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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Colleton County
Honorable Robert J. Bonds, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RYAN MANIGO (2),

APPELLANT

APPELLATE CASE NO. 2024-001818

FINAL BRIEF OF APPELLANT

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3. Whether the circuit court judge erred in failing to find that the Freedom of Information Act's statutory exemptions prevent the release of pretrial detainee telephone calls?

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STATEMENT OF THE CASE

Appellant was arrested on July 2, 2023.[1] He waived all bond hearings and has been held in pre-trial detention since his arrest. During the entirety of his pre-trial detention, his telephone calls (calls) have been monitored and recorded by private companies contracted by the detention facilities. In anticipation of media outlets requesting Appellant's calls pursuant to FOIA, Appellant filed a motion to prevent the release of such communications prior to a hearing where the requesting party, the detention facility, and Appellant's counsel could be present to determine whether the calls where subject to release pursuant to FOIA.

On October 19, 2023, a hearing was held in Colleton County in front of the Honorable Judge Robert J. Bonds. Present were counsel for the Appellant and the State. The State made the circuit court aware that there were several FOIA applications for Appellant's communications, but the calls had not been released.[2] The circuit court ordered that the hearing be rescheduled to October 24, 2023, so that the media could have an opportunity to have their counsel present. On October 24, 2023, the circuit court reconvened. Present were counsel for the Appellant, counsel for two media companies, and the State. R. 1. After arguments by Appellant's counsel and the media's counsel were heard, the circuit court held that the Appellant's calls were public records subject to FOIA and that Appellant's various State and Federal Constitutional protections did not prevent the release of the communications. The circuit court held that the detention center should

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[1] A portion of the warrants were served July 31, 2023. R. 139-159.

[2] While the Appellant has no objection to this Court hearing from a variety of perspectives, it is likely the State does not have standing on this issue. Typically, a dispute involving jail calls should involve the person making the jail call, a representative from the pretrial detention facility, and a representative from the party requesting the information pursuant to FOIA. Here, while the State has reviewed the calls to determine exemptions, they are not representatives of the pretrial detention facility. Indeed, the State's review of the jail calls is likely a violation of the Appellant's Fourth Amendment rights pursuant to State v. Ellefson, 226 S.C. 494, 224 S.E.2d 666 (1976).

review the calls prior to releasing them to determine if there are any applicable statutory exemptions to release that they believe applied. The circuit court further held that Appellant should then be given three days to review the calls to determine if they believe any exemptions apply and move to intervene. The circuit court ordered that any calls where no exemption applied should be released.

On October 31, 2023, the circuit court issued its written order. R. 126-131. On the same day, the circuit court denied a motion to reconsider and a motion to stay its order. Appellant subsequently filed a Notice of Appeal and Petition for Writ of Supersedeas with the Supreme Court of South Carolina.[3] On November 9, 2023, the Supreme Court of South Carolina transferred the matter to this Court. On November 14, 2023, this Court denied the Appellant's request to quash the circuit court order, granted the Appellant's request to stay the circuit court order, and ordered briefings from all parties. On January 24, 2024, this Court found the Notice of Appeal to be interlocutory because the circuit court order contemplated some further act which must be done prior to a determination of the rights of the parties and dismissed the matter. This Court did not rule on the Write of Supersedeas. This Court denied Appellant's Petition for Rehearing *En Banc* on March 18, 2024. On April 26, 2024, remittitur was sent to the circuit court.

