

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Family Court

Civil Action Court Case Nos.: 2025-DR-26-2774 & 2026-DR-26-1083

Appellate Case No. 2026-001137

Stuart M. Axelrod,

Petitioner,

v.

Carla Ericson,

Respondent.

**REPLY TO RESPONDENT’S RETURN TO MOTIONS TO SUPPRESS
ELECTRONIC/ORAL COMMUNICATIONS**

Petitioner Stuart M. Axelrod, herein (“Axelrod”), hereby replies to Respondent Carla Ericson’s (herein “Ericson”) Response to Motion to Suppress and Supplemental Motion to Suppress as follows:

APPLICABILITY OF WIRETAP ACT

1. Ericson’s first argument is that the Motion to Suppress and Supplemental Motion to Suppress are improper because she claims that Motions to Suppress are only applicable to criminal cases. Ericson’s position is rebutted by the plain language of the Statute.

2. S.C. Code § 17-30-65 provides “Whenever any wire, oral, or electronic communication has been intercepted, no part of the contents of the communication and **no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body,**

legislative committee, or other authority of the State, or a political subdivision thereof, if the disclosure of that information would be in violation of this chapter.” Emphasis Supplied.

3. S.C. Code § 17-30-110(A) specifically states “Prior to any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority, any aggrieved person may move to suppress the contents of any intercepted wire, oral, or electronic communication, or evidence derived therefrom....” Emphasis Supplied.

4. The plain wording of the statutes do not exempt Family Court actions. The language includes any “trial” or “hearing” before ANY Court in this State. That includes any trial or hearing before the Family Court.

5. Further, the plain language of the Act includes matters other than criminal cases as it specifically includes “proceedings” which take place before any department, officer, agency, regulatory body, or other authority. By definition, that broad applicability encompasses far more proceedings than criminal proceedings as argued by Ericson.

6. Further, this Court has historically heard motions to suppress regarding Family Court actions, which supports Axelrod’s interpretation of the statutes.

7. Because the plain language of the statutes encompass all court proceeding, including Family Court proceedings, the Court should deny Ericson’s Motion.

RECORDINGS

8. Ericson’s claim that her surreptitious recording of Axelrod does not violate the Wiretap Acts is without merit.

9. Title III of the Omnibus Crime Control and Safe Streets Act of 1968, codified at 18 U.S.C. §§ 2510 et seq., governs the interception of wire, oral, and electronic communications. *Scott v. United States*, 436 U.S. 128, 98 S. Ct. 1717 (1978). Under the federal wiretap statute, an "oral communication" means any oral communication uttered by a person exhibiting an

expectation that such communication is not subject to interception under circumstances justifying such expectation. 18 U.S.C.A. § 2510.

10. "Intercept" means the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device. 18 U.S.C.A. § 2510.

11. Federal law prohibits any person from intentionally intercepting, endeavoring to intercept, or procuring any other person to intercept or endeavor to intercept any wire, oral, or electronic communication. 18 U.S.C.A. § 2511. The protection of privacy was an overriding congressional concern when Title III was enacted, and the act places strict conditions on the government's use of wiretapping and electronic surveillance and largely prohibits private, nonconsensual wiretapping. *United States v. Crabtree*, 565 F.3d 887 (4th Cir. 2009).

12. The Fourth Circuit has expressly held that there is no implied exception for electronic surveillance conducted between spouses, meaning interspousal wiretapping and bugging are fully prohibited under federal law. *Schiff v. Kennedy*, 691 F.2d 196 (4th Cir. 1982).

13. The federal wiretap statute contains a one-party consent exception, which provides that it is not unlawful for a person not acting under color of law to intercept a wire, oral, or electronic communication where such person is a party to the communication or where one of the parties to the communication has given prior consent to such interception, unless the interception is for the purpose of committing any criminal or tortious act. 18 U.S.C.A. § 2511.

14. South Carolina's Homeland Security Act, codified at S.C. Code Ann. § 17-30-30 et seq., similarly regulates the interception of oral communications. Under South Carolina law, it is lawful for a person not acting under color of law to intercept a wire, oral, or electronic communication where the person is a party to the communication or where one of the parties to the communication has given prior consent to the interception. S.C. Code Ann. § 17-30-30.

15. The South Carolina statute adopts the same one-party consent framework as the federal statute. *State v. Whitner*, 399 S.C. 547, 732 S.E.2d 861 (2012) When a party to a communication gives consent for the communication to be intercepted, such recording does not violate South Carolina law. *Id.*

16. South Carolina law expressly provides that evidence intercepted in violation of the Wiretap Act must be suppressed. *Id.*

17. Under general rules of statutory construction, a jurisdiction adopting legislation from another jurisdiction imports with it the judicial gloss interpreting that legislation. *Id.* An interception does not violate wiretap statutes when the person recording is a party to the communication. *Carpenter v. Commonwealth*, 51 Va. App. 84, 654 S.E.2d 345 (2007), *Pick v. Commonwealth*, 72 Va. App. 651, 852 S.E.2d 479 (2021).

18. In assessing whether an interception violates Title III, courts evaluate the reasonableness of the actual interceptions in light of the purpose and the totality of the circumstances. *Scott v. United States*, 436 U.S. 128, 98 S. Ct. 1717 (1978). Legislative history confirms that Congress specifically intended Title III to encompass acts of wiretapping incident to divorce litigation, which was one of the primary areas in which private electronic surveillance was widespread. *Nalley v. Nalley*, 53 F.3d 649 (4th Cir. 1995).

19. Ericson admits to placing the recording device in the bedroom with the express intent of surreptitiously recording Axelrod. The placement of the recording device, in and of itself, is a violation of both the Federal Act and the State Act. Thus, the question becomes not whether the Acts have been violated, but rather what evidence was obtained by Ericson which must be suppressed under the Acts.

20. As to Ericson's contention that she did not recover any of the recordings or that her recordings were limited in time or scope, those allegations are refuted by the objective forensic evidence.

21. As set forth in the Affidavit of Christopher Watkins, forensic analysis of the devices confirms that Ericson began surreptitiously recording Axelrod by at least July 2025. Ericson's assertions otherwise are simply false.

22. Similarly, Ericson's assertions that she did not access the recording device are also rebutted by the objective evidence. While Ericson claims that she never accessed the recording device, the forensic evidence confirms that a Mac computer accessed the recording device. Ericson uses a Mac computer.

EMAILS

23. Ericson makes self-serving statements about her access to Axelrod's computer, but these are belied by the evidence. First, Ericson's affidavit proves that she is not a credible witness as she makes numerous assertions which are rebutted by the forensic evidence. Ericson makes numerous claims which are simply false and are directly disproved by the objective evidence.

24. Further, as set forth in Axelrod's Reply Affidavit, Ericson did not in fact use or have implied consent to use Axelrod's personal email account. This is particularly true as Ericson did not simply access the computer and email, but she also accessed and disseminated attorney-client privileged communications. As someone who had worked for a law firm for many years, Ericson clearly knew she was not entitled to those communications. She simply ignored that legal privilege and reasonable expectation of privacy to illegally violate Axelrod's rights.

25. Second, Ericson claims that she used Axelrod's email account to perform technological tasks does not comport with the objective evidence indicating that Ericson needed to enlist the assistance of a third-party in setting up the recording device. Ericson would not have

been used to provide technical assistance. It was Axelrod who was the more technically savvy party and the person who would have performed such technical tasks. Axelrod did not and would not have granted Ericson permission to use his computer or personal email address for technological purposes.

26. Because the Court should deny Ericson's argument that she had express or implied consent to access Axelrod's computer and/or email, the Court should also dismiss her Return.

CLAIMED MOOTNESS

27. Ericson's argument that the matters are moot is without merit.

28. Axelrod acknowledges that Ericson purported to dismiss her initial action and immediately thereafter filed a new action. As set forth in his Supplemental Motion to Suppress filed with this Court and Motion to Strike filed with the Family Court, Axelrod asserts that the dismissal was improper and that Ericson is basing her new action upon the same illegally obtained information which formed the bases of her prior action.

29. Axelrod's belief has been corroborated by Ericson's actions in the new action.

30. With the initial Complaint, Ericson served discovery which was designed to obtain admission related to claimed adultery. This information was derived from Ericson's illegal interceptions of Axelrod's communications. It is "fruit from the poisonous tree."

31. Further, Ericson has recently amended her Complaint in the 2026 action to also allege adultery. Her current action is now virtually identical to the 2025 action which she acknowledges is based upon illegally obtained information. Ericson cannot avoid the illegality of her actions by simply filing a new action and obtaining a new docket number.

32. Additionally, it is clear that Ericson intends to either use the illegally intercepted communications in the Family Court litigation (under either Docket Number). Thus, the necessity

of the Court to intervene to prevent her from doing so belies Ericson's argument that the issue is moot.

33. "A moot case exists where a judgment rendered by the court will have no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the reviewing court." *Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 26, 630 S.E.2d 474, 477 (2006).

34. Here, regardless of which docket number the case proceeds, Axelrod has a statutory right under both Federal and State law to prevent Ericson from utilizing illegally obtained evidence, including privileged communications between Axelrod and his attorneys.

CONCLUSION

35. Based upon the foregoing, Axelrod requests that this Court grant his Motion to Suppress and grant him an award of attorney's fees, suit money, and costs which he incurred in connection with this Motion.

Respectfully submitted,

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