

RECEIVED

Sep 28 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Civil Action Court Case No. 2025-CP-10-04577

Appellate Case No. _____

COMES NOW Respondent Robbins Construction Group, LLC (“Robbins”), by and through its undersigned counsel, and respectfully submits this Memorandum in Opposition to Petitioners’ Motion to Suppress Electronic Communications. Robbins relies on the accompanying affidavits of Derek Robbins and Alan Burgreen in support of the factual assertions set forth herein.

BACKGROUND

This action arises from disputes concerning Mr. Willard’s departure from Robbins and his subsequent employment with The Bastion Group, LLC. Mr. Willard was employed by Robbins until July 2025 and was provided a Robbins-owned Dell laptop for use in connection with his employment. During his employment, Mr. Willard used his personally owned Samsung phone in connection with the Robbins laptop through Microsoft Phone Link. See Affidavit of Derek Robbins ¶ 3; Affidavit of Alan Burgreen ¶ 3.

When Mr. Willard’s employment ended, he returned the Robbins laptop to Robbins. See Affidavit of Derek Robbins ¶ 4; Affidavit of Alan Burgreen ¶¶ 4-5. Robbins retained the laptop as company property for access to company emails, files, records, and other business information. Robbins’ evidence establishes that no one at Robbins reconnected or re-paired Mr. Willard’s personal phone to the laptop after his employment ended, remotely accessed his phone, installed

surveillance software, or intentionally activated Phone Link to monitor his communications. See Affidavit of Derek Robbins ¶¶ 5-7; Affidavit of Alan Burgreen ¶¶ 5-8.

Petitioners nevertheless allege that Robbins intentionally reactivated Phone Link and intercepted Mr. Willard's personal communications after his employment ended. The motion relies heavily on the fact that communications were accessible on the Robbins-owned laptop and asks the Court to suppress those communications and broad categories of evidence allegedly derived from them. However, Petitioners have not identified competent evidence establishing who allegedly reactivated Phone Link, when it occurred, or that Robbins intentionally acquired any identified communication through an interception.

ARGUMENT

I. Petitioners have not established an unlawful interception.

South Carolina statute permits suppression only where the challenged communication was unlawfully intercepted. S.C. Code Ann. § 17-30-110(A)(1). The statute defines "intercept" as "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." S.C. Code Ann. § 17-30-15(3).

Petitioners have not established that Robbins intentionally acquired any particular communication through an unlawful interception. Their theory depends primarily upon the presence of Microsoft Phone Link on a Robbins-owned computer and Mr. Willard's belief that Robbins must have reactivated the connection after his employment ended. The presence or technical capability of Phone Link does not establish who activated it, when it was activated, whether Robbins activated it at all, or whether Robbins acquired any particular communication through the transmission process.

Mr. Willard's affidavit does not resolve those questions. Instead, it repeatedly relies on speculation. He states that Robbins "likely" obtained the June 8 message through Phone Link, that Robbins "could have" used the laptop to intercept his communications, and that the allegations in Robbins' Complaint are "likely" based on his communications. The forensic examiner identified by Mr. Willard had not completed his examination when the motion was filed and was still searching for artifacts that might establish how the alleged connection operated. That evidence does not establish that Robbins intentionally intercepted a communication. At most, it establishes that Mr. Willard previously connected his personal phone to a Robbins-owned computer and that communications associated with that connection were later accessible on the computer.

Petitioners place particular emphasis on the June 8, 2026 text message from Candice Chastain. However, the existence of a copy of that message on the Robbins computer does not establish how or when Robbins acquired it. The message was displayed through the computer's messaging interface. Mere existence does not establish that Robbins reactivated Microsoft Phone Link, intercepted the message while it was being transmitted, or otherwise caused the message to be acquired from Mr. Willard's phone. Petitioners have offered no forensic evidence identifying the mechanism by which Robbins allegedly acquired that particular communication. See Affidavit of Derek Robbins ¶¶ 5-9; Affidavit of Alan Burgreen ¶¶ 5-8.