On May 7, 2024 the circuit court heard arguments by the Appellant, the State, and Gray Media Group, Inc. in a closed hearing. R. 52. The hearing was held so that a final ruling could be made on the Appellant's argument regarding statutory exemptions related to FOIA. On the same

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[3] In a similar general sessions case currently pending in the Ninth Judicial Circuit, State v. Jamie Komoroski, (2023GS1003982-85) the defendant's jail calls were released pursuant to FOIA without giving the defendant an opportunity to object to their release. In a subsequent order in Gray Media Group, Inc. v. Kristin Graziano, (2023-CP-10-03027) part of the circuit court's order affirming the release of the jail calls pursuant to FOIA was based on the fact that the jail calls had already been released to the public and that the "cat [was] out of the bag." Appellant hoped to avoid that outcome with its Notice of Appeal and Writ of Supersedeas.

day, the circuit court ordered that certain redactions be made to the calls pursuant to various FOIA statutory exemptions and asked for a proposed order. After redactions were made, the circuit court issued a written order on October 23, 2024 that the remaining portions of the calls be released subject to FOIA on November 1, 2024. The circuit court issued both a public and a sealed order. R. 126-131; 132-138. Appellant filed a motion to reconsider on October 25, 2024 and it was denied on the same day.

Appellant subsequently filed a second Notice of Appeal and Petition for Writ of Supersedeas with this Court on October 28, 2024. On October 29, 2024, this Court again denied the Appellant's request to quash but granted its request to stay. It further ordered the State, Gray, and any interested party to file returns to Appellant's Writ of Supersedeas within fifteen days and for the Appellant to reply within ten days. All parties filed their briefings timely. This Court also ordered that the circuit court's sealed order, sealed transcript, and sealed exhibits be delivered to the Court on various deadlines. The Court is in receipt of all those items. All orders from this Court related to scheduling were complied with.

On December 4, 2024, Gray Media moved to dismiss the Appellant's appeal because the Appellant failed to timely file and serve his initial brief. Appellant filed its return and Gray Media filed its reply.

On May 5, 2025 this Court denied Gray Media's motion to dismiss the appeal. It further denied the Appellant's petition for writ of supersedeas finding the Appellant will not suffer irreparable harm or a miscarriage of justice due to the release of the calls. The Appellant filed a petition for rehearing for this Court's denial of his petition for writ of supersedeas.[4]

[4] Appellant filed its petition for rehearing out of an abundance of caution. The Appellant deferred to this Court on whether to address the merits of its issues through its appeal or writ of supersedeas.

Both the writ of supersedeas and this appeal are not interlocutory as they are in response to final rulings by the circuit court and do not relate to any evidentiary issues in the Appellant's criminal trial.

ARGUMENTS

1. The circuit court erred in failing to find that pretrial detainee telephone calls are not subject to the Freedom of Information Act.

a. FOIA Introduction

Our FOIA statute provides that public bodies within South Carolina, upon request from the public, must disclose certain public records. The fundamental purpose of FOIA is "to protect the public from secret government activity." Glassmeyer v. City of Columbia, 414 S.C. 213, 219, 777 S.E.2d 835, 839 (Ct. App. 2015) (*citing* Perry v. Bullock, 409 S.C. 137, 141, 764 S.E.2d 251, 253 (2014)). The FOIA statute guarantees the public the right to "reasonable access to **certain activities of the government.**" Pope v. Wilson, 427 S.C. 377, 389, 831 S.E.2d 442, 448 (Ct. App. 2019) (emphasis added). This does not authorize unfettered access to all documents and recordings in the possession of the government. Indeed, courts have denied FOIA requests where there was "no evidence in the record demonstrat[ing] disclosure would further the FOIA's purpose of protecting the public from secret government activity." Glassmeyer at 223, 777 S.E.2d at 841.

b. Standard of Review

Courts, when interpreting the reach of a request pursuant to FOIA, are bound by the basic principles of statutory construction. As this Court is well aware, the primary rule of statutory construction is to ascertain and give effect to the intent of the legislature. Bryant v. State, 384 S.C. 525, 529, 683 S.E.2d 280, 282 (2009). All rules of statutory construction are subservient to the one in which legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute. State v. Sweat, 386 S.C. 339, 351, 688 S.E.2d 569, 575 (2010). Additionally, when applying the rules of statutory construction a "[c]ourt must presume the legislature did not intend a futile act, but rather intended its statutes to accomplish something." Denene, Inc. v. City of Charleston, 352 S.C. 208, 574

