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**Sep 01 2023**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Family Court

Family Court Case No. 2022-DR-10-3072

Appellate Case No.

Justin McGee,

Respondent,

v.

Lindsay F. McGee,

Petitioner.

**AMENDED  
MOTION TO SUPPRESS EVIDENCE**

This matter comes before the Court on behalf of Petitioner (the Petitioner in the pending action before the Family Court for Charleston County) by and through her undersigned counsel, who would show unto this Court, pursuant to Rule 240, SCACR, and Court News as posted and denoted as 2020-03-20-01, and S.C. Code Ann. § 17-30-110, that the relief requested here should be granted. Petitioner moves before this Court for an Order suppressing 1) all evidence relating to illegally obtained audio and video recordings, intercepted and/or illegally obtained text and email messages, and the information derived therefrom, 2) immediate listing of and disclosure of all audio/video recording devices, documents and/or records concerning the interception of electronic communications of Petitioner, 3) factual findings regarding how certain evidence has been contained in this case, and 4) other relief requested herein including attorney's fees and expert fees.

Petitioner makes this Motion on the following grounds:

1. Petitioner and Respondent are husband and wife, having been married on March 10, 2012. They are the parents of three children who are aged eight, six and three. The parties separated on or about February 21, 2021.

2. On or about September 15, 2021, Respondent gave Petitioner an iPhone 12. In exchange, Petitioner gave Respondent her iPhone 8 after she performed a “factory reset” and transferred her number 843-xxx-3367 to the iPhone 12. However, Petitioner did not remove the SIM card from the iPhone 8 before giving Respondent possession of the iPhone 8. This is significant because the SIM card gave Respondent the ability to restore the information on Petitioner’s iPhone 8, thus giving Respondent access to all of Petitioner’s text messages, emails, and iCloud account information.

3. As set forth in the affidavit of John Bumgarner, Petitioner is informed and believes that Respondent has been intercepting and/or reading her text and email communications since on or about September 2021, including privileged communications with Petitioner’s attorneys.

4. At the time of the separation, Petitioner and Respondent were members of The McGee Law Firm, LLC. Respondent was, and is, the administrator of the law firm email domain and both parties had email accounts which they utilized for personal and business. Upon information and belief it was on or about November 1, 2022 that Respondent terminated Petitioner’s access to the law firm email, [lindsay@mcgee-lawfirm.com](mailto:lindsay@mcgee-lawfirm.com).

5. On or about February 1, 2021, Petitioner moved into a home located at 664 McCutchen Circle where she has resided since that time. Respondent occasionally came to the home to visit with the children or even keep the children for Petitioner. At some point, Respondent complained that Petitioner did not have USB connections for his electronic devices and installed

a power adapter with additional plugs and USB ports. Then he installed more and eventually he placed various devices throughout the house and in her garage. Attached at **Exhibit 1** is a picture of the same adapter which Respondent installed in Petitioner's garage and, upon information and belief, in other areas of her house.

6. Soon after the parties' separation, Petitioner began to have concerns that Respondent seemed to "know" about private conversations she was having with friends while Petitioner was in the privacy of her home, alone in her car, or otherwise alone and not in the presence of a third-party. Petitioner was further concerned that Respondent seemed to "know" details of pictures, text messages and/or emails between Petitioner and third parties. And that at times certain text messages and/or emails would "disappear" from her telephone" and/or her iCloud account. At some point, Petitioner would discover random password changes to her iCloud and Gmail account. When Petitioner would then go through the "forgot password" process and change her password, within hours or days, the new password would be invalid, thus requiring her to create yet another password.

7. On or about January 10, 2021, Petitioner created the email account [lmcgee9310@gmail.com](mailto:lmcgee9310@gmail.com) to ensure she had confidential communications with her then attorney, James T. McLaren. With increasing concerns that Respondent was accessing her financial information, Petitioner opened a new checking account at Bank of America on November 17, 2021 using 843-xxx-3367 as her recovery telephone number and [lmcgee9310@gmail.com](mailto:lmcgee9310@gmail.com) as her recovery email account. In September 2022, Petitioner believed that Respondent "knew" things that he should not have known and was informed and believed that Respondent was able to read her text messages. As a result, Petitioner purchased an iPhone 13 and obtained a new number (843) xxx-2168 on the same account which she used for her iPhone 8 and iPhone 12.

