrated good cause in refusing to comply with the funding orders. During the hearing, SCCID relied on its perceived legal objections to the previously entered funding orders as good cause in refusing to comply with the orders. However, simply issuing a letter that raises objections to a court order is not the proper procedure to appeal a court order. Rule 203(b)(2) of the South Carolina Appellate Court Rules requires that a notice of appeal shall be filed and served on all respondents within ten (10) days after receipt of written notice of entry of the order or judgment. The requirement of service for the notice of appeal is jurisdictional, i.e., if a party misses the deadline, the court lacks jurisdiction to consider the appeal and has no authority or discretion to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice. Similarly, Rule 29(a), SCRCrimP, provides that a post-trial motion shall be made within ten (10) days after the imposition of sentence and Rule 59(e), SCRCrP, requires that

a motion to alter or amend a judgment “shall be filed no later than 10 days after receipt of written notice of the entry of order”. These are the only procedures for a party to amend or appeal an order that has already been entered by the Court. *See Wells Fargo Bank v. Fallon Properties*, 422 S.C. 211, 810 S.E.2d 856 (2018); *See also State v. Campbell*, 376 S.C. 212, 656 S.E.2d 371 (2008); *Norris v. Heyward*, 312 S.C. 67, 439 S.E.2d 264 (1993). In the case at hand, no such notice of appeal or procedural motion was filed by SCCID, despite receiving written notice of the filed orders on December 12, 2023. SCCID’s objection letter is not a properly filed procedural motion or notice of appeal under our rules of procedure and therefore cannot be considered good cause for failing to comply with the entered orders. Given that a notice of appeal was not filed within ten (10) days of SCCID receiving notice of the orders, this Court does not have jurisdiction to hear SCCID’s objections to the orders or its request to vacate the funding orders. Accordingly, SCCID has not demonstrated good cause in its failure to comply with the funding orders in this matter.

In addition to the Court’s lack of jurisdiction in hearing SCCID’s objections to the funding orders as a basis for good cause, the Court’s ruling that SCCID is not in contempt of the funding orders based upon its findings that (1) an indigent person is not entitled to indigent funds if they have retained counsel, and (2) that defense counsel’s failure to follow SCCID’s internal policies, as good cause for SCCID’s refusal to comply with the funding orders is also an error in law. S.C. Code Ann. §17-3-50 is specifically titled “Determination of fees for appointed counsel and public defenders; maximum amounts; authorization to exceed maximums; payment for certain services”. Pursuant to the “payment for certain services” section of the statute, §17-3-50(B) allows that “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 authorized the defendant’s attorney to obtain such services on behalf of the defendant and shall order the payment from funds

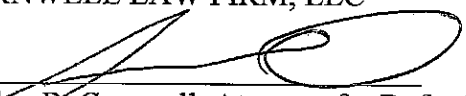
available to the Office of Indigent Defense, of fees and payment...” while §17-3-50(C) allows for payment in excess of the statutory rates to provide compensation adequate to ensure effective assistance of counsel. Neither of these statutes indicate that the ex parte proceeding for funds can only be conducted by appointed counsel nor that compensation in excess of statutory rates may only be obtained in cases where counsel has been appointed. The clear and unambiguous language provided in the statute as applied to ex parte hearings for funds involving investigative services, expert witnesses, and other services is that a “defendant’s attorney” shall obtain such services on behalf of the defendant not “appointed counsel shall...” Furthermore, while SCCID does have the authority to implement internal policies and procedures for appointed counsel and to timely object to orders entered on appointed cases, this authority does not extend over matters where counsel has been retained and properly followed the statutory requirements and well-known common practice of petitioning the court for payment of certain services in accordance with the statutory provisions for services necessary to ensure effective assistance of counsel. Common practice followed by both the courts and SCCID has always allowed for retained counsel to engage in ex parte hearings and obtain funding orders to be paid by SCCID for investigative, expert and other expenses reasonably necessary for the representation of a defendant pursuant to §17-3-50(B) and (C). Accordingly, the Court’s findings that indigent defendants who retain counsel are statutorily prohibited from receiving funds from SCCID is an error of law, as is the Court’s finding that defense counsel failed to follow proper procedures in obtaining and submitting these orders to SCCID.

Based upon the foregoing reasons, Defendant respectfully requests the court reconsider its denial of Defendant’s Rule to Show Cause and order SCCID comply with the funding orders that

were properly entered in this matter by rendering immediate payment to the expert witnesses as ordered.