S.E.2d 196 (2002); *See Also* State v. Long, 363 S.C. 360, 364, 610 S.E.2d 809, 811 (2005) ("The legislature is presumed to intend that its statutes accomplish something").

c. Public Record

A public record is defined in S.C. Code Ann. 30-4-20(c) as:

> [A]ll books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by a public body. Records such as income tax returns, medical records, hospital medical staff reports, scholastic records, adoption records, records related to registration, and circulation of library materials which contain names or other personally identifying details regarding the users of public, private, school, college, technical college, university, and state institutional libraries and library systems, supported in whole or in part by public funds or expending public funds, or records which reveal the identity of the library patron checking out or requesting an item from the library or using other library services, except nonidentifying administrative and statistical reports of registration and circulation, and other records which by law are required to be closed to the public are not considered to be made open to the public under the provisions of this act; nothing herein authorizes or requires the disclosure of those records where the public body, prior to January 20, 1987, by a favorable vote of three-fourths of the membership, taken after receipt of a written request, concluded that the public interest was best served by not disclosing them. Nothing herein authorizes or requires the disclosure of records of the Board of Financial Institutions pertaining to applications and surveys for charters and branches of banks and savings and loan associations or surveys and examinations of the institutions required to be made by law. Information relating to security plans and devices proposed, adopted, installed, or utilized by a public body, other than amounts expended for adoption, implementation, or installation of these plans and devices, is required to be closed to the public and is not considered to be made open to the public under the provisions of this act.

For a record to be subject to a FOIA request, three elements must be satisfied. Specifically, the record must be: 1) from a public body, 2) a public record, and 3) *related to a government activity*. The recordings of inmate calls are not expressly stated as public records by the General Assembly. There is no public interest or pressing need that would be served through disclosure of the intimate recordings between an incarcerated individual and their loved ones. Further, the release of such calls would not shed light on any governmental activity. These calls should not be

deemed public records simply because a public agency has access to Appellant's calls. No employee from any detention center participated in the communication or recording of the calls. No public official is party to the calls. These recordings reveal nothing about a governmental agency's conduct. *See* Glassmeyer at 219-20, 777 S.E.2d 835, 839. Given the fact that the purpose of FOIA is "to protect the public from secret government activity[,]" Id. at 219, these telephone recordings cannot be equated with public records to which the public should be granted reasonable access.

In a case similar to Appellant's, the Fourth District Court of Appeal of Florida ruled telephone records from a detention center were not subject to disclosure under their state's FOIA statute. Bent v. State, 46 So.3d 1047 (Ct. App. 2010). The Court quashed a trial court's ruling ordering the release of telephone records. Id. The Court explained, "[a]lthough monitoring of inmate calls for security purposes is related to official business of the jail, maintaining recordings of purely personal calls is not. The recordings at issue are personal phone calls as opposed to records generated by BSO, such as mail logs or logs of phone numbers called." Id. at 1049. As such the Court found telephone calls themselves are clearly not public records. The Court went on to say that "[a]n inmate's personal phone calls **do not in any way reflect the actions of government** and releasing the calls would not further the purpose of the Public Records Act." Id. at 1050 (emphasis added).

Moreover, S.C. Code Ann. 30-4-20(c) provides that "records which by law are required to be closed to the public are not considered to be made open to the public under the provisions of this act..." As will be discussed below, Appellant's telephone calls under the First, Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, Article I, §§ 3, 9, 10, 11, 12, 14 and 15 of the Constitution of the State of South Carolina, and State v. Ellefson, 266 S.C.

