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Nov 29 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM COLLETON COUNTY  
Honorable Robert J. Bonds, Circuit Court Judge

Appellate Case No. 2023-001747

THE STATE.....*Respondent,*

v.

RYAN LENARD MANGIO.....*Petitioner.*

**GRAY MEDIA GROUP, INC.'S RETURN  
TO WRIT OF SUPERSEDEAS**

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## ARGUMENT

### I. Petitioner failed to allege sufficient grounds to grant a writ of supersedeas.

Rule 241(d)(3), SCACR, requires that a petition for a writ of supersedeas be verified by the client. The petition for writ before this Court fails to include the verification of the Petitioner, Mr. Manigo, and is therefore insufficient on its face. Additionally, while the request for writ of supersedeas states in the opening paragraph that “Petitioner will suffer irreparable harm,” Petitioner fails to cite what specific, or even general, harm he will suffer should this Court deny the relief requested. For these reasons, the Petitioner has failed to allege sufficient grounds to grant a writ of supersedeas.

Further, because the Petitioner seeks relief related to an order requiring a party to produce certain documents, a stay of this matter is improper. While other appellate matters trigger an automatic stay, Rule 241, SCACR, provides an exception for “[j]udgments directing the assignment or delivery of documents or personal property as provided in S.C. Code Ann. § 18-9-150.” As the Court is aware, the Circuit Court judgment in this matter orders the Respondent to deliver certain documents to the requesting parties. More specifically, following a hearing of October 24, 2023, an Order was entered finding certain documents to be non-exempt public records and *requiring* Colleton County to “comply with the procedures set forth in the Freedom of Information Act” after providing the Petitioner and interested parties with 72-hours advance notice of doing so. As evidenced by Attachment One of Petitioner’s request, the Respondent clearly intended to comply with this Order, and but for the filing by Petitioner with this Court, would have immediately done so. S.C. Code Ann. § 30-4-30(C) requires that a public body provide non-exempt public records to a requestor “no later than thirty calendar days” from the date of final determination. Relying on the same, the Circuit Court ordered Respondent to comply with state

law and produce the non-exempt public documents to the requesting parties. Should the Court grant the relief requested by the Petitioner, Colleton County will be prohibited from complying with state law, as required by S.C. Code Ann. § 30-4-30(C), during the pendency of this appeal.

## **II. Discussion of FOIA Exemptions**

The South Carolina Freedom of Information Act provides that “a person has a right to inspect, copy, or receive an electronic transmission of any public record of a public body, except as otherwise provided by Section 30-4-40, or other state and federal laws, in accordance with reasonable rules concerning time and place of access.” S.C. Code Ann. § 30-4-30(A)(1). It is undisputed that the detention center is a “public body.” A “public record includes all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by a public body.” S.C. Code Ann. § 30-4-20(c). It is undisputed that the detention center records all telephone calls of its inmates, and that those recordings are in the possession of, and retained by, Colleton County. Thereby, making the recordings “public records” pursuant to FOIA.

FOIA is remedial in nature and should be liberally construed to carry out its purpose. Quality Towing, Inc. v. City of Myrtle Beach, 345 S.C. 156 (S.C. 2001). It is important to note that any exemptions that may be applicable to certain documents belong to the government entity claiming those exemptions. S.C. Code Ann. § 30-4-40(a) provides specific exemptions that “a public body may but is not required to exempt from disclosure.” Further, “if any public record contains material which is not exempt under subsection (a)..., the public body shall separate the exempt and nonexempt material and make the nonexempt material available in accordance with the requirements of this chapter.” S.C. Code Ann. § 30-4-40(b). Our courts have held that whether a record is exempt depends on the particular fact of the case. City of Columbia v. ACLU, 323 S.C.

384, 387 (1996). The determination of whether documents or portions thereof are exempt from FOIA must be made on a case-by-case basis. Id. Additionally, it is well settled that the exemptions in section 30-4-40 “are to be narrowly construed so as to fulfill the purpose of FOIA...to guarantee the public reasonable access to certain activities of the government.” Fowler v. Beasley, 322 S.C. 463, 468 (1996). Exemptions should be narrowly construed to not provide blanket prohibition of disclosure. Id. The government has the burden of proving an exemption applies. Id. In this case, the government has exempted three of the recorded calls, and is not claiming any other exemptions.