8. However, it was evident that Respondent continued to know about conversations Petitioner was having with third parties as evidenced by their telephone conversation and text exchange on October 2022 when he threatened her about with whom she chooses to communicate and telling her “F\*\*\* Around and Find Out”, which was a phrase he often used to tell Petitioner that if she spoke with someone that he would know about it. [Exhibit 2] Interestingly, John Bumgarner noted that an unknown IP address, which he suspects was Respondent, had accessed Petitioner’s iCloud account on October 30, 2023.

9. Respondent reinstated Petitioner’s access to her [lindsay@mcgee-lawfirm.com](mailto:lindsay@mcgee-lawfirm.com) email on May 10, 2023 after asking her to prepare some documents in a case he was working and suggesting that she use the law firm email for this purpose. [Exhibit 3] Petitioner logged into the account at approximately 11:14 a.m. during which time she deleted thousands of mostly junk and spam emails. Thereafter, at approximately 1:55 p.m., Respondent logged into the account, recovered the emails deleted by Petitioner, and stored them in a retention folder he named “Manage Litigation Hold.” Petitioner did not log back into the [lindsay@mcgee-lawfirm.com](mailto:lindsay@mcgee-lawfirm.com) account after the May 10, 2023 login. Petitioner is informed and believes that Respondent terminated her access to this account either when he logged in on May 10, 2023 at 1:55 p.m. to create the “manage litigation hold” or in the days following the May 12, 2023 incident for which Respondent was arrested for Criminal Domestic Violence. In any event, Petitioner did not have access to the [lindsay@mcgee-lawfirm.com](mailto:lindsay@mcgee-lawfirm.com) email from November 2022 until May 10, 2023, or after May 15, 2023. [Exhibit 4]

10. A Temporary Hearing was held in the Family Court on June 13, 2023. Respondent’s affidavit package included a copy of an email dated May 16, 2023, from Bank of America to [lindsay@McGee-lawfirm.com](mailto:lindsay@McGee-lawfirm.com). [Exhibit 5] On May 16, 2023, Petitioner no longer had

access to the [lindsay@mcgee-lawfirm.com](mailto:lindsay@mcgee-lawfirm.com) email account. Respondent's counsel stated that Respondent was the system administrator for the law firm email domain and, with that authority, had legally retrieved the May 16, 2023, Bank of America from the [lindsay@mcgee-lawfirm.com](mailto:lindsay@mcgee-lawfirm.com) email account. Petitioner immediately contacted Bank of America at which time she discovered that the [lindsay@mcgee-lawfirm.com](mailto:lindsay@mcgee-lawfirm.com) email address was added to her online banking on March 13, 2023, during the time period that Petitioner did not have access to this email account.

11. Petitioner issued subpoenas to Bank of America on June 14 and 15, 2023 to obtain the login history and other information regarding a suspected intrusion into her online account. The internal Bank of America records show that someone accessed Petitioner's bank account on Monday, March 13, 2023, at 07:20 PST (10:20 EDT) using an unidentified Apple iPhone that was connected to the AT&T cellular network. **[Exhibit 6]** At this point, Petitioner began issuing additional subpoenas to identify the individual to whom this IP address belonged. Notwithstanding, Petitioner is informed and believes that Respondent added the [lindsay@mcgee-lawfirm.com](mailto:lindsay@mcgee-lawfirm.com) email address to her online banking account because Respondent was the only person who had access to that email account at the time.

