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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

ON APPEAL FROM THE REVIEWING AUTHORITY
The Honorable Chief Judge H. Bruce Williams

Appellate Court Case No. 2023-001376
Related Family Court Case No. 2022-DR-10-3072

Justin McGeeAppellant,

v.

Lindsay F. McGee.....Respondent.

LINDSAY F. MCGEE’S APPEALABILITY MEMORANDUM

Respectfully submitted,

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By letter dated March 10, 2026, the Court of Appeals indicated that the orders challenged by Appellant Justin McGee (“Husband”) might not be appealable. *See* Letter from S.C. Ct. App. To Counsel Requesting Briefing on Appealability, *McGee v. McGee*, Case No. 2026-000472 (S.C. Ct. App. dated Mar. 10, 2026). The letter required the parties to serve and file memoranda addressing the issues of appealability in this matter. *Id.* As set forth below, the matters Husband seeks to appeal are not appealable, and Husband’s appeal is procedurally improper, because Respondent seeks to appeal interlocutory matters involving pre-trial suppression of evidence arising out of a family court action. As a result, Respondent Lindsay McGee (“Wife”) respectfully requests that the Court dismiss Husband’s appeal.

INTRODUCTION

Husband seeks to appeal thirteen matters (a suppression order and twelve ancillary orders/reports), all of which relate to Wife’s Motion to Suppress certain illegal evidence in relation to a Family Court matter. Specifically, by Order dated August 20, 2025, and based on overwhelming evidence of extensive, highly intrusive, and illegal interceptions by Husband, the Court of Appeals, sitting as the Reviewing Authority under S.C. Code Ann. § 17-30-10(9), entered a thorough and carefully-tailored Order (the “Suppression Order”) granting Wife’s petition to suppress certain electronic communications obtained by Husband in violation of the South Carolina Homeland Security Act (the “Act”) and Title III of the Omnibus Crime Control and Safe Streets Act of 1968 (the “Federal Act”). *McGee v. McGee*, S.C. Ct. App. Order dated August 20, 2025.

Notably, the Suppression Order is not yet the final word on the issues under review by the Court of Appeals and Family Court. While the Suppression Order granted “Wife’s motion to suppress the oral communications intercepted through the Device” where “Husband was not a

party,” (*id.* at 3), the Order finds further steps are necessary to determine the scope of materials to be suppressed. *Id.* Specifically, the Court of Appeals’ Order found that the recording device at issue “contains hundreds of hours’ worth of recordings.” *Id.* As a result, the Suppression Order allows the Wife to “present any intercepted oral communications from the Device to the family court to demonstrate which portions of Husband’s allegations were derived from intercepted communications,” and indicated that the family court should consider suppressed any such information. *Id.* These steps have not yet occurred.

Nonetheless, on September 2, 2025, Husband filed a Petition for Rehearing and Rehearing *En Banc*. On January 21, 2026, the South Carolina Court of Appeals denied Mr. McGee’s petition for rehearing and rejected Mr. McGee’s Petition for Rehearing. Husband’s present efforts to appeal the unappealable orders of the Court of Appeals and Family Court followed.

While Husband’s Notice of Appeal contains a lengthy list of thirteen items Husband attempts to appeal, every item on the list is part of the Court of Appeals’ consideration of Wife’s motion that simply seeks to suppress evidence illegally obtained by Husband. The thirteen items Husband attempts to appeal can be grouped into four categories:

1) Court of Appeals’ Suppression/Reconsideration Orders:

- a. August 20, 2025 Order Granting Motion to Suppress;
- b. January 21, 2026 Order Denying Petition for Rehearing and Rehearing *En Banc*.

2) Court of Appeals’ Case Management Orders:

- a. September 14, 2023 Order of Chief Judge H. Bruce Williams denying Husband’s Motion to Dismiss;
- b. November 27, 2023 Order of Chief Judge H. Bruce Williams granting Wife’s Motions for Leave to File Supplemental Reply and to Supplement the Record;
- c. December 5, 2023 Order of Chief Judge H. Bruce Williams certifying issues to the Honorable Spiros Ferderigos, Family Court Judge;

- d. June 10, 2024 Order of Chief Judge H. Bruce Williams certifying issues to the Honorable Spiros Ferderigos, Family Court Judge.

