

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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MOTION FROM RICHLAND COUNTY

Court of General Sessions  
\_\_\_\_\_

Case Nos.: 2014GS4003853  
and 2016GS4000587  
\_\_\_\_\_

**RECEIVED**  
AUG 05 2016  
SC Court of Appeals

Perez Antwan Brooks, ..... Petitioner/Movant,

v.

Fifth Judicial Circuit Solicitor's Office, ..... Respondent.

\_\_\_\_\_  
Motion To Suppress Recorded Pretrial Detention Telephone Calls  
\_\_\_\_\_

Pursuant to Rule 240, SCACR and S.C. Code Ann. § 17-30-110 (Supp. 2012),  
Petitioner/Movant hereby moves this Court for an Order allowing these Parties to  
conduct discovery and a hearing for testimony concerning the manner and  
circumstances allowing the Alvin S. Glenn and Sumter-Lee Detention Centers to record  
Petitioner/Movant's pretrial detention phone calls and to provide the same to the Fifth  
Circuit Solicitor's Office without a court order or other legal process.

On or about, May 2, 2014, Petitioner Brooks was arrested and charged with  
Felony DUI (Death) arising from a traffic accident in Richland County. In January 2016,  
Brooks was also indicted for Reckless Homicide arising from the same traffic accident.

In July 2016, the State provided Petitioner Brooks with additional discovery consisting of two discs of Brooks' telephone calls that were recorded while Petitioner was in pretrial detention at the Alvin S. Glenn Detention Center in Richland County and at the Sumter-Lee Detention Center in Sumter County. The State has not produced any court order authorizing the recording of the telephone calls or for the Detention Centers to provide those recordings to the prosecutors in this case.

S.C. Code Ann §§ 17-30-10, *et seq.* (Supp. 2012), part of the South Carolina Homeland Security Act (the "Act"), governs the interception and disclosure of telephone communications. *See*, S.C. Code Ann. § 17-30-10 ("interception of wire, electronic, or oral communications is hereby authorized only in the manner permitted by this chapter"). The Act further provides, in part, that a person is prohibited from intentionally intercepting any wire, oral or electronic communication; intentionally using any device to intercept an oral communication; or intentionally disclosing to any other person the contents of any intercepted wire, oral or electronic communication. *See*, S.C. Code Ann. § 17-30-20. Sections 17-30-25 and 35 set forth instances when the interception and disclosure of the content of wire, electronic, or oral communications are permitted, including by court order or by written certification from the South Carolina Law Enforcement Division that no warrant or court order is required by the Act. *See*, S.C. Code Ann. §§ 17-30-25, 35, and 95.

The Act prohibits a person or entity providing an electronic communication service to the public from divulging the contents of those communications to any person "other than an addressee or intended recipient of the communication or an agent of the addressee or intended recipient," except in four statutorily authorized situations. *See*,

S.C. Code Ann. § 17-30-40(A). The statutorily exceptions to the prohibition on disclosure of the contents of intercepted communications are “as otherwise authorized by this chapter”; “with the lawful consent of the originator or any addressee or intended recipient of the communication”; “to a person employed or authorized, or whose facilities are used to forward the communication to its destination”; or “which were inadvertently obtained by the service provider and which appeared to pertain to the commission of a crime, if the divulgence is made to a law enforcement agency.” See, S.C. Code Ann. § 17-30-40(B). Section 17-30-65(A) further provides that any wire, oral, or electronic communication that has been intercepted in violation of the chapter may not be received in evidence in any trial, hearing, or other proceeding in any court.

The State has produced to the Petitioner/Movant numerous recorded telephone calls made by Petitioner while he was held in pretrial detention in Richland and Sumter Counties.<sup>1</sup> The State has indicated that they intend to introduce one or more of these recorded telephone conversations into evidence at the trial of Petitioner’s case. Thus, pursuant to S.C. Code Ann. § 17-30-110, Petitioner moves this Court for an Order suppressing Petitioner’s recorded telephone conversations on the grounds that the recordings were made in violation of the S.C. Homeland Security Act; that Petitioner’s implied consent to the recording of his telephone calls from a detention center telephone was not voluntary consent for purposes of the Fourth Amendment of the United States Constitution; and that even if properly recorded by the detention centers, the Act requires Petitioner’s consent, absent a court order, before the contents of his

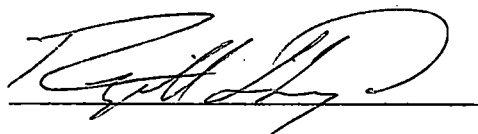
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<sup>1</sup> Petitioner concedes that, upon information and belief, all telephone calls made from the two detention centers contain a warning that can be heard by the detainee and any person receiving the telephone call and which state that the call is subject to monitoring and/or recording.

communications may be disclosed to the Fifth Circuit Solicitor's Office. *See, e.g., State v. Ellefson*, 266 S.C. 494, 224 S.E.2d 666 (1976) (warrantless exploratory search and copying of pretrial detainee's mail, without legitimate jail purpose or probable cause violated detainee's First and Fourth Amendment rights, even though detainee signed a card authorizing jail officials to read his mail, absent proof of voluntariness of consent).

In order for the Parties to more thoroughly brief the issues raised in this matter, the Petitioner respectfully requests that this Court allow the Parties to conduct written discovery and have a hearing to elicit testimony concerning the manner and circumstances in which the Alvin S. Glenn and Sumter-Lee Detention Centers record telephone calls of detainees and the manner and circumstances in which such recordings are monitored, reviewed, and provided to law enforcement or prosecutors.

August 5, 2016



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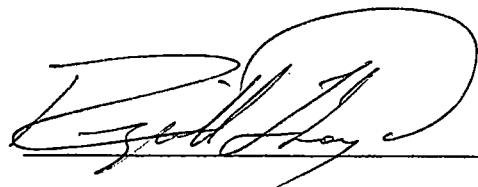
v.

Fifth Judicial Circuit Solicitor's Office, ..... Respondent.

PROOF OF SERVICE

I certify that I have served the Petition/Motion to Suppress Recorded Pretrial Detention Telephone Calls, to Respondent's attorneys of record, by hand-delivery, to Joshua P. Golson, Esq. and John Steadman, Esq., Fifth Judicial Circuit Solicitor's Office, 1701 Main Street, Suite 302, Columbia, South Carolina 29201, on this 5th day of August, 2016.

August 5, 2016



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844-270-4813 (f)

August 5, 2016

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SC Court of Appeals

Hon. Jenny Abbott Kitchings  
Clerk of Court  
1015 Sumter Street  
Columbia, South Carolina 29201

RE: State of South Carolina v. Perez Antwan Brooks, Indictment Nos.:  
2014GS4003853 and 2016GS4000587; Motion to Suppress  
Recorded Telephone Calls.

Dear Ms. Kitchings:

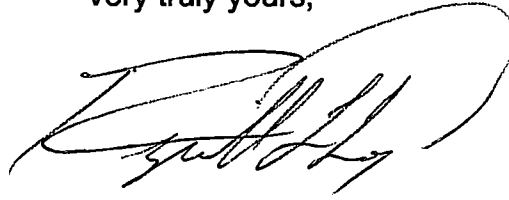
Enclosed for filing, in the above referenced matter, please find the original and nine (9) copies of Petitioner's Motion to Suppress Recorded Pretrial Detention Telephone Calls. This motion is being filed with the Court of Appeals pursuant to S.C. Code Ann. § 17-30-110 (Supp. 2012), which vests the South Carolina Court of Appeals with reviewing authority concerning the interception and use of wire, electronic and oral communications.

Please file the original and six copies and return two clocked copies to me. It is my understanding that no filing fee is required for this motion related to a pending criminal case. If I am mistaken, please let me know and I will promptly remit the proper filing fee.

Thank you for you assistance. If you should have any questions, please do not hesitate to contact me.

With kind regards, I am

Very truly yours,

A handwritten signature in black ink, appearing to read 'Reginald I. Lloyd', written in a cursive style with a large loop at the end.

Reginald I. Lloyd

Enclosures

cc: Mr. Joshua P. Golson (via hand-delivery)  
Assistant Solicitor, Fifth Judicial Circuit Solicitor's Office  
Richland County Clerk of Court, General Sessions