

The South Carolina Court of Appeals

Laura L. Stone, Petitioner,

v.

Jared R. Stone, Respondent.

Appellate Case No. 2024-000261

ORDER

Laura L. Stone (Wife) has filed a motion pursuant to the South Carolina Homeland Security Act (the Act)¹ to suppress electronic communications which she argues Jared R. Stone (Husband) "intercepted" from an outdoor camera² in violation of the Act and Title III of the Omnibus Crime Control and Safe Streets Act of 1968 (the Federal Act).³

Both the Act and the Federal Act prohibit interception of wire, electronic, or oral communications except in manners provided by those statutes. 18 U.S.C.A. § 2511; § 17-30-10. The acts define "interception" as "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." 18 U.S.C.A. § 2510(4); § 17-30-15(3). Additionally, both acts define "oral communication" as "any oral communication uttered by a person exhibiting an expectation that the communication is not subject to interception under circumstances justifying the expectation" 18 U.S.C.A. § 2510(2); § 17-30-15(2).

¹ S.C. Code Ann. § 17-30-10 to -145 (2014).

² In her motion, Wife also requested this court suppress any recording obtained by Husband from the interior of the home. However, there is no evidence in the record indicating Husband obtained any such recordings. Accordingly, we address Wife's motion only as it applies to the recordings obtained from the outdoor camera.

³ 18 U.S.C.A § 2510 to -2523.

Under the circumstances here, we find Husband did not violate the Act by using the outdoor camera to record Wife's interactions with their children because Wife did not have a reasonable expectation of privacy in these communications.⁴ We note the communications in question were made in the garage and in front of the home, and at such a volume that neighbors or anyone walking past the home would have heard Wife's statements. *See State v. Guerrero-Flores*, 402 S.C. 530, 534, 741 S.E.2d 577, 580 (Ct. App. 2013) (observing "[t]he [Act] is patterned after Title III of the [Federal Act]" and "federal cases analyzing comparable provisions of the Federal Act are persuasive in interpreting the provisions of the [Act]."); *Katz v. United States*, 389 U.S. 347, 360-61 (1967) (Harlan, J., concurring) ("[C]onversations in the open [are] not [] protected against being overheard, [and] the expectation of privacy under th[ose] circumstances [is] unreasonable."); *Kee v. City of Rowlett*, 247 F.3d 206, 211-15 (5th Cir. 2001) (finding plaintiffs failed to demonstrate a reasonable expectation of privacy in statements made at an outdoor grave site which the plaintiffs could not show "were communicated free from the possibility of eavesdroppers who might have been in close proximity to the grave"); *United States v. Peoples*, 250 F.3d 630, 634-37 (8th Cir. 2001) (finding defendant did not have a reasonable expectation of privacy under the Federal Act for conversations he had with his codefendant at the latter's detention facility). Additionally, Wife knew of the existence of the camera and, although she believed it could no longer retain recordings, she was aware it was capable of broadcasting live audio and video feeds to connected devices. *See Huff v. Spaw*, 794 F.3d 543, 548-56 (6th Cir. 2015) (finding a plaintiff did not possess a reasonable expectation of privacy in statements because he was aware his phone could pocket-dial other phones and he failed to take any protective measure to prevent these calls from occurring); *Peoples*, 250 F.3d at 637 (finding defendant did not have a reasonable expectation of privacy in communications while visiting an inmate at a detention facility because he was—or should have been—aware the facility recorded conversations between inmates and their visitors).

⁴ To the extent Wife also complains Husband's actions violated the Stored Communications Act (SCA) and the Computer Fraud and Abuse Act (CFAA), the Act does not provide for this court to determine those issues in its original jurisdiction. *See* 18 U.S.C.A. §§ 1030, 2701-13 (prohibiting unauthorized access to: (1) computers; and (2) communications stored in electronic communications facilities); § 17-30-110(A) (providing this court with jurisdiction over "mo[tions] to suppress the contents of any *intercepted* wire, oral, or electronic communication, or evidence derived therefrom") (emphasis added)).

Accordingly, after careful consideration, Wife's motion to suppress is denied.⁵

H. Bruce Williams C.J.
Stephen P. McDonald J.
[Signature] J.

Columbia, South Carolina

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cc:
Richard Giles Whiting, Esquire
Bryn Colette Sarvis, Esquire
Sheila McNair Robinson, Esquire
The Honorable W. Greg Seigler
The Honorable Robert E. Newton

⁵ Wife's requests for a hearing, attorney's fees, and to seal these communications are also denied. See § 17-30-110(A) ("The reviewing authority may, *in its discretion*, conduct a hearing and require additional testimony or documentary evidence." (emphasis added)); § 17-30-135(A)(4) ("Any person whose wire, oral, or electronic communication is *intercepted* . . . has a civil cause of action . . . and is entitled to recover . . . a reasonable attorney's fee and other litigation costs reasonably incurred." (emphasis added)); § 17-30-65(A) ("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 . . ." (emphasis added)); Rule 41(b), SCRPC ("The burden is on the party seeking to seal [the record] to satisfy the court that the balance of public and private interests favors sealing the [record].").