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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Colleton County

Court of General Session
The Honorable Robert J. Bonds, Circuit Court Judge

Appellate Case No. 2023-001747

THE STATE,

Respondent,

v.

RYAN LENARD MANIGO,

Appellant.

RETURN TO PETITION FOR SUPERSEDEAS

Appellant, Ryan Lenard Manigo, is a pretrial detainee in Colleton County currently charged with five counts of murder; arson first degree; two counts of criminal sexual conduct first degree; two counts of criminal sexual conduct with a minor; two counts of kidnapping; six counts of possession of a deadly weapon in the commission of a violent crime, burglary first degree; attempted murder and incest. Appellant petitioned this Court on November 28, 2023, to "stay and quash" the October 31, 2023, Order of the Honorable Robert J. Bonds that allowed Appellant's "pre-trial detention telephone calls" to be released to media outlets pursuant to their Freedom of Information Act[1] (FOIA) requests.[2] On November 14, 2023, this Court "decline[d] to quash the circuit court's order," however, it "temporarily stay[ed] the order to" allow the filing of responses

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[1] S.C. Code Ann. §§ 30-40-10 through 165.

[2] Appellant had been held at both the Colleton County Detention Center and the Clarendon County Detention Center. The Order addresses requests made to each facility.

to the petition. This return, on behalf of the State, follows. Procedurally, the State submits the appeal is interlocutory, thus the supersedeas petition must be denied and the notice dismissed. *See* Rule 241(c), SCACR (supersedeas works to stay the order on appeal during the pendency of the appeal).[3] This appeal is premature not only because it is an interlocutory appeal in a general sessions matter, but also because further review and factual development is expressly allowed under the circuit court Order. Further, such review and development may moot the questions posed. Even so, the State further submits, consistent with its position expressed in the circuit court, that the relevant statute places the discretion to release squarely upon the public body that holds the records, and that determination must be made on the individual records at issue and not blanket objections. *See generally* S.C. Code § 30-4-40 (a) and (b). Notably, by the terms of the Order that is the subject of this appeal, Appellant is protected from disclosure without an opportunity for argument. Appellant may seek review if release of a *specific* record would generate, in his opinion, the need to be challenged. At this juncture, though, the appropriate action is to deny the petition and dismiss the appeal to allow further factual development in the circuit court.

In support of its position, the State would respectfully show the Court:

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[3] The rule expressly speaks to supersedeas in civil actions; however, Appellant is not appealing from a civil action, but a motion in a general sessions matter. Normally, a criminal defendant may not appeal prior to being sentenced. *See State v. Rearick,* 417 S.C. 391, 400, 790 S.E.2d 192, 196 (2016) ("defendant may appeal only after sentence has been imposed"); S.C. Code Ann. § 14-3-330 (1) (setting out required finality for appellate jurisdiction). There is no required finality here and the notice should be dismissed. Of no little note, under the FOIA statute, a "citizen of the State" may seek redress by filing an action seeking a declaratory judgment and injunctive relief – a civil action. *See* S.C. Code Ann. Code § 30-4-100. Additionally, in some circumstances, "a person or entity with a specific interest" may "request a hearing" or move to "intervene in an action previously filed." *See* S.C. Code Ann. Code § 30-4-110. Neither provision was followed here. Again, the instant appeal is an improper, interlocutory appeal from the general sessions action and should be dismissed. In light of the dismissal, the petition for supersedeas must be denied.

1. On August 9, 2023, Appellant, through counsel, filed a motion in the criminal case to "Preclude the Release of Defendant's Private Communications Being Held and Maintained by the Colleton County Detention Center." Various media organizations filed requests to release jail call records. The detention center requested the Solicitor's Office represent it for purposes of the requests.[4] The Solicitor's Office did, and reviewed a number of jail calls determining, on behalf of the detention center, that some were entitled to exemption, some were not. The information and determinations were disclosed.