Respectfully Submitted,

CORNWELL LAW FIRM, LLC

By: 

Ashley B. Cornwell, Attorney for Defendant

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[acornwell@cornwellfirm.com](mailto:acornwell@cornwellfirm.com)

March 7, 2024

Mount Pleasant, South Carolina

|                         |   |                                   |
|-------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF GENERAL SESSIONS  |
|                         | ) |                                   |
| COUNTY OF ORANGEBURG    | ) | FIRST JUDICIAL CIRCUIT            |
| STATE OF SOUTH CAROLINA | ) |                                   |
|                         | ) | Indictment No.: 2020-GS-38-0943   |
| v.                      | ) |                                   |
|                         | ) |                                   |
| KENNETH HENRY EASTWOOD  | ) | <b>SCCID REPLY TO DEFENDANT'S</b> |
|                         | ) | <b>MOTION AND MEMORANDUM TO</b>   |
| Defendant.              | ) | <b>RECONSIDER</b>                 |
|                         | ) |                                   |

The South Carolina Commission on Indigent Defense (SCCID), by and through undersigned counsel, replies to the Defendant's Motion and Memorandum to Reconsider dated March 7, 2024, as detailed below.

### **I. Procedural History**

On December 16, 2019, Kenneth Henry Eastwood was arrested and charged with Murder in the above captioned matter. Bond was denied and he remained in custody. Eastwood did not apply for the appointment of counsel. Between the date of arrest and February 24, 2020, Eastwood retained attorney James Falk to represent him in this case.<sup>1</sup> Falk continued to be the attorney of record until he passed on May 9, 2023. Because of the nature of the charge and the fact that Eastwood was in custody and his attorney had just passed, the Public Defender office was appointed to represent him on May 18, 2023. On or about June 15, 2023, Eastwood retained Attorney Ashley Cornwell to represent him, and the Public Defender office was relieved. On or about September 19, 2023, Cornwell submitted an Ex Parte Motion for Funding for a False Confession Expert and a proposed Ex Parte Order for Funding for a False Confession Expert to the Court. No hearings on the motion were held. The Court signed the proposed order on

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<sup>1</sup> According to the Clerk of Court files, Attorney James Falk filed a Motion for Discovery in the case.

October 13, 2023. On or about November 1, 2023, Cornwell submitted another Ex Parte Motion for Funding for a Forensic Pathologist Expert and a proposed Ex Parte Order for Funding for a Forensic Pathologist Expert to the Court. No hearings on the motion were held and the Court signed the proposed order on November 2, 2023. Cornwell filed the orders with the Clerk of Court, under seal, but did not submit the orders to SCCID. A jury trial was held in this case on November 8 – 9, 2023, and both experts testified for the defense. On November 9, 2023, the jury found Eastwood guilty, and the Court sentenced him to a life sentence.

Cornwell submitted the funding orders and expert invoices to SCCID on December 12, 2023. SCCID discussed the submissions with Cornwell and informed her that the Agency did not have authority to provide indigent funds for retained counsel and would raise an objection with the Court. On December 19, 2023, Cornwell filed a Rule to Show Cause. SCCID served its written objection with the Court and Cornwell on December 20, 2023. A virtual hearing was held on the Rule to Show Cause and SCCID's objection on January 18, 2024. On January 19, 2024, Cornwell submitted a written Response to SCCID's Objection Argument. SCCID submitted a written Reply to the Defendant's Response on January 26, 2024. The Defendant and SCCID then submitted proposed orders for the Court's consideration.

The Court issued its Order Denying Defendant's Rule to Show Cause on February 26, 2024, and filed the same on February 28, 2024, with the Clerk of Court. The Defendant filed a Motion and Memorandum to Reconsider on March 7, 2024. The Defendant raised the following grounds in the Motion and Memorandum to Reconsider: (1) the Court lacks jurisdiction to hear SCCID's objections to the funding orders or its request to vacate the same and (2) the Court's finding that indigent defendants who retain counsel are statutorily prohibited from receiving funds from SCCID is an error in law.

## II. Jurisdiction/ Procedures to Hearing Funding Objections

The Defendant argues that the Court does not have jurisdiction to hear SCCID's objections because SCCID did not file a notice of appeal and serve all respondents within ten (10) days after receipt of written notice of entry of the order nor did SCCID file a post-trial motion under Rule 29(a) SCRCrimP and/ or Rule 59(e) SCRCP.