494, 224 S.E.2d 666 (1765) are records which by law are required to be closed to the public. Therefore, they are not public records subject to release under FOIA.

d. Public Body

A public body is defined in S.C. Code Ann. 30-4-20(a) as:

> [A]ny department of the State, a majority of directors or their representatives of departments within the executive branch of state government as outlined in Section 1-30-10, any state board, commission, agency, and authority, any public or governmental body or political subdivision of the State, including counties, municipalities, townships, school districts, and special purpose districts, or any organization, corporation, or agency supported in whole or in part by public funds or expending public funds, including committees, subcommittees, advisory committees, and the like of any such body by whatever name known, and includes any quasi-governmental body of the State and its political subdivisions, including, without limitation, bodies such as the South Carolina Public Service Authority and the South Carolina State Ports Authority. Committees of health care facilities, which are subject to this chapter, for medical staff disciplinary proceedings, quality assurance, peer review, including the medical staff credentialing process, specific medical case review, and self-evaluation, are not public bodies for the purpose of this chapter.

The detention centers that have, and will continue, to detain Appellant are public bodies under the statute. However, those **detention centers have contracted with private, for profit, companies to record and maintain detainees telephone calls**. It is common practice for private companies to contract with detention facilities and monitor detainee telephone calls. The private companies charge detainees and the people they communicate with – typically their families, loved ones, and attorneys – fees to place the telephone calls. The detention center retains access to the recordings for security purposes, but the private companies maintain and possess the recordings. Simply put, the media is attempting to refashion a private business transaction into a public record

because of the general nature of jail. Such a leap far exceeds the expectations of Appellant, the private business, or those who have willingly accepted the calls.[5]

Moreover, FOIA requires public bodies to give access to public records involving government activity. While the detention centers where Appellant is incarcerated at have access to his telephone calls and can facilitate releasing them pursuant to a FOIA request, they are not the body that is in possession of them. Because the private companies possessing the telephone calls do not fall within the definition of a "public body" as defined by S.C. Code Ann. 30-4-20(a), the telephone calls are not subject to release pursuant to FOIA.

e. The circuit court erred in failing to find that the release of pretrial detainee telephone calls violates the pretrial detainee's state and federal constitutional rights

a. Standard of Review

Article VI of the United States Constitution provides that it "shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the ...laws of any State to the contrary notwithstanding." United States Constitution Article VI. Furthermore, the South Carolina Supreme Court has stated "... where there is a conflict between [a] statute and the State Constitution, the Constitution overrides the statute." State v. Whitener, 225 S.C. 244, 81 S.E.2d 784 (1954).

"It is well settled that the interpretation of the state's constitution is a matter for the courts." Baddourah v. McMaster, 433 S.C. 89, 103, 856 S.E.2d 561, 568 (2021). "State courts may afford more expansive rights under state constitutional provisions than the rights which are conferred by the Federal Constitution." State v. Easler, 327 S.C. 121, 131 n.13, 489 S.E.2d 617, 622 n.13

[5] Notably, those who receive calls from the pre-trial detainees or inmates are at no time in this message told these calls can be subject to FOIA or subject to being made public, raising serious privacy considerations.

(1997), overruled on other grounds by State v. Greene, 423 S.C. 263, 814 S.E.2d 496 (2018). "This relationship is often described as a recognition that the federal Constitution sets the floor for individual rights while the state constitution establishes the ceiling." State v. Forrester, 343 S.C. 637, 643, 541 S.E.2d 837, 840 (2001).

b. Right to Privacy

The South Carolina Constitution contains an express right to privacy provision that favors an interpretation offering a higher level of privacy protection than the Fourth Amendment. *See* State v. Key, 431 S.C. 336, 848, S.E.2d 315 (2020). Notably, this Court has found that our State Constitution affords broader protections under other provisions. Most recently in Planned Parenthood S. Atl. v. State, 882 S.E.2d 770 (S.C. 2023), reh'g denied (Feb. 8, 2023), this Court recognized that article I, section 10 of our State Constitution granted a broader right to privacy than the federal Constitution based on the plain language of the text. As Chief Justice Beatty wrote in his separate opinion in Planned Parenthood S., "[w]e interpret our constitution to ensure South Carolinians retain the rights it guarantees." Id.

