

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) C/A NO.: 2024-CP-26-03798

Jennifer Spivey Foley, as Personal)
Representative of the Estate of Scott)
Ryan Spivey,)

Plaintiff,)

v.)

Charles Weldon Boyd and Kenneth)
Williams,)

Defendants.)

MEMORANDUM IN SUPPORT OF DEFENDANT KENNETH WILLIAMS' MOTION TO STAY ALL PROCEEDINGS

Defendant Kenneth Williams through his counsel submits this Memorandum in support of his Motion to Stay All Proceedings which is pending before this Court.

INTRODUCTION

On the afternoon of September 9, 2023, the Defendant was traveling from North Myrtle Beach, South Carolina to a location near Loris, South Carolina to assist in preparations for Co-Defendant Charles Weldon Boyd's ("Boyd") family outing on the following day. This Defendant and Boyd were traveling in Boyd's white truck, with a tandem axle trailer in tow. Boyd was driving, and this Defendant was a front-seat passenger. Loaded on the trailer was outdoor furniture. Boyd and this Defendant's route of travel took them along South Carolina Highway 9. Boyd and this Defendant stopped at the Tractor Supply Store located near Stephens Crossroads to purchase fans. Without incident, Boyd and this Defendant loaded the newly purchased fans onto Boyd's truck and trailer and proceeded along their drive on SC Hwy. 9, toward Loris.

Along the drive, this Defendant, the front-seat passenger, exclaimed to Boyd that a man driving beside them in the outside lane was acting crazy and pointing a gun at him. When Boyd turned his attention to the right-hand lane, he observed Scott Ryan Spivey ("Spivey") in a Black truck pointing a semi-automatic pistol directly at the head of this

Defendant. Spivey then aggressively accelerated, swerved, and engaged in reckless driving seeking to force Boyd off the roadway. Boyd took evasive action to avoid a collision by driving into the median. After recovering control of his vehicle, Boyd began to follow Spivey and called E911 dispatchers to alert authorities as to Spivey's location and of what had occurred. This Defendant and Boyd observed Spivey aggressively pointing his handgun at them and at least one other motorist. After the incidents of direct contact with Spivey, which resulted in Spivey's death, the Defendants learned that Spivey had also threatened numerous other motorists with aggressive and reckless driving and by pointing a gun at them.

In an approximately eight (8) minutes recorded E911 telephone call, Boyd narrated Spivey's actions, location and relevant events to E911 dispatchers. Boyd continued the call until police officers arrived at the scene where Spivey initiated an exchange of gunfire in which he was killed.

This Defendant's and Boyd's account of events and the ensuing investigation confirmed that Spivey was not known to this Defendant or Boyd and had not communicated or interacted with this Defendant or Boyd prior to the minutes before Spivey started shooting. The investigations revealed that Spivey, who was traveling alone in his truck, and for reasons unknown to this Defendant or Boyd, threatened and terrorized numerous motorists with his reckless and erratic driving while brandishing and pointing a semi-automatic handgun at them. These actions took place while Spivey was driving along South Carolina Highway Number 9 under the influence of alcohol and other intoxicating drugs. Upon information and belief, Spivey was also raging under the influence of illegal anabolic steroid drugs which were found in Spivey's possession.

After months of investigation of the incident the findings of law enforcement were presented to a prosecutor in the Office of the South Carolina Attorney General. A decision was made by that prosecutor that no criminal charges would be sought against this Defendant or Boyd. In the investigation, this Defendant and Boyd were both fully cooperative, gave video recorded interviews to law enforcement and surrendered their electronic devices and passwords for search and inspection.

This lawsuit was filed on behalf of the Plaintiff, who was appointed as Spivey's Personal Representative. Through both the *South Carolina Freedom of Information Act* ("FOIA") and in civil discovery Plaintiff and her attorneys have obtained voluminous

documents in this case. To attain a collateral advantage, Plaintiff and her attorneys have widely circulated the documents obtained in this case to perpetuate a conspiracy and engage in a concerted effort to intimidate and harass law enforcement and the South Carolina Attorney General to reconsider the prior determination that this Defendant and Boyd are immune from prosecution.