S.C. Code Ann. § 30-4-40(a)(2) provides that a public body may exempt from disclosure “information of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy.” In S.C. Lottery Comm’n v. Glassmeyer, 433 S.C. 244 (S.C. 2021), our Supreme Court found that in order to invoke this exemption, “[a] public body must make two decisions...(1) The public body must determine whether the information requested is personal and (2) whether the disclosure would constitute an unreasonable invasion of privacy...[i]f so, the public body must determine whether to disclose the information.” Gray Media, Inc.’s FOIA request does not request information of a personal nature, and therefore does not meet the first prong of the Court’s test in Glassmeyer. Additionally, if the government wished to cite this exemption, this statute gives the mechanism to do so.

S.C. Code Ann. § 30-4-40(a)(3)(A) provides that a public body may exempt from disclosure “records, video or audio recordings, other information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information: would interfere with a prospective law enforcement proceeding.” In Evening Post Publ. Co. v. City of N. Charleston, 363 S.C. 452 (S.C. 2005), our Supreme Court held that “we do not close the door to pre-trial publicity ever factoring into a decision whether this exemption

applies.” As stated, the exemption is for the government to cite, which they have not done in this case, and the government’s burden to prove.

S.C. Code Ann. § 30-4-40(a)(3)(B) provides that a public body may exempt from disclosure “records, video or audio recordings, other information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information: would deprive a person of a right to a fair trial or an impartial adjudication.” In Ex parte First Charleston Corp., 329 S.C. 31 (S.C. 1998), our Court held that even in highly publicized cases, *voir dire* is usually sufficient to ensure a fair trial. In fact, we can look to the criminal trial of Richard A. Murdaugh that occurred in Colleton County earlier this year to show that just because a case is highly publicized does not default to the defendant not receiving a fair trial. The government has not cited this exemption, and Petitioner has no grounds to allege this exemption.

S.C. Code Ann. § 30-4-40(a)(3)(C) provides that a public body may exempt from disclosure “records, video or audio recordings, other information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information: would constitute an unreasonable invasion of personal privacy.” The FOIA statute does not define “unreasonable invasion of personal privacy.” In U.S. v. Van Poyck, 77 F.3d 285 (9th Cir. 1996), the Court held that “any expectation of privacy in outbound calls from prison is not objectively reasonable and that the Fourth Amendment is therefore not triggered by the routine taping of such calls.”<sup>1</sup> In the present case, Petitioner and whomever he is calling or speaking to hears a recording explicitly stating that the call is recorded and that the call is not private. However, if the Court finds that Petitioner does have a right to privacy during outbound calls to non-attorneys or other non-privileged persons, our courts have held that we resort to the general privacy

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<sup>1</sup> Van Poyck was a pre-trial detainee at time of the recordings.

principles, which involves a “balancing of conflicting interests of the individual in privacy on the one hand against the interest of the public’s need to know on the other.” Burton v. York County Sheriff’s Dep’t, 358 S.C. 339 (S.C. 2004). However, a limitation on the right to privacy is that it does not prohibit the publication of matter which is of legitimate public or general interest. Soc’y of Prof’l Journalists v. Sexton, 283 S.C. 563 (S.C. 1984). Our courts have held that, as a matter of 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. Doe v. Berkeley Publishers, 329 S.C. 412 (S.C. 1998). The Petitioner’s pending charges have been, and are of, great public interest. The government has not cited, and Petitioner cannot meet the burden of showing that the release of any of the recordings is an unreasonable invasion of privacy.

### CONCLUSION

Based on the foregoing reasons, Gray Media Group, Inc. respectfully prays this Court deny Petitioner’s request for a writ of supersedeas.

This 29<sup>th</sup> day of November, 2023 in Charleston, South Carolina.

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**PROOF OF SERVICE**

I certify that I have served Gray Media Group, Inc’s *Return to Petitioner’s Petition for Writ of Supersedeas* on the below by e-mailing a copy of the same of the following addresses:

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