

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

The Honorable Eugene C. Griffith, Jr.

Circuit Court Case No. 2024-CP-36-00087
Appellate Case No. 2024-001360

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SC Court of Appeals

Abdellah El Farissi, Appellant,

V.

Newberry College, Respondent.

Appellant Final Reply Brief

TABLE OF CONTENTS

Table of Authoritiesi

Introduction1

Arguments in Reply.....1

 I. Preservation of Issues for Appeal.....1

 II. Appellant’s Objection at Trial Preserved the Issue for Appeal.....2

 III. Violation of the Federal Wiretap Act (FWA).....2

 IV. Violation of the South Carolina Homeland Security Act (SCHSA).....2-3

 V. Wrongful Termination and Due Process.....3

Conclusion.....4

Table of Authorities

Cases

Grosdidier v. United States, 77 Fed. Cl. 106 (Fed. Cl. 2007).....	
Burnside v. Sanders, 281 S.C. 453, 315 S.E.2d 129 (Ct. App. 1984)	
State v. Passmore, 363 S.C. 568, 581, 611 S.E.2d 273, 280 (Ct. App. 2005).....	
State v. Prioleau, 345 S.C. 404, 411, 548 S.E.2d 213, 216 (2001).....	
Carpenter v. United States, 484 U.S. 19, 26 (1987).....	
State v. Adams, 409 S.C. 641 (2014)	
Ludwick v. This Minute of Carolina, Inc., 287 S.C. 219 (1985)	
Garner v. Morrison Knudsen Corp., 318 S.C. 223 (1995)	

Statutes

22 U.S.C. 474(1).

18 U.S.C.S § 2511(2)(d).

18 U.S.C.S § 2511(1)(c)(d)

INTRODUCTION

Pro Se Appellant, Abdellah El Farissi, respectfully submits this Reply Brief in response to Respondent Newberry College's Initial Brief.

Appellant maintains that the Trial Court erred in granting Respondent's Motion to Dismiss and respectfully requests this Court to reverse the Trial Court's Order dismissing the Complaint with prejudice.

ARGUMENTS

I. Preservation of Issues for Appeal

The record demonstrates that Appellant raised the pertinent legal and factual claims at every stage of the proceedings. However, it is crucial to note that the opposing counsel, in its brief, intentionally omitted a significant part of Appellant's argument—namely, that Appellant, a qualified U.S. citizen, was denied a promotion in favor of a foreign national with little to no experience, in direct violation of 22 U.S.C. 474(1).

This omission appears to be a deliberate attempt to distract the court from the clear public policy violations committed by Respondent.

Courts have consistently held that failure to address key arguments can be indicative of an attempt to mislead or obfuscate the facts. See *Grosdidier v. United States*, 77 Fed. Cl. 106 (Fed. Cl. 2007). The preservation of this issue is fundamental to the integrity of the appeal, as it directly implicates federal law and public policy regarding the hiring of non-citizens only when no suitably qualified U.S. citizens are available.

Respondent argues that certain claims, including Fourth Amendment violations, failure to promote, and judicial bias, were not raised at the trial level and therefore cannot be considered on appeal.

However, the crux of Appellant's claim has always been the violation of his privacy rights resulting from the unlawful recording and subsequent disclosure of a private conversation. Appellant, acting Pro Se, may not have framed all legal theories with precision but consistently alleged the core facts supporting his claims.

South Carolina courts recognize that Pro Se litigants are entitled to greater leniency in pleading standards. See *Burnside v. Sanders*, 281 S.C. 453, 315 S.E.2d 129 (Ct. App. 1984).

Moreover, the issue of judicial bias was very apparent from the start of the hearing, preventing Appellant from making a contemporaneous objection. Appellant respectfully contends that the Court should consider this issue in the interest of justice, and that no substantive arguments have been waived.