In State v. Ellefson, this Court held that under the First Amendment of the United States Constitution, pre-trial detainees have the right to not have their written communications screened for purposes other than detention security. Ellefson, 226. S.C. 494, 224 S.E.2d 666 (1976). "When a pre-trial detainee remains in custody, he is not disrobed of his constitutional rights and laid bare for the zealous investigation of his case. He is cloaked with the presumption of innocence. His rights are curtailed only to the extent 'justified by the considerations underlying our penal system.'" Id. at 500, 224 S.E.2d at 669 (*citing* Price v. Johnston, 334 U.S. 266, 285-86 (1948), overruled on other grounds by McCleskey v. Zant, 499 U.S. 467 (1991)).

This Court ruled that a warrantless search of the detainees' communications for the purposes of an investigation was unconstitutional. Id. Furthermore, this Court reached this determination even though a detainee signed a card at intake authorizing jail officials to read his mail. Id. at 502, 224 S.E.2d at 670. "The court ... cannot assume there was consent. For noncustodial searches, the current test is whether or not the consent was voluntary under the totality of the circumstances. The skeletal details of the so called 'consent' belie it. If we were to hold the Appellant consented to waive his constitutional rights here, the doctrine of consent would be effectively emasculated." Id. at 502-503, 224 S.E.2d 666, 670 (*citing* People v. Henry, 65 Cal.2d 842, 56 Cal.Rptr. 485, 423 P.2d 557 (1967) and Schneckloth v. Bustamonte, 412 U.S. 218 (1973)).

Because the release of Appellant's telephone calls subject to FOIA are not for the purposes of security, any release would violate Appellant's First, Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and Article I, §§ 3, 9, 10, 11, 12, 14 and 15 of the Constitution of the State of South Carolina. Furthermore, despite the telephone calls providing an alert that they are being recorded, this Court cannot conclude there was consent.

c. Right to a Fair Trial

Under both the United States Constitution and the South Carolina Constitution, a defendant in a criminal prosecution is constitutionally guaranteed a fair trial by an impartial jury. U.S. Const. amend. VI; S.C. Const. art. I Section 14. This "most fundamental of all freedoms" must be maintained at all costs. Estes v. Texas, 381 U.S. 534, 540 (1965).

In Patterson v. State of Colorado ex rel. Attorney General, 205 U.S. 454, 462 (1907), the United States Supreme Court interpreted the requirement of an impartial jury to mean that "the conclusions to be reached in a case will be induced only by evidence and argument in open court, and not by any outside influence, whether of private talk or public print." Subsequently, in

Sheppard v. Maxwell, 384 U.S. 333, 357 (1966), the Supreme Court ruled that a trial court erred by "holding that it lacked power to control the publicity about the trial." The Court specifically found that "the trial court might well have proscribed extrajudicial statements by any lawyer, party, witness, or court official which divulged prejudicial matters," noting that with the pervasiveness of modern communications and the difficulty of erasing prejudicial publicity from the minds of the jurors, the trial courts must take strong measures to ensure that the balance is never weighed against the accused. Sheppard, 384 U.S. at 361, 362.

If Appellant's private communications with his family, loved ones, and attorneys are released to the media, he will be deprived of his right to a fair trial. Having the public listen to Appellant's most private conversations that are either not related to his case or that are related to his defense, will not enable a fair and impartial jury to be impaneled. Not only will the public be given access to information prior to trial, they will be given access to information that may not even be admissible at trial - thereby eviscerating his constitutional rights. For these reasons, the release of Appellant's telephone calls subject to FOIA will violate his First, Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and Article I, §§ 3, 9, 10, 11, 12, 14 and 15 of the Constitution of the State of South Carolina.