The circuit court held a hearing with the parties and representatives of the media. The circuit court resolved, in relevant part, that the jail calls fell within the definition of "public records" in S.C. Code Ann. § 30-4-20 (c), and Appellant failed to show that the release constituted an unreasonable invasion of privacy. (Order, para. 6 and 7).[5] Thus, the circuit court found that the provisions of S.C. Code Ann. § 30-4-30 (c) must be followed (*i.e,* provisions requiring review by the detention center and "timely noti[ce]" to the requesting media organizations whether the detention center determined release was appropriate or that the records would be considered exempt from release). (Order, para. 8). The circuit court rejected broad protection and found that exemption must be premised on characteristics of "specific records and recordings." (Order, para.

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[4] Our Supreme Court has noted before that some entities holding records subject to potential release "have shared interest" with the solicitor "in the prosecution of persons charged with committing crimes ... ." *Evening Post Pub. Co. v. City of N. Charleston*, 363 S.C. 452, 458, 611 S.E.2d 496, 499 (2005).

[5] Appellant's reliance on other jurisdictions with different definitional statutes simply do not apply. *See* Petition, at 4 citing *Bent v. State,* precedent from Florida. And, as another Florida court clarified, "*Bent* determined that the recorded phone calls of inmates were not public records within the meaning of the statutes and constitutional provisions. ... It did not decide that an inmate had a right of privacy in such phone conversations." *Palm Beach Newspapers, LLC v. State,* 183 So. 3d 480, 483 (Fla. Dist. Ct. App. 2016). At any rate, the communication there concerned communication by minors – that would not be allowed here, but for a different reason. *See* S.C. Code § 63-19-2030.

9). Independent of the statutory provisions,[6] the circuit court ordered that "if the detention center determines that each specific recording *is not exempt*," (*i.e.*, will be released), the detention center "must provide 3 business days' notice to the above-named Defendant of its intent to release the records and recordings" so that Appellant has the opportunity return to the circuit court and request specific relief. (Order, para. 10) (emphasis added).[7]

2. The State submits the instant appeal is premature. The circuit court did not order immediate release of all jail calls without further review; rather, the circuit court ordered that the detention center review and make the initial determination whether any or all recordings fall under a potential exemption, including 30-4-40 (a)(3). *See Pope v. Wilson,* 427 S.C. 377, 388, 831 S.E.2d 442, 448 (Ct. App. 2019) ("when a citizen in litigation with a governmental agency directs a FOIA request to that agency, the agency must show the applicability of a specific FOIA exemption to each requested public record"). If the detention center, through the Solicitor's Office, and upon review of each individual record, determines that an exemption is applicable and declines to disclose, and the circuit court agrees, Appellant's concern is moot. There are already some calls that have been identified as such. Alternatively, if the detention center, through the Solicitor's Office, and upon review of each individual record, determines that all or some should be released,[8]

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[6] S.C. Code Ann. § 30-40-110 (B) allows "a person or entity with a specific interest in the underlying records" to request either a hearing or otherwise intervene. However, the request must follow an allegation the records would be exempt "under Section 30-4-40(a)(1), (2), (4), (5), (9), (14), (15), or (19)...." Appellant seeks review of potential exemption under Section 30-4-40 (a) (3), which is omitted in the referenced provision, thus, the provision for request of a hearing is not applicable.

[7] Appellant's motion was filed in general sessions and appears to be in the nature of a motion for a restraining order. While restraining orders are generally civil matters, our Supreme Court has resolved that "a court of general sessions has subject matter jurisdiction to issue an injunction, if necessary, to protect its proceedings." *State-Rec. Co. v. State*, 332 S.C. 346, 349, 504 S.E.2d 592, 594 (1998).

the circuit court has already exercised its authority to temporarily restrain disclosure until specific arguments may be heard and it makes a ruling on whether disclosure will be allowed.[9] Simply, Appellant brings this appeal too soon. At this juncture, the facts have not yet been developed to allow a definitive and informed ruling. *See generally Evening Post Pub. Co. v. Berkeley Cnty. Sch. Dist.*, 392 S.C. 76, 84, 708 S.E.2d 745, 749 (2011) ("The General Assembly, by the clear language of the statute, believes FOIA should be broadly construed to allow the public to gain access to public records. The interest in confidentiality ... should not trump the public's right to know at this juncture. More development of the facts ... is necessary to explore these competing interests before rendering judgment as a matter of law."); *Evening Post Pub. Co. v. City of N. Charleston,* 363 S.C. 452, 458-459, 611 S.E.2d 496, 500 (2005) (finding "[t]he Court of Appeals erred by holding that harm is irrefutably presumed when the subject of the FOIA request will be evidence in a prospective criminal trial. We reject this categorical rule in favor of the usual case-by-case approach.").