However, SCCID followed the exact and very specific procedural process established by the S.C. Supreme Court Order dated September 29, 2006, regarding the processing of indigent vouchers to include the ability of SCCID to file objections<sup>2</sup>. The Court issued this Order under the authority granted by the General Assembly, in SC Code § 17-3-110, authorizing “the Supreme Court to establish such rules and procedures as may be necessary for proper administration of Chapter 3 of Title 17 pertaining to indigent defense”. The Court further stated that; “accordingly pursuant to S.C. Code Section 17-3-110, and Article V, Section 4 of the S.C. Constitution, the procedures outlined herein are adopted for the processing of indigent defense vouchers”.

The procedures established by the Court provided that if there are objections by SCCID, then the “Office of Indigent Defense shall notify the trial court and counsel of any objection and shall forward any necessary materials to the trial court **in writing or electronically**” [Emphasis added]. This is exactly the process SCCID followed with its written objection filed with both the Trial Court and Counsel on December 20, 2023.

The Order further provides that “the trial court may determine the matter with or without a hearing, as may be appropriate, or upon submission of written materials”. In this matter the trial court granted the Agency's request to be heard, thus the hearing on January 18, 2024.

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<sup>2</sup> Numerous State Agencies have policies, regulations, etc. specific to that Agency wherein administrative processes do not necessarily mirror the timelines and process of SCRCrimP, SCRCP, etc.

The Order also provided that the procedures outlined “shall remain in effect until altered or changed by subsequent order or legislation”. There have not been any subsequent orders or legislation that altered or changed this procedure.

Also, pursuant to the authority granted by the General Assembly, in SC Code § 17-3-310 and 17-3-340, SCCID developed a Voucher Payment Policy that includes the Court’s procedure regarding objections in the processing of indigent defense vouchers. The Voucher Payment Policy was amended in 2021 to require attorneys to submit funding orders to SCCID within 15 days of a court signing such orders. This procedure allows for issues and objections to be raised in a timely manner. The trial court can immediately consider any Agency objections, hear from both parties, and avoid the exact scenario that has occurred in this matter where work is completed before the Agency is even aware of the orders and able to object.

### **III. Properly Filed Procedural Motion Or Notice of Appeal**

Attorney Cornwell asserts that “SCCID’s objection letter is not a properly filed procedural motion or notice of appeal under our rules of procedure and therefore cannot be considered good cause for failing to comply with the entered orders”. As noted in paragraph II the proper procedure in this matter was established by our Supreme Court and followed by SCCID with the filing of a “writing” as contemplated by the Court.

However, assuming arguendo that SCCID should have followed the rules cited by Cornwell this still does not deprive the Court of jurisdiction. The ex parte funding order was not a final order until such time as SCCID had the opportunity to file any objections and the Court rule on those objections. That ruling did not occur until the Trial Court’s Order of February 26, 2024.

Attorney Cornwell's argument that no Rule 29(a) SCRCrimP or Rule 59(e) motion was filed within 10 days again seeks to elevate form over substance. While not captioned as a motion, the Agency's filing (written objection) on December 20, 2023, was within 10 days of the Agency receiving written notice of the filed orders on December 12, 2023, and requested that the Trial Court rescind (vacate, alter, or amend) the funding orders. Before SCCID could even file the objection and less than 10 days after serving the funding orders on the Agency, Attorney Cornwell filed the Rule to Show Cause under the jurisdiction of the Trial Court.

Upon information and belief at no time prior to the Court's final ruling has Attorney Cornwell raised these alleged procedural defects.

#### **IV. The Court Did Not Commit and Error in Law**

The Defense of Indigents Act can be found in Chapter 3 of Title 17 of the South Carolina Code. Multiple sections reference the payment of fees and/or expenses in cases where the court has appointed counsel, being either the public defender or "private appointed counsel". Section 17-3-50 is specifically titled "Determination of fees for **appointed counsel and public defenders . . .**" [emphasis added] This section begins with the words "When private counsel is appointed pursuant to this chapter. . ." Section 17-3-80 is titled "Appropriation for expenses of **appointed** private counsel and public defenders; restrictions and limitations." The text of the section provides that "This fund must be used to reimburse private-appointed counsel, public defenders, and assistant public defenders for necessary expenses, . . ., actually incurred in the representation of persons pursuant to this chapter, so long as expenses are approved by the trial judge." Section 17-3-90 is titled "Vouchers for payment for services by private appointed counsel and for reimbursement of expenses; approval and submission for payment." The

section's text begins with "Private, appointed counsel shall submit . . . , and the public defender shall do likewise. . . ."