3) Family Court Status Conference Orders:

- a. December 15, 2023 Order from Initial Status Conference issued by the Honorable Spiros Ferderigos, Family Court Judge;
- b. January 16, 2024 Order from Second Status Conference issued by the Honorable Spiros Ferderigos, Family Court Judge;
- c. February 12, 2024 Order from Third Status Conference issued by the Honorable Spiros Ferderigos, Family Court Judge;
- d. March 4, 2024 Order from Fourth Status Conference issued by the Honorable Spiros Ferderigos, Family Court Judge;
- e. June 11, 2024 Interim Order by the Honorable Spiros Ferderigos, Family Court Judge;
- f. June 24, 2024 Order from Fifth Status Conference issued by the Honorable Spiros Ferderigos, Family Court Judge.

4) Family Court Evidentiary Report:

- a. May 3, 2024 Report and Proposed Findings of the Honorable Spiros Ferderigos, Family Court Judge.

As further set forth below, Husband’s appeal should be dismissed: the issues at play here are functionally equivalent to an interlocutory discovery order or an order on a motion in limine entered by a trial court—and the issues at play here are no more immediately appealable. Indeed, the involvement of the Court of Appeals and the interim events leading up to the Court of Appeals’ suppression order are all red herrings: despite the involvement of the Court of Appeals, the suppression order is not an appellate order at all; instead, the Court of Appeals, sitting in a quasi-trial court role as the Reviewing Authority, has simply entered a ruling on the evidence, not the outcome.

Moreover, the impropriety of Husband’s appeal demonstrated by the language of the South Carolina Homeland Security Act itself, which provides Husband no avenue for appeal.

Husband has also filed a Motion to Transfer this appeal to the South Carolian Supreme Court and a Petition for Certiorari to the South Carolina Supreme Court. Wife will separately request that the South Carolina Supreme Court deny the Motion to Transfer and dismiss the Petition for Certiorari based on the absence of an appealable order.

STANDARD

“The right of appeal arises from and is controlled by statutory law.” *Hagood v. Sommerville*, 362 S.C. 191, 194, 607 S.E.2d 707, 708 (2005). Ordinarily, a party may pursue an appeal “only after a party has obtained a final judgment.” *Id.* Where an order is entered before or during trial, appealability is governed by S.C. Code Ann. § 14-3-330. *Hagood*, 362 S.C. at 195; 607 S.E.2d at 708. To be immediately appealable, the order “generally must fall into one of several categories set forth” in this statute, which consist of:

- (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;
- (2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action;
- (3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; and
- (4) An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver.

S.C. Code Ann. § 14-3-330.

As set forth below, Husband’s appeal does not fall into any of the categories enumerated under § 14-3-330. Moreover, an appeal of an order granting a motion to suppress is generally an appeal of an interlocutory order. *See State v. Whitner*, 399 S.C. 547, 551, 732 S.E.2d 861, 863 (2012) (describing State’s appeal of an order granting a motion to suppress as an “interlocutory appeal”). Further, Husband’s appeal is not authorized by the State Homeland Security Act. S.C. Code Ann. § 17-30-110.

ARGUMENT

I. HUSBAND’S APPEAL IS IMPROPER UNDER RULE 201, SCACR, BECAUSE THE MATTERS HUSBAND SEEKS TO APPEAL ARE NOT FINAL JUDGMENTS OR OTHERWISE APPEALABLE ORDERS OR DECISIONS.

Husband’s appeal should be dismissed as an improper appeal of unappealable interlocutory matters. “The right of appeal arises from and is controlled by statutory law.” *Hagood v. Sommerville*, 362 S.C. 191, 194, 607 S.E.2d 707, 708 (2005). Ordinarily, a party may pursue an appeal “only after a party has obtained a final judgment.” *Id.* Where an order is entered before or during trial, appealability is governed by S.C. Code Ann. § 14-3-330. *Hagood*, 362 S.C. at 195; 607 S.E.2d at 708. To be immediately appealable, the order “generally must fall into one of several categories set forth” in this statute, which consist of:

(1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;

(2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action;

(3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; and

(4) An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver.

S.C. Code Ann. § 14-3-330.

As set forth below, Husband's appeal does not fall into any of the categories enumerated under § 14-3-330.

First, upon information and belief, it is uncontested that subsection 14-3-330(4) does not apply because Husband's appeal does not involve an injunction or appointment of a receiver.