Mr. Willard's own affidavit likewise does not establish that Robbins acquired the Chastain message through an interception. He states that he recognized the format as consistent with Phone Link and inferred that Robbins must have obtained it through that connection. An inference based on the format of a message is not evidence of who caused the message to appear on the computer or when the message was acquired.

The circumstances here are analogous to *Ducharme v. Madewell Concrete, LLC*, No. 6:20-1620-HMH, 2021 WL 2141728 (D.S.C. 2021). In *Ducharme*, the plaintiff used a company-owned device for both business and personal communications. After the plaintiff left his employment, he returned the company device, and the employer subsequently accessed a personal email that remained available on the device. The court concluded that the alleged conduct did not constitute an “intercept” because there was no evidence that the employer acquired the communication contemporaneously with its transmission. *Id.*

The same distinction applies here. Mr. Willard personally connected his Samsung phone to a Robbins-owned Dell computer through Microsoft Phone Link during his employment. He then returned the computer to Robbins. Robbins did not reconnect or re-pair Mr. Willard’s phone or intentionally activate Phone Link after his employment ended. See Affidavit of Derek Robbins ¶¶ 3-8; Affidavit of Alan Burgreen ¶¶ 3-8. Thus, the fact that a communication may have remained accessible on a company-owned computer does not, standing alone, establish that Robbins intercepted the communication. As *Ducharme* explains, the alleged acquisition must occur contemporaneously with the communication’s transmission to constitute an “intercept.” *Id.*; see also *Carson v. Emergency MD, LLC*, No. 6:20-1946-HMH, 2020 WL 5077655 (D.S.C. 2020). Petitioners have not established that Robbins intentionally acquired any identified communication in a manner constituting an “intercept” under the statute.

II. Petitioners have not established unauthorized access to stored communications.

Petitioners’ Stored Communications Act claim presents a separate set of requirements and likewise has not been established. The statute requires proof of unauthorized access to a qualifying facility through which an electronic communication service is provided and to communications in electronic storage. See *Jennings v. Jennings*, 401 S.C. 1, 736 S.E.2d 242 (2012). Petitioners’

allegations largely assume that Robbins accessed Mr. Willard's personal phones or otherwise obtained communications directly from those devices. The evidence described by Robbins, however, concerns information that was already accessible on a Robbins-owned computer that Mr. Willard had used during his employment. Petitioners have not established that Robbins obtained the communications by accessing Mr. Willard's personal phone or by circumventing any security measure. Accordingly, the mere presence or later discovery of communications on the Robbins-owned computer does not establish a violation of the Stored Communications Act.

III. Petitioners have not established a basis for suppression or exclusion of Robbins' evidence.

Section 17-30-65(A) excludes the contents of an intercepted communication and evidence derived from it only where disclosure would violate the statute. The remedy therefore depends upon proof of an unlawful interception and a causal connection between that interception and the evidence sought to be excluded. Petitioners instead ask the Court to suppress unspecified communications, "derivative works," pleadings, and apparently the factual basis of Robbins' civil claims. That request is far broader than their proof. Petitioners cannot obtain wholesale suppression of Robbins' claims merely by alleging that some information was available through Mr. Willard's personal communications.

Robbins possessed substantial independent sources of information concerning its customers, projects, employees, and business opportunities, including Robbins' own email system, project records, customer communications, employee communications, and information received directly from customers, vendors, and other business contacts. Robbins also received information directly from customers, employees, vendors, and other business contacts. Robbins therefore did not rely exclusively on information allegedly accessible through Mr. Willard's personal communications. See Affidavit of Derek Robbins ¶ 10; Affidavit of Alan Burgreen ¶ 9. Petitioners

have not identified a specific item of evidence that was unlawfully intercepted and have not established that the allegations or evidence at issue were obtained through an unlawful interception. Without that showing, there is no basis for the broad suppression and exclusionary relief requested.

Furthermore, the same threshold problem remains under federal law: Petitioners have not established that Robbins intentionally intercepted any identified communication. The federal statute defines “intercept” as the acquisition of the contents of a communication through the use of an electronic, mechanical, or other device, and § 2511(1)(a) prohibits intentional interception. 18 U.S.C. §§ 2510(4), 2511(1)(a).

