

**RECEIVED**

**Dec 14 2023**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM GREENVILLE COUNTY  
Family Court

---

Family Court Case No. 2023-DR-23-0198

Appellate Case No.

---

Jeffrey Ellicott Lindley, Respondent,

v.

Sara Elizabeth Lindley, Petitioner,

---

**MOTION TO SUPPRESS EVIDENCE**

---

This matter comes before the Court on behalf of Petitioner by and through her undersigned counsel, who would show unto this Court, pursuant to Rule 240, SCACR 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 all evidence relating to intercepted and/or illegally obtained social media messages and the information derived therefrom.

1. Petitioner and Respondent are husband and wife, having been married on April 22, 2006. They are the parents of two children who are aged sixteen and twelve. The parties separated on January 20, 2023.

2. Respondent installed software called Dr. Fone onto a MacBook used by Petitioner, which synced the software to all devices used by Petitioner, including her iPhone and her iPad in August and September 2022. Dr. Fone has the capabilities to allow Respondent to recover deleted electronic communications, from Petitioner's Apple devices as well as transfer, migrate, and store data from Petitioner's electronic devices to Respondent's electronic devices.

3. As set forth in the affidavit of Steven M. Abrams, J.D., M.S. (hereinafter, "Abrams"), Dr. Fone is a toolkit of applications for performing various system functions and hacks of Apple and Android mobile devices. Among the applications in the Dr. Fone Toolkit are applications to recover deleted data from those devices, to bypass passcodes and to transfer the data from mobile devices to computers.

4. According to Abrams's examination, Dr. Fone was installed on Petitioner's MacBook in August 2022. On September 30, 2022, Respondent configured the Dr. Fone phone manager application on the MacBook and propagated the application to the iPhone and iPad via shared iCloud drive storage. Various components of the Dr. Fone application were accessed and used on the MacBook on at least three dates, September 30, 2022, March 23, 2023, and April 17, 2023.

5. According to a Dr. Fone installation log file on the MacBook, on September 30, 2022, user "jlindley40" connected Dr. Fone to an iPhone and began a transfer from the iPhone to the MacBook. The iPhone is serial number D594HHC7XP, which does not correspond with either of the Apple mobile devices of Petitioner's examined by Abrams. The log file details each photo that was copied from the iPhone in a four-minute transfer window from 10:15 p.m. to 10:19 p.m. Based on that timing, Abrams concluding that "jlindley40" was the user who likely pushed the application onto the iCloud drive shared by Petitioner's Apple mobile devices.

6. For example, it appears on the iPad that a Dr. Fone transfer application installation package (.drfone\_transfer\_setup\_full3354.dmg.icloud) was synched via iCloud at 10:09 p.m. on September 30, 2022. The full path of this Dr. Fone transfer application is “/mobile/Library/MobileDocuments/com~apple~CloudDocs/Documents/.drfone\_transfer\_setup\_full3354.dmg.icloud.” The “/mobile/Library/MobileDocuments” portion of this path indicates that the file is in the iCloud share directory. This indicates that “jlindley40” used the MacBook to push this Dr. Fone transfer application over iCloud to the shared iCloud library at 10:09 p.m. on September 30, 2022.

7. An examination of Petitioner’s iPhone, according to Abrams, found the exact same Dr. Fone transfer application in the iCloud share directory, at the same exact time on September 30, 2022. This confirms that the iCloud from the MacBook was being shared with both the iPhone and iPad. Both the iPhone and the iPad accessed the Dr. Fone application from iCloud.

8. The evidence found in Abrams’s examination confirmed that the Dr. Fone toolkit was installed by Respondent on the MacBook and, via iCloud, was shared with Petitioner’s iPhone and iPad. Therefore, the Dr. Fone software was available on the Petitioner’s iPhone and iPad.

9. Respondent admits that he installed Dr. Fone on a MacBook in the family home and that Dr. Fone automatically synced with every device connected to the computer, which were the iPad and iPhone used exclusively by Petitioner. However, Respondent never shared with Petitioner that her personal iPad and iPhone data was being accessed nor did Respondent get Petitioner’s consent to access her devices.