12. Thereafter, Petitioner began to delve into her suspicions that 1) Respondent was somehow accessing her text messages and emails and 2) there may also be recording devices in her home and/or automobile. On June 22, 2023, Petitioner's expert, John Bumgarner, requested access to Petitioner's Smart Home Manager Application associated with her home Wi-Fi network. This search revealed the possibility of there being covert surveillance cameras in Petitioner's home. Petitioner recalled electronic items that Respondent either gave her or placed in her home. Specifically, Petitioner identified some power adapters with additional plugs that Respondent installed in her home, as well as other potential devices. Petitioner immediately removed the plug

adapters, one of which she found in the garage where Petitioner often retreats to speak on the phone with her attorney outside the presence of her children. **[Exhibit 7]**

13. On June 23, 2023, Petitioner delivered these plug adapter devices to her forensic expert Steve Abrams. Mr. Abrams disassembled the device Petitioner found in her garage and confirmed that it contained a hidden camera. Mr. Abrams was able to extract the 16GB SD card embedded in the device and determined that the SD card contained video and audio recordings for the time period between October 9, 2022, and July 22, 2023, the date Petitioner removed this device from an outlet in her garage. The person monitoring this covert surveillance camera had allowed someone to listen to Petitioner's private conversations when the device was triggered by motion detection. There was a gap in the recordings from December 24, 2022, to April 30, 2023 as a result of someone deleting all data during that time period. The interim time gap in information unquestionably indicates that someone was accessing the device and selectively deleted information. Moreover, the deleted data included March 7, 2023 when Respondent came to Defendant's home, entered the garage, and took her golfcart.

14. Petitioner issued a subpoena to SCS Enterprises to obtain the purchase history for the covert surveillance camera discovered in her residence. SCS Enterprises' subpoena response indicates that a total of five devices identical to the device that was found in Petitioner's garage were purchased by Respondent on January 31, 2022, April 25, 2022, and July 26, 2022 and shipped to his office address 125 A Wappoo Creek Drive, Suite A, Charleston, South Carolina, 29412. **[Exhibit 8]**

15. According to the affidavit of Mr. Bumgarner, the WF-113 model of the covert surveillance camera that Respondent purchased from SCS Enterprises has the default name of GF-PH130. Petitioner's router log files indicate that there had been six different GF-PH130 named

devices that have authenticated and connected to the Wi-Fi network in Petitioner's home. Mr. Bumgarner also found that all of these devices last connected to Petitioner's Wi-Fi network in July 2023 and on Saturday July 8, 2023, at approximately 21:05 EDT a device named "Justins-iPhone" was connected to Petitioner's home Wi-Fi network. **[Exhibit 9]**

16. Petitioner then issued a subpoena to PayPal through which Respondent paid for the three separate purchases from SCS Enterprises. The documents provided by PayPal reflect that Respondent purchased additional covert surveillance on January 24, 2022, from the website knowyournanny.com which sells covert surveillance cameras. **[Exhibit 10]** The devices purchased from knowyournanny.com were shipped to Respondent's office located at 125 A Wappoo Creek Drive, Suite A, Charleston, South Carolina, 29412. A subpoena to Nanny Watch Services to identify the specific device purchased is outstanding. Finally, PayPal records also indicated that Respondent purchased a covert surveillance camera from Deluxe CCTV Incorporated's website on April 25, 2022, which is the same date that he purchased two covert surveillance cameras from SCS Enterprises.

17. It is significant that Respondent admitted to Petitioner that he placed the camera in her garage, but advised Petitioner that the other devices are now being kept at his office and in his home. Mr. Bumgarner notes that several of the covert surveillance cameras with the default names of GF-PH130 went offline the weekend of July 4, 2023. Upon information and belief, these devices were likely removed from Petitioner's residence prior to Friday, July 07, 2023, at 18:43 EDT, although one device came online on August 26, 2023.

18. Counsel for Petitioner respectfully submits that on its face the actions of Respondent intercepting Petitioner's Bank of America email and using that intercepted Bank of America email as evidence in court violated 18 USC §2515 which specifically prohibits the use of

these recorded conversations or the use of any evidence of intercepted wire or oral communications in "... any trial, hearing, or other proceeding in or before any Court, ... of the United States, a state, or a political subdivision thereof if the disclosure of that information would be in violation of this chapter" as well as the corresponding state statute (SC Code §17-30-65 ) as addressed hereinbelow.