d. Equal Protection

The South Carolina Constitution provides that no "person shall be denied the **equal protection** of the laws." S.C. Const. art. I, § 3 (emphasis added). "The *sine qua non* of an equal protection claim is a showing that similarly situated persons received disparate treatment." Grant v. S.C. Coastal Council, 319 S.C. 348, 354, 461 S.E.2d 388, 391 (1995) (emphasis added). Only the calls of pre-trial detainees who cannot afford or are denied bond are subject to recording by the detention center. Requiring that the private communications of indigent

pre-trial detainees be made public for anyone that submits a FOIA request, creates an unconstitutional classification that more affluent people accused of a criminal offense do not suffer. An interpretation that FOIA applies to pre-trial detainee's jail calls implicates a suspect class, i.e. indigency, and must survive strict scrutiny in order to survive. People accused of crimes and released from detention centers, on bond, or otherwise, do not have their communications recorded by a public agency absent a warrant. Even with a warrant these communications are not subject to FOIA disclosure.

e. Due Process

"Due Process is not a technical concept with fixed parameters unrelated to time, place, and circumstances; rather it is a flexible concept that calls for such procedural protections as the situation demands." State v. Legg, 416 S.C. 9, 13, 785 S.E.2d 369, 371 (2016). The pre-trial release of Appellant's private jail calls will undoubtedly affect his ability to receive a fair trial. Counsel for various media companies that have made FOIA requests for Appellant's jail calls have said that any infringement on Appellant's right to a fair trial is easily cured by the trial judge through voir dire, or possibly a change of venue. Asking potential jurors to set aside whatever opinions or impressions they may have formed about a pre-trial defendant, after listening to or reading about the defendant's private pre-trial communications with others is "to shut the stable door after the horse has bolted." The only way to protect Appellant's right to a fair trial is to find that pre-trial detainee's private communications are not subject to FOIA requests.

D. The circuit court erred in failing to find that the Freedom of Information Act's statutory exemptions prevent the release of pretrial detainee telephone calls

S.C. Code Section 30-4-40, entitled "Matters exempt from disclosure" specifically provides, in pertinent part:

(a) A public body may but is not required to exempt from disclosure the following information:

> (2) Information of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy. . . .
>
> (3) Records, video or audio recordings, or other information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:
>
> > (A) would interfere with a prospective law enforcement proceeding;
> > (B) would deprive a person of a right to a fair trial or an impartial adjudication;
> > (C) would constitute an unreasonable invasion of personal privacy; ... [or]
> > (F) would endanger the life or physical safety of any individual.
>
> (4) Matters specifically exempted from disclosure by statute or law.

Under South Carolina law, "[w]hether a record is exempt from disclosure depends on the particular facts of the case." Glassmeyer at 219, 777 S.E.2d at 839 (*citing* City of Columbia v. ACLU, 323 S.C. 384, 387 (1996)); *See also* Evening Post Publ'g Co. v. Berkeley Cnty. Sch. Dist., 392 S.C. 76, 82 (2011) (the "determination of whether documents or portions thereof are exempt from FOIA must be made on a case-by-case basis."). This Court, therefore, must engage in a fact-specific analysis in assessing the applicability of the exemptions. As discussed below, the facts in this matter weigh heavily against public disclosure of the telephone call recordings.

FOIA's mechanism for a party other than the releasor to exert an exemption is found in S.C. Code 30-4-110(B):

> (B) If a request for disclosure may result in the release of records or information exempt from disclosure under Section 30-4-40(a)(1), (2), (4), (5), (9), (14), (15), or (19), a person or entity with a specific interest in the underlying records or

information shall have the right to request a hearing with the court or to intervene in an action previously filed.

a. 30-4-40(a)(3)

Notably, Section 30-4-110(B) prohibits the non-disclosing party from challenging the release under Section 30-4-40(a)(3). The lack of a mechanism for a private citizen to be able to object to the release of their own recorded private phone calls highlights the fact that the legislature never intended for FOIA to be used this way. The incentives are misaligned. It benefits the State to release jail calls painting Appellant in a bad light. Appellant cannot rely on the State to protect his interest.

b. Privacy Exemption under 30-4-40(a)(2)

Although the exemptions set forth in S.C. Code Section 30-4-40 are to be "narrowly construed" to avoid "a blanket prohibition of disclosure," the "privacy exemption" expressly exempts from disclosure "[i]nformation of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy." Pope v. Wilson, 427 S.C. 377, 389, 831 S.E.2d 442, 448 (Ct. App. 2019); S.C. Code Ann. § 30-4-40(a)(2).

