

The South Carolina Court of Appeals

Justin McGee, Respondent

v.

Lindsay F. McGee, Petitioner.

Appellate Case No. 2023-001376

ORDER

Petitioner's motion to suppress communications pursuant to the South Carolina Homeland Security Act (the Act) is currently pending before this court. *See* S.C. Code Ann. § 17-30-10 to - 145 (2014). On September 1, 2023, Petitioner filed her amended motion to suppress, requesting this court "suppress[] all evidence relating to audio and video recordings, interception of text and email messages, and the information derived therefrom" obtained by Respondent through violations of the Act. Section 17-30-110(A) grants this court the authority to "suppress the contents of any intercepted wire, oral, or electronic communication, or evidence derived therefrom"

After extensive discovery related to the motion, Petitioner uncovered one device located in her home which contained over five thousand (5,000) recordings with approximately eight hundred and thirty-three (833) hours of material. Further, it appears there is at least the possibility that Respondent was the individual that placed the device in the home, and that at least some of the 833 hours of recordings contain information which was obtained in violation of the Act. However, the family court did not review these recordings and, due to their volume, recommended that a special referee be appointed to analyze them.

On June 10, 2024, this court remanded the case for further discovery consistent with the family court's recommendation. On June 25, 2024, Petitioner filed a motion for an expedited hearing to clarify this court's June 10, 2024 order, asserting "the contents of the recordings are irrelevant to a determination [of] whether or not a[n] illegal interception o[f] her communication[s] took place."

Additionally, Petitioner claims the family court has calculated the cost of hiring a special referee to analyze the 833 hours of recordings to be \$249,900, and that the family court has asked each party to provide it with half of the estimated cost at this juncture. On July 12, 2024, Respondent filed a return to Petitioner's motion for clarification of this court's prior order, requesting this court deny the motion.

We believe determining the contents of the recordings may be necessary for ruling on Petitioner's motion to suppress and, without this information, dismissal of the motion may be the only appropriate course of action. Section 17-30-110(A) grants this court the authority to "suppress the *contents* of any intercepted wire, oral, or electronic communication, *or evidence derived therefrom . . .*" (emphasis added). However, we also recognize the severe financial burden of having a special referee review the entirety of these recordings. Accordingly, we grant expedited consideration of the motion to clarify and request the parties provide returns within fifteen (15) days of this order, arguing: (1) how this court can rule on Petitioner's motion to suppress when the contents of the allegedly intercepted communications are unknown; and (2) the feasibility of the parties reviewing copies of the communications themselves and informing the family court what, if any, of the recordings contain information which could be considered intercepted communication pursuant to the Act.¹



FOR THE COURT C.J.

FILED
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Columbia, South Carolina

¹ We acknowledge Respondent's June 21, 2024 motion requesting this court lift the automatic stay in this case as it applies to the custody and financial issues involved in the underlying proceedings. We decline to address the merits of this motion until after the parties file the returns requested by this court; depending on the parties' arguments made in the returns, this court may dismiss the motion to suppress and lift the automatic stay currently in place.

cc:

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The Honorable Michèle Patrão Forsythe
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