Second, Husband's appeal cannot be under § 14-3-330(1) because Husband does not appeal an action from the court of common pleas or general sessions. *See Dove v. Gold Kist, Inc.*, 314 S.C. 235, 238, 442 S.E.2d 598, 600 (1994) (noting that the circuit court consists of the court of common pleas, "which hears civil actions," and the court of general sessions, "which hears criminal cases"). Instead, this matter involves a divorce action in the Family Court. *See* Husband's Petition for a Writ of Certiorari at 1; S.C. Code Ann. § 63-3-10 (creating family courts in South Carolina); S.C. Code Ann. § 63-3-510 (setting jurisdiction of family courts). As a result, the matters Husband attempts to appeal are not immediately appealable under § 14-3-330(1). Moreover, even if the appeal was from an action in the court of common pleas or general sessions, Husband's appeal does not involve an intermediate judgment on the merits or a final judgment: no divorce decree has been entered and the case remains pending. *See McCrea v. City of Georgetown*, 384 S.C. 328, 331, 681 S.E.2d 918, 920 (Ct. App. 2009) ("An order involves the merits if it finally determines some substantial matter forming the whole or part of some cause of action or defense in the case."); *Cozby v. Oliver*, No. 2024-000742, 2026 WL 295390, at *2 (S.C. Ct. App. Feb. 4, 2026) (discussing when an order on appeal involves the "merits" of the action).

As a result, it appears Husband would most likely invoke §§ 14-3-330(2) or (3) to justify the appeal. However, Husband’s appeal is not proper under either subsection because these subsections permit an appeal only of “a final order affecting a substantial right.” Here, the entire series of thirteen items on appeal—including the ultimate suppression order from the Court of Appeals—involve questions regarding the admissibility of evidence in the Family Court action or items incidental to the suppression order, not intermediate judgments final orders nor do they affect a substantial right. The thirteen items (twelve Orders and the Family Court’s Report) are addressed in more detail below.

a. Court of Appeals’ Suppression/Reconsideration Orders

Ultimately, Husband’s appeal arises out of Wife’s Motion to Suppress and the Court of Appeals’ ruling, in its role as the Reviewing Authority, on the suppression motion. As a result, Wife first addresses the suppression and reconsideration orders, which consist of (1) the August 20, 2025 Order Granting Motion to Suppress and (2) January 21, 2026 Order Denying Petition for Rehearing and Rehearing *En Banc*.

Evidentiary and discovery matters are not generally immediately appealable. *See, e.g., S.C. Dep’t of Transp. v. McDonald’s Corp.*, 375 S.C. 90, 92, 650 S.E.2d 473, 474 (2007) (holding that motions *in limine* are “generally not considered” final orders “on the admissibility of evidence and, for that reason,” are “not immediately appealable”); *Grosshuesch v. Cramer*, 377 S.C. 12, 30, 659 S.E.2d 112, 122 (2008) (“Though these issues raise interesting questions, the fact remains that discovery orders, in general, are interlocutory and are not immediately appealable because they do not, within the meaning of the appealability statute, involve the merits of the action or affect a substantial right.”). Moreover, the fact that the Family Court action will now proceed to trial does not change this analysis. *Shields v. Martin Marietta Corp.*, 303 S.C. 469, 470, 402 S.E.2d 482, 483

(1991) (“Avoidance of trial is not a ‘substantial right’ entitling a party to immediate appeal of an interlocutory order.”).

Here, the August 20, 2025 Suppression Order is an evidentiary Order by the Court of Appeals in its role as the Reviewing Authority, which Order granted Wife’s petition to suppress certain electronic communications obtained by Husband in violation of the South Carolina Homeland Security Act and Title III of the Omnibus Crime Control and Safe Streets Act of 1968. *See* Suppression Order. Indeed, South Carolina’s Appellate Case Management System, the case is classified as an evidentiary matter:

Case Information: 2023-001376			
Court:	Court of Appeals	Classification:	Motion to Suppress - Wiretap Evidence - Wiretap Evidence
Short Title:	Justin McGee v. Lindsay McGee	Case Status:	Rehearing Denied
	View Full Title		

C-Track, *McGee v. McGee*, No. 2023-001376 (S.C. Ct. App.), <https://ctrack.sccourts.org/public/caseView.do?csIID=79122> (last visited 3/16/2026). Moreover, the Order does not contain any intermediate judgment on the merits or a final judgment; to the contrary, the divorce action remains pending. *See id.*; *see also McCrea*, 384 S.C. at 331, 681 S.E.2d at 920 (“An order involves the merits if it finally determines some substantial matter forming the whole or part of some cause of action or defense in the case.”); *Cozby*, No. 2024-000742, 2026 WL 295390, at *2 (discussing when an order on appeal involves the “merits” of the action).