In assessing whether certain information should be classified as private and exempt from disclosure, the courts must "resort to general privacy principles, which examination involves a balancing of conflicting interests—the interest of the individual in privacy on the one hand against the interest of the public's need to know on the other." Glassmeyer at 220, 777 S.E.2d at 839 (*quoting* Burton v. York Cty. Sheriff's Dep't, 358 S.C. 339, 352 (Ct. App. 2004)).

The Court of Appeals in Glassmeyer, quoting at length a decision from the Supreme Court of Michigan interpreting the FOIA privacy exemption, adopted its sound reasoning:

> Simply put, disclosure of employees' home addresses and telephone numbers to plaintiff **would reveal little or nothing about a governmental agency's conduct,**

> **nor would it further the stated public policy undergirding the Michigan FOIA.** Disclosure of employees' home addresses and telephone numbers would not shed light on whether the University of Michigan and its officials are satisfactorily fulfilling their statutory and constitutional obligations and their duties to the public. When this tenuous interest in disclosure is weighed against the invasion of privacy that would result from the disclosure of employees' home addresses and telephone numbers, the invasion of privacy would be clearly unwarranted.

Id. at 221 (*quoting* Mich. Fed'n of Teachers & Sch. Related Pers. v. Univ. of Mich., 481 Mich. 657, 753 N.W.2d 28, 43 (2008)) (emphasis added). Disclosure of such private and personal information "would not appreciably further the citizens' right to be informed about what their government is up to' and 'would reveal little or nothing about the employing agencies or their activities.'" Id. (quoting U.S. Dep't of Def. v. Fed. Labor Relations Auth., 510 U.S. 487, 497 (1994)). Balancing the privacy interests against the public interest, the Court of Appeals concluded that the information such as home addresses, telephone numbers, and personal e-mail addresses constitutes "information of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy" and are exempt from disclosure under section 30-4-40(a)(2). Id. at 223. *See also* City of Columbia v. Am. Civ. Liberties Union of S.C., Inc., 323 S.C. 384, 387 (1996) (reasoning that the contents of an investigatory report of a public body may be exempt from FOIA under the privacy exemption, following a fact-specific analysis).

Here, the release of Appellant's personal telephone calls would violate the privacy exemption contained in FOIA. The telephone calls do not contain information related to any government action or operation. The telephone calls do not provide citizens insight into how the government is being run. Accordingly, the telephone calls are not subject to release pursuant to FOIA.

c. Exempted by Statute or Law under 30-4-40(4)

FOIA contains an exemption to release of records where the release is exempted by some other statute or law. As previously argued in its Petition, the release of Appellant's private telephone calls would violate Title 30, Chapter 4 of the South Carolina Code of Laws (FOIA), the First, Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, Article I, §§ 3, 9, 10, 11, 12, 14 and 15 of the Constitution of the State of South Carolina, and State v. Ellefson, 266 S.C. 494, 224 S.E.2d 666 (1976). Accordingly, the telephone calls are not subject to release pursuant to FOIA.

E. The circuit court erred in failing to find that the release of pretrial detainee telephone calls violates public policy.