Essentially, Appellant cannot show the fundamental reason a writ of supersedeas should be granted – to maintain a status quo while on appeal. *See* Rule 241(c), SCACR. And again, though this particular appeal has its focus on an issue collateral, but related, to the general sessions charges, it is not an independent civil action which greatly undermines reliance on the cited rule. Even so, as set out above, this issue need not be addressed as the entirety of the appeal is premature.

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[8] This is consistent with the statutory provision in S.C. Code Ann. § 30-4-40(b): "If any public record contains material which is not exempt under subsection (a) of this section, the public body shall separate the exempt and nonexempt material and make the nonexempt material available in accordance with the requirements of his chapter."

[9] The State may also wish to address arguments presented regarding disclosure based on the nature of the communication(s) and defense arguments eventually presented. The circuit court's provision for notice and opportunity allows the parties to the criminal case an opportunity to be fully heard.

3. Further, the circuit court has already provided additional protections for Appellant independent of what is provided in the FOIA statutory structure. These additional protections are sufficient to allow assertion and litigation of Appellant's positions, whether it be an assertion of disclosure negatively affecting his right to a fair trial, or his personal privacy. [10] *See* S.C. Code Ann. § 30-4-40 (a)(3)(B) and (C).[11] To lift the stay and allow the matter to proceed in the circuit

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[10] *But see State v. Ellefson*, 266 S.C. 494, 500, 224 S.E.2d 666, 669 (1976) (acknowledging a defendant's "rights are curtailed" in detention facilities for purposes of security); *Busby v. Dretke*, 359 F.3d 708, 721 (5th Cir. 2004) ("Given that jail officials could legitimately read Busby's mail, we do not think that the First Amendment would bar them from turning letters over to the prosecutors if the jailers happened to find valuable evidence during their routine monitoring."); *Doe v. Berkeley Publishers*, 329 S.C. 412, 414, 496 S.E.2d 636, 637 (1998) ("Under state law, if a person, whether willingly or not, becomes an actor in an event of public or general interest, 'then the publication of his connection with such an occurrence is not an invasion of his right to privacy.'") (*quoting Meetze v. The Associated Press*, 230 S.C. 330, 337, 95 S.E.2d 606, 609 (1956)); *United States v. Van Poyck*, 77 F.3d 285 (9th Cir. 1996) ("any expectation of privacy in outbound calls from prison is not objectively reasonable").

Given the precedent that may well be against him, the State submits allowing additional proceedings to give context to Appellant's broad assertions would prevent either an overly broad or an unnecessarily narrow ruling on generalities. Many of Appellant's questions posited in the petition as to types of communications or individuals on the call may not ever be at issue once the record is developed. *Sangamo Weston, Inc. v. Nat'l Sur. Corp.*, 307 S.C. 143, 148, 414 S.E.2d 127, 130 (1992) ("[An appellate] court will not issue advisory opinions and cannot alter precedent based on questions presented in the abstract."). *Accord I'On, L.L.C. v. Town of Mt. Pleasant,* 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) ("Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments.").