The Legislative intent and plain language of Chapter 3 of Title 17 is clear that defense of indigent funds are limited to cases where private counsel or a public defender is appointed. This is also SCCID's interpretation of this statutory language, which SCCID is tasked with implementing. See *Brown v. DHEC*, 348 S.C. 507, 560 S.E.2d 410 (2002), the Supreme Court has held that "the Court generally gives deference to an administrative agency's interpretation of an applicable statute or its own regulation."

Because Attorney Cornwell is retained counsel for the defendant, the defendant is not entitled to access to the Defense of Indigents Fund.

The Defendant now also argues that this Court should read SC Code § 17-3-50(A-C) as three separate and independent statutes. However, as our Supreme Court explained in *CFRE, LLC v. Greenville County Assessor*, 395 S.C. 67, 716 S.E.2d 877 (2011), statutes.

"must be read as a whole and sections which are part of the same General statutory law must be construed together and each one given effect." *S.C. State Ports Auth. v. Jasper County*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006). We therefore should not concentrate on isolated phrases within the statute. *Id.* Instead, we read the statute as a whole and in a manner consonant and in harmony with its purpose. *State v. Sweat*, 379 S.C. 367, 376, 665 S.E.2d 645, 650 (Ct.App.2008), *affd.* 386 S.C. 339, 688 S.E.2d 569 (2010).

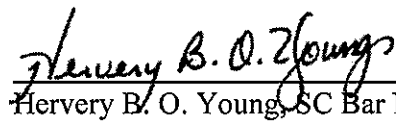
Section 17-3-50 must be read and construed as a whole. The statute addresses fees and expenses for private attorneys appointed to represent indigent defendants and public defenders. The "defendant" referenced in the statute is the indigent defendant and the attorney the statute references is the private appointed attorney, or the public defender appointed to represent that defendant.

Further authority that reimbursement shall not be had from indigent funds is the unambiguous language of Rule 602 (c), SCACR, which provides, “if counsel shall have been retained and partially paid for his services in either the trial or appeal stages, no reimbursement may be had from indigent funds.”

The Court’s ruling is not an error in law as the Court has correctly applied the laws of this State regarding use and access of indigent funds.

### **Conclusion**

For the foregoing reasons SCCID respectfully requests the Defendant’s Motion to Reconsider be denied.

  
Hervy B. O. Young, SC Bar No. 7013  
SC Commission on Indigent Defense  
Post Office Box 11433  
Columbia, South Carolina 29211  
(803) 734-1343  
Email: hyoung@sccid.sc.gov

Columbia, South Carolina

March 14, 2024

STATE OF SOUTH CAROLINA )  
)  
COUNTY OF ORANGEBURG )

IN THE COURT OF GENERAL SESSIONS  
  
FIRST JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA )

Indictment No.: 2020-GS-38-0943

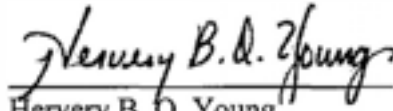
v. )

KENNETH HENRY EASTWOOD )

**CERTIFICATE OF SERVICE**

Defendant. )  
\_\_\_\_\_ )

The undersigned certifies that he served a copy of SCCID Reply to the Defendant's Motion and Memorandum to Reconsider upon the Defendant by electronic mail to the official AIS email address for Attorney Ashley Cornwell on this date.

  
\_\_\_\_\_  
Hervey B. O. Young  
General Counsel for SCCID

Columbia, South Carolina

March 14, 2024

STATE OF SOUTH CAROLINA  
COUNTY OF ORANGEBURG

State of South Carolina

v.

Kenneth Henry Eastwood,

Defendant.

