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June 29, 2021

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Via Email Only

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Email: ctappfilings@sccourts.org

RE: Robert Palmer v. State of South Carolina, Horry County, and David Weaver
Appellate Case Number: 2017-000567
Civil Action Number: 2016-CP-26-1614
Claim Number: 19730
Our File Number: 104.10136

RECEIVED

Jun 29 2021

SC Court of Appeals

Dear Ms. Kitchings:

I am in receipt of a letter dated June 28, 2021, from Chief Deputy Clerk Claire Allen requesting the Respondent's position with respect to an email received from the Appellant's counsel, Gene Connell, dated June 23, 2021. I responded to that email to Mr. Connell on that same date. I did not realize a copy had been submitted to the Court of Appeals, and I certainly did not realize that the Court would be treating that email as a motion to stay or the equivalent.

The following is my response to Mr. Connell on June 23, 2021:

I am unaware of any rule that allows for the Court of Appeals to stay consideration of the motion for costs on appeal particularly once the Remittitur is issued. Furthermore, we should be entitled to the interest that accrues on the costs that are awarded so we cannot agree to any stay. If you are successful on your appeal to the U.S. Supreme Court, a judgment for the award of costs can be vacated. That would seem to me to be the relief to which your client is entitled should he prevail at the Supreme Court.

Further responding, I would point out that the Appellant has not filed a motion for a stay. Likewise, he has not cited any rule, statute, or other authority allowing for the taxation of costs to be stayed. Furthermore, a different situation would be arguably presented if a petition for writ of certiorari had already been filed with the U.S. Supreme Court and was pending. But at this point, it is entirely speculative whether such a petition will even be filed. The Appellant may very well choose not to proceed with a petition to the U.S. Supreme Court. Certainly, it is well established

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that the State of South Carolina is not a "person" amenable to suit under 42 U.S.C. § 1983, and as a result, it is unclear what federal question is even available for the Supreme Court to review on certiorari. Finally, as indicated above, the Respondent should not be denied the interest that accrues on an award of costs on appeal. The Appellant is not without a remedy if he does petition the U.S. Supreme Court and prevails – any judgment entered would be vacated.

For these reasons, the Respondent requests that the Court not issue a stay under these circumstances. If you have any questions, please advise.

Sincerely,

LINDEMANN & DAVIS, P.A.



Andrew F. Lindemann

AFL/

cc: Gene M. Connell, Esquire (*Via Email Only*)
Roger D. Johnson, Esquire (*Via Email Only*)
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