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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 Sessions

HONORABLE Robert J. Bonds

Appellate Case No. 2023-001747

The State,.....Respondent

v.

Ryan Lenard Manigo,.....Appellant

PETITION FOR REHEARING *EN BANC*

Pursuant to Rule 219 and 221, SCACR, Petitioner respectfully requests rehearing because this Court may have misapprehended the fact that the circuit court has issued a final ruling on whether pretrial detainee recorded telephone calls (jail calls) are public records subject to the South Carolina Freedom of Information Act (FOIA) and a final ruling on whether the Petitioner’s State and Constitutional Rights will be violated as a result of the release of the jail calls. Furthermore, while the circuit court has provided a mechanism for the jail calls to be challenged by the Petitioner, that mechanism is not based in the substance of the statute and, even if it was, would still be prevented by the clear reading of S.C. Code 30-4-110(b) as it relates to privacy and the right to a fair trial under S.C. Code 30-4-40(a)(3).

In this Court's order finding the petition interlocutory, this Court noted that the circuit court's "order contemplates some further act which must be done prior to a determination of the rights of the parties . . ." Order. However, that relates only to the issue of exemptions. If this Court were to find that jail calls are not subject to FOIA pursuant to Glassmeyer v. City of Columbia, 414 S.C. 213, 777 S.E.2d 835 (Ct. App. 2015) and Pope v. Wilson, 427 S.C. 337, 831 S.E.2d 442 (2019) or that the Petitioner's Constitutional rights were to be violated by release of the jail calls, then the issue of exemptions would be moot.

Furthermore, the record needs no more development on the issue of exemptions. The factual development is wholly dependent on the substantive content of FOIA. FOIA does not provide for a mechanism to allow the Petitioner, or any other party to a jail call, to be given notice and opportunity to object. Furthermore, it specifically precludes any party to the jail calls to object to any exemptions under 30-4-40(a)(3) – which is the very subsection this Court requested the parties to address in its original order denying the Petitioner's motion to quash and granting its motion to stay.

Finally, pursuant to judicial economy, this issue is ripe for this Court to consider. If the case is remanded, it will be appealed no matter what the circuit court rules. Upon remand, the circuit court will be required to listen to every jail call. Prior to the filing of the initial petition with this Court, the State disclosed 72 jail calls and cited exemptions for only three. That leaves 69 jail calls for the circuit court to consider. The Petitioner objects to all 69 jail calls being released. This does not include jail calls made after the filing of the original petition.

The circuit court would need to hold a hearing in a closed court room for hours to review the jail calls. The court room would need to be closed, otherwise the media would have access to the content of the jail calls prior to a ruling on whether they are subject to FOIA. The media would

likely object and appeal an order closing the court room. If the circuit court were to rule the hearing be public, the Petitioner would file a separate Notice of Intent to Appeal and Petition for Writ of Supercedeas objecting to the court room being open. Either way, if the circuit court rules that even one jail call is subject to release, the Petitioner will refile the original Notice of Intent to Appeal and Petition for Writ of Supercedeas. If no jail calls are released, the media will file an action against the pretrial detention center requesting release that will eventually – again – be appealed by a party. The substantive issues, however, will remain the same. This process will repeat itself throughout the entirety of this case and in any other South Carolina criminal case where jail calls are requested and a party to the call objects. The issue cannot be litigated at the circuit level without risk of irreparable harm being imposed on the Petitioner and undue burden being placed on this circuit court and all other circuit courts in South Carolina.

WHEREFORE, the Petitioner moves that this Court grant this petition for rehearing *En Banc* and decide under the precedents Glassmeyer and Pope whether the Petitioner's jail calls are subject to FOIA. Furthermore, that this Court decide *En Banc* whether the Petitioner's State and Federal Constitutional rights would be violated by the release of his jail calls. Finally, that this Court decide *En Banc* whether the factual record is developed enough to issue a ruling on FOIA's exemptions and afford all parties and courts judicial economy in deciding these issues.

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