

The South Carolina Court of Appeals

Megan Cronin, Petitioner,

v.

William Cronin, Respondent.

Appellate Case No. 2023-000959

ORDER

Megan Cronin (Wife) has filed a motion pursuant to the South Carolina Homeland Security Act (the Act)¹ to suppress electronic communications, specifically text messages, which she argues William Cronin (Husband) "intercepted" in violation of the Act and Title III of the Omnibus Crime Control and Safe Streets Act of 1968 (the Federal Act).² The messages in question were sent to and from Wife's iPhone, but copies of these communications were obtained by Husband through a laptop computer (MacBook)³ synched with Wife's Apple account.

Both the Act and the Federal Act prohibit interception of wire, electronic, or oral communications except in manners provided by those statutes. 18 U.S.C.A. § 2511; § 17-30-10. Additionally, both Acts define "interception" as "the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device." 18 U.S.C.A. § 2510(4); § 17-30-15(3).

¹ S.C. Code Ann. § 17-30-10 to -145 (2014).

² 18 U.S.C.A § 2510 to -2523.

³ We acknowledge the parties disagree as to who owned the MacBook and to what extent Husband was permitted to access it. However, for the reasons below, we believe the ownership issue is ultimately irrelevant to Wife's motion.

We find Husband did not violate the Act by accessing Wife's past text messages on the laptop.⁴ The statute applies only to the acquisition of the contents of electronic communications that occur *contemporaneous* with their transmission, and not the subsequent acquisition of such communications while they are held in electronic storage. *See State v. Guerrero-Flores*, 402 S.C. 530, 534, 741 S.E.2d 577, 580 (Ct. App. 2013) (observing "[t]he [Act] is patterned after Title III of the [Federal Act]" and "federal cases analyzing comparable provisions of the Federal Act are persuasive in interpreting the provisions of the [Act]."); *United States v. Steiger*, 318 F.3d 1039, 1048-49 (11th Cir. 2003) (holding that "a contemporaneous interception—*i.e.*, an acquisition during 'flight'—is required to implicate the [Federal] Act with respect to electronic communications"); *Konop v. Hawaiian Airlines, Inc.*, 302 F.3d 868, 878 (9th Cir. 2002) (holding that "for [an electronic communication] to be 'intercepted' in violation of the [Federal] Act, it must be acquired during transmission, not while it is in electronic storage"); *Steve Jackson Games, Inc. v. U.S. Secret Serv.*, 36 F.3d 457, 462 (5th Cir. 1994) (analyzing statutory text and legislative history and concluding that "Congress did not intend for 'intercept' to apply to 'electronic communications' when those communications are in 'electronic storage'"); *see also* 86 C.J.S. Telecommunications § 208 (2021) ("In order for an 'intercept' of an electronic communication to occur for purposes of the [Federal] Act, the electronic communication at issue must be acquired contemporaneously with the transmission of that communication.").

Based on the evidence provided to this court,⁵ it appears Husband only viewed communications which were sent to the laptop prior to his accessing the computer; thus, Husband's actions did not constitute an "interception" under the Act.⁶ *See*,

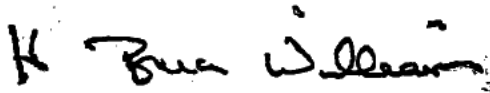
⁴ To the extent Wife also complains Husband's actions violated the Stored Communications Act and the Computer Fraud and Abuse Act, the Act does not provide for this court to determine those issues in its original jurisdiction. *See* 18 U.S.C.A. §§ 1030, 2701-13 (prohibiting unauthorized access to: (1) computers; and (2) communications stored in electronic communications facilities); § 17-30-110(A) (providing this court with jurisdiction over "mo[tions] to suppress the contents of any *intercepted* wire, oral, or electronic communication, or evidence derived therefrom") (emphasis added)).

⁵ We note Wife disposed of the MacBook; therefore, no additional information relevant to this motion may be obtained from the laptop itself.

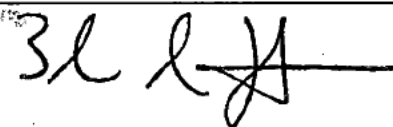
⁶ Nothing prohibits Wife from challenging the authenticity of these items in the lower court.

e.g., *Steiger*, 318 F.3d at 1048-49 (stating electronic communications must be intercepted contemporaneously with their transmission to violate the Federal Act).

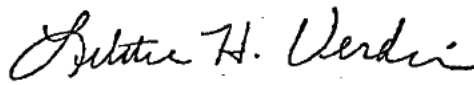
Accordingly, after careful consideration, Wife's motion to suppress is denied.⁷



C.J.



J.



J.

Columbia, South Carolina

cc:

Richard Giles Whiting, Esquire
Ashby Lawton Jones, Esquire
Nettie ElizaBeth Branham, Esquire
The Honorable Huntley S. Crouch

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⁷ Both parties' requests for a hearing and attorney's fees and costs are also 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)); § 17-30-135(A)(4) ("Any person whose wire, oral, or electronic communication is *intercepted* . . . has a civil cause of action . . . and is entitled to recover . . . a reasonable attorney's fee and other litigation costs reasonably incurred." (emphasis added)). Further, Husband's request for sanctions against Wife for her alleged spoliation of the iPhone and MacBook is denied because that issue is outside the scope of this court's limited review. *See* § 17-30-110(A) (providing this court with jurisdiction over "mo[tions] to suppress the contents of any intercepted wire, oral, or electronic communication, or evidence derived therefrom").