19. Petitioner is informed and believes that Respondent committed numerous interceptions of her electronic and aural communications in violation of the South Carolina Homeland Security Act (SC Code of Laws §17-30-10, *et seq*) and the Electronic Communications Privacy Act (18 USC §2510, *et seq.*) when he accessed the [lindsay@mcgee-lawfirm.com](mailto:lindsay@mcgee-lawfirm.com) email account to intercept, read, print and disseminate the May 16, 2023 email from Bank of America, when he intercepted and/or read her text and email communications including those with her attorneys, and when he secreted at least six Wi-Fi connected hidden cameras with microphones within petitioner's home without her knowledge and used them to monitor and record her conversations, including with her attorneys, for over a year. While both the South Carolina Homeland Security Act (§17-30-15 (4)(a)(ii)) and Title I of the Electronic Communications Privacy Act have exemptions to the interception language for systems administrators "in the normal course of [their] employment while engaged in any activity which is a necessary incident to the rendition of [their] service" (18 USC §2515(2)(a)), the conduct engaged in by Respondent, intercepting the communications of Petitioner purely to benefit his own self-interest, falls clearly outside any legitimate system administrator exemption. Petitioner is informed and believes that Respondent has already utilized one of these illegally intercepted electronic communications by providing screenshots or photographs of the May 16, 2023, Bank of America interception to the family court through his attorneys.

20. Additionally, Respondent likely also committed multiple violations of the Stored Communications Act by accessing email and electronic communications in electronic storage in

Petitioner's iCloud, and Microsoft and Google email accounts. Respondent also violated the Computer Fraud and Abuse Act (18 USC §1030) by intentionally accessing a protected computer without authorization and thereby obtaining information contained in a financial record of Bank of America, a financial institution, on March 13, 2023, through May 16, 2023.

21. Petitioner respectfully submits that prior to the review, dissemination, or any use of such recordings, Petitioner may move before this Court, and hereby does move for this Court to hold an expedited hearing before an appropriate panel, to make a factual finding not only as to whether or not the intercepted communications violate the law, but also as to the other general admissibility issues relating to audio and video recordings and the information derived therefrom. SC Code of Laws §17-30-65 prohibits the introduction of any intercepted material into evidence before any court or tribunal within the state.

22. As such, Respondent's use of the material that he intercepted from the electronic and aural communications of Petitioner, and any material derivative of the intercepted material, should be suppressed, and barred from use in any litigation between the parties. Petitioner respectfully requests this honorable Court to issue an order suppressing all of the material that was intercepted by Respondent, including any and all derivative material.

23. Petitioner requested the identification of all surveillance devices and the identification of intercepted communications by Interrogatories and Request for Production served on opposing counsel on August 14, 2023, but responses are not yet due, although Counsel for Defendant made a request that Plaintiff comply with this request forthwith and deliver the requested covert cameras and electronic devices to Mr. Abrams for inspection. **[Exhibit 11]** Petitioner respectfully submits that she would be entitled to those discovery responses prior to any hearing set by this Court in this matter so as to properly prepare for the hearing.

24. Petitioner is informed and believes that since September 2021, and beginning the months prior to May 22, 2023, Respondent has monitored her actions and each and every conversation she has engaged in for conceivable nineteen months inside her home, including but not limited to countless telephone calls of which Respondent heard everything Plaintiff said to friends, her now known paramour, and more importantly her attorneys. Petitioner is further informed and believes that Respondent has been intercepting and/or reading her text messages since approximately September 2021, including her privileged communications with her attorneys. Petitioner is informed and believes that the genesis of virtually all evidence Respondent has compiled in this case, information that he provided to his private investigator, information he provided to his attorneys to develop their strategies and defenses, the allegations in his complaint, and his discovery requests seeking information is derived from the illegal audio/video recordings Respondent obtained from the covert surveillance cameras he placed in Petitioner's home and the text messages and emails of Petitioner that he illegally intercepted and/or read.