[11] Moreover, to the extent Appellant is simply attempting to keep his crimes and notoriety out of the media, that is unlikely. First, an internet search with his name already yields multiple articles detailing his crimes. *See, e.g,* https://www.wjcl.com/article/ryan-manigo-colleton-county-death-penalty/44700100; https://www.live5news.com/2023/07/31/colleton-county-murder-suspect-faces-17-new-charges/; https://www.nbcnews.com/news/us-news/1-6-people-found-dead-south-carolina-house-fire-was-11-year-old-daught-rcna92428. But media attention does not equate with unfair proceedings. " It is not required ... that the jurors be totally ignorant of the facts and issues involved." *Irvin v. Dowd,* 366 U.S. 717, 722 (1961). Simply, "mere exposure to pretrial publicity does not automatically disqualify a prospective juror" rather, "[t]he relevant question is ... whether the jurors had such fixed opinions that they could not judge impartially the guilt of the defendant." *State v. Evins,* 373 S.C. 404, 412–13, 645 S.E.2d 904, 908 (2007). Our Supreme Court has cautioned "that jury voir dire is the preferred and generally

court simply encourages the development of a factual record that is essentially to fair appellate review. [12] The State acknowledges that this Court expressly requested that "the parties or amici ... address section 30-4-40 (a)(3)." (November 14, 2023, Order). The State submits that the most accurate response is that proper arguments regarding the provision as to specific records have not yet been made to allow the issue to be properly addressed on appeal. Notably, the terms referenced for potential exemptions in the section are not specifically defined. To weigh in generally would not allow the Court to properly consider competing interests, if any, as to a specific record. Again, the determination must be made case by case. *City of Columbia v. Am. C.L. Union of S.C., Inc.*, 323 S.C. 384, 387, 475 S.E.2d 747, 749 (1996) (rejecting concept of "*per se* exempt[ion]").

4. To the extent Appellant claims he will suffer irreparable harm, (Petition at 1), the State submits the circuit court order does not support the premise for that assertion. Appellate contends that essentially immediate and wholesale release of records will follow; however, as set out above, the circuit court's order is much more measured and provides Appellant the opportunity for fair litigation, and, if necessary, further opportunity to seek restraint.

5. Lastly, to the extent Appellant contends there is no adequate way to protect potential disclosures while propriety of release is litigated, the State disagrees. Circuit courts have the ability to protect potential privileged matters while determining the question of release. *See Ex parte Hearst-Argyle Television, Inc.*, 369 S.C. 69, 74, 631 S.E.2d 86, 89 (2006) ("When the alleged

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accepted tool that protects a defendant from the prejudicial effects of pre-trial publicity." *Ex parte Hearst-Argyle Television, Inc.*, 369 S.C. 69, 77, 631 S.E.2d 86, 90 (2006).

[12] The State notes that to grant Appellant's requested relief to quash the Order would result in removing the very notice that protects his ability to seek an order restraining the media from receipt and use of the items. The State has found no indication of any objection that would cause or support a challenge to the notice and protective provision in the Order should the case be returned to the circuit court.

'higher value' justifying [courtroom] closure is protecting the defendant's Sixth Amendment right to trial by an impartial jury, the courtroom may be closed only if specific findings are made that (1) there is a substantial probability that the defendant's right to a fair trial will be prejudiced by publicity, (2) there is a substantial probability that closure would prevent that prejudice, and (3) reasonable alternatives to closure could not adequately protect the defendant's rights."); *see also State v. Blackwell,* 420 S.C. 127, 154–55, 801 S.E.2d 713, 727 (2017) (providing procedure for "the judge alone" to "review the contents of" a witness's privileged mental health records to determine whether records must be provided to the defense).

CONCLUSION

WHEREFORE, having made its return, and for all the foregoing reasons, the State submits the petition for writ of supersedeas should be denied and the notice of appeal should be dismissed in favor of further factual development below.

Respectfully submitted,

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November 29, 2023
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PROOF OF SERVICE

I, Angela Brown, am an employee of the Respondent, hereby certify that as per the March 20, 2020, Order of the Chief Justice, the Return to Petition for Supersedeas, and Certificate of Service has been forwarded to Appellant's counsel, via email today, November 29, 2023 to S. Boyd Young, Esquire at byoung@sccid.sc.gov, Robert L. Bank, Jr., Esquire at rbank@sccid.sc.gov and Matthew Walker, Esquire at mwalker@bcgov.net.

I further certify that all parties required by Rule to be served have been served.

This 29th day of November, 2023.

s/ Angela Brown

Angela Brown
Legal Assistant to Melody J. Brown
Senior Assistant Deputy Attorney General