IN THE COURT OF GENERAL SESSIONS  
FIRST JUDICIAL CIRCUIT  
INDICTMENT NO.: 2020-GS-38-0943

2024 MAR 25 P 1:08

CLERK OF COURT  
ORANGEBURG, SC

**ORDER DENYING  
MOTION TO RECONSIDER**

THIS MATTER came before the Court on the Defendant's Motion and Memorandum to Reconsider, by and through his retained counsel, filed on March 7, 2024. The Court has reviewed all filings on this matter and reached the following findings of fact and conclusions of law:

**PROCEDURAL HISTORY**

On December 16, 2019, Kenneth Henry Eastwood was arrested and charged with Murder in the above-captioned matter. Bond was denied and he remained in custody. Eastwood did not apply for the appointment of counsel. Between the date of arrest and February 24, 2020, Eastwood retained attorney James Falk to represent him in this case. Falk continued to be the attorney of record until his death on May 9, 2023. Because of the nature of the charge, his retained counsel's death, and the fact that Eastwood was in custody, a public defender was appointed to represent him on May 18, 2023. On or about June 15, 2023, Eastwood retained Attorney Ashley Cornwell, and the public defender was relieved. On or about September 19, 2023, Cornwell submitted to this Court an Ex Parte Motion and proposed Ex Parte Order for Funding for a False Confession Expert. No hearings on the motion were held. The Court signed the proposed order on October 13, 2023. On or about November 1, 2023, Cornwell submitted another Ex Parte Motion and a proposed Ex Parte Order for Funding for a Forensic Pathologist Expert to this Court. No hearings on the motion

were held and the Court signed the proposed order on November 2, 2023. Cornwell filed the orders with the Clerk of Court under seal but did not submit the orders to SCCID. A jury trial was held in this case on November 8 – 9, 2023, and both experts testified for the defense. On November 9, 2023, the jury found Eastwood guilty, and the Court sentenced him to life in prison.

Cornwell submitted the funding orders and expert invoices to SCCID on December 12, 2023. SCCID discussed the submissions with Cornwell and informed her that the Agency did not have authority to provide indigent funds for retained counsel and would raise an objection with the Court. Following that conversation, on December 19, 2023, Cornwell preemptively filed a Rule to Show Cause in an effort to have the court compel SCCID to pay the experts. SCCID served its written objection with the Court and Cornwell on December 20, 2023. A virtual hearing was held on January 18, 2024, and the parties submitted written arguments and proposed orders for the Court's consideration.

The Court issued its Order Denying Defendant's Rule to Show Cause on February 26, 2024, and filed the same with the Clerk of Court on February 28, 2024. The Defendant filed a Motion and Memorandum to Reconsider on March 7, 2024. SCCID filed a Reply on March 14, 2024.

### **ISSUES RAISED IN MOTION TO RECONSIDER**

The Defendant raised the following grounds in the Motion and Memorandum to Reconsider:

- (1) The Court lacked jurisdiction to hear SCCID's objections to the funding orders or its request to vacate the same; and
- (2) The Court's finding that indigent defendants who retain counsel are statutorily prohibited from receiving funds from SCCID was an error in law.

## **I. JURISDICTION**

### **A. Procedures to Hear SCCID's Funding Objections**

The S.C. Supreme Court, by Order dated September 29, 2006, established the procedures for the processing of indigent vouchers to include the ability of SCCID to file objections. The Supreme Court issued this Order under the authority granted by the General Assembly in S.C. Code § 17-3-110, authorizing "the Supreme Court to establish such rules and procedures as may be necessary for proper administration of Chapter 3 of Title 17 pertaining to indigent defense." The Court further stated that, "accordingly pursuant to S.C. Code § 17-3-110, and Article V, Section 4 of the S.C. Constitution, the procedures outlined herein are adopted for the processing of indigent defense vouchers."

The procedures established by the Court provide that if there are objections by SCCID to submitted vouchers, then the "Office of Indigent Defense shall notify the trial court and counsel of any objection and shall forward any necessary materials to the trial court in writing or electronically." This is exactly the process SCCID followed with its written objection filed with both the Trial Court and Counsel on December 20, 2023.

The Order further provides that "the trial court may determine the matter with or without a hearing, as may be appropriate, or upon submission of written materials." In this matter, this Court granted the Agency's request to be heard, thus the hearing on January 18, 2024.

The Order also states that the procedures outlined "shall remain in effect until altered or changed by subsequent order or legislation." This Court is not aware of any subsequent orders or legislation that altered or changed this procedure.

Also, pursuant to the authority granted by the General Assembly, in SC Code §§ 17-3-310 and 17-3-340, SCCID developed a Voucher Payment Policy that includes the Court's procedure

regarding objections in the processing of indigent defense vouchers. The Voucher Payment Policy was amended in 2021 to require attorneys to submit funding orders to SCCID within 15 days of a court signing such orders. This procedure allows for issues and objections to be raised in a timely manner. The trial court can immediately consider any Agency objections, hear from both parties, and avoid the exact scenario that has occurred in this matter where work is completed before the Agency is even aware of the orders to be able to object.

