

# The South Carolina Court of Appeals

The State, Plaintiff,

v.

Perez Antwan Brooks, Defendant.

Appellate Case No. 2016-001622

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## ORDER

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Perez Antwan Brooks has filed a motion pursuant to the South Carolina Homeland Security Act (the Act)<sup>1</sup> to suppress recordings of telephone calls he made while in pretrial detention, arguing the Alvin S. Glenn Detention Center and Sumter-Lee Regional Detention Center violated the Act by recording his calls and providing the recordings to the State in anticipation of trial. The motion is denied.

The Act prohibits "[t]he interception of wire, electronic, or oral communications" except "in the manner permitted by this chapter." S.C. Code Ann. § 17-30-10 (2014). However, interceptions by law enforcement in the ordinary course of its duties and interceptions to which a party to the communication has consented are permitted. *See* S.C. Code Ann. § 17-30-15(3) (2014) ("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."); S.C. Code Ann. § 17-30-15(4) (2014) ("Electronic, mechanical, or other device' means any device or apparatus which can be used to intercept a wire, electronic, or oral communication other than: (a) any telephone or telegraph instrument, equipment, or facility, or any component thereof . . . (ii) being used by . . . an investigative or law enforcement

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<sup>1</sup> S.C. Code Ann. §§ 17-30-10 to -145 (2014). This court reviews motions to suppress under the Act in its original jurisdiction. *See* S.C. Code Ann. § 17-30-110(A) (2014) (providing such motions "must be made before the reviewing authority"); S.C. Code Ann. § 17-30-15(9) (2014) (defining "reviewing authority" as "a panel of three judges of the South Carolina Court of Appeals designated by the Chief Judge of the South Carolina Court of Appeals").

officer in the ordinary course of his duties . . . ."); S.C. Code Ann. § 17-30-30(B) (2014) ("It is lawful under this chapter for a person acting under color of law to intercept a wire, oral, or electronic communication, where the person is a party to the communication or one of the parties to the communication has given prior consent to the interception.").

Because the Act "is patterned after Title III of the Omnibus Crime Control and Safe Streets Act of 1968" (the Federal Act), we look to relevant case law interpreting the Federal Act for guidance. *State v. Guerrero-Flores*, 402 S.C. 530, 534, 741 S.E.2d 577, 580 (Ct. App. 2013) (recognizing "federal cases analyzing comparable provisions of the Federal Act are persuasive in interpreting the provisions of the [Act]").

In *United States v. Hammond*, the Federal Bureau of Prisons (BOP) recorded phone calls Hammond made while incarcerated, including calls during which Hammond tampered with a witness. 286 F.3d 189, 190 (4th Cir. 2002). The FBI obtained the recordings by means of a subpoena, rather than an interception order pursuant to the Federal Act. *Id.* Hammond unsuccessfully sought to suppress the recordings at trial, arguing the government did not comply with the Federal Act in obtaining them. *Id.* at 191. On appeal, the Fourth Circuit noted the BOP made the recordings in accordance with its routine monitoring practices and inmates were notified their calls would be monitored. *Id.* The court recognized, "Although the argument has been made that [the Federal Act] was not intended by Congress to apply to prisons, it is well accepted that its protections do apply to that context." *Id.* at 192. The Fourth Circuit ruled "both the 'law enforcement' and 'consent' exceptions rendered the BOP's recording of the tapes permissible." *Id.* As to the law enforcement exception,<sup>2</sup> the Fourth Circuit ruled, "Because the BOP was acting pursuant to its well-known policies in the ordinary course of its duties in taping the calls, the law enforcement exception exempted the actions of the BOP from the prohibitory injunction of [the Federal Act]." *Id.* Similarly, the court ruled "the 'consent' exception<sup>3</sup> applies to prison inmates . . . required to permit monitoring as a condition of using prison telephones." *Id.*

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<sup>2</sup> 18 U.S.C. § 2510(5) (2015) ("[E]lectronic, mechanical, or other device" means any device or apparatus which can be used to intercept a wire, oral, or electronic communication other than-- (a) any telephone or telegraph instrument, equipment or facility, or any component thereof . . . (ii) being used by . . . an investigative or law enforcement officer in the ordinary course of his duties . . . .").