The orders at issue here, at best, involve questions of discovery and/or evidence, as is further demonstrated by the relief granted by the August 20, 2025 Order itself. *See* Suppression Order. The Order allows the Wife to “present any intercepted oral communications from the Device to the family court to demonstrate which portions of Husband’s allegations were derived from intercepted communications,” and indicated that the family court should consider suppressed any such information. *Id.* at 3, fn. 4. This demonstrates both the evidentiary/discovery nature of

the Order and the fact that the ruling involves ongoing determinations yet to be completed by the Family Court, showing there is not yet any judgment on the merits or final order that would permit an appeal.

Likewise, the Court’s ruling on the Petition for Rehearing and Petition for Rehearing *En Banc* is not immediately appealable. These petitions sought rehearing of the above August 20, 2025 Order, which is not appealable as set forth above. Moreover, the January 21, 2026 denial of the rehearing petitions presents no independent grounds for appeal. Indeed, the petition itself was procedurally improper: under South Carolina law, a petition for rehearing will not be entertained “unless the action of the court on the motion or petition [for which rehearing has been requested] has the effect of dismissing or finally deciding a party's appeal.” *Portee v. Always Precise Prot. Agency & Investigations, Inc.*, No. 2012-UP-649, 2012 WL 10864536, at *1 (S.C. Ct. App. Dec. 5, 2012) (citing Rule 221(c), SCACR). The August 20, 2025 Order did not have the effect of dismissing or finally deciding a party’s appeal, and the petitions for rehearing were thus procedurally improper. Wife's Return to Resp't's Pet. for Reh'g & Suggestion for Hr'g En Banc at 2–4, *McGee v. McGee*, No. 2023-001376 (S.C. Ct. App. Oct. 6, 2025). Thus, the petitions were not proper, and the Court’s ruling denying the petitions is not appealable.

For these reasons, neither the Suppression Order nor the ruling on the Petitions for Rehearing are immediately appealable under § 14-3-330(1).

b. Court of Appeals’ Case Management Orders

In addition, Husband seeks to appeal the following Orders from the Court of Appeals, sitting as the Reviewing Authority: (1) the September 14, 2023 Order of Chief Judge H. Bruce Williams denying Husband’s Motion to Dismiss, (2) the November 27, 2023 Order of Chief Judge H. Bruce Williams granting Wife’s Motions for Leave to File Supplemental Reply and to

Supplement the Record, (3) the December 5, 2023 Order of Chief Judge H. Bruce Williams certifying issues to the Honorable Spiros Ferderigos, Family Court Judge; and (4) the June 10, 2024 Order of Chief Judge H. Bruce Williams certifying issues to the Honorable Spiros Ferderigos, Family Court Judge. Each of these items involve case management activity that is not immediately appealable.

The September 14, 2023 Order is a two-page Order ruling on Husband's Motion to Dismiss Wife's Motion to Suppress. *McGee v. McGee*, S.C. Ct. App. Order dated September 14, 2023. Specifically, Husband argued that the Court of Appeals lacked jurisdiction over Wife's Motion to Suppress. *Id.* The Court of Appeals denied the motion, citing S.C. Code Ann. §§ 17-30-110(A) and § 17-30-15(9), which requires the "reviewing authority" to consider motions to suppress communications and defines "reviewing authority" as "a panel of three judges of the South Carolina Court of Appeals designated by the Chief Judge...." *Id.* The Order permitted the suppression proceeding to go forward. *Id.*

The November 27, 2023 Order is a one-page order granting Wife's motions seeking to supplement the record and her reply to Husband's Return to the Motion to Suppress. *See McGee v. McGee*, S.C. Ct. App. Order dated November 27, 2023.

The December 5, 2023 Order and June 10, 2024 Orders (each totaling two pages) certified the Family Court to supervise additional discovery and issue reports to the Court of Appeals regarding its findings. *See McGee v. McGee*, S.C. Ct. App. Orders dated December 5, 2023, and June 10, 2024.

None of these four Orders involved any final ruling on the merits. The first Order denied a motion to dismiss, permitting the Motion to Suppress and, ultimately, the Family Court matter to continue forward to a conclusion. This is not directly appealable and does not affect the merits.

See Allison v. W.L. Gore & Assocs., 394 S.C. 185, 188, 714 S.E.2d 547, 549 (2011) (noting that an order “denying a motion to dismiss for lack of subject matter jurisdiction is not directly appealable because, among other things, it does not affect the merits”); *Shields*, 303 S.C. at 470, 402 S.E.2d at 483 (“Avoidance of trial is not a ‘substantial right’ entitling a party to immediate appeal of an interlocutory order.”).