10. Respondent admits under oath that he used his personal iPhone to take pictures of Instagram direct messages between Petitioner and another individual appearing on the screen of

an iPad tablet. This iPad tablet was used exclusively by Petitioner and she did not give Respondent consent to access her private data on her iPad.

11. A Temporary Hearing was held on March 15, 2023, in the Family Court in Greenville County. Petitioner served a Motion *in Limine* asking the Court for an Order to exclude introduction of or reference to the improperly intercepted electronic communications. In Petitioner's Motion *in Limine*, she cited Fulmer v. Coggeshall, S.C. Ct. Ap. Order filed September 2, 2022.

12. The Family Court in Greenville County denied the Petitioner's Motion *in Limine* and considered the Petitioner's intercepted electronic communications. The Petitioner filed a Motion to Reconsider the decision made by the Family Court, but the Motion to Reconsider has not been heard yet.

13. South Carolina Homeland Security Act (SC Code of Law §17-30-20, hereinafter, "The Act") is violated when a person "intentionally intercepts...any wire, oral, or electronic communication"; "intentionally discloses or attempts to disclose to any other person the contents of any...electronic communication, knowing or having reason to know the information was obtained through the interception of a[n]...electronic communication"; or when a person "intentionally uses or attempts to use the contents of any...electronic communication, knowing or having reason to know that the information was obtained through the interception of a[n]...electronic communication." S.C. Code Ann. § 17-30-20(1), (3), (4).

14. According to The Act, "'intercept' means 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." S.C. Code Ann. § 17-30-15(3). An "'[e]lectronic, mechanical, or other device' means any device or apparatus which can be used to intercept a wire, electronic, or

oral communication.” S.C. Code Ann. § 17-30-15(4). An “aggrieved person” is any person “who was a party to any intercepted wire, oral, or electronic communication or a person against whom the interception was directed.” S.C. Code Ann. § 17-30-15(10). “Whenever any wire, oral, or electronic communication has been intercepted, no part of the contents of the communication and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court...” S.C. Code Ann. § 17-30-65(A).

15. In Fulmer, Fulmer obtained and used an iWatch without the consent of the owner of the device to capture the owner’s iMessages (sent to both her iPhone and iWatch) in a series of 962 photos taken on his iPhone. As set forth in *United States v Szymuszkiewicz*, 622 F.3d 701 (7<sup>th</sup> Circuit 2010) and *Epstein v. Epstein*, 843 F. 3d 1147 (7<sup>th</sup> Cir. 2016), based on the understanding of what it means to “intercept” electronic communications after the advent of packetized communications the South Carolina Court of Appeals ruled that Fulmer’s use of the iWatch and his phone to obtain his child’s mother’s electronic communications constituted an illegal interception under The Act. The petitioner filed a motion to suppress the contents of those text messages pursuant The Act and the Court of Appeals ruled that pursuant to §17-30-65(A) none of the illegally intercepted communications obtained by Fulmer from the iWatch were admissible.

16. The Petitioner is informed and believes that Respondent committed numerous interceptions of her electronic communications in violation of The Act as described above. Like in Fulmer, the aforementioned Apple devices belonged to the Petitioner, not the Respondent. However, also like in Fulmer, even if the Apple devices belonged to the Respondent, there was no evidence that the Petitioner gave the Respondent permission to access her communications on those devices. Respondent’s use of Petitioner’s iPad and his iPhone to capture Petitioner’s private electronic communications with a third-party, without consent of either party to those

communications, constitutes an illegal interception of electronic communications under the The Act.

17. Petitioner respectfully submits that prior to the Motion to Reconsider in the Greenville County Family Court, the 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 violated the law, but also as to the other general admissibility issues related to the communications and the information derived therefrom. The Act prohibits the introduction of any intercepted material into evidence before any court or tribunal within the state.

18. As such, Respondent's use of the material that he intercepted from the electronic communications of the 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.

