

The South Carolina Court of Appeals

Brice Huet de Guerville, Petitioner

v.

Sarah Huet de Guerville, Respondent.

Appellate Case No. 2023-000387

ORDER

Brice Huet de Guerville (Father) has filed a motion pursuant to Title III of the Omnibus Crime Control and Safe Streets Act of 1968 (the Federal Act)¹ and the South Carolina Homeland Security Act (the Act)² to suppress all audio communications that were intercepted and recorded by Sarah Huet de Guerville (Mother) through use of a cellular phone. Father argues the recordings violated the Federal Act and the Act because Mother did not have a good-faith basis to record his conversations with their child (Child).

Mother and Father are divorced and share joint legal custody of Child; however, Child resides primarily with Mother. Pursuant to the divorce agreement, both parties were restrained from disparaging each other to Child and from discussing the details of the divorce agreement. Subsequent to the parties' divorce, Mother sought a modification to the custody and visitation agreement due to her plans to marry Child's stepfather (Stepfather) and relocate with Child to Tennessee, and that

¹ 18 U.S.C § 2510 to -2523.

² S.C. Code Ann. § 17-30-10 to -145 (2014). This court reviews motions to suppress under the Act in its original jurisdiction. *See* S.C. Code Ann. § 17-30-110(A) (2014) (providing such motions "must be made before the reviewing authority"); S.C. Code Ann. § 17-30-15(9) (2014) (defining "[r]eviewing authority" as "a panel of three judges of the South Carolina Court of Appeals designated by the Chief Judge of the South Carolina Court of Appeals"); *see also State v. Whitner*, 399 S.C. 547, 553, 732 S.E.2d 861, 864 (2012) ("[T]he Federal Act is substantively the same as South Carolina's Wiretap Act . . .").

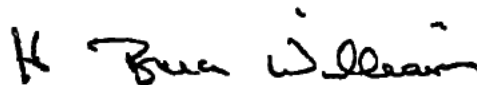
action is the case underlying this motion. In March 2021, a hearing was held on the motion. In April 2021, the family court issued a temporary order granting the modification and reappointing the guardian ad litem (GAL) from the divorce action to represent the best interests of Child. In September 2021, Father discovered Mother had recorded three phone calls between him and Child from March, June, and July 2021 and had given those recordings to the GAL. Father argues Mother did not have a good-faith basis upon which to vicariously consent on behalf of Child to record the phone calls. Mother contends she recorded the calls because Child appeared upset after his communications with Father, and that she suspected Father was alienating Child from her and discussing topics specifically forbidden in the divorce agreement.

The Act prohibits "[t]he interception of wire, electronic, or oral communications" except "in the manner permitted by this chapter." § 17-30-10; *see also* 18 U.S.C. § 2511. "The . . . Act is violated when a person intercepts oral communications that are not otherwise exempt from or subject to an exception contained in section 17-30-30." *Whitner*, 399 S.C. at 553, 732 S.E.2d at 864. However, "[i]t is lawful under this chapter for a person not acting under color of law to intercept a wire, oral, or electronic communication where the person is a party to the communication or where one of the parties to the communication has given prior consent to the interception." S.C. Code Ann. § 17-30-30(C) (2014); *Whitner*, 399 S.C. at 553, 732 S.E.2d at 864 ("[The] Act parallels the Federal Act passed by Congress in 1968, which similarly permits lawful interception where one party to the communication consents."). Our supreme court has found "the Legislature intended the consent provision [of section 17-30-30(C)] in the [Act] to encompass the vicarious consent of a parent on behalf of a minor child," provided the parent has a good faith, objectively reasonable basis for believing that it was necessary and in the best interest of the child to consent. *See Whitner*, 399 S.C. at 554-56, 560, 732 S.E.2d at 864-65, 867.

We find Mother did not have a good-faith basis to give Child's consent to intercept his communications. First, we note Mother's allegations of parental alienation, considered in light of the recordings themselves, do not rise to the level of severity which would justify Mother's vicarious consent to the interception. *See Pollock v. Pollock*, 154 F.3d 601, 610 (6th Cir. 1998) ("[T]here are situations, such as verbal, emotional, or sexual abuse by the other parent, that make [vicarious consent] necessary to protect the child from harm."); *Whitner*, 399 S.C. at 557, 732 S.E.2d at 866 (finding mother and stepfather articulated a good-faith basis for vicariously consenting to record phone conversations on behalf of minor child when they testified they believed the recordings would assist them in deciding the "best

course of action" for handling child's allegations of sexual abuse, such as deciding whether child needed sexual abuse counseling and whether they should terminate her visitation with father). Mother should have utilized less-intrusive means to pursue the matter, such as requesting the court-appointed guardian ad litem investigate the matter. *See Whitner*, 399 S.C. at 554-56, 560, 732 S.E.2d at 864-65, 867 (requiring a parent demonstrate a good faith, objectively reasonable basis for believing that it was *necessary* and in the best interest of the child to consent); *cf. Pollock*, 154 F.3d at 610 (stating the doctrine of vicarious consent "should not be interpreted as permitting parents to tape any conversation involving their child simply by invoking the magic words: 'I was doing it in his/her best interest'" and that the purpose of the doctrine was to protect children from such harm as "verbal, emotional, or sexual abuse by the other parent"). Second, we find the record indicates Mother did not possess a good-faith belief the recordings were necessary to helping Child. Child was not in severe mental or emotional distress during any of recorded the conversations. Further, Mother held onto at least one of the recordings for several months before providing it to the guardian ad litem and, during this same period of time, rejected Father's requests to place Child in therapy. *See Whitner*, 399 S.C. at 550, 732 S.E.2d at 862-63 (noting mother and stepfather, after recording phone call between father and child in which the former admitted sexual abusing the latter, gave said recording to law enforcement).

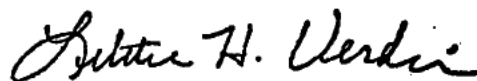
Based on the foregoing, we find Mother's allegations of alienation do not justify the level of invasiveness found in this case. Accordingly, under the specific facts before this court and after careful consideration, Father's motion to suppress is granted.³



CJ.



J.



J.

³ Mother's request for a hearing is denied. *See* § 17-30-110(A) ("The reviewing authority may, *in its discretion*, conduct a hearing and require additional testimony or documentary evidence." (emphasis added)).

Columbia, South Carolina

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FILED
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