25. Further, Respondent engaged the services of a private investigator, John Clayton, on or about June 2022, after Respondent had been intercepting and reading Petitioner's text and email communications, after he had been accessing her Gmail account, and after May 2022 when he placed covert video/audio recording devices in Petitioner's home. Petitioner is informed and believes that the reason for engaging the private investigator and the directives including who to surveil was derived from the illegally obtained information and all evidence obtained by Mr. Clayton throughout his investigation is "fruit of the poisonous tree" and should be suppressed.

26. For these reasons and such further reasons as may appear at any hearing to be set on the matter, Petitioner hereby moves for a hearing to be held by this Court, if needed following this Court's review of this Motion and attachments, as required by S. C. Code Ann. § 17-30-110,

*et seq*, and U. S. Code Ann., 18 U.S.C.A. § 2511, *et seq*, and appropriate rulings made as to the intercepted communication(s) and that in the interim, any action by the trial court below be stayed in addition to an Order requiring the immediate listing of and disclosure of all audio/video recording devices, documents and/or records concerning the interception of electronic communications of Petitioner, plus, such other action, rulings, and other relief as may be appropriate in this matter, including but not limited to, an award of attorney's fees, costs and expenses.

27. Petitioner also moves for an order of this Court requiring the lower Court to segregate and seal the unlawfully obtained electronic communications and any evidence that has been gleaned from the use of said covert surveillance cameras and from the [lindsay@mcgee-lawfirm.com](mailto:lindsay@mcgee-lawfirm.com) email account. Petitioner believes that information should be segregated in the lower Court's file prohibiting review of said information by any Court including but not limited to Family Court, Common Pleas, General Sessions, Federal Court, either party, or the public.

28. Counsel verifies that he attempted in good faith to resolve this matter prior to filing this Motion, to no avail. Counsel also affirms to this Court that he has by copy of this Motion, notified opposing counsel, the guardian, and the Court below of this Motion.

29. This motion is further supported by the Affidavit of Petitioner [**Exhibit 12**], Affidavit of John Bumgarner [**Exhibit 13**], and Affidavit of Steve Abrams [**Exhibit 14**], as well as such other evidence which becomes available prior to the hearing in this matter.

#### CONCLUSION

Based upon the foregoing, Petitioner respectfully requests the following relief:

30. For this Court to hold an expedited hearing before an appropriate panel, to make a factual finding not only as to whether or not the intercepted communications violate the law, but

also as to the other general admissibility issues including suppressing all evidence relating to audio and video recordings, interception of text and email messages, and the information derived therefrom;

31. For a factual finding that Respondent installed covert surveillance recording devices in Petitioner's home and unlawfully obtained video and audio recordings;

32. For a factual finding that Respondent unlawfully accessed and intercepted Petitioner's text messages and emails;

33. For a factual finding that Respondent unlawfully accessed Petitioner's Bank of America personal account and intercepted Petitioner's emails from Bank of America, including the email dated May 16, 2023;

34. For a factual finding not only as to whether or not the intercepted communications violate the law, but also as to the other general admissibility issues relating to audio and video recordings and the information derived therefrom, to include any evidence from Respondent's private investigator, John Clayton;

35. For any action by the trial court below be stayed pending this court's Order.

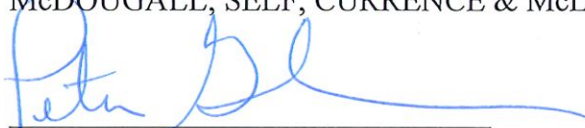
36. For Respondent to be required to provide the immediate listing of and disclosure of all audio/video recording devices, documents and/or records concerning the interception of electronic communications of Petitioner, and to make those recording devices available, with the original SD card and link to the software to decrypt the audio, for inspection by Petitioner's expert;

37. To determine and find that Respondent used unlawfully, obtained information to advance his case through his attorney's and exhibits;

38. For an award of attorney's fees and costs and expert fees and costs;

39. For such other and further relief as this court deems just fit and proper.

McDOUGALL, SELF, CURRENCE & McLEOD, LLP



PETER G. CURRENCE

791 Greenlawn Dr. Suite 4

Columbia, South Carolina 29209

(803) 776-3130

Attorney for Petitioner

September 1, 2023

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**Sep 01 2023**

**SC Court of Appeals**

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

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APPEAL FROM CHARLESTON COUNTY  
Family Court

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Case No. 2022-DR-10-3072

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Justin McGee,.....Respondent

v.

