

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

SC Court of Appeals

105700

The Honorable Eugene C. Griffith, Jr.

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

Abdellah El Farissi, Appellant,

V.

Newberry College, Respondent.

Motion Reply Brief in response to Respondent's Final Brief

Appellant, Abdel El Farissi, respectfully submits this Motion Reply Brief in response to Respondent's Final Brief. Respondent has misstated the record, misapplied controlling law, and ignored key issues preserved for appellate review. When properly considered, the facts and law demonstrate that the trial court erred in dismissing Appellant's Complaint with prejudice, and reversal is warranted.

I. Respondent Misstates Preservation of Issues

Respondent argues that claims involving violations of privacy rights, wrongful termination, and judicial bias were not preserved for appellate review. This assertion is incorrect. From the filing of the original Complaint and Amended Complaint onward, Appellant consistently alleged unlawful interception and disclosure of a private conversation in violation of the Federal Wiretap Act ("FWA"), 18 U.S.C. § 2511, and the South Carolina Homeland Security Act ("SCHSA"), S.C. Code Ann. § 17-30-20 and § 17-30-135. The record clearly reflects that these claims were raised before the trial court.

South Carolina law also recognizes that pro se litigants are entitled to leniency in pleading standards. In *Burnside v. Sanders*, 281 S.C. 453, 315 S.E.2d 129 (Ct. App. 1984), this Court made clear that the filings of self-represented parties must be liberally construed to allow potentially meritorious claims to proceed. The United States Supreme Court has similarly emphasized that pro se pleadings must not be dismissed merely because they lack the technical precision of attorneys' filings. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007).

Further, the issue of judicial bias was preserved. The transcript demonstrates repeated comments from the trial court minimizing Appellant's arguments and misstating the law. Appellant explicitly stated his intent to appeal, which under South Carolina law is sufficient to preserve objections when the basis for the challenge is clear. See *State v. Passmore*, 363 S.C. 568, 581, 611 S.E.2d 273 (Ct. App. 2005). Thus, Respondent's contention that key issues were not preserved is without merit.

II. The One-Party Consent Exception Does Not Apply When the Purpose Is Criminal or Tortious

Respondent relies heavily on South Carolina's one-party consent rule to argue that Chamoun's recording was lawful. However, this ignores the critical statutory exception. Section 2511(2)(d) of the Federal Wiretap Act expressly prohibits a party from recording a communication when the purpose of that recording is to commit a criminal or tortious act. Appellant alleged that Chamoun, acting at the direction of Head Coach Elias Fernandez, recorded the conversation for the express purpose of securing Appellant's termination. Such conduct constitutes a tortious act, removing the protection of one-party consent.

Moreover, even if the initial recording were lawful, Respondent independently violated both 18 U.S.C. § 2511(1)(c)-(d) and S.C. Code Ann. § 17-30-20(3)-(4) by disclosing and using the contents of the recording to terminate Appellant's employment. These provisions impose liability not only for unlawful interceptions but also for the intentional disclosure or use of communications obtained through unlawful means. The trial court failed to address this distinction, and Respondent's brief likewise avoids this critical point. Courts have long recognized that the use and disclosure of intercepted communications, particularly for retaliatory or harmful purposes, falls squarely within the prohibitions of the Wiretap Act. See *Carpenter v. United States*, 484 U.S. 19, 26 (1987).

III. Appellant Had a Reasonable Expectation of Privacy

Respondent further contends that Appellant had no reasonable expectation of privacy in the conversation because it occurred in his vehicle. This argument is legally and factually flawed. Under 18 U.S.C. § 2510(2), "oral communication" includes statements uttered by a person exhibiting a reasonable expectation of privacy under the circumstances. Appellant's conversation occurred in his personal vehicle, a private, enclosed space, not in a public forum. This setting justifies a reasonable expectation of privacy.

The United States Supreme Court has held that oral statements made in private spaces are protected from unlawful interception. See *Silverman v. United States*, 365 U.S. 505 (1961). By dismissing Appellant's privacy expectation simply because the device used was a cell phone, the trial court misapplied the law. The court's suggestion that a cell phone is a mere "recording device" outside statutory coverage disregards both federal and South Carolina precedent. The fact that Chamoun used her cell phone to capture the conversation does not diminish Appellant's privacy interest in what was said within the confines of his vehicle.

IV. Wrongful Termination in Violation of Public Policy

Respondent attempts to characterize this matter as wholly unrelated to employment. That characterization is inaccurate. The unlawful recording and its subsequent disclosure were the direct basis for Appellant's termination. Termination of employment based upon illegally obtained communications contravenes South Carolina's clear public policy.

The Supreme Court of South Carolina has long recognized that termination of an at-will employee is unlawful when it violates public policy. *Ludwick v. This Minute of Carolina, Inc.*, 337 S.E.2d 213 (S.C. 1985); *Garner v. Morrison Knudsen Corp.*, 318 S.C. 223 (1995). In this case, Appellant was deprived of his position on the basis of conduct that both federal and state statutes prohibit. Allowing such termination to stand would endorse unlawful practices and undermine public trust in legal protections against privacy violations.

Furthermore, Respondent's conduct also violated federal public policy. Appellant, a qualified U.S. citizen, was denied a promotion in favor of a foreign national who lacked proper work authorization. This directly violates 22 U.S.C. § 474(1), which provides that non-citizens may only be hired when no suitably qualified U.S. citizens are available. The denial of promotion, combined with termination based on unlawful conduct, presents a textbook case of wrongful termination in violation of public policy. See *Grosdidier v. United States*, 77 Fed. Cl. 106 (2007).

V. Judicial Bias Compromises Fairness

Finally, Respondent downplays the role of judicial bias, but the record demonstrates that impartiality was compromised. The trial judge repeatedly minimized Appellant's claims, suggested that unlawful interception statutes did not apply, and equated the use of a cell phone to a harmless "recording device." These comments show prejudice and a misunderstanding of the law, undermining Appellant's right to a fair hearing.

Judicial neutrality is fundamental to due process. As the United States Supreme Court held in *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009), even the appearance of bias erodes public confidence in the judiciary and warrants corrective action. Furthermore, the Court has consistently recognized that pro se litigants are entitled to fair treatment. See *Boag v. MacDougall*, 454 U.S. 364 (1982). The trial court's treatment of Appellant failed to meet these standards, resulting in a decision tainted by partiality and legal error.

CONCLUSION

For these reasons, Respondent's arguments cannot withstand scrutiny. The trial court erred in dismissing Appellant's Complaint with prejudice, having disregarded statutory exceptions, ignored well-established privacy rights, and failed to recognize wrongful termination in violation of public policy. The court's conduct further compromised fairness through partiality and misapplication of the law.

Appellant respectfully requests that this Court reverse the judgment of the trial court and remand the matter for further proceedings on the merits.

Respectfully submitted,

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Eugene C. Griffith Jr., Circuit Court Judge

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PROOF OF SERVICE

I certify that I have served the Motion Reply Brief in response to Respondent's Final Brief on Newberry College by serving a copy of it to their attorney of record, Sheila M. Abron, via Electronic Mail and U.S. Mail at her office located at 1320 Main St. Suite 750, Columbia, South Carolina, 29201.

September 2, 2025

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