As a direct result of the actions of the Plaintiff and her attorneys, an investigation of misconduct committed by law enforcement officers has been initiated, is being conducted by SLED and is pending. It is uncertain at this time whether additional criminal investigations will be initiated concerning this Defendant and Boyd, based upon the false narratives asserted and perpetuated by the Plaintiff and her attorneys. The law enforcement officers currently under investigation by SLED are among the witnesses necessary to this Defendant's and Boyd's civil case.

ARGUMENT

It would be patently prejudicial and unfair for this Defendant and Boyd to be required to advance this case while under threat of further investigation at the behest of Plaintiff and her attorneys. The unfairness is compounded by the likely inability of this Defendant and Boyd to call witnesses to testify who are under investigation by SLED for alleged misconduct concerning the investigation into the incidents that give rise to this case. Of more compelling import, several of the Defendant's and Boyd's witnesses have been harassed and intimidated by individuals who are purporting to advance false narratives initiated by the Plaintiff and her attorneys.

Plaintiff and her counsel have engaged multiple network and social media outlets and disseminated pretrial information about this case to launch a social media smear campaign in order to inflict severe emotional distress upon this Defendant and Boyd and in an attempt, indeed a demand, for law enforcement and the South Carolina Attorney General to reopen a criminal investigation into the actions of this Defendant and Boyd. The Plaintiff's conduct is certainly questionable and inappropriate. The lending of influence by elected members of the South Carolina General Assembly and the Horry County Council is a further form of inappropriate influence initiated at the behest of Plaintiff and her attorneys.

Of more concern, the conduct of Plaintiff's attorneys, which violates the mandate of the *South Carolina Rules of Professional Conduct* and their sworn oath (Rule 3.6 and relevant portions of the attorney's oath are set forth immediately below) which this Defendant and his counsel bring to the attention of this Court as required by the *South Carolina Rules of Professional Conduct*.

RULE 3.6: TRIAL PUBLICITY

- (a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.
- (b) Notwithstanding paragraph (a), a lawyer may state:
 - (1) the claim, offense or defense involved and, except when prohibited by law, the identity of the persons involved;
 - (2) information contained in a public record;
 - (3) that an investigation of a matter is in progress;
 - (4) the scheduling or result of any step in litigation;
 - (5) a request for assistance in obtaining evidence and information necessary thereto;
 - (6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and
 - (7) in a criminal case, in addition to subparagraphs (1) through (6):
 - (i) the identity, residence, occupation and family status of the accused;
 - (ii) if the accused has not been apprehended, information necessary to aid in apprehension of that person;
 - (iii) the fact, time and place of arrest; and
 - (iv) the identity of investigating and arresting officers or agencies and the length of the investigation.
- (c) Notwithstanding paragraph (a), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.
- (d) No lawyer associated in a firm or government agency with a lawyer subject to paragraph (a) shall make a statement prohibited by paragraph (a).

Rule 402 of the *South Carolina Appellate Court Rules*, in pertinent part, requires all attorneys admitted to practice law in the State of South Carolina to pledge an oath that

[her or she] pledges fairness, integrity, and civility to opposing parties and their counsel. Each attorney's oath further requires that he or she pledges to maintain the dignity of the legal system and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which [he or she] is charged. Lastly, each attorney's oath requires that [he or she] pledge to employ for the purpose of maintaining the causes confided to [him or her] only such means as are consistent with trust and honor and the principles of professionalism, and will never seek to mislead an opposing party, the judge, or jury by a false statement of fact or law.

With the greatest deference to advocacy, one or both of Plaintiff's attorneys have violated the *South Carolina Rules of Professional Conduct* and [his or her] sworn oath. The judicial system and *South Carolina Rules of Professional Conduct* do not embrace conspiring with others in high tech lynchings via social media, peddling false and misleading information to media outlets, berating witnesses and witness intimidation, promoting false and clearly one-sided narratives in wide-spread media outlets and the demeaning of adverse parties. It is inexcusable that those in the media outlets with whom Plaintiff and her attorneys have conspired have berated and intimidated witnesses to the underlying events giving rise to this case.