Lindsay McGee, .....Petitioner

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**PROOF OF SERVICE**

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I certify that I have served the MOTION TO SUPPRESS EVIDENCE on Respondent, by email and by depositing a copy of it in the United States Mail, postage prepaid on August 29, 2023, addressed below:

Mr. Jerry N. Theos  
Theos Law Firm, LLC  
11 State Street  
Charleston SC 29401

Ms. Marie-Louise Ramsdale  
Ramsdale Law Firm  
1476 Ben Sawyer Blvd., Suite 5  
Mt. Pleasant, SC 29464

Ms. Elizabeth Stringer  
Stringer Law  
753 Folly Road  
Charleston, SC 29412



**Peter G. Currence**

McDougall, Self, Currence & McLeod, LLP

791 Greenlawn Drive, Suite 4

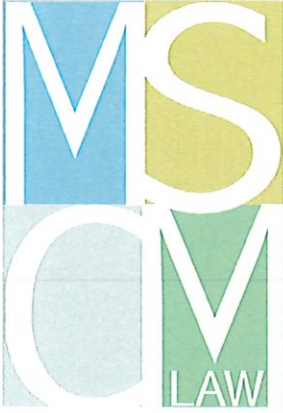
Post Office Box 90860

Columbia, SC 29290-1860

(803) 776-3130

ATTORNEYS FOR PETITIONER

August 12, 2023



McDougall | Self | Currence | McLeod

John O. McDougall\*†  
Peter G. Currence  
Ryan A. McLeod\*‡  
Alyssa H. Richardson  
R. Jason Hall^  
Adam Pickworth

Of Counsel: Michael W. Self

791 Greenlawn Dr., Suite 4, Columbia, SC 29209-2641  
P.O. Box 90860, Columbia, SC 29290-1860  
(803) 776-3130 phone; (803) 961-6653 fax

21 East Calhoun St., Sumter, SC 29150-4315  
P.O. Box 2197, Sumter, SC 29151-2197  
(803) 778-5062 phone; (803) 778-6908 fax

September 1, 2023

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**Sep 01 2023**

**SC Court of Appeals**

Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, SC 29211

RE: Justin McGee v Lindsay McGee  
Case #. 2022-DR-10-3072

Dear Ms. Kitchings:

Enclosed please find the AMENDED MOTION TO SUPPRESS EVIDENCE in the above referenced matter. I have amended the statement in the first paragraph to clarify the relief requested in the Motion. Nothing in the body of the Motion has changed including the exhibits attached to the original filing. Therefore, I have not attached another set of exhibits to this Amended Motion. Please let me know if it is required that I submit this Amended Motion along a second set of exhibits.

Also, the original Motion had the incorrect caption. We listed husband first because he is the Plaintiff, however, he is the Respondent so we have amended to list husband as Respondent and wife as Petitioner.

Please return the filed stamped copy to me. I am also enclosing a Certificate of Service. If another filing fee is required, please advise.

With kind regards.

Sincerely,

  
PETER G. CURRENCE

PGC:lr

Enclosure

Cc: Lindsay McGee (via email only)  
Jerry Theos (via email only)  
Brittany Point (via email only)  
Marie-Louise Ramsdale (via email only)  
Elizabeth Stringer (via email only)

Reply to Columbia Office | [pete@mscmlaw.com](mailto:pete@mscmlaw.com) | [www.mscmlaw.com](http://www.mscmlaw.com)