

THE STATE OF SOUTH  
CAROLINA  
IN THE COURT OF APPEALS

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DEC 05 2023

SC Court of Appeals

APPEAL FROM COLLETON COUNTY

Court of General Sessions

HONORABLE Robert J. Bonds

Appellate Case No. 2023-001747

The State,.....Respondent

v.

Ryan Lenard Manigo,.....Appellant

**REPLY TO STATE’S RETURN TO PETITION  
FOR SUPERSEDEAS**

ARGUMENT IN REPLY

The State<sup>1</sup> seeks to delay consideration of the merits on the three issues before this Court with the red herring that the factual record is not complete. On the first issue – whether recorded

<sup>1</sup> While the Petitioner has no objection to this Court hearing from a variety of perspectives, it is likely the State does not have standing on this issue. Typically, a dispute involving jail calls should involve the person making the jail call, a representative from the pretrial detention facility, and a representative from the party requesting the information pursuant to FOIA. Here, while the State has reviewed the calls to determine exemptions, they are not representatives of the pretrial detention facility. Indeed, the State’s review of the jail calls is likely a violation of the Petitioner’s Fourth Amendment rights pursuant to State v. Ellefson, 226 S.C. 494, 224 S.E.2d 666 (1976).

telephone calls of pretrial detainees (jail calls) are public records subject to the Freedom of Information Act (FOIA) – the facts are complete and the circuit court issued a final ruling. The second issue – the constitutional deprivations if the Petitioner’s calls are released – is a purely legal question which this Court reviews de novo. The record is also complete on whether FOIA’s exemptions apply. This Court should reject the State’s red herring and consider the merits.

The facts necessary for this Court’s review are in the record. The Petitioner preemptively filed a motion to prevent the release of jail calls pursuant to FOIA if any requests were made. The Petitioner requested that if a FOIA request was made, there be a hearing between the Petitioner, a representative from the pretrial detention facility, and the requestor to determine whether the jail calls were subject to FOIA. Subsequently, FOIA requests by various media outlets were made. A hearing was held where the Petitioner, the requestor, and the State was present. The Petitioner objected to the release on the aforementioned grounds. The circuit court ruled that jail calls were public records subject to FOIA. It further ruled that the release would not violate any constitutional rights of the Petitioner. Finally, it held that both the State and the Petitioner could assert exemptions. The Petitioner moved to reconsider and requested a stay. Both were denied. The State provided the jail calls at risk for release to Petitioner and indicated its intention to release the jail calls to the requestors in three days. The Petitioner’s Petition for Writ of Supersedeas followed.

I. Jail calls are not public records subject to release pursuant to FOIA.

For a record to be subject to FOIA it must be: 1) a public record; 2) belonging to a public body. However, that does not end the analysis. The purpose of FOIA is to guarantee the public the right to “reasonable access to **certain activities of the government.**” Pope v. Wilson, 427 S.C. 377, 389, 831 S.E.2d 442, 448 (Ct. App. 2019) (emphasis added). For the public record to be

subject to FOIA it must *also* relate to government activity. Jail calls are between pretrial detainees and their friends, families, and attorneys. No government actors are a party to the calls.

The calls typically relate to the details of their pending criminal cases, their day-to-day activities, and the pretrial detainee learning about what is going on in the world outside of the pretrial detention facility. Parties to these calls often are minors and can, in some cases, be victims. This Court, in recognizing the clear intent of the legislature, has pointed to courts denying FOIA requests where there is “no evidence in the record demonstrat(ing) disclosure would further the FOIA’s purpose of protecting the public from secret government activity.” Glassmeyer v. City of Columbia, 414 S.C. 213, 223, 777 S.E.2d 835, 841 (Ct. App. 2015).

The legislature did not create FOIA with the intention of weaponizing a procedure for the press, bloggers, or any curious member of the public to listen in on the most private details of other private citizens’ phone calls, simply because they are in pretrial detention. The legislature created it with the intent, which our courts have long recognized, that the record being released must relate to government activity.

The circuit court ruled on this issue. Specifically, the circuit court found “that the recordings made of jail calls at each detention center are public records as defined by S.C. Code Ann. § 30-4-20(c).” (Circuit Court order clocked Oct 31, 2023). There is no other factual record that needs to be made on this issue. If this Court finds that jail calls are not subject to FOIA, the remaining issues need not be addressed, and no other record made. The Respondent failed to address the substance of this issue in their Return to Petition for Supersedeas. A glaring sign that the State’s argument is a red herring is that it failed to identify any areas where the record is deficient.

II. The Petitioner's constitutional rights prevent the release of jail calls pursuant to FOIA.

This issue is a legal question. As has been argued by multiple amicus briefs submitted by various organizations, the release of jail calls subject to FOIA implicates a number of constitutional concerns for the Petitioner and any other pretrial detainee in the State of South Carolina.<sup>2</sup> Specifically, that the Petitioner's privacy rights will be violated under the South Carolina Constitution's heightened right to privacy. Petitioner's right to a fair trial will be violated. Petitioner is being treated differently than a non-incarcerated individual violating his right to equal protection. Petitioner's due process rights and any other State and Federal Constitutional rights are being violated by the release of his jail calls pursuant to FOIA.

