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Feb 10 2026

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County
Honorable Kristi F. Curtis, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

FRANCISCO CORTES,

APPELLANT


APPELLATE CASE NO. 2024-002210

**AMENDED DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictments and sentencing sheets;
- (2) Trial transcript pages 1-5; 55-86; 93-346;
- (3) Defendant's notice of motion and motion to suppress jail calls including exhibits;
- (4) State's #1, #2 – 911 calls – **TO BE TRANSPORTED;**
- (5) State's #30 – Officer Ray body camera – **TO BE TRANSPORTED;**
- (6) State's #31, #32 – Officer Cushman body camera – **TO BE TRANSPORTED;**
- (7) State's #92, #93, #94, #95, #96 – Jail calls and video visit - **TO BE TRANSPORTED.**

I certify that this designation contains no matter which is irrelevant to this appeal.


Kathrine H. Hudgins
Senior Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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February 10, 2026

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF GENERAL SESSIONS
FOURTEENTH JUDICIAL CIRCUIT 9: 25

STATE OF SOUTH CAROLINA)

INDICTMENT NO(s): 2022GS0701862, 2023GS0701862

v.)
Francisco Cortes,)
Defendant.)

DEFENDANT'S NOTICE OF MOTION AND
MOTION TO SUPPRESS JAIL CALLS

YOU WILL PLEASE TAKE NOTICE that the Defendant, Francisco Cortes, by and through his undersigned counsel, will move before the Presiding Judge of the Court of General Sessions as soon as counsel may be heard, for an Order Suppressing from evidence of all jail phone calls allegedly made by the Defendant while incarcerated at the Beaufort County Detention Center. The Defendant contends that the jail phone calls that the State of South Carolina seeks to introduce against him were obtained in violation of his First Amendment right, as incorporated by the Fourteenth Amendment, to be free to communicate without the uninvited ears and eyes of the government, and his state, under Art. § 10, and federal constitutional rights, under the Fourth and Fourteenth Amendments, to be free from unreasonable searches and seizures because they were obtained without a warrant, subpoena, court order, or other legal process by the State of South Carolina.

FACTS

This incident occurred in Beaufort County on July 5, 2021. Mr. Cortes was arrested on unrelated charges in Jasper County on July 9, 2021. A hold was placed on Mr. Cortes for the Beaufort County charges of Attempted Murder (2 counts), Discharging a Firearm into a Dwelling

(2 counts), Unlawful Carrying of a Pistol and Possession of a Weapon During a Violent Crime. The 14th Circuit Solicitor's Office directly presented an additional charge of Assault and Battery of a High and Aggravated Nature on December 7, 2023. After his arrest in Jasper County on July 9, 2023, Mr. Cortes was booked into the Jasper County Detention Center ("JCDC") and remained there until April 18, 2022 where he was transferred to the Beaufort County Detention Center ("BCDC") on these pending Beaufort County charges and where he remains today.

Per documentation provided by L/Cpl. Eddie Aiken of the Beaufort County Detention Center, on December 2 and December 9, 2024, Assistant Solicitor Samantha Molina accessed the recorded jail calls of Mr. Cortes. On December 11, 2024, Ms. Molina subpoenaed five specific jail calls with call ID Numbers 82868040, 82890502, 82964796, 82964494, 83306068. (Attached hereto as EXHIBIT 1). Ms. Molina provided Defense Counsel a copy of these jail phone calls the State intends to use in the prosecution of this case.

AUTHORITY

The Fourth Amendment guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. Amend. IV. "[T]he underlying command of the Fourth Amendment is always that searches and seizures be reasonable." Wilson v. Arkansas, 514 U.S. 927, 931 (1995). "A search compromises the individual interest in privacy; a seizure deprives the individual of dominion over his or her person or property." State v. Wright, 391 S.C. 436, 442, 706 S.E.2d 324, 327 (2011) (citing Horton v. California, 496 U.S. 128, 133 (1990)). The Fourth Amendment prohibits "unreasonable searches and seizures" by the Government. Terry v. Ohio, 392 U.S. 1, 9 (1968). Pre-trial detainees maintain protections afforded under the Fourth Amendment, including a diminished expectation of privacy. Bell v. Wolfish, 441 U.S. 520, 557 (1979).

"When a pretrial detainee remains in custody, he is not disrobed of his constitutional rights and laid bare for the zealous investigation of his case." State v. Ellefson, 266 S.C. 494, 500 (1976). A pretrial detainee enjoys the presumption of innocence, and his rights are curtailed "only to the extent justified by the considerations underlying our penal system." Ellefson, at 500.

In Ellefson, the South Carolina Supreme Court reversed appellant's conviction and remanded for a new trial after concluding the trial court erred by admitting three letters written by appellant to a witness while in pretrial confinement. Id. at 498. The letters at issue in Ellefson were obtained by the State through the efforts of a detective who was not connected with the operation of the jail. Id. Rather, the State's efforts were entirely investigatory and in pursuit of securing a conviction. Id. The detective in Ellefson had been given permission to read and photocopy the letters by the jailor who routinely scanned outgoing mail as a security precaution. Id.