Petitioners’ evidence establishes, at most, that Mr. Willard previously connected his personal phone to a Robbins-owned computer and that information associated with that connection remained accessible after the computer was returned. It does not establish that Robbins intentionally acquired any particular communication while it was being transmitted.

CONCLUSION

For the foregoing reasons, Robbins Construction Group, LLC respectfully requests that the Court deny Petitioners’ Motion to Suppress Electronic Communications and grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

September 28, 2026

s/Ryan A. Baker
Ryan A. Baker, SC Bar No. 105995
ryan@smithlawcarolinas.com
Steven L. Smith, SC Bar No. 5173
steve@smithlawcarolinas.com
Smith Law Group of the Carolinas, LLC

25-203

225 Seven Farms Drive, Ste 203
Charleston, SC 29492
P.O. Box 50610, Summerville, SC 29485
843-607-0254
Attorneys for Respondent

RECEIVED

Sep 28 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

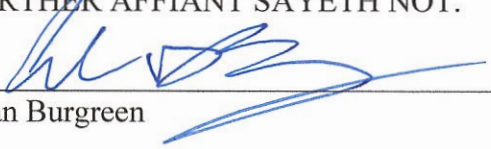
Civil Action Court Case No. 2025-CP-10-04577

Appellate Case No. _____

PERSONALLY appeared before me the undersigned officer Alan Burgreen, who, being duly sworn, states as follows:

1. I am the Vice President of Robbins Construction Group, LLC ("Robbins"). I have personal knowledge of the matters set forth below and am competent to testify regarding them.
2. As part of my responsibilities with Robbins, I handle the setup, issuance, return, and cleaning of company computers and other company-issued equipment.
3. During his employment with Robbins, Aaron Willard was provided a Robbins-owned Dell laptop for use in connection with his work. Mr. Willard used his personal Android phone in connection with the laptop, including through Microsoft Phone Link.
4. When Mr. Willard's employment ended in July 2025, I personally received and handled the Robbins laptop that had been assigned to him. The laptop remained in Robbins' possession as company property and was handled in accordance with Robbins' normal process for returned company computers.
5. I did not reconnect, re-pair, or otherwise establish a new connection between Mr. Willard's personal phone and the Robbins laptop after his employment ended.
6. I did not remotely access Mr. Willard's personal phone, install spyware or surveillance software on his phone, or use his personal passwords or credentials to gain access to his phone.
7. I did not use the Robbins laptop to monitor Mr. Willard's personal phone communications in real time, and I did not intentionally activate or reactivate Microsoft Phone Link after Mr. Willard's employment ended for the purpose of monitoring his personal communications.
8. In handling Mr. Willard's returned laptop, I did not intentionally establish a new connection to his personal phone for the purpose of accessing his personal communications.
9. Robbins maintained its own email, project files, customer records, employee records, and other business information on its computer systems. Robbins also received information directly from customers, employees, vendors, and other business contacts.

FURTHER AFFIANT SAYETH NOT.


Alan Burgreen

SWORN TO AND SUBSCRIBED before me
this 25 day of September, 2026.


Notary Public for South Carolina

My Commission Expires: July 7, 2030

Michele McGee Strause
Notary Public, State of South Carolina
My Commission Expires July 7, 2030

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
Sep 28 2026
SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Civil Action Court Case No. 2025-CP-10-04577

Appellate Case No. _____

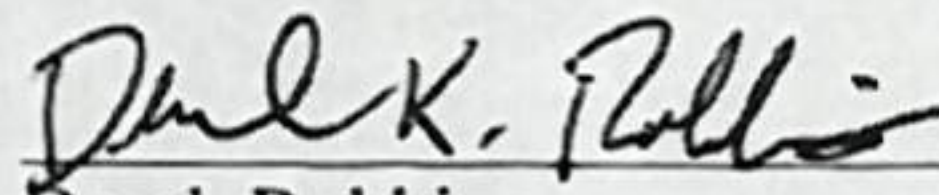
PERSONALLY appeared before me the undersigned officer Derek Robbins, who, being duly sworn, states as follows:

1. My name is Derek Robbins. I am the owner and an authorized representative of Robbins Construction Group, LLC ("Robbins"). I have personal knowledge of the matters stated in this affidavit, except where expressly stated otherwise, and I am competent to testify to them.
2. Aaron Willard was employed by Robbins until July 2025. During his employment, Robbins provided Mr. Willard with a Dell laptop computer for company business. The computer was and remains property of Robbins.
3. While employed by Robbins, Mr. Willard used Microsoft Phone Link on the Robbins-owned Dell computer in connection with his personal Android phone. Mr. Willard's use of Microsoft Phone Link on the Robbins-owned computer began during his employment with Robbins. Robbins did not install, activate, or configure Phone Link for the purpose of monitoring Mr. Willard after his employment ended.
4. When Mr. Willard's employment ended, he returned the Dell computer to Robbins. Robbins retained the computer as company property and for access to company emails, files, records, and other business information stored on it.
5. I did not take possession of or remotely access Mr. Willard's personal telephone. I did not install spyware or other surveillance software on his telephone, and I did not direct anyone to hack, compromise, or bypass security on his telephone. I did not knowingly obtain or use Mr. Willard's personal password for the purpose of remotely entering his telephone.
6. Information visible on the returned Robbins computer included business-related information concerning Robbins' customers, projects, employees, and business opportunities. Robbins reviewed information on the computer in connection with its business operations and its investigation of matters involving Mr. Willard.
7. Other information visible through the returned computer included communications concerning meetings and work involving Curtiss-Wright, GXO, bid information, and communications with current or former Robbins employees concerning employment with The Bastion Group, LLC.
8. I did not reactivate, reconnect, or re-pair Mr. Willard's personal telephone with the Robbins-owned Dell computer after Mr. Willard left Robbins. I did not direct anyone to do so. To the best of my knowledge, neither I nor anyone acting at my direction re-paired Mr. Willard's

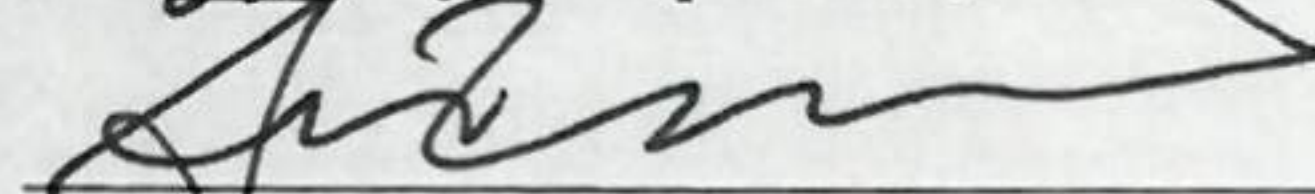
telephone to the Dell computer after he left Robbins, and I did not intentionally cause a new pairing between the returned Dell computer and Mr. Willard's replacement Samsung Galaxy S25 telephone.

9. I did not monitor Mr. Willard's personal telephone communications in real time. I did not sit at the computer waiting for or attempting to capture Mr. Willard's messages as they were being transmitted. I did not use packet-sniffing, keylogging, wiretapping, or similar software to capture communications in transit.
10. Robbins maintained its own email system, project files, customer records, employee records, and business communications. Robbins also received information directly from customers, employees, vendors, and other business contacts. Robbins did not rely exclusively on information accessible through Mr. Willard's personal communications in investigating his activities or pursuing this lawsuit.

FURTHER AFFIANT SAYETH NOT.


Derek Robbins

SWORN TO AND SUBSCRIBED before me
this 28 day of September, 2026.


Notary Public for South Carolina
My Commission Expires:



STEVEN LEWIS SMITH
NOTARY PUBLIC
SOUTH CAROLINA
NOTARY ID# 10120281
MY COMMISSION EXPIRES 03-30-36