Like the previous issue, these issues have been ruled on by the circuit court. Specifically, the circuit court held, "that the Defendant's rights under Title 30, Chapter 4 of the South Carolina Code of Laws (FOIA), the First, Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and Article I, §§ 3, 9, 10, 11, 12, 14, and 15 of the Constitution of the State of South Carolina, State v. Ellefson, 266 S.C. 494, 224 S.E.2d 666 (1765), and State v. Blackwell, 420 S.C. 127, 801 S.E.2d 713 (2017) do not prevent the disclosure of calls under FOIA." (Circuit Court order clocked Oct 31, 2023). There is no other factual record that needs to be made on this legal issue. This Court reviews legal issue de novo. If this Court finds that the State and Federal constitutions prevent the release of jail calls pursuant to FOIA, the remaining issues need not be

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<sup>2</sup> Amicus briefs were submitted by the National Association of Criminal Defense Lawyers, the South Carolina Association of Criminal Defense Lawyers, and the South Carolina Public Defender Association.

addressed, and no other record made. The Respondent failed to address the substance of this issue in their Return to Petition for Supersedeas.

III. FOIA's exemptions prevent the release of jail calls.

The State appears to have only addressed issues related to exemptions. However, despite the Court requesting discussion on S.C. Code 30-4-40(a)(3), 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.” (Respondent’s Return to Petition for Supersedeas). As an initial matter, the State spends considerable time asserting that the Petitioner has not suffered irreparable harm and that the Petitioner filed an improper Writ of Supersedeas.<sup>3</sup> However, the irreparable harm is clear. If the jail calls are released, they cannot go unheard by the media and the public. Likewise, the Petitioner’s privacy cannot be returned to him or to the called parties. The Petitioner’s due process rights, right to a fair trial, unequal treatment, and any other rights that he has will be taken from him with no mechanism to undo it. Faced with a circuit court that had previously denied an order for a stay, the Petition for Writ of Supersedeas was filed.<sup>4</sup>

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<sup>3</sup> It appears the State believes this should be filed pursuant to Rule 241(c), SCACR. However, the original Petition for Writ of Supersedeas was filed under the common law with the South Carolina Supreme Court. See State v. Cooper, 342 S.C. 389, 536 S.E.2d 870 (2000), State v. Price, 441 S.C. 70, 893 S.E.2d 286 (2023). This filing is a Writ. Not an interlocutory appeal.

<sup>4</sup> In a similar general sessions case currently pending in the Ninth Judicial Circuit, State v. Jamie Komoroski, (2023GS1003982-85) the defendant’s jail calls were released pursuant to FOIA without giving the defendant an opportunity to object to their release. In a subsequent order in Gray Media Group, Inc. v. Kristin Graziano, (2023-CP-10-03027) part of the circuit court’s order affirming the release of the jail calls pursuant to FOIA was based on the fact that the jail calls had already been released to the public and that the “cat [was] out of the bag.” Petitioner hopes to avoid that outcome with this Writ of Supersedeas.

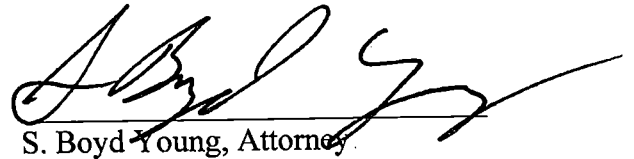
As it relates specifically to the exemptions provided for in FOIA, there are a number of exemptions that would be relevant to the Petitioner's interests. As the Petitioner laid out in his Petition for Writ of Supersedeas, the exemptions related to privacy and a fair trial are of particular interest. However, there is no mechanism for the Petitioner to assert those exemptions. The Petitioner has to rely, in this case, on the very people prosecuting him to assert those exemptions and protect his interests. Even if the Petitioner were to request a hearing under S.C. Code 30-4-110(b) as a person with a specific interest, the statute does not provide the opportunity to pursue relief specifically for the exemptions under S.C. Code 30-4-40(a)(3). The lack of a mechanism for a private citizen to be able to object to the release of their own recorded private phone calls highlights the fact that the legislature never intended for FOIA to be used this way.

It is unclear what exemptions the pretrial detention facility (or in this case, the State) has or would assert. The incentives are misaligned. It benefits the State to release jail calls painting Petitioner in a bad light. Petitioner cannot rely on the State to protect his interest. Nonetheless, there are a number of exemptions the pretrial detention facility may assert that relate to the security of the facility, interference with law enforcement proceedings, confidential sources, and other law enforcement interests. There may be other parties that are recorded on the jail calls that might assert their rights under S.C. Code 30-4-110(b). While there has been no hearing on what exemptions might apply in this particular case, judicial economy affords this Court the opportunity to consider these issues now without remanding to the circuit court simply to have the Petitioner refile a subsequent Petition for Writ of Supersedeas in a matter of weeks. The record is sufficient for this Court's consideration.

Conclusion

For the foregoing reasons, this Court should quash the circuit court's order and find that jail calls are not public records subject to FOIA. Alternatively, this court should find the Petitioner's State and Federal constitutional rights prevent the release of the jail calls. Finally, if this Court finds the jail calls are subject to FOIA and Petitioner's State and Federal constitutional rights afford him no protections from their release, this Court should provide a mechanism for the Petitioner and other parties to assert exemptions that would prevent the release of his jail calls pursuant to FOIA.

December 5, 2023



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The Honorable Robert J. Bonds, Circuit Court Judge  
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**PROOF OF SERVICE**

The undersigned hereby certifies that on the date indicated below she served counsel for the Respondent with the Reply to State's Return to Petition for Supersedeas on the following as indicated herein below, by emailing a copy of the same at the following addresses:

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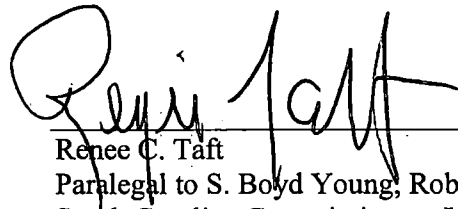
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