### **B. Procedural Motion or Notice of Appeal**

The Defendant argued that "SCCID's objection letter is not a properly filed procedural motion or notice of appeal under our rules of procedure and therefore cannot be considered good cause for failing to comply with the entered orders." However, as outlined in Section I.A of this Order, the procedure established by our Supreme Court does not require procedural motions pursuant to the Rules of Court nor a notice of appeal at this stage of the matter.<sup>1</sup> The ex parte funding orders were not final until such time as SCCID had the opportunity to file any objections and this Court ruled on those objections. That ruling did not occur until this Court's Order of February 26, 2024.

The Supreme Court only requires SCCID to notify the trial court and counsel of the objection in "writing or electronically." While not captioned as a formal motion, SCCID's filing (written objection) on December 20, 2023, was within 10 days of the Agency receiving written notice of the filed orders on December 12, 2023, and requested that the trial court rescind (vacate, alter, or amend) the funding orders.

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<sup>1</sup> The filing of a Notice of Appeal pursuant to Rule 203(b)(2) would have transferred jurisdiction to the appellate court.

## II. ERROR IN LAW

In the Order dated February 26, 2024, this Court closely reviewed the issue regarding retained counsel having access to the Defense of Indigents funds. Specifically, this Court examined the argument now raised by the Defendant that § 17-3-50(B) and (C) do not specify that counsel be appointed. This Court found that SCCID's interpretation of the statute, based on the statutory language and legislative intent, is that the Defense of Indigents Fund is limited to cases where the courts have appointed private counsel or a public defender. This Court gives deference to that interpretation.<sup>2</sup>

Also, § 17-3-50 must be read and construed as a whole, and not on isolated words or phrases.<sup>3</sup> The section addresses fees and expenses for appointed counsel and public defenders. Read in this context it is this Court's interpretation that the "defendant" referenced in the statute is the indigent defendant and the attorney the statute references is the appointed attorney, or the public defender appointed to represent that defendant.

Further authority that reimbursement shall not be had from indigent funds is the unambiguous language of Rule 602(c), SCACR, which provides that "if counsel shall have been retained and partially paid for his services in either the trial or appeal stages, no reimbursement may be had from indigent funds."

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<sup>2</sup> See *Doe v. Keel*, 440 S.C. 427, 431, 892 S.E.2d 427, 284 (2023) ("[T]he Court generally gives deference to an administrative agency's interpretation of an applicable statute or its own regulation. . . . If the statute or regulation 'is silent or ambiguous with respect to the specific issue,' the court then must give deference to the agency's interpretation of the statute or regulation, assuming the interpretation is worthy of deference.") (citations omitted).

<sup>3</sup> See *CFRE, LLC v. Greenville County Assessor*, 395 S.C. 67, 716 S.E.2d 877 (2011) ("[T]he statute must be read as a whole and sections which are part of the same general statutory law must be construed together and each one given effect. . . . We therefore should not concentrate on isolated phrases within the statute. . . . Instead, we read the statute as a whole and in a manner consonant and in harmony with its purpose.") (citations omitted).

### CONCLUSION

This Court has had the opportunity to review the record before it, including the Defendant's Motion and the Reply of SCCID. After careful review, this Court finds that it had jurisdiction to consider the objection raised by SCCID and that ruling of the Court was not in error of law. Therefore, the Defendant's Motion to Reconsider is hereby denied.

IT IS THEREFORE ORDERED that the Defendant's Motion to Reconsider is denied.

AND IT IS SO ORDERED this 25 day of March, 2024.

  
Maite Murphy  
Circuit Court Judge, First Judicial Circuit

  
Orangeburg, South Carolina

RECEIVED

Jan 17 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM ORANGEBURG COUNTY  
Court of General Sessions

Maite Murphy, Circuit Court Judge

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Appellate Case No.: 2024-000583

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Ex Parte: South Carolina Commission on Indigent Defense, Respondent,

In Re: The State, Respondent,

V.

Kenneth Henry Eastwood, Appellant.

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CERTIFICATE OF COUNSEL FOR APPELLANT

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Counsel for Appellant certifies that this Record on Appeal contains all material proposed to be included by the parties and not any other material.

January 14, 2025

*Ashley Cornwell*

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Attorney for Appellant