II. Appellant's Objection at Trial Preserved the Issue for Appeal

Opposing counsel erroneously claims that Appellant did not object to the trial court's actions. However, the record reflects that Appellant explicitly told the trial judge that he intended to take the case to the appellate court. As a Pro Se litigant, Appellant understands that appealing a decision inherently constitutes an objection to that decision. The South Carolina courts have recognized that objections must be considered in light of the circumstances, particularly where a party lacks legal representation. See *State v. Passmore*, 363 S.C. 568, 581, 611 S.E.2d 273, 280 (Ct. App. 2005) (noting that Pro Se litigants should not be held to the same technical pleading standards as attorneys).

Furthermore, a contemporaneous objection does not require the use of specific legal terminology, as long as the basis for the objection is clear. See *State v. Prioleau*, 345 S.C. 404, 411, 548 S.E.2d 213, 216 (2001) (holding that an objection must be sufficiently specific to alert the court to the alleged error, but need not be phrased with legal precision). By clearly stating his intent to appeal, Appellant preserved his challenge to the trial court's rulings.

III. Violation of the Federal Wiretap Act (FWA)

Respondent's argument that the recording by Nastassia Chamoun did not violate the FWA because she was a party to the conversation overlooks a key exception under 18 U.S.C.S § 2511(2)(d).

The statute prohibits interceptions made for the purpose of committing a criminal or tortious act. Appellant alleged that the recording was made at the direction of the Head Tennis Coach, Elias Fernandez, as part of a scheme to terminate Appellant's employment. This constitutes a tortious act, which removes the recording from the one-party consent exception. See *Carpenter v. United States*, 484 U.S. 19, 26 (1987).

Additionally, Respondent's use and disclosure of the recording to terminate Appellant's employment independently violates 18 U.S.C.S § 2511(1)(c) and (d) of the FWA. The Trial Court's dismissal of these claims without addressing this exception was erroneous.

IV. Violation of the South Carolina Homeland Security Act (SCHSA)

The South Carolina Homeland Security Act (SCHSA) prohibits the unauthorized interception of electronic communications, aligning with the intent of federal wiretap laws but with specific provisions under South Carolina law. Under SCHSA, it is unlawful for any individual or entity to intentionally intercept, disclose, or use any wire, oral, or electronic communication without consent unless an applicable exception applies.

In this case, Respondent's student-athlete on behalf of the head tennis coach engaged in unauthorized recording of private communication. South Carolina courts have consistently upheld privacy rights in the workplace and/or private settings, emphasizing that employers must adhere to state and federal laws. In *State v. Adams*, 409 S.C. 641 (2014), the court held that interception of communications without proper legal justification constitutes a breach of state privacy laws.

The actions of Respondent's student-athlete and athletic staff not only violate the SCHSA but also demonstrate a reckless disregard for the fundamental privacy rights of the Appellant. The lack of explicit consent and the failure to comply with legal exceptions place the Respondents in direct violation of South Carolina law, warranting legal redress.

V. Wrongful Termination and Due Process

The wrongful termination of the Appellant resulted from the unauthorized recording and the subsequent use of intercepted communication as a pretext for dismissal. The Fourteenth Amendment guarantees due process before an individual can be deprived of life, liberty, or property, and South Carolina law recognizes wrongful termination claims when an employee is dismissed in violation of public policy.

In *Ludwick v. This Minute of Carolina, Inc.*, 287 S.C. 219 (1985), the South Carolina Supreme Court established the public policy exception to at-will employment, holding that an employer cannot terminate an employee for reasons that contravene clear public policy. Additionally, *Garner v. Morrison Knudsen Corp.*, 318 S.C. 223 (1995), reaffirmed that an employee may seek relief if discharged under circumstances that violate statutory protections.

Here, Appellant was terminated based on information obtained through unlawful means, in direct contradiction to public policy and constitutional due process protections. The Respondents' reliance on illegally intercepted communications as justification for dismissal constitutes wrongful termination and a violation of procedural fairness.

Given the precedents set forth in *Ludwick* and *Garner*, Appellant's termination should be deemed unlawful, entitling Appellant to appropriate legal remedies.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Honorable Court reverse the Trial Court's Order granting Respondent's Motion to Dismiss and remand this matter for further proceedings.

Respectfully submitted,

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A handwritten signature in black ink, appearing to be 'A. El Farissi', written in a cursive style.