The Ellefson Court invoked a two-prong analysis the State must satisfy to justify the censorship. Id. at 499-500. First, the regulation or practice in question must further an important or substantial governmental interest. Id. at 500. Second, the limitation of First Amendment freedoms must be no greater than is necessary or essential to the protection of the particular governmental interest involved. Id. The detective testified he was censoring the mail solely to try to get evidence for the case and not for purposes of jail security and no warrant was issued. Id.

Because the search in Ellefson was not for any legitimate jail purpose, the Court proceeded into a Fourth Amendment analysis, explaining, "the most basic constitutional rule in this area is that searches conducted outside the judicial process, are per se unreasonable under the Fourth Amendment--subject only to a few specifically established and well-delineated exceptions." Id. at 501 (citing Coolidge v. New Hampshire, 403 U.S. 443, 454, 455, 91 S.Ct. 2022, 2032, 29 L.Ed.2d 564 (1971)).

To satisfy the exigent circumstances exception, there "must be a showing by the State that the exigencies of the situation made that course imperative." Id. (citing McDonald v. U.S., 335 U.S. 451, 456, 69 S.Ct. 191, 93 L.Ed. 153 (1948)). The Court found no exigent circumstances existed and there was no attempt by the State to show the existence of probable cause. Id. The opening and reading of appellant's letters was entirely exploratory and contravenes the very purpose of the constitutional safeguard against unreasonable searches and seizures. Id. at 501. Additionally, the Court determined the search impinged upon the Appellant's First Amendment right, as incorporated by the Fourteenth Amendment, to be able to communicate without the uninvited ears and eyes of the government. Id.

Consent is another exception to the search warrant requirement. "'Consent' is a broad term and is defined as 'agreement, approval, or permission as to some act or purpose.'" State v. Whitner, 399 S.C. 547, 554, 732 S.E.2d 861, 865 (2012) (quoting Black's Law Dictionary 346 (9th Ed. 2009)). "Whether a consent to search was voluntary or the product of duress or coercion, express or implied, is a question of fact to be determined from the totality of the circumstances." State v. Mattison, 352 S.C. 577, 584, 575 S.E.2d 852, 856 (2003). "The state bears the burden of establishing the voluntariness of the consent." Id.

ANALYSIS

While Ellefson concerns censorship of prison mail, the same logic applies to recorded jail phone calls as they are both intimate forms of communication made by pre-trial detainees that have not been convicted of the crime that they are being detained for and only have these limited avenues to communicate with individuals outside of the detention center such as family, significant

others and legal counsel. They are both subject to monitoring by the detention center for purposes of security.

In Ellefson the letters were obtained by the State through the efforts of a detective who was not connected with the operation of the jail. His efforts were entirely investigatory and in pursuit of securing a conviction. Similarly, Mr. Cortes's phone calls were obtained by the State through the efforts of the Assistant Solicitor herself—who certainly is not connected with the operation of the jail. See EXHIBIT 1. Further, L/Cpl. Eddie Aiken of the Beaufort County Detention Center had not listened to Mr. Cortes's calls prior to receiving the Assistant Solicitor's subpoena. Thus, Mr. Cortes's phone calls were listened to by the Assistant Solicitor and then specifically subpoenaed by the State solely to get evidence for this case and not for the legitimate purposes of jail security and no search warrant was issued, nor any attempt by the State to show the existence of probable cause.

In the present case, if the State relies upon the exigent circumstances exception to the warrant requirement, then there must be a showing by the State that the exigencies of the situation made that course imperative. Here, the State did not subpoena Mr. Cortes's phone calls until December 11, 2024, more than three years after his arrest and more importantly, the week before his jury trial. Listening to the recorded jail calls and then issuing a subpoena for Mr. Cortes's specific phone calls is clearly an attempt to secure evidence for purposes of prosecution and shows there were no exigencies making that course imperative.

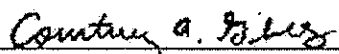
If the State relies upon the consent to search exception, it has the burden of proving the voluntariness of the consent. Id. at 502. It is assumed the State will argue that consent was given by Mr. Cortes because of the recording prior to his jail calls informing him that they were being

monitored and recorded. This issue was addressed in Ellefson, as when appellant was processed into the jail, he signed a card authorizing jail officials to read his mail. The State attempted to elevate this into a waiver of constitutional rights. Apparently, all inmates were required to sign the card and this is accomplished routinely during the reception process. If the State relies upon the consent to search, it has the burden of proving the voluntariness of the consent. Id. at 502-503 (citing Bumper v. North Carolina, 391 U.S. 543, 88 S.Ct. 1788, 20 L.Ed.2d 797 (1968)). The court thus cannot assume there was consent. Id. (citing People v. Henry, 65 Cal.2d 842, 56 Cal.Rptr. 485, 423 P.2d 557 (1967)). For noncustodial searches, the current test is whether or not the consent was voluntary under the totality of the circumstances. Id. at 503 (citing Schneckloth v. Bustamonte, 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973)). 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.

Mr. Cortes was in pre-trial detention when the calls took place. He didn't have any choice in whether his calls were monitored and recorded. He did not have the ability to give consent. Consent can't be forced or involuntarily given.

Therefore, for the above-mentioned reasons, the Defendant asks this Honorable Court to Suppress any and all of his jail phone calls which the State of South Carolina intends to introduce in this case against him.

Respectfully submitted,



Courtney A. Gibbs
Deputy Public Defender
14th Circuit Public Defender's Office

Beaufort, South Carolina
12/16, 2024

Call Records

Showing 1 to 1 of 1 entries

+	Action	Start Time ▾	CSN	Inmate ID	Last Name	Phone Number	Call Type	Tariff Band	Station	Talk Secs	Billed Tim
<input type="checkbox"/>		07/13/2024 15:21:20	82868040	47965	CORTES	1-843-816-2253	Debit	Local	83-1	579	10:00

Showing 1 to 1 of 1 entries

Show 1,000 ▾ entries

View Listeners

Username	Action	Last Access
eaiken	Burn	12/11/2024 17:19:21
eaiken	Manifest	12/11/2024 17:19:21
eaiken		12/11/2024 16:56:44
smolina	Play	12/02/2024 13:31:24
smolina	Listened (71%)	
smolina	Download	12/02/2024 13:30:15

[Handwritten signature and notes]

Call Records

Showing 1 to 1 of 1 entries

+	Action	Start Time ▾	CSN	Inmate ID	Last Name	Phone Number	Call Type	Tariff Band	Station	Talk Secs	Billed Tim
<input type="checkbox"/>		07/20/2024 09:09:56	82890502	344569	ANDERSON	1-843-815-2253	Debit	Local	B3-1	498	9:00

Showing 1 to 1 of 1 entries

Show 1,000 ▾ entries

View Listeners

Username	Action	Last Access
ealiken	Burn	12/11/2024 17:17:28
ealiken	Manifest	12/11/2024 17:17:28
ealiken		12/11/2024 16:59:38
ealiken	Listened (5%)	
ealiken	Play	12/11/2024 16:59:04
smolina	Listened (37%)	
smolina	Play	12/02/2024 13:19:38
smolina	Download	12/02/2024 12:38:26



THE ENFORCER®

Beaufort County Detention Center
User: ealiken (14.0.55)
Copyright 2005-2024

Call Records

Showing 1 to 1 of 1 entries

+	Action	Start Time v	CSN	Inmate ID	Last Name	Phone Number	Call Type	Tariff Band	Station	Talk Secs	Billed Tim
<input type="checkbox"/>		08/10/2024 13:10:07	82964796	142	SIMMONS	1-843-816-2253	Prepaid	Local	B3-1	560	10:00

Showing 1 to 1 of 1 entries

Show 1,000 v entries

View Listeners

Username	Action	Last Access
ealiken	Burn	12/11/2024 17:18:14
ealiken	Manifest	12/11/2024 17:18:14
ealiken		12/11/2024 16:58:18
smolina	Play	12/09/2024 08:08:55
smolina	Listened (73%)	
smolina	Download	12/02/2024 15:18:56



THE ENFORCER®

Beaufort County
Detention Center
User: ERSKINE (14-4-35)
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Visitation Records

Showing 1 to 1 of 1 entries

CRN	Visit ID	Scheduled Start	Actual Start	Duration	Scheduled End	Actual End	Visitor ID	Visitor	Visitor Station	Inmate ID	Inmate	Inmate Station	Admitt Visits
82964494	111892	08/10/2024 12:30:00	08/10/2024 12:30:00	29:39	08/10/2024 13:00:00	09/10/2024 13:00:00	45773	ERSKINE, OLIVIA	Office	47965	CORTES, FRANCISCO	B3	

Showing 1 to 1 of 1 entries

Show 1,000 entries

View Listeners

Username	Action	Last Access
eriken	Burn	12/11/2024 17:16:34
calken	Manifest	12/11/2024 17:16:33
smolina	Listened (10%)	
smolina	Download	12/02/2024 15:37:36
smolina	Play	12/02/2024 15:37:32

Close

Call Records

Showing 1 to 1 of 1 entries

+	Action	Start Time ▾	CSN	Inmate ID	Last Name	Phone Number	Call Type	Tariff Band	Station	Talk Secs	Billed Trm
<input type="checkbox"/>		11/17/2024 10:24:44	83300068	47965	CORTES	1-843-816- 2253	Debit	Local	B3-1	503	10:00

Showing 1 to 1 of 1 entries

Show: 1,000 ▾ entries

View Listeners

Username	Action	Last Access
ealton	Burn	12/11/2024 17:18:43
ealton	Manifest	12/11/2024 17:18:43
ealton		12/11/2024 16:57:43
smolina	Listened (100%)	
smolina	Download	12/09/2024 11:29:07
smolina	Play	12/09/2024 11:28:52