<sup>3</sup> 18 U.S.C. § 2511(2)(c) (2015) ("It shall not be unlawful under this chapter for a person acting under color of law to intercept a wire, oral, or electronic

The relevant statutes under the Act are substantively identical to the Federal Act provisions the *Hammond* court considered. Because *Hammond* was decided prior to the Act's enactment<sup>4</sup> and earlier federal decisions exempted prison phone calls from the Federal Act's interception prohibitions,<sup>5</sup> we are persuaded that our legislature intended for the Act to similarly apply to South Carolina prisons and detention centers. See *State v. Whitner*, 399 S.C. 547, 552-53, 732 S.E.2d 861, 864 (2012) ("Under general rules of statutory construction, a jurisdiction adopting legislation from another jurisdiction imports with it the judicial gloss interpreting that legislation." (quoting *Orr v. Clyburn*, 277 S.C. 536, 540, 290 S.E.2d 804, 806 (1982))); *id.* at 554, 732 S.E.2d at 865 ("[The] Act, modeled after the Federal Act, was enacted in 2002. . . . [W]hen our Legislature enacted the [Act], it was well aware of the majority rule concerning construction of the Federal Act . . ."). We therefore find the reasoning in *Hammond* persuasive and adopt it here.

In this case, the detention centers intercepted several calls Brooks made while detained. However, Brooks concedes in his motion all calls made from the detention centers begin with a warning—given both to the detainee and to the party receiving the call—the call is subject to monitoring and recording. We therefore find the detention centers recorded Brooks's telephone calls in the ordinary course of their business and the recordings were subject to the Act's law enforcement exception. See § 17-30-15(4); *Hammond*, 286 F.3d at 192 ("Because the BOP was acting pursuant to its well-known policies in the ordinary course of its duties in taping the calls, the law enforcement exception exempted the actions of the BOP from the prohibitory injunction of [the Federal Act]."). Additionally, because the detention centers notified Brooks any call he made was subject to monitoring or recording, we find Brooks consented to such recording when he utilized the

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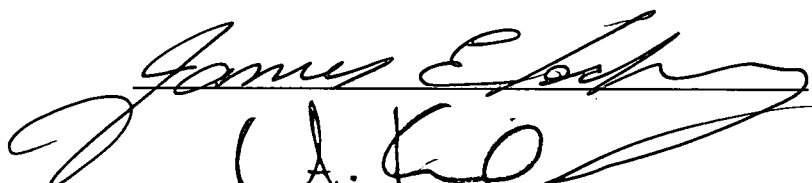

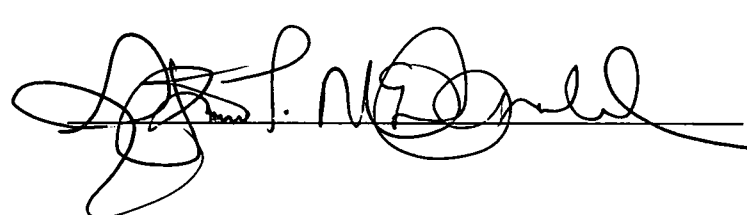
communication, where such person is a party to the communication or one of the parties to the communication has given prior consent to such interception.").

<sup>4</sup> *Hammond* was decided on April 12, 2002, and the Act was ratified on June 4, 2002. See Act No. 339, 2002 S.C. Acts 3619, 3708.

<sup>5</sup> See, e.g., *Adams v. City of Battle Creek*, 250 F.3d 980, 984 (6th Cir. 2001) ("Congress most likely carved out an exception for law enforcement officials to make clear that the routine and almost universal recording of phone lines by police departments and prisons, as well as other law enforcement institutions, is exempt from the statute."); *Abraham v. Cty. of Greenville, S.C.*, 237 F.3d 386, 391 (4th Cir. 2001) (recognizing the law enforcement exception applies to "calls relating to [d]etention [c]enter inmates and employees").

detention centers' phones.<sup>6</sup> Accordingly, the recordings were also subject to the Act's consent exception. *See* § 17-30-30(B); *Hammond*, 286 F.3d at 192 (ruling "the 'consent' exception applies to prison inmates . . . required to permit monitoring as a condition of using prison telephones").

Because the recordings are subject to the Act's law enforcement and consent exceptions, we deny Brooks's motion to suppress.

  
C.J.  
  
J.  
  
J.

Columbia, South Carolina

cc: Reginald I. Lloyd, Esquire  
Joshua Paul Golson, Esquire  
John Wallace Steadman, Esquire  
Daniel Edward Johnson, Esquire

**FILED**  
September 23, 2016

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<sup>6</sup> In his motion, Brooks argues his implied consent in using the phones does not amount to voluntary consent under the Fourth Amendment to the United States Constitution. We find this argument inapposite because Brooks had no reasonable expectation of privacy in the calls he made while detained. *See United States v. Van Poyck*, 77 F.3d 285, 291 (9th Cir. 1996) (holding "any expectation of privacy in outbound calls from prison is not objectively reasonable and [] the Fourth Amendment is therefore not triggered by the routine taping of such calls").