As a matter of fact, one of Plaintiff's attorneys has initiated civil claims against defendants who were accused of similar conduct to that of Plaintiff and her attorneys in this case. In that case, Attorney Mark B. Tinsley alleged that the defendants ***"hired social media 'knife fighters' ¹ and others to affect the proceedings in the Civil Action and to devise a way to harm the Plaintiffs to affect their resolve in prosecuting the Civil Action"***. Here, Plaintiff and her attorneys conspired with others, including elected and appointed officials, to create false narratives and disseminate false factual accounts about the underlying events that give rise to this lawsuit. Here the hypocrisy of Plaintiff's attorney is revealed. The very conduct demonstrated by him and his client in this case is asserted to constitute civil conspiracy

¹ The term "knife fighters" and "social media knife fighters" are terms coined or utilized by Attorney Mark B. Tinsley when filing suit against defendants whom he alleged engaged in a civil conspiracy and intentionally inflicted emotional distress upon Attorney Tinsley's clients when utilizing media and social media outlets to launch a social media campaign just as Attorney Tinsley and the Plaintiff have done in this case. See Hampton County Court of Common Pleas Case No. 2021-CP-25-00392.

and intentional infliction of emotional distress in Attorney Tinsley's pending lawsuit filed in this the Hampton County Court of Common Pleas and bears Civil Action Number 2021-CP-25-00392. A Copy of the filed Complaint are attached and denoted at "Exhibit A". It appears that Attorney Tinsley believes this conduct is inappropriate when engaged in against him and his client in Hampton County but is appropriate when engaged in by Attorney Tinsley and his client in this case in Horry County.

LEGAL STANDARD

Courts have discretion in determining whether to grant a motion to stay. *Landis v. North An. Co.*, 299 U.S. 248, 254 (1936). As the United States Supreme Court recognized, "the power to stay proceedings is incidental to the power inherent in every court to control the disposition of causes on its docket with economy of time and effort for itself, for counsel and for litigants." *Id.* the determination of whether to stay a proceeding "calls for an exercise of judgment to balance the various factors relevant to the expeditious and comprehensive disposition of the causes of action on the court's docket." *Popoola v. MD Individual Practice Ass'n. Inc.*, No. DKC-OO-2946, 2001 WL 579774, at *2 (D. Md. May 23, 2001) (quoting *United state v. Georgia Pacific Corp.*, 562 F.2d 294, 296 (4th Cir. 1977)); *Landis*, 299 U.S. at 254-55 (noting the decision as to whether to stay a proceeding "calls for the exercise of judgment, which must weigh competing interests and maintain an even balance"); see also, e.g., *In re Mutual Funds Investment Litigation*, MDL No. 1568, 2011 WL 1540134, at *1 (D. Md. Apr. 20, 2011) (assessing a request for a stay pending appeal and noting that, in striking the balance *Landis* envisioned, courts look to such factors as the length of the stay, the hardship to the movant were the action to proceed, the burden a stay would impose on the non-moving party and whether the stay would promote judicial economy by avoiding duplicative litigation).

A Stay of the Civil Proceeding Until Resolution of the Pending SLED Investigation is Warranted:

Where the same incident gives rise to a civil lawsuit for damages and a criminal prosecution, the civil case ordinarily should be stayed until the criminal proceedings have concluded. See *Estes-El v. Long Island Jewish Med. Ctr.*, 916 F. Supp. 268, 269 (S.D.N.Y. 1995) (Explaining "[i]t is well-settled that the Court may (and indeed, should stay a

federal Section 1983 action until resolution of parallel state court criminal proceedings.”); *Guillory v. Wheeler*, 303 F. Supp. 2d 808, 811 (M.D. La. 2004) (observing that where criminal charges remain pending, “the better course is to proceed as strongly suggested by the Fifth Circuit Court of Appeals – to stay proceedings...until the criminal case has run its course”); see also, e.g., *Peyton v. Burdick*, 358 F. App’x 961, 962 (9th Circuit 2009) (vacating and remanding action to the district court with instructions to impose a stay because plaintiff’s claims for false arrest and manipulation of the evidence implicate rulings that are likely to be made in pending criminal proceeding); *Gallipeau v. Mitchell*, No. 07-3522, 2009 WL 539947, at *1 (D.S.C Mar 4, 2009) (staying plaintiff’s Bevins claims stemming from the alleged warrantless seizure until the resolution of the Plaintiff’s federal charges).