Release of a pre-trail detainee's private communications would also violate the public policy as expressed by the South Carolina General Assembly. It is well established that our courts "exercise restraint when undertaking the amorphous inquiry of what constitutes public policy." Taghivand v. Rite Aid Corp., 411 S.C. 240, 768 S.E.2d 385, 387 (2015). Given that public policy is amorphous, this Court should consider what the implications are for releasing private communications from pre-trial detainees pursuant to FOIA requests. It should not be lost on this Court that FOIA provides any citizen the right to access government materials-this is not simply utilized by credentialed and reputable media outs. Allowing the release of Appellant's telephone calls opens the public policy floodgates. The following policy considerations are merely the beginning of this Court's inquiry:

a. Should jurors, witnesses, and victims be permitted to acquire telephone calls pursuant to FOIA?

b. How is the South Carolina Victims' Bill of Rights implicated when the telephone calls involve a victim?

c. Should people receiving calls have the ability to intervene and object to calls being released pursuant to FOIA?

d. Should telephone calls to minors be subject to forced consent and released pursuant to FOIA?

e. Should pre-trial detainees be permitted to file lawsuits when telephone calls are misattributed to them?

f. What are the implications of technology being able to manipulate telephone recordings and the voices that are recorded?

g. What resources would be needed from all South Carolina pre-trial detention centers, the Judicial System, and the Bar to facilitate the review, legal objections, and legal rulings related to endless FOIA requests for any and all recorded telephone calls held by those detention centers?

h. What are the implications of pre-trial detainees having access to other pre-trial detainees' telephone calls pursuant to FOIA?

i. The original motion to prevent the telephone calls was filed in circuit court on August 9, 2023. More than two years has passed with multiple filings and hearings. Litigation has not begun on Petitioner's telephone calls that have been made since the first 72 calls. Did the legislature intend for FOIA to be weaponized in such a way that constant litigation regarding pretrial detainee telephone calls will be needed for this and every other pretrial detainees' cases throughout the state?

Release of pre-trial detainee telephone calls would affect not just the detainee but many other unrelated individuals and entities. Because a finding that pre-trial detainee telephone calls

are subject to FOIA would violate the public policy of South Carolina, this Court should find that they are not subject to FOIA.

Specifically, as it relates to this case, if this Court does not grant Appellant's appeal, litigation will continue in perpetuity. Upon denial, the circuit court will be required to listen to every future call made by the Appellant. Prior to the filing of the initial petition with this Court, the State disclosed 72 jail calls and cited exemptions for only three. That left 69 jail calls for the circuit court to consider. The Appellant objected to all 69 jail calls being released. This does not account for every call made after the first 72.

The circuit court had to hold a hearing in a closed court room for hours to review the calls. The court room had to be closed, otherwise the media would have access to the content of the calls prior to a ruling on whether they were subject to FOIA. Because the circuit court ruled that even one jail call was subject to release, the Appellant was forced to refile the original Notice of Intent to Appeal and Petition for Writ of Supersedeas. If no jail calls were released, the media would have filed an action against the pretrial detention center requesting release that would eventually – again – be appealed by a party. The substantive issues, however, remain the same. This process will repeat itself throughout the entirety of this case and in any other South Carolina criminal case where calls are requested and a party to the call objects. The issue cannot be litigated at the circuit level without undue burden being placed on this circuit court and all other circuit courts in South Carolina. In sum, the issue is inherently capable of repetition and evading review. Accordingly, public policy and judicial economy provide sufficient reason for this Court to reverse the circuit court order.

CONCLUSION

Based on the above arguments this Court should reverse the circuit court order releasing the Appellant's calls pursuant to FOIA.

Respectfully Submitted,

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This 26th day of September, 2025.

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SC Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

This 26th day of September, 2025.

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Colleton County

Honorable Robert J. Bonds, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RYAN MANIGO (2),

APPELLANT

APPELLATE CASE NO. 2024-001818

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Final Brief of Appellant in the above-referenced case has been served upon Melody J. Brown, Esquire, and I. McDuffie Stone, Esquire AND Michael J. Anzelmo, Esquire and Mark Peper, Esquire at the primary e-mail addresses listed in the Attorney Information System (AIS); this 26th day of September, 2025.

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