The remaining three Orders involved supplementation of the record and certification of certain discovery findings to the Family Court, which Orders are not immediately appealable. *S.C. Dep't of Transp.*, 375 S.C. at 92, 650 S.E.2d at 474 (2007); *Grosshuesch*, 377 S.C. at 30, 659 S.E.2d at 122 (2008); *Cozby*, No. 2024-000742, 2026 WL 295390, at *2 (under the finality doctrine, the “prevailing rule... is that most orders which are not final judgments are not appealable”).

c. Family Court Status Conference Orders:

Husband also seeks to appeal six status conference orders issued by the Family Court Judge, the Honorable Spiros Ferderigos. Those orders are the following: (1) December 15, 2023 Order from Initial Status Conference issued by the Honorable Spiros Ferderigos, Family Court Judge; (2) January 16, 2024 Order from Second Status Conference issued by the Honorable Spiros Ferderigos, Family Court Judge; (3) February 12, 2024 Order from Third Status Conference issued by the Honorable Spiros Ferderigos, Family Court Judge; (4) March 4, 2024 Order from Fourth Status Conference issued by the Honorable Spiros Ferderigos, Family Court Judge; (5) June 11, 2024 Interim Order by the Honorable Spiros Ferderigos, Family Court Judge; (6) June 24, 2024 Order from Fifth Status Conference issued by the Honorable Spiros Ferderigos, Family Court Judge.

The December 15, 2023 Order from Initial Status Conference addressed discovery in the matter, with the Court setting guidelines for orderly discovery on the suppression issues assigned to the Family Court by the Court of Appeals. *McGee v. McGee*, Family Court Order dated December 15, 2023. The Order addresses guidelines for written discovery, subpoenas, and forensic evaluators. *Id.*

The January 16, 2024 Order from Second Status Conference addressed extraction of information from physical devices and digital sources by forensic evaluators and confidentiality of extracted information. *McGee v. McGee*, Family Court Order dated January 16, 2024. The Order further addressed discovery objections, supplementation of discovery, discovery deficiencies, and issuance of subpoenas. *Id.*

The February 12, 2024 Order from Third Status Conference addressed a conference to be held with the parties' forensic evaluators to address technology issues; return of physical devices to Wife's counsel and access of the devices by Wife's forensic experts; supplemental discovery responses; the Court's requirement that Husband provide certain information regarding his phone to Wife; issuance of a subpoena; provision by the parties to the Court of a proposed consent order; provision by Wife to Husband of a proposed Memorandum of Findings of Fact; and a ruling that the Court limiting depositions at present, with allowance for Husband to make further request in the future. *McGee v. McGee*, Family Court Order dated February 12, 2024.

The March 4, 2024 Order from Fourth Status Conference required Wife to submit supplemental discovery to Husband regarding the processes used by Wife's expert in his forensic evaluation, the experts' communications with Wife's counsel, supplemental exhibits to Wife's proposed Memorandum of Findings of fact, submission by Husband of a proposed Memorandum

of Findings of Fact, and a ruling continuing the prior limitation as to depositions. *McGee v. McGee*, Family Court Order dated March 4, 2024.

In the June 11, 2024 Interim Order, the Family Court scheduled a status conference and directed Wife's counsel to file a stipulation regarding the number of hours of video contained in a series of CAMDUCK recordings. *McGee v. McGee*, Family Court Order dated June 11, 2024.

Finally, in the June 24, 2024 Order from Fifth Status Conference, the Family Court addressed the Court of Appeals' certification of additional matters to the Family Court. The Family Court indicated it would be appointing a special referee to review CAMDUCK recordings and addressed assignment of the costs for the review. *McGee v. McGee*, Family Court Order dated June 24, 2024. It also discusses Wife's request for leave to seek clarification from the Court of Appeals regarding the certification and objections raised by Husband's counsel. *Id.*

None of these five Orders involved any final ruling on the merits. Rather, the Orders involved case management and discovery matters by the Family Court in compliance with the certification issued by the South Carolina Court of Appeals. These Orders are not immediately appealable. *S.C. Dep't of Transp.*, 375 S.C. at 92, 650 S.E.2d at 474 (2007); *Grosshuesch*, 377 S.C. at 30, 659 S.E.2d at 122 (2008); *Cozby*, No. 2024-000742, 2026 WL 295390, at *2.