Courts, relying on *Wallace*, routinely stay civil actions pending resolution of ongoing criminal proceedings when those civil suits include claims challenging a plaintiff’s arrest or are otherwise related to the issues that may be ruled on in a criminal proceeding. e.g., *Dickerson v. City of Charleston Police Dep’t.*, No. 10-1625, 2011 WL 3880958 (D.S.C August 10, 2011) (staying action alleging excessive force, false imprisonment, illegal search and seizure and other claims); *Max-George v. Keel*, No. 10-1215, 2010 WL 2010876 (S.D. Tex May 18, 2010) (staying civil action that included claim that defendants falsely charged him with criminal offenses); *Cameron v. Wise*, No. 09-967, 2009 WL 3755093 (S.D.N.Y. Nov. 2, 2009) (staying civil action asserting claims of false arrest and theft); *Crooker v. Burns*, 544 F. Supp. 2d 59, 60 (D. Mass. 2008) (staying civil actions raising illegal search and seizure claims); *Motley v. Wolf*, No. 07-823, 2007 WL 4270569 (E.D. Mo. Dec. 3, 2007) (Staying civil case raising false arrest claim).

Even prior to *Wallace*, court recognized that staying the civil action until resolution of the criminal matter makes sense in most instances because the resolution of the criminal action could contribute significantly to the narrowing of issues in dispute in the civil case, would avoid potential Fifth Amendment issues and other discovery problems that may arise in parallel proceedings, and should prevent inconsistent rulings. See *Estes-El*, 916 F. Supp. at 270 (identifying concerns created by proceeding simultaneously in criminal and civil actions); *Guillory*, 303 F. Supp. at 810-11 (same).

In this case, the weight of the various interests’ tips heavily in favor of issuing a temporary stay until SLED’s current investigation ends. If the civil action is permitted to

go forward simultaneously with the criminal action, the defendant would be forced to respond to and defend claims that might otherwise be resolved by a threshold legal motion. More importantly, the overriding interest of the State of South Carolina in ensuing a fair resolution of the pending criminal charges would be impaired if the pending civil case were allowed to proceed.

While the temporary stay may impose a burden on the Plaintiff, who like all plaintiffs seek the expeditious resolution of this matter a delay spent waiting for resolution of a related case is “not sufficient reason for refusing to grant a stay.” *Talley v. John-Mansville Sales Corp.*, 285 S.C. 117, 118-19 n. 2, 328 S.E.2d 621, 622-23 n.2 (1985).

The most compelling reason to stay the pending civil matter is that a temporary stay of the civil matter may serve to protect this Defendant, who can avoid the potential of self-incrimination. See, e.g. *Shaw v. Hardberger*, No. 06-751, 2007 WL 1465850, at *1-2 (W.D. Tex. May 16, 2007) (granting defendant’s motion to stay in part based on potential Fifth Amendment concerns because the civil case arose from the same set of operative facts as the criminal charges and thus “there is a danger of self-incrimination”); *Estes-El*, 916 F. Sup. At 270 (explaining that permitting the civil action to go forward may prejudice defendant because of “potential Fifth Amendment issues”). The harm which a postponement of the civil matter does not tip the scales against the granting of a stay in this matter.

A stay will promote judicial economy. A stay ensures that this Court is never asked to simultaneously adjudicate the same issues in the civil and criminal courts. Finally, a stay of the civil matter serves the interest of judicial economy because it eliminates the need for the Court to structure or balance between the discovery available to the parties in the Court of General Sessions and the Court of Common Pleas.

CONCLUSION

For the reasons stated above, all of which establish good cause for the relief sought, Defendant Kenneth Williams requests that this Court grant his motion to stay all proceedings and enter an order directing that this case be stayed in its entirety, pending resolution of SLED's current investigations.

ROBERT E. LEE, LLC

s/ Robert E. Lee

Robert E. Lee – S.C. Bar No. 63052
Post Office Box 1096
Marion, South Carolina 29571
Telephone: 843-423-1313
E-Mail: rel@rellawfirm.com

**ATTORNEY FOR DEFENDANT
KENNETH WILLIAMS**

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Marion, South Carolina