19. 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 The Act and appropriate rulings made as to the intercepted communication(s) and that, in the interim, any action by the Family Court be stayed in addition to an Order requiring the immediate listing of and disclosure of all 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.

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

21. This Motion is further supported by the Affidavit of Abrams [**Exhibit 1**], this Court's Order in Fulmer [**Exhibit 2**], and such other evidence which becomes available prior to this hearing in this matter.

### CONCLUSION

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

22. 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 the intercepted communications and the information derived therefrom;


23. For a factual finding that Respondent unlawfully accessed the Petitioner's electronic communications;

24. For any action by the Family Court below be stayed pending this Court's Order;

25. For Respondent to be required to provide the immediate listing of and disclosure of all documents and/or records concerning the interception of electronic communications of Petitioner, and to make those available for Petitioner's expert's inspection; and

26. For such other and further relief as this Court deems just, fit, and proper.

**MOONEYHAM BERRY, LLC**

  
s/  
E. Kimberly Berry, SC Bar No. 13286  
Post Office Box 8359  
Greenville, SC 29604  
864.421.0036 | Fax 864.421.9060  
kimb@mbllc.com

*Attorney for Petitioner*

December 14, 2023

**RECEIVED**

**Dec 14 2023**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM GREENVILLE COUNTY  
Family Court

---

Family Court Case No. 2023-DR-23-0198

Appellate Case No.

---

Jeffrey Ellicott Lindley, Respondent,

v.

Sara Elizabeth Lindley, Petitioner,

---

**PROOF OF SERVICE**

---

I certify that I have served the MOTION TO SUPPRESS EVIDENCE and MOTION TO CONFIRM AUTOMATIC STAY on Respondent, by Electronic Mail, addressed below on December 14, 2023:

**Reid T. Sherard**  
**Jordan W. Peeler**  
E-mail: [rsherard@hsblawfirm.com](mailto:rsherard@hsblawfirm.com)  
E-mail: [jpeeler@hsblawfirm.com](mailto:jpeeler@hsblawfirm.com)

**MOONEYHAM BERRY, LLC**

A handwritten signature in blue ink, appearing to be 'E. Kimberly Berry', written over a horizontal line.

E. Kimberly Berry, SC Bar No. 13286

Post Office Box 8359

Greenville, SC 29604

864.421.0036 | Fax 864.421.9060

kimb@mblc.com

*Attorney for Petitioner*

December 14, 2023

Jeffrey Ellicott Lindley v. Sara Elizabeth Lindley [Family Court Case No.: 2023-DR-23-0198]

Larissa Lopez <larissa@mbllc.com>

Thu 12/14/2023 6:02 PM

To: Sherard, Reid <rsherard@hsblawfirm.com>; Peeler, Jordan <jpeeler@hsblawfirm.com>; kngrahamsc@sccourts.org <kngrahamsc@sccourts.org>

Cc: Kim Berry <kimb@mbllc.com>; Johnson, Katie <kmjohnson@hsblawfirm.com>; arhymer@hsblawfirm.com <arhymer@hsblawfirm.com>

📎 3 attachments (731 KB)

Motion to Suppress Evidence - Signed.pdf; Motion to Confirm - Signed.pdf; Proof of Service - Signed.pdf;

Judge Nichols-Graham, Mr. Sherard, and Mr. Peeler:

Please find attached the Motion to Suppress Evidence and Motion to Confirm Automatic Stay regarding the above referenced matter, along with our Proof of Service.

Thank you.



**Mooneyham Berry**  
— Trial Lawyers —

Larissa Lopez  
Certified Paralegal for E. Kimberly Berry  
Mooneyham Berry, LLC  
1225 S Church Street  
Greenville, South Carolina 29605  
Email: larissa@mbllc.com  
Direct Line: (864) 383-9244  
(864) 421-0036 Fax (864) 421-9060

**CONFIDENTIALITY NOTICE:** This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you not authorized to read, print, retain, copy or disseminate this message or any part of it. If you are not the intended recipient please notify the sender immediately.