

# The South Carolina Court of Appeals

State of South Carolina, Respondent,

v.

Ryan Bradford Kirby, Petitioner.

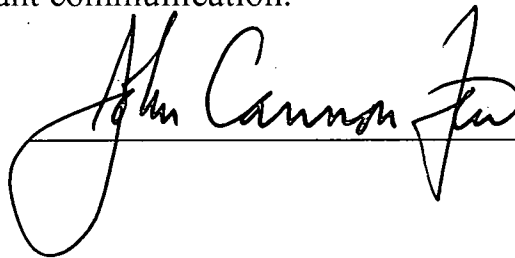
Appellate Case No. 2013-002145

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## ORDER

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Petitioner filed a motion to suppress his intercepted electronic communication pursuant to the Fourth and Fifth Amendments of the United States Constitution, Rule 403, SCRE, and section 17-30-110(A)(1) of the South Carolina Code (Supp. 2012) (the Wiretap Act).<sup>1</sup> Because the victim consented to law enforcement's taping of the electronic communication in question and the plain language of the Wiretap Act does not include any exception to the general admissibility of an electronic communication where one party has consented, Petitioner's motion is denied. *See State v. Whitner*, 399 S.C. 547, 553, 732 S.E.2d 861, 864 (2012). ("[W]hen a party to a communication gives consent for the communication to be intercepted, such recording does not violate the [the Wiretap Act.]"). Further, there is no evidence Respondent utilized deceit, trickery or misrepresentation to induce the victim to consent to the instant communication.



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C.J.

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<sup>1</sup> We decline to address Petitioner's constitutional grounds as well as those based on Rule 403, SCRE. *See* S.C. Code Ann. § 17-30-110(A) (Supp. 2012) (noting this Court's function under the Wiretap Act is to "decide whether the order of authorization was issued and the communications were intercepted in conformity with the requirements of this chapter").

U. Ke

J.

Regina A. Carleton At

A.J.

Columbia, South Carolina

cc:

Margaret Fent Bodman

Hemphill P. Pride, II

Lesli Brown Darwin

**FILED**

10/21/13