

The South Carolina Court of Appeals

Justin McGee, Respondent,

v.

Lindsay F. McGee, Petitioner.

Appellate Case No. 2023-001376

ORDER

Lindsay McGee (Wife) filed a motion pursuant to the South Carolina Homeland Security Act (the Act)¹ to suppress electronic communications which she argues Justin McGee (Husband) "intercepted" from the interior of her home in violation of the Act and Title III of the Omnibus Crime Control and Safe Streets Act of 1968 (the Federal Act).²

The Act prohibits "[t]he interception of wire, electronic, or oral communications" except "in the manner permitted by this chapter." § 17-30-10; *see also* 18 U.S.C. § 2511. The Act defines an "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." § 17-30-15(3); *see also* 18 U.S.C.A. § 2510(4). Additionally, the Act defines an "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

¹ S.C. Code Ann. § 17-30-10 to -145 (2014). This court reviews motions to suppress under the Act in its original jurisdiction. *See* S.C. Code Ann. § 17-30-110(A) (2014) (providing such motions "must be made before the reviewing authority"); S.C. Code Ann. § 17-30-15(9) (2014) (defining "[r]eviewing authority" as "a panel of three judges of the South Carolina Court of Appeals designated by the Chief Judge of the South Carolina Court of Appeals"); *see also State v. Whitner*, 399 S.C. 547, 553, 732 S.E.2d 861, 864 (2012) ("[T]he Federal Act is substantively the same as South Carolina's Wiretap Act . . .").

² 18 U.S.C.A § 2510 to -2523.

expectation" § 17-30-15(2); *see also* 18 U.S.C.A. § 2510(2). "The [Act] is patterned after [the Federal Act]." *State v. Guerrero-Flores*, 402 S.C. 530, 534, 741 S.E.2d 577, 580 (Ct. App. 2013). "The . . . Act is violated when a person intercepts oral communications that are not otherwise exempt from or subject to an exception contained in section 17-30-30." "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 in or before any court, . . . if the disclosure of that information would be in violation of [the Act]." § 17-30-65(A); *Whitner*, 399 S.C. at 553, 732 S.E.2d at 864. Notably, "[i]t is lawful under this chapter for a person not acting under color of law to intercept a wire, oral, or electronic communication where the person is a party to the communication or where one of the parties to the communication has given prior consent to the interception." S.C. Code Ann. § 17-30-30(C) (2014); *Whitner*, 399 S.C. at 553, 732 S.E.2d at 864 ("[The] Act parallels the Federal Act passed by Congress in 1968, which similarly permits lawful interception where one party to the communication consents.").

Wife and Husband married in March 2012. On or about February 1, 2021, Wife moved into a home (the Residence) without Husband. Husband complained the Residence lacked USB connections for his electronic devices, and he installed various devices throughout the interior of the home, including Wife's garage and bedroom. On October 20, 2022, Husband filed an action for divorce on the ground of adultery. Wife subsequently filed a motion to suppress, asserting her belief that Husband had intercepted her private communications. Using an expert, Wife discovered multiple electronic devices had been placed throughout her home and had been utilizing the Residence's Wi-Fi network. She eventually found a hidden camera (the Device) in her bedroom at the Residence. Wife's experts found the Device contained a combination of over 5,000 audio and visual recordings collected over a period of eight months.

Through discovery, Wife learned Husband had purchased several electronic devices, including some which had already been removed from the Residence, with the capability of recording audio and video data and which could be accessed remotely using Wi-Fi and a smart phone application named CIXICM. She also learned Husband's Apple purchase history showed he had downloaded CIXICM on his phone. The application specifically allows for users to remotely view, save, and delete recordings collected by compatible devices. Wife's experts determined someone with the CIXICM application used it to access the Device on August 24, 2022, and August 27, 2022, and deleted hundreds of files from it. Husband admitted to purchasing the Device and placing it in the Residence "in the summer

of 2022," but he claims he removed the Device in August 2022. He alleged Wife then placed the Device back in her home at some later date. All communications recovered from the Device were recorded prior to Husband filing his divorce action.

We find the preponderance of the evidence indicates Husband placed the Device within Wife's bedroom at the Residence, and that he was responsible for using it to intercept Wife's oral communications.³ We further find Husband used information derived from these communications as a basis for his divorce action. We grant Wife's motion to suppress the oral communications intercepted through the Device in which Husband was not a party.⁴ However, we deny Wife's requests for a hearing, attorney's fees, and to seal these communications. *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), SCRCP ("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]"). Any further motions concerning these cases should be addressed to the family court.

³ Wife originally moved to suppress a variety of communications she alleged Husband illegally obtained, including recordings from other hidden devices, text messages, emails, and information concerning her personal bank accounts. However, following discovery, the only intercepted communications provided to this court were those found on the Device; accordingly, this order applies only to those communications.

⁴ We note the Device contains hundreds of hours' worth of recordings. Wife may present any intercepted oral communications from the Device to the family court to demonstrate which portions of Husband's allegations were derived from the intercepted communications, and the family court should consider the content of any such information suppressed.

H. Bruce Williams

C.J.

John D. Bostick

J.

[Signature]

J.

Columbia, South Carolina

cc:

- Nicholas Jerry Theos, Esquire
- Marie-Louise Ramsdale, Esquire
- Matthew A. Abee, Esquire
- Peter George Currence, Esquire
- Richard Giles Whiting, Esquire
- Julie J. Armstrong
- The Honorable Spiros S. Ferderigos
- The Honorable Michèle Patrão Forsythe
- Elizabeth J. Stringer, Esquire

FILED
Aug 20 2025