d. Family Court Evidentiary Report

Finally, Husband seeks to appeal the May 3, 2024 letter containing the Report and Proposed Findings of the Honorable Spiros Ferderigos, Family Court Judge, to the Court of Appeals ("Report"). The Report does not contain any orders or final rulings on the merits; rather, it simply contains "proposed findings as to what, if any, of [Husband's] actions may have constituted violations of the Act (as well as other findings relevant to said violations." *See Report, McGee v. McGee*, Case No. 2026-000472 (S.C. Ct. App. dated May 3, 2024). The Report contains

a set of proposed factual findings; a background section; a discussion of a “CAMDUCK” device; a discussion of other spy camera devices that are no longer in either party’s possession; and a discussion of hidden camera devices that did not record audio. *Id.* at 2-12.

This Report contains no rulings at all. Rather, the Report contains proposed findings from the Family Court for consideration by the Court of Appeals. It is not immediately appealable. *S.C. Dep’t of Transp.*, 375 S.C. at 92, 650 S.E.2d at 474 (2007); *Grosshuesch*, 377 S.C. at 30, 659 S.E.2d at 122 (2008); *Cozby*, No. 2024-000742, 2026 WL 295390, at *2.

II. HUSBAND’S APPEAL IS IMPROPER UNDER THE SOUTH CAROLINA HOMELAND SECURITY ACT.

Husband’s Appeal is also not appealable under the South Carolina Homeland Security Act. The Act specifically addresses appellate rights, stating that “[t]he State has the right to appeal an order granting a motion to suppress made under subsection (A).” S.C. Code Ann. § 17-30-110. No other parties (whether the defendant in a criminal action, or any party to a civil matter) are granted the right to appeal under the Act. *See id.*

The asymmetric appellate structure created under § 17-30-110 is deliberate. The South Carolina Act is based on and parallels the Federal Act. *State v. Whitner*, 399 S.C. 547, 553, 732 S.E.2d 861, 864 (2012). Like the State Act, the Federal Act provides an asymmetrical appellate framework, with only the United States authorized to directly appeal the grant of a suppression order. *See* 18 U.S.C. § 3731. This provides a remedy for the government that it would not otherwise have, given concerns of double jeopardy and the severe effect the government faces where it faces an adverse suppression motion in a criminal matter. As background, before enactment of this statute, orders granting a suppression motion, even as against the government, were considered interlocutory and not appealable. *See Carroll v. United States*, 354 U.S. 394, 405, 77 S. Ct. 1332, 1339, 1 L. Ed. 2d 1442 (1957) (noting that suppression orders were considered interlocutory and

generally not appealable, even though, for the government, “the effect of suppressing the evidence seized from petitioners at their arrests will be to force dismissal of the indictment for lack of evidence on which to go forward”). With the enactment of 18 U.S.C. § 3731, this changed such that the government was specifically authorized to appeal adverse suppression rulings. *See United States v. Kemp & Assocs., Inc.*, 907 F.3d 1264, 1275 fn. 4 (10th Cir. 2018) (“Today, unlike in 1957, adverse suppression rulings are specifically appealable. See 18 U.S.C. § 3731.”). In fact, the text of § 3731 in its current form specifically recognizes double jeopardy concerns. *See* 18 U.S.C. § 3731 (providing the United State the right to appeal “except that no appeal shall lie where the double jeopardy clause of the United States Constitution prohibits further prosecution”).

However, the Federal Act, like the state act, does not provide for appeal by a criminal defendant or for parties facing an adverse suppression ruling in a civil matter. *See id.* Simply put, neither the defendant in a criminal case, nor the parties in a civil matter, are left without an appellate remedy when a court enters an adverse suppression order. This is because the criminal defendant and the parties to a civil action retain their right to an appeal in the normal course; they do not face double jeopardy concerns. *See* discussion *supra* at 15-16. *See also Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 106-08, 130 S. Ct. 599, 604-06, 175 L. Ed. 2d 458 (2009) (discussing collateral order doctrine and that even an order requiring disclosure of attorney-client privileged information did not render a matter “effectively unreviewable”).

As a result, Husband’s appeal is not permitted under the State Act.

CONCLUSION

For these reasons, Husband’s appeal involves interlocutory matters that are not immediately appealable, and the appeal is also not appealable under the State Act. As a result, Husband’s appeal should be dismissed.

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Columbia